

**IN THE SUPREME COURT OF BELIZE A.D. 2020**

**CLAIM NO. 647 of 2020**

**BETWEEN (EARL ARTHURS CLAIMANT**  
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**(AND**  
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**(JASMINE MIDDLETON DEFENDANT**

**BEFORE THE HONORABLE JUSTICE LISA M SHOMAN**

Trial Date: May 24, 2020.

Appearances: Mrs. Robertha Magnus Usher SC for the Claimant  
Ms. Naima Barrow for the Defendant

Written Submissions:  
August 2, 2021 for the Claimant  
July 14, 2021 for the Defendant

**JUDGEMENT**

**BACKGROUND**

1. Earl Arthurs and Jasmine Middleton were married on August 16, 2008. No doubt when they got married, they expected the union to last. But in May of 2017, the Parties separated, and the recriminations and legal actions began. The marriage between the parties was dissolved on 25<sup>th</sup> February, 2020 by consent.
2. The Claimant, Earl Arthurs (“Mr. Arthurs”) claims possession of a property known as Lot No. 19 Egbert Quilter Ave., Ladyville, title for which is held by a Deed of Gift dated the 30<sup>th</sup> August, 2001 and recorded at the General Registry in Deeds Book Vol. 36 of 2001 at Folios 1117 to 1124 (“the property”); damages for unlawful occupation and possession of

the property; mesne profits; and costs.

3. For her part, the Defendant, Jasmine Middleton (Ms. Middleton”) has counterclaimed and claims for a declaration that the Claimant holds 50% of the property as Constructive Trustee for her; and an order that 50% of the property be transferred to her and/or pays her 50% of any sums remaining after the sale of the property and repayment of the liability to Scotiabank Belize Limited (“the Bank”).
4. Ms. Middleton is in occupation of the property, Mr. Arthurs who left in May 2017, wants her out. The Bank –Scotiabank as it was known then – wants to be paid the mortgage loan balance which is in default. And Ms. Middleton wants a share of the property.
5. The case is confined to these issues, and submissions to the Court as to whether one party failed to take the name of the other on marriage, or if the second child was registered by the wife with her surname, or that she described herself as a single woman therein, and other like allegations and counter-recriminations of marital conduct or misconduct - are not of assistance to the Court, nor necessary for this purpose, and these tidbits add neither seasoning nor spice to the bubbling pot that the Court has to judge.
6. The current dispute is not moreover, one of matrimonial property settlement. Neither party has claimed under the legislative framework under the Supreme Court of Judicature Act which empowers the Court to determine how the properties and assets should be distributed on the breakup of the marriage. In this case, there is simply a claim by Mr. Arthurs as to his sole ownership of the property, and the removal of the Defendant, and for damages/mesne profits; and by Ms. Middleton for the declaration of a beneficial interest via a constructive trust.

## **ISSUES**

7. The Issues that this Court is required to resolve may conveniently be summarized into the following two general headings:

- a. Is the Defendant entitled to any interest in the property?  
If so, what is the nature of the interest?
  - b. If not, is the Claimant entitled to possession of the property, loss and/or damage, and/or mesne profits?
8. What isn't disputed - is that eight years before he and Ms. Middleton were married, when Mr. Arthurs was 22, he was gifted the property at 19 Quilter Avenue, Ladyville, Belize, by his father via Deed of Gift. The Defendant does not dispute this, nor that he is the legal holder of the title. What she does claim is an interest therein, which is disputed by the Claimant.
9. Factually, it is beyond dispute that the Parties lived at 19 Quilter Avenue, Ladyville from when the house there was built, as the matrimonial home, until May 2017 when the Claimant left the home; and that the Defendant still lives there with Tyler Ethan Arthurs born on the 18<sup>th</sup> July 2010, and Taj Amahl Middleton born the 3<sup>rd</sup> October, 2017.

**Is the Defendant entitled to any interest in the property? If so, what is the nature of the Defendant's interest?**

10. The unchallenged evidence shows that after marriage, the Parties lived in the lower flat of the Defendant's parents' home. At some point, the Parties decided to build on the property, and to borrow money for that purpose. I find that this is in fact, clear evidence of a common intention – which was to join forces in order to build and provide a home of their own.
11. On May 26<sup>th</sup>, 2009, the property was mortgaged for \$150,000.00 in order to build a house on the property in which the parties would live together as a married couple (“the First Loan”). The loan was secured by a mortgage<sup>1</sup> against the property deeded in Mr. Arthurs' sole name, in favour of the Bank, and at the time, the Bank valued the land at \$21,024.00.

