

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES
IN THE HIGH COURT OF JUSTICE

SVGHMT2013/0007

BETWEEN:

CATHERINE PEARLINA JOYETTE NEE DE FREITAS

(of Murray's Village)

PETITIONER

and

LEOPOLD DELPINO JOYETTE

(of Mississauga, Canada)

RESPONDENT

Appearances:

Mr. G. Grahame Bollers for the Petitioner

2018: February 20

2018: March 9

ORAL DECISION

INTRODUCTION

[1] **BYER, J.:** The factual matrix of this case is like any other where the parties find themselves before the matrimonial jurisdiction of the Court.

- [2] Unhappy differences in a twenty (20) year old marriage came to an end in 2015 and the sole issue for this court's determination is for a property adjustment order being sought by the Petitioner of the former matrimonial home at Harmony Hall, St Vincent.
- [3] The nature of this adjustment is an order from joint ownership to sole ownership.
- [4] In considering the application, it is of course important to examine the evidence that was before the Court on the issue.
- [5] The Petitioner by affidavits filed 23rd June 2017 and 18th December 2017, set out the circumstances of the acquisition of property at Harmony Hall. The parties agree that the down payment was provided by the Petitioner's then father-in-law upon sale of his home in Canada. It was also evident that the land purchased in 1998 was during the currency of the marriage and the matrimonial home was constructed on the same, by way of mortgage to Bank of Nova Scotia in 2004. The Petitioner in her evidence went on to say that upon the securing of the mortgage, by way of the assignment of her salary, the couple agreed that the Respondent was to contribute \$1,000.00 towards the mortgage by means of repayment to the Petitioner. The Petitioner's evidence, which was not refuted, was that this never happened. The only time any monetary contribution to mortgage was made by the Respondent was by way of a single payment of \$500.00, made by cheque, which cheque was subsequently dishonoured. The Petitioner's further evidence was that additionally the Respondent never made any significant contribution to the household expenses which she was left to handle on her own along with continuous maintenance of the children of the marriage.
- [6] In response, the only evidence before the Court from the Respondent was an affidavit filed on 8th December 2017. This did not amount to the required Affidavit of Means which was indeed unfortunate since it made crucial allegations as to contributions allegedly made by the Respondent to the construction of the former matrimonial home. However, there was not one document exhibited to substantiate the allegations nor did he or his Counsel appear at the hearing for which his Counsel had been given notice of on the 8th January 2018.
- [7] Thus, in the round, all the Court was privy to was the unhelpful affidavit of the Respondent and the Court tested evidence of the Petitioner. Additionally, this Court considers that mention must be made of two (2) other properties identified by the Petitioner belonging to the Respondent in Bequia

and Richmond Hill. There was mention of an attached value to the latter but since there was no document produced regarding that value, this Court places little weight on that information. However, the Deed of Gift to the Respondent in 1997 for the property in Bequia was exhibited. There are no facts supporting the circumstances of this gift. However, I do accept that this Deed was executed during the currency of the marriage and must be taken into consideration in any order that this Court will make.

[8] The Law applicable to this application is clear and is provided for by the statutory frame work under the Matrimonial Causes Act CAP 239.

[9] Section 29 gives the Court the power to consider a property adjustment order and Section 34 outlines the consideration for a court in these applications. These include:

1. *the duration of the marriage;*
2. *the parties' ages, incomes, earning capacities, properties and other financial resources, needs, obligations and responsibilities; their contributions to the family's welfare;*
3. *whether either party suffers from any physical or mental disabilities;*
4. *the standard of living enjoyed by the family before the dissolution of the marriage; and*
5. *the value of any benefit which either party will lose as a result of the breakdown of the marriage."*

[10] In looking at these factors, my sister Henry, J. in the case of Bibby v. Bibby¹ had this to say *"in making its decision, the court must take the listed factors into account with a view to placing each party, so far as reasonably practicable and just, in the position he or she would have been had the marriage not broken down and each party had properly discharged his or her financial obligation towards the other. In addition, the court must give effect to the legal principles which govern the apportionment of matrimonial property as articulated in legislation and given effect to in decided cases."*

[11] It has long been determined by these Courts that the factors itemized in Section 34 of the Act do not rank in any particular order or is any one of them more important than the other.

