



[2021] JMSC Civ 61

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN CIVIL DIVISION

CLAIM NO. 2015HCV05959

**IN THE MATTER OF AN APPLICATION PURSUANT
TO THE PROPERTY RIGHTS OF SPOUSES ACT
2004 FOR THE DECLARATION OF PROPERTY
INTEREST.**

BETWEEN	LILLIAN BERNICE BECKFORD	CLAIMANT/APPLICANT
AND	LEONARD BECKFORD	DEFENDANT/RESPONDENT

TRIAL IN CHAMBERS

Mr. Ravil Golding, Attorney-at-Law, Instructed by Lyn-Cooke & Golding, Attorney-at-Law,
for the Claimant.

Mr. George E. Clue, Attorney-at-Law, for the Defendant.

HEARD: 17 July 2017, 24 July 2017, 30 June 2021.

**CLAIM FOR ENTITLEMENT IN PROPERTY – PROPERTY (RIGHTS OF SPOUSES) ACT– SECTIONS 2,
6, 7, 10, 12, 13 AND 14 – FAMILY HOME – EQUAL SHARE RULE – DISPLACEMENT/VARYING OF
THE EQUAL SHARE RULE**

STAMP J.

[1] This judgment was not delivered in a timely manner for several reasons including the mislaying of a notebook. I deeply regret the delay and any undue inconvenience caused to the parties. My sincere apologies to them.

THE CLAIM

[2] The claimant and defendant were married on 8 September 2010 and divorced on 15 December 2014 when a decree absolute was granted. At the time of the marriage the claimant was a housekeeper aged 50 years and the defendant was a 71 year old retiree who had returned to Jamaica having lived and spent his working life in England. By Fixed Date Claim Form filed 11 December 2015 the claimant seeks declarations that the house where they resided as husband and wife at Twin Palms Estate in the parish of Clarendon is the family home of the parties, pursuant to section 2(1) of the *Property (Rights of Spouses) Act ('PROSA')* and that both parties are beneficially entitled in equal shares to the property, pursuant to section 6(1) of *PROSA*. She also seeks ancillary orders to give effect to her claim.

[3] At the hearing of the matter the parties relied on the evidence contained in their affidavits filed in the matter and parties were cross examined. No witnesses were called in support of their respective claims.

THE CLAIMANT'S CASE

[4] The claimant averred that she met the defendant in late 2006. They were both divorcees. She was employed as a housekeeper to a family in the Twin Palms Estate community in Clarendon where the defendant lived. The relationship between the parties became intimate and he encouraged her to leave her job and move in with him at his home in Twin Palms Estate of which he was the sole registered proprietor. She eventually quit her job and moved in with him around January 2007 and they were married in 2010. She said that during that period she managed his household and they cohabited like man and wife.

- [5] According to her, after the marriage the defendant became dangerously and violently jealous and verbally, emotionally and physically abusive and the marriage broke down in 2012 although she continued to reside at the house. She said that in January 2013 there was a physical confrontation which resulted in both of them being charged for criminal offences but the charges were dropped after mediation. The defendant instituted a civil case against her for his injuries but this was later withdrawn. She remained living at the house and eventually the defendant petitioned for divorce and the decree absolute was granted on 15 December 2014.
- [6] She said that in January 2015 the defendant served her with a Notice to Quit the property. On 10 March 2015, the defendant had changed the locks and refused her entrance to the property and a few days later she was able to retrieve some clothes with the assistance of the police. She left the property on the same day after being threatened by the defendant, leaving behind items of furniture belonging to her.
- [7] She also claimed that she expended approximately Five Hundred Thousand Dollars (\$500,000.00) in renovating and refurbishing the property. A total of five receipts from a hardware store were tendered in support: 4 September 2007 for \$207.00, 13 September 2007 for \$25,080.00, 20 September 2007 for \$9,520.00, 22 September 2007 for \$14,731.21 and 8 October 2007 for 11,270.00.
- [8] In cross-examination the claimant rejected the suggestion that the marriage lasted for only about 6 months. She said that they cohabited up to October 2012 when the defendant moved out of the bedroom but in December she was still cooking and cleaning for him. The marriage finally broke down on 6 January 2013 when they had a fight. She denied that after they met and until the marriage she worked and was paid as the defendant's domestic helper. She maintained that she moved in with him in January 2007 because they were having an intimate relationship. She said that she went with the defendant to his brother in Saint Mary to collect a set of keys for the house which he gave to her. She denied that she was given the keys so that she could keep an eye on the house while the defendant went to

England in 2007 and that while he was away she moved into the house with her adult daughter. She said that the abuse started in October 2011 when he brought his sister to live in the house. She said they both abused each other on one occasion when he chopped her on her hand with a machete and she threw hot tea on him. On one occasion he kicked her and on another he bit her.

