



IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
COLONY OF MONTSERRAT
(CIVIL)
A.D 2014

CLAIM NO. MNIHCV2012/0022

BETWEEN:

MARY IDABELLE MEADE

Claimant

and

WILFORD ST. CLAIR MEADE

Defendant

APPEARANCES:

Ms Marcelle Watts for the Claimant

Mr. Kenneth Allen QC for the Defendant

2014: January 16

2014: January 30

JUDGMENT

[1] **REDHEAD J. (ag):** The parties were married on 23rd November 1981. There are four (4) children of the marriage. After marriage the Claimant and the Defendant lived together in the matrimonial home at Kinsale.

[2] In or about the year 1983 the Claimant and Defendant established a restaurant business and a Guest House.

[3] In or about 1995 the Claimant and the Defendant were forced to give up their matrimonial home at Kinsale and to relocate their business because of the on slaught of the Soufriere Hills Volcano. This rendered Kinsale an unsafe zone in which to reside or carry on any business activity.

[4] After the parties left Kinsale in or about 1995, they began to construct a dwelling house at Davy Hill. The house was completed in or about 2010 and was valued in December 2012 for EC\$413,577.11 by Mr. William Thomas BSc Eng, MRCS, LLS. The conveyance for this house is in the joint names of the parties.

[5] On 30th June 2009 the Crown transferred a lot of land at Little Bay to the Defendant. The transfer is in the sole name of the Defendant.

[6] On 3rd June 2009 a dual decree of divorce was granted to both parties.

[7] On 3rd May 2012, the Claimant filed Fixed Date Claim form in which she claims

- a) A declaration that the Claimant is entitled to one half interest or in such proportion as the Honourable Court deems just in the property located on Davy Hill Block 14/9/20 registered in the Register at the Land Registry.
- b) A declaration that the Defendant holds the property located at St. John's Block 14/1/15 registered in the Register at the Land Registry on trust for the Claimant and the Defendant in equal shares, or in such proportion as the Honourable Court deems just

- c) An Order that the said properties be valued and sold and that the net proceeds be divided equally between the parties or in the proportion deemed just by the Court and that the cost of the valuation be borne equally by the parties.
- d) That the Defendant has the first option to purchase the property at St. John's Block 14/1/15 after same has been valued within ninety (90) days of the date of the said valuation failing which the Claimant has the option to purchase the Defendant's share within sixty (60) days of Defendant's failure to exercise his option. In the event that both the Defendant and the Claimant fail to purchase the property then the said property be sold in the open market or at a public auction.
- e) An injunction restraining the Defendant whether by himself or his servants and / or agents from disposing of the property situated at Block 14/1/15 and registered at the Land Registry.
- f) Such further and other relief as this Honourable Court deems fit.
- g) Such costs as are incidental to the proceedings.

[8] The Claimant on May 03, 2012 has filed an affidavit in support of her fixed date claim. The Claimant now resides in Roseau Dominica.

[9] In her affidavit she swore that in about 1983 that she and the Defendant established a restaurant and guest house and although she was employed full time at the Royal Bank of Canada, she handled all the administrative functions of the business. She also worked in the restaurant on a daily basis providing services and preparing meals



to ensure the efficient operations of the business. She swore that from 1985 to 2005 that she operated full time in the business and even while overseas was responsible to ensure that the business functioned smoothly. According to the Claimant the business was relocated to Little Bay and the Claimant and the Defendant resided in an apartment on the premises.

[10] The Claimant swore that in 2000 she and the Defendant negotiated for the purchase of 0.23 acres of land at Davy Hill. That land is registered as Block 14/9/20 in the names of the Claimant and the Defendant as joint proprietors.

[11] The Claimant deposed that she secured a loan from the St. Patrick's Co-operative Credit Union in the amount of EC\$25,000.00 being the purchase money for the land. The loan agreement is exhibited. This shows that the loan was made to the Claimant on the 9th day of May 2000 and was required to make monthly payments of EC\$438.33 from 27th May 2000 for a period of 72 months.

