

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN CIVIL DIVISION

CLAIM NO. 2007/HCV02805

BETWEEN CAMILLE GREENLAND CLAIMANT

AND GLENFORD GREENLAND DEFENDANT

IN CHAMBERS

Mr. A. Reynolds instructed by Patrick Bailey & Company for the Claimant

Ms. D. Staple instructed by Kinghorn & Kinghorn for the Defendant.

Heard on 5<sup>th</sup> and 12<sup>th</sup> day of June 2008.

**APPLICATION FOR SUMMARY JUDGMENT**

**Gayle J (Ag.)**

This is an application for Summary Judgment pursuant to Pt. 15 of the Civil Procedure Rules 2002. The application was made in response to a claim by the Claimant/Respondent filed on July 12, 2007 under the Property (Rights of Spouses) Act 2004. In the claim the claimant/respondent sought the following orders:

- a) an order that the proceeds of sale of the family home be shared equally with the defendant
- b) that in the alternative an order that the defendant purchase from the claimant her half-share in the said premises;

- c) that the property is to be valued and that the cost of the said valuation is to be born equally as between the parties;
- d) that the defendant refund the claimant her cost for taking out divorce proceedings;
- e) Costs; and
- f) Such further and/or other relief as this Honourable Court shall deem just.

### **SUBMISSIONS**

Counsel for the Applicant/Defendant Mr. Greenland submits that summary judgment should be given in favor of the applicant/defendant who through his sole efforts and resources contributed to the construction and completion of the family home, and generally to providing for the family including assisting the claimant to pursue her education. It was submitted for the applicant/defendant that the claimant made no contribution to family home and is therefore not entitled to a half-share, under the Property (Rights of Spouses) Act 2004.

Counsel for the claimant/respondent on the other hand, opposed summary judgment on the basis that she contributed to the family home financially and therefore has an equitable interest in the property, and that she also contributed physically in its construction and therefore is entitled under the Act to half share of the property, or in the alternative should be refunded the amount of money expended in contributing to the property. Counsel submitted that given the complexity of the issues raised, it is a matter to be decided by the court and summary judgment in this situation would not be appropriate.

## LAW

The power of a court to make a summary order is contained in Pt 15 of the Civil Procedure Rules (CPR) 2002. CPR 15.2 provides the grounds for summary judgment:

The Court may give Summary Judgment on a claim or a particular issue if it considers that:

- a) The claimant has no real prospect of succeeding in the claim or issue
- b) The defendant has no real prospect of successfully defending the claim or the issue.

The proper posture to be assumed by the court when faced with an application for Summary Judgment was clearly articulated in the leading case of **Swain v Hilman** [2001] 1 All ER 91, the facts of which need not be stated herein, although the relevant principles will be restated in detail.

In **Swain v Hilman** (supra) Lord Woolf MR in delivering the judgment of the court explained the effects of r 24.2 (the equivalent of 15.2). He stated that:

*"... under the rule the court has a very salutary power, both to be exercised in a claimant's favour or, where appropriate, in a defendant's favour. It enables the court to dispose summarily of both claims or defences which have no real prospect of being successful."*

In giving effect to r 15.2 the court must of necessity construe the words 'no real prospect of succeeding'. According to Lord Woolf in **Swain v Hilman** (Supra) it is not a difficult proposition:

*"... [as] the words 'no real prospect of succeeding' do not need any amplification, they speak for themselves. The word 'real' distinguishes fanciful prospects of success or [...], they direct the court to the need to see whether there is a 'realistic' as opposed to a 'fanciful' prospect of success."*

Where of necessity the court applies Pt.15 Lord Woolf at p. 92 explains that:

*"...[in so doing] the court gives effect to the overriding objectives contained in Pt 1 and in so doing it saves expense, achieves expedition, avoids the court's resources being used up on cases that serve no purpose and is in the interest of justice. If a claimant has a case which is bound to fail, it is in his interest to know as soon as possible that that is the position. Likewise, if a claim is bound to succeed, a claimant should know that as soon as possible. However, it is important that the power under Pt.24 is kept to its proper role. It is not meant to dispense with the need for a trial where there are issues which should be investigated at trial..."*

Judge LJ at p.96 summarises the parameters within which the power is to be exercised, he states that:

