

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

SAINT LUCIA

Suit No: SLUHMT 2008/0057

BETWEEN:

Anita Ferguson

Petitioner

and

David Ferguson

Respondent

Appearances:

Ms. Veronica Barnard for the Petitioner;

Ms. Carol Gideon-Clovis for the Respondent.

2010: March 15th
June 14th

JUDGMENT

- [1] **WILKINSON J.:** The Parties married at London, England on 29th October 1966, and were married for 43 years. The Petitioner and Respondent were 31 and 29 years of age respectively. The Petitioner and Respondent are retirees. The Petitioner was a nurse, and the Respondent was a long distance lorry driver. Their children are grown and independent.
- [2] The decree nisi order was made on 15th January 2009. On 7th May 2009, the Petitioner filed the Application for ancillary relief and it was supported by the affidavit of the Petitioner. The application prayed for the following:

1. A declaration that the only community property existing between the parties is:
 - (i) The dwelling house and land situate at Mongiraud, Gros Islet registered as Block 1254 B parcel 106 and the contents therein;
 - (ii) A parcel of land at Ciceron registered as Block 0646B 54;
 - (iii) A secured Notes Investment held at the Bank of Saint Lucia in the capital sum of \$800,000.00;
 - (iv) A dwelling house situate at 39 Stafford Road, London, England;
 - (v) A Honda CRV motor car registration No. PB 4732.

That the Respondent do pay the Petitioner her one-half share thereof.

The Petitioner also asked that the Respondent pay the costs arising from the application.

- [3] The Petitioner's affidavit sought to enlarge upon the orders that she was seeking from the Court as therein at the final paragraph she sought the following additional orders:

- (a) That a valuer be appointed by the Honourable Court to view and value the said immovable properties at Saint Lucia and England and the motor vehicle.
- (b) That the Respondent do transfer his half share in the Mongiraud property to her.
- (c) That she do transfer her half share of the Stafford Road property to the Respondent.
- (d) That the Respondent do pay her for her one half share of the Honda Motor vehicle registration No. PB 4732.
- (e) That the Respondent and herself both compensate each other for any difference in value, if any, which may occur as a result of any order pursuant to paragraphs (b) and (c) above.
- (f) On maturity in July 2009, that the secured Notes Investment held at the Bank of Saint Lucia be shared equally.
- (g) *Several moveable household items were listed for distribution between the Petitioner and Respondent. (I have abbreviated this order)*
- (h) That the Respondent do compensate her for her half share of the Ciceron property.
- (i) That the Respondent do pay the costs of the application.

- [4] On 18th February 2010, when the ancillary relief application first came on for hearing, a trial date was fixed for 15th March 2010. It was ordered that the filed affidavits of the Petitioner and Respondent would stand as evidence in chief, and at trial there would only be cross examination.

- [5] When the matter came on for hearing, counsel for the Petitioner stated to the Court that having regard to the Respondent's affidavit filed 29th July 2009, the property at Mongiraud, Gros Islet, Saint Lucia (hereinafter "the Mongiraud property") and the property at 39 Stafford Road, London England (hereinafter "the Stafford Road property") were jointly owned by the Petitioner and Respondent. Further that in regard to the monies held at the Bank of Saint Lucia, she would submit that it is in fact the joint property of the parties having regard to the consent order made 3rd June

2007, in Claim No.:SLUHCV 2008/0105 Sarah Anita Ferguson v. Davidson Ferguson. She said that the only 2 items before the Court for consideration were the land at Ciceron, Saint Lucia (hereinafter "the Ciceron property"), and the motor vehicle. She also added that the affidavits revealed that both the Respondent and the Petitioner wished to keep the Mongiraud property.

- [6] The consent order in Claim No.: SLUHCV: 2008/0105 Sarah Anita Ferguson v. Davidson Ferguson provides as follows:

"IT IS HEREBY ORDERED BY CONSENT:-

1. That the Bank of Saint Lucia Ltd. is directed and ordered to add the Petitioner SARAH ANITA FERGUSON on the Fixed Deposit of \$800,000.00 placed in Secured Notes Investment held at the Bank of Saint Lucia Ltd.
2. That there be two signatories to the above Fixed Deposit account namely, Sarah Anita Ferguson and Davidson Ferguson."

- [7] Counsel for the Respondent said that she agreed with counsel for the Petitioner except in relation to bank account at the Bank of Saint Lucia. She added that the Respondent also raised the issues of the proceeds of sale of the Bonne Terre land at Saint Lucia, the proceeds of sale of the Rothsay Road property at London, England (hereinafter "the Rothsay Road property"), and the joint bank account at the Bank of Nova Scotia, Rodney Bay, Saint Lucia.

