

Livers 19/4/07

1 IN CHAMBERS
2 IN THE GRAND COURT OF THE CAYMAN ISLANDS

- Civil

CAUSE NO: D11/06

12.3.07

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6 BETWEEN:

7 DARREL HINES

Petitioner

8
9
10 AND:

11 ESTHER HASSETT

Respondent

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13
14 BEFORE: The Honourable Madam Justice Livers

15
16 APPEARANCES:

17 Counsel for the petitioner: Mr. A. Akiwumi of Stuarts Walker Hersant

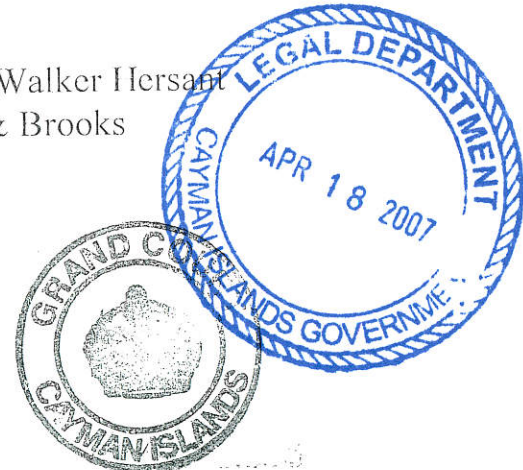
18 Counsel for the respondent: Ms. S. Brooks of Brooks & Brooks

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20 HEARD: 6th March, 2007

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JUDGMENT

Livers, J.

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26 The Court is now dealing with the ancillary relief sought by the respondent,
27 Esther Hasset. The petitioner, Darrel Hines, initially filed a petition, which
28 was contested by the Respondent, on the basis that the Court had no
29 jurisdiction to hear it. After a short hearing, the question of jurisdiction was
30 conceded and an amended Petition was filed, deleting the old particulars and
31 going on the basis of two years separation. The Court then ordered that the



1 petition was proved and adjourned the question of ancillary relief to
2 Chambers.

3

4 The relief sought by the Respondent in this application is the distribution of
5 the matrimonial assets. No maintenance is being asked for and as there are
6 no children, there is no question of care or control involved. The general
7 principles dealing with ancillary matters is governed by Section 19 of the
8 Matrimonial Causes Law (2005 Revision):

9

10 “In dealing with all ancillary matters arising under
11 this Law, the Court shall have regard first of all to
12 the best interests of any children of a marriage and
13 thereafter to the responsibilities, needs, financial
14 and other resources, actual and potential earning
15 power and the deserts of the parties.”
16

17 Section 20 does not apply in this case. Section 21 deals with ancillary orders
18 and it is the section that governs any order that this Court makes relating to
19 matrimonial property. Section 21 reads:

1 At the time of pronouncing a decree under this Law, the
2 Court shall, as appropriate, make orders for –

- 3 (a) the custody, care and control of the children of the
4 marriage;
- 5 (b) the disposition of matrimonial property, including the
6 matrimonial home;
- 7 (c) varying any settlement of the property of the spouses
8 made in consideration of the marriage, whether such
9 settlement was made before or upon the treaty of the said
10 marriage;
- 11 (d) varying any other settlement of matrimonial property;
- 12 (e) making financial provision from the property of either
13 spouse for the children of the marriage and for the other
14 spouse;
- 15 (f) providing for periodic payments to be made by either
16 spouse for the benefit of the children of the marriage and
17 for the other spouse; and
- 18 (g) costs.
19

20 As will be seen from Section 21, the Court has power of disposition over
21 matrimonial property, varying any settlement of the property of the spouses,
22 varying any other settlement of matrimonial property, and making financial
23 provision from the property of either spouse for the children of the marriage
24 and for the other spouse.
25

1 In making these orders, the Court has to take heed of: the responsibilities;
2 needs; financial and other resources; actual and potential earning power and
3 the deserts of the parties. The deserts of the parties has been a phrase that
4 has been canvassed frequently in this jurisdiction and it has been decided in
5 various authorities, by varying language, that the deserts of the parties means
6 'the conduct of the parties during the marriage and the credit that they are
7 deserving of by such conduct'. The ancillary relief, the Respondent seeks,
8 is a clean break settlement for herself and indeed, the husband (petitioner)
9 also seeks the same relief.

