

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA**

CLAIM NO.: ANUHCv2018/0557

BETWEEN:

Sally Davis-Meyer

CLAIMANT

-AND-

Geddes Meyer

DEFENDANT

APPEARANCES:

Ms. Ann Henry KC for the Claimant

Mr. Kendrickson Kentish for the Defendant

2021: December 7

(Submissions: 2022 January)

2022: September 26th

JUDGMENT

[1] **Robertson, J.** The parties cohabited and later married on 28th July 1990. The parties were separated on 22nd of August 2005 when the claimant left the matrimonial home. Prior to the marriage and while the parties cohabited two parcels of land, Parcels 21 and 87, were purchased and placed in the name of the defendant. The properties are the subject of these proceedings.

[2] The claimant, in these proceedings seeks:

- a. A declaration that the land and property situate at Cedar Hill in the Parish of Saint Peter in Antigua and Barbuda and recorded on the Land Registry as Registration Section: Central Block No. 13 2490B Parcel 21 and Parcel 87 are beneficially owned by the Claimant and the Defendant in equal shares.
- b. A declaration that the Defendant holds the matrimonial property in trust for himself and the claimant in equal shares.
- c. An order that the property be sold, and the proceeds be divided equally between the parties.
- d. An order that the defendant pay interest on any sum found to be due to the claimant.

[3] The defendant responded to the claim and filed an ancillary claim. In the ancillary claim the defendant seeks:

- a. A declaration that the defendant was entitled to 50% of the mortgage balance paid by the defendant to the financial institution to liquidate the mortgage. The total sum paid was EC\$347,166.00.
- b. A declaration that the defendant is entitled to half the annual costs of maintaining the property over the period of 13 years which the defendant estimates to be at least EC\$200,000.00.
- c. Interest and costs.

[4] **Overview and Framework.** The marriage between the parties resulted in the birth of three children. The children were born in 1991, 1995 and 1996. Sometime in or around 1990 the parties determined that there was a need to acquire property. Adjacent parcels, 21 and 87 were acquired¹ from an individual at a price which the parties have agreed was below the market value for the parcels. The defendant entered the transaction and paid for the parcels of land. The properties were placed in the name of the defendant. The matrimonial house was built thereon.

[5] The claimant contends that she has a beneficial interest in adjacent parcels 87 and 21 which are held in the name of the defendant. The claimant further contends that the apportionment of the beneficial ownership is a half share interest.

[6] The defendant pleads that any beneficial interest that the claimant may have held was diminished and extinguished after 13 years of separation. This, the defendant pleads, was because the claimant voluntarily left the matrimonial home, the defendant paid the outstanding sum of the mortgage debt in its entirety and the defendant was thereafter solely responsible for the maintenance and upkeep of the property.

[7] The counsel for the defendant, in his submissions, indicated that the fact that the parties were jointly liable under the mortgage facility demonstrates the common intention of the parties with respect to

¹ Transfer of Land dated 14th April 1990 and registered in the Land Registry on 1st August 1990.

the ownership of parcel 87². Counsel for the defendant referred to the matrimonial home loan facility document dated 30th September 2002 and noted that the document referred only to parcel 87. This, counsel contends, is an indication that the matrimonial home was built on parcel 87.

[8] On this matter, counsel for the claimant submitted, and this court agrees, that there is no pleading by the defendant to suggest that the dwelling house stood on a specific parcel or that the matrimonial property and the claimant's interest therein, if any, should be limited to the dwelling house and the parcel upon which it stood. It is a well-established principle that cases are framed by the content of the pleadings.

[9] Thus, in the determination of this matter this court is required to consider:

- a. Whether the claimant held a beneficial interest in the matrimonial property, (parcels 21 and 87).
- b. If so, what proportion does the claimant hold.
- c. Whether the claimant's beneficial interest in parcels 21 and 87 has been extinguished.
- d. Whether the claimant's interest in the property requires the claimant to make good any payments to liquidate the mortgage and to maintain the property.

The Law.

