

ANGUILLA

IN THE HIGH COURT OF JUSTICE

SUIT NO. AXAHMT 107 OF 1998

BETWEEN:

VICTORIA ROMNEY

Applicant/Petitioner

And

GLENFORD ROMNEY

Defendant/Respondent

Appearances:

Mrs. Josephine Gumbs-Connor and Ms. Yanique Stewart for the Applicant/Petitioner
Mrs. Tara Ruan for the Defendant/Respondent

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2011: January 31
April 20
2012: February 1
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JUDGMENT

- [1] **BLENMAN, J:** This is a matter in which Mrs. Victoria Romney seeks a number of discrete orders against her ex-husband Mr. Glenford Romney. Chief among the orders sought is an order varying the Ancillary Order that was made by the Court in relation to her interest in the matrimonial home and the payment of money which represents her interest in another property. Mrs. Victoria Romney also seeks to enforce the contempt order that was made by the Court in 2007 and suspended.
- [2] In addition, there is an application in which Mrs. Romney seeks to vary the Ancillary Order that was previously made by the Court on 20th November 2006, with which Mr. Romney has not complied.

[3] Mrs. Romney seeks an order to have Mr. Kenvic Romney joined as a party to the claim. She also seeks to have the Court set aside the transfer of land that Mr. Romney effected in his brother Kenvic Romney's name.

[4] Mr. Glenford Romney strenuously opposes all of the applications.

Issues

[5] The issues that arise for the Court to resolve are as follows:

- (a) Whether the Court should order Mr. Kenvic Romney to be joined as a party to the proceedings.
- (b) Whether Mr. Romney is in contempt of the Court through his default in payment of the sums that were ordered by the Court.
- (c) If so, whether the Court should activate the suspended custodial sentence that was imposed on Mr. Romney.
- (d) Whether the Court is satisfied that Mr. Romney caused parcel 170 to be transferred into the name of his brother Kenvic in order to defeat the enforcement proceedings by Mrs. Romney.
- (e) Whether the Court should set aside the transfer of parcel 170 by Mr. Glenford Romney to his brother Kenvic.
- (f) Whether the Court should make a further order for the sale of Parcel 170.
- (g) Alternatively, whether the Court should order the sale of the former matrimonial home.

Background

- [6] Mrs. Victoria Romney and Mr. Glenford Romney were married and the marriage lasted for several years. They were divorced on 7th September 2000. Subsequently, Mrs. Romney filed ancillary proceedings seeking maintenance for the then minor child of the family together with division of the matrimonial property and another property, namely, Parcel 170 West Central Section Block 28310B, which they owned as a couple.
- [7] On the 20th day of November 2006, the Court ordered Mr. Romney to pay her the sum of US\$90,000 representing her half share in the matrimonial home and a third share of the value of Parcel 170, Block 28310B. Mr. Romney was also ordered to pay Mrs. Romney the monthly sum of EC\$1,200 towards the maintenance of the then minor child of the family, Shekimea Shenja Romney, until she attained the age of 18.
- [8] Mr. Romney failed to comply fully with the above orders and Mrs. Romney brought contempt proceedings against him.
- [9] On 6th November 2007, Mr. Romney was found to be in contempt of Court and was committed to prison for six (6) months unless he paid the sum of US\$90,000 on or before 31st December 2000 and the arrears of maintenance in the sum of EC\$12,000 on or before 30th November 2007. Costs were awarded in the sum of US\$700.00. The committal order was suspended.
- [10] Apparently, the parties subsequently entered into another payment arrangement with a view to liquidating his indebtedness to Mrs. Romney and he paid approximately US\$40,000 towards the entire debt. He was quite sporadic with his payments and did not make any payments for a long period of time.
- [11] Thereafter, Mrs. Romney moved the Court to have the suspended contempt order activated on the basis that Mr. Romney owed her the sum of US\$62,000 on the ancillary judgment and EC\$10,367.70 for maintenance.

- [12] The matter came on for hearing and the Court ordered Mr. Romney to pay the sum of US\$5,356.74 representing the arrears on child maintenance and costs; these were to be paid by 4th November 2009, failing which Mr. Romney was to have been committed for six (6) months. It was further ordered by consent that Mr. Romney should pay Mrs. Romney the sum of US\$62,000 and interest of US\$11,102.60 on or before the 30th day November 2009 representing the balance of monies owed to her for her share in the matrimonial home.
- [13] Mr. Romney failed to comply with the Court's Orders and Mrs. Romney caused her solicitor to write Mr. Glenford Romney demanding that he make good his indebtedness or in the alternative threatening legal action against him.
- [14] Before the application for the Committal Order was filed, Mr. Romney caused the land and property situate at Registration Section West Central Block 28310B, Parcel 170, to be transferred to his brother Mr. Kenvic Romney. This is the same parcel of land in which Mrs. Romney was awarded a third share. The parcel of land is now registered in Kenvic's name.
- [15] Mrs. Romney contends that Mr. Romney has deliberately transferred the parcel of land to his brother Kenvic in order to avoid enforcement proceedings and she has filed an application to have Kenvic joined as a party. She has also requested the Court to set aside the transfer of the property to him.
- [16] She also contends that Mr. Glenford Romney was previously employed at a lucrative job and earned handsomely and has still refused to liquidate his indebtedness towards her in accordance with the Court's order.
- [17] Mrs. Romney seeks the following Orders against Mr. Glenford Romney, namely, An Order committing him to prison for a period of seven (7) days.
- (a) Pursuant to section 43(1) (b) of the Matrimonial Property and Proceedings Act, an Order setting aside the transfer of land for Registration Section West Central Block 28310B, Parcel 170 to Kenvic Romney.

