

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHCV2012/0563

CLAIM NO: ANUHCV2012/0566

BETWEEN:

EVE JOSEPH

Claimant

AND

KEITH SHAW

Defendant

Appearances:

Mr. Steadroy Benjamin for the Claimant

Mr. Lawrence Daniels for the Defendant

2014: May 26
November 05

JUDGEMENT

[1] **Cottle, J.:** In claim 2012/563, the claimant sought a declaration that she was beneficially entitled to the majority share in the certain real property. She wished to have her interest realized and other consequential orders. In claim 2012/0566, the claimant sought a declaration that she was beneficially entitled to a one half share of the proceeds of certain funds held on a certificate of deposit at the ABI bank in Antigua. By consent the claims were consolidated and heard together.

[2] The claimant is qualified to practice as a solicitor in England. In 1993 she embarked upon an intimate relationship with the defendant, then a married man with an estranged wife. The claimant

purchased a parcel of land from the Government of Antigua and was issued a land certificate in 1997. The relationship between the parties became strained and in 1996 the claimant left Antigua for the UK.

- [3] Despite the geographical divide the parties rekindled the relationship and the defendant joined the claimant in the UK in 1998. In The UK the defendant embarked upon a course of training as an electrician. The defendant worked as an electrician in the UK. The parties had a joint account into which they both deposited their earnings. The claimant that no exact records were kept of the contributions to the account as the parties intended to return to Antigua to live together and because of the trust that then permeated the relationship, no thought was given to keeping such records.
- [4] In July, 2008, the parties opened an account number 300288775 at the ABI Bank Ltd in the amount of \$404,370.31. Of this amount the defendant contributed \$344,522.20 and the claimant \$59,848.11. The rate of interest on the account was 6.25% per annum. The parties decided to construct a home in Antigua together.
- [5] The defendant returned to Antigua in September, 2009. He opened an account at the ABI Bank in his sole name, account number 300288776. On 14th October, 2009, the defendant opened an account #300288715 at the ABI Bank Ltd. This account was to be the account from which the matrimonial home could be built. \$129,643.43 was transferred from the joint account and \$247,374.81 from the account 300288776 which the claimant avers was derived from the joint earnings of the parties in the UK.
- [6] In his defense the defendant admits that the house was built on the claimants land and that the funds for building came from both parties. He too agrees that the parties kept no records of the respective contributions that they made to the money that financed the building. The defendant counterclaims for a 60% share in the property at issue as well as occupational rent from 1st September, 2012, on the basis of the claimant's occupation of the house to his exclusion. He also prays for a declaration that he is beneficially entitled to a share in the funds held in the bank

account 300288778 and a one half share of the balance in account 300288715 which stood at \$22,905.53.

The Evidence

- [7] The evidence from the claimant came from Bridget Merchant, Dane Hodge and the claimant herself. The defendant testified on his own behalf.
- [8] Bridget Merchant knows both parties. She courts both as her friends. She swore that the defendant had told her that the house belonged to the claimant and no one could take it from her. When crossed examined she said that the parties built the house together. The defendant actually did some of the work himself. She also said she was aware that the defendant contributed financially to the building project.
- [9] Dane Hodge is a Superintendent of the Police. He did not provide much assistance to the court. He could only say that the parties built the house together.
- [10] In her witness statement, the claimant testified that she purchased the land on which the house was built. She bought it from the Government of Antigua using her own funds. In 1996, she was having difficulties in the relationship. She returned to England. She qualified herself as a solicitor. The defendant joined her in England in September 1998 at her invitation. While in the UK she applied for residence status for the defendant and several years later was able to obtain UK citizenship for him. She enrolled him in adult classes and he obtained a City and Guilds Certificate as an Electrician. They pooled resources and in 2009 they decided to build a house in Antigua and to relocate to this country permanently. She gave evidence in line with her pleadings that both parties contributed to the funds used to build the house. No records were kept. She says that she earned substantially more than the claimant. She was a legal practitioner. He was a partly qualified electrician. But without records she was unable to quantify the respective contributions.
- [11] In his witness statement the defendant says that the parties operated a joint account in the UK. He earned about \$5,000 per month. He worked as an electrician for some 5 years in England. His

earnings went into the joint account and were regularly remitted to another joint account in Antigua. He describes the source of funds for the building account as follows:-

1. He put in \$100,000 of his own money from a settlement he had received from his ex-wife.
2. The balance came from joint accounts the parties held and the interest from these accounts.
3. He says the house is now complete. He has been excluded completely.

