

Henderson
16/4/10

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN**

CAUSE NO. D50/06

BETWEEN: ROBERT EARL GIBB

Petitioner

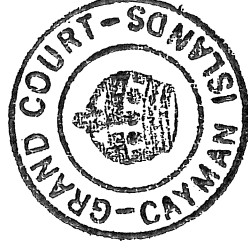
AND: BRENDA MAE GIBB

Respondent

Appearances: Ms. Laura Briggs of Samson & McGrath for the Petitioner

Ms. Sheridan Brooks of Brooks & Brooks for the Respondent

Before: Hon. Justice Henderson



Heard: April, 16, 2010

Judgment – Robert Earl Gibb v. Brenda Mae Gibb Cause No. D50 of 2006 16.04.10

JUDGMENT

1. In this matrimonial proceeding, I am called upon to settle the following ancillary issues: entitlement to spousal support; division of assets; and the manner in which certain payments already made by Mr. Gibb to Mrs. Gibb should be treated.
2. Mr. and Mrs. Gibb are originally from Canada. They met in the Bahamas in 1978, married in Canada in 1979 and returned to the Bahamas to live in 1982. In 1987, they moved to Grand Cayman. Mr. Gibb has lived here ever since.
3. The couple separated in March 2001, at which time Mrs. Gibb returned to London, Ontario, and has resided there for the last nine years. The couple have no children.
4. Mr. Gibb is at present a 56-year-old chartered accountant who has found success in his chosen career. Neither he nor his wife brought any assets of significance to the marriage. Throughout the marriage, and particularly in the latter half of it, Mr. Gibb, acquired some significant financial resources through his own efforts.

5. He started his career in private practice with Thorne Riddell in Canada and in the Bahamas. In 1987 he took employment with Fordsar (Cayman) Limited, with whom he has remained ever since. He is now a shareholder and a director of Fordsar.
6. Mrs. Gibb is now 54 years of age. She was working for the Toronto Dominion Bank when the couple first met. She continued to work for that bank until 1982 as a teller. From 1982 to 1987 she did not work. There is evidence suggesting that work permit difficulties in the Bahamas prevented that.
7. Between 1987 and 1991, she worked for the Bank of Nova Scotia here on Grand Cayman as a teller. In 1991, she ceased working and has not worked since, either in the Caribbean or in Canada. Work permit difficulties may have played some role in that decision, but I am satisfied that she also preferred not to work given that the couple found it unnecessary for Mrs. Gibb to earn an income. At the time she gave up work, she was 38 years of age, fit and healthy.
8. It will be evident from the brief narrative I have just provided that, as Mrs. Gibb concedes, the matrimonial assets owe their existence more to the efforts made by Mr. Gibb than to those of his wife.

This is a case where an unequal division of assets will be appropriate. Mrs. Gibb has not, in her submissions, resisted that, although there has been debate over the appropriate percentage.

9. In light of the history of the marriage, I accept Mr. Gibb's submission that the assets should be divided by awarding two-thirds of them to him and the remaining one-third to Mrs. Gibb.
10. I turn to a consideration of the assets and their valuation for present purposes. There is no significant difference between the parties regarding the family assets.
11. In the category of assets referred to by Mr. Gibb in a Schedule as "cash and bank assets", there exists as at February 28th, 2010, assets worth \$134,050. (All of the figures I am quoting are in US dollars unless I say expressly that I am using CI dollars.)
12. In addition, the couple has acquired investments in various funds which, at the valuation date I have mentioned, have a market value of \$1,089,683. There is a matrimonial home here in the Cayman Islands. It is owned by a corporate entity but, with the

concurrence of the parties and for present purposes, I will treat the home as if it were owned by the parties jointly. The home has a value as at February 28th of this year of \$1,017,563. In fact, the valuation I have just quoted is an old one. It is stale. It was done around the time of separation. There is no reliable evidence from either party as to the home's current value and little was said on this subject at the hearing. I must accept that the best evidence in the case is the older valuation. I find that its value for present purposes is the figure I have quoted. There is some suggestion that the value, although it may have fluctuated over the intervening years, is now not very different from what it was in 2001. I say that because BCQS, quantity surveyors, have filed some evidence as to the market rent which that home could have fetched over the years. I note that the rent it would bring in today is very close to the rent it would have brought in in 2001.

