

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
GRENADA

HIGH COURT OF JUSTICE (DIVORCE)

SUIT NO GDAHMT 2009/0162

BETWEEN:

LOCKSLEY BERNARD BOWEN

Petitioner

and

AGNES MARY BOWEN

Respondent

Appearances:

Mrs. Barbara Lindo for the Petitioner

Mrs. Celia Edwards, QC and Mrs. P Nicola Byer for the Respondent

2013: February 5;
May 9.

JUDGMENT

- [1] **MOHAMMED, J.:** The parties in this matter were at one time husband and wife. They were able to arrive at an agreement at mediation ("the mediation agreement") on the ancillary proceedings issues which arose from their marriage. The mediation agreement was entered as an order of the court ("the mediation order") where there were obligations on both parties. Unfortunately, it appears that the spirit of compromise which brought about the mediation agreement has not spilled over in the completion of the mediation order and it is for this reason the wife had engaged the court's attention to assist the parties in finally resolving the outstanding issues.

[2] By the mediation order the parties agreed to the following;

1. Panell Kerr Foster or such other person as agreed between the parties be appointed to value the on-going concern known as "Country Style Bakery".
2. Winston Gabriel or such other person as agreed shall be appointed to value the property at La Femme, St. David's, housing the former matrimonial home.
3. The husband shall pay the wife one-half of the assessed value of the business "Country Style Bakery".
4. The wife shall pay the husband one-half of the assessed value of the property housing the former matrimonial home.
5. The cost of the said valuations shall be paid from the income of the business "Country Style Bakery".
6. The balance of the La Femme property mortgage due at completion shall be equally borne by the parties.
7. Completion shall be on or before 90 days from receipt of the last valuation.
8. Each party shall get one lot of the Westerhall land.
9. The mortgage on the Westerhall land shall be paid proportionately by the parties upon completion. In the meantime the mortgage shall be paid by "Country Style Bakery".
10. The husband shall get the Bocage, St. David's land with the chattel house thereon.
11. The wife shall get the contents of the former matrimonial home except that the husband shall get the A/C unit in his former bedroom.
12. Vehicle PX 795 shall be to the husband.
13. Vehicle P 4003 shall be to the wife.
14. Transfer of the vehicle to the wife shall be within 30 days.
15. The husband shall pay to the wife the sum of \$60,000.00 by \$10,000.00 by 31st March, 2011 and the balance by \$3,000.00 per month until the entire sum is paid.
16. The husband shall pay to the wife the sum of \$1,000.00 at the end of February, 2011 and thereafter \$1,500.00 per month until completion.
17. The wife shall yield possession of the business "Country Style Bakery" on the 16th February, 2011.

18. The wife shall be paid the sum of \$400.00 on the 16th February, 2011.
19. The husband undertakes to refrain from visiting the premises housing the former matrimonial home without the prior consent of the wife.
20. The wife undertakes to refrain from participating in the business of "Country Style Bakery" with effect from 16th February, 2011.
21. Until completion, the business "Country Style Bakery" shall pay the mortgage on the former matrimonial home."

[3] The wife contends that the husband has breached the letter and spirit of the mediation order in the following aspects: by his actions the "Country Style Bakery" ("the bakery") is undervalued and that the accounts payable and liabilities should not form part of the valuation; the husband has unreasonably objected to alterations done to the former matrimonial home at La Femme, St David ("the La Femme property") which the wife occupies; the husband has misrepresented the sale of the piece of land situate at Confer-Calivigny and that the husband has ceased paying his monthly obligation pursuant to clause 16 of the mediation order.

[4] The husband contends that the valuation of the bakery is proper and admits that he is responsible for paying off the Further Charge secured in February 2012¹ to purchase an oven for the bakery where he used the La Femme property as the security. While the husband has admitted to his objections on the work being done by the wife on the La Femme property, he maintains that he has honoured the terms of the mediation order and instead contends that it is the wife who is in breach for failing to pay her share for the La Femme property which has been valued and as such the cost to repair the wall should not be borne by the bakery. Finally he is of the view that he has fulfilled his obligation under clause 16 of the mediation order.

[5] I have not considered the sale of piece of land at Confer-Calivigny and the motor vehicle PF 58 as issues for determination by this Court since they were not part of the mediation order. In my view the issues are:

¹ Paragraph 5 of affidavit of Locksley Bowen filed 14th December 2012

- (a) whether the accounts payable and liabilities as set out in the valuation should form part of the valuation of the bakery;
- (b) whether the husband has acted unreasonably in objecting to the alterations done by the wife to the La Femme property;
- (c) whether the cost for repairing the retaining wall at the La Femme property should be paid from the bakery; and
- (d) whether the husband is in arrears of the sum of \$1,500.00 per month from July 2011 to present in the total sum of \$28,500.00.

