

NMLS

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. HCV 3121/2004

BETWEEN                      NOLDA CHINTERSINGH                      CLAIMANT  
AND                              ALTON CHINTERSINGH                      DEFENDANT

Mrs. Judith Cooper-Batchelor instructed by Chambers Bunny & Steer for the claimant.

Mr. H. S. Rose for the defendant.

Claimant and defendant in person.

**Heard: 19<sup>th</sup> December 2006 and 22<sup>nd</sup> May 2009**

**Campbell, J.**

(1) The parties, to whom I will refer as husband and wife, were married on the 14<sup>th</sup> November 1992. In December 2000, they purchased a service lot, by combining their points to qualify for a loan from the National Housing Trust (NHT). They were allocated a lot at Wickie Wackie, in Bull Bay, St. Thomas. They received a mortgage from the NHT towards the purchase of the lot and took title to the land in their joint names. The parties declared at the start of these proceedings that they had agreed that the land was owned in equal shares between them.

(2) In August of 2001, the wife left for New York, to take up a teaching assignment. Whilst there, she sent remittances to the household. The husband was also in the United States from July to October 2001. The wife had provided a Power of Attorney to the husband to raise financing for the construction of a house on the lot. The husband raised a sum of \$1,800,000.00 of which \$1.2m was a further loan from the NHT, both parties being signatories. The remainder of \$600,000.00 was raised from the AAM Credit Union of which the wife was a member; both were borrowers under this loan.

(3) In April 2003, the husband and their two boys joined the wife in New York. The husband returned to the island in October of that same year. The boys were to

remain with their mother even after her return from New York on the 31<sup>st</sup> July 2004. The wife has never lived at the house that was constructed at 96 Wickie Wackie (the premises). The husband resides at the premises. Communication between the parties broke down after the husband returned to the island. He was served with summons for maintenance of the children and herself in the Family Court.

### **Wife's Claim**

(4) On 21<sup>st</sup> December 2004, the wife filed a claim seeking determination by the Court under the Married Woman's Property Act, that she was entitled to fifty per-cent (50%) interest in the premises, and consequential orders. Counsel for the wife argued that ownership of the land is integral in determining the ownership of the house. The action of the joint borrowings to finance the construction of the house supports the wife's claim for equality. It is of no consequence whether the wife lived in the house or not, it was the common intention that the house be treated as the matrimonial home.

### **Husband's Case**

(5) The defendant, in his affidavit dated 28<sup>th</sup> June 2005, had agreed that the wife's share in the land was 50% and prayed that the Court would order that he is entitled to 90% of the value of the house. He wanted to be given the first option to purchase the wife's respective shares in the land and the house. However, at this hearing, Mr. Herbert Rose, for the defendant, pointed out that the husband "has never claimed that the wife has no interest in the house" and brought to the attention of the Court that the husband was now only claiming 70% interest in the value of the house. His application was based on his contention that the wife had not contributed to the mortgage, and the funds he had expended on the purchase in excess of the joint loans.

(6) Mr. Rose argued that monies provided for groceries did not constitute an indirect contribution, therefore, funds remitted by the wife were not contributions. On the other hand, according to counsel, the husband made all the mortgage payments and, in addition, he had arranged that a sum of \$700,000.00 representing his salary, from April 2003 to October 2003 (the period in the United States), be used in the building of the house. The sums of \$100,000.00 and \$380,000.00 raised through loans from the credit union and from a settlement for loss of use of his motor vehicle were similarly contributed to the building. The house should not be

considered the matrimonial home, but a house to which both parties had contributed to its acquisition.

## Analysis

(7) What was the beneficial ownership the parties had in their minds at the time of the acquisition of the land? The subsequent actions by one party cannot have the effect of displacing this intention. It is clear that the original intention of the parties is determinative of the common intention of the parties. In Petit v Petit (1969) 2 All E. R. 385, Lord Diplock said;

“Unless it is possible to infer from the conduct of the spouses at the time of the concerted action in relation to acquisition or improvement of the family asset that they did form an actual common intention as to the legal consequences of their acts on the proprietary rights in the assets, the court must impute to them a constructive common intention which is that which, in the court’s opinion, would have been formed by reasonable spouses.”

(8) All the steps taken by the parties prior to the construction were done jointly in respect of the land. The down payment was sourced from the “partner draw” to which both had contributed and from a Bank of Nova Scotia account the parties had opened for the benefit of their sons. Of this account, the wife denies that the husband had made any contribution. The two loans which funded the acquisition were the joint actions of the parties. The wife provided a Power of Attorney to facilitate her participation during periods of her absence from the island. The parties have agreed that the land was held in equal shares. The funds that financed the construction were by way of loans borrowed by both husband and wife. There is no disagreement that it was purchased for the future enjoyment of both of them. The division that the husband seeks is a result of contributions he is claiming he made subsequent to the acquisition of the loans. The wife has denied knowledge of these contributions.

