

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

(FAMILY DIVISION)

No. 390 of 2006

IN THE MARRIAGE OF

DOROTHY MELROSE CLARKE

APPLICANT/WIFE

AND

KEITH ANDERSON CLARKE

RESPONDENT/HUSBAND

Before The Hon. Madam Justice Kaye Goodridge, Judge of the High Court

2012: February 28

April 11, 18

May 14

2015: March 6

Beverley Lady J. Walrond QC and Ms. Nailah Robinson, Attorneys-at-Law for the Applicant/Wife.

Mr. Ryan J. L. Moseley and Mrs. Dianna Boyan-Persaud, Attorneys-at-Law for the Respondent/Husband.

DECISION

Introduction

[1] In this matter the Applicant/Wife and the Respondent/Husband have both filed applications for the determination and alteration of their

interests in property in accordance with **sections 56 and 57** of the **Family Law Act, Cap. 214** (the Act).

The Applicant/Wife's Application

- [2] The Applicant/Wife sought the following orders in her application:
- (i) An alteration of the interests of the parties in the property at No. 19 Cromer Road, Romford, Essex, England so as to vest an interest in excess of 50 percent in her;
 - (ii) That 90 percent of the property at No. 7 Clerview Drive, Clermont, St. James be vested in her;
 - (iii) That the Respondent/Husband's application in respect of all other property including his claim to the shares in Abbey Life Insurance and the leasehold in the restaurant at Walthamstow, London be dismissed.

The Respondent/Husband's Application

- [3] In his application the Respondent/Husband sought the following relief:
- (i) A declaration that he is entitled to a share/interest in the properties acquired during the subsistence of the marriage;
 - (ii) An order that the Applicant/Wife pay to him such sums as may be ordered by the court representing his share/interest in the properties, failing which the properties be sold and the net proceeds of sale apportioned between the parties.

Alternatively, he sought an order that the entire fee simple in the property situate at #7 Clerview Drive, Clermont in the parish of St. James be conveyed to him absolutely.

The Background

- [4] The parties cohabited prior to their marriage on 23 May 1981. There is some dispute between the parties as to the commencement of cohabitation. That issue will be determined later in this decision. This was the second marriage for both the Applicant/Wife and the Respondent/Husband, who each had children from their previous marriages. During the course of the marriage the parties had three children together, two of whom are deceased. The other is an adult.
- [5] After some years the marriage encountered difficulties, which led to the parties separating in October 2003. An Application for Dissolution of Marriage was filed by the Applicant/Wife on 12 July 2006 and on 25 October 2006 the court granted the decrees *nisi* and absolute dissolving the marriage.

The Court's Approach to the Applications

- [6] In the determination and alteration of the interests of the parties to a marriage, the court's approach is in keeping with the approach

outlined by our Court of Appeal in the case of **Proverbs v Proverbs**

(2002) 61 WIR 91(Proverbs), namely that:

1. The net value of the property of the parties must be identified and valued by the court;
2. The respective contributions of the parties within the terms of section **57(3)** must next be considered and evaluated;
3. The section **53(2)** factors, so far as they are relevant, should then be considered.

In addition, section **57(2)** enjoins a court not to make an order altering the property interests of the parties unless it is satisfied that, in all the circumstances, it is just and equitable to make such an order.

[7] **Section 57(3)** requires the court to take into account the following considerations:

- (a) the financial contributions, direct or indirect, which have been made by or on behalf of a party to the acquisition, conservation or improvement of the property;
- (b) the contributions which have been made by or on behalf a party to the acquisition, conservation or improvement of the property in the capacity of homemaker or parent;
- (c) the effect of any proposed order upon the earning capacity of either party;
- (d) the matters set out in **section 53(2)** of the Act in so far as they are relevant; and

- (e) any other fact or circumstance that in the opinion of the court ought to be taken into account.

[8] It must be noted that, even in cases where there has been a long period of cohabitation and marriage, (as in this case) there is no principle of equality of interests in property. See **Mallet v Mallet (1984) FLC 91-507**.

