

GRENADA

IN THE COURT OF APPEAL

CIVIL APPEAL NO.11 OF 2005

BETWEEN:

JOSEPH GAYLORD

Appellant

and

CONSTANCE CONOVER (Formerly GAYLORD)

Respondent

Before:

The Hon. Mr. Michael Gordon, QC

Justice of Appeal

The Hon. Mr. Hugh A. Rawlins

Justice of Appeal

The Hon. Madam Ola-Mae Edwards

Justice of Appeal [Ag.]

Appearances:

Mr. Lloyd Noel for the Appellant

Ms. Lisa Taylor for the Respondent

2005: December 8;

2006: May 22.

JUDGMENT

[1] **GORDON, J.A.:** This is an appeal against a decision of the Master seeking to resolve the proprietary interests of a long divorced couple. The Master's Order is unaccompanied by reasons for his decision which was the product of judicial discretion and so this Court is in the position of having to exercise its discretion de novo.

Background

[2] The parties were married in 1959 and thereafter lived and worked in the United States of America until they came to Grenada about 1967. Shortly thereafter, the

parties purchased property at Lanse Aux Epines for some EC\$52,500.00 and developed that property by the building of a matrimonial home and 6 – 8 apartments which they started to operate as a guest house known as Twelve Degrees North. It is conceded that the wife/respondent (hereafter referred to as “the wife”) contributed about US\$135,000.00 into the venture and that further capital derived from borrowings.

[3] In 1979 there was a revolution in Grenada which seemed to have been a factor in the wife deciding to move back to the United States of America. The wife sought and obtained a divorce in America in 1982. Between the wife leaving and to-day, the husband continued to run the guest house.

[4] The affairs of the Gaylords have occupied the time of the courts in Grenada commencing in 1984. The matter that now occupies this court would appear to be the final gasp in a domestic quarrel of epic length, if not proportion.

[5] The learned Master’s order read as follows:

It is ordered:

1. That the Applicant is entitled to a 60% share of the land situate at Lance Aux Epines more particularly described in the first and second schedules in the Fixed Date Claim form herein which share is valued at the sum of \$1,097,664.00 pursuant to the terms of a valuation report dated 6th July 1999 by Mrs. Hyacinth Mc Barnette, agreed to by the parties hereto
2. That the Respondent is entitled to a 40% share of the said land which share by terms of the valuation aforesaid amounts to \$731,776.00.
3. That the Applicant and Respondent are each entitled to a 50% share of the buildings situate on the land at Lance Aux Epines aforesaid which is valued at \$937,100.00 each pursuant to the terms of the valuation aforesaid.
4. That either party may purchase the interest of the other in the property in the proportions as aforesaid failing which the property comprising the land and the buildings thereon is to be sold and the proceeds divided between the parties in proportions above as to their respective share

5. Each party is to bear their respective costs of this action.

[6] In argument before us learned Counsel for the appellant stated, without demur from learned Counsel for the Respondent, that of the Master's order, only paragraph 3 was being disputed, and the dispute is not about the whole of the paragraph, but rather concerns the Master's failure to deduct a sum of money representing the appellant's "management, supervision and personal labour contribution in the upkeep and enhancement of the ... buildings from 1980 to date".¹ The appellant's claim is that the sum of \$720,000.00 should be deducted from the value of the building and awarded to him as compensation prior to the equal division of the value of the building.

[7] The Master had before him a variety of pleadings and affidavits by both parties. To the extent that these documents tell a story the following can be derived.

- the parties consented to an interlocutory order by Patterson J in the 1984 suit to the intent that the land purchased at Lance Aux Epines was owned jointly by the appellant as to two-fifths and the respondent as to three-fifths (the Patterson order);
- on attempting to execute a conveyance effecting the Patterson order the appellant objected to language describing the partitioned property as inclusive of the buildings;
- the parties returned to court for an interpretation of the partition order and in 2001 Sylvester J excluded the buildings from the conveyance referred to above (the Sylvester order);
- the Sylvester order was appealed and the Court of Appeal allowed the appeal by consent, set aside the Sylvester order and ordered that the appellant and respondent do execute the Deed of Conveyance giving effect to the Patterson order in terms of the originally submitted draft, but excluding the words "together with the buildings thereon";

¹ Ground (c) of Grounds of appeal

- since the departure of the respondent from Grenada, the appellant has run the business of Twelve Degrees without reference to the respondent, though he alleges that he has from time to time sent accounts to whoever he knew to be her legal representative;
- attached to the defence filed in suit 2002/0317 were accounts (income and expenses) for the business of Twelve Degrees for the years 1983 thru 2001 which, on totaling, show that the business made a profit of \$34,408.00 over the period of some 18 years. If one excludes an aberrant loss of \$95,611.00 in 2001 then the picture would be correspondingly better;
- the same accounts referred to above show that in each year the largest expense is, by far, salaries and wages, though there is no information whether this includes drawings by the appellant; nor do the accounts show any dividends paid out to the respondent.

[8] The appellant's chief complaint with the order of the Master is that, in his submission, the Master failed to deduct the sum of \$720,000.00, or indeed any sum, from the value of the buildings, prior to the division into two equal parts, by way of compensation for his efforts in running, maintaining and building up the business and hence the value of the buildings. The sum of \$720,000.00 is arrived at by the appellant valuing his contribution at \$2,500.00 per month for 24 years. As I understand the respondent's counter to this latter argument, it is that for 24 years the appellant has lived in the matrimonial home and has survived (in the sense of continuing to live as opposed to continuing to exist) on the income from the business for those same 24 years and has not once, in that 24 year period, accounted to her, a fifty percent shareholder in the business, for any dividends.

[9] Given the very narrow focus of the submissions of the appellant the only issue before this court is whether the appellant was able to persuade the Master, on a balance of probabilities, that his contributions to the business Twelve Degrees should be valued at \$720,000.00. Clearly the Master was not persuaded, nor am I persuaded that there is sufficient evidence before the court to be determinative of

that issue. The old, trite, true statement that he who asserts must prove still rules in our courts. I would dismiss the appeal with costs to the respondent.

Michael Gordon, QC
Justice of Appeal

I concur.

Hugh A. Rawlins
Justice of Appeal

I concur.

Ola Mae Edwards
Justice of Appeal [Ag.]