10
11 The question for the Court, in this matter is, what constitutes matrimonial
12 property? Does it include, property purchased before the marriage and does
13 the present property in joint names alone cover the financial needs,
14 responsibilities and requirements of the applicant/respondent if the court was
15 to hold that the pre-marriage purchased property is not part of the
16 matrimonial property and whether inherited property has to be looked at to
17 satisfy the requirements of the Respondent.

18

19 **History of the marriage**

20

1 The parties met in 1994, and traveled extensively till 1997, when they
2 arrived back in London and started a business together. The relationship
3 continued until 2001, when the parties got married on 29th January.
4

5 The parties then visited the Cayman Islands for a brief holiday and decided
6 to reside here. They have been residents in the Cayman Islands since March
7 2001, and the Petitioner has been employed on a work permit at Caribbean
8 Network Solutions, initially as a manager and now as a general manager.

9 The Respondent has been employed for the last two years, as a manager at a
10 communications company. The Petitioner and the Respondent during the
11 course of the marriage acquired two properties, one was a property in
12 London, which is now rented and the other, a property in Ireland (next to the
13 Respondent's sister's home) an investment property. The third property
14 involved in these proceedings is a property purchased by the Petitioner in
15 1992. The Petitioner calls it his mother's house because he alleges that he
16 purchased the house for his mother, although it was in his name, as she
17 could not get a mortgage at her age. She pays £200 towards the mortgage
18 and he pays the balance.

19

1 The Respondent is now claiming a beneficial interest in that property by
2 virtue of the following:

3

4 (1) That the company put all the monies in a joint account from which
5 both parties drew monies into their private account and paid their own
6 bills. She therefore claims that it is the joint income that paid the
7 money for the mortgage and therefore, she is beneficially entitled to
8 an interest.

9 (2) She also claims that the excess from the rental property in London
10 (£80) went towards payment of the mortgage on the mother's house.

11

12 The matter is made complicated by the fact that the Petitioner borrowed
13 approximately £17,000, as a loan on the mother's house or the house
14 purchased in 1992, to put down as a deposit on the Irish residence. The
15 Court will examine these facts in conjunction with the law at a latter
16 stage in this judgment.

17

18 As stated previously, the parties came to the Cayman Islands in March
19 2001 and have lived here for all these years, going back to England very
20 infrequently for family purposes. The Respondent however, was asked
21 by the Petitioner to give him some breathing space and in 2003, she left
22 and went to Ireland for practically a year.

1
2 The Respondent alleges that this is because the Petitioner was going
3 through depression and she did not suspect that anything was wrong with
4 the marriage. The Petitioner eventually left the matrimonial home in
5 April 2005. It was then that the Respondent discovered that he had a
6 liaison with a good friend of hers.

7
8 Devastated as the Respondent was, she decided to move on with her life
9 and although she got no legal advice, (in fact, neither party did), they
10 negotiated and commenced discussions on a settlement of the
11 matrimonial assets. It is interesting to note that in the various emails that
12 had been exchanged between the parties, the Respondent appears to have
13 indicated to the Petitioner that although she indicated her intentions in
14 these exchanges, she would take the matter to the United Kingdom and
15 have a solicitor draw up an official agreement.

16
17 The Respondent's intentions were clearly stated in the emails as were the
18 Petitioner's. They seemed to have agreed on many of the issues,
19 including the properties, and it was decided that a lump sum payment
20 would be withdrawn from the joint account and paid to the Respondent.

1 The sum of CI\$40,000 was given to the Respondent by the Petitioner on
2 the understanding apparently that this agreement was binding and it was
3 in full and final settlement of any cash payment.