The Property of the Parties

[9] The Respondent/Husband has identified five assets/properties which he claimed that he made direct and/or indirect contributions to:

1. The house at No. 4 Hampton Road, Forest Gate, London E9 (the Hampton Road property);
2. The house and land at Cromer Road, Romford, England registered in the names of the Respondent/Husband and the Applicant/Wife (the Cromer Road property);
3. The house and land at No. 7 Clerview Drive, Clermont, St. James registered in both names (the Clerview property);
4. The 50,000 shares in the Abbey Life Insurance Co. Ltd of London (the Abbey Shares); and
5. The leasehold interest in the restaurant at Palace Parade, Walthamstow, London (the Restaurant).

[10] The Cromer Road and the Clerview properties are the existing properties which are to be settled by the court. These properties are both registered in the names of the Applicant/Wife and the

Respondent/Husband. The other assets have been disposed of. It is accepted by the parties that the present value of the Cromer Road Property is £230,000 to £240,000. The sums owed on the property consist of two mortgages of approximately £40,469.97 and £14,247.40 respectively. The equity is approximately £175,282.63 or Bds\$525,850.89 using the lower figure as the property has not attracted a buyer. It has also been agreed that, based on the latest land tax valuation, the value of the Clerview Property is \$775,000.

The Evidence

[11] Both parties filed affidavits in support of their applications, gave evidence under oath and were cross-examined. The Applicant/Wife called one witness, Mrs. Debra Byer who is her daughter.

The Applicant/Wife's Evidence

[12] The Applicant/Wife's evidence is that in 1974 the Respondent/Husband came to live with her at the Hampton Road Property which she owned. The property had at one time been mortgaged, but when he joined her it was free of any mortgage. The Respondent/Husband owned no property. She was residing with her two daughters there. The Respondent/Husband had court orders to maintain two children in Barbados and also had two children born in

England. She had a full time job as an Assistant Nurse which she held for 30 years and was in receipt of state allowance because she was a single parent.

[13] The Applicant/Wife stated that the property was a listed property and an income generating one, as part of it was rented out while she resided in the other part. The Respondent/Husband tried to do some work on the property, but because it was done incorrectly, she was unable to claim available rebates. She provided the Respondent/Husband with accommodation at her expense, especially since he was unemployed for long periods of time.

[14] It is also her evidence that she mortgaged the Hampton Road property for £2,500 in order to provide the deposit for the purchase of the Cromer Road property which cost £22,000. The remainder of the money came from a mortgage from Bradley & Bingley Building Society (Bradford) which she alone repaid. The Respondent/Husband was unemployed at the time but a friend of his who owned/operated a garage wrote a document which allowed him to get the mortgage jointly with her.

[15] Another mortgage was obtained from Midland Bank (Midland) because the Cromer Road property needed to be refurbished. The

two mortgages combined amounted to over £39,000. She paid that mortgage.

[16] The Applicant/Wife's evidence is that the Hampton Road property was rented out for about ten years after she left that property. She received that income as well as her salary. After her son died in 1985, she became depressed and was granted six months full pay leave and then six months half pay leave together with a disability allowance. Thereafter she received a disability allowance for a period of a year and then she took early retirement. She received a lump sum which was used for the benefit of the family and the properties.

[17] In 1987 the Applicant/Wife sold the Hampton Road property for £84,000, paid off the £2,500 mortgage, purchased 50,000 Abbey Life shares and deposited monies at Midland Bank.

[18] In September 1988, a deposit was paid on the land at Clerview, Clermont which was purchased for Bds \$51,971.25. The sum of \$35,400 was borrowed from Barclays Bank and she paid the remainder out of the proceeds of sale. The Applicant/Wife stated that she made regular payments on the mortgage including the period 1991 to 1993 when the Respondent/Husband was unemployed.

- [19] According to the Applicant/Wife, two mortgages were taken on the Cromer Road property for the purpose of building a dwelling house at Clermont, one for £40,000 which she paid and the other for £20,000 which the Respondent/Husband paid until 2007 when he stopped. She thereafter assumed responsibility for paying this mortgage.
- [20] For most of 1993, 1994 and part of 1995, the Respondent/Husband was in Barbados and she remitted money for him to pay the bills. She was also paying his relatives who were working on the house. The Respondent/Husband returned to England in 1995 and re-commenced work at British Oxygen Company (BOC). Work on the property came to a halt for some years.
- [21] In 1996, the Applicant/Wife decided to open a restaurant and entered into a three year lease. In 1997 she came to Barbados with £20,000 which was deposited into a Barbados National Bank account in the names of both parties, but the funds were contributed by her alone.
- [22] The Applicant/Wife took another lease of the restaurant for twelve years. Her evidence is that the Respondent/Husband was not involved in either the lease or the restaurant. He got his meals from the restaurant and he assisted sometimes with the cleaning up on evenings and on Sundays.