- [8] I stated to counsel that since the bank account at the Bank of Saint Lucia was the subject of claim No.:SLUHCV 2008/0105 Sarah Anita Ferguson v. Davidson Ferguson, and there was a consent order therein, this court would not address the said account in the present suit and therefore if any clarification as to the consent order was required, they ought to address it in that suit.

- [9] Before cross-examination of the Petitioner and Respondent could commence, both counsel informed the Court that the Petitioner and the Respondent were now agreed that they were the joint owners of (i) the Mongiraud property, (ii) the Stafford Road property, and (iii) the Bank of Saint Lucia account. The Mongiraud and Stafford Road properties are the matrimonial homes of the Parties at Saint Lucia and England. In light of this declaration to the Court, I will not address the ownership of these properties save and except to make a declaration as to ownership now agreed by the Parties, and to make an order to bring about a clean break having regard to the requests in the affidavits. I have already made a statement about the bank account at the Bank of Saint Lucia.

[10] Given the present position of the Petitioner and Respondent, there were only 4 matters for determination of ownership by the Court and they were (a) the Ciceron property, (b) the proceeds of sale of the Rothsay Road property, (c) the bank account held at the Bank of Nova Scotia, Rodney Bay, Saint Lucia , and (d) the motor vehicle.

ISSUES

- (a) Whether the Petitioner is entitled to a share in the Ciceron property and which property is registered in the sole name of the Respondent.
- (b) Whether the Respondent is entitled to be paid a share of the proceeds of sale of the Rothsay Road property, and which property was registered in the sole name of the Petitioner.
- (c) Whether the Petitioner and the Respondent are entitled to share equally or otherwise, the monies that were held in a bank account at the Bank of Nova Scotia, Rodney Bay, St. Lucia.
- (d) Whether the Petitioner is entitled to a share in the motor vehicle which is registered in the sole name of the Respondent.

EVIDENCE

[11] There were 2 affidavits of the Petitioner dated 7th May 2009, and September 1st 2009. There was 1 affidavit of the Respondent dated July 29th 2009. The only other evidence before the court was that elicited under cross-examination of the Petitioner and Respondent.

The Petitioner's evidence

[12] The Petitioner said that she was unemployed and received a monthly pension of £406. and also monthly an injury benefit of £600. The Respondent is also a pensioner and he receives a monthly pension in excess £1,000. The Petitioner exhibited copies of various bank accounts and other bank investment instruments of the Respondent between the period April 2007 to December 2008.

Ciceron property

[13] The Ciceron property was registered in the sole name of the Respondent and she asked the Court to declare a half interest in her favour. In relation to the purchase of this land, she said that between August – September 1974, while the Respondent was on vacation at Saint Lucia, he telephoned her and informed her that he had seen a house for sale at Marchand, and it was part wall and part wood. He asked her to send him £1000. via Barclays Bank for him to put down as a deposit on the property. She sent the money the same day and paid £16. for the wire transfer.

- [14] About a week later the Respondent told her via telephone that the deal to purchase the property at Marchand fell through because a Barclays Bank employee had purchased the property. He informed her that he had seen a lot of land at Ciceron that he was about to purchase. The Respondent on his return to London showed her the deed of sale for the Ciceron property and told her that his father had loaned him the balance of the money to complete the purchase. She noticed that her name was not on the deed of sale but said nothing to the Respondent because he had done the same thing to her before of only putting his name on the deed of sale when they purchased the Stafford Road property. She exhibited a copy of the deed of sale for the Ciceron property.
- [15] The Petitioner in her second affidavit which was made in rebuttal to the Respondent's affidavit said that it had been a long time since she had sent the money and she could not remember exactly when the Respondent had telephoned her requesting the money. She said that the Respondent is a liar and that he had given 3 versions of as to how he acquired the property. The versions were (a) he borrowed the balance of money from his father to pay for the property in 1974, (b) in January 2009, he said the land was a gift from his father, and (c) he had said that his father paid for the land in part exchange for a van and various parts.

