

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

CLAIM NO: SLUHMT 2010/0008

BETWEEN

NORMA ELLEN LOUISIEN NEE SIEMSEM

Petitioner

AND

MATTHEW LOUISIEN

Respondent

Appearances:

Ms. Esther Green-Ernest for the Petitioner
Mr. Maurice Compton for the Respondent

2011: July 11th,
September 29th

[1] WILKINSON, J.: The Petitioner filed her petition on January 21st 2010, and therein she asked for ancillary relief to be adjourned to Chambers. On September 16th 2010, the order on decree nisi was made and an order was made adjourning ancillary relief to chambers. At October 1st 2010, the Petitioner filed a notice of application¹ for ancillary relief supported by affidavit filed on even date and therein she sought the following orders:

- (i) That the Respondent do transfer forthwith his half share in the property registered in the Land Registry as Block No.1455B Parcel 719 to the Petitioner together with all appurtenances and dependencies thereof including the dwelling house erected thereon which was erected solely by the Petitioner with her separate funds.

¹ The Court has in the past reminded all counsel that a notice of application is a CPR 2000 form and not a form prescribed by the Divorce Act Cap.4.03 and the Divorce Rules 1976.

- (ii) That the Respondent do vacate the matrimonial home immediately upon the granting of the order pursuant to this application.
- (iii) That there are no children of the family to which section 41 of the Divorce Act applies.

[2] The Respondent in his affidavit filed January 19th 2011, sought the following orders:

- (i) A declaration that the property situate at Beausejour in the Quarter of Gros Islet in the State of Saint Lucia and registered as Block 1455B Parcel 719 is the community property of the Parties.
- (ii) That an expert be appointed to view and value the aforesaid property.
- (iii) That the Petitioner pays to him an equivalent of his one-half (1/2) share in the property, or
- (iv) Alternatively that the property be sold and the proceeds of sale be shared equally between the Petitioner and himself.
- (v) The Court makes all orders and declarations which it deems fair, equitable and just in all the circumstances.

[3] The sole item in dispute is the matrimonial home. The parcel of land is registered as Block 1455B Parcel 719 in the Quarter of Gros Islet. The parcel of land upon which the matrimonial home was built was purchased at August 23rd 2000, from Mr. Stanislaus Modeste, and both the Petitioner and the Respondent are shown as the purchasers. The consideration on the purchase was thirty six thousand, four hundred and thirty five hundred dollars (\$36,435.00). The parcel of land is in a residential development with covenants restricting the property to a private dwelling only, forbidding animals except house pets and a number of other covenants meant to retain the residential nature of the surroundings and adjoining properties.

Issue:

1. Whether the property registered as Block 1455B Parcel 719 is the separate property of the Petitioner or the community property of the Petitioner and the Respondent.

The evidence

[4] Examination in chief was by way of three (3) affidavits from the Petitioner filed October 1st 2010, February 15th 2011, and May 24th 2011, and one (1) affidavit from the Respondent filed January 19th 2011.

The Petitioner's evidence

- [5] The Petitioner is German by birth and resided in the United States of America before moving to Saint Lucia. Her marriage to the Respondent is her second marriage. She is presently employed as a nail technician at Saint Lucia. At the time of filing the application for ancillary relief the Petitioner was sixty-one (61) years and the Respondent forty nine (49) years. The Petitioner suffers from hypertension, diabetes, hyperlipidemia, hyperthyroidism, and unipolar affective disorder. This evidence was supported by the medical report of Dr. Jeaneen Payne dated March 25th 2009.
- [6] The Parties married in the State of New Jersey, United States of America on November 21st 1998. Shortly thereafter, at January 11th 1999, they executed in the State of New Jersey a post nuptial agreement (hereinafter "the agreement") which provided:

"WITNESSETH:

...

WHEREAS, the parties desire to enter into this Agreement subsequent to their marriage in order to fix, establish and determine the rights which shall accrue to each of them in the other's estate in the event of the death of either of the parties, and to fix, establish and determine the rights of the parties in the event of an annulment, separation, or dissolution of the marriage, including but not limited to the rights of the parties to support, alimony and equitable distribution, pursuant to N.J.S.A. 2A:34-23, and N.J.S.A. 37:2-31 et seq. community property or any other rights which the parties may acquire through the course of the marriage by statute and/or decision of law in this State or any other jurisdiction now or in the future, and

WHEREAS, the parties accept the provisions of this Agreement in lieu of any other rights either may have, in law or equity, and in full discharge and satisfaction of such rights, and;

WHEREAS, ...

