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*Subv  
Family Law - Matrimonial  
Property Disposition*



**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
HOLDEN AT GEORGE TOWN, GRAND CAYMAN  
DIVORCE AND MATRIMONIAL CAUSES REGISTRY**

**CAUSE NO. D57 OF 1997**

**BETWEEN: BLONDE RACHEL ANN SCIAMONTE - PETITIONER**

**AND: PHILIP JOHN SCIAMONTE - RESPONDENT**

Mrs. Karen Thompson for Petitioner

Ms. Sheridan Brooks for Respondent

**RULING**

This summons contains an application on behalf of the Petitioner for the formal determination of the outstanding ancillary matters to include an Order in respect to the deposition of the former matrimonial property together with such other Order pursuant to Section 22 (b) of the matrimonial Causes Law (1997 Revision) which provides as follows:

At the time of pronouncing a decree under this Law, the Court shall, as appropriate, make orders for the disposition of matrimonial property, including the matrimonial home.

The parties were married in April 1979, a union which lasted seventeen years when in August 1996 the Respondent left the matrimonial home. At the time of the marriage

the Petitioner was the owner of the land and an almost completed dwelling which was to become the matrimonial house. The property had been given to her by her father to provide a house for herself and the three children of a former marriage.

Approximately three months after the marriage the Petitioner transferred the title to the property into their joint names. With the assistance of a mortgage from the Canadian Imperial Bank of Commerce in the amount of C\$15,000.00, the parties were able to complete the construction of the matrimonial home. The Petitioner now refutes the Respondent's claim that he is entitled to 50% of the value of this house. The Petitioner is also seeking a share of the Respondent's equity in certain companies of which the Respondent is a share holder.

I will deal, first of all, with the situation regarding the matrimonial home. It has been held by the Court of Appeal ( see *Preedy v. Preedy*, 1988-89 CILR) that while a marriage subsisted, in the absence of any evidence of a contrary intention, the putting of the title of the matrimonial home in their joint names raised the presumption that the husband was making a gift to the wife of a share in the beneficial ownership.

Although no mention is made regarding a donor wife, one can presume that in these modern times the same applies when the donor spouse is the wife. However it is clear that the degree of entitlement in such equity is not automatically fifty percent. In the *Preedy* case (supra) it was also held that the starting point for the division of capital assets between husband and wife was the allocation of one third their value to the wife which would be then varied according to the circumstances of the marriage. Again we see no mention of the wife donor. Certainly, the equity of the donee could not immediately after such a transfer be equal to that of the donor. In the case at hand the land had been given to the wife by her father specifically for the benefit of herself and

the children of her previous marriage. It is therefore difficult to see how it could be presumed that the transfer of the matrimonial home should immediately, and automatically endow the male Respondent with equity in that land.. At the time of the transfer, the parties were about to negotiate a loan for the completion of the house. They would be sharing the responsibility of improving their matrimonial home together, and accordingly the husband would thereby be building up equity in the ownership of the home. The marriage lasted for seventeen years. The evidence shows that most of the loans taken out for the running of the home were not only negotiated by the Petitioner, but also repaid by her. However in his Affidavit in Reply, dated 19 of November 1998 the Respondent avers that it was he who paid off the mortgage on the matrimonial home. I have no reason not to accept this, which with his fifteen years of marriage to the Petitioner, reinforces his claim to an equal share in the equity of the house. This however does not apply to the land on which the house was built. It appears that any equity that he may have acquired in the land that was given to the Petitioner by her father for her, and her children's benefit is so negligible that I am constrained not to even attempt to quantify it. Photographs of the premises reveal no lawn, garden, or any other obvious improvement to the land, nor is there any evidence before me that the Respondent expended any time or finances in its improvement. Fortunately we have been provided with a separate valuation for the house which has been set at CI\$130.000.00, a valuation that has not been disputed by either party. Having determined that the Respondent is entitled to a 50% equity in the matrimonial home which, in monetary terms, must be set at CI\$65.000. In accordance with the wish expressed by the Petitioner, she will retain possession of the home, purchasing the Respondent,s share for the abovementioned amount..