- (b) That Mr. Kenvic Romney be joined as an interested party to the application.
- (c) An order varying the ancillary relief order made on 20th November 2006 in favour of a grant of any of the following Orders:
 - (i) That the former matrimonial home located at Registration Section West Central Block 28310B, Parcel 170, be sold and the proceeds from such sale be paid to Mrs. Romney in settlement of the debt owed by Mr. Romney.
 - (ii) That the property located at Registration Section West Central Block 28310B, Parcel 170, be sold and the proceeds from the sale be paid to her.

[18] Mr. Romney takes issue with most of the contentions that have been made by Mrs. Romney. He says that he simply does not have the money to make good on his indebtedness to her. While he worked for a period of time, he says that he was also unemployed for a very long time.

[19] Mr. Romney states that he simply does not have the money to pay her the lump sum and that he has done his best to offset some of his indebtedness to her. He says that he has no access to money to pay her the balance even though he has tried unsuccessfully to obtain a loan.

[20] He agrees that he has transferred the property to his brother Kenvic but says that his reason for doing so was because his brother expended substantial sums in assisting him to construct the building that sits on the land.

Evidence

[21] Mrs. Romney and Mr. Romney filed affidavits in support of their respective positions and they were cross-examined at length. Throughout the cross-examination that sought to test their respective credibilities, the Court formed the view that Mrs. Romney was an honest witness

who was merely seeking to obtain the fruits of her judgment after several years. In contradistinction, Mr. Romney struck the Court as a very hostile and uncooperative gentleman who was determined not to comply with the Court's order. On several occasions, he gave the impression and made statements which clearly showed that he had no intention to pay the outstanding sum. It was equally clear that Mr. Romney is determined to protract the matter for as long as possible.

Mr. Romney's Submissions

- [22] Learned counsel Mrs. Ruan said that Mr. Romney's evidence is that he made efforts to make payments towards the debt and that within approximately two (2) years of the Order, he had managed to pay approximately US\$40,000 towards the debt. In fact, the evidence is such that it was only after he was laid off in 2008 and during the financial decline that his payments became less consistent and in smaller sums. There is no evidence before the Court upon which it could be concluded that he was willful and had the means to pay the full debt. He had the means to make installment payments. Mr. Romney testified that he was in the process of looking for work but that he had been out of work for significant periods of time. He gave evidence that he tried to obtain a loan to pay the debt but was denied. Mrs. Romney herself agreed that she had worked at the Golf Course with Mr. Romney and that she knew when the project closed down and they were all laid off.
- [23] The onus of proof rests with the Judgment Creditor (Applicant). Mrs. Ruan referred the Court to *Fitzroy Warner v. Hotel Equity Fund V, LLC*. The Court, in this case, in looking at the Debtors Act said on page 5 that: "*The significant, it has been called revolutionary reform, brought about this Act is well-known to all lawyers. It required that the judgment creditor prove that the judgment debtor had been both (1) refusing or neglecting to pay the debt and that (2) he had or has had since the date of the judgment the means to pay. The burden of proving the means of the judgment debtor was placed squarely on the judgment creditor, and the judgment debtor had nothing to prove.*"

[24] Learned counsel Mrs. Ruan said that Mrs. Romney has failed to present evidence to persuade the Court, on the balance of probabilities, that Mr. Romney has been willful and/or that he has had the means since the judgment to satisfy the full payment of the debt.

Requirement for Leave of Court before Enforcement Application is Made

[25] Next, Mrs. Ruan said that the applications fall within the ambit of the *Matrimonial Proceedings and Property Act* R.S.A. c. M60 ("MPPA") and not the CPR 2000. Mrs. Ruan said that section 31 of the Act states that:

"31(1): A person shall not be entitled to enforce the payment of any arrears due under an order made by virtue of section 22, 23(1), 24(2), 27(5) or 27(6) without the leave of the Court, if those arrears became due more than 12 months before proceedings to enforce the payment of them are begun."

[26] Mrs. Ruan said that Mrs. Romney ought to have obtained the leave of the Court before seeking to have the Orders enforced. Mrs. Ruan submitted that Mr. Romney had been ordered to pay a lump sum in accordance with section 23 (1) (c) of the MPPA. The fact that Mrs. Romney has obtained no leave is fatal to her applications.

Application for Sale

[27] Turning her attention to Mrs. Romney's application for the sale of the property i.e. Parcel 170, Mrs. Ruan said that CPR 2000 does not apply to matrimonial proceedings. This Application has therefore been made pursuant to section 53(1) of the **Matrimonial Proceedings and Property Act R.S.A. c. M60**.

