JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 98 of 1995

BEFORE: ***THE HON. MR. JUSTICE RATTRAY, P.***
THE HON. MR. JUSTICE GORDON, J.A.
THE HON. MR. JUSTICE BINGHAM, J.A.

BETWEEN ***PAUL GEDDES*** ***DEFENDANT/APPELLANT***

A N D ***HELGA STOECKERT*** ***PLAINTIFF/RESPONDENT***

Michael Hylton QC., Patrick McDonald and Paul Fisher, instructed by Stephen Shelton of Myers, Fletcher & Gordon for the Appellant

Crafton S. Miller, Miss Nancy Anderson and Mrs. Patricia Brown-Roberts, instructed by Crafton S. Miller & Co. for the Respondent

February 11, 13-14, 17, 19-21 and June 18, 1997

RATTRAY P.:

On the 19th December 1995 Clarke J delivered a judgment in the Supreme Court whereby it was declared, inter alia, that the plaintiff/respondent Helga Stoeckert was entitled to one-sixth share of the assets of Paul Geddes the defendant/appellant as at 16th April 1991, and that the said share was held in trust for the plaintiff/respondent by the defendant/appellant.

This appeal challenges the Order of Clarke J and prays, inter alia, that it be set aside and judgment entered for the defendant/appellant.

The facts are that Miss Helga Stoeckert came to Jamaica from East Germany as a young woman aged 27 years in 1958 and met the defendant, the following year. Mr. Geddes was then a Brewmaster and Co-Managing Director of Desnoes & Geddes Limited as well as Owner and Manager of Geddes Refrigeration Limited.

He was a successful businessman and the Companies he headed were successful businesses. Financially he was very well off.

They developed an intimate personal relationship. Mr. Geddes though married was at that time separated from his wife. He was the father of two daughters of the marriage which ended in divorce in 1962. Both parties despite their intimate relationship as lovers lived separately and apart.

Miss Stoeckert who was planning to establish a meat processing business with her sister Mrs. Christa Lundh who had come to Jamaica at the same time as herself opened Tip Top Restaurant on the Half Way Tree Road. At the end of 1967 they began to operate the Four Seasons Hotel on Ruthven Road which is owned by the two sisters.

In 1963 Mr. Geddes bought land at 1A Braywick Road, Jacks Hill, St. Andrew on which he built a house. Mr. Geddes resided in this house between 1963 and 1973 by himself although Miss Stoeckert was frequently there with him as a visitor. She told the Court of the encouragement which she gave to Mr. Geddes in building the house, of advice on the style of the house and landscaping, of suggestions made by her for changes and discussion relating to furnishings.

In 1967 Mr. Geddes transferred the property 1A Braywick Road to Desnoes & Geddes Limited to the knowledge of Miss Stoeckert. He however continued to live in the house.

In 1973 after an illness which required an operation on her spine she received medical treatment in respect to which Mr. Geddes paid all expenses including her travelling abroad to receive further treatment. On Mr. Geddes' suggestion on her return from medical treatment overseas Miss Stoeckert took up residence with Mr. Geddes at 1A Braywick Road.

It is to be noted that at this time the property was in the ownership of Desnoes & Geddes Limited. Mr. Geddes and Miss Stoeckert lived in the home together as de facto man and wife until the 3rd of May 1991 when she was ejected from the house by Mr. Geddes. A week later he married another woman. On the 2nd of November 1992 the house was transferred from Desnoes & Geddes Limited to Mr. Geddes.

A part of Miss Stoeckert's claim in the action is in respect of the ownership of the house. She maintains that she is entitled to a share in this property which she alleges is held by Mr. Geddes on a constructive trust for both of them. The trial Judge Clarke J rejected her claim in this regard and I will deal with this later as this determination has been challenged on appeal by Miss Stoeckert.

Miss Stoeckert gave a narrative to the Court of extensive travelling abroad with Mr. Geddes to Europe, the Caribbean, the United States of America, Cayman Islands, Canada, England, and countries in the Far East including Japan, Malaysia, Singapore, Taiwan and the Philippines when they were described as Mr. & Mrs. Geddes. With reference to an occasion in 1973

when they were both together in Nassau she stated "we had very beautiful time together, it was like our honeymoon."

In respect of her taking up residence in 1973 at Braywick Road she stated: "Mr. Geddes suggested I should come up to the house. And there I lived until 3rd May 1991." Between 1973 and 1991 she described her relationship with Mr. Geddes as husband and wife and she carried out the wifely responsibilities of running the home. Miss Stoeckert related incidents illustrating her care and love for Mr. Geddes whilst they lived together. It would be fair to interpret her evidence as establishing that she cherished him in sickness and in health.

She rendered him advice as a business confidante. She was never remunerated for the advice she gave when called upon or when given. He added her name to three accounts which he had abroad in the Cayman Islands, Miami and the United Kingdom.

He sought her advice concerning the work at Desnoes & Geddes Limited. He discussed with her the activities in companies of which he was a part: West Indies Glass Company, West Indies Pulp & Paper Co. Ltd., and Desnoes & Geddes.

In relation to the expansion of Desnoes & Geddes she stated that Mr. Geddes "was very knowledgeable in this field. He was responsible for building the brewery known as the Hunts Bay Brewery that was founded in 1958."

In Desnos & Geddes Mr. Geddes was the single largest shareholder, His father had been the founder of the Firm. Miss Stoeckert projected herself as being very much involved in giving advice in relation to the running of the

business as to the decisions which Mr. Geddes had to make with respect to Desnoes & Geddes. However, it is to be noted that the business of Desnoes & Geddes Limited was operated by a Board of Directors; that Mr. Geddes had always had his paid advisors and the Company as well. Indeed Miss Stoeckert by her background and training was in no way qualified in this regard.

Mr. Geddes acquired properties in the Cayman Islands, which included cottages for rental and a hotel known as the Cayman Islander. Miss Stoeckert claims to have given him advice with regard to these. In respect of the Cayman Islander it is to be noted that Mr. Geddes had on Miss Stoeckert's recommendation employed a consultant, a Mrs. Lowry and that when a report had to be given in respect of the operations of this business and its re-organisation it was to Mr. Geddes not to Miss Stoeckert that Mrs. Lowry reported.

Mr. Geddes formed several Companies in the Cayman Islands which she maintained that she knew about. However she had a search carried out in the Cayman Islands Land Register, and thus was able to give to the Court a list of all the various properties which Mr. Geddes owned in the Cayman Islands.

With respect to his shareholdings in Jamaican Companies and his investments on the Stock Exchange in Jamaica she called to give evidence a representative of the Registrar of Companies and the General Manager of the Stock Exchange in Jamaica who were able to give evidence of the extent of Mr. Geddes' shareholdings in public Companies, and the value of the shares of those listed on the Stock Exchange. All this of course is a matter of public record.

Her involvement she said with Mr. Geddes in relation to his purchase of property in Cayman was that "we discussed the purchases." The part she played in the development of the Cayman properties she described as advice which she gave to Mr. Geddes from time to time. Her knowledge of Mr. Geddes' assets both in real estate in Jamaica and the Cayman Islands as well as in stocks and shares is consistent not necessarily with her personal involvement in their acquisition and operation but with information obtained from public records.

Mr. Geddes did extensive entertainment at Braywick Road for which the catering was provided by the Hotel Four Seasons. The hotel bill was paid by Mr. Geddes or Desnoes & Geddes Limited. Indeed it is clear from the evidence that her business benefited greatly from the custom brought to it by Mr. Paul Geddes. He also ate his meals at the Hotel Four Seasons and paid the bill. This is established by the hotel's records. He entertained guests there and the records also show that he paid whatever was provided for and consumed by his guests.

