THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANGUILLA CIRCUIT
(MATRIMONIAL)
A.D. 2020

CLAIM NO. AXAHMT 2017/0021

BETWEEN:

KATHERINE LAVERNE BROWN

Petitioner

and

PATRICK ANTHONY BROWN

Respondent

Appearances:
Mrs. Jacinth Jeffers, Caribbean Juris Chambers of counsel for the Petitioner
Mrs. Keesha Carty, KCW et al of counsel for the Respondent

2020: May 21;
November 3.
Reissue

JUDGMENT

[1] **INNOCENT**, **J**.: The petitioner ('Mrs. Brown') and the respondent ('Mr. Brown') were married for ten years. Mrs. Brown is an Anguillian and Mr. Brown a Jamaican. The court granted a decree nisi to the petitioner on 14th December 2017 on the grounds that Mrs. Brown and Mr. Brown had lived separate and apart for a continuous period of five years immediately preceding the presentation of the Petition.

[2] It appears that Mrs. Brown and Mr. Brown ceased cohabiting from on or about the year 2009. After the celebration of the marriage in Jamaica, Mrs. Brown and Mr. Brown cohabited at the matrimonial home belonging to Mrs. Brown at Island Habour in Anguilla.

[3] Prior to the marriage, on or about 8th December 1992, Mrs. Brown had inherited a parcel of land measuring approximately 0.45 acres situated at Island Habour registered as East Central Block 89318 B, Parcel 223 (the 'Property') upon which she had constructed a dwelling house (the 'Dwelling House') from the proceeds of a loan from National Bank of Anguilla Limited ('NBA') on or about April 2000.

[4] Subsequent to their marriage in July 2007, on or about July 2008 Mrs. Brown and Mr. Brown took a loan from NBA, now National Commercial Bank of Anguilla Limited ('NCBA'), in the sum of EC$945,620 (the 'Mortgage') to construct a two floor apartment building on the Property (the 'Apartment Building'). According to the Business Loan Agreement, the purpose of the loan was to assist with the construction of the ground floor and first floor of a three floor apartment building.[1] By the time that the parties separated, the apartment building consisted of a ground floor, two floors and an uncompleted third floor.

[5] On 6th May 2019, Mrs. Brown filed a Notice of Application for Ancillary Relief seeking the following orders:

(a) That Mr. Brown share equally in making payments towards the Mortgage at National Commercial Bank of Anguilla ('NCBA') in respect of the property registered as East Central Block 89318 B, Parcel 223 (the 'Property');

(b) That Mr. Brown reimburse Mrs. Brown one-half of her contributions paid to the Loan as of 2008; and

(c) That Mrs. Brown and Mr. Brown each contribute towards the payment of the Mortgage equally until the Mortgage is paid in full.

[6] The Application for ancillary relief was supported by an affidavit filed on 30th April 2019. Mrs. Brown alleged that after her marriage to Mr. Brown she was the main breadwinner as Mr. Brown was unemployed. Mrs. Brown further alleged that as soon as Mr. Brown became employed on about the year 2009 he left the matrimonial home. She further alleged that Mr. Brown made no contribution to the expenses related to the matrimonial home during their period of cohabitation.

[1] Mrs. Browns affidavit of 18th July 2019 (Exhibit KB2)

[7] Mrs. Brown alleges that she earns EC$6,639.40 monthly from her employment as a teacher with the Government of Anguilla. From this income she spends EC$3,090.83 on household and medical expenses. According to Mrs. Brown, at the time that the Mortgage was secured she was making a salary of EC$8,400.00 monthly.

[8] It is not in dispute that Mr. Brown acquired no share to the Dwelling House. However, what is in dispute between the parties is Mr. Brown's entitlement to a share in the Apartment Building and whether he is liable to Mrs. Brown for her contributions towards the Mortgage.

[9] According to Mrs. Brown, she and Mr. Brown acquired the Mortgage jointly, and that Mr. Brown never made any payments towards the Mortgage. Therefore, she alleged that the full responsibility for the repayment of the Mortgage fell upon her. Mrs. Brown further alleged that it was their mutual intention and understanding that they both had an equal commitment towards the repayment of the Mortgage.

