

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN FAMILY DIVISION
CLAIM NO. E. 1997 – B 149

BETWEEN VINCENT BROMFIELD PETITIONER
AND EUTETRA LOUISE BROMFIELD RESPONDENT

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN EQUITY
CLAIM NO. 1998 – E 189

BETWEEN EUTETRA BROMFIELD CLAIMANT
AND VINCENT BROMFIELD DEFENDANT

Mr. Raphael Codlin and Ms. Melissa Cunningham instructed by Raphael
Codlin and Co. for Mrs. Eutetra Bromfield

Mr. Lawton Heywood for Mr. Vincent Bromfield

9th, 11th, 22nd December 2008 and 6th January 2009

BROOKS, J.

The marriage union between Mrs. Eutetra Bromfield and Mr. Vincent Bromfield was dissolved by divorce in 1998. Mrs. Bromfield has however brought these consolidated claims, firstly, to have the court declare that she is entitled to an interest in property acquired while they were married and secondly, to increase the monthly maintenance payments which this court had ordered Mr. Bromfield to make to her.

According to Mrs. Bromfield, the property, namely several parcels of real estate and two limited liability companies, was acquired through the

joint efforts of the couple. As a result, says Mrs. Bromfield, she should be awarded a share of each of them.

The condition, in which Mrs. Bromfield describes herself as living, seems to be indicative of a significantly lower standard than that to which she was accustomed, during the marriage. She requires that situation to be remedied.

Mr. Bromfield on the other hand contends that Mrs. Bromfield did not contribute in the way she says that she did. On his account, Mrs. Bromfield and he had such a poor relationship that they operated in totally different orbits and that he secured the, now disputed, assets for his sole benefit.

Mr. Bromfield had filed an application to discharge the order for maintenance. During the course of the hearing before me that application was withdrawn.

The issues to be decided turn mainly on the credibility of the parties. Although neither party was particularly impressive in cross-examination, Mrs. Bromfield was less credible than Mr. Bromfield. There were glaring instances, on both sides, where answers to questions, were not candidly made. Some of the questions did, however, relate to events which occurred many years ago and therefore it is not unexpected that memories would have faded and the answers to the questions thereby affected. The court will have

to sift, from the evidence of each party, what is probable and credible, remembering always that the onus of proof rests on Mrs. Bromfield.

The Married Women's Property Act Claim

Although the Property (Rights of Spouses) Act was brought into effect on April 1, 2006, this claim was filed prior to that date and is therefore not affected by that Act. The Married Women's Property Act is therefore the relevant legislation to be used as the background for assessing the claim.

There are a number of parcels of real estate involved:

1. 55 Hope Road, in the parish of Saint Andrew. The registered proprietor is Bloomfield Jamaica Ltd.
2. 86 Lady Musgrave Road, and 53 Hope Road, in the parish of Saint Andrew, which together house Medallion Hall Hotel. The registered proprietor of No. 86 is Glen Vincent Bromfield, while the registered proprietors of No. 53 are Glen Vincent Bromfield and Elaine Bromfield. Mr. Bromfield is one and the same person as Glen Vincent Bromfield and Glen Bromfield;
3. Townhouse No. 4, 1 Waterworks Road, in the parish of Saint Andrew. The registered proprietors are Glen Bromfield for

the duration of his life and thereafter to his son David Bromfield;

4. 5 Chaves Avenue, in the parish of Saint Andrew. The registered proprietor is Glen Vincent Bromfield.
5. 3 Pinkneys Green, in the parish of Saint Andrew. The registered proprietors are Glen Vincent Bromfield, as to a 4/5th interest and Glen Vincent Bromfield, Eutetra Bromfield, Debbie-Ann Bromfield, Nicole-Ann Bromfield and Glenna Bromfield as joint tenants, for the remainder;
6. 2 Halls Crescent, in the parish of Saint Andrew. The registered proprietors are Glen Vincent Bromfield and Dulcie Bromfield.

The properties are considered individually below:

No. 55 Hope Road

Mrs. Bromfield's evidence, concerning proof of the source of funds for purchasing the majority of the disputed properties, was generally speaking, sparse. The property at No. 55 Hope Road is an example of this and it may be quickly disposed of. It is owned by Bloomfield Jamaica Ltd.

Her evidence, at paragraph 28 of her affidavit sworn to on 5th April 1998, is that the purchase money for that property came from the sale of

another property owned by Bloomfield Jamaica Ltd. The latter property was at Bradley Avenue. She also deposed at paragraph 36 of her affidavit sworn to on 21st May, 2008, that she was entitled to a part of the proceeds of the sale of the Bradley Avenue property. Based on her evidence, however, this property is entirely a company asset. It would be improper for this court to award her any interest in 55 Hope Road.

