SUPREME COURT OF NOVA SCOTIA
(TRIAL DIVISION)

Citation: *Marriott v. Marriott* (January 15, 1988), Halifax 1201-35979 (NSSC(TD))

1988 86 NSR(2d) 11

Date: 1988-01-15
Docket: 1201-35797
Registry: Halifax

Between:

Margaret Mary Marriott

Petitioner

v.

Brian Leslie Marriott

Respondent

And

Leslie Lawrence Marriott and Lorna Vivian Marriott

Intervenors

LIBRARY HEADING

Judge: The Honourable Justice William J. Grant

Heard: April 22-23, June 26 & 29, 1987

Summary: The husband's parents (the intervenors) sold the couple a home for a reduced price. Sale terms provided that if the terms weren't met, the couple would be tenants. Couple breached terms. Wife claimed ½ house's equity. Couple had more than tenants' rights at separation: they had a matrimonial interest in the home as a result of "modest but recognizable of labor and material". Their payments for two years of occupation were no greater than rent. Value of their interest fixed at $2,000 and wife awarded $1,000.

Key words: Family, Matrimonial property, Equal division, Classification of assets

Legislation: *Matrimonial Property Act*, S.N.S. 1980, c. 9, section 4
Divorce Act, S.C. 1967-68, c. 24

1987 File No. 1201-35979

IN THE SUPREME COURT OF NOVA SCOTIA

TRIAL DIVISION

BETWEEN:

MARY MARGARET MARRIOTT,

Petitioner

- and -

BRIAN LESLIE MARRIOTT,

Respondent

- and -

LESLIE LAWRENCE MARRIOTT and
LORNA VIVIAN MARRIOTT,

Intervenors

HEARD: at Halifax, Nova Scotia, before the Honourable Mr. Justice William J. Grant, Trial Division, on April 22, April 23, June 26 and June 29, 1987

LAST MEMORANDA RECEIVED January 15, 1988

COUNSEL: Jean Morris for the petitioner
J.W. Jordan, Esq. for respondent
Michael Lambert, Esq. for Intervenors

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GRANT, J.:

This is a matrimonial action. The issues of the divorce, custody, access and other ancillary matters have been agreed upon or dealt with by me.

The sole remaining issue is the claim of the petitioner in the former residence of the parties, under the **Matrimonial**

Property Act.

The parties were married in 1973.

The Intervenors are the parents of the respondent. Leslie L. Marriott is 69 years old. He retired from his job as a driver at Simpson-Sears in 1982. He has Canada Pension and Old Age Security.

The Intervenors were anxious to help their son and his wife.

On January 5, 1984 William A. Reid died leaving his property at 114 Herring Cove Road to his brother Harry Alfred Reid. Harry Alfred Reid gave his cousin, the Intervenor Leslie Lawrence Marriott the opportunity to purchase it for $20,000.00. It was then assessed at $37,000.00.

The petitioner and respondent were then living in a mobile home at Lower Sackville. In an effort to assist their son and daughter-in-law the Intervenors agreed to sell the property to them for their cost. There were some expenses and the purchase price was $21,000.00. The monthly payments were to be $250.00 - for a term of 7 years. There was to be no interest. At the end of the 7 years they were to get a deed.

The Intervenors also prepared a lease agreement. In the event there was a default under the terms of the

agreement in the purchase and sale then the parties became tenants. The money paid in was to be treated as rent and the title remained in the Intervenors. That was apparently the extent of the instructions given by the Intervenors to their solicitor.

Nothing was paid down by the petitioner or respondent. The documents were executed on May 2, 1984. The parties separated February 28, 1986. Less than 2 years had passed and $5,500.00 had been paid during that period.

The fair market value of the property is now agreed at $55,000.00. The petitioner claims half of the equity. The Intervenor quantifies this at $20,000.00. The petitioner quantifies it at not more than $12,500.00.

The Intervenors were motivated by a desire to see the young couple get ahead.

The documentation was prepared by the Intervenors' then solicitor. It was prepared primarily for the protection of their interests.

The petitioner and respondent were not taking any risk, they had nothing to lose. They were the beneficiaries of the bounty of the Intervenors. They were not represented by counsel at the signing. Each had the opportunity to read the documents before and after execution had they wished to do so. Each had the opportunity to consult counsel.

At the time of signing the couple were not earning much money. The petitioner worked as a cashier for Sobeys and the respondent worked with the City Transit Commission. The respondent was being assisted by his father. Leslie Marriott had been helping his son financially. He helped pay to paint a truck and later pay off a lien. He loaned $3,000.00 to buy a Pontiac and $3,500.00 to later buy a truck.

