

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN CIVIL DIVISION
CLAIM NO. 2007 HCV 2189

IN CHAMBERS

BETWEEN VERONICA REID-CAMPBELL CLAIMANT/APPLICANT
AND ROSVELT CAMPBELL DEFENDANT/RESPONDENT

IN THE MATTER of ALL THAT parcel of land part of BENGAL in the parish of SAINT ANN being the lot numbered SIX on the plan of Bengal deposited in the Office of Titles on the 16th day of March 1971, of the shape and dimensions and butting as appears by the Plan thereof and being the land comprised in Certificate of Title registered at Volume 1080 Folio 251 of the Register Book of Titles

AND

IN THE MATTER of the proposed severance of the joint tenancy in respect of that land

Mrs. Marisa Dalrymple-Philibert and Mrs. Angela Gallimore for the Claimant/Applicant.

Mr. Ravil Golding instructed by Lyn-Cook Golding and Company for the Defendant/Respondent.

Husband and Wife – Claim for declaration of interest pursuant to the Property (Rights of Spouses) Act - Parties separated prior to the promulgation of the Act- Attempt at reconciliation just prior to promulgation – Whether court has jurisdiction to hear claim - Whether time begins to run when attempt fails – Property (Rights of Spouses) Act ss. 11 and 13

Husband and Wife – Matrimonial home – Allegation of unequal contribution to the cost of construction - Whether circumstances require a departure from the equal share rule – Burden of proof – Property (Rights of Spouses) Act ss. 6 and 7

7th January and 9th February 2010

BROOKS, J.

Veronica Reid and Rosvelt Campbell met and fell in love in New York in 1990. They were both mature Jamaicans who had lived in New York for some time before.

They married in 1991 and like many of their compatriots planned a return to Jamaica to spend their retirement years.

The plan was put into effect. They purchased a plot of land at Bengal in the parish of Saint Ann. They had a house designed and built it on the land. They eventually moved in. It was their matrimonial home. Unfortunately, after about 15 years, the marriage has broken down. They no longer want to live together. Mrs. Reid-Campbell has brought this claim for the court to declare their respective interests in the house.

How is the interest in the property to be allocated? Mrs. Reid-Campbell claims three-quarters. She says that she contributed the lion's share to the cost of the acquisition and the construction. Mr. Campbell disputes those assertions of fact and asks for a division in equal shares. The Property (Rights of Spouses) Act (the Act) is the starting point for considering the majority of claims of this nature, now coming before the court.

Jurisdiction to hear the claim

Before turning to the substantive issue, it is first requisite to determine if the Act is applicable to this case. The point has not been taken by either side but if the court is of the view that the legislation is inapplicable to this case then it cannot ignore that factor. The point arises because the parties first separated in 2001. The Act speaks to the jurisdiction of the court to hear claims thereunder.

It is section 13 of the Act which deals with the question of jurisdiction. The relevant portion follows:

- “(1) A spouse shall be entitled to apply to the Court for a division of property –
- (a) on the grant of a decree of dissolution of a marriage or termination of cohabitation; or
 - (b) ...
 - (c) where a husband and wife have separated and there is no reasonable likelihood of reconciliation; or
 - (d) ...

(2) An application under subsection (1) (a), (b) or (c) shall be made within twelve months of the dissolution of a marriage, termination of cohabitation, annulment of marriage, or separation or such longer period as the Court may allow after hearing the applicant.”

In *Shirley-Stewart v Stewart* 2007 HCV 03257 (delivered 6/11/2007), my learned brother, Sykes, J. opined that if the relevant events occurred before the Act came into force on April 1, 2006, then the Act cannot apply and the court has no jurisdiction to grant an extension of time pursuant to section 13 (2). Accepting that *dictum* for the time being, I nonetheless, find that the Act does apply to these circumstances. Although the parties agree that they separated in 2001, the evidence is that an attempt was made at reconciliation in 2006. There is some indication that the attempt lasted from late 2005 to early 2006, but I am prepared to find that an attempt at reconciliation restarts the clock in terms of compliance with section 13 (2). The 12-month period would therefore expire after the Act came into force. My learned sister, N.E. McIntosh, J. seems to have taken that view in *Boswell v Boswell and another* 2006 HCV 02453 (delivered 31/7/2008).

For completeness I should also point out that there is evidence that Mr. Campbell has since filed a petition for divorce. The Decree Nisi has not yet been granted but that fact, together with the evidence as to the separation, convinces me that the marriage has broken down irretrievably. The instant claim was filed on May 22, 2007 and divorce proceedings are under-way. This means that there would, in any event, be another opportunity for the court to have jurisdiction to hear a claim of this nature, if and when the decree for dissolution is granted.

On that reasoning, I am prepared, pursuant to Section 13, to extend the time for filing the claim, to the date of the actual filing. The claim would therefore fall within the purview of the Act and the court would have jurisdiction to apply its provisions.

Alternatively, the court would have jurisdiction to hear this claim pursuant to the provisions of Section 11 of the Act. That section permits the consideration, during the subsistence of the marriage, of questions between the spouses, as to the title to property.

The onus of proof

Section 6 of the Act stipulates that, on the occurrence of certain events, each spouse is entitled to a one-half share of the matrimonial home. It is a rebuttable presumption. Section 7 allows for the presumption to be displaced. It states:

“(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.