86 Lady Musgrave Road and 53 Hope Road

These two properties may be conveniently considered together because of their connection with Medallion Hall Hotel. Mrs. Bromfield asserted that both were purchased from the entire proceeds of sale of a house at Anthurium Drive. In cross-examination she gave the impression that the properties were purchased together and that the proceeds from Anthurium Drive provided the deposit. The certificates of title show, however, that 53 Hope Road was acquired a year after No. 86 Lady Musgrave Road.

Mr. Bromfield acknowledges that the house at Anthurium Drive was in the joint names of both parties. He deposed, however, that he handed over 50% of the proceeds of sale to Mrs. Bromfield. According to Mr. Bromfield, he alone purchased No. 86 Lady Musgrave Road. He did not state the source of the funds used to purchase that property. He deposed that he and his daughter together purchased No. 53 Hope Road. The sources of

the purchase money, he stated, were his daughter and his earnings from the transportation business. Mr. Bromfield deposed that he sold premises 84 Lady Musgrave Road, which he had earlier acquired, and used the proceeds toward refurbishing the combined premises.

It is not without significance that Mrs. Bromfield purchased a property in her sole name within two months of the acquisition of No. 53 Hope Road. This was a property at Farrington Drive in Saint Andrew. It could be an indication that her interest and finances were directed at that property, rather than at the acquisition of No. 53. Although there was no independent evidence to directly support either version of the events, I prefer Mr. Bromfield's as being more probable and credible. He provided more detail than did Mrs. Bromfield and presented a more credible demeanour in cross-examination in this regard.

Townhouse No. 4, 1 Waterworks Road

Townhouse No. 4 is Mr. Bromfield's home. He moved there some time after vacating the matrimonial home. Mrs. Bromfield deposed that he used the profits from both companies to purchase the townhouse. In cross examination she said, "I made a contribution to the acquisition of the property". Again, no documentation was provided to support that evidence.

Mrs. Bromfield also said in cross-examination that Mr. Bromfield told her that he had purchased the property from the businesses.

Mr. Bromfield testified in cross examination that he purchased that property with a loan. In respect of his income to satisfy his loan obligations he said, "I work in the business and I receive a salary". In addition to the fact that the endorsement on the certificate of title for the property supports the aspect concerning the loan, I find Mr. Bromfield's explanation more credible and probable. I have already indicated that if company funds were used to purchase the property then the benefit would accrue to the company and not to Mrs. Bromfield.

5 Chaves Avenue

A similar comment is relevant to Mrs. Bromfield's description, in her affidavit, of the acquisition of premises at 5 Chaves Avenue. Her terse statement in respect of these premises is that they were "bought from the Company's funds in the name of [Mr. Bromfield]". In cross-examination, however, she testified that the property was purchased from "pooled funds from the bank account". This was an account which she said was held in the parties' joint names at the Bank of Nova Scotia.

Mr. Bromfield, on the other hand, stated that the purchase was financed by a mortgage loan. His statement of the purchase price was

inaccurate but the certificate of title for the property does show that a mortgage was registered two months after the transfer of the title to him.

As in the other cases, I am more impressed with Mr. Bromfield's testimony. It was more credible than Mrs. Bromfield's, who, it would have been noticed, gave inconsistent accounts as to the financing of the purchase.

3 Pinkneys Green

3 Pinkneys Green is the former matrimonial home. It was originally acquired by Mr. Bromfield in his sole name. He subsequently transferred a one-fifth interest to Mrs. Bromfield, their children and himself.

In this instance, Mrs. Bromfield maintains that she signed the agreement for the original purchase of this property. Indeed, she testified in cross-examination that she also signed a mortgage document in respect of the property. Based on her account, it could only have been by some subterfuge that Mr. Bromfield became the sole registered proprietor. I do not accept her account as credible. Mrs. Bromfield's level of education (she is the holder of two Masters degrees) and business exposure, belie the level of naiveté which she attributes to herself in respect of this transaction.

Apart from that aspect, Mrs. Bromfield was unclear as to the source of funding for the purchase. She stated in cross-examination that the monies came from joint accounts but she was not convincing in respect of the

identity of the banks and the respective branches. Although she couldn't initially recall the source of the funds in the accounts, she stated that they had sold a property in Harbour View. That property would probably have been Mr. Bromfield's house at Lagoon Avenue, acquired before the marriage, as it is the only Harbour View property mentioned in the evidence.

