

30/8/2005
Cmt.



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

3
4 CAUSE NO: D66 OF 2004

5
6 BETWEEN: CAROLYN PARKER PETITIONER

7
8 AND: JEFFREY M. PARKER RESPONDENT

9
10 CORAM: PANTON J.

11
12 **Appearances:**
13 Mr. William Helfrecht instructed by Ogier & Boxalls for the petitioner.
14 Mr. David McGrath instructed by Quin & Hampson for the respondent.

15
16 **Dates of hearing:** August 18th and 30th, 2005.



17
18
19 **RULING**
20

21 There are two summonses before me. The first is a summons for directions seeking,
22 primarily, an order that the petitioner be given leave to retain and instruct accountants to
23 assist in analyzing the financial affairs of the respondent as disclosed in the material
24 provided by the respondent at the petitioner's request. The accountants would also be
25 required to report on the results of their analysis, and to advise on how financial provision
26 might best be made for the petitioner.

27
28 Mr. Helfrecht, for the petitioner, submitted that this summons is a follow-up to that
29 aspect of the consent order made by Henderson J. on December 16th 2004, by which
30 provision was made for the respondent to pay the professional fees and expenses of the
31 petitioner's attorneys-at-law in this suit. For completeness, it should be added that the
32 order also provided for the valuation of the former matrimonial home and for the time

1 periods during which the various steps were to be taken. It is also clear that the order was
2 made with a view to the speedy determination of the ancillary issues between the parties.

3

4 Since the making of this order, the petitioner posed several questions to the respondent
5 regarding his financial affairs. These questions were answered several months ago.

6 Given the time lines set out in the order, the request at this stage for accountants to probe
7 and report on the material supplied to the petitioner may well result in delay in the
8 disposition of the matter. However, it may be said that a little delay is of no moment if
9 justice is achieved in the end.

10

11 As stated earlier, the petitioner has asked for “leave” to retain and instruct accountants.

12 However, this is not really a question of “leave”. It is more a matter of whether the
13 respondent should be ordered to pay for accountants whom the petitioner wishes to
14 employ. Now, it seems to me that in today’s world the provision of legal representation
15 at the expense of a wealthy respondent husband for a very dependent petitioner wife is
16 appropriate for several reasons. The most important of such reasons is the ensuring that
17 there is no imbalance in the scales of justice, and that the wife’s interests will be properly
18 advanced and protected.

19 An example of the making of an order of this nature is White v White [2000] 3 WLR
20 1571 where it was held at first instance that it was proper to include an element of
21 maintenance pending suit for legal costs in the order.

22

1 In her affidavit in support of her application, the petitioner has stated that she “simply”
2 does not believe that the respondent has fully and frankly disclosed his true worth. She
3 has not favoured the Court with the basis for her unbelief. She also believes that the
4 accountants’ analysis will provide a clearer and more accurate picture of the present and
5 likely future value of the assets of the respondent. In this regard, it seems that she is
6 speculating and wishes that accountants be employed to speculate. If the petitioner has
7 further questions to ask of the respondent, then what she ought to do is ask them. In any
8 event, it seems likely that the respondent may have to give oral evidence. At that time he
9 may also be cross-examined on the material that he has provided.

10 I have read the documents that have been provided in the judge’s bundle for this hearing.
11 They include a summary of the financial affairs of the respondent. I see nothing
12 mystifying about them. There is no evidence that the respondent is in the habit of stating
13 falsehoods on oath. Bearing in mind his professional standing, and the fact that he has
14 provided the information on oath, one has to presume that he is credible, until the
15 contrary is shown.

16

17 In the circumstances, the employment of accountants at the expense of the respondent is
18 an extravagance that I will neither sanction nor order.

19 The application is accordingly refused and the parties are hereby reminded that the time
20 lines that were set on December 16th, 2004 are to be followed as closely as possible with
21 a view to bringing this matter to an early conclusion.

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The second summons seeks:

“(1) an order enjoining the respondent to protect the former matrimonial home ... its contents and other chattels in which the parties claim an interest by:

- (i) directing the respondent forthwith to pay to the petitioner the sum of C\$270, 981.50 being the cost of repairs to the home described in the quotation of Mr. Nigel Terrance dated 24th November 2004;
- (ii) directing the respondent forthwith to insure the home for its full replacement value and to provide the petitioner’s attorneys with copies of the relevant policy of insurance;
- (iii) directing the respondent forthwith to insure the contents of the home to a replacement value of not less than C\$150,000. and to provide the petitioner’s attorneys with copies of the relevant policy of insurance;
- (iv) directing the respondent to reimburse the petitioner the amounts expended by her since the 16th December 2004 order of this court in repairing, refurbishing, reinstating, replacing or otherwise preserving and protecting the home, its contents and other chattels in which the parties claim an interest;
- (v) such other order or orders as to the Court seem expedient and just; and

(2) An order providing for the costs of this application.”