Miss Stoeckert placed specific emphasis on her recollection that "before the General Election in 1980 Mr. Geddes went on a business trip to Mexico. He told me in person that if the Jamaica Labour Party did not win he would not return to Jamaica and he would leave me in charge of all his business. The Jamaica Labour Party won the Election and Mr. Geddes returned to Jamaica."

Mr. Geddes took her to his lawyer to make a will and she was one of the beneficiaries of the will.

He told her, she maintains, "that I have nothing to worry about, I would be 'the richest corpse' in Jamaica."

Miss Stoeckert's world crumbled around her on the 16th of April 1991 when she got a letter from Mr. Geddes which was handed to her by his secretary. It was a letter ending the relationship.

She continued residing in the house until the 3rd of May. Mr. Geddes did not stay there during that period. On that day she went to the house at Braywick Road and saw some people on the premises and could not enter. In the course of the day a truck delivered her belongings to Hotel Four Seasons.

She admits that Mr. Geddes gave her a lot of advice in relation to the Four Seasons Hotel between 1959 to 1991 regarding refrigeration and instalment of equipment which were matters within his engineering knowledge.

She admits that Mr. Geddes arranged with Mr. George Desnoes, attorney-at-law, to lend her £400 from his mother's account with which she made the downpayment for 18 Ruthven Road which is the Hotel Four Seasons.

She claims that because of the unpaid services and advice she rendered to Mr. Geddes she is seeking an Order from the Court that she is entitled to 50% of Mr. Geddes' assets.

Mr. Geddes having got married the will in which she was a beneficiary would no longer be effective.

Her story then, almost fairy tale in its origins is of a young woman who was a bank clerk in East Germany who came to Jamaica with her sister and met a man of means. This man was very successful in the businesses which he operated. Indeed he had inherited some of his means from his own father. The association was clearly valuable to her not only emotionally but financially as well in that she was able to acquire property in Jamaica and developed a successful hotel operation. She was able also to travel from time to time to

different parts of the world with him much to her great enjoyment. The business associates he brought to her hotel were a substantial source of income to her. Her trips with him all over the world provided for her a source of great pleasure. She was very fully engaged in her own business and admitted "apart from times when I was away I spent up to 1990 about ten or eleven hours each day in the Hotel's business."

The records produced show that from time to time when Mr. Geddes ate by himself at the Hotel he was charged for his meals. She said that whenever it was so recorded that was a mistake. He should not have been charged. Whenever he had a guest the bill was paid by Mr. Geddes. Desnoes & Geddes was also a valued customer of the Hotel. She admits that the vouchers for the Hotel Four Seasons show that in December of 1979:

> "Mr. Geddes ate at my hotel and was charged by me on 22 separate days in that month.
>
> Yes, I agree that those include Christmas Day, Boxing Day and New Year's Eve. I agree that the sums charged there represented half the charge."

Mr. Geddes did make her a gift of shares of Desnoes & Geddes for which she was offered approximately $US50,000.00 in 1992 but did not take up the offer. Apart from the Hotel she was able to buy the two adjoining lots of land. On many of the trips that she travelled abroad with Mr. Geddes she made purchases required for the operation of her Hotel. A house on Montrose Road in which her sister lived was owned by herself and her sister. She is the owner of stocks and shares other than the Desnoes & Geddes shares given to her by Mr. Geddes. She has bank accounts other than those on which Mr. Geddes put her name. She told the Court:

"Yes, I have told the Court of various things I did for Mr. Geddes and did not get paid.

Q: At the time you were doing them did you expect that you would be paid?

A: No, I did not expect to be paid but compensated through his expression that I would never have to worry about any financial problems. By compensation I mean sharing in his financial wealth.

Q: When did you have this expectation?

A: From 1980.

Q: So the things you did prior to 1980 you didn't do with that expectation but the things you did after 1980 you did with that expectation?

A: No, sir.

Q: The things you did before 1980 did you do them with that expectation?

A: We were very close.

Q: Are you changing your earlier answer that in 1980 you first had the expectation?

A: I had the intention in 1973 to be compensated for my services. Yes, I am making a distinction in between expectation and intention. In 1973 I had the intention to spend my whole life with Mr. Geddes. But it was not until 1980 that he clearly indicated to me that I had nothing to worry about money until I was a rich corpse, that is until I died. He told me up to 1991 that I would be the richest corpse. He first told me that in the 1980's.

Q: Did you perform the various services you have told me about because of your expectation of monetary compensation?

A: No, I did not."

THE LAW

Miss Stoeckert's claim to a proportion of the assets of Mr. Geddes rests upon the submission that there is in existence a constructive trust with respect to these assets under which Mr. Geddes holds these assets in trust for himself and Miss Stoeckert as trustee, and in respect of which Miss Stoeckert is a beneficiary as to the proportion claimed.

This has been a well travelled road in recent times and the preconditions necessary in law to arrive at the destination sought are now well established.

Each case of course, must be determined on its own peculiar facts and on an application of the law to those facts.

In our own jurisdiction in ***Azan v Azan***, Supreme Court Civil Appeal 53 of 1987, the Court of Appeal in judgments of Forte JA and Downer JA, delivered on July 22, 1988 fully reviewed several of the cases up to that time in which the principles of constructive trust in the circumstances of such a claim had been examined.

In ***Grant v. Edwards*** [1986] 2 All ER 426 in a judgment of Sir Nicholas Browne-Wilkinson VC the principle is stated that if the legal estate in the property:

> "is vested in only one of the parties (the legal owner) the other party (the claimant), in order to establish a beneficial interest, has to establish a constructive trust by showing that it would be inequitable for the legal owner to claim sole beneficial ownership. This requires two matters to be demonstrated:
>
> > (a) that there was a common intention that both should have a beneficial interest; and
> >
> > (b) that the claimant has acted to his or her detriment on the basis of that common intention." [p. 437]

As was said by Forte JA in ***Azan v Azan*** (supra):

> "In determining whether there was a common intention to share the beneficial interest an express agreement to that effect would be sufficient. However, where, as in most cases, there is no such agreement, the common intention of the parties may be inferred from their words or conduct."

It is in the determination of the establishment of the common intention that difficulty most often arises. In ***Grant v. Edwards*** (supra) Nourse LJ at p. 433 posed and answered for these purposes a very important question:

> "So what sort of conduct is required? In my judgment it must be conduct on which the woman could not reasonably have been expected to embark unless she was to have an interest in the house. If she was not to have such an interest, she could reasonably be expected to go and live with her lover, but not, for example, to wield a 14-lb sledge hammer in the front garden. In adopting the latter kind of conduct she is seen to act to her detriment on the faith of the common intention."

Following these principles the following questions arise for our consideration:

> 1. Was there evidence which established on the standard of proof required an express agreement between Mr. Geddes and Miss Stoeckert that Miss Stoeckert was to have a beneficial interest in the assets of which Mr. Geddes was the legal owner?
>
> 2. In the absence of such an express agreement was there established a common intention of the parties to this effect?
>
> 3. If the answers to (1) and (2) above are in the positive did Miss Stoeckert act to her detriment as a consequence of the common intention?

It is on an analysis of the evidence that the true answers will emerge.