[28] Learned Counsel Mrs. Ruan maintained that Mrs. Romney is barred from making this application after the decree of divorce has been granted. Mrs. Ruan referred the Court to section 53(1) of the Act which states:

“The Court, on granting a decree of divorce, if it is satisfied that both parties to the marriage have made a substantial contribution to the matrimonial home may, if it thinks fit, on the application of either party made before the decree of divorce is made, make an order –

(a) Subject to subsection (2) directing the sale of the home...and the division of the proceeds, after the payment of the expenses of the sale, between the parties in such proportions as the Court thinks fit.”

[29] Mrs. Ruan therefore urged the Court to dismiss all of the applications that are filed by Mrs. Romney.

Joinder of Kenvic

[30] Learned counsel Mrs. Ruan submitted that the Court should not accede to Mrs. Romney's request to have Kenvic joined as a party to the claim. Mrs. Ruan said that the land transfer has not been placed before the Court and there is no basis for joining him as a party.

Setting aside the Transfer of the Property

[31] Next, Mrs. Ruan urged the Court not to grant the Order and set aside the transfer that Mr. Glenford Romney made to his brother Kenvic. Learned counsel Mrs. Ruan said that the Court should accept Mr. Glenford Romney's evidence as to the circumstances under which Parcel 170 was transferred to his brother Kenvic.

Mrs. Romney's Submissions

Joinder of Kenvic

[32] Learned counsel Mrs. Josephine Gumbs-Connor urged the Court to join Kenvic as a party to the applications. Mrs. Gumbs-Connor said that Kenvic was served with all of the relevant papers including the application for joinder. He appeared in Court on one occasion and he did not appear subsequent to that.

[33] Mrs. Gumbs-Connor said that the evidence clearly indicates that Kenvic has shown no interest in the matter for his own purposes. The Court should not refrain from making the appropriate Order for his joinder as a party.

Setting aside the transfer of Parcel 170

[34] Learned counsel Mrs. Gumbs-Connor submitted that Mr. Glenford Romney was untruthful when he said that his brother Kenvic helped to finance the construction of the building on Parcel 170 and this is the reason why he (Glenford) transferred the property into Kenvic's name. Mrs. Gumbs-Connor said that all of the credible evidence told a different story. Mrs. Gumbs-Connor asked that the Court find, as a fact, that Mr. Glenford Romney deliberately transferred the property into this brother's name so as to frustrate any effort by Mrs. Romney to enforce the judgment. Mrs. Gumbs-Connor therefore urged the Court to set aside the transfer of the property from Mr. Glenford Romney to his brother.

[35] Learned counsel Mrs. Gumbs-Connor referred the Court to section 43(1) (b) of the **Matrimonial Proceedings and Property Act R.S.A. c. M60** which empowers the Court as follows:

“(a) Where proceedings for relief under any of the relevant provisions of this Act (hereafter in this section referred to as “financial provision”) are brought by a person (hereafter in this section referred to as the “applicant”) against any other person (hereafter in this section referred to as the “other party”), the Court may, on an application by the applicant —

(b) if it is satisfied that the other party has, with the intention mentioned in paragraph (a), made a disposition to which this paragraph applies and that if the disposition were set aside, financial provision or different financial provision would be granted to the applicant, make an order setting aside the disposition and give such consequential directions as it thinks fit for giving effect to the order (including directions requiring the making of any payment or the disposal of any property).”

[36] Mrs. Gumbs-Connor said that the standard of proof to be applied by the Court in reaching a decision on the transaction is as stated in subsection (1)(b) above and as elaborated upon by the Court of Appeal in *K v K (1983) England CA* as quoted in *S v S (1992) 51 WIR 286* at 282:

“ the Court had to be satisfied that the disposition had been made with the intention of defeating the applicant’s claim. The burden of proof was not to be found in fraud cases, nor in any particular test such as the balance of probability or beyond reasonable doubt. The word “satisfied” was to be given its ordinary meaning.”

[37] Learned counsel Mrs. Gumbs-Connor maintained that the conveyance made by Mr. Romney was made for the sole purpose of defeating any enforcement claims which Mrs. Romney may make pertaining to property owned by him, particularly as the matrimonial home is yet to be transferred into his name. Mrs. Romney’s case is that she has been prejudiced by this transaction in that she is now unable to apply for the sale of any of the relevant properties as she has sought to do by asking the Court for a variation of the ancillary relief order.

[38] In *Cadogan v Cadogan, [1977] 3 All ER 831* at page 842, the Court of Appeal found that the husband’s conveyance deprived the wife of the possibility of seeking any remedies in relation to financial relief and that this loss of opportunity constituted sufficient prejudice for the wife to be granted the opportunity to amend her claim to properly include an application to set aside the transaction for fraud. In the instant case, Mr. Romney’s transaction puts the only property in his name out of reach of Mrs. Romney who is essentially precluded from bringing enforcement proceedings as against the transferred property or from seeking an effective variation of the ancillary relief order so as to sell the property and thereby obtain satisfaction of her ancillary award.

[39] As indicated in paragraph 4 of Mrs. Romney’s Affidavit of 4th May 2010, Mr. Romney has in the past resisted efforts to transfer parcel 170 to her on the basis that the property was for their son’s and this accords with the intention stated by the parties during the hearing of the application for ancillary relief as indicated at paragraph 19 of the judgment. However, having

received a letter warning of impending enforcement proceedings on 31st July 2009 and having contacted Mr. Romney's legal representatives on 17th August and indicated that they could sell his house if they so wished because he was not in a position to settle the debt, he then made the conveyance to his brother on 19th August 2009, a mere two days later. Paragraphs 5 through to 11 of Mrs. Romney's Affidavit of 4th May 2010 speak to this issue.