THE DEFENDANT'S CASE

[9] In his affidavit the defendant said that following on one of his neighbour's recommendation, he employed the claimant to work as a domestic day worker on Mondays and she worked elsewhere on other days. He said that she offered to cook his Sunday dinner and he accepted and from there they became intimate. He denied encouraging and begging the claimant to leave her job and move in with him. He said that in 2007 when things began to get too serious between them he left Jamaica and returned to England for a while. His brother would normally take care of the property in his absence but was unable to do so on this occasion due to ill health and so the claimant was given a key to the property and was asked to oversee the property, and to call his brother if any problems arose. She was paid for this. He averred further that after a hurricane struck Jamaica, he telephoned from England and the claimant advised him of damage to the roof and ceiling. He asked his brother to go and take a look at the property and it was then he discovered that the claimant and her adult daughter had moved into the property without his knowledge and permission. She continued to live there but they did not share intimacies until the marriage.

[10] He said that after the marriage it was the claimant who became physically and verbally abusive and that he was never physically abusive to her. He declared that she told him that there was nothing he could do to get her out of the house and that half of it belonged to her. According to him, after the marriage she never did any of the duties of a wife. The marriage broke down within 6 months but he was advised by his attorney-at-law that he would have to wait a minimum of two years before he could file for divorce. The divorce Petition was tendered into evidence

bearing the date filed of 18 February 2013 and according to him the breakdown was more than two years before the filing. Apart from the filing date of the Petition the Court, for reasons set out below, will not treat the statements made in the Petition as bearing any evidential or probative value.

- [11] He said that he never inflicted any wound on her and that in 2013 the claimant threw boiling hot water on him and exhibited a medical report in relation to the injuries sustained. He accepted that there were criminal proceedings against each party and he instituted civil proceedings and these were later withdrawn and discontinued.
- [12] The defendant denied that the claimant used her personal finances to undertake renovation and refurbishing of the property.
- [13] In his testimony before the court the defendant said that he was a returning resident of Jamaica having worked in England as an electrician from 1962 until his retirement in 2004. He said he purchased the property in 1991 and constructed the house on it which was completed in 2004. In cross examination he said that he left to England on 21 June 2007 and returned to Jamaica on 21 November 2007. He said that before he went to England they were in an intimate relationship and when he returned she was living in his house. He asked her to leave and she said she would not. However, her daughter did leave. They did not have sexual relations from the time he returned until they got married. She was his domestic helper until they got married and was paid \$20,000.00 per month. He said he did not get married to her in 2010 because of love or for sexual reasons. She asked him to marry her, he told her he would not, and the reason he later complied, he said, was because she pressured him by means of what he termed as 'blackmail'. After he told her that he would not marry her, when he was visited by other members of his church, she threatened him that she would tell them that she was his helper by day and his mistress by night and also that she would tell them that if he fired her.

SUBMISSIONS

[14] The gravamen of the submissions of both parties related to the effect of sections 2, 6, 7, 13, and 14 of **PROSA** on the facts that each party urged be accepted as true. As indicated earlier, the defendant agreed during the proceedings and without prejudice to his case to permit the claimant to retrieve the items of furniture which she claims. Thus the remaining issue is whether the claimant is entitled to an interest in the property of which the defendant is the sole registered proprietor.

Claimant's submission

[15] Counsel submitted that although the property is in the sole name of the defendant and the claimant cannot prove direct contribution to the purchase price or to the other expenses involved in acquiring the property, claimant has established that she is entitled to the half interest claimed. He argued that the claimant had suffered detriment and the acts she performed were unequivocally related to her being the spouse of the defendant. She had abandoned two jobs when at the invitation of the defendant she moved in with him and became his housekeeper.

