GRENADA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. GDAHCV1995/0075

BETWEEN:

GLENFORD THOMAS ROBERTS

Petitioner

and

SANDRA CLAUDIA ROBERTS (nee) CHARLES

Respondent

Appearances:
Mr. Ian Sandy for the Petitioner
Mr. G. W. Prime for the Respondent

2002: November 18, December 17

DECISION ON ANCILLARY RELIEF

[1] **BARROW, J. (Ag.):** It is of some moment that the application by the Petitioner, in the language in which it is framed, seeks relief that may be given under the **Matrimonial Causes Act 1973** ("the Act"). Both in his petition and in the notice that he issued after decree absolute was pronounced on 27th January 1997 the Petitioner, whom I shall continue to call "the husband" for convenience, asked for ancillary relief in the form of 'a property adjustment order that the Respondent may be ordered to transfer to the Petitioner his half interest in the matrimonial home situate at Grand Anse'. The notice of application for ancillary relief, dated 16th April 1997, was essentially the Form 11 notice contained in the **Matrimonial Causes Rules 1977** or its equivalent in the **Family Proceedings Rules 1991** requiring the Respondent, whom I shall continue to

call “the wife” for convenience, to file an affidavit giving full particulars of her property and income and advising her that she could allege in her affidavit, if she wished, that the husband had property or income.

[2] A property adjustment order, which includes a transfer of property order, may only be made for the purpose of adjusting the financial position of the parties to a marriage and any children of the family, according to section 21 of the Act. The object of that adjustment is now stated to be to recognize the transferee’s contribution to the accumulation of family wealth and to assure, so far as just and practicable, his future living standard, see **Rayden and Jackson on Divorce and Family Matters**, 16th ed. (1991) at para 29.124.

[3] Because the fundamental purpose of a property adjustment order is to adjust the financial position of the parties it is indispensable that the ‘pre-adjusted’ position of the parties should be known. In the absence of that knowledge the court is ignorant and would be unable to have regard to the matters that section 25 of the Act says it should. The section sets out in great detail what these matters are and ‘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’ tops the list. Immediately following is ‘the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future’.

[4] Consistent with the need for this critical information is the emphasis in the Form 11 notice on disclosure of property and income. In fact the direction in rule 2.58 of the **Family Proceedings Rules 1991** to an applicant for ancillary relief is explicit in requiring him to state in his affidavit in support ‘full particulars of his property and income’.

[5] But nothing about either party’s current income or property is to be found in the five affidavits that the two parties swore between them, except that the husband owns a house at Calivigny which seems to be the rock upon which the wife rests her contention that the husband is not to get any share of her property. There is, similarly,

nothing about their financial needs, obligations or responsibilities. This dearth of relevant information points to a fundamental truth about the application.

[6] While the husband's application, as framed, undoubtedly invokes the jurisdiction that this court has under the Act, the application that was actually pursued on the affidavits and in the conduct of the hearing is altogether a different endeavour. The husband's supporting affidavit of even date with his notice of application reveals this reality. It states at paragraph 12: '…I therefore respectfully ask this Honourable Court for an order that the Respondent pay to the Petitioner the value of one half share in the aforementioned matrimonial home.' The husband, it seems to me, is not seeking an adjustment in the financial position of himself and the wife. He is seeking an order that by virtue of the financial contribution he made to the acquisition of the house he is entitled as a matter of law to a share in the property on which the house stands. What the husband wants is an order under section 17 of the **Married Women's Property Act 1882**. The 1991 Rules contain express provision permitting and directing how a section 17 application shall be made. Rule 3.6 says it is to be made in any ancillary relief proceedings by notice of application or summons.

[7] No section 17 application was filed.

[8] There was no objection from the wife's side to the substance of the application and her counsel fought the case on the footing that the husband was not entitled to any share in the property because whatever was his contribution it was a gift. The common issue between the parties was whether or not the husband was entitled to an interest in the property. It is a cardinal principle that there should be avoidance of multiplicity of proceedings. In the circumstances of this case I believe that the overriding objective of dealing with cases justly expressed in the **Civil Procedure Rules 2000** would be served if I were to proceed to determine the issue that the parties litigated. This, notwithstanding the conceptual difficulties that the framework of the litigation presents and notwithstanding that there can be no full exercise of the powers that a court ought properly to exercise on an application for a property

adjustment order which is definitionally an order adjusting the financial position of the parties.

[9] It was the briefest of marriages. Celebrated on 17th June, 1995, the Petition for divorce was filed on 17th October of the same year. While it is no inflexible rule it is the case that the shorter the marriage the less far-reaching is likely to be the adjustment that a court will make in favour of a party to such a marriage, see for example **Potter v Potter** [1982] 3 All ER 321 at 326. The rationale for this approach of the courts seems to have been validated by the disposition of the parties neither of whom deigned to require that any part of the assets of the other should go towards adjusting her or his own fortunes. What the husband seeks is what he says is his by right. The wife seeks nothing except that she should be left with ownership of her house intact.

