

CIRCULATE

23.10.03



IN CHAMBERS

IN THE GRAND COURT OF THE CAYMAN ISLANDS

MATRIMONIAL CAUSES LAW

CAUSE NO. D181/2002

BETWEEN:

HEIDI ANNE **MENKES**

Petitioner

AND:

LUKE JOSEPH MENKES

Respondent

AND:

ALANIA LEE ZITO

Co-Respondent

BEFORE: MADAME JUSTICE LEVERS

**APPEARANCES:**

Counsel for the Petitioner: Mr. Phillip Boni of Truman Bodden & Co.

Counsel for the Respondent: Mr. David McGrath of Quin & Hampson

Heard: 6<sup>th</sup> & 8<sup>th</sup> October, 2003



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**JUDGMENT**

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This is an application by the wife, Mrs. Menkes for the division of matrimonial property.

**The Background**

The parties first met in or about 1991. They are both Canadian. They got married in Canada on the 13<sup>th</sup> August 1993, at which time the Petitioner was a

Spinster and the Respondent a Bachelor. The husband worked for a chemical manufacturing company and the wife worked in secretarial jobs but at the time of marriage she was working as a stock broker's assistant. Both husband and wife were Jehovah's witnesses and they took this religion seriously enough to go and do missionary work in the Dominican Republic for some time. Eventually, they moved to Florida and then on the death of the husband's father, they decided to move to settle in the Cayman Islands. There are no children of the marriage. In December 2002, the wife, Heidi Ann Menkes petitioned this Honourable Court for the grant of a Decree Nisi on the grounds that:

*"Since the celebration of the said marriage, the Respondent has at various places and at various times committed adultery with Alana Lee Zito (Co-Respondent) and that the Petitioner finds it intolerable to live with the Respondent.*

*Alternatively, "the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent. The Petitioner will rely upon the matters herewith alleged."*

One of the particulars of the unreasonable behaviour was:

*"(ii) The Petitioner has been upset and concerned about financial matters, the parties lost money in an investment; which loss could have been avoided if the Respondent had sold earlier as the Petitioner had begged him to do. The parties have been on the verge of bankruptcy for the past 2 years. On average they have 3 to 10 bounced cheques every month because of poor book keeping and excessive spending. The Respondent is not a good businessman and will not take advice. He became sullen and moody when the Petitioner tries to discuss these matters with him."*

Another particular reads:

*“(iii) The parties have moved more than 11 times in 9 years because of financial difficulties. The Petitioner always moves in support of the Respondent’s decision. Even if she did not want to move but her sacrifices were ignored.”*

The Respondent initially filed an acknowledgement of service contesting jurisdiction but subsequently jurisdiction was waived and the matter proceeded. The Decri Nisi was granted and the ancillary matters now come before this court.

From 1993 to 1998 when the parties got married, the parties did not accumulate any wealth. They did not save any monies. Both the Petitioner and the Respondent agree that wealth was not accumulated by their efforts during the period of 1993 to 1998. They worked in companies owned by the Respondent but these businesses earned negligible amounts and what was earned was spent immediately as it was received by the parties.

In 1998, on the death of the Respondent’s father there was a massive injection of wealth into the Respondent’s life. It came in the form of four assets.

- (1) a life insurance policy,
- (2) Shares in a plaza know as Regency Courts in the Cayman Islands owned by a company known as Southdown Development Company;
- (3) interest in land in Canada “Gwillumbury land”; and
- (4) Shares in a company called Global Tech.

On the Respondent's father's death, the Petitioner and the Respondent made a decision to move to the Cayman Islands and were allowed Permanent Residency but with no permission to work. Legal advice given to them was that they could manage Regency Court, but could not work in the Cayman Islands doing anything else. For the first two years after the inheritance (1998 to 1999), third parties managed the running of the plaza known as Regency Court. Late in 1999 early 2000 both the Petitioner and the Respondent decided that it would be financially more beneficial to take it over themselves. The Petitioner alleges that she found tenants for the plaza and on occasions collected rent and interacted with the tenants to address their grievances when and if they arose. Both parties agree that the work involved was not burdensome. Both parties agree that they helped themselves liberally to the finances although they did not get paid a salary for the work undertaken in this plaza. Both parties agree that their life styles were such that they had freedom to travel and live well. See paragraph 7 of the Petitioner's affidavit dated the 18<sup>th</sup> July 2003:

*"When my husband and I were together and we worked side by side in the business I had more freedom. We were able to travel often. Every month we went somewhere, by way of example I have several thousands air miles points with American Airlines. In that sense my standard of living has deteriorated and not from my choice."*

Having decided to live in the Cayman Islands permanently, the parties bought a house (the matrimonial home) at Raleigh Harbour in the Cayman Islands in their joint names. As stated previously, due to the Respondent's behaviour and his

adultery, the Petitioner and the Respondent parted in November 2002. The Petitioner alleges that she asked him to leave the matrimonial home and that the parting was not as acrimonious as is made out by the Respondent. The Respondent states that he was kicked out of the matrimonial home. It is uncontested that the Petitioner changed the locks after the Respondent complied with her request to leave the matrimonial home.

The parties have not reconciled since.

The Petitioner has continued to live in the matrimonial home. The Respondent has lived in various places and presently lives in a six hundred square foot apartment in the property known as Regency Court which he inherited from his father. The Respondent has continued to pay the mortgage payments on the matrimonial home. To date the payments are some 2 ½ months in arrears. However, as the property is being sold this is not important for purposes of this judgment. The Respondent, since the separation, has paid off all the Petitioner's debts, purchased a car for her and pays her the sum of \$500 per month as maintenance. The Petitioner is working with Roper Enterprises earning \$2500 a month. She has paid no rent since the separation, but has been responsible for her utility bills and the strata fees for the matrimonial home. There is evidence that the Petitioner rented out one of the rooms in the matrimonial home and collected a rental of \$600 a month for which she has not accounted to the Respondent nor, has she been asked to account for those monies.

By summons dated the 18<sup>th</sup> July 2003, the Petitioner now seeks the following relief in this Court:

1. The disposition of matrimonial property including the former matrimonial home and other realty;
2. Other financial provisions including periodic payments and lump sum orders as this Honorable Court shall deem appropriate;
3. Such other ancillary orders as this Honorable Court shall deem appropriate to finalize the ancillary matters; and
4. Costs.

### **The Proceedings**

The issues in this case are relatively straight forward. The former matrimonial home in Raleigh Harbour in which there is an equity of \$143,000 belongs to both husband and wife. The balance of the assets are what can be termed as "inherited property" and all of them are in the husband's sole name. The wife claims a portion of 40% of the assets on the basis that she contributed to the enhancement of the property and companies and that she was supportive of the husband in his business ventures. The evidence as to that will have to be examined carefully by this Court, but those are her submissions in asking the court to conclude that 40% would be a fair and reasonable distribution of the inherited property to which she claims an entitlement. In these proceedings the husband who has filed affidavit evidence and also given *viva voce* evidence, rejects the wife's claims. He makes an offer of \$100,000

based on half equity of the matrimonial home and what he terms an additional generous offer of approximately \$30,000.

### General

Divorce has two particular importance legal consequences and results in peoples lives. Firstly, a divorced couple can remarry. Secondly, the Court has been given extensive discretionary powers to make financial orders. Since the case of *White v. White* [1998] 2 FLR page 310, the relationship between a person's entitlement and a discretionary adjustment has been foremost in the Court's mind. The question of a fair and equitable distribution of the couples' property must be of paramount importance when the court is considering the matter of division of the matrimonial property . Since the case of *White v. White* (Supra) and *Lambert v. Lambert* neutral citation no EW CE Civ (2002) commonly known as the "big money" cases, the Court finds that the petitioning party who is not the beneficiary of inherited wealth frequently wishes to lay claim to that wealth unmindful of the principles on which the Courts have to rely before the wealth can be taken into account in the distribution of the assets. The Law is remarkable not only with respect to the powers which it gives to the Court over the income and assets of divorcing spouses, but also in the almost unfettered discretion it gives to the Court. It has now been said that the judicial objective is, "to do that which is fair, just

*and reasonable between the parties.” (White v. White (1998) 2 FLR page 310 at 318, per Thorpe LJ CA).*

In this case, the question therefore are (1) what of the properties constitute the matrimonial assets and; (2) can the court take into account the inherited wealth of the Respondent in achieving a fair and equitable distribution. The passage from Lord Nicholls speech in *White* (Supra) is instructive when considering the question of inherited property and I quote:

*“This distinction is a recognition of the view, widely but not universally held, that property owned by one spouse before the marriage, and inherited property whenever acquired, stand on a different footing from what may be loosely called matrimonial property. According to this view, on a breakdown of the marriage these two classes of property should not necessarily be treated in the same way. Property acquired before marriage and inherited property acquired during marriage come from a source wholly external to the marriage. In fairness, where this property still exists, the spouse to whom it was given should be allowed to keep it. Conversely, the other spouse has a weaker claim to such property than he or she may have regarding matrimonial property.”*

He goes on:

*“Plainly when present, this factor is one of the circumstances of the case. It represents a contribution made to the welfare of the family by one of the parties to the marriage. The judge should take it into account. He should decide how important it is in the particular case. The nature and value of the property, and the time when and circumstances in*

*which the property was acquired, are among the relevant matters to be considered. However, in the ordinary course, this factor can be expected to carry little weight, if any, in a case where the claimant's financial needs cannot be met without recourse to this property."*

### **The Evidence**

Before reviewing the evidence, this Court bears in mind that it must seek to keep the parties, so far as practicable, and having regard to their conduct, in an equal position. The Legislation does not discriminate between the sexes. However, in practice, as Lord Nichollas of Birkenhead put it, in *Brooks v Brooks* [1996] 1AC 375, House of Lords:

"The major responsibility for family care and home makings still remains with women and the consequent limitation on their earning power and sometimes on their opportunity to obtain educational and other qualifications prevent their building assets on the scale customary for men of equivalent social and economic standing. Hence, realism often dictates that financial orders be made against husbands in favour of the wife."

The Legislation in Cayman is different to that of the English legislation, in that, it gives the Courts wider discretion over the income and assets of divorcing spouses.

## The Evidence of the Husband

For purposes of this application, the evidence must be confined to the financial standing of the parties. The husband in his affidavits has outlined his finances. He has outlined the historical background to the inherited properties and his present income and outgoings and the present values of those properties. It is perhaps convenient at this stage to trace the main assets that he inherited and how they have either changed in character or been enhanced by the efforts, if any of either party.

### Life Insurance Policy

The husband inherited a share of his late father's insurance policy, in 1998. From these monies he invested \$300,000CI in Alice Fazooli's Restaurant, a business in Canada. This he alleges involved no work on the part of the applicant. It apparently proved to be a good investment because it repaid him monthly installments between CI\$3000 and CI\$5000. This money was used to fund a fairly lavish lifestyle enjoyed by both parties.

In April 2000, the husband says, "in order to free up some cash", he was forced to sell his minority shareholdings in Alice Fazooli's Restaurant. The shares were sold for CI\$387,000, a figure which is not disputed by the Petitioner. After payment of capital gains tax, the Petitioner utilized the balance to keep on

paying the mortgage for the matrimonial home and maintenance for the Petitioner of \$500 per month, legal fees and other miscellaneous personal expenditure. The net proceeds left from the sale of the shares which were purchased from the inherited life insurance policy is US\$290,250.

### Regency Court

The husband also inherited the asset known as Regency Court Plaza, which is owned by a company called Southdown Development Ltd. His inheritance amounted to 1/3 of the company. A valuation was obtained and he decided to purchase his siblings shares. Each one was valued at \$490,000US. The brother was paid outright from a loan obtained from Barclays Bank and the sister was given \$100,000US with the balance to be paid on a compound interest basis at 10% per annum. As a result of certain other events overtaking the Respondent's finances, this property was mortgaged once again in the sum of \$2,100,000,00 (two million one hundred thousand dollars). These monies were borrowed from the Cayman National Bank. This was a restructuring exercise. The monies were used to pay off the first loan at Barclays Bank, purchase an apartment at Lime Tree Bay for \$270,000 and to buy land in Savannah. A bridging loan of \$48,000 was taken because of cash flow problems. The liability therefore, on this property is, the debt to the Bank of 2.1 million dollars, the debt to the Respondent's sister of \$459,396, leaving a net asset value according to the Respondent of \$696,436US. He contends that there was no contribution by the

Petitioner in refinancing, in negotiating any loans or in the repayment of mortgages and acquiring of the two properties at Lime Tree Bay and Savannah.

Global Technology Ltd.

