N2LR

IN THE SUPREME COURT OF NEW ZEALAND
NORTHERN DISTRICT
AUCKLAND REGISTRY

M. No. 878/70

IN THE MATTER of the Matrimonial Property Act, 1963, and its amendments.

BETWEEN EMILY SELINA ECKMAN of Auckland, Married Woman

Applicant

A N D PATRICK GERRARD SWEETMAN of 75 Kings Road, Old Trafford, Manchester, England, Labourer

Respondent

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Hearing: 17th April, 1973.

Counsel: Johnson for Applicant.
Midlane for Respondent.

Judgment: 18 April, 1973.

JUDGMENT OF HENRY, J.

The parties were married in England in 1948. There were a number of pregnancies but, in the events which happened, seven children were born but only five survived. Those five now range from 22 years of age down to 14 years of age. They parted, except for a later short attempt at reconciliation, early in January, 1966. On June 2nd, 1966, Applicant obtained separation, custody and maintenance orders on the grounds of Respondent's cruelty. They were later divorced and Applicant has since re-married one, Carl Eckman, with whom she had been friendly since early 1970. She and her present husband reside in the property which is the subject matter of this application. I am not clear about the present position of the children but it seems that the youngest is still with his mother and is attending school. The others are all of an age at which they are self-supporting. Rory, who is over 18½ years of age, has gone to England where Respondent now resides.

Applicant seeks an order vesting the disputed property solely in her name or, alternatively, that their respective

interests be determined so that she may re-finance and pay Respondent his share and thus become the sole owner by purchase. Respondent asks for a sale of the property and for a division of the net proceeds between the parties.

The property in dispute (hereinafter called "the "Blockhouse Bay property") is a quarter acre section with a substantial residence built thereon. The latest Government valuation shows a capital valuation of $10,600 made up of improvements valued at $6,400 and unimproved value at $4,200. The market value has not been established. It is registered in their joint names and is subject to a first mortgage on which the sum of $3,320 is now owing.

Before embarking on the earlier history of principles relevant to these proceedings, it is convenient to deal with the Blockhouse Bay property and a property at Titirangi which was owned by the parties and used as a matrimonial home immediately prior to its sale and the acquisition of the Blockhouse Bay property. Upon the sale of the Titirangi property a clear sum of $3,380 was realised. The Blockhouse Bay property was bought for $8,300. A sum of $4,000 was raised on first mortgage, the said sum of $3,380 was used as part payment of the purchase price, making a total of $7,380. The balance of $920 was provided by Applicant. She has reduced the mortgage from $4,000 to $3,320, that is by $680. She has thus contributed $1,600 and the balance came from proceeds from the sale of the jointly owned Titirangi property.

The parties lived in England, Eire, England, Australia and New Zealand, in that order. They arrived in New Zealand in September, 1963, and thereafter purchased and set up home in the Titirangi property. This continued till 1966 when, as stated before, Respondent left and Applicant got a separation order which effectively put an end to his association with Applicant. The Titirangi property was purchased for $5,200. First and Second mortgages totalling $3,400 were raised. The balance of $1,800

was paid from a Savings Bank account in the name of Applicant. The Titirangi property deteriorated badly. The parties had separated and Respondent had returned to England. Applicant desired to sell the Titirangi property and to purchase the Blockhouse Bay property. There is a conflict of evidence concerning the reasons for purchasing the Blockhouse Bay property in their joint names. I do not think the reasons matter much. Each had an equity in the Titirangi Road property and the proceeds were brought forward into the Blockhouse Bay property.

I have carefully read both affidavits on the course of the marriage and the property deals, including a business in Australia, and the somewhat conflicting evidence on the contributions made by each to the various properties in which they have been interested. At the stage when the Titirangi property was sold, it having been the matrimonial home, I am satisfied that justice can only be done by giving each an equal share and that this should continue to be the position as at the date of its sale. It is virtually impossible to unravel the contributions of each to the various matrimonial ventures, and in that event and in the particular circumstances of this case, equality is equity.

From this basis the interests of each in the Blockhouse Bay property can, with justice to each, be fixed. The joint fund invested was $3,380, that is $1,690 each. Applicant has contributed a further $1,600 as earlier mentioned. In my judgment, therefore, it would be just to declare that the parties are entitled to a definition of their interests on the basis that the Blockhouse Bay property is to be held by them as tenants in common as to two shares by Applicant and one share by Respondent. This defines their respective interests but does not dispose of the property or of its possession. No doubt the parties may now be able to negotiate a form of settlement which will enable Applicant to purchase the interest of Respondent. Each party should pay his or her own costs. The further hearing of the application is adjourned with the right of either party to apply for a further

fixture should a settlement not be reached. Any further reduction of the principal of the mortgage by Applicant is to be credited to her.

Application adjourned accordingly.

Solicitors:

Haddow & Co., Auckland, for Applicant.

Alderton, Kingston & Co., Auckland, for Respondent.