

TRINIDAD AND TOBAGO

**IN THE HIGH COURT OF JUSTICE
MATRIMONIAL**

H.C.A. NO. M.163 OF 1998

BETWEEN

**SHARFRAN SOOKDEO
(also called
Shafferon Sookdeo)**

PETITIONER

AND

MAHASE SOOKDEO

RESPONDENT

Before The Honourable Mr. Justice Stollmeyer

Appearances:

Mrs. K. Gonzales for the Petitioner

Ms. C. Gobin for the Respondent

JUDGMENT

This application concerns a property at 6th Street, Five Rivers, Arouca, Trinidad ("The Arouca Property"). It is for a transfer or settlement of that property in favour of the Petitioner or the payment of a lump sum to her and is brought by her Notice of 2nd November 1998. The Notice is supported by the Petitioner's Affidavits of 29th January 1999 and 16th November 1999. The Respondent's

Affidavit in opposition was filed on 13th May 1999 and on 4th January 2000 certain Particulars were filed.

Certain of the facts are not in contention or can be easily discerned. The parties were married on 8th October 1967. The husband was then twenty, he is now fifty-four, and the wife was then seventeen. She is now fifty-one. A Decree Nisi was pronounced on 9th July 1998 and there was therefore a marriage of some thirty-one or thirty-two years, although the parties have not lived together on a continuous basis since 1993. There are three children. The youngest is now nearly twenty-eight and there is no contention that there is no necessity to make any provision for any of them.

The husband and wife migrated to the United States, New York to be precise, in early 1979. They did so to make a better life for themselves and their family as indeed do so many other citizens of this country. They both worked. The husband initially as a gas pump operator earning US\$240.00 per week, then as a driver and then as a store clerk at US\$480.00 per month. At some time he took up employment with the New York City Department of Sanitation at a salary of US\$400.00 per week. He also had part time employment as an auto mechanic and doing various odd jobs between 1989 and 1993. He does not say with whom or at what remuneration. In the event he retired from the New York City Department of Sanitation in 1994 and returned to Trinidad and Tobago in 1995. He lives in the subject property with his new companion and their child and his income is derived from rental of two apartments there.

The wife worked initially as a baby sitter at some US\$225.00 per week and subsequently as a Home Help Aide, particularly caring for the elderly. She worked for the United Cerebral Palsy Associations of New York State Inc. from 1980 up to 1988 at least, earning a weekly salary of about US\$442.00, and also held several other part-time or temporary jobs. She still lives in the United States and has now no intention of returning to Trinidad and Tobago.

During the time the husband and wife lived in New York together, certain properties were acquired. First, the apartment in Manhattan where they lived (“the Manhattan Apartment”). This was rented initially and then purchased. It is vested in the husband’s name and it is valued at approximately US\$75,000.00. Second, there is a property at Queens in New York (“The Queens’ House”). The circumstances of its acquisition and its beneficial ownership is in contention but I am not required to determine any of those issues. Suffice it to say it is now vested in the wife’s name and was apparently initially vested in the names of the parties’ elder daughter, Diane and her husband, Roger Basant, when it was acquired in 1989. There was a loan to acquire this property and the daughter and son-in-law are responsible for it being paid. The mortgage loan is in their name. This property is said to be worth some US\$275,000.00.

The application before me, it should be noted, is restricted solely to the Arouca Property. I would have thought it appropriate that all the matrimonial assets be dealt with but this is not the case, for whatever reason. Nevertheless their existence is not to be ignored.

The Arouca Property was conveyed to the husband by deed dated 20th November 1988, registered as No. 20625 of 1988. Plans were drawn for construction of a building on it and construction started in 1993/1994. The husband travelled regularly to Trinidad and Tobago to oversee construction which progressed slowly, it would seem, and he then returned to this country in October 1995.

The principal issue for determination is the contributions made by the husband and wife respectively with respect to the construction of the building on the Arouca Property. I am satisfied from the evidence that contributions were made by both parties but it is the apportionment of those contributions that presents the difficulty – as is so often the case. This task is made no easier by the conflicting evidence of the parties, both on affidavit and as given by each of them in cross-

examination, the latter being on occasion either inconsistent or contradictory with what they may each have said on affidavit.

As an example, the husband claims he funded the purchase of the Queens' House but in cross-examination he says he put it into the names of the daughter and son-in-law for reasons which I find difficult to accept. He admits that the mortgage loan on this property is in the name of the daughter and son-in-law. Additionally, he says on affidavit that on one visit to Trinidad the wife took away his passport and "green card" and that he could not return to New York for some ten weeks. In cross-examination he said it took him some ten months to do so.

