

ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 490 OF 2000

In the Matter of the Domestic Violence and
Matrimonial Proceedings Act Cap 165 of the 1991
Revised Edition of the Laws of St Vincent and the
Grenadines
And
In the Matter of the Matrimonial Homes Act Cap
177

BETWEEN:

RONELLE WEST

Petitioner

and

JOHN WEST

Respondent

Appearances:

Kay Bacchus-Browne for the Petitioner

Margaret Hughes-Ferrari and Grahame Bollers for the Respondent

2000: November, 24, 30, December 14

DECISION

[1] MITCHELL, J: This is a ruling on the issue raised by the Respondent whether an *ex parte* order made against him under the **Domestic Violence and Matrimonial Proceedings Act, Cap 165** should be discharged on the basis, *inter alia*, that the Petitioner had not made full disclosure on the occasion when the order against the Respondent was first obtained *ex parte*.

[2] By an *ex parte* Summons filed on 3 November 2000 the Petitioner had sought an order against the respondent that he be restrained from molesting or assaulting or

using violence against her and for an order that she be not evicted or excluded from the matrimonial home, with a power of arrest to be attached to the injunction. By her affidavit in support of the *ex parte* summons, she deposed that she and the Respondent had been married on 3 April 1999, merely 19 months previously; that irreconcilable differences had arisen between them; that the Respondent had been married twice previously and was the owner of a "million-dollar company;" that she had reluctantly agreed to a separation agreement whereby he would pay her \$93,000.00 over a period of 12 years and that she would leave the home not later than 31 October 2000; that the one month that the agreement gave her to find alternative accommodation had been insufficient; that she had tried desperately to find a place to purchase by borrowing from a bank; that she had been turned down by two banks; that the Respondent had failed to assist her to find a rental apartment if she had not been able to purchase a house in time; that he had failed to let her have items from the furniture in the matrimonial home to furnish her accommodation; that he had used violence against her on 1 November 2000 by violently pushing her into the kitchen cupboards which assault she had reported to the Stubbs Police Station; that when Officer Ricky Matthews had come to investigate the matter the Respondent had switched character and had acted so sweetly that the police officer had left the premises; that the respondent had thereafter reverted to threats and name-calling and that the Petitioner was afraid of him; that she had on 2nd November returned to the house from work and had met the main gate to the house locked with new locks; that the respondent had parked his vehicle to block access to the gate by her car; that he had previously warned her that if she came home he would attack her; that she was presently locked out of her house with no personal belongings such as underwear, toothbrush or money; that she was anxious to comply with her agreement with the Respondent but that she wished the court to vary the agreement to permit her more time to buy somewhere rather than to rent; that the agreement was as yet unregistered and not supported by a court order and that she remained a half owner in the matrimonial home; that the matter was extremely urgent.

[3] On 6 November 2000 having read the Summons of 3rd November and the supporting affidavit of the Petitioner, I granted the two restraining orders requested against the Respondent and ordered that the Order be served on him with a return date of 4 December 2000, 4 weeks later, as requested by counsel for the Petitioner to give her time to file an application on behalf of the Petitioner under the **Matrimonial Causes Act, Cap 176** for variation of the separation agreement between the parties. The terms of the Order as filed were:

It is hereby ordered:

That the respondent John West be restrained from molesting or assaulting or using violence against the Petitioner/Applicant herein.

And it is further ordered:

That the Petitioner/Applicant be not evicted or excluded from the matrimonial home.

And it is further declared:

That the Petitioner had a right to occupy the said matrimonial home.

It is further ordered:

That a power of arrest be attached to this injunction.

And it is further ordered that this matter be returnable on or before 4 December 2000.

