

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO ANUHCV 2004/0082

In the Matter of the Married Women's Property Act, Cap. 267, section 19

In the Matter of the Determination of a Property Dispute between Husband and Wife

BETWEEN:

ADA HENRY

Claimant

And

CHARLES HENRY

Defendant

Appearances:

Mrs Denise Parillon-Jonas for the Claimant

Mr Hugh Marshall and Ms Samantha Marshall for the Defendant

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2005: October 17th, November 22nd
2006: May 15th 22nd
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DECISION

[1] **Blenman J**; This is a dispute between a husband and wife in which each party is alleging that he or she is entitled to various interests in different properties.

[2] Mrs Ada Henry (Mrs Henry) and Mr Charles Henry (Mr Henry) shared a relationship while they lived in Canada. She is Jamaican by birth while Mr Henry is an Antiguan. The parties were, at the commencement of their relationship, just coming out of marriages to other persons.

[3] While in Canada, they lived together for a short while in an apartment owned by Mrs Henry. Eventually, Mr Henry returned to Antigua and Barbuda, he later invited Mrs Henry

to join him. Mr Henry by that time, had owned lands at Crosbies and registered as **Registration Section: Cedar Grove & Crosbies Block 44 Parcel 1997B, Parcel 58** (Crosbies Property).

[4] Subsequently, Mrs Henry resigned her job in Canada and joined Mr Henry in Antigua and Barbuda where they lived in rented premises as common law wife and husband. The parties eventually married on 9th August 1995 after living together for 13 years. Their relationship ended in February 2004.

[5] Mrs Henry seeks the following orders: -

- (a) a declaration that she owns beneficially six-sevenths of the property registered in the Land Registry as Registration Section: Cassada Gardens & New Winthorpes; Block: 42 1992 B; Parcel: 308 and that Mr Henry owns beneficially one-seventh of and that the said property be sold and the net proceeds of sale thereof be divided between them in accordance with their shares in the property or such declaration as to ownership and such order as to the division of the proceeds of sale as the court thinks just.
- (b) a declaration that she and Mr Henry own the property registered in the Land Registry as Registration Section: Cedar Grove & Crosbies; Block: 44 1997B; Parcel: 58 beneficially in equal shares and that the said property be sold and the net proceeds of sale thereof be divided equally between them or such declaration as to ownership and such order as to the division of the proceeds of sale as the court thinks just.
- (c) a declaration that she owned beneficially motor car Nissan Sentra A440 which had been sold by Mr Henry and that Mr Henry pays her the value thereof as at September 2003.
- (d) a declaration that she is the owner of the following chattels which Mr Henry took into his possession and/or disposed of and that he shall pay to her the value of the same as at January 2004:
 - i. One side table worth EC\$600.00
 - ii. One juicer worth US\$49.00 (EC\$133.13)
 - iii. Two cake platters worth EC\$40.00
 - iv. Two partial sets of china wares worth EC\$100.00
 - v. One large pottery vase worth EC\$270.00

- (e) a declaration that Mr Henry shall pay to her, her loss of rental income from her two houses situated on parcel 308 at the rate of \$1,500.00 per month from October 1st, 2003 to the date of judgment due to Mr Henry's prevention of the rental of the said houses by her.
- (f) that Mr Henry pay the costs of these proceedings.

The Law

- [6] Section 19 of the Married Women's Property Act Cap 267 of the Laws of Antigua and Barbuda provides as follows:

"In any question between husband and wife as to the title to 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."

- [7] The equitable rights of the parties have been dealt with in a number of celebrated cases. The law is that where one spouse has contributed financially to the purchase of the property the title to which is in the name of the other spouse, the court will hold that that one spouse holds the property in trust for himself and the other.

- [8] Where there is no financial contribution, the party who claims to have an interest in the property must establish a common intention that that party would have a beneficial interest in the property. The party seeking to establish the common intention must adduce evidence on which the common intention can be inferred and proved also that he/she acted on the common intention. **Grant v Edwards [1986] Ch 638** is very instructive on this point. See also **Pettit v Pettit [1969] 2 ALL ER 385**, **Williams v Williams [1986] 39 W.I.R 140**

- [9] Lord Hope of **Craighead** in the Privy Council case of **Green v Green 2003 R.C 39** said that:

"The question in all these case is whether a common intention can be inferred from the parties conduct as to how the beneficial interest is to be held. The relevant intention is that which a reasonable person would draw from the parties' words or conduct. It is for the court to determine what inferences can reasonably be drawn, and each case must depend on its

own facts. Where the most likely inference from the parties' conduct is that the beneficial interest was not to belong solely to the party is vested, the court must determine what in all the circumstances is a fair share."

