

**THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA & BARBUDA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2013/0302

BETWEEN:

NOREEN NATALIE FRANCIS

Claimant

AND

TITUS GABRIEL THEODORE FRANCIS

Defendant

Appearances:

Mrs. Alincia Williams-Grant for the Claimant
Dr. David Dorsett for the Defendant

2014: November 14

DECISION

[1] HENRY, J.: The parties were married on 31st October 1970. The marriage was dissolved effective 28th October 2002. According to the pleadings 3 properties were acquired during the course of the marriage, one of which was utilized as the matrimonial home. All the properties were registered in the name of the defendant. By Fixed Date Claim Form filed on 16th May 2013, the claimant seeks the following relief:

1. A declaration that the defendant holds the following properties on trust for the claimant and defendant in equal shares or such other shares as the court deems just:
 - (a) Registration Section: Golden Grove; Block: 612 1790D; Parcel: 118 (parcel 118)
 - (b) Registration Section Crabbs Peninsular & Neighbouring Islands, Block 21 2492A, Parcel 5 (parcel 5)

2. A declaration that immediately prior to its transfer to a third party in May 1996, the defendant held the following property on trust for the claimant and defendant in equal shares or such other shares as the court deems just:

(a) Registration Section: Falmouth & Bethesda; Block 34 2482B; Parcel: 22 (parcel 22)

3. An account of the value of parcel 22 at the time of its sale in May 1996
4. An order that parcel 118 and parcel 5 be sold and the proceeds of sale divided equally between the claimant and defendant or in such shares as the court deems just; or alternatively, the defendant do pay to the claimant the amount representing one-half of the current market value of parcel 118 and parcel 5 or such other amount as the court deems just
5. An order that the defendant do pay to the claimant an amount representing one half of the May 1996 value of parcel 22 or such other amount as the court deems just.
6. Interest on the amounts payable at paragraphs 4 and 5 above pursuant to the Eastern Caribbean Supreme Court Act.
7. Costs

[2] In her statement of claim, the claimant (hereinafter Mrs. Francis) pleads that after proceedings for divorce were commenced in 1993, she lodged cautions in the Land Registry against the said properties to secure her interest until a determination of the respective interest could be made by the court. However, prior to the granting of the divorce, the defendant (hereinafter Mr. Francis) requested that, in exchange for the sum of \$10,000.00, Mrs. Francis would lift the cautions to enable him to obtain financing he needed and to enable Mrs. Francis to meet certain debts. This was done. According to her at the time, the understanding of the parties was that this was an interim arrangement only, pending the dissolution of the marriage and final settlement of their respective interest in the said properties and assets acquired during the course of the marriage. However since the divorce order was made, there has been no settlement.

[3] Mrs. Francis avers that Mr. Francis has never denied her beneficial interest in the parcels as evidenced by certain correspondence between Counsel for both parties. Moreover, in acknowledgement of Mrs. Francis' beneficial interest in the said properties, Mr. Francis has, between the period October 2008 and November 2011 paid Mrs. Francis the sum of \$24,000.00 in part settlement of her beneficial interest in the said properties. However, they have been unable to agree the full extent and value of Mrs. Francis beneficial interest in the properties.

- [4] Before the matter came on for hearing, Mr. Francis filed the instant application seeking an order that Mrs. Francis' statement of case be struck out with costs on the grounds that the statement of case discloses no reasonable ground for bringing an action and constitutes an abuse of the process of the court as it is barred by section 17 of the Limitation Act 1997
- [5] Mr. Francis submits that the parties have lived separate and apart since 1992. Mrs. Francis has lived in Florida in the United States of America since 1995. He notes that she has not denied that they have lived separate and apart for over 12 years. He reasons that 12 years from 1993 would be 2005. Therefore the claim should be struck out as an abuse of the process, notwithstanding that it is a draconian step. The court, he concludes, ought to grant the application.
- [6] Mrs. Francis' position is that the right of action in this matter arose from at the earliest, the date of the dissolution of the marriage and not sooner. The dissolution of the marriage took effect on 28th October 2002. Alternatively, that the material time for computing the time period under the Act was when Mr. Francis later disputed her entitlement to an interest in the properties and not at the point of separation. Mrs. Francis therefore requests that the application be dismissed and the matter be allowed to proceed on the merits.
- [7] As was noted by Mitchell J, in **Abbott v Abbott**¹ there is no Matrimonial Causes Act in Antigua and Barbuda or any other modern legislation governing the property of husband and wife on dissolution of marriage. Ex-spouses must therefore resort to the old nineteenth century Married Women's Property Act with all the disadvantages and limitations that that Act carries with it, and the law of equity. Like the claimant in the Abbott case, the claimant herein seeks certain declarations of her right to the various properties acquired during their marriage.
- [8] In the United Kingdom, section 17 of their Married Women's Property Act has been extended by section 7 of their Matrimonial Causes (Property and Maintenance) Act 1958. The result is that by legislation, either party may make the relevant application to the High Court within 3 years from the date on which the marriage was dissolved. No comparable section exists in the Married Women's Property Act, Cap 267 of the Laws of Antigua and Barbuda. Therefore the parties both agree that section 17 of the Limitations Act 1997, in respect of commencement of an action to recover an interest in land, is applicable. That section provides that such an action cannot be brought after the expiration of 12 years from the date on which the right of action accrued. The parties disagree as to the date when the right of action accrued. Mr. Francis urges that the right of action accrued when the parties separated in 1992, which would mean that the action, having been commenced in May 2013, would be statute-barred.
- [9] The court cannot agree that the right of action accrued on the separation of the parties. Mrs. Francis' claim to an interest in the properties in dispute is by virtue of rights acquired during her marriage to Mr. Francis. Her property rights are therefore, to a great extent, pegged to her marital status. Separation does not terminate a marriage. It is only upon divorce that one can rightly say

¹ High Court Suit No ANUHCv2002/0203

that the marriage is legally terminated and property rights acquired during the marriage are ripe for determination. The question of providing a remedy does not arise until the right has been infringed. It seems to the court that the right of action accrued on the divorce of the parties in 2002.

- [10] While section 29(2) of the Limitations Act provides that where there is acknowledgement by the person in possession, the right of action is deemed to have accrued on and not before the date of the acknowledgement; however, to be effective the acknowledgement must be in writing and signed by the person making it. No evidence has been put before the court by Mrs. Francis that the acknowledgement referred to meets the requirements of the Act. In any event, the court is of the view that the earliest that the right of action accrued was upon the divorce of the parties in October 2002.
- [11] Accordingly, the court finds that, at the time of filing the action the limitation period had not run. There is no abuse of the process and Mrs. Francis can maintain the action filed by her.
- [12] The application by Mr. Francis is dismissed with cost of \$850.00 to Mrs. Francis. The matter is to be restored to the fixed date claim list on a date to be fixed by the court office.


CLARE HENRY
High Court Judge
Antigua & Barbuda