

5-5-2004

IN THE GRAND COURT OF THE CAYMAN ISLANDS (Civ)  
MATRIMONIAL CAUSES REGISTRY



CAUSE NO: D123/2002

BETWEEN:

EUSTACE N. SPENCE

Petitioner

AND:

CAROL M. SPENCE

Respondent

BEFORE: THE HON. MADAME JUSTICE P. LEVERS

APPEARANCES:

Petitioner in person

Counsel for the Respondent: Mr. Delroy Murray of Samson Murray Jackson

Heard: 19<sup>th</sup> April, 2004

JUDGMENT



Livers J

This an application by the Respondent wife for settlement of all outstanding ancillary matters. There are no children of the marriage and the only issue is the division of the matrimonial home at Palm Dale Drive, George Town. The property is in the joint names of both the Petitioner Mr. Spence and the Respondent Mrs. Spence.

Brief Background

The Respondent and the Petitioner were married in 1990 and initially lived in rented accommodation. In December 1999, as a result of the Respondent

finding the Petitioner in a compromising situation with the named co-respondent, she left the matrimonial home and returned to Jamaica her country of origin. On the evidence that is what caused the breakdown of the marriage. The Petitioner and Respondent have lived separately and apart since then. Proceedings were filed by the Petitioner Mr. Spence. Mrs. Spence remained in Jamaica till October 2000 when she returned to the Cayman Islands. She is presently working here.

### **The Petitioner's Case**

Mr. Spence states that he purchased the property in 1990 for the sum of \$20,000.00 with the assistance of a loan from Barclays Bank in the sum of \$18,180.00. Initially, the property was in his name alone, but when he obtained a further loan in 1997, in the sum of \$129,113.00 to build two apartments on the property, the mortgage was put in the names of the Respondent and himself. The apartments were completed during the next year and payments on the loan using the proceeds of the rent were commenced in 1998. The property, in fact, was not transferred into the name of the Respondent and Petitioner till January 1999. The Petitioner admits that he signed a transfer document for the property to be put into the Respondent's name but did not finalize it until some time in January 2000. He further states that he was not concentrating on what he was doing when he finalized it and that when he initially agreed to transfer the property into the name of the Respondent it was because she was insistent that it

be done as she was insecure in the Islands and she needed some form of security.

The Petitioner submits that the Respondent is not entitled to any monies from the property and that the property was not the matrimonial home. He further states that she has no interest as she was repaid \$20,000.00 which she had put into the property in furnishings. It is the Petitioner's contention that in 1997, he took out a Trade and Business Licence for a bicycle shop which the Respondent operated for 3 years and that as she paid no rent (as it was on his family property) and saved approximately US\$60,000.00 from this business from which he received no monies that she should get no interests in the matrimonial home. He also states that she took \$90,000.00US when she left Cayman to go to Jamaica in December 1999. There is absolutely no proof of either of these allegations against the Respondent.

### **The Respondent's Case**

The Respondent alleges that the parties lived together from 1986 and separated in December 1999. She states the reason she separated is that she found the Petitioner in bed with the Co-Respondent. On the other hand, the Petitioner in his affidavit states that the reason the Respondent left the matrimonial home in 1999 was to visit her family. I accept the reason given by the Respondent. The Respondent alleges that they lived in rented accommodation and saved portions

of their income in a joint account from which the matrimonial property was purchased. She states that after the apartments were built, this was their matrimonial home until she left in December 1999. I accept that also as a fact. The Petitioner asserts that he serviced the loan with which he purchased the property whilst the Respondent alleges that the loan was serviced from a joint account. Both parties agree that the mortgage to build the apartments in the sums of \$129,113.00 was granted in the joint names and that immediately on completion the apartment were rented and the proceeds from the said rental were used to pay the monthly mortgage payments. The Respondent is quite firm in her contention that the Petitioner always intended to transfer the property into their joint names and did so without any acrimony or problems. The property was always considered their joint asset. She presents evidence to show that she was actively involved in the construction phase of the apartments and that she purchased furnishing for the said apartments from her own savings account. She denies that she was ever repaid the \$20,000.00 and that in fact the loan with which the Petitioner alleges was used to repay the \$20,000.00 to her was used to repay an overdraft at the Bank of Butterfield. She further states that she collected no rent from the apartments save and except, for three months totalling \$2400.00 and a further two cheques totaling \$2,000.00 in the year 2001 paid by the Petitioner to the Respondent as being her share of the rent. There are allegations and counter allegations as to the Petitioner and the Respondent taking each others jewellery and a van that belonged to the Respondent. For purposes of this application neither party is asking the Court for an accounting of

the rents collected from the apartments. Mr. Murray on behalf of the Respondent seeks purely the division of the matrimonial home. The Petitioner seeks a transfer of the matrimonial home into his name with no monies to be paid to the Respondent. The Respondent has provided proof to this court of the active part she took in the construction of the property. In this case the Court does not have to adjudicate on the percentage that is due to the Respondent as the property is already in joint names. I have therefore decided why the Respondent should not be given the equivalent of her interest in the matrimonial assets which is in her name.

There is one other aspect of this matter which I have to deal with and that is the conversion of the garage in the matrimonial home. The Petitioner alleges that without the assistance of the Respondent, the Petitioner converted a room – the garage into an apartment in which he now lives.