As was said by Waite J in ***Hammond v. Mitchell*** [1992] 2 All ER 109 at p. 112:

> "The template for that analysis has recently been restated by the House of Lords and the Court of Appeal in ***Lloyd's Bank plc v Rosset*** [1990] 1 All ER 1111, [1991] 1 AC 107 and ***Grant v. Edwards*** [1986] 2 All ER 426, [1986] Ch 638. The court first has to ask itself whether there have at any time prior to acquisition of the disputed property, or exceptionally at some later date, been discussions between the parties leading to any agreement, arrangement or understanding reached between them that the property is to be shared beneficially. Any further investigation carried out by the court will vary in depth according to whether the answer to that initial enquiry is Yes or No. If there have been discussions of that kind and the answer is therefore Yes, the court then proceeds to examine the subsequent course of dealing between the parties for evidence of conduct detrimental to the party without legal title referable to a reliance upon the arrangement in question. If there have been no such discussions and the answer to that initial enquiry is therefore No, the investigation of subsequent events has to take the form of an inferential analysis involving a scrutiny of all events potentially capable of throwing evidential light on the question whether in the absence of express discussion, a presumed intention can be spelt out of the parties' past course of dealing. This operation was vividly described by Dickson J in Canada as: 'The Judicial quest for the fugitive or phantom common intention' (see ***Pettkus v Becker*** (1980) 117 DLR (3d) 257) and by Nourse LJ in England as a climb up 'the familiar ground which slopes down from the twin peaks of ***Pettitt v Pettitt*** [1969] 2 All ER 385, [1970] AC 777 and ***Gissing v Gissing*** [1970] 2 All ER 780, [1971] AC 886': see ***Grant v. Edwards*** [1986] 2 All ER 426 at 431, [1986] Ch 638 at 646. The process is detailed, time-consuming and laborious."

Counsel for Miss Stoeckert Mr. Crafton Miller relies upon specific pieces of evidence to establish the common intention. What is the evidence upon which Miss Stoeckert relies to establish an express agreement between herself and Mr. Geddes that she was entitled to a share of his assets?

1. In her evidence in chief she stated:

> " In his own words he used expressions to me that made me feel I would be made financially well off through him.
>
> Q: Can you tell the Court remarks that he made in that connection?
>
> A: On many occasions Mr. Geddes told me that I have nothing to worry about, I would be 'the richest corpse' in Jamaica".

2. In his will which was negated by virtue of his subsequent marriage he had devised the residue of his estate after bequest to his two daughters of all his personal household and domestic effects, to be converted and invested. The income from such investment was to be held in trust for his two daughters and Miss Stoeckert equally during their life time. The capital on their decease was to go to his grand-children on their attaining 21 years of age.

3. That prior to the General Elections in 1980 in Jamaica on his departure on a trip to Mexico he told her:

> "... that if the Jamaica Labour Party did not win he would not return to Jamaica and he would leave me in charge of all his business. The Jamaica Labour Party won the election. Mr. Geddes returned to Jamaica."

4. In June 1988 he gave her 23,300 shares in Desnoes & Geddes Limited in which he held 9.2 million shares.

5. Mr. Geddes added her name to three overseas bank accounts which he already had, one In Miami, USA, one in Cayman and one in the United Kingdom.

In his judgment Clarke J found that there was an express oral agreement based upon this evidence for Miss Stoeckert to have a beneficial interest in the assets held in the name of Mr. Geddes. In my judgment neither taken separately or cumulatively can such a conclusion be sustained. The remark that she would be the 'richest corpse in Jamaica', whatever that means, cannot assist in establishing that agreement.

In ***Windeler v. Whitehall*** [1990] 2 FLR 505 an unmarried couple lived together as man and wife. During the course of the relationship in the Spring of 1979, Mr. Whitehall sold his house and bought another in which they both continued to reside. In June 1979 Mr. Whitehall made a will leaving his residuary estate to Miss Windeler. Millett J at p. 511 stated:

> "This is undeniable evidence that he acknowledged a moral responsibility to ensure that she was provided for in the event of his death, unless of course circumstances should occur in the meantime to make him change his mind."

It was not evidence which supported an intention that she should have an interest in the house:

> "It was a recognition of some moral obligation at the time on his part to provide for her if he should die unexpectedly and while circumstances remained the same. It was completely consistent with the absence of any intention on his part to make a present irrevocable disposition of a share in his house or other property to Miss Windeler." [Millett J at p. 515]

Neither can it be interpreted that Mr. Geddes' statement that if the Jamaica Labour Party lost the Elections in 1980 he would not return to Jamaica and would leave her in charge of all his business could be reasonably considered to mean that he was making her a beneficiary of his property. What is more the event upon which this was predicated did not take place.

His gift of shares in Desnoes & Geddes Limited to her only evidences the fact that whenever he wanted her to benefit from his assets he made her an outright gift. Likewise the addition of her name as a signatory to his bank accounts abroad only evidences his facilitation of her ability to access these accounts whenever she was overseas and she so desired. It is significant that she was not made a signatory to any of his Jamaican bank accounts.

Clarke J was in error in finding that the evidence established a specific agreement between the parties which created in Miss Stoeckert a beneficial interest in the assets of Mr. Geddes.

What evidence then is there to support the inference of a common intention?

Acts relied upon by a claimant to establish by inference a beneficial interest in the property of another must be exclusively consistent with that common intention and not attributable to any other reason [See ***Gissing v Gissing*** (1970) 2 All ER 780 at 793]. If these acts are consistent with the intimate and loving relationships between the parties they cannot create any inference of a common intention to share the beneficial interest in assets which are legally vested in one of the parties. Persons in the relationships of these parties would naturally offer support, succour, advice and comfort to each other without expecting a share of each other's property.

Has Miss Stoeckert acted to her detriment by virtue of the relationship between herself and Mr. Geddes and the acts which she claims to rely upon to establish the common intention?

It is clear that she enjoyed tremendously and benefited from the relationship between herself and Mr. Geddes. She received the opportunity of travelling frequently in luxurious circumstances all over the world and has given evidence of the great pleasure she had on these occasions. Mr. Geddes arranged for her to obtain a loan which was the downpayment on the property on which was developed the thriving business "Four Seasons Hotel" owned by her sister and herself. When not travelling she spent up to 1990 about ten or eleven hours each day on the hotel's business. It is clear that Mr. Geddes

and Desnoes & Geddes Limited were prime customers there. The hotel catered for his business functions as also the business functions of Desnoes & Geddes Limited. He ate there with guests and paid the bill.

Far from being the bank clerk of no significant means who came to Jamaica and met Mr. Geddes her evidence now discloses her ownership of the Four Seasons Hotel with her sister, lands next to the Hotel, a house at Montrose Road jointly owned with her sister and lands at different locations in Jamaica for dwelling house purposes.

Miss Stoeckert has no qualifications for the giving of the business advice which she claimed to have given to Mr. Geddes in respect to the many spheres of his endeavours. She admits to Mr. Geddes' own qualifications as an engineer, the fact that he engaged the services of qualified stockbrokers and that his various firms had within them or was able to employ the expertise required for their success. Indeed Desnoes & Geddes Limited originally a family business and Geddes Refrigeration Limited were established businesses before Miss Stoeckert came to Jamaica and commenced a relationship with Mr. Geddes. Mr. Geddes was a man 19 years older than herself and was already a successful and established businessman in Jamaica.

Although she has no real estate expertise she claims to have advised him in relation to purchase of real estate in Cayman. Even in respect of the Cayman Islander Hotel bought by Mr. Geddes it is a Mrs. Lowry recommended by Miss Stoeckert who made a detailed assessment and made her reports and recommendations directly to Mr. Geddes.

