

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 345 OF 1997

BETWEEN:

P. DAPHNE BELMAR NEE DOPWELL

Petitioner

and

OWEN C. BELMAR

Respondent

Appearances:

Mrs. Agnes Cato for the petitioner

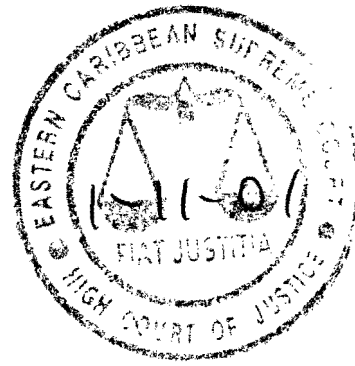
Mr. Cecil A Williams for the respondent

2001:October 24, 25, 26
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JUDGMENT

ALLEYNE J.

- [1] This is an application for ancillary relief involving property settlement. The petitioner and the respondent were married at Bequia, St. Vincent and the Grenadines, on August 9, 1975. The respondent brought no real property into the marriage, while the petitioner was, at the date of the marriage, entitled, subject to a life interest in favour of her aunt Miriam Wallace, to a portion of land at Port Elizabeth, Bequia, by deed of gift registered as deed No. 809/1972. In addition, in 1981 the petitioner's mother Pearl Dopwell granted to the petitioner and the respondent by way of deed of gift registered as deed No. 2323/1981, a considerable portion of land at Belmont,



Bequia. The petitioner also owned a share in another portion of land in Bequia, jointly with her brother, which has since been sold and in which I hold that the respondent has no interest. In 1992 the respondent bought a valuable property at La Pompe, Bequia, which the petitioner claims was purchased entirely with earnings from a restaurant built on the first-mentioned property, on the basis of which the petitioner claims to be entitled to share in the last-named property.

- [2] The petitioner and the respondent each filed an affidavit of means, and the petitioner filed an additional affidavit in response to the respondent's affidavit. Counsel for the respondent and the petitioner each cross-examined the opposing party on her/his affidavits. In contrast to the petitioner, who demonstrated a degree of hurt and disillusionment, the respondent demonstrated hostility and a lack of frankness. He was not at all forthcoming in his evidence and put forward propositions concerning substantial financial transactions without the slightest documentary support. I was wholly unconvinced by his claims.
- [3] The petitioner was a bank clerk and the respondent a chef on a tourist vessel at the time of their marriage. The respondent's job was seasonal, although no doubt reasonably well-paid. He sent a portion of his wages to the petitioner to assist in household expenses and towards savings. She established and maintained bank accounts in their joint names and for their joint benefit.
- [4] In or about 1979 the parties built a house on the petitioner's land at Port Elizabeth, the land in which the petitioner's aunt, the grantor, yet had a life interest, but of which the petitioner and respondent were in actual possession, and have remained so throughout. To facilitate the building of the house, the petitioner took advantage of her staff privilege as an employee of Barclays Bank and secured a loan at the highly concessional interest rate of 3% per annum. The respondent supervised the construction and undertook some of the work himself, he being a skilled woodworker. I have no doubt that both parties contributed to the repayment of the loan. I

do not for one moment accept the respondent's unsupported claim that he contributed substantially from his savings to build this property, or that he worked for years in filling the land. By his own admission he was mainly out of Bequia. He was also very insistent that he has never in his life maintained a separate bank account, but that all his accounts have been joint, with the petitioner, and with his brother when they operated the chicken farm. I do not accept that he had substantial savings apart from the small joint account with his wife, nor do I accept his claim that his brother and his friend lent him the very considerable sums claimed, which, he claims, remain unpaid even now after well over ten years, notwithstanding that he has, as I find, run a very profitable and successful business during that period. The respondent is not a witness of truth.

- [5] Most of the time the respondent was at sea in connection with his work, and was based in the United States of America, where the petitioner visited him periodically. To use his words, those were the only times they met during the early years of the marriage. Not surprisingly, he contributed to the cost of her visits.
- [6] The petitioner, and the respondent when he came to live in Bequia, lived in that house as the matrimonial home until 1988, when they decided to convert that house into a restaurant in order to provide the respondent with more regular employment. They borrowed money on the questionable security of the petitioner's title to the land which continued to be subject to her aunt's life interest, and on the additional security of life insurance policies on the lives of the petitioner and the respondent, which were obtained on the advice or insistence of the lending bank, the Development Bank (DEVCO), to extend and modify the building to render it suitable for a restaurant, and to equip and supply the restaurant. At that time they went to live in the house which the petitioner's mother had given to her and her brother, which has since been sold.
- [7] The respondent supervised and worked on the construction of the restaurant, and operated it, with the active support, financial and otherwise,

of the petitioner, who kept the accounts as well as working in all necessary and appropriate capacities after her regular work day at the bank.