[12] From the state of the evidence, it is clear that both parties contributed to building the house but the proportion of each party's contribution is unclear. Having seen and heard the witnesses, I am convinced that the claimant made a substantially larger contribution. When cross examined the defendant admitted that it was the claimant who paid for his application for leave to remain in England. Then he said his earnings were £1,800 pounds per month and not £5,000 like he had said in his evidence in chief. The job he spoke of was closed down in 2003. He only got leave to remain in 2000. He could not have worked for 5 years as he had said. At another stage of his cross examination he said he was paid £3,000 per month. I found his evidence on this point to be unreliable. The fact that he attempted to embellish his contribution leads to me to the belief that his was the far smaller contribution. In all of the circumstances, I conclude that it is fair to fix his contribution at 30%. It was his evidence that the house was built at a cost of some \$500,000. I fix his interest in it at \$150,000.00.

[13] There were other claims. The claim for occupational rent to be paid by the claimant falls to be considered. Counsel for the claimant argues that this claim must fail. The exclusion of the defendant from the home was on account of his own conduct. He cites with approval the dicta of Millett J. in Re Pavlou (A bankrupt) 1993 (WLR 1046

"I take the law to be to the following effect. First, a court of equity will order an inquiry and payment of occupation rent, not only in the case where the co-owner in occupation has ousted the other, but in any other case in which it is necessary in order to do equity between the parties that an occupation rent should be paid. The fact that there has not been an ouster or forceful exclusion therefore is far from conclusive. Secondly, where it is a matrimonial home and the marriage has broken down, the party who leaves the property

will, in most cases, be regarded as excluded from the family home, so that an occupation rent should be paid by the co-owner who remains. But that is not a rule of law; that is merely a statement of the prima facie conclusion to be drawn from the facts. The true position is that if a tenant in common leaves the property voluntarily, but would be welcome back and would be in a position to enjoy his or her right to occupy, it would normally not be fair or equitable to the remaining tenant in common to charge him or her with an occupation rent which he or she never expected to pay."

This position was accepted as correct by the court in Byford v Butler [2004] 1 FLR 56.

[14] In the present case the defendant was excluded from the home after the claimant obtained an injunction in the high court to prevent the defendant from molesting the claimant.

[15] Counsel for the defendant submitted that it is only just that the defendant be paid. The claimant has moved the court to evict the defendant and he is compelled to seek alternative accommodation. In the present case I find that the defendant is the author of his own misfortune. It is his voluntary conduct which causes him to be out of the house. I decline to make any order for occupational rent where the domestic violence of the defendant has led to a court issuing an injunction to prevent him from remaining in the house. I make no order as to the account 300288778 as the balance is now \$210.28. Account 300288776 was a joint account. No reliable evidence of the respective contribution of each party to this account has been given. The fact that the parties chose to arrange their affairs as they did persuades me that it was their intention that they be equally entitled to the proceeds. I direct that any balance in this account be equally divided between the parties.

[16] The order of the court is as follows:-

(1) The claimant is entitled to sole possession of the house upon payment to the defendant of \$150,000 being the value of his share in the building. The claimant will pay this amount to the defendant within 30 days failing which the defendant is at liberty to apply for sale of the house to realize his entitlement.

- (2) The parties are equally entitled to the proceeds of the account 300288776 and any funds standing in that account are to be equally divided.
- (3) Each party will bear his or her own costs.

Brian Cottle
High Court Judge