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<sup>1</sup> Witness Statement of Earl Arthurs, Annex EA 3

The loan was therefore partly secured by a property which was at the time valued at less than 15% of the total debt. It was of course also secured on any buildings and erections standing thereon which would include the house once built. It was further secured by a promissory note which is dated 14<sup>th</sup> October 2009, and which was executed and signed by both the Defendant and the Claimant as “borrower” and “co-borrower” respectively.<sup>2</sup> Under the terms of the application, the repayment of the First Loan was tied to the Claimant’s account.

12. Ms. Middleton’s evidence was that when the property was mortgaged, she was the one to whom the loan was first extended by the Bank as borrower, since she was earning more than Mr. Arthurs and he was made the “co-borrower”. The documentary evidence supports this, and I accept that as being a fact
13. Mr. Arthurs said at first under cross-examination, that he believed that he was “the only one who secured the loan” but was obliged to concede thereafter, that on the loan application, Jasmine Middleton was listed as the Applicant and that he was listed as “co-applicant”. He admitted they both made the loan and that both of their names were on the loan application, and that she signed the loan application.
14. In March 2012, the Parties entered into an Extending Loan Agreement<sup>3</sup>. Jasmine Middleton was listed as the “Borrower”, and Mr. Arthurs was listed as the “Co-Borrower”.
15. In February 2015, they borrowed \$196,000.00 from Scotiabank Ltd<sup>4</sup> (the Second Loan) to settle various liabilities and repay various loans including the First Loan. At the time, the mortgage was increased by \$45,000.00 in order to pay the credit card debt of the Claimant and the Defendant, to make renovations to the house on the property, to pay for loans for Tyler’s medical expenses. Under the terms of the application, the repayment of the Second Mortgage Loan is tied to the Defendant’s account.

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<sup>2</sup> Witness Statement of Jasmine Middleton, Annex 1, page 7; Witness Statement

<sup>3</sup> Ibid, Annex 3

<sup>4</sup> Ibid, Annex 4

16. In May of 2015, the mortgage was again up stamped for the purchase of a vehicle for the Defendant, who is still driving the vehicle. The Claimant says she was to repay the loan.
17. In May 2017, the Claimant unilaterally left the home on the property where he and the Defendant were living, and thereafter, the Defendant remained with Tyler, and Taj, when he was born in October of 2017. The Defendant thereafter changed the locks to the house.
18. It is absolutely fair to call this house, the matrimonial home. It was built for that purpose, with monies borrowed for that reason. Both parties lived there, raised Tyler there; and renovated the premises.
19. The Defendant informed the Claimant on 17<sup>th</sup> November, 2017 that she would vacate the house by the end of that month if he assumed full responsibility for the mortgage and her salary became available to her from December 2017. This evidence was not disputed. It did not happen.
20. In February 2018, the Bank demanded repayment of all the monies owed which then amounted to \$179,708.73, but according to the evidence, the Claimant believed in April 2018 that only \$10,000.00 was “outstanding and due” to the Bank.
21. The evidence is that the Defendant offered in September 2019, to relocate from the property in 30 days if the Claimant assumed full responsibility for the mortgage. It did not happen.
22. Although the Bank had informed the parties of its intention to sell the property, the property has not been sold to pay the Bank’s debt, and it is generally conceded that the quantum of the debt is now probably greater than the value of the property. It is clear that the years of marital antagonism since 2017, have done nothing but exacerbate and deepen the scope of the financial problems facing both parties.
23. The Defendant says that she has made direct financial contributions to acquisition of

material to construct and furnish the matrimonial home worth more than half the value of the property. Her evidence is that on the 13<sup>th</sup> May 2009, the Defendant withdrew \$6,500.00 from her savings at the Holy Redeemer Credit Union.

24. She also alleged that she made indirect contributions to the payment of the mortgage installments by bearing the primary financial responsibility for most of the other joint liabilities.
25. The Supreme Court had already ruled in Action No. 295 of 2017 that the Defendant did not make direct contribution to the mortgage installments. The Claimant's evidence, however, at paragraph 14 of his witness statement, acknowledged that payments for the mortgage were deducted from the Defendant's account, which he says repaid to her.
26. I find as a matter of fact, that the Defendant did not previously make any of the assertions being made in this claim regarding her direct and indirect contributions to the property. I also find that there has not been any previous judicial determination, which is adverse to the Defendant, which prevents the raising of the issues now raised. I find that there has been no previous judicial proceeding regarding the ownership of this property, per se. The issue of res judicata as a preliminary point for resolution, therefore simply does not arise, and need not be resolved by this Court.
27. There are, therefore, really three matters to unpack under the heading of this issue:
  - (i) Was there a "common intention of the Parties" as to the ownership of the property on which Ms. Middleton acted to her detriment;
  - (ii) What if any were the contributions of the Defendant, and
  - (iii) Does the Defendant have a beneficial interest in the property, and if so, what is the nature of such interest.

