

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

Claim Number: SLUHMT2017/0004

BETWEEN:

KIMBERLEE GORDON nee CHARLEMAGNE

Petitioner

and

AUBYN DWIGHT GORDON

Respondent

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

Appearances:

Mr. Lorne Theophilus for the Petitioner

Ms. Diana Thomas for the Respondent

2021: May 20;
2025: June 24.

JUDGMENT

[1] **CENAC-PHULGENCEJ:** By decree nisi dated 24th July 2017, the marriage between the petitioner, Mrs. Kimberlee Gordon ("Mrs. Gordon") and the respondent, Mr. Aubyn Dwight Gordon, ("Mr. Gordon") was dissolved at which time the parties had been married for eight (8) years having married on 14th March 2009. By the decree nisi, the petitioner and respondent were granted joint custody of their daughter, BG born on 19th December 2012 with care and control to Mrs. Gordon. The Court ordered Mr. Gordon to pay the sum of \$500.00 monthly for the maintenance of BG commencing 31st July 2017.

[2] The ancillary matters in relation to the child of the family were disposed of on the grant of the decree nisi and matters relating to property were adjourned to Chambers. At the close of the hearing on 20th May 2021, the Court gave direction for the filing of submissions on or before 25th June 2021. To date, neither party has filed submissions.

- [3] By originating summons filed by Mr. Gordon on 7th August 2017 pursuant to section 45 of the **Divorce Act**¹ ("the Act"), seeks orders with respect to the property registered as Block and Parcel No. 1251B 327 and the building erected thereon ("the Property"). He seeks the following orders:
- (a) An independent valuation of the Property by a valuation surveyor agreed by the parties to determine the market value and rental value of the property;
 - (b) That the costs of the independent valuation be borne equally;
 - (c) The petitioner pay the respondent the sum equivalent to half of the value of the Property or such proportion as the Court thinks fit having regard to his contributions to the purchase and improvement of the Property within ninety (90) days of the date of the Order;
 - (d) In the alternative, and should the petitioner fail to pay the sum ordered, that the Property be sold and after deduction of expenses, the balance of proceeds be divided between the parties equally or in such proportion as the Court determines;
 - (e) Until the petitioner pays the respondent the sums determined by the Court, that she pay rent to the respondent as determined by the valuation surveyor retroactive to February 2017 when the respondent left the home.
- [4] Mr. Gordon acknowledges that the Property is registered in Mrs. Gordon's name solely. The Property was purchased by Mrs. Gordon by a deed of sale² recording her as 'stipulating herein with regard to her separate property acquired with her separate funds and earnings' and during the subsistence of the marriage. Mr. Gordon however contends that there was a common intention that it would be the matrimonial property and they would hold it equally. Mr. Gordon contends that the Property was acquired during the marriage and he contributed over 90% of the sums used towards that acquisition and improvement of the Property which included providing all sums used as the downpayment on the mortgage. Mr. Gordon also avers that he paid over 90% of the mortgage payments. Whilst Mr. Gordon claims an interest in the Property he does not appear to challenge the fact of the Property being registered as Mrs. Gordon's separate property.

¹ Cap. 4.01, Revised Laws of Saint Lucia.

² Deed of Sale executed on 9th March 2010 and registered at the Land Registry as Instrument No. 1199/2010.

- [5] It is the respondent's position that based on his contributions to the acquisition and maintenance of the Property and/or the common intention of the parties, he is entitled to a half share of the value of the Property.
- [6] The sole issue for determination in this matter is whether the respondent has satisfied the Court under section 45 of the Act that he has made a substantial contribution in the form of money payments, services, prudential management and otherwise to the improvements and preservation of the matrimonial home or that he has established a common intention to entitle him to a beneficial interest in the Property and if so, what is that beneficial interest.

Applicable Law

- [7] Ancillary relief is determined by reference being had to both the **Civil Code**³ ("the Code") and the **Divorce Act** and the procedure by reference to the **Divorce Rules 1976**. It involves an assessment of the property of the petitioner and respondent to determine the nature of the property and its ownership. In Saint Lucia, the starting point in determining ownership is the Code. The Code sets up what is deemed to be separate property and property of the community (community property) in a marriage.
- [8] As stated by Michel JA in **Jonathan David Lesfloris v Glenda Dale Lesfloris**⁴ at paragraph 38:
- "...The property of married persons is either community property, in which each holds a moiety (which is a right exactly equal to the right of the other) or is the separate property of one of the parties...."
- [9] Article 1190 of the Code provides that community of property is established by the mere fact of the parties' marriage in the absence of any stipulations to the contrary.