[23] In 2001 the Respondent/Husband was made redundant by BOC and he received £8,000 redundancy pay, a substantial part of which he used to repair his son's car which he had crashed while driving it without insurance coverage.

[24] The Respondent/Husband returned to Barbados in February 2003 and took up residence at the Clerview Property where he resided until 2007. During this time the Applicant/Wife was sending funds to him from England.

The Applicant/Wife's Witness

[25] The Applicant/Wife's witness, Mrs. Debra Ann Byer testified that she advanced monies totalling £10,779.60 to her mother for installation of gas central heating, conversion of laundry to shower and payment of building and contents insurance for the Cromer Road property which have not been repaid. This evidence was not challenged in cross-examination. Mrs. Byer also gave evidence that she took over all the paper work for the Restaurant to assist her mother. She recorded the daily takings in an accounts book. At the end of each tax year the information would be submitted to the accountant for preparation of the yearly tax return. Her evidence is that the Respondent/Husband

did not look after the accounts but some evenings and weekends he cleaned and tidied up at the restaurant.

The Respondent/Husband's Evidence

[26] The Respondent/Husband's evidence is that when he moved in with the Applicant/Wife he was employed as a welder with Sanders & Forster Ltd on a full time basis. He would bring home his weekly pay package which he gave to the Applicant/Wife unopened as she was responsible for the running of the home. The Applicant/Wife would deposit the money into their joint account at the Midland Bank. This continued until 1995. It was agreed that the parties would pool their resources. He did mechanic work on cars in his spare time in order to earn money for himself.

[27] The Respondent/Husband also testified that, when he moved into the Hampton Road Property, it was in a dilapidated state and that he repaired and renovated this property by changing the roof, installing the central heater and doing the lagging. He also put up wallpaper. It must be noted that most of the work which he alleges that he did was not put to the Applicant/Wife during cross-examination. Accordingly, the court does not have the benefit of her evidence on this matter.

- [28] It is the Respondent/Husband's evidence that in 1975 he and the Applicant/Wife borrowed the sum of £2,500 from the Beneficial Finance Society of London, part of which was used towards repairs and the remainder was paid towards the deposit for the purchase of the Cromer Road Property. According to the Respondent/Husband, this loan was repaid by both parties out of their joint savings at the Midland Bank. That account was subsequently moved to HSBC.
- [29] The parties next obtained a mortgage of £27,600 to purchase the Cromer Road Property which was repaid by the Respondent/Husband and the Applicant/Wife.
- [30] In 1988, the Respondent/Husband and Applicant/Wife came to Barbados and jointly obtained a loan of \$35,400 from the then Barclays Bank Plc. which was used for the purchase of a parcel of land at Clerview Drive, Clermont St. James in their joint names. Before the loan was obtained, the parties had deposited the sum of £20,000 which came from monies derived from part of the shares that were bought in Abbey Life and some from the joint savings held at Midland Bank. The Respondent/Husband was working for BOC and was still giving the Applicant/Wife his wages.

- [31] The Respondent/Husband testified that he was made redundant in 1990 by BOC, and he received the sum of £8,000, the majority of which he applied towards the construction of the Clerview Property.
- [32] It is the Respondent/Husband's evidence that in 1994 the parties obtained a loan from UCB Home Loans Corporation Limited in England to assist in the construction of the Clerview Property. It was agreed that one party would pay the interest and the other the loan. The Respondent/Husband exhibited his bank statements for the period 28 January 2006 to 27 January 2008 showing monthly payments ranging from £123.17 to £143.91 by way of direct debit from his personal account at HSBC.
- [33] The Respondent/Husband stated that he was later re-employed by BOC and in 2001 he was again made redundant. He received a redundancy payment of £15,000. From this payment, he invested the sum of £6,000 and brought the remainder to Barbados which was deposited in the joint account at BNB. The money was then used to further the work on the Clerview Property.
- [34] The Respondent/Husband's evidence also is that he hired masons to work on the construction of the house. He directed the back hoe operator where to excavate. He supervised the construction and