13. In addition to the home, there are items of furniture worth \$49,472 and an amount due from Fordsar (Cayman Limited) in the amount of \$55,788.

14. It follows that the matrimonial assets in total are valued at \$2,346,556.

15. Given the 2/3, 1/3 division at which I have arrived, Mr. Gibb's entitlement in the family assets is fixed at \$1,564,449 and Mrs. Gibb's entitlement is \$782,107.
16. Mr. Gibb has paid the sum of \$5,000 per month to Mrs. Gibb from March 2001 until March 2008. He also paid significant sums (to a total of about \$80,000) to her in the first year or so after separation. An important issue in this case is how these payments should be treated.
17. The evidence shows that there was never any agreement between the parties with respect to any ancillary relief. There was no agreement that spousal support be paid; no agreement that the assets should be divided in any particular way; and no agreement that Mr. Gibb could live in the matrimonial home and would have to pay any particular amount of occupation rent. By acquiescence, the parties have impliedly agreed to that which took place over a nine-year period, as there was little dispute between them until recently.
18. There is a letter dated March 12th, 2001 from Mr. Gibb to

Mrs. Gibb which contains an offer to which she never responded. He offered to rent her a car for a month in Canada, to purchase a condominium or a house for her in the range of \$300,000 Canadian (which would have been about \$200,000 US at the time), and arrange for a trust to be established offshore into which he would pay \$5,000 US per month for Mrs. Gibb's living expenses. The letter contains an offer to contribute money into the trust for the next 17 years, or until such time as \$1 million US had been paid. He assured his wife that this sum of money plus interest on it would cover her expenses for the rest of her life and said that the monies taken from the trust should be tax free but, if that were to change, he would readdress the situation.

19. Mrs. Gibb did not accept that offer. Nevertheless, \$5,000 a month was paid and the money was spent.

20. About 18 months later, on August 22nd, 2002, Mr. Gibb wrote again. This time his position had hardened. He started by reminding Mrs. Gibb that he had agreed to pay her \$5,000 US per month until she had received \$1 million. He continued in this vein.

"I am going to suggest, and we can discuss after you have given it some thought, that I will give you 10 promissory

Judgment – *Robert Earl Gibb v. Brenda Mae Gibb* Cause No. D50 of 2006 16.04.10

notes for US \$100,000 each in exchange for your shares of RG & BG Ltd. This US \$1 million will take me to the age of 65 to pay off [at] the rate of US \$5,000 per month. The promissory notes are legally enforceable and should I die, you would be the first to get your money as you would have a claim against my estate."

21. So he was putting to her somewhat the same offer without, however, any mention of the \$300,000 house or condo, which had never been purchased, and with the very significant alteration that the money was now said to be in exchange for her share of the matrimonial assets.
22. All of the assets of substance are owned by the company called RG & BG Ltd. The purchase of Ms. Gibb's shares in that company would amount, in effect, to the purchase of her matrimonial entitlement. Again, Mrs. Gibb gave no response to that offer.
23. How then should these payments be treated for present purposes? There was, as I have said, no agreement that they be characterised as spousal support or that they be characterised as payment for the matrimonial assets or that they be characterised partly in each way.

