

12/4/2006



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

4 CAUSE NO: D174 OF 2002

6 BETWEEN:

7 CARYN LYN CARLSON THURNER

Petitioner

10 AND:

11 THOMAS JEFFREY THURNER

Respondent

14 BEFORE: The Honourable Madam Justice Levers

16 APPEARANCE:

17 Counsel for the Petitioner: Mrs. Eileen Nervik of Nervik & Co.

18 Counsel for the Respondent: Mrs. Sheridan Brooks of Brooks & Brooks

20 HEARD: 23<sup>rd</sup> March 2006

22 \_\_\_\_\_  
JUDGMENT  
\_\_\_\_\_



25 Levers, J.

28 This is an application by the wife Caryn Lyn Carlson Thurner for:

- 29 1. Orders pursuant to Section 19 and 21 of the Matrimonial Causes Law,
- 30 (2005 Revision); and
- 31 2. Such further and/or other relief as this Honourable Court deems fit
- 32 and proper.

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2 **Background**

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4 Mrs. Thurner was married on the 15<sup>th</sup> March, 2001, at George Town, Grand  
5 Cayman to Thomas Jeffery Thurner, also known as Erick Jeffery Van  
6 Tiergen. That prior to the marriage, the couple had cohabited for  
7 approximately 10 years. Each party's version as to the reason for  
8 cohabitation varies vastly and has a bearing on the proceedings at hand. The  
9 Petitioner claims that she met the Respondent in the Bahamas, fell in love  
10 with him, and came to the Cayman Islands on a trial basis for 90 days. The  
11 Respondent, on the other hand, states that he informed the Petitioner that he  
12 needed somebody to look after his daughter, as he was going through an  
13 acrimonious divorce, and the Petitioner agreed to come on the basis that she  
14 got free board and lodging. When both parties commenced cohabitation  
15 they also put their efforts into a business called the Magnificent Dive Dump  
16 Hotel. The Respondent had the land prior to marriage. The Petitioner  
17 claims that she assisted him in developing and building the hotel, not  
18 financially, but running the hotel as a manager without any remuneration.  
19 She says she did this because he had promised to marry her and give her a  
20 good life and the hotel was to be their retirement funding.

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2 Although the Respondent has endeavoured to make out that the Petitioner  
3 was homeless and jobless when she first met him, I find that the evidence in  
4 the matter goes contrary to that assertion. I find that she was, in fact,  
5 employed and she gave up her employment albeit willingly.

6 She fell in love with the Respondent. I also find that they must have had a  
7 good relationship, and that she did in fact put a considerable effort into  
8 assisting the Respondent in his endeavours with developing the hotel.

9 However, it must be true to say that the Respondent with his connections in  
10 the Cayman Islands must have played a greater role in the development than  
11 the Petitioner did.

12

13 **The Claim**

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15 The Petitioner, despite her assertion that she assisted in this development,  
16 makes no claim on the hotel. What she claims is that she is entitled to the  
17 loss of salary for the ten years that she lived with the Respondent. She says  
18 she lived with him because she was taken in by his promises which led to  
19 her giving up her employment permanently. She says if she had gone on  
20 working, she would have earned US\$800,000. She therefore wishes to be

1 compensated for this loss. This matter is complicated by the fact that there  
2 is between the parties a Pre-Nuptial and Post-Nuptial Agreement. As I  
3 indicated to counsel this agreement is against public policy and against the  
4 law in this country. I therefore have no alternative but to refer the matter to  
5 the Attorney General. The Agreement states clearly that this is a marriage of  
6 convenience and has been undertaken for Immigration purposes. The  
7 Agreement reads:

8

9

*PRENUPTUAL and POSTNUPTUAL AGREEMENT*

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*The following partys, Capt. T. Jeffrey Thurner and Caryn Lynn  
Carlson/Thurner do hereby enter into this agreement for the sum  
of C\$10.00 and other good and valuable consideration.*