The information as to the assets of Mr. Geddes is easily available culled from the public records in Jamaica and in the Cayman Islands. Miss Stoeckert obviously had detailed searches made of those relevant records so that information could be produced with respect to Mr. Geddes' assets.

It is to be noted that the Barnett Bank, Miami, bank account is in the name not only of Mr. Geddes and Miss Stoeckert but also of a Mr. John Martinez. His placing of her name on the accounts is consistent with the suggestion made to her by counsel for Mr. Geddes that this was done so that she could draw on the accounts if she so required whenever she travelled overseas. It is noteworthy that she never did draw on these accounts.

There is in this case no act relied upon by Miss Stoeckert in support of her claim which is not consistent with and cannot be referable to "the natural love and affection existing between the parties." There is established no connection between what is relied upon as "contributions" by Miss Stoeckert and the acquisition by Mr. Geddes of the particular assets to which Miss Stoeckert claims a beneficial interest. Mr. Crafton Miller, Counsel for Miss Stoeckert has submitted that the Court should apply principles of unjust enrichment in order to divest Mr. Geddes of a proportion of his assets and to vest this proportion in Miss Stoeckert. Quite apart from the absence of evidence that Mr. Geddes has been unjustly enriched by anything done or any services rendered by Miss Stoeckert the hurdles of common intention and acting to her detriment would still have to be surmounted by Miss Stoeckert. This she has clearly on the evidence failed to do. None of the matters relied upon by the Learned Trial Judge as establishing Miss Stoeckert acting

to her detriment can thus be categorised. Rather, indeed for Miss Stoeckert the relationship with Mr. Geddes proved to be immensely beneficial.

The evidence disclosed no basis upon which the Learned Trial Judge could properly have concluded, as he did, that Miss Stoeckert was beneficially entitled to a proportion of the assets of which Mr. Geddes is the legal owner.

The appeal therefore is allowed, the judgment of Clarke J set aside and judgment entered for the appellant Paul Geddes. The cross appeal by the plaintiff/respondent with respect to the trial Judge's findings in regard to 1A Braywick Road is dismissed.

The defendant/appellant is awarded the costs of these proceedings as well as the costs of the proceedings in the Court below.

GORDON, J A

By writ of summons bearing date 28th January 1992 the plaintiff Helga Stoeckert claimed from the defendant:

> "1) A declaration that the Plaintiff is entitled to one half (or such other proportion) of the sums representing the balances in all the Bank Accounts held in the joint names of the Plaintiff and the Defendant as of the 10th April, 1991.
>
> (2) A declaration that the Plaintiff is entitled to be compensated for her services by way of a sum equivalent to the income to which she would have been entitled under paragraph seven (7) of the Defendant's Will in existence on April 16, 1991 and/or referred to in paragraph 14 herein or such other sums as this Honourable Court sees fit or deems just to award.
>
> 3) A declaration that the Defendant is trustee for the Plaintiff for 50% or such other proportion as the Court deems just of all assets, property acquired by or in the name of the Defendant during the period of 1963 to 1991, or during such period as this Honourable Court deems just.
>
> 4) An enquiry into the assets of the Defendant, including Bank Accounts as on the 10th April, 1991.
>
> 5) An Order of payment or such sums as this Honourable Court finds due to the Plaintiff.
>
> 6) Further or other relief.
>
> 7) Costs.

Clarke J presided at the trial on 17, 20, 23 - 27 and 31st October, 1995 and 1, 2 November, 1995. In his judgment delivered on 19th December, 1995 he said:

> "There plainly was a common understanding between them that quite apart from his interest, her interest would be limited on the basis of his declared intention to provide for her equally with his two daughters. The

will though revoked by his subsequent marriage reflected that common understanding which I think remains relevant to the question of the quantification of her interest.

That common understanding I take into account. I also bear in mind the contribution she made at his request to improving 1A Braywick Road and, more particularly, to advancing and expanding his assets and business interests by performing the aforesaid unpaid services.

I therefore make this binding declaration of right: that Miss Stoeckert is entitled to one sixth (1/6) share of the value of Mr. Geddes' assets as at 16th April 1991 and that he accordingly holds the said share upon trust for her. The submission of no case is therefore overruled.

For reasons I have already given, 1A Braywick Road does not form part of the assets subject to the trust. But included are the shares held by the defendant in Sun and Land Ltd., All Seasons Ltd., Jette Ltd., and Cayman Islander Ltd., (all incorporated in Cayman), bank accounts held abroad in the joint names of the parties as well as shares in the following companies: (a) Desnoes and Geddes Ltd., (b) Canadian Imperial Bank of Commerce Ltd., (c) Jamaica Citizens Bank Ltd., (d) Mutual Security Bank Ltd., (e) The Gleaner Company Ltd., (f) Kingston Ice Making Company Ltd., (g) Montego Bay Ice Ltd., (h) Telecommunications of Jamaica Ltd., (i) Geddes Refrigeration Ltd., and Bush Boake Allen Jamaica Ltd.

I order that the Registrar of the Supreme Court inquire and report on the particulars of the assets of the defendant (including the value thereof) as they stood on 16th April 1991. She will inquire and report in terms of a draft order to be submitted to me by the Attorneys for the plaintiff within 21 days of the date hereof for approval.

The defendant must pay the plaintiff's costs which are to be taxed if not agreed."

The defendant/respondent appealed the Judgment thus delivered and prayed a reversal thereof. The plaintiff/appellant by a respondent notice sought a variation of the orders to reflect that:

> "(1) The plaintiff/respondent is entitled to a share in excess of one sixth ... of the value of the defendant/appellant's assets as at 16th April 1991, and that he accordingly hold the said share upon trust for her.
>
> (2) The said assets include 1A Braywick Road, Kingston 6 registered at Volume 996 Folio 248 and Volume 996 Folio 249, now in the name of the defendant/appellant solely."

At the trial of the action the plaintiff was the sole witness who testified. The defence elected to rest on submissions made. The plaintiff's evidence was tested in cross-examination. She testified that she came to Jamaica from Germany on 10th November, 1957. She was then 27 and had worked in her mother's factory as a Clerk before working as a Bank Clerk in East Germany.

She met the defendant in 1959. At that time she was planning to open a meat processing business and eventually commenced this business but closed it and opened Tip Top Restaurant at 45 Half-Way-Tree road in 1960. In 1967 with her sister Mrs. Christa Lundh, they acquired and commenced operating the Four Seasons Hotel at 18 Ruthven Road, Kingston 10.

When she met the defendant he was brewmaster and co-managing director and principal share holder in Desnoes & Geddes Ltd; the largest Brewery in Jamaica and perhaps the West Indies. She acknowledged "he was very knowledgeable in this field and was responsible for building the brewery known as Hunts Bay Brewery." He was manager and owner of Geddes Refrigeration Ltd., Chairman of West Indies Pulp and Paper Company and a member of the Board of Directors of other companies.

She admitted in cross-examination "Yes when I met Mr. Geddes I would say he was a successful businessman.

Having met the defendant in 1959 a personal relationship developed between them. The defendant then married was separated from his wife. The personal relationship blossomed into an intimate one. The defendant obtained a divorce in 1962 and the relationship flourished until the 16th April 1991. The friendship was a visiting one in which from time to time she would stay overnight at his home at 1 Braywick Road, Kingston 6. Then from sometime in 1973 she took up residence at his home until they parted in 1991.