³ Cap. 4.01 of the Revised Laws of Saint Lucia.

⁴ SLUHCVP2015/0018 delivered 13th December 2019, unreported.

[10] Article 1132 of the Code details what is considered as separate property. It comprises:

- “(a) the property movable and immovable, which the spouses possess on the day when the marriage is solemnized;
- (b) the income and earnings of either spouse, *investments in the name of one spouse*, and insurance policies taken out on the life and in the name of one spouse;
- (c) property, movable and immovable, acquired by succession, or by donation or legacy made to either spouse particularly;
- (d) compensation payable to either spouse for damages resulting from delicts and quasi-delicts, and the property purchased with all funds thus derived; and
- (e) fruits, revenues, and interest, of whatever nature they be, derived from separate property, the proceeds of separate property, and *property acquired with separate funds* or in exchange for separate property.”

[11] As a start, the Court must first determine what property is the community property of the parties and what is the separate property of each or either of the parties. As described by Michel JA in **Lesfloris**, in the case of separate property, the distribution is one hundred – zero, unlike in the case of community property where it is fifty-fifty.

[12] Section 45 of the Act provides that on making a decree of divorce, the Court may make an order in respect of separate property of either party if it is satisfied that the other party has made a substantial contribution (whether in the form of money payments, or services, or prudent management or otherwise howsoever) to the improvement or preservation of such property, direct the sale of such property and the division of the proceeds, after the payment of the expenses of the sale, between the parties and in such proportion as the Court thinks fit, or direct that either party pay to the other such sum, either in one sum or in instalments as the Court thinks fair and reasonable, in return for the contributions made by that other party.

[13] In **Lesfloris**, the Court was clear that unlike the situation in the UK and in the countries of the Commonwealth Caribbean with matrimonial property law identical to the UK, there is no concept of matrimonial property in Saint Lucia with respect to which a court can determine the extent of the ownership interest of the parties to the marriage. Michel JA went on to say that the approach taken

by the UK courts in cases like **White v White**, **MAP (Petitioner) v MFP (Respondent)** and **Stack v Dowden** that treat with the property of parties to a marriage as matrimonial property which can be distributed to the parties upon the dissolution of marriage as the court sees fit, cannot be applied to Saint Lucia. This I know is a shift from what was thought to be the law and it had become quite commonplace for cases like **White v White** and **Stack v Dowden** to be applied in divorce matters when dealing with property matters.

[14] In **Wendy Bristol v Christopher John Bristol**,⁵ Smith J was of the view that section 45(b) of the Act appeared to have codified the common law position as enunciated in cases such as **Petitt v Petitt**,⁶ **Gissing v Gissing**⁷ and **Grant v Edwards**⁸ where once it can be shown that a wife made substantial expenditure in relation to the acquisition of the home and has acted to her detriment in doing so, she is deemed to have a beneficial interest in it, through inference of a common intention that they were both to benefit.

[15] Lord Reid in **Petitt v Petitt**⁹ set out the approach that should guide the deliberation of the Court:

“...even where there was in fact no agreement, we can ask what the spouses, or reasonable people in their shoes, would have agreed if they had directed their minds to the question of what rights should accrue to the spouse who has contributed to the acquisition or improvement of property owned by the other spouse. There is already a presumption which operates in the absence of evidence as regards money contributed by one spouse towards the acquisition of property by the other spouse. So why should there not be a similar presumption where one spouse has contributed to the improvement of property of the other? ...But if the spouse who owns the property acquiesces in the other making improvements in circumstances where it is reasonable to suppose that they would have agreed to some right being acquired if they had thought about the legal position, I can see nothing contrary to ordinary principles in holding that the spouse who makes the improvement has acquired such a right.”

⁵ SLUHMT2011/0040 (delivered 29th September 2017, unreported).

⁶ [1969] 2 All ER 385.

⁷ [1970] 2 All ER 780.

⁸ [1986] 2 All ER 426.

⁹ Fn. 8 at pp 794-795.

[16] In **Grant v Edwards**, Nourse J put it this way:

“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. sledgehammer 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.”

[17] Evidence of that common intention might be inferred from contributions (direct or indirect) to the deposit, the mortgage instalments or general housekeeping expenses, which was referable to the construction of the house.