(9) In Gem Harris v Eugene Harris (1982), 19 JLR 319, The Court of Appeal held that, where property is transferred into the joint names of husband and wife, prima facie, the parties are treated as beneficially entitled in equal shares. The acquisition of the house was by way of a mortgage, of which Mrs. Harris claimed the down payment had come from a common fund to which she had participated. She was unable to substantiate that there was a common fund. The Court was of

the view that a common fund required nothing other than “an intention that it is for the joint use of the parties “(per Carey J.A, 321, letter g). The Court refused to dissect the funds into the respective contribution of each party.

(10) The husband is urging the Court to apportion him a larger share based on the loan of \$100,000.00 from Churches Credit Union that he claims he expended on the house. There is no support for this contention, which the wife denies. The use of his salary for three months, amounting to \$700,000.00 would mean that all the other aspects of running the household were being met by the wife during that period. The household, during this period, was ensconced in New York and all the bills for rental and the upkeep of the family were being met by the wife. The husband’s claim of having obtained \$380,000.00 as settlement for loss of use of his vehicle was refuted by the wife. She says that the vehicle had loans on it and any funds derived from its sale went to pay his brother whom he had owed monies.

(11) The husband states that the only money the wife sent was US\$300 for the maintenance of the children. He further stated that it was originally planned that the claimant would contribute monthly payments, but she refused. The wife has exhibited to her affidavit in response, receipts of money transfers sent through Western Union to the husband from November 2001 to April 2003. These transfers range from \$47,000.00 to \$5,475.00. The wife also adduced evidence from the AAMM Credit Union that the husband’s monthly payments had fallen into arrears and the credit union had taken \$34,654.81 from the wife’s savings to satisfy the arrears. The wife, with these unchallenged evidence, has been able to demonstrate that the husband has been less than frank with the court. I reject the husband’s assertion that the wife has not contributed to the monthly mortgage payments. In any event, I refuse to dissect the respective contributions of the parties. In Harris v Harris (Supra), the husband sought to rebut the presumption of equality that arises when the property is in the joint names of the parties, by adducing evidence that the wife’s signing the agreement for sale was “for convenience,” the mortgagee having insisted that the mortgagor’s salary must be three times the premium. The court felt that it strained credulity to think that the wife would undertake the legal responsibilities merely for the husband’s convenience.

(12) The husband’s attempts in this case, similarly fails. I cannot accept that the wife’s effort of funding a one-half share in the lands was to provide basis for a less than proportionate share in the house. There is nothing adduced before this court to indicate that the parties had intended to own the house in a proportionately different share from the ownership of the land. The court in Harris v Harris, relied

on the principle stated in Cobb v Cobb (1955) 2 ALL E.R. 696, that where property is transferred in the joint names of the husband and wife, the parties are to be treated as beneficially entitled in equal share. The concession granted by the husband that the wife is entitled to an interest of 20% more than the 10% he had earlier attributed to her, is inexplicable and inconsistent in that no additional contribution has been claimed by the wife. Neither has the husband subtracted any contribution he had formerly claimed. This concession is not an act of generosity on the husband's part but an acknowledgment on his part that he had grossly underestimated her interest and that his estimate is not grounded in the facts. Similarly, in Harris v Harris, the court drew an inference adverse to the husband's, by his offering the house for sale to the wife at an undervalue. The court held that he was offering to sell his share in the property and was not offering to dispose of his property to the wife.

(13) I consider the premises to be a part of the family assets. Lord Denning, in Nixon v Nixon (1969) 3 All E.R. 1133, describes it as a compendious phrase to express the principle that when husband and wife, by their joint efforts, acquire property which is intended to be a continuing provision for them both for the future, the proper inference is that it belongs to them both jointly. If there is no other appropriate division, the proper inference is that they hold in equal shares.

I make the following Orders:

- (a) The claimant is entitled to fifty percent (50%) interest in the property, 96 Wickie Wackie, Bull Bay, in the parish of St. Thomas.
- (b) That a valuation agreed upon by the claimant and the defendant be taken and that the cost be shared equally by the parties.
- (c) If no valuator agreed then one be appointed by the Registrar of the Supreme Court.
- (d) The claimant is given first option to purchase the said property. In the event the purchaser is unable to purchase the property, it be put up for public auction or private treaty.
- (e) The Registrar of the Supreme Court is empowered to sign any and all documents necessary to carry out the Orders of this court if either party is unable or unwilling to do so.