Mr. Bromfield's account is more credible. He deposed that shortly before purchasing Pinkneys Green, they had looked at another property. He said that based on the behaviour of Mrs. Bromfield in respect of that property, he resolved to purchase Pinkneys Green on his own and in fact did so. Mrs. Bromfield's version of the events in respect of the other property mentioned by Mr. Bromfield was not credible. I accept his account.

2 Halls Crescent

Mrs. Bromfield also sought to have the court enquire into the ownership of a property situated at Halls Crescent in the parish of Saint Andrew. She alleged that it had been purchased by Mr. Bromfield, during the marriage, for the mother of one of his children resulting from an extra-marital relationship. The name of that individual appeared on the title for the relevant property as the sole proprietor. Mr. Bromfield denies that it was he who purchased it for the woman in question.

The property has however, been registered in the names of Mr. Bromfield and his new wife since 9th October, 2006. Initially, Mr. Bromfield gave the court the impression that he had had nothing to do with the property. When, however, a copy of the certificate of title was produced, his counsel Mr. Heywood, on the basis of transparency, had no hesitation in allowing it to be put into evidence.

Except for saying that Mr. Bromfield had used the profits of the two companies mentioned above, to purchase the property, she has not provided any evidence concerning the source of the purchase money. No documents have been produced. The recent purchase, so many years after the couple's separation, does not provide a basis on which this court could make any order affecting the ownership of that property. If the property was purchased with company funds, her interest, at best, would be *via* a claim initiated by the companies, or one of them.

Apart from the real estate, Mrs. Bromfield also claims an interest, or greater interest in two limited liability companies; Bloomfield Jamaica Ltd. and Medallion Hall Hotels Ltd.

Bloomfield Jamaica Ltd.

It is Mrs. Bromfield's account that she gave up her high-level public service job with the Government of Jamaica at Mr. Bromfield's request. He

wanted her, she said, to “remain at home to look after the children and run the household”. At about the time that she left that job, Bloomfield’s Motor-Coaches Jamaica Ltd. was incorporated. It was later renamed Bloomfield Jamaica Ltd. She is on record as holding 100 of the 1550 shares issued by the company. That was the initial allotment and it has remained unchanged.

There was a disagreement between the parties in respect of whether Mrs. Bromfield was aware of her shareholding at the time of the incorporation of the company. Mrs. Bromfield denies knowing of her allotment at the time that she signed the documents leading to incorporation of Bloomfield Jamaica Ltd. She indicates that the common intention of the couple was that the company would have been owned by them only. Mr. Bromfield, in respect of that documentation said that the share allotment was beside Mrs. Bromfield’s name when she was given the document to sign. He said it was most likely he who had given the document to her for her to sign. He made it clear that it was he who had made the allocation of the shares to the seven shareholders, including himself.

I reject Mr. Bromfield’s evidence concerning the incorporation documentation. It is plain, from the manner in which the allocation of shares is written on the Memorandum of Association, that that was done after each subscriber had affixed their respective names and address. The words and

numbers representing the shareholding are adjusted according to the space left by each subscriber after having inserted their respective particulars.

Although it appears that none of the subscribers actually paid cash for their shares, it is clear that share certificates were issued. Certificate numbered "6" was issued to Mrs. Bromfield indicating her shareholding. She exhibited it to her affidavit sworn to on 21st May 2008. The certificate is dated 23rd June 1980. Two things seem most probable, firstly she would have known from the outset that there were four other shareholders apart from the couple, and secondly it seems that she would have known at an early stage what her allocation was and that she accepted it.

In terms of her working in the company, Mr. Bromfield said in cross-examination that Mrs. Bromfield did not work at the Medallion Hall Hotel. He was emphatic: "She never did". He would not even admit that she attended special functions at the hotel. In respect of the opening of the hotel, he said, "I can't recall if my wife was there...she could have been there".

Mr. Bromfield is being less than candid with the court in respect of that evidence. In his first affidavit filed in the matter, Mr. Bromfield stated that Mrs. Bromfield:

"...used to come to the hotel at one time. She did so for a period of about 6 weeks. One Monday I asked her to arrange a meeting with the staff and she took offence, we had [an] argument and I asked her to leave."

Mrs. Bromfield participated in other ways. Minutes of director's meetings and annual general meetings which were exhibited, show that Mrs. Bromfield was present at several of these.