But it is the wife's evidence that gives me particular cause for concern. For instance, she fails to disclose the transfer of the Queens' House to herself in February 1999 and when presented with a copy of the documentation effecting this transfer she became noticeably subdued. Second, her explanation for this transfer strains the bounds of credulity. She says it was to facilitate the son-in-law's acquisition of a property in Florida without having to pay a deposit on the account of the purchase price, and that when this purchase is completed the Queens' House is to be transferred back to her daughter and son-in-law. The evidence, however, is that the daughter and son-in-law separated at least a year ago and the daughter is living with a third party in the Queens' House, together with the child of that relationship. Further, the property in Florida, says the wife, is being in the process of being acquired by the daughter and son-in-law, their children and the parents of her son-in-law. This acquisition, she says, should be completed "soon". But she then claims that she has an appointment with her lawyer in New York on Monday 20th March 2000 (she was giving her evidence on Wednesday March 15th, 2000) about effecting this retransfer, she having already initiated this process, but she does not recall either the name, or the address, or the telephone number of this lawyer.

Additionally, the wife claims that she was injured in 1999 and cannot now work. This is another matter not disclosed in her Affidavit of 16th November 1999. She says that she was hospitalised for twenty days but does not recall when. And this evidence comes from a qualified Home Health Aide, someone who provides care-giving to the ill and elderly as her occupation or profession. Further, she does not condescend to say what these injuries are.

As a further example of her inconsistent or contradictory evidence, certain assertions as to dates and events as set out in her Affidavit are clearly displaced by the affidavit evidence of the husband. Examples of this are the date of their departure to live in New York and the date on which the husband retired and then subsequently returned to Trinidad.

The result of all this is that I find her evidence to be of poor quality and her to be of low credibility generally.

Dealing with the issue of contributions, first, I have no evidence of the wife maintaining a separate bank account in New York although when working in Florida in 1999 she immediately opened an account with a bank there so as to be able to negotiate the cheques by which she was paid for looking after a patient. Second, I do not accept that all her income earned, or the majority of it, would have been in cash. It stands to reason she would also have an account in New York. Third, I find suspect her assertions as to the income she earned. She claims, for example, that between 7th July 1995 and 6th November 1995 while working for the United Cerebral Palsy Associations of New York she also worked for Tina Poulous and Charles Karmioli simultaneously earning a total of US\$2,889.00 per week in addition to her salary from the United Cerebral Palsy Associations of New York of US\$442.00 per week.

In the event I have come to the conclusion as I have said that both parties contributed to the cost of construction of the building on the Arouca Property.

There is no valuation of this property in evidence. On the evidence before me, it apparently cost some TT\$300,000.00 to construct and was then insured at one time for TT\$500,000.00, which is slightly more than it is worth. I accept that some money came from New York and originated from the joint account maintained by the husband and wife at Chemical Bank in that city. I accept also that the wife remitted some US\$15,000.00 to US\$16,000.00 by way of Western Union Money Transfers to the husband while he was in Trinidad and that this money was to be used for the purpose of constructing the building on the Arouca Property. I also accept that when the husband returned to Trinidad in 1995 he brought with him US\$15,000.00 which he deposited into Bank of Nova Scotia (Trinidad and Tobago) Ltd. I also accept that a part, at least, of the proceeds of sale of the Mausica property, which the husband sold in 1997 for approximately TT\$145,000.00, went towards construction of the building on the Arouca Property.

I have not, however, been able to arrive at any precise apportionment of the respective sums contributed by the husband and the wife. The wife having supplied no evidence whatever as to her having her own bank account in New York it is probable that both the husband and the wife provided the funds which were in the joint account at Chemical Bank as well as in a second account at Citibank, but there is no means by which I can ascertain with any degree of certainty how much each of the parties may have contributed to those bank accounts.

I have not before me any evidence as to how the rental of the Manhattan Apartment was paid or by whom, nor am I able to say with any definitiveness in whom the beneficial ownership of the Queens' House is vested. From the evidence, however, it would seem probable that the mortgage loan in respect of the latter property is in fact being paid by the rentals obtained in relation to that property.

I have already remarked upon the inappropriateness of attempting to determine the fate of the Arouca Property in isolation from the rest of the matrimonial assets. It would have been far better that this be done in the context of the matrimonial assets globally. Further, the wife has made it clear that she has no intention now of returning to Trinidad to live. The husband is obviously well settled here and lives with his new partner and their child. He, equally, has no intention of returning to New York. The wife had very clearly stated at the hearing of the application her intention to take proceedings in New York relative to the Manhattan Apartment by way of having it sold and the proceeds of sale divided. From her evidence she does not regard the proceeds of sale as entirely hers. She wishes, however, to acquire somewhere else to live.