[12] The Claimant swore that since she secured the loan at her own expense solely and without any contribution from the Defendant to service the loan. Mrs. Meade also claimed that the Defendant never contributed any money in part or at all to the purchase of the land at Davy Hill.

[13] The Claimant also exhibited documents showing payments made by her towards the loan; showing payments from 2002 onwards. I have seen none for 2000 or 2001 among the exhibits.

[14] The Claimant deposed that in October 2001 and February 2003 she obtained a loan from Bank of Montserrat in the amount of EC\$39,000.00 and EC\$64,000.00 respectively.

[15] The Claimant swore that she serviced these loans over the past 10 years solely with proceeds from her salary and savings and without any contribution from the Defendants whether in part or at all.

[16] The Defendant in his affidavit evidence deposed that he owned a restaurant prior to his marriage. He said that he opened a guest house and mini-mart and allowed the Claimant to manage them in so far as she was able to do so after her work at the Bank.

[17] The Defendant swore that he also had four (4) tenanted premises from which the income was EC\$2,000.00 per month. This money along with monies from the guest house, restaurant and bar were collected by the Claimant.

[18] The Defendant said that he never opened a Bank account in his name during the marriage, nor did he ever ask the Claimant to see the bank book into which monies from which the several businesses were deposited.

[19] Mr. Meade swore that when he thought that they were doing well; on one occasion he asked the Claimant how much money they had at the bank. She replied "none". The Claimant ran away to New York the following day. The Claimant then

called him, begging him to come to New York so that she can explain what happened to the money. Up to this day he said the Claimant has not explained.

[20] The Defendant in his affidavit evidence deposed that after the family was displaced from their matrimonial home by the volcanic activities they lived at diverse inconvenient places at the mercy of friends and family. He continued to prepare and sell food at the back of a pick-up truck which he parked at Little Bay on crown lands.

[21] Mr. Meade said that he later built a small chattel house at St. Peter's and moved it unto Crown land at Little Bay where his pick-up truck was packed. This became the first bar and restaurant at Little Bay.

[22] While the Claimant swore an oath that in so far as to the purchase of the land at Davy Hill she borrowed EC\$25,000.00 from St. Patrick's Co-operative Credit Union solely and serviced the loan without any contribution from the Defendant; the Defendant on the other hand swore that it is not true that the Claimant had anything to do with the purchase of the 0.23 acres of land at Davy Hill. The Defendant said that he purchased the parcel of land, paid instalments over a long period of time without the knowledge of, or contribution from the Claimant.

[23] In light of the exhibit referred to above, which shows that on 9th May 2000 that the sum of EC\$25,000.00 was advanced to the Claimant in respect of the purchase of Block 14/9 parcel Davy Hill with monthly payment of EC\$438.33; I cannot accept that the purchase of that parcel was without the knowledge of the Claimant. I cannot

accept either the Claimant's version that the purchase was solely on her own and without any contributions from the Defendant. To accept this, in my view, is to lose sight of the fact that the parties operated a business jointly; that there were monies coming from rented accommodation, all of which were collected by the Claimant; that I will accept.

[24] Moreover I draw the unmistakable conclusion that the defendant managed the business, the Claimant having full time employment; there is no evidence that he got a salary for so doing. He must therefore have contributed significantly to whatever profits were realized from the operation of the business.

[25] I now turn to the construction of the dwelling house on Block 14/9 Parcel 20. The Claimant swore in her affidavit that in October 2001, she borrowed EC\$39,000.00 and in February 2003 she again borrowed EC\$64,000.00 from the Bank of Montserrat. That over the past ten (10) years she solely serviced the loan from her salary and savings without any contribution from the Defendant.

[26] Again, as I have said above, I cannot accept that the Claimant serviced the loan solely without any contributions from the Defendant having regard to the fact that they operated business jointly and monies were collected by the Claimant for the rented accommodation.

