

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO. GDAHCV1999/0608

BETWEEN:

DOREEN LALGIE

Claimant

and

ERROL MAITLAND

Defendant

Appearances:

Ms. Rosalyn Wilkinson for the Claimant
Ms. Daniella Williams-Mitchell for the Applicant, Errol Maitland, and for two other beneficiaries, Evita Maitland and Earl Maitland
Ms. Pauline Hannibal for the minor children, Karol Maitland, Kieron Maitland, Charlton Maitland and Nas St. Louis-Maitland
Mr. Alban John for Angelina Chandler
Ms. Kim George for Kristal Maitland
Mr. Raymond Anthony for Champ Maitland.

2009: July 28, 30
August 28

JUDGMENT

[1] **MICHEL, J. (Ag.):** By Writ of Summons with Statement of Claim endorsed dated 31st December 1999 the Claimant, Doreen Lalgie, then referred to as the Plaintiff, claimed against the Defendant, Errol Maitland, the following:

1. A declaration that she is entitled to a half share or such other proportion as this Honourable Court shall deem just in all the real and personal properties, inclusive of cash and business ventures owned, controlled and operated by the Defendant and hereinafter specifically identified and pleaded, or as may be found to be owned, controlled and operated by the Defendant, the Plaintiff having worked side by side with the Defendant as

his common-law wife from since in or about the year 1977 when the Defendant had none of the said properties until the break-up of the relationship in or about January 1999 during which time the said properties were acquired through the joint effort and industry of the parties hereto.

2. An Order that the Defendant do transfer or cause to be transferred to the Plaintiff one half of the aforesaid properties or such proportion as the Court shall deem just or that a valuation be obtained of all real property and business ventures acquired during the relevant period by the parties and now held in the Defendant's sole name and that the Defendant be ordered to sell same or as may be required and to pay to the Plaintiff a one half share of such value as may be found or such proportion as the Court shall deem just.
3. An Injunction restraining the Defendant by himself, his servant or agents or howsoever named from charging, further charging, transferring, leasing, assigning or in any manner encumbering or dealing with the said properties, businesses or assets inclusive of cash in any manner prejudicial to the Plaintiff's claim herein.
4. An Order that the Defendant give account for all properties and business acquired in his name during the relationship with the Plaintiff, inclusive of all monies and profits earned by the aforesaid business.
5. That the Defendant be ordered to compensate the Plaintiff in such monetary sum as the Court shall deem just, in all the circumstances, for her years of service to the Defendant as the manageress of his various business ventures she having so managed the said businesses without compensation.
6. Interest pursuant to Section 17 of the West Indies Supreme Court Act at such rate and for such period as the Court deems just.

7. Such further or other relief as this Honourable Court shall deem just.

8. Costs.

[2] The Defendant entered an Appearance on 24th February 2000 and filed a Defence on 26th June 2000 in which he denied that the Claimant was entitled to the relief claimed.

[3] The Claimant filed a Reply to the Defence on 19th September 2000 joining issue with the Defendant on his Defence.

[4] The Claimant had in the meantime filed an application on 3rd February 2000 (with an affidavit in support dated 5th January 2000) seeking an interlocutory injunction to restrain the Defendant from encumbering or dealing with the properties, businesses or assets itemized in the Statement of Claim in any manner prejudicial to the Claimant. The Defendant filed an affidavit in reply on 6th April 2000. After several adjournments of the application, on 19th May 2000 an undertaking was given on behalf of the Defendant not to dispose of or further encumber the properties in question until the trial of the matter or until further order and it was agreed between the parties that the matter would be set down for speedy trial.

[5] Witness statements were filed by and on behalf of the Claimant between January and February 2003 and by the Defendant in March 2003. A List of Documents was filed on behalf of the Claimant on 24th February 2003 and on behalf of the Defendant on 21st March 2003. A Trial Bundle was filed on 26th March 2003.

[6] On 8th October 2003 a Consent Order dated 31st March 2003 was entered in the matter. The Consent Order stated -

“BY CONSENT IT IS ORDERED THAT judgment be entered herein for the Claimant as follows:

1. The Defendant do transfer all his share and interest in the flatter of two lots owned by the Defendant and situated at Grand Anse, St. George's free from all encumbrances; and
2. The Defendant do pay the sum of \$30,000.00 to the Claimant."

[7] By Notice of Application filed on 16th November 2007 the Claimant sought compliance by the Defendant with the Consent Order. The application was scheduled for hearing on 16th May 2008 but was never heard. The Defendant died on 24th September 2008 without the application being heard or the Consent Order being complied with. Then on 9th February 2009 the Claimant filed an application for an order that the Registrar of the High Court execute a conveyance in favour of the Claimant so as to achieve compliance with a part at least of the Consent Order. This application was scheduled for hearing on 3rd April 2009 but was adjourned until 28th July 2009.

[8] By Notice of Application filed on 7th July 2009, Errol Jenson Maitland - the son of the now - deceased Defendant and one of the beneficiaries and intended administrators of the Estate of the Defendant - made application to the Court for:

1. A Declaration that the consent order or judgment granted in this matter on the 31st March 2003 was a final order and it concluded this action commenced by Writ dated 31st December 1999 and dealt with all matters and issues before the Court.
2. A Declaration that the Claimant Doreen Lalgie is not a shareholder and has no interest whatsoever in the Deceased Defendant's companies or businesses including and not limited to Moving Target Limited and Maitland Supplies Limited.
3. A Declaration that the Claimant Doreen Lalgie has no interest in the Estate of the Deceased Errol Maitland save and except as a judgment

creditor having obtained the judgment dated 31st March 2003 against the Deceased Defendant in this matter.

