

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT
(CIVIL)**

SAINT LUCIA

CLAIM NO.: SLUHMT2011/0040

BETWEEN:

WENDY BRISTOL (NEE WINTER)

Petitioner

and

CHRISTOPHER JOHN BRISTOL

Respondent

APPEARANCES:

Mrs. Andra Gokool-Foster for the Petitioner
Mr. Horace Fraser for the Respondent

**2017: March 31st;
September 29th.**

JUDGMENT

- [1] **SMITH J:** This is the all too familiar case of a wife seeking a beneficial interest in the matrimonial home registered in the sole name of the husband, following the breakdown of their marriage. Mrs. Bristol says that she made a substantial contribution in the form of money, services and prudential management to the improvement and preservation of the matrimonial home so as to entitle her to a beneficial interest in it. Mr. Bristol says that he financed all improvements and renovations to the matrimonial home from his own separate funds and that Mrs. Bristol has failed to make out a case that she has in fact so made a substantial contribution and that her application ought to be dismissed with costs.

- [2] The parties got married in 1998 and lived together in the matrimonial home until they were divorced thirteen years later in 2011. They had no children of the marriage. It is not in dispute that the matrimonial home is on land registered in the Land Registry as 0649D Parcel 1 in the sole name of the Mr. Bristol. It is also not in dispute that Mr. Bristol had acquired the matrimonial home prior to his marriage to Mrs. Bristol. In fact, it was the matrimonial home of Mr. Bristol and his first wife. On separating from his first wife, he had taken out a loan to make a lump sum payment to her for her interest in the matrimonial home.
- [3] Mrs. Bristol's narrative is that, throughout the thirteen years of the marriage, her husband's income was wholly applied to servicing his loan of \$295,000.00 from the Royal Bank of Canada which has been used to make a lump sum payment to his first wife. Mrs. Bristol says that her savings and income was applied to improving and preserving the matrimonial home and looking after the wellbeing of Mr. Bristol since he was paying off the loan for which the matrimonial property stood as security. Mr. Bristol's narrative is that as a draughtsman, contractor and information technology specialist he earned enough money to both service his loan and improve and preserve his property and that his wife contributed very little to it.

THE ISSUE

- [4] In her application for ancillary relief, Mrs. Bristol does not specify any particular section of the **Divorce Act** under which she seeking relief. It is clear however from the tenor of the application and her written submissions that she is relying on section 45 of the **Divorce Act**. She frames the primary issue for the Court's consideration as follows:

"Whether the Petitioner has satisfied the Court under section 45 of the Divorce Act ... that she 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 ...so as to entitle her to a beneficial interest in the matrimonial home to the extent of the improvements made thereto during the marriage."

She also seeks compensation/refund for certain other sums she expended on her husband and the matrimonial home during the marriage.

- [5] It is therefore to the **Divorce Act** of Saint Lucia that we must turn for the applicable statutory provisions relevant to the resolution of this issue:

45. Order of court as to property

The Court, on making a decree of divorce or of nullity of marriage may, if it thinks fit, on the application of either party made before the decree of divorce or nullity is made, make an order—

- (a) if any property of the parties is community property within the meaning of the Civil Code—
 - i) directing that either party shall, for such time as to the Court may seem fit, be entitled to the use or usufruct of a part or the whole of such property, or
 - ii) declaring either party forfeit to the other of his or her share of a part or of the whole of such property; or
- (b) if any property of the parties or of either of them is separate property within the meaning of the Civil Code and the Court 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—
 - i) directing the sale of such property 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
 - ii) directing that either party pay to the other such sum, either in one sum or in installments and either 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.

- [6] It is clear from the above that even where the property is the separate asset of one party (as in the case at bar), the Court may find that the other party is entitled to an interest in it if it is satisfied that that party has made a substantial contribution in money, services or prudential management or howsoever otherwise to the improvement or preservation of the property.

THE COMMON LAW POSITION

[7] Section 45 (b) of the **Divorce Act** appears to codify the common law position as it has evolved in such cases as **Pettitt v Pettitt**,¹ **Gissing v Gissing**² and **Grant v Edwards**³ where, once it can be shown that a wife made substantial expenditure referable 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 the inference of a common intention that they were both to benefit.

[8] I find the statement of Lord Reid in **Pettitt v Pettitt** (at pp 794-795) to be particularly practical and helpful in setting out the approach that should guide the deliberation of this 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”

[9] If therefore I am satisfied that Mrs. Bristol has in fact made out a case that she made a substantial contribution to the improvement or preservation of the matrimonial home, I must ask: what would reasonable people in their shoes have agreed if they had directed their minds to the question of what rights should accrue to Mrs. Bristol who has contributed to the preservation of Mr. Bristol's property?