[18] In **Ulrich v Ulrich and Felton** [1986] 1 WLR 180 the court said that when a couple pooled their resources to buy and equip a home:

“ ... they do not think of it as an “ante-nuptial” or “post-nuptial” settlement, or give their minds to legalistic technicalities of “advancement” and “resulting trusts”. Nor do they normally agree explicitly what their equitable interests in family asset shall be if death, divorce or separation parts them. Where there is no explicit agreement, the courts first task is to infer from their conduct in relation to the property what their common intention would have been had they put it into words before matrimonial differences arose between them.”

[19] It therefore means that if I find that Mr. Gordon has made a substantial contribution (whether in the form of money payments, or services or prudent management or otherwise howsoever) to the improvement or preservation of such property then I must ask what would reasonable people in their position have agreed if they had thought about what rights Mr. Gordon would have.

The Evidence

[20] In order to arrive at a conclusion in this matter, I must carefully sift through and examine all the evidence to determine if Mr. Gordon has established that he made a substantial contribution to the improvement or preservation of the matrimonial property whether in money, services, prudential management or howsoever otherwise and/or whether there was a common intention that the Property was matrimonial property and they would own it equally.

- [21] Mr. Gordon filed two affidavits and exhibits in support and reply filed on 7th August 2017 and 28th January 2021 respectively. Mrs. Gordon filed one affidavit on 10th November 2017.
- [22] Mr. Gordon is a Jamaican and Saint Lucian citizen having acquired Saint Lucian citizenship on 12th July 2012. At the time of filing the section 45 application, he was an Assistant Executive Housekeeper on a cruise line, Norwegian Cruise Line. About a year after they got married in about March 2010, he says he and Mrs. Gordon decided to purchase the Property, and it was their intention that it would be their matrimonial home. According to him, at the time Mrs. Gordon had a job letter to go back to work on the ship but she never went and used the letter to get a loan from Bank of Nova Scotia ("BONS"). He contends that he put money to pay that mortgage into her account. Then they needed more monies from BONS but were denied and they decided to move the loans to Financial Investment and Consultancy Limited ("FICS") and agreed that the loan payments would come from the account held at BOSL in Mrs. Gordon's name to make the mortgage payments at FICS.
- [23] Mrs. Gordon on the other hand says she purchased the Property with her separate funds and earnings. She says at the time of the marriage Mr. Gordon only had about \$1,390.52 in his BONS Account in Jamaica and exhibited a letter from Scotia Bank Jamaica. In response, Mr. Gordon says the letter referred to by Mrs. Gordon showed the current status of an account he held with his mother in Jamaica. He says Mrs. Gordon has all the documents but chose to only show this one to the Court. He says he was a working man at the time he married her and he had other accounts but these details are no longer available to him to produce.
- [24] According to Mrs. Gordon the deposit for the Property was \$27,500.00 and that was paid with her separate funds and the balance of the purchase price with a loan from FICS. She says initially they lived in an apartment at her mother's residence. It was during that time that the Property was purchased.

- [25] Contrary to the agreed intention advanced by Mr. Gordon that they would both own the Property, Mrs. Gordon says she and Mr. Gordon agreed that the Property would have remained her separate property and Mr. Gordon would assist with the mortgage whenever he could since his job was contractual and he would not get a salary on termination of the contract.
- [26] Mrs. Gordon's evidence is that when the Property was purchased, it needed extensive repairs and Mr. Gordon had no funds and was unable to contribute to their expenses or the repairs to the Property. She says she paid for all the renovations with her separate funds from her supersaver savings account at Bank of Saint Lucia.
- [27] Mrs. Gordon exhibits a document which she says shows her last contract on the NCL Sun which ended on 30th January 2009. That contract was not renewed due to a promise she had made to her daughters to work a few contracts and return to be with them. She says she did not have any job letter to return to work on the ship which she used to obtain funds from BONS as Mr. Gordon's evidence suggests.
- [28] Mrs. Gordon says she obtained a loan to pay for the fees for Mr. Gordon's citizenship (\$2,050.00) and his Saint Lucian passport, and the balance was put towards the outstanding mortgage and vehicle payments. She says she also took other loans to pay for the mortgage and other outstanding debts as the respondent had no money or savings and this put a strain on her as she had to take care of the household expenses and the children. She exhibits two documents, but it is hard to understand what they are. They do not show their origin and are therefore unreliable.
- [29] Mr. Gordon agrees that Mrs. Gordon handled his citizenship application, and he says he was happy for her to do so but he says he fully funded the application. He however does not say how he did so. In addition, he says he funded the acquisition of the family vehicle which Mrs. Gordon had exclusive use of.

