SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

SUIT NO. D 127 of 2000

BETWEEN:

THOMASINE SPOONER

Petitioner

and

JOSEPH SPOONER

Respondent

Appearances:

Mr. Christopher Anthony McNamara for the Petitioner
Mr. Alberton Richelieu for the Respondent.

2002: May 16
May 17
August 22

MATRIMONIAL PROPERTY….LAW OF COMMUNITY OF PROPERTY…RENE CENAC v EARL CENAC CIVIL SUIT NO. D 31 OF 1984 (ST. LUCIA)(UNREPORTED) APPLIED….WAS WIFE ENTITLED TO HALF-SHARE IN ALL FAMILY ASSETS? EFFECT OF NON-DISCLOSURE

JUDGMENT

[1] HARIPRASHAD-CHARLES J: This application for Ancillary Relief came on for hearing on 16th day of May 2002 and on the following day, I gave an oral judgment and indicated that the reasons therefor would be reduced into a written judgment subsequently. I do so now.

[2] The Petitioner and the Respondent are Saint Lucian Nationals resident in New York. They were married on 9th day of June 1988 at the Office of the City Clerk in the Borough of Manhattan, City of New York. She was 33 and he was seven years her senior. There are no children of the marriage although the Petitioner has mothered two adult children of another relationship and the Respondent has at least eleven children from different associations. The parties lived and worked in New York during the first eight years of their marriage after which they decided to return permanently to their homeland. Mr. Spooner, the Respondent arrived in Saint Lucia on 13th day of December 1995 and Mrs. Spooner followed some days later. He was also returning home to take up the position as Superintendent of Prisons in January 1996. As most wives would do, she came here, settled her husband in his new job and returned to New York on 14th day of February 1996 for knee surgery. She returned to Saint Lucia on crutches two weeks later. She then made a final visit to New York for follow-up check and in April 1996, she returned to Saint Lucia to settle permanently. But her dream quickly turned into a nightmare as she became a victim of physical and mental abuse at the hands of her husband; a former winner of Mr. America Body Building, a Juvenile Psychologist, a Doctor and a Superintendent of Prisons. And so, in or about December 1997, she was forced to return to the hustle and bustle of New York City to start life all over again, this time with a physical handicap – a severe knee injury.

[3] On 7th day of November 2000, the Petitioner petitioned the Court for a dissolution of their marriage. On 28th day of December 2000, a decree nisi was pronounced in her favour. The said decree has since been made absolute.

[4] On 20th day of September 2001, the Petitioner commenced these proceedings for Ancillary Relief for a declaration that she be the owner of one-half share in the matrimonial property registered as Block 1054B Parcel 236 including the contents thereof and that the Respondent be ordered to pay to her the monetary value thereof, or alternatively that an order be made for the sale of the said property out of which proceeds the Petitioner be paid for her said one-half share. She also sought a one half-share of all funds derived from the said matrimonial property or owed as rent by the Respondent, a one-half share of all

funds standing in the joint account at Barclays Bank PLC, Castries and a one-half share of all funds removed from the "Right Time" Savings Fund. In addition, the Petitioner sought Maintenance by way of periodical payments or a lump sum and Costs.

[5] The Petitioner's application for ancillary relief was supported by an affidavit filed on 20th day of September 2001 and a supplemental affidavit filed on 26th day of February 2002. On 26th day of November 2001, the Respondent swore and caused to be filed an affidavit in response to the Petitioner's first affidavit.

[6] The matter was adjourned to Chambers on two occasions to facilitate an amicable resolution. When this reached a deadlock, pre-trial directions were given in an effort to expedite the matter and simplify the issues. It was agreed that all affidavit evidence will stand as evidence in chief and that the parties would avail themselves for cross-examination. Both parties were given adequate time to produce supplemental affidavits with accompanying relevant exhibits. The Petitioner complied fully with the Order of the Court. The Respondent was unmindful. He was content to stand by his sole affidavit. He also failed to provide skeleton arguments by the stipulated date or at all.