The third main asset inherited by the Respondent from his father were shares in Global Technology Investments Limited. The Respondent traded the shares with the end result being that over the course of the year 2000, the Respondent sold the majority of these shares and gained approximately 1 million dollars being his 1/3 of the value of the shares. The money was spent as follows:

1. US\$250,000 on Raleigh Harbour, the matrimonial home, which is in the joint names of the Petitioner and the Respondents;
2. \$210,000 on the land in Savannah, now held by Southdown;
3. US\$190,000 to purchase shareholding in Jack Astors another restaurant chain, but this time the shares were given to the Petitioner's parents as a gift;
4. US\$70,000 to purchase an interest in the same restaurant, Jack Astors for his half sister and
5. US\$150,000 to purchase the shareholding in the name of his company to be held for the Respondent.

The Respondent alleges his shares are valued at approximately US\$150,000. They do not presently pay any dividends.

*The Gwillumbury Land*

These are lands that were owned by the Respondent's father in which the Respondent asserts that he has a 25% ownership. However, apart from a sum of \$45,000, he alleges that he has received nothing from those lands as the lands are the subject of litigation between the executors, his mother, his sister and his stepmother. This litigation has lasted for some 5 years. The Petitioner admits there is litigation and that it will be difficult to ascertain when and if the Respondent is likely to get any financial benefit from this inheritance. The Respondent states that the Petitioner had no input into the development or enhancement of these lands.

These are the main assets that he inherited from his father. There are also some miscellaneous assets namely, two motor vehicles and furniture. The matrimonial home, although purchased from inherited funds is in the joint names of the Petitioner and the Respondent. That therefore is clearly a matrimonial asset and will be dealt with separately. Finally, there is the furniture in the matrimonial home which the Respondent has agreed should be given to the Petitioner.

## The Petitioner's Evidence

The Petitioner gave *viva voce* evidence and filed several affidavits. She alleges that she was working as a stock broker's assistant at the start of the marriage and that she gave up her profession real estate/stock brokers assistant to be by the Respondent's side. As stated previously, she agrees that there was no accumulation of wealth from 1993 to 1998 despite several business being commenced by both parties. For one reason or another the businesses lost income and there was no accumulation of wealth. She alleges however that in 1998 when there was the massive injection of inherited wealth into the Respondent's life, and thereafter, she stood by his side worked with him and supported him emotionally. When asked why she felt that she was entitled to any of the assets which were inherited, she said she helped advance the companies and felt that she should be rewarded for the emotional support she had given the Respondent over the years. She conceded, the marriage was not a long one but was long enough, in that, they were married for 9 years. The following is the contribution she says she made from the start of the marriage and it is perhaps convenient that I detail her affidavit evidence and *viva voce* evidence as far as each of these items are concerned:

1. In her affidavit filed in October 2003, she says at paragraph 4:

*"I worked in the various companies owned by my husband including "Luke Menkes Realty Ltd." I spent a great deal of time developing a piece of farmland which was approximately 113 acres and was called*

*“Gwillumbury” which land was converted into a subdivision. This work included many meetings with the Government of Ontario and municipalities.”*

In cross-examination she admitted that the Luke Menkes Realty Limited was a company owned by the Respondent. That, in fact, that company conducted only three real estate transactions all of which belonged to the Respondent's father and that the company was the beneficiary of those sales, not by virtue of any work done by the Petitioner or the Respondent, but by virtue of the fact the Respondent's father utilized the company. The Respondent in her *viva voce* evidence does not expand on the extent of the work she did for the farmland, but she did agree that she was compensated for the work undertaken on behalf of the company. This Court cannot turn a blind eye to the fact that the Respondent's evidence as to this must be viewed in the light of the fact that it was inherited only in 1998 and that both the Respondent and the Petitioner by that time had decided to live in the Cayman Islands permanently. Her evidence is that whilst living in the Cayman Islands they travelled extensively on vacation every month, that they lived well and that she had a lot of free time. There is no evidence before this Court, save and except for the bland statement of the Petitioner as to the value of the work done by the Petitioner of the Gwillumbury Lands.

2. Savannah land

In paragraph 5 of her October 2003 affidavit, the Respondent says:

*"I think it is also relevant that we had plans (i.e. blue prints) to build our future family home in Savannah, Grand Cayman. The parcel of land is the one which is owned in Savannah Sunset Ltd. we worked exceedingly hard on drawing for a 5000 sq ft home."*

The *viva voce* evidence of the Petitioner is that she attended 2 or 3 meetings with the architect and she had input into the plans.

