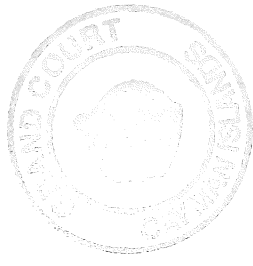


IN THE GRAND COURT OF THE CAYMAN ISLANDS**HOLDEN AT GEORGE TOWN, GRAND CAYMAN****DIVORCE AND MATRIMONIAL CAUSES****CAUSE NO. D75/1998**

BETWEEN:	JOSEPH DARNLEY BRYAN	PETITIONER
AND:	MERRILL LILLIAN BRYAN	RESPONDENT

Ms Sheridan Brooks for Petitioner

Mrs. Eileen Nervik for Respondent

RULING

This summons which is dated 11 January 2000 and filed on behalf of the wife

Respondent seeks, *inter alia*:-

- (1) An order as to the disposition of all the matrimonial property.
- (2) An order as to the maintenance of the Respondent.

As can be seen this application is pursuant to sections 19 and 22(b)&(e) of the Matrimonial Causes Law (1997 Revision). The provisions of these sections are as follows:-

- (19) In dealing with all ancillary matters arising under this Law the Court shall have regard first of all to the best interest of any children of the marriage, and thereafter to the responsibilities, needs financial and other resources, actual and potential earning power

and the deserts of the parties.

(22) At the time of pronouncing a decree under this Law the Court shall as appropriate, make an order for:-

- (b) the disposition of the matrimonial property
- (e) the making of financial provision from the property of either spouse for the children of the marriage and for the other spouse.

The parties were married for just under thirty years. During this time they accumulated seven properties, the gross value of these is estimated at \$1011,391.42. and now constitutes the sole matrimonial assets.

At present there are three mortgages outstanding on these properties, they total approximately \$C1\$281,352.00. The respondent has submitted that the most equitable way in which to distribute the property is to give the Respondent sole ownership of the matrimonial home, that all other properties be sold and the proceeds used to liquidate the mortgages. Whatever balance remaining would be divided equally between the parties. In addition the Petitioner would get the sum of \$150,000 being his share of the value of the matrimonial home.

This proposal is clearly not acceptable to the Petitioner, and in view of the history of this marriage I would not consider it to be an equitable distribution of the matrimonial property. Firstly it involves the sale of all income bearing properties, save the Northward

home which, as we will see, now brings in some rental. Secondly, the Petitioner would be left with little more than sufficient to provide himself with a home in which to live.

The parties were married in 1969. In 1994, on the retirement of the Petitioner they left the then matrimonial home at Northward, Grand Cayman and moved to Cayman Brac where they eventually resided in a cottage built on the land described above as Cayman Brac Block 111E parcel 82. The Will of one John Ryan shows that this property was bequeathed to both parties, the land to be divided into two equal shares by a line drawn down the middle from North to South. The Respondent has urged the Court to bear in mind when determining the disposition of this property that the Respondent was given that portion of the land "with the house thereon." After the Petitioner retired the parties lived in a cottage that they build on that property. The difference in value of the above bequests should have little influence on the final disposition as the property is all part of the 'family assets' as enunciated by Lord Denning in *Wachel v. Wachel* (1973) 1 All ER 829. In that case His Lordship he described them as-

" those things acquired by one or other or both of the parties, with the intention that they should be continuing provision for them and their children during their joint lives, and used for the benefit of the family as a whole."

On his retirement the Petitioner received a retirement pension of \$192,102. Most of this money was put towards the purchase of the two beach properties on the Brac. These have been the main income producers for the parties. A portion of this money was also used to pay off the balance owed on the Northward property. In order to acquire the beach properties it was also necessary to obtain a loan from CIBC, the said mortgage now

stands at over \$138,000 and as stated above, is accruing interest. In 1998 while living in their matrimonial home on Cayman Brac, the parties agreed to lease the Northward property to tenants, and accordingly a Lease Agreement and an Offer to Purchase were expedited.

