ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 350 OF 1997

BETWEEN:

CHERYL ANN SMITH

Plaintiff

and

CLAUDE LONGHEED SMITH

Defendant

Appearances:

Mr Olin JB Dennie for the Plaintiff
Ms Paula David for the Defendant

- -
2000: February 23, March 16, May 3
- -

JUDGMENT

[1] MITCHELL, J: This is a case brought by a writ issued on 23 September 1997 by an ex-wife (hereinafter "the Ex-wife") against her ex-husband (hereinafter "the Ex-husband") for an equal share of the value of the matrimonial home and its contents. She asks for declarations that the property and the furniture belong jointly to the two parties. She asks that he either pay her her half share or the property and furniture be sold and the proceeds divided equally. Title to the matrimonial home had been registered by deed in the name of the Ex-husband only, but he did not deny that it was acquired by their joint efforts. The Ex-husband contended in his defence filed on 21 October 1997 that the Ex-wife was entitled only to a quarter share, as she contributed only to the payment of the first half of the loan borrowed to construct the house, while he alone met the monthly loan payments after she had left the matrimonial home. As regards the furniture

and equipment that was in the house, the Ex-wife wanted $15,575.00 for her half share. The Ex-husband responded that the furniture and equipment was old, and she could have her half to take away, but not that amount of money. He accepts her valuation of the property as $56,997.00.

[2] At the close of the case for the defence, counsel in addressing the court claimed to rely on the case of Wachtel v Wachtel [1973] 1 All ER 829 and other related cases. At a later hearing, the court observed to both counsel that this suit was a claim brought by writ on an action in trust, and not matrimonial proceedings brought under the Matrimonial Causes Act. Both counsel then advised the court that it had been agreed by the parties that the matter should be determined as if it had been brought under that Act. Although the proposal of the parties was difficult to understand, the court was faced with one of the following choices: of refusing to go along with the declared agreement of the parties, and dismissing the suit as having been misconceived, resulting in a waste of time and costs; or of reluctantly attempting to resolve the dispute within the framework of the pleadings, the evidence, and the law and procedure either that had been agreed by the parties, irregular as that might have been, or of such other relevant law and procedure. Given those choices, it appeared preferable to proceed to seek to apply to the dispute between the parties (as set out in the pleadings and elaborated in the evidence) the provisions of the Matrimonial Causes Act Cap 176 of the 1991 Revised Edition of the Laws of St Vincent and the Grenadines, and the authorities that arise and apply under that Act. If neither party complained of the eventual decision of the court, that would bring an end to the matter. If it was subsequently found that the court had decided incorrectly, it was open to the Court of Appeal to correct any error, and no permanent harm would be done. It is mentioned as a footnote that although it would appear that the parties are now divorced, no information on the date of the granting of the Decree Nisi or of the Decree Absolute was before the court.

[3] The facts as I find them are as follows: The Ex-husband and the Ex-wife were married in Kingstown in St Vincent in September 1978. There were no children of the marriage. At the time of the marriage, the Ex-husband was a contract agricultural worker in the USA, and was a self-employed farmer when he was in St Vincent. The Ex-husband spent 5 or 6 months each year away on contract. The Ex-wife was a self-employed farmer in St Vincent. By their joint effort and savings, the parties put down a deposit of $15,000.00 and acquired the matrimonial home at Troumaca in St Vincent. It was a 3 bedroom dwelling house. They borrowed $22,500.00 from the St Vincent Building & Loan Association to pay the balance of the purchase price. The quarterly installment on the loan was only $281.25. That amount of installment was a token sum, a trivial obligation, if the matrimonial home was to be preserved. It would have taken many years to repay the loan at that rate. The mortgage was not put in evidence, so it is not known if that amount of $22,500.00 included interest. It if did, we may easily calculate that at $281.25 per quarter or $1,025.00 per year it would take over 21 years to repay the small loan. If interest was not included in the loan amount, then it would take many more than 21 years to pay off the loan. The property was registered by deed in the name of the Ex-husband only. Many improvements and additions were done to the house over the following years, paid for out of their joint income and savings. I believe the Ex-wife that her financial contribution to the mortgage payments and to the improvements to the home during this period were principally paid by her from her earnings as a farmer. The usual household furniture, furnishings, and equipment were acquired for the home. Some of it was purchased by the Ex-husband while he was in the USA, and some of it was acquired by the Ex-wife in St Vincent, but all of it with the intention that it was for their common use.

