

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA

CLAIM NO: ANUHCV 2009/0616

BETWEEN:

HERMAN ESPRIT

Claimant

and

GLEND A ESPRIT

Defendant

Appearances:

Dr. David Dorsett for the Claimant
Ms. Nina Joseph for the Defendant

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2010: July 20, 21
October 28
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JUDGMENT

[1] **MICHEL, J.:** The parties to this suit are husband and wife. The Claimant, who is the husband, has been variously referred to as a building contractor, a mason, a labourer and a grass cutter. The Defendant, who is the wife, is a waitress at a restaurant. The couple were married in 2003 and have one child together.

- [2] The undisputed evidence in the case is that in 2006 a wooden house or the wooden portion of a house was acquired by one or both of the parties from Mr. Raymond Yhap, with whom the Defendant had been employed for several years as a waitress and for whom the Claimant worked sometimes as a grass cutter, and the house (or the dismantled wooden portion of it) was transported to a portion of land at Golden Grove New Extension rented by the Claimant from Mr. Leroy Roberts, where it was transformed into a three-bedroom dwelling house which (for the next three years) served as the matrimonial home of the parties.
- [3] In August 2009 the Defendant obtained a Protection Order in the St. John's Magistrate's Court which required the Claimant to remove himself and his personal effects from the matrimonial home and prohibited the Claimant from entering or remaining in the home. The Defendant has since then occupied the matrimonial home to the exclusion of the Claimant.
- [4] In October 2009 the Claimant instituted these proceedings seeking a declaration that the aforesaid house is his property or, alternatively, is the property of the Defendant and himself, and an order that the house be sold and the proceeds of sale be apportioned between them in such shares as the Court may determine or, alternatively, that the Defendant pays him for his share in the house. The Claimant also sought compensation from the Defendant for having to provide alternative accommodation for himself since being excluded from the house, he also sought interest, costs and further or other relief.
- [5] In November 2009 the Defendant filed a Defence and Counterclaim denying the Claimant's claim and seeking a declaration that she (the Defendant) is the sole legal owner of the house and seeking also interest, costs and further or other relief.
- [6] In December 2009 the Claimant filed a Reply and Defence to Counterclaim joining issue with the Defendant on her Defence and Counterclaim.

- [7] The evidence in this case came from witness statements and viva voce evidence by the Claimant and four other witnesses called on his behalf and by the Defendant and two other witnesses called on her behalf.
- [8] The Claimant's evidence - which was partly corroborated by the witnesses called on his behalf - was to the effect that he bought a wooden house from Mr. Raymond Yhap for \$1,000, rented a portion of land at Golden Grove New Extension in order to rebuild the house there, obtained permission from the relevant governmental authorities to transport the house from All Saints Road to Golden Grove New Extension and to build it there, paid to have the house dismantled and transported to the rented land where it was built by and for him using materials from the dismantled wooden house bought from Mr. Yhap and also using materials purchased by him from various suppliers; the labour for the construction of the house was sourced and paid for by him; the Defendant made virtually no contribution towards the enterprise, apart from contributing the sum of \$80 to pay a backhoe to grade some cassi out of the road and cooking food once or twice for the persons who were working on the construction of the house at Golden Grove New Extension.
- [9] The Defendant's evidence – which was partly corroborated by the witnesses called on her behalf – was to the effect that the house was given to her by her employer, Mr. Raymond Yhap, and transported wholesale to Golden Grove New Extension where it was placed and extended with materials derived from a shed and a walkway previously attached to the house and other materials paid for by her; the labour was contributed free of costs by friends and family; the Claimant's financial contribution to the enterprise consisted of a payment of \$1,000 to Mr. Yhap for windows which Mr. Yhap had intended to take away from the house and keep for use in his new building and the sum of \$1,150 contributed to the cost of moving the house to Golden Grove New Extension.
- [10] Having seen and heard the witnesses, the Court does not accept the account of either the Claimant or the Defendant in terms of the acquisition and establishment of what came to be the matrimonial home of the parties. Both accounts contain elements of truth and elements of untruth.

[11] The Court has determined from the evidence of the eight witnesses in this case and the several documents forming part of the evidence in the case, that the Defendant's employer, Mr. Raymond Yhap, gave her the house which stood on a portion of land purchased by him on All Saints Road on condition that she moved the house from the land as soon as possible so that he could use the land for the construction of a new building on it; that Mr. Yhap had indicated his intention to remove the windows from the house and the Claimant offered to pay him for them, with a price of \$1,000 being agreed to, which the Claimant paid to Mr. Yhap for the windows; that the house or the wooden portion of the house was moved – whether in a dismantled or semi dismantled state or otherwise – from All Saints Road to a portion of land at Golden Grove New Extension rented to the Claimant by Mr. Leroy Roberts; that all arrangements for moving the house or part of the house and placing it and expanding it or constructing it at Golden Grove New Extension – whether made with the governmental authorities or with the persons engaged to move it and work on it at Golden Grove New Extension – were made by the Claimant; that the utilities in the house were installed at the instance of and in the name of the Claimant; that the Claimant worked on the house personally during time taken off his job or on weekends from April 2006 (when the house was transported to Golden Grove Extension) to August 2009 (when he was prohibited from entering or remaining in the house). The Court has also determined that, apart from her role in the acquisition of the house, the Defendant also contributed towards the movement and improvement of the house.