4
5 The Respondent argues that these agreements were not binding and that
6 the payment of the cash was not in part performance of any concluded
7 contract. That the emails merely indicate that these were discussions
8 taking place. I do not believe she goes as far as saying that the emails do
9 not indicate intention. What is certain, however, is that at no time until
10 the first affidavit was filed on 15th February, 2007, did the Respondent
11 give any hint of claiming an interest in the 1992 property that the
12 Respondent brought into the marriage. Nor did she claim any interests in
13 the inherited property which she now claims.

14
15 The present situation is that the Respondent continued to live in the
16 Cayman Islands and the rental for her premises of CI\$2400 which she
17 shared up to recently with her tenant was contributed towards by the
18 Petitioner. She earns sufficient money to meet her requirements (she is
19 not asking for maintenance). He is a bigger earner than her but he has
20 greater financial obligations caused by the fact that a loan was taken on

1 the 1992 property and has to be repaid by him alone. It is also clear that
2 the Respondent and the Petitioner need a roof over their head. The
3 Respondent will get a lump sum payment from the shares in the
4 matrimonial properties. She appears not to have any financial
5 obligations except for day-to-day living expenses. Of course, it is
6 understood that if she purchases a house, eventually she will have to pay
7 a mortgage.

8
9 **The Law**

10
11 In the leading case of *White v White* [2003] 3 WLR at page 1571, Lord
12 Nicholls said:

13
14 “As a general guide, equality should be departed
15 from only if, and to the extent that, there is good
16 reason for doing so. The need to consider and
17 articulate reasons for departing from equality
18 would help parties and the court to focus on the
19 need to ensure the absence of discrimination. But,
20 there is one principle of universal application
21 which can be stated with confidence. In seeking to
22 achieve a fair outcome, there is no place for
23 discrimination between husband and wife and their
24 respective roles.”
25

1 It must be said that the primary object is an award that is fair to both
2 parties. What I need to take into account, in my view, are the following
3 factors, as was stated in Uzzell v Uzzell (2001) CILR Note 12, D97/97:

- 4 1. The length of marriage;
- 5 2. The age of the parties;
- 6 3. The income and earning power of the parties;
- 7 4. The amount of matrimonial and non-matrimonial property
8 available to the parties; and
- 9 5. The needs and obligations of the parties;
- 10 6. The liquidity of the parties, including one party's ability to
11 pay any lump sum award;
- 12 7. The deserts of the parties, including the contribution that
13 the parties have made to the accumulation of the
14 matrimonial as well as non-matrimonial property. In
15 considering what the relative contribution of each party is,
16 the Court should:
 - 17 (a) examine the efforts made by each party;
 - 18 (b) examine the results achieved from the
19 respective parties efforts; and
 - 20 (c) examine the nature of the contribution;
 - 21 (d) not discriminate against one spouse on the
22 basis that he or she did not work outside the
23 home but rather stayed at home to care for the
24 family and attend to the family.

1 If for example, one party did not work for whatever reason, especially
2 where there are no children, and did not contribute to a joint account
3 but has got the benefit of half the joint account on separation then the
4 Court must take that into account too. It must also consider the deserts
5 of the parties which means, as I have said previously, the conduct of
6 the parties, especially if that conduct is such that it would in the
7 opinion of the Court be inequitable to disregard it.

8
9 The Courts must give effect to the parties' intention during the course of the
10 marriage, with the idea that marriage was a partnership, and that unequal
11 contribution in acquiring a matrimonial home or matrimonial property is not
12 a reason for departure from equality. I need also to stress that the statutory
13 requirements in England are not exactly the same as in the Cayman Islands
14 but are very similar.

15
16 The case of Lambert v Lambert [2002] EWCA (Civ) deals with the exercise
17 of discretion in proceedings of this nature and is worthy of careful scrutiny.

18 That case, however, was predominantly dealing with the special
19 contributions that parties can make in a marriage. The following passage is,
20 in my view, an impeccable exposition on the law:

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“The court’s fundamental duty however remains to apply section 25 of the Matrimonial Causes Act, 1973 to all the circumstances of this case in its attempt to arrive at a fair outcome. Although the issue of the parties contributions to the welfare of the family has been uppermost in the minds of the parties and of their representatives, I observed that that issue can claim no statutory priority in the discretionary exercise. I must have regard to each of the eight matters separately specified in section 25(2) against the background of all the circumstances of the case. Since each of the children is now adult and wealthy as described, their welfare no longer requires ‘first consideration’.”

