

IN THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHCv2020/0433

BETWEEN:

KAYANNE KING

Claimant

and

JERRY KING

Defendant

Appearances:

Ms. C. Debra Burnette for the Claimant

Mr. Jarid Hewlett for the Defendant

2022: November 30th

2023: January 25th

ORAL DECISION

- [1] **Byer, J.:** According to the words of Mohammed J in the case **Philomena La Qua v Justin La Qua**¹ at paragraph 1 thereof “divorce creates many problems. One question always arises. It concerns how the property of the husband and wife should be divided and whether one of them should continue to support the other. Stated in the most general terms the answer is obvious. Everyone would accept that the outcome of these matters, whether by agreement or court order should be fair. More realistically, the outcome ought to be as fair as is possible in all circumstances. But

¹ GDAHMT2010/0006

everyone's life is different. Features which are important when assessing fairness differs in each case and sometimes different minds can reach different conclusions on what fairness requires. Then fairness, like beauty is in the eye of the beholder".

[2] This application filed by the claimant was quite simple. The claimant by her Fixed Date Claim Form filed on 26th November 2020 sought the following relief:

- a. A Declaration that the property registered and recorded in the Land Registry as follows:

Registration Section	Block	Parcel
Gilberts	22 2488 A	168

("the property") is held by the defendant in trust for himself and the claimant in equal shares.

- b. An order that the property be sold and the proceeds be divided up between the parties in equal shares, after payment thereof of all encumbrances on the said property.
- c. A declaration that the claimant is entitled to half the rental value of the said property from 22nd July 2018 until payment is made.
- d. A declaration that a 01 25" The Searay Boat purchased by the parties and used exclusively by the defendant is held by the defendant in trust for himself and the claimant in equal shares. (the Searay)
- e. An order that the said 01 25" Searay Boat be sold and the proceeds be divided up between the parties in equal shares.
- f. A declaration that a fishing boat known as "El Tiboron" by the parties and sold by the defendant, was owned by the parties in equal shares. (El Tiboron)
- g. An order that the defendant do pay to the claimant half the amount of the proceeds of sale of "El Tiboron" together with interest thereon pursuant to Section 27 of the Eastern Caribbean Supreme Court Act, Cap. 143.
- h. Such further or other relief as this Honourable court deems just.
- i. Interest pursuant to Statute
- j. Costs.

- [3] The claim was supported by two affidavits of the claimant filed on 26th November 2020 and 14th May 2021 and a witness statement on 20th September 2021.
- [4] In response, the defendant filed an Affidavit in opposition on 4th March 2021 and a witness statement filed on 29th October 2021 in which he denied the claims of the claimant in their entirety, save and except an admission that the claimant at the most may have been entitled to a 24% of the value of the Searay ².
- [5] This matter although not a lengthy one, or one that could not be determined amicably between the parties if emotions as to the breakdown were not still so raw and real for the parties and in particular the defendant who manifested his bitterness and anger throughout the trial, came on for trial on 30th November 2022 at which time the parties were cross-examined on their evidence as filed. Both the claimant and the defendant purported to make written submissions to the court on how the court should be guided in making the orders as sought. However, this court wishes to make clear at this juncture that the court has not considered the submissions filed on behalf of the defendant for the following reason.
- [6] It would appear, in the short time that I have been in this jurisdiction, the culture may be that when an order is made for the filing of closing submissions, somehow it is merely a suggestion by the court and once they are filed then there has been substantial compliance. This court is not of the same belief. If this court makes an order for the closing submissions to be filed by a particular date and the same is not forthcoming, then any other filing must require a variation of the order of the court. A simple application which can even be heard on paper if the other side agrees is more than adequate. In the case at bar, the date for the filing of the closing submissions was 12th December 2022 and counsel for the claimant diligently did so on that date. Without any application, however, counsel for the defendant purported

² Paragraph 26 of the Affidavit in opposition of the Defendant at page 56 TB filed 22/7/2022

to file submissions 11 days later. This action will not be condoned by the court and as such this court is of the view that the same is not properly before it and will be making no reference to the same in the course of this judgment.