- [30] At the time the loan applications were made to FICS, Mr. Gordon says he was not in Saint Lucia and on his return, he asked Mrs. Gordon to put his name on the mortgage and the land, but she indicated this could not be done as he was not a Saint Lucian. Therefore, Mrs. Gordon alone signed the loan application and mortgage. She made a deposit of about \$25,000.00 for the acquisition of the Property. The mortgage was registered at the Land Registry on 18th March 2010 as Instrument Number 1200/2010.
- [31] Mr. Gordon's evidence is that he continued to ask Mrs. Gordon about his half share of the Property as he thought it odd that he was not included as a co-proprietor on the land register even after the conclusion of the sale. When he asked Mrs. Gordon on one occasion about this she said it would cost a lot of money to put his name on the title and that he should not worry as the house was theirs.
- [32] Mrs. Gordon says at no time did Mr. Gordon ask for his name to be included on the Deed in April 2010. She says he knew that the Property was under repairs from January to July 2010 and at that time he was unable to contribute to the repairs to the property.
- [33] She says further that Mr. Gordon was not a citizen at the time she purchased the Property and could not hold property without an Alien's Landholding Licence. She again says he knew that the Property was her separate property as he had agreed.
- [34] According to Mr. Gordon, when he and Mrs. Gordon decided to buy the Property and for the duration of the marriage, they agreed that he would be responsible for the mortgage payments as Mrs. Gordon was unemployed. He says but for one year when Mrs. Gordon worked at Peter & Company, she was unemployed for the duration of the marriage.
- [35] Mrs. Gordon denies that she was unemployed for the duration of the marriage. Her evidence displaces Mr. Gordon's evidence that she was unemployed for most of the marriage. Her evidence is that she was employed although most of

it was temporary. She says she worked at (a) Windjammer Landings Private Residence Club as a Sales Representative from April to September 2009-6 months -exhibit does not state her salary; (b) Kai Nous Lifestyle Boutique from 2009-2010-net salary of \$2,166.23 monthly -does not show full earnings; (c) EDL Food Express (no dates given); (d) Bryden and Partners Ltd from November 2010-May 2013-No idea of salary; (e) Kimbo Pops-owner from 2013-2015-Certificate of registration is dated 4th August 2014; Columbian Emeralds International (six month contract-13th Oct 2014 to 31st December 2014) as sales representative-incomplete letter-showing a base salary of \$1,340.00 and commission of 3% on all sales over US\$10,000.00.

[36] Mr. Gordon says in December 2015, Mrs. Gordon left for the United States. She became involved in an accident in Rochester, United States where she suffered serious back injuries. She was doing treatment for much of that year on her back and remained in the United States for much of 2016 and she returned in November 2016.

[37] Mr. Gordon says when Mrs. Gordon worked he did not know what she did with her money. He again says he bore all the household expenses from his salary. Very little of his earnings were kept for himself as he considered all assets were acquired as joint assets. He says in relation to the house, he has always considered this was a joint acquisition as he contributed to the initial purchase. He went to see the house with Mrs. Gordon before the purchase, but it was bought while he was out of Saint Lucia. Mrs. Gordon denied that Mr. Gordon ever went to see the house with her.

[38] Mrs. Gordon speaks of financing the adoption of their daughter in May 2015 by obtaining a loan of \$10,000.00 to facilitate the costs of the adoption and the balance was put towards the mortgage and vehicle payments due and owing since she was out of work for some time during the year 2013. The document exhibited shows a disbursement of \$6,000.00 and not \$10,000.00. There is no evidence of the costs of the adoption and the mortgage and vehicle payments which were made.

- [39] Mr. Gordon says he earned a good salary, and he knew that he could meet the monthly mortgage payments and the household expenses and it did not bother him that he did not know what Mrs. Gordon did with her money. He continued to make deposits remotely on their joint account and instructed Mrs. Gordon to withdraw the sums necessary to make the mortgage payments. She also withdrew monies for maintenance of the household, purchasing furniture and other items.
- [40] Mr. Gordon's evidence is that he and Mrs. Gordon kept a joint account #510047696 at Bank of Saint Lucia ("BOSL") from the beginning of their marriage. He produces an activity statement for the period 15th January to 29th June 2017. He says the mortgage payment was \$2,433.00 and Mrs. Gordon would sometimes make withdrawals in incremental sums and then make the monthly payment at the end of the month.
- [41] Mrs. Gordon denies that they had a joint account from the commencement of the marriage. She says in January 2010, she closed two accounts at BONS and opened a new account in her own name for the purpose of renovating the Property. She says in February 2011, she added Mr. Gordon's name to the account since he was sending money to the account and would need to access the funds whilst on vacation. This is consistent with the bank statements exhibited by Mr. Gordon. He became a joint holder of that BOSL account in 2011. The evidence shows that Mrs. Gordon opened not one but two accounts at BOSL in her name alone in January 2010.
- [42] Mrs. Gordon says that sometimes Mr. Gordon whilst on the ship would deposit monies to one of her accounts at BONS which were utilised for payments of the mortgage and vehicle loan. Prior to 16th September 2015 the loan payments were transferred to BOSL Account #510047696 and Mr. Gordon continued to make payments up until 24th May 2017. According to her, she continued to make payments to the mortgage and vehicle loans from June 2017 to present.
- [43] Mr. Gordon says he has paid over \$205,000.00 in mortgage payments, making all the mortgage payments from the inception of the loan. Mrs. Gordon denies

