

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2012 HCV 03093

BETWEEN	DWIGHT ORLANDO SUTTON	CLAIMANT
AND	CELINE ANTHOUVY DOSSOU	DEFENDANT

IN CHAMBERS

Ruel Woolcock instructed by Ruel Woolcock & Co. for the Claimant.

Mrs. Judith Cooper Bachelor instructed by Chambers. Bunny and Steer for Defendant.

Heard: July 24, 2013 and October 6, 2017

**Application for share in family home by spouse –
Sections 2, 6, 7, 13. Property (Rights of Spouses) Act 2004**

DAYE, J

- [1]** The marriage of the claimant and the defendant was dissolved by a decree absolute on the 20th July 2011. The parties were married at Long Bay in the parish of Portland on the 10th of February 2008. In fact, the parties lived separate and apart from July 2008.
- [2]** The claimant husband applied by a fixed date claim form dated 31st May, 2012 for a declaration that he is entitled to a fifty (50) percent share in the "family home" located at Lot 50 Fair Prospect, known as Commodore, in the parish of Portland.
- [3]** Section 6 (1) (c) of the **Property (Rights of Spouses) Act 2004** provides that each spouse shall be entitled to one half share of the family home when husband

and wife have separated and there is no likelihood of reconciliation or when the marriage has been dissolved or terminated. This section of the Act creates the equal share rule or the statutory presumption of equality in the family home.

- [4] A spouse who has separated is entitled under Section 13 (1) (d) to apply to a court for a division of property. Similarly a spouse who is granted a decree of dissolution of marriage. It is necessary to refer to the statutory definition of 'family home' in Section 2 (1) of the Act.

"Family home" means a dwelling house that is wholly owned by either or both of the spouses or used habitually or from time to time by the spouses as the only or principal family residence together with any land, buildings or improvements, appurtenant to such dwelling house and used wholly or mainly for the purpose of the household, but shall not included such a dwelling house which is a gift to one spouse by a donor who intended that spouse alone to benefit."

- [5] The house that the claimant seeks to have a one half share is at Lot 50 Commodore District in the parish of Portland. The defendant wife in cross-examination said this about the house:

"Yes, I did say why my house at Lot 50 Commodore that I purchased was not purchased as a matrimonial home, but I purchase as a business. Yes, it is correct that between the time I purchased the property and July 2008 that the property was the sole place of residence between me and Mr. Sutton. It is not until about 2011 and 2012 that the business really got off the ground".

- [6] The defendant argued further that it was in July 2008 she asked Mr. Sutton to leave her house. There is no dispute that this house was purchased and owned solely by the defendant wife and this purchase of the property was completed in February 2008.
- [7] The parties were married on the 10th February, 2008 and took occupation of the house a week after their wedding. The house was undergoing repairs for occupation prior to the couple moving into it.

On the evidence the house was used by the spouses as the only family residence and used wholly or mainly for the purposes of the household up to July 2008 when the parties separated. Based on the Act, Mr. Sutton would be entitled to one half share of this house. The circumstance of the husband and wife residing in the house satisfies the statutory definition of a "family home". The issue now is should the court vary the one half share entitlement of Mr. Sutton? Should the statutory presumption of equal share be displaced?

Variation of One Half Share Needs

[8] Section 7 (1) of the Act sets out some of the circumstances that could displace the statutory rule. It reads:

7 (1) Wherein the circumstances of any particular case the court is of the opinion it would be unreasonable or unjust for each spouse to be entitled to one half [sic] the family house, the court may on an application by an interested party make such order as it thinks reasonable taking into consideration such factor as the court thinks relevant including the following:

- (a) the home was inherited by one spouse.
- (b) that the family house was already owned by one spouse at the time of the marriage or the beginning of the cohabitation
- (c) that the marriage was of a short duration

[9] The burden of proof is on the party who is seeking to displace the statutory equality rule. This party must show that for this rule to apply, the equality rule would be unreasonable and unjust. The circumstance of the acquisition of the property and the relationship of the parties, may give rise to a conclusion that the rule should be displaced.

[10] The circumstances that are found to displace the statutory equality rule do not invariably settle how the entire beneficial interest is to be divided. The

circumstances may point to one quarter, one eighth, one fifth, or no portion of the house being shared with the spouse who is applying for division of the family home. The ultimate test is fairness as dictated by the provision of the Act.

[11] In the instant case the marriage is of short duration. Secondly, the house was solely owned by the defendant wife before the marriage. The other fact is that the house was bought by the defendant to engage in a business viz teaching yoga which is an alternative health therapy. The circumstances of the acquisition of the house and the relationship of the two parties are:

- (a) The defendant resided in England. She is a French citizen. She is single but she was a visitor to Jamaica in 1993 and 1995.
- b) She met Mr. Sutton on one of her visits to Jamaica.
- (c) In 2007, she informed Mr. Sutton that she was interested in finding a property to start her yoga business.
- (d) Mr. Sutton helped her to locate the property.
- (e) The property needed repairs.
- (f) Mr. Sutton proposed marriage to Ms. Dawson. She accepted she left Jamaica and went back to England. She came back and got married February 2008 (See Marriage Certificate exhibited).
- (g) Before she left Jamaica in 2007, she started taking steps to purchase Lot 50 Commodore District, Long Bay P.O. Portland.
- (h) The claimant is a builder by trade. He does job work and does not have a fixed income. He lived with his parents at Fair Prospect in Portland when his wife met him.
- (i) It appears that he was left as caretaker of the Lot 50 Commodore when Ms. Dossou returned to England in 2007 to prepare for the marriage.

