



In The Supreme Court of Bermuda

DIVORCE JURISDICTION

2018: No. 79

BETWEEN:

J

Petitioner

-and-

T

Respondent

Before: Hon. Alexandra Wheatley, Acting Justice

Appearances: Angelita Dill of AAA Law Company Ltd, for the Petitioner
The Respondent, Failed to appear

Dates of Hearing: 29 August 2024

Date of Ruling: 18 September 2024

RULING

Enforcement of Order; Matrimonial Causes Act 1974; Court's Jurisdiction to Grant Orders of Ancillary Relief; No Jurisdiction to Order Sale of Property

1. This matter came before me as the Petitioner (hereinafter referred to as the **Wife**) wishes to enforce the Order dated 9 December 2021 (**December 2021 Order**) which was made by Justice Stoneham in relation to the Petitioner's application for ancillary relief dated 17 September 2019 (**Wife's Ancillary Relief Application**). The Wife's Ancillary Relief Application sought an order for maintenance the child of the family, spousal maintenance and "*settle the sale of the former marital home*" (hereinafter referred to as the **FMH**).

2. In the December 2021 Order Justice Stoneham set out sections on definitions, recitals, the parties positions and made reference to the consent order dated 25 February 2021 in which the parties consented to list the FMH for sale on the open market no later than 1 July 2021 "*unless the Respondent confirms prior to that that he is able to and will buy out the Petitioner's share*" and that "*all rents received from the lower apartment of the matrimonial property at the rate of \$1,500 per month shall be applied directly to the mortgage*". Justice Stoneham then made a finding regarding the value of the former matrimonial home and set out directions in relation to its sale. The December 2021 Order set out the following terms which are relevant for the purposes of the application before me:

- “1. The former matrimonial home shall be sold forthwith on the open market for sale.*

- 2. The former matrimonial home shall be immediately placed on the open market for sale by JBM Realty and Associates for BD\$710,000.00 for a period of six (6) months from the date of the fully executed real estate agency agreement. After the aforementioned period an open listing may be entered into by the parties.*

- 3. The former matrimonial home may not be sold for not less than \$675,000.00 or such other reasonable sum that may be agreed between the parties having taken advice from the Realtors and the Bank of NT Butterfield and Son Ltd or in default of agreement determined by the Court.*

- 4. Should the Respondent, after receiving a written request to do so, fail and refuse to sign any documents necessary to effect the sale of the former matrimonial home, the Registrar of the Supreme Court is empowered to execute any and all documents on behalf of the respondent, including the listing for sale real estate agency agreement and the sales and put stop the Registrar shall endeavour to sign all such documents*

within five (5) business days from the date of filing such documents into court by the Petitioner's attorney.

...

8. *For the avoidance of doubt, the proceeds of sale shall be applied to discharge the outstanding mortgage including all arrears due, the payment of the attorneys fees, conveyancing costs, and disbursements including stamp duty in connection with the sale and realtor charges. Thereafter, the Petitioner's attorney shall hold in escrow any equity remaining and shall within fourteen (14) days thereof, write to the Registrar to have this matter listed as regards to the distribution of equity (if any) and liability (if any).*

9. *The Petitioner shall have her costs of this application to be taxed by the Registrar, if not agreed. Such costs shall be paid by the Respondent out of his share of the proceeds of sale without prejudice to other defined deductions from the sale proceeds."*

3. As the December 2021 Order helpfully sets out the chronology of this matter, there is no need for it to be repeated; however, it is necessary for it to be referenced as it was taken into consideration for the purposes of making my decision in this matter. As such, a copy of the December 2021 Order can be found at **Appendix 1**.
4. Subsequent to the December 2021 Order, the Husband has been extremely uncooperative in terms of allowing the realtors access as well as refusing to vacate the FMH. Counsel for the Wife appeared before me in 2023 seeking that the sale price for the FMH be reduced to \$650,000.00. Additionally, the Wife sought vacant possession of the FMH as the Husband continued to refuse to sign sales documents and refused to vacate the FMH. I granted the Order sought by the Wife to sell the FMH for the reduced sale price; however, I informed counsel at that time, that I was not satisfied that I had jurisdiction to make an order for the Husband to vacate the FMH.
5. In August 2024, Ms Dill for the Wife made an application again for the FMH to be sold (**Enforcement Application**) at a lower price as the sale in 2023 fell through due to the Husband refusing to vacate the FMH. Ms Dill appeared before me on 29 August 2024 at 11:30 a.m. on the first return date of the Enforcement Application. Ms Dill confirmed service of the Enforcement Application and supporting affidavit on the Husband's Counsel of record, Ms Victoria Greening (as it appears that she is still attorney of record) as well as submitted an

affidavit of service evidencing personal service on the Husband. Ms Greening and the Husband failed to appear, and I was satisfied the appropriate notice had been given for the matter to proceed.

