

**IN THE EASTERN CARIBBEAN SUPREME COURT
HIGH COURT OF JUSTICE
FEDERATION OF ST. CHRISTOPHER AND NEVIS
ST. CHRISTOPHER CIRCUIT
(DIVORCE)
A.D. 2009**

Claim No. SKBHCV 2008/0055

Between:

ELCEADRO NAOMI CAINES

Claimant

And

RICHARD LLEWELLYN CAINES

Defendant

Appearing: Mr Ricaldo Caines for the Claimant
Ms Marsha Henderson for the Defendant

**2009: May 5th
August 18th**

JUDGMENT

- [1] **BELLE J.** The Claimant was lawfully married to the Defendant on 26th September 1971 at the Wesley Methodist Church in the Parish of Saint George, St. Kitts. The Marriage was dissolved on 13th December 2007 by the High Court. This means that the parties were married for 36 years. The Claimant performed the role of housewife from the time of the marriage until the dissolution of the marriage. It is not disputed that during the marriage the Claimant also worked in the business.
- [2] The Claimant's case is that the assets acquired during the marriage by either spouse was for the common benefit of the parties even though both names may not be registered on relevant land documents, bank accounts and as business names.

- [3] The Defendant's response in summary is that the parties produced two children as husband and wife and the Defendant had (4) four children prior to the marriage to the Claimant.
- [4] According to the Defendant the parties resided at Greenlands, College Housing Site and later Fortlands all in Basseterre, St. Kitts. The Fortlands property was registered in the names of both parties. But the Defendant has resisted the Claimant's claim to an interest in all of the properties and businesses owned by him.
- [5] The Defendant does not deny that the Claimant worked in his businesses. He agrees that the Claimant was never paid a salary by the business but had signing authority on three (3) of the businesses' checking accounts. The Defendant contends that the Claimant had the liberty to, and did withdraw from the accounts for her personal use. But she had no decision-making authority beyond this in the businesses.
- [6] To assess the significance of the arguments of both parties I will have to follow the relevant law. The parties differ on this issue only to the extent that Claimant thinks that there are relevant provisions in the Divorce Act, which apply to the existing situation between them. The Defendant's counsel argues that there can be no further proceedings under the Divorce act in relation to maintenance nor division of property and that the claim would have to proceed on the basis of the ordinary law relating to binding agreements from which it would be unconscionable to permit either party to renege, or the law of resulting or constructive trust created by the conduct of the parties during the marriage. See **Stack v Dowden** [2007] 2 All ER 929, **Green v Green** Privy Council Appeal No. 4 of 2002 and **Abbott v Abbott** Privy Council Appeal No 142 of 2005.
- [7] I hold that counsel for the Defendant is correct since there could be no new claim for alimony pending suit or settlement of property under the Matrimonial Causes Rules 1937 for the Claimant at this time and the provisions for the declaration of an interest in property can only be utilized by a spouse although the orders resulting from either kind of action could be varied pursuant to the Divorce Act. The Claimant brought this action some time after the divorce had been completed. However the Defendant complied with a previous order to maintain the Claimant to the tune of EC\$6000.00 per month.

[8] Flowing from the conclusion above, the Court's task based on the relevant law is to determine whether there was any conduct or anything said which would lead to the conclusion that the Claimant was entitled to what she has claimed. In examining this issue the court should not limit itself to a narrow view of the law but may draw certain inferences from the course of dealing of the parties.

[9] The court finds favour with the submission that the weight of the authority is based on a long line of cases including **Grant v Edwards** [1986] 2 All ER 426, **Stokes v Anderson** [1991] FCR 539, **Midland Bank plc v Cooke** [1995] 4 All ER and **Oxley v Hiscock** [2004] EWCA Civ. 546 , [2004] All ER 703.

[10] Based on the aforesaid authorities I summarize the issues before the court as follows:

(i) The first issue for the court must be whether there is evidence of an agreement (the starting point) between the parties.

(ii) The second issue must be whether there is evidence of common intention with contributions which may create a resulting trust or behaviour creating a constructive trust in favour of the party seeking to interpret the course of dealings between the parties as evidence of a beneficial interest in his/her favour, along with the quantification of that beneficial interest. The court must not substitute the conclusions gleaned from the evidence of the course of dealings in favour of a notion of fairness based on the nature of the relationship between the parties. See **Stack v Dowden** [2007] All ER 929

[11] The questions to be answered based on the above are as follows:

(1) Is there evidence that the parties share legal or beneficial interests in the various properties?