- [8] By 1989, these two jobs became too burdensome for the petitioner, and she resigned from the bank and came to work at the restaurant exclusively. The hard work, diligence and cooperative spirit of the petitioner and respondent resulted in success for the restaurant, and they were able to service their loans from the operation of the restaurant. It is evident from respondent's exhibit "O.B.1" that by 31 December 1991 the restaurant had total assets valued at \$319,325.00, with outstanding business loans of \$107,752.00 and proprietors' equity valued at \$203,928.00. The payables and bank overdraft were insignificant.
- [9] By late 1991 unhappy differences had arisen between the petitioner and the respondent, and they separated, the principal cause appearing to be the determination of the respondent to biologically father a child. The petitioner was unable to bear children, and the respondent undertook an adulterous relationship which eventually resulted in the birth of a child. By the end of 1991 the petitioner had left the matrimonial home and the marriage effectively came to an end. Nevertheless, the respondent continued to operate the restaurant, but rendered no accounts to and shared no benefits from that operation with the petitioner.
- [10] For some unexplained reason, the respondent has now rendered, by the said exhibit "O.B.1", financial statements of the operation of the restaurant only for the years 1991 and 1997, with no information being provided concerning the intervening years. Nevertheless the accounts provided do demonstrate that in that period the business loans of \$107,752.00 had been substantially liquidated but for \$16,435.00, the payables were up from \$400.00 to \$5,755.00 and the bank overdraft had moved from \$7,245.00 to \$19,324.00. In addition there was a bank loan from CBC in the sum of \$20,625.00, but the proprietor's equity stood at \$374,303.00, up from \$203, 928.00 at the end of 1991. The business had evidently not been a losing proposition as the respondent claimed.

- [11] I find as a fact, and I so rule, that the entire legal estate and beneficial interest in the land at Port Elizabeth on which the Restaurant is located, is vested in the petitioner, her aunt's life interest having come to an end by her death earlier this year, by virtue of the deed under which she holds title. As to the restaurant built thereon, I find as a fact, and so hold, that the petitioner and the respondent are entitled beneficially in equal shares to the building and its contents, the business of the restaurant being, in reality, a partnership between them. The petitioner is also entitled to an accounting by the respondent for the profits and assets of the said business.
- [12] After the petitioner left the matrimonial home, leaving the restaurant under the sole control of the respondent, the respondent borrowed money from the Caribbean Banking Corporation to enable him to purchase the property at La Pompe. He borrowed \$120,000.00, of which some \$100,000.00 was spent to purchase and improve the house, and the balance on unspecified purposes. It is the evidence of the respondent that this property is rented regularly, and realises a rental of between \$450.00 US and \$850.00 per week depending on the number of persons occupying the property at any given time. I accept that the income from this property is adequate to service the loan obtained to purchase it.
- [13] There is no evidence connecting the purchase of this property with the restaurant property or other matrimonial property, and while I have no doubt that it was the solid financial foundation enjoyed by the respondent as a result of the joint venture restaurant located on the petitioner's land and built up by the joint effort of the petitioner and the respondent that enabled the respondent to access financing to purchase this valuable and highly profitable property, the petitioner cannot be regarded as having any proprietary interest or entitlement to share in this property.
- [14] The petitioner has lived in Grenada for the past ten years, and is employed there. In the same period the respondent has lived in Bequia on the Port Elizabeth property, where he continues to operate the restaurant. He has in his possession certain personal property of the petitioner, of perhaps limited

commercial value but of considerable sentimental value to the petitioner, which property he must return or compensate her for.

- [15] I have carefully considered the written and oral submissions of learned Counsel on both sides, and the authorities on which reliance has been placed.
- [16] Notwithstanding my finding that the respondent is liable to account to the petitioner in respect of the restaurant business, I consider that the circumstances of this case are such that a clean break is desirable, and I refrain from making an order for accounts. Instead, I endeavour by means of the property adjustment order, to take account of all entitlements and to sever connections between the parties once for all. In this regard I have also taken into account the fact that in the past ten years the petitioner has made no direct contribution to the development of the restaurant business, although the real property on which it is located is hers solely, and her equity in the business otherwise is considerable.
- [17] It is ordered that the property at Belmont, Bequia, which was given as a gift to the petitioner and the respondent by the petitioner's mother, be transferred to and vested exclusively in the name of the petitioner, for her sole use and benefit.
- [18] It is further ordered that the La Petit Jardin Restaurant property, including land, building and equipment be separately valued by an independent valuer appointed by agreement between the parties, and failing agreement within seven days, by the court, and that the respondent pay to the petitioner the value of the land and one half the value of the building and equipment, and that upon payment to the petitioner of the said sums found to be due, the legal estate in the land at Port Elizabeth is to be conveyed to the respondent absolutely.
- [19] Until payment, the respondent must pay to the petitioner for the use and occupation of the premises and the said equipment a sum which is equal to ten per centum (10%) of the amount ordered to be paid or of the balance of

such amount, calculated on an annual basis, and apportioned in respect of any part of a year, from the date of judgment until payment is made.

- [20] Should the respondent fail to make payment of the amount due in respect of the Port Elizabeth property and the equipment associated therewith within six months of judgment, the petitioner shall be entitled, upon paying to the respondent one half the value of the buildings and equipment, and repaying any amounts paid in respect thereof under this order, save and except any amounts paid or due in respect of use and occupation, to take possession of the said property for her sole use and benefit.
- [21] It is further ordered that the respondent forthwith deliver to the petitioner the items of her personal property presently at the Port Elizabeth property, with liberty being granted to the petitioner to apply, upon proof that specific items were not delivered, having been left in the said premises, for an order for compensation in respect thereof.
- [22] It is declared that the property at La Pompe shall remain the property of the respondent exclusively.
- [23] The respondent is ordered to pay the costs of these proceedings, including the costs incurred in the valuation of the properties.



Brian G.K. Alleyne
High Court Judge