Rothsay Road property

- [16] The Petitioner said that in 1979, she purchased the Rothsay Road property, and it was her separate property. She exhibited a copy of the deed of sale that stated that the property was held in her sole name. She sold the property 15 years ago, and had spent all of the proceeds of sale. In her second affidavit, she said that the property was originally a 2 bedroom house of which 1 of the bedrooms had been converted to a bathroom. She borrowed £10,000. and used the money to add a bathroom, and build a fitted kitchen of mahogany. She hired a contractor to do all the renovations. The children of the family lived in the house until they were able to purchase their own properties.
- [17] She said that there was only 1 occasion on which she asked the Respondent to assist her with a matter pertaining to the property. It was a late Friday afternoon, when she suspected that 1 of the radiators at the house was leaking. She went to the Betting Shop where she located the

Respondent and asked him to buy her a replacement. She gave him the money to purchase the replacement. He did not charge her for installation. When she sold the property, she gave him £50.

The Bank of Nova Scotia accounts # 81015 (High Street, Castries), and # 6002540 (Rodney Bay, Gros Islet).

- [18] The Petitioner said that she had an accident at work in the United Kingdom in 1986, and retired on medical grounds. She received a settlement of £25,000. for her injury. She first invested the money in a high interest fixed deposit for a couple of years (presumably at England), then transferred the money to 1st National Bank of Saint Lucia. She said that the money on that account consisted of money acquired between 1954 -1966 before she moved in with the Respondent, sickness benefit, invalidity benefit which she received until she retired in 2000, injury settlement, pension from the National Health, and injury pension. The account at 1st National Bank of Saint Lucia was opened in her maiden name of "Anita Rosembert".
- [19] Between 1999 – 2000 she withdrew the monies from the 1st National Bank of Saint Lucia and opened a fixed deposit account in her married name with the Bank of Nova Scotia at High Street, Castries, for 25 months and bearing interest at the rate of 7 percent per annum. At maturity, she transferred the money into an ordinary account within the same branch of the Bank of Nova Scotia bearing interest at the rate of 3 percent.
- [20] Subsequently, the Respondent and herself went to open an account with the Bank of Nova Scotia at Rodney Bay, Gros Islet with \$38,000.00. This money was rent money. When the bank clerk checked the computer and saw her personal account at the High Street branch she cried out "Mrs. Ferguson, you have an account with us on High Street, Castries, earning 3 percent, why don't you add it on to the \$38,000.00?" The Petitioner said that she became numb and speechless for a while because of the bank clerk disclosing her account in the presence of the Respondent. She responded it was okay to do so.
- [21] Under cross-examination, when asked if she was returning the good deed that her husband had done for her of putting her name on an account in 1997, by now putting his name on her account, she responded vehemently "No, I would never do that."

- [22] Again under cross-examination, she said that her account was not a bank account like that at the Bank of Saint Lucia. It was that she was shocked when the bank clerk disclosed her account. She didn't think that things like that happened at Saint Lucia. She admitted that her husband did not force her to put his name on the account but she was embarrassed at the disclosure of her account. She had not gone to the bank with the Respondent to put his name on her account but she had gone to the bank with the intention of opening a joint account with the Respondent to deposit \$38,000.00. This money was rent money from the Mongiraud property
- [23] Her account balance at the time at the High Street branch was \$636,000.00. She exhibited a letter from the Bank of Nova Scotia at Rodney Bay dated 4th November 2008, and wherein the bank officer states that account #6002540 was opened on the 20th September 2006, with the sum of \$674,000.00, and that this sum included an amount of \$636,000.00 which was transferred from account #81015, an account held solely in the name of the Petitioner.
- [24] The \$38,000.00 was to be equally shared between the Respondent and herself, and this was the situation with all rent monies received as at October 2008.
- [25] Under cross-examination the Petitioner was asked whether the Respondent and herself ever maintained joint accounts either at Saint Lucia or the United Kingdom. She responded that they had not in 43 years maintained any joint accounts at England but at Saint Lucia they had a joint account. She spoke of an RBTT account into which the proceeds of the settlement with Texaco West Indies Ltd. was deposited.

The purchase and shipment from England of 2 motor vehicles - 1996 and 2005.

- [26] The Petitioner said that in 1996, the Respondent shipped a Honda Accord motor vehicle to Saint Lucia and it was licenced no. PB 4732. She gave him £250. (EC\$1250.00) to clear the motor vehicle. In September 2005, the Respondent shipped a Honda Jeep to Saint Lucia. He sold the Honda Accord motor vehicle to a taxi driver for \$10,000.00 cash. She was present when the Respondent sold the first vehicle to the taxi driver. The Respondent did not give her one cent from the sale proceeds. She said that she is entitled to a half share of the Honda Jeep, the replacement vehicle.

Other

- [27] The Petitioner said that she is unable to pay the Respondent for his share of the Stafford Road property, and so she was asking the Court to order the Respondent to pay her, for her half share in this property.
- [28] She said that she wished for there to be appointed a valuer to assess and value of the immovable properties, and she would share the cost of the valuer.
- [29] She asked that she be allowed to retain a 3 piece brown settee, the microwave, and pots and pans.