- performed the tasks of steel bender and labourer. He purchased various building materials using his funds. The original plans were changed to include a carport/garage, steps leading into the back garden and a balcony which he built.
- [35] On his return to England in 2001, he shipped a container with furniture, fittings and household equipment to Barbados for use at the Clerview Property. This was partly financed by a loan of £7,583.00 from First Direct of England.
- [36] The Respondent/Husband later returned to the Barbados and lived at Clerview between 2002 and 2007. During this time he paid the water, electricity and land tax bills.
- [37] He gave evidence that he and the Applicant/Wife purchased the leasehold of the property at Palace Parade with funds held in a joint account. They bought fittings for the restaurant and he built and installed the stainless steel work tops in the kitchen. He kept a daily record of the takings and the outgoings for the restaurant which were entered in a special book bought for that purpose.
- [38] The Respondent/Husband testified that during evenings, off days and weekends he did most of the cleaning around the restaurant as the

Applicant/Wife was busy cooking. He also served at the till, waited tables and helped to prepare the meat and fish in the kitchen.

The Submissions of the Parties

[39] Counsel for the parties both filed written submissions in this matter.

The Applicant/Wife's Submissions

[40] Lady Walrond QC, Attorney-at-Law for the Applicant/Wife, submitted that the Applicant/Wife provided the Respondent/Husband with accommodation, at her expense, when he came to reside with her at the Hampton Road Property. This was a contribution on her part to the Husband. The purchase of the Cromer Road Property, including the deposit for its purchase, came from charging her Hampton Road Property with the money for the deposit.

[41] Lady Walrond QC pointed out that it was the sale of the Hampton Road Property for £84,000 which allowed the Wife to pay off the small mortgage, purchase 50,000 Abbey Life shares and to place monies in the Midland bank. The Respondent/Husband she said did not carry out renovations and repairs to the Hampton Road Property. It was denied that he made any such contribution to the acquisition of the shares.

[42] Counsel referred to the fact that the initial money towards the construction of the Clerview Property was the sum of \$69,103.22 which was deposited by the Applicant/Wife into the Barclays Bank account in December 1992. Two mortgages were subsequently taken on the Cromer Road Property for the purpose of building the Clerview Property. She submitted that it was the Applicant/Wife who paid the mortgage of £40,000, while the Respondent/Husband paid the mortgage of £20,000. She posited that when the Respondent/Husband stopped payment in 2007, the Applicant/Wife assumed responsibility for that amount.

[43] It was also submitted that during the course of the marriage the Respondent/Husband was unemployed for a substantial period of time, and that he was not in any position to maintain the Applicant/Wife. There was no pooling of monies as stated by the Respondent/Husband.

[44] Counsel submitted that the Respondent/Husband has had the use of the motor car which the Applicant/Wife stated that she purchased when they were coming to Barbados. He was the returning national as she is Jamaican by birth and the car was brought into the island in his name for their use but the marriage broke down. It is contended by

the Applicant/Wife that, because she had been burdened with debt, she asked the Respondent/Husband to take the loan for the car in his name and the restaurant funds paid that loan. This was not a gift from the Respondent/Husband to her.

[45] It was further submitted that the Respondent/Husband was not involved in either the lease or the restaurant, despite his claim to the contrary. She pointed to the lease which the Respondent/Husband stated that he was a party to, and asked the court to note that the lease did not carry his name as a party. The Applicant/Wife no longer operates the restaurant.

[46] Based on the foregoing, counsel submitted that it is totally inequitable for the Respondent/Husband to be asking for the Clerview Property which is free of any encumbrances, and to suggest that the Applicant//Wife should be given the Cromer Road Property in England. The Applicant/Wife had shown that she provided large sums towards both properties, and the court should alter significantly the ownership rights of the parties in the properties and grant her no less than 90% in the Clerview Property and an interest in excess of 50% in the Cromer Road Property.

