

EASTERN CARIBBEAN SUPREME COURT
IN THE FEDERATION OF SAINT CHRISTOPHER AND NEVIS

IN THE HIGH COURT OF JUSTICE
ST. CHRISTOPHER CIRCUIT

SKBHCV2008/0055

BETWEEN:

ELEANORA NAOMI CAINES

Claimant/Applicant

And

RICHARD LLEWELLYN CAINES

Defendant/Respondent

Appearances:

Mr. Ricaldo Caines for the Applicant

Ms. Marsha Henderson of Henderson Law for the Respondent

2013: August 23;

November 27;

REASONS FOR RULING

[1] **THOMAS, J [A.G]:** On August 18th, 2009 Mr. Justice Belle made an order consequent on the hearing of ancillary matters as a result of the divorce of the parties. At issue is the following order:

“2 I declare 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”

[2] At the subsequent hearing a judgment summons filed on June 15th, 2011 the sum of \$350,000.00 stated therein. This figure related to the 1/3 value of the Nevis property. In essence the narrow issue is whether the 1/3 share should be based on equity or on the current market value of the house. In the circumstances are: The contention in the learned counsel for the judgment creditor rests on the current market value; while, learned counsel for the judgment debtor holds out for the equity in the said property on the part of the judgment creditor and rejects the figure.

[3] Learned counsel for the judgment creditor, Mr. Ricaldo Caines submits the following:

“We are of the opinion that the court in having the totality of the evidence before it, when it gave its judgment, giving the judgment creditor 1/3 interest in the property in Nevis, it did so to the exclusion of the mortgage. The court in giving the judgment creditor 1/3 interest in the property on Nevis did so to offset its findings that she had no claim to any interest in the business started by the judgment debtor prior to the marriage or his other real estate holdings and business ventures during the marriage. His Lordship Justice Belle being the finder of fact in the case, having heard both witnesses, having seen their demeanor and having heard the other witnesses sought to benefit the judgment creditor in accordance with section 13 of the Divorce Act of 2005 of the Laws of the Federation of St. Christopher and Nevis”

[4] The submissions by learned counsel Ms. Marsha Henderson on behalf of the judgment debtor are as follows:

(1) “The judgment summons disclosed a figure which was never made an order by the court, but rather the court made [an] order giving the judgment creditor a 1/3 interest in the property situate at Paradise Estate, Nevis.

(2) The judgment creditor proposes to the court to consider the valuation exhibited to her affidavit which discloses a value in relation to the said property in the sum of EC\$680,000.00. This value we submit is not relevant, as the judgment creditor has

failed to disclose that the property is still subject to a mortgage in favour of CIBC/ First Caribbean Bank...

- (3) The order of this Honourable Court making the judgment creditor 1/3 owner in the property situate at Paradise Estate, Nevis was made on the 18th August 2009.
- (4) We submit that what figure is relevant in determining the quantum due to the judgment creditor would therefore be based on the equity in the property at that date that order was made being the 18th August 2009. The court is respectfully, is not in a position to make an order for the respondent to pay the sum of EC\$350,000.00 without proper evidence before the court".

Ruling

- [5] The court agrees with the submissions on behalf of the respondent. In particular that the value of \$680,000.00 was not as a result of an order of the court. The court also agrees that the quantum due to the judgment creditor would be the equity in the property at the date of Justice Belle's order on 18th August 2009. This is because the mortgage is subject to a mortgage paid by the judgment debtor and there is no claim evidence to say that the judgment creditor made any contribution thereto. That can only be fair and just in the circumstances.
- [6] Therefore, with the determination that it would be unjust to award the judgment creditor her 1/3 share based on a value which includes the mortgage payments, a relevant maxim of equity is that he who comes to equity must come with clean hands.
- [7] On account of the foregoing the parties are free to enter into a consent agreement or failing that further submissions are to be filed and exchanged on or before December 16th, 2013

Errol L. Thomas
High Court Judge [Ag]