EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2011/0516

BETWEEN:

ANDINE GEORGE

Claimant

and

ELROY GEORGE

Defendant

Appearances:

Mr Lawrence Daniels for the Claimant
Mr John Fuller for the Defendant

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2016: June 6; July 6
2017: May 23

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JUDGMENT

Introduction and relevant background facts

[1] **LANNS, J** [Ag]: In this case, the court is called upon to decide, among other things, whether lottery winnings may be regarded as matrimonial property to be shared equally before or after divorce; or whether the lottery winnings are to be treated as non-matrimonial property. Once I have decided these questions, the reasoning would impact on the other issues including (1) whether the Claimant is entitled to any further portion of the winnings; (2) whether the Claimant is entitled to interest in any existing properties that may have been purchased out of the winnings; (3) whether the claimant had an equitable

interest in property that may have been purchased out of the winnings, and disposed of during the course of the marriage.

[2] Andine George, ('Andine' or 'the Claimant') and Elroy George ('Elroy' or 'the Defendant') began a relationship when Aldine was 13 years of age. At age 14, Andine moved in with Elroy and his mother in Elroy's mother's wooden house at Bolans. The wooden house stood on Crown lands. By age 16, Aldine had her first child. Aldine and Elroy eventually became married to each other in December 1992. They were divorced in December 2014. Notwithstanding the divorce, Andine and Elroy continue to reside in the matrimonial home with their two children, namely, Orey George, Jr. who was born on 16th October 1985, and Javier Denroy George born on 15th July 1994.

[3] In December 2004, Elroy purchased a lottery ticket. The ticket won $1,580,870.39 in the draw of 8th December 2004. As soon as Elroy found out that the ticket won, he called Andine and shared the good news. Elroy instructed the cashier of the Lottery Company (Maudlyn), to make the cheque payable to his son, Orey as he did not want any publicity. The cashier did as she was instructed. Elroy and Orey then went to the First Caribbean International Bank (FCIB) and deposited the cheque into an account opened in Orey's name. Elroy then picked up Andine at her workplace, and they went out and celebrated. Elroy then took Andine back to work, and he went home

[4] The following day, Elroy, Andine and Orey attended at the FCIB, withdrew the funds from Orey's account and deposited them in a joint account at the FCIB in the name of Elroy and Andine. Elroy and Andine then proceeded to deal with the funds as joint owners. Their dealings with the funds were destined to become the main reasons for the eventual ending of the marriage.

[5] Elroy purchased a new vehicle for himself which cost $80,000.00, and he purchased one for Andine which cost $60,000.00. Elroy purchased a bank draft in the sum of $500,000.00 and deposited it at the Bank of Antigua (BOA) in his and Aldine's names. He also purchased another draft in the sum of $500,000.00 and deposited it at the Antigua and Barbuda Investment Bank (ABIB) in his and Andine's names. He deposited EC$80,000.00 in Orey's account at the FCIB. Andine withdrew $300,000,00 from the

account at BOA. Elroy got wind of this withdrawal; so he in turn withdrew the remaining $200,000.00 from the account at BOA. He also withdrew the $500,000.00 from the joint account at ABIB. They completed construction/renovation of their matrimonial home. They each made monetary gifts to their family and friends. Andine purchased a property in Old Road which is registered in her sole name, and Elroy purchased parcels of lands in Bolans which he subsequently sold, except for one parcel which remains registered in his sole name. According to Elroy, he took care of himself with 'those' monies. "I did not save anything." he said, during cross-examination. Andine made a loan of $60,000.00 to her sister. Elroy invested $100,000.00 in British American Insurance Company. (BAICO), which he said he lost, but got back about $30,000.00 in 2015. Before the court, when asked what he did with the remaining $360,000, Elroy did not hesitate to reply "I gambled it out."

[6] Needless to say, the good fortune only lasted for a while. The marriage broke down, culminating in divorce, and the Claimant instituted these proceedings to determine what if any interest she has or had in (a) the lottery winnings; (b) the properties which the Defendant purchased with part of the lottery winnings during the marriage; and (c) the matrimonial home, to which she contributed time, money and labour, and the completion of which was financed with a portion of the lottery winnings.

The specific reliefs sought

[7] In her claim, the Claimant asks the court to declare that she holds an equitable interest in three parcels of land being (1) Parcel **414**; Registration Section : South West: Block 55 1386 D; (2) Parcel **459**; Registration Section: South West: Block 55; 1386 D; and (3) Parcel **363** Registration Section: South West 55 1386 D (the disputed parcels). The Claimant further asks the court to declare that the Defendant holds the disputed parcels in trust for her and the Defendant. The Claimant also asks the court to order that the disputed parcels be sold and the proceeds divided equally, or in such shares as the court sees fit. Additionally, the Claimant asks the court to order that the Defendant do compensate her for the value of any lands in which she had an equitable interest, but which were wrongfully transferred to third parties. Finally, the Claimant asks the court to declare that she is

entitled to the sum of $200,000.00 being part of the proceeds of the $500,000.00 due to her from the lottery winnings, but which the Defendant withdrew from the joint account at ABIB and refuses to share.

