

20/5/10  
Henderson.

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS  
2 HOLDEN AT GEORGE TOWN, GRAND CAYMAN  
3

4  
5 CAUSE NO. D66 OF 2008  
6  
7

8 BETWEEN: THOMAS MARTIN DEWITT Petitioner  
9

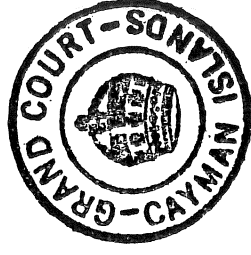
10  
11 AND: EDNA VANDEEN DEWITT Respondent  
12

13  
14  
15  
16 Appearances: Mr. Philip Boni of Higgs Johnson  
17 for the Petitioner

18  
19 Ms. Eileen Nervik of Nervik & Company  
20 for the Respondent  
21

22  
23 Before: Hon. Justice Henderson  
24

25  
26 Heard: March 24, 2010  
27



28  
29 JUDGMENT  
30

- 31  
32 1. After a hearing intended to settle the ancillary issues in this  
33 matrimonial cause, I directed the parties to file written  
34 arguments on a number of disputed points. That has been done  
35 and the parties are agreed that I should now give my decision  
36 without hearing further oral argument. As I explain below,

1 there are some issues which cannot be resolved without  
2 additional evidence.

3

4 2. The parties met in 1988 and began living together at 74 Seaview  
5 Drive on Grand Cayman in that year. They were married in  
6 July, 1991. After twenty years of marriage, the parties  
7 separated in January, 2008. There are no children . Mr. Dewitt,  
8 who is 67 years of age, describes himself as now retired.

9

10 3. This is a case in which the division of property is best  
11 approached by first determining the percentage share each of  
12 the parties should retain in each matrimonial asset.

13

14 4. The “Sea Beauty” Businesses

15

16 Mrs. Dewitt, who is a Caymanian citizen, established her own  
17 business called “Vans Hair Success” in 1984 under a trade and  
18 business licence issued in her name.

19

20 5. In 1989, Mr. Dewitt wished to establish a jewellery business.

21 Not being a Caymanian citizen or status holder, he could not  
22 obtain a trade and business licence in his own name. Mrs.

1 Dewitt changed the name of her business to “Sea Beauty” and  
2 from that point on both businesses – the beauty salon and the  
3 jewellery business – operated under that same trading name and  
4 trade and business licence. Mrs. Dewitt also took out a work  
5 permit which permitted her to hire Mr. Dewitt to run the  
6 jewellery business. Mr. Dewitt designed the jewellery,  
7 manufactured it and provided the equipment. The money from  
8 both businesses was deposited into an account by Mrs. DeWitt.  
9  
10 6. After their marriage, the parties built an addition on to the  
11 matrimonial home at 74 Seaview Drive. This addition was  
12 shared between Mrs. Dewitt’s beauty salon business and Mr.  
13 Dewitt’s jewellery business.

14  
15 7. In 2000, Mrs. Dewitt tired of running the beauty salon and  
16 closed it. The “Sea Beauty” name was retained by the jewellery  
17 business. In reality, the driving force behind the business was  
18 now Mr. Dewitt and Mrs. Dewitt took on a subsidiary role.  
19 Thus, the ostensible position evidenced by the trade and  
20 business licence (in her name) and the work permit (for the  
21 employment of Mr. Dewitt) was reversed.

22

1 8. Mrs. Dewitt performed the accounting and banking for the Sea  
2 Beauty jewellery business. Mrs. Dewitt says she attended at the  
3 customs department to collect and clear stock received by the  
4 business, delivered jewellery to retail outlets, and collected  
5 jewellery needing repair. She took no active role in the  
6 manufacturing of jewellery because, she says, the dust produced  
7 by that process and the fluids used in it aggravated her  
8 asthmatic condition and allergies. Mrs. Dewitt now says that  
9 she intends to carry on running the Sea Beauty jewellery herself  
10 “once these proceedings are completed” .  
11

12 9. Mr. Dewitt asserts that Mrs. Dewitt’s role in the jewellery  
13 business has been minimal. He says that bank deposits were  
14 made once per month and customs matters were attended to  
15 about once per year.  
16

17 10. After Hurricane Ivan, in September, 2004 the jewellery  
18 workshop was relocated to 42 Avalon Street and operated from  
19 the garage there. After the parties separated in 2008, the  
20 jewellery workshop equipment and stock was relocated to 73  
21 Seaview Drive.  
22

1 11. Mrs. Dewitt says that Mr. Dewitt ceased making jewellery  
2 around the time of separation and that the stock held on  
3 consignment by retail outlets “ran dry” around May, 2009.  
4  
5 12. As an unincorporated business which has not operated since  
6 2008, the value of Sea Beauty will be reflected in its equipment,  
7 its stock on hand, and its account receivables. There is little  
8 evidence as to the value of the equipment; I will adopt a  
9 suggestion in Mr. Dewitt’s submission and set a value on it for  
10 present purposes of \$20,000. Since Mrs. DeWitt intends to  
11 operate the jewellery business and Mr. DeWitt does not, I award  
12 the equipment to her.