The Respondent/Husband's Submissions

- [47] Mr. Ryan Moseley, counsel for the Respondent/Husband, submitted that the Respondent/Husband made an indirect and direct financial contribution and non-financial contribution to the Hampton Road property towards the preservation and improvement of the property by carrying out repairs and renovations to the said property. He maintained a joint account with the Wife at Midland Bank into which the parties placed their monies. It was these funds which were used to repay the loan of £2,500 which was the deposit for the purchase of the Cromer Road property. He was therefore entitled to a share in the proceeds of sale.
- [48] It was submitted that the Respondent/Husband played a significant part in taking care of the Applicant/Wife's children while she worked nights thereby indirectly contributing to his Applicant/Wife's career and earnings. His contribution as a homemaker ought to be assessed in a substantial and not merely in a token way. He alone maintained the family when the Applicant/Wife was not employed, and therefore contributed to the household expenses of the family.
- [49] Counsel further submitted that the Cromer Road and Clerview properties were acquired from joint savings held on the joint accounts

of the parties. The Respondent/Husband, he argued, made a significant contribution towards the conservation and improvement of these properties and he was entitled to a significant interest thereof.

[50] Counsel also submitted that the leasehold of the restaurant was purchased with funds that were held in the parties' joint account. The Respondent/Husband built and installed stainless steel work-tops in the kitchen. He kept daily records of the takings and outgoings from the restaurant and worked at the restaurant during evenings, weekends and off-days, and did most of the cleaning around the restaurant. According to counsel, the evidence clearly shows that the Respondent/Husband did assist with the operation of the restaurant and he is therefore entitled to an interest in the business.

[51] It was counsel's final submission that the Respondent/Husband is (i) the legal owner of the existing vehicle; and (ii) entitled to a 60% share or interest in the Cromer and Clerview properties.

DISCUSSION

The Commencement of Cohabitation

[52] It is the Respondent/Husband's case that he met the Applicant/Wife sometime in 1966 and that they started cohabiting at her residence, the

Hampton property in December 1967. He was then employed by London Transport.

[53] Under cross-examination, the Respondent/Husband said that he was recruited in Barbados by London Transport and left Barbados for England in November 1965. He got married on 17 September 1966 and had a son who was born in December 1966. He left London Transport in 1967. The Respondent/Husband admitted that paragraph of his affidavit of 16 March 2012 stating that he worked for London Transport for 2 ½ years was incorrect.

[54] The Applicant/Wife denied any knowledge of the Respondent/Husband's employment at London Transport, stating that they had a visiting relationship which started in 1970 and that cohabitation began in 1974 when he moved into the Hampton property.

[55] The Applicant/Wife's witness, Mrs. Byer, who is her daughter, gave evidence on this issue. She testified that she was born on 25 July 1965 and was about eight years old when the Respondent/Husband came to live at her home. She first knew of him when she was about four years old.

[56] During cross-examination, the witness stated that the Respondent/Husband moved into the home around 1973 or maybe longer. She testified that when she was very young the Respondent/Husband would come and visit and her aunt would look after her and her sister as their mother worked nights for the most part. It was after the Respondent/Husband moved into the home that he would take care of them.

[57] This witness was forthright in her responses to the questions posed by counsel. Having observed her demeanour, the court formed the opinion that she was a truthful witness. The court preferred the evidence of the Applicant/Wife and her witness to that of the Respondent/Husband which it regarded as entirely self serving on this issue. It is the finding of the court that cohabitation between the parties started in 1973.

Evaluation of the Parties' Contributions

[58] I turn now to evaluate the evidence of the Applicant/Wife and the Respondent/Husband as it relates to their contributions to the Cromer Road and Clerview properties. Before doing so, it is necessary to determine whether (i) the Respondent/Husband made any contribution towards the Hampton Road property at all, and if so, (ii) in what way

and (iii) the value of such contribution because it was the proceeds of sale of this property which were used to acquire the other assets.

[59] It must be stated that in assessing the credibility of the Respondent/Husband I found him to be a less than candid and truthful witness when his evidence was tested under cross-examination.

The Hampton Road Property

[60] It is not in dispute that when the parties commenced cohabitation the Applicant/Wife was the sole owner of a major asset, the Hampton Road property, which she obtained when her previous marriage was dissolved. This was a substantial contribution on the part of the Applicant/Wife to the family. The Respondent/Husband brought no property into the relationship and he made no direct or indirect contribution, financial or non financial, towards the acquisition of the Hampton Road property.