4. An Order that the Claimant cease and desist forthwith from any and all interference in the businesses and companies of the Deceased Defendant.
5. An Order that the Claimant give a strict account of all her dealings with the businesses and companies of the Deceased Defendant.
6. The costs of this application to be borne out of the Estate of the Deceased Defendant.

[9] The ground of the application was that the Consent Order was a final judgment which dealt with all matters before the Court and settled all claims between the parties.

[10] The application was supported by affidavits of Errol Jenson Maitland, his brother, Paul Maitland, and Carla Rae Briggs - the mother of three of the minor children of the Defendant, namely, Karol Maitland, Kieron Maitland and Charlton Maitland.

[11] On 22nd July 2009 the Claimant filed an affidavit in opposition to the application and an affidavit was also filed on that date by Champ Maitland - a son of the Claimant and the Defendant.

[12] On 24th July 2009 Mr. Alban John, an Attorney-at-Law who had previously acted for the Claimant but now acts for one of the beneficiaries of the Estate of the Defendant, filed an affidavit in response to the affidavit of the Claimant filed two days earlier.

- [13] On 27th July 2009 Dr. Francis Alexis, an Attorney-at-Law who had previously acted for the Defendant, also filed an affidavit in response to the affidavit of the Claimant filed on 22nd July 2009.
- [14] On 30th July 2009 Champ Maitland filed a supplemental affidavit in support of his mother - the Claimant in this matter.
- [15] As per an Order of this Court dated 14th July 2009 and entered on 15th July 2009, skeleton arguments were filed on behalf of the following persons, which entitled them to make submissions to the Court on the hearing of the application on 28th July 2009:
- (a) The Applicant, Errol Jenson Maitland;
 - (b) The Claimant, Doreen Lalgie;
 - (c) Champ Maitland; and
 - (d) The minor children of the Defendant, namely, Karol Maitland, Kieron Maitland, Charlton Maitland and Nas St. Louis Maitland.
- [16] The application was heard on 28th July 2009 and continued on 30th July 2009, with oral submissions made by Ms. Daniella Williams - Mitchell for the Applicant, Ms. Pauline Hannibal for the minor children of the Defendant, Mr. Raymond Anthony for Champ Maitland and Ms. Rosalyn Wilkinson for the Claimant. These oral submissions augmented the written submissions previously made.
- [17] Before addressing the issues raised by this application, and in accordance with Rule 21.8 of the Civil Procedure Rules 2000, this Court directs that, in view of the conclusions arrived at by the Court in this matter, it is unnecessary to appoint anyone to represent the estate of the now-deceased Defendant.

[18] The Court has considered the submissions made - both written and oral - and the authorities cited in support of the submissions and has come to the following conclusions:

1. The Court rejects the evidence of the Claimant to the effect that she was not a party to the Consent Order and did not approve of it or indeed even know of it until she was provided with a copy of it in October 2008 by her new lawyer over five years after the making of the Order. The Court prefers the evidence of Dr. Francis Alexis and Mr. Alban John on this issue and finds that the Claimant was a willing party to the Consent Order which she has twice sought to enforce. In any event, if the Claimant had not been a party to the Consent Order and/or did not approve of it or even know of it, then when once it was brought to her attention it was incumbent upon her if she wanted to disavow it to immediately seek leave to appeal against it rather than to seek to enforce it. It is not open to the Claimant to seek to derive the benefit of the Order but to seek to avoid the burden of it - she cannot approbate and reprobate.
2. The Consent Order dated 31st March 2003 and entered on 8th October 2003 is in law and in fact a final judgment which concluded the proceedings between the Claimant and the Defendant and the only live issue remaining in the case is the implementation or enforcement of the Consent Order.
3. The Consent Order resulted in the transfer of, or at least the obligation to transfer, real property and cash from one party to the proceedings to the other party, but it did not result in any transfer of shares in any company by one party to the other, so any shares in any company which either party held before the Consent Order is unaffected by the Consent Order.
4. The Defendant did not counterclaim against the Claimant for surrender, forfeiture or transfer to him of any shares which she held in any

companies and no such outcome can flow from the Consent Order entered in this matter.

5. If the Claimant has improperly interfered in the business of any companies in which the Defendant has interests then the person or persons to whom the Defendant's interests have been transmitted should initiate action against the Claimant to cause her to account for her dealings with the companies and desist from interfering in the affairs of the companies.

[19] The Court notes that Counsel for the Claimant did not address the Claimant's application for enforcement of the Consent Order, which application was filed on 9th February 2009. In any event, the provisions of Rule 21.7 of the CPR would suggest that it was not open to the Claimant at this juncture to proceed with her application.

[20] It is accordingly ordered as follows:

1. This Court declares that the Consent Order in this matter dated 31st March 2003 and entered on 8th October 2003 is a final judgment which concluded the proceedings between the Claimant and the Defendant.
2. The other declarations and orders sought by the Applicant in this matter are denied.
3. The costs of this application are to be borne out of the Estate of the Defendant.

Mario Michel
High Court Judge (Ag.)