[7] At the hearing, both Mr. Richelieu and Mr. McNamara concentrated on the issue of the matrimonial property. The peripheral issues of maintenance and costs were not actively pursued.

THE EVIDENCE

(a) Matrimonial Property (Land and matrimonial home)

[8] The crux of the matter relates to the interest of the parties in respect of the matrimonial property (land and matrimonial home). According to the evidence, the Respondent purchased the parcel of land on which the matrimonial home stands long before he met and married the Petitioner. There is no evidence that the Petitioner made any contribution

to its acquisition. Consequently, the Respondent owns the legal estate in the land and there is no evidence as to any beneficial interest residing in the Petitioner.

[9] It is however undisputed that the matrimonial home was constructed during the currency of the marriage. The Respondent alleges that the matrimonial home was acquired with his personal savings and some monies from the "Right Time" Savings Fund and therefore, it is his separate property. The Petitioner claims that the matrimonial home is community property and that she is entitled to one-half share of it. She further alleges that since she had made substantial contribution during the subsistence of the marriage, she is not only entitled to a one-half share of the matrimonial home but a one-half share of the entire matrimonial property (which includes the land on which the matrimonial house stands).

(b) Furniture and Appliances

[10] The Petitioner alleged that their joint funds were used to purchase moveable household items including two cars, leather and other furniture, beds, stove, microwave, refrigerator and other household appliances totaling $150,000.00. She also alleged that as a result of the breakdown of the marriage and her relocation to New York, she has had to expend money to purchase new furniture and appliances while the Respondent continues to enjoy the use of these items. In response, the Respondent at paragraph 12 of his affidavit stated:

> "The moveable household items are now over 7 years old and were bought with my personal funds with no monetary contribution from the Petitioner. I further state that I could not finish paying for the said items and I therefore filed for bankruptcy in the United States for the sum of $85,000.00 as evidenced therein."

[11] The Respondent has not denied the existence of these household furniture and appliances. He however denied that the furniture and appliances were acquired with their joint funds.

(c) "Right Time" Savings Fund

[12] The "Right Time" Savings Fund of Philadelphia started in 1991 during the existence of the marriage. The Petitioner was named as the principal beneficiary. The Fund as of 30th day of August 1996 stood at US$50,172.53.

[13] At paragraph 12 of her affidavit of 20th day of September 2001, the Petitioner alleged that the Respondent and herself contributed to the "Right Time" Savings Fund. The Respndent categorically denied this allegation and stated that he was the sole contributor to the fund. He however admitted that the Petitioner is the primary beneficiary.

(d) Rental of Matrimonial Home

[14] The Respondent admitted that he rented the matrimonial home for a year at $2,000.00 monthly. He however alleged that the funds received as rent were used to build a retaining wall costing $50,000.00. The Petitioner deposed that she was living in the house when the retaining wall was built.

THE LAW OF COMMUNITY PROPERTY

[15] Mr. Anthony McNamara for the Petitioner forcefully argued that the matrimonial property and family assets should be deemed to be community property by virtue of the Civil Code of Saint Lucia. Learned Counsel quoted extensively from the Saint Lucian case of *Rene Cenac v Earl Cenac (Civil Suit D 31 of 1984) (unreported)* to substantiate his assertion. In that case, *Bryon J.* [as he then was] dissected the law of Community of Property and proceeded to examine the concepts of "separate property" and "the property of the community." At *page 4* of his Judgment, Byron J. stated:

> Article 1191 of the Civil Code of Saint Lucia states:
>
> "Legal community may be established by the simple declaration which the parties make in the contract of their intention that it shall exist. It also takes place when no mention is made of it, when it is not expressly nor impliedly excluded, and also

when there is no marriage contract. In all cases it is governed by the rules set forth in the following articles."