- [10] Applying the above principles, the court in seeking to determine Mrs Henry's interests in the properties must first determine whether there was any express common intention. Should the court find that there was not such an express common intention, it must then go on to determine based on the evidence adduced what inference a reasonable person would draw based on the facts.

Evidence

- [11] Both parties adduced evidence on their own behalf by way of affidavits and were cross-examined at length. As is usual with these types of cases, each party gave different accounts as to how the properties/items were acquired and each sought to indicate to the court their understanding of their interest, if any, in the properties in dispute.
- [12] The court heard the evidence and read the very helpful submissions of both learned counsel in relation to the various properties/items.

Crosbies Property

- [13] Mr Henry owned the land situate at Crosbies before he commenced the relationship with Mrs Henry. The land is registered in his sole name and as stated earlier is recorded as **Registration Section: Cedar Grove & Crosbies Block 44 1997B, Parcel 58** (Crosbies Property). After Mr Henry had commenced the relationship with Mrs Henry they formed the intention to construct a home at Crosbies on the land. This they did over a period of years.
- [14] I accept Mrs Henry's evidence in relation to the Crosbies' property. She did not dispute that the land was bought by Mr Henry with his money in his sole name. However, she maintained that she sold her apartment in Canada and used some of the purchase on fittings for the house that was constructed.

- [15] I believe that she bought some of the fixtures that are installed in the house. She purchased some of the fixtures from Canada with her own funds and shipped them to Antigua and Barbuda. Mr Henry denies this and counters that she is not entitled to share in their property.
- [16] I also have no doubt that the house and land at Crosbies were intended by the parties to be matrimonial property even though there is or was no expressed intention to this effect.
- [17] I am also satisfied that Mrs Henry physically assisted Mr Henry in the construction of the house and do not accept his evidence when he sought to persuade me that by the time the parties moved into the house it was complete. I prefer Mrs Henry's evidence since she struck me as being very truthful. I am afraid that I cannot say the same about Mr Henry. I am fortified in my view having examined the sort of detail evidence Mrs Henry candidly provided to the court.
- [18] Further, based on the evidence Mrs Henry provided, it is obvious that she is a woman of some thrift and that she had paid particular regard to the construction of their matrimonial home and made both physical and financial contribution to that venture.
- [19] I have no doubt that while Mr Henry obtained the original architectural drawings for the house, Mrs Henry worked manually and assisted him with the construction of the house at Crosbies. This house, the parties intended to be their matrimonial home and they did use it as such.
- [20] In these sort of matters it is often difficult to quantify the exact contribution made by each party. However, I have no doubt that Mrs Henry made substantial profits from operating her business in "the Quencher" and that she used some of the profits she realized to finance the running of their home thereby enabling Mr Henry to pay for the construction of their matrimonial home. At times when Mr Henry was unable to pay the workers, Mrs Henry paid the workmen who were employed in the construction of their home.

[21] Mr Henry for his part, sought to have me believe that he financed the entire construction of the home at Crosbies utilizing his own funds together with a loan he obtained. I do not believe him.

[22] I am convinced that the justice of this matter requires that I award Mrs Henry a half share in the Crosbies property.

Cassada Gardens

[23] The land situate at Cassada Gardens is registered as **Registration Section: Cassada Gardens & New Winthropes Block 42 1992 B Parcel 308** (Cassada Gardens land). Mrs Henry has constructed two houses on the Cassada Gardens land. She claims to be entitled 100% in the two (2) buildings situate on the property at Cassada Gardens and 6/7 interests in the land.

[24] Based on the evidence adduced, I have no doubt that Mr Henry initially purchased the land having paid a deposit of \$1,000.00 out of the purchase price of \$7,000.00 The balance of the purchase price was outstanding and he was unable to meet this obligation

[25] Mr Henry does not dispute that Mrs Henry owns solely one of the buildings situate on the land. However, he denies that Mrs Henry is entitled to any share or interest in the land.

[26] Initially, Mrs Henry built a first house on the land, there is no dispute that she owns that house solely. Mrs Henry was an enterprising lady so she obtained a loan from a bank and used the Cassada Gardens' land as security in order to obtain the loan. However, as stated earlier, Mr Henry still had the outstanding sum of \$6,000.00 on the purchase price and the bank required that the purchase price be paid off before it could have given Mrs Henry the loan that she required. She said that she paid off the balance of the purchase price for the land this was to the extent of 6/7 of the purchase price. Mr Henry did not controvert her evidence in this regard. I therefore accept her evidence on this aspect of the matter.

[27] Mrs Henry sought to give the impression that, though discussions with Mr Henry it was her understanding that she would have had an interest in the Cassada Gardens' land and based on the fact that she had paid off the balance of the purchase price and she was Mr Henry's wife.