There are however, certain outstanding loans for which the Petitioner is liable to her credit union, and for which she now seeks reimbursement from the Respondent. In July 1989 the Petitioner obtained a loan from First Cayman Bank Ltd. for CI\$10,000.00 to assist the Respondent to open a night club. This loan was secured by a charge over a property registered in her sole name. Shortly thereafter she obtained a further loan of CI\$16,000.00, on this occasion from the Cayman National Bank. The proceeds of this loan were used to liquidate the previous loan with First Cayman Bank, and the additional monies were applied to various small consumer loans that had been obtained over a period of time to assist both parties in meeting their bills.

In October 1992 the Respondent obtained a loan of CI\$9,000.00 for the purchase of his own personal truck. This loan was guaranteed by the Petitioner. In March 1993 she obtained a further loan to help pay off the Respondent's truck loan. Then in August 1996 the Petitioner went to her Credit Union where she obtained a loan of CI\$23,140.41, the proceeds of which were used to liquidate the outstanding loans. It was within weeks of this transaction that the Respondent left the Matrimonial home. The Petitioner, has since then accumulated further debts for which the Respondent cannot be held responsible.

From the evidence before me there is no doubt that some of the proceeds of these loans taken out during the marriage accrued to the benefit of both parties. The first, that for CI\$10,000.00 went towards an investment which, if successful, would have provided income for both Respondent and the Petitioner. According both are responsible for its repayment, The Petitioner is therefore entitled to be reimbursed in the sum of CI\$5,000.00 which represents 50% of that loan. The next item is the

amount of CI\$9,000.00 for the purchase of the Respondent's truck. At the time of its repayment by the Petitioner, the Respondent had already repaid some CI\$2,000.00 of the loan. He acknowledges that the truck is his personal property, and of which he is still in possession. The Petitioner is therefore entitled to the sum of CI\$7,000.00 in this regard. Accordingly I find that the total amount for which the Respondent is indebted to her in respect of these loans is CI\$12,000..

I now come to issue of the equity to which the Petitioner claims to be entitled in the shares owned by the Respondent in certain companies.

In 1982, by virtue of his marriage to the Petitioner who is not only a Caymanian, but also an Immigration Officer, the Respondent acquired Caymanian Status. He was thus able to embark on a small manufacturing business, and shortly thereafter obtained a 2% share in a company by the name of Island Repair and Maintenance Ltd. The Respondent does not deny that he has in recent years acquired a 60% share in both Seaview Ocean Resort Ltd. and Seaview Dive Centre Ltd. It is his contention however, that the Petitioner has contributed nothing to these more recent business ventures, and is therefore not entitled to an equity in his shares in either company. In this regard he is greatly mistaken. Without his Caymanian Status he would not have been able to acquire 60% ownership in these companies, and for which he admits that he has not expended a cent. In my view, she as his wife, the person who has made these circumstances possible, is entitled to a share of any equity to which he may be entitled in these companies.

Regarding the 2% share that the Respondent has in Island Supplies Ltd. acquired shortly after the marriage, I hold that the Petitioner is entitled to 40% of the value of

these shares. It has been brought to my attention that both Seaview Ocean Resorts Ltd. and Seaview Dive Centre Ltd. are up for sale. I assess her equity in the Respondent's share of the proceeds at 30%.

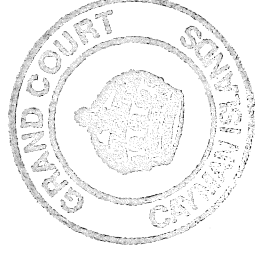
The Respondent contends that the Petitioner, who now lives with her grown children and a male companion in the matrimonial home, should pay rent to him the Respondent for this privilege. He supports this contention by the fact that he has to be paying rent at the rate of \$700.00 per month, and in these circumstances, it is not fair for the Petitioner to be enjoying the benefit of the matrimonial free of cost. What the Respondent seems to have forgotten is that it was he who voluntarily left the matrimonial home to the Petitioner. His status as a joint tenant had remained the same as hers, and accordingly he was legally free to return to it and enjoy the benefits thereof. He can blame no one but himself for the present situation, nor can he demand rent from the Petitioner for her occupation of her own home. On the other hand the Respondent is not responsible for any loans negotiated by the Petitioner after his departure from the matrimonial home..

At present the parties seem to be on reasonably good terms, and I have no doubt that with the help of this ruling of the Court they will be able to finally settle their fiscal differences.

~~There will be no order as to costs, unless~~

  
Kipling Douglas

Judge of the Grand Court



27<sup>th</sup> April, 1999