**Was there a “common intention of the Parties” as to the ownership of the property  
on which Ms. Middleton acted to her detriment;**

28. In the ECWA case cited by the Defendant, **Galarotti v Sebastianelli**<sup>5</sup>, per the decision of Lady Justice Arden, the ingredients for discerning a constructive trust based on common intention are as follows:

5. ***“The parties did not execute a written declaration of trust as to the proportions in which they owned the Flat. Accordingly the parties did not comply with the legal requirements for creating a trust. The Recorder relied for her conclusions on a common intention constructive trust, that is, a trust arising by operation of law where parties agree that beneficial ownership should be held in a particular way but do not follow the formalities required by law and where one of the parties has suffered detriment in reliance on the agreement. In the case of a constructive trust, the court looks at the conduct of the parties throughout their relationship. It is not restricted, as it would be in the case of a resulting trust, to examining the contributions made to the acquisition. The common intention constructive trust is thus more flexible. It is also more appropriate where the parties have incurred expenditure on the strength of their personal relationship and without expectation of having to account, or to call for an account, of every item as they would have to do in the case of a true legal partnership.***

6. ***In giving her reasons for the conclusion that the parties had equal shares in the Flat, the Recorder held that the onus of proof was on Mr Gallarotti. The Recorder held that the principles to be applied to a constructive trust were the same whether the parties were in a relationship such as that of husband and wife or were business associates, though the court might draw different inferences as to their conduct in the latter case. The Recorder held that "in the light of the close relationship between the parties when the Flat was purchased"***

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<sup>5</sup> [2012] ECWA Civ. 865 at <https://www.bailii.org/ew/cases/EWCA/Civ/2012/865.html>

*the analysis to be carried out "is to be seen more in the domestic than in the commercial context" (Judgment, paragraph 106). I agree with all those points."*

29. I also accept the guidance set out in the UK House of Lords case of Lloyds Bank v Rosset<sup>6</sup> per Lord Bridge of Harwich as follows:

*"I do, however, draw attention to one critical distinction which any judge required to resolve a dispute between former partners as to the beneficial interest in the home they formerly shared should always have in the forefront of his mind.*

***The first and fundamental question which must always be resolved is whether, independently of any inference to be drawn from the conduct of the parties in the course of sharing the house as their home and managing their joint affairs, there has at any time prior to acquisition, or exceptionally at some later date, been any agreement, arrangement or understanding reached between them that the property is to be shared beneficially. The finding of an agreement or arrangement to share in this sense can only, I think, be based on evidence of express discussions between the partners, however imperfectly remembered and however imprecise their terms may have been. Once a finding to this effect is made it will only be necessary for the partner asserting a claim to a beneficial interest against the partner entitled to the legal estate to show that he or she has acted to his or her detriment or significantly altered his or her position in reliance on the agreement in order to give rise to a constructive trust or a proprietary estoppel.***

***In sharp contrast with this situation is the very different one where there is no evidence to support a finding of an agreement or arrangement to share, however reasonable it might have been for the parties to reach such an arrangement if they had applied their minds to the question, and where the court must rely entirely on the conduct of the parties both as the basis from which to infer a common intention to share the property beneficially and as the conduct relied on to give rise to a constructive trust. In this situation direct contributions to the purchase price by the partner who is not the legal***

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<sup>6</sup> [1990] UKHL 14



**owner, whether initially or by payment of mortgage instalments, will readily justify the inference necessary to the creation of a constructive trust.** *But, as I read the authorities, it is at least extremely doubtful whether anything less will do. (Emphasis added).*

30. The Defendant's case is that it was understood and agreed that she and Mr. Arthurs would both jointly own the home, and that therefore there was a common intention that they would both have a beneficial interest in the property. She says further that she has acted to her detriment or significantly altered her position upon reliance of that common intention that both parties would have a beneficial interest in the property. Mr. Arthurs of course denies this.
31. The onus on this case is on the Defendant to show sufficient proof of a common intention and reliance thereon to her detriment, in order to give rise to a constructive trust.
32. I do find as a matter of fact that the Defendant has discharged her duty to prove that there was a common intention that the Parties would build a matrimonial home on the property which had been gifted to the Claimant by his father. The fact that they borrowed the money as "Co-Borrowers", built the home, refinanced the mortgage to make improvements to the home (among other things); that the First Loan was linked to the Claimant's account, and the Second Loan to the Defendant's account; that they cohabited in the house that was built on property until Mr. Arthurs left in 2017, that they jointly raised at least one child of the marriage there; make for a strong case that there was a common intention to build and reside at the home as their matrimonial home, and that there was a common intention that both parties would have a beneficial interest in the property.
33. I also accept as fact that the Defendant made direct contributions to the mortgage,<sup>7</sup> since if there was any shortfall in the Claimant's loan payment transfer, the balance would be withdrawn from the account of the Defendant. The Claimant's own evidence was that a "few payments" for the mortgage had been deducted from the Defendant's account.<sup>8</sup>

