

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO MISC118OF1995

BETWEEN:

KEITHROY ROMEO SHAW

Claimant

and

CYNTHIA DOROTHY SHAW

Defendant

Appearances:

John E Fuller for the Claimant

Vernon Tomlinson for the Defendant

2003: June 23, July 21, August 19

JUDGMENT

[1] **MITCHELL, J:** Keithroy Romeo Shaw and Cynthia Dorothy Shaw were married in the year 1985. They had been living together prior to the marriage since the year 1976, ie, for nine years. At the time they began to live together, Mr Shaw was 23 years old and Mrs Shaw 41 years old. Mrs Shaw had seven children by a previous relationship, some of them adults at the time her relationship with Mr Shaw began. Some of the older children lived in a house owned by Mrs Shaw at the village of Yorks, while others of them lived with the couple at the matrimonial home in the village of McKinnons. There were no children of the marriage. They lived together for eighteen years in all, nine of them after they married. They separated in the year 1993, when the relationship broke up and Mr Shaw was

ejected by Mrs Shaw from the matrimonial home. They appear from their testimony to have been divorced at some point subsequently, but they gave no details of the date, if any, of the dissolution of the marriage.

[2] At the time they began living together, Mr Shaw was not only much younger than Mrs Shaw. He was also partially disabled. He was unable to read and write. He has since he took up residence in the United Kingdom been diagnosed as suffering from a serious case of dyslexia. Even now, after having received treatment for his condition for the past several years, and having obtained qualifications in his present occupation of electrical engineering, his reading age is described as that of a nine-year old. At the time he lived with Mrs Shaw, his reading age must have been even less. During all those eighteen years, Mr Shaw worked as a mason and taxi driver, did butchering, operated a bar, helped Mrs Shaw in the sale of foods, and took on other odd jobs. Mr Shaw worked hard to help support himself, his wife, and the children of the marriage, none of whom were his. It is not in dispute that throughout this period he permitted Mrs Shaw to handle all of his financial affairs. Given his reading disability at the time in question and continuing to the present day, and given the discrepancy in age and the domineering character of Mrs Shaw, it is clear that Mr Shaw would have had little alternative. At all times, he handed his earnings over to Mrs Shaw in the belief that his interests were being taken care of by her.

[3] Mrs Shaw is a business woman in her own right. She has developed over the years a fresh fruit and vegetable business. She enjoys the benefit of property rentals. She owns vehicles, a cooked food business, a shop at McKinnons, a chattel house at Yorks, and she has kept and has sold the family vehicles used by Mr Shaw for his taxi work when he left the home. She has retained all the funds in the family bank account that she alone had operated. The value of all this property is not known.

[4] In the year 1988, the parties agreed to purchase together the land at McKinnons registered as McKinnons Registration Section, Block 45 1695B, Parcel 235. They completed the purchase of it in the year 1990. The following year, they built a two-storey concrete house on it. Given Mr Shaw's disability, it is no surprise to learn that the registered title is in Mrs

Shaw's name alone. Mrs Shaw and her son, Everton James, claim that it was Mrs Shaw and her children who solely contributed to the purchase and construction. They testified that Mr Shaw made absolutely no contribution to the purchase and construction.

[5] Mrs Shaw denied that Mr Shaw had ever made much of a contribution to the family expenses, far less to the acquisition of the matrimonial home. She was not a convincing witness. In general, whenever her testimony conflicted with that of Mr Shaw, I preferred that of Mr Shaw. I believe the testimony of Mr Shaw and Mr Jarvis, the building contractor. I believe Mr Shaw that he and Mrs Shaw acquired the land with the intention of constructing on it their matrimonial home. I believe Mr Jarvis that the instructions for the construction of the house came jointly from Mr and Mrs Shaw. I place reliance on the insurance policy taken out for the house in construction. I note that it was in the names of both Mr and Mrs Shaw. Since Mrs Shaw would have been the one filling out the application form, this amounts to an admission against interest on her part of Mr Shaw's joint interest in Parcel 235.