[16] Counsel argued that the claimant in reality was the wife of the defendant for eight years, ie, from the commencement of cohabitation in 2007 to the decree absolute in 2014. During this time, she performed all household duties and expended money to enhance the property. He submitted that the equal share rule should apply to the family home and relied on authorities including the Jamaica Court of Appeal case of **Stewart v Stewart [2013] JMCA Civ 47** where it was held that **PROSA** had eliminated financial contribution as being a dominant factor in determining whether the statutory rule of equal entitlement to the family home should be displaced.

Defendant's submission

[17] Counsel for the defendant argued that prior to the marriage the defendant was the sole owner of the property and placed strong reliance on section 7 of **PROSA** in

support of his contention that the application of the equal share would be unreasonable and unjust and should be varied.

- [18] Counsel submitted that the Court ought to find on the evidence that the marriage broke down within six (6) months. This he argued is supported by statements in the Petition which was tendered into evidence to show that the date of separation was in or around March 2011 and the Court should look at the date of separation to determine the length of the marriage and not when the divorce was finalized. I must point out now that the prior statements made by the defendant in the Petition offends the rule that a witness' previous narrative cannot be used to support his testimony in the trial. In addition, it was an uncontested divorce and there are no admissions by the claimant to the assertions made in the Petition. The statements made by the defendant in the Petition are of no evidentiary value.
- [19] Counsel further argued that even if the court were to accept the claimant's standpoint that the date of separation was 6 January 2013, it should nonetheless be considered a short marriage. He relied on *Brown v Brown* [2010] JMCA Civ 12 for this proposition.
- [20] Counsel also urged the court not to accept the evidence of the claimant that within a year into the relationship she expended monies on the property which was not hers. He argued that the receipts for materials purchased in September and October 2007 that were tendered in evidence should not be accepted as they are in the name of a Ms Gowe.
- [21] Counsel also argued that the claimants position that there was spousal cohabitation prior to the marriage should not be accepted and the court should find that the claimant became the wife and spouse from the date of the marriage and so the court's consideration is confined to the period after the marriage.

THE RELEVANT LAW

- [22] Section 2 of *PROSA* defines the "family home" as follows:

*“[t]he dwelling house that is **wholly owned by either or both** of the spouses and used habitually or from time to time by the spouses as the only or principal family residence together with any land, buildings or improvements appurtenant to such dwelling house and used mainly for the purposes of the household but shall not include such a dwelling house which is a gift to one spouse by a donor who intended that spouse alone to benefit....”* (Emphasis supplied)

[23] There is no real contest that the property was the family home as envisaged by the section 2 of **PROSA**. It was a dwelling house wholly owned by the defendant which was used by the parties as the only family residence during the marriage. The real issue is whether in the circumstances of this case, the equal share rule provided in section 6 would, pursuant to section 7, be unreasonable or unjust so as to warrant a variation.

[24] Where the property is deemed to be the family home then sections 6 and 7 come into operation. The sections provide:

“6. -(1) Subject to subsection (2) of this section and sections 7 and 10, each spouse shall be entitled to one-half share of the family home

(a) on the grant of a decree of dissolution of a marriage or the termination of cohabitation;

(b) on the grant of a decree of nullity of marriage;

(c) where a husband and wife have separated and there is no likelihood of reconciliation.

(2) Except where the family home is held by the spouses as joint tenants, on the termination of the marriage or cohabitation.”

7.- (1) Where in the circumstances of any particular case the Court is of the opinion that it would be unreasonable or unjust for each spouse to be entitled to one-half the family home, the Court may, upon application by an

interested party, make such order as it thinks reasonable taking into consideration such factors as the Court thinks relevant including the following-

(a) that the family home was inherited by one spouse;

(b) that the family home was already owned by one spouse at the time of the marriage or the beginning of cohabitation;

(c) that the marriage is of short duration.

(2) In subsection (1) 'interested party' means –

(a) a spouse;

(b) a relevant child; or

(c) any other person with whom the Court is satisfied has sufficient interest in the matter.”

[25] So section 6 of **PROSA** prescribes an equal share rule in respect to the family home. However, by virtue of section 7 the court may vary that equal share rule in appropriate circumstances. There are now many Jamaican authorities which provide guidance on how to treat and apply these provisions. For present purposes I think it is necessary to summarise the relevant principles gleaned from just a few of them.

