

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN CIVIL DIVISION
CLAIM NO. 2008 HCV 4863

IN CHAMBERS

BETWEEN	CAROLEE JADDOO	CLAIMANT
AND	RAFIC RAAM NESBETH	DEFENDANT

Ms Carol Vassall instructed by C.M. Vassall & Co for the Claimant.

Mr Sean Kinghorn and Ms Danielle Archer instructed by Kinghorn and Kinghorn for the Defendant.

Civil Practice – Addition of parties - Claim for declaration of interest pursuant to the Property (Rights of Spouses) Act – Unmarried couple residing in a house built on land registered in the name of another –Whether any declaration may be made in respect of that property – Hearing commenced and the case of both parties closed – Application to add registered proprietor of land - Whether registered proprietor ought to be added as a defendant – Property (Rights of Spouses) Act ss. 6, 13 and 14 - Civil Procedure Rules 2002 rr 19.2 and 19.3

14, 15, 21 and 28 March 2011

BROOKS, J.

Mr Rafic Raam Nesbeth and Ms Carolee Jaddoo formed an intimate relationship in or about the year 1992. In 1993 she began cohabiting with him at his parents' home in Heathfield District, Linstead in the parish of Saint Catherine. At the time that their relationship ended in 2007, they were living in a large house built on a plot of land which was registered in the name of a Mr Michael Thomas. The land in question is designated lot 69, Knollis District, Bog Walk in the parish of Saint Catherine. A saw-mill business, bearing the name "R. Nesbeth Lumberyard", was established, in or about 1993, on a portion of the said plot of land and the construction of the house and the acquisition of other chattels, including motor vehicles, were funded, at least in part, by the income from that business.

The parties having separated, Ms Jadoo has filed this claim seeking a declaration, pursuant to the Property (Rights of Spouses) Act, that she is entitled to an interest in the home, the business and the chattels. Mr Nesbeth has denied that she made any contribution to the acquisition of the assets and asserts that, except for a vehicle which is registered in both their names, she is not entitled to any interest in those assets.

The evidence was taken on 14 and 15 March 2011. Both parties had closed their respective cases and the claim was adjourned for counsel to submit closing submissions in writing and to present them on 21 March. It was at that point that the claim took a dramatic, if not unexpected, twist. Ms Vassall, acting on behalf of Ms Jadoo, submitted in closing, that Ms Jadoo ought to be permitted to add, as parties to the claim, a number of other persons who ostensibly claim some interest in the real property. In addition to the registered proprietor, Mr Michael Thomas, Ms Vassall submitted, two other persons ought to be added. The first is Mr Michael Thomas' brother Clive Thomas, who is the person who is alleged to have let Mr Nesbeth into possession of the land. The second person is Mr Clive Thomas' wife, Benda who had lodged a caveat against the registered title, asserting an equitable interest therein, on the basis that the land had been purchased with money owned by Clive and herself.

On 21 March when the parties reconvened, Ms Vassall produced an application to add the three Thomas' as defendants to the claim. Again, not unexpectedly, there was strident opposition to the application and the claim was adjourned to 28 March for submissions to be made in respect of the application.

The crux of the dispute is whether, at the stage where both parties have closed their respective cases, the court should allow defendants to be added resulting inevitably, in the restarting of the case management purposes, or whether the demand for an end to

litigation, requires the court to give its judgment on the evidence which had been presented.

The submissions

Ms Vassall, addressing the point, submitted that the court was not prevented, even at this stage, from adding new parties. In her view, the addition of the Thomas' would "finally resolve the issue of ownership of Lot 69".

Counsel for Mr Nesbeth, apart from taking technical objections to the application which, I do not consider appropriate at this stage, submitted that as the claim has been brought under the Property (Rights of Spouses) Act, there is no basis on which to add third parties. On counsels' submission, the legislation concerns jointly owned property and since this land "is not 'owned' by [Ms Jaddoo and Mr Nesbeth]...there is no dispute to be resolved". Counsel also submitted that as the registered title, is conclusive of the proprietorship of the land, "the Court's jurisdiction is therefore shackled to deciding questions as it relates to" property which the parties have demonstrated that they own.

On the question of the relevance of the Thomas' to the claim, counsel submitted that there was evidence which had been adduced to indicate that (a) there had been no agreement for sale with the registered proprietor Mr Michael Thomas and (b) the entire purchase price had not been paid. On these points counsel concluded there was no order which this court could properly make against any of the Thomas'; certainly not, according to the submission, in the context of a claim under the Property "Rights of Spouses" Act.