[4] The marriage came to an end in 1993 when the Ex-wife left the home. She went to stay with friends and family, and so was able to take very little with her. She was ill, caused she claims by the treatment meted out to her by the Ex-husband. He had been torturing her, she claims. He offered no alternative explanation for the break-up of the marriage. The conduct of the parties and the cause of the

divorce is not strictly relevant to the determination of the issues in this case. It is relevant only as will appear later to the question of why the loan installments were not paid for a period before the Ex-wife left the home. The Ex-wife left virtually everything in the house when she left, including most of her clothes and personal belongings and her receipts.. She paid no more contributions towards the mortgage after she left the matrimonial home. She does not appear to have been able to farm after she left the home as she had in the earlier years of the marriage. At any rate the Ex-husband did not dispute her evidence to that effect.

[5] The loan had not been properly serviced for some two years before the Ex-wife left the home. The letters from the Building & Loan put in evidence indicate varying levels of arrears arising in the last two years of the marriage. The Ex-wife had been the one principally responsible for attending at the Building & Loan over the years of the marriage to pay the monthly installments. It was put to her that she had been squandering the savings of the marriage. She denied it. I find no evidence of any squandering on her part. She was an industrious and community minded person. She had for years annually won the prestigious award of "Farmer of the Year." She had been employed part-time by a government agency to assist in community development. She had built and stocked, with financial and other assistance from the Ex-husband, a small shop in the yard of their home. She had attended to the Ex-husband's farm in addition to her own farm, when he was away for extended periods on his farming contracts. She had organized the repairs and additions to the home, with the financial and other contribution from the Ex-husband, over the years of the marriage. The marriage had broken down. The details of the cause of the breakdown are not known. It did not happen overnight, we may assume. As we have seen, she claimed without any demur by the Ex-husband that she had been abused by him. Presumably, the ill treatment that caused her to run from the home began years before she cracked. If her health broke down as a result of his treatment she would not have been able to work her farm. That would have adversely affected her ability to continue servicing the loan. In 1987 the Ex-husband had gone to the USA as a contract agricultural

worker for the last time. The marriage had got into difficulty from that time. From the following year on the Ex-husband had farmed only in St Vincent, and had assisted with the shop. I find that the Ex-wife had been attending to the financial responsibilities of the family, including the servicing of the loan, up to about 2 years before she left the home. When she left, the loan was in arrears, and the Building & Loan would shortly take proceedings to foreclose. The Ex-husband had stopped servicing the loan. The Ex-wife had also stopped servicing the loan. Neither one appears more blameworthy for that default than the other. The result of the neglecting of the loan for the period of at least 1991 to 1995 was that the balance due to the bank grew larger.

[6] By 1995, the amount of the loan outstanding, including arrears of interest and late charges, was $25,825.18. The Ex-husband was doing quite well financially by 1995. He had stopped operating the shop. He was earning a good income from a business he had started up of exporting the vegetables and produce he farmed to the USA. The Ex-wife did not appear to be prospering, though no evidence was led as to what if anything she was able to do. She gave uncontraverted evidence that she was still ill at the time of the trial, and needed her share of the family assets to take care of her needs. The Ex-husband had remained in the home after the break-up of the marriage. The Ex-wife by contrast was being put up by a friend. When the Building & Loan foreclosed on the mortgage, the Ex-husband went to the CIBC, another lending institution, and with the further security of a property put up by the Ex-wife's sister, on 8 September 1995 borrowed $22,500.00 to repay the Building & Loan. The Ex-husband had rapidly paid off this entire amount of $25,825.18. First, he paid $5,950.00 from his savings. Then, on 8 September 1995 he paid off the balance due to the Building & Loan of $19,875.18. He paid off the last amount owning to CIBC with a lump sum payment of $4,524.76 just last month, on 6 January 2000. For nearly 10 years the Ex-wife and Ex-husband had serviced the loan out of their two incomes. For the last 5 years the Ex-husband alone serviced and paid off the second loan he had taken out to satisfy the first lender.