After the Intervenors acquired the property $675.00 was paid for a survey. They were not reimbursed. About $500.00 was spent fixing the property before they dealt with it.

The down payment was to be $1.00. The petitioner and respondent put nothing into the transaction as they had nothing to put in.

Under the lease arrangement a default in the provisions of the lease was to trigger a default in the Agreement of Purchase and Sale. The status then would be changed to a landlord and tenant situation.

The petitioner and respondent separated on February 28, 1986. Payments fell into arrears.

There were several other breaches of the agreement. No damage deposit was paid. The parents made no effort

to enforce payment. Some or most of the taxes were paid by the Intervenors. Again no effort was made to insist on payment of all of the taxes. There were some alterations and redecorating without consent. There was some damage to the premises.

This, in my assessment, was an effort by an honest, elderly couple, of very modest means to help their son and his wife. He sought legal help in drawing up the documents. In my assessment of Lawrence Marriott he would consider the lawyer "knew best" how to draw up the documents once he outlined his proposition. Had this been a contract between hard nosed business people the documentation may have been different. Here the standard documents were adjusted to conform to this rather unusual transaction.

When the marriage, which I find the Intervenors were trying to keep together, fell apart, the situation changed. The respondent stayed on as a tenant rent free until March, 1987.

Had the petitioner or respondent made any real contribution either in money or in work or money's worth the situation could be much different.

Here they contributed little and risked little. The rent they paid was no more than they had paid before they came into possession. Any work they did was not of

great consequence either in cost or in increase in the value of the house. They enjoyed the result of that work as the premises were more pleasant to live in.

Counsel has referred me to several cases which they consider persuasive.

In **Gillis** v. **Gillis** 40 R.F.L. (2d) 145 the Manitoba Court of Queen's Bench Morse, J. included a farm property as a matrimonial asset. The husband's elderly parents ran a farm and in 1971 asked the son to run the farm for them. The husband and wife returned to the farm. He worked until 1977. The father retired in 1975. In 1977 he divided some assets amongst his family. He gave the farm to the son, not to both. He gave a deed to the son with an agreement back to pay certain sums over a period of time. Although the deed was only to the son the court included that property as a matrimonial asset.

In **Smith** v. **Smith** 23 R.F.L. (2d) 263, Maloney, J. of the Supreme Court of Newfoundland found a wife had a 25 percent interest in a property owned by a parent. The parties built a house on the father's land. The couple both worked at constructing the house over a four year period.

Notwithstanding that the title to this land continued in the father's name the court found the home to be a matrimonial

asset, the interest of the father was quantified and the remaining 50 percent was divided equally between the husband and wife.

In **Elliott** v. **Lowe** 1 N.S.R. (2d) 187, Gillis, J. of this court refused to exercise his equitable discretion in favor of an owner against a purchaser.

I consider that in this case it is necessary to balance the equities of the parties. I find few, if any equities, in favor of either the petitioner or respondent. I find the balance of the equities in favor of the Intervenors.

I find that at the date of separation the property was one in which the couple had more than a tenants rights. They were in possession under two instruments which purported to define the rights and obligations of each. I find they had a matrimonial interest in the property.

My understanding of the practice in this province relating to agreements of sale is that a purchaser generally acquires equities under such an agreement which this court recognizes and enforces. In certain instances it may be treated as a deed-mortgage situation requiring a foreclosure and sale proceeding. Generally if the purchasers have acquired an interest in the property equitable principles come into play to protect those interests.

I find that the interest the parties had acquired

at the time of separation was the result of certain modest, but recognizable expenditures in labor and material. They had moved from the mobile to the house. I cannot see that their financial situation suffered, in fact I believe and find that it improved.

The payments they made to the Marriotts, Sr. were no more than rent would have been for comparable premises, perhaps less.

Considering all the relevant circumstances including the position of the Intervenors, I fix the interest of the petitioner and respondent in that asset at $2,000.00. The petitioner is entitled to one-half of that interest, i.e. $1,000.00. This sum shall be a charge against the real property until paid.

I have also considered the doctrine of unjust enrichment. I consider that to find either the petitioner or respondent to have a greater interest in the property would be to unjustly enrich them to the detriment of the Intervenors.

There shall be no costs.

J.

Halifax, Nova Scotia

February 18, 1988

1987 Filw No. 1201-35979

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DECISION OF GRANT, J.
