

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2007HCV03543

BETWEEN DERRICK LATTIBEAUDIERE CLAIMANT
AND PAULETTE LATTIBEAUDIERE DEFENDANT

Mr. Gordon Steer for Claimant, instructed by Chambers, Bunny & Steer.

Mrs. Jacqueline Samuels-Brown & Mrs. Tameka Jordan for Defendant, instructed by Jacqueline Samuels-Brown & CO.

Heard in Chambers: July 21, 2009, July 29, 2009, October 27, 2009 and November 23, 2009.

Coram: D. McIntosh:

The hearing of this matter lasted over several months. The constraints of time, the unavailability of personnel and the ongoing attempts of counseling and mediation, trying to achieve an amicable resolution all contributed to delays.

The parties who were married for over thirty (30) years are now irrevocably separated and are in a bitter conflict over the division of property accumulated by them during the period of their marriage.

They met each other while they were both students at the University of the West Indies, they became friends and perhaps starry eyed lovers as they sought their academic qualifications. By 1976 they were Happily Married.

This union started off well. They were an enterprising couple which worked together pooling their resources and were unselfish in their quest for the success of each other and their marriage.

Their family increased by two children and they prospered materially. There was great upward mobility. It is apparent that from the material successes, the fame and the fortune, there emanated dangerous pitfalls. There were rifts causing periodic separations which culminated in their irrevocable separation in 2007, from each other.

Shortly after this separation, the claimant Derrick Lattibeaudiere filed this Fixed Date Claim Form seeking the following declarations and remedies:

(a) That the Claimant and the defendant own in equal shares the following:

- 1) 1b Belvedere Crescent, Forrest Hill.
- 2) Lot 24 Cherry Hill, St. Andrew
- 3) 6 Hopefield Avenue, Kingston 10
- 4) Shop # 5, 80 Half Way Tree Road, Kingston 10
- 5) Shop at 80 Half Way Tree Road, Kingston 10
- 6) Shop # 28, the Domes, 85 Hagley Park Road, Kingston 10
- 7) Shop # 29, the Domes, 85 Hagley Park Road, Kingston 10
- 8) Shop # 30 the Domes, 85 Hagley Park Road, Kingston 10
- 9) Town House at Point, Negril
- 10) One bedroom apartment at Point, Negril
- 11) One bedroom apartment Seacastles, St. James
- 12) One bedroom apartment Columbus Heights, Ocho Rios
- 13) 3 Norbrook Woods, Kingston 8

The orders requested at (b) to (d) are basically consequential upon the declaration sought if the properties listed are to be divided equally.

The orders sought at (i), relate to paintings, while those sought at (j) relate to furniture. The divergence from the equal shares is apparent. The Claimant is claiming sole ownership of property indicated at (i) and (j).

In her defence and counterclaim the Defendant joins the Claimant in seeking the same declarations in respect of the properties listed at 1 to 12 supra. There is indication that the property listed at (5) should be shop number 4.

In addition the defendant claims other properties not mentioned by the claimant. There are listed below in numerical sequence for easy reference. They are;

- 14) Half of the total amount of the rent paid to the claimant by the Bank of Jamaica for occupation of 16 Belvedere Crescent from the time the Claimant became Governor of the Bank of Jamaica until the determination of this matter.

- 15) Half share in all investments held at the Bank of Jamaica and Bank of Nova Scotia or any other financial institution (including account number 10272-5-10 at the Bank of Jamaica)
- 16) Half share of the art work collected by the parties over the past three decades.
- 17) Half share of all furniture, appliances and fittings acquired during the marriage and in the custody of the claimant whether held or kept at Cherry Hill or elsewhere.
- 18) Half share of the coin collection or the value thereof.
- 19) Half share of the watch collection or the value thereof.
- 20) A lump sum of payment representing one half share of the claimant's non-contributory pension entitlement from the Bank of Jamaica.
- 21) Half share of the value of and/or proceeds of the sale of the horses.

The Claimant filed his claim under the Property Rights of Spouses Act 2004. This Act was intended to replace the provisions which when applied created constructive trusts, implied trusts and took into account the respective contributions of each party as in *Petit v. Petit*

The basic tenet of the Act is to ensure equality between the parties upon their separation.