WHEREAS, each party has had the opportunity to obtain independent legal advice prior to the execution of this agreement and have been fully advised as to his or her rights hereunder and in such absence of an agreement, and with full knowledge of such rights, each is fully satisfied to enter into this Agreement, and

NOW, THEREFORE, in consideration of the mutual covenants contained herein and intending to be legally bound hereby, the parties hereby agree as follows:

...

JOINT PROPERTY

2. It is the intention of the parties to have limited joint property acquired by them during the marriage. The parties contemplate that joint property shall be solely limited to property acquired in joint names, gifts in honor of marriage. Any other property shall be deemed the sole and separate property of either Norma or Matthew.

SEPARATE PROPERTY

3. ...

22. This Agreement is being executed and entered into in the State of New Jersey. This Agreement shall be construed in accordance with and shall in all respects be governed by the laws of New Jersey, now and hereafter in effect. (My emphasis)

23. Norma Siemsen-Louisien and Matthew Louisien hereby declare that each has had the opportunity to receive independent legal advice by counsel of his or her own choosing, in relation to the negotiation and preparation of this Agreement. Norma Siemsen-Louisien has had counsel of Kathleen A. Browning, Esq., and acknowledged that she has been fully informed of all of her legal rights and liabilities relating to this Agreement. Matthew Louisien has waived his right to consult with an attorney. The parties acknowledge to each other that they have entered into this Agreement freely and voluntarily and that no one has caused them to enter into this Agreement through coercion, force, pressure or undue influence." (My emphasis)

[7] The Petitioner said that the Respondent having signed the agreement he now tries to feign ignorance of it and gives the impression that he is illiterate and did know what he signed. He was well aware of what he was signing and that the agreement was to reflect what they had both agreed would happen in the event of divorce. At the time of execution of the agreement, the Respondent waived his right to independent legal advice.

[8] The Petitioner moved to Saint Lucia on July 23rd 2000, being approximately one (1) year eight (8) months after the marriage. Upon her arrival she rented a house

for three (3) weeks and for this she paid the rent. The Petitioner and the Respondent then went to live with the Respondent's aunt, Ms. Cynthia Hodge until December 14th 2000. During this time, the Petitioner was not working but contributed what she could to the household. The Respondent did not contribute anything to the household.

[9] In regard to the matrimonial property, the Petitioner said that the property was bought with her sole funds and the Respondent made no contribution. She was previously married and resided at New Jersey, United States of America. During that time she was employed full-time as the manager of a facility for disabled adults and worked part time as a nail technician. When her first husband and herself divorced, she made an offer to buy out his share of their matrimonial home and did so. She had that home for twelve (12) years and she at times worked four (4) jobs to be able to pay for and retain it.

[10] The Petitioner sold her house at July 2000, and received net ninety thousand, one hundred and three dollars and seven cents united states dollars (US\$90,103.07). She provided the Court with copies of her ownership title for the property at 10 Haskell Boulevard, Haskell, New Jersey and a HUD-1 UNIFORM SETTLEMENT STATEMENT form evidencing sale at July 17th 2000, to Sean D.Galleethen and Jennan B Elimini for one hundred and thirty seven thousand, two hundred and eighty united states dollars (US\$137,280.00). It was from the proceeds of sale of her property at the United States of America she was able to purchase the land at Gros Islet and pay for construction of the matrimonial home thereon. In support of the payments she made, the Petitioner exhibited the receipt for Scotia Bank draft #099349 payable to Stanislaus Modeste (the vendor) for thirty six thousand, four hundred and twenty five dollars (\$36,425.00) and three (3) other receipts for Scotiabank drafts # 099351 dated August 18th 2000, for sixty six thousand, six hundred and ten dollars and thirty cents (\$66,610.30) payable to Bel View Resorts Ltd., #118178 dated September 20th 2000 for thirty thousand, eight hundred and ten dollars and thirty cents (\$30,810.30), payable to Desmond Fostin, and #118406 dated November 15th 2000 for thirty thousand, four hundred and twenty

seven dollars and thirty cents (\$30,427.30) payable to Bel View Resorts Ltd. The Petitioner's evidence as to the purposes of these bank drafts was not denied by the Respondent. All the bank drafts were drawn against the Petitioner's bank account.