[8] At a case management conference held before the Master on the 6th October 2014, the matter was referred to mediation, but the parties failed to reach agreement and thus, a trial took place.

The Claimant' Case

[9] The Claimant's pleaded case is that she and the Defendant shared a relationship since 1984 when she was 14 years of age. In or round 1986, they began living together in a wooden house at Bolans, belonging to the Defendant. In or about 1991, a wall portion was added to the wooden house, and over the years, repairs and structural changes were done, and the house is now a two storey structure valued at about $400,000 to $500,000. The Claimant and the Defendant, along with family members and neighbours assisted with labor. It was the intention of the parties, that the house would be for the benefit of the husband and wife jointly and this house ultimately became their matrimonial home.

[10] The matrimonial home was constructed on land (Parcel 414) belonging to the Crown, and payments for the land were made by the Defendant towards ultimate purchase of Parcel 9. Although the payments were made by the Defendant, those payments were made in the name of Glenroy Browne, the brother of the Defendant.

[11] The parties became married to each other in December 1992, and the union was dissolved in December 2014. Notwithstanding the divorce, both parties continue to reside in the matrimonial home, to which they both contributed money, time and labour.

[12] The parties have two children together, Orey George, Jr who was born 16th October 1985, and Javier Denroy George born on 15th July 1994.

[13] In 2004, the parties took part in the Leeward Island Lottery and won the sum of $1, 580,870.39. Initially, they deposited $1, 580,000 in Orey's account at FCIB[1]. The following day the Claimant opened a new account at FCIB and transferred $1, 500.000 into that account. The Defendant's name was added to the account the next day. Of the $1,500.000, $500,000 was used for completion of the work on the matrimonial home and the purchase of two vehicles for use by the parties.[2] The parties agreed that the remaining $1,000.000.00 would be divided equally between the Claimant and the Defendant. However, the Claimant took $300,000.00, and the Defendant took $700,000.00, and he promised that a portion of the $700,000 was to be placed in trust for the benefit of the children. The Defendant did not keep his promise. Instead, he bought parcels of land and transferred them to other persons. For example, in November 2009, Parcel 363 was purchased from the Central Housing and Planning Authority (CHA), and registered in the sole name of the Defendant. In September 2005, the Defendant purchased Parcel 459 from the CHA, and in January 2009, he transferred it in the name of his brother Elvis George. Then in November 2006, the Defendant purchased Parcel 100 and transferred it to one Ingrid Kay in March 2008.

[14] On these pleadings, the Claimant asks the court to grant the reliefs sought for in the Amended Claim Form and Amended Statement of Claim filed on the 10th January 2012, and which are summarised in paragraph [6] herein.

The Defendant's Case

[15] The Defendant's pleaded case is that the Claimant did not move into the property when she was 14. She was initially living with her father, but after the birth of the first child, she moved into the house at Bolans with the Defendant, his mother and his brother.[3] The Defendant denied that the wooden house was owned by him. He says that when the parties moved into the house, it was a wooden and concrete structure and it belonged to his mother. The house was eventually renovated to a complete concrete structure. The house was renovated to be the matrimonial home for the benefit of both parties during the

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[1] Uncertain as to how the $870.33 was accounted for

[2] These vehicles were, and continue to be registered in the joint names of the parties.

[3] Name not disclosed

subsistence of the marriage; and also for the benefit of the children. It was never intended that the house would be owned by both parties jointly. The house was initially owned by the Defendant's mother who (during her lifetime) had indicated her desire that the house be transferred to her son Glenroy[4], (sic) and his mother's wishes were carried out. The Defendant admits that the Claimant made some contribution to the work done on the house but says that the vast majority of the work was done by the Defendant and his brother Glenroy (sic) and his (Defendant's) cousin. The Defendant made the contributions to the renovation of the house knowing that the property was to be eventually put in the name of his brother Glenroy,(sic) as per the wishes of his mother. The parties were making plans to move out of the Defendant's mother's home and to get their own property. To that end, they contributed equally to the purchase of lands at Old Road. This land was put in the sole name of the Claimant, who eventually constructed a house thereon.

[16] The Defendant denies that he fraudulently bought parcels of land and transferred them to other persons. He asserts that any properties which he bought were bought with his own monies, on his sole initiative, and were for him to sell, transfer or otherwise dispose of or deal with as he saw fit. The Defendant further asserts that, like the Claimant, he is the owner of one parcel of land.