this. She says that during the marriage she bore most of the responsibility of the home and other expenses such as education, vehicle insurance and loan payments, house insurance and property tax. She says Mr. Gordon has no knowledge as to how she paid for the said expenses as he was never interested or did not care to find out about the other expenses involved in maintaining the Property.

[44] In response, Mr. Gordon produced a list of wire transfer deposits to the BOSL joint a/c #510047696 and stamped copies of the incoming wire receipts which he says shows total deposits of \$162,757.06 during the period February 2010 to December 2016.

[45] Mr. Gordon says he worked in the cruise ship industry for more than 15 years, He worked for NCL Bahamas Ltd widely known as Norwegian Cruise Lines. According to him, he worked for three-month periods followed by one month vacation. He explained that after he and Mrs. Gordon got married in March 2009, he made arrangements for part of his salary to be transferred to Saint Lucia directly to her account. He says he kept the rest of the salary or he would come to Saint Lucia with cash. He says he deposited money into Mrs. Gordon's account when he came to Saint Lucia as he realised that the expenses would increase with him being home. He says he would deposit the money on any of Mrs. Gordon's accounts. He says the loan account was at BONS at first and he used to make deposits to that account as well.

[46] Mr. Gordon says he requested disclosure of records relating to direct deposits to the SuperSaver account at BOSL in Mrs. Gordon's name to assist him in identifying cash deposits but that was not forthcoming. He also sought information in relation to the BONS account and he was told that the bank did not have information on deposits as the request related to transactions done more than 6 years prior. Despite the lack of documentary evidence, he says that he consistently made payments to BONS where the mortgage loan was originally held.

[47] Mr. Gordon says he is entitled to half share of the Property due to the substantial payments towards its acquisition.

Analysis and Discussion

[48] The paucity of evidence produced by both Mr. Gordon and Mrs. Gordon is stark. None of them provided any proof of their earnings. Mr. Gordon spoke of his engagement on the cruise ship but provided no evidence of his monthly earnings or the contractual arrangements relative to his job.

[49] Mrs. Gordon, likewise, produced letters to show where she worked but none of these assisted the Court to appreciate what her earnings were. She also spoke of having worked on the cruise line for about nine years and the fact that she had savings, but she does not say how much she earned, nor does she provide any bank account statements for the BONS account which is where she says she had her savings. In cross-examination, Mrs. Gordon suggested that she could not get the statements as BONS had indicated that they were from too far back, but she produced nothing from the bank to support this.

[50] Mr. Gordon's evidence that he paid all the mortgage payments cannot be correct. He agreed that the BOSL statement showed that he transferred \$162,757.06 to the BOSL joint account. However, when one looks at both the BOSL statements for that account and the wire transfer receipts exhibited by Mr. Gordon, they show that he transferred a total of **\$173,077.06** between January 2010 and December 2016. The total mortgage payments which would have had to have been made for the period March 2009-August 2017 would be \$248,230.26.

[51] It is quite evident that Mrs. Gordon was the one responsible for taking care of things in Saint Lucia whilst Mr. Gordon continued to work on the cruise line. From the cross-examination, Mr. Gordon was of the view that the loan to purchase the Property was initially at BONS and was then transferred to FICS. However, this appears not to be the case. From Mrs. Gordon's cross-examination, a loan was taken at BONS to purchase a vehicle. Mrs. Gordon admitted that Mr. Gordon deposited monies onto her account to pay that vehicle

loan until it was paid off in 2015. He was the only one paying that loan of \$1,713.58 monthly which was in their joint names and this was admitted by Mrs. Gordon.