13  
14 13. Sea Beauty Accounts Receivable  
15  
16 There is a substantial issue between the parties concerning  
17 accounts receivable owed to the Sea Beauty jewellery business  
18 at the date of separation and the subsequent disposal of this  
19 income. Mr. Dewitt (in his affidavit filed January 12<sup>th</sup>, 2010)  
20 says that he had at the date of separation “approximately  
21 US \$200,000 worth of jewellery memoed to Island Companies.”  
22 In effect, this jewellery was provided to vendors like Islands

1 Companies on consignment. As the retailer sold the  
2 merchandise, it would inform Mr. Dewitt and Mrs. Dewitt  
3 would then collect the proceeds cheque and deposit it into the  
4 Sea Beauty account at Scotiabank. Mr. Dewitt says that, since  
5 separation, he has not been advised of the status of the sales or  
6 the state of the bank account. He has not received the usual  
7 monthly reports provided by Island Companies to Sea Beauty  
8 showing payments made on account. Mr. Dewitt says he has  
9 requested an accounting of the deposits and withdrawals by  
10 Mrs. Dewitt but has not received one. He has also requested  
11 bank statements and asserts that he is owed “a minimum of US  
12 \$75,000.”

13  
14 14. Mrs. Dewitt, in her affidavit of February 24<sup>th</sup>, 2010, explains  
15 that the inventory of jewellery was relocated to 73 Seaview  
16 after the couple separated. She says: “I am unable to provide a  
17 breakdown of these items or estimate their value” (paragraph  
18 16). She goes on to say:

19 “in addition, on or around 18, February 2008, I  
20 handed over to Ms. Lavern Branford stock held in  
21 my possession with a value of approximately  
22 US \$31,071.75 representing a total of 105 items.”  
23

1 Lavern Branford is an employee of Sea Beauty. Mrs. Dewitt  
2 attached a document entitled “Sea Beauty – Returned Stock” to  
3 her affidavit. She said that Mr. Dewitt has provided to her  
4 “stock reports in the sum of \$23,285”. Items having a value of  
5 US \$6,455 in the stock reports also appear in the “Returned  
6 Stock” document. The remaining items in the stock reports,  
7 having a value of US \$16,830, have, according to Mrs. Dewitt,  
8 been delivered to various retailers but were not accompanied by  
9 Sea Beauty invoices.

10  
11 15. Mr. Dewitt’s second affidavit of March 16, 2010 asserts, based  
12 upon the content of an email which he attaches, that one retailer  
13 (Island Companies) has jewellery to a value of US \$65,000 still  
14 unsold and on consignment. He attached to his affidavit a  
15 “purchasing sales analysis” which, he says, demonstrates that as  
16 at December, 2007 jewellery with a value of \$181,406.49 had  
17 been provided on consignment to Island Companies, the major  
18 retailer of the product. The proper interpretation of this  
19 document is not self evident and no explanation has been  
20 provided. It lists pieces of jewellery having an “on hand cost”;  
21 the total on hand cost for everything listed is \$42,479.16 There  
22 then appears the figure of \$181,406.49 set beside the legend

1           “Totals for Buyer DD”. Only the first and last pages of this  
2           twenty-five page document are provided. Mrs. Dewitt, also,  
3           attached a number of business records to her affidavit without  
4           providing any adequate explanation of their meaning.  
5  
6           16. I am satisfied that Mr. DeWitt made a substantially greater  
7           contribution to the jewellery business than that of Mrs. DeWitt.  
8           Her contribution, however, was of significant value and  
9           deserves full recognition. I award to Mr. DeWitt 60% of the  
10          value of the Sea Beauty jewellery business. Its value is equal to  
11          the sale proceeds received since the date of separation less the  
12          overhead for that period, plus the value of the still-unsold  
13          inventory and the \$20,000 value I have assigned to the  
14          equipment.