[10] Mrs. Brown contended that she does not have the means to continue making payments towards the Mortgage on her own. This, she said, was the case particularly in light of the current state of her health which has resulted in increased medical expenses. In the circumstances, Mrs. Brown desires that the court orders Mr. Brown to reimburse her in respect of his contribution towards the payment of the Mortgage which she has paid since 2008, and to continue making payments to the Mortgage until the Mortgage is completely amortized.

[11] Mr. Brown appears to be a man of very meagre means. This fact is not disputed by Mrs. Brown. In fact, Mrs. Brown attested to the fact that at the time that she met Mr. Brown she knew that he did not have much money. Mr. Brown insisted that he literally lives from hand to mouth.[2] Mr. Brown claims no interest in the Apartment Building situated on Mrs. Brown's land.

[2] Respondent's affidavit filed 11th July 2019

[12] In order to resolve the issue regarding Mr. Brown's obligation to repay the Mortgage, it will be necessary to first determine the intention and understanding between the parties when they entered into the Mortgage agreement. In other words, whether it was the intention of the parties that they would have equal responsibility for the repayment of the Mortgage. In addition, the court must also resolve the question of whether the Apartment Building constitutes matrimonial property.

[13] At the time that the parties contracted the loan facility with NBA, Mr. Brown was unemployed. The security provided as collateral for the repayment of the Mortgage was Mrs. Brown's land and the existing dwelling house erected thereon valued at EC$945,620,00 at the time. At that time there was an existing charge on the property in respect of the dwelling house erected thereon.

[14] In her testimony at the trial, Mrs. Brown accepted that she was aware that if the installments towards the payment of the Mortgage remained unpaid she was liable to lose her property. Mrs. Brown also conceded that if Mr. Brown remained unemployed that she would have had to repay the Mortgage on her own.

[15] It appears that the purpose for which the parties obtained the Mortgage to construct the Apartment Building on Mrs. Brown's land was to enable them to obtain additional income from the rental of the apartments. According to Mrs. Brown, their intention prior to the breakup of the marriage was that they would both enjoy the rental income from the apartments.

[16] According to Mrs. Brown, Mr. Brown never made any payments towards the Mortgage. However, she agreed that Mr. Brown worked hard on the apartment building. It appears from Mrs. Brown's testimony that Mr. Brown's contribution towards the construction of the Apartment Building was in the form of labour; for which she affirms that he was paid out of the proceeds of the Mortgage.

[17] Mr. Brown accepted that he assisted with three-quarters of the work done on the apartment building and the remainder of the work was undertaken by a

construction company. He agreed that he knew that he would also be responsible for paying the Mortgage. However, he admitted that he did not assist Mrs. Brown with repaying the Mortgage.

[18] Mr. Brown testified that when he left the matrimonial home he did not do so voluntarily. He left because, in his words, he was "thrown out". In Mr. Brown's words, "Mrs. Brown made it clear to me that she would pay the Mortgage on her own".

[19] According to Mr. Brown, at the time that the Mortgage was negotiated with NBA his income was assessed. At that time, he was earning a salary of about US$400.00 weekly. The substance of Mr. Brown's contentions with respect to the issue of who would ultimately be responsible for the Mortgage payments are as follows.

[20] Mr. Brown contended that it was Mrs. Brown who negotiated the Mortgage in the first instance; and that initially it was her idea to have the Apartment Building constructed, a fact which Mrs. Brown denied. Mr. Brown insisted that Mrs. Brown informed him that she had obtained qualification for the grant of the Mortgage; however, that due to her health condition she could not provide the requisite life insurance coverage to secure the Mortgage. Mr. Brown contended, that as a result she asked him to submit a life insurance policy and declare his income in order to assist with securing the Mortgage.