6. Ms Dill was helpful in providing the court with what has occurred since she was last before the courts in 2023. The most significant issues raised are as follows:

- a) The Husband has allowed the FMH to continue to be in a state of disrepair which has significantly affected its value. The new purchasers have made a lower offer based on the poor state of the FMH.
- b) Since the FMH has been listed for sale, it was discovered that there are outstanding issues with the Department of Planning which the new purchasers are willing to address but have offered a lower price as a result.
- c) Despite being required by the Court by way of the Order dated 25 February 2021 (**February 2021 Order**) for all the rental income from the apartment located at the FMH at the rate of \$1,500 per month be applied to the monthly mortgage payments, the Husband has continued to receive the rental income directly from the tenant and failed to make any payments against the mortgage since the February 2021 Order.
- d) The outstanding mortgage has continued to increase since the December 2021 Order which has greatly compromised of interest on the arrears.
- e) As the FMH is held in the parties' joint names, the Wife has been left in a position which has been to her financial detriment as a direct result of the Husband's lack of participating in these proceedings as well as his lack of compliance with orders of this court.

7. Taking into consideration the issues raised in paragraph 6 above, it was essential for the Court to find a way forward to allow the Wife to resolve her long outstanding application for ancillary relief.

8. Having reviewed the file further as well as satisfying myself on the law, it is clear to me that the Court has no jurisdiction under the Matrimonial Causes Act 1974 to order that any FMH, in this case the FMH, be sold. Whilst the UK Matrimonial Causes Act 1973 was amended in 1981 to include a provision for the sale of FMH, this amendment has not been made in Bermuda.

9. In light of this finding, this matter shall be set down for further directions at which time I shall consider whether the December 2021 Order should be set aside or varied. As such, this matter shall be listed on 26 September 2024 at 9:00 a.m. A Notice of Hearing will be issued by the Court. Counsel for the Wife must serve a copy of this Ruling and the Notice of Hearing on Ms Greening of Resolution Chambers as well as personally serve the Husband.

DATED this **18th** day of **September 2024**



ACTING JUSTICE ALEXANDRA WHEATLEY

APPENDIX 1 – Pages 6 to 12

(Johnson v Trott; 2018 No. 79, Divorce Jurisdiction of the Supreme Court)

IN THE SUPREME COURT OF BERMUDA

DIVORCE JURISTICION

2018: No. 79

BETWEEN:

[REDACTED]

Petitioner

and

[REDACTED]

Respondent

ORDER

BEFORE Hon. Justice Nicole Stoneham, in private Chambers via Zoom on the 9th of December 2021.

This Order was made after hearing Ms. Angelita Dill of AAA Law Company Ltd, on behalf of the Petitioner, in the absence of the Respondent and his attorney of record Ms. Victoria Greening of Resolution Chambers, Innovation House, 1st Floor, 46 Reid Street Hamilton HM12, (each of whom were personally served on 3 December 2021 per Affidavit of Service of Odette Gbeve dated 9 February 2021)

A. Definitions:-

- i) "The former matrimonial home" shall mean jointly owned property situate at [REDACTED]
[REDACTED]
- ii) "The mortgage" shall mean the mortgage secured upon the former matrimonial home in favour of the Bank of N.T. Butterfield & Son Limited, 65 Front Street Hamilton HM12 Bermuda

B. Recitals:-

- i) The Petitioner and the Respondent (jointly known as 'the Parties') were married on 16 September 1989.