15  
16          17. The state of the evidence does not permit me to evaluate the  
17          accounts receivable. Mrs. DeWitt handled the banking and  
18          booking; I will direct her now to obtain affidavits within 60  
19          days from Sea Beauty’s retail vendors setting out: the value of  
20          inventory on hand at February 1, 2008; a list of payments  
21          (including payee, date, and amount) made on account to either  
22          party since then; a list of items returned to either party since

1 February 1, 2008 and their assigned value; and the value  
2 assigned to the inventory still on consignment at the vendor.  
3 The parties are at liberty to apply for Witness Summonses to the  
4 vendors if the required information is not presented in a  
5 coherent form.  
6

7 18. 73 & 74 Seaview Drive  
8

9 This property was purchased by Mr. Dewitt nine years before  
10 the marriage. The parties began living together at 74 Seaview  
11 Drive in 1988 and occupied the premises there as their  
12 matrimonial home until 2004. In addition, both businesses were  
13 operated from these premises.  
14

15 19. Mrs. Dewitt says that she contributed a lot of work to  
16 maintaining the Seaview property, including cleaning the beach,  
17 installing trellises, garden boxes and planting, repairing the  
18 building structure, painting the interior and exterior of the  
19 premises, and replacing furniture and appliances. In his  
20 affidavit evidence Mr. Dewitt takes issue with the nature and  
21 extent of Mrs. Dewitt's contribution to the upkeep of the  
22 Seaview premises.

1  
2 20. After the parties moved to 42 Avalon Street, the premises (at 74  
3 Seaview Drive) which had housed the beauty salon and  
4 jewellery businesses were converted into apartments. With  
5 some additional remodeling, 74 Seaview was made to provide  
6 three apartments for rental.

7  
8 21. During the marriage, a two bedroom house known as 73  
9 Seaview Drive and a tool shed were erected on the same piece  
10 of land. Both that home and the apartments have generated  
11 rental income since 2004.

12  
13 22. The parties are agreed that the Seaview properties have a value  
14 of \$400,000. Mrs. Dewitt says the Seaview property is a  
15 matrimonial asset but Mr. Dewitt denies that.

16  
17 23. I am satisfied that the parties have treated the Seaview property  
18 as a jointly-owned asset for some considerable period of time.  
19 It was the matrimonial home for 16 years and housed both  
20 businesses. It is a matrimonial asset.

21

1 24. Mr. DeWitt brought the Seaview asset into the marriage and, in  
2 addition, has made a greater financial contribution than Mrs.  
3 DeWitt to its upkeep and expansion. In recognition of his  
4 greater contribution, Mr. DeWitt is entitled to 75% of the value  
5 of this asset.

6  
7 25. Rental Income

8  
9 Mrs. Dewitt says that the gross income from the rental of all  
10 four units is \$4,000 per month. She claims a share in the rental  
11 income. She is entitled to a sum equal to 25% of the net rental  
12 income since separation, after deduction of all reasonable  
13 expenses incurred in maintaining the property. There is no  
14 evidence of these expenses. If the parties cannot agree on the  
15 appropriate figure, each is at liberty to apply.

16  
17 26. 42 Avalon Street

18  
19 The parties are agreed that this property, which was the last  
20 matrimonial home, is a matrimonial asset. It was purchased in  
21 2002 with funds from the jewellery business and rental income  
22 from the Seaview property. It has a current value of \$525,000;

1 there is a mortgage on the property in the amount of \$216,287.  
2 Mrs. Dewitt has resided at this address since separation and  
3 wishes to continue to reside in this property. The value of this  
4 asset should be divided equally.  
5

6 27. Occupation Rent  
7

8 As Mrs. DeWitt has been residing in the matrimonial home  
9 alone since the date of separation, she might be taken to owe a  
10 sum for occupation rent to her husband. However, there is no  
11 evidence before me as to what that rent should be. In these  
12 circumstances, I will not award any occupation rent to Mr.  
13 DeWitt.

14  
15 28. Wisconsin Properties  
16

17 Many years before he met Mrs. Dewitt, Mr. Dewitt acquired  
18 land at Bailey's Harbour in Wisconsin. This land now consists  
19 of eight lots which have a total estimated value of U.S.  
20 \$205,000. It is unclear, however, what the net sale proceeds  
21 might amount to because Mr. Dewitt owes back taxes on the  
22 land.

1

2 29. Mrs. Dewitt asserts that the Wisconsin property is a  
3 matrimonial asset because the “funds to sub-divide the property  
4 ... came from income derived from “Sea Beauty”. The property  
5 was subdivided into 14 lots in 2000; six of the lots were sold  
6 prior to separation. Mrs. Dewitt claims an entitlement to 50%  
7 of the value of the remaining lots.