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<sup>7</sup>[Ibid, paragraphs 29 and 30

<sup>8</sup> Witness Statement of Earl Arthurs, paragraph 14

34. I accept the evidence of the Defendant that the only reason she applied for the mortgage with Mr. Arthurs who offered the property as security, was that she would have a beneficial interest therein. She was the principal Borrower, and he was the Co-Borrower of both loans from the bank for which the property was mortgaged.
35. I accept as fact that the copy of the application adduced into evidence by the Defendant makes clear that her name was not simply “placed on the loan application” as alleged by the Claimant. She was in fact the “principal borrower” of the Mortgage Loan. Those loans were extended by the Bank to the Defendant and the Claimant jointly, and the property was willingly offered by the Claimant as security for the same.
36. I accept further that the assumption of this fiscal position by the Defendant was, in fact, to her detriment, because she became thereafter, personally liable per the loan agreements for the re-payment of both loans. Having entered into 2 loan agreements with Mr. Arthurs as the Co-Borrower, Ms. Middleton has been subsequently unable to secure a loan for another house and property as long as her name remains on the Second Mortgage Loan; and as long as Mr. Arthurs has not assumed full responsibility for the Mortgage Loans. As pointed out already, the First Loan was linked to the Claimant’s account, and the Second Loan to the Defendant’s account.
37. The question is whether there is sufficient evidence of the common intention of the parties so as to award a beneficial interest in the property. I find that as a matter of fact, that there is. The Claimant did concede some elements to prove the same, including the fact that the Defendant did make payments to the mortgage and coupled with the other evidence which I have already referred to above, are in fact sufficient to pass the required **Rosset** criteria for a common intention constructive trust.
38. I therefore find that the Defendant does in fact, have a beneficial interest in the property which arises via a constructive trust which may be inferred by this Court because there is factually, a sufficiency of evidence of a common intention of the Parties to build the house,

to have the house as a matrimonial home, and that the Defendant should have a beneficial interest therein, to which common intention this Defendant has relied on, to her detriment.

**What if any were the contributions of the Defendant?**

39. The case for the Defendant is that, in addition to pledging her credit, she has made direct financial contributions to the construction of the House and therefore to the improvement of the Property.
40. The documentary evidence provided by the Defendant to the Court is that during the time that the house was being constructed, the Defendant withdrew \$6,500.00 and \$20,000.00 from her savings. She gave evidence that the \$6,500 withdrawn in May 2009 was to buy electrical materials for the home, and that \$20,000.00 was used to finish the interior of the home. I accept as fact that the Defendant has therefore directly contributed \$26,500.00 to the construction of the home.
41. The Defendant also says that she made indirect financial contributions to the improvement of the Property by assuming responsibility for the majority of the families' living expenses which allowed the Claimant to be able to pay the mortgage instalments.
42. According to the Defendant, family expenses were divided such that the Claimant paid 40% and the Defendant paid 60%<sup>9</sup>. I cannot and I will not accept a spreadsheet created by the Defendant as proof of this assertion, where there is actually no supporting documentary evidence provided by the Defendant to prove the assertion.
43. Even if I accept the assertion by the Defendant that her "financial commitment included electricity bill, groceries, furniture, appliances, clothing for all three family members, house and yard maintenance, as well as fuel and vehicle maintenance for the family car"<sup>10</sup>, it would be difficult if not impossible to quantify this expressed as a monetary sum.

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<sup>9</sup>Witness Statement of Jasmine Middleton, Annex 5, Spreadsheet of expenses

<sup>10</sup>[Witness Statement of Jasmine Middleton, paragraph 30

Regrettably, Annexes 6 to 8 were not allowed into evidence and therefore, I have no basis on which to adjudge the quantum of the Defendant's indirect contribution expressed as a sum of money.