[10] Before the marriage the parties had lived briefly together, for some eight months in 1991, in the husband's own house in Calivigny. The wife says that the husband turned her out along with her two infant children. The husband had a son by a previous marriage and the falling out apparently related to that child. It was after this that the wife applied to the Government for a piece of land at Grand Anse 'with the view of building a house for my self and my said children' as she puts it. Construction of the house began in 1993 and the husband said he would help her with it but the house was not built as a matrimonial home but as a residence for herself and children, she deposed. The petitioner expressly told her that he would help her in consideration for her nursing him to recovery from a broken leg in 1990, she said. These assertions of the wife were in response to the husband's assertions that 'as a result of our intention to marry' he and the wife pooled their income together to build the house.

[11] The husband's evidence is that they could not get a loan from a financial institution because the land was not fully paid for and being short of finance he organized friends to volunteer labour on weekends and he paid for all other labour, transportation and building materials for the house. He said that he did all the

electrical work being a certified electrician. He provided other information as to his financial contribution. In addition, he filed affidavits by five persons, three of whom deposed that they worked on the house in various capacities and were paid by the husband and one of whom was the director of the suppliers, Jonas Browne & Hubbard (Grenada) Ltd, who confirmed that the husband established an account with that company which supplied the husband with building material.

[12] There was a fierce dispute as to which party paid for what and who paid for more. I have carefully considered the material placed before me and both what they say and what the parties say about this material. I note that the bulk of the material is in the form of invoices (counsel describe them as receipts in the joint statement that they very helpfully prepared summarizing these invoices) and that those from some suppliers carried the name of one party and those from other suppliers carried the name of the other party. The wife says that those in the name of the husband were for material that the husband bought to fix his own house at Calivigny and not her house at Grand Anse. The husband denies this and says, moreover, that the invoices which carried the wife's name were paid for in the main by him. The parties also testified as to their respective income (and capital) at the time and hence as to their respective ability to finance the construction.

[13] The wife accepts that the husband made some contribution to the building of the house. She asserts that it was minimal while he asserts that it was his contribution that was substantial and hers that was minimal. Based upon his testimony and the affidavits of the husband's supporting deponents I accept that his contribution in money and labour by himself and his friends was distinctly more than minimal. I found that the husband emerged from cross-examination undiminished in credibility while I found that the cogent questioning by Mr. Sandy for the husband left the wife's evidence weakened.

[14] I specifically reject the evidence of the wife that the material that the husband purchased from Jonas Browne & Hubbard (Grenada) Ltd was for construction that he was doing at Calivigny. This is because if one looks at the period covered by those

invoices which the wife herself says were for her house at Grand Anse, being January 1993 to February 1995, there were invoices from Hubbard for eleven of the fifteen months for which invoices were produced, including the first and the last months. I do not believe that the alleged work on the husband's house at Calivigny would have so closely paralleled the two years of construction of the house at Grand Anse. This finding confirms me in my view that the husband is to be believed on his evidence that he made the greater contribution to the cost of building the house. I also believe the husband that there was a decision to pool money to build the house for their joint benefit.

[15] There is no suggestion by the husband that there was any express statement made by either of them that the wife would hold the legal estate in the property in her name in trust for both of them so there was no express trust. However, the decision to pool money to build the house and their acting on this decision for more than two years is more than a sufficient agreement or arrangement to indicate the common intention of the parties that the husband should have an interest in the property. That common intention upon which both parties acted makes the wife a constructive trustee of the husband's share, see **Lloyds Bank Plc v Rosset** [1991] 1 AC 107.

[16] The wife obtained a deed of conveyance from the State dated 1st November 1996 in which the consideration for the land was stated to be $2,613.00. At the trial both counsel agreed a value of $110,000.00 for the house at the state of completion to which the husband contributed; the wife subsequently added a lower flat and the husband makes no claim to the increased value resulting therefrom. Accordingly, when I refer hereafter to the house, I am referring only to the house to which the husband contributed and not to the house as added to by the wife.

[17] Counsel for the husband says that the husband is content to accept a half share of the house as his entitlement. I find that on the evidence he is entitled to at least a half share and I so declare. The formal application is for an order that the wife transfer that one half share to the husband. As I noted at the outset, the purpose for which the power to make such an order is given is to adjust the financial position of the parties.

The exercise of that power is in every case a matter of discretion and part of that discretion has to be to decide whether or not to make an order. Given the absence of the necessary information to which I am required to have regard in making a property adjustment order I must refuse to make the order sought.

[18] It may be useful for me to add that the quantification of the husband's share, had these proceedings followed in substance the form in which they were presented, would not have been determinative of any order that I might have been required to make. The outcome could well have been to adjust the husband's property right for the benefit of the wife had the financial information about the parties indicated such a result. As the proceedings were conducted, however, they end with the husband obtaining a declaration that he is the beneficial owner of a one half share in the house built on the property described in the deed of conveyance in favour of the wife dated 1st November, 1996, but refused a property transfer order.

[19] Before the trial commenced I took particular care to get counsel for each party to quantify the value of the claim and warned of the cost implications. As the successful party the husband is entitled to an award of costs. Prescribed costs for a claim with a value of $55,000.00 amount to $15,000.00. I have a limited discretion to reduce this sum in this case purely on the basis that the husband has succeeded on the single issue that was litigated but was not successful in the whole proceedings because he did not succeed in obtaining the order for which he applied, according to Part 64.6 (6) (c) of **CPR 2000.** I therefore reduce costs by 20% and award costs to the husband in the sum of $12,000.00.

Denys Barrow SC
High Court Judge (Ag.)