

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



13/03/09

Cause No. D23/2007

BETWEEN: GLENNIS PRECILLA HYDES
PETITIONER

AND: HALFRANK WILLIAM HYDES
RESPONDENT

Coram: The Hon. Mr. Justice Foster

Appearances: Ms. Georgina Clarke of Samson & McGrath for the Petitioner
Respondent in person

Heard on 4th March 2009

RULING

1. In this application by the Petitioner (“the wife”) for final determination of outstanding ancillary matters on her divorce from the Respondent (“the husband”) several issues arise.

2. I have reviewed the affidavits of the husband and the wife and the documents which have been produced. I have also heard extensive oral evidence from the wife and from the husband and also from their eldest daughter. I have also heard submissions and argument from the husband in person and from the wife’s attorney.

3. The first issue to be determined is the date of separation of the parties for these purposes. The parties were married in 1987 and the wife contends that they should not be treated as having finally separated until 2006 when she stopped working with the husband in the family businesses. She accepts that she and the husband ceased living together in the same house in about 1997, but she gave evidence that they continued to have an intimate physical relationship until at least 2004. Even after then they continued to work together in what were the matrimonial businesses and it was not until the wife discovered that the husband had a second child outside the marriage (she had been aware of the first child) that she terminated their marital relationship. The husband claims that he and the wife had separated in 1990 when he moved out, although he did not dispute the wife's contention that they continued to have physical relations after that. In fact the youngest child was born in 1993. In determining when a husband and wife should be considered to have finally separated for these purposes the Court will consider all of the circumstances. The fact that a husband and wife are no longer living together all of the time in the same house does not necessarily mean that they have finally separated as far as the law is concerned. Nor does the fact that they may no longer be having a physical relationship. It all depends on the precise circumstances. In the present case, having seen and heard the evidence of the parties, in all the circumstances I consider that for these purposes the parties final separation should be taken as having occurred in 2006 when the wife finally terminated the parties' relationship and the Court will proceed on that basis.

4. There are several assets to be considered, namely a duplex property in West Bay, 2 commercial fishing boats purchased during the marriage, 2 haulage trucks and the construction business of Hydes Construction Ltd., and, possibly, its successor, Hydes Builders Ltd.

5. However, before considering these assets in more detail I should comment on a significant complicating factor. This is that there has been an obvious material failure by the husband to give full and proper disclosure of his financial dealings and of all his assets both prior to and since the separation in 2006. By an order of the Court made on the 14th April 2008 the husband was required to serve an affidavit with documentary evidence disclosing all his assets, whether or not in his own name, and giving the value, location and details of all such assets within 14 days of being served with the order. The order also required the husband to respond to a list of specific questions concerning his financial position and his assets which was attached to the Court order. There was a penal notice attached to the order. Despite having been served with the order, initially through the parties' elder daughter and subsequently in person by a process server in September 2008, the husband did not respond or otherwise comply in any way with the order. In August 2007, almost a year previously, he had filed a rather brief "affidavit of means", the inadequacy of which no doubt prompted the order of 14th April 2008 requiring him to provide answers to the specific questions attached. It subsequently became apparent that, for example, the husband had several substantial assets in Honduras which had not been disclosed nor had other

significant details concerning substantial bank transfers apparently made by him. I found the husband's explanations that he had not appreciated he was required to disclose assets outside the Cayman Islands, despite that having been clear from the terms of the order of 14th April 2008, and that he could not afford to pay the modest fees required by his bankers to provide historic information, wholly unsatisfactory. He was in clear breach of the Court order of April 2008 and of his obligation to disclose all his assets wherever and whatever they were and to explain the large transfers out of the bank accounts.

6. One of the principal matrimonial assets is a duplex in West Bay which was built during the marriage over a significant number of years as the intended matrimonial home and is still not yet fully complete. It is in joint names of the parties. It is, however, sufficiently complete to have enabled people to live in at least one of the apartments from time to time and for some rental income to have been paid as a result. The parties themselves have never lived there, having lived for almost all of the period of co-habitation with the wife's parents where the wife still lives. The estimated value of the duplex property if completed is \$330,000, with the most recent estimate of the cost to complete the property being \$47,550, say \$48,000. The value of the property as it stands to date i.e. not fully completed, is estimated to be \$275,300, say \$275,000. There is currently a mortgage over the property with the Cayman Islands Development Bank of about \$120,000 in joint names of the parties, although there is a dispute between the parties as to how the need for this mortgage, which was arranged by the wife,

arose or at least as to the way in which the wife has used the loan proceeds. The monthly payments in respect of the mortgage are currently \$1,050 per month and are being paid by the wife. Accordingly, the current equity in the property in its present condition is approximately \$155,000. If the construction of the property was completed and the resulting value of the property was \$330,000, the remaining equity in the property would then be approximately \$210,000 after repayment of the loan, an increase in the equity of \$55,000.