Subsection 2 stipulates that a spouse is one of the “interested parties” referred to in subsection (1). It is obvious that neither clause (a) nor (b) applies. Clause (c) is not relevant because the Campbells married in 1994 and their first separation was in 2001. I would not designate that a marriage of “short duration”.

The onus of disproving the applicability of the presumption is on the person who alleges that it would be unreasonable or unjust to apply it. My learned sister McDonald-Bishop, J. in *Graham v Graham* 2006 HCV 03158 (delivered 8/4/08), explained the philosophy behind the presumption and pointed out the different approaches utilized in various jurisdictions. She quoted Lord Cooke of Thorndon in *White, White v White* [2000] 2 F.L.R. 981 where the learned Law Lord said:

“The most important point, in my opinion, in the speech of my noble and learned friend Lord Nicholls is his proposition that, as a general guide, equality should be departed from only if, and to the extent that, there is good reason for doing so. I

would gratefully adopt and underline it. Widespread opinion within the Commonwealth would appear to accept that this approach is almost inevitable whether the regime be broad or detailed in its statutory provisions.”

The evidence which may displace the presumption must be credible. It cannot be sufficient for the party bearing the burden of displacement to merely say, for instance, in an affidavit or cross-examination, that “I alone financed the acquisition of the matrimonial home because my spouse refused to contribute”. There should be more.

It is also to be noted that, for the purposes of section 6, the court will not ignore non-financial contributions to the maintenance of the matrimonial home. (See *Graham v Graham* cited above.) I now turn to the evidence adduced in this case.

The evidence

The parties acquired title to the land as joint tenants. Mrs. Reid-Campbell asserted in cross-examination that she did not know how much it cost to construct the house. She knew however, that she had contributed US\$ 184,000.00. Save for visits (there was a dispute as to whether or not it was only two) she was not in Jamaica during the time of construction. It was Mr. Campbell who was present throughout and Mrs. Reid-Campbell agreed that he, himself, worked on the building. According to Mr. Campbell, the parties had received an estimate of construction from the draftsman, who drew the plans for the building. That was in 1994. It was a figure of J\$8 - 10 million. The exchange rate at the time he said was J\$7 - 8: US\$1. They did not get a quantity surveyor's report when the work was finished. Speaking of Mr. Campbell's financial contribution, Mrs. Campbell said in cross-examination:

“As far as I know he made no contribution. If he did, I don't know about it.”

For his part Mr. Campbell testified that he spent US\$160,000.00 on the building. He also said that they went shopping together in New York for furniture and fittings and filled a forty-foot container which they shipped to Jamaica.

Apart from a copy of the duplicate certificate of title, neither party put any document into evidence to support their respective positions. Mrs. Reid-Campbell's explanation was that when she asked Mr. Campbell for documentary evidence of the cost of construction, he would tell her that he didn't keep any. She also stated that whatever documents she had, were later removed from her bedroom without her permission.

Equitable principles

Even without the provisions of the Act, it is significant that the parties took the title to the property as joint tenants. They worked together to have the house constructed as their matrimonial home. Mrs. Reid-Campbell says, though it is disputed by Mr. Campbell, that he promised to repay her a half of what she had spent on the building, on the presumption that she was advancing the entire cost. All these factors, in the absence of any agreement to the contrary, indicate an intention to hold the property as joint beneficial owners. See *Phipps v Phipps* SCCA 77/1999 (delivered 11/4/2003) at page 7.

Conclusion

The provisions of section 6 of the Act applies to this claim as the parties separated in early 2006 and the twelve-month period referred to in section 13 would not have expired when the Act had come into force in April 2006. This is not a case where a decree absolute had been granted prior to the advent of the Act. The marriage still subsists even though the parties have been living separately and apart and the marriage has broken down irretrievably.

In those circumstances it is for Mrs. Reid-Campbell to provide evidence to displace the presumption created by section 6, that each party is equally entitled to the beneficial interest in the property. She has failed to do so, in that she has said in cross-examination that she does not know if he contributed and she does not know the cost of construction. In the circumstances, her claim must fail.

The order of the court therefore is:

1. It is declared that the Applicant Mrs. Veronica Reid-Campbell and the Respondent Mr. Rosvelt Campbell are equally entitled to the beneficial interest in all that parcel of land, with buildings thereon, known as Lot # 6 Pimento Drive, Bengal Discovery Bay, in the parish of Saint Ann, being the land comprised in Certificate of Title registered at Volume 1080 Folio 251 of the Register Book of Titles (hereafter called 'the property');
2. The joint legal interest of the parties in the property is hereby severed;
3. The property shall be sold by private treaty and if not so sold within three months of the date hereof, by public auction or private treaty, and the net proceeds of sale divided equally between the parties;
4. The valuation prepared on or about November 3, 2008, by C.D. Alexander Company Realty Ltd. in respect of the property is accepted for the purposes of fixing a sale price and the forced sale value specified therein shall be the reserved price for the purpose of a public auction held up to one year from the date of this judgment;
5. The Claimant's attorneys-at-law shall have carriage of the sale;
6. The party in possession of the duplicate Certificate of Title shall deliver or cause it to be delivered to the Claimant's attorneys-at-law, the within thirty days from the date hereof;
7. The Registrar of this court shall be and is hereby authorised to sign any and all documents required to give effect to this order, should either party fail or refuse to do so within ten days of being required in writing so to do;
8. Both parties shall have liberty to apply;
9. Costs to the Respondent to be taxed if not agreed.