[11] The Petitioner said that at all times the Respondent and herself discussed the purchase of the land and subsequent construction of the house and that all of the money would come from her separate funds which she had acquired before marriage and so the property would be her sole property.

[12] At the time of purchase of the land, the Petitioner said that she had been approved for Saint Lucian citizenship but it had not been finalized. When they attended the office of the attorney-at-law she had made known in the presence of the Respondent that the deed for the land was to be in her name only as she was paying for the land. Before the attorney-at-law she came to understand that she needed an alien landholding-licence. She was told that it would take approximately three (3) to six (6) months to procure the licence and therefore if she wanted the transaction to be completed immediately her only option was to do so with the Respondent's name on the deed. The Respondent then said that he did not want his name on the deed as he did not want anything from her. With the knowledge that she had the post-nuptial agreement made at New Jersey, she felt secure that her money and subsequent investment in the land would be protected as her separate property and so she agreed to allow the Respondent's name to be added to the deed.

[13] For the purchase of the land she dealt with the vendor, Mr. Stanislaus Modeste, and for construction the developer, Mr. Desmond Fostin. There was no discussion about any discount for the land which was sold to her at seven dollars (\$7.00) per square foot and she was not informed at anytime that Mr. Modeste was, as is alleged by the Respondent, his cousin and for this reason the land was sold at a discount. The Respondent did not contribute a single cent to either the purchase of the land or the construction of the house.

- [14] During the marriage the Petitioner supported herself by working as a nail technician. After expenses she had approximately three hundred dollars (\$300.00) to support herself and pay household bills. The Respondent made little money as he elected not to work. From December 14th 2000, when they moved into the matrimonial home, he would give her minimal amounts of money towards expenses. When the marriage was breaking down, he reduced the amount he gave her and eventually he gave her nothing.
- [15] By Magistrate's Court order the Respondent vacated the matrimonial home from April 2009 to October 2009. After he returned to the matrimonial home he did not give the petitioner a cent towards household expenses. Any money that the Respondent earned from time to time, he gave to Ms. Claudia Charles to support herself and his two (2) sons born of Ms. Charles. The Petitioner tried to assist the Respondent with earning an income by buying him a weed-eater and a chainsaw.
- [16] As a result of the Respondent failing to earn or earning very little money, the Petitioner in 2002, went to New Jersey, United States of America to work for eight (8) months. It was joint decision between herself and the Respondent that she would go to New Jersey to work for eight (8) months. She sent money to the Respondent to pay the household bills and yet she returned to find the bills in arrears. She exhibited a WASCO (water bill) history dated January 28th 2011, and which reflected an outstanding due amount of one hundred and twenty two dollars and seventy four cents (\$122.74). The history reflected all invoices submitted by WASCO for the years 2001 to 2010 save and except the years 2003 and 2004. The history also reflected an average of two (2) lump sum payments being made each year to clear arrears. In the first instance, the Respondent told her don't send any money home for he would take care of the bills. However, when she spoke with him by telephone, he complained that he did not have any money and so she sent him one thousand two hundred united states dollars (US\$1,200.00) over the eight (8) months that she was away. She continued thereafter to travel to New Jersey for a few months during most years of the marriage for the purpose of earning an income to support both the Respondent

and herself. Up to the date of her affidavit at May 24th 2011, the Respondent continued to use the washing machine, take baths, and cook while failing to contribute to the cost of utilities.

[17] During the course of the marriage, the Petitioner said that the Respondent was abusive and on several occasions the police had to be called. She now lives like a hermit confined to her bedroom as the Respondent enters and exits the matrimonial home at all times and at odd hours without regard to her security. Communication between them had entirely broken down.