[17] As regards the lottery winnings, the Defendant does not agree with the Claimant when she avers that "the parties took part in the Leeward Islands Lottery and won the sum of $1, 580,870.39." The Defendant states that it was he, on his own volition, and sole initiative, purchased the lottery ticket with his own funds and who won. He asserts there was never any discussion between the parties prior to the Defendant's winning as to what was to be done with the proceeds of any winning. However, after the winning he told the Claimant that he would use a portion of the winnings to complete the matrimonial home. The Defendant states that the Claimant was not happy about the Defendant's playing the lottery, and would not have been supportive of the Defendant in this activity. She viewed it as 'gambling' and an unchristian act, he said. According to the Defendant, the Claimant was unaware that he, (the Defendant) had purchased the ticket.

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[4] Should be Glenmore

[18] The Defendant admits that the sum of $500,000 was used for various works on the matrimonial home, and the purchase of two vehicles for the Claimant and Defendant. According to the Defendant, the Claimant took $400,000.00 from the proceeds of the lottery, and not $300,000.00 as she stated in her Statement of Case. He states that it was never agreed that the remainder of the lottery monies was to be divided equally; nor that the Defendant would put monies in trust for the children; Nevertheless, the Defendant states that he did give his son Orey $80,000.00 for his personal use and benefit.

[19] The Defendant disclosed that he invested $100,000.00 of the lottery money in BAICO, but he lost it due to financial difficulties experienced by BAICO.

[20] The Defendant's Defence concludes with a denial that the Claimant is entitled to any of the reliefs sought in the Claim.

The Reply

[21] By her Reply, the Claimant admits that there was a wooden house occupied by the Defendant and the Defendant's mother and the Defendant's brother Glenmore lived there for several months. Then the Defendant's brother Elvis George came and lived there for one year. The wooden house was subsequently given to Glenmore Browne[5] but neither Elvis nor Glenmore have ever lived in the matrimonial home built by the Claimant and the Defendant. The house that the Claimant and the Defendant now share as the matrimonial home is not a renovated house, but an entirely new structure built from monies contributed to by the Claimant and the Defendant and from the lottery monies won by them; it was never intended to be owned by Glenmore Browne who was never around during the construction of the house and never contributed to it in any way, shape or form.

[22] The Claimant denies that she and the Defendant pooled any money to buy any land or build any house at Old road. She says that the parcel of land at Old Road was bought from her own resources. As to the lottery ticket, the Claimant denies that the

[5] Glenmore Browne, seems to be the person referred to earlier as Glenroy Browne.

Defendant bought the lottery ticket of his own initiative. She says that years before 2004 they had been buying lottery tickets together with the hope of winning and they have in the past won small sums which they shared. They agreed that they would continue to play the same numbers, and if they won, they would share the money. Nothing was suggested about Christianity and the Claimant's not participating in the lottery, the Claimant stated.

[23] The Claimant denied that she took $400,000.00 of the lottery moneys. She maintained that she withdrew $300,000.00 from a joint account she had with the Defendant and loaned $60,000.00 of it to her sister who is still repaying the loan.

The Issues

[24] The main issue for determination is

1. Whether or not the lottery winnings may be treated as matrimonial or non-matrimonial property.

[25] As I have said, other issues arise on the pleadings. The Claimant claims an equitable interest in Parcels 363; 414 and 459, and she claims a declaration that the Defendant holds the disputed parcels in trust for her and the Defendant. Once I have decided the first question above, then I would be in a position to determine whether the Claimant is entitled to the declarations and orders claimed by her.

Whether or not the lottery winnings may be treated as matrimonial or non-matrimonial property.

[26] The applicable legal principle to be applied in determining this issue appears in the landmark case of **S v AG (Financial Remedy: Lottery Prize)**[6] (said to be the first in the United Kingdom)[7]. In that case, the High Court (Mr. Justice Mostyn) had to consider the

[6] [2011] EWHC 2637 (Fam)

[7] But it was pointed out that there have been at least five reported decisions on the subject in Australia. I am not aware of, and counsel did not refer me to any reported decisions on the subject in the OCS and or the wider Caribbean.

treatment to be accorded to a lottery prize of £500,000 in financial remedy proceedings following divorce.

[27] In S **v G** a hotel porter claimed a proportion of his former wife's lottery winnings. The couple had been living in a Council House when his former wife had been playing the National Lottery, without her husband's knowledge, more than ten years ago, from her own earned income. The judge found that the starting point was that the lottery prize of £500,000 was non-matrimonial money. However, the wife then used some of the money to purchase what became the newly family home. In doing so, she converted that part of her non-matrimonial asset into matrimonial property. [8] As a result of this, the Judge decided that this element of the winnings comprised matrimonial property and awarded the husband a lump sum which reflected the short period of time in which he had lived in the property.

