

IN THE EASTERN CARIBBEAN SUPREME COURT
COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. DOMHMT2016/0039

BETWEEN:-

MARCUS FRANCIS BLONDEL

Petitioner/Applicant

And

BEVERLINE BERYL NEWTON BLONDEL

Respondent

2019: January 24th & 25th
June 13th

Appearances:

Mrs. Singoalla Blomqvist Williams for the Petitioner/Applicant
Ms. Dawn Yearwood Stewart for the Respondent

DECISION

[1] STEPHENSON J.: The intent of this court in matters that concern the division of matrimonial property after a divorce is to achieve fairness. It is a standard worldwide application that there should be no discrimination between the parties to the marriage and their roles or behaviour within that union. The Court is required to assess the **party's** contributions to the family and there ought not to be any favour given to the superior earner or money earner against the party taking care of the home and the children.

- [2] The parties herein were divorced on the 12 December 2016 after 13 years of marriage. There are two children of the marriage. During their marriage they lived and cohabited at River Estate, Canefield, Dominica.
- [3] Marcus Blondel (the applicant)¹ filed notice of intention to proceed with Ancillary Relief with an affidavit in support with exhibits on 6th April 2017. Beverly Blondel (the respondent) filed her affidavit in response and supplementary affidavit with exhibits on the 30th May and 2nd June 2017 respectively.
- [4] There were two brief skirmishes in this matter regarding the settlement of the insurance payments made to the parties as a result of the claim made and settled for the damage to the matrimonial home due to the passage of the monster hurricane Maria and the reconnection of the utilities to the property.
- [5] At the conclusion of these skirmishes, it was agreed between the parties that there was no need for a trial as the matters in issue were of law and not of fact and on the 7th November 2018 the following order was made:
- a. That there shall be a new evaluation of the matrimonial home by Mr Kelly Gallion to be completed on or before the 22nd November 2018. The cost of the evaluation to be borne by both parties;
 - b. That the parties shall confirm the agreed list of issues on or before the 14th November 2018;
 - c. That the parties shall file written submissions both had and soft copies on or before the 31 December 2018.
- [6] Submissions were filed by both parties out of time on the 24th and 25th January 2019 respectively.

¹ For the avoidance of all doubt the Mr Marcus Blondel is referred to in this judgment as the applicant and Mrs Beverly Beryl Newton Blondel is referred to as the respondent.

[7] It was agreed by both sides that the parties are entitled to 50% of the equity of the matrimonial home.

[8] A mortgage was secured by the parties herein to build the matrimonial home which was paid equally save for but a few cents, by both parties and the building occupied by the family prior to their separation.

[9] As the court understands it the home was abandoned for a while after it was damaged by the passage of the monster hurricane Maria, but has since been repaired by the respondent and the she has subsequently returned to live there with the children of the marriage.

[10] The issue to be addressed is as follows: Whether or not the land forms part of the matrimonial property and is to be considered jointly with the house or whether the applicant should be paid for the land separately. This is the sole issue that was addressed by counsel in their written submissions under consideration.

[11] It has been submitted on behalf of the applicant by Learned Counsel Mrs Singoalla Blomqvist Williams that the land does not form part of the family assets and that the applicant is entitled to be paid for the land and one half of the equity in the house. On the other hand it is the submission of learned counsel Mrs Dawn Yearwood Stewart on behalf of the respondent that based on the applicable facts and law the respondent is entitled to a ½ share of the property as a whole (house and land).

CASE FOR THE RESPONDENT

[12] Learned Counsel Dawn Yearwood Stewart in her written submissions in support of the respondent in the application before the court in essence submitted that this was a long marriage. That even though the respondent brought the land into the marriage the matrimonial home was built on the said land with proceeds of a mortgage taken by both parties and the house was occupied by the family until the breakup of the marriage when the applicant vacated the said home.

[13] It was further submitted that it clear that it was the **applicant's** intention to share this asset with the respondent. Mrs Yearwood Stewart also submitted that the respondent's **continued interest in the** house by the evidence of her following up with the insurers and ensuring the house was repaired after the hurricane should dictate that she is entitled to one half share in the property (both house and Land) as was decided in the case of Yvonne Elizabeth Williams –v- Kenneth Sylvester Williams ².