The Respondent's evidence

Ciceron property

- [30] The Respondent said that this property is not community property. It is his alone. At the time of purchase, however, he was at Saint Lucia and had no money with him at Saint Lucia and so his father paid for the land. In exchange, he sent his father from England, a secondhand 12 seater van, hydraulic parts for a truck dumper, and a welding set. The property cost him \$11,087.00.
- [31] He admitted that the Petitioner sent him £1000. from England. This however, was because he was at Saint Lucia, she was at England and having run out of money due to him having to help with unexpected expenses pertaining to his grandmother's death, which he had not anticipated, and money which he had to pay the customs department to release a Ford Escort motor vehicle shipped from England. He asked her to look in his wardrobe, see how much money he had there, and make up the balance to send him £1000.
- [32] He denies the Petitioner's statement that the £1000. was towards the purchase of property. He said that while she says that he telephoned her at August or September 1974, by August 1974, the deed of sale for the land was already executed. The deed of sale was executed at 19th August 1974, and registered at 22nd August 1974.

Rothsay Road, England

- [33] The Respondent said that his wife purchased this property in her name in 1994. He knew she was buying the property because she told him so. He said that he did repair works to the property so that she could obtain a good rent and that in the event of sale, the price would be boosted. The works that he carried out at the house included tiling the kitchen and bathroom, replacing heating radiators, painting and decorating.
- [34] He said that for the entire period that the Petitioner was paying for her property, he paid all the expenses at the family home at the Stafford Road property and he further assisted her by driving her to work and picking her up from work when she worked late shifts into the morning.
- [35] He said that when the Petitioner sold the property he spoke to her about splitting up the proceeds of sale with him. She told him that Rothsay Road property was her own, and the Reduit Park property (Saint Lucia) was his. She told him that if he sold Reduit Park property, the proceeds of sale would be his.
- [36] When the Petitioner sold Rothsay Road property for £58,000. in 1994 she never gave him a cent. She sent the proceeds of that sale to an account at Saint Lucia to avoid taxes at the England.

Bank of Nova Scotia # 6002540 (Rodney Bay, Gros Islet)

- [37] The Respondent said that the Petitioner and himself held this account jointly. He said that she subsequently withdrew all of the monies on the account and that the location of the money is now unknown to him. The amount withdrawn was \$698,000.00. The sum withdrawn to close the account was supported by a letter from the Bank dated 31st October 2008.

The purchase and shipping from England of 2 motor vehicles - 1996 and 2005.

- [38] The Respondent said that he purchased the motor vehicle at London, England from his separate and own funds that he had in a high interest bearing account, and he brought the motor vehicle with him to Saint Lucia as a returning resident.

Other

- [39] The Respondent said that while he returned to Saint Lucia as a returning resident, the Petitioner never came back to Saint Lucia as a returning resident but continued to reside at England to fulfill her prescriptions regularly, and to look after her cat. The Petitioner never wanted to reside at Saint Lucia and it was for this reason that he purchased land in Saint Lucia without a cent from her. When he asked the Petitioner to invest with him, she told him she had no intention of investing in land in Saint Lucia, and to go ahead with whatever money he had for the purchase. He said that he nevertheless put her name on the deed for the land as a way of enticing her to come to Saint Lucia but she never actually came and stayed.
- [40] He resides at Saint Lucia but travels to England for vacations and medical check-ups.
- [41] As to the contents of the house at England, he wished to receive some cutlery, and the set of 1 dozen golden champagne glasses.

LAW

- [42] Ancillary relief is governed by the Civil Code and the Divorce Act, Chapter 4.03. According to section 53 of the Divorce Act, where a conflict exists between the Civil Code and the Divorce Act then the Divorce Act is to prevail. The Divorce Act provides:

"22. (1) On granting a decree of divorce or a decree of nullity of marriage or at any time thereafter (whether, before or after the decree is made absolute), the Court may, subject to the provisions of section 32(1), make any one or more of the following orders, that is to say –

- (a) an order that either party to the marriage shall make to the other such periodical payments and for such term as may be specified in the order;
- (b) an order that either party to the marriage shall secure to the other, to the satisfaction of the Court, such periodical payments ...;
- (c) an order that either party to the marriage shall pay to the other such lump sum as may be so specified.