[4] On 14 November 2000 the Respondent filed a summons applying for the Order of 6 November 2000 to be discharged and for an enquiry to be made as to the damages suffered by him; and for interest thereon pursuant to section 27 of the **East Caribbean Supreme Court Act, Cap 18**; and for the Respondent to be at liberty to enter judgment against the Petitioner for the amount of damages and interest; and for his costs. The principal complaints against the Order as appears from the affidavit of the Respondent filed on 14 November 2000, were that the affidavit of the Petitioner of 3rd November 2000 contained many falsehoods and inconsistencies and was designed to mislead the court. Thus, the Respondent deposed that he and the Petitioner had been negotiating a settlement since May

2000; that both he and the Petitioner had at all times been represented by counsel; that it had finally been agreed between the parties that he would make certain payments of money to the Petitioner and that she would leave the matrimonial home within 30 days of signing the agreement and would transfer her share in the home to him; that she had made no financial contribution towards the matrimonial home which was actually in a position of negative equity in that the parties owed more on the home than it was worth; that after negotiations the parties had on 26 September 2000 reduced their agreement for separation and maintenance to writing and he had paid the Petitioner the sum of \$20,000.00 as provided in the agreement; that he had subsequently paid her \$10,000.00 as provided for in the agreement; that he had offered to assist the Petitioner to locate suitable premises for her to rent but that the Petitioner had refused the offer; that in October it had become clear to him that the Petitioner was not making a serious effort to find somewhere to live; that he had kept reminding her of her obligation to move by the end of the month; that he had after the breakdown of the marriage met another lady who lived in England and with whom he had made arrangements to visit and stay with him for two weeks from 6 November 2000; that on the morning of 1 November 2000 he had reminded the Petitioner that she had to be out of the house that day; that the Petitioner had arrived at the house at 5 pm and she had told him that she might have a problem moving out that day; that he had asked her to hand over the keys to the house and the safe but she had refused to do so; that he had told her that he would notify the Stubbs Police Station that she was now technically a trespasser; that he had called the Police Station and reported that there was a dispute over a domestic matter; that at about 11.15 pm the Petitioner had returned with PC Matthew of the Stubbs Police Station; that the officer had requested that he not put the Petitioner out of the home until the next day and that he had agreed to that; that the police officer did not tell him that the Petitioner had reported that he had used violence to her; that he denied that he had ever assaulted her or used violence on her and in particular had never pushed her into the kitchen cupboards as she alleged in her affidavit; that it was strange that if the Petitioner was afraid of him she was so desperate to remain in the

house with him; that on his instructions his lawyer had contacted the lawyer for the Petitioner; that he had learned that the Petitioner had not yet found anywhere to rent and did not in fact wish to rent accommodation as it would eat into her money that she needed to purchase a property; that this was in spite of the sum of \$3,000.00 that he had agreed to pay to the Petitioner specifically for rent for 3 months while the Petitioner located a property to buy; that the Petitioner's lawyer had given no indication as to when the Petitioner would leave the home and that his friend had been coming to stay with him in a few days' time; that he had wished to avoid embarrassment and humiliation for all concerned and had changed the locks on 2nd November 2000; that he had informed the Petitioner and her lawyer that the Petitioner's personal belongings could be collected at the house at any time of the day or night and he exhibited copies of letters to that effect dated 4 November 2000; that he had personally investigated the availability of houses and had sent the Petitioner a list of 17 properties available for immediate rent; that his friend had arrived from England on 6 November 2000 and was now staying in the house; that he had received a copy of the court order by a security guard employed at his house on 10 November 2000; that he had allowed the Petitioner to move back into the home but that the situation was extremely uncomfortable for all concerned; that he believed that the Petitioner was intent on causing mischief and mayhem and was not concerned with keeping to the agreement reached between the parties after long and careful negotiation on which she had been advised every step of the way; that he was willing to pay for a furnished apartment for the Petitioner to move into immediately; that the Petitioner had told many lies and half-truths in her affidavit; that the failure of the Petitioner and her lawyer to disclose all material facts to the court is an abuse of process particularly when an application is made *ex parte*. He therefore asked that the court set aside the Order made on 6 November 2000 and grant him the reliefs requested in his summons of the same date.

[5] On 18 November 2000 the Petitioner filed her affidavit in response. She deposed, *inter alia*, that she had been intimidated by the Respondent; that he had taken a