[21] Therefore, it appears that Mr. Brown's input to securing the Mortgage was limited to the provision of a life insurance policy and acting as a principal debtor without providing any security for the grant of the same. Essentially, Mr. Brown claimed that the addition of his name to the Mortgage was a matter of convenience and that he assumed no responsibility for the repayment of the same. Mrs. Brown accepted that she paid the policy of life insurance on Mr. Brown's behalf.

[22] In addition, Mr. Brown contended that prior to Mrs. Brown filing the petition for divorce, he was approached by her and she asked him to visit NBA with her for the

purpose of removing his name from the Mortgage. According to Mr. Brown, NBA denied this request on the ground that in order for this to be done, someone else would have to provide a policy of life insurance in substitution for his. Mr. Brown insisted that prior to, and subsequent to the divorce proceedings, Mrs. Brown never demanded that he make any contribution towards the Mortgage.

[23] Mr. Brown insisted that he has never paid the Mortgage and at all material times the payments came from Mrs. Brown's salary. He claimed to have no idea what the quantum of the monthly payments on the Mortgage were.

[24] In the circumstances, Mr. Brown accepts that notwithstanding the absence of any obligation on his part to assist Mrs. Brown with the payment of the Mortgage, he is nonetheless obligated to NBA in respect of his liability to repay the Mortgage. In addition, Mr. Brown adopted the position that he has no legal or equitable interest in Mrs. Brown's property and claims none whatsoever.

[25] Therefore, Mr. Brown desires that the property be sold and the proceeds thereof be utilised to liquidate the Mortgage, and any remaining proceeds be distributed exclusively to Mrs. Brown.

[26] Mrs. Brown complains that should the court order that the Apartment Building be sold, she will inevitably lose her dwelling house as the charge exists over the entire property. Mrs. Brown contended that the arrears on the Mortgage stands in excess of the value of the Property. Therefore, Mrs. Brown anticipates that should the Property be sold, she will inevitably lose all equity in the Property. Therefore, Mrs. Brown is not desirous of the court ordering a sale of the Property in the present circumstances.

[27] In the course of the protracted ancillary relief proceedings between the parties, the court had encouraged the parties to strive towards a settlement of the matters in dispute between them. To this end, it was proposed that the Property be subdivided with the consent of the NBA Receiver to the extent that the Apartment Building would stand on a separate parcel of land, with the view to the same being

sold to discharge the existing mortgage. Unfortunately, these negotiations bore no fruit.

[28] It appears that a valuation of the land and the Apartment Building excluding Mrs. Brown's dwelling house was undertaken on 29th June 2019. The valuation report dated 1st July 2019 gave the market value at US$590,000.00 with a forced sale value of US$470,000.00. The valuation report also disclosed that the estimated costs of repairing the Apartment Building stood at US$12,000.00 and the costs of completing the third floor was in the estimated sum of US$138,000.00.[3] Based on the valuation report, it appears that Mrs. Brown's fears regarding her potential loss of equity on the sale of the property or the Apartment Building is unfounded given the amount outstanding on the Mortgage.

[29] It is not in dispute that Mr. Brown has a legal and/or contractual obligation to repay the Mortgage. However, it is evident that the parties are on unequal financial footing. It is also apparent from the evidence presented that Mr. Brown does not possess the financial ability to discharge his contractual obligation to NBA.

[30] Based on the evidence presented to the court, it is more likely than not that Mrs. Brown must have appreciated this fact when she married Mr. Brown and when they contracted the Mortgage with NBA.

[31] Furthermore, the court finds that Mr. Brown, having entered into the Mortgage, must have intended to derive some beneficial or other legal interest in the Apartment Building. The primary intention of the parties was to derive supplemental income for their supposed mutual benefit within the marital union.

[32] The court is also of the view, that it ought to accept Mr. Brown's contention that the idea to construct the Apartment Building was initially or solely Mrs. Brown's brainchild, which he wittingly subscribed to. Clearly, given Mr. Brown's financial position, it is hardly conceivable that he would have been the progenitor of such a grand scheme entirely on his own.