[16] In the instant case like in the *Cenac's case (supra)*, the evidence did not disclose any specific agreement about whether there was legal community or not between the parties. Certainly there was no evidence of any agreement excluding legal community and there was no marriage contract. In these circumstances the provisions of Article 1191 require the finding that legal community was established between the parties. Byron J. went on to explain *(at pages 4-5):*

> "Article 1192(1) stipulates that the property of persons married in community is divided into separate property and the property of the community. The effect of this is that it is not automatic that all property acquired by a spouse during a marriage is community property.
>
> However, it is clear from Article 1193 that the burden of proving that property acquired during the community is separate property is placed firmly on the person who is alleging that it is separate property. Article 1193 (1) stipulates as follows:
>
> > "Property is deemed to be the joint acquisition of the community unless it is admitted or proved to have belonged to, or to have been in the legal possession of one of the spouses previously to the marriage, or, if acquired after marriage, is admitted or proved to have been acquired in one of the ways set forth in Article 1192, or to otherwise belong to one of the spouses only…."
>
> Article 1192 (2) sets out the circumstances under which a spouse may acquire separate property during marriage and the paragraph that is relevant in this case reads as follows:
>
> > "Separate property comprises-
> >
> > (b) the income and earnings of either spouse, investments in the name of one spouse, and insurance policies taken out on the life and in the name of one spouse."

[17] Mr. McNamara submitted quite correctly that the general principle and starting point is that any and all assets purchased or acquired during the marriage is jointly owned by the parties unless admitted otherwise or proven to fall within the exceptions contained in Article 1192. He next submitted that on the strength of *Cenac's case* alone, the Petitioner

is entitled to at least a one-half share of the matrimonial property, the furniture and appliances, the "Right Time" Fund as well as the funds derived from the rental of the matrimonial home.

[18] Mr. Richelieu for the Respondent acknowledged that the Petitioner contributed to the construction of the matrimonial home. He conceded that the Petitioner is entitled to an interest in the matrimonial property but resisted a one-half share of the matrimonial property and the family assets acquired during the currency of the marriage. According to Learned Counsel, the Respondent purchased the land on which the matrimonial home

stands in 1977. The parties were married in 1988. The Petitioner contributed nothing to the acquisition of the land. The Respondent built the matrimonial house with his personal savings and some monies from the "Right Time" Savings Fund. In respect of the furniture and appliances and the "Right Time" Savings Fund, the Respondent maintained that these were his separate properties.

[19] On a balance of probabilities, I prefer the evidence of the Petitioner to that of the Respondent. At paragraph 3 of her affidavit of 26th day of February 2002, she described the three jobs she held which were not denied by the Respondent. She described her total contribution to the family expenses and exhibited statements and rent invoices to substantiate her allegation. She pointed out that the Respondent had numerous extra-marital expenses to meet and so, she used all of her earnings in further supplementing his income and allowing him to save for the matrimonial home in Saint Lucia. On the whole, I found her evidence to be more credible and acceptable.

[20] The Respondent did not impress me as a witness of truth. His sole affidavit of 26th day of November 2001 provided sketchy assistance to the Court. He denied that the Petitioner made any contribution towards the household expenses. He denied that they pooled their incomes to run the matrimonial household and alleged that his income was used solely to run the house. He was unable to produce an iota of relevant evidence to substantiate his allegations. The Respondent next alleged that he was earning $1,800.00 U.S. weekly. This

was a blatant misrepresentation of his earnings. The Petitioner was able to provide documentary evidence of the Respondent's weekly earnings of $804.00 US.

[21] It seems palpably clear that by virtue of Articles 1188 - 2000 of the Civil Code, the Petitioner is entitled to at least a one-half share of the matrimonial home and any and all assets purchased or acquired during the marriage jointly owned by the parties. But in my judgment, the matter does not end here.