In this case, however, there is no doubt that the two properties, the Irish property and the London property in the parties’ joint names are matrimonial assets. What the parties wish me to do is to say that each of them has a greater connection with London and therefore each of them should get the London property and not the Irish property. The Respondent’s arguments as far as the London property is concerned is that she has connections with London and that she cannot get a mortgage easily and that she will need a sitting tenant which will be most useful to her. Why that is so is because she says her earning power is less than the Petitioner. The Petitioner, on the other hand, says that the Respondent has connections all over the world especially in Ireland. That he purchased the Irish property initially because

1 she persuaded him to do so as it is close to her family. That she has
2 connections in Milan and that she has connections in the United States of
3 America and that she has a green card in the United States of American and
4 that she can work there. He on the other hand, never thought of London as a
5 permanent residence having being taken from Kenya by his mother at a very
6 young age to send him to school in England. He only worked in London for
7 four years and although his mother is there he wishes to live in the Cayman
8 Islands. He does have connections in London and nowhere else and so he
9 feels that his entitlement should be the London home and hers should be the
10 Irish home.

11
12 The Respondent also submits that her beneficial interest in the house
13 purchased in 1992, was acquired by virtue of the fact that the income from
14 the company that was setup together jointly, went into a joint account from
15 which monies were drawn by either party and put into a personal account
16 from which mortgage payments were made for the 1992 property. The
17 payments made were half of the mortgage payments and at best therefore
18 she should be entitled (although this not submitted) to half of a half of the
19 amount contributed to by the Petitioner towards the mortgage payments.

1 The Respondent does not pretend to have made non-financial contributions
2 toward the property.

3

4 How does a person acquire a beneficial interest? Before enactment of the
5 Matrimonial Proceedings Law (2005 Revision), the Court had no
6 discretionary power to reallocate property on divorce and court cases about
7 beneficial ownership often involved married couples. The Act in England
8 and the law here has made the Common law principles governing beneficial
9 entitlement largely irrelevant in dealing with the allocations of assets on
10 divorce once it is matrimonial property.

11

12 In this application it is claimed that there is a beneficial interest in the 1992
13 purchased property because of financial contribution alone. In the absence
14 of evidence of such an understanding or an agreement, the court must make
15 inquiry into all the circumstances of the case. This is, where drawing
16 inferences from the conduct or the deserts of the parties could apply. It
17 must be emphasized however, that neither the fact that a person assumes
18 liability, nor even the fact that a person makes the payments towards the
19 mortgage, of itself gives rise to any beneficial entitlement. Rather the issue

1 is whether the facts constitute evidence of the parties' intentions at the time
2 of purchase. (See *Re Gorman* [1992] 2 FLR 184 at p 291, per Vinelott J.)

3

4 There is no question here of implied resulting and constructive trust. The
5 house was not conveyed into the name of one person after the marriage.

6

7 Even if I was to hold that there was beneficial interest, how does one
8 quantify the beneficial interest? There are two situations.

9

10 (1) Where there is a declaration quantifying the beneficial interest. In
11 such a case of course that declaration will be virtually conclusive in
12 the absence of fraud or mistake.

13 (2) If there is no such declaration, whether the legal estate is held by one
14 person or two or more, is for the court to consider in accordance with
15 the principles, whether there was a contribution in money or monies
16 worth such as would give rise to a resulting trust proportionate to the
17 value of the parties respective contributions and whether there has
18 been an agreement or understanding as to the extent of their beneficial
19 interest. In the absence of any such agreement or understanding, it

1 looks to the parties conduct as the basis from which to infer their
2 common intentions.

3
4 Matrimonial property is property which was acquired during the marriage, or
5 if it was before marriage, put into the melting pot of the marriage and all
6 other assets directly traceable to the income earned during the marriage. In
7 this case the only assets prior to marriage was the 1992 property.

