

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO.: SLUHMT2017/0170

BETWEEN:

JACQUELINE CAROLINE FLOOD

Petitioner

and

RAYMOND MICHAEL FLOOD

Respondent

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

Appearances:

Mr. Eghan Modeste for the Petitioner

The Respondent appearing in person

2021: September 30; (Trial)

2022: February 28; (Submissions)

March 7; (Submissions)

2025: October 27. (Decision)

JUDGMENT

[1] **CENAC-PHULGENCE J:** The petitioner, Jacqueline Caroline Flood and the respondent, Mr. Raymond Michael Flood were married on 22nd September 2012 and on 10th April 2018 just a little over five years later, a decree nisi was granted on the basis that both parties agreed that they had contributed to the breakdown of the marriage. The decree nisi was made absolute on 22nd January 2021.

[2] Before this Court are two applications for determination: (i) the petitioner's application for ancillary relief pursuant to section 24 of the **Divorce Act**¹ filed on 15th June 2018 and the respondent's originating summons filed on 5th July 2018.

¹ Cap. 4:03 of the Revised Laws of Saint Lucia.

- [3] It is important to note that the respondent after being represented by two separate Counsel who had removed themselves from the record as his Counsel, decided to represent himself at the trial on 30th September 2021. Written closing submissions were to have been filed initially by 22nd October 2021, which time was extended to 28th February 2022. The submissions were filed on 28th February 2022, and 7th March 2022 by the petitioner and respondent respectively.
- [4] In her application, the petitioner seeks the following orders:
- (a) that Block and Parcel 1020B 16 situate at Vieux Fort (“the Vieux Fort Property”) which she acknowledges is community property be sold and the proceeds applied to the joint debt in favour of FirstCaribbean International Bank (Barbados) Limited (“FCIB”);
 - (b) that the Mitsubishi Pick Up Van registration number PB3565 (“the Mitsubishi Pick Up”) and Mitsubishi Nativia SUV (“the Mitsubishi SUV”) registration number PE 938 be sold and the proceeds applied to the FCIB debt;
 - (c) that full ownership of the Nissan Bluebird Motor Car (“the Nissan Car”) be transferred to the respondent;
 - (d) that the parties jointly service the FCIB debts until they are fully liquidated.
- [5] I note in closing submissions, the petitioner speaks of the Honour 50 joint account at Bank of Saint Lucia Limited (“BOSL”) but no relief was sought in relation to that account in the petitioner’s application. Neither does the respondent seek any specific relief in relation to this account. I will return to this later.
- [6] The respondent, by his application filed pursuant to section 45 of the **Divorce Act**, seeks an order that he be paid \$210,102.05 or such sum as represents his contributions to the improvement or preservation of Block and Parcel 1246B 309 (“the Babonneau property”) which he acknowledges is the separate property of the petitioner, she having acquired it before their marriage. Should the Petitioner fail to pay the said sum, he asks that the Babonneau property be sold and he be paid from the proceeds of sale.

- [7] In relation to the originating summons filed by the respondent, the petitioner filed two affidavits from Augustus Emmanuel which were struck out as he did not attend the trial. The respondent filed affidavits from Clive Antoine, Robert Samuel and Christopher D'Ornellas, the latter two being struck out as these witnesses were absent at the trial.

Applicable Law

- [8] The starting point as stated very clearly in **Jonathan Lesfloris v Glenda Lesfloris**² is that the law recognizes only two types of matrimonial regimes: community and separate property. There is no middle ground and no discretion for the court to vary the statutory entitlement as provided for in the **Civil Code of Saint Lucia**³ ("the Civil Code"). Therefore, once a marriage ends, each spouse becomes entitled to one-half of all community assets as of right. The task of the court in ancillary relief proceedings is to determine which assets fall into the community and which do not and to make appropriate orders for division, transfer or sale or other appropriate orders in the circumstances of a case in accordance with the **Divorce Act** and the **Civil Code**.
- [9] There is no dispute between the parties that the Vieux Fort property, the two Mitsubishi vehicles were acquired during the marriage. One party, however, seeks to claim that the vehicles are solely theirs. There is also no dispute that the Babonneau property is the separate property of the petitioner she having acquired same before the marriage. The parties also agree that they have joint liabilities to FirstCaribbean International Bank (Barbados) Limited ("FCIB").
- [10] Section 24 of the Act allows the Court on granting a decree of divorce or nullity of marriage or at any time thereafter (whether, before or after the decree is made absolute) to make the following orders so far as relevant to the circumstances of this case:
- (a) an order that a party to the marriage shall transfer to the other party such property as may be so specified, being property to which the first-mentioned party is entitled, either in possession or reversion;

² SLUHCVP2015/0018, (delivered 13th December 2019, unreported).

³ Cap. 4.01, Revised Laws of Saint Lucia, 2020.

- (b) an order that a settlement of such property as may be so specified, being property to which a party to the marriage is so entitled, be made to the satisfaction of the Court for the benefit of the party to the marriage;
- (c) an order extinguishing or reducing the interest of either of the parties to the marriage under any such contract or settlement.

[11] Section 25 of the Act sets out the factors which the Court is duty bound to have regard to when deciding whether to exercise the powers granted under sections 22 and 24 in relation to a party to the marriage. These include: (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future; (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future; (c) the standard of living enjoyed by the family before the breakdown of the marriage; (d) the age of each party to the marriage and the duration of the marriage; (e) any physical or mental disability of either of the parties to the marriage; (f) contributions made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family; (g) in the case of proceedings for divorce or nullity of marriage, the value of either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage that party will lose the chance of acquiring.