[18] Whenever the Petitioner traveled to the United States of America, the Respondent remained in the matrimonial home and took care of her pets, a dog and a cat. She purchased the pet food in advance and the Respondent was only required to feed her pets.

[19] According to the Petitioner, the matrimonial home is her sole asset after 45 years of working and without it she would be forced to live on the street. Due to her age and level of income she did not believe that she would be able to qualify for a loan to establish another home. She expressed the view that the Respondent being much younger than her, he had many more working years left.

The Respondent's evidence

[20] The Respondent is a Saint Lucian by birth. It was his first marriage. He is the father of six (6) male children three (3) of whom are under the age of eighteen (18) years old and he said that up to the time of trial he was supporting all of them.

[21] He said that after marriage the Petitioner and himself lived with his aunt, Ms Cynthia Hodge rent free for over one (1) year. His aunt also provided the Petitioner a place to operate her nail salon. The arrangements were made with a view to them saving expenses so they could acquire the property.

[22] In his affidavit the Respondent said that he was a labourer and mason during the day and in the evening he raised pigs. At the trial he said his only occupation was that of burning charcoal for a living. The making of charcoal occupied his entire

day as he went to watch the pit every day. He agreed that he had no other permanent job when this was put to him in cross examination, and added that he did not have time to do anything else. He said that every Friday when he sold his charcoal he gave the Petitioner his money to “make message” and buy groceries.

[23] In his affidavit the Respondent said he had worked exceedingly hard as a mason during the day, and late in the evening rearing pigs and it was from these sources that he acquired the financial means to assist the Petitioner in the joint acquisition of the parcel of land.

[24] He denied it when it was put to him that his wife purchased a weed-eater to help him earn extra income. He agreed that she purchased a chainsaw to help him but it was stolen. He denied that his wife bought him work boots, or trowels for mason work.

[25] In regards to the post nuptial agreement, he denied the agreement. He said that he never signed the agreement and the signature on the agreement was not his signature. Further, he said he could not read or write, and that he never had independent legal advice and the agreement was obtained by undue influence. Under cross-examination the Respondent said that the only agreement he remembered was the agreement to purchase the parcel of land for the house. The agreement never contemplated the acquisition of the property at Saint Lucia since the Petitioner was an alien and therefore did not have the requisite qualification of an alien landholding licence, to own land. It was in the ‘spirit of matrimony” that he caused the Petitioner’s name to be added to the deed to show good faith and that the property belonged to the both of them.

[26] The Respondent in his affidavit also said that at all times the Parties conducted their marital business with a common intention and it was by their joint efforts that the property was acquired.

[27] When asked if he paid for the land from charcoal, he said. “I was working and what I had I gave towards it.” The Petitioner invested his money with her money as they put their heads together.

- [28] Under cross-examination when asked if he was telling the Court that the matrimonial home and parcel of land were purchased for thirty six thousand, four hundred and thirty five dollars (\$36,435.00), he replied that he did not have the "paper for the house because it was from the handover and cousin that we bought it at that price."
- [29] When it was put to him in cross-examination that he didn't know how the parcel of land and matrimonial home were acquired because all of the funds came from the Petitioner, he said
- "Well when the house and land was bought, my wife was an alien, when we went to see the lawyer, the lawyer said that I will have to pay to have her name to be put on the document and I paid for it."
- [30] He said that he never kept receipts as he never contemplated the breakdown of the marriage. It was on the advice of the attorney-at-law that he added the Petitioner's name to the deed.
- [31] He denied the Petitioner's statement that she had sold her property at New Jersey to gain the funds to purchase the parcel of land and construct the matrimonial home. Further he said that when the parcel of land was being purchased and the matrimonial home constructed, the Petitioner did not tell him that she was purchasing the parcel of land with her separate funds.
- [32] He also said that from the time the Petitioner came to Saint Lucia she travelled overseas twice per year and while she was overseas she did not leave with him or send to him any money for expenses incurred at the matrimonial home.
- [33] When he was asked about the police attending the matrimonial home on at least three (3) occasions, he said that it was he who telephoned the police when the Petitioner did such things as put dog droppings in his room and remove his passport. Since the divorce, the Petitioner made him to understand that he was going to have to pay her rent.

