

THE EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS

IN THE HIGH COURT OF JUSTICE

CLAIM NO. NEVHMT2015/0032

BETWEEN:

Carlisle Everton Powell

Petitioner

and

Emma Frances Powell

Respondent

Appearances:-

Mr. Patrice Nisbett for the Petitioner

Mr. Ricaldo Caines for the Respondent.

2018: November 16

JUDGMENT

[1] WILLIAMS, J.: The Petitioner filed on the 2nd February 2017 an application for Ancillary relief pursuant to Section 19 of the Married Women Property Act Cap 12.11 for the following order;

- i. A Declaration that the Respondent is entitled to a share in the property situate at Malcolm Hill Housing, Prospect Estate, St. John's Parish, Nevis commensurate to the sum she paid at the start of the construction of the said property and the Petitioner do pay the Respondent the value of her share thereof.
- ii. Alternatively the Court settle the property as it deems just.

- iii. The Court makes all orders and declarations which it deem fair, equitable and just in all the circumstances.
- iv. That the Respondent pay the costs of this matter.

Background facts

- [2] The Petitioner and the Respondent were lawfully married on the 19th April 2003 on the Island of Montserrat.
On the 12th of May 2016, the Petitioner was granted an order of dissolution of the said marriage.
- [3] On the 22nd day of July 2004 the Petitioner purchased a piece of land at Malcolm Hill Housing, Prospect Estate for which lands he holds a Certificate of Title which is registered in Book 42 Folio 237 of the Register of Titles Nevis.
- [4] The Petitioner and the Respondent agreed to construct a dwelling house on the said land and the parties made various contributions towards the construction of the said residence.
- [5] On the 28th December 2004, the parties obtained a loan from the RBTT (SKN) Limited for an amount of \$536,000.00 inclusive of a loan of \$136,000.00 to complete the construction of a dwelling house with fencing.

The **Petitioner's submissions**

- [6] **The Petitioner avers that he contacted Dore's Architectural Services to design the said house, and he and the Respondent amended the same to their satisfaction and agreement.**
- [7] The Petitioner asserts that it was agreed by the Respondent and himself that the construction of the said house should commence before the loan was approved consequently, the Respondent contributed \$100,000.00 towards the initial stage of the construction of the said house.
- [8] The Petitioner asserts that the proceeds of the loan were used to finance the construction of the said dwelling house, to purchase materials, and to pay the contractor. The Petitioner contends that the carpentry, electrical work and communication systems were done by different service providers who were paid by the Petitioner out of his earnings.

- [9] The Petitioner states further that the tiling work at the dwelling house was done by him and the task was estimated to be \$15,000.00. Also that he supervised the construction of the dwelling house.
- [10] Mr. Powell asserts that Mrs. Powell has never contributed or paid any monies towards the repayment of the loan that was obtained to construct the said dwelling house and that he has paid the loan and continues to do so without the assistance of Mrs. Powell.
- [11] Mr. Powell also avers that he used his personal funds to buy all furniture and appliances for the said residence and has done all the maintenance work and repairs to the dwelling house.
- [12] The Petitioner Mr. Powell avers that save and except the initial \$100,000.00 contributed by the Respondent Mrs. Powell, no financial or non-financial contribution has been made by her towards the acquisition development, construction or maintenance of the said Residence.

The Respondent's submissions

- [13] The Respondent asserts that she has consistently contributed money to the Petitioner to pay the mortgage facility for the matrimonial home and other matters during the course of the marriage.
- [14] The Respondent Mrs. Powell contends that she did not keep copies of the International money orders whereby she regularly sent money to the Petitioner. The **Respondent says that she had no reason to doubt the Petitioner's honesty and trustworthiness** and therefore did not record all of the monies invested in the matrimonial home.
- [15] The Respondent avers that she was never told by the Petitioner that on entering the marriage, she would have had to look for her own economic wellbeing, and place to live. Further that the loan facility with the RBTT was obtained on the financial health of both of them. However the Respondent contends that the Petitioner has admitted in his Affidavit in Reply dated 13th October 2017 that she contributed \$8000.00 to remove windows out of the wooden frames for the said house.