[12] In looking at these factors, the Court must ultimately exercise its powers so as to place the parties so far as is practicable and just, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards each other. The conduct of the parties is a relevant consideration in the Court's assessment.

[13] Section 45 which applies to the respondent's application in relation to the petitioner's separate property allows the Court to direct the sale of such property and division of the proceeds or that either party pay to the other such sum as the court thinks is fair and reasonable, in return for the contributions made by that other party where the court is satisfied that the party has made a substantial

contribution (whether in the form of money payments or services or prudent management) to the improvement of the property.

- [14] I will now examine the various properties and the parties' evidence in relation to same.

Finances of the Parties

- [15] The petitioner's evidence is that despite the joint acquisitions, she felt very stifled and suffocated because of the controlling nature of the respondent. According to her, the respondent insisted that all items purchased by her during the marriage be jointly owned even if they had been acquired with her funds. She gives an example of her earnings from being a director of Bank of Saint Lucia and the insistence of the respondent that these monies be placed in an account in their joint names. She says she desired to have sole access to these monies but because of the respondent's controlling behaviour she could not.
- [16] Of course, the respondent denies this and says that during their courtship, they 'expressly agreed to "share our lives" and a condition of that decision to marry was that they would own everything "we" acquired during our marriage'. He says the petitioner willingly agreed to this and did not raise any objections or express a desire to own anything on her own during the four years of marriage. The petitioner was adamant that there was never any such agreement, but the respondent insists that he was deceived into accepting the petitioner's verbal agreement regarding them sharing their lives by amalgamating their assets and liabilities. He is of the view that the petitioner allowed him to commit to sharing the burden of paying her loan of \$415,000.00 for over eleven years, well beyond his retirement when she knew that his personal loans were scheduled to be paid off upon his retirement in 2016.
- [17] The respondent says that purchases during the marriage were made from their joint chequing account at BOSL and when they used their personal credit cards, they were refunded from the BOSL joint account. The petitioner asserts that the respondent treated the BOSL joint account as his personal expense account and most of the withdrawals from the account were done by him and for his

personal expenses. She says further the respondent did not own a credit card until June 2016 and before then, all foreign transactions that he wished to make were made with her credit card including making purchases for himself and his children and grandchildren. The petitioner says that the cheque referenced by the respondent to show the refund for purchases was actually to pay the credit card for household items including four new vehicle tyres which the respondent had insisted on importing. The respondent, she says did not make any additional contributions from his salary towards such payments and all additional amounts were paid by her. I note here that the petitioner's statement that the respondent did not own a credit card before June 2016 cannot be correct as the respondent exhibits a FCIB credit card statement in his name dated 22nd March 2016.⁴

- [18] The respondent also speaks of an Honour 50 Account at BOSL which he says they agreed to use to save for their retirement. Deposits to that account according to the respondent came from both the BOSL joint chequing account and other direct deposits from Director stipends paid to the petitioner. It is not clear from the respondent's evidence what deposits were made from the joint chequing account into the Honour 50 BOSL account.
- [19] The petitioner says when she met the respondent, she already had the Honour 50 Account. The respondent was added in 2013 and withdrawals from this account require both signatures. The petitioner exhibits letters dated 20th January 2017 and 27th February 2018 from Eastern Caribbean Financial Holding Company Limited which show that she received a total of \$120,150.00 as director's fees in 2016 and 2017 (\$78,850.00 in 2016 and \$41,300.00 in 2017). The respondent says the petitioner's regular savings account was converted into a joint Honour 50 Account at the petitioner's urging on 23rd December 2012 to be owned by both of them. It is on this date that the respondent says the Honour 50 Account was opened in both names.
- [20] In February 2013, the respective debts of the parties were consolidated through a joint loan taken with FCIB in the sum of \$505,000.00. The petitioner's

⁴ TB 2 at p 97.

Babonneau property was used as the security for that consolidated loan and the respondent's debt over his separate property situate at Micoud registered as Block and Parcel 1246B 300 ("the Micoud property"), was cleared. Therefore, the petitioner's property remained encumbered and now included the respondent's debt.

[21] The petitioner says despite the joint indebtedness to FCIB, the respondent did not make any payments after December 2016, and she has had to shoulder the debt on her own. This is despite the respondent having received a gratuity of \$120,281.81 on his retirement and a monthly pension of \$2,004.97. The respondent agrees that he received these sums on retirement, but he says he had to rethink use of this money when he was 'evicted' from the house by the petitioner.

[22] The respondent speaks of the Babonneau property as the matrimonial home. He says the petitioner's outstanding debt on that property of \$415,899.47 and his debt of \$89,611.02 were cleared when they took the joint loan of \$505,000.00. He speaks of the joint loan being \$505,510.49. However, the hypothecary obligation registered as Instrument Number 1442/2013 shows \$505,000.00. He says this consolidation of debts did not relieve him of his debt but extended his liability to include the petitioner's.

[23] According to the respondent, although the larger debt was the petitioner's, out of the monthly instalment payment of \$4,725.00, he paid \$2,400.00 per month⁵ from inception until January 2017. The petitioner says he stopped paying in December 2016. He also says he deposited over \$2,000.00 into their joint chequing account which serviced their monthly needs. The respondent also says that he provided produce from their farms at Babonneau and Micoud weekly for their consumption.