7. During the course of the marriage 2 fishing boats were purchased. The first boat, "Shenique", now "Tamara" was purchased in about 1998. The second boat, "Shekira" was purchased in about 2000 or 2001. The boats were acquired for the purposes of commercial fishing, although in fact only the first boat, "Shenique" was used for that purpose. The parties were both involved to a greater or lesser extent in the fishing business, with the wife being involved in selling the catch after each 10 day fishing trip to various supermarkets on the Island. This continued until approximately 2006 when the wife finally severed all relations with the husband. The second boat "Shekira" was not operated on a commercial basis and has since sunk in the North Sound. The first boat, "Shenique", is now in Honduras having been taken there by or on behalf of the husband. The husband has only a Honduran passport. The husband claimed that the boat has since been sold in Honduras, having developed engine trouble, in exchange for some cattle, which he said were worth the equivalent of about \$8,300. It was not made clear by the husband what happened to the cattle or where they were or are

kept. He estimated the total value of the 2 boats in August 2007 as being \$27,000.

8. I should also mention 2 trucks which were apparently purchased during the marriage, one of which remains with the husband. He said in his evidence that this has now been sold for \$4,000 but that he had only been paid \$1,000 and was having difficulty obtaining payment of the balance due. There was limited evidence about the trucks but in the circumstances I will proceed upon the basis that they are or were matrimonial property with a total value of \$8,000 for the two of them.

9. The other main asset in issue is a construction business which the parties set up in about 1998, Hydes Construction Ltd. This Cayman Islands company ceased trading in August 2006, some 10 years later, at which time the husband incorporated another company, Hydes Builders Ltd. in partnership with the parties' eldest daughter. The parties disagreed about the role which the wife played in Hydes Construction Ltd. She maintained that she was involved with assisting with preparing quotations for work and other administration of the company but the husband disputed that, claiming that the wife did not have sufficient knowledge to have been able to do so. Nonetheless, whatever the wife's direct role in the business, if any, the business was clearly established during the marriage and I am satisfied that for these purposes it should be treated as matrimonial property. During the period prior to the final separation the wife

was either earning herself in income producing employment or was looking after the parties' children at home. As mentioned above, the parties have 3 daughters born in 1987, 1990 and 1993 respectively and I have already concluded that for these purposes the parties relationship did not end until 2006. Accordingly, for purposes of deciding how the matrimonial assets should be divided between them, this constitutes a relatively long marriage of some 19 years. The law has developed significantly over the last few years and it is now clear that a party to a marriage who may not have earned nearly as much as the other spouse, or even earned nothing at all, during the period of cohabitation but who contributed to the family in other ways, for example by looking after the parties' children, is not to be discriminated against in determining a fair division of the matrimonial property. Such a party, usually a wife, is nowadays generally considered to be entitled to share equally with her husband in the matrimonial property, including any business, unless there is some special reason having regard to the particular circumstances why in fairness she should not do so. In fact in this case I am satisfied that the wife did assist in the business of Hydes Construction Ltd. (as well as the fishing business to which I have referred), to some extent and that she anyway contributed by enabling the husband to attend to the business while she worked herself or looked after the children and dealt with other domestic matters, although, it should be noted that anyway the Trade and Business Licence for the business was actually in her name. In all these circumstances, in my opinion it is fair and equitable that the wife should in this case share no less than equally with

the husband in all matrimonial assets, including the net income and assets of Hydes Construction Ltd.

10. A number of copy bank statements relating to Hydes Construction Ltd. over several years were produced by the wife, as well as copies of some of the husband's personal bank statements. It is clear from these documents that in excess of a total of \$600,000 was transferred out of these accounts at varying times and in varying amounts over a period of about 3 years. Since the only signatories on the business accounts were the husband and the wife (and possibly their eldest daughter, although she was not clear about that in her evidence), the only inference must be that these funds were most probably moved by the husband and in his evidence he did not really deny that. Despite the order of 14th April 2008 and the specific questions attached concerning these accounts and the payments out of them, the husband provided no documentary evidence whatsoever which satisfactorily explained his movements of relatively large sums. In his oral evidence he contended that these payments were in respect of payments to employees of Hydes Construction Ltd. and for materials but he was unable to identify any such payments specifically from the bank statements, save for a few relatively small payments in cash (he said that the employees were generally paid in cash). However, the wife did give evidence that at times the company had as many as 10 employees, some on work permits. It is also clear that one occasion a sum of \$17,585.37 was transferred from the Hydes Construction Ltd. US dollar account to an account in the name of the husband

trading as Hydes Builders. As the husband did not produce any bank statements at all, including statements of Hydes Builders, it was not possible to ascertain whether other payments had been made to this account from Hydes Construction Ltd.'s accounts.