- ii) Decree Nisi of divorce was pronounced on 28 September 2018 and made absolute on 17 December 2018. The Petitioner prayed for all forms of ancillary relief including orders that the Respondent be ordered to make such payments or otherwise by way of property adjustment or variation of settlement as may be just and such further and other relief as may be just.
- iii) By Notice of Change of Attorney dated 22nd January 2019 DV Bermuda Limited, Barristers & Attorneys, of Melbourne House 44 Victoria Street Hamilton HM 12 notified the Registrar and Marshall Diel & Myers Limited, Barristers & Attorneys of their appointment to act on behalf of the Respondent replacing Trott & Duncan Limited.
- iv) By Notice of Intention to Act in Person dated 17th September 2019 Marshall Diel & Myers Limited notified the Registrar and DV Bermuda Limited (Attn: Tyrone Quinn and Bruce Swan) of the Petitioner's intention to act in person.
- v) By Summons and affidavit dated 17 September 2019 the Petitioner, acting in person filed an application for Ancillary Relief seeking, *among others*, orders related to the former matrimonial home.
- vi) **On the first return date 3rd October 2019** the Petitioner attended, in person and Mr. Tyrone Quinn of DV Bermuda Limited appeared on behalf of the Respondent. The Court ordered, *inter alia*, that the parties shall on or before 21st November 2019 at 10:30 a.m. make full and frank disclosure of all bank accounts held in their respective names whether solely or jointly with another for the period January 2016 to the date together with particulars of the mortgage arrears and lease agreements related to the lower rental unit of the former matrimonial home.
- vii) **On the second return date 21st November 2019** the Petitioner appeared, in person. The Respondent and his attorneys, DV Bermuda Limited failed to appear and failed to comply with the disclosure order of 3rd October 2019. After hearing the Petitioner, the Court directed further disclosure and granted the Respondent an extension of time to comply with the 3rd October 2019 Order.
- viii) **On the third return date 5th December 2019**, the Petitioner appeared, in person and the Respondent appeared with his attorney Mr. Quinn of DV Bermuda Limited. The parties were ordered to prepare, file into Court (and disclose to the other) their respective position statements regarding the former matrimonial on or before 16th January 2020. The Court confirmed that the Respondent shall continue paying the monthly mortgage obligation to the Bank of Butterfield & Son Limited ('the Bank') until further order.

ix) **On the Fourth return date 16 January 2020** the Respondent's attorney Mr. Tyrone Quinn of DV Bermuda Limited failed to appear. The matter was adjourned to 30th January 2020.

C. The Parties' Positions:-

i) **On 30th January 2020** the Petitioner, appearing in person confirmed her position regarding the one financial asset of the marriage to include, *inter alia*, returning to the former matrimonial home to reside therein with her adult children and purchasing the Respondent's share in the former matrimonial home.

ii) By Notice of Appointment of Attorney dated 4th February 2021 AAA Law Company Ltd. notified the Registrar and Resolution Chambers of its appointment to act on behalf of the Petitioner in this matter.

iii) **On 27th February 2020** the parties attended, each in person. The Respondent indicated his intention to instruct new attorneys and **By Notice of Change of Attorney** dated 22nd July 2020 Victoria Greening of Resolution Chambers, Barristers & Attorneys, was appointed to act on behalf of the Respondent replacing DV Bermuda Limited.

iv) **On 23rd July 2020** the Petitioner attended in person. Ms. Greening appeared on behalf of the Respondent and advised the Court of the inability to take instructions from the Respondent due recent ill-health (stroke) and inability to obtain instructions and undertook to obtain a current valuation of the former matrimonial home. The matter was adjourned to 10 September 2020.

v) On 10 September 2020 Ms. Victoria Greening, on behalf of the Respondent confirmed (a) the growing mortgage arrears, (b) the Respondent's position that he continue to occupy the former matrimonial home and (iii) his desire to buy the Petitioner's share in the former matrimonial home subject to the approval Bank of Butterfield & Son Limited. The Respondent was ordered, *inter alia*, to file and serve the updated valuation of the former matrimonial home on the Petitioner and Court. The matter was adjourned to 24th September 2020 at 12:00 p.m.

D. The Consent Order:-

i) By Consent Order dated 25th February 2021 Ms. Dill on behalf of the Petitioner and Ms. Victoria Greening on behalf of the Respondent, the parties consented to list the former matrimonial home for sale on the open market no later than 1st July 2021 "*unless the Respondent confirms prior to that he is able to and will buy out the Petitioner's share*" and that "*all rents received from the lower apartment of the matrimonial property at the rate of \$1,500 per month shall be applied directly to the mortgage..*". The matter was listed for mention before the Court on Thursday 24 June 2021.