[28] The case also decided that where one party to a marriage wins the lottery, the other will not share in those winnings unless they were acting together in the ticket purchase -- in other words they were effectively acting as a syndicate -- or unless the proceeds are invested in joint assets or property such as the matrimonial home. The court in **S V G** also found the case to be fact sensitive and does not wholly depend on the origin of the amount used to purchase the lottery tickets, but also on knowledge of the other party:

"15. As I have stated, the result is highly fact specific, and does not depend centrally on the origin of the trifling amount to purchase the ticket. If the parties are in effect operating a syndicate, whether formal or informal, where both are aware that tickets are being bought and where both have agreed tacitly or expressly to their purchase, then it is easy to see the prize as a joint venture and therefore as matrimonial property, normally to be equally shared. On the other hand if one party is unilaterally buying tickets, from his or her own earned income, without the knowledge of the other party, then it is equally easy to see the prize as a receipt by that party alone akin to an external donation, and therefore as non-matrimonial property.

[8] See Article entitled "Do you have winnings to share with your spouse, Published on June 10, 2013

[29] Did the Claimant have knowledge that the Defendant was playing the lottery? The evidence of the parties differ in this regard, but I prefer and accept the evidence of the Claimant where ever there is conflict.

[30] The Defendant contends that the Claimant was unaware that he bought the ticket. The Claimant in in her pleadings and in her witness statement says that she and the Defendant took part in the Leeward Island Lottery and won $1,580,870.39. The Claimant says that she and the Defendant had for years before 2004 bought lottery tickets together and has in the past won small sums. She said that they agreed that they would continue to play the same numbers. It is uncertain, however, as to whether the winning ticket bore the numbers that the parties agreed they will continue to play. But this, to me makes no difference.

[31] Under cross-examination, the Claimant maintained that she and the Defendant used to play the lottery. She developed that point stating that they would normally fill out four to five cards and the Defendant would usually pick up the ticket. She said that they were accustomed to gamble at Heritage Quay Hotel in Antigua and also in St Martin, and it was not true that she was unhappy about him playing the lottery.

[32] The Defendant refutes that the Claimant won the lottery. He specifically denies that the Claimant took part in the lottery. He maintains that the Claimant was unhappy about him playing the lottery. The Defendant says that he habitually purchased tickets twice per week, and the Claimant had no knowledge that he had purchased the ticket. He says that it was he who purchased the lottery ticket from his own money and won. The Claimant says she did not go with the Defendant to purchase the ticket, because he was on his way to work, but she claims that the lottery ticket was purchased from 'our money'.

[33] I accept the Claimant's evidence that the Claimant and the Defendant usually played the lottery and had in the past won small sums of money; that they usually filled out cards, for one lotto ticket; and that they agreed that they would play the same numbers all the time. The Defendant has not denied that the same numbers were played and won. I find it perplexing for the Defendant to say that the Claimant was unaware that he was

playing the lottery; or that she had no knowledge that he had purchased the ticket, yet, he says that the Claimant was always unhappy about his involvement in playing the lottery. I find that, unlike the situation in **S v G** the Claimant was aware that the Defendant was playing the lottery.

[34] There is no dispute that upon finding out that the numbers he played matched the winning numbers, the Defendant immediately called the Claimant to inform her that they had won. According to the Claimant, the Defendant called her and said "It look like we win". I believe her. He picked her up from work and they went straight to a restaurant and had celebratory drinks. I find as a fact and hold that the lottery prize was matrimonial property to be shared equally among the parties.

[35] Even if I am wrong in my finding, or even if it can be said that the lottery prize was non-matrimonial property, solely owned by the Defendant for him to do as he pleases, the subsequent conduct of the Defendant, shows his overall intent and changed the state of play.

[36] The Defendant wished to obscure[9] his win, so he instructed Maudlyn (the cashier) to place the cheque in his son Orey's name. She did as was instructed..

[37] At this stage, with a cheque payable to Orey, pursuant to the instructions of the Defendant, clearly this tends to confirm the Lottery Company's view of ownership. But this, in and of itself is not determinative of ownership because the Defendant then went straight to the FCIB and deposited the cheque there in Orey's name.[10] The very next day, the Defendant, the Claimant and Orey, attended at the FCIB, withdrew the funds and deposited them in a joint account at the said FCIB in both their names. This is clear evidence that the parties agreed they would share any lottery winnings; contrary to the Defendant's contention that he never agreed to share any winnings with the Claimant. The

[9] He said he did not want any publicity

[10] It is unclear as to whether the Defendant opened an account in Ore's name and paid into it the amount of the Cheque; or whether Orey had an existing account at the FCIB and the Cheque was deposited into that account.