He avers that he altered the structure in 1999 and that the Petitioner made no contribution whatsoever towards the conversion. The Respondent states that both the Petitioner and she converted the garage into their matrimonial apartment and that the labor costs were drastically reduced because her cousin Alvin Gayle and Keith Whitely did this job. The Respondent has provided a letter in confirmation from Keith Whitely. The Petitioner however alleges that his improvement has enhanced the value of the land and he stands firm that the Respondent made no contribution towards the conversion. Where no

documentary proof of an allegation is available, the Court has to review the facts carefully and assess the credibility of the witnesses. The evidence, as to the breakdown of the marriage as given by the Petitioner, the evidence of the conversion of the garage in the matrimonial home as given by the Petitioner, raises serious questions as to his credibility. For example, the Petitioner states that the completion of the garage took place after the Respondent left Cayman in December 1999. The exhibited letter from the worker and more importantly the Planning Authority indicates that the work was completed in 1999. Despite the evidence and the lack of any documentary proof of the allegations made against the Respondent, the Petitioner states that this Court must exercise its discretion and not give the Respondent any interest in the property for the following reasons:

1. That he paid for the land on which the property was purchased from separate funds and during an earlier period of separation;
2. That he repaid the Respondent her contribution to the property and its contents by way of a payment of \$20,000.00;
3. That when the rental income did not cover the mortgage he paid it from his income;
4. That he altered the structure of the building when he converted the garage into an apartment and that has enhanced the value of the property;
5. He has personally paid for maintenance of the property;

6. That all his spare money has gone into the apartment and that the Respondent has been transferring money to her home in Jamaica;
7. That the Respondent has behaved badly over a number of years removing his personal possessions, forging checks and lying as to the true circumstances concerning the breakdown of the marriage.

### The Law

Section 19 of the Matrimonial Causes Law of the Cayman Islands provides as follows:

“In dealing with all ancillary matters arising under this Law, the Court should have regard first of all to the best interests of any children of a marriage and thereafter to the responsibilities, needs, financial and other resources, actual and potential earning power and the desert’s of the parties.”

Section 22 reads:

“At the time of pronouncing a decree under this Law, the Court shall, as appropriate, make order for:

- (a) the custody, care and control of the children of the marriage;
- (b) the disposition of matrimonial property, including the matrimonial home;
- (c) varying any settlement of the property of the spouses made in consideration of the marriage,

whether such settlement was made before or upon the treaty of the said marriage;

- (d) varying any other settlement of matrimonial property;
- (e) making financial provision from the property of either spouse for the children of the marriage and for the other spouse;
- (f) providing for periodic payments to be made by either spouse for the benefit of the children of the marriage and for the other spouse; and
- (g) costs."

Section 22 gives the Court a wide discretion to make the appropriate order and that is in this case, the disposition of matrimonial property including the matrimonial home. The Court in a number of cases has to exercise its discretion as to the percentage to be awarded to one party or the other. In this case the Court has to decide whether the Respondent is to get any interest at all despite her name being on the property. The facts in this case do not support the usual consideration of the responsibilities, needs, financial and other resources, actual and potential earnings. What has to be examined in this case is to determine whether the Respondent has an interest at all for the reasons set out by the Petitioner and whether 50:50 is a fair division of the matrimonial property. The principles are as set out in case of *Uzzell v Uzzell* (D97/97):

1. The primary objective is an award that is fair to both parties. What is fair will depend on the particular circumstances of each case;
2. The length of the marriage;

3. The age of the parties;
4. The income and earning power of the parties;
5. The amount of matrimonial and non-matrimonial property available to the parties;
6. the needs and obligations of the parties, but recognizing that an award need not necessarily be limited to a party's needs, when there is matrimonial property that exceeds both parties needs;
7. The liquidity of the parties, including one parties ability to pay any lump sum award without seriously impairing his or her ability to continue to generate sufficient income;
8. The desserts of the parties including the contribution that the parties have made to the accumulation of the matrimonial as well as non-matrimonial property.

As Lord Nicholls of Birkenhead said in *White v White* [2000] 1 All ER 1:

“as a general guide, equality should be departed from only if, and to the extent that, there is good reason for doing so.”

I therefore had to ask myself is there a good reason from departing from the equality principle in this case? The Petitioner states that he paid for the land on which the property was purchased from separate funds.

There is absolutely no proof of his allegations and even if it were true, the fact is that the Petitioner placed the Respondent's name on the property during the course of the marriage and there is a presumption of advancement.

I do not accept that the Respondent was repaid her contribution for the furnishings and even if it were true that does not negate her interest in the property.

The fact that the Petitioner paid for the mortgage payments on occasions, in my view does not vary the Respondent's interest in the property and further there is no proof that the Respondent was ever short of rental income. Indeed, the tenants who have given affidavits appear to have occupied the premises from inception.

I do not accept that the Respondent made no contribution to the conversion of the garage and in view of the evidence presented by Respondent, I accept that she and her family played a role in the conversion.


The Petitioner submits that he maintained the property himself. He does not dispute that he collected the rents for the majority of the period since the Respondent left the matrimonial home.

The allegation by the Petitioner as to the Respondent taking money to Jamaica is not proven and I do not accept it as evidence against her.

In my view there is nothing in the evidence on which I should exercise my discretion in preventing the Respondent from getting her share of this property. I hold that the Petitioner must pay the Respondent half the net value of the property and that is 50% of \$250,000.00CI, less the mortgage outstanding. I therefore Order that:

1. The Petitioner pay the Respondent the sum of \$57,0294.50 being the net value of the matrimonial asset within 90 days of the date hereof;
2. Failing payment of 1 above, the property at Palm Dale Drive, George Town to be sold and the net proceeds to be divided equally between Petitioner and Respondent;
3. Maintenance of \$250.00 being presently paid to continue till the payment of 57,294.50 is made;
4. Each party to return their respective personal property to the other party;
5. Costs to the Respondent to be agreed or taxed.

Dated this <sup>h</sup> 5 day of May 2004



Judge of the Grand Court