The facts which are not in dispute indicate that in the early stages of the marriage, the defendant was the main 'bread winner.' The claimant's rise in the Bank of Jamaica was meteoric. With his position secure financially, he became the major bread winner and the defendant, the Lady of the Manor, no longer needed to work. It became her duty to look after the children, to entertain, manage and oversee their businesses and/or properties.

The defendant demonstrated her trust in her husband's skill as a banker and a financier when she was regularly employed. She would hand over her salary cheque to him. He was always in control of the "purse."

He in the interim would invest some, use the money as he pleased and even opened an account in their joint names at the bank of Jamaica from which the defendant

could make withdrawals. The defendant's ability to make withdrawals from the account continued up to 2007 when she was stopped from doing so by the claimant.

This Court takes the view that the properties of the parties should be divided equally between them as at the date of their irrevocable separation in 2007. For the purposes of a cut-off date this Court will use April 30, 2007.

Both parties are agreed on properties listed at 1 through 12 of the Claim. It is true that in final submissions the claimant no longer wants property at '12' divided equally. That is merely an attempt to be disingenuous. There was no such averment when this claim was filed.

Number 13, the house at 3 Norbrook Woods is not in my view property of the marriage. The house is in the name of the defendant and her children. The uncontradicted evidence is that her name was placed on the title by way of gift. She was not a purchaser for value. No doubt it was intended as a safe haven for her if one became necessary.

The properties listed at 15 to 19 and 21 are all properties of the marriage and should be divided equally.

15, Follows from the principle of equal shares in all property of the marriage at the time of the separation. This Court has indicated a cut off date as at April 30, 2007 for conveniences.

16, Needs no elaboration as they were acquired during the marriage and before April 30, 2007. They were no doubt part of the décor of the family home and was intended to be enjoyed by the family as well as visitors to their home. It is as much a part of the house as the fixtures or the furniture in it.

18, Their coin collection whether given to the family or bought as an investment, whether on display in the house or placed in a safe would also be property of the family as would 19, the watch collection. There is nothing to suggest that these watches were for wearing it seems clear that they were for display as much as the art works, they being collector's items and also no doubt for investment purposes.

22, Horses are also property of the marriage and are to be divided equally.

14, Would have been included in property at 15 and will not be dealt with separately.

20, Is not taken into account as there is not sufficient evidence before the Court to make it relevant. The claimant has not made the details or terms of the pension plan available. This Court in the absence of evidence as to its relevance before the retirement of the claimant will not assume that at April 30, 2007 it was property of the marriage.

Accordingly this Court declares as follows:

The properties listed 1 through 12, 15 through 19 and 21 are owned by the claimant and the defendant in equal shares.

Court Orders:

1. That the parties agree the values of the properties listed at 1 to 12, 16 to 19 and 21. Alternatively that valuers be agreed by the parties to value the various properties. Should there be no agreement on valuers within thirty (30) days of this order, the Registrar of the Supreme Court is hereby empowered to appoint appropriate valuers. The cost of same to be borne equally by the parties.
2. Either party may purchase the other parties one-half share in any of the properties within sixty (60) days of the valuation reports being received. The claimant is hereby granted the first option to purchase defendant's half share in the property at Cherry Hill. If he wishes to exercise that option he must do so within thirty (30) days of receipt of the valuation.
3. The coin collection, art work and watch collection could be divided on the basis of comparative values to achieve equity as selling these assets may not be easily achieved.
4. All property for which either party has not exercised an option to purchase or having exercised the option is not been able to follow through with it within the time allowed, that property is to be put up for sale on the open market, by public auction or by private treaty.
5. Any party exercising any option to purchase; the other party's attorney is to have carriage of sale.
6. The Registrar of the Supreme Court is hereby empowered to sign any or all documents to make effective any or all orders of this Court if either party is unwilling or unable to do so.

7. Both parties to produce in writing all audited accounts of all investments and monies which was in any bank or financial institution, whether in this country or abroad as at April 30, 2007, whether held in the names of both parties or in the name of either party within thirty (30) days hereof. These amounts are to be divided equally between the parties.

It must be borne in mind that all the accounts should have been made available at Discovery so there should be no difficulty producing them now to facilitate the speedy and equitable distribution of property.

D.O. McIntosh, J

April 9, 2010.