fact is, that they were husband and wife. There was a joint account at the FCIB before the lottery win. He could have lodged the cheque to an account opened in his sole name; or he could have deposited the funds in his personal account at the Antigua Commercial Bank where he said his salary was lodged. He did not do that. His conduct in placing the funds into a joint account at FCIB, and his subsequent conduct in placing the funds in a joint account at ABIB and BOA, their collaboration on the use of $500,000 for completion of the family home, and for furnishing the home, and purchasing new vehicles for each of them, demonstrated quite clearly that he, and they intended to share the benefit of the winnings

[38] I find that the situation described in **S V G** in relation to the subsequent conduct of the Defendant is consistent with the subsequent conduct of the Defendant in the instant case in that when the Defendant deposited the winnings in a joint account in both his and the Claimant's names, and when he used a portion of the funds to renovate and complete the construction of the matrimonial home in which the parties still live, (assuming that the winnings were non-matrimonial property), in doing so, he converted the non-matrimonial (lottery winnings) into matrimonial property. [11] As a result of this, all of the winnings comprised matrimonial property, and as such, should be shared equally. In terms of what the Claimant withdrew, there will have to be some adjustments made.

[39] I come now to determine whether the Claimant is entitled to a further $200,000 from the lottery winnings and what, if any interest the Claimant is entitled to in the properties in dispute purchased by the Defendant. In so doing, I propose to trace the withdrawals made by each party and their use of the funds withdrawn

The $500,000 used for the completion of the matrimonial home and the two vehicles

[40] As I have found, each party was entitled to one half of the proceeds of the lottery prize of $1,580.870.39. This one half share amounts to $790,435,20.

[41] The parties agree that $500,000 was used to complete the matrimonial home and to purchase two vehicles for themselves and furniture and fitting for the matrimonial home.

[11] See Article entitled "Do you have winnings to share with your spouse, Published on June 10, 2013

The parties are taken to have contributed equally to the cost of the vehicles, as well as the costs incurred for completion of the matrimonial home, together with the costs for furniture and furnishings that were purchased for the home. It means that each party is to taken to have at this stage received $250,000.00 out of the proceeds of the winnings, as they agree that $500,000 was used in part for the completion of the matrimonial home for their joint benefit and that of the children.[12]

The $300,000 withdrawn by the Claimant

[42] I accept that the Claimant withdrew $300,000 from the joint account at the BOA; and the Defendant withdrew the remaining $200,000. It means that at this point, the Claimant would have received a total of **$550,000** ($250,000 + $300.000) and the Defendant $450,000 ($250,000 + $200,000).

The $500,000.00 withdrawn by the Defendant from the ABIB Account

[43] Each party was entitled to one half of this amount. It was in their joint names. However the Defendant withdrew it and did as he pleased with it, with the result that he has now received a total of **$950,000** =($250,000 + $200,000 + $500,000)

The $80,000 deposited to Orey's Account by Defendant

[44] I regard this sum as a gift to Orey by both parents. Therefore, the Claimant is now taken to have received an additional $40,000 for a total of **$590,000** = ($250,000 + $300.000 + $40,000)

[45] The Defendant on the other hand is now taken to have received **$990,000** = ($250,000 + $200,000 + $500,000 + $40,000).

[46] The shortfall for the Claimant appears to be $**200,435.20** being ($790, 435.20 -- $590,000.00); with the Defendant having a surplus of $199,564.80 ($990,000.00-- ($790,435.20).

Unaccounted Amount of $870.00.39

[47] Based on the evidence, the total amount taken by both parties amount to $1,580.000 ($990,000 + $590,000) leaving the amount of $870.39 unaccounted for. I treat

[12] No documents were produced to substantiate the expenditure associated with these transactions

this as an amount received by both parties, and thus I attribute $435, 19 to Elroy and $435.20 to Andine = $870.39. The result is that Andine is taken to have received a total of $590,435.20 ($250,000 + $300.000 + $40,000 + $435.20), and Elroy a total of $990,435.19, ($250,000 + $200,000 + $500,000 + $40,000 + $435.19). It means that Elroy had an overdraft of $200,000.00 ($999,435.10 - $790,435.19) In the analysis, based on the totality of the evidence, of the parties given in their witness statements and viva voce, Andine is entitled to a further share of the lottery winnings in the amount of $200,000,00.[13]. The financial analysis is given further as follows:

[48] **FINANCIAL ANALYSIS**

LUMP SUM AMOUNT (LOTTERY WINNINGS	**$ 1,580,870.39**
ANDINE'S ACCOUNT	
Withdrawal	$ 700,000.00
50% House and Vehicle Expenses ($500,00)	$ 250,000.00
50% Gifted to Orey ($80,000)	$ 40,000.00
50% Unaccounted Amount ($870.00)	$ 435.20
TOTAL	**$ 590,435.20**
Amount due to Andine (50% of Lottery Winnings	$ 790,435.20
Balance owed to Andine ($790,435.20 - $590,435.20)	**$ 200.000.00**
ELROY'S ACCOUNT	
Withdrawal	$ 700,000.00
50% House and Vehicle Expenses ($500,000)	$ 250,000.00
50% Gift to Orey ($80,00)	$ 40,000.00

[13] Although Andine' claimed a further $200,000.00, from the lottery winning, she never showed how she arrived at that figure.