- [34] Under cross-examination the Respondent denied throwing water on the Petitioner's transformer, in her television and spreading water throughout the house. He also denied punching a hole in the Petitioner's bedroom door.
- [35] The Respondent said that a few years after purchase of the parcel of land, and construction of the matrimonial home, the Petitioner told him that she had obtained her citizenship and that she did not need him anymore, and that she wanted him to remove his name from the property. When he asked her why? She told him "just so". He said to her "now you have what you want, you want my name removed? She said "Yes". He said "after all my hard work and sweat ...you want my name removed?" She said "Yes".
- [36] Under cross-examination, he repeated that all the money did not come from the Petitioner and said that it was for this reason she asked him to "sign off" the matrimonial home and gave him a motor car. After he had repaired the motor car, she took it back and sold it because he would not sign a deed transferring his share to her.
- [37] The Respondent said that he only ever knew the Petitioner to be a nail technician as this is what she had told him was her occupation and she had said that she got very little income from the United States of America. She had also told him that she had suffered ill-treatment at the hands of the first husband and so she wanted a "good matrimonial relationship". The Petitioner was not forced to go New Jersey to work for eight (8) months over the years.
- [38] He denied that the utility bills for the house were usually in arrears upon the Petitioner's return always supported himself and his household.
- [39] The Respondent said that the Petitioner fabricated the stories about her health and age to avoid him having a roof over his head and her evidence was calculated to leave him destitute and on the street.

The Law

- [40] The Petitioner pursuant to her application for ancillary relief seeks the matrimonial home be declared her sole and separate property. In effect, the Petitioner seeks an order transferring the property now in their joint names to her sole name. The Respondent seeks that the property be declared community property and sold so that he can be paid a half share of the proceeds. They both seek a “property order” pursuant to section 45 of the Act.
- [41] Ancillary relief is determined by reference being had to both the Civil Code and the Divorce Act² and the procedure by reference to the Divorce Rules 1976. The Act at section 53 provides that where there is a conflict between any other law, the Civil Code in this instance and the Act, then the Act shall prevail.
- [42] To the Court the starting point in determining ownership is the Civil Code. The Civil Code sets up what is deemed to be separate property and property of the community (community property) in a marriage. The Civil Code provides:
- “ 1188. With respect to marriages taking place after the coming into operation of this article there shall be only one kind of community property, namely: legal community, the rules governing which are contained in this Chapter.
1189. Community commences from the day the marriage is solemnized: the parties cannot stipulate that it shall commence at any other period.
1190. Legal community is that which the law, in the absence of stipulation to the contrary, establishes between spouses, by the mere fact of their marriage, in respect of certain descriptions of property.
1191. Legal community may be established by the simple declaration which the parties make in the contract of their intention that it shall exist. It also takes place when no mention is made of it, when it is not expressly nor impliedly excluded, and also when there is no marriage contract. In all cases it is governed by the rules set forth in the following articles.
1192. (1) The property of persons married in community is divided into separate property and the property of the community.
- (2) Separate property comprises –

² Cap. 4.03

(a) the property, moveable and immovable, which the spouses possess on the day when the marriage is solemnized;

(b) the income and earnings of either spouse, investments in the name of one spouse, and insurance policies taken out on the life and in the name of one spouse;

(c) ...

(d) ...

(e) fruits, revenues, and interest, of whatever nature they be, derived from separate property, the proceeds of separate property, and property acquired with separate funds or in exchange for separate property.

(3) Property which is acquired by the husband and the wife during marriage in any manner different from that above declared is the property of the community.

1193. (1) Property is deemed to be the joint acquisition of the community unless it is admitted or proved to have belonged to, or to have been in the legal possession of one of the spouses previously to the marriage, or, if acquired in one of the ways set out in article 1192, or to otherwise belong to one of the spouses only.

Provided however, that where property is acquired by one of the spouses while they are living separate and apart from each other by virtue of a separation deed, such property is presumed to be the separate property of such spouse unless it is admitted or proved to be community property.

(2) Where spouses purchase property in their joint names such property falls into the community unless it is expressly stated at the time of purchase that they are purchasing with their separate funds. (My emphasis)

1194. Income and earnings are the separate property of that spouse from whose separate property or by whose sole labour they come, without prejudice, nevertheless, to the liability of the spouses to contribute towards the education and the support of the children and the expenses of marriage.