[6] That being said, having heard the evidence and seen the parties on cross-examination the court accepts the following on a balance of probabilities:

- a) That the parties met in 2003, contemplated marriage by 2005 and got married in 2006.
- b) At the time that the claimant met the defendant in 2003, he had already acquired the said property and he was in fact residing on the said property in a one-bedroom apartment.
- c) That between the time of their initial meeting and the marriage, the defendant on his own acquired a mortgage with a financial institution for which he was solely responsible to fund and supplement the funding of the expansion of the said property.
- d) That the defendant even before marriage had plans to expand the said property.
- e) That after marriage the claimant and the defendant took up residence in the newly expanded property with the mortgage payments being met by the defendant
- f) That by the end of 2006, the defendant lost his job at the Antigua Distillery which resulted in a reduction of income for which the claimant picked up the deficit.
- g) That the claimant and defendant had an agreement after marriage on how the household expenses would be met and with the reduction in the salary of the defendant, it fell upon the claimant to purchase groceries and pay the utilities. After the birth of their first child in 2007, the claimant was also responsible for childcare.
- h) That in 2017 the claimant joined the defendant to her detriment in the refinancing of the mortgage on the house as a co-borrower.

- i) That the claimant and defendant although married never pooled resources and kept their financial obligations and entitlements separate throughout the marriage.
- j) That despite this manner in ordering their finance, the parties still acted as a family and as such, the claimant used her financial stability to obtain a loan for the purchase of the Searay and invested \$10,000.00 into "El Tiboron". It was also from the salary of the claimant by way of direct deductions, that the loan for the Searay was repaid which was not refunded by the defendant and that the loan from which half of the purchase price for "El Tiboron" was obtained was also repaid by the claimant in her own right.
- k) That the defendant also invested large sums into making the Searay and "El Tiboron" seaworthy which was additional to the sums that were paid by the claimant for what was classified as the hulls of the vessels.
- l) That there was no repayment by the defendant to the claimant for those monies paid for the hulls of these boats and she did not contribute to the outfitting of the boats subsequently.

[7] During cross-examination, and in spite of the defendant's clear position in his examination in chief that he denied any contribution by the claimant to the maintenance and acquisition of the assets identified, the defendant was forced to grudgingly admit that the claimant by her actions had in fact acquired interests in the assets as claimed. His firm position however was that any contribution made did not amount to 50%. In this court's mind, having assessed the evidence, I am to a limited extent in agreement with that submission by the defendant.

[8] It is clear from the law that this court must consider the conduct of these parties as they ordered their affairs to determine what may amount to the fair distribution of the assets to which the claimant lays claim.

[9] In the case of **Abbott v Abbott**³, the court made it clear that there are two questions which must be addressed, “first was it intended that the parties should share the beneficial interest in a property conveyed to one of them and second if it was so intended in what proportions was it intended that they share the beneficial interest?” As this is understood, as it was succinctly elucidated in the case of **Lloyds Bank plc v Rosset**⁴ that in order to answer these questions the “search is to ascertain the parties shared intentions, actual, inferred or imputed with respect to the property in the light of their whole course of conduct in relation to it.”

[10] This marriage lasted from 2006 to 2018 with its breakdown and the removal of the claimant from the home upon the instigation of the defendant, an event to which this court will return to shortly in relation to another prayer of the claimant. The defendant admitted on cross-examination that during the period from 2009 to 2018, the claimant was responsible for paying the utilities in the house, the groceries and looking after the children. The claimant denies that this was only from 2009 but from the inception of the marriage. The court has already found as a fact that the claimant was positioned to make the contributions she did, especially after the defendant suffered a reduction in his salary when he transitioned to new employment with a reduced salary. It was therefore clear to this court that the manner in which the defendant and the claimant ordered their affairs, even without merging their finances, evidenced an intention that the house in which they lived and were responsible for could not have been intended to be the defendant’s wholly, with no reference to the claimant. In fact, he acknowledges that their conduct “was one of cooperation” in meeting the expenses of the family.⁵ This conduct shows that essentially there was a common intention that they should both share the beneficial interest in the property.⁶

³ [2007] UKPC 53 at paragraph 4 per Baroness Hale of Richmond

⁴ [1991] 1 AC 107 at paragraph 60

⁵ **Teckla Edwards v Dr Alvin G Edwards** ANUHCVP2012/0040 at paragraph 43 per Thom JA