(2) Without prejudice to the generality of subsection (1) (c), an order under this section that a party to a marriage shall pay a lump sum to the other party –

(a) may be made for the purpose of enabling that other party to meet any liabilities or expenses reasonably incurred by him or her in maintaining himself or herself or any child of the family before making an application for an order under this section;

(b) may provide for the payment of that sum by instalments of such amount as may be specified in the order and may require the payment of the instalments to be secured to the satisfaction of the Court.

23.;

24.;

25. It is the duty of the Court in deciding whether to exercise its powers under section 22,23 or 24 in relation to a party to the marriage and, if so, what manner, to have regard to all the circumstances of the case including the following matters, that is to say –

- (a) 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;
- (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
- (c) the standard of living enjoyed by the family before the breakdown of the marriage;
- (d) the age of each party to the marriage and the duration of the marriage;
- (e) contributions made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family;
- (f) in the case of proceedings for divorce or nullity of marriage, the value of either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage that party will lose the chance of acquiring;

and so to 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 obligation and responsibilities towards the other.

(Emphasis is mine.)

25.;

45. 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 payment, 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 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 instalments 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. (Emphasis is mine)

- [43] Section 53 of the Act provides that in such circumstances, the provision of the Act is to prevail. Section 53 reads:

“53. Where a conflict exists between this Act and any other law the provisions of this Act shall prevail.”

- [44] The Civil Code states:

“ 1188. With respect to marriages taking place after the coming into operation of this article there shall be only one kind of community property, namely: legal community, the rules governing which are contained in this Chapter.

1189. Community commences from the day the marriage is solemnized: the parties cannot stipulate that it shall commence at any other period.

1190. Legal community is that which the law, in the absence of stipulation to the contrary, establishes between spouses, by the mere fact of their marriage, in respect of certain descriptions of property.(Emphasis is mine.)

1191. Legal community may be established by the simple declaration which the parties make in the contract of their intention that it shall exist. It also takes place when no mention is made of it, when it is not expressly nor impliedly excluded, and also when there is no marriage contract. In all cases it is governed by the rules set forth in the following articles.

1192. (1) The property of persons married in community is divided into separate property and the property of the community.

(2) Separate property comprises –

(a) the property, moveable and immovable, which the spouses possess on the day when the marriage is solemnized;

(b) the income and earnings of either spouse, investments in the name of one spouse, and insurance policies taken out on the life and in the name of one spouse;

(c) property, moveable and immovable, acquired by succession, or by donation or legacy made to either spouses particularly;

(d) compensation payable to either spouse for damages resulting from delicts and quasi-delicts, and the property purchased with all funds thus derived;

(e) fruits, revenues, and interest, of whatever nature they be, derived from separate property, the proceeds of separate property, and property acquired with separate funds or in exchange for separate property.

(3) Property which is acquired by the husband and the wife during marriage in any manner different from that above declared is the property of the community.

1193. (1) Property is deemed to be the joint acquisition of the community unless it is admitted or proved to have belonged to, or to have been in the legal possession of one of the spouses previously to the marriage, or, if acquired in on of the ways set out in article 1192, or to otherwise belong to one of the spouses only. (Emphasis is mine.)

Provided however, that where property is acquired by one of the spouses while they are living separate and apart from each other by virtue of a separation deed, such property is presumed to be the separate property of such spouse unless it is admitted or proved to be community property.

(2) Where spouses purchase property in their joint names such property falls into the community unless it is expressly stated at the time of purchase that they are purchasing with their separate funds.

1194. Income and earnings are the separate property of that spouse from whose separate property or by whose sole labour they come, without prejudice, nevertheless, to the liability of the spouses to contribute towards the education and the support of the children and the expenses of marriage.

In case of disagreement the judge determines the contribution, if any, to be made by either spouse in accordance with the duties, liabilities, means and circumstances of the spouses.

1195. (1) A deposit in a bank in the name of one spouse is presumed to be his or her separate property, and the bank is not concerned to ascertain whether it is separate or community property.

(2) Money payable to the wife by or through a bank or from funds in court in her name only is presumed to be her separate money.

1198. Property acquired during marriage with separate funds or in exchange for separate property is separate property. (Emphasis is mine.)

1220. Husband and wife may contract obligations for the individual affairs of each other, and may bind themselves and their separate property with or for each other, as though they were unmarried.

(2) Save as in the preceding paragraph stated, the separate property of a spouse shall be liable for obligations contractual, delictual or otherwise of such spouse and not for the obligations of the other spouse.

1221. If the separate property of one of the spouses be sold, and the price of it be paid into the community and be not invested in replacement, or if the community receive any other thing which is the separate property of one of the spouses, such spouse has a right to compensation for the value of the thing which has thus fallen into the community.

