

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: D108 OF 2007



BETWEEN CAREN SUE WIGHT

PETITIONER

AND STANLEY PETER WIGHT

RESPONDENT

IN CHAMBERS

THE 29TH OCTOBER 2009

BEFORE THE HON. CHIEF JUSTICE

Appearances: Mr. David McGrath for the petitioner
 Ms. Angelyn Hernandez for the respondent

RULING

1. This is the application for final determination of the ancillary matters arising from the divorce of the parties. By two Deeds of Separation between them; (the first undated and the second dated 21 July 1998) the parties had agreed on most of the aspects of their separation including the disposition of the matrimonial house. Arrangements were also agreed for the custody, care and control of the two children of the marriage – Eric and Justin – now 14 and 16 years old, respectively.
2. The Deeds of Separation have been acknowledged by earlier decisions of this Court made in these proceedings.
3. See, in particular, Ruling of 11th February 2009 which enforced the provision of the Deeds of Separation dealing with the Petitioner's interests in the Respondent's

shareholdings in General Traders Ltd. (t/a "Schellections"); a local retail business of tourism products. By that Ruling, the Petitioner was awarded, upon valuation of the shareholding by the Court, the amount of USD 254,677 for her interest in 16.5% of the shares of the Company (the equivalent of one-half of the 33% interest held in the Respondent's name).

4. The Deeds of Separation also provided for the transfer of the matrimonial house to the Petitioner, subject to a charge securing a loan owed to a local bank. Although she is at liberty to sell the house, (and although it has been advertised for sale) the children have continued to reside with her there.
5. The primary issue remaining now to be resolved by the Court is the amount which the Respondent should be required to provide by way of maintenance for Eric and Justin. They will both continue to reside with the Petitioner as she remains responsible for their daily care and control.
6. The Deeds of Separation provided for the payment of \$866 per month by the Respondent for their maintenance. The Respondent is also required to and has been paying one-half of their educational, dental and medical expenses.
7. The Petitioner believes that the maintenance payments of \$866 per month, in place now since the separation some 11 years ago, should be increased to take account of inflation. Mr. McGrath on her behalf also points to the Respondent's superior earnings at present and earning power for the future.
8. Mrs. Hernandez, on behalf of the Respondent, says that there should be no increase.

9. In the first place, it is the Respondent's contention that the sum of USD 254,677 paid to the Petitioner was not simply a payment of capital to which the Petitioner was solely entitled. It was, he contends, a payment to which he agreed (and for which he had to incur a debt to others in order to make); with the intention that it be taken in trust by the Petitioner to assist, not only with her maintenance, but also with the boys' and to which they could resort as their needs increased over the years. He says that that money should have been invested by the Petitioner to be available for those purposes, and it is no fault of his that she has applied most of it for other purposes such as paying off her house loan or to finance for her new business.

10. As I indicated during the hearing, I would not be able to accept that contention of the Respondent. The award of USD 254,677 was the subject of the Ruling of 11 February 2009. In then arriving at its decision, there can be no doubt that the Court was required to approach the valuation of the shares as being an entitlement to capital of the Petitioner herself. The subject shares had been acquired by the parties shortly after the marriage. Although the sum of USD15,000 used to acquire them was a sum of capital brought into the marriage by the Respondent, the Petitioner worked thereafter in improving the business. As it grew and as its value greatly appreciated over the ensuing years; the parties, along with the other investors, saw the value of their equity investment dramatically increase. It became clear from all the circumstances – including in the way the shares were treated in the Deeds of Separation – that they had come to be regarded by the parties as a matrimonial asset.

11. The Respondent seeking to have the Petitioner's capital in the shares treated now as a gift from him, impressed with a trust of some kind for the benefit of the children is, in my view, an unacceptable proposition.
12. The capital sum of USD15,000 paid by him was doubtless regarded by the parties over the years of the marriage simply as money used to acquire their jointly owned asset in the shares of the company. The sum became amalgamated, with everything else brought by them into the marriage or acquired by them during the marriage, into matrimonial property.
13. It is now well recognised in the case law that the importance of the source of an asset brought into a marriage will diminish over time. As the family's personal and financial inter-dependence grows, it becomes harder and harder to disentangle what came from where and so with time, the source of the asset may become less of a reason for departing from the yardstick of equality of division of matrimonial property: See *Miller v Miller and McFarlane v McFarlane* [2006] UKHL 24 at para 147, per Baroness Hale.
14. In this case, the approach taken by the parties themselves to the division of their property was one of equality. Nothing about the manner in which the shares in issue were acquired or about the source of funds used for their acquisition, convinces me that I should depart from that intention evinced by the parties themselves towards achieving equality by their separation agreements. The treatment of the shares as being the Petitioner's capital entitlement is confirmed.