[52] From Mr. Gordon's evidence in cross-examination it seemed quite clear to me that he did not have a clear picture of the financial arrangements. He was correct though that there was a loan at BONS. It was just not for what he said it was for. He initially said in cross-examination that it was to do additional work on the house and to refurbish it, then he said it was to pay down on the property and then he said that they went to BONS to get money for renovations and the bank turned them down. Mr. Gordon's evidence was not very clear.

[53] Mr. Gordon was adamant that he and Mrs. Gordon did have an agreement that he would be responsible for the mortgage.

[54] Counsel for Mrs. Gordon, Mr. Lorne Theophilus ("Mr. Theophilus") in cross-examination suggested to Mr. Gordon that if he had made all the payments on the vehicle loan he would have had to have made payments totalling about \$123,377.76. This would mean that there would only have been roughly \$49,699.30 left to put towards the mortgage at least until 2015 when the vehicle loan was paid off. Whilst that mathematical calculation may be correct it does not take into account Mrs. Gordon's own admission that Mr. Gordon was depositing money onto her BONS account to pay the loan on the vehicle initially in 2009.

[55] Mr. Theophilus also tried to discredit Mr. Gordon's evidence that when he came to Saint Lucia, he paid the mortgage in cash and suggested to him that this could not be correct since there was a standing order in place from the joint account to pay the mortgage. However, the BOSL statement for that account shows that the standing order was only put in place in September 2015 so it is quite conceivable that Mr. Gordon is correct.

[56] Mr. Gordon in cross-examination agreed that based simply on the transfers it could not show that he paid both the house mortgage and the vehicle loan, but

he was adamant that he brought cash with him when he was in Saint Lucia and paid things as well.

[57] The BOSL account #510047696, the joint account, shows that it was opened in January 2010. The evidence provided by Mrs. Gordon also shows a Supersaver account at BOSL which was also opened in January 2010. The opening of these two accounts is consistent with Mrs. Gordon's evidence that she closed two accounts at BONS in 2010 and opened the BOSL accounts. The joint account which was initially only in Mrs. Gordon's name, had an opening balance of \$5,625.29 whilst the Supersaver account's opening balance was \$70,000.00.

[58] I note that most of the deposits on the Supersaver account in Mrs. Gordon's name which is what she says she used to pay the mortgage show that the majority of the deposits made between November 2010 and April 2015 were made by direct deposit. This would mean that these deposits were electronically transferred from another bank account but there is no information in the statement to identify that account.

[59] When I consider the evidence of both Mr. and Mrs. Gordon, it is difficult to conceive that Mrs. Gordon did not use the monies wired to the joint account to assist in making the mortgage payments. I say this because if one examines the direct deposits made to the BOSL Supersaver account in 2010, it would have only covered about four full payments and one payment in part. The rest of 2010 would have had to have been covered from another source. The 2011 direct deposits would have covered all the monthly payments with not much to spare. The 2012 direct deposits except for one would have fully covered all monthly payments. The 2013 direct deposits would have covered full monthly payments except for two months between January and May. Between June and October 2013, it is not clear how mortgage payments could have been made as there were no direct deposits or wire transfers for that period.

[60] It is hardly likely that Mr. Gordon would have wired in excess of \$170,000.00 to a joint account simply to sustain his wife and to make mortgage payments when

she could not. It seems to me that a man would not make that kind of investment if he did not think that this was a joint venture.

[61] As I have found with Mr. Gordon's evidence, Mrs. Gordon's evidence does not show that she could have made all the mortgage payments on her own either. Mrs. Gordon exhibited statements for a BOSL supersaver account. When I examine the Supersaver account activity closely, it shows the following: (a) there were no deposits between February and August 2010, but there were four wire transfers and four direct deposits from the BOSL supersaver account made to the BOSL joint account; (b) there were two direct deposits in November and December 2010, while there were four wire transfers to the joint account; (c) there were direct deposits made to the supersaver account for each month in 2011 and 2012 while there were four wire transfers to the joint account during the same period; (d) direct deposits were made to the supersaver account from January to May 2013 which amount would not have been sufficient to cover the mortgage payments for the year. Only one wire transfer was made to the joint account in 2013; (e) three direct deposits were made in 2014 to the supersaver account which again would not have covered the mortgage payments for 2014, while seven wire transfers were made to the joint account; (f) four direct deposits were made to the supersaver account between January and April 2015 while for the period January to November 2015 there were a total of eight wire transfers;

[62] From the evidence, it is clear that neither Mr. Gordon nor Mrs. Gordon could have made the mortgage payments solely as they each allege.