The plaintiff testified that in the course of their relationship she was his confidante and business adviser. She advised him on business deals relating to the firm of Desnoes & Geddes Ltd., and in his personal business affairs, there was an understanding that she would be remunerated for the services she rendered. She advised him on the acquisition of stocks and shares and on business ventures at home and abroad. She also advised him on a hotel enterprise he undertook in the Cayman Islands. She did not advise him on the purchase of the lot but she advised him on the construction of the home at 1A Braywick Road and determined structural alterations and improvement to this property. Construction of this house was commenced in 1964. She said:

> "The house was constructed for Mr. Geddes and me to live in the house I intended for both Mr. Geddes and me to make the house our home."

Her contribution consisted of suggestions on structural changes some of which she said she insisted on being made.

One must consider this against the fact that the friendship commenced in 1959, the construction in 1964 and they were not then living together. This land at 1A Braywick Road was acquired by the defendant in 1963 and was transferred on sale to Desnoes & Geddes Ltd in 1967. The defendant commenced living there after the construction of the house was completed in 1965. She was aware she said, of the sale to Desnoes & Geddes Ltd who made the house available to the defendant as his residence.

Continuing her evidence she said that the defendant travelled extensively abroad to Europe, Asia the far east, Cayman Island and Haiti , United States of America and Canada on business and she accompanied him often and at times met him abroad at his invitation. She claimed she participated in his business discussions and advised him. He paid her expenses and in the late 1980s added her as a co-signatory to accounts he had in banks abroad - one in the Cayman Islands, one in the United States of America and one in England. She never placed any money in either the account in the United States of America or in England and after the cessation of the relationship she received a cheque representing the balance on account she had in the Bank in Cayman. She had unlimited drawing rights on these overseas accounts. She was not joined in any bank account he had in Jamaica but she was joined by him as a member of the Admiral Club since 1989 and a member of the Inosphere Club. Her membership cards bore the name Helga Geddes.

They discussed the subject of marriage. He did not wish to marry and neither of them wanted to have children. In the beginning the defendant's daughters lived with him at his house and played some small part in the furnishing of the home. The plaintiff said she was his hostess and wife, entertaining his business and private parties at the home at 1 Braywick Road and at the Four Seasons Hotel. The Four

Seasons Hotel, her business, catered at all his parties and the bills were paid by him or by Desnoes & Geddes. He paid for every meal he had at the hotel. Bills identified by her were admitted in evidence indicating the extent of these business dealings.

In 1973 she fell ill and underwent surgery at the Miami Heart Institute. The defendant made all the arrangements and paid all the bills. On her return to Jamaica while convalescing the defendant suggested that she should reside at his house at 1 Braywick Road. She accepted the invitation. The defendant's home was staffed with household help and other ancillary staff.

The defendant she said, confided his business secrets in her and sought her advice as a business confidante. He gave her reason to believe she would be remunerated for those services. She was not paid for the services she rendered but she was not concerned as she "trusted Mr. Geddes totally." She insisted she gave the defendant expert advice in the acquisition of his assets. She admitted she had no input in his purchase of the land at 1 Braywick Road.

She said that the defendant used words to her that made her feel she would be financially well off. She would be compensated for her services. He told her many times she would be the "richest corpse in Jamaica". In 1985 the defendant took her and his daughter Marylyn to his lawyers and gave instructions for the preparation of his will. He later gave her a copy of this will. This will (undated) was admitted in evidence. In this will his two daughters and the plaintiff were named as executrices and trustees. He gave personal items to his daughters and left the residuary estate to be converted into cash and the cash held on trust with a life interest in one third given to each executrix with remainder over to his grandchildren. The plaintiff submitted that this was evidence of an intention to create a trust for her benefit.

The plaintiff claimed "I am entitled to one half or such other proportion of the balances of the joint account I held with Mr. Geddes at 16th April, 1991. I am also asking for a declaration that I am entitled to be compensated for all those services I have rendered by way of a sum of money equivalent to the income I would have been entitled to under paragraph 7 of the will. Also a declaration in that the defendant is a trustee for me for 50% in respect of such other properties acquired by Mr. Geddes during the period 1963 and 1991 or such other period as the court deem fit.

The learned trial judge in assessing the plaintiff's evidence concluded "although much of her evidence was challenged I find that it was not contradicted... There is nothing incredible or inconceivable about any aspect of her evidence. Although she readily agreed she had no professional qualifications in the fields of stockbroking and brewing her evidence was in my opinion cogent and reliable".

The advantage the trial judge had of seeing and hearing the witnesses ought not easily to be displaced ***Watt (or Thomas) vs Thomas*** [1947] 1 All E.R. 582.

This court following ***Watt vsThomas*** (supra), in ***Walters vs Shell Co (W.I.) Ltd*** [1983] 20 JLR 5 held that the Court of Appeal will not lightly upset a judgment based on those advantages which the trial judge had merely on a consideration of the written record. One is however obliged to look critically at the evidence given by the plaintiff in the light of her admission of lack of expertise in the fields of business in which the defendant was engaged.

When she met him in 1959 he was a very successful businessman aged 47 years. He was the principal shareholder in Desnoes and Geddes a brewmaster, par excellence, with a track record of having established a most successful brewery in 1958. He was an acknowledged expert in his field. The question therefore falls - what advice could she give him in this field? Already the principal shareholder in Desnoes &

Geddes Ltd and Co-Managing Director, he had on her evidence, "more than one firm of stockbrokers advising him on the stock market." Again what advice could she give about dealing in the stock market?

One has to examine the evidence carefully and critically to determine if there has been at any time prior to the acquisition by the defendant of property subsequent to the establishment of the common law relationship of husband and wife which had its genesis in their living together as such in 1973, "any agreement arrangement or understanding reached between them that the property is to be shared beneficially." ***Hammond v. Mitchell*** [1982] 2 All E R 109.

It seems to me there were no such prior agreements; the investigation of subsequent events has to take the form of an inferential analysis involving a scrutiny of all events potentially capable of throwing evidential light on the question whether, in the absence of express discussion, a presumed intention can be spelt out of the parties past course of dealings. ***Hammond v. Mitchell*** (supra).

The authorities indicate that for the establishment of a trust there must be evidence of (a) an agreement, actual or constructive; (b) the plaintiff acting to her detriment. The plaintiff claimed she was wife and hostess to the defendant but in no wise did her business suffer. She testified she arrived at the hotel at 7.00 a.m. and worked there until 6.00 p.m., then most evenings she had dinner with the defendant there then she went home. She explained she spent 10-11 hours at the hotel; the evidence suggests she spent in excess of 12 hours daily. She made no sacrifice of her business interests. On the contrary the evidence suggests great wealth as a result of her association with Mr. Geddes.

The plaintiff admitted that the defendant gave her financial assistance in her acquisition of the Four Seasons Hotel at 18 Ruthven Road owned jointly with her sister.

He arranged the financing of the mortgage she obtained to acquire the property. He arranged the financing for the expansion of the hotel and the acquisition of adjacent property for that purpose. He arranged also the financing of the acquisition by her and her sister of a home at 10 Montrose Road, St. Andrew.

The defendant paid the expenses of the plaintiff's extensive overseas travels and she testified that on these trips she visited friends and relatives, bought things for her hotel and indubitably promoted the Hotel Four Seasons. She was made joint holder of his account in three banks overseas and had unrestricted drawing rights. She was also afforded membership in exclusive clubs. The plaintiff gave her a gift of 35,000 shares in Desnoes & Geddes Ltd and she refused an offer of US$50,000 for the sale of these shares. She was made a director of Geddes Refrigeration Ltd in 1980. She was unable to say how many shares the defendant had in this his company.