1222. If, on the contrary, monies have been withdrawn from the community and have been used to improve or to free from incumbrance an immovable belonging to one of the spouses, or have been applied to the payment of the individual debts, or for the exclusive benefit of such spouse, the other spouse has a right to compensation, out of the property of the community.(Emphasis is mine)

1223.

1225. The compensation for the price of an immovable belonging to the husband can be claimed only out of the mass of the community; that for the price of an immovable belonging to the wife, may be claimed out of the private property of the husband, if the property of the community prove insufficient.

In all cases, such compensation consists in the price brought by the sale and not in the real or conventional value of the immovable sold."

[45] The enumerated considerations to which I must have regard according to the Divorce Act section 25 are identical to that found in the Matrimonial Causes Act 1973 at England and Wales. These considerations were the focus of lengthy discussion in the judgment in *White v. White*¹. Therein Lord Nicholls said :

"Everyone would accept that the outcome of these matters, whether by agreement or court order, should be fair. More realistically, the outcome ought to be as fair as is possible in all the circumstances....

¹ [2001]1 ALL ER 1

The courts are given wide discretion, largely unrestricted by statutory provision. That is the route followed in this country. The Matrimonial Causes Act 1973 confers wide discretionary powers on the courts over all the property of the husband and the wife.²

Findings

- [46] Being guided by the provisions of the Divorce Act, the Civil Code, and the discussion in *White v. White* when undertaking consideration of the matters raised by the Petitioner and Respondent, I set out my findings hereunder, and on the authority of section 45(b) of the Divorce Act, and articles 1192, 1194, 1195, 1221, and 1222 I make the declarations and orders set out hereunder.
- [47] While I have not recounted it herein, the Petitioner gave evidence about certain conduct of the Respondent that she contends was responsible for the breakdown of the marriage. I do not believe that this factor is of much weight for my determination of the ancillary relief matters in light of the evidence surrounding how the Petitioner and Respondent conducted their financial affairs.
- [48] It is clear to me from the evidence of both the Petitioner and the Respondent, that from early in their marriage, they conducted their financial affairs both at England and Saint Lucia separate and independent of each other. I would also observe that they were both fiscally conservative. Notwithstanding that they conducted their financial affairs separately, they would on occasion inform each other when a purchase of property was made but would neither invite the other to contribute, and or be a co-owner in the purchase of the property.
- [49] It was also clear to me that when they wanted a joint enterprise they took deliberate steps to enter into such an enterprise. Such an enterprise was for example account #6002540 held with the Bank of Nova Scotia at Rodney Bay, where they went to the bank together, to open the joint account bearing both their names.
- [50] I have found the Petitioner to be somewhat disingenuous on the matter as to what of her own money she might have available to her at present, and about the funds that were held in the bank account at Bank of Nova Scotia at Rodney Bay. I believe am entitled to draw such inference in the circumstances which I will detail shortly. In *Payne v. Payne*³ Wilmer J said:

² Ibid. p.4

³ [1968] 1 All ER 1113 at p.1117

“ It is well established that the Court is entitled to draw inferences adverse to a husband who has not made a proper disclosure of his available resources. That was held by **Sachs J in J v. J [1955] 2 All ER 85**, a decision which was subsequently upheld, so far as that point at any rate was concerned, by the Court. It was also held by **Lloyd Jones in Ette v. Ette [1965] 1 All ER 341**, where again it was again decided that it was proper to draw inference adverse to the husband from the fact of his failure to make a proper disclosure”

- [51] While the Petitioner disclosed bank accounts and banking instruments held by the Respondent, to support her statements as to money available to him and his pension payment, she did not make a similar disclosure to support her statement that she receives a pension of £406. and payment of injury benefit of £600.
- [52] Further, the Respondent asserted that the Petitioner closed the Bank of Nova Scotia account at Rodney Bay taking all of the money. This statement was not denied by the Petitioner. The evidence was, that this sum was \$698,000.00, money which includes excess of what she claims was her separate property from the High Street branch account. The Petitioner has not disclosed the whereabouts of this money and her own evidence was that she was only entitled to a half share of the rent money, \$38,000.00 deposited on the account and therefore the Respondent was by simple deduction at a minimum, entitled to the other half.
- [53] Finally, while she has stated that she sold the Rothsay Road property, she never disclosed for how much, or what she had done with the proceeds of sale, which sale price according to the Respondent was £58,000. This sum was never contested by the Petitioner. Given the fiscally conservative person that I have observed the Petitioner to be, I have my doubts that the proceeds of sale were entirely dissipated.
- [54] In relation to the purchase of the Ciceron property, the Petitioner did say that the Respondent informed her that he had seen a lot of land at Ciceron that “he” was about to purchase. I measure this statement against the clear pattern of behavior of the Petitioner and Respondent in relation to their financial affairs. The clear intention expressed to the Petitioner was that “he” was going to purchase. The Petitioner gave no evidence that at any time Respondent suggested before she saw the deed of sale that the property was to be their joint property. The clear statement that he was going to purchased was confirmed in the deed of sale that bore the sole name of the Respondent.