(2) If there is such evidence how are the interests to be quantified based on the course of dealings and any implied resulting or constructive trusts derived from any financial contributions of either or both parties?

The Evidence

[12] There were two (2) children of the marriage who at the time of the divorce were adults living their own lives. The Defendant revealed that he had four (4) children prior to the marriage who also were fully grown adults at the time of the divorce.

- [13] Both parties trace the movement of matrimonial dwellings from Greenlands to College Housing and finally to Fortlands where they still reside. Both parties agree that Mr. Caines was a businessman before the marriage in 1971. Without the aid of some historical accounting data it would be difficult to determine how successful the businesses were prior to the marriage but the Defendant insists that there were three businesses in existence prior to the marriage. The first was the car rental business, which the Defendant stated he started in 1957. Along with this business he operated a mechanic shop mainly to service the rental cars.
- [14] The Defendant states that in 1968 he entered into a business known as BEC representing the names (Berry, Evelyn and Caines) Auto Parts operating in the sale of spare parts. The Claimant contends that this business was formed after the marriage. Once again without the relevant data it is not possible to state definitively who is telling the truth. However the obvious implication of the evidence is that the Defendant was engaged in substantial business before the marriage and continued to develop the businesses after the marriage. I find that it would be safe to conclude that the Defendant Mr. Caines was an accomplished businessman when he met and married the Claimant.
- [15] The Claimant was a civil servant who had moved on to work as a secretary at S.L. Horsford and Company Ltd at the time of the marriage. This is confirmed in the Defendant's examination in chief.
- [16] There is no evidence that the Claimant made any financial contribution to the purchase of any of the properties nor the development of any of the businesses owned by the Claimant or jointly owned by herself and the Defendant. The Claimant stated in her examination in chief that "there was a clear and definite arrangement throughout the entire marriage where my contribution was to the household for 36 years and as a manager for 12 years of our businesses."

[17] She described her attitude and understanding to be one based on being promised "heaven on earth," and stopping her employment because her husband invited her to do so. She indicated that the Defendant never said to her that if she wanted anything she had to pay for it. She complained,

"He impressed upon me that it was not necessary (to work) he would give me heaven on earth and I foolishly believed him."

[18] The Claimant said that though her contribution was not financial it was always substantial and done on the basis that the assets acquired during the years of marriage were for their joint benefit and that of the family. As a result of reliance on these assurances, it led to her financial detriment and the benefit of the Defendant. However in the amplification to her witness statement the Claimant said that she worked for the Defendant's businesses because she did not want her two children to blame her (supposedly for the consequences for the businesses) for not working with the businesses.

[19] The Claimant also refers to a Will executed by the Defendant in 1985 in which she says that the Defendant left the majority of assets to her after payment of debts. This Will was disclosed and forms part of the body of evidence before the court. Mr. Caines' attitude towards the Will is that it represents his intentions at the time in the event of his passing.

[20] At Clause 5 of the said Will it is recorded:

"I HEREBY GIVE to my wife ELSIE CAINES the goodwill of my business CAINES RENT- A -CAR and B.E.C. AUTO PARTS carried on by me at Princes Street, Basseterre, St Kitts and the stock-in-trade furniture fittings plant machinery motor cars and vehicles all effects employed in carrying on the business and the benefits of all contracts subsisting in relation thereto at my death and all book debts and other monies owing to me at my death in connection with the business together with the balance to the credit of my businesses' accounts at Barclays Bank Basseterre, St Kitts, but subject to all my debts and liabilities in connection with the business at the date of my death or attributable to the business or to me in respect thereof which I hereby direct should be paid out of the funds of the business and not out of my residuary estate AND the foregoing gift shall include all my interest in the lands and buildings on and in which the businesses are carried on at Princes Street, Basseterre , St. Kitts".