[40] Mrs. Romney, in her Application and Affidavit of 4th May 2010, made it clear that she was alleging that the conveyance was made for evasion purposes to defeat her claim and the documents were served on Mr. Romney and his brother to whom the conveyance was made as evidenced by the affidavit of service filed on 13th August 2010 by Michael Fleming. Mr. Romney and Mr. Kenvic Romney appeared in Court on 19th May 2010 for the hearing of the Application and were both given leave to respond to the Application made. Neither party has responded, though it should be said that Mr. Romney spoke to the allegation in his Affidavit of 28th October 2009.

[41] In *Blenkinsopp v Blenkinsopp*, 42 E.R. 644, the Court of Appeal found that the fraud alleged was established in the fact that it appeared that the deed of transfer in that case had been executed pending a suit in the Ecclesiastical Court against the Defendant who executed it, which suit, according to the law as it then stood, might, if successful, have ended in some kind of execution against his property. It is Mrs. Romney's contention that this is similar to the case at bar.

[42] For the sake of evaluating the Respondent's intention, section 43(3) of the Matrimonial Proceedings and Property Act prescribes as follows:

“(3) Where an application is made under this section with respect to a disposition which took place less than 3 years before the date of the application or to a disposition or other dealing with property which is about to take place and the Court is satisfied—
(a) in a case falling within paragraph (1)(a) or (b), that the disposition or other dealing would (apart from this section) have the consequence; or

*(b) in a case falling within paragraph (1)(c) that the disposition has had the consequence;
of defeating the applicant's claim for financial provision, it shall be presumed, unless the contrary is shown, that the other party disposed of the property with the intention mentioned in paragraph (1)(a) or, as the case may be, with that intention, is about to dispose of or deal with the property."*

[43] Learned counsel Mrs. Gumbs-Connor submitted that, given all the circumstances including the above presumption and the above submissions made, there is sufficient evidence before the Court on which to find that the conveyance was executed with the aim of defeating any claims which Mrs. Romney could issue in this Court relating to the property. Should the Court make such a finding, Mrs. Gumbs-Connor said that the next step has to then be that the transaction is set aside to cure the prejudice which has been caused to Mrs. Romney by its execution.

Sale of Parcel 170

[44] Learned counsel Mrs. Gumbs-Connor argued that section 30(1) of the **Matrimonial Proceedings and Property Act R.S.A. c. M60** authorizes the Court to vary orders for financial provision including those made by virtue of section 25(1)(b) which broadly deals with orders for settlement of property.

[45] Learned counsel Mrs. Gumbs-Connor argued that the order made by the Court upon pronouncement of the judgment for Mrs. Romney to be paid a third and a half share respectively in the relevant properties, was made pursuant to section 25(1)(b). The Order can thus be varied by the operation of section 30(1)(d) in conjunction with section 30(4)(b) which specifies the instances in which the Court can vary orders made under section 25(1)(b). Mrs. Gumbs-Connor submitted that the Court is also empowered to make the Order sought pursuant to its inherent jurisdiction.

[46] Learned counsel Mrs. Gumbs-Connor stated that, in essence, Mrs. Romney seeks a variation of the initial property order to settle the parties' interests in the matrimonial home by selling it and dividing the proceeds in accordance with the initial judgment. In circumstances where the divorce has been so protracted; where the proposals for payment made by Mr. Romney as alluded to in paragraphs 5 to 7 of the Affidavit of 6th October 2010 and paragraphs 17 through to 21 of the Affidavit of 4th May 2010 are clearly unsatisfactory; and where the age and earning capacity of the parties is not favourable to obtaining loans to otherwise settle this matter, Mrs. Gumbs-Connor submitted that the only way to achieve a clean break will be for one of the properties to be sold and for Mrs. Romney to be paid out of her interest in the matrimonial properties.

Activation of the Suspended Committal Order

[47] Mrs. Gumbs-Connor submitted that Rule 53.11 (1) of the Civil Procedure Rules 2000 indicates that the process for enforcement where there is default by a Judgment Debtor who is subject to a suspended committal order is for the Judgment Creditor to apply to the Court for enforcement of such Order. This is in line with cases such as *Villiers v Villiers*, [1994] 2 All ER 149 at 153, where Sir Thomas Bingham MR stated as follows:

"There is nothing automatic about the activation of a suspended sentence, and it involves an exercise of judicial judgment on the occasion when the issue of activation arises."

[48] The question to be determined by the Court is whether Mr. Romney was contumelious in his contempt. Mr. Romney was earning US\$700.00 per week at the time the hearing took place. Notwithstanding this high earning power, Mr. Romney made no payments at all towards the financial relief award for a whole year such that a Committal Order was made on 6th November 2007 on the entire sum.