[7] The Ex-wife had obtained a valuation of the matrimonial property from Carlisle B Adams, a licensed property valuer. He gave detailed reasons and valued it at $56,997.00. That value has been accepted at the trial by both the Ex-husband and the Ex-wife as the present-day value of the property. The Ex-wife has no longer any control of how the property is maintained. The Ex-husband is in sole occupation and control. The Ex-husband has indicated that he proposes to pay out the Ex-wife and to remain in possession. There is a need to ensure that he complies with whatever order is made by the court. He must not deprive the Ex-wife any longer than is absolutely necessary of her right to enjoy her share of the property that he has been the sole possessor and beneficiary of for the past several years.

[8] The furniture and furnishings in the house, one half of the value of which was claimed by the Ex-wife, are now quite old. Most of it was purchased in the early years of the marriage, in the 1980s. The TV sets, radios, stereo equipment, do not have an unlimited life. The Ex-husband gave no evidence of what value he put on the goods. The Ex-wife did not explain how exactly she came to the values that she put to the goods on the list of furnishings and their values she put in evidence. I have considered the values she gave in evidence, eg, 3 beds for $1,800.00, 6 mattresses for $1,200.00, 2 Zenith TV sets for $2,200.00. I am satisfied that these values are, as she said, a fair estimation of the value at the date she made the valuations. These are not replacement values, or extravagant values. These are second-hand or used furniture values. There is no reason why I should not accept them as accurate. Some of the furniture in the house belongs to the Ex-wife's sister. It is not clear which items these are. I have no reason to believe that any of the sister's furniture is included in the Ex-wife's valuation.

[9] I now turn to consider in what way the court can apply to the above pleadings and facts the law that the parties as previously explained had agreed should govern the rights of the parties to this action, the Matrimonial Causes Act Cap 176.

Section 29 of that Act sets out the circumstances and limitations applying to the making of orders under the following sections of the Act. Section 30 of the Act provides for orders to be made for maintenance pending suit. Section 31, as explained by section 29, provides for the court to be able to make financial provision orders in connection with divorce proceedings for the purpose of adjusting the financial position of the parties to a marriage on proof of neglect to provide or to make a proper contribution towards reasonable maintenance. Section 32 provides for property adjustment orders in connection with divorce proceedings. It provides for the court to be able to order one spouse to transfer to the other spouse property to which the first spouse is entitled. The section does not express itself to apply to property to which the claiming spouse is entitled. Section 33 provides power to the court, where it makes an order under section 31 or 32, to make a further order for the sale of property to which either or both of the parties has or have a beneficial interest. Section 34 sets out the several matters that it is the duty of the court to have regard to in deciding whether to exercise its powers under section 31, 32, or 33. Section 35 provides that proceedings for relief under section 30 or section 31 may be begun at any time after the presentation of the petition, subject to certain conditions.

[10] Counsel for the Ex-husband submitted copies of the following reported and unreported cases for the guidance of the court:

Wachtel v Wachtel [1973] 1 All ER 829
Daubney v Daubney [1976] 2 All ER 453
Martin v Martin [1977] 3 All ER 762
Harry v Harry (St Vincent 168/1977) [unreported]

In Wachtel's case [supra] the wife had applied for orders for the husband to make periodical payments for herself and her daughter, for the payments to be secured, for a settlement, transfer of property, or variation of settlement order. In dealing with the application for maintenance the judge made certain orders, which were