[61] The issue which next arises is whether the Respondent/Husband made a non-financial contribution to the conservation and preservation of this property. The Respondent/Husband testified that he undertook repairs and renovations to this property which was in a dilapidated state when he moved in. He changed the roof, installed the central heating and did the lagging.

[62] The Respondent/Husband gave no indication as to cost of this work or of the sums expended. While I am prepared to accept that the Respondent/Husband put up wall paper in the children's rooms and did some work to the bathroom, it is my finding that the work which he did was not on the scale and to the extent asserted and amounts at best to a *de minimis* contribution. I accept the Applicant/Wife's account of the work the Respondent/Husband did on the expansion of the bathroom. In this regard, rather than contribute to its improvement and conservation, his efforts had the contrary effect.

[63] It is also the contention of the Respondent/Husband that he took care of the Applicant/Wife's children while she worked at night and that this was an indirect contribution to her career and a direct contribution to the family as a whole. Therefore his contribution as a homemaker ought to be assessed in a substantial and not a token way.

[64] I accept that the Respondent/Husband assisted in caring for the children and as such made a contribution as a homemaker. However the court must also take into account the fact that the Applicant/Wife also made a contribution as a homemaker.

[65] Having regard to the above, I hold that the Respondent/Husband made an indirect contribution to the preservation and improvement of

the Hampton Road property, which contribution was minimal in nature.

The Cromer Road Property

[66] The evidence discloses that the Applicant/Wife mortgaged the Hampton Road property for £2,500 in order to obtain the deposit for the purchase of the Cromer Road property. The remainder of the money for the purchase of Cromer Road in 1977 came from a mortgage from Bradford. Since this property needed to be refurbished, the parties subsequently obtained another mortgage from Midland and the first mortgage was transferred from Bradford to Midland. The total sum involved was £39,000. These mortgages were eventually transferred to UCB Home Loans.

[67] The Respondent/Husband's testimony is that the deposit was repaid by the Applicant/Wife with his assistance. This was denied by the Applicant/Wife who stated that the loan fell into arrears because she was unable to make full payments and that the money was repaid out of the proceeds of sale. When questioned about this in cross-examination, the Respondent/Husband did not dispute that the mortgage was paid off by the Applicant/Wife when she sold the property. Having heard both parties, I accept the evidence of the

Applicant/Wife in this regard and hold that the Respondent/Husband did not contribute to the deposit.

[68] It has also been alleged that there was an agreement for the pooling of financial resources by the parties. The Respondent/Husband testified that he was employed throughout the existence of the relationship and that he gave the Applicant/Wife his weekly pay packets unopened as she was responsible for the running of the home and that this continued up to 1995. I find it difficult to reconcile this evidence with the evidence that he was obliged to support two children in England.

[69] The evidence discloses that the Respondent/Husband was employed until 1976 with Sanders & Forster Ltd. From 1978 he was employed with BOC until he was made redundant in 1991. As for the Applicant/Wife, I accept that she was in full time employment until 1985 and thereafter received payments from her employer until she took early retirement and was paid retiring benefits. It must be remembered too that the Applicant/Wife was receiving rental income for Hampton property for a period of 10 years. Consequently I do not accept that the Respondent/Husband was solely responsible for supporting the family from 1985 as he has alleged. My assessment

of the evidence is that both parties were contributing to the welfare of the family.

[70] It is the Respondent/Husband's contention that both parties repaid the mortgage. This was denied by the Applicant/Wife whose evidence is that she alone repaid the money. I accept her evidence on this point. However, the Respondent/Husband was employed with BOC from November 1978 until March 1991 and again from 1995 until 2000. I am of the opinion that although the Respondent/Husband did not pay the mortgage he would have made some financial contribution to the running of the household during these periods. This is a small indirect contribution to the acquisition of the property.

The Abbey Life Shares

[71] The Applicant/Wife's case is that she purchased 50,000 shares at Abbey Life with some of the money which she received when she sold the Hampton Road property for £84,000. The shares were subsequently disposed of and the proceeds used in connection with the Clerview property. This was not seriously contradicted by the Respondent/Husband and I accept her evidence on this matter. The Respondent/Husband claimed to be entitled to an interest in those shares on the basis of his undertaking repairs and renovations to

Hampton Road. It is my finding that the Respondent/Husband is not entitled to any interest in these shares or the proceeds of the disposal thereof.