I heard this application in March 2000. After completion of addresses and before giving my decision, I indicated to Attorneys in the matter that it would appear to me that, even at that juncture, it would be preferable to adopt one of two approaches. First, to stay these proceedings pending the outcome of the proceedings to be brought in New York by the wife relative to the Manhattan Apartment and, presumably, any other matrimonial assets. Alternatively, to give my decision on the application before me, make such orders as I thought fit, but stay implementation or execution of those orders, such as they may be, until the outcome of the proceedings in New York. Each of these approaches has its drawbacks. If these proceedings are stayed, they will then lie pending and part-heard before me until such time as the New York proceedings are completed. That of itself is unsatisfactory. On the other hand, to give a decision and make orders now carry no guarantee of recognisance in proceedings before a Court in the United States, not, at least, without the husband being put to not inconsiderable expense. If there is an advantage to be derived from anything which has taken place before me thus far, it is that a decision now and staying the implementation and execution of any orders I might make will at least bring these proceedings to an end.

I have given the matter very considerable thought. I have also had the benefit of further addresses from both Ms. Gonzales and Ms. Gobin. I am now told that no proceedings have been instituted in New York and that there is no assurance that proceedings will be instituted and determined in New York with any degree of expedition. The wife is not minded to amend her Notice of 2nd November 1998 so as to seek some form of determination of the parties' respective interests in the Manhattan Apartment. The wife lives in the Manhattan Apartment, which must properly be regarded as the matrimonial home, and could possibly stay there for a considerable period of time without any agitation on the part of the husband despite her saying that she wishes to sell it and find somewhere else to live.

The circumstances of this case dictate that a determination of the application before me calls for the payment of a lump sum by the husband to the wife, rather than the transfer to the wife, or settlement on her, of an interest in the Arouca Property. As I have said, there is no valuation of the Arouca Property. The median between its supposed construction cost and the subsequent insured value is TT\$400,000.00. On the evidence before me, I am satisfied that the wife contributed to the cost of construction. On the evidence before me I accept that her income was for some time at least equal to that of the husband. Regrettably, her evidence as to her income now and as to her contribution to the cost of construction has to be viewed in the light of the quality of her evidence and her credibility generally which, as I have said, is poor. Given the length of the marriage and her contribution to the welfare of the family I would assess her share of the Arouca Property at no better than 50% of its value. The value of the Arouca Property is not far adrift from that of the Manhattan Apartment. Both parties contributed to the acquisition and maintenance of the latter. On the evidence it is reasonable to conclude that, on a balance of probabilities, they did so equally.

Given all the circumstances, the justice of this case would best be met by the Manhattan Apartment being owned solely by the wife and the Arouca Property

being owned solely by the husband. This would result in each of them having a roof over their heads with value at least similar, although the Manhattan Apartment is in my view probably of a higher value. The wife has no children to house and maintain, unlike the husband. There must be recognition and acceptance of the husband's obligations to his new family. Both the wife and the husband are of an age and stage in life which will make it difficult to obtain and repay a loan of any sizeable amount.

I am not in a position to make any enforceable order in relation to the Manhattan Apartment since it is real property situated outside of this jurisdiction. The wife is not minded, despite my suggestion to the attorneys appearing in this matter, that the present application might be amended to make the beneficial ownership of the Manhattan Apartment a matter for adjudication by this Court. Further, in the absence of a consent order, I am not in a position to make any order as to its disposition which is enforceable in New York. If no enforceable order can be made by me vesting the sole ownership of these properties in the manner I have suggested, then the justice of the case should, in normal circumstances, dictate that one party should buy out the interest of the other i.e. that the wife should purchase the husband's interest in the Manhattan Apartment, and vice versa. Howsoever this application maybe determined, however, it is not appropriate, or proper, that determination of the application before me should ignore the existence, or worth, of this property. Further, I do not see that justice can be done in respect of either party unless there is at some time an adjudication as to their respective interests in this property.

The consequence is therefore that I am left with little choice but to make an order for the payment of a lump sum.

I do so, however, with reluctance. The husband has now progressed to the age of 54. He is not likely to be able to obtain a loan of any substantial amount, nor to be able to repay such a loan. He has a new family for whom he must care and his

income now is derived from the rental of two apartments at the Arouca Property. The wife's evidence is that the rental of each of these apartments is \$800.00 per month and there was no cross-examination on this, nor does the husband put forward any evidence to contradict it. Without some form of determination as to what is to become of the Manhattan Apartment, taking into account his share or interest in that property, he is unlikely to be able to raise a lump sum without disposing of the Arouca Property. As I have said, he and his new family must have accommodation. It would be wrong for me to order either that the Arouca Property be sold so as to enable him to pay a lump sum, or to vest a share of that property in the wife, without the husband being the beneficiary of an order relating to the Manhattan Apartment.

In all the circumstances:

1. the Petitioner's application for a transfer to or a settlement on her of the Arouca Property is dismissed. The Respondent will retain sole beneficial and legal ownership of the Arouca Property for his own use and benefit absolutely;
2. the Respondent is to pay to the Petitioner a lump sum of \$200,000.00.
3. payment of the lump sum is suspended until such time as proceedings are instituted and determined in New York relative to the Manhattan Apartment;
4. Each party will bear its own costs of this application.
5. There will be liberty to apply.

25th June, 2001

C.V.H. Stollmeyer
Judge