[3] At para 2 affidavit of Mrs. Brown filed 13th February 2020 (Exhibit KB6)

[33] It cannot be disputed that the Apartment Building is matrimonial property. Notwithstanding the nonfinancial contribution that Mr. Brown made towards the acquisition of the Apartment Building, he claimed no interest or share in the same and sought to relinquish any interest he may have therein.

[34] Mr. Brown's contention is that, bearing in mind his unwillingness to have any claim to or interest in the matrimonial property, it would be unfair to him, in all the circumstances of the case, to have to be equally responsible for paying the installments on the Mortgage over property in which he claims no interest.

[35] Alternatively, Mr. Brown seems to have contended that should he be ordered to make any financial contribution to Mrs. Brown for the purpose of discharging his financial and contractual obligation under the Mortgage, he should also, in that event, be entitled to a declaration or his share or interest in the Apartment Building and have same vested in him.

[36] The court takes cognizance of the fact that Mrs. Brown appeared to have denied that Mr. Brown has any interest or share in the Apartment Building on the basis that Mr. Brown made no contribution towards the construction of the Apartment Building, save and except by the provision of labour for which he was paid out of the proceeds of the Mortgage. This argument does not avail Mrs. Brown. The court finds that Mr. Brown made a substantial contribution towards the acquisition of the Apartment Building by virtue of his time and labour expended thereon. Direct financial contribution is not a sole basis for entitlement to a share in matrimonial property.

[37] In light of the evidence presented at the trial, the court has arrived at the conclusion that the parties intended that they each would have an equal share in the Apartment Building. The evidence leads ineluctably to the conclusion that the parties' entire course of conduct in relation to the acquisition of the Apartment Building showed their shared intentions as to its ownership.[4]

---

[4]Abbott v Abbott [2007] UKPC 53; (2007) 70 WIR 183 where it was held that in determining the shared intentions of a couple as to the ownership of property the courts must have regard to the whole course of

[38] In deciding on the order that the court ought to make in light of the circumstances of the present case, the court has adverted its attention to the provisions of section 25 of the Matrimonial Proceedings and Property Act (the 'Act'), which empowers the court to make an order extinguishing or reducing the interests of either of the parties to the marriage under any such settlement.

[39] In deciding the order that the court should make in the circumstances, the court has paid regard to 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; the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future; the standard of living enjoyed by the family before the breakdown of the marriage; the age of each party to the marriage; the duration of the marriage; any physical or mental disability of either of the parties to the marriage; contributions made by each of the parties to the welfare of the family.[5]

[40] The court is also mindful of the fact that it must exercise those powers as to place the parties, so far as it is practicable, and having regard to their conduct, just to do so, 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 the other.

[41] In the circumstances, the court has various options available to it by virtue of the Act. The court may decide on any one or combination of the following orders, taking into account the matters contained at section 25 of the Act.

[42] The court may order the sale of the matrimonial property subject to the rights of the Mortgagee preserved under section 51 of the Act and direct the proceeds

---

conduct of the couple in relation to the property and the Court of Appeal appeared to have attached undue significance to the importance of contributions towards the purchase of the matrimonial home, and as to what conduct should be taken into account in quantifying an acknowledged beneficial interest.

[5] White v White [2001] 1 All ER 1 at 8 where the court's approach to the statutory provisions in the UK similar to that obtained under the domestic Matrimonial Proceedings and Property Act was discussed

thereof to be distributed in such proportions as the court sees fit pursuant to section 53 of the Act.

[43] Section 53(1) empowers the court, if it is satisfied, that both parties to the marriage have made a substantial contribution to the matrimonial home (whether in the form of money payments, or services, or prudent management, or otherwise howsoever, may, if it thinks fit, order, subject to subsection (2), direct the sale of the home (including the land on which it is situated and such other land appurtenant thereto as the court directs) and the division of the proceeds, after the payment of the expenses of the sale, between the parties in such proportions as the court thinks fit; or direct that either party pay to the other such sum, either in one sum or in instalments and either forthwith or at a future date and either with or without security, as the court thinks fair and reasonable in return for the contributions made by that other party.