[63] In cross-examination, it was revealed that there was also a vehicle loan at BONS. Initially, Mrs. Gordon said that Mr. Gordon was sending money to the BONS account which was in her name alone. Then she said that that was an error and that he was sending the monies to BOSL where she took the money and transferred it to BONS to pay the vehicle loan. Mrs. Gordon had use of that vehicle almost exclusively as Mr. Gordon was out of the island for most of the year. It is very telling that in 2009, the BOSL accounts did not exist as yet so Mr. Gordon must have been depositing money into Mrs. Gordon's BONS account.

Interestingly, Mrs. Gordon could not say how much money Mr. Gordon was sending to the BONS loan account.

[64] Mrs. Gordon initially said that Mr. Gordon paid the vehicle loan sometimes and then when pressed she admitted that he paid it all the time because he was in charge of paying the vehicle loan. Although the vehicle was paid by Mr. Gordon solely, it was owned by both Mr. and Mrs. Gordon. It therefore begs the question as to why the Property is to be treated differently when it is clear that Mrs. Gordon must have used some of the funds deposited into the BOSL accounts by Mr. Gordon to assist with paying the mortgage. It is not expected that either spouse would be able to bear all the expenses solely as marriage is a partnership in which both parties share.

[65] I accept that Mr. Gordon contributed to the acquisition of the Property seen by the wire transfers which total \$173,077.06. This is a substantial contribution to assist with the mortgage expenses. Clearly both parties were expected to pool resources to deal with their expenses. It would be unconscionable to expect someone to pay a mortgage or contribute to it with no expectation whatsoever that they have a stake or interest in the property being acquired.

[66] It can be inferred from Mr. Gordon's conduct of wiring or depositing money to accounts which could be accessed by Mrs. Gordon on a consistent basis that he must have been of the view that he had an interest in this Property.

[67] In cross examination, Mrs. Gordon said that she was not disputing that Mr. Gordon ever contributed but when he was not working on the ship he would not get paid and she was solely taking care of the mortgage. She says Mr. Gordon was her husband at the time and in case she fell short or if anything happened he would step in and help with the mortgage. Mrs. Gordon's responses seemed to suggest that Mr. Gordon was such a benevolent husband that he would simply step in when she could not pay the mortgage with no strings attached. I do not accept that this was the case. The parties had only got married in 2009 and a year later a property was being secured. Obviously at the time, Mr. Gordon was not a citizen and could not have held any property and it was convenient

that the Property would be in Mrs. Gordon's sole name. I believe Mr. Gordon when he said that he thought that notwithstanding, he still had a share in the Property.

[68] Mrs. Gordon would wish the Court to believe that she had enough funds to pay the deposit and sustain the mortgage payments but as I have indicated, she has failed to present any evidence of this. From the evidence before me, when she closed the two BONS accounts in 2010, she opened two accounts at BOSL and the evidence shows what the starting balances were. I do not see any reason to believe Mrs. Gordon that she had funds from which she could have paid the mortgage without assistance from Mr. Gordon.

[69] From my observations of the two parties, I am inclined to accept that Mr. Gordon did contribute to the mortgage. He would not be privy to all the mortgage information as the loan is in Mrs. Gordon's name, and he does not have access to these records. I note that Mrs. Gordon was very fixed on ensuring that she plugged in at every step that she paid this mortgage with her own funds and without Mr. Gordon, yet she failed to provide any evidence to show the Court the funds that she claimed she had access to and utilised to do so. At some point towards the end of her cross-examination, Mrs. Gordon's position appeared to change, and she said that she paid most of the mortgage suggesting that Mr. Gordon did contribute some to it. She said later that Mr. Gordon contributed to the balance of the mortgage, but he did not contribute to getting the Property. That was indeed an interesting proposition.

[70] I also note that in cross-examination, when Mrs. Gordon was asked about the joint account and whether she had closed that account given that the last activity on the account was on 29th June 2017, for the first time in the case she said it was never closed because Mr. Gordon took all the money from the account when they first got divorced. However, this could not be true as the decree nisi was granted in July 2017 and the loan activity statement ends at June 2017. It is unclear what was taken from the account as Mrs. Gordon did not elaborate. Again, for the first time she says that Mr. Gordon had an account at BOSL but

this was not part of her evidence in chief. As at June 2017, there was a balance of \$274.68 on the joint account.