A great area of benefit to the plaintiff as a result of her association was the business the hotel enjoyed. The hotel Four Seasons catered at parties the defendant had at his home or at the hotel as he entertained friends and/or business associates. The defendants despite having a fully serviced home, had the most of his meals at the hotel and most nights dined at the hotel with the plaintiff. The defendant or his firm of Desnoes & Geddes Ltd., was billed for every service rendered.

She said she advised him on the acquisition of a hotel in the Cayman Islands. She got the defendant to employ the services of her friend as a consultant and to employ her niece and her husband to manage same.

We have here a situation in which two adults, business oriented, entered into an intimate relationship. From the outset the defendant declared he had no intention, having once been married, to remarry and both agreed not to have children, he having fathered two. In the beginning from 1959 to 1973 they maintained separate

households and she accepted his invitation to live at his house after her discharge from hospital, having undergone surgery and while she was convalescing. It is noteworthy that although he made her a joint holder of his overseas accounts, she was not joined with him in one account here in Jamaica, and there was no complaint about this. The relationship in concubinage was consummated in 1973 and he had his meals at her hotel daily, yet such was her record keeping he paid for every meal even those he had on Christmas Day, every cup of tea he had even when he dined with her. Despite the meticulous care in record keeping not one jotting exists of the understanding, the commitment, she said he made to remunerate her for her services.

There is no evidence of any contribution in cash or by way of services rendered by the plaintiff to the acquisition of property by the defendant. On her evidence she spent most of her time in running her hotel for her benefit. In **Lankow v Rose** [1995] 1 NZLR 277 relied on by the plaintiff, Tipping J set out at page 294 the criteria for the imposition of a constructive trust where it is being used as a remedy in an action for unjust enrichment. They are:

> 1. Contribution direct or indirect to the property in question.
>
> 2. The expectation of an interest therein
>
> 3. That such expectation is a reasonable one
>
> 4. That the defendant should reasonably expect to yield the claimant an interest.

Mr. Hylton for the appellant submitted that "the respondent has not led any evidence to substantiate her claim that there was sufficient contribution to the various assets in which she claims to be entitled to an interest and on that basis alone the claim should fail." At page 295 Tipping J defined contribution as:

> " any payment or service by the claimant which either (a) of itself assists in the acquisition, improvement or maintenance of the property or its value or, (b) by its provision helps the other party acquire, improve or maintain the property or its value."

I accept Mr. Hylton's submissions as correct and agree the dicta of Tipping J accurately state the law. Hardie Boys J in the same case of **Lankow v Rose** at page 282 made the following statement which I endorse:

> "It is however important that whatever the legal rubric there should be clear criteria for the imposition of constructive trusts in the area of de-facto relationships. The essential requirements I see to be twofold: that the plaintiff contributed in more than a minor way to the acquisition, preservation or enhancement of the defendant's assets, whether directly or indirectly; and that in all the circumstances the parties must be taken reasonably to have expected that the plaintiff would share in them as a result."

Peter v Beblow [1993] 101 DLR (4th) 621 a decision of the Supreme Court of Canada was another case relied on by Mr. Miller for the plaintiff in support of her claim that the Court should find that a constructive trust exists in her favour. The plaintiff performed a substantial amount of domestic services without payment or compensation in any form. She contributed money to the purchase of groceries and household supplies. This she did after she had moved in with the defendant at his request because his two children needed to be cared for. There was no dispute that the defendant had been enriched and the court found there was a corresponding deprivation of the plaintiff. Compensation, the court held, was best effected by way of a constructive trust which McLachlin, J., described at page 643 as:

> "The basis for remedying the injustice that occurs where one person makes a substantial contribution to the property of another person without compensation."

Mr. Miller's reliance on this case was misplaced. So too was his reliance on the will as evidencing an intention to create a trust. A will is ambulatory and revocable. It was revoked by the subsequent marriage of the defendant.

The plaintiff claimed her interest in the defendant's property acquired since 1963. This was when the defendant bought 1 Braywick Road without her knowledge of it. The trial judge made his award in respect of all property owned by the defendant as at 16th April, 1991.

There is no evidence of any contribution made by the plaintiff to the acquisition by the defendant of property or any sacrifice, deprivation or act done by the plaintiff to her detriment as would raise a constructive trust in her favour. I find that the learned trial judge fell in error when he found for the plaintiff.

I would allow the appeal set aside the judgment entered therein and enter judgment for the appellant. The appellant will have his costs here and below. The respondent notice is dismissed with costs to the appellant. The costs are to be taxed if not agreed.

BINGHAM, J.A.:

Having read in draft the judgments prepared by the learned President and Gordon, J.A., I am in agreement with their reasoning and the conclusions reached that the appeal be allowed. As the court, in coming to this conclusion, is differing from the learned judge below, I have availed myself of the opportunity to add my own contribution in the matter.

The respondent, Helga Stoeckert, had, in her prayer for relief, claimed a 50% share of "all assets or property acquired by or in the name of the defendant during the period of 1963 to 1991 or during such period as this ...court deem just."

Clarke, J., in finding for the respondent, awarded her a one-sixth share of all the appellant's assets as at 16th April, 1991, this being the date of the parties' separation. The learned judge properly rejected the respondent's claim to an interest in 1A Braywick Road, the dwelling house in which the parties lived together in concubinage from 1973 to 1991. He rested his judgment in coming to this conclusion on the basis that the appellant, Paul Geddes, had no proprietary interest in this house during the period that the parties lived and cohabited together. Although the property had been transferred by the appellant to the company of which he was then the Chairman, he continued to live on these premises, with the permission of the company. The fact that the respondent said she still regarded the house during this period as belonging to the appellant was immaterial. The transfer of the property to Desnoes and Geddes Limited in 1967 was not challenged at the hearing before Clarke, J. There was accordingly no such asset owned by the

appellant during the material period to which the respondent's cross-appeal can relate.

Before leaving this aspect of the claim, the learned judge, having rejected the respondent's claim, nevertheless took into consideration acts allegedly done by her in "improving" the residence for which she admitted that such charges and expenses were borne either by the appellant or the company. He saw these acts as "giving cumulative force" to the respondent's contention that it was the common intention of the parties that she was to share in the appellant's property. In coming to this conclusion, in the light of his earlier finding, the learned judge erred for reasons which will become more apparent later in this judgment.

The judgment has been challenged on the following grounds:

> "1. The learned trial judge erred in accepting the Plaintiff/Respondent as a witness of truth, and in ruling that her evidence was not contradicted and that there was nothing incredible or inconceivable about any aspect of her evidence.
>
> 2. The learned trial judge erred in finding that the Plaintiff/Respondent's pleading disclosed that she was relying on an express agreement between herself and the Defendant/Appellant.
>
> 3. The learned trial judge erred in finding that the evidence disclosed that there was an express oral agreement or a common intention between the parties that the Plaintiff/Respondent would have a beneficial interest in the assets of the Defendant/Appellant.
>
> 4. The learned trial judge erred in law in finding that the evidence disclosed that the Plaintiff/Respondent had 'acted to her detriment' and that she had done so in reliance on or pursuant to the express agreement or the common intention alleged by her.
>
> 5. The learned trial judge erred in ruling that the Plaintiff/Respondent was entitled to a share of **all** the Defendant/Appellant's assets (except for the Braywick Road premises), as at

> April 16, 1991, **including** those assets acquired by him before he met her."

The respondent in her cross-appeal, not content with the award made to her, now seeks a larger share of the appellant's property which it is common ground is considerable. She also challenges the judgment of Clarke, J. in so far as it relates to the rejection of her claim to a share of the house at 1A Braywick Road, St. Andrew. For reasons already set out, this claim is totally unfounded.