Her participation, in my view, does not give Mrs. Bromfield any interest in the company's property except as a shareholder. It does not give her any interest in property acquired by Mr. Bromfield using his earnings from the company. No credible evidence has been adduced to establish an agreement on which Mrs. Bromfield acted to her detriment concerning her participation in the company.

Although it seems that there were some blurring of the lines between Mr. Bromfield's personal matters and the company's affairs, I find that nothing in the evidence allows for any adjustment of Mr. Bromfield's shares in favour of Mrs. Bromfield. She certainly cannot be allocated any of the company's assets.

Medallion Hall Ltd.

Mrs. Bromfield is not a shareholder of Medallion Hall Ltd. That company operates the hotel which was mentioned earlier. There is nothing in the evidence which indicates that Mr. Bromfield holds any of his shares in this company on behalf of Mrs. Bromfield. This is so despite the fact that she may have assisted at the hotel at some point in time.

Conclusion

It is my view, based on the evidence, that these parties operated their business interests separate and apart from each other. This is evident from the fact that when Mr. Bromfield operated a company named Citizens' Omnibus Services Association Ltd., Mrs. Bromfield operated buses under the franchise held by that company. Her income from those buses was for her own use. Another example of their independent operation is that Mrs. Bromfield secured and operated a franchise to operate a petroleum service station. This she did on her own. Mr. Bromfield's only input was to help with enforcing discipline in respect of employees from time to time.

In the circumstances I find that Mrs. Bromfield cannot succeed on the evidence in respect of her claim under the Married Women's Property Act. Mr. Bromfield has however offered to transfer his interest in Pinkneys Green to Mrs. Bromfield on the basis that she pays the costs of transfer. I am prepared to make an order which would give effect to that offer.

Maintenance Act Claim

The current maintenance order (made by Harris, J. (as she then was)) mandates Mr. Bromfield to pay Mrs. Bromfield \$50,000.00 per month toward her maintenance. It had also ordered him to make a payment of \$20,000.00 per month toward the maintenance of their youngest child. The

latter aspect of the order is no longer applicable as that child is now above the age governed by the Maintenance Act.

The court is authorized by section 20 (3) of the Matrimonial Causes Act to modify the existing order. Mrs. Bromfield seeks an increase of the monthly payment to \$234,500.00. She has given a breakdown of her income and expenditure in an effort to justify that figure. She asserts that her expenses have increased over the last eight years and her home is deteriorating for lack of maintenance. She lives in the former matrimonial home at Pinkneys Green.

Despite being highly academically qualified and very experienced in business matters, Mrs. Bromfield says that she has not been gainfully employed since her divorce in 1998. She has done some social work for her church, but little else. She has indicated that it is difficult to obtain employment at her age and that she has no capital to engage in any entrepreneurial ventures.

Since the date of the court order on 20th October 2000 Mr. Bromfield has remarried. That was in 2006. He also has a teenaged son whose education he proposes to finance to the tertiary level. Mr. Bromfield has deposed that he can no longer afford to pay the sum of \$50,000.00 toward Mrs. Bromfield's maintenance. He has, however, not given any indication

of his income and expenses in order to assist the court in identifying an appropriate figure. In cross-examination he testified that he earns a salary of \$2,000,000.00 -2,500,000.00 per annum. He testified that he is not well and he has not been active in his businesses.

Mr. Bromfield has proposed, through Mr. Heywood, to pay a sum of \$3,000,000.00 as a lump sum and that all periodical payments cease. The proposal is the counterpart to the proposal concerning the transfer of Pinkneys Green to Mrs. Bromfield. It envisages that she would be able to sell Pinkneys Green, purchase a less expensive property, and utilize the price difference as a capital fund to provide her with an income. A valuation of Pinkneys Green, done almost two years ago, indicated a market value of approximately \$42,700,000.00.

In light of the time that has elapsed since the divorce and the subsequent changes in Mr. Bromfield's life, it is my view that the time has come for periodical payments to cease. Mr. Bromfield's failure to provide any credible information concerning his income and expenditure, though not sufficient to thwart the court in making an award for a periodical payment (see *Hughes v Hughes* (1993) 45 W.I.R. 149), encourages the move to an order for a lump sum payment.

How is such a lump sum to be calculated?