- [55] There is no doubt that at some point in time proximate to the purchase of this Ciceron property the Petitioner sent the Respondent the sum £1000. The Petitioner though cannot say exactly when the money was wired to the Respondent. The Respondent on the other hand, was able to show that the purchase was completed and deed of sale recorded before the initial time stated by the Petitioner as to when she wired the money. While the Petitioner insists that the money was for the purchase of land, the Respondent says that the money was needed because he was 'broke' due to unexpected expenses while he was on vacation at Saint Lucia. A portion of the money, its source was also in contention by their various accounts.
- [56] The Petitioner said that the Respondent had given multiple versions as to how he acquired the Ciceron property. His evidence however, was consistent and a single statement. His father paid for the land and in exchange he sent him a 12 seater van, parts for a truck, and a welding set. Even if I were to have regard to the Petitioner's statement of multiple versions, 2 of the versions to my mind would support the Respondent's position as to how he came to acquire the land. It was not improbable for his father to have loaned him the money, and in exchange he agreed to send his father a van, parts for a truck and a welding set as repayment for the loan.
- [57] I therefore find that the Petitioner did not acquire any interest in the Ciceron property and it is the separate and sole property of the Respondent.
- [58] The Petitioner having admitted to receiving the sum of £1000. from the Petitioner, I will order that the Respondent repay the Petitioner the £1000. with interest.
- [59] In regard to the Rothsay Road property, the Petitioner has asserted that this was her separate property and it was purchased by her. The Respondent has not denied this. Rather he has sought to assert that having done certain refurbishment, he was entitled to a share in the property and hence now that the property has been sold, a share in the proceeds of sale. This property was purchased in 1979, 31 years ago, and sold 15 years ago. The Respondent presented no evidence to support this assertion or to show the skills that would have been required for the refurbishment. There was no evidence that during the last 15 years the Respondent took any action to acquire his share of the proceeds of sale or before that to acquire any interest in the property. He appears until

these proceedings to have accepted as he said she told him, that the Reduit property was his and the proceeds of sale for the Rothay Road property was the Petitioner's.

[60] Here too against the background of how the Petitioner and Respondent conducted their financial affairs, I find that the Rothsay Road property was the separate property of the Petitioner and she was entitled to the proceeds of sale thereof.

[61] In regard to bank account # 6002540 held at Rodney Bay and which was opened as a joint account in both the name of the Petitioner and the Respondent, this account according to the Petitioner's evidence contained 2 sums of monies. One sum was \$38,000.00 being rent money jointly owned by the Respondent and herself, and the second sum of \$636,000.00 being the proceeds of her Bank of Nova Scotia account # 81015 at High Street, Castries. The Petitioner itemized the source of the \$636,000.00. The Respondent did not deny any of the matters itemized or that any part of the \$636,000.00 was the Petitioner's. The letter of the Bank exhibited by the Defendant indicated that the account had in excess of these 2 sums. The sum of \$698,000.00 was withdrawn on 2nd May 2007, by the Petitioner, a sum clearly in excess of the cumulative amount of the 2 sums which the Petitioner said was deposited when the account was opened.

[62] Having regard to the Petitioner's evidence as to the source of the money claimed and which remained unchallenged, I find that the sum of \$636,000.00 was the separate money of the Petitioner.

[63] Turning now to the balance on deposit in the Bank of Nova Scotia Rodney Bay account, i.e. \$62,000.00, the Petitioner's evidence is that both the Respondent and herself went to the Bank to open this account as a joint account. Based on the evidence before the court, this joint enterprise was a rare event, and contrary to the pattern by which the Petitioner and Respondent had conducted their financial affairs.

[64] I find this express change of pattern indicates that the parties intended to share monies on the account, the \$62,000.00. I therefore find that the \$62,000.00 is to be shared equally by the Petitioner and Respondent.