- ii) On the 24 June 2021 the Respondent and his attorney, Ms. Victoria Greening, failed to appear. The matter was adjourned to 7th October 2021 with directions that Ms. Angelita Dill immediately communicate with Ms. Greening regarding the Respondent's application to the Bank of N.T. Butterfield & Son Limited to secure financing and the listing of the former matrimonial home for sale on the open market.
- iii) On 4th November 2021 Counsel for both parties failed to appear. The Acting Justice Wheatley adjourned the matter *sine die* with liberty to restore by letter to the Registrar.

Findings of the Court

Upon reading the Independent Valuation Survey prepared by Shawn Brown MRICS (a registered valuer under the RICS Registered Valuer Scheme - number 5021124), for and on behalf of Rego Sotheby's International Realty, the Court is satisfied that the market value of the freehold interest in the former matrimonial home as at 8th, July 2021 is BD\$675,000.00 (**Six Hundred and Seventy-Five Thousands**).

IT IS THEREFORE ORDERED THAT:-

1. The former matrimonial home shall be sold forthwith on the open market for sale.
2. The former matrimonial home shall be immediately placed on the open market for sale by JBM Realty and Associates for BD\$710,000.00 for a period of six (6) months from the date of the fully executed real estate agency agreement. After the aforementioned period an open listing may entered into by the parties.
3. The former matrimonial home may be sold for not less than \$675,000.00 or such other reasonable sum that may be agreed between the parties having taken advice from the realtors and the Bank of N.T. Butterfield & Son Limited or in default of agreement determined by the Court.
4. Should the Respondent, after receiving a written request to do so, fail and or refuse to sign any or all documents necessary to effect the sale of the former matrimonial home, the Registrar of the Supreme Court is empowered to execute any and all documents on behalf of the Respondent, including the listing for sale real estate agency agreement and the Sales & Purchase Agreement. The Registrar shall endeavor to sign all such documents within five (5) business days from the date of filing such documents into Court by the Petitioner's attorney.

5. The Real Estate Agent and its representatives are empowered to enter and show the former matrimonial home, including the lower unit and environs, subject to 48-hours prior notice to the Respondent and tenant of the lower rental unit, via hand delivered letter, email and or telephone.
6. Any one of the methods listed below and shall be deemed effective and immediate notice for the purpose stated in paragraph 5 above:-

The Respondent:-

Telephone:-

- Resolution Chambers, Barristers & Attorneys: - 1(441) 595-3789 including via voice message or
- Raymour Trott: 1(441) 704-9479 (personal) or 1(441)734-9211 (business) or

Email Address:-

- vgreening@resolutionchambers.com or
- rjelectric@northrock.bm or

Hand delivery:-

Written notice letter or memorandum in the mailbox or affixed on the main entrance doors of the former matrimonial home.

Mr. Troy Hall -Tenant of the lower rental unit:-

Telephone number:-

295-5111 Ext 1248 or 1658 or such other phone number providing contact.

Email:- THall@belco.bm or such other email address that will provide contact with Mr Hall

Hand delivery:-

Written notice letter or memorandum in the mailbox or affixed on the main entrance doors of the lower unit or place of employment.

7. The Respondent shall provide the real estate agent with keys to the primary entrance of each dwelling unit to facilitate access to the interior and the said agent shall keep safe and use such keys for the sole purpose of showing the premises for sale.

8. For the avoidance of doubt, the proceeds of sale shall be applied to discharge the outstanding mortgage including all arrears due, the payment of the attorneys' fees, conveyancing costs, and disbursements including stamp duty in connection with the sale and Realtor charges. Thereafter, the Petitioner's attorney shall hold in escrow any equity remaining and shall within fourteen (14) days thereof, write to the Registrar to have this matter listed as regards to distribution of equity (if any) and liability (if any).
9. The Petitioner shall have her costs of this application to be taxed by the Registrar, if not agreed. Such costs shall be paid by the Respondent out of his share of the proceeds of sale without prejudice to other defined deductions from the sale proceeds.

DATED this 9th day of December 2021



JUSTICE NICOLE STONEHAM

IN THE SUPREME COURT OF BERMUDA
DIVORCE JURISDICTION
2018: No. 79

BETWEEN



Petitioner

and



Respondent

ORDER



SUPREME COURT BERMUDA

2022 FEB 16 AM 10:00



AAA Law Company Ltd

BARRISTERS, ATTORNEYS & NOTARIES PUBLIC

Magnolia Towers, 4th Floor
15 Parliament Street
Hamilton, HM 12

Attorneys for the RESPONDENT

adill@aaalaw.bm