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12

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*It is agreed that they are to become wed under the laws of the  
Caymans Islands in the spring of 2001. The sole purpose of this  
wedding is to allow Caryn Lynn Carlson/Thurner to continue to  
reside in the Cayman Islands. She is currently under threat of  
deportation by the Department of Immigration.*

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*Both partys agree to waive any property or monetary benefits  
normally obtainable under the dissolution of this marriage under  
Caymanian law.*

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*Both partys agree to the dissolution of this marriage in a timely  
manner if either or both partys should terminate their normal  
residence in the Cayman Islands.*

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*Prenuptual:*

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*Signed: Capt. T. Jeffrey Thurner Date 14/3/01*

31

32

*Signed:*

33

*Caryn Lyn Carlson Date 14/3/01*

34

35

*Postnuptual:*

36

*Signed: Capt. T. Jeffrey Thurner Date 15/3/01*

37

*Signed: Caryn Lyn Carlson/Thurner date 15.3.01*

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2 As will be seen, this Agreement, if the Court held it binding, would not  
3 entitle the Petitioner to any monies under this claim. The Agreement is  
4 against public policy, and the Court finds itself unable to be bound by it.

5 The Petitioner claims that she didn't know what she was signing and that  
6 when she signed it for the second time too, although it was done in front of a  
7 Notary Public, she did not read it. I find this unacceptable. I believe that the  
8 Petitioner knew what she was signing and that she signed it voluntarily.

9 There was no evidence of duress. Although the Petitioner was called with a  
10 review to substantiating duress, no such evidence was forthcoming. If this  
11 agreement was not against the law, it would at best only indicate the parties'  
12 intentions.

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14 Neither of the partners in a relationship outside marriage is automatically  
15 entitled to legal rights stemming from the status of marriage. It is irrelevant  
16 that they have been living together happily for many years and that they  
17 have for long been regarded as a married couple by all their friends and  
18 neighbours. The case of Burns v Burns [1984] Ch 317 provides a dramatic  
19 example of the consequences of being an "unmarried couple".

20


1                   “Mr. and Mrs. Burns lived together for 19 years.  
2                   Mrs. Burns (as she was known) gave up her job to  
3                   look after Mr. Burns and their two children.  
4                   Although she put her earnings into the  
5                   housekeeping, and bought domestic appliances and  
6                   other household goods, she was held to have no  
7                   claim to the house or any of the assets.  
8

9                   There appears to be a widespread belief that living together for  
10                  a sufficient length of time makes the couple “common law  
11                  spouses”, but this is not true. A former President of Divorce  
12                  Division, expressing this in picturesque if rather offensive  
13                  language, described the use of the term “common law wife” as  
14                  a euphemism for mistress, lover, concubine etc. as a misleading  
15                  vulgarism”.  
16

17 I find that I can take into account cohabitation as evidence of the party’s  
18 intentions, which culminated in marriage. I cannot however, as Mrs. Nervik  
19 submits, take the period of cohabitation as the period of marriage. This is  
20 therefore a short marriage of one year and eight months. The couple has no  
21 children. I find as a fact that Mrs. Thurner did support Mr. Thurner in his  
22 endeavours in developing the property. She did not contribute financially to  
23 the property. Therefore I now have to look at the question of whether she is  
24 entitled to maintenance, although it is a short marriage. The truth of the  
25 matter is that Mrs. Thurner now earns more than Mr. Thurner. She is back  
26 in her nursing profession and although she lost ten years, she is earning  
27 sufficient to support herself. She therefore is not in “need” as the concept of  
28 need is defined in the law. Her income appears to adequately cover her

1 expenses but I find that equity would demand that she should be  
2 compensated in some form to meet the expenses of her relocation. Her  
3 expenses in this regard for the six months were nineteen thousand dollars  
4 approximately. I order that she should receive the sum of US\$20,000 as a  
5 lump sum settlement. No order as to Costs.

6  
7 Dated this *04* day of April 2006

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9   
10 Judge of the Grand Court

