



[2018] JMSC CIV. 34

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN CIVIL DIVISION

CLAIM NO. 2017HCV02444

| | | |
|----------------|-----------------------------|------------------|
| BETWEEN | YVONNE LAWRENCE BELL | CLAIMANT |
| AND | DAULTON ERIC BELL | DEFENDANT |

IN CHAMBERS

Tameka K. Dunbar instructed by Tameka K. Dunbar & Co. for the Claimant

Frances J. Barnes instructed by the Legal Aid Clinic for the Defendant

Heard: March 22, 2018

PUSEY J. J (Actg).

- [1]** This is an application for division of property and the repayment of loans between the parties who are husband and wife who have separated.
- [2]** The parties met in 2011, had a platonic relationship for about a year followed by a brief courtship and were married on the 13th July 2013. There are no relevant children.
- [3]** Throughout their relationship the applicant resided overseas and the respondent in Jamaica.
- [4]** Two properties are for adjudication – a cottage at Lot 319, Block B, Drax Hall Country Club, Phase 4 registered at Volume 1491 Folio 867 of the Register Book of Titles (Drax Hall) and a house at Stepney District, Calderwood registered at Volume 1479 Folio 2 of the Register Book of Titles (Stepney), both in the parish

of St. Ann. The purchase of the Drax Hall property was completed solely by the applicant, after the marriage, while the Stepney property was owned solely by the applicant from 1993 and she had constructed a substantial house there before she met the respondent.

- [5] On several occasions during the courtship, the claimant loaned money to the respondent amounting to over two million Jamaican dollars. These sums were to purchase two motor vehicles, settle a bill resulting from an accident, purchase jewellery and pay his half of the wedding expenses. There is a memorandum in writing evidencing these loans.

ISSUES

1. What is the respective share of the parties in the real property?
2. Can the applicant recover these loans?

- [6] The Property Rights of Spouses Act (PROSA) governs division of property between married persons on separation.

THE FAMILY HOME

- [7] There is strong disagreement regarding which property is the family home.

DRAX HALL

- [8] After the marriage they resided in Stepney for two days or a week and the applicant left the respondent there at the family home when she returned to Florida. The respondent contends that the applicant wanted to sell Stepney to move away from her family. When the keys were ready for Drax Hall he relocated there, unknown to the applicant, and designated it the family home.

- [9] His contention is not supported by his own evidence in cross-examination that the property was to be rented and a room reserved for the family when his wife is in Jamaica. The property was furnished for letting by the applicant. On a balance of probabilities I find that Drax Hall was not the family home.

- [10] The applicant contends that she 'gifted' a one tenth share in Drax Hall to the respondent which is endorsed on the title. The understanding was that he was responsible, proportionate with his share in the property, for the maintenance cost and cost of any improvement to the property. I accept this evidence and that he is entitled to this 10% share in Drax Hall and the responsibilities that go with it.
- [11] During the course of the marriage a perimeter wall was constructed at Drax Hall. The applicant paid J\$1,000,000.00 for the construction of the wall. The respondent is to reimburse her 10% of this sum.
- [12] A recurrent maintenance charge is payable to the managers of the property. The respondent is to pay to the claimant 10 per cent of the maintenance cost from the date it fell due in 2014.

STEPNEY

- [13] Section 6 of PROSA provides that both parties are entitled to half share in the family home on the dissolution of a marriage or separation. This entitlement is circumscribed by section 7, if in the circumstances of the matter the court feels it is unjust or unreasonable for an equal shares division to be made.
- [14] Section 7(1)(a) (b) and (c) sets out factors that may cause a court to dispense with the equal share rule. These factors include,
- that the property was solely owned by one party before the marriage,
 - that the marriage is of short duration,
 - and such factors the court thinks is relevant to determine the issue.
- [15] The test in determining whether the half share rule should be dispensed with is whether it is unjust or unreasonable to apportion half share. Guidance is given at paragraph 34 of **Stewart v Stewart** [2013] JMCA Civ. 47 by Brooks JA as to how to approach these Section 7 factors,

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.**

Emphasis mine.

- [16] The factors in 7(1)(b) and (c) coalesce in the instant case. The property was owned by the applicant before the marriage and the marriage was of short duration (July 2013 to December 2015). I also considered the following factors:

The respondent was unemployed for the duration of the marriage. He talked about engaging in various businesses but none of them bore fruit even though the applicant provided start-up funds to assist him;

The parties never resided together for any substantial period or contributed to the support of each other. The respondent was at the receiving end of any assistance or gifts passed in the marriage;

- [17] The conduct of the respondent is worthy of consideration. The property at Stepney was on unregistered land. The applicant instructed attorneys to register the land and requested that the respondent take a document to two persons who knew the history of the land to be signed. His name was not on the application. He collected the declarations, did not return them to the attorney and went to the Land Administration and Management Programme, (LAMP) where he registered the land and placed his name along with the applicant and the applicant's daughter as co-owners of equal one-third share in the property. The implication of this course of conduct is astonishing.

