

25/6/08

IN CHAMBERS
IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: D87/2006

BETWEEN:

DARREN PETER TRICKETT

Petitioner

AND:

TARA ELIZABETH TRICKETT

Respondent

AND:

KERLING BROWN

Co-Respondent

BEFORE: The Honourable Justice Henderson

Appearances:

Ms. Sheridan Brooks of Brooks & Brooks for the Petitioner
Mr. Philip Boni of Truman Boddan & Company for the Respondent
Ms. Sheri Boddan of Boddan & Boddan for the Co-respondent
(May 27th 2008 only)

Heard: 27th May 2008 & 18th July 2008

RULING



Henderson, J.

These reasons are intended to replace the unapproved version of my

Ruling dated June 25, 2008.

I have already ordered that there is to be an equal division of the matrimonial assets and that the assets are to be valued as at February, 2006.

There are two real property assets involved, referred to as the Vista Village and Captain Curry Road properties. The total value of these two properties is accepted as being \$727,000. At the time of the hearing on March 31, 2008 there were charges against both properties in the total amount of \$289,000. Shortly after the hearing, Mrs. Trickett obtained a discharge of a mortgage on Vista Village: nothing had to be paid to achieve this. That reduced the total amount of the charges against both properties to \$261,000. Accordingly, the equity in the two properties combined is \$466,000 and each party's share in the matrimonial property is therefore \$233,000.

Mr. Trickett wishes to retain the Vista Village property, in which he is living. The appraised value of Vista Village is \$220,000. There are no charges on that property at present.

Prior to the hearing on March 31, 2008, Mrs. Trickett intended to retain the Captain Curry Road property for herself. She came to this conclusion because of certain assumptions she made about how her contribution to that property would be valued and recognized in the division of the matrimonial assets. When it became clear during the hearing that her view of the matter was unlikely to prevail, she changed her mind. She advised the court that she would move out of the Captain Curry Road property and place it on the market for sale.

When the Captain Curry Road property is sold, the net sale proceeds will be divided equally between the parties. Since Mr. Trickett is retaining the Vista Village property, he must pay to Mrs. Trickett from his share of the sale proceeds of the Captain Curry Road property a sum equal to her half of the equity in Vista Village.

At the hearing on March 31, 2008 I set the amount of Mr. Trickett's compensation payment at \$95,000 because, in light of the charge against the property on that date, I assessed the equity at \$190,000. Mrs. Trickett now asks that I increase the compensation payment to \$110,000 to reflect the current equity in the property now that the

mortgage has been discharged through her efforts. Mr. Trickett argues that "the exceptional circumstances" which are a prerequisite to my amending my judgment do not exist: See *Stewart v Engel and another* [2000] 3 All ER 518 (Court of Appeal, Civil Division).

A court can and no doubt should amend its judgment (provided a final order has not been entered) if it contains a plain mistake: *ibid*. At the hearing on March 31, I was of the understanding that the charge against Vista Village was an existing liability which would have to be paid off by Mr. Trickett in due course, with the result that the equity was just \$190,000. In fact, the mortgage was of no financial significance and the true amount of the equity was \$220,000. This is a plain mistake, and it is only fair that I rectify it by amending my judgment accordingly.

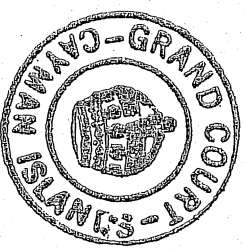
For these reasons, I order that Mr. Trickett is to pay compensation to Mrs. Trickett in the amount of \$110,000 from his share of the net sale proceeds of the Captain Curry Road home.

In his written submission dated July 25, 2008, Mr. Trickett has asked me to reconsider my refusal to take into account in his favour the fact that he paid a down payment of \$25,000 on the Vista Village property prior to the marriage. My decision on that point must stand; none of the circumstances mentioned in *Stewart v Engel* as justifying the amendment of a prior judgment are applicable to this question.

If, as a result of this ruling, Mr. Trickett now decides to sell Vista Village, the net proceeds of sale are to be divided equally between the parties.

I make no order as to costs.

Dated this 29th day of July, 2008



Henderson, J.

Henderson, J.
Judge of the Grand Court