According to the Petitioner the trouble started between the parties when he was unable to get any accounting from the Respondent who looked after the rental and income from the two cottages that were rented to tourists. There was, and apparently still remains, a dispute between the parties as to the amount of income being derived from these properties. As a result of this dispute the couple ceased cohabiting. It was at this time that the Respondent applied for, and was granted the weekly maintenance of \$300.00 per week. This was later varied as a result of the Court discovering in her affidavit of 23rd July 1998 that she had misled it as to the Petitioner's income from the matrimonial property. However on 29 September the Court ordered that the net income from the properties in Cayman Brac be divided equally between the parties. It was also alleged that at that time the Respondent had been molesting the tenants at Northward. This resulted in the Court making an order on 30th July 1998 restraining her from approaching within a hundred yards of that property. Another bone of contention was the fact that on 25th September the Court ordered that the rent from this property was to continue to service the mortgage at CIBC, the Respondent advised the tenants not to do so and instead to pay it into her own private account. Even if it were, as she contends, pursuant to a previous agreement between the parties, any such agreement would have been vitiated by the subsequent order of the Court. There is some evidence that one or two of the tenant's cheques may have been returned by the bank, but the Petitioner contends that

one of the factors leading up to the unpaid mortgage is the diversion of the rent by the Respondent into her own account. The other factor is that when the tenants vacated the premises in May of 1999, the Respondent was discovered living there in September of that year, and is now still in residence. This did not allow the yielding of any rent towards the payment of the mortgage. Whatever were her reasons for moving into the house, she is clearly in breach of the Restraining Order. Although not stated in her affidavit, she now admits having one of the rooms rented for \$500.00 per month. This is also contrary to her assertion that she is without income. The Petitioner claims that she now has three rooms of the house rented, but is unable to substantiate this. What is abundantly clear is that since the departure of the tenant no mortgage has been paid and the bank is now threatening to foreclose.

The letters from the rental agency in Florida reveal that the income from the properties in Cayman Brac was not what the Respondent claimed it to be. I accept that she had been concealing this income from the Petitioner, and this, no doubt, led to the break up of the marriage. In addition to this her veracity has twice come into question in this matter. The order of 24 August 1998 had to be varied because of misinformation given by her. Again in this hearing although claiming to have no income, it now transpires that she has been collecting rent from a tenant at the Northward property. It has been submitted that her occupation of the premises notwithstanding the extant restraining order places her in contempt of Court. Although this might be so, in civil matters of this nature it is not the role of the Court to police such breaches, or to take any action in the absence of the appropriate application by the other party. Furthermore the order was clearly made to

protect the then tenants from further molestation by her. Her evidence is that when she returned to the Island needing a place to stay, she found the matrimonial home vacant and therefore moved in. Although the correct procedure would have been to apply to have the order revoked before moving in, it is unlikely that any Court would consider this act of disobedience to be of such gravity to warrant its unsolicited attention. It must also be noted that the Petitioner by not dividing the income of the Cayman Brac property as ordered by the Court, was also in breach. He has indicated that this was due to his lack of funds at the time as evidenced by the Promissory Note dated 2 September 1998 that shows that he had borrowed \$600.00. Whatever were the parties' reasons, these breaches are not before the Court and can have no bearing on the determination of this matter.

The Respondent now claims to be very sick and unable to work. A letter from a very reputable physician shows that she is suffering from Osteo-arthritis in both knees. A document from the Health Service shows that she has medical bills totalling over \$5000.00. In an affidavit dated 3 April 2000 the Petitioner also states that he has health problems, but fails to say of what nature. Whatsoever be the case, he appears to be a healthy middle-aged man several years younger than of his wife. There are clear indications that the Respondent may require surgery on her knees. If at all feasible, she should be put in a position whereby she can acquire funds for such an eventuality without having to dispose of any property that may come into her sole possession as a result of this ruling. It is true that she is in possession of two parcels of land that she has not disclosed to the Court, and which have not been included for the determination of this matter.

The Petitioner has also put forward proposals to assist the Court in its determination. Of the proposals put before me by the parties, I find that of the Petitioner far more equitable and more likely to find favour with this, and I daresay, any other Court. It clearly fulfils more of the requirements of section 19 of the Law.

The first and most important consideration is the repayments of the mortgages, of which there are three. As I have already stated these mortgages total the sum of CI\$281,352.19. The liquidation of these encumbrances will require the sale of some real estate. The Petitioner wishes to continue residing in the house at Northward, and although the proceeds from such a sale would be more than sufficient to cover the debt, it is clear that the satisfaction of the mortgages can be achieved without such a measure.