First, her expenses; Mrs. Bromfield states that they are as follows:

| | |
|-----------------------------|------------------|
| Food: | \$40,000.00 |
| Clothing and Entertainment: | 40,000.00 |
| Domestic Helper: | 12,000.00 |
| Gardener: | 12,000.00 |
| Electricity: | 10,000.00 |
| Water bill: | 2,500.00 |
| Telephone: | 5,000.00 |
| Cable and Internet: | 4,000.00 |
| Medical Expenses: | 10,000.00 |
| Personal Insurance: | 12,000.00 |
| Property Insurance: | 25,000.00 |
| Motor Vehicle Maintenance: | 25,000.00 |
| House Maintenance: | <u>35,000.00</u> |
| Total | \$232,500.00 |

It seems to me that some, if not most, of these figures are either inflated or incompatible with Mrs. Bromfield's situation. In cross-examination Mrs. Bromfield was not convincing in respect of the sums she incurred as her regular expenditure. Some seemed to be what she would have liked to put in place, rather than what she actually incurred. I also bear in mind that at least one of Mrs. Bromfield's daughters lives with her. Mrs. Bromfield must be taken as living alone, regardless of the factual situation. She does not have the expense of paying for accommodation. A sum of \$100,000.00 per month would not be considered penury. This translates to \$1,200,000.00 per annum.

Based on the record in the judgment of Harris, J. Mrs. Bromfield is now 64 years old. A multiplier of 5, taking into account contingencies and

the vicissitudes of life, would be appropriate. I have used the cases of *Trevor Clarke v National Water Commission and others* 5 Khan 21 (a multiplier of 4 for a 63 year old male) and of *Alfred Hinds v Eric Smith and others* 4 Khan 27 (a multiplier of 3 for a 66 year old male) as guides for arriving at that multiplier. I have used a slightly higher multiplier than that indicated by those cases, because both involved men. It is, I believe, universally accepted that women live longer than men.

Applying the multiplier to the annual requirement brings a figure of \$6,000,000.00. In that context, it means that Mr. Bromfield's offer of \$3,000,000.00 as maintenance is inadequate. When one considers, however, his offer concerning Pinkneys Green and assuming that Mrs. Bromfield were able to secure a further lump sum by relocating to a less expensive property, the sum of \$3,000,000.00 assumes credibility.

Conclusion

The figures which Mrs. Bromfield has submitted to support her application for variation, contains exaggerations and unrealistic positions. I have adjusted the figures to arrive at what I view as being more realistic and have used the adjusted figure to calculate a lump sum payment. I am satisfied that the lump sum payment and the sum which Mrs. Bromfield should be able to make from Pinkneys Green, together, would be sufficient

to provide a capital sum for her to promote an income earning business, or otherwise invest so as to provide a stream of income for the rest of her life.

Conclusion

Mrs. Bromfield has failed to establish an entitlement to an interest in any of Mr. Bromfield's property including his shareholding in Bloomfield Jamaica Ltd. and Medallion Hall Ltd. I am nonetheless prepared to give effect to Mr. Bromfield's offer to transfer his interest to the Pinkneys Green property to her. That offer must be taken into account when considering the variation of the existing maintenance order.

The circumstances of the parties require that periodical maintenance payments be brought to an end and that a lump sum payment be substituted to address Mrs. Bromfield's maintenance needs. I have calculated that a lump sum payment, which Mr. Bromfield has offered, may be combined with such sum as she manages to derive from the sale of the Pinkneys Green premises, to provide her with an income stream, sufficient to maintain her to a fair standard, for the rest of her life.

It is hereby ordered as follows:

1. By and with the consent of Mr. Glen Vincent Bromfield, all his estate and interest in all that parcel of land known as No. 3 Pinkneys Green, Kingston 6 in the parish of Saint Andrew, being all that parcel of land comprised in Certificate of Title registered at Volume 1209 Folio 545 of the Register Book of Titles

with buildings thereon, be forthwith transferred to Eutetra Bromfield of 3 Pinkneys Green aforesaid;

2. That the said Glen Vincent Bromfield deliver up the Duplicate Certificate of Title for the said land to the said Eutetra Bromfield and execute such instruments of transfer and other documents as are required to give effect to this order;
3. That in the event that the said Glen Vincent Bromfield shall fail and/or refuse to execute such documents, as are mentioned above, within ten days of being required in writing so to do, the Registrar of the Supreme Court is hereby empowered to execute the said documents in order to give effect to this order;
4. Mr. Glen Vincent Bromfield shall pay to Mrs. Eutetra Bromfield the sum of \$3,000,000.00, being a lump sum payment in respect of her maintenance. The sum shall be paid in three equal monthly instalments commencing on the 12th day of January, 2009 and thereafter on the first days of each succeeding month;
5. This order supersedes the order made by Harris, J. on 20th October, 2000;
6. No order as to costs.