[16] The Respondent submits that the actions of the Respondent point to a common intention of the parties that they should both benefit from assets of the marriage and the combination of their financial resources.

The Issues

- [17] The issues for determination by the Court are;
- i. Whether the Respondent contributed directly or indirectly to the construction of the dwelling house on the piece of land already described.
 - ii. **Whether the Respondent's contribution can entitle her to a beneficial interest in the property notwithstanding the Petitioner's legal title.**
 - iii. Whether the Petitioner holds the property on a constructive/resulting trust for the use and benefit of himself and the Respondent.
 - iv. What if any is the Respondent's **share in the matrimonial property.**

The Law

[18] **This Claim is made under the Married Women's Property Act Cap 12.11 in particular Section 19 and the Law is set out in cases;**

Pettitt vs Pettitt ¹,

Gissing vs Gissing ²

Lloyds Bank PLC vs Rossett ³

Stack vs Dowden ⁴

Lynn Anne Abbott vs Dane N.L. Abott⁵.

[19] The applicable law in the matter before the Court has not changed much. The rights of the parties in these circumstances are defined by the concepts of Resulting Trusts and Constructive Trusts. The Privy Council in the Abbott case has expressed that **the "Constructive Trust is generally the more appropriate tool of analysis in most matrimonial cases."**

¹ [1969] 2 A11 E.R. 385

² [1979] 2 A.E.R 780 HL

³ [1991] 1AC 107

⁴ [2007] UKHL 17 and [2007] 2 WLR 831

⁵ Antigua and Barbuda P.C Appeal 142/05

- [20] **The fundamental question to both Trust concepts is whether “independently** of any inference to be drawn from the conduct of the parties in the course of sharing the house as their home and managing their joint affairs, there has at any time prior to acquisition, or exceptionally at some later date, been any agreement, arrangement, or understanding reached between them that the property is to be shared **beneficially**”. (Baroness Hale in Abbott vs Abbott)
- [21] Lord Bridge adumbrated in **Lloyd’s Bank vs Rosset** as follows;
“The finding of an agreement or arrangement to share in this sense can only, I think, be based on evidence of express discussions between the partners however imperfectly remembered and however imprecise their terms may have been.
Once a finding to this effect is made it will only be necessary for the partner asserting a claim to the beneficial interest against the partner entitled to the legal estate to show that he or she has acted to his or her own detriment or significantly altered his or her position in reliance on the agreement in order to give rise to a constructive **trust or proprietary estoppels.**”
- [22] The Resulting Trust is created by payment or part payment of the purchase price. By operation of the Law, the resulting trust arises in favor of the party who has provided money for that purchase. It gives effect to the presumed intentions of the parties at the date of acquisition of the property.
- [23] In Button vs Button⁶ Lord Denning determined that;
“The wife does not get a share in the house simply because she cleans the walls or works in the garden, or helps her husband with the painting or decorating. These are the sort of things which a wife does for the benefit of the family without altering the title to or interest in the property.”

Analysis

- [24] The starting point is that it is for Mrs. Powell the Respondent to show that the common intention, when taking a conveyance of the house into their joint names was that they should hold the property otherwise than as beneficial joint tenants.

⁶ [1968] 1A11ER 1067

[25] **I have had the benefit of reading the Respondent's submissions and the Petitioner's** submissions filed on the 30th November 2017.

Both submissions have comprehensively set out the case and evidence in support of their respective cases.

[26] **The evidence in support of the Petitioner's case is;**

- 1) A letter dated 11th April 2002 from the Nevis Housing and Land Development Corporation to the Petitioner approving his application to purchase land at Prospect Estate, Malcolm Hill and setting out the terms and conditions of that approval.
- 2) A Certificate of Title dated 22nd **July 2004 in the Petitioner's name** evidencing his registered proprietorship.
- 3) A letter from RBTT Bank addressed to the Petitioner and the Respondent dated 28th December 2004, advising them that the Bank would continue to make available to them a mortgage facility in the amount of \$536,000.00 to complete the construction of a dwelling house.
- 4) **Actual mortgage payments from the Petitioner's account.**
- 5) Receipts from St. Kitts Nevis Insurance Co. (SNIC) from 2004 to 2016 for Insurance premiums covering the said loan on the dwelling house.
- 6) Taxpayer receipts for payment of property tax from 2009 to 2016.
- 7) Property valuation report dated 2nd August 2016 prepared by J. Michael Dore.

