

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CIVIL CLAIM NO 106/2006
(DIVORCE)**



**IN THE MATTER OF THE PETITION OF PASCALE CONSTANCE FOR THE DISSOLUTION OF
MARRIAGE**

BETWEEN:

PASCALE CONSTANCE

Petitioner

V

ERROL CONSTANCE

Respondent

2006: November 2

Appearances:

Mr. S.E. Commissiong for the Petitioner

Ms. N. Sylvester and Mr. C.B Williams for the Respondent

- [1] The parties were married at the Mayor's office in Brussels on 1st March 1994. In 2002 the petitioner presented a petition for divorce. Consequent upon the grant of the decree dissolving the union the Respondent has sought ancillary relief. He seeks property adjustment orders with regard to certain real estate. He also seeks an order granting him reasonable access to the children of the marriage.

The facts:

- [2] The parties first lived together at the Respondent's home at Arnos Vale, St Vincent. The Respondent was then employed at the local electricity company. He had over two decades of service. He earned \$1,800 per month plus allowances. They commenced cohabitation in 1988.
- [3] In 1992 a parcel of land at Maroon Hill was purchased. It was conveyed to the respondent alone. In 1998 a second parcel of land was bought. It was conveyed to both parties jointly. Later in 1998 two other contiguous parcels at Maroon Hill were purchased. These were conveyed to the Respondent solely. The petitioner says that all 4 parcels of land should belong to her as she provided the purchase money. The first parcel was placed in the name of the Respondent because at the time the petitioner was an alien who had no license to hold land. The respondent says the purchase price was paid by him. The petitioner says that although the respondent initially put up the purchase price she in fact repaid him the purchase price pursuant to an arrangement they had. Two other parcels were purchased and placed in the sole name of the Respondent while one parcel was conveyed to the parties jointly.
- [4] The respondent says that all these properties are jointly owned. He seeks an order adjusting the equity in the real estate to reflect what he claims was the intention of the parties. He wishes the court to declare that all of the parcels are held by the parties in equal shares. The respondent arrives at this position because he says that the parties pooled their earnings in one joint account. From these earnings came the funds to purchase the real property. Thus, says the respondent the properties are held jointly.
- [5] The petitioner supplied bundles of bank records to demonstrate that she furnished the funds to secure the lands. The cost of the 4 parcels was some \$167,000. This does not include conveyancing fees and government taxes and registration fees. On one parcel at Maroon Hill, the parties have built a guest house. It is an incomplete structure. There are 3 levels. The middle level is where the petitioner and the children reside. The other two

levels are not habitable. Even the second level is far from complete. The petitioner says that the cost of constructing this building is in excess of \$433, 637.89.

- [6] How is the court to deal with these items of real property? The starting position must be the legal ownership of the lands in question. 3 parcels are the sole property for the Respondent while one property is in the joint names of the parties. Considering all of the circumstances of this case is it just to adjust this initial legal position?

The financial contribution by the parties

- [7] The petitioner says that she received from her father 5 million Belgian Francs. She also earned income from her job in Belgium before she came to Vincent and from employment with her father's business at Belmont Estates. From these sources as well as gifts from relatives she says she was able to finance the land purchases.
- [8] The Respondent says he purchased the first lot in 1992 with funds received from the sale of his Arnos Vale Property. He says he contributed to the purchase of the other three parcels from the balance of moneys from the sale of his Arnos Vale house, his severance pay of \$27,000, savings and money earned in Belgium. I examine these sources in turn.

Sale of Arnos Vale House

- [9] This house was sold for \$140,000.00 in 1993. \$19,000 went to retire the mortgage which was on that house. \$27,000 was loaned to Albert Cornelis the father of the Petitioner. When the Respondent went to Belgium his bank account showed a balance of \$82,086.39. Under cross examination the Respondent said this represented the balance of his sale of the house. He took some of this money to Belgium. He does not say how much. He does not recall. He brought some back again he does not recall how much he repatriated on his return to St Vincent. I find it difficult to understand how the respondent could have purchased the land for \$42,000 in 1992, meet all his having expenses and still retain \$82, 086.39 by 1993, after he had loaned \$27,000 to his father in law did repaid the bank \$19,000.00. In 1998 the parties bought land worth \$125,000.

Severance pay from Vinlec

- [10] This item causes little difficulty. It is accepted that the Respondent received some \$27,000 as severance pay from Vinlec. This he would have gotten in 1995 as he says it took him over two years to get this money.

Savings

- [11] Prior to his departure to Belgium in 1993, the Respondent had no savings apart from the proceeds of sale of his Arnos Vale house. In his cross examination he admitted to having a joint account with one Loren Davis of over \$25,000 in 1992. He was not able to say what became of these funds. However it was only by applying some of the proceeds of sale of the Arnos Vale house that he was able to satisfy his debts to the bank. I thus conclude that the respondent had no savings otherwise.

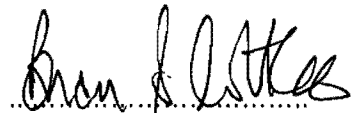
Earnings in Belgium

- [12] The respondent says he worked in Belgium for some 3½ years. He worked for a company called CO2, incorporated by his father-in-law to provide consultancy services to his plastics company. The respondent says he was to earn \$6,000.00 per month but that he received no actual cash. The petitioner he says was the accountant for CO2 and used the money in which ever way she wanted. The respondent did not know how much money, if any at all, was in there CO2 account. He says he worked but his wife was paid. He did not know what income he actually earned. In this unsatisfactory state of the respondent's evidence I am unable to ascertain what income accrued the Respondent from his time in Belgium. All of the expenses of living and maintaining his children in Belgium were met. However the respondent is unable to say whether his earnings were sufficient for that purpose or to generate any savings which could be used to acquire real estate later in St Vincent.

I am therefore convinced that the funds to buy the last three parcels came largely from the Petitioner. Two of these parcels are vested in the Respondent alone. One is vested in the parties jointly. I find that the Respondent purchased the first parcel. The evidence convinces me that the Petitioner later refunded to him a part of the purchase price.

Having looked at all of the factors in this case and having particularly considered the contributions made by the parties I consider that it would be just to vary the legal ownership of the parcels in the following manner.

The first parcel, bought in 1992, is declared to be jointly owned by the parties in equal shares. The other three parcels are declared to be jointly owned by the parties in the proportion of 20% to the respondent husband and 80% to the petitioner wife. These proportions are somewhat arbitrary in the sense that I cannot qualify with any precision the exact amount of the contributions of each party to the acquisitions. However, I consider it clear that the petitioner contributed much more than respondent did. The parties are at liberty to appoint a valuer to appraise the respective parcels. The petitioner can pay to the respondent a sum representing his share of the property whereupon the respondent will transfer his interest in the property to the petitioner. The mechanics of this can easily be worked out by counsel, failing which either party is at liberty to apply for an order of sale of the properties. The proceeds of any such sale will be divided in the proportions I have adverted to above. I make no order as to the request by the respondent for reasonable access to the children at this point. The social enquiry report reveals that it would not be in the best interest of the children to make such an order at this time. I give liberty to the respondent to make further application for access should circumstances vary. I direct that the respondent pay the costs of these proceedings. I assess those costs at \$3,500.00.



Brian S. Cottle
MASTER