In case of disagreement the judge determines the contribution, if any, to be made by either spouse in accordance with the duties, liabilities, means and circumstances of the spouses.

1195.(1) ...

(2) ...

1196. (1) ...

(2) ...

1198. Property acquired during marriage with separate funds or in exchange for separate property is separate property.” (My emphasis)

[43] The procedure and process to be used for deciding ancillary relief in this suit is found primarily in the sections 24, 25, and 45 for the Act and rules 50 and 75 of the Divorce Rules 1976. This Court continues to be very grateful for the learning on the application process set out by Edwards J. (as she then was) in **Craig Laurie Barnard v. Penelope Ann Barnard nee Bird**³.

[44] The matters to which the Court must give consideration before making an ancillary relief order are:

25. FACTORS TO BE CONSIDERED BY COURT

(1) It is the duty of the Court in deciding whether to exercise its powers under section 22,23 or 24 in relation to a party to the marriage and, if so, what manner, to have regard to all the circumstances of the case including the following matters, that is to say –

- (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;
- (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
- (c) the standard of living enjoyed by the family before the breakdown of the marriage;
- (d) the age of each party to the marriage and the duration of the marriage.
- (e) any physical or mental disability of either of the parties to the marriage;
- (f) contributions made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family;

³ Claim No. SLUHMT2001/0131

- (g) in the case of proceedings for divorce or nullity of marriage, the value of either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage that party will lose the chance of acquiring; and so to exercise those powers as to place the parties, so far as it is practicable, and having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligation and responsibilities towards the other.
- (2) ...

[45] The provision governing the Petitioner's application is:

45. The Court, on making a decree of divorce or of nullity of marriage may, if it thinks fit, on the application of either party made before the decree of divorce or nullity is made, make an order –

- (a) if any property of the parties is community property within the meaning of the Civil Code -
 - (i) directing that either party shall, for such time as to the Court may seem fit, be entitled to the use or usufruct of a part or the whole of such property, or
 - (ii) declaring either party forfeit to the other of his or her share of a part or of the whole of such property; or
- (b) if any property of the parties or of either of them is separate property within the meaning of the Civil Code and the Court is satisfied that the other party has made a substantial contribution (whether in the form of money payment, or services, or prudent management, or otherwise howsoever) to the improvement or preservation of such property –
 - (i) directing the sale of such property and the division of the proceeds, after the payment of the expenses of sale, between the parties in such proportions as the Court thinks fit, or
 - (ii) directing that either party pay to the other such sum, either in one sum or in instalments and either or at a future date and either with or without security, as the Court thinks fair and reasonable in return for the contributions made by that other party."

[46] The procedure for application for a property order is prescribed by the Divorce Rules rule 75:

"75 Application for property order. (1) An application for an order under Part IV⁴ of the Act (herein referred to as a "property order") shall be made by summons.

(2) There shall be filed with the application an affidavit by the applicant verifying the statements in the application and also a copy of the application and affidavit of service on the respondent.

(3) There shall be annexed to the copy of application for service a copy of the affidavit referred to in paragraph (2) and a notice in Form 28 with Form 6 attached".

[47] The status of the Petitioner as an alien, as apparently she was at the time of purchase was raised by both Parties. The Alien (Licencing) Act⁵ provides:

"2. INTERPRETATION

In this Act—

"alien" means—

- (a) a person who is not a citizen of Saint Lucia or a national of a member State;

3. LICENCE TO HOLD LAND

- (1) An alien may apply in the prescribed form to Cabinet for a licence to hold land.
- (2) Cabinet may, if it thinks fit, grant to an alien a licence to hold land as owner, or as lessee for a term of not less than 2 years, whether subject to any conditions or not.
- (3) Despite subsection (2) the Minister may, where the land concerned is not more than ½ an acre, grant to an alien a licence to hold land, whether subject to certain conditions or not, but a Minister shall not under this subsection grant more than one licence to the same alien.
- (4) A licence granted under this section shall be operative only in respect of the land described and as to the interest specified in the licence and shall be of no effect until the lease or a notarially certified copy of the licence is registered in the office of the Registrar of Lands.
- (5) Where a condition in a licence to hold land is breached, the interest of the alien in the land shall be forfeited to

⁴ Being section 45 thru to 50.