Finally, counsel submitted that it was far too late in the day for Ms Jaddoo to be seeking to change the course of the litigation.

I shall analyse these submissions and the issue before the court in the context of the relevant law concerning the management of cases and the addition of parties. On the procedural issues raised by counsel for Mr Nesbeth, it will be sufficient to observe that the court has the power to shorten the time for the service of notice of an application for court orders. The circumstances of this case would have already prepared Mr Nesbeth's counsel to meet some of the arguments raised by this application. In any event the application was adjourned for a week for the application to be considered and arguments in opposition formulated.

I shall first refer to the relevant law and thereafter assess the evidence in respect of the issues which have been identified. In light of the position I have taken in respect of the matter, I shall make only sparse reference to the evidence tendered before the court.

The law

I take the view that the duty of the court to actively manage cases is a continuing one. In my view that duty does not cease once the trial or hearing of the claim has begun. Nor does it cease even when the parties have closed their respective cases. The aim of case management is to "further the overriding objective". There is therefore, in my view, no procedural barrier to the court considering whether to add additional parties pursuant to part 19 of the Civil Procedure Rules (2002) (the CPR).

Rule 19.2 (3) (b) of the CPR allows the court to add a new party to the proceedings "where there is an issue involving the new party which is connected to the matters in dispute in the proceedings and it is desirable to add the new party so that the court can resolve that issue". The addition may be made "at or after the case management conference" (rule 19.3 (5)). There is, therefore, no prohibition on such an addition simply because the trial has started. Although the case management process

ought to have identified the need at an earlier stage, it must be recognized that that need may come to the realization of the parties and/or the court, late in the litigation. Where it is identified late, it means that much of the ground already covered must be re-covered after the new party is added. There may well be orders as to costs to compensate the party prejudiced by the addition, if such prejudice may be compensated by costs.

The test in making the decision whether or not to add a new party is, therefore, whether the addition of that party will resolve the issues between the original parties and the issues between the original parties and the party to be added.

Application to the instant case

Despite the submissions of counsel for Mr Nesbeth, it seems to me that the instant case fits squarely within the contemplation of rule 19.2 (3) (b). There is clearly an issue between Ms Jadoo and Mr Nesbeth as to whether she has contributed to the construction of the building on the land. It is a substantial structure; two stories with seven bedrooms. It cannot be removed from the land and therefore has become a part of the land.

The land, being registered in Mr Michael Thomas' name, means that this court must hear from him before it may make any declaration that either Ms Jadoo or Mr Nesbeth are owners of any interest therein. Joining Mr Michael Thomas will therefore allow the issue between the original parties to be resolved. If Mr Michael Thomas is recognized, after the judicial process, to still be the legal and beneficial owner then neither Ms Jadoo nor Mr Nesbeth can have any interest therein.

To resolve the issue with Mr Michael Thomas requires Clive and Benda Thomas to be joined also. The evidence is that Mr Nesbeth was let into possession of the land by Mr Clive Thomas. Clive gave Mr Nesbeth receipts for the payment made to Clive in respect of an agreement between them for Mr Nesbeth to purchase the land. Both Ms

Jaddoo and Mr Nesbeth were of the view that Clive was the owner of the land until they saw a copy of the certificate of title for same, some time afterward. Of course, the title reflected that Michael was the registered proprietor. The further evidence is that when they confronted Clive with their discovery, he admitted that he was not the registered owner and made a suggestion as to how the situation could be resolved.

The certificate bore evidence that two caveats have been lodged against the title. One of those was lodged by Clive's wife Mrs Benda Thomas. Mrs Thomas lodged the caveat to protect her claim to a beneficial interest in the land. The declaration signed by her in support of the caveat alleges that Clive used money from their joint account to purchase the land in Michael's name.

That evidence is a clear indication that in order for the court to make a declaration as to ownership between Ms Jaddoo and Mr Nesbeth, on the one hand and Michael on the other, Clive's status as Michael's agent and/or the beneficial owner, along with Benda, of the property, becomes a live issue.

For these reasons, I find that it is desirable to add these parties so that the court can resolve all those issues. There may yet be need to add still another defendant as the identity of the party lodging the other caveat against the certificate of title has not yet been identified.

I test the conclusion which I have reached, by asking whether it is a just result. Undoubtedly, Mr Nesbeth will have incurred costs over the two and a half years that this litigation has existed. On the other hand he has had sole occupation of the property since Ms Jaddoo removed some time in 2007.