[24] The respondent says his monthly pension is \$2,004.73 and exhibits three salary slips from February to March of 2018 to support this. He says he still pays the

⁵ See TB2 at p. 121-Salary Assignment/Deduction Order.

insurance on the consolidated loans of \$241.00 and provided a Sagicor letter dated 31st December 2012 as evidence of this payment. This letter however does not show that the life insurance was used to secure the consolidated loan. The respondent's suggestion that he is still paying insurance of \$241.00 is flatly denied by the petitioner and she says if he is indeed paying this, it is totally unnecessary.

[25] The respondent says all his savings have been used in the marital home and he has been forced to rent several fully furnished apartments because he cannot afford to purchase furniture. He was forced to use his retirement funds to secure a loan to purchase membership in a taxi company and to get a vehicle to help supplement his income.

[26] The petitioner says that the respondent's efforts to paint himself as being without means is untruthful. She says that throughout the period of the marriage, the respondent lived off her earnings, a suggestion that the respondent vehemently denies. She says the respondent was a young retiree at the time while she was still working to meet her monthly expenses.

[27] The petitioner says that the respondent maintained a taxi licence on his Nissan Bluebird even before they got married and to make it appear that since the divorce, he has had to purchase membership in this taxi company is untrue. The respondent says that the petitioner had insisted that he not operate a taxi until his retirement and in April 2014, he changed the ownership of the Nissan Car to include the petitioner's name. He says he never operated a taxi whilst he was married, and he maintained the taxi licence plate until the petitioner expressed discomfort at driving the vehicle. He says he purchased membership in Holiday Taxi Limited⁶ which was in keeping with their agreement that he would pursue taxi operations after retirement.

⁶ TB B at p. 133.

- [28] According to the petitioner when she met the respondent she was employed and she was the owner of her own home and had no reason to rely on the respondent for anything.

Analysis of Property

The Vieux Fort Property

- [29] It is accepted that this property is community property. It was acquired through a loan taken by both parties in the sum of \$88,041.00 in 2016 as an additional mortgage. The property was bought for \$66,000.00 using these loan funds. The security for this loan was the Babonneau property and therefore the Vieux Fort property is unencumbered.
- [30] According to the petitioner, at the time this additional mortgage was taken, the parties were already paying the 2013 mortgage, and they agreed that they would equally pay the increase in the monthly amount which would have to be paid as a result of the 2016 additional mortgage. The respondent did not, and the petitioner says she was left to pick up the increase in the monthly payments on her own.
- [31] The petitioner says that the Babonneau property was used as security and encumbered in order to acquire the Vieux Fort property which is unencumbered. She says that should that property be sold, the proceeds ought to be applied to the debt.
- [32] The respondent agrees with how this property was financed. He however does not speak to the fact that it is the Babonneau property which was used as security. He says that he is entitled on sale to one half of any equity after the outstanding balance due to the FCIB is settled.

The Motor Vehicles

- [33] The Mitsubishi Pick Up and Mitsubishi SUV are registered in both the parties' names. The petitioner is of the view that despite this, they belong solely to her as she provided all of the financing for these vehicles. She provides an explanation.

- [34] The Mitsubishi Pick Up was purchased in April 2014, using in large part funds from a vehicular insurance claim and from Bank of Saint Lucia ("BOSL"). The petitioner says when she proceeded to purchase the Mitsubishi Pick Up, the respondent insisted that the vehicle be registered in both names, and it was so registered. The respondent then took possession of the vehicle, and she sometimes had to wait for hours to be picked up after work, which is denied by the respondent. As a result, she decided to purchase the Mitsubishi SUV in August 2015 through financing which she sourced from BOSL. She says she provided the monies to purchase the vehicle through a salary deduction. Again, the respondent insisted that the vehicle be registered in both names.
- [35] The respondent denies all of this and in relation to the Mitsubishi Pick Up says that the petitioner secured insurance in both their names because her insurance premium had skyrocketed because of her claim on a previously written off vehicle and in order to avoid the high insurance premiums, since he enjoyed maximum no claims discount. He said being a supportive husband, he obliged. Since vehicle registration required the particulars of the vehicle registration and insurance certificate to be the same, both names were included on the vehicles' registrations.
- [36] The respondent denies that he took over use of the Mitsubishi Pick Up as the petitioner says and says that it was an economical decision to use one vehicle most times and this also allowed for bonding time. The respondent says the petitioner never complained about the use of the vehicles and he says 'we had made a decision to acquire them for our future plans and especially in preparation for 'my' retirement.'" The petitioner says this is not true at all. She was forced to purchase the Mitsubishi SUV for her own convenience. She additionally says that she never planned any retirement with the respondent.
- [37] In relation to the Mitsubishi SUV, the respondent says that the vehicle was registered in both names because of the economic benefits of having several vehicles covered by the same insurer. He says the petitioner convinced him that they should buy this vehicle because, among other reasons, she thought it would

be a great vehicle for my tourism business ideas when he would retire in December 2016.

[38] It is agreed that the Nissan Bluebird registration number PB4338 was owned by the respondent prior to the marriage. It is registered in both names which the petitioner insists was at the insistence of the respondent. She says the vehicle was not even in a good condition. The petitioner agrees to transfer full ownership of this vehicle to the respondent.