3. Lime Tree Bay

The Respondent states that she did not expend money and or have any input as far as negotiating the purchase of Lime Tree Bay were concerned. However, she says and I quote from her affidavit at paragraph 8:

*"The Respondent fails to point out that my two brothers and I worked on renovating the Lime Tree Bay property thereby saving thousands of dollars in builders fees."*

Her *viva voce* evidence when tested on that statement was that her two brothers at the Respondent's expense flew down, stayed at the Respondent's expense with the Respondent and the Petitioner for two weeks and assisted in renovating Lime Tree Bay. There are no details

as to how much was saved on builders fees and nor are there any details as to the work done.

4. The Petitioner alleges in her affidavit that the Respondent has failed to take account of any contributions made by her in work in all the companies he owned. The detail reading of her evidence in this Court and the affidavits do not highlight and or detail the contributions made by her in all of the companies that the Respondent owned. Her evidence refers to the Southdown development which owns Regency Court. She states that she collected rental, on occasions found 3 or 4 tenants and dealt with tenants queries and problems. However, it is to be borne in mind that the Petitioner does not dispute the Respondent's evidence that the property was not managed by either of them until the year 2000. It was managed first by an individual, whose name bears no relevance, and then by Deloitte & Touche. The Petitioner does not allege that she had any input into the upgrading of the property. The Petitioner does not state that she was not rewarded for her work. It was a family run business and both the Petitioner and the Respondent lived entirely off the profits of the business.

The above does not show either a financial contribution or a managerial contribution by the Petitioner to the Respondent's inherited wealth. It is perhaps a contradiction in her evidence when the Petitioner alleges that she has made such contributions to the companies that the Respondent owns, as

enabled her to benefit from them, when in her petition for divorce she alleges that they are almost bankrupt. No evidence is given to indicate any steps taken by the Petitioner to consolidate the family finances and/or to preserve the property. Her contribution to the assets are not detailed but a mere assertion that this Court must take into account, the efforts by her in the workings of the companies.

5. There is also a joint account with E-Trade which presents no problems to this Court as the monies must be owned equally.
6. Her evidence is that she has played no part in repaying the liabilities on the property and that she does not even owe the monies to her parents which they both borrowed jointly to enable them to survive in 2002. The affidavit of the Petitioner shows that debt to the Petitioner's parents of \$19,500 being that of the Respondent's. In her *viva voce* evidence she readily agrees that the monies was spent on both of them and that she perhaps may be entitled to pay part of it back.
7. Value of Assets

The Petitioner has not contested the values as outlined by the Respondent in any detail, save and except to say that "she questions the values put forward." In any event, the Petitioner's values are gross values. This Court

is mindful of the fact that any order made will result in the properties having to be sold and therefore, it intends to take the net values as the assets as opposed to the gross value. The net value of the assets is \$951,936.

#### 8. Debts

Finally, the Petitioner agrees that the Respondent paid off all her debts, even after separation and purchased a car for her. The Respondent therefore, presently lives on her income and is debt free.

#### The Law

By section 22 of the Matrimonial Causes Law (1997 Revision), this Court shall, as appropriate, make orders for –

- (a) the custody, care and control of the children of the marriage;
- (b) the disposition of matrimonial property, including the matrimonial home;
- (c) varying any settlement of the property of the spouse made in consideration of the marriage, whether such settlement was made before or upon the treaty of the said marriage;
- (d) varying any other settlement of matrimonial property;
- (e) making financial provisions from the property of either spouse for the children of the marriage and for the other spouse;
- (f) providing for periodic payments to be made by either spouse for the benefit of the children of the marriage and for the other spouse; and

(g) costs.

The Court must take into account when deciding what if any orders, are to be made the considerations that are set out in section 19:

*“The Court shall have regard first of all to the best interests of any children of a marriage and thereafter to the responsibilities, needs, financial and other resources, actual and potential earning power and the deserts of the parties.”*

On previous occasions I have taken the view that “deserts of the parties” is purely the conduct of the parties towards each other and nothing more should be imported into the words. There are several factors to take into account including, the responsibilities, the needs, the financial and other resources of the persons involved. In particular, in this case as there are no children, the age of each party to the marriage and the duration of the marriage is important, any physical or mental disability of either of the parties to the marriage, the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future, the income earning capacity, property and other financial resources which each of the parties to the marriage have or is likely to have in the foreseeable future, including in the case of earning capacity, any increase in that capacity which in the opinion of the Court be reasonable to expect of a party to the marriage to take steps to acquire. Whilst the English have legislated in a similar fashion to the Caymanian legislation, it is true to say that the Caymanian legislation gives the Court a much wider discretion. Although