[10] The **Divorce Act** does not confine the contribution to being a substantial financial contribution toward either the purchase, deposit or mortgage installments by means of which the family home is acquired. The Act empowers the court to consider not only

¹ [1969] 2 All ER 385.

² [1970] 2 All ER 780. ² [1986] 2 All ER 426.

³ [1986] 2 All ER 426.

money contribution, but also: (1) services; or (2) prudential management; or (3) howsoever otherwise towards not only to the acquisition of the home but also its improvement or preservation. In this regard, the Act, by taking into account “services” and “prudential management” would appear to provide a little more flexibility than the common law to a party seeking to establish a beneficial interest.

- [11] In **Richardson v Richardson**⁴, much as in the case at bar, the matrimonial home was built on the husband’s land and the entire loan payment for the matrimonial home was paid from the husband’s salary. Hariprashad-Charles J said:

“In almost all divorce cases and this one is no exception, the Court is concerned how the matrimonial property of the parties should be divided. Stated in the most general terms, the answer is obvious. Everyone would expect the outcome to be fair. More realistically, the outcome ought to be as fair as possible in all the circumstances. Before a fair outcome could be reached, the Court has the mammoth task of sifting the evidence to find out where the truth lies.”

THE EVIDENCE OF MRS. BRISTOL

- [12] I must now carefully sift through the evidence to see if Mrs. Bristol can establish that she made a substantial contribution to the improvement or preservation of the matrimonial property whether in money, services, prudential management or howsoever otherwise.

- [13] Mrs. Bristol evidence comprised three affidavits. In her first affidavit,⁵ she claimed \$431,869.75 representing the value of her contributions to renovations of the matrimonial home, expenditure on household good, furniture and appliances, utilities and groceries and other expenses. The only exhibit to this affidavit was a copy of the land register for the matrimonial home which showed in the incumbrance section a hypothec to secure \$295,000.00 in favor of the Royal Bank of Canada. There was no documentary evidence to support her claim. In her second affidavit⁶ Mrs. Bristol exhibited some sixty pages of what appears to be her personal accounting statements of expenditure she made but this was bereft of any actual receipts or checks as actual proof of payments made.

⁴ [2001] ECSCJ No. 58.

⁵ Filed 15th September 2011

⁶ Filed 30th September 2013

- [14] By Order of the Court dated 16th June 2016, the Court observed that the “Petitioner was claiming nearly \$ ½ million but had exhibited not an iota of evidence so show that she ever possessed such amount of money.” The Court granted her leave to file a supplemental affidavit solely for the purpose of exhibiting proof of income and other financial assets against which she drew funds to meet the expenses allegedly paid.
- [15] In her third affidavit,⁷ Mrs. Bristol exhibited the following: (1) copy of a bank statement from the Antigua Commercial Bank that she entered the marriage with savings of \$222,797.65; (2) sales commission reports, salary statements and National Insurance Corporation statement of contributions showing that she was gainfully employed for the duration of the marriage variously at Little Switzerland Duty Free Shop, Panache Limited, Windjammer Landing Villa Beach Resort, Sandals Grande Resort, Sandals Halcyon and Magna Reward St. Lucia Ltd, earning increasing salaries from \$2,000 and rising to about \$5,000; (3) at least ten checks made out to Christopher Bristol for varying amounts totaling some \$11,700.00; (4) a number of cheques made out to various home furnishing stores like M&C Home Depot, Chreiki & Sons, Chugani’s Industries, Sunbilt Ltd; (5) three receipts for \$350.00 each paid for cleaning services of the matrimonial home; (6) extensive monthly credit card statements covering a period from 2004 to 2007 showing a multiplicity of payments to various suppliers of home furnishings such as Home Depot, Sunbilt Ltd, AF Valmont & Co Ltd., Johnson Hardware, Tiles Plus Ltd., Courts Saint Lucia Ltd.
- [16] Mrs. Bristol says that monies paid to her husband was for the specific purpose of purchasing materials, paying labourers and other miscellaneous expenses related to repairs and remodeling works done to both the upstairs main house which was in a dilapidated state and the downstairs apartment of the matrimonial home. Her evidence was that she expended: \$25,743.89 on renovations to the main house and downstairs apartment; \$24,341.42 on remodeling the interior and furniture; \$41,466.88 on television sets, deep freezer and an array of other furnishings and appliances; \$118,373.82 on utilities and \$149,881.91 on groceries; contributed a Suzuki Swift motor vehicle valued at \$10,000 to DAE Holding a company in which she alleged Mr. Bristol was a director.

⁷ Filed 30th September 2016.