[49] In the absence of a written judgment pertaining to committal, learned counsel Mrs. Gumbs-Connor argued that the fact that Mr. Justice Redhead made a committal order, and one for a period of six (6) months, can be construed that the Respondent was contumelious in his

contempt. Whilst Mr. Romney did cease to earn at such a high level at some point in time, Mrs. Gumbs-Connor submitted that the efforts he has made to pay have been at best unsatisfactory as elaborated upon in paragraph 6 and 16 to 18 of the Applicant's Affidavit of 1st October 2009 and in the Affidavit of 4th May 2010.

[50] Mrs. Gumbs-Connor said that the behaviour that Mr. Romney has exhibited has consistently shown that he repeatedly enters into consent orders without ever having the intention to comply despite him being fully aware of the consequences of non compliance. Mrs. Gumbs-Connor submitted that even in the event of a change of circumstances, it must be incumbent on a responsible Judgment Debtor to make payment arrangements tailored to the prevailing situation at the time; however, instead it is Mrs. Romney, who has to be the watchman and pursue Mr. Romney, who has been increasing her costs. In addition, the apparent consequences to Mr. Romney is of little moment when Mr. Romney can tell Mrs. Romney that he is ready to be incarcerated. (See paragraph 15 of the Applicant's Affidavit of 4th May 2010 and the Applicant's Affidavit of 7th October 2010.)

[51] By entering into apparently untenable consent positions and making agreements which are then reneged upon, Mrs. Gumbs-Connor submitted that Mr. Romney is willful in his default of the Orders before the Court.

[52] Learned counsel Mrs. Gumbs-Connor said that the Court should determine whether it has jurisdiction to reduce the length of six (6) months ordered in the original Committal Order to 7 days as sought by the Application of 4th May 2010.

[53] The Court of Appeal in the case of *Re W. (B) an infant, 1 All ER 594 at 596 C*, stated as follows:

"Imprisonment is not the inevitable consequence of a breach. The Court has discretion to do what is just in all the circumstance. It can reduce the length of the sentence or can impose a fine instead. It all depends on how serious is the breach, how long has the man behaved himself, and so forth."

- [54] On this basis and also pursuant to the fact that the issue of activation of a committal order involves a fresh exercise of discretion, Mrs. Gumbs-Connor submitted that the Court can and should exercise its discretion in favour of granting the committal order for a reduced period than originally ordered, given the circumstances.
- [55] It is the general rule that the party in contempt cannot be heard or participate in proceedings in the same cause until he has purged his contempt, said Mrs. Gumbs-Connor. The rule should be upheld and the Court should accept the submissions and evidence provided on behalf of Mrs. Romney on this issue, as the case stated.
- [56] In summary and on the basis of the submissions made above, learned counsel Mrs. Gumbs-Connor said that there is sufficient evidence on which to find that the transfer of Parcel 170 to Kenvic Romney by Mr. Romney was effected with a view to defeat any claims for financial provision which Mrs. Romney could issue in relation to the said property. Should the Court find in favour of this submission, learned counsel Mrs. Gumbs-Connor submitted that the next step would be for the Court to make an order for parcel 170 to be sold and Mrs. Romney paid the balance of the monies owed to her from the matrimonial properties so as to achieve a clean break, particularly in the absence of other alternatives for payment.
- [57] Finally, Mrs. Gumbs-Connor reiterated that the suspended committal order in this matter should be activated for the reasons elaborated above and for the period as stated on the application, since Mr. Romney has been in contempt since 2007.

Court's Analysis and Findings of Facts

- [58] The Court has reviewed the evidence that was adduced in this matter. The Court has also given deliberate consideration to the very helpful and lucid submissions of both learned counsel. The Court makes the following findings of facts:
- [59] Throughout the trial, Mrs. Romney appeared to be very frustrated with the fact that despite having had several orders made against her ex-husband and in spite of her willingness to

accommodate periodic payments by Mr. Romney, he has not been very forthcoming. She has a judgment in her favour which is several years old and has awarded her a share in the former matrimonial home and in Parcel 170 she is still awaiting the full fruits of the judgment.

[60] The Court has no doubt that Mrs. Romney's main interest is not so much to have Mr. Romney imprisoned but rather she wishes to receive the fruits of her judgment. This position is clearly stated in her affidavit.

[61] For his part, Mr. Romney gave the impression that he could not care less. He was very defiant in his manner. His demeanor was consistent with his unwillingness to honour his financial obligations as provided in an Order of Court.

Issue No. 1

Joinder of Kenvic Romney

[62] The first issue to be determined is whether the Court should order Mr. Kenvic Romney to be added as a defendant.

[63] This issue, though raised on behalf of Mrs. Romney, did not attract a lot of attention in the submissions of both learned counsel as it could. The Court is nonetheless obliged to proceed to determine the issue since it is a live one. Even though Mr. Kenvic Romney was served with the application to have him joined as a party and he actually appeared before the Court on one occasion, his physical presence was thereafter excused by the Court.

[64] It is clear that this issue, though identified during the trial, was not pursued as vigorously as it ought to, even though Mrs. Romney in her closing arguments urged the Court to join Mr. Kenvic Romney as an interested party. Mr. Romney, however, has resisted the application to have his brother joined as a party to the matter.