[21] Clauses 6 and 7 read as follows:

6. *"I HEREBY GIVE AND DEVISE to my wife ELSIE CAINES the following properties absolutely:*
- (a) *my other property situate at Market Street, Basseterre, St Kitts*
 - (b) *my property situate at Sandy Point, St Kitts*
 - (c) *my property situate at Douglas Estate, St. Kitts*
 - (d) *my property situate at Gibbons, Anguilla*
7. *Subject to the repayment of my debts funeral expenses and testamentary expenses and all estate duty I GIVE BEQUEATH AND DEVISE all my real and personal property whatsoever and wheresoever not hereby or by any codicil hereto specifically disposed of including any property over which I may have a general power appointment or disposition by will to my wife ELSIE CAINES absolutely."*

Application of the Law to the Evidence

[22] At this stage it is fair to say that the Claimant is not relying on any purported financial contribution to any assets owned by the Claimant himself or jointly with her. There can therefore be no claim of a resulting trust. What remains to be determined is whether there was an agreement that she would have an interest in the properties and businesses owned solely by the Defendant or whether a common intention can be gleaned from the course of dealing between the parties.

[23] The Defendant vehemently denies any agreement. While he says that the Will quoted above reflects what he wanted at the time, the evidence reveals new circumstances occurring after the execution of the Will including the Defendant's request that the Claimant not return to work and the appearance of mutual resentment and disagreement over the nature of other transactions entered into by the Claimant including the purchase of the Earl Mornes property, and the purchase of shares in a car-wash business also supported by other family members but not Mr. Caines, the use of the Nevis property and an alleged attempt to sell same without the Defendant's knowledge even though the Defendant was paying the mortgage and, the sale of a vehicle purchased for the Claimant by the Defendant followed by the purchase of another vehicle by the Claimant which the Defendant subsequently had to pay for before the bank took steps to repossess it.

- [24] Many things changed after 1985 and I cannot find that there was any clear agreement as to how the assets of the marriage or the businesses would be shared prior to the Will or after 1985. To understand the terms of the Will one has to recognise first of all that it only comes into force on the death of the deceased and it can be changed by the revocation of that Will in a new Will.
- [25] In considering whether the Claimant acted to her detriment by agreeing not to work after getting married to the Defendant until the period 1980- to 1992 when she was invited to work without being paid a salary and contributed by managing the Defendant's businesses, I must determine what the facts are in relation to these allegations. The evidence was that the Claimant went out to work with the Defendant's businesses on the request of the Defendant. It is quite evident that this was related to stealing going on at the car rental business and the fact that the Defendant had been appointed a minister of government and had less time to supervise the businesses himself. I do find that the implication of this would have been that the Claimant would have presumed some other kind of benefit would accrue to her.
- [26] The Claimant worked in the business for 12 years. She worked from 9- 11.30 a.m. or midday, met the children for lunch, returned around 1.15 p.m. and worked until 3 p.m. The Claimant insists that she worked until 4 p.m. But she accepted that she never worked on Saturdays because her husband told her this would not be required. In contrast the Defendant even when he was a government minister worked from 7 a.m. to 9 a.m. from 12:00 to 2 p.m. and then again from 6 or 7 p.m. to 9 p.m.. Since leaving government he works from 7 AM to 9 PM. The existence of this schedule is supported by the evidence of Inez Caines the Defendant's daughter.
- [27] I am satisfied that the Claimant's duties were fairly well defined and were administrative in nature. She paid salaries and made inventory. She dealt with some employee issues but they generally took directions from Mr. Caines. She had the authority to sign cheques for various purposes. But I can see no evidence that she made major decisions in the business. She claims that she influenced the decisions to purchase the buildings at Princes Street and maintain the name Caines Rent- A- Car rather than purchasing a franchise. But these decisions were made before she began to work with the businesses and I do not think that they were anything exceptional in a

husband and wife relationship. They certainly do not indicate that there was any substantial contribution to the businesses by the Claimant.

[28] The Claimant claims that she worked without a salary. But the Defendant says that the Claimant had access to three checkbooks belonging to the businesses and wrote cheques as though she ran the businesses. What is clear however is that when the time came the Defendant made it possible for the Claimant to invest in a car-wash business with a financial contribution and later it was seen that she had accumulated enough funds to open a small hair and body supplies store after she stopped working with the Defendant's businesses. The Claimant says she borrowed \$15,000 to stock the store. She did not say that the loan was unsecured. Neither of these businesses survived. But the Claimant lived the life of the wife of a successful businessman including accompanying him in extensive travel all over the world.