Before going further into the merits of the issues raised in this appeal, it is necessary to examine the evidential basis from which the respondent's claim had its genesis. In this regard, I adopt as my own the facts as summarised in the judgment of the learned President.

On these facts Clarke, J., in rejecting the contentions of learned counsel for the appellant, Mr. Hylton, Q.C., found:

> "...that there was nothing incredible or inconceivable about any aspect of her evidence. ...I found her evidence to be both cogent and reliable."

While an appellate court ought not to interfere with the findings of a trial judge who has had the advantage of seeing and hearing witnesses as to fact, where on an examination of the printed record it is clear that his assessment was erroneous, then the evidence below becomes at large for the appellate court to examine it and, where the circumstances so warrant, to come to a different conclusion (vide ***Watt (or Thomas) v. Thomas*** [1947] 1 All E.R. 582).

The respondent's claim is made against the background of an admission on her part that she did not contribute financially to any of the assets owned by the appellant. There is no documentary evidence to support the respondent's claim that there was a common intention that she should acquire a share in the appellant's assets. She claimed to have been "his business advisor, sounding board, playing an active role

in his business interests both locally and internationally." She admitted, however, that by the time the parties met the appellant was middle-aged, married but separated, a very successful businessman; the brewmaster and Chairman of Desnoes and Geddes Limited, Chairman of West Indies Pulp and Paper Limited, owner of Geddes Refrigeration Limited and on the board of several other companies. He had in 1958 built the Hunts Bay Plant, reputed to be the largest of its kind in the Caribbean. The respondent, despite this evidence, represented herself as his advisor on all matters to do with the running of the brewery as well as investment in the stock market. The brewery was at least the one area in which the appellant was fully qualified to make his own informed judgment, having regard to his expertise. He also had at least two professional stockbrokers advising him as to possible investments in the market. This would have rendered the respondent's account, if not incredible, highly unlikely.

The respondent also claimed to have encouraged the appellant to acquire land and to build a house for both of them to live in. She recalled them perusing magazines with designs of various houses in deciding the sort of residence they wanted to construct. The true facts, as the evidence indicated, however, was that the respondent was unable to say when the land on which the house was constructed was bought. When the house was completed in 1965, it was the appellant and his two daughters who lived in it. The respondent, although a regular visitor to the premises, did not actually go to live there until ten years later, in 1973, following an operation on her spine. She required further treatment abroad at the Miami Heart Institute. It was the appellant who paid all her expenses, both locally and overseas. When she returned to Jamaica, it was the appellant who invited her to come up to the house and stay there. This invitation was probably influenced by the fact that among the therapy recommended for the respondent was

swimming. There was no pool at the Hotel Four Seasons, the respondent's business place, nor at her home at 10 Montrose Road. There was a pool at the appellant's residence at 1A Braywick Road. It is in the light of this evidence that the respondent's account of premises 1A Braywick Road being built as "the matrimonial home" for the parties, is not truthful, given her own admission that she did not go to live in the house upon its completion in 1965.

As the legal title in respect of all the property to which the award below relates was vested in the appellant, it can only be justified on there being evidence establishing, on a balance of probability, that the relationship of trustee and beneficiary was created by the relationship between the parties. It is not merely sufficient for the respondent to adduce evidence proving that there was a common intention by her being led to believe that she would acquire a share of the appellant's assets. She must go further and establish that, in reliance on this belief, she acted to her detriment. There must be that link necessary giving rise to the creation of a constructive trust in her favour.

Was the common intention proved?

This can only be determined by evidence which, in this case material to this issue, came entirely from the respondent.

What is clear from the outset of the relationship between the parties is that, although marriage was discussed, the appellant made his wishes clear that he was not desirous of re-marrying. They were not interested in having children.

The next important factor to be looked at was the manner in which the parties conducted their affairs, both private and personal. The appellant as a businessman with wide and varied interests continued to devote his times and energies in that direction. He, however, was not

selfish. Long before 1973, when following her illness he invited the respondent to come up to 1A Braywick Road to live, he had assisted her in 1967 in making the down payment on premises at 18 Ruthven Road, where the Hotel Four Seasons was located. For the entire period of their relationship, he was a constant and regular customer at the hotel. He paid for every meal he ate there, whether dining alone or with friends and business associates. This also included when he dined in the company of the respondent. This situation did not alter after the respondent came to live at Braywick Road, as the appellant had breakfast and dinner at the hotel on most weekdays, despite having a fully-serviced residence. He was charged not only for meals eaten at the hotel during weekdays but even those consumed on special occasions such as Christmas Day, Boxing Day and New Year's Eve. Meticulous records were kept, nothing was missed. On one occasion there was the omission to make a charge for a small item. This charge was added to the next bill. The appellant not only ensured that the respondent's hotel benefited from the custom which he brought there by his patronage but, as Chairman of Desnoes and Geddes Limited, whenever the company were hosts to functions put on for customers and business associates, both local and from overseas, the hotel did the catering.

What clearly emerges from this evidence is that the respondent, while enjoying an intimate relationship with the appellant with an eye to the future and with some degree of financial assistance from the appellant, was advancing herself as a woman of no ordinary proprietary status.

Whenever the appellant rendered financial assistance to the respondent, however, this was done in a business-like manner by a formal document being executed. Such was the case when the hotel was bought and two of the neighbouring lots forming part of Cecelio Lodge acquired by the respondent and her sister in the 1970s. In all these instances,

a mortgage was drawn up and executed. In 1988, through a stock split, the appellant's shareholding in Desnoes and Geddes increased. He made the respondent a gift of 23,300 shares in the company. This was not done by word of mouth. He went to his lawyers and had a transfer of the shares executed and shares certificates issued to the respondent.

The respondent also sought to rely on the Will as being evidence in proof of the common intention towards establishing the existence of a constructive trust in her favour. The Will, executed in 1985 leaving her a life interest of a one-third share in the income from the residue of his estate along with his two daughters, can be seen as a moral obligation on his part that he should make some special provision for her should he die while their relationship lasted. As a gift, conditional on death, it created no vested interest in the respondent and was revoked by the subsequent marriage of the appellant.

From the manner in which the appellant ordered his affairs, therefore, it cannot be said, either directly or inferentially, that he intended the respondent to share in his assets. He assisted her in the way of her business and commercial ventures. With the custom which came to the hotel from the appellant and the Corporate Group of which he was the Chairman, it is little wonder that when quizzed about the fortunes of the hotel the respondent admitted that the venture was "fairly successful."

As can be seen from the manner in which the parties ordered their affairs in their relationship with each other, there was a marked absence of any material facts from which the learned judge could properly conclude, as he did, that:

> "On these facts I find that there was an express oral agreement as contended for by Mr. Miller."

Clarke, J. adverted to certain proven facts upon which he based his finding of a common intention.

These facts will now be examined. They were as follows:

1. Miss Stoeckert said that shortly before the General Elections in November 1980 the appellant, on leaving on a trip to Mexico, told her that if the Jamaica Labour Party did not win the Elections she was to take charge of his affairs. As this eventuality never occurred, it cannot be relied on for this purpose. Moreover, the assurance was for her to manage his affairs, not to own his property.

2. The respondent said that following Mr. Geddes' return from Mexico and on several occasions during the 1980s he constantly assured her that "she need not worry about anything as she would be the richest corpse". This the learned judge interpreted to mean that he would make her financially wealthy.