[6] Mr Shaw does not dispute that Mrs Shaw has increased the size of the house since he left it in the year 1993, but he disagrees with her assessment that she has doubled it. There is little concrete evidence one way or the other. Nor does he deny that she has alone since he left the home paid the mortgage on the loans that she took out to improve the house. They had built the house out of cash and savings. It was only in the year 1995, two years after Mr Shaw had departed, that Mrs Shaw encumbered the property for the first time with a charge of \$60,000.00. Mr Shaw brought this case the same year. Five years later, in the year 2000, she used the title as security for the borrowing of a further sum of \$29,999.00. There is no evidence as to what use Mrs Shaw put the amounts of money she borrowed. She may as easily have used them or some of them to advance her business interests as to have improved the house. Two years later, in the year 2002, after Mr Shaw had begun this claim and had placed a Caution on the Register to protect his interest, and while he was in the United Kingdom, Mrs Shaw managed to persuade the Registrar of Lands to remove the Caution. She then proceeded to raise a loan of another

\$33,316.00 secured by a further charge. At the time of trial there was only a relatively small amount of these loans left to be repaid.

[7] The only question is what is the proper extent of the interest of Mr Shaw? Mrs Shaw submits that it is minimal if at all. Mr Shaw submits that it should be a one-half interest. He submits that the value of his share in the house, and in the various businesses that he and Mrs Shaw built up over the years that they were together and which she now has sole control of, should be placed at \$500,000.00.

[8] Mr Shaw brings his action under the only statute that applies in Antigua and Barbuda to matrimonial property: The **Married Woman's Property Act, Cap 267**. Section 19 of the Act provides that in any question between husband and wife as to the title or possession of property, either party may apply by summons or otherwise in a summary way to any Judge, and such Judge may make such order with respect to the property in dispute, and as to costs as he thinks fit.

[9] Mr Shaw relied on a number of well-known United Kingdom and other non-OECS authorities. There is no need to recap them. Suffice it to say that it is well settled law that the presumption against an intention to create legal relations in domestic arrangements between husband and wife does not apply to acts done with respect to the acquisition, improvement or addition to real or personal property. Whenever two parties by their joint efforts acquire property to be used for their joint benefit, but the title is registered in the name of one of them only, the court may impose on the party with title a resulting or a constructive trust for the benefit of the party without title. This sort of trust is created in equity in situations where it is felt that an owner of property should in conscience hold it or part of it on trust for another. A declaration of trust is an equitable remedy by which the court can in suitable circumstances enable an aggrieved party to obtain restitution.

[10] There is no reliable evidence upon which to base an assessment in money's worth of the contribution of either Mr Shaw or Mrs Shaw to the acquisition of the plot of land and the construction of the matrimonial home. Suffice it to say that I am satisfied that it was one

half at the time of his departure in the year 1993. The property was then worth some \$350,000.00. I do not believe Mrs Shaw that her children made any financial contribution to the construction of the home. All the construction was been done by both parties out of their savings and income and without the benefit of a bank loan.

[11] After Mr Shaw made his claim for a half-share in the Parcel Mrs Shaw improved it to some uncertain extent, as we have seen. Mrs Shaw was well aware at the time that she was improving the property and encumbering the title that Mr Shaw was making a claim for one half of its value. She does not seem to have considered that the rule is that where a person is entitled to a share in the home then that person will be entitled to share in any increase in its value.

[12] Mr Shaw makes a claim for his interest in the various other family assets to be recognised. He suggests that an arbitrary value of \$500,000.00 should be put on his interest in the home and all the other assets of the marriage. There is no basis for valuing Mr Shaw's interest in the various family businesses that he has left in Mrs Shaw's control. There is no evidence of the valuation of any asset of the marriage other than Parcel 235.

[13] I find that Mrs Shaw holds title to McKinnons Registration Section, Block 45 1695, Parcel 235 on a resulting trust for herself and Mr Shaw in equal shares. Mr Shaw is entitled to a one-half interest in Parcel 235 as it is presently improved and free from having to make any contribution to the discharge of the encumbrances placed on it by Mrs Shaw. He is entitled to have his name placed on the register as the proprietor of a half share. The Registrar of Lands is authorised to make the appropriate correction. There will be judgment accordingly for Mr Shaw together with his agreed costs of \$5,000.00.

Don Mitchell, QC
High Court Judge