[39] The petitioner is clear that she was perfectly capable of meeting the cost of the insurance premium and the monthly payment for the Mitsubishi SUV without the respondent's assistance and that it was he who insisted that his name be placed on every vehicle which she purchased. She totally denies the respondent's version of events.

The Babonneau property

[40] The respondent claims that he made substantial contributions to the improvement of the Babonneau property including the house by providing direct financial contributions, services, labour and by prudent management of the property. It is his contention that there was a common intention between he and the petitioner that the Babonneau property would be their matrimonial property and that they would share the liabilities and live there for the rest of their lives. The respondent claims that as a result he is entitled to the sum of \$210,102.05.

[41] The respondent says that he and the petitioner had many discussions on how they would jointly manage their finances and the decisions they made in that regard were joint decisions. He says he never forced the petitioner to do anything against her will. Their financial arrangements were that they would bear the burden of the debts and enjoy the fruits of their labour together. He says it was with this promise that he proceeded to invest in the Babonneau property.

Money Payments

[42] The respondent says to service the consolidated debt in 2013 and the additional advance taken in 2016, a salary deduction was made to his salary in the sum of

\$2,400.00 monthly⁷ for 48 months, a total of \$115,200.00. He also says he paid term life insurance as coverage for the mortgage by way of salary deduction and the sum of \$2,097.20 to the BOSL joint account for 48 months. The petitioner, he says, paid \$2,325.00 per month for 38 months and \$3,500.00 per month for 10 months, a total of \$123,350.00 as at December 2016.

Home Improvement

- [43] The respondent provided a list of improvements which he said were done by virtue of the parties' joint efforts. The list also gives the cost in relation to each item to the tune of \$76,003.24 which he says was paid for out of the BOSL Joint Account. He also says he was intricately involved in every aspect of the works and was engaged in the process of obtaining workers, materials and equipment, and implementing/managing certain activities which he details. He places a value on his services of \$18,000.00 which he says is what they would have had to pay if they had contracted the services out.
- [44] The respondent provides tables of the services he provided as well as the refurbishment and maintenance of the marital home. Some of the services which the respondent says he rendered were: consulted with engineers, extended concrete drain, planted and nurtured trees, felled coconut trees and cleared land and cultivated crops such as dasheen, potatoes, cassava, plantains, pineapple, corn among others. The total cost for these services is \$3,400.00.
- [45] Some of the refurbishment and maintenance works undertaken and listed are: sealing the patio to stop water leak, repair concrete portion of roof to stop leak, cleaning and repair of concrete water tank, demolish and remodel upstairs kitchen, replacing and installing of fifteen (15) windows, converting the two car garage and apartment into fully furnished single car garage and self-contained apartment, replacing water pump, repairing and servicing water heater, conversion of master bathroom into walk in shower. The costs of these services is put at \$12,600.00.

⁷ See TB C at pp 38-41Salary Slips.

- [46] The respondent says the works undertaken were as a result of discussions between him and the petitioner. The residential building was almost twenty years old and had not received adequate maintenance for years, the surrounding land had been neglected and became prone to landslides as a result of inadequate management. He says that most of the slope stabilisation works carried out at the Babonneau property required transportation of several loads of material which came from his personal and family properties. He says he also used his personal car to transport these materials.
- [47] The respondent is of the view that the petitioner continues to enjoy the enhancements to the property and unless he is compensated, he will lose the benefit of his efforts. He claims that the property has increased by about \$100,000.00 during the marriage through his contributions. He provides a 2012 valuation of the Babonneau property which shows the market value of the property as \$1,603,748.00 and a residential full appraisal report dated 8th January 2016 which values the property at \$1,700,000.00. This seems to be the basis of his value of the improvements.
- [48] The respondent's claim to the sum of \$210,102.00 is based on the representations made to him by the petitioner that theirs was a joint effort and that they would both benefit equally. He claims (i) \$91,839.84 for contributions to the mortgage on the Babonneau property; (ii) \$12,260.00 for contributions to the term insurance coverage for the mortgage/home; (iii) \$38,000.62 for one-half of the value of improvements; (iv) \$18,000.00 for services and management; (v) \$50,000.00 for a share of the increase in the value of the house;
- [49] As to the respondent's claims that he contributed labour and management services for construction at the house, the petitioner says the respondent is incapable of 'even the slightest masonry and carpentry work and has no expertise or skill in managing home repair works'. She keeps reiterating that she never agreed to consolidate any income with the respondent and says repeatedly that she was forced to.

- [50] The petitioner says the respondent made no direct financial contributions to the house and rather it was her funds which he caused to be deposited into joint accounts that were used for his personal benefit and also put into the Babonneau property. She says at all times the respondent deposited a disproportionate sum into the joint account and used the majority of the funds, including those deposited by her for his own use during the marriage. She does not provide evidence of this allegation though.
- [51] According to the petitioner, she was the one who caused the repairs to the house to be done using her own funds and while the works were going on, the respondent was engaged as a Civil Servant and would spend the day at work out of the house as would she.
- [52] As to the services which the respondent says he performed and is claiming compensation for, the petitioner says the respondent used her property for a period to engage in farming activities which yielded crop which he sold and retained all of the income.
- [53] The petitioner states that the list of refurbishment and maintenance works referred to by the respondent is misleading as when she met him, the entire house was completed and secured with audio and video alarm systems and there was already an apartment downstairs with a two-car garage although unfinished. The renovations which were done were simply to reconfigure the internal design of the apartment and were minor. The petitioner says it was the respondent who brought a friend to the house to put the security system online so he could monitor the house when he was away, and about two additional cameras were added. As to the leak in the roof which the respondent has as part of his list of services, the petitioner says her cousin only recently repaired this and the respondent's assertion that he in any way repaired the roof is untrue.
- [54] The apartment according to the petitioner was her idea and had nothing to do with the respondent. She says at the time of filing the affidavit, the apartment was still unfinished. She says the respondent did not supervise any such works.