[29] The evidence shows that the Defendant has worked in his businesses for over fifty years. The Claimant can claim that she contributed 12 years to the business. At the highest what can she expect from such a contribution? The Defendant recalls that the Claimant has never ever shown any further interest in the businesses since he asked her not to return in 1992. Any contribution the Claimant made is restricted to the 12 years administrative work. Her interest in the business ceased in 1992. The evidence goes no further than to indicate that recognition would be given for dedication to the family and its businesses. The recognition came in the form of the statement re: taking care of the family and the effort to make the Claimant and the children of the marriage comfortable in practice.

[30] I find that the children of the marriage were raised nurtured and fed by both parties and no doubt the wife had more input in this regard. But again it is the Defendant who paid for their education.

[31] There is no dispute that all utilities and other necessities were paid for by the Defendant. After a while however, as the relationship steadily deteriorated the Defendant purchased no food for the house because the Claimant no longer cooked for him. Indeed the Defendant's daughter Inez was lending a hand to feed him on weekends while he purchased food during the week.

[32] I see no evidence in this regard of a common intention to make the Claimant beneficial owner of the properties and businesses, which were legally owned by the Defendant, and I so hold.

[33] In **Oxley v Hiscock** [2004] EWCA Civil 546 Chadwick LJ summarised the law relevant to similar circumstances in which it was necessary to determine the actual quantum of the interest to be awarded as follows:

“But in a case where there is no evidence of any discussion between them as to the amount of the share which each was to have and even in a case where the evidence is that there was no discussion on the point the question still requires an answer. It must now be accepted that (at least in this court and below) the answer is that each is entitled to that share which the court considers fair having regard to the whole course of dealing between them in relation to the property. And in that context “ the whole course of dealing between them in relation to the property includes the arrangements which they make from time to time in order to make the outgoings (for example mortgage contributions, council tax and utilities, repairs, insurance and housekeeping) which have to be met if they are to live in the property as their home”

[34] We are therefore left to look at the course of dealings between the parties. We should go back to the beginning when within 5 years or so of the marriage the Claimant made a cash purchase of the matrimonial home at Fortlands and had the Defendant's name inserted on the Certificate of Title. This was clearly a gift which represented the love and affection felt between the parties at the time and the fact that it was the intention that they should share in this property with the family for the rest of their lives. A similar intention was shown in relation to the house at Mattingley but later the parties agreed to give this property to their daughter.

[35] I see nothing inconsistent about the manner in which the Defendant included the Claimant in the ownership of the Fortlands property and his position that the Claimant and the family would be taken care of and would lack for nothing. It is also important to note that the Defendant insisted that his behaviour was influenced by the fact that he had children before the marriage to the Claimant and he wanted to take care of them. I conclude that the clauses of the Will referred to above were consistent with the stated intention.

- [36] The course of dealings shows that when the Defendant wanted the Claimant to have a particular benefit above and beyond the general benefits of being his wife he made specific gifts in that regard including the gift of money for the shares in the Earl Momes property and the motor car. He never gave her any stake in any of the businesses, which remained his, and he never asked for any stake in businesses, which the Claimant started.
- [37] At this juncture it is important to deal with the peculiar circumstances surrounding the property at Paradise Village in Nevis. This was a property jointly owned by the Defendant and his son. The evidence is that the property was purchased in the names of the Defendant and his son Richard Caines Jnr. According to the Defendant the Claimant rented out the house and would not let him have the key. He subsequently discovered that the Claimant and his son were planning to sell the property. The Bank called for him to sign the relevant documents and this is when he discovered the plan. He later sought legal advice and he offered his son \$50,000.00 to get his name off the registered title to the property. All of this happened in spite of the fact that he was paying monthly mortgage instalments of \$4,490.00.
- [38] It is important to add that the Defendant stated that this property was intended to be self-financing. It would therefore appear that this was a family asset for leisure purposes or real estate investment in Nevis. Either way the asset appears to have been given to the Claimant and the Defendant's son to manage otherwise it is difficult to understand how they got hold of the keys. In the absence of the son I would glean from the course of dealings that this is a property in which the parties would have had joint beneficial ownership similar to that in Mattingley. This presents a situation in which the Claimant would have presumed that she would accrue some benefit until the son assumed full ownership or as part of the partnership between herself, the Defendant and her son.
- [39] I differentiate between the upscale purchase in Mattingley and Paradise Village Nevis and the more urban Market street purchases, which were more useful for business purposes. The latter remained business assets in my view. The former were family assets in which the Claimant would have expected to have an interest. Properties, which were purchased before the marriage remained solely legally and beneficially

owned by the Defendant. There is no indication that the properties in Anguilla and Miami were ever considered as properties in which the Claimant would have an interest.