8

9 30. Mrs. Dewitt has also said (in her affidavit filed May 16, 2008)  
10 that “I was unaware as to how the monies derived from my  
11 business ‘Sea Beauty’ were spent,” thus seeming to contradict  
12 her assertion that revenue from “Sea Beauty” paid for the  
13 expense of subdividing. Moreover, there is no evidence as to  
14 the amount of this expense. The assertion that the cost of  
15 bringing about the subdivision was absorbed by income from  
16 the “Sea Beauty” jewellery business is not established by the  
17 evidence. I am satisfied that the Wisconsin properties are not  
18 matrimonial assets.

19

20

21

22

1     31.     Liquid Assets

2

3     At the time of separation, the parties owned shares in Caribbean

4     Utilities Company, Cayman National Corporation, Telecom

5     Investor Ltd., and Butterfield International Balanced Fund. Mr.

6     Dewitt says the value of some of these shares is not

7     known and some have been sold by Mrs. Dewitt since

8     separation. He has received none of the proceeds.

9

10    32.     Mrs. Dewitt agrees that these investments are matrimonial

11    assets but provides no further information in her affidavit.

12

13    33.     There is insufficient evidence of any justification for a departure

14    from an equal division of this asset. I direct each party to file

15    within 14 days an affidavit accounting for any disposition of

16    any of these shares. Mrs. DeWitt is also to file evidence from

17    which the value of the Cayman National Corporation and

18    Telecom Investor Ltd. shares can be inferred. The CUC shares

19    are valued at \$13,944 and the Butterfield shares have a value of

20    \$16,423.

21

22

1 34. Daffodil Street

2

3 Mrs. Dewitt owns a ¼ share in the property at 11 Daffodil  
4 Street in Bodden Town. She obtained this from her father in  
5 1964. Mr. Dewitt concedes that this is not a family asset and I  
6 agree.

7

8 35. Boat

9

10 Mr. Dewitt lists as a family asset a boat, to which he assigns a  
11 value of \$1,000. In the absence of any better evidence, I accept  
12 that this matrimonial asset is valued at \$1,000 and award it to  
13 Mr. Dewitt.

14

15 36. Gifts

16

17 Over the years, Mr. Dewitt has created some \$30,000 worth of  
18 jewellery which he gave to his wife. He concedes that these  
19 gifts should not be treated as matrimonial assets.

20

21

22

1  
2 37. Chattels

3  
4 When the couple separated, Mr. Dewitt left the family home. In  
5 doing so, he left Mrs. Dewitt in possession of a number of  
6 chattels, including paintings, a table he had made, a collection  
7 of rare coins, and furniture. He seeks what he refers to in his  
8 written argument as an accounting. I direct that these chattels  
9 are to be listed and appraised (as at February, 2008) and that  
10 each of the parties is to bear half of the cost of these appraisals.  
11 Mrs. Dewitt's evidence contains no clear information on the  
12 whereabouts of these chattels or their current value. She is to  
13 file an affidavit within 60 days setting out clearly whether she  
14 has disposed of any of these matrimonial assets and, if so, the  
15 amount received for the asset. Each party is entitled to a 50%  
16 share by value in these chattels.

17  
18 38. Stock Trading Accounts

19  
20 Mr. Dewitt discloses two stock trading accounts called Bay  
21 Lake and E Trade. He says that each has a value of \$1,000 or  
22 less.

1  
2 39. Mrs. Dewitt says that she considers the Bay Lake account to be  
3 a matrimonial asset but provides no details about her reasoning  
4 in that regard and makes no mention of the E Trade account.  
5 Mr. Dewitt asserts that he acquired both accounts “long before  
6 marriage”. In the absence of any further evidence, I find that  
7 neither account is a matrimonial asset.

8  
9 40. Spousal Support

10  
11 Mrs. DeWitt will now operate the jewellery business on her  
12 own account. Mr. DeWitt is 67 years of age and has elected to  
13 retire. Mrs. DeWitt has been able to work throughout the  
14 marriage and cannot be said to have been disadvantaged  
15 financially by the relationship. The couple have no children. In  
16 these circumstances, I am satisfied that an award of spousal  
17 support is not justified.

1

2 41. Costs

3

4 Costs of the hearing are reserved until the remaining ancillary  
5 issues are resolved.

6

7 *Henderson, J.*

8 Henderson, J

9 May 20, 2010

10