⁵ Cap. 15:37

the Government.

5. Forfeiture of land held by unlicensed alien
 - (1) An unlicensed alien shall not, after the commencement of this Act unless as otherwise provided for in this Act, hold land.
 - (2) Where an unlicensed alien contravenes subsection (1) the land, held by that alien shall be forfeited to the Government.

7. AGREEMENT TO HOLD LAND

An agreement to hold land shall not vest an interest in the land in the purchaser, where the purchaser is an alien, unless a licence to hold the land is first obtained but nothing in this section shall prevent a person, who has paid a deposit under an agreement for sale of the land, from placing a caution against the land in accordance with the Land Registration Act."

Findings

- [48] The Court believes that it is called upon to make its finding pursuant to the Civil Code article 1193(2) since there exist a deed in the joint names of the parties so there would be a presumption that the property is community property.
- [49] The Court's finding is that although the Respondent has asked the Court for a property order, he has failed to comply with the procedure to obtain such relief. The procedure pursuant to rule 75 required him to file an originating summons, he did not file one.
- [50] The Court finds as it relates to the agreement made at New Jersey that the agreement states quite clearly that it is to be interpreted pursuant to the laws of New Jersey. The Court does not believe itself competent to interpret the agreement pursuant to the laws of New Jersey. If it was that the Petitioner wished to rely on the agreement she ought to have done so by pursuing her interest in a court at New Jersey. No further comment will be made on the application of the agreement save that the Court has observed that in relation to evidence given about its existence by Respondent, like other of his evidence here too he contradicts himself.

- [51] The Court finds that while all the matters set out in section 25 of the Divorce Act are to be borne in mind, the decision largely comes down to whose financial resources provided for the purchase of the parcel of land and subsequent construction of the matrimonial home. The Parties had no children, there was no evidence as to standard of living maintained, no evidence about future responsibilities save the Petitioner's medical statement about her health and no evidence of physical or mental disability of either party.
- [52] In so far as the Respondent's evidence was concerned, it was very hard to find much consistency in his evidence. First, he said in his affidavit that he was a mason by profession and a labourer who reared pigs in the evenings and used this income to purchase the parcel of land and construct the house. Then at trial, he absolutely refuted this statement and said that he only burnt charcoal for a living and he went to his charcoal pit every day and did nothing else. He bolstered his affidavit statement about source of income by stating in his affidavit that he worked "exceedingly hard" as a mason and rearing pigs. Since the Respondent so definitively rejected his affidavits statement about him being a mason and labourer who reared pigs the Court accepts what the Respondent said at the trial and which is that he burnt charcoal for a living.
- [53] The inconsistency in the evidence of the Respondent continued when the Respondent said that every Friday after he sold his coal, and gave the Petitioner all of his money. This is contradicted by his statement that he supports all of his children and none of them are with the Petitioner. Clearly there must be deduction for his several children whom he says he supports.
- [54] A further inconsistency was when the Respondent said that he purchased the parcel of land and he only authorized the attorney-at-law to put the Petitioner's name on the deed in the "spirit of matrimony". This is contradicted when he said that it was on the advice of the attorney-at-law that he put the Petitioner's name on the deed.