[27] The Defendant on oath said that he never heard anything about the Claimant taking a loan from the St. Patrick's Co-operative Credit Union until the papers in this claim were served on him. He contends that the Claimant borrowed the monies for

her own use and without his knowledge. I note that the loans of EC\$39,000.00 and EC\$64,000.00 do not say for what they were, i.e. they were silent as to the purposes they were advanced.

[28] The Defendant in his affidavit swore that in order to build a house on the land in Davy Hill, he gave whatever money he was able to muster from time to time to the Captain of "Abiding Love", a boat which traded between Trinidad and Montserrat to purchase concrete blocks which he stored at Little Bay until there were sufficient blocks to start a house. He purchased a house plan from government and began to build with the guidance of a contractor friend named Al Duberry.

[29] Mr. Meade on oath said that while the construction of the house was in progress, he and the Claimant applied for a government grant under the Self Build Housing Grant Programme; when the grant was received, the house was substantially completed and some of the suppliers who were contracted by the Land Development Authority to supply materials had to refund monies which the Claimant kept for herself.

[30] The Claimant when asked how much Grant money she received, she told him EC\$30,000.00. However when they separated, the Defendant said that he found a letter which confirmed that he had received EC\$41,390.00. This letter is exhibited.

[31] Notwithstanding, the conflicting evidence in relation to the acquisition of the house on Davy Hill and my analysis above I am not called upon to make a

determination as to the share entitlement of the parties because there is no issue so far as this property is concerned.

[32] The conveyance was taken in the joint names of the parties. The Claimant is seeking a declaration that she is entitled to one half interest in the property at Davy Hill Block 14/9 Parcel 20.

[33] The Defendant has conceded that the Claimant is entitled to one half interest in the matrimonial home in Davy Hill. Indeed equity is equality¹. I am therefore spared the arduous task of climbing the foggy peaks of the Soufriere Hills. He has also said that the Claimant is entitled to half interest in the Chattel House at Little Bay, although in my view the Claimant made no claim for an interest in the Chattel house at Little Bay.

[34] In my opinion the issue and the real disagreement of the parties revolves around the land at Little Bay Block 14/1 Parcel 15, the conveyance of which was taken in the sole name of the Defendant. I now turn my attention to this issue.

[35] The Claimant successfully contested the general elections in Montserrat in 2001 and was sworn in as Minister of Government. Mrs. Meade swore that in about the year 2002 through her Ministerial colleagues she was awarded a parcel of land at Little Bay through a lease purchase agreement to the Defendant to operate the restaurant business.

¹ See *Fibrance v Fibrance* [195] 1 AER 357
And *White v White* [2007] 1AC. 596

[36] As I have said above the conveyance was in the sole name of the Defendant. The Claimant explained that because of her position in Government it was decided to register the property in the Defendant's sole name.

[37] In cross examination, she said that in order to be part of it, the buying of the land she had to excuse herself from the discussion. As I understand it when the Claimant's Ministerial Colleagues were discussing the allotment of land, she excused herself from being part of the discussion. I understand that, but this does not explain why the Claimant is not included in the conveyance document.

[38] Learned Queen's Counsel Mr. Allen contends in his written submission that in contemplation of a modern development, the Crown repossessed the lands on which the Defendant and Claimant had squatted for several years; the parties were already divorced when this happened.

[39] The Claimant admits that she left no money with the Defendant in any account from which he could have purchased lands. After the lands were repossessed, the Defendant alone was squatting; the Government designed a road through the land and offered for sale small parcels of land to the Defendant and other persons who were affected by the repossession.

The letter says:

“Ministry of Agriculture, Lands Housing and Environment

P. O. Box 272

Brades

Montserrat

West Indies

TO WHOM IT MAY CONCERN

This is to confirm that our records indicate that Mr. Wilford Meade was offered Block 14/1/15 at a Sale price of EC\$22,032.00.

Payments were in 2004 – EC\$750.00, 2007 – EC\$20,400.00, final payment 2009 – EC\$1,632.00.

Please be guided accordingly.