- [18] I accept the applicant's evidence that she did not authorize the inclusion of the respondent's name on the title for Stepney and it was not her intention to give him a registered interest in the property.
- [19] I find that his conduct, his failure to contribute financially to the marriage and property are factors leading to a departure from the half share rule. They also weigh substantially in the assessment of the extent of his entitlement.
- [20] The respondent contends that he did physical labour and supervision during the construction of a driveway at Stepney but the financing of the project was by the applicant solely. He said he was **employed** to her in this project and did not seek employment because of this. Employment connotes some payment for labour. There is evidence he took money from sums she sent to pay the labourers. There is evidence from two witnesses that he did little or no physical work on the driveway, which I accept.
- [21] In these circumstances I find that it would be unjust and unreasonable for the respondent to be entitled to a 50/50 share in the Stepney property.
- [22] In ***Allicent Kelly-Larisi v Timoh Larsis*** [2016] JMSC Civ. 25, it was held in circumstances distinguishable from the matter at bar that one tenth interest was appropriate where the parties lived during a brief marriage in the home owned by one spouse before the marriage and the other spouse contributed insignificantly to the maintenance of the home.
- [23] In ***Gardener v Gardener*** [2012] JMSC Civ. 54 the respondent did not receive a benefit on an application that considered section 7.
- [24] In the case at bar the entire acquisition and development of the property was done solely by the applicant, including paying the respondent to work there. His questionable conduct regarding the acquisition of the title suggests a direct intention to enrich himself without the knowledge of the applicant and without

making any contribution whatsoever to the development or maintenance of the property.

[25] He left the property and moved to Drax Hall, where he still resides.

[26] Section 12(2) provides that the spouse's share in the property is to be determined on the date on which the spouses ceased to live together. That would have to be 2014 when the respondent says he left Stepney, less than a six months after the marriage took place.

[27] Further in cross-examination the respondent asserted,

“She never lived with me at Drax Hall.

She never lived with me in Jamaica, not at Stepney and not at Drax Hall.”

[28] He says his interest in the property arises from his one third interest registered on the title which was gifted to him by the applicant.

[29] When these factors are taken together with the fact that the applicant was ordinarily resident in the United States of America, it raises the question of what proportion he is entitled to.

[30] I agree with the applicant's submission that in all the circumstances of this case, it would be unjust and unreasonable to apportion any interest in Stepney to the respondent.

[31] He lived there for less than 6 months alone and made no significant contribution to its development. He surreptitiously placed his name on the title and asserts that he was employed by his wife to stay there to oversee work on the driveway.

THE LOANS

[32] I accept the applicant's evidence that she advanced sums on loan to the respondent to help him engage in various business prospects to take care of himself. In cross-examination the respondent asserts that they are gifts from a

wife to her husband, although they were advanced before the marriage. Notwithstanding he signed the exhibited document in 2013 promising to repay these loans. He denies signing this document. In cross-examination he spoke about the JUTA venture with the Prado motor car and said he abandoned the project because his driver's licence was a private licence and JUTA required a PVV licence. This admission supports the applicant's contention that it was a business loan.

[33] Regarding the wedding expenses sum, he admitted that as a man he wanted to pay his share, but added that his wife insisted on paying all the expenses.

[34] I did not accept his evidence in this regard and find that the sums, amounting to \$2,072,500.00, were advanced as loans and should be repaid by the respondent.

[35] The following are the Orders:

1. the respondent, his servants and agents are to vacate Lot 319, Block B, Drax Hall Country Club in the parish of St. Ann (Drax Hall) within 21 days of the date hereof;
2. the applicant has the option to sell Drax Hall by private treaty by listing the property with a licensed real estate agent and to apportion to the respondent 10% of the net proceeds of the sale; **or** pay to the respondent 10% of the value of Drax Hall, less any liabilities incurred in relation to the said property;
3. that the parties agree to a Valuator to determine the value of Drax Hall as at the date hereof and in the event a Valuator cannot be agreed by the parties the Registrar of the Supreme shall appoint a Valuator to assess the value of the property;
4. that the attorney at law for the applicant shall have carriage of the sale in the event of the sale of Drax Hall;
5. that the duplicate Certificates of Title registered at 1491 Folio 867 and Volume 1497 Folio 102 for Drax Hall and Stepney respectively,

be returned forthwith by the Registrar of the Supreme Court to the attorney with the carriage of sale herein;

6. that the applicant's attorney at law shall cause the Registrar of Title to amend the Registrar of Titles by removing the one third interest of the respondent from the said title registered at Volume 1491 Folio 867;
7. that a copy of this order be served on the Registrar of Titles;
8. that the Registrar of the Supreme Court is empowered to execute all documents to effect any order herein in the event the respondent fails or refused to do so;
9. that the respondent pays to the applicant the sum of \$2,072,500.00 to settle the loans advanced by the applicant;
10. Cost of this application to the applicant to be agreed or taxed.