[40] My findings in relation to the evidence are based on an assessment of the acceptable content of all of the witnesses and where there were conflicts I was able to reconcile them generally without deeming either party to be more truthful than the other. I do not think that the differences in relation to issues such as whether properties were purchased prior to or after the marriage were significant since there was no indication that the Claimant during the marriage made any significant contribution to the businesses to a degree that would have made an impact on their ability to purchase properties. But the ability to purchase these properties was consistent with the finding that the Defendant was an accomplished businessman at the time of the marriage.

[41] However I must find that the Claimant's assertion that a clear agreement existed that the parties would share equally in the properties and the businesses was false. She was not able to recall any conversation or intimation to support this other than the declaration that he would take care of her and the family. The 1985 Will could not support such a contention since it only operates on the Defendant's death and no one knows whether it would have been revoked by then. Finally the Claimant was not able to provide one single example of an important decision she made while she worked for the Defendant's businesses. Indeed the Defendant asserts that she resisted his instruction to insure the rental vehicles and insisted that he dismiss his daughter from the business. According to the Defendant these were the reasons for telling her not to return to work. In this regard I consider the Defendant to be more truthful than the Claimant.

[42] I also take into account that the Defendant says he offered the Claimant a cash settlement of \$1 million in lieu of the monthly payments along with the house at Greenlands.

[43] I have concluded on the evidence before me that the Claimant enjoyed a good life as the wife of the Defendant before the breakdown of the marriage. It was not refuted that the Claimant had access to the accounts of the businesses and was able to attend to some personal needs.

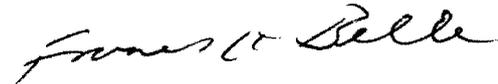
[44] Being true to the evidence I conclude that the course of dealings between the parties was exemplified by the Claimant's name being recorded on two of the properties while others were kept in the sole name of the Defendant. I think this behaviour is consistent with the Defendant's regard for the fact that he had children prior to the marriage and he intended that these children should share in the wealth, which was accumulated largely through his efforts. But he also intended to take care of his wife.

[45] There is some evidence of the values of the properties being assessed for tax and other purposes. I will not make any orders based on these valuations, which cannot be relied upon without evidence of a proper professional input and an up to date review.

[46] Based in these findings I make the following orders:

1. I declare that the parties jointly own the property at Fortlands Basseterre, the site of the former matrimonial home and the chattels contained therein in equal shares.
2. I declare that based on the course of dealings the Claimant is entitled to 1/3 share in the property at Paradise Estate in Nevis and I order that she be paid the equivalent of her interest if she is unable to purchase the Defendant's interest.
3. The Claimant is not entitled to a beneficial interest in any other properties owned by the Defendant or the Defendant's businesses.
4. The parties are to arrange to have the relevant properties valued and sold at the existing market price at the time of the sale, and the proceeds shared equally or based on the aforesaid valuations either party may purchase the other's share.
5. All valuations are to be completed no later than 3 months after the date of this order and the sale of the properties or purchase of the relevant interests is to be completed as soon as possible thereafter.
6. The application to grant the Claimant the Fortlands house and order the Defendant to vacate is denied.
7. The Claim for declarations of any legal or beneficial interests in any other properties owned by the Defendant is also denied.

8. The Claimant is not entitled to a declaration that she has a half interest or any interest in the Defendant's bank accounts, fixed deposits, shareholdings, and other securities in his name whether solely or jointly situated in the Federation or anywhere in the world and such a declaration is denied.
9. The Claimant is not entitled to any share in the businesses of the Defendant and the application for a complete disclosure of financial assets etc. is denied.
10. The application that the Claimant be at liberty to examine the financial records of the Defendant for verification of the information submitted pursuant an order of complete financial disclosure is consequently denied.
11. The Defendant is to pay to the Claimant the lump sum of EC\$1.5 million in lieu of the monthly maintenance payments already ordered by the court.
12. The Claimant is entitled to recover one third of the costs of this claim pursuant to Part 65 of the CPR 2000 from the Defendant.



Francis H V Belle
High Court Judge