11. It is clear that Hydes Construction Ltd. obtained some lucrative work during its existence, including both residential and commercial building contracts. There was particular evidence of a contract worth some \$2.4 million in respect of construction work at Fountain Court, Walkers Road and, following Hurricane Ivan, the company obtained a regular building contract with the Hyatt Hotel, which resulted in regular substantial payments to the company. It was notable from the bank accounts that, for example a payment of \$114,634.14 was received from Hyatt which was, according to the wife, deposited by her in the Hydes Construction US dollar account at Fidelity Bank on 14th October 2005 but was subsequently withdrawn, it has to be assumed by the husband, 3 days later on 17th October 2005, with no satisfactory explanation by the husband as to what happened to that money.

12. In all the circumstances, even giving the husband the benefit of the doubt and making significant allowance for payments to employees and for materials, it is nonetheless clear that substantial sums were transferred out of the accounts of Hydes Construction Ltd. which have not been explained by any documentary evidence, despite the husband's legal obligation to produce such documents, or

satisfactorily explained in the husband's oral evidence. It is also clear, from the husband's Will dated 4th October 2006, which was again not produced by the husband but located by the wife, that the husband then had several significant assets in Honduras, including a house in La Ceiba, land in La Ceiba and land in Guanaja. The Will also lists land at Town Hall Crescent Road, West Bay (without identifying it further) as one of his possessions. As I have said, none of this was disclosed by the husband and it seems quite probable that some, if not all, of this property may have been acquired using funds ultimately derived from Hydes Construction Ltd. The husband endeavoured in his oral evidence to give various explanations in relation to the property referred to in the Will but in my view this was again unsatisfactory and unconvincing. He also produced absolutely no documentary evidence to support his purported explanations. The Will itself expressly states that it lists the husband's current possessions and, in the absence of any documentary evidence to the contrary, it must, in my opinion, be taken at face value. Unfortunately there was also no evidence of the value of these assets.

13. The wife also produced a copy document, which was a time share agreement relating to an apartment in Florida, entered into by the husband in June 2005 for the sum of US\$19,175.62. Once again the husband produced no documentary evidence relating to this but in his oral evidence he stated that he had not proceeded with the agreement which, he said, he had been persuaded to sign by a forceful sales representative, and that the property was subject to a "foreclosure",

by which I understood him to mean that he had not honoured and therefore forfeited the contract. In the circumstances I am prepared to accept on this occasion the husband's evidence about that but once again this is a matter which the husband clearly should have disclosed in response to the order of 14th April 2008.

14. As I have said, both parties and their elder daughter gave evidence. Unfortunately I did not find any of them particularly satisfactory witnesses. The wife was relatively clear and appeared reasonably reliable in giving her evidence in chief. However, when various matters were put to her by the husband in cross-examination she became very evasive and much less credible. I had the clear impression that she was evading the questions and that there was at least an element of truth behind the various propositions which the husband was putting to her about her financial irresponsibility, extravagance and lack of credit worthiness. The husband's own evidence, however, was also unsatisfactory and his explanations for his failures to give full and proper disclosure, about the apparent dissipation of funds from the Hydes Construction Ltd. bank accounts and the position in relation to the previously undisclosed assets listed in his Will, were not at all convincing. The parties' 21 year old eldest daughter, who also gave evidence, came across as being very partisan towards her father, the husband, and against her mother, the wife. She clearly has a very poor, if not non-existent, relationship with the wife and has very much taken the father's side, for whatever reason, in the divorce proceedings. She also tended to give rather imprecise

answers to specific questions which suggested that there was probably more to the subject of the questions than met the eye. I did not find her a very objective witness.

15. Section 19 of the Matrimonial Causes Law (2005 Revision) (“the Law”) requires the Court to have regard, first of all, to the best interest of any children of the marriage and thereafter to the responsibilities, needs, financial and other resources, actual and potential earning power and the deserts of the parties. In exercising its discretion pursuant to Section 19, of the Law, it is clear that where there is general failure by a husband to give full and frank disclosure in the course of the case the Court may infer the existence of assets denied by such husband to exist or which he has failed to disclose (see Baker v Baker [1995] 2 FLR 829). It is also clear that the Court may take into account a husband’s earning potential and fundraising capability, on the basis of his apparent business acumen exhibited in the past, to make fair and proper provision for a wife. In such a case the Court does not have to be in a position to quantify the assets dissipated or the existence of which has not been disclosed or denied or to quantify the future prospects but may draw on inferences made on this basis for the purposes of making a fair and proper division between the parties (see Rye v Rye [2000] 2 FLR 981 referred to in B v B [2007] EWHC 594).

