

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CLAIM NO.: 31 OF 2004

BETWEEN:

JOHN WEST

Petitioner

and

RONELLE WEST

Respondent

Appearances:

Mr. J. Delves for Petitioner

Mrs. K. Bacchus-Browne for Respondent

2005: 10th June

JUDGMENT

- [1] The parties were married in April 1999. The union was dissolved in May 2004. There were no children of the marriage. The Respondent seeks:
- (1) Maintenance for herself
 - (2) Property adjustment order.
- [2] The Petitioner is a businessman. He is part owner of a company TMM (St. Vincent) Ltd (TMM). He says his monthly income is \$2,680.04. He details monthly expenses which add up to \$6,779.11. All of his monthly expenses are met by TMM.
- [3] The Respondent is a bank clerk. Her net monthly income is \$948.77. She has a share certificate showing that she owns 22 shares in TMM. That company has issued 49 shares, 5 of which are held by nominee shareholders at one share each. This was common under the old Companies Legislation which required 7 shareholders at least. It is convenient to dispose of the issue of these shares at the outset. The evidence showed that the

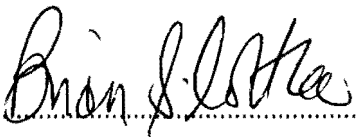
Respondent is not registered with the Registrar of Companies – now the Registrar of the Commerce and Intellectual Property Office as a shareholder. The Respondent in her testimony said that the share certificate she holds was given to her to present to the officials at the US Embassy to support her visa application. I am persuaded that both parties recognized this as a mere artifice for the limited purpose of facilitating the issuance of a US visa to the Respondent. I find that the certificate held by the Respondent does not in fact make her a shareholder of TMM Ltd.

- [4] In 2000 the parties had unhappy marital difficulties. Divorce was contemplated. The parties freely negotiated and concluded an agreement to cover the financial arrangements after the dissolution of the marriage. The husband paid to the wife a total of \$40,000.00 as part of the agreed financial provision for the wife.
- [5] The parties thereafter reconciled. The marriage continued and cohabitation resumed until 2004 when the present petition was filed by the husband.
- [6] Mr. Delves for the Petitioner urges that the agreement – written and witnessed – that the parties had previously finalized be enforced. This would leave the Petitioner to pay the balance of \$63,000.00 in full settlement of all ancillary relief claims by the wife. Mrs. Bacchus-Browne asks the Court to ignore the agreement. She says the parties by their conduct in resuming cohabitation for several years had demonstrated that they no longer intended to be bound by the terms of the agreement.
- [7] I find that the entire basis of the agreement vanished when the parties resumed cohabitation. The agreement expressed itself to have been made in contemplation of an imminent petition for divorce being filed. This is inconsistent with the continued union of the parties that transpired thereafter.
- [8] While the agreement cannot be strictly enforced, I still intend to have regard to the provisions therein as conduct on the part of the parties which is relevant to be considered when deciding what relief to award the Respondent.

THE MATRIMONIAL HOME

- [9] The matrimonial home is jointly owned by the parties. I accept the valuation placed on it by Mr. Franklyn Browne as the most reliable. The matrimonial home is worth \$680,000.00. The outstanding mortgage on the home and an adjoining parcel of land which I treat as a single property is \$472,246.16. The equity in the property is thus \$207,753.84.
- [10] The Petitioner further says that TMM has "loaned" a total of \$365,918.62 which was used to construct the matrimonial home. This he says should be deducted from the equity with the result that the parties effectively own no equity in the matrimonial home. This loan from TMM is unsecured. It is interest free.
- [11] I accept from the evidence that TMM has paid this amount towards the construction of the matrimonial home. There is nothing in the evidence which demonstrates that this "loan" was taken by the Respondent. TMM is clearly the creature of the Petitioner. His monthly expenses are met by the company and in fact amount to income paid to the Petitioner. I am convinced that the funds paid by TMM towards the home similarly represent income paid to the Petitioner. I see no reason to deduct these from the present equity.
- [12] This marriage was relatively short – only 5 years. During the marriage the wife worked but her income would have been far less than the husband. They pooled their resources and applied these to running the household and acquiring the matrimonial home. The wife did not have any domestic duties and there are no children whose care was her responsibility. In the circumstances of this case it would be wrong to award her 50% of the matrimonial assets.
- [13] I have given consideration to the standard of living enjoyed by the parties during the marriage and the inevitable decrease in that standard for the wife upon the dissolution of the marriage. I also note that she is young and her prospects of remarriage are quite good.

- [15] I do not consider this a case where periodic payments would be best. I will award the wife a lump sum to cover maintenance for her. I assess her share in the matrimonial home to be about 20%. I believe a total lump sum payment to the wife of \$105,000.00 will meet the justice of this case. This will include a sum of \$60,000.00 as maintenance and \$45,000.00 for her share in the equity of the matrimonial home. She will transfer to the Petitioner all of her interest in the matrimonial home upon payment of the lump sum and the husband will be solely liable for repayment of the mortgage.
- [16] I have not dealt with the personality as there has not been sufficient evidence led before me to make any order in this regard. The Petitioner will pay the Respondent's costs in the amount of \$3,000.00.


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Brian S. Cottle
MASTER