[14] In the Williams Case the land upon which the matrimonial home was built was owned previous to the marriage by the wife and the matrimonial home was seemingly built by the joint efforts of the parties and occupied by the husband. It is noted that in that case there was no specific evidence adduced by either party which would have provided an accounting of the contributions made by each party. It was concluded by the Court of appeal that “ ... **the jurisprudence applied by this court required that the property be split equally because it was undisputed that both had made substantially contributions but neither were able to prove the extent of the said contributions. ...**”

[15] Learned Counsel Yearwood Stewart relied on this authority and submitted that the applicant is entitled to 50% of both the house and the land and urged the court that the respondent should not be compensated for the land separate and apart from his share in the equity of the matrimonial home.

[16] Mrs Singoalla Blomqvist Williams on behalf of the respondent contends that the applicant is entitled to a share in the house but that she does not have any entitlement in the land upon which the matrimonial home stands as that the land was purchased and paid for by her client prior to the marriage.³

[17] In her very brief submissions learned counsel relied on Pettit –v- Pettit⁴ to say that in English law “**there is no doctrine of community of property or any separate rule of law applicable to family**

² Civil Appeal No. 5 of 2003 (St Vincent & The Grenadines)

³ See Paragraph 4(a) of the Respondent's submissions

⁴ 1969 2 All E R 385

assets". Further that "consequently if one spouse buys property intended for common use with the other this cannot per se give the latter any property interest."⁵

[18] Counsel Blomqvist Williams also made reference to and relied Gissing –v- Gissing⁶ to submit that that if either party seeks to establish a beneficial interest in property vested in the name of the other the party claiming can only do so by establishing that the legal owner holds in on trust for the other.

[19] Learned counsel submitted that the respondent did not contribute to the acquisition of the land on which the matrimonial house sits and therefor the respondent is only entitled to a 50% share in the equity of the said house and not to the land.

Fairness generates obligations as well as rights

[20] The courts must exercise its powers so as to achieve an outcome which is fair between the parties. The principles of fairness are not to be applied automatically and uniformly in every situation. What fairness demands is dependent on the circumstances of each case which is to be taken into account in all its aspects and is to be applied in the context of the matter.

[21] In determining the beneficial ownership of matrimonial property the Constructive Trust is the more beneficial tool for determining the beneficial ownership of matrimonial property.

[22] In the circumstances of this case it is necessary for the court to determine:

- 1) Whether the parties had a common intention that they would share the beneficial interest in the property;
- 2) If they had that common intention, then in what proportion did they intend the share to be?

⁵ Extracted from the written submissions filed on behalf of Marcus Francis Blondel by Counsel Mrs Singoalla Blomqvist Williams on the 25 January 2019

⁶ 1979 2 All E R 38

- 3) What evidence, if any has been presented to this court in support of a finding of a common intention of the parties that there would be if not a joint ownership of the property that the husband would have interest solely in the land?

[23] In making its calculation the Court is also obliged to take into consideration the matters as set out in Section 25 of the Matrimonial Causes Act 1973 which confers a wide discretion on the court and the court is required to consider inter alia, the financial obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future. I am required to have regard to all of the circumstances of the case and exercise the powers granted to the court to achieve an outcome that is fair between the parties.

[24] In the case of *Millar –v-Millar*⁷ Lord Nichols said “**In seeking a fair outcome there is no place for discrimination between a husband and wife and their respective roles ...**”

[25] Looking at the facts of this case from the constructive trust perspective, the question that has **to be asked is whether or not the is evidence pointing to the applicant’s intent that the land upon** which the matrimonial home was built was to become part of the matrimonial assets and therefore subject to this ancillary application before the court?

[26] I ask myself the question, what then can be discerned about the parties shared intention from their whole course of conduct in this matter? This, as has been dealt with in the case of *Lloyd’s Bank plc v Rosset*⁸ can be inferred from the conduct of the parties in the absence of an open and actual agreement. In the *Abbott Case*⁹ **it was stated by the Privy Council that “the parties whole course of conduct in relation to the property must be taken into account in determining their shared intentions as to its ownership”**¹⁰

[27] In the case at bar consideration is made of the loan application made by the parties jointly, to build the house, they were both policy holders on the insurance policy relating to the property, the

⁷2006 UKHL 24 para 1

⁸ [1991] 1 AC 107

⁹ 70 WIR 183

¹⁰

mortgage to the house was paid from their joint income. Both became liable for the mortgage repayment: This is solid evidence which clearly reflects a common intention between the parties that there would be a joint ownership of the property and that the respondent would have interest in the entire property.