we are not bound by the English legislature, it is a useful guideline as indeed, is the Law in Scotland which counsel for the Respondent, Mr. McGrath has brought to the attention of the Court. By section 9 (1) Family Law (Scotland) 1985, the Court is required to divide the net value of matrimonial property fairly. By section 10 (1) of that legislation "fairly" means equally. Importantly, by section 10 (4) of that legislation gifts or successions from a third party are specially excluded from the definition of matrimonial home. That of course is not the case, in England where inherited property or property from a third party can be taken into account in the divisions of matrimonial assets in special circumstances. It is my view that the Court should arrive at an equitable division of the matrimonial property and come to a fair and reasonable distribution. It is also my view that from the matrimonial assets, the court should make orders for the provision of the children and the parties and look to inherited property forming part of the matrimonial assets only where the matrimonial property is insufficient to meet one party's needs and arrive at a fair distribution. In cases of this nature, the applicants, if they are not the beneficiary of a inherited property settlement often rely on cases of *White v White* (Supa) and *Lambert v Lambert* (Supra). However, counsel must be reminded that those "big money" cases as they are commonly called were cases where the marriage lasted a substantial length of time. The inherited property became either part of the lifestyle of the parties and both parties contributed to the enhancement or the upkeep of the property. Where the assets are substantial, the courts equate the expression "needs" with "reasonable requirements" and the court will seek to assess what is sufficient. For example,

in *A v A* [1998] 2 FLR 190, the husband, a multimillionaire who had over two hundred million pounds and his wife, throughout their 13 year marriage enjoyed a high standard of living and money was always available to do whatever the family choose. The judge decided that the wife's reasonable requirement involved an annual expenditure of some £160,000. The husband was ordered to pay her a lump sum of \$4.4 million dollars. The Court must asks itself: Does the meeting of reasonable requirement of the parties do justice to this wife of a man with substantial assets? Should the wife's claim be restricted to what is in effect, a claim for maintenance? In this case the marriage being (a) a fairly short marriage of 9 years and; (b) any property that this Court needs to consider in a fair and equal distribution being only inherited property and not anything that the wife has contributed to either in preserving or acquiring, it is this Court's view that it should not go beyond "the reasonable requirements and the financial needs" criteria in the distribution of this property. I am of the view that this is not a case for a percentage distribution of the assets, in light of the evidence listed below:

1. The length of the marriage;
2. That for the first five years of the marriage neither party contributed to any accumulative wealth or to preservation of any of the properties;
3. The wife's conduct was such that she spent monies liberally on a jet setting life style not contributing to the preservation of any inherited wealth;
4. The youthful years of the applicant and her ability to work and support herself;
5. Her admission that the work undertaken in managing one of the inherited properties was not substantial, even though it was perhaps no more than the Respondent's. This Court

remembers that it is his inherited wealth and that this Court would only look to it if the wife's financial needs requires the Court to do so;

6. The wife herself admits that they are on the verge of bankruptcy in her petition and does not dispute the fact that during the course of the marriage even after the massive injection of inherited asset wealth, there were times when monies had to be borrowed in order to live.

In coming to any conclusion, in the particular circumstances of this case, the Court bears in mind the wife's requirements, the fact that she is in the Cayman Islands due to a joint decision taken by the Respondent, the fact that she needs time to rehabilitate herself and that she is now working and she has an income of \$2500 per month. However, she has to find rental and/or a deposit to be placed on a home she may wish to purchase. She is fairly comfortably off. However, as the matrimonial home is now due to be sold and the proceeds divided equally between the parties, she will now have to find rental accommodation which she estimates at approximately \$1500 leaving \$1000 per month on which she is to live. Taking all these matters into account, the order of the Court is as follows:

1. The matrimonial home at Raleigh Harbour has already been sold and the proceeds of sale are approximately \$143,000. Those proceeds are to divided equally between the parties;
2. The Respondent to pay the sum of \$30,000 as a lump sum settlement computed by this Court as maintenance of \$500 per month for 5 years to enable the Petitioner to rehabilitate

herself and address her needs and satisfy the reasonable requirements of her life style.

As Counsel for the Respondent submitted in his thorough and persuasive submissions, "*she is not entitled to subsidize the future quality of her life style by taking from his testamentary gifts.*" This Court is entirely in agreement with that view and for those reasons the orders above have been made.

Dated 23 day of October, 2003



Madam Justice Priya Levers  
Judge of the Grand Court