[12] The Court has accordingly concluded that the Claimant and the Defendant both contributed to the acquisition of a house from Mr. Yhap (consisting of a wooden structure or the wooden portion of a structure, with windows included) and to its development into the three bedroom dwelling house at Golden Grove New Extension used as the matrimonial home of the parties between 2006 and 2009. The Court has also concluded that in doing so the parties had the common intention that the aforesaid dwelling house would be their home as husband and wife and neither addressed his or her mind to what would happen or in any event communicated to the other what was intended to happen if

they separated as husband and wife. This reality has now confronted them and they have each asked the Court for a declaration of ownership of the dwelling house.

[13] Having concluded that both parties contributed to the acquisition and improvement of the dwelling house with the common intention that it would be used as their matrimonial home, the Court accordingly determines that the Claimant and the Defendant are each entitled to a share in the house. The Court cannot, however, on the evidence, determine the quantum or percentage of the respective shares of the parties in the house and will therefore be guided by the maxim "equality is equity" and will declare the house to be owned by the Claimant and the Defendant in equal shares.

[14] The Court notes the submission of Learned Counsel for the Claimant to the effect that the house as it stood at All Saints Road was not a chattel and could not, even if it were, be gifted to the Defendant by Mr. Yhap in the manner described by the Defendant. The Court however considers that the principles and authorities referred to and relied upon by Learned Counsel in support of this submission come into play in disputes between the donor and the donee of a chattel or, more frequently, between the donee and the successors in title of the donor, as to whether title has passed from the donor to the donee, and do not assist the Court in a dispute between the donee and a third party in which both the donor and the donee assert the making of the gift and the passing of title by and from the donor to the donee.

[15] The Court also notes the submission on estoppel made by Learned Counsel for the Claimant and holds that the behaviour of the Defendant in allowing the Claimant to be the sole tenant of the land at Golden Grove New Extension to which the house was moved and allowing a number of things concerning the house (including the utilities) to be in his name alone is consistent with the behaviour of a wife towards the joint property of her husband and herself where neither is averting to the possibility of separation and the effect of separation on their property relations.

[16] The Court notes to the submission made by Learned Counsel for the Claimant on the issue of conversion, but the Court does not regard this issue as being relevant in light of the Court's determination of the joint ownership of the house and the position which the Court is minded to adopt on the parties' rights flowing therefrom. As to which, the Court hereby declares that it will not proceed to effect any separation of property between the parties, who remain husband and wife, or otherwise deal with the parties' property rights beyond the declaration that the Claimant and the Defendant are the owners in equal shares of the three-bedroom dwelling house situate at Golden Grove New Extension. The Claimant is now entitled to approach the St. John's Magistrate's Court with this Order and to seek a discharge or variation of the order previously made by that Court and to approach the Divorce Court, if the marriage cannot be reconciled, to address the separation of the property of the parties upon the termination of their marriage.

[17] The Court's orders are as follows:

1. This Court declares that the Claimant and the Defendant are jointly entitled in equal shares to the ownership of a three-bedroom dwelling house situate at Golden Grove New Extension in the Parish of St. John in Antigua and Barbuda used as the matrimonial home of the parties from 2006 to 2009.
2. The application for an order of sale of the dwelling house and the apportionment of the proceeds of sale between the parties is declined.
3. The application for compensation, interest and costs is declined.
4. No order as to costs.

[18] The following authorities were cited by Counsel for the Parties:

By Counsel for the Claimant –

1. Divorce Act, 1997
2. Domestic Violence (Summary Proceedings) Act, 1999
3. **Berridge and Edwards v Benjiles Business Centre¹**
4. **Canada and Dominion Sugar Co Ltd v Canadian National (West Indies) Steamships Ltd²**
5. **Cochrane v Moore³**
6. **In re Cole, A Bankrupt⁴**
7. **Davis v Oswell⁵**
8. **Elitestone Ltd v Morris⁶**
9. **Irons v Smallpiece⁷**
10. **Kuwait Airways Corp v Iraqi Airways Co (Nos 4 and 5)⁸**
11. **Maclaine v Gatty⁹**
12. **In re S-B (Children) (Care Proceedings: Standard of Proof)¹⁰**
13. Halsbury's Laws of England, 4th Edition, Volume 35, Paragraph 1227
14. Mc Gregor on Damages, 18th Edition, Paragraph 33-006

By Counsel for the Defendant –

1. **Lloyds Bank PLC v Rosset¹¹**
2. **Lynn Anne Abbott v Dane Norman Lawrence Abbott¹²**
3. **Pettitt v Pettitt¹³**
4. **Gissing v Gissing¹⁴**

¹ [1996] ECLR 329

² [1947] AC 46

³ (1890) 25 QBD 57

⁴ [1964] Ch 175

⁵ (1837) 173 ER 351

⁶ [1997] 1 WLR 687

⁷ (1819) 106 ER 467

⁸ [2002] 2 WLR 1353

⁹ [1921] 1 AC 376

¹⁰ [2010] 1 AC 678

¹¹ [1990] 1 All ER 1111

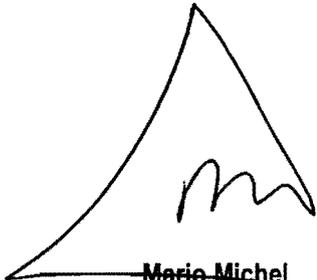
¹² Privy Council Appeal No. 142 of 2005

¹³ [1969] 2 All ER 385

¹⁴ [1979] 2 All ER 780

5. **Button v Button**¹⁵

6. **Burns v Burns**.¹⁶



Mario Michel
High Court Judge

¹⁵ [1968] 1 All ER 1064

¹⁶ [1994] 1 All ER 244