*"To give summary judgment against a litigant on papers without permitting him to advance his case before the hearing is a serious step. [The] discretion in the court to give summary judgment against a claimant, [must be] limited to those cases where, on the evidence, the claimant has no real prospect of succeeding (at p.96).*

Finally, in dismissing the appeal against the decision to dismiss the application for summary judgment, Lord Woolf at p.94 cautioned that:

*"...useful though the power is under Pt 24, it is important that it is kept to its proper role. It is not meant to dispense with the need for a trial where there are issues which should be investigated at the trial. The proper disposal of an issue under Pt 24 does not involve the judge conducting a mini-trial, that is not the object of the provisions; it is to enable cases, where there is no real prospect of success either way, to be disposed of summarily.*

## DISCUSSION

The Property (Rights of Spouses) Act 2004 in relation to Family Home provides at Section 6(2) that each spouse shall be entitled to one half share of the family home. However, this is subject to certain exceptions as contained in section 7(1) which states:

Where in the circumstances of any particular case, the court is of the opinion that it would be unreasonable or unjust for each spouse to be entitled to one-half of the family, home, the Court may upon application by an interested

party, make such order as it thinks reasonable, taking into consideration such factors as the Court thinks relevant including:

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

Section 8(1) of the Act states that where the title to a family home is in the name of one spouse only, then subject to the provisions of the Act:

- a) The other spouse may take steps as may be necessary to protect his or her interest including the lodging of a caveat pursuant to Section 139 of the Registration of titles Act; and
- b) Any transaction concerning the family home shall require the consent of both spouses.

Under the revised Property (Rights of Spouses) Act 2004, questions of financial contribution and or intention of the parties are no longer of primary relevance to the question of entitlement to a family house which falls outside of the exceptions of section 7(1)(a-c). Consequently, whether or not section 6(2) applies in a particular case is a question of fact to be decided by the court after taking into consideration the various factors set out in the Act, which are themselves not exhaustive.

In his evidence Mr. Greenland claimed that the plans to acquire the property was made with his first wife prior to her death and that the Claimant was fully aware that the property was acquired for the children of his first marriage and that she was in full agreement.

He stated that at the time of acquiring the property he was required to pay thirteen thousand dollars (\$13,000.00) to the government of Jamaica to regularize the squatter settlement on which the family home is built. That the payment was made by his sole effort and resources as the claimant had no money. That he was the sole contributor to the building of the family home. He stated that Mrs. Greenland did not and was unable to contribute to the household as she had no resources. That he paid for helper services to do domestic chores as the doctors had advised that she could not lift any object at all. That he paid all the bills in the house and that he paid for the education of the children of the first marriage who were still living with him. That he also paid for Mrs. Greenland to go back to school.

On the contrary, Mrs. Greenland said she had paid over to RADA the thirteen thousand dollars (\$13,000.00) required to regularize the squatter settlement on which the family home is built from her own resources. That she had contributed to the building of the home by physically breaking stones, mixing mortar, carrying board and going to purchase the material for the home.

In light of the above situation where the parties have lived together for more than ten (10) years in the family home and where the family home was built or acquired during the period of the marriage as in the present case, and where the contributions of either party is in dispute, it follows therefore that the question of distribution remains a live issue and one to be decided by the court.

## **FINDINGS**

I find that the property in question falls outside of the exceptions stated in section 7(1) of the Property (Rights of Spouses) Act 2004. I find that the marriage lasted for seventeen years. I also find that the circumstances surrounding the acquisition of the family home are such that give rise to the need for investigation at trial and ultimately the exercise of the discretion of the court within the context of the

Act. I therefore find in the instant case that either party has a real prospect of successfully defending the claim.

## **CONCLUSION**

- 1) Application for Summary Judgment refused
- 2) Cost to the respondent to be agreed or taxed
- 3) Liberty to apply

### **Case Management Orders:**

- 1) Standard disclosure on or before September 22, 2008
- 2) Inspection of documents on or before September 22, 2008
- 3) Witness statement to be filed by November 28, 2008
- 4) Listing questionnaire to be filed on or before December 19, 2008
- 5) Pre-trial review on January 1, 2009 for at 10 a.m. for ½ hour
- 6) Trial by Judge alone in open court on March 16, 2009
- 7) Witnesses Limited to 2 for each side
- 8) Cost to be cost in the claim
- 9) Claimant attorney to prepare, file and serve the order.