[6] A hallmark of a successful mediation where parties are able to arrive at an agreement is each party is able to put aside his/her differences and act in good faith to arrive at an arrangement which both parties can live with. It appears that that while temporarily the parties in this matter were able to arrive at a mediation agreement, which was eventually entered as the mediation order, their deep seated differences have prevented them from resolving the simple issues before this court. Against this backdrop I will now address each of the aforesaid issues.

Whether the accounts payable and liabilities as set out in the valuation should form part of the valuation of the bakery?

[7] According to the mediation order, the bakery was to be valued as an on-going concern and the husband shall pay to the wife one-half of the assessed value of the said bakery². The wife contends that she was not notified of the date the valuation took place³. She disputes the assets stated in the valuation. She is of the view that the husband removed items from the bakery before the valuation was conducted⁴. However, apart from the water tank and a pump which she states are not included in the valuation,⁵ she fails to list any other items. She contends that the husband deliberately let the stock of the bakery run down and did not restock it so there were few items to be valued⁶. She disputes the liabilities. The equipment loan in the sum of \$12,651.00, she is of the view that it was taken by

² Clause 1

³ Paragraph 6 of affidavit of Agnes Bowen filed 11th October 2011

⁴ Paragraph 7 of the affidavit of Agnes Bowen filed 11th day of October 2011

⁵ Paragraph 10 of the affidavit of Agnes Bowen affidavit filed 11th day of October 2011

⁶ Paragraph 4 of the affidavit of Agnes Bowen filed 27th day of June 2011

the husband after the mediation order and that it is a charge on the La Femme property and not the bakery and the accounts payable in the sum of \$17,275.00 was deliberately left unpaid, which was contrary to the practice during the marriage⁷.

[8] The husband denies all the wife's contentions save and except he has admitted that the equipment loan represented on the valuation was taken from the bank as a further charge on the La Femme property to assist him in purchasing an oven for the bakery in February 2012⁸.

[9] I agree with the wife's submissions that the husband's conduct with respect to the valuation of the bakery must be taken into account. This court is forced to draw a negative conclusion on the husband's conduct where he has admitted that he was present for the valuation of the La Femme property⁹ but when it was the wife's turn, she was not notified when the valuation was being done for the bakery. The only conclusion the court can draw from the husband's exclusion of the wife is he did not want the wife to be aware of the assets of the bakery. It is because of the husband's conduct I accept the wife's position that the husband deliberately let the stock of the bakery run down and did not re-stock it so there were few items to be valued¹⁰ and that the husband allowed the bills to run up and thereby allowing the accounts payable to increase. This can be the only conclusion this court can draw since according to the mediation order the husband is to pay the wife one-half of the value of the bakery and it is only the husband who would benefit from a lower value of the bakery since the sum he would have to pay the wife would be lower.

[10] Further, if I am to accept the husband's evidence that he looked after the finances of the bakery, then I have to accept that the wife who said that the husband would leave signed blank cheques with her to pay for "goods when they were delivered"¹¹ would have known that he used to pay for goods and not maintain an accounts

⁷ Paragraph 4 of the affidavit of Agnes Bowen filed 27th day of June 2011

⁸ Paragraph 4 of the affidavit of Locksley Bowen filed 14th December, 2012

⁹ Paragraph 3 of the affidavit of Locksley Bowen filed 28th September 2011

¹⁰ Paragraph 4 of the affidavit of Agnes Bowen filed 27th day of June 2011

¹¹ Paragraph 11 of the affidavit of Agnes Bowen filed 11th day of October 2011

payable. For these reasons, I am of the view that the accounts payable is not to be taken into account in the valuation of the bakery.

[11] From a question posed by the Court to the husband and the valuer, Mr. Henry, both men indicated that the equipment loan which was set out in the valuation as a liability was for a revolving oven used in the bakery and that the oven was not the security used by the bank to secure the loan but rather there was a Further Charge on the La Femme property. This is therefore the husband's sole responsibility which he has acknowledged¹². In my opinion, only if the oven was mortgaged to the bank to secure the loan for the oven then it could be set out as a liability for the bakery. There were no documents produced to this court which stated that the bakery was responsible to pay off this loan. In any event, the further charge was in 2012 before the transfer of the bakery and ought not to have been taken out without the consent of the wife, in light of the mediation order. I therefore would not take this into account. As part of the valuation.

[12] The Court therefore finds that the value of the bakery is \$96,141.00.

Has the husband acted unreasonably in objecting to alterations by the wife at the La Femme property?

[13] The wife contends that the husband has acted unreasonably by objecting to alterations done by her to the La Femme property. The husband has not denied this allegation and instead insists that the mediation order was for him to be paid one-half of the value of the La Femme property, which the wife has failed to do, and that the order did not provide for the wife to do alterations.