[10] The claimant asserts beneficial interests in the properties to which the defendant holds the legal title. This court is required to determine whether such an interest exists. The principles of law on this matter have long been settled and can be seen in the Privy Council case of **Abbott v Abbott**³ and in the case by our Court of Appeal of **Edwards v Edwards**⁴. It is noted that in the determination of whether the claimant holds a beneficial interest in the property the court must consider the whole course of conduct between the parties in relation to the property. In circumstances where the court has examined the whole course of dealings between the parties in relation to the property and has determined that a party holds a beneficial interest, the court must consider the evidence and further determine the proportions held by the respective parties. In this regard it is an acceptable principle

² Abbott v Abbott PC No. 142 of 2005.

³ PC Appeal No. 142 of 2005.

⁴ ANUHC VAP 2012/0040 Teckla Edwards v Dr. Alvin G. Edwards.

of law that the financial and other contributions of the parties are considered in the determination of interests held by parties.

The Evidence

[11] The claimant and the defendant provided evidence in support of their respective cases. The parties knew each other from their youth. The evidence before the court is that by 1984 the parties were in a relationship. The parties began to cohabit in or about 1986. This court accepts the evidence that the parties, while in the relationship, anticipated marriage and/or an extended life-long partnership and framed their lives in this context. This court has formed this view from the evidence of the claimant which indicated that *“When we started living together, we did so in anticipation of our marriage, and we discussed and agreed on all our major financial undertakings. We did so on the understanding and agreement that we were investing jointly in our future for the benefit of ourselves and the family which we planned to have and that we would own everything equally”*. This is supported by the fact that the mortgage facility which was used to build the matrimonial home was in the joint names of the parties. This court does not accept the contention of the defendant that while the parties discussed their financial goals it was not with a view to making joint investments as a family.

The Acquisition of Parcels 21 and 87.

[12] The parcels of land, 21 and 87, were purchased prior to marriage but during the period of the parties' cohabitation. The land was purchased from a friend of the defendant at a reduced price. Although the claimant made no financial contribution to the purchase of the parcels of land this court has formed the view, for the reasons set out herein, that the parcels were purchased with the common intention that the parties would enjoy joint ownership.

[13] In this regard the acquisition of and the loan to develop the property are relevant. Specifically, the parties were in a committed relationship with the intention of being married. The parcels of land were purchased in April 1990 approximately three months prior to the date of their marriage. The matrimonial house was built in 1996 on the property which was purchased. The mortgage facility was in the names of both parties and payments were made by both parties on this mortgage facility. Although the defendant indicated that he made larger financial contributions to the liquidation of the

mortgage it is noted that the defendant admitted that equal payments were required on the monthly premium of the initial loan facility. It is also noted that the refinanced mortgage facility required that the parties make equal monthly payments on the installments.

The Company

[14] The Defendant was employed at Texaco until 1994. Thereafter the defendant began a business in which he distributed and sold oil products. The evidence of the claimant is that she encouraged the defendant to become an entrepreneur and later, in 2001, encouraged the defendant to incorporate the business.

[15] The defendant's evidence is that the incorporation of the business was not encouraged by the claimant, but that the business was incorporated on the advice of the defendant's siblings. The defendant also indicated that the incorporation was required in response to changes to the legislative framework.

[16] The claimant was a director⁵ of the company and although the parties were separated in 2005 the claimant remained a director, not active, until March 2015.

[17] The evidence of the claimant is that since the claimant had been a long-standing employee of a bank, the parties and the defendant's business benefited from the preferential rates and privileges offered to bank employees. The claimant admitted that the business would not have benefited from preferential rates on the business' over-draft facility but noted that there would have been benefits when foreign currency was purchased, and when bank drafts and traveler's cheques were required. The claimant also noted that the preferential loan interest rates, reduced fees, and charges for banking services permitted the parties to generally have additional disposable income and therefore a higher standard of living. The claimant specifically referred to the preferential rate for the loan facility afforded to the parties for the construction of the matrimonial home.

⁵ The claimant was never held a shareholder in the company.