16. With regard to the ancillary matters to be considered pursuant to Section 21 of the Law the parties have agreed that the wife should retain day to day care and

control of the parties' youngest daughter (who is the only child of the marriage who is relevant for these purposes) and that access to her by the husband will be as agreed between the parties. However, it is clearly in the best interests of the child that she should be properly provided for financially and in that regard the wife is seeking maintenance for the child of \$500 per month. The husband claimed that he is not able to work at present due to a medical condition for which his doctor in Honduras has advised an operation. He said that he is endeavouring to arrange such an operation in Cuba but claimed to be unable to meet the cost at this time. He did produce a letter from a doctor in Honduras but that appeared to me to be simply a diagnosis that said nothing about the husband's ability to work or need for an operation and there was no other evidence in that regard. Furthermore, the husband admitted in cross-examination that it was only physical work which his medical condition presently precluded him from doing and that he was quite capable of working in an administrative or managerial position as he had done previously in managing the matrimonial businesses and then Hydes Builders. His evidence was that he is currently living with the parties' elder daughter. Rather surprisingly in light of his contentions about his abilities to work, the husband nonetheless said that he was willing (and therefore presumably able) to pay \$500 per month as maintenance for the parties' youngest daughter and accordingly I will so order, such maintenance to be paid until the child reaches the age of 18 or until she finishes full time education if that is later.

17. The wife also seeks spousal maintenance for herself of \$500 per month for one year. On 26th January 2007 the Summary Court made an order that spousal maintenance of \$500 per month should be paid by the husband. To date the husband has only paid \$4,000 pursuant to that order and arrears of spousal maintenance now amount to \$8,500. The husband has never returned to court to seek to have the Summary Court order varied or discharged, although the wife apparently did not return to court to seek enforcement of the order either. Since 2007 the wife has been working with a water sports company and earns \$1,300 net per month. She is currently paying the whole mortgage on the duplex property although the loan obligation is co-signed by the husband. She previously rented out one half of the duplex but because of its incomplete condition the rental was modified to \$1,100 per month; if completed it could rent for more. She would like to have the whole property transferred to her and to live in one of the duplex apartments herself and rent out the other. She claimed also to be paying the college fees for the party's second daughter totalling approximately \$3,000 per annum and to have a personal Credit Union loan costing her \$450 per month. In addition she claimed to owe her father \$2,500 and her sister approximately \$3,000 in respect of loan payments they had helped her with. These personal debts were incurred subsequent to the date of the parties effective separation but, if she is to be believed, were largely in respect of the mortgage loan for which the husband was equally liable, although, as I have said, he disputed the need for the loan or at least the way in which the loan proceeds had been spent by the wife. I did get the impression that the wife's spending habits and financial management

were not as responsible or prudent as they could or should be. In addition to the general suggestions of financial irresponsibility, extravagance and lack of creditworthiness which she evaded answering in any detail or with any conviction, there was, for example, evidence from both the husband and the eldest daughter that the wife had some time ago "borrowed" \$3,000 from the eldest daughter, which had been set aside for college expenses, but has never repaid it. The wife admitted this. The husband also gave evidence that he had had to request the supermarkets which were buying fish from their commercial fishing business to stop making payments to the wife because she simply spent the money irresponsibly. He further said that the wife could no longer obtain credit from local retail businesses because of her failures to honour her indebtedness. However, I am also satisfied that based upon his past performance the husband has the wherewithal to make a reasonably substantial income and/or to raise funds. He clearly has business acumen and experience and is well able to make significant profits or earnings whether in business on his own account or as an employee, whether in Cayman or Honduras. In all the circumstances, having regard to my assessment of the evidence and in light of the factors set out in Section 19 of the Law, I shall order spousal maintenance for the wife of \$300 per month to be paid by the husband, again through the Court Funds Office, for 12 months with effect from 15th April 2009 and on 15th day, or the next working day, of each month thereafter.