[27] On the other hand there is some evidence that Mrs. Powell made payments into a Scotia Bank Blue Chip savings account in Antigua in their joint names. The closing balance on that account #77861 at the 31st January 2014 was EC\$2108.55.

There are also payments payable to Carlisle Powell from Emma Powell by international money orders commencing from the 21st December 2004 in the sum of £2000.00.

- i. On the 2nd October 2004 - £5000.00.
- ii. On the 14th April 2004- £10,000.00.
- iii. On the 28th November 2003- £3768.00.
- iv. On the 10th June 2002- £10,000.00.

Total = £30,768.00

[28] In my respectful opinion, this sort of evidence as presented indicates the pitfalls **involved in attempting an arithmetical approach to ascertaining the parties' intention.**

The one thing that is clear in my mind is that when the Malcolm Hill Property was bought, both parties were fully aware that Mr. Powell had contributed far more towards it than Mrs. Powell.

[29] The context is supplied by the nature of the parties conduct and attitude towards their property, although they did not consciously formulate that intention in their minds or even acted with some different intention which he did not communicate to the other party.

I am not of the opinion that the Petitioner and the Respondent pooled their separate resources for the common good. They appeared to have separate savings accounts in London, U.K. from which she appears to remit funds to Mr. Powell.

However, I am of the firm belief that it was intended that Mrs. Powell should have some beneficial interest in the Malcolm Hill property to which she made a contribution.

[30] In the case of Gissing vs Gissing Lord Pearson was pellucid in his reasoning that: **“If the Court is satisfied that it was the common intention of both spouses that the contributing wife should have a share in the beneficial interest and that her contributions were made upon this understanding, the Court in the exercise of its equitable Jurisdiction would not permit the husband in whom the legal estate was vested and who had accepted the benefit of the contributions to take the whole beneficial interest merely because at the time, the wife made her contributions, there had been no express agreement as to how her contributions were to be quantified.”**

[31] The evidence regarding the direct financial contribution to the purchase of the land and payment of the mortgage installments are in favor of the Petitioner, as the sole direct contributor.

In her oral evidence Mrs. Powell stated that Mr. Powell had told her that he could not put her name on the Certificate of Title to the land because they were not married. In 2003 when they were married Mr. Powell had told her that under the

laws of St. Kitts and Nevis, her name could not be inserted under the Certificate of Title. until three years after the marriage.

Mrs. Powell further stated in her evidence that when the Petitioner came to London she would withdraw monies from her account and give it to the Petitioner and even when she was in Nevis, she would withdraw monies from her account and give it to the Petitioner.

In December 2004, she submits that she sent a money order to the Petitioner to furnish the said residence, and that she furnished the house with two chandeliers pots and pans and furniture from Puerto Rico. She also gave the Petitioner monies to pay his debts and had a joint account with him where she deposited international money orders. She did not know what he did with the money.

[32] Under cross-examination Mrs. Powell admitted that the Petitioner and herself discussed the construction of a house, and the Petitioner made the Application to the Bank and she came down to sign. She did not agree that the \$136,000.00 was for fencing and paving of the driveway, and it was never agreed that she would pay \$100,000.00 towards construction of the house.

Still under cross-examination, **Mrs. Powell admitted that it was the Petitioner's salary** which paid the mortgage and that they had no discussion about her share in the matrimonial property. She had not given the Petitioner a gift of money since there was an understanding that both of them owned the property.

[33] **In relation to the Respondent's evidence, I am of the opinion that it lacked specificity,** quantification, and inherent consistency, sufficient to elevate it to evidence satisfying the civil standard of proof.

While I accept that the Respondent had sufficient funds to enable her to make a contribution to the construction of the dwelling house, the question is how much of a share does this contribution entitle her to?

[34] The cost of construction of the dwelling house with fencing as gleaned from documents exhibited by the Petitioner (Exhibit CP1) is \$536,000.00 granted by way of demand loan from the RBTT on the 28th December 2004 to both parties. The evidence from both parties is that \$100,000.00 was contributed by both of them before the loan was granted.