[28] This however, is not the end of the matter. I am compelled to view the situation broadly, and to look at the entire circumstances of the case, in an effort to ensure that justice is done and to achieve a fair division of the matrimonial assets.

[29] Consideration is also given to the repair of the matrimonial home after the damage and destruction caused by the passage of Hurricane Maria by the respondent with no input or cooperation from the applicant **who by that time had moved on with his life. To the court's mind** this is clear evidence that the respondent was confident that she was repairing and fixing a place that she had a full half share in. There is also clear evidence of the respondent acting to her detriment. If she had no interest, she would have abandoned the matrimonial home after the damage suffered and tried to find somewhere else for her and the two children of the family. The insurance payment would have been taken up by the Bank.

[30] The actions of the respondent during marriage, that is participating in the acquisition of the matrimonial home combined with her actions after the breakup of the marriage and her solo efforts to ensure that the claim on the insurance was made, her accessing the funds of the said payment to ensure that the matrimonial home was repaired so she and the children of the family can return to live there all together convinces me that from the time of the building of the matrimonial home the parties from that time and at all times prior to the break-up of the **marriage and coupled with the respondent's actions after the breakup of the marriage and the** passage of Hurricane Maria had the understanding that the respondent would be a joint owner of the entire premises comprising the matrimonial home and the land it was built on.

[31] Looking at all of the facts and circumstances of the case at bar from the constructive trust perspective, the respondent has met the requirements for acquisition of an equitable interest in the

land upon which the matrimonial home is built it being part of the matrimonial property owned by the applicant.

[32] I make reference to the case of *Edwards -v- Edwards*¹¹ the Court of Appeal of the Eastern Caribbean Supreme Court in applying *Oxley v Hiscock* [2005] Fam 211 applied; *Jones v Kernott* [2011] UKSC 53 held *inter alia* that

“Where property is registered in the name of only one of the parties in a cohabiting couple, there is no presumption of joint beneficial ownership. In determining what share each party is entitled to, the court must consider the whole course of dealings between them in relation to the property and determine what is fair. In doing so it must be noted that financial contribution is only one of the relevant factors.”

[33] In this case the court of appeal found that even though one party acquired the land, the court found that the building of the matrimonial home and the construction of the said house was financed mainly by a mortgage paid by the respondent. The court found that both the appellant and the respondent used their resources for the construction and development of the property and the maintenance of the family which amounted to a course of conduct that showed that there was a common intention that they should both share the beneficial interest in the property.

[34] Likewise in the case at bar, even though the land was bought by the applicant and paid for by him this court finds that based on the evidence produced in the affidavits that the matrimonial home which was built and occupied by both parties and the children of the family financed jointly by the parties equally. This court finds that there was a clear intention between the parties they would both have had a beneficial interest in the property.

[35] This court finds that there existed a common intention upon which the respondent relied on to acquire such an interest in the land upon which the house was built which was purchased by the applicant prior to the marriage and registered in his own name and that on the strength of this common intention she acted to her detriment in a way that one can infer such an acquisition.

¹¹ ANUHC VAP2012/0040

[36] Having view the situation of this case broadly, the factors as set out in section 25 of the MCA 1973 along with the authorities cited and having taken into consideration the entire circumstances of this case and noting the fact that the respondent has the day to day custody of the children of the marriage and together with them, she lives in the said property and in an effort to ensure that justice is done in order to achieve a fair division of the matrimonial asset. Applying the above legal principles to the case at bar, I find that the land upon which the matrimonial home was built forms part of the matrimonial property and I so declare to which the respondent is entitled to a share.

[37] I would therefore declare that the parties in the case at bar hold interest in both the land and the matrimonial home (including the land) 60% to the Applicant and 40% to the Respondent. I do **believe that some consideration ought to be given to the applicant's purchase of the land hence the 60/40 split** as opposed to the 50/50 split of the house solely.

[38] There shall be no order as to costs.

[39] I therefore make the following orders:

- a. It is declared that the matrimonial property located at River Estate and registered in the name of Marcus Blondel includes both the house and the land.
- b. That both parties jointly hold an interest in the said property 60% to the applicant and 40% to the respondent.
- c. There is no order as to costs.

M E Birnie Stephenson
High Court Judge

[SEAL]

By the Court

Registrar