[12] Between the time Mrs Dossou deposited on the property in 2007 and when she got married and the breakdown of the marriage, repairs and renovations were done to the property.

- [13] This property was purchased for US\$300,000.00. The defendant is the sole registered owner, See Certificate of Title exhibited. The transfer was done on the 8th February, 2008. The defendant obtained a mortgage from a financial institution in England on the security of a flat she owned in England. She is servicing the mortgage by paying monthly interest,
- [14] The real dispute between the parties concerning this property pertains to repairs to the property. The property had a three bedroom house, a smaller building on eight (8) acres with a river running along the back of the premises.
- [15] In his evidence at paragraph (9) Mr. Sutton deponed:

"9 ...that whilst the defendant was away (February to March 2008), I did quite a bit of work on the said land such as painting and general repairs to various structures For that I used my money earned from jobs I was doing at Black Rock, Portland. I also used money I received from relatives living abroad".

"10....that when the defendant came back (March 2008), she appeared pleased with the work that he did but wanted more to be done to the premises. She would become upset with me and quarrelled that I was ignoring the work on the matrimonial home".

- [16] Mrs. Dawson responded in her Affidavit of 24th January, 2013:

"11.....nothing was done to the house when I was away. The claimant never used any money to do repairs on the house. In fact, the claimant expected to be 'kept', that is, fed, housed and given money. This is one factor that led to the breakdown of the marriage.

"12 "When I returned to Jamaica in March 2008, I set about repairing the house. I contracted and paid painters, and electricians, plumbers and tilers and labourers. I solely paid all the workmen. I also assisted in the skilled labour. I worked and give him money to pay the workmen and later realized that he did not pay over all the money".

- [17] I prefer and accept the evidence of the defendant about the repairs to the house. She is an independent, self-financing person. She had the means to buy the

property. She sought and obtained a mortgage externally and was servicing this mortgage. She was financially responsible.

- [18]** The claimant was a builder and his specific training was carpentry. He did job work and did not have the means to pay workers. He had to rely on relatives living abroad. A trade's man flow of income is different from a fixed income worker but his contribution from his trade should not be discounted. But in the instant case the claimant gave generalised evidence about his work. His labour if he did any would be of value in money's worth. He would be entitled to compensation for such work.
- [19]** However the short time that the defendant was abroad from February to March 2008 and from she returned to Jamaica to live, to the date of September 2008, do not lead to an inference that he did substantial labour on the property. He described it as "general".
- [20]** This work did not amount to direct or indirect contribution to the home or household. He was not a partner in the proposed yoga business that the defendant was starting.
- [21]** The beneficial interest in Lot 50 Commodore was fixed at the time of acquisition. That is that the claimant had the sole legal and beneficial interest in the property. There was no alteration of interest that the claimant should obtain beneficial interest in the property. This is of course subject to the statutory presumption that both spouse is entitled to one half beneficial interest in the family home. However, the circumstances of the acquisition of Lot 50 is a weighty factor I consider in determining if it is unreasonable and unjust that the claimant should be entitled to the statutory share of the property.
- [22]** She deponed that she bought the property not as a residential home but to house her business and the physical location was peaceful and inspiring for her yoga business (paragraph 17 of affidavit). In my opinion defendant has displaced the statutory equal share rule.

[23] Due to the short duration of the marriage. Due to the fact the defendant purchased the house solely and is now financing it solely. Due to the fact that the property was purchased for her Yoga business and that the claimant was never a partner or contemplated to be a partner in the business and they have no children of the short marriage, I hold further that the claimant is not entitled to any share or beneficial interest in the property.

[24] He may be entitled to, subject to proof, refund for any expenditure or labour costs incurred to the repairs of the property during the short few months of his association with it.

[25] Brooks JA, relying on **Forret v Forret in Stewart v Stewart [2013] JA CA..** 47 67-68 applied the principle that if one co-owner incurred cost or made expenditure on the property owned jointly, the other co-owner is obliged to refund other co-owner for his expense and costs. At least one half share of the cost is due to the co-owner who incurred the expenses. This is what the claimant is entitled to subject to proof.

[26] Therefore these are the orders on the fixed date claim form:

- (1) declaration that the claimant is entitled to fifty (50%) percent share in the legal and beneficial interest in Lot 50 Commodore is denied.
- (2) The claimant has no legal and beneficial interest in the "family home".
- (3) No order paragraphs 3, 4, 5, 6 for valuation, option to purchase, sale on open market and carriage of sale of home.
- (4) Costs to the defendant to be agreed or taxed total.
- (5) Liberty to apply.