- [17] She also exhibited (1) about nine cheques totaling some \$3,000 for medical and laboratory services for Mr. Bristol whom, by his own evidence had a serious medical condition; (2) some 32 pages of extensive credit card monthly statements from 2004 to 2010 evidencing regular payments to Medical Associates, Cable & Wireless, Saint Lucia Electricity, Gablewoods supermarket and a host of other miscellaneous payments.
- [18] Mr. Bristol was not at all impressed by this extensive array of exhibits and contended that (1) no evidence of “services” or “prudential management” of the matrimonial home was provided; (2) the expenditure on utilities and groceries should be halved since Mrs. Bristol equally benefitted from these; (3) Mrs. Bristol has failed to put the value of the matrimonial home before the Court which makes it impossible for the Court to determine her contribution if any; (4) her bank statement and payments for medical services are of no moment to the matter of hand; (5) on his calculation, the total expenditure undertaken by Mrs. Bristol for the duration of the marriage was more akin to \$66, 662.63 denies that his wife contributed to the renovation of the matrimonial home and this could not be considered substantial.

THE EVIDENCE OF MR. BRISTOL

- [19] Mr. Bristol said that from about 1995 he had begun undertaking a series of incremental renovations and improvements to the property, that he constructed the apartment below the main house with a loan of \$25,000 from the Royal Bank of Canada which he supplemented with \$7,000 of his own funds and that, throughout his marriage to Mrs. Bristol, he continued to improve the property with his separate funds. He stated that he was able to get substantial discounts on a broad range of building materials because of his being a draughtsman/contractor and was able to use excess materials from various works projects to renovate and improve the matrimonial home. He stated that as far as he could recall she only ever contributed to the floor and wall tiles of the master bathroom. He also conceded that his wife had purchased a number of pieces of furniture, appliances, and electronic equipment for the house.

[20] Mr. Bristol admitted that since 2001 Mrs. Bristol voluntarily and routinely paid the utility bills but that he had never entered into any arrangement whatsoever for her to pay those bills so as to enable him to pay the mortgage which he was, in any event, capable of paying. It is perhaps apropos to state at this juncture that the common law position is that even in the absence of an express agreement, the court, in certain circumstances, may infer that there was a common intention that the wife should benefit. 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.”

[21] Lord Diplock, in **Gissing v Gissing**, put it less colorfully. Evidence of that common intention might be inferred from contributions (direct or indirect) to the deposit, the mortgage installments or general housekeeping expenses, which was referable to the construction of the house. In the case at bar, proof of payment by the wife of any housekeeping expenses would have to be referable to the payment of the mortgage, the improvement or preservation of the matrimonial home.

[22] In **Ulrich v Ulrich and Felton**⁸ 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 court’s 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.”

[23] By the same Court Order dated 16th June 2016, Mr. Bristol had also been given leave to file a supplemental affidavit solely for the purpose of exhibiting proof of loans, expenses and income. Mr. produced the following exhibits to the Court: (1) a letter of agreement

⁸ [1968] 1 WLR 180.

signed by the Royal Bank of Canada and himself dated 14th September 1999 stating that his recent application for additional financing had been approved; (2) three maintenance contracts for the servicing and maintenance of computer systems at fees of \$300.00, \$400.00 and \$1200 per month, respectively; (3) one building contract in 2001 valued at \$343,460.00; (4) a sheaf of quotations to potential clients for construction works along with some schedule of payments; (5) miscellaneous bank statements from Royal Bank of Canada and First Caribbean International Bank showing various bank balances none of which appear to have exceeded \$18,000.00.

EVALUATION OF THE EVIDENCE

[24] There was a certain degree of opacity to Mr. Bristol's documentary evidence which, unfortunately, left the Court unclear as to his financial position during the marriage. This is so because: (1) there was no actual proof, beyond the letter of agreement with the Royal Bank of Canada that the additional financing had ever been advanced; the land register showed the only incumbrance as being the original \$295,000; (2) the bulk of his exhibits comprised mere quotations for design/construction works with no actual proof that these crystalized into actual contracts; (3) the one contract exhibited was for the global value of the works without any indication of what his contractor's fees would be; (4) there were a few "schedule of payments" for different works but again no proof of actual payment; (5) the clearest evidence was the three maintenance contracts for computer systems which were not for substantial amounts. Taken at its highest, his evidence suggests that he certainly had the opportunity to bid on a variety of design/construction contracts but the only real substantial proof of earnings rested on three computer systems maintenance contracts.