THE IMPACT OF THE DIVORCE ACT

[22] In addition to the Civil Code of Saint Lucia, there is the Divorce Act No. 2 of 1973. Section 24 empowers the Court to make orders for transfers and settlement of property. Section 25 sets out certain matters to which the Court is to have regard in deciding what orders to make under sections 22 and 24.

[23] Section 25(1) states:

> "It shall be the duty of the Court in deciding whether to exercise its power under sections 22, 23 or 24 in relation to a party to the marriage and, if so, in what manner, to have regard to all the circumstances of the case including the following matters, that is to say:
>
> (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;
> (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
> (c) the standard of living enjoyed by the family before the breakdown of the marriage;
> (d) the age of each party to the marriage and duration of the marriage;
> (e) any physical or mental disability of either of the parties to the marriage;

(f) contributions made by each of the parties to the welfare of the family including any contribution made by looking after the home or caring for the family…"

[24] Broadly speaking, it is the duty of the Court so as to exercise those powers as to place the parties, so far as practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards each other.

[25] The Court therefore must exercise its judicial discretion in respect of the matters set out in paragraphs (a) to (f) of Section 25 (1). Under this section, the Court is given a wide discretion in the exercise of its powers to make financial provisions orders or orders for transfer and settlement of property but the Court must have regard to all the circumstances of the case.

[26] I should point out that the Divorce Act recognized the principle of constructive trust and contributions to the home by the housewife for her services and even more cogent contributions being direct contributions towards the matrimonial property and maintenance of the household by a working wife. See: *Lang v Lang (Civil Suit No.30 of 1991)(Saint Lucia).*

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[27] Before I proceed any further, I must state my conclusions on the facts in issue. After careful analysis of the three affidavits and after listening to submissions from both Counsel, I make the following findings of fact.

[28] According to the evidence, the Petitioner and the Respondent worked continuously and assiduously during the marriage. The Petitioner held three jobs. She worked as the Assistant Manager of a Sheraton Hotel. She was a Beautician and Cosmetic Sales Agent as well as the Director of a Center for Children. There is no evidence as to what the Respondent was engaged in but it seemed as though he worked hard also. The 12 year-

old marriage relationship has ended. For all intent and purposes, the parties are permanently estranged. The parties should be put back in the position they were in before the breakdown. Fairness must be the ultimate goal. Fairness requires the Court to take into account all the circumstances of the case. In the recent landmark House of Lords decision of *White v White (2000) 3 WLR 1571, Lord Nicholls of Birkenhead* said(at *page 1573:*

> "Features which are important when assessing fairness differ in each case. And, sometimes, different minds can reach different conclusions on what fairness requires. Then fairness, like beauty, lies in the eye of the beholder. So what is the best method of seeking to achieve a generally accepted standard .of fairness? Different countries have adopted different solutions. Each solution has its advantages and disadvantages. One approach is for the legislature to prescribe in detail how property shall be divided, with scope for the exercise of judicial discretion added on."

[29] The Petitioner has returned to the hustle and bustle of New York literally to start life all over again. She can no longer do three jobs being limited by a severe knee injury. She can only do light work and is limited to childcare. The Respondent has a doctoral degree. He is a Juvenile Psychologist. He was also a Mr. America Body Building. One would expect him to be in a perfect state of health and he appeared so when I saw him in Court. He is unemployed at 54. He alleges that he cannot find a job. Perhaps so when one considers retirement age to be 55. But the Respondent rents portions of the matrimonial home and operates a bar. He says that he never operated a bar on the premises. However, the Respondent could in the absence of a stable job, continue to rent portions of the matrimonial home so as to derive a form of income. There is also room for expansion of his present business arrangement. The building has potential to be used for commercial purposes. In fact, the Development Control Authority, by letter dated 25th day of April 2000 is willing to consider rental apartments with a common dining area arrangement instead of a commercial bar.