[71] When Counsel, Ms. Diana Thomas ("Ms. Thomas") asked Mrs. Gordon whether the deposits made after the withdrawal which she claims Mr. Gordon made, were to sustain the mortgage payments, she responded 'well both my account and the respondent's.' Therefore, she agreed that Mr. Gordon made partial payments in 2017, up to May of that year but she could not identify which of the deposits were hers or Mr. Gordon's as they were all made via mobile banking transactions.

[72] Mrs. Gordon admitted to giving Mr. Gordon access to the ATM card before she put his name on the account. She admitted that he had access to the account when in Saint Lucia but that purchases made from that account were mainly made by her. Mrs. Gordon also admitted that when she said that Mr. Gordon had no funds and could not contribute to the renovations that was not true. The joint account activity shows wire transfers and point of sale purchases some of which Mrs. Gordon accepted were for renovations to the Property. Mrs. Gordon in cross-examination admitted that Mr. Gordon did contribute to the household expenses but that she was disputing the total amount he said he contributed although she could not give any indication as to how much he contributed. In her affidavit she did not say anything about Mr. Gordon's contributions and made it seem that she was the one who paid and contributed to all the expenses.

[73] Mrs. Gordon in cross-examination said that the mortgage payments were initially coming from her personal BONS account where Mr. Gordon was sending money at the time and not the joint account. She then clarified that it was the vehicle payments which came from that BONS account. Mrs. Gordon's evidence in cross-examination was very confusing. She says that mortgage payments only came from the joint account in 2015 when she had asked Mr. Gordon to assist for about a year as she was in the US with her daughter. She responded in the affirmative when asked whether prior to 2015 the mortgage payments came from the Scotia account. However, that cannot be correct as according to Mrs. Gordon in her affidavit evidence she would have closed her account at

BONS in January 2010 and opened the BOSL accounts. Contrary to this, she would have said in cross-examination that she closed the BONS account in 2015. It is therefore unclear what account was closed in 2015. The mortgage payments began in February 2010 at which time the BONS accounts were closed. Only the loan account remained at BONS which may be what Mrs. Gordon was referring to.

[74] Mrs. Gordon suggested in cross-examination that any payments made by Mr. Gordon to the joint account between 2010 and 2015 went to his vehicle loan and not the mortgage payments but that is difficult to believe when the wire transfers were in excess of the vehicle loan monthly payments. I also note the reference to his vehicle loan, but it will be remembered that the vehicle was in both names.

[75] As indicated before, both parties fell short of providing full and frank disclosure, but Mrs. Gordon fell way short. In the case of **Thomasine Spooner v Joseph Spooner**¹⁰ the court reminded that in proceedings of this nature the law 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. I have borne this in mind in my evaluation of the evidence before me.

[76] Mr. Gordon's evidence of his contribution to the mortgage payments has been substantiated by the wire transfer documentation. Mrs. Gordon on the other hand has failed to assist the Court and has provided no information regarding the amount held in her BONS account, the status of the mortgage payments or the balance of the loan as at the date of the hearing. This information was solely within her reach. I believe Mr. Gordon's evidence of his contributions and find that he did make substantial contributions to the acquisition of the Property by contributing to the mortgage payments, but the Court must be fair. After May

¹⁰ Saint Lucia Matrimonial Claim D127 of 2000 (delivered 22nd August 2002) at para 36.

2017, Mr. Gordon ceased to make any further contributions which could have been utilised for mortgage payments and therefore any interest which the Court finds he would have could only be in the equity, if any as at May 2017. In the absence of any other valuation, the Court accepts the valuation dated March 2020 exhibited to Mr. Gordon's affidavit filed on 28th January 2021 wherein the market value of the Property is stated as \$300,000.00.

[77] Given the above discussion and the Court's findings, I make the following orders:

1. The respondent is entitled to a 2/5 share of the equity in the Property as at May 2017.
2. The petitioner shall provide to the respondent through her Counsel, the statement of the balance of the loan from Financial Investment and Consultancy Services Limited (FICS) as at May 2017 within 60 days of today's date failing which the respondent is at liberty through his Counsel to obtain a copy of the statement.
3. The petitioner shall pay the respondent 2/5 of the value of the equity in the Property as at May 2017 within ninety (90) days of the date of receipt of the statement of the balance of the loan referred to in paragraph 2.
4. The petitioner and respondent shall each bear their own costs.
5. The respondent shall have carriage of this Order.

[78] I offer my sincere apology for the delay in delivery of this decision which was due to matters beyond my control and for any inconvenience which this may have caused to the parties and Counsel.

**Kimberly Cenac-Phulgence
High Court Judge**



By The Court

Registrar