[65] The Court is of the view that given the nature of the application and being mindful of the fact that Mr. Kenvic Romney was served with the application to have him joined and did in fact

appear in Court, he is fully aware of the application. He was also served with the relevant pleadings in the matter but has chosen not to file any affidavit in opposition. The fact that Mr. Glenford Romney has not chosen to place any objection, apart from submissions in opposition to the proposed joinder, is cause for pause. Mr. Kenvic Romney has provided the Court with no independent submissions.

[66] There is no doubt that the property was transferred by Mr. Glenford Romney to Mr. Kenvic Romney. Be that as it may, the Court, having reviewed the entirety of the matter, has no doubt that it is right that Mr. Kenvic Romney be joined as an interested party. It is essential that Mr. Kenvic Romney be added as an interested party so that he is placed in the position of having to abide by the judgment of the Court. The Court is far from satisfied that he would suffer any prejudice by this Order since he was given the right to be heard but instead he has chosen not to be heard.

[67] The Court accordingly orders that Mr. Kenvic Romney be joined as a party to the application.

Issue No. 2

Nature of Transfer of Parcel 170

[68] The Court now has to determine whether there is sufficient evidence upon which it could properly be concluded that Mr. Romney transferred Parcel 170 to his brother Kenvic in order to evade enforcement proceedings.

[69] The Court has alluded to the fact that it has no doubt, based on the evidence of Mrs. Romney, which the Court accepts is credible, that Mr. Glenford Romney has transferred Parcel 170 to his brother Kenvic in order to prevent Mrs. Romney from being able to enforce her judgment. The Court does not believe Mr. Glenford Romney nor does the Court accept that he was truthful when he sought to impress upon the Court that the reason for him transferring the property into his brother's name is because of the financial contribution that his brother made towards the construction of the property. Given the sequence of events, including the period during which Mrs. Romney caused her lawyer to write to Mr. Glenford Romney about the

arrears and with the clear threat of enforcement proceedings over his head, the Court is convinced that he transferred the property to his brother for the sole purpose of defeating any efforts by Mrs. Romney to enforce her judgment.

Issue No. 3

Whether the transfer should be set aside

- [70] Learned counsel Mrs. Gumbs-Connor asked the Court to set aside the transfer of Parcel 170 on the basis of the alleged fraud that has been committed by Mr. Romney in relation to the property. For her part and as stated above, learned counsel Mrs. Ruan urged the Court not to set aside the transfer on the basis of fraud since it has not been specifically pleaded.
- [71] The Court is of the considered view that the law requires that the particulars of fraud have to be specifically pleaded and proven. Mrs. Romney is alleging that Mr. Glenford Romney's conduct in transferring Parcel 170 to his brother was fraudulent. There is no requirement for her to have specifically used those words. Mrs. Romney in her affidavit clearly indicated that it was her view that Mr. Glenford Romney had transferred the property to Kenvic in order to prevent her from bringing enforcement proceedings. Mr. Romney could not have been in doubt that, based on the clear and unequivocal evidence of Mrs. Romney, she was contending that he had improperly caused Parcel 170 to be transferred to his brother in order to defeat any steps which she may have taken to enforce the judgment.
- [72] Learned counsel Mrs. Gumbs-Connor maintained that Mr. Romney's transfer of Parcel 170 to his brother Kenvic Romney should be set aside on the basis of fraud. In support of her argument, Mrs. Gumbs-Connor referred the Court to section 43 (1) (b) of the **Matrimonial Proceedings and Property Act R.S.A. c. M60**. Also, Mrs. Gumbs-Connor asked the Court to exercise its inherent jurisdiction and set aside the transfer.
- [73] The Court is of the considered view that the fact that Mrs. Romney did not specifically plead that Mr. Romney had committed a fraud in transferring Parcel 170 is not fatal to her application.

- [74] In view of the totality of the circumstances, the Court is of the respectful view that Mr. Glenford Romney deliberately and dishonestly caused Parcel 170 to be transferred into his brother's name in order to defeat any enforcement applications that Mrs. Romney may make.
- [75] The Court cannot sit idly by and allow Mr. Romney to flout its orders and so defeat Mrs. Romney's rights which have crystallized. Taking into account the totality of circumstances as stated so far, the Court now has to determine what the justice of the case requires.
- [76] Having examined Mr. Glenford Romney's entire conduct, including his failure to liquidate his indebtedness to Mrs. Romney, I am satisfied that the justice of the case requires that the Court carefully scrutinizes the transfer and the circumstances of the transfer of Parcel 170 by Mr. Glenford Romney to his brother Kenvic. There is no doubt, after having carefully reviewed the evidence and submissions that Mr. Glenford Romney has deliberately sought to put the property out of its reach. It is not a genuine transfer.
- [77] Accordingly, there is no alternative but to set aside the transfer to Mr. Kenvic Romney, and the Court so orders.

Issue No. 4

Whether Mr. Romney is in Contempt of Court

- [78] It is appropriate to state that due to the history of the matter it may be easy for one to conclude that Mr. Romney is deliberately disobeying the Court's order. However, the Court must subject the entire circumstances to very careful scrutiny before determining whether, as a matter of law, Mr. Romney is in contempt of Court.
- [79] In determining this issue, the Court must pay significant regard to Mrs. Romney's evidence and that of Mr. Glenford Romney's. It is noteworthy that Mrs. Romney has stated in her affidavit that "whilst the Respondent may not be able to satisfy the entire debt owed to me out of his savings, I believe that he should be making some attempt to settle the debt.