⁶ Ibid

- [11] Whether the defendant intended that the claimant would be able to claim an interest in what he has termed his dream house, it is clear to the court that the fact that parties marry and set up house together and contribute to the running of the property and family in which they reside shows a clear intention that they should each have a share in the property. However, the contention made on behalf of the claimant that she should be entitled to a half share in the property in this court's mind is not made out and in fact, as was identified in the case of **Izola Willett v John Willett**⁷ the principle of equality is merely a means by which the courts have dealt with matters where there was no ability on the breakdown of a marriage to produce precise evidence as to the extent of the contribution made by each individual to the "joint" acquisition of the property in dispute.
- [12] This is not the position with the case at bar. Here it is clear that the claimant did not contribute to the acquisition of the property and by her own admission did not pay towards the mortgage that funded its expansion to accommodate the family. But I do accept that her contributions to the running of the household and the family were made over the 12 year period of the marriage and in that regard, I consider that she is entitled to a 30% interest in the said property.
- [13] The claimant has also asked that the property be sold and that she be paid her interest as determined by the court. This court has not been provided with any evidence that this draconian method of reaping the funds attached to the interest of the claimant is a meritorious request. I however state that the defendant is to pay to the claimant 30% of the value as provided by the valuation dated 26th May 2017⁸ of \$709,000.00 minus any outstanding sum that may be still owed to the financial institution. The said sum is to be paid to the claimant within 18 months of today's date failing which the claimant is at liberty to apply for the sale of the property to realise her share of the same. The defendant is also to take all reasonable steps to have the claimant removed from the mortgage within 6 months of today's date.

⁷ ANUHCv2000/0254 at paragraph 25 per Joseph -Olivetti J

⁸ At page 25 of the Core Trial Bundle of Agreed documents filed 22/7/2022

- [9] As it relates to the claim for half of the rental value of the said property. It is clear to the court that having now declared that the claimant is in fact entitled to a share in the said property that this claim is entirely relevant. This claim which is to represent compensation to the claimant for being kept out of the said property by the defendant has linked to it, the sum that would have been equivalent to the rental sum that was payable for the self-contained apartment at the said property.
- [10] This court accepts that there is authority to suggest that a co-owner who has been ousted from the house which is retained by the other party may be entitled to a sum representing the value that the remaining owner enjoyed to the exclusion of the ousted party. However the authorities have also recognized that this is not a rule of law but rather, "...merely a statement of the prima facie conclusions to be drawn from the facts".⁹ However when the authorities ¹⁰ are critically examined, it is the opinion of this court that the recognition of the payment of what is termed "an occupation rent" all seem to be fixed to where ownership is either as joint tenants or as tenants in common which by law translates to equal ownership and entitlement to a property. In the case at bar, the claim of the claimant would have been based on the relief sought that she was entitled to a 50% share, the court having found that she is not, does not agree that it is a carte blanche principle that encompasses all co-owners in whatever percentage of ownership they may be entitled to as declared by the court. Even in the case from this court ¹¹ where an occupation rent was ordered to be paid, it was clear that the ownership of the property was determined as equal, that the wife had been the one paying the mortgage, that the property was rented after the wife was excluded from the home and there was evidence that the wife was responsible for her own accommodation in terms of rental payments.

⁹ **Re Pavlou** (A bankrupt) [1993] 1 WLR 1046

¹⁰ **Ibid, Leake (formerly Bruzzi) v Bruzzi** [1994] 2 All ER 1196

¹¹ **Jenifer Carty v Oral Carty** SKBHCV2015/0139

- [11] In the case at bar, the only circumstance that applies is that it is not disputed that the claimant was excluded from the property after she made a comment to the defendant that she would file (and did in fact file) an application for a protection order against him. For the last four plus years, the defendant has solely been responsible for paying the mortgage for the house, there is no evidence that he has been receiving any rental income from the self-contained apartment and the claimant is only entitled to 30% interest. In all the circumstances this court is of the opinion that the claimant is not entitled to any sum representing a portion of any rental value of the property for having been kept out of the same.
- [12] As it relates to the two vessels, the Searay and the "El Tiboron" it was admitted by the defendant at trial and in his evidence in chief¹² that the claimant is entitled to a share in both vessels. The share that the defendant conceded was of course half of the claimant's prayer for 50% of both vessels. It must, of course, be borne in mind that at present "El Tiboron" is no longer in the possession of the defendant it having been sold sometime prior to the trial of this matter.
- [13] It is therefore clear to this court that the claimant made significant contributions to the acquisition of these two vessels, both for the benefit of the family and the defendant, in particular. At trial the defendant took pains in cross-examination to insist that the monies that were expended by the claimant was only in relation to the hull of the boats, that he was the one who invested his monies to outfit and install all the equipment, a fact that was not disputed by the claimant. However, it cannot be lost on this court that as it presently stands, the defendant is the one in sole control of the Searay and that he sold "El Tiberon" without any consideration to the claimant. Additionally, the defendant was unable to provide any information to the court, save and except his say so, which this court finds was largely unreliable, to his own investment.