18. As far as the matrimonial assets are concerned, as I have already explained, the total equity in the duplex property in its current condition is \$155,000. With regard to the other matrimonial assets, I have already indicated that I will proceed upon the basis of a total value of \$8,000 for the 2 trucks and a total value for the 2 fishing boats of \$27,000. This leaves the question of the funds apparently dissipated by the husband from the accounts of Hydes Construction Ltd., which may be represented, at least to some extent, by the assets referred to in the husband's Will and possibly also by funds transferred to his present company Hydes Builders Ltd. The available evidence was that a total of approximately \$600,000 was transferred out of these accounts over a period of some 3 years. It is not clear what happened in previous years. It is clearly most unsatisfactory that the husband produced no documentary evidence to explain or justify these payments out. However, I must accept that Hydes Construction Ltd. was, during the relevant time, carrying on business as a construction company with a number of employees. Although the husband was unable to point to specific payments relating to payment of wages, costs of materials and other expenses of the business, I am prepared to accept that substantial payments must have been made in those respects and in the circumstances I am somewhat reluctantly prepared to proceed on the basis that as much as 75% of the total of \$600,000 is attributable to such business operational costs. However, this still leaves approximately \$150,000 unexplained and unaccounted for, although, as I have said, possibly reflected at least in part in the value of the assets listed in the Will of October

2006. This amount, however it is now reflected, is clearly matrimonial property of which the wife is entitled to a share which is appropriate in the circumstances.

19. The total of the matrimonial property, consisting of the current equity in the duplex property, the trucks, the boats and the funds removed from Hydes Construction Ltd, on the figures which I have used, therefore amounts to \$340,000 which, if divided equally between the parties, would result in \$170,000 each. In light of my comments above, including all the inferences I have drawn and having regard to the factors in Section 19 of the Law, I consider it would be fair that the whole duplex property should be the wife's. This will provide security and accommodation for her and the youngest child and/or a source of income. I therefore order the husband to execute and deliver a registerable transfer of his joint share in the title to the duplex property (West Bay Block 4C Parcel 242) into the wife's sole name within 30 days, failing which I authorize such transfer to be executed upon his behalf by the Clerk of the Court, so that the whole of the property becomes the wife's and she will have the benefit of a matrimonial asset with a present net value of \$155,000. Assuming the chargee bank will agree, the husband's name shall be removed as a co-obligor in respect of the outstanding borrowing and from the charge over the property as soon as possible, so that the loan shall become the wife's sole responsibility. In light of the transfer of this property to the wife, on the basis of a 50/50 split of all matrimonial property, there would be a balance due to her of \$15,000. However, in light of the husband's blatant failure to comply with the disclosure order of 14th

April 2008 and his failure to produce any documentary evidence as to his assets, means and financial dealings, leaving it to the wife to do the best she could to establish his financial position and leaving it to the Court to draw whatever inferences it could, I shall find that figure up to \$18,000.

20. However, there remains the cost of completion of the building work on the duplex property. If completed this would enable the wife to rent out one or even both of the duplex apartments and thereby meet the monthly loan payments and reduce the loan, possibly, depending on the rental, quicker than might otherwise be the case. Completion of the work would also, in light of the estimated value of the property as completed of \$330,000, significantly increase the value of the equity to approximately \$210,000 of which the wife would benefit. Since she would be responsible for the mortgage I consider that to be reasonable and an appropriate outcome in all the circumstances. However, I consider it only fair that the husband should contribute one half of the cost of completing the building work, namely \$24,000 and I so order. I also order that all building materials, tools and other equipment currently on site or now in the wife's possession shall be deemed to be the wife's and available for use in the completion of the work on the duplex property, irrespective of which party may have paid for it or otherwise acquired it and notwithstanding the payment by the husband of \$24,000.

21. There is also the matter of the arrears of maintenance totalling \$8,500. Having heard all the evidence and considered all the circumstances I shall order that an

amount of \$8,000 shall be payable in respect of this and the balance of \$500 shall be waived. Accordingly, having regard to my view of the appropriate inferences to be drawn and the needs, responsibilities and deserts of the parties in light of the evidence and of all the other factors in Section 19 of the Law, I order that, in addition to the transfer of the duplex property to the wife, the husband shall pay to the wife in full and final satisfaction of her claim for division of the matrimonial property, a further lump sum of \$50,000. This sum shall be paid as to \$25,000 within 60 days and the balance of \$25,000 shall be paid within 180 days with interest of 5% per annum to be added to the outstanding amount from the due date of payment until actual payment. The payments are to be made through the wife's attorneys. I should perhaps add that, in all of the circumstances, I am satisfied as to the husband's ability to pay and/or to raise the sums which I have ordered him to pay.

22. Finally, I also order that the husband shall pay one half of the wife's legal costs of these proceedings, such costs to be taxed if not agreed. I shall also give liberty to each party to apply in relation to the working out of the order to be made on this Ruling and the enforcement thereof.

13th March 2009


Foster J.
Acting Judge of the Grand Court