- [80] It bears stating that Mr. Romney was ordered to pay Mrs. Romney the sum of US\$62,000 together with interest in the sum of US\$11,102.60 on or before the 20th November 2009 representing the balance of monies owed to her. Subsequent to that order, the parties agreed that he would liquidate the debt by periodic payments. Mr. Romney made very little payment in this regard and eventually stopped. A large part of the debt is still outstanding, as was stated earlier.
- [81] The Court accepts learned counsel Mrs. Ruan's submissions that there is no evidence before the Court on which it can be properly concluded that Mr. Romney has had the means to pay the full debt. Equally, the Court is not satisfied that Mr. Romney is refusing or neglecting to pay the entire debt. However, it is clear on the evidence that he may have been in a position to make periodic payments towards the debt but he clearly did not have the means to liquidate the entire debt. The Court also accepts this. See *Fitzroy Warner v. Hotel Equity Fund V, LLC* *ibid*.
- [82] Accordingly, in the case at bar, Mrs. Romney has failed to prove that Mr. Romney is refusing to pay the debt and that he had or has had since the date of the judgment the means to pay the entire debt.
- [83] This in no way negates the fact that the Court is of the considered opinion that Mr. Romney could have made more regular and periodic payments towards the liquidation of his indebtedness. He deliberately took the position to liquidate his indebtedness towards other persons and paid very little regard to the Order of the Court. He is very deliberate in his actions.
- [84] Taking the totality of circumstances into account, the Court is not of the view that this is a proper case in which the suspended Committal Order should be activated. This, in addition to the Court's concern as to whether this type of debt can properly attract a custodial sentence in circumstances where there is default (see *Elsee Cranberry v Grenada Telecommunications Ltd*, Civil Appeal 1 of 1997.)

- [85] As alluded to earlier, there is no doubt that Mr. Romney is in continuous default in the payment of the judgment debt. The matter does not end there; the Court is required to go further and determine whether Mr. Romney is deliberately disobeying the order. The evidence that Mrs. Romney has provided the Court falls short of establishing that Mr. Romney had the means to liquidate the substantial indebtedness and has willfully refused to do so.
- [86] Committal proceedings orders are very punitive in nature and it is only in the clearest of cases should the Court imprison a defaulter. This is not one such case. Accordingly, I decline to activate the suspended Committal Order. Indeed, the Court is not satisfied that this is a proper case in which it should exercise its discretion to imprison Mr. Romney for his failure to comply with the order.
- [87] It is clear that Mr. Romney agreed to pay Mrs. Romney the sums stated in the order on or before 20th November, 2009 when he full well knew that he did not have the means to do so. He cannot properly be held in contempt of that order when he never had the means to make the lump sum payment to which he had agreed. To complicate matters further it seems as though the parties had agreed privately to enable Mr. Romney to make periodic payments towards the debt.
- [88] It would not be right in all of the circumstances for the Court to seek to punish him when there is no evidence on which it could properly be concluded that he deliberately failed to pay US\$60,000; he simply never had it.

Issue No. 5

Variation of Order to Facilitate the Sale of Property

- [89] This brings the Court now to consider whether it should accede to Mrs. Romney's request to vary the Ancillary Order so as to order the sale of Parcel 170.
- [90] The Court has given careful consideration to the evidence and very helpful submissions of both learned counsel. It is evident that Mr. Romney has no intention of allowing his ex-wife to

obtain the fruits of her judgment. In fact, he boldly asserted that everyone knows that the property that he owns is for the child of his dead son. This can hardly be acceptable, particularly when he has had the benefit of occupying the former matrimonial home to the exclusion of Mrs. Romney and for so many years in the face of a judgment of the Court in which she was awarded an interest. However, it is hardly likely that Mr. Romney would ever be able to honour his financial obligations in its present form. Indeed, with Mr. Romney not having any savings and being out of employment, it is inconceivable that he would be able to honour his financial obligations.

[91] The Court takes a serious view of the fact that Mrs. Romney has received the judgment in her favour since 2006 and Mr. Romney is yet to satisfy his full indebtedness towards her and this is in relation to her interest in the former matrimonial home.

[92] It is passing strange that he has been able to complete the construction of the building on Parcel 170 and also to complete the construction of the top floor of the matrimonial home. The Court is far from persuaded that Mr. Romney was truthful in saying that his brother has contributed financially to more ventures. It is clear from his own evidence that over the years Mr. Romney has placed priority on completing the construction of those properties and paying other bills rather than seeking to fully comply with the Court's order. While the Court accepts that Mr. Romney was unemployed for a period of time, this has in no way prevented him from completing the construction referred to above. He was not in a position to pay a lump sum; neither does it appear as though he will ever be.

[93] Based on the evidence presented, the Court accepts that Mr. Romney had some financial challenges for a short period of time; however they were in no way as severe as he would have the Court believe. It can hardly be acceptable for Mr. Romney to simply assert that he cannot liquidate his indebtedness to Mrs. Romney while he seemed to be continuing to live a comfortable life and has exclusive use of the former matrimonial home.