[44] Neither Mrs. Brown nor Mr. Brown are in any financial position to pay each other any sum equivalent to either of their respective contributions towards the construction of the Apartment Building. Therefore, it would be entirely superfluous in the circumstances to make an order directing either party to pay to the other such sum that the court finds reasonable and fair in return for the contributions made by that other party, whether by installments or otherwise.

[45] Section 53(2) of the Act has special significance for the purposes of the present case. It limits the power of the court, where the home comprises part of a building that is not used exclusively or principally as the home of the parties, or where the land appurtenant to the home is not used exclusively or principally for the purposes of a home, to make an order under this section, unless in the special circumstances of the case the court considers it is fair and equitable.

[46] In the present case, the Apartment Building cannot, for all intents and purposes, be regarded as the matrimonial home. However, the court formed the view, that in light of the circumstances of the present case, the only fair and equitable manner

in which to resolve the dispute between the parties involving the Apartment Building is to order that the Apartment Building be sold.

[47] Where the court makes an order under subsection (1), it may make such other orders and may give such directions as may be necessary or desirable to give effect to the order. Therefore, in order to give effect to any order which the court makes pursuant to section 53 of the Act, it will be necessary to also order that the Property be subdivided to exclude the petitioner's dwelling house.

[48] Section 53(5) of the Act provides that where any order is made under subsection (1), such notice as the court directs shall be given to any person having any interest in the property that would be affected by the order, and any such person shall be entitled to appear and be heard in the matter as a party to the application. This is necessary in light of the provisions of section 51 which provides that subject to subsection (2), the rights conferred on the husband or wife by any order made under this Part shall be subject to the rights of the person entitled to the benefit of any mortgage, security, charge, or encumbrance affecting the property in respect of which the order is made, if it was registered before the date of the making of the order, or if the rights of that person arise under an instrument executed before that date.

[49] Section 51(2) of the Act does not extinguish the liability of either Mr. Brown or Mrs. Brown to repay the Mortgage. However, it precludes the mortgagee from calling in the Mortgage on account of any order made by the court, except when an order is made pursuant to section 53 for the sale of any property.[6] In the circumstances, the court makes no finding as to Mr. Brown's liability to repay the Mortgage held over the Property in favour of NBA.

[50] To the extent that Mr. Brown still has a continuing obligation to repay the Mortgage, he is clearly unable to honour this obligation. In fact, Mr. Brown, due to

[6] (2) Notwithstanding anything in any written law or in any instrument, no money payable under any such mortgage, security, charge or encumbrance shall be called up or become due by reason of the making of any such order, not being an order under section 53 directing the sale of a matrimonial home.

his financial constraints and limitations, has failed to do so from the commencement of the Mortgage. On the other hand, Mrs. Brown paid the installments on the Mortgage from inception and even after the marriage had broken down and the parties separated. In these circumstances, it is fair to hold that any proportionate share or interest in the Apartment Building that Mr. Brown acquired during the course of the marriage by virtue of his contribution thereto, may have been extinguished by the continued mortgage payments made by Mrs. Brown during the latency of the marriage. Also, any equity that Mrs. Brown acquired in the Apartment Building would inevitably be partially lost in the event that the Apartment Building is sold.

[51] The sale of the Apartment Building appears to be the fairest and most efficacious way of achieving a clean break between the parties. In **Minton v Minton**[7] it was held that:

> "There are two principles which inform the modern legislation. One is the public interest that spouses, to the extent that their means permit, should provide for themselves and their children. But the other - of equal importance - is the principle of "the clean break." The law now encourages spouses to avoid bitterness after family break-down and to settle their money and property problems. An object of the modern law is to encourage each to put the past behind them and to begin a new life which is not overshadowed by the relationship which has broken down. It would be inconsistent with this principle if the court could not make, as between the spouses, a genuinely final order unless it was prepared to dismiss the application."[8]

[52] It is intended that by making such an order that the parties will be placed, so far as it is practicable and, having regard to their conduct, just to do so, 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 the other. Clearly, Mrs. Brown will be able to retain her interest in her Dwelling House which she acquired prior to the marriage and will inevitably retain some residual equity in the proceeds of sale of the Apartment Building. Mr. Brown's obligation to repay the Mortgage will be thereby extinguished. The

[7] [1979] A.C. 593
[8] Infra at pp. 607F-608H

court is of the view that this is the fairest and most equitable arrangement that can be made given the relative financial position of the parties and the circumstances of the case as a whole.