- [55] The Babonneau property is registered in the sole name of the petitioner. According to her evidence this property remained in her sole name throughout the marriage. She says that throughout the marriage, despite the respondent's insistence, she was able to prevent the Babonneau property from being registered in both names. She is perplexed as to how the respondent claims the sum of \$210,102.05 as his share in the house on the Babonneau property but he does not want to continue to contribute to the debt.
- [56] The petitioner says categorically in her evidence that the respondent made no contribution to any improvement of the Babonneau property, nor has he provided any direct or indirect financial contributions, services, labour or prudent management of it. The petitioner states that the only property which it was intended to be owned by her and the respondent jointly was the Vieux Fort property which they purchased together.
- [57] The petitioner again says that it was the respondent who insisted that they consolidate their debts after they got married and that the debt over his Micoud property could be paid off. She says she was not in favour of this because it was financially disadvantageous to her and she tried to resist it but was not able to as the respondent demanded that it be done.
- [58] She says it is entirely dishonest and misleading for the respondent to say that she agreed that he commit to the mortgage over the Babonneau property as she did not agree to that. She says she was forced by the respondent to accept it.
- [59] The petitioner is adamant that even if there was an agreement to consolidate which she says there was not, the debt owed to the bank on the Babonneau property is significant and the respondent cannot want the benefit of the asset without shouldering the debt. The petitioner says she was misled by the respondent to believe that he would apply his gratuity towards reducing the debt but he never did so. She says he presented a letter to FCIB from the Government showing the expected gratuity amount and his monthly retirement

income⁸. The respondent says that by the time he received the pension benefits their marital situation had changed and he had to put the funds toward trying to start over.

[60] The petitioner concludes by saying that she never had any intention with the respondent to improve the Babonneau property and could not have had that intention as the property was hers. At all times, she says her intentions were for the improvement of her house using her own private and personal account. She says she may have informed the respondent of her intentions and given his controlling nature he would impose his will on her and at the time she says she did not have the strength to stand up to him.

[61] In his reply affidavit in relation to the Babonneau property, the respondent is adamant that if it was that the Vieux Fort property was to be their only joint property he would not have got into the debt consolidation and burdened himself when he would have been debt free on his retirement. The respondent says if he were controlling, he would have pressed for joint ownership of the Babonneau property but he did not. However, it will be recalled that the petitioner says he tried to get this property to be jointly owned but she was able to avoid this. The respondent says that as one of the conditions to share their lives, they agreed to secure one loan to pay off their debts and the petitioner never objected and she even requested a valuation which was paid for by both of them. It is useful to indicate that the valuation would have been needed for the Bank to consider whether the Babonneau property was of sufficient value to secure the consolidated sum. Getting the valuation does not prove that the petitioner intended for the property to be jointly owned.

[62] The respondent says in this affidavit for the first time that the petitioner was happy to add his name to all utility payments and the bills were paid from the BOSL joint account, but he produces none of these bills. The respondent says the insurance payments of \$214.14 monthly are still being deducted from his

⁸ TB C at p 82.

pension income, but the salary slips he produces do not show this sum as a deduction. There is a Sagicor deduction, but it is unclear what this relates to.

- [63] The respondent says contrary to the petitioner's assertions that he did things on his own, she agreed and was part of the things he did and she agreed to them. The alarm was done with her knowledge. She utilised the produce from the farm, and he says that the income from the farm went into paying labourers to stabilise slopes, produce food for the family, manicure the petitioner's garden and yard plants and general maintenance of the lands.

Personal property-Respondent

- [64] In his affidavit in response to the ancillary relief application,⁹ the respondent seeks an order that the petitioner deliver some of his personal items: 2 skate boards, 1 water tank, 1 carpenter hand saw, 1 set of dumbbells and 2 sets of weights and 1 King sized bed.
- [65] In response to this, the petitioner says the respondent visited her house in April 2017 to retrieve all items belonging to him. This is a visit that was arranged by the parties' attorneys, and the petitioner says the respondent spent about three hours at the house collecting items. He then left with two loaded vehicles containing his bulkier belongings. She says he then requested the sum of \$158.00 and a certificate for a chainsaw, both of which were paid over to the respondent through his attorney. Then the petitioner says the respondent then sought \$36.00 for what he deemed an outstanding fee, and she paid this to him through his attorney. In April 2017, the petitioner says she informed the respondent via text message that the two skateboards as well as a pruning tool were available for him to pick up, and he did not respond. The water tank she says is also available for the respondent to collect. Other than these items, the petitioner says she does not have any of the other items listed.

⁹ Filed on 13th July 2018.

