

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

CLAIM NO. 470 OF 2001

BETWEEN:

ARIANE KARJALAINEN

Petitioner

AND

LEO H.J. VAN BLADEL

Respondent

Appearances:

Mr. O. Dennie for Petitioner

Mr. S.E. Commissiong for Respondent

2004: December 02

DECISION

- [1] The parties were divorced in 2002. They had married in 1998. The only matter of ancillary relief which falls for determination is the disposition of the sole asset of the marriage, the matrimonial home in Bequia. The parties agree that they are to share the home equally. The home has been valued at US\$240,000.00 approximately. The petitioner occupies the home. She is thus to pay to the respondent the value of his one-half interest in the matrimonial home. The petitioner claims the respondent is indebted to her. She seeks to deduct the alleged indebtedness from the sum due to the respondent for his share in the matrimonial home.
- [2] In her affidavit filed on 13th June 2002 the petitioner swore that the respondent owed her \$13,100.00 US being the balance with respect to the acquisition of the matrimonial home. She also referred to a pre-nuptial agreement by virtue of which she says the respondent had agreed to compensate her for any sums expended on his maintenance and upkeep and for any sums expended on improvements to his share of the matrimonial home. She

calculated these expenses to amount to \$117,500.00 or \$43,709.50 US. Thus the total indebtedness stood at US\$56,890.50. The respondent denies being indebted to the petitioner as alleged or at all.

- [3] The questions which fall for determination are therefore:
- (i) is the respondent indebted to the petitioner as alleged or at all?
 - (ii) Does the prenuptial agreement impose an obligation on the respondent to repay the petitioner for expenses incurred on his upkeep during the marriage?

THE PRENUPTIAL AGREEMENT

- [4] This agreement is in the Dutch language. Before it could be considered it had to be translated properly. Eventually the respondent provided a translation. The agreement expresses itself to be governed by Dutch law. The parties have agreed however that it is to be interpreted according to the laws of Saint Vincent and the Grenadines. Mr. Dennie says that the obligation of the respondent to repay the petitioner is found at Article 4. Article 4 reads:

"Unless agreed otherwise, the spouses are obliged to compensate each other for anything that has been withdrawn from the one spouse's property for the benefit of the other spouse.

- [5] This article deals with property or capital and does not deal with income or expenditure on household expenses. It has no relevance to the present dispute.
- [6] Article 6 deals with household expenses. It provides that those expenses are to be borne by the spouses, in the absence of any agreement, in proportion to their income. Several exhibits have been filed in this claim to demonstrate the income of the spouses during the marriage. These exhibits are not in the English language and have not been translated. In effect there is no evidence of the income of the spouses. I am not able to determine what expenditure was made by either spouse or for what purposes.
- [7] In this unhappy state of affairs the court is constrained to find that the petitioner has failed to show that the claimed expenditure was actually made.

- [8] I am left with the situation where the petitioner owes the respondent the value of his one-half share in the house on Bequia. The parties have agreed the value of this one-half share to be \$120,000.00 US. The petitioner has already paid to the respondent the sum of \$50,000.00 US. She had agreed to sell the matrimonial home and deposit the balance of the respondent's share into court according to the order of Alleyne J to await the determination as to what debts were owed to the petitioner by the respondent. The petitioner did not sell the matrimonial home. She has occupied it to the exclusion of the respondent and has decided to keep it. In effect she has purchased the respondent's interest but no deposit of moneys representing his share has been made as the trial judge contemplated.
- [9] As noted above the alleged debt occurred mainly on the basis that the prenuptial agreement called for the compensation of one spouse by the other for household expenses. I read the clause in question as requiring the spouses to meet household expenses in accordance with their income.
- [10] The proportion of income to the parties to the marriage cannot be determined on the state of the available evidence. As such the petitioner has failed to establish on a balance of probabilities that as the income of the spouses was equal, the responsibility for meeting the household expenses was also equal.
- [11] In the circumstances I hold that as the petitioner has failed to establish the alleged debts owed by the respondent the petitioner is ordered to pay to the respondent the remaining balance of \$70,000.00 US due to him. Upon payment of that amount, the respondent is to convey to the petitioner all his interest in the house.
- [12] I award the respondent his costs incurred on this application. I assess those costs at \$5,000.00.