[26] In **Graham v Graham Claim No. 2006 HCV 03156 (delivered 8th April, 2008)**. McDonald-Bishop J (as she then was) laid down that the equal share rule must be taken as the general rule and should only be departed from where the court deems it unjust or unconscionable. A strict application of the equal share rule should apply in respect to the family home even where the contributions of the parties has been unequal. See **Annette Brown v Orphiel Brown [2010] JMCA Civ 12**.

[27] There is an evidential burden on a party who pursuant to section 7 seeks a variation of the general rule.

[28] In **Stewart (Carol) v Stewart (Lauriston)** [2013] JMCA Civ 47 Brooks JA, after a close analysis of the authorities, set out several practicable guidelines for the adjudication of matters involving the application of sections 6 and 7:

“[25] Section 6 of the Act creates the rule that each spouse is entitled to one-half of the beneficial interest in the family home, despite the manner in which the legal interest is held. Neither section 6(2), which deals with the death of a joint tenant, nor section 10, which deals with agreements between the parties, is relevant to this analysis. It is important to note, however, that the rule of equality created by section 6(1) may be displaced.

[26] Section 7(1) explains the method by which the statutory rule may be displaced. It authorises the court to vary the equal share rule at the request of a party wishing to dispute the application of that rule.”

“[31] ...if the door is opened, by the existence of a section 7 factor, for the consideration of the displacement of the statutory rule, then very cogent evidence would be required to satisfy the court that the rule should be displaced.”

“[32] Another aspect of section 7, which requires closer examination, is the question of the other factors that the court may consider in deciding whether the statutory rule has been displaced. It must first be noted that the three factors listed in section 7(1) are conjunctive, that is, any one of them, if shown to exist, may allow the court to depart from the equal share rule. Secondly, there does not seem to be a common theme in those three factors by which it could be said that only factors along that theme may be considered.

[33] It is true that the first two factors, (a) and (b) mentioned in section 7(1), contain the common element that there was no initial contribution from one

of the spouses to the acquisition of the family home. The third factor, (c), does not, however, include such an element. It is conceivable that, despite the marriage being a short one, there may have been active participation in, and contribution to, the acquisition of the matrimonial home by both spouses.

[34] The third point to be noted is that the existence of one of those factors listed in section 7 does not lead automatically to the entire interest being allocated to one or other of the spouses. What may be gleaned from the section is that each of these three factors provides a gateway whereby the court may consider other elements of the relationship between the spouses in order to decide whether to adjust the equal share rule. It is at the stage of assessing one or other of those factors, but not otherwise, that matters such as the level of contribution by each party to the matrimonial home, their respective ages, behaviour, and other property holdings become relevant for consideration. For instance, the family home may have been inherited by one spouse, but the other may have, by agreement with the inheriting spouse, solely made a substantial improvement to it at significant cost. In such a case the court would be unlikely, without more, to award the entire interest to the spouse who had inherited the premises.

[35] The proposition that matters such as contribution may only be considered if a section 7 gateway is opened may, perhaps, be an unconventional view. It is, however, based on a comparison of sections 7 and 14 of the Act. Whereas, by section 14, the legislature specifically allows the consideration of financial and other contributions in considering the allocation of interests in property, other than the matrimonial home, such a factor is conspicuously absent from section 7. Similarly, what may, inelegantly be called, a “catch-all” clause, placed in section 14(2)(e), to allow consideration of “other fact[s] and circumstance[s]”, is also absent from section 7. From these absences it may fairly be said that the legislature did not intend for the consideration of the family home to become embroiled

in squabbles over the issues of contribution and other general “facts and circumstances”, which would be relevant in considering “other property”.

“[76] In order to displace the statutory rule for equal interests in the family home, the court must be satisfied that a factor, as listed in section 7 of the Act, or a similar factor, exists. Contribution to the acquisition or maintenance of the family home, by itself, is not such a factor, it not having been included in section 7. This is in contrast to its inclusion, as a relevant factor, in section 14, which deals with property other than the family home.