¹² Paragraph 26 of the Affidavit in response by the defendant filed 4/3/2021 of the 24% interest in the Searay and in cross-examination in relation to El Tiboron

[14] In this court's mind, however, both parties worked at acquiring these assets but without the claimant's assistance, these assets would not even be in existence. It is therefore wholly unreasonable in this court's mind for the defendant to deny the claimant's claim (although this was also adjusted at trial) in relation to the vessels. In relation to the Searay, I have accepted that the claimant was the one who was solely responsible for the payment of the loan which was used to acquire the same, and the vessel was made seaworthy by the equal efforts of the defendant. In all the circumstances I do not see why I should depart from determining that the parties own this vessel in equal shares and I so determine. The claimant is therefore entitled to 50% interest in the value of the vessel Searay and the said vessel is to be sold and the proceeds to be divided equally as between the parties after any outstanding sums have been paid. Such sale is to be undertaken within 12 months of today's date by the defendant failing which the claimant is at liberty to have conduct of the said sale to realize the said sum as due and owing.

[15] In relation to "El Tiberon", it cannot be denied by the defendant that the bill of sale for the purchase of the vessel in 2013 was in the sole name of the claimant. Neither has the claimant denied that both she and the defendant made that payment of the purchase price of \$20,000.00.¹³ Yet on the sale of the vessel the defendant sought to retain the funds for his sole use. Indeed, it was with interest that the court noted the strong position taken by the defendant in his affidavit in opposition¹⁴ which totally denied the payment of half of the purchase price for the hull of "El Tiberon" had changed by the time he filed his witness statement¹⁵ where he admitted that the claimant had, in fact, made a payment of \$10,000.00 towards the purchase of the hull. This inconsistency in the evidence of the defendant which even changed more at trial when he then admitted that the claimant had an interest shakes the credibility of the defendant generally and in this regard in particular.

¹³ The ECAB cheque dated 21/2/13 at page 21 Core trial bundle of Agreed documents

¹⁴ Filed 4/3/2021

¹⁵ Filed 29/10/2021

[16] This court, therefore, finds that the claimant is entitled to an interest in “El Tiberon” as well and I quantify that interest at 50%, the claimant having provided that investment in the acquisition of the said vessel. The defendant is therefore ordered to pay to the claimant 50% of the reported proceeds of sale for this said vessel within 18 months of today’s date.

[19] In making these orders, I am satisfied that the parties need to move on with their lives. The court hopes that this will be the way in which they can now do so.

The order of the court is therefore as follows:

1. The claimant is entitled to a 30% interest in the property located at Registration Section Gilberts as Block 222488A parcel 168.
2. The said 30% is to be paid on the basis of the valuation dated 26th May 2017 by NAS viewpoint in the sum of \$709,000.00 less the sum, if any still due on the mortgage of the said property. Such sum is to be paid to the claimant within 18 months of today’s date failing which the claimant will be at liberty to apply to the court for the sale of the property. The defendant also has 6 months within which he is to have the claimant removed from the mortgage.
3. The claim for the payment of rental value is dismissed.
4. The claimant is entitled to a 50% interest in the Searay vessel. The said vessel is to be sold under the conduct of the defendant or his counsel and the proceeds are to be divided equally after the payment of any outstanding sums attributable to the sale of the said vessel. If the defendant fails to take any action within 12 months of today’s date to have the vessel sold, the claimant is at liberty to assume conduct of the sale with the proceeds to be divided as hereinbefore stated.
5. The claimant is entitled to 50% interest in “El Tiberon” and the defendant is to pay the sum equal to that 50% from the amount stated at \$35,000.00 representing the proceeds of sale for the vessel by the defendant. This said sum is also to be paid within 18 months of today’s date.

6. The claimant is entitled to interest on the said sums as due at the statutory rate of interest from today's date until payment.
7. In the circumstances that the court considers that this is a matter that should have been settled, the court orders that the claimant is entitled to her costs to be assessed if not agreed within 21 days of today's date.
8. Liberty to apply.

Nicola Byer
HIGH COURT JUDGE

By the Court
Registrar