[35] The oral testimony from the Petitioner Carlisle Powell is that his monthly salary was \$4500.00 and the monthly mortgage repayment was \$4321.00. He also paid utilities and child support from his previous relationship. Mr. Powell said further that he had other income sources from a successful company called Carlisle Imports. However no evidence was presented on the income generated from that said company.

[36] Using the RBTT Bank printouts, it appears that the Petitioner was the one who made payments to the loan which was granted in December 2004. The evidence from the printouts show payments from 2008 until May 2016 towards the mortgage debt made solely by the Petitioner.

From that date to the end of 2016 some \$414,816.00 was payable and presumably paid.

[37] The market value of the property was provided in the Property Valuation Report dated 24th November 2017 by Hamoron Services and requested by order of this Court dated 17th October 2017.

The value accorded to the property owned by the Petitioner is \$650,000.00 and the Court accepts this valuation from Hamoron Services.

[38] On the issue of quantification, Lord Diplock in Gissing vs Gissing provides useful guidance;

“I take it to be clear that if the Court is satisfied that it was the common intention of both spouses that the contributing wife should have a share in the beneficial interest and that her contributions were made on this understanding, the Court in the exercise of its equitable jurisdiction would not permit the husband in whom the legal estate was vested, and who has accepted the benefit of the contributions to take the whole beneficial interest merely because at the time her wife made her contributions, there had been no express agreement as to how her share in it was to be quantified.”

[39] Lord Reed stated further in the said case of Gissing vs Gissing;

“It is perfectly true that where the wife does not make direct payments towards the purchase, it is less easy to evaluate her share; if her payments are direct, she gets a share proportionate to what she had paid; otherwise there must be a more rough and ready evaluation.

I agree that this does not mean that would be as a rule, a half share. **I think the high sounding brocard “Equity is equity” has been misused. I agree** that there will be cases where a half-share is a reasonable estimation, but there will be many others where a fair estimate might be a tenth or a quarter or sometimes even more **e than half.”**

- [40] Lord Pearson explained further in the said case of Gissing vs Gissing:
“No doubt it is reasonable to apply the maxim in a case where there has been a very substantial contribution by one spouse to the purchase of the property in the name of the other spouse but the proportion borne by the contributions of the total price or cost is difficult to fix. But if it is plain that the contributing spouse has contributed about one-quarter. I do not think it is helpful or right for the Court to feel obliged to award either one-**half or nothing.”**
- [41] From all of the evidence given by the Respondent, she contributed \$100,000.00 and remitted sums to the Petitioner in the sum of £30,768.00 (See Exhibits EP1, EP2, EP3) = approximately EC\$109,000.00 and she claimed that she bought furnishings for the house although no receipts and invoices were provided by her.
I have made a rough and ready evaluation and I have estimated her contribution to be approximately EC\$200,000.00.
- [42] In my respectful view, I cannot declare that the parties are entitled in equal share as this would be unfair to Mr. Powell, as it would give insufficient weight to the fact that his direct contribution towards the purchase of the land and construction of the dwelling house was substantially greater than that of Mrs. Powell and this is evidenced by the documentary evidence that he exhibited. (Exhibits CP1-CP6)
- [43] I have also taken into account the parties conduct in relation to the property and accept that the parties had shared intentions as to the ownership of the matrimonial home, since there is no evidence to support a finding of an agreement to share.
Taking that into account, and in light of all the evidence adduced in this matter, and the equitable legal principles established by the Authorities that have been cited.
I hereby award a 70% share of the property consisting of house and land to Mr. Powell and a 30% share to Mrs. Powell consisting of the said dwelling house.

Conclusion

[44] It is hereby ordered:

- 1) That the Petitioner is given ninety days to pay the Respondent the 30% value of her share in the property failing which the said property is to be put up for sale.
- 2) That the matrimonial property is valued at \$650,000.00 being the market value of the property in the report of Hastings Daniel dated the 24th November 2017.
- 3) That each party to bear their own costs because of the nature of this matter.

[45] I thank Counsel on both sides for their patience in the delay in delivery of this Judgment and for their helpful submissions to the Court in this matter.

Lorraine Williams

High Court Judge

By the Court

Registrar