Discussion and Analysis

- [66] Having reviewed all of the evidence in the matter and having regard to all the factors as outlined in section 25 of the **Divorce Act**, I make the following findings and observations.
- [67] The petitioner and the respondent were both fifty years old on the date of their marriage having been born on 14th December 1961 and 30th August 1962 respectively. At the date of trial in 2021, the petitioner was sixty and the respondent fifty-nine years old. Both parties were in the retirement phase of their lives.
- [68] It is very clear that the petitioner and the respondent's relationship was far from harmonious. I noted that they each took 'jabs' at each other whenever they could in their affidavits.
- [69] The principle of community property is that property acquired during the course of the marriage is presumed to be community property. This presumption can be rebutted by a party with evidence to show that the acquisition was made with his/her sole funds. In this case, the petitioner gave evidence that she used her sole funds but provided no evidence of what funds were used. No bank or loan documents were exhibited by her. It is also noted that the balance due on the vehicles was paid off using funds from the additional mortgage taken from FCIB in 2016 and the vehicles are registered in both names. The petitioner is asking that the vehicles be declared her sole property but has not provided a basis for such a declaration.
- [70] It is clear that the respondent saw this relationship as a good retirement plan. He says in his affidavit in response "*I handled my finances and planned for my financial future premised on the representations of the petitioner...*"
- [71] The respondent's posture can further be seen from his statements in cross-examination when he said that he had informed the petitioner that in his view of marriage, he would not enter into someone's home in co-habitation when the value of the property is not known especially since they had agreed that they

were *protecting* their children's inheritance. He went on to say that the only thing either one of them could acquire would be the increased value of the other's property. When asked what his position would be if the petitioner left him with the Mitsubishi Pick Up and absorbed all other assets along with the existing debts, the respondent said that this would not be sufficient compensation and that most of the debt was the petitioners. These statements clearly show that the respondent was ensuring that he secured himself in the relationship.

[72] Throughout this matter I had the opportunity to observe the respondent and I can say from his demeanour and behaviour that he always wanted things to go his way and to get the last word in. He was very authoritative and confrontational in the manner in which he asked the petitioner questions at the trial and indeed throughout the proceedings. I accept the petitioner's evidence of the controlling and demanding nature of the respondent. It appears to me that his primary concern was his welfare. He gave no thought to the fact that because of the consolidation of debts he had an unencumbered property whilst the petitioner continued to be saddled with the whole monthly payment after he stopped paying his contribution.

[73] The respondent in his evidence referred to WhatsApp messages¹⁰ between himself and the petitioner which he says show his use of endearing terms when addressing her which were a genuine reflection of his feelings for her. He says it was she who evicted him from the house. However, if you look at the conversation between the parties, whilst the respondent seemed to be sending very endearing messages to the petitioner, the petitioner seemed distant and unresponsive.

[74] From the evidence, when the initial consolidated loan was taken, the monthly payments were \$4,725.00 monthly and the parties were contributing more or less equally to the loan. However, when the additional advance was taken in 2016, the loan payments increased to \$5,962.54, an increase of \$1,237.54, and the respondent by his own evidence continued to pay \$2,400.00 whilst the

¹⁰ Trial Bundle B, pages 86 and 87.

petitioner had to pay \$3,562.54 monthly. The repayments from 2016 were no longer being paid equally. This is contrary to the respondent's suggestion that the parties' intention was that they would share all liabilities equally. As to why he did not increase the monthly payments when the liability increased in 2016, he said there was discussion about it, and he was never asked to.

[75] It is not clear who engaged the respondent to carry out the works for which he is saying he should be paid. It is also not clear how he came up with the value of his services as no basis is provided. I also cannot accept that the respondent did all of this supervision of work to such an extent that he wants to be paid for it, when he had a fulltime job and would have been out for most of the day. His only witness, Mr. Clive Antoine says he witnessed the respondent supervising works but he admits that at the time the works were carried out by the main electrician and the helper, both he and the respondent would have been at work full-time.

[76] I do not accept the respondent's evidence that he made significant contributions to the improvement of the Babonneau property as he has not shown that he has. The respondent in his submissions makes the point that he had provided all receipts to his lawyer, and she apparently did not put them in. He also says that though he was given an opportunity to put in the documents he said were missing, he not being an attorney and having to appear in person, he could not have foreseen the detrimental impact the missing receipts would have had on him.

[77] I remind that a litigant in person has an obligation to familiarise himself with the Court's rules, procedures and the law. It is not for the Court to extend and special courtesies to a litigant in person except that the Court must ensure that it gives a fair hearing. The United Kingdom Supreme Court in **Barton v Wright Hassall LLP** said:¹¹

“...In current circumstances any court will appreciate that litigating in person is not always a matter of choice. At a time when the availability of legal aid and conditional fee agreements have been restricted, some

¹¹ [2018] UKSC 12 at para 18.

litigants may have little option but to represent themselves. Their lack of representation will often justify making allowances in making case management decisions and in conducting hearings. But it will not usually justify applying to litigants in person a lower standard of compliance with rules or orders of the court. ... he rules do not in any relevant respect distinguish between represented and unrepresented parties.”

[78] In this case, the respondent was originally represented by Counsel and then chose to represent himself after the relationship with his two chosen attorneys broke down and they applied to be removed. He gets no special consideration as a result.

[79] The respondent lived in the house at the Babonneau property and would have been obliged by that fact to at least contribute to the living expenses of the home although he never speaks about that. If the respondent undertook any work or gave any assistance to the petitioner, he could only have been doing so as he said because he was a ‘supportive and helpful husband’ and not because he was looking to get some return from her or to be paid.