- [55] Another inconsistency was seen in the Respondent's statements on the agreement. He said that he never signed it, could not read, and write. This is contradicted when he said that the agreement was procured by undue influence. The latter statement suggests to the Court that the Respondent did sign the agreement albeit he says he did so under some type of pressure.
- [56] Even putting aside the inconsistencies in the Respondent's evidence for a moment, the Respondent failed to tell the Court whether as mason or pig farmer or charcoal maker what his income was per day, per week or even per month, and there was no evidence about a savings account or other investment held by the Respondent and which proceeds were used to purchase the parcel of land. The purchase price for the parcel of land was considerable.
- [57] The Respondent also said that for a period the Petitioner and himself lived with his Aunt with a view to saving money, and this money was used for the purchase. No evidence was given as to what amount was saved and applied towards the purchase of the parcel of land. The Petitioner denies this statement and said that while they did not pay his aunt rent, the Respondent did not work and did not contribute to his aunt's household in any way. It was important for the Court to be informed of the estimated savings, especially since the Petitioner and the Respondent contradicted each other as to how long they resided with Ms. Cythia Hodge.
- [58] It was also observed by the Court that the Respondent did not give a single item of evidence about construction of the matrimonial home. Construction of a house is usually a major event in most persons lives.
- [59] In the Court's opinion, the provision of evidence of income and or at least proof of source of money such as a savings account gained further importance when it is measured against the fact that the parcel of land was purchased approximately one (1) year and nine (9) months after marriage, and the actual purchase occurred approximately one (1) month after the Petitioner migrated to Saint Lucia on July 23rd 2000.

- [60] Having regard to all the inconsistencies found in the Respondent's evidence, and his failure to provide any evidence of income, or source of money, the Court finds the Respondent's evidence to be not credible and in fact unreliable.
- [61] The Petitioner's evidence on the source of money used to purchase the parcel of land and construct the matrimonial home was clear-cut and she produced evidence to support her statement that she owned a property at New Jersey, sold that property, brought the money to Saint Lucia, and produced Scotia Bank drafts payable firstly, to the Vendor for the full purchase price of the parcel of land, and secondly, for the company and person involved in the construction of the home.
- [62] The Court therefore finds that all of the money for the purchase of the land and subsequent construction of the matrimonial home was provided by the Petitioner. It is at this juncture that the Civil Code article 1193(2) arises as both names are included in the deed.
- [63] From the evidence of both the Petitioner and the Respondent, it is clear that at the time of purchase and preparation of the deed that the Petitioner was not in possession of Saint Lucian citizenship nor an alien landholding licence. Again from the evidence of both the Petitioner and the Respondent, although at times the Respondent contradicted himself, it is clear the attorney-at-law involved in the transaction made remarks about the Petitioner's ability to hold title to the parcel land at Saint Lucia and thereafter both names were on the deed.
- [64] The Respondent appeared from his evidence to rely on the fact that the Petitioner was not a citizen of Saint Lucia nor in possession of an alien landholding licence at the time of purchase to say the parcel of land was his, and he purchased it. As stated prior, not an iota of evidence was provided to show the Respondent's financial status and capability. In addition to proof of outlay of money to purchase the land and construct the house it is the happenings before the attorney-at-law that lays to rest for the Court that the parcel of land was intended to be the sole property of the Petitioner.

- [65] There was no evidence before the Court as to the Petitioner's status post the execution of the deed. The Court does not believe that it could retroactively give the Petitioner today what she could not acquire without Saint Lucian citizenship or an alien landhold licence.
- [66] As the Court understands the Alien (Licensing) Act sections 2 and 3, since the Petitioner was an alien and did not have Saint Lucian citizenship she could not hold an interest in land without an alien landholding licence. Further, according to the said Act if the land were to be vested in the Petitioner's name in the circumstances, then it was due to be forfeited to the Government and not to the Respondent.
- [67] In light of the evidence before the Court and the Act, notwithstanding the Court's earlier finding that the Petitioner was the person who provided all the money to purchase the parcel of land and construct the matrimonial home and that from the events before the attorney or execution of the deed that the deed was intended to be in the sole name of the Petitioner, the Court can do no more than make a declaration to this effect.
- [68] The Court declares that the parcel of land registered as Block 1455 Parcel 719 was purchased by way of the sole and separate money of the Petitioner and construction of the matrimonial home was by way of the sole and separate money of the Petitioner and so it was intended to be the separate property of the Petitioner.

Conclusion

It is ordered and declared that:-

- (1) It is declared that the Petitioner is the only person who provided money for the acquisition of the parcel of land registered as Block 1455 Parcel 719, the only person who provided money for construction of the matrimonial home thereon, and it was all intended to be the separate property of the Petitioner.

(2) The Respondent is to vacate the matrimonial home and do so ninety (90) days after the making of this order.

(3) Each Party is to bear their own costs

Rosalyn E. Wilkinson
High Court Judge