8
9 The inherited property must now be examined. Lord Nicholl's speech in
10 *White* (Supra) is instructive:

11
12 "This distinction is a recognition of the view,
13 widely but not universally held, that property
14 owned by one spouse before the marriage, and
15 inherited property whenever acquired, stand on a
16 different footing from what may be loosely called
17 matrimonial property. According to this view, on
18 a breakdown of the marriage these two classes of
19 property should not necessarily be treated in the
20 same way. Property acquired before marriage and
21 inherited property acquired during marriage come
22 from a source wholly external to the marriage. In
23 fairness, where this property still exists, the spouse
24 to whom it was given should be allowed to keep it.
25 Conversely, the other spouse has a weaker claim to
26 such property then he or she may have regarding
27 matrimonial property."
28

1 He goes on:

2

3 “Plainly when present, this factor is one of the
4 circumstances of the case. It represents a
5 contribution made to the welfare of the family by
6 one of the parties to the marriage, the judge should
7 take it into account. He should decide how
8 important it is in the particular case. The nature
9 and value of the property, and the time when and
10 circumstances in which the property was acquired,
11 are among the relevant matters to be considered.
12 However, in the ordinary course, this factor can be
13 expected to carry little weight, if any, in a case
14 where the claimant’s financial needs cannot be met
15 without recourse to this property.”

16

17 **Conclusion**

18

19 As has already been stated, there are certain matters that the Court needs to
20 look into in dealing with the disposition of the property. It is best I think
21 that I start with the obvious matrimonial properties. That is, the properties in
22 Ireland and England. Both are held jointly and both parties are ad idem that
23 they are matrimonial properties. The distributions of these to either party in
24 my view, is difficult for the Court if it were to be fair to both parties.

25 Connections to London are tenuous at the most. Connections to Ireland are
26 far greater for the Respondent than the Petitioner. The Court needs to look
27 at the other evidence and decide whether a sitting tenant would be a better

1 proposition for the Respondent or for the Petitioner. There is no evidence in
2 my view to tilt the scales one-way or the other.

3

4 I therefore hold:

5

6 (1) That the properties should be sold, at an open market value, if either
7 party wishes to buy the other they should do so within two months of
8 the date of this order, if not, it should be put with a reputable real
9 estate agent, to be sold in the open market;

10 (2) I now come to the 1992 purchased property. The agreements that
11 were reached by the parties show that the parties had no intention of
12 dealing with the 1992 property, as matrimonial property. The
13 Respondent has made some allegations before this Court as to duress
14 in the agreement, with absolutely no evidence to support it. This
15 allegation was made first in the oral evidence given by the
16 Respondent in this Court. I dismiss it and hope that this sort of
17 practice is not undertaken without prior notice to the other side. I
18 must mention that this has nothing to do with counsel who I am sure
19 was taken by surprise. The evidence of the Respondent was not to the
20 effect that there was any intention during the marriage to look at this

1 property as matrimonial property. What she said was that from the
2 joint incomes of the company, which was paid into a joint account,
3 each party drew monies out and put it into their private account and
4 then paid their various bills. In my view, this cannot give her a
5 beneficial interest, as the Petitioner could have spent it numerous
6 other things, but he chose to spend it on some of the mortgage on the
7 1992 property.

8 (3) The other limb of her claim, as far as beneficial interest in this 1992
9 property is concerned, is the contribution from the excess from the
10 London property rental (£80) that went towards paying the mortgage.
11 In my view there must be clear evidence that the parties had made an
12 agreement about beneficial entitlement. In Barclays Bank v Khaira
13 [1993] 1 F.L.R. at page 343, a husband and wife signed a Land Registry
14 form in the presence of a witness which purported to transfer their
15 house to the wife. Although the document was stamped, it was never
16 presented to the Land Registry for registration and was thus
17 ineffective to transfer the legal estate to the wife. However, the trial
18 judge held that the transfer was “the best evidence the court could
19 reasonably expect of an express domestic arrangement as to the

1 sharing of the beneficial interest”, which was capable of being
2 effective to give the wife an equitable interest in the property.