44. On the other hand, the Claimant says that he has contributed "*equally or sometime more than the Defendant towards the family expenses, in addition to paying the mortgage.*"<sup>11</sup> This does provide an acknowledgement by the Claimant that the Defendant did in fact contribute towards the family expenses, and that her contribution was about half of the same.
45. When cross-examined about these payments, the Claimant said he paid the water bill, Tyler's school expenses including school fees and his aid, groceries, maintenance and the upkeep of the home. When he was asked to quantify the amount, the Claimant said it was difficult to say over the nine (9) years and that he could not give an answer; but pressed further he claims to have paid the school aid for Tyler at \$125.00 or \$150.00 a week.
46. I find that the Claimant is estopped from claiming to have been financially responsible for Tyler's aid since it was determined in the maintenance proceedings<sup>12</sup> that the Defendant paid for the school aide.

**Does the Defendant have a beneficial interest in the property,  
and if so, what is the nature of such interest?**

47. I do accept however, that the Defendant has in fact made indirect monetary contributions to the family's finances, and that those contributions are in fact quantifiable as a part of the beneficial interest that the Defendant has in the property. The contribution by the Defendant to the family finances did not in fact, stop in 2017 when the Claimant

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<sup>11</sup> Witness Statement of Earl Arthurs, Paragraph 30

<sup>12</sup> Defendant's Written Submissions, Tab 5

unilaterally left the matrimonial home in 2017. It continued until the Parties were divorced, and is continuing in respect of the children of the marriage, even after the divorce of the Parties on February 14, 2020.

48. Along with the direct financial contributions made, the indirect contributions are to be assessed as giving the Claimant a beneficial interest of 50% in the said property, less the original value of the property gifted to Mr. Arthurs by his father, which was \$ 21, 024.00.
49. The Claimant has provided as evidence, a letter from the Bank dated March 11, 2021 stating that the payout figure at that time, for the mortgage was \$213,993.03 with interest accruing thereon at \$20.02 per day<sup>13</sup>.
50. The Defendant's victory may well prove pyrrhic, since she has either a share in the value of the property after the current mortgage debt is paid, of 50%, or she may owe an equal share with the Claimant of the debt. For the good of all parties concerned, it is best that this matter be resolved as quickly as possible in order to preserve any equity that the Parties may still have in the property.
51. Since the Claimant is not the sole owner of the property, but holds it on a constructive Trust for the Defendant, the Claimant is entitled to sole possession of the property, nor for loss and/or damage, nor mesne profits?

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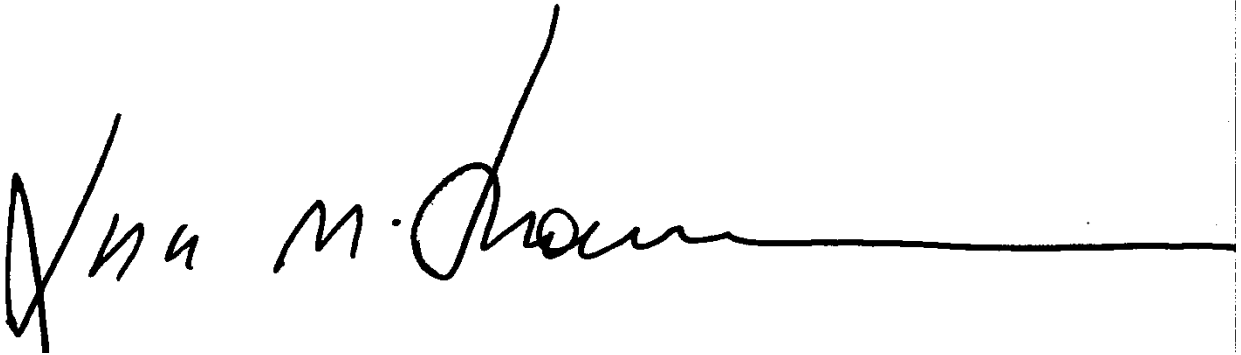
<sup>13</sup> Witness Statement of Earl Arthurs, Annex 29, Letter from Musa & Balderamos

**ORDERS**

52. I therefore grant the following orders:

- (1) A Declaration that the Claimant holds 50% of the Property as constructive trustee for the Defendant;
- (2) An Order that the Claimant shall either transfer to the Defendant a 50% share of the property, or shall, in the alternative pay her 50% of any sums remaining after the sale of the property and the repayment of the liability to Scotiabank and or the successor Bank holding said loan liability; and
- (3) Costs as agreed or assessed.

**DATED SEPTEMBER 27, 2021**

A handwritten signature in black ink, appearing to read "Lisa M. Shoman", written over a horizontal line.

**LISA M SHOMAN  
JUSTICE OF THE SUPREME COURT**