50% Unaccounted Amount $870,00)	$	435.19
Total	**$**	**990,435.19**
Amount due to Elroy (50% of Lottery Winnings)	$	790,435.19
OVERDRAFT ($990,435.19 - $790,435.19)	**$**	**200,000.00**

[49] I now turn to the Matrimonial Home and the Parcels in dispute.

The Matrimonial Home and Parcel 414

[50] The Defendant has accepted that the Claimant contributed to the construction of the matrimonial home prior to the lottery winnings. He agreed that the matrimonial home was being constructed for the benefit of the Claimant, the Defendant and their children, but he sought to suggest that this depended on the subsistence of the marriage.

[51] In **S V G Moyston J** noted that "**In Miller & McFarlane**[14] Lord Nicholls specified that the matrimonial home should always be designated matrimonial property, whatever its source. He stated at para 22 that "the parties' matrimonial home, even if this was brought into the marriage at the outset by one of the parties, usually has a central place in any marriage. So it should normally be treated as matrimonial property for this purpose. This is reflected in the remarks of Wilson LJ in K v L at para 18(c). But even the matrimonial home is not necessarily divided equally under the sharing principle; an unequal division may be justified if unequal contributions to its acquisition can be demonstrated. ..."

[52] Mr Fuller has not addressed the issue of the matrimonial home itself. Instead, he seemed to have treated Parcel 414 (on which the matrimonial home stands) and the house itself as one asset. In so doing, he relied on the Antigua case of **Elaine Knowles v George Knowles** [15] to submit that as Parcel 414 belong to Glenmore Browne, he having been the "official purchaser" from the CHA, any improvements to the Parcel made by the Claimant and the Defendant were carried out with no agreement from the paper owner

[14] [2006] UKPC24; [2006] 2 AC 618
[15] Privy Council Appeal No 28 of 2007

who is the Crown. This submission, to my mind cannot pass muster. In the first place, the case of **Knowles v Knowles** is inapplicable to assist the Defendant. It is based on totally different facts. Second, Mr Fuller cannot speak for the Crown; nor for Glenmore. Thirdly, the evidence is that during the course of the marriage, it was Elroy who was paying CHA for the land, and rightly so, because he and the Claimant and their children had been living on the land for years, before the breakdown of the marriage. By some apparent machination, Glenmore, after the breakdown of the marriage, began paying CHA in 2011. Clearly this was an attempt by Elroy to out maneuver the Claimant so she cannot get a share.

[53] Parcel 414: The evidence of the Claimant, the Defendant and the Valuator Mr Henderson St C. Simon of Lewis, Simon & Partners show that Parcel 414 is situated in Bolans; that it consists of a parcel of land said to be measured as 0.10 of an acre. On Parcel 414 stands the matrimonial home which is of reinforced concrete and masonry construction. The house has two floors. The lower floor includes three bedrooms, two bathrooms, living room, dining room kitchen and two porches. The upper floor includes one bedroom, one bathroom, a living room area and a porch. The house is fenced with masonry fence and chain link fence. On the 7th November 2013, Mr Simon ascribed a value of $450,000.00 to the entire property as follows:

"Value of Land	$ 30,000.00
Replacement Cost of Residence	$ 443,300.00
Depreciation	$ 44,300.00
Value of Residence	$ 339,000.00
Value of Paving and Fence	$ 21,000.00
Value of Property	**$ 450,000.00**

[54] It is common ground between the parties that neither party has title to Parcel 414. It is still registered in favour of the CHA. The Claimant gave evidence that the Defendant had been making the payments to CHA in respect of Parcel 414. However, Mr Fuller's submission is that the Defendant's brother Glenmore Browne is the official and ultimate purchaser of Parcel 414, even as the Defendant and the Claimant, without any interference or hindrance by the CHA, constructed the matrimonial home on Parcel 414,

and even as the Defendant admits that the Clamant, (to her detriment),contributed to the construction of the house which the Defendant himself says was intended to be for the benefit of the Claimant, the Defendant and their children. Neither Glenmore nor any official of the CHA has been called to give any evidence as to matters of payments for Parcel 414, nor to confirm who is, or will be regarded as the official purchaser of the land from the CHA. When asked to state when his brother began paying for Parcel 414, the Defendant replied that he did not know. When it was put to him that Glenmore started paying for the land in 2011, the Defendant replied "I do not know."