varied on appeal. In the decision of the Court of Appeal, the principles that are to govern maintenance orders and subsidiary orders for the securing of the maintenance or property adjustment in connection with maintenance were established in the judgment of the court delivered by Lord Denning MR. In the course of the judgment at p.837 at letters d-e, the court explained the relationship between the new Act and the Married Women's Property Act, which as in St Vincent continues to be part of the law in the UK. Prior to the new Act, there had been much debate in divorce cases as to whether the wife had made financial contributions of sufficient substance to entitle her to a share in the house. Since the new Act, that was now of little importance as the powers of transfer enabled the court to do what was just having regard to all the circumstances. Prior to 1948, if the matrimonial home stood in the husband's name, it was taken to belong to him entirely, both in law and in equity. The wife did not get a proprietary interest in it simply because she helped him to buy it or to pay the mortgage installments. Any money that she gave him for these purposes would have been considered as gifts, or, at any rate, not recoverable by her. It was only in the line of cases beginning with Re Rogers' Question [1948] 1 All ER 328, and ending with Hazel v Hazel [1972] 1 All ER 923 that she got an interest proportionate to her financial contribution. The courts had never succeeded in getting a wife a share in the house by reason of her contributions other than her financial contributions, eg, her having devoted herself to caring for the husband and children. All this changed when Parliament intervened and passed the new Act. As a result, there were now few cases brought in the UK under the Married Women's Property Act. In Daubney's case [supra] the matrimonial home was purchased in both names. The wife left the husband and bought a flat with money of her own and the help of a mortgage. The husband was disabled. He applied for an order that the matrimonial home be transferred to him. The wife did not apply for maintenance, and neither did he. The Court of Appeal took account of the husband's greater needs, as compared to the wife's earning power and her possession of a roof, and increased his interest from that awarded by the judge. In Martin's case [supra] it is interesting to note that, while the wife had applied for periodic payments and for a

property adjustment order transferring to her the husband's interest in the matrimonial home, the husband had applied under the Married Women's Property Act for a declaration as to the ownership of the matrimonial home and for an order for sale and division of the net proceeds.

[11] At first blush, on reading the sections of the Act, it would appear that none of the sections have any necessary application to the dispute between these two parties. The property adjustment orders that the Act envisages would appear to be principally orders against a spouse's property limited to a connection with his or her obligation to maintain the other spouse or the children of the marriage. If that is so, in this case the Ex-wife claims no maintenance. The Ex-wife in this case claimed in her writ for her share of the admittedly jointly owned property, the house, to be transferred to her as a result of her financial contribution. This case then would be strictly a property ownership dispute between two ex-spouses. As such it could properly have been brought either by writ after the divorce as was in fact apparently done, or by a Summons during the divorce proceedings under the provisions of the Married Women's Property Act, Cap 175. Even under that old Act and the cases under it, the court would have been able to deal with her claim as described above in full. However, that is evidently no bar to this court proceeding to make an appropriate order under the Matrimonial Causes Act Cap 176. In Daubney's case [supra] there was similarly no maintenance application, merely an application by the husband for an order that the matrimonial home be transferred to him. Yet, neither the court below nor the Court of Appeal had any difficulty in applying the provisions of the Matrimonial Causes Act 1973 to that application. Being guided accordingly, I consider myself able to apply the very flexible provisions of Cap 176 to the determination of the dispute between the parties.

[12] The Ex-husband did not deny that the matrimonial home was an asset, the only asset, of the family. His only issue was the amount of the beneficial interest of the Ex-wife in the property. She claimed for herself, as previously explained, one half

while he claimed for himself three-quarters. Other than the provisions of the Act and the cases cited above, neither counsel had any law for the court. Neither counsel addressed the court on any particular matter arising from the evidence or from the authorities that the court was asked to take into account in coming to a determination. Both counsel were asked by the court whether there should be any consequence of the Ex-husband having enjoyed the benefit of the matrimonial home while paying off the balance of the mortgage. Counsel for the Ex-husband submitted that there should be no legal consequences; that the Ex-wife was entitled to an equal share of the equity in the property up to the date she left the matrimonial home and ceased contributing to the monthly mortgage payments; that thereafter, as the bank was paid off, all the remaining equity accrued to the Ex-husband, so that he should be found to hold 75% of the equity in the property. Counsel for the Ex-wife disagreed, but did not refer to any other factor to be taken into account.