3
4 In this case, the best evidence this court has is that during all the negotiations
5 there was never any mention of the 1992 property by the wife. Ms. Brooks
6 makes the submission that she was not legally advised but every other aspect
7 of the matrimonial property and assets have been covered and it seems
8 surprising that a woman with such astute understanding of needing to get
9 solicitors advise in London, would now claim for the first time that she was
10 only in discussions and that the only reason she did not mention the 1992
11 property was because she was emotionally unstable and not legally
12 represented.

13
14 In **Lloyds Bank v Rosset** [1991] 1 AC 107, Lord Bridge of Harwich said
15 that the first and fundamental question which must always be resolved is
16 whether they have “at an time prior to the acquisition of the disputed
17 property, or exceptionally at some later date, been discussions between the
18 parties leading to any agreement, arrangement or understanding reached
19 between them that the property is to be shared beneficially”.

1 There is no conduct on the part of the Respondent during the marriage or of
2 the Petitioner during the marriage that can drawing an inference that the
3 Respondent is entitled to any beneficial interest in this property. I am also of
4 the view that the joint income does not give rise to a beneficial interest.
5 What, in fact, happened was the monies were paid into a joint account and
6 each party withdrew monies from that account for their own purposes. In
7 the circumstance, I hold that the Respondent does not have any beneficial
8 interest in that property.

9
10 **The inherited property**

11
12 I hold that the Respondent's needs would be adequately met from the capital
13 gain from the sale of these two properties and I therefore hold that there is
14 no entitlement to these properties by the Respondent.

15
16 **Pensions**

17
18 I hold that both pensions should be added and divided equally.

19
20 **The Honda Civic**

21

1 The Petitioner wishes to claim the sum of \$1750, on the basis that this was a
2 car purchased after Ivan. I do not hold that he should get this money. I hold
3 that the Petitioner during the marriage purchased this car for the Respondent
4 and that he is not entitled to any refund on this car. I do not believe that the
5 other cars are subject matters on which the Court has been addressed and
6 that the parties in fact have apparently agreed on this.

7

8 **The bank accounts**

9
10 There is no dispute – the Court was not required to adjudicate on this.

11

12 **The Deposit**

13

14 The Petitioner further claims the £17000 that he used to put down as a
15 deposit on the Irish property and wishes to have that returned to him on the
16 sale of the property. I refuse this application.

17

18 In making these Orders, I bear in mind that the Petitioner's conduct has not
19 been exemplary but it is not the sort of conduct that this Court must take into
20 account in dealing with matrimonial property. The allegation is that he is
21 having an affair. In these proceedings however, the divorce was obtained

1 on a two year separation and it is my view that even if that were not so,
2 allegations of the conduct within the phrase “deserts of the party” must
3 mean, the ill-treatment, the violence or some other domestic abuse mental or
4 physical or behaviour of the Petitioner that would have a direct impact on
5 the question of ancillary relief. In this case, the Petitioner paid the
6 Respondent’s rent, paid the insurance, agreed to pay travel expenses, and
7 agreed to give her £40,000 from the account. He does not come within the
8 phrase “deserts of the parties” in which the conduct should be regarded, or
9 putting it another way, where it will be inequitable to disregard the conduct.

10

11 **Rental Deposit (Cayman)**

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13 Finally, it is the question of the deposit paid on the Respondent’s rental
14 accommodation. I order that \$600 of that \$1200 should be returned to the
15 Petitioner when the Respondent leaves the premises.

16

17 There is now the question of costs that have been awarded against the
18 Respondent and that should be paid. I order that the sale proceeds of both
19 properties should not be paid to either party till the Petitioner’s costs are
20 deducted therefrom. I further direct that the order in these proceedings when

1 formally signed by the Court should be filed as a mirror order, both in
2 Ireland and in England.
3
4 No order as to costs of this application. Each party to bear their own costs.
5

6 Dated this 12th day of March 2007

7 
8

9 Judge of the Grand Court