new lover merely one year after the marriage and wanted the Petitioner out of the matrimonial home so that he could bring the new lover into it; that he had always threatened to use his wealth and power to crush her; that she had been advised that in all the circumstances she should try to settle with the Respondent; that the Respondent was trying to scare her out of court; that the Respondent was the one who was misleading the court; that the negotiations had been forced on her; that the parties had had merely two conferences; that at the first conference she had refused to sign the ready-made agreement presented to her but that she had subsequently at the second conference signed it; that she acknowledged the terms of the agreement she had signed; that she now wished to have the agreement varied by the court under the relevant matrimonial law provision; that she had taken steps to apply to the court to vary the agreement and that she would apply to consolidate the two applications; that if the matrimonial home was in negative equity that was because the Respondent had purposefully mortgaged it to his company TMM Barefoot Vocation to evade any claim she might have in it contrary to the provisions of section 47 of the Matrimonial Causes Act; that she had applied to vary the agreement because she had not realised how impossible it would be for her to buy a house based on the agreement; that the bank she had approached had said that it would not lend her money based on the agreement as it was not enough security for them; that she did not wish the Respondent merely to rent a house for a while and then stop, leaving her without a home; that she wished to have a reasonable house that is paid for which belongs to her; that the Respondent had assaulted her as she claimed; that she had reported it to Sergeant Ellis of the Stubbs Police Station and that was why constable Matthews had been sent with her to the house; that the Respondent had packed her things and thrown them into the unventilated garage room which had dead roaches in it; that he had burned the matrimonial mattress on which she had been sleeping claiming that it was stink; that the steam iron he had put with her things was broken and the towels were the ones used to dry the dogs and that her clothes had a foul smell from the odour of the room and the lack of air and sunlight; that when she had returned to the house on the evening of Friday 10 November with

the court order she had been met by two security guards employed by the respondent who had followed her everywhere she went in the home; that she had met a woman sleeping in the matrimonial room; that she had no mattress to sleep on as the respondent had burned her mattress and refused to give her another one; that he had instructed the security guards to make written reports of all her activities minute by minute and even to follow her into the bathroom; that the Respondent had given the security guards code words to use as they changed shifts for fear that she might breach the security somehow; that the security guard followed her around with handcuffs in his hand; that all her conversations were taped; that the woman Gillian she had found in her home had refused to leave when she had asked her to do so; that Gillian and the security guards had told her to play music and listen to the television at a low volume; that the guard had stayed on duty watching her until she went to bed at 2 am on that night; that the guards were changed so that new faces appeared daily; that after much complaint a female guard had been used on Wednesday 15 November; that the situation was intolerable; and that she was willing to leave if she was given the security of a house to live in.

- [6] Although much evidence was placed before the court, that evidence principally concerned the merits or otherwise of the Petitioner's claim to have the agreement varied. That matter is not at this point before the court. The court is dealing at this stage only with the Respondent's application to discharge the *ex parte* injunction based on the allegation that the Petitioner had failed to make full and frank disclosure of all material facts known to her. The Respondent relied on the cases of **R v Kensington Income Tax Commissioners, ex parte Princess Edmond de Polignac** [1917] 1 KB 486, and **Sumitomo Heavy Industries Ltd v Oil and Gas Natural Commission** [1994] 1 Lloyd's Reports 45, and **Ali and Fahd Shobokshi Group Limited v Moneim** [1989] 1 WLR 710. His further complaint was that the *ex parte* injunction should not have been granted as it had not been an emergency and could have been heard *inter partes* instead of *ex parte*; it should have been limited to the period required to arrange an *inter partes* hearing

which should have been measured in days; also the order did not specify the date on which it expired. He relied on the case of **Ansah v Ansah [1977] 2 All ER 638** in applying for a finding that the order was void *ab initio* and should be discharged. His counsel further submitted that the Petitioner had asserted that the Respondent had used violence against her and that she was afraid of him, yet she had asked that she be allowed to remain in the matrimonial home in spite of this; that the court should have been put on notice of the impropriety of granting an *ex parte* injunction on this basis alone; that the power of arrest could only be attached to an Order under section 3 of the **Domestic Violence and Matrimonial Proceedings Act** if the judge was satisfied that the Respondent had caused actual bodily harm to the Petitioner and was likely to do so again; that the Petitioner had not even alleged that the Respondent had caused her actual bodily harm; and that the power of arrest was therefore improper and should not have been inserted in the order. His counsel relied on the case of **Hopper v Hopper (1979) 1 All ER 181** for her submission that an injunction under the Act was only a short term remedy and that it should have been expressly limited in some way so that it would lapse after a reasonable time sufficient to allow the wife to make other arrangements for her accommodation.