[55] Indeed, I find it mind boggling and unreasonable that Andine would cause his wife to expend time, money and labour towards building of the matrimonial home, on land that neither of them owned, but would eventually be owned by someone[16] other than the Claimant and or the Defendant.

[56] The court rejects that bit of evidence and the submissions advanced in respect of such evidence that Parcel 414 belongs to Glenmore. The evidence which the court accepts is that the wooden house (and no more) was probably meant to be transferred to Glenmore - not Parcel 414 on which the wooden house stood. The court accepts the evidence of the Claimant and that of Mr Owen Pigott that the wooden house was placed on Mr Pigott's land while the concrete structure was being built, and that the matrimonial home is a completely new structure built by both parties for the benefit of themselves and the children of the family, albeit that no permission was sought or obtained from the CHA and or the Planning Authority[17]. The Court is of the opinion that Parcel 414, having been paid for by the Defendant, it should be transferred to the Claimant and the Defendant as beneficial owners, and not to Glenmore. The Court cannot, without more, accept the evidence of the Defendant about his deceased mother's wishes. His mother could not have given away, during her lifetime what she did not have. Obviously, she was a squatter on Parcel 414. The wooden house was hers to give away to Glenmore -- not the land. What is more, is that there is no reference to any Will or grant of Probate or Letters of

[16] In the person of Glenmore Browne, the brother of the Defendant.

[17] That issue was never canvassed. Parcel 414 remains registered in the name of CHA

Administration in the estate of the Defendant's mother, and thus, there is no plausible evidence upon which the court can make a finding that Parcel 414 was meant to be given to Glenmore. It is not inconceivable that the Defendant initially made the payments to CHA in the hope of ultimately owing Parcel 414, on which the matrimonial home stood, and sought (after the marriage began to experience difficulties) to hide his equitable interest therein by making the payments in the name of Glenmore, and requesting that Parcel 414 be put in Glenmore's name with the further intention of depriving the Claimant of any interest in the disputed Parcel, and the matrimonial home.

Is the Claimant entitled to a beneficial interest in Parcel 414 and the house which stands thereon which was the former matrimonial home? If so what is the extent of her beneficial interest.

[57] Counsel for the Defendant has submitted that the Claimant is not entitled to any beneficial interest in Parcel 414, nor the house which stands thereon. Counsel for the Claimant, on the other hand, has submitted that the Claimant is entitled to a half share of the matrimonial property, and once the court finds that the Claimant is entitled to share equally the lottery money, then, the Claimant was entitled to a beneficial interest in the properties which the Defendant bought from the lottery money and hence from the proceeds of sale of such properties.

[58] I am unable to agree with the submission of counsel for the Defendant. Indeed, it would be unconscionable for the Claimant to be ousted from the matrimonial home in the face of the Defendant's admission in paragraph 4 of his Defence that she contributed financially and otherwise (prior to the lottery winnings), to the renovation of the said home. The trouble is, there is no documentary or other evidence before me as to the value of the matrimonial home prior to its completion with a portion of the lottery winnings; or of the value of the contribution of either party to the home before its completion with the lottery winnings.

[59] In the absence of any such evidence, I would find and hold that the Claimant is entitled to one half of the value of Parcel 414 and one half of the value of the Matrimonial Home standing thereon. Account has been taken of the $250,000 from the lottery winnings

which the parties are deemed to have contributed towards completion of the Matrimonial Home. Account has also been taken of the fact that the Claimant contributed to the construction of the home before the winnings.

Parcel 363

[60] There is no dispute that Parcel 363 was purchased during the course of the marriage, after the lottery winnings, and with funds from the lottery winnings. Parcel 363 is registered in the name of the Defendant. Learned counsel for the Defendant submits that the Claimant is not entitled to any interest in Parcel 363. Learned counsel for the Claimant, on the other hand refutes this. He seeks a declaration that Parcel 363 is held on trust for the Claimant and the Defendant.

[61] The Court is of the view that the Defendant should be allowed keep Parcel 363 for his sole use and benefit. It was purchased out of his share of the lottery winnings, and to declare that the Claimant is entitled to an equitable or beneficial interest therein, would, to my mind result in double recovery and would be unfair.

Parcel 459

[62] Like Parcel 363, Parcel 459 was acquired during the course of the marriage, after the lottery winnings, and with funds from the lottery winnings. Parcel 459 is registered in the name of Elvis George, brother of the Defendant. The documentary evidence reveals that Parcel 459 was sold to Elvis George on the 15th January 2010 for $25,000.00. Learned counsel for the Defendant has not made any specific submissions in respect of Parcel 459, except to say that the Claimant is not entitled to the reliefs sought in respect thereof.