I am therefore ordering that Cayman Brac East Block 111E Parcel 82 be sold. I find that the sale of this parcel will provide a number of advantages. Firstly the estimated value of CI\$390,000.00 is far more than required for the repayment of the mortgages. Secondly this property is owned legally as to half share to each party, having been Willed by the Respondent's uncle, she to have exclusive use of the house, he of the land. It is on this land that the parties built a two-bedroom cottage from their joint funds, and which became their Cayman Brac matrimonial home. Taking into account the money that the

Petitioner injected into the matrimonial property, such a sale for the proposed purpose would not be disadvantageous to either party. The amount of money remaining from the sale, which should be approximately CI\$108,000.00, shall be divided equally between the parties, each would get approximately CI\$54,000,00.00. As can be observed, these figures are Approximations as at this stage it is impossible to pre-determine the actual price that will be realised from such a sale. This will necessitate the Petitioner, who now

lives in the cottage on the premises, finding alternative accommodation. It is hereby ordered that he vacate the said cottage on the sale thereof.

Secondly, it is the order of this Court that the property known as Lower Valley Block 37E Parcels 51 and 145, the Northward matrimonial home in which the Respondent now resides, be transferred into her sole name. There exists a discrepancy between the two valuations on this property, the Respondent's being CI\$340,000.00, whereas that of the Petitioner is CI\$300,000.00. It is apparent that the former valuation took into consideration the furniture, although the Respondent denies that those items were worth very much. However I consider a valuation of CI\$320,000.00 to be fair and equitable. It is also ordered that the three parcels, namely Cayman Brac East Block 111E Parcel 11 valued at CI\$28,500.00, Cayman Brac East Block 111E Parcel 12, valued at CI\$26,500.00, and Cayman Brac East, Block 111E Parcel 90, valued at CI\$14,300.00 be all transferred into the sole name of the Respondent..

Cayman Brac East Block 111E Parcel 7 valued at CI\$15,000.00 is to

be sold and the proceeds divided equally between the parties. This will bring the total value of the Respondent's real property to approximately CI\$396,800.00.

The Respondent will also keep the other two parcels of land that have not been disclosed during these proceedings. Although they are both in her sole name, they rightly constitute matrimonial assets as they were acquired during the tenure of the marriage. Without taking these two properties into consideration, it is my calculation that the properties and the cash she is due to receive after the liquidation of the mortgages, and the sale of Parcel 7, the Respondent's assets will total

over CI\$460,000.

It is also ordered that the property registered as Cayman Brac East Block111E parcel 8 valued at CI\$380,000.00 be transferred into the sole name of the Petitioner. This with his share of the balance of the money after the payment of the mortgages, and half the proceeds of Parcel 7 (supra) will bring his total assets to approximately CI\$440,000.00.

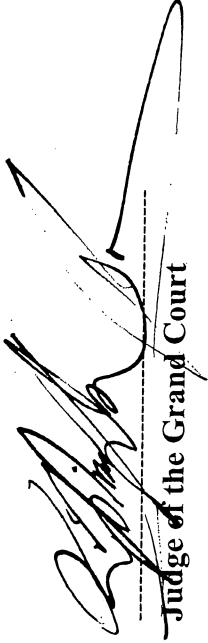
The furniture and personal items are to be divided between the parties. Should they be unable to agree on the division of any or all of these items, the said items shall be sold and the proceeds divided equally between them.

It will be seen that the wife Respondent appears to have received the larger share of the matrimonial property. However, it must also be noted that no order has been made in regard to the second Application in the Summons, that for maintenance. This is in keeping with the necessity for a clean break between the parties. In this regard the second application has been subsumed by the first, hence the size of her portion. On the other hand, the Petitioner, though receiving the lesser portion and losing the house in which he now resides, will be in possession of Parcel 8, which is currently capable of bearing more income than any of the other properties. This will provide some income by which he can obtain alternative accommodation. In *L.A. Ebanks v. K.D. Ebanks*, reported at CILR 1992-93 at page 294, it was held, *inter alia*, I quote, "As a general objective the Court should try whenever appropriate to ensure that the reasonable

accommodation requirements of both parties were met..." In this matter, not only has this has been taken this into regard, but also the responsibilities, and resources of the parties as required by section 19 of the Law.

There will be no order as to costs.

Dated this ~~2~~ day of April 2000



Judge of the Grand Court