[80] I accept the petitioner’s evidence that she never had any intention that the respondent would have jointly owned the Babonneau property with her as she had it prior to marriage. In much the same way, the respondent never spoke of the petitioner owning his Micoud property with him. It is only when the petitioner replied to his application that the respondent said that they had even discussed how they would utilise the unencumbered Micoud property. This had not been said at any time before which is to say the least, very telling. Had the parties remained married and the respondent continued paying the loan beyond the debt he brought into the consolidation, perhaps the Court would have taken a different view.

[81] The respondent’s contributions to the mortgage are more or less equivalent to what he would have had to pay on his separate loans had the parties’ debts not been consolidated in 2013. The respondent admitted as much in cross-examination when he said that considering his loan amount, he would have had to have made payments of \$90,000.00. The loan statements for the

respondent's two loans which were eventually consolidated with the petitioner's debt show that in total he paid the sum of \$2661.61 as monthly mortgage payments.¹² He was therefore put to no more expense by having to contribute to the consolidated mortgage as his evidence is that he paid \$2,400.00 to the mortgage until December 2016. It is the petitioner's Babonneau property which continued to be saddled with the burden of the mortgage and not his separate Micoud property.

[82] The respondent spent a total of four years at the Babonneau property as the husband of the petitioner. In a marriage relationship it is expected that the parties would assist each other. The respondent however helped and now seeks an interest in the petitioner's sole property and has even been so bold as to put a cost on his assistance. The respondent was not a contractor or electrician and any assistance he gave was with a view to supervising the project making sure the work was done according to their wishes. I find it absolutely unimaginable that a husband could seek to recover for the assistance which he so freely gave during the marriage. That in and of itself speaks volumes.

[83] As to his financial contributions, the respondent says he deposited \$2,097.20 into the BOSL joint account and he exhibited the job letter for the petitioner which shows her receiving \$13,635.08 in 2015. It is not clear from the evidence how much of the petitioner's salary was deposited into the joint account. The respondent said he earned \$4,725.00 and it would appear that by 2016, he was earning \$5,805.46. The \$2,097.21 which the respondent says he deposited into the BOSL joint account was simply the balance of his salary after deductions. It is unfathomable how the respondent could have provided all of the work, services and materials that he did without financial assistance from the petitioner. The respondent puts costs to the items listed in his tables but provides no documentary evidence to support the costs.

¹² TB B at pp 89-92 and 94.

[84] It is well established that a party making assertions must provide evidence of same and when no such evidence is provided, the Court may draw adverse inferences about that party. The Court in **Spooner v Spooner**¹³ put it this way:

“[35] It is significant to point out that in proceedings of this nature the Jaw requires both husband and wife to give full and frank disclosure to the Court whether by affidavit of facts, by affidavit of documents or by evidence on oath. Any shortcomings from this standard can and normally will result in the Court drawing inferences adverse to that party.

Both the petitioner and the respondent have fallen short in this regard.

[85] I am always struck by the fact that once parties go through divorce, they now begin to isolate their respective contributions. This is clearly not what is contemplated in a marriage where the parties jointly attempt to deal with their finances. Invariably one party may contribute more than the other, but the **Civil Code** does not make that the basis for the parties' shares. It expressly makes the basis acquisition during the course of the marriage regardless of who contributed what unless a party can show that the particular property was purchased with their own separate funds. The starting point is that once the property is acquired during the course of the marriage and is not deemed separate property by virtue of article 1192 of the **Civil Code**, each party is entitled to a one-half share in the property. That is the concept of community property.

[86] It must be remembered that the basis of orders made in ancillary relief proceedings is not to seek to punish the petitioner or the respondent. The purpose of the proceedings is to arrive at a position which is fair, reasonable and just in all the circumstances of the case.

[87] The petitioner came into the marriage with a significant debt. She had the benefit of some years of reduced payments as the respondent contributed monthly to the loan. If you look at the respondent's debt which he came into the marriage

¹³ SLUHMT2000/0127 at paragraph 35.

with (approximately, \$89,000) and the amount he would have paid with his monthly payments from March 2013-December 2016, it is clear that he would have completed or almost completed paying his loan component of the consolidated debt by December 2016 if he had continued paying his loan on his own. According to the evidence in cross-examination, the respondent's loans would have been paid off by 2016. This is supported by the Loan Statements which show the term of the loan as 108 and 66 months.¹⁴ The petitioner acknowledged that this would have been the case as well in cross-examination.

[88] The petitioner's request for an order that the respondent continue to service the debt equally with her is highly unreasonable given that she is adamant that he does not have a share in the house. I think it would be unfair to ask that the respondent continue to service the balance of the debt jointly with the petitioner given that the evidence does not support the respondent's allegations that he made significant contributions to the petitioner's Babonneau property.

[89] From the evidence of both parties, it appears that they are ad idem that the Vieux Fort property should be sold although the petitioner in her submissions seems to say something else which was not originally in her application. No party has provided the Court with a balance of what is owed in relation to the additional sum taken to purchase this property. From the loan documents it appears to me that the mortgage sum was increased and not that there was a new mortgage. Therefore, it would be difficult to tell what portion of the additional loan is still outstanding. I agree that the financing of the Vieux Fort property and it being unencumbered is due to the Babonneau property being used as security. I believe the easiest and fairest way to deal with this property is for it to be sold and the proceeds divided equally between the parties.

