



11/11/15

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. M. 00296 of 2006

BETWEEN	PAMELETA MARIE LAMBIE	PETITIONER
AND	LEROY EVON LAMBIE	RESPONDENT

Mr. Errol G. Gentles instructed by Gentles & Willis Attorneys-at-Law for the Respondent/Applicant.

Mr. Keith V. Brooks Attorney-at-Law for the Petitioner/Defendant

IN CHAMBERS

HEARD: June 11, 2008; July 4, & August 12, 2008

PUSEY J,

The parties got married in 1992. Mrs. Lambie owned property at 1 Farrington Heights and a house was built on that property. The claim in this application is by Mr. Lambie alleging that he is beneficially entitled to a one half share of the property by virtue of the Property (Right of Spouses) Act or in equity.

The parties met in or about 1985 at which time Mr. Lambie was still in the process of having his divorce in his previous marriage finalized and there were issues in relation to property as a result of that marriage that were still unsettled. The house construction started before the marriage but according to Mr. Lambie it was completed after the marriage. Mrs. Lambie had said it was completed

before the marriage. In April 1997 Mrs. Lambie transferred an interest in the property to her son Norson Harris. Mr. Harris is not Mr. Lambie's child.

The important questions are whether or not the property was the family home and what, if any contribution did Mr. Lambie make to the construction of the house.

Mrs. Lambie contends that the property was purchased by her alone and there was no contribution to its acquisition by Mr. Lambie. This is not contested by her husband as it is common ground that the property was bought in 1981 before the parties met.

She also denies that Mr. Lambie provided any financial help for her to build the house. She indicates that she sold her home in Portmore for \$150,000 and applied the proceeds of that sale to the construction of Farringdon. Additionally she obtained a loan of \$100,000 which she also applied to the construction. In her words:

... "this house was built solely by me, using my own savings, the proceeds of the sale of my house in Portmore, as well as moneys borrowed from my son Norson Othneil Harris and from First life Insurance Company limited".

She specifically denies that Mr. Lambie contributed any money from his business to the design and construction of the house.

Mrs. Lambie also denies that she sought the assistance of Mr. Lambie in using his real estate expertise in designing or constructing the house. She states that the architectural design of the house was not done by Mr. Lambie and had no input or supervision from him. In her words:

“The respondent never made any contribution, financial or otherwise, directly or indirectly to my purchase or acquisition of this property, or its conservation, improvement or maintenance”.

Mrs. Lambie has specifically denied that there was any intention to treat the home as the matrimonial home. She says that the matrimonial home was in Ocho Rios and Mr. Lambie only moved into Farringdon in 2000 for a short while after he lost the matrimonial home. At that time she contended they were effectively separated and did not live together as man and wife.

The parties also differ on Mrs. Lambie's involvement in Mr. Lambie's business interests. He contends that she was a manager/partner in his business with full signing powers. She states that she managed her own business and only assisted periodically with some typing when he needed help.

Even though the parties were both present at the hearing for cross examination it is always difficult to determine the truth when the evidence is so divergent. I found great assistance in the evidence of the supporting witnesses and the documents that were exhibited.

The question of when Mr. Lambie lived at Farringdon was addressed by Mr. Hugh Levy Attorney-at-Law (in his Affidavit filed November 26, 2007, where he spoke of visiting the Lambies at Farringdon before and after their wedding. Ms. Verona Hoo spoke of attending social gatherings including birthday parties and anniversary celebrations between 1990 and 2005 at Farringdon. Documents such as the Marriage Certificate and letters from the lawyer were addressed to both parties at Farringdon. In fact even Mrs. Lambie's own document, the agreement of October 1995 between the Lambies and Irma Tully which was exhibited in her affidavit of 22nd April 2008 states the joint address of the parties as Farringdon.

In fact, the documents exhibited both in relation to Ms. Tully and a loan obtained from Workers Saving and Loan Bank in 1998 for use in their business, indicate that there was a level of partnership between the parties. As a result on a balance of probabilities I prefer Mr. Lambie's evidence that Farringdon was the family home.

Consequently I find that Farringdon was the family home. I accept that the parties lived in that house before and after the marriage. I accept that Mr. Lambie contributed financially and otherwise to the building of the house and it was the principal family residence for the duration of the marriage. I do not accept that the construction and maintenance of the house was Mrs. Lambie's private project and that she had no input from Mr. Lambie.

Having found that Farringdon is the family home the provisions of the Property (Family Rights of Spouses) Act have to be applied to this case. The fact that Farringdon was owned by Mrs. Lambie before the parties means that the Court should consider whether this is a proper case for a variation of the equal share rule.

This rule has had a lot of judicial scrutiny in recent time. The principle of equality in relation to the matrimonial home is not based on the balancing of financial or other contributions, but is based on a legislative decision that the equality of the marriage relationship should be demonstrated by giving parties an equal share of the family home.

The equal share rule should only be departed from for good reason. This view is set out in White v White [2000] 2 F.L.R. 981 and more recently, elegantly set out by McDonald-Bishop J (Ag) in Graham v Graham.

No good reason has been presented to vary the equal share rule and therefore Farringdon ought to be equally divided between the parties.

The interest of Mr. Neil Harris has to be determined. Section 8 (3) of the Property Rights of Spouses Act gives the Court the power to set aside any transaction for the family home entered into without the permission of the other spouse. The Act allows for a *bona fide* purchaser for value without notice to be

protected. There is no evidence that Mr. Harris is a bona fide purchaser. In fact his relationship to the parties would exclude him from such a description.

Therefore I am of the view that the transaction should be set aside and the Order sought by Mr. Lambie should be granted.

It is hereby ordered that:-

1. That the property registered at Volume 1096 Folio 496 situated at 1 Farringdon Heights, Kingston 6 is the family home within the meaning of Section 2(1) of the Property (Rights of Spouses) Act 2004.
2. That the Applicant/Respondent is beneficially entitled to one half interest of the family home situated at 1 Farringdon Heights, Kingston 6 registered at Volume 1096 Folio 496.
3. That the transfer registered on the Certificate of Title Volume 1096 Folio 496 on the 7th of April, 1997 to the Petitioner and her son Norson Othniel Harris be set aside.
4. That the property registered at Volume 1096 Folio 496 be valued by a valuator to be agreed by the parties within thirty (30) days of the date of this Order to be appointed by the Registrar of the Supreme Court if the parties fail to agree.
5. That the Petitioner to enter into a written agreement with the Respondent for the purchase of the Respondent's one half interest of the property registered at Volume 1096 Folio 496 within sixty (60) days of the date of receipt of valuation report.
6. That the cost of the valuation report to be borne by the parties equally.
7. Should the Petitioner fail to enter into a written agreement with the Respondent within sixty (60) days of receipt of the valuation report, the said property to be sold by private treaty and the net proceeds divided equally between the parties and that the Attorneys-at-Law for the Respondent/Applicant have carriage of sale.
8. Execution of this Order shall be stayed for a period of ninety (90) days from the date thereof.

9. There be liberty to apply.