15. I am however, convinced that some adjustment for the future must be made to the Respondent's monthly contribution of maintenance of \$866 to take account of the effect of inflation over the past 11 years. This adjustment must also reflect the disparity in current income and in income earning potential as between the parties.

16. In this regard I have considered the affidavits of means most recently filed respectively by the parties. The Petitioner claims that it costs some \$7,468 per month to maintain her home, some \$4,512 of which she attributes to the costs of housing and supporting the boys. In relation to the costs of maintenance of Eric and Justin, I must observe immediately however, that because of the several items of purely discretionary expenditure included, the monthly amount of \$4,512 is far too generous. I consider a more realistic amount to be about \$3,200 given the undeniable costs of upkeep for the matrimonial house in which they still reside; although a smaller, less expensive house would do and must eventually be found. This sum of \$3,200 still, however, does not include the costs of medical, dental and educational expenses which are separately agreed to be met as to one-half each by the parties. The boys also attend at a private school at which the fees are quite significant and which, along with the other costs, have increased over the years.

17. The Petitioner avers that her present income is \$3,000 per month comprising entirely of the salary she obtains from her new business. While there is no apparent basis for doubting her evidence on this, the Respondent asserts that her

new business, placed as it is in a prime location on the waterfront in direct competition with Schellections, has a greater income earning potential than he is likely to realise in the future from his remaining 16.5% of Schellections. He says that this comparison holds true also in respect of the business which he conducts through his solely owned company Peter Wight Holdings Ltd.


18. He at present receives no income from Schellections because such dividends – reduced as they are from the current depressed tourism market – are applied towards repaying a loan he took from his fellow shareholders to buy out the Petitioner's interest.

19. From the solely owned business he acknowledges earnings of about \$6,000 per month but he claims monthly expenditure of \$7,498 per month. This, he says, includes payments on a house mortgage of \$212,000 and the repayments on the loan of \$250,000 borrowed from his other shareholders of Schellections to pay out the Petitioner's interests. The combined amount of these two payments is \$4,000 per month with the house mortgage taking \$2,385. To this must be added the monthly payment of \$866 for the boys as well as the further significant payments for their educational, medical and dental expenses. By the time one factors in his purely personal expenses, the Respondent says he arrives at the deficit of some \$1,498 per month mentioned above.

20. Mrs. Hernandez, on his behalf, argues therefore that the Respondent cannot afford and should not be required to meet any increase in payments.

21. The picture presented on all the foregoing is clear but unsettling: both parties have financial obligations which exceed their income. The Petitioner's present circumstances are, however, even more constrained than the Respondent's. Some leeway must be found, at least until she is able to realise greater income from her business or manages to sell or lease the house and move to a more affordable place. It is plain that at present she bears the major brunt of the financial responsibility for Eric and Justin. With 11 years having gone by without any increase in maintenance for them, the effect of inflation has rendered the monthly payment of \$866 significantly lower than it ought to be.
22. The Respondent says that his dividends from Schellections go directly to repay the loan from his fellow shareholders which by inference must be \$1,615 per month (\$4,000 - \$2,385). Those returns on his share holdings must be seen as being at an historic low. They are likely to increase and, having regard to the assessment of their value in the earlier proceedings, this will not be before long.
23. With all the foregoing in mind, the orders I make are as follows:
- (i) The Respondent's monthly contribution for maintenance of Eric and Justin will increase to \$1,100 per month (\$550 for each boy); with the Respondent continuing also to meet one-half their reasonable educational, medical and dental expenses.
 - (ii) The matrimonial house must again be listed for sale;
 - (iii) As an entirely separate matter, there is a sum of \$20,500 agreed to be owed by the Petitioner to the Respondent (arising from an earlier

transaction addressed in the Separation Agreements) and for which both parties agree provision must be made now. Having regard to the discussions during this hearing, the order is that the sum shall be paid when the house is sold; with interest to accrue at the one-half Judgment Interest Rates until payment.



Hon. Anthony Smellie
Chief Justice



November 18, 2009