¹ SVGHMT2015/0058 at para 31

- [12] Each one must be applied to the individual case and an assessment made as to achieve “fairness” for both parties. (per Saunders JA in **Stonich v. Stonich**²)
- [13] Thus, it is for the Court as per the directive of the legislature *“to place the parties so far as it is practicable and having regard to their conduct just to do so in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other.”*³
- [14] In looking at the statutory considerations, I accept Counsel for the Applicant’s submissions that some of the factors are inapplicable to the present proceedings for instance any physical or mental disability or the value of any benefit which either party will lose as a result of the breakdown of the marriage. However, the other factors do apply and I address the same in brief now.
- [15] **Duration of the marriage** – this was a marriage of some 20 years. **The parties’ ages, incomes, earning capacity, properties and other financial resources, needs, obligations and responsibilities, their contributions to the family welfare** – the parties appear to be in their late 40s from the ages appearing on the marriage certificate. There was no indication given by either party as to their present income. We can safely assume that the Applicant will remain with the Government of St. Vincent and the Grenadines until retirement and the affidavit of the Respondent to which little weight is ascribed, gives no information on his present income or earning capacity. The Applicant has no other property but divulged the information of the properties owned by the Respondent to which again no comment was made.
- [16] It is also apparent that it was the Applicant/Petitioner who kept the roof over the heads of the family during the currency of the marriage.
- [17] With regard to the **standard of living enjoyed by the family**, again the Respondent was not helpful in this regard and the Petitioner clearly stated that once the Respondent left, she was unable to support the children by herself and was forced to send them to Canada to reside with the Respondent’s sister. I therefore accept that the breakdown of the marriage affected the standard of living.

²Civil Appeal 17 of 2002 (BVI)

³Section 34 MCA Cap 239

- [18] I accept the evidence of the Applicant/Petitioner as to the manner in which events unfolded in this marriage and specifically as to the care and maintenance of the matrimonial home and the family. The unchallenged evidence in fact of the Applicant/Petitioner, is that she took care of all the bills in the house and solely served the mortgage and continues to do so up to today's date.
- [19] In adopting the words again of my sister in the Bibby⁴ case, I accept that; *“although they had good intentions to share the responsibility for the mortgage, they were not realized. [Mrs. Joyette] for the most part, singlehandedly serviced the mortgage. There is no evidence that they shared their daily expenses. In fact, [Mrs. Joyette]’s unchallenged testimony is that she took care of all bills. In all the circumstances, [Mr. Joyette]’s influence in the family was not impactful.”* [My changes to the names]
- [20] I therefore accept that despite the property having been registered in both names to initially effect the intentions of the parties, the subsequent conduct of the Respondent supports the inference that the property was in fact owned only by the Applicant/Petitioner.
- [21] I do not in these circumstances accept any of the evidence of the Respondent as to his contributions during the initial acquisition of the property to afford him the continued retention of his interest in the same.
- [22] I am satisfied that although the exact nature of the Respondent's other properties are not known, that at the breakdown of their marriage and in applying the principles of fairness and effecting a clean break I grant the property adjustment order as prayed.

IT IS HEREBY ORDERED AS FOLLOWS:

ORDER

- [1] The interest of the Respondent on the matrimonial home at Harmony Hall be transferred to the Petitioner. Such transfer to be done within 21 days of today's date, failing which the Registrar of the High Court shall execute such deed to the Petitioner.

⁴ Op Cit para 40

[2] Upon the transfer to the Petitioner, the Petitioner shall hold the entire interest in the matrimonial home in fee simple and shall within 6 weeks thereafter have the Respondent released from the mortgage by the Bank of Nova Scotia.

[3] Liberty to apply.

[4] No order as to costs.

Nicola Byer
HIGH COURT JUDGE

By the Court

Registrar