[18] The defendant agreed that the business did benefit from some preferential rates but noted that the business did not always benefit from preferential rates on account of the claimant's employment. Additionally, the defendant indicated that, after incorporation, the company's banker was not the financial institution where the claimant was employed thus, the preferential arrangements would not have been available to the company.

[19] In the context of the parties living in one household and raising a family together this court has determined that the defendant operated the business to derive an income for the household. The claimant provided general support to the defendant which permitted the defendant to be an entrepreneur.

The Beneficial Interest of the Parties.

[20] In the determination of the beneficial interest the court must again consider the whole course of dealings relating to the property.

[21] The claimant contends that she paid an equal share to the mortgage but is unable to produce evidence in support of this contention on the initial loan facility. The claimant indicated that she is unable to produce evidence since her employer went into receivership and thereafter it became difficult to obtain her financial records. The claimant's evidence is that the difficulty in obtaining records from the bank persisted although the claimant was employed at the bank until 2016 and thereafter commenced a new employment with the receiver of the bank until July 2021. The claimant has not produced evidence supporting attempts made to obtain the payment information from the financial institution.

[22] The evidence of the defendant is that the house was completed in 1997, that he earned a larger salary and that he paid most of the mortgage. The defendant estimated that the claimant paid roughly one-third of the mortgage from the claimant's salary.

[23] The claimant tendered into court a loan statement for the re-financed loan facility for the period 27th September 2002 to 4th April 2005. The re-financed mortgage facility of September 2002 required semi-monthly payments of EC\$1 605.00. The statement indicated that fortnightly payments were

made by the claimant in the sum of EC\$802.50 towards the liquidation of the mortgage. Thus, the claimant made contributions equal to one-half of the required monthly installments.

[24] It is noted that the statement also indicated that the defendant made regular payments to the mortgage facility and that these payments were in excess of one half of the required monthly installments. The sums paid by the defendant ranged from EC\$3,000.00 to EC\$5,000.00.

[25] On the matter of household expenses, it is noted that save for a general reference to discussions about the parties' finances, the claimant has not offered specific evidence regarding the household expenses. The defendant, however, has indicated that he paid most of the household bills every month from the earnings from the business which he operated.

[26] The parties were both employed during the period of cohabitation, and they raised three children. The parties jointly cared for the household. It is noted that the defendant would have earned a higher income to that of the claimant and be able to make greater contributions to the home including the contributions towards the liquidation of the mortgage facility. It is also recognized that the defendant was able to manage being an entrepreneur as a result of the non-financial contributions of the claimant to the household.

[27] On the matter of value of non-financial contributions by a party in a domestic relationship reference is made to the dicta of Saunders JA in the Court of Appeal in case of **Timothy Stonich v Tamara Stonish**⁶ where it was noted that "*the Court should not pay too much regard to a contribution merely because it is easily quantifiable in hard currency and too little to a contribution that is less measurable but equally important to the family structure*".

[28] This court has concluded that when the properties were acquired it was the intention of the parties that both parties would hold a beneficial interest. During the marriage both parties were equally liable to the mortgage facility and both parties paid the mortgage premiums. This court accepts that the defendant made greater contributions to both the household and to the liquidation of the mortgage facility when sums were paid above the mortgage installments and greater contributions to the household. It is clear that the parties contributed financially to the household according to their

⁶ [2003] ECSC No. 72; Civ App. No. 17 of 2002.

financial abilities. The court also considers the non-financial contributions of the claimant to the household.

[29] This court has determined that the claimant holds a 40% beneficial interest in parcels 87 and 21.

Whether the Claimant's Interests in the Properties were Extinguished.

[30] The defendant pleads that the interest which the claimant held in the property was diminished and was later extinguished. The defendant contends this to be the case since the claimant left the matrimonial home voluntarily, the defendant liquidated the outstanding sum on the mortgage and the defendant maintained the property after the claimant left the matrimonial property.

[31] The counsel for the defendant noted that having regard to the proportion of the defendant's payments during and after cohabitation the defendant's beneficial interest in the property should have stood at 80% at the time when the defendant liquidated the mortgage facility. The submission of the counsel for the defendant is that claimant's equitable interest in the property would have been further altered by the fact that the defendant solely maintained the property for a period of more than 15 years. The defendant estimates that the sum spent on maintenance was approximately EC\$200,000.00.