[30] The Petitioner, as I have already pointed out, has had to start life all over again. In so doing, she has had to purchase new furniture and appliances. She now has to live in a

rented house. In the meantime, the Respondent enjoys the benefit of a furnished matrimonial home to the exclusion of the Petitioner.

[31] According to Mr. McNamara, the Petitioner was financially raped. He submitted that this is a case where once the hustle was over, one party forced the other away by abuse and behaviour of an excessive kind and having achieved this, took possession and enjoyment of the fruits of their joint labour all for himself, whilst the other was condemned to return to the hustle in New York empty handed and to start all over again.

[32] Counsel maintained that the Petitioner is entitled under the Civil Code of Saint Lucia as well as the Divorce Act and decided judicial authorities to a one-half share of all family assets acquired during the existence of the marriage. He cited the following cases to support his submission:

(1) *White v White (2000) 3 WLR 1571*

(2) *Fitz Marcellin v Anne Marcellin (Civil Suit No. D 49 of 1984)(unreported (Saint Lucia)*

(3) *Lang v Lang (Civil Suit No. D 30 of 1991)(unreported) (Saint Lucia)* and

(4) *Clarke v Clarke (Civil Suit No. D 113 of 2002) (unreported) (Saint Lucia)*

[33] Learned Counsel for the Respondent was less aggressive and theatrical than Mr. McNamara. He was however equally persuasive in his arguments and maintained that the Respondent and the Petitioner never pooled their resources to run the matrimonial home. Counsel contended that the matrimonial home was run solely on the income of the Respondent as the Petitioner was never interested in living in Saint Lucia.

[34] The Respondent presently enjoys the use and occupation of the matrimonial home to the exclusion of the Petitioner. He has been doing so for the last five years. He has even rented the said house for a year and made a profit. He claimed that he used the money from the rental of the house to build a $50,000.00 retaining wall. There must be a receipt for such a costly venture yet none was tendered. This brings me to the issue of non-disclosure.

[35] It is significant to point out that in proceedings of this nature the law requires both husband and wife to give full and frank disclosure to the Court whether by affidavit of facts, by affidavit of documents or by evidence on oath. Any shortcomings from this standard can and normally will result in the Court drawing inferences adverse to that party.

[36] The powers of the Court to draw inferences adverse to the party in such circumstances was expressed in *Payne v Payne (1968) 1 All ER 1113.* At *page 1117, Willmar LJ* declared:

> "It is well established that the Court is entitled to draw inferences adverse to a husband who has not made a proper disclosure of all his available resources…."

[37] I can only come to the conclusion that I cannot believe the Respondent since he has not made proper disclosure to the Court.

[38] In all the circumstances of the case, I think that this is a proper case for a lump sum award as maintenance especially in light of the financial needs and obligations of the Petitioner and her disability. See: Lord Denning MR at page 840 in *Wachtel v Wachtel (1973) 1 All ER 829.* Also, in the Vincentian case of *Sassine v Sassine (Civil Appeal No. 18 of 1993)(unreported), the Court of Appeal applied the "clean-break"* principle as it is understood in the Divorce jurisdiction. I will apply this principle and increase the Petitioner's share of the matrimonial property instead of making a monetary order.

[39] In addition to the law of community property, the instant case could also be satisfactorily dealt with by carrying out the exercise required by Section 25(1) systemically and realistically to ascertain those interests in a broad way so that one can see the justice of each side's case.

[40] In doing so, my Order would be:

That the Petitioner be and is hereby awarded the following:

(i) A one-half share of the matrimonial property (land and matrimonial home) at Trouya valued at $587,000.00.

(ii) A one-half share of the furniture and appliances valued at $150,000.00.

(iii) US$25,000.00 representing a one-half share in the “Right Time” Savings Fund.

(iv) EC$12,000.00 representing a one-half share of the rental value of the matrimonial home.

(v) Each party bears his or her own Costs.

INDRA HARIPRASHAD-CHARLES

High Court Judge