The Clerview Property

(a) Acquisition of the Land at St. James

[72] In 1988 the parties came to Barbados and entered into an agreement for the purchase of the land at Clerview, St James in the amount of Bds.\$51,971.25. A deposit was paid and the parties jointly obtained a mortgage in the sum of Bds.\$35,400.00 from Barclays Bank. The Applicant/Wife asserts that she provided the funds for the deposit, not the Respondent/Husband, as she had funds from the sale of the Hampton property.

[73] Furthermore I find it difficult to accept the Respondent/Husband's evidence that he was assisting with the repayment of the mortgage between 1991 and 1993 for the following reasons. The Respondent/Husband's testimony is that during 1990 to 1995 he was self employed driving mini cabs. The Applicant/Wife gave evidence that he drove mini cabs for about 18 months.

[74] However, when confronted with a letter which he had written to Havering Council stating that he was unemployed from 1991 to 1993

and not in receipt of unemployment or any other monies whatsoever, the Respondent/Husband stated that statement was not "exactly true".

It must be noted that the Respondent/Husband also stated in the letter that the Applicant/Wife was receiving invalidity benefit. I do not accept his evidence as being truthful in this regard and I hold that he was unemployed during this time.

[75] My assessment of the evidence on this issue is that the majority of the funds for repayment of this loan was provided by the Applicant/Wife.

(b) The Construction of the Clerview Property

[76] Construction of the home started in early 1993 and was carried out over a period of time. I accept the evidence of the Applicant/Wife that she deposited \$69,103.22 into the Barclays Bank account on 29 December 1992 and that this money belonged to her. It was these funds which were used to start the work.

[77] The evidence disclosed that the Respondent/Husband came to Barbados and remained there during the initial construction of the property. I accept that he supervised the work while the Applicant/Wife remained in England and that he used his skills as a steel bender.

- [78] The receipts which the Respondent/Husband produced for the purchase of materials in 1993 clearly established that he could not have been in England driving minicabs as he claimed during this time.
- [79] The court also accepts the evidence of the Applicant/Wife that she brought £15,500 in cash to Barbados in 1997 which was placed on an account at Barbados National Bank which was in the names of both parties. The Applicant/Wife was at this time operating the Restaurant and the Respondent/Husband was employed by BOC. It is my finding that he might have contributed in some way to the accumulation of these funds.
- [80] Work on the property was suspended for some time before it was restarted and completed in 2002. It is agreed by the parties that the Cromer Road property was remortgaged in order to obtain £20,000 for renovation of that property and to assist in completing Clerview. It is accepted by the court that the Respondent/Husband repaid this mortgage from August 2000 until early January 2008 and that the Applicant/Wife is currently repaying the same.
- [81] The Respondent/Husband deposed that in 2001 he sent a container with furniture, fittings and household items for use at Clerview which was partly financed by a loan of £7,583 from First Direct. What is

interesting about this claim is that the document which he exhibited relates to a period starting in 1995 and therefore it could not be a loan for anything done by him in 2001. I therefore do not accept the evidence of the Respondent/Husband in this regard.

[82] On the evidence tendered, I am satisfied that the Applicant/Wife made substantial financial contributions to the construction of the property. I am also satisfied that the Respondent/Husband made a direct financial contribution and a non financial contribution to the construction.

The Restaurant

[83] The Respondent/Husband claims to be entitled to an interest in the restaurant. He stated that he and the Applicant/Wife were parties to the lease which was purchased with funds held in the parties' joint account at Midland Bank. There is difficulty in accepting his evidence as the lease which was exhibited was only in the name of the Applicant/Wife. Further I accept the evidence of Mrs. Byer that she did the bookkeeping for the business and that an accountant completed the yearly tax returns. I saw and heard her and found her to be a witness of truth. I reject the evidence of the Respondent/Husband that he kept the accounts for the business.

[84] It is the finding of the court that the Respondent/Husband assisted sometimes with cleaning up on evenings and weekends. I hold also that the Respondent/Husband did not work at the restaurant for a year.

[85] I accept the Applicant/Wife's evidence that the money earned from the operation of the restaurant was used in the construction of Clerview. Any interest to which the Respondent/Husband is entitled is in my opinion minimal in nature.