[25] In contrast, Mrs. Bristol evidence comprised cheques, salary statements from employers and credit card statements which together, taken in the round, demonstrate proof of both income and expenditure. Not only was Mr. Bristol's evidence sparsely populated with actual proof of income and expenditure, but also there was a certain casual, cavaliness to it. I am therefore satisfied that the more satisfactory body of evidence in terms of illuminating income and expenditure during the marriage is that Mrs. Bristol. That,

however, is not the end of the matter. The Court must now examine the evidence to see whether it meets the threshold of being a substantial contribution to the improvement or preservation of the matrimonial home.

SUBSTANTIAL CONTRIBUTION?

[26] Even disregarding Mrs. Bristol's expenditure on vacations, entertainment and clothes, the clear evidential picture that emerges is that while Mr. Bristol used his income to service his loan, Mrs. Bristol paid the utilities, groceries, continuing medical expenses for Mr. Bristol and made contributions to the renovations and upkeep of the home. Mr. Bristol contended that there was no proof of "prudential management". I cannot but conclude that there was. A spouse who uses her income to pay utilities, groceries, and medical expenses for her husband as well as to contribute to renovations while his income goes to servicing his loan, has to be considered as prudently managing the affairs of the household. She managed to do this as well as contribute to vacations, entertainment and clothing for her husband. There was not a morsel of a suggestion that she was a spendthrift who spent lavishly on herself and on idle pursuits.

[27] I did not embark on any extensive arithmetical computation arriving a final true tally of what Mrs. Bristol's contribution to the improvement and preservation of the matrimonial home was. In the absence of proof from Mr. Bristol that his income was such that he could service both his loan as well as finance the renovations and preservation of the home, I am left to conclude that he could not do both. The fact that Mr. Bristol deposed that he could not adequately service his mortgage because Mrs. Bristol was living in the apartment downstairs which would have netted him \$1,000 per month, suggests that in fact he was not able to do both. The fact the Mrs. Bristol bore the brunt of monthly expenditure of utilities, groceries, medical and entertainment strongly suggests that her income was necessary and being relied on to meet these recurring expenses over the course of the marriage, or at least from 2001 until 2010. I would consider this to be a substantial contribution by way of money and prudential management to the preservation of the matrimonial home. In this regard, the size of the financial contribution made is not the sole determinant of whether a spouse has made a "substantial contribution". Prudential

management over the course of nine or ten years combined with monetary contributions over the same period of time could amount to a substantial contribution as contemplated by section 45 of the **Divorce Act**.

QUANTIFICATION OF SHARE

- [28] From the perspective of the common law, there is enough from the whole course and history of their dealings with each other over the course of the marriage, from which it can be inferred that there was a common intention that Mrs. Bristol should have a beneficial interest in the matrimonial home. The question now, however, is how is Mrs. Bristol's share to be quantified. Lord Diplock, in **Gissing v Gissing**, provided the following guidance as to quantification where the court is satisfied that there was a common intention that the contributing wife should have a share in the beneficial interest and that her contributions were made on this understanding:

“In such a case the court must first do its best to discover from the conduct of the spouses whether any inference can reasonably be drawn as to the probable common understanding about the amount of the shares of the contributing spouse on which each must have acted in doing what each did, even though that understanding was never expressly stated by one spouse to the other or even consciously formulated in words by either of them independently. It is only if no such inference can be drawn that the Court is driven to apply as a rule, and not as an inference of fact, the maxim ‘equality is equity’ and to hold that the beneficial interest belongs to the spouses in equal shares”.

- [29] I think that from the conduct of the parties, they both intended that the house at Vigie would be their matrimonial home for the duration of their marriage. And so it was. Mr. Bristol says it was a short marriage but I venture to say that, these days, thirteen years can hardly be considered a short marriage.
- [30] I further think that from the conduct of the parties it can be reasonably be inferred that the probable common understanding (though unexpressed) was that Mrs. Bristol would have a half-share in the beneficial interest of the house in return for applying her income over the course of the marriage to the preservation of the family and the matrimonial home. I therefore find that the matrimonial house belongs to the Petitioner and the Respondent in equal shares. This does not include the land.

[31] The Court is of the view that the other refunds claimed by the Petitioner were not expenses directed to the improvement or preservation of the matrimonial home and therefore no order will be made in relation thereto.

[32] I therefore make the following orders:

- (1) That the matrimonial house situate at Vigie in Castries and registered in the Land Registry as 0649D Parcel 1 be sold and the proceeds be divided equally or that the Respondent be at liberty to purchase the Petitioner's half-share of the house based on a valuation to be done by a Quantity Surveyor to be agreed upon by the parties.
- (2) In relation to furniture and appliances, the parties should retain whatever is presently in their possession.
- (3) Each party shall bear his/her own costs.
- (4) The parties shall have liberty to apply.

JUSTICE GODFREY SMITH, SC
HIGH COURT JUDGE

BY THE COURT

REGISTRAR