[13] In determining the position of the parties under the provisions of the Matrimonial Causes Act, the proper process is to go, as Cairns LJ recommended in Daubney's case [supra] at page 456 letter h, straight to a consideration of the matters in s 34(1). The matter should be dealt with on a broad basis. It is an advantage that in this case the matter is not complicated by the needs of children, or an application for periodic payments. Here, the matrimonial home was being acquired by the joint efforts of a Ex-husband and a Ex-wife with the intention that it should belong to them equally. The Ex-husband forced the Ex-wife out of occupation so that the she had to make her own arrangements for accommodation, while the Ex-husband having secured occupation rights in the matrimonial property continued to pay the mortgage. No advantage accrues to the spouse who remained in possession in such circumstances. The court is enabled to take into account that he pays no rent, while the other must seek about for accommodation. It is not that the Ex-wife had to pay rent while the remaining Ex-husband did not. The Ex-wife may have found shelter that was not subject to a rent, on sufferance from friends or family. It is that the Ex-wife has been deprived

of the accommodation in the matrimonial home to which she was entitled while the Ex-husband who remained in possession continued solely to enjoy the comforts of the matrimonial home. The monthly mortgage payments made now solely by the Ex-husband in occupation after the eviction of the Ex-wife do not increase his interest in the property. A spouse can no longer force a contributing spouse out of a matrimonial property and then claim the benefit of her no longer contributing to the bank loan upon which the property was acquired while he continues to be the sole enjoyer of the comforts of the property. The Ex-husband in this case, but for the agreement of the parties that it be determined under the provisions of the Act, would have been held to have been a trustee of the matrimonial home for himself and the Ex-wife. The status of trustee brought added obligations to him. As a trustee he was under an obligation to take such steps as he did to save the matrimonial home from foreclosure. What he did in paying off the balance of the borrowing was his duty, to the Ex-wife and to himself. Additionally, the maxim that he who comes to equity should come with clean hands, may have been apropos. It is hardly necessary to point out that the approach suggested by the Ex-husband of looking solely at the financial contribution of the two parties, was appropriate in earlier times to applications under the Married Women's Property Act. The court today is not constrained to look only at financial contribution when dealing with the same matter under the provisions of the Matrimonial Causes Act.

[14] Applying the provisions of the Act, the court is directed by section 34 to take into account such matters as the earning capacity and other financial resources of each of the parties. The Ex-wife in now apparently incapacitated, while the Ex-husband's income has apparently considerably increased. He had been able to pay off the new mortgage in a short period of time. If there had been proper detailed evidence on this aspect, and if the wife had been applying for the entire property to be vested in her, the court might even, if the evidence had warranted it, applying the new latitude under the Act, have considered that as a reasonable application, and ordered the Ex-husband to vacate the matrimonial property and vest it in the Ex-wife, leaving the Ex-husband to acquire a new home. The court

might also have ordered, in suitable circumstances, and if the evidence had been there, the Ex-husband to make periodic payments for the maintenance of the Ex-wife if it found that she had lost the ability to earn. Neither of these is appropriate here, as these are neither asked for nor is there any evidence upon which to base such an order. But, given the greater contribution to the acquisition of the matrimonial property by the Plaintiff during the first 10 years of the marriage, the present greater earning capacity of the Defendant, the present financial need of the Plaintiff, and the present undisputed physical disability of the Plaintiff, an order for the Defendant to vest the property in the Plaintiff and to contribute to her maintenance is now possible. In this case, an order for the Defendant to pay the Plaintiff what she asks, one half of the value of the property and the furniture, would be fair. If this were being dealt with as a case in trust, as would have followed if the pleadings were the determining factor, an order compelling the Defendant to act with some strict timetabling attached to the order would have been appropriate. But, as a result of the agreement of the parties that this case should be dealt with as matrimonial property under the Matrimonial Causes Act, the court will limit itself to the remedies set out in section 32. A provision in the order for leave to apply will allow either of the parties to return to the court for further directions as permitted in an order under the Act.

[15] Given the above findings, there will be the following orders:

1. Pursuant to s 31(1) of the Act, the Defendant shall pay to the Plaintiff forthwith the sum of $15,575.00 being the one half value of the furniture and equipment owned by himself and the Plaintiff that he has forcibly retained since the break-up of the marriage.
2. Pursuant to s 31(1) of the Act, the Defendant shall pay to the Plaintiff forthwith the sum of $28,498.50 being the one half of the agreed value of the matrimonial home.
3. Liberty to apply.

[16] Costs to the Plaintiff to be taxed if not agreed.

I D MITCHELL, QC
High Court Judge