[28] During cross-examination, she resiled from that position and said that while she had never discussed this with Mr Henry she thought as his wife she was entitled.

[29] However, in all of the circumstances referred to above I am satisfied that as she alleges that Mr Henry intended for her to have a share in the Cassada Gardens' land. I have no doubt that the parties had a common intention that she would have a share or interest in the Cassada Gardens' land. This is the land on which Mr Henry previously had built his (garage) car parts shop. He allowed Mrs Henry to construct two houses on the land. In all of the circumstances, he must have intended for her to have a share/interest in the land

[30] I must also take cognizance of the fact she benefited from having the use of the land as security in order to obtain the loan from the bank which she financed the construction of the second house. I am therefore required to determine what share or interest she has in the Cassada Gardens land. I am not at all persuaded that she would be granted a 6/7 share in the land as she has urged on me. I am of the view that taking all of the facts into account I am of the view that the justice of the case demands that I award a half share in the Cassada Gardens land, as I hereby do.

Cassada Gardens Houses

[31] I propose now to deal in a little more detail with the Cassada Garden houses. Mr Henry said that he worked on the second house situate at Cassada Gardens and built by Mrs Henry. He accepts that the first house that she built on the Cassada Gardens' land belongs to her exclusively. However, he seeks to obtain an interest in the second house, which he says was intended by the parties to belong to them jointly. He counter claims an interest in the second house that Mrs Henry built on the Cassada Gardens' land.

[32] In relation to the second house that was built by Mrs Henry, I do not believe her when she said that the second house belonged to her exclusively. There is absolutely no evidence before the court upon which a reasonable person would not properly conclude that the parties intended that the second house would belong to Mrs Henry exclusively. I do not accept, as Mrs Henry would have me believe that Mr Henry never supervised the construction of the second house that was built by her.

[33] Further, I do not accept that he did no more than what any husband would do in "passing by the construction site after he left work to see how the construction was progressing."

[34] Mrs Henry, for her part, maintains that both houses belong to her. She says that she constructed both houses with moneys she obtained from profits from the restaurant business that she owns solely. The business was very successful and her family had lent her the initial sums of money to commence the business. From this business, she operated a bank account in her name. I believe her when she says that she built the houses with money from her business and loans obtained from the bank.

[35] However, Mr Henry told the court that he worked on the second house and assisted her in supervising the construction of the second house. I have absolutely no reason to disbelieve this aspect of Mr Henry's evidence. I do accept Mr Henry's evidence when he said that it was their intention that the second house would have been owned by both of them. However, based on all of the relevant circumstances I am required to determine Mr Henry's interest in the second house. Based on the evidence adduced, I am of the view that it is just to award him 30% interest in the second house. As I hereby do.

Nissan Car

[36] Mrs Henry complains that she owned another car which Mr Henry sold and used the proceeds therefrom to purchase a Registration Nissan car No. A440 This latter car was registered in Mr Henry's name. She says that she did not pay for it the second car since Mr Henry had exchanged the Nissan car for another car she owned. She contends that Mr Henry sold the Nissan car, which she estimated was value at \$19,683.00 without her

permission. She seeks an order from the court that he compensates her in the said sum, which represents the value for which it was insured.

[37] Mr Henry does not deny that he exchanged a car owned by Mrs Henry for the Nissan car Registration No. A440. Instead, the thrust of this rebuttal was that she did not pay for the Nissan car.

[38] I therefore accept Mrs Henry's evidence and find that Mr Henry held the Nissan car No. A440 on trust for Mrs Henry. I have no doubt that Mr Henry sold the Nissan car without her permission. She is therefore entitled to be awarded the value of the car, which I would accept as \$19,683.06

Household items

[39] It is obvious that the relationship between the parties is very strained so much so that Mrs Henry seeks a declaration that she is the owner of the following items:

- (a) One side table worth EC\$600.00
- (b) One juicer worth US\$49.00 (EC\$133.13)
- (c) Two cake platters worth EC\$40.00
- (d) Two partial sets of china wares worth EC\$100.00
- (e) One large pottery vase worth EC\$270.00.

The total value of the articles, as valued by Mrs Henry, is \$1,143.13

[40] During cross-examination Mrs Henry admitted that these items were purchased by her for use in the matrimonial home by both parties. Mr Henry would be entitled to 50% interest in those household items. She also admitted to having sold some of the furniture in the house because they belonged to her and she needed the money.