[63] The court accepts the Defendant's evidence that Parcel 459 was purchased with funds from the lottery winnings and that he spent the proceeds from sale thereof on himself. Assuming this to be the case, the court is of the opinion that the sum of **$200,000.00** which is payable to the Claimant by the Defendant reflects any interest the

Claimant might have had in the proceed of sale of Parcel 459, and thus, to avoid double recovery, there will be no further share in respect of this Parcel.

The vehicles purchased with portion of proceeds of the lottery winnings

[64] As mentioned previously, these vehicles are jointly owned by the parties. No submissions have been offered in respect of them. Their value has already been accounted for in the amount of $500, 000.00 used to purchase the vehicles and to complete the matrimonial. These expenditures are reflected and accounted for in the financial analysis above That said, I am of the view that each party should be allowed to keep his/her vehicle, and should take necessary steps to have the vehicle registered in his or her sole name thereby conveying sole ownership of such vehicle to each other.

Conclusion

[65] My conclusion is that the lottery winnings are regarded as matrimonial property to be shared equally between the parties. Even assuming that the winnings were initially non-matrimonial property, owned solely by the Defendant, the subsequent conduct of the Defendant and both of them, changed the picture and the lottery winnings became matrimonial property to be shared equally among the parties. Given that I have found the lottery winnings to be matrimonial property, and have sought to identify and trace the movement and use of the funds; and given that I have found that the Defendant withdrew the greater amount of the funds and admitted to gambling out a portion of it; and given that the Defendant has admitted that the Claimant contributed to the building of the matrimonial home prior to the winnings; and given that I have found as a fact that the Claimant did contribute to the building of the matrimonial home before and after the lottery winnings, my judgment is as follows:

[1] The Defendant shall pay to the Claimant the sum of $200,000.00 being the shortfall in the proceeds of the lottery winnings to which the Claimant is entitled.

[2] The Claimant is entitled to one-half share of the value of Parcel 414 and one half share of the matrimonial home standing thereon. In this regard, the parties are to

procure an updated valuation of Parcel 414 and the Matrimonial Home, and the properties be valued by a certified valuator at the discretion of the parties. All costs associated with the updated valuation of the disputed property shall be borne equally by the parties.

[3] Three months after being paid her one half share of the value of Parcel 414 and one half share of the matrimonial home, the Claimant shall vacate the matrimonial property.

[4] The parties are at liberty to sell the said property and the net balance from the proceeds of sale be divided equally between the parties after all expenses associated with the sale have been paid. Each party is at liberty to buy in each other's share. If the Claimant chooses to buy in, she is at liberty to set off the $200,000.00 payable to her by the Defendant. If the parties agree to the sale of the property, such sale is to be arranged jointly between the parties' lawyers, with mutual agreement for the mechanics of sale.

[5] The Defendant has no equitable or beneficial interest in the proceeds of sale of Parcel 363 nor Parcel 459, because even though they were originally purchased during the course of the marriage, they were purchased with funds from the lottery winnings and are already accounted for in the $200,000,00 payable to the Claimant.

[6] The Claimant shall keep the vehicle purchased for her out of the lottery winnings for her sole use and benefit absolutely; and the Defendant shall keep the vehicle purchased for him out of the lottery winnings for his sole use and benefit, absolutely.

[7] The parties shall each take necessary steps to secure sole ownership of the vehicle which each party is using, and which was purchased with joint funds from the lottery winning

[8] Success was divided and thus, each party shall bear his or her own costs.

[9] Liberty to apply for directions or otherwise.

[66] Last, but by no means least, I sincerely apologise for the delay in delivery of this judgment. I was forced to do extensive research on the subject of 'lottery winnings and divorce' in order to complete this judgment, I have been unable to find any case in the OECS or the wider Caribbean on the subject. And it is apparent that there is only one reported case in the UK. Mostyn J in **S v G** commented that while there were about five reported cases in Australia, there was none in the UK.

[67] As more and more people take part in lotteries in the Caribbean region, it is inevitable that many of those who win will either be or become, involved in a divorce – hopefully not as a result of the lottery winnings, and in this regard, the words of **Mostyn J in S V G** are apt:

"There are many perplexing situations that may one day require examination. What, for example, of the individual spouse who each week invests a small part of his or her spare cash in the national lottery, and one day wins £1m, or £10m? Should this asset be viewed like any sudden accretion to the value of the joint home or other matrimonial investment, due to market movements? or might it, in some circumstances at least, be more analogous to property brought into a marriage or inherited property?

Would it for example make any difference, if the other spouse was opposed to all gaming as a waste of money, or if the very limited money expended came from inherited property?" Questions to ponder.

Pearletta E. Lanns
High Court Judge
[Ag]

By the Court

Registrar