



[2018] JMSC Civ. 189

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**IN THE CIVIL DIVISION**

**CLAIM NO. 2017 HCV 00215**

<b>BETWEEN</b>	<b>NANCY PARZAN HARRISON</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>EASTON HENRY HARRISON</b>	<b>1<sup>ST</sup> DEFENDANT</b>
<b>AND</b>	<b>VENETTA ROSEWAY</b>	<b>2<sup>ND</sup> DEFENDANT</b>

**IN CHAMBERS**

Marjorie Shaw instructed by Brown & Shaw for the Claimants.

Chumu Paris instructed by Paris & Co. for the 2<sup>nd</sup> Defendant

October 11 and 24, 2018

**ANDERSON, J**

[1] This is a dispute between the claimant and the 2<sup>nd</sup> defendant about a house which is located in Barrett Town, St. James. That house is not situated on land which is legally owned by either of the parties to this Claim. As such, no title exists in favour of either party to this claim, as regards that land. The evidence disclosed that the disputed, house was built on, 'captured land' and this court has, in the particular context of this particular case, taken that to mean that said house was built on unregistered land and that such land's ownership, is in a legal sense, unknown to the parties and this court.

[2] The 2<sup>nd</sup> defendant is a retired patient care assistant, who used to work at a public hospital. The claimant and the 1<sup>st</sup> defendant purchased properties for investment purposes in the United States, which they either rented or sold. This court has

accepted that evidence from the 2<sup>nd</sup> defendant and the claimant, respectively. Clearly, the claimant owned properties with the 1<sup>st</sup> defendant. Her divorce settlement with the 1<sup>st</sup> defendant which took effect in United States and only related to properties jointly owned by them, there, makes it clear that the Claimant and the 1<sup>st</sup> defendant jointly owned properties there.

**[3]** I do not accept the 2<sup>nd</sup> defendant's evidence that she purchased the house and land in Barrett Town, St. James, either using her own money as earned by her, or with money, which was given to her, by others – both versions of which, she testified to, orally and in her affidavit evidence, respectively.

**[4]** I also do not accept the 2<sup>nd</sup> defendant's evidence that she built that house in order to accommodate the members of her family who live overseas, and who may have wished to visit Jamaica from time to time, in order that any of those family members, could stay there, for as long as they wish. That evidence is entirely unworthy and incapable of belief. The house has several bedrooms, which I saw when I visited the premises. It was the number of bedrooms as was testified about, by the claimant which was completely contrary to the much smaller number of rooms, as was testified to by the 2<sup>nd</sup> defendant.

**[5]** I have concluded that the 2<sup>nd</sup> defendant was even dishonest about matters which she need not have been dishonest about and that she was dishonest about same, because she did not wish for this court to recognize that she was also being dishonest about the primary issue in this case which is whether or not the 2<sup>nd</sup> defendant bought the relevant house and the land on which that house now stands, with 'her own money.'

**[6]** I accept the court's evidence that the 2<sup>nd</sup> defendant purchased said house and land, with money belonging to the claimant and the 1<sup>st</sup> defendant and that, as she is the aunt of the 1<sup>st</sup> defendant and all matters pertaining to that property were left as between the claimant and the 1<sup>st</sup> defendant, to the 1<sup>st</sup> defendant to attend to, and he had in turn, passed on monies to the 2<sup>nd</sup> defendant, in order for her to purchase that property, on their behalf. That was done, no doubt, because the

claimant and the 1<sup>st</sup> defendant, never lived in Jamaica, at that time, whereas, the 2<sup>nd</sup> defendant did.

[7] I am satisfied that the disputed house, is not 'family property' under The Property (Rights of Spouses) Act. That house was never used by either or both the claimant and the 1<sup>st</sup> defendant, either habitually, or from time to time by them, as the only or principal family residence. As such, sections 14(1)(b) and 17(2) of the Property (Right of Spouses) Act apply to the matter at hand.

[8] The parties were married for many years – between 2001 and 2016. This court has taken that into account, as one of the factors, in deciding as to how the disputed house should be divided as between the claimant and the 1<sup>st</sup> defendant. The claimant also made financial contribution which was insignificant towards the purchase of and improvements made to that house. This court has also applied that factor to the matter at hand. This court has not accepted that there was any agreement between the parties the claimant and the 1<sup>st</sup> defendant, as regards how that house should be divided.

[9] In the overall circumstances though, an equal division of the property as between the claimant and the 1<sup>st</sup> defendant is appropriate, especially since the 1<sup>st</sup> defendant has not at all, disputed the claimant's claim to that equal share.

[10] In the circumstances, judgment is entered for the claimant and these are the judgment orders.

### **Judgment Orders**

- i. The claimant and the 1<sup>st</sup> defendant are each declared as having 50% (equal) share in the house located at Barrett Town, Little River P.O., in the parish of St. James, which is the subject of this claim.
- ii. A survey shall be conducted to determine the legal boundaries of the property on which said house is situated and the claimant and 1<sup>st</sup> defendant shall equally bear the cost of the survey.

- iii. The claimant and the 1<sup>st</sup> defendant shall, within 90 days of the making of this Order, make reasonable efforts to agree on who will be the valuator to conduct the survey, in accordance with Order No. 2 above, but, if after that 90 days period has elapsed, the claimant and the 1<sup>st</sup> defendant have not yet reached agreement as to same, then the Registrar of this court shall appoint a valuator for the purpose of compliance with Order No. 2 above and in such circumstance, the cost of any survey work carried out in accordance with this Order (Order No. 3), shall be borne equally, by the parties.
- iv. The claimant and the 1<sup>st</sup> defendant shall be equally entitled, either jointly or separately, to occupy the house which is the subject of this claim, as well as to authorize any person or persons to occupy said house provided that, if either the claimant or the 1<sup>st</sup> defendant wishes to properly authorize any person to either live in, or use that house, in any way, or do any construction work either in relation to that house, or in relation to the land which is within the boundaries of the parcel of land on which said house is situated, then before any such authorization shall take effect, the claimant or 1<sup>st</sup> defendant, being the party so authorizing, shall nullify the order of that authorization a minimum of one month in advance of such authorization taking effect. That notice shall either be provided personally, or in writing, directly to either the claimant or 1<sup>st</sup> defendant (as the case may be) or alternatively, by hand delivery to the office of anyone on record in this claim, as the attorneys for the claimant and/or 1<sup>st</sup> defendant.
- v. In the event that the parties agree in writing, then the requirements of Order No. 4 above, as regards notice and written authorization, need not be complied with.
- vi. If there is/are any person or persons presently occupying any part of the house which is the subject of this claim that party or parties shall, by or before December 31, 2018, quit occupation of said house and shall do so, without causing any damage to said house and any person who has any keys to the said house, or to any part thereof, shall by or before said date, provide those keys to attorney Chumu Paris, whose office address is No. 18 Barnett Street, Montego Bay, in the

parish of St. James and once in possession of any such keys, attorney Chumu Paris shall act with reasonable despatch to pass on same to the claimant's Attorneys – Messrs Brown and Shaw, whose office address is No. 12 Herb McKenley Drive, Kingston, in the parish of St. Andrew.

- vii. Liberty to apply.
- viii. The costs of this Claim are awarded to the Claimant as against the 2<sup>nd</sup> Defendant with such costs to be taxed, if not sooner agreed.
- ix. Leave to appeal is denied.
- x. The claimant shall file and serve this order.

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Hon. K. Anderson, J