[53] By declaring the parties' beneficial interests in the Apartment Building and directing the sale of the same, the court has considered the words of Saunders JA in the case of **Stonich v Stonich**[9] relying on the dicta in **White v White**, where His Lordship said:

> "In assessing the respective contributions of husband and wife, there was a time when one regarded the fruits of the money-earner to be more valuable, more important that the childrearing and homemaking responsibilities of a wife and mother. If the man was reasonably successful at his job and the family fortunes were vastly improved, his contribution was almost automatically treated as being greater than that of the wife who remained at home. Ironically, if the man's business failed, whether through bad luck or ineptitude, the wife invariably shared equally the couple's hard times.
>
> 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. In the vast majority of cases where these two types of contribution are in issue - that of a homemaker and that of an income earner, it is the wife who has stayed at home while the husband has performed the role of breadwinner. There is therefore an element of gender discrimination in degrading the woman's role in the home.
>
> The MPPA does not rank in any order of preference any of the factors to which Courts are obliged to have regard. It is for the Court to consider all of them. In one case, the facts and circumstances may call for a particular factor to be given special importance. In another case another factor may assume most significance. The point is that there is no basis in law for Courts to regard always as decisive or of special importance the financial contribution made by a party to the welfare of the family. In the normal course of things any such contribution should be weighed in the same scales as a contribution of a different nature. Spouses may choose to perform different roles in a marriage. If the husband's skill, initiative, hard work and drive yield handsome financial rewards, it is entirely unfair to regard those rewards as being any greater in value than those of the wife who might have employed equal skill, initiative and dedication at home bringing up the children and keeping a stable household. In such a case I see no reason why the assets acquired during the marriage ought not to

[9] [2003] ECSCJ No. 72

be equally divided. As Lord Nicholls states, each in their different spheres contributed equally to the family and, as a general guide, equality in the distribution of matrimonial assets should be departed from only if, and to the extent that, there is good reason for it."[10]

[54] Therefore, in light of the provisions of section 53(5) of the Act, NBA (in Receivership) and/or the Receiver shall be given notice of this order by service of the same; and NBA (in Receivership) and/or the Receiver, as the case may be, shall be at liberty to appear and be heard in the matter as a party to the application as required by section 53(5) of the Act.

[55] In the circumstances, the court makes the following declarations and orders: -

1. The respondent, Mr. Patrick Brown, has no interest in the Dwelling House situated on the property registered as East Central Block 89318 B, Parcel 223 ('Parcel 223').

2. The petitioner and the respondent have an equal interest in the Apartment Building situated on the property registered Parcel 223. That any such interests held by the respondent in the said Apartment Building is extinguished to a substantial extent by the contributions made by the petitioner towards the Mortgage on Parcel 223.

3. The property registered as Parcel 223 shall be subdivided to exclude the petitioner's dwelling house which previously served as the matrimonial home; and the new parcel of land created by such subdivision, including the Apartment Building erected thereon, be sold by public auction or private treaty and the proceeds of such sale shall be first applied to the discharge of the Mortgage in relation to the Apartment Building registered against Parcel 223. The remainder of the proceeds of such sale shall be distributed to the petitioner and the respondent in the proportion of three-quarter and one-quarter shares respectively after the expenses of the subdivision and the expenses of the sale of part of Parcel 223 have been paid.

[10] Infra at paras 28-29

4. NBA (in Receivership) and/or the Receiver shall be given notice of this order by service of the same; and NBA (in Receivership) and/or the Receiver, as the case may be, shall be at liberty to appear and be heard in the matter as a party to the application as required by section 53(5) of the Act.

5. Each party shall bear their own costs as occasioned by the present application.

Shawn Innocent
High Court Judge

By the Court

Registrar