[77] If the court is satisfied that a section 7 factor exists, it may then consider matters such as contribution and other circumstances in order to determine whether it would be unreasonable or unjust to apply the statutory rule. The degree of cogency of that evidence is greater than that required for other property. In considering whether the equality rule has been displaced, the court considering the application should not give greater weight to financial contribution to the marriage and the property, than to non-financial contribution.”

[78] The court should also bear in mind that the interests in the family home are fixed, in the case where the parties have separated, at the date of separation. Post-separation contributions cannot disturb the entitlement at separation.

[29] To this I may add that it is well known in the law that spouses may be separated and cohabitation terminated even though they reside under one roof.

[30] I have sought to apply these principles to that I find proven.

FINDINGS AND ANALYSIS

[31] In the instant case there was not much documentation to assist in weighing the very divergent evidence of the parties and making factual findings. However, it is not challenged that the defendant, the sole legal registered owner of the property,

owned the property from 1991, nineteen years before the marriage, and construction of his house was completed in 2004. This was also several years before he met and later married the claimant. Thus the section 7 (1) (b) factor (that the family home was already owned by one spouse at the time of the marriage or the beginning of cohabitation) has been established and this opens the door for the consideration of the displacement of the statutory rule of equality.

[32] Regarding the duration of the marriage the claimant says that it lasted from September 2010 to October 2013. The defendant says it broke down within months but that the Petition for divorce was filed after two years on the advice of his attorney-at-law. I reiterate that the statements made by the defendant in the Petition are of no evidential value on this issue. However, I did not find the claimant very credible on this issue. Her evidence on her affidavit was that after the marriage in September 2010 the defendant became dangerously and violently jealous. In cross-examination she said he would curse and threatened her with a machete and that he kicked her once in 2011. According to her the physical and verbal abuse started in October 2011 when he brought his sister to live in the house telling her that his lawyer told him to bring her in 'and if I say anything he will have a case against me that I am violent'. She said he visited England in 2012 and left the stove lit so that she would not have any gas after he left. I am aware that some marriages have their ups and downs and a marriage may subsist over long periods even where one or both of the parties are abusive but this claimant did not present as someone who was docile. While I am not now adjudicating the issue of abuse and violence between the parties, I did form the impression from observing the demeanour of the parties that the claimant could be the abusive or more abusive partner and I do not accept her evidence of the defendant's alleged physical violence towards her although it is clear that he was verbally abusive. There is medical evidence of first degree burns to his left forearm, left hand and left side of face. She admitted that she inflicted those injuries but said that she did so after he chopped her. There is no independent evidence of the alleged chopping which the defendant denies. That being said, the important thing is that much of the claimant's evidence supports the conclusion that the marriage broke down within

six months to a year. By then it is clear that the defendant was trying to get her out of the house but she refused and remained. For example, her evidence regarding the defendant bringing his sister into the house shows that this was his intention from in 2011.

[33] In cross-examination the claimant also appeared uncertain regarding the time when the marriage broke down. At one stage she said it broke down in October 2012 and at another she said that it was January 6 2013. I found the defendant more consistent and credible on this issue. I find on a balance of probabilities that the marriage broke down quite early, in 2011, within a year of its celebration although they continued to live under the same roof for some time afterwards. The marriage was therefore of short duration. Thus a second section 7 factor exists.

[34] I did not find that either party told the whole truth regarding the living arrangements between 2007 when the claimant moved into the house and the celebration of the marriage in 2010. The defendant says that in that period there were no sexual or intimate relations, she was there as his live-in helper and he paid her a monthly salary. On behalf of the claimant it was submitted that although they were married in 2010 she should be treated as the defendant's spouse from 2007 as she lived there as the defendant's spouse in the sense described in section 2 of PROSA, ie, cohabited with him as if she were in law his wife. She managed the household and they shared intimate relations. I do not find the defendant truthful in saying that there were no sexual relations. If that were so one wonders how, on his evidence, he could have been blackmailed because of his fear of exposure to fellow church members that the claimant was his housekeeper by day and mistress by night. I find that the parties were sharing intimacies during that period.