[65] In regard to the motor vehicle that is presently owned by the Respondent, the evidence is that the Respondent purchased 2 motor vehicles. The first was purchased at 1996 and in 2005, some 9 years later, he sold the motor vehicle for \$10,000.00. The Petitioner states that she gave the Respondent £250.(\$1250.00) to clear this motor vehicle of duty and so forth. The Respondent has not denied receipt of this money. I therefore find that the Petitioner did give the Respondent this money.

[66] The Petitioner has said that on sale of the first motor vehicle in 2005, the Respondent failed to give her a share of the proceeds of sale and for this she is now entitled to a half share in the motor vehicle which the Respondent subsequently purchased.

[67] I believe that between 1996 and 2005 the Petitioner would have benefitted from the convenience of the Respondent owing and having available the first motor vehicle. I am of the view that in relation to the second motor vehicle until the breakdown of the marriage occurred that she would also have benefitted. The Petitioner has not made any statements in this regard. Both motor vehicles would have been required gasoline, insurance, licence and maintainance. The Petitioner has not stated that she contributed to any of these matters which were necessary for the operation of a motor vehicle between 1996 and the breakdown of the marriage. I therefore find that motor vehicles were the separate property of the Respondent.

[68] In regard to the Stafford Road and the Mongiraud properties which at the beginning of the trial the Petitioner and Respondent agreed they own jointly, their affidavits have proposed a manner for settlement so as to achieve equality, and a clean break although not on the same terms. I declare each of these properties to be jointly owned, and owned in equal shares by the Petitioner and Respondent.

[69] The Petitioner had proposed that the Respondent transfer his share in the Mongiraud property to her and in exchange, she would transfer her share in Stafford Road property to the Respondent. The Respondent had proposed that he keep the Mongiraud property and the Petitioner keep the Stafford Road property. I gleam from these proposals that both the Petitioner and the Respondent wish to keep the Mongiraud property. This

clearly is not possible. I am therefore left with no choice but to order sale of the 2 properties and equal division of the proceeds after deduction of expenses incurred to facilitate the sales.

[70] Both the Petitioner and the Respondent raised the issue of division of certain movables. If the Petitioner and Respondent are not able to settle the dispute over these movables within 90 days of this decision, then they are to be sold and the proceeds of sale after deduction of all legitimate expenses are to be divided equally between the Petitioner and the Respondent.

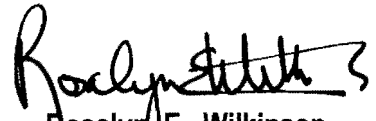
Conclusion

It is ordered and declared that:-

1. The Mongiraud property is the joint property and owned in equal shares by the Petitioner and the Respondent.
2. The Mongiraud property is to be listed for sale with an agreed real estate agent or agents, 90 days from the date of this order and sold. The proceeds of sale after deduction of all expenses and costs associated with the sale are to be divided equally between the Petitioner and the Respondent.
3. The Stafford Road property is the joint property and owned in equal shares by the Petitioner and the Respondent.
4. The Stafford Road property is to be listed for sale with an agreed real estate agent or agents, 90 days from the date of this order and sold. The proceeds of sale after deduction of all expenses and costs associated with the sale are to be divided equally between the Petitioner and the Respondent.
5. The Ciceron property is the separate and sole property of the Respondent.
6. The proceeds of sale of the Rothsay Road property was the separate and sole property of the Petitioner.
7. The sum of \$636,000.00 which was deposited into the Bank of Nova Scotia account at Rodney Bay, is the separate and sole property of the Petitioner.
8. The sum of \$62,000.00 being the balance that would have remained on deposit in the Bank of Nova Scotia account at Rodney Bay, after deduction of the Petitioner's \$636,000.00, is the joint property and owned in equal shares by the Petitioner and the Respondent.
9. The Petitioner is to pay the Respondent the sum of \$31,000.00 being his half-share of the sum of \$62,000.00, together with interest at the rate of 6 percent from the date that she closed the Bank of Nova Scotia account #6002540 until date of payment.
10. The Respondent is to pay the Petitioner the sum of £1000. together with interest at the rate of 6 percent interest from April 21st 2008, until date of payment.
11. The motor vehicle (Honda Jeep) licenced No. PB 4732 is the separate and sole property of the Respondent.
12. Should the Petitioner and Respondent not be able to settle within 90 days between themselves the division and distribution of the moveables within the Mongiraud and Stafford properties, then the moveables are to be listed with an agreed auctioneer/s and sold. The proceeds of sale after

deduction of all expenses and costs are to be divided equally between the Petitioner and Respondent.

13. Each Party is to bear their own costs.


Rosalyn E. Wilkinson
High Court Judge