[41] It is obvious to me that the household items were intended by the parties to be used by both of them. I note that Mr Henry has not sought to establish any interest in the items that Mrs Henry has sold, this may be generous of him. It seems to me that he would have been entitled to a share or interest in those items. Mrs Henry has sought to quantify the value of the items. I am of the view that the justice of this aspect of the case demands that I award Mrs Henry half of the value of the items she has claimed. In view of the fact that the

values that she provided have not been challenged the court has no basis from varying from that. I therefore declare that Mr Henry shall give to Mrs Henry some of the items, which is the equivalent to the sum of \$571.50. In the alternative he is to pay her the sum of \$571.50 on or before 31st July 2006.

Rent for houses

- [42] Mrs Henry complains that Mr Henry has prevented her from renting her houses. In addition she says that by his conduct he has forced some of her tenants to vacate her premises. She seeks to recover sums of money which are equivalent to the rents she would have received for her houses situate at Cassada Gardens had she been able to do so. She indicated that she could have obtained \$1500.00 per month from the rentals. I have reviewed her evidence in this regard and I am not satisfied that she has proven the allegations in this regard. Accordingly, I disallow this item of her claim.

Valuations

- [43] Fortunately, the resolution of this matter should be possible in a very short period of time in view of the fact that Mr Haynes Smith in his valuation report dated July 15, 2004 has provided the court with valuations in relation to the houses and lands. Mr Haynes Smith's valuations are very useful.
- [44] The Court therefore does not anticipate any impediments to the two parties resolving the sale of their properties and distribution of the proceeds in a very timely and an amicable manner in accordance with the orders of the court as stated below.
- [45] The court is however mindful of the fact that there is an obvious level of acrimony between Mr and Mrs Henry. The ideal resolution of the matter is one that allows each party to have clean break from the other. It is very regrettable that the interests to both parties in the properties in dispute are so intertwined, the court must however seek to ensure that the matter is concluded in a fair and just manner that is achievable with the least amount of difficulties resulting to both parties.

Conclusion

[46] In conclusion and for the above reasons I make the following orders.

- (a) I declare that Mr Charles Henry and Mrs Ada Henry are equally and beneficially entitled to half share in the matrimonial home and the land situate at Crosbies and registered as **Registration Section: Cedar Grove & Crosbies Block 44 1997 B Parcel 58**.
- (b) That Mr Henry holds Mrs Henry's half share in the Crosbies property registered as **Registration Section: Cedar Grove & Crosbies Block 44 1997 B Parcel 58**, in trust.
- (c) That the matrimonial home and the land situate at Crosbies and Registered as **Registration Section: Cedar Grove & Crosbies Block 44 1997 B Parcel 58**, be sold as soon as possible and the net proceeds be divided equally between the parties.
- (d) That Mr and Mrs Henry are entitled to a half share each in the Cassada Gardens land registered as **Registration Section: Cassada Gardens & New Winthropes Block 42 1992 B Parcel 308**.
- (e) That either party should offer to purchase from the other the half share in the Cassada Gardens land.
- (f) That Mr Henry is to pay to Mrs Henry the sum of \$19,683.00, which the court accepts as the value of the Nissan car Registration No. A440. This sum is to be paid no later than 31st July 2006.
- (g) That Mr Henry is entitled to 30% in the second house that was built by Mrs Henry on the Cassada Gardens land.
- (h) That Mrs Henry offers Mr Henry to purchase his 30% interest in the second house situate at Cassada Gardens. The value should be based on Mr Haynes Smith's valuation. In addition, Mrs Henry should offer to purchase from Mr Henry the garage that he owns solely, which is situate on the Cassada Gardens land.
- (i) That in the alternative, Mr Henry offers to purchase from Mrs Henry her share in the second house and the first house (the latter, which is owned by her exclusively, together with her 70% interest in the land, situate at Cassada Gardens.
- (j) That Mr Henry gives to Mrs Henry forthwith some of the items taken from the matrimonial home, the equivalent of the value of \$571.50 based on the figures provided by Mrs Henry and

accepted by the court. In the alternative, he should give Mrs Henry the sum of \$571.50 no later than 31st July 2006.

- (k) Mr Charles Henry is to pay Mrs Ada Henry prescribed costs unless otherwise agreed.
- (l) Liberty to apply.

[47] I am grateful to all learned counsel for their assistance.

Louise Esther Blenman
Resident High Court Judge

PS.

The court is aware that Mrs Henry has incurred liabilities in relation to the second house. Mr Henry's interest in the second house must be based on the value provided by the valuator. In the event that the parties are unable to resolve the sale of the Cassada Gardens lands and houses between themselves, it may be prudent for the properties to be sold to third parties and the net proceeds should be divided in a manner that reflects this order, taking into consideration the fact that Mrs Henry has an outstanding loan in relation to the second house situate at Cassada Gardens.