BARBADOS

[Unreported]

IN THE SUPREME COURT OF JUDICADURE

HIGH COURT

FAMILY DIVISION

No. 508 of 1997

BETWEEN:

RUDEN NOEL

(Applicant)

EUDESE NOEL

(Respondent)

Before the Honourable Mr. Justice Carlisle Payne, High Court Judge

1999: March 29

2000: June 26

2001: June 13,14, 25

September 5.

Mr. William Chandler forthe Husband

Mr. Theodore Walcott for the Wife.

JUDGEMENT

Both parties have madeapplications under sections 56 and 57 of the Family Law Act in respect of thematrimonial home.

Theymet in England in 1975 and lived together in aCouncil flat from 1976. Mrs. Noel had ason then aged 10 from a previous marriage, who lived with them as part of thefamily. The son's father madecontributions to his support. Mr. Noelhad a daughter from a previous marriage who lived with her mother. He contributed to his daughter's support.

Theparties were married in 1982. They livedwell together in England. Mrs. Noel worked as a nurse (S.E.N.) and Mr. Noel worked as a polisherin a chrome business. She was the moreenterprising of the two and managed the family finances. In 1976 he received £ 2500 redundancy payfrom a previous employment and in 1979 she received a settlement of £ 2130 fromher former marriage. There was somedispute as to their respective incomes, but I find that she earned more thathe. I also find that both partiescontributed to the best of their abilities to the running of the household andto the family finances.

Theybought the land in Barbados on which the matrimonial home wasbuilt as joint tenants in 1981 for $ 13, 752.00. The home was built between1985 and 1993. On their retirement theirinsurance and pension payments were applied to finishing, fitting andfurnishing the home.

Theycame to Barbados in 1993 and moved into thematrimonial home. However, tensionsdeveloped between them in 1994, and the marriage broke down in 1995. The parties now live separate lives under thesame roof, occupying separate parts of the house.

InOctober 1997 Mr. Noel applied for dissolution of the marriage which was grantedin February 1998.

Mr.Walcott contends that the wife is entitled to a larger share of the matrimonialhome based on her larger contributions.

Correspondingprovisions to Sections 56 and 57 of our Family Law Act are found in theAustralian Legislation of 1975 and 1979. It is therefore useful to consider the judgments of the Full Court ofthe Family Court of Australia in " Potthoffv. Potthoff (1978) Family Law Cases 980 – 475 at p.77, 443, Wardhamand Hudson (1978) Family Law Cases 90 – 466 and Mahon v. Mahon (1982)Family Law Cases 91- 242.

In the PotthoffCase it was said at p. 77, 446-

……where a court under the Family Law Act is dealingwith jointly owned assets or assets which are acquired or built up by the jointefforts of the parties in a marriagewhich has lasted for a number of years, equality is in (our) view, at least theproper starting point. One should thenlook to the particular circumstances of the individual case to see whether achange from that is in all the circumstances justified. Ultimately of course each case has to bedetermined on its own individual circumstances and the individual circumstancesof a particular case may indicate that some other result is the properone. For example the need of anon-smoking mother to have suitable accommodation for young children of themarriage may obviously call for a different result."

In Wardman andHudson it was said at p. 77,384 –

It appears to us that in relation to jointly ownedproperty of parties whose marriage has broken down or in respect of a propertywhich has been acquired jointly by such parties as a result of their jointcontributions over a significant period of time at least a proper startingpoint, is that the property upon dissolution of the marriage and resolution ofthe financial issues between them ought to be treated as jointly owned andought in ordinary circumstances to be divided equally between them. This we consider is at least a strong primafacie position."

In Mahon v.Mahon it was said at p. 77, 333 -

"Although it is normally the wife who relies upon hercontribution as a homemaker and parent, there is nothing in the Act to suggestthat it is inappropriate to take this factor into account in the case of ahusband. The basic principle is thatparties to a marriage which has lasted some considerable should share theassets which each has acquired during that marriage….. andthis principle applies even where as here the parties have during theirmarriage been financially independent of each other."

In Hunte v. Hunte (1983) 18 Barb.L.R. 103, the respondent Husband

had asubstantial as compared to that of the wife as a seamstress. The facts as

found byWilliams J., as he then was, were as follows:

"My finding on the evidence as a whole is that therespondent paid for the matrimonial home and its extension and renovation. The legal title is vested in him and itbelongs to him. I find with respect tothe furniture and effects in the home that they were bought for the most partwith money provided by him. I would onthe evidence estimate 90% of the money spent on providing them would have beenhis."

He however determinedthe matter as follows:

"Her contribution as a homemaker and parent over thesubstantial period of 20 years entitles her to an equal share in the equity ofthe former matrimonial home and its contents. The home is now valued at $87,000. I make an order altering their interests so that she should have onehalf in the equity of the former matrimonial home its furniture and effects.Out-standing loans and the valuation costs must of course be deducted for thepurpose of determining her entitlement."

In this case thehusband is now aged 73 and the wife aged 71. They are both receiving a modest retirement income from the United Kingdom.

From1976 to 1994 they built a life contributing to the family purse and themaintenance of their home leading to the completion of the matrimonial home in Barbados in 1994. I can only see one factor which could justifydivision of the property otherwise than equally between them. This relates to a loan taken by the wife fromBarclays Bank in London in 1993 to help with the expenses of the matrimonialhome. She made repayments at £ 222 permonth on her own after the breakdown of the marriage up to December 1997.

Sheshould be credited with half of the payments she made after January 1996. This date was determined because the husbandwas also repaying a loan, used for fencing the property, at $300.00 per monthup to January 1996. I calculate the sumto be credited to the wife as £ 2,553.

Therewill therefore be a declaration that the equity in the matrimonial home isowned by the parties in equal shares, subject to the sum of £ 2,553 beingcredited to the wife, or being deducted from the husband's half share.

Therewill be liberty to apply.

Carlisle S. Payne

Judge of the High Court.