[35] So I accept the claimant's evidence that, prior to the marriage between 2007 to 2010, while the claimant lived at the house there was a sexual relationship and she did the housekeeping. However, I do find that for most of that period she was paid for the work of housekeeping. Apart from the sexual relations, there is no other evidence demonstrating that they cohabited as if she were in law his wife –

no shared dealings, activity or concerns, no joint interests financial or otherwise, nothing to indicate a spousal partnership. And the fact that she was paid for housekeeping is significant in my view. I find that initially the defendant moved the claimant into his house for the convenience of having sexual favours from his housekeeper. He used his superior financial and residential position to entice her. They were not cohabiting as spouses during the greater part of this period but only at the latter part near to when they agreed to marry. I also find that the claimant chose to move into the defendant's house also for convenience. I do not accept her evidence that she, with the experience of life of a 50 year old divorcee, quit two good jobs and lost her independence to move in with the defendant in January 2007 when she had only met him in late 2006. She did quit the jobs but I find that this was much later, close to the marriage in 2010, and so she did not suffer significant pecuniary disadvantage by moving into the defendant's house.

- [36]** The claimant said she spent significant sums on renovations to the house and provided receipts for September and October 2007. It was posited that these receipts should be rejected because the purchaser's name is recorded as Miss Gowe. However, I noticed that the claimant's maiden name as disclosed in the marriage certificate is Lilian Bernice Gowe and that disposes of that argument. It is an indisputable and notorious fact that hurricane Dean moved across Jamaica in mid August 2007. At that time the defendant was in England. He said he telephoned and spoke to the claimant about the damage to the house. He also said that while in England from July to November 2007 he sent money to the claimant through a person he knew and also through Jamaica National Building Society but he does not say that he sent her money for hurricane damage repairs. In fact, he said it is not true she paid for any work done in Sept 2007. I find however that expenses that the claimant said she incurred in repairs to the house in September 2007 are minimal totalling approximately \$61,000.00.
- [37]** There are no later or other receipts tendered by the claimant. It is not my view that in order to prove payment of expenses one necessarily must provide a receipt. However, one would expect that if receipts were saved from as far back as 2007

then if there were later expenditures these receipts would also be available There is no good explanation for their absence. She said that the respondent destroyed the rest of the receipts but that begs the question of how or why was he able to destroy some and not all of the receipts. I do not accept that explanation. In addition and more importantly, apart from saying 'I spent approximately \$500,000.00 renovating and refurbishing the said premises' the claimant does not give any further evidence detailing the work done and correlating the work to the expenses incurred. I do not find that the claimant contributed in any significant way to maintaining, renovating or refurbishing the property.

Should the equality rule be displaced?

[38] By way of brief summary, on my factual findings, this case relates to claimant aged within the normal working range and an elderly retired returning resident. They met in late 2006, had an intimate relationship, and in around January 2007 she moved in to live with him in his house. He had owned the house for many years before they met. It is his retirement home. The claimant did not contribute at all to the acquisition of, or in any significant way to the maintenance of, the property.

[39] She was paid her salary as a domestic helper but they engaged in sexual relations. They did not cohabit as spouses while they lived together in this way except for a period shortly before their marriage in September 2010. This pre-marital cohabitation was therefore of very short duration, a matter of months, and so was the marriage which broke down within six months to a year. At the time of the breakdown the claimant was about fifty-one years old and the defendant was about seventy-two years old. The defendant by then was well beyond normal working age. Although at some point prior to the marriage the claimant did quit her housekeeping jobs with other employers, this condition of unemployment lasted for a very short period of time, no more than a year or two, before the breakdown of the marriage and for the most part during her residence at the house prior to the marriage she was paid by the defendant. She made no significant sacrifice or sustained any significant loss during this time but she benefited from the residential

arrangement prior to the marriage and, after the breakdown of the marriage in 2011, she refused to leave the house and remained resident there until 2015. She is a dressmaker by trade and housekeeper who was employable at the time of the breakdown.

[40] As I held before, the property in issue was the family home for a short duration of time before the breakdown of the marriage. However, because of the existence of the two section 7 factors - the defendant owned the property before the marriage and the marriage was of very short duration - the court has considered whether the equal share rule in section 6 of **PROSA** should be varied. In all the circumstances of this case I hold that it would be unreasonable and unjust to apply the equality rule of section 6 and further hold that the justice of this case requires that the entire interest in the property be awarded to the defendant.

ORDERS

[41] Judgment is entered for the defendant.

[42] The parties are to bear their own costs.

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Hon. C. Stamp