Yours sincerely,

Camille U.C. Thomas-Gerald (Mrs.)

Permanent Secretary”

[40] Mr. Meade said in cross-examination that he gave his son in 2003 the sum of EC\$750.00 to make the deposit. The balance was paid in 2007 and 2009. The document referred to above bears out these facts.

[41] The Claimant filed her divorce in 2006. In my considered opinion it would be highly unlikely that a year later she would be advancing money or would be making any contribution towards the acquisition of a property with Mr. Meade.

[42] Learned Counsel Ms Watts in her written submission argued that although the title in the Little Bay property is registered in the sole name of the Defendant, the Court should take into account the following:

- a) The joint efforts of the parties in running the business from 1995 – 2006.
- b) The EC\$750.00 paid in respect of the lease purchase agreement in 2003 while the marriage was still subsisting,
- c) Evidence from the Claimant of payment of utilities and other bills associated with the business up until 2010.
- d) The Defendant's assertions that he provided goods to the Claimant while she was operating a restaurant at the Tropical Mansions Suites in 2009.
- e) Payment of EC\$20,400.00 in 2007 towards the purchase price.

[43] In my opinion, (d) and (e) above cannot be in favour of the Claimant. As I have said the payment of EC\$20,400.00 was in 2007, one year after the decree of divorce was filed, could not have anything to do with the Claimant as it is highly unlikely that she would be advancing money toward the purchase of a property after she had filed a divorce petition.

[44] When property is taken in the sole name of party to the marriage, in order that the other could claim a proprietary interest in the property, that party must show that they make a direct or indirect contribution towards the acquisition of the property. Cupid v Thomas²; Gissing v Gissing³.

² (1985) 36 W.I.R 182

³ (1971) AC. 886

[45] In this case I cannot find any such contribution made by the Claimant towards the acquisition of the Little Bay property.

[46] In 2001 she became a Minister of Government, I do not accept that from then on she played any significant part in the running of the business. I also accept as Mr. Allen QC puts it "the parties have not been in a relationship formal or informal since he was shocked into melancholy by the service of divorce petition on him in November 2006"

[47] I also accept the evidence of the Defendant that in 2007 he was given a government contract to build a stretch of road around the area of land which he occupied at Little Bay. With his earnings he was able to pay EC\$20,400.00 in 2007.

[48] The Defendant in his affidavit swore that he back filled the area making it reasonably safe from further erosion. He says that it is his belief that is why the plot was offered to him to purchase for the sum of EC\$22,000.00.

[49] I accept the Defendant's evidence that when the Claimant filed the divorce he was left penniless. He said that he gave the Claimant every cent that he earned to save in a joint account. He gave the Claimant monies which he received from the Insurance Company for Volcanic damages. He also sold a boat for EC\$11,000.00 which he gave to the Claimant to open an account at the Antigua Commercial Bank. Profits made from the business were added to the account.

[50] I find as a fact that the Claimant was the brain in the business with the Defendant.

I come to the unmistakable conclusion that she did not always deal with the Defendant at arm's length. This is borne out by the fact that in 2006 after she filed a divorce petition, two weeks after she tried to obtain a loan for the sum of EC\$91,000.00 using the matrimonial property to secure the loan without the knowledge and consent of the Defendant.

[51] I hereby declare that the matrimonial home at Davy Hill Block 14/1 Parcel 20 is jointly owned by the Claimant and Defendant. Block 14/1 Parcel 20 is to be sold by public auction within three (3) months of today's date. Sale to be organized by the Registrar of the Supreme Court. The proceeds of sale to be applied as follows: The debts incidental to the sale to be paid. Fifty percent (50%) of the balance to be paid to the Claimant and the Defendant each. Sale to be postponed for six (6) months to give either party an opportunity to purchase the fifty percent (50%) interest of the other.

[52] I hereby also declare that the property at Little Bay Block 14/1 Parcel 15 is the sole property of the Defendant

[53] No order as to costs.



Albert Redhead

High Court Judge