3. As the respondent, during this period, was enjoying a lifestyle as the constant companion of the Chairman of what was unquestionably a large and successful company, in addition to owning and managing a "fairly successful" hotel along with acquiring several other prime properties, had she "passed on" she may well have been termed as a "rich corpse".

4. The gift of 23,300 shares in Desnoes and Geddes Limited, far from affording proof of a common intention, this disposition is cogent evidence to the contrary and indicative of the manner in which the appellant acted when he had a desire to benefit the respondent in a particular way. He went to his attorneys and executed a transfer of the shares to the respondent.

The overseas bank accounts

The respondent, in her claim, sought to lay claim to a half share of the proceeds in three accounts established by the appellant in the Cayman islands, Miami, Florida, USA and in London, England. These were joint accounts, the respondent's name being added by the appellant as a signatory sometime in the 1980s. Apart from the Cayman accounts, to which the respondent deposited a couple thousand dollars at the request of the appellant, she was repaid this sum with interest following the parties' separation in April 1991, the appellant was responsible for

depositing all the funds in these accounts. Although the respondent had drawing rights, she admitted that the appellant needed no permission from anyone to withdraw funds from any of the accounts. It is further of interest to note that the name John Martinez is also a signatory as having drawing rights to the Miami account.

It is the appellant's contention that, given the circumstances relating to the respective accounts, the learned judge ought to have concluded that the appellant was the owner of the funds remaining in the accounts. The respondent's name being added was a mere facility to her, if while the relationship lasted the parties happened to be travelling in the country where the accounts were located and they were in need of funds for whatever reason.

Learned counsel for the appellant, Mr. Hylton, Q.C., cited in support ***Cummins v. Cummins*** 35 W.I.R. 69 at 71, where Douglas, C.J. said:

> "There was never any question, in my view, of establishing a joint purse or a common pool. The parties are people in the evening of their days. What property they had before marriage, they retained as separate property....It is also worthy of note that after the marriage, the wife continued to maintain a joint account with her niece. In all the circumstances, it has not been shown that, in adding the name of the wife to the account which he had at the bank, the husband intended that the wife should acquire a right to half the proceeds of that account or any other portion of it. It was the husband's account to all intents and purposes and the addition of the wife's name did not change that fact."

This case is also important as there the parties being married, the addition of the wife's name to the account gave rise to the possible argument that there was a presumption of advancement in her favour. There is no such presumption in this case operating in favour of the respondent, having regard to the status of the parties (vide ***Austin v. Austin*** [1978] 31 W.I.R. 46.

On a careful review of the facts in this case, the respondent was not someone who remained at home or worked in some business owned by the other party rendering services for which, had she not been there performing them, other paid assistance would have had to be sought. Such services as in ***Nixon v. Nixon*** [1961] 3 All E.R. 133, where the claimant did nothing else apart from working in the business and running the household, prompted Edmund-Davies, L.J. to remark:

> "The help she rendered was not casual but regular, not intermittent but continuous, for every hour of every day when business was being done, she was there, ready and available to take part in it."

The authorities relied on by learned counsel for the respondent, Mr. Miller, as in ***Nixon v. Nixon*** (supra) involved similar factual situations in which it would not be difficult for one to conclude that the party rendering the services to their detriment did so on the basis of a common intention that they would acquire a beneficial interest in the particular asset and, but for the representation by the party in whom the legal title was vested, it is unlikely that such services would have been performed.

This line of cases as ***Eves v. Eves*** [1975] 3 All E.R. 768, ***Grant v. Edwards*** [1986] 2 All E.R. 426, and ***Hammond v. Mitchell*** [1992] 2 All E.R. 109, are all on the particular facts clearly distinguishable from the instant case.

In ***Eves v. Eves*** (supra), the claimant was told that her name would have been on the title deeds, but for the fact that she was under age at the time the property was purchased. Based on this representation, she performed extraordinary acts, both in the house and in the garden, thereby improving the premises, including wielding a 14 lb. sledge hammer.

In ***Grant v. Edwards*** (supra), the claimant was told that because she was involved in a matrimonial dispute her name would not then be put on the title. She worked and contributed substantially towards the housekeeping expenses thus enabling the other party to go out and work to pay the mortgage instalments.

In ***Hammond v. Mitchell*** (supra), the situation there involved the parties in joint speculative business ventures resulting in properties being acquired in England and Spain. The claimant was fully engaged in assisting in the English venture, to which she contributed financially as well as looking after the household and rearing the children. There the court held that:

> "In determining the beneficial titles relating to the joint assets of an unmarried couple, the questions to be determined were, firstly, whether the parties had reached some agreement, arrangement or understanding relating to any and, if so, which property on the basis of express discussions to the effect that such property should be shared beneficially and, if so, secondly, whether the party claiming a beneficial title had shown him or herself to have acted to his or her detriment or had significantly altered his or her position in reliance on that agreement, thereby giving rise to a constructive trust..."

Clarke, J., in coming to a conclusion that on the evidence a trust had been created in the respondent's favour, while rejecting her claim to a proprietary interest in 1A Braywick Road, regarded the changes by way of improvement to the premises, which the respondent claimed to have effected at no cost to herself, as being services performed by her to her detriment, thereby establishing the link between the detriment and the common intention necessary to create a trust in her favour.

There was no basis for such a conclusion for the reasons that:

1. His earlier finding had already determined that the appellant was not the owner of the house at the material period that the parties lived and cohabited together.

2. Even assuming the appellant was the owner of the house, the changes effected were not done at any cost to the respondent.

3. The changes were all of an ephemeral character (vide ***Pettit v. Pettit*** [1969] 2 All E.R. 385, followed in ***Lynch v. Lynch*** S.C.C.A. 36/89 (unreported), and also ***Windeler v. Whitehall*** [1990] 2 F.L.R. 505.

Having rested his finding of a detriment on an erroneous premise, it followed that there was no legal basis upon which Clarke, J. could properly determine that a trust was created in favour of the respondent.

The respondent, Miss Stoeckert, spent the better part of every day working in and building up the Hotel Four Seasons to be the successful business it now is. As for the time that she spent at 1A Braywick Road, entertaining the appellant's guests and business associates, her efforts were mutually beneficial to the appellant as well as herself as it was the hotel that catered on these occasions. Most of her leisure moments were spent in the company of the appellant in faraway places, enjoying a luxurious existence and discovering the world.

The parties enjoyed a long relationship emotionally and mutually satisfying to both, but, as the evidence clearly shows, of a distinct material advantage to the respondent. Upon receipt of the appellant's letter on 16th April, 1991, ending the relationship, the world in which her hopes and aspirations revolved was brought suddenly to an end. What the respondent sought in her claim for a share of the appellant's property was not based on her belief that he intended for her to share in his property. She herself admitted that she expected to receive no monetary compensation for the services she rendered as the appellant's common-law partner for 19 years. In this role she has, rather than suffering any detriment, benefited greatly in so many areas from the relationship. What she now sought in her claim was compensation for the

pain and agony which she experienced in seeing her lover abandon her for a much younger woman.

As Mr. Hylton, Q.C. submitted, however, that is not what this case is about, as to succeed the respondent had the burden of establishing in the words of Millet, J. in ***Windeler v. Whitehall*** (supra) at 506F:

> "To succeed therefore it is not enough for the (Plaintiff) to persuade me that she deserves to have such a share she must satisfy me that she already owns it."

Given the facts in this case and the law applicable, on neither ground can the findings and conclusions reached by the learned judge below be sustained.

For the reasons set out, I join with the learned President and Gordon, J.A. in allowing the appeal and setting aside the judgment of Clarke, J. in terms of the order as proposed by them.