[14] It is not in dispute that the La Femme property has not been transferred as yet to the wife. The husband remains the sole owner of the property with responsibility for the insurance for the property. The mortgage for the La Femme property is being paid from the bakery.

¹² Paragraph 5 of Affidavit of Locksely Bowen filed 14th December 2012.

[15] From the evidence, both parties took steps to move on with their lives. The husband took a Further Charge in 2012 to purchase an oven for the bakery while the valuation of the bakery was still outstanding, and the wife admits that after the valuation of the La Femme property she started alterations¹³. I agree with the husband that there is no provision in the mediation order allowing the wife to make alterations to the La Femme property before it is transferred to her. When the wife started her alterations she had the full knowledge that the La Femme property was not in her name and still in her husband's name and she ought to have known that there was a risk that until the property was transferred to her, the husband being the sole owner of the property, could object to the alterations. In this regard, I do not find that the husband acted unreasonably in objecting to the wife's alterations to the La Femme property.

Whether the cost for repairing the retaining wall on the La Femme property should be paid from the bakery?

[16] The wife contends that since she has moved into the La Femme property she has incurred costs for repairing a retaining wall and that the cost for this is to be borne by the bakery. The husband vehemently opposes this suggestion on the basis that since the wife has undertaken substantial alterations with the property she should be responsible for the costs of the retaining wall.

[17] While the husband is still the sole owner of the La Femme property, I am of the view that the cost of the retaining wall is to be borne by the wife for the following reasons: She has been in possession of the La Femme property; she has been doing alterations knowing that the transfer has not been effected to her; the husband has not been involved in the alterations; the mortgage is being paid by the bakery and eventually the wife would benefit from the retaining wall since she would be the sole owner of the property, and the mortgage for the Westerhall lots and the La Femme property are being paid by the bakery.

¹³ Paragraph 7 of the affidavit of Agnes Bowen filed 27th June 2011

Is the husband in arrears of his monthly payments under clause 16 of the mediation order?

- [18] Clause 16 of the mediation order states:
"The husband shall pay to the wife the sum of \$1,000.00 at the end of February 2011 and thereafter \$1,500.00 per month until completion."
- [19] The wife contends that the husband made payments from March 2011 to June 2011 and that he is in arrears from July 2011 to present (February 2013).
- [20] The husband insists that he is not in breach of the mediation order since he paid the wife \$1,000.00 at the end of February 2011 and the sum of \$1,500.00 each subsequent month until the agreed closing date, which was 90 days from receipt of the last valuation. In his view the last valuation was received in May 2011 and the completion date was 5th August 2011.
- [21] According to the mediation order there are two properties to be valued, the bakery and the La Femme property. The husband agreed to pay the wife one-half of the assessed value of the bakery and the wife agreed to pay the husband one-half of the assessed value of the La Femme property. Completion of these transactions were agreed to be on or before 90 days from receipt of the last valuation¹⁴. While the husband was given notice of the date when the valuation was conducted of the La Femme property, he failed to notify the wife when the valuation of the bakery was being conducted.
- [22] I cannot agree with the husband that the wife's displeasure with the valuation of the bakery is baseless. She was blocked out by the husband when she was entitled to be present. While I accept that the husband has complied with clauses 13, 15 and 18 of the mediation order, these clauses have no impact on the valuation and transfer of the bakery and the La Femme properties. In my view, the husband's conduct with respect to the valuation of the bakery contributed significantly in causing the wife's concerns and by extension the completion referred to in clause 7 of the mediation order which has not been effected. I

¹⁴ Clause 7 of Mediation order dated 10th February 2010

therefore agree with the wife that "completion" referred in clause 16 of the mediation order has not been effected. The husband therefore owes the wife arrears for the period July 2011 to present (February 2013). Further, in the interest of clarity, the Court having now stated that the value of the bakery is \$96,141.00, the parties are to effect the necessary transfers of the two properties on or before 90 days from today's date and until the transfers are effected, the husband is to pay the wife \$1,500.00 per month.

Other matters arising from the mediation order

- [23] In the course of submissions by the parties, it appears that there are other aspects of the mediation order which have not been referred to this court for determination, still remain outstanding, for example, the transfer of the one lot of the Westerhall land to the wife. I want to urge the parties to use their best efforts to complete all outstanding issues as soon as possible.

Order

- [1] The bakery is valued at \$96,141.00.
- [2] The husband has not acted unreasonably in objecting to the alterations to the La Femme property.
- [3] The wife is to bear the full costs of the retaining wall at the La Femme property.
- [4] The husband is to pay to the wife the sum of \$1,500.00 per month for the period July 2011 to present and thereafter until the transfers of the bakery and the La Femme properties are effected.
- [5] On the issues which have been referred to this court for determination both parties have shared some degree of success. It is for this reason that I order each party is to bear his/her costs.

Margaret Y. Mohammed
High Court Judge