Mr. McGrath submitted that the Court’s jurisdiction is set out in section 20 of the Matrimonial Causes Law and that that section does not give the Court the power to make an order in terms of this summons.

Section 20 reads thus:

“The Court may make orders pending the outcome of any suit in respect of which a petition has been presented providing for ___

- (a) The care and control of the children of a marriage;
- (b) The use of a matrimonial home;
- (c) Periodic payments to be made by one party to another pending suit;
- (d) An injunction for the protection of settled and other property in which either spouse claims an interest;
- (e) The protection of one spouse from interference by the other; and

1 (f) Security for costs.”
2

3 Mr. McGrath contends that section 20 (d) which is being invoked by the petitioner
4 provides a “preservation power, not an enhancement power”. He submitted that the
5 section is in the nature of a civil injunction to prevent the dissipation of assets in dispute
6 pending final determination. He said that a good example of the use of section 20 (d) is
7 in respect of a bank account. The section, he said, is therefore irrelevant to the present
8 application. If this submission did not find favour with the Court, he said that the most
9 the Court would be empowered to do is make an order preserving the asset. The amount
10 quoted in the summons is not an amount necessary for preservation of the asset and in
11 any event, reinstatement should not be the sole responsibility of the respondent, he said.

12
13 The respondent has acknowledged receipt of US\$262,237.80 from the insurers in respect
14 of damage done to the property by hurricane Ivan. This sum is in the clients account of
15 an entity known as Moore Stephens (Cayman Islands) Limited in the name of RFD
16 Holdings Ltd., owner of the house. The respondent concedes that “it may be necessary
17 for a limited amount of remedial work to be undertaken before trial”.

18
19 On June 15th 2005, Deloitte and Touche Property Consulting Services valued the house at
20 US\$635,000 and suggested a replacement value of US\$594,000.

21 On June 12th, 2005 insurance had been arranged on a reinstatement basis of US\$595,000.

22 Hence, the question of insurance raised in the summons is of no moment.

23

1 The petitioner has put forward an estimate of repairs prepared by NLT Ltd. General
2 Contractors for CI\$270, 981.50. In the context of the value of the property, this seems to
3 be a substantial remake of the house. It does not appear to be in keeping with the report
4 by Deloitte referred to earlier. That report has provided full details of the condition of the
5 house and the property in general. At pages 7 to 8 of that report which is attached to the
6 respondent's affidavit, the following words appear under the heading "Other Comments"-

7 "Wind and water damaged internal fixtures and fittings were noted throughout to
8 swollen indoor, windows and sheetrock walling. Roof tile damage in missing and
9 broken tiles noted externally.
10 Externally cracking was also noted to the exterior marmoran finish which may
11 require further investigation".
12

13 In valuing the property Deloitte took note of the above and also that there was damage
14 done by hurricane Ivan "which has not been rectified" -- see page 13 of the report.

15
16 I am satisfied that section 20 (d) of the Matrimonial Causes Law permits the Court to
17 make orders for the protection of the matrimonial home. In this regard, it seems to me
18 that so far as this house is concerned, it ought be made secure and waterproof. To be
19 specific , all windows and doors should be made safe and secure, and wherever there are
20 leaks, they should be addressed immediately. If the parties are unable to agree on the
21 matters that need to be addressed in this regard, then I direct that Deloitte and Touche
22 Property Consulting Services be consulted. Payment for such necessary work as
23 described above is to be made from the sum being held by Moore Stephens (Cayman
24 Islands) Ltd.

25

1 The petitioner has attached to her sixth affidavit a list of what she has described as “post
2 hurricane Ivan expenses”. The respondent has conceded in paragraph 14 of his affidavit
3 dated 16th August 2005, that this list “contains some matters which are properly described
4 as replacements and repairs”.

5 However, he has noted that the list contains a raft of items which have nothing to do with
6 the hurricane. There does not appear to be any dispute in this regard. Accordingly, I am
7 ordering that the petitioner be reimbursed the amounts listed at items 1,3 and 4, 5, 6, 7, 8,
8 9, 11, 15 and 16, 17, 18, 19, 21, 22, 23 , 29 and 30, N/A, 36, 37, 40 , 41, 43, N/A.

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10 There will be no order as to costs.

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Panton J

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Judge of the Grand Court (Acting)

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Delivered on 30th August 2005

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