- [7] Counsel for the Petitioner responded that the **Domestic Violence and Matrimonial Proceedings Act Cap 165** and the **Matrimonial Homes Act Cap 177** were special legislation passed specifically to address matrimonial problems. She submitted that the provisions of the general civil law and other statute law did not apply to injunctions under these Acts; that the old provisions relating to ordinary injunctions did not apply; that the duty to disclose all material facts cannot be measured to a nicety in matrimonial situations; and that the Petitioner had disclosed all material and salient points both for the occupation order and for the injunction *re* violence; that the Petitioner had satisfied both tests laid down in the case of **Lewis v Lewis [1978] 1 All ER 729** for the attaching of a power of arrest; and that there was no requirement for there to be blood or a wound for there to be

actual bodily harm. The Petitioner relied on the case of **Gurasz v Gurasz [1969] 3 All ER 822** in support of the occupation order made in her favour.

- [8] Having heard both counsel and having read their very helpful written submissions and the authorities and statutes referred to by both of them, I find as follows. First, I was and am satisfied that the evidence before me at the time of the making of the *ex parte* order disclosed that the Respondent was alleged to have effected actual bodily harm to the Petitioner by pushing her violently against the cupboards. I was and am satisfied that the allegation and the evidence in the Petitioner's affidavit was that the Respondent was attempting to carry out the terms of his written agreement with the Petitioner by force. I was and am satisfied that this was an emergency situation which required an immediate and *ex parte* order to protect the alleged right of the Petitioner to remain in the alleged matrimonial home until such time as the court could hear both parties and adjudicate on the rights of both of them over the occupation of the alleged matrimonial home. In a situation of alleged violence the purpose of the Act would be lost if the application for injunctive relief were invariably ordered to be served on the Respondent before it was heard. In most cases of alleged domestic violence, it is desirable to make the Order first before the *inter partes* hearing and to have it served on the spouse alleged to be using the violence, and to give the Order teeth by attaching a power of arrest. I am satisfied that in a disintegrating matrimonial situation, filled as it inevitable is with strong emotions and a multiplicity of issues that appear more or less important to each of the spouses, the law does not require that an *ex parte* domestic violence injunction should be granted or retained only in the strict circumstances of disclosure required by the authorities in commercial or other civil situations. In cases of alleged actual bodily harm, the court will not apply the niceties found in tort and contract cases as to the duty of disclosure. The time given in the Order as the return date in this case was unusually long, but there was a reason for it, and I do not consider that this by itself, if it was a wrong exercise of discretion, deprived the Respondent of the right to come at any earlier time before the court or was sufficient to cause the *ex parte* injunction to have

been improper, illegal, or consequently void. The court has an obligation in domestic violence cases to protect the rights of spouses *vis a vis* each other. The law provides a mechanism for the parties to be given an opportunity to have their claims adjudicated in the relative calm of the courtroom. This applies even when a dispute arises between them as to the terms of a binding agreement one of them claims has been reached. The *ex parte* order as made in this case protected the rights of the Petitioner and the Respondent as spouses to a marriage that has not yet been brought to an end by an order of the court. Whether or not the Petitioner had acted contrary to a valid agreement, knowingly and willingly entered into by her in circumstances that make the agreement binding on her, will await the outcome of evidence and argument on that issue. For the moment, on the *ex parte* application, it was only necessary for the court to strive to use the wide powers given to the court by the Acts referred to above to preserve the peace between the parties and to freeze their rights to personal security and a roof over both their heads until the court could adjudicate on the relative strengths of their various claims against each other. The fact that the Respondent had paid money to the Petitioner under the agreement that the Petitioner now complains about was not a matter that necessarily affected the right of the Petitioner to seek the protection of the court against alleged violence against her person and the alleged use of force to evict her from the alleged matrimonial home. The rights of the parties under the agreement and otherwise will be a matter for decision either when the Respondent brings up the substantive injunction prior to the return date or the Petitioner brings it up on a summons made returnable on the date given by the court in the Order. If the matter is not brought up the injunction will lapse on 4 December 2000. In the absence of any real evidence of the requisite impropriety either in the application by the Petitioner for *ex parte* injunctive relief in a domestic violence situation or in the terms of the order itself, the Respondent's application is dismissed. Costs will be costs in the cause.

I D MITCHELL, QC
High Court Judge