[94] Mr. Romney's transfer of Parcel 170 to his brother Kenvic coming on the heels of the letter from Mrs. Romney's lawyer threatening him with committal proceedings must again be

brought into sharp focus. The Court notes from his statements in his affidavit that he will never be in a position to clear his indebtedness unless the Court intervenes. There is no doubt that Mr. Romney has displayed a level of arrogance, both in his affidavit and also his evidence in Court. He clearly gave the impression that he could care less if the Court were to take steps to have him imprisoned since he simply does not have the means to liquidate his indebtedness.

[95] The Court accepts the submissions of learned counsel Mrs. Josephine Gumbs-Connor that there is cogent evidence before the Court upon which it could be properly concluded that Mr. Romney has no intention of fully honouring his financial obligations to Mrs. Romney.

[96] It is imperative that the Court acts with despatch in order to protect Mrs. Romney's rights. It is noteworthy that her rights to property are in effect human rights that are internationally recognized. The Court has a duty to be avert attempts by persons who violate the international human rights of women and to act dispassionately so as to protect those rights.

[97] Indeed, the 1979 Convention On the Elimination of All Forms of Discrimination Against Women is an important legal means of promoting the protection of the equal rights of women.

[98] It cannot be right that for approximately 6 years Mr. Romney has had the use and control of the former matrimonial home to the exclusion of Mrs. Romney, particularly since the Court has already ruled and determined her interests in the home.

[99] Women have the right to equal enjoyment of human rights as men do.

[100] The Court is cognizant of the fact that on several instances during the skilful cross-examination of learned counsel Mrs. Gumbs-Connor, Mr. Romney insisted that the matrimonial home is for the kids.

[101] The evidence revealed that at the date of trial Mr. Romney owed Mrs. Romney US\$60,884.13 together with US\$12,951.20 in interest. He has, since the initial order was made, managed to

have the outstanding costs to Mrs. Romney escalate due to the numerous applications that she had to make in Court to the extent of EC\$6,560.00.

- [102] The Court has a legal duty to provide effective remedies to persons whose rights have been violated. There is no doubt, in my view, that the justice of the case requires that the Court varies the previous Order dated 20th November 2006 so Parcel 170 could be sold in order to satisfy Mr. Romney's indebtedness to Mrs. Romney and so comply with the Court's previous order.
- [103] Accordingly, the Court hereby orders that the previous order is varied and the home located at Registration Section West Central, Block 28310B, Parcel 170 be valued by a valuator agreed to by the parties within 21 days of this order. Failure to reach an agreement within 21 days, Mrs. Romney is directed to have the property valued by a registered valuator.
- [104] Thereafter, the property will be sold at the market value and the net proceeds from the sale shall be used to offset Mr. Romney's indebtedness to Mrs. Romney.
- [105] All previous charges that are attached to the property are to be liquidated before the debt to Mrs. Romney can be liquidated.
- [106] The parties are free to select a valuator from persons in Anguilla including Mr. Gifford Connor, Mr. Cecil Niles, Mr. Cleveland Richards and Mr. Fritz Smith.
- [107] In the event of the failure of the parties to reach an agreement as to the valuation within 21 days, Mrs. Romney is free to select a valuator from the named persons. Thereafter, the property should be sold by public auction. The remainder of proceeds of the sale should first be applied to offset any registered charges on the property and thereafter to meet the remaining outstanding debt owed by Mr. Romney to Mrs. Victoria Romney. Any remaining sum should be forwarded to Mr. Romney.

Summary of Conclusions

[108] In view of the foregoing, there will be judgment for Mrs. Victoria Romney against Mr. Glenford Romney on her claim. It is hereby ordered and declared as follows:

- (a) Mr. Kenvic Romney is joined as a party to the claim.
- (b) Mr. Glenford Romney has disobeyed the order of the Court and continues to be in contempt.
- (c) The Ancillary Order granted on 20th November 2006 is varied.
- (d) Mr. Glenford Romney's voluntary transfer of the property described as Registration Section West Central, Block 28310B, Parcel 170 to his brother Mr. Kenvic Romney is set aside forthwith.
- (e) The Registrar of Lands is directed to take the necessary steps in order to give effect to the terms of this order.
- (f) Within 21 days of this Order, the parties shall jointly appoint a valuator to value the property situated at Registration Section West Central, Block 28310B, Parcel 170.
- (g) Should the parties fail to agree on a valuation, Mrs. Romney is free to select a valuator from the local valuers including Mr. Gifford Connor, Mr. Cecil Niles, Mr. Cleveland Richards and Mr. Fritz Smith.
- (h) The property shall thereafter be sold by public auction and the net proceeds of sales, after any registered charges are offset, shall be applied towards the liquidation of the outstanding debt owed by Mr. Romney to Mrs. Romney.
- (i) The costs of the auction and the valuation are to be deducted from the proceeds of the purchase price.

(j) The balance of the purchase price should be credited/given to Mr. Glenford Romney (after the outstanding debt to Mrs. Romney is liquidated).

[109] Mrs. Victoria Romney is entitled to prescribed costs against Mr. Glenford Romney, unless otherwise agreed.

[110] The Court commends learned counsel for their industry.

Louise Esther Blenman
Resident High Court Judge
Anguilla