[32] In the evidence regarding the maintenance of the matrimonial home the defendant indicated that *"The house has a concrete roof and with earthquakes and heavy rains it has been expensive to maintain"*. The defendant also indicated that, *"The amount which I paid in maintenance of the property, that is payment of property taxes, maintenance of the yard and household repair in the last 15 years is approximately EC\$200,000.00"*.

[33] On the matter of the extinguishing of the claimant's beneficial interests this court notes that there is no basis for a finding of fact that the common intention of the parties changed ⁷ thereby extinguishing the claimant's beneficial interests. Additionally, any reference to the fact that the claimant left the matrimonial home would not assist the defendant's submission on this issue since the defendant has neither proven that the claimant's departure from the matrimonial home was an act by the claimant to abandon the claimant's interest in the property nor that the claimant's departure from the

⁷ Jones v Kennock [2011] UKSC 53.

matrimonial home demonstrated a change in the common intentions of the parties regarding the property.

[34] On the matter of diminishing the claimant's interest in the property on account of the defendant's contributions towards the maintenance of the property after the claimant left the matrimonial home, this court notes that the defendant has offered no evidence to support the fact that significant maintenance works were undertaken.

[35] Counsel for the defendant has raised in his submissions the matter of unjust enrichment. Counsel for the defendant advanced that the law has recognized that in circumstances where a spouse leaves the matrimonial home and the other spouse exclusively occupies the property and pays off the mortgage, the interest of the departing spouse may be extinguished. Counsel referred to the case of **Hurren v Hurren**⁸. In that case that court made a finding on adverse possession but indicated that the principle of unjust enrichment could have been applied. It is noted that the case of **Hurren v Hurren** is not applicable in these proceedings. In the **Hurren** case the husband proved that after the separation the husband added value to the house through renovation and by building an addition to the house. In order to obtain funds to finance the construction of the addition to the home the husband sold stocks owned by him and used his personal savings.

Whether the Defendant is entitled to a Contribution for sums paid to Liquidate the Mortgage.

[36] The counsel for the defendant contends that the claim that the claimant ought to be required to contribute to the sums paid for the liquidation of the mortgage is rooted in equity. Counsel for the defendant referred the court to the case of **Helo Lafrentz and another v M& L Leasing, A Limited Partnership**⁹ which makes reference to the right of contribution between and among joint and several debtors¹⁰. The case is not relevant as the nature of the relationship between the parties in these proceedings is different.

⁸ 11 R.F.L. (4th).

⁹ 2000 ABQB 714.

¹⁰ Above at. Para. 29

[37] This court, however, notes that the mortgage facility for the matrimonial home was a facility granted to both parties. The claimant and the defendant were making payments to the facility. After the claimant left the matrimonial home, the defendant liquidated the outstanding sums so that it was no longer a liability to either party. No further payments were required from the claimant. This court has considered the equitable maxim, *he who seeks equity must do equity*. The application of such a maxim requires the court to look at the entire circumstance. In the circumstances of this case the claimant who holds a share in the matrimonial property and was liable for the mortgage facility derived a benefit when the mortgage facility was liquidated. The evidence before the court is that the defendant paid the sum of EC\$347,166.00. In this court's view the claimant is required to make a 40% contribution to the sum paid in final liquidation of the mortgage.

[38] As a consequence of the foregoing this court has determined that:

- a. There shall be a declaration that the defendant holds the properties more particularly described as Registration Section: East Central, Block: 13 2490B, Parcels: 87 and 21 for the beneficial interests of the defendant and the claimant.
- b. The claimant and the defendant hold shares of 40% to 60 % in parcels 87 and 21.
- c. The claimant is liable to the defendant for 40% of the sum of EC\$347,166.00.
- d. The properties be valued, and that the defendant is to pay to the claimant the claimant's interest in the properties. In default, the properties are to be sold, and the sums apportioned in accordance with the respective parties' interests.

Justice Marissa Robertson
High Court Judge

By the Court

Registrar