24. It seems to me that I should start by asking what amount of spousal support this court would have awarded to Mrs. Gibb had she applied for it promptly in 2001. Given her age, her state of health (which was good), the lack of any children to look after, the length of the marriage, and the respective earning abilities of the parties, I consider that this court would have awarded spousal support to her in the range of US \$5,000 per month for a period of 18 months. In addition, I view the substantial payments which payments were quite separate and distinct from the \$5,000 monthly allowance, made to Mrs. Gibb during the first year of separation, at a time when she was uprooting herself from the Cayman Islands and relocating in Canada, to have been intended to assist her in relocation. They also are to be treated as spousal support payments.
25. In my view, Mr. Gibb has fully discharged his spousal support obligation by the payments he made to Mrs. Gibb for the first 18 months after separation. That leaves a balance of \$330,000, which has been paid in monthly instalments to Mrs. Gibb after what I have found to be the obligation to pay spousal support ended. That sum must be characterised now as a payment on account for her share of the matrimonial assets. The total paid on

account is \$330,000 US.

26. I turn to the subject of occupation rent. Mr. Gibb has lived rent free in the matrimonial home from the date of separation until the present. Clearly, some occupation rent must be paid. As I have found, Mrs. Gibb was entitled to one-third of the value of the matrimonial home and would be entitled equally to one-third of the net amount of any rental income earned by the asset.

27. The analysis I have been given has been provided by Mr. Gibb. It strikes me as reasonable. He says that the house could have earned a rental income of \$4,000 CI per month (that is \$5,000 US per month). From his analysis, he omits the three months immediately following Hurricane Ivan when he says the home was uninhabitable. Mrs. Gibb disagrees with that. It seems to me that the home, if not completely uninhabitable, would have presented such spartan living conditions in the immediate aftermath of the hurricane that it is justifiable to deduct, as he has done, the sum of \$12,000 for three months' rent.

28. Mr. Gibb's schedule takes as its starting point rental income for five and a half years ending at the end of 2006. The reason is this.

He says that had he known that he would have to pay occupation rent, he would have taken steps to purchase Mrs. Gibb's interest in the house well before the present time. That too strikes me as reasonable. It seems to me an appropriate assumption, which I will adopt, to say that Mr. Gibb would have acquired the interest fully by the end of 2006.

29. Accordingly, the total amount of notional rent payable by Mr. Gibb is \$280,000 CI, which amounts to \$341,463 US converted at \$.82 cents. The net rental income, once we deduct the Hurricane Ivan period, is \$326,829 US.

30. From that, one would have to deduct the overhead which the Gibbs would have had to absorb had they been renting the house. This includes such things as pool maintenance, yard maintenance, pest control, building insurance, roof repairs, repair of Hurricane Ivan damage, et cetera. All of those things would be absorbed by the landlord when renting a house in this bracket. I accept Mr. Gibb's estimates that the total amount of those expenses for the five-and-a-half-year period, including significant payments to repair hurricane damage, would be \$162,568 US. It follows that the net occupation rent for the relevant period of time would be

\$164,262 US. Mrs. Gibb, however, is entitled to a third of that, not to a hundred percent of it, and therefore her share of that rent is \$54,749.

31. It is conceded by Mr. Gibb that he has had the use of Mrs. Gibb's money for the last nine years. He has had the use of the cash and bank assets, although one-third of those assets are her property. He concedes that he should pay interest.

32. The assets described as cash and bank assets are in the amount of \$134,050. Mrs. Gibb's one-third share of that asset is about \$45,000. Mr. Gibb proposes an interest rate of 3.7%, which I accept. The hypothesis is that Mrs. Gibb would have invested the money conservatively, perhaps in term deposits. At a rate of 3.7% per annum over nine years, without compounding, the interest entitlement of Mrs. Gibb is \$15,000. I consider that a fair amount and will credit it to her.

33. In summary, the matrimonial assets are to be divided so that Mr. Gibb would receive \$1,564,449 and Mrs. Gibb would receive \$782,107. In addition, Mrs. Gibb is entitled to occupation rent in the amount of \$54,749 and to interest in the amount of \$15,000.

Her total entitlement is therefore \$851,856, from which must be subtracted the sum of \$330,000 which has already been paid to her. Mr. Gibb, therefore, owes to her the net amount today of US \$521,856, which in CI currency is \$417,485.

Dated this 16th day of April, 2010

Henderson, J.

Henderson, J.
Judge of the Grand Court