[90] A portion of the additional loan taken in 2016 went to pay off the loans on the two Mitsubishi vehicles according to the evidence, but it is unclear the amount of these loans and what was paid off. The petitioner says that the vehicles were acquired solely by her with her finances, but she does not provide any evidence

¹⁴ TBB at p 89-92 and 94.

to support this. I therefore find that the Mitsubishi Pick Up and Mitsubishi SUV having been acquired during the marriage, are community property. I am of the view that the principle of community property should be applied, and the parties should receive their equal share of the proceeds of sale of the two vehicles after any expenses incidental to the sale are deducted. I note that the petitioner in her submissions sought relief different from that in her application for ancillary relief. This cannot now be done in submissions when the respondent would not have had these reliefs in his contemplation when responding to the said application.

[91] I also note that the petitioner did not seek relief relating to the Honour 50 BOSL joint account in her application. However, both parties addressed the account and therefore in accordance with section 17 of the **Eastern Caribbean Supreme Court Act**,¹⁵ I am able to address the matter to bring an end to all matters of an ancillary nature between the parties.

[92] Whilst I accept that the respondent is a joint holder of this account, it is clear from the evidence that the majority of the funds in this account came from directors' fees earned by the petitioner which according to article 1192 (2)(b) is separate property. As at the date of the trial the balance in that account stood at \$70,000.00 when for two years the total directors fees deposited was \$120,150.00, in excess of the balance on the account. I therefore find that the funds in this account are the sole property of the petitioner. The petitioner spoke of a tax liability owed in relation to her director's fees but provided no evidence to support this.

[93] This marriage did not work as envisaged by the parties. It is clear to me that both parties may have contributed to the decline and eventual demise of the marriage and that they each came to the marriage wanting a desired outcome-financial stability. I do not find that there was any clear intention between the parties as it relates to the Babonneau property nor does the respondent satisfy the Court of his substantial contributions to the improvement of this property. I

¹⁵ Cap. 2.01, Revised Laws of Saint Lucia, 2020.

find that the Vieux Fort property and the Mitsubishi Pick Up and Mitsubishi SUV are community property.

[94] I note that both the petitioner and the respondent did not provide full and frank disclosure of all matters particularly as relates to their finances and the Court can only work with the evidence that it has and cannot assume or presume anything. It was quite evident that the parties may have had accounts in their own names, but they did not provide any information which would have been relevant in assessing the parties' financial position. It is the duty of parties to furnish the Court with all the relevant evidence and supporting documents to allow the Court to do what is fair and just between the parties.

[95] For the sake of completeness, I note that the respondent has persisted in his submissions about the properties which the petitioner sought to acquire by way of judicial sale in October 2017 at which she was declared to be the highest bidder. One of those sales was annulled and the deposit paid ordered to be returned to the petitioner and she never became the proprietor of that property. The other property sale was the subject of an appeal which decision was delivered on 12th July 2021 upholding the judicial sale and lifting the stay which had been granted by the Court of Appeal, paving the way for payment of the balance of the purchase price by the petitioner. However, there is no evidence that this property was actually acquired by the petitioner and therefore the Court cannot take this into account in its assessment of the ancillary relief matters.

[96] In light of the foregoing discussion, I make the following orders:

- (1) The Court declares that the property which is situate at Vieux Fort and registered at the Land Registry as Block and Parcel 1020B 16 ("the Vieux Fort property") is community property.
- (2) The Vieux Fort property shall be sold at an agreed price and the proceeds divided equally after payment of all expenses incidental to the sale including vendor's tax, any commission payable to a sales agent if the parties choose to engage the services of one.
- (3) If the parties cannot agree the sale price for the Vieux Fort property, they shall jointly appoint a valuation surveyor to provide a valuation of the market

value of the said property and the property shall be sold at that price at a minimum unless the parties agree otherwise.

- (4) The petitioner shall transfer full ownership of the Nissan Bluebird registration number PB4338 to the respondent within thirty (30) days of the date of this judgement such that the respondent shall be the sole owner of the said vehicle.
- (5) The Mitsubishi Pick Up Van registration number PB3565 ("the Mitsubishi Pick Up") and Mitsubishi Nativia SUV registration number PE 938 ("the Mitsubishi SUV") shall be sold and the proceeds divided equally.
- (6) The Court declares that the property registered as Block and Parcel 1246B 309 and the house erected thereon ("the Babonneau property") is the separate property of the petitioner.
- (7) The Court declares that the respondent does not have a share or interest in the house erected on Block and Parcel 1246B 309.
- (8) The petitioner shall continue to service the debt/s due to FirstCaribbean International Bank (Barbados) Limited (now CIBC Caribbean Limited) under Hypothecary Obligation registered as Instrument Number 1442/2013 and Additional Hypothecary Obligation registered as Instrument Number 2959/2016 solely, and subject to the written confirmation and agreement of the said FirstCaribbean International Bank (Barbados) Limited (now CIBC Caribbean) the debts shall be discharged as against the respondent and the appropriate documents executed.
- (9) The respondent shall relinquish all rights and entitlement to the proceeds held in the Honour 50 Account held at Bank of Saint Lucia Limited and standing in the joint names of the petitioner and the respondent and this account shall be deemed to be the sole property of the petitioner. The respondent shall sign any documents necessary to facilitate the petitioner's access to the Honour 50 Account, if necessary.
- (10) Each party shall bear his/her own costs.

[97] I wish to sincerely apologise to Counsel and the parties for the delay in the delivery of this judgment which was due to circumstances beyond my control. I regret any inconvenience caused to the parties as a result.

**Kimberly Cenac-Phulgence
High Court Judge**



By The Court

Registrar