Although Mr Nesbeth has said that he has taken no step in order to secure a title to the property for himself it seems to me that, based on his evidence alone and subject to

what the Thomas' or any of them may say, he may well have a defence under the Limitation of Actions Act, against any claim which the Thomas', or any of them may institute against him for recovery of the land. Other possible scenarios exist. One is a claim for specific performance. Another is an application for registration by virtue of his occupation of the land, unmolested, for a period in excess of 12 years. It would not be justice for this court to rule that Ms Jaddoo has no interest in the real property she occupied with Mr Nesbeth because of the fact that the land is owned by another and thereafter, Mr Nesbeth secures a title for himself alone, by one or other of the methods mentioned above and Ms Jaddoo is ruled out of court because the matter is deemed to have already been adjudicated between them.

I find that Mr Nesbeth will not be prejudiced by the addition to the extent that an order for costs could not compensate him. In my view he is entitled to those costs because Ms Nesbeth's legal advisers should have made the application long before, at least from the time that it came to their attention that there was a registered title to the land. This court also should have, as part of the management of the case, indicated at an earlier stage that the issue between Ms Jaddoo and Mr Nesbeth could not be satisfactorily resolved without joining the registered proprietor of the land.

I now turn to the question as to whether the claim may properly proceed under or along with a claim brought pursuant to the Property (Rights of Spouses) Act where there are parties to the claim other than the "spouses". There is no provision in that Act which prevents such a situation. It is true that the definition of the "family home" excludes premises owned by persons other than one or both of the "spouses". The result is that the presumption of equality of interest provided for by section 6 of the Act cannot apply to premises which fall outside that definition. In the absence of such a presumption the

provisions of sections 13 and 14 of the Act would apply to the issues between the “spouses” but the normal provisions as to trust would apply as between the spouses, and each of them, on the one hand and the third parties on the other.

If it is that there are significant issues as to fact then orders may be made for the claim to proceed as if it had been commenced as an ordinary claim form. That is one of the options open to a court in exercising its case management powers (see *Eldemire v Eldemire* (1990) 38 WIR 234). There have been examples of cases involving third parties decided under the Married Women’s Property Act which is the predecessor to the Property (Rights of Spouses) Act (see *Gordon-Hinds v Hinds* 1995 E 416 a (delivered 30 July 1999)). In the dispensation of the Property (Rights of Spouses) Act, there has also been at least one decision involving third parties (see *Greenland v Greenland and others* 2007 HCV 2805 (delivered 9 February 2011))

Conclusion

Applying the provisions of rule 19.2 (3) of the CPR, I find that the parties which Ms Jaddoo seeks to join, should be joined. I find that there is an issue involving the proposed parties which is connected to the main matter in dispute between the original parties and it is desirable to add the new parties in order to resolve that issue.

The order of the court therefore is:

1. The following persons shall be added as defendants to this claim:
 - a. Mr Clive Thomas of Linstead P.O., in the parish of Saint Catherine and/or New York in the United States of America;
 - b. Mrs Benda Thomas of 1C Newton Avenue, Spanish Town in the parish of Saint Catherine;
 - c. Mr Michael Thomas of Linstead P.O., in the parish of Saint Catherine and/or the United States of America;
2. The claimant shall prepare and file the amended Fixed Date Claim Form and in addition Particulars of Claim and a copy of this order on or before 29 April 2011;

3. The amended Fixed Date Claim Form and Particulars of Claim shall be served on Mr Rafic Raam Nesbeth on or before 14 May 2011;
4. The amended Fixed Date Claim Form and Particulars of Claim, copies of all affidavits filed herein and a copy of this order shall be served on all the newly added defendants;
5. The defendants and each of them may be served outside of the jurisdiction at the locations mentioned above or wherever they may be located;
6. Where the defendants or any of them is served outside of the jurisdiction the defendant so served shall file an acknowledgement of service within 28 days of service, if served in the United States, Canada or in the Caribbean, 42 days if served in Europe (not including Russia) and 56 days if served other than in those countries;
7. Where the defendants or any of them is served outside of the jurisdiction the defendant so served shall file a defence within 56 days of service if served in the United States, Canada or in the Caribbean, 70 days if served in Europe (not including Russia) and 84 days if served other than in those countries;
8. A case management conference shall be held on 3 November 2011 at 10:00 a.m. for one hour.
9. All parties shall have liberty to apply;
10. Costs thrown away to the Respondent to be taxed if not agreed. Such costs shall be paid within 30 days of being taxed or agreed;
11. Leave to appeal granted.