The Section 53(2) Factors

[86] I now consider the **section 53(2)** factors relevant to this case.

1. The age and state of health of the parties

[87] The Applicant/Wife is 77 years old. She suffers from hypertension and has problems with her heart. The Respondent/Husband is 70 years old and suffers from diabetes.

2. The income, property and financial resources of each of the parties and the physical and mental capacity of each of them for gainful employment

[88] The Applicant/Wife is retired and receives a pension from the National Health Service in the United Kingdom and a state pension. The Husband is retired also and receives state pension benefit. He has a £40,000 investment benefit with Abbey Life from which he gets a monthly pension.

3. The financial needs and obligations of each of the parties

[89] There are outstanding mortgages on the Cromer Road property. As stated earlier, the Applicant/Wife agreed to pay the first mortgage of approximately £40,000 and the Respondent/Husband undertook to pay the second mortgage of £20,000. However the Respondent/Husband paid mainly the interest and ceased payments in January 2008. The Applicant/Wife is the one who has been making payments on both mortgages. She also pays the house insurance annually.

[90] The Applicant/Wife pays the land tax on the Clerview property in addition to clearing off the arrears of land tax which were accumulated when the Respondent/Husband resided in the property. This pattern of behaviour by the Respondent/Husband is consistent with the Applicant/Wife's evidence of his attitude to financial matters during the marriage and fortifies my reasons for preferring her evidence over his.

4. The duration of the marriage

[91] The parties in this case cohabited from 1973 until they were married in 1981 and they separated in 2003. They were together for 30 years. This is a case where the Applicant/Wife was the "go getter" and the Respondent/Husband was the passive partner.

5. Any fact or circumstance that, in the opinion of the court, the justice of the case requires to be taken into account

[92] The Applicant/Wife has been residing at the Clerview property alone since 2007, while the Respondent/Husband has been renting an apartment.

[93] Having weighed the contributions of the Applicant/Wife and the Respondent/Husband and taken the relevant **section 53(2)** factors particularly the length of the marriage into account, I am satisfied that it is just and equitable to alter the parties' interests in the Cromer Road and the Clerview properties in the following manner. I hold that the Applicant/Wife is entitled to a 65% share and interest and the Respondent/Husband a 35% share and interest in the Cromer Road property. I also hold that the Applicant/Wife is entitled to a 70% share and interest and the Respondent/Husband to a 30% share and interest in the Clerview property.

[94] The evidence discloses that neither party is in a position to pay out the other party. I do not consider it just to order the Applicant/Wife to vacate the Clerview property as suggested by counsel for the Respondent/Husband since she is residing there.

[95] Further, it is the opinion of the court that the Cromer Road property should be sold and the net proceeds distributed between the parties in

the percentage of 65% to the Applicant/Wife and 35% to the Respondent/Husband as stated above.

[96] The parties gave evidence in relation to a 1989 Vauxhall motor car which is now very old. There is no application for orders under **sections 56 and 57** of the **Act** in relation to this vehicle. The court declines to make an order which has not been sought by the parties.

DISPOSAL

[97] It is therefore ordered as follows:

1. Pursuant to **section 57** of the **Act**, the interests of the parties in the property known as No 7. Clerview Drive, Clermont St James is altered so as to vest a 70% share and interest in the Applicant/Wife and a 30% share and interest in the Respondent/Husband;
2. Pursuant to **section 57** of the **Act**, the interests of the parties in the property known as No. 19-21 Cromer Road, London Road, Romford, Essex, England is altered so as to vest a 65% share and interest in the Applicant/Wife and a 35% share and interest in the Respondent/Husband;
3. That the Cromer Road property be sold and that after all existing liabilities are discharged, the net proceeds be distributed between the parties with the Applicant/Wife receiving 65 % and the Respondent/Husband 35% thereof;
4. The Applicant/Wife shall pay to the Respondent/Husband the equivalent of the value of his 35% share in the Clerview property from her 65% share in the proceeds of sale of the Cromer Road property;

5. Current valuations of the properties be obtained with the costs of such valuations being borne equally by the parties;
6. Each party shall bear his or her own costs on both applications;
7. Liberty to apply.

KAYE GOODRIDGE
Judge of the High Court.