

IN THE CAYMAN ISLANDS COURT OF APPEAL

C.I.C.A # 33 OF 1998
Grand Court Cause # D23 of 1997

BETWEEN:

MITZI MARGUERITE PANTON

Appellant/Petitioner

- and -

ALBERT COLIN PANTON

Respondent



BEFORE: The Rt. Hon. Edward Zacca, President
The Rt. Hon. Telford Georges, Justice of Appeal
The Hon. Gerald Collett, Justice of Appeal

Mr. Ramon Alberga, Q.C. and Mrs. Eileen Nervik, instructed by Nervik & Company, for the Appellant/Petitioner.

Norman Hill, Q.C. and H. Delroy Murray, instructed by Samson Murray Jackson, for the Respondent.

April 12 & 13, 1999

Judgment

After the hearing of the arguments in this matter we announced our decision giving brief oral reasons. We undertook shortly to deliver written reasons and now do so.

This was an appeal from a judgment of the former Chief Justice on an application for the final determination of the outstanding ancillary matters consequent upon the dissolution of the marriage between the parties.

The parties, who will be referred to as “husband” and “wife”, were married on 12 December, 1957 and the decree of dissolution pronounced on 30 May, 1997. The learned Chief Justice found that both parties were truthful and estimable people who have sadly gone their separate ways after some 40 years of marriage. The wife had had a reasonably good earning potential throughout and had sacrificed some of that in order to make a home for the family over many years.

On that basis, he concluded that the “so called” one third rule should be used as the starting point for the division of the matrimonial property and exercising the “wide discretion permitted under Miller v Miller” she was entitled to somewhat more on the basis of her contribution to the marriage. These conclusions have not been challenged. The disagreement which resulted in this appeal springs from the Chief Justice’s method of applying them to the facts of the case.

In the course of discussions between the parties the husband stated that he was prepared to offer the wife in settlement the former matrimonial home located in Belair Manor (unit 5) valued at CI \$160,000.00 , the car valued at CI \$10,000.00, a parcel of land located in North Sound Estates valued at CI \$33,600.00 and a lump sum of \$8,000.00. This offer was made on the basis that the settlement should effect a clean break between the parties. This approach has been accepted as correct.

The former matrimonial home had been purchased and improved with the husband’s money. The title was held jointly between the parties. The parcel of land at North Sound Estates Savannah Block 27c Parcel 276 was valued at CI \$33,600.00. It had been purchased with the husband’s

money and registered in their joint names. There were also banks accounts not mentioned in the offer which were in the parties' joint names. In fact, however, each of the parties treated each particular joint account as relating to one or other of them and deposits and withdrawals were made into that account only by the person to whom it related.

In applying the one-third rule the Chief Justice treated the property, the subject matter of the offer, as though that property had already been transferred to the appellant. The itemisation on page 4 of the judgment read –

<u>Petitioner</u> (all in C1\$)		<u>Respondent</u> (all in C1\$)	
<u>Capital</u>		<u>Capital</u>	
Former matrimonial home Block 21C Parcel 55	160,000	GT South Block 14D Parcel 318 REM2 (1/2 share)	1,000,000
Parcel at North Sound Estates Savannah Block 27C Parcel 276	33,600	Prospect Block 23C Parcels 66 & 146	170,000
1992 Subaru Legacy	8,000	Bank Accounts (C1\$ and US\$ in accordance with respondent's affidavit dated 13.1.98)	15,038.42
Shares in Allied Aviation Inc.	8,000		
25% share in land in West Bay	21,000		
Bank Accounts (US\$ and C1\$ in accordance with Petitioner's oral evidence)	74,315		
Cash offer by Respondent	<u>8,000</u> 312,915		<u>1,185,03.42</u>

Having done this he calculated the value of one-third of the husband's holdings of C1\$1,185,038 as C1\$395,013. The husband's offer amounted only to C1\$312,915. This fell short of C1\$395,013 by C1\$82,096. He concluded, therefore, that the husband should pay C1\$90,000 to the wife to make his offer up to slightly more than one-third of the husband's holdings.

Clearly this was an error. The wife's share under the one-third rule must be calculated on the basis of the joint assets of the husband and the wife. From the total assets thus calculated the share owned by the wife should then be deducted to arrive at the sum to be awarded. The Chief Justice calculated the one-third share on the husband's assets alone.

Carrying out this exercise in the instant case the calculations would be as follows –

Husbands assets	C1\$1,185,038.00
Wife's assets	<u>312,915.00</u>
	<u>C1\$1,497,953.00</u>

One third of this sum would be C1\$499,317.66. The wife would have received on these calculations C1\$312,915.00, leaving a balance of C1\$186,402.66.

It will be noted that though the Chief Justice intended that the appellant should receive somewhat more than the standard one-third, his method of calculation resulted in the award of a sum significantly less. It should also be noted that the wife was credited with a sum of C1\$8,000.00 which was at that stage no more than an offer.

In his reply Mr. Hill contended that there was yet another error in the method of calculation. He argued that the property comprised in the offer which the husband had made to the wife should not have been treated as the wife's property. All the property should have been treated as the husband's property and an award should have been made of one-third of that sum. There is clearly no merit in the argument. If that had been done the Chief Justice could have then allocated the property comprised in the offer to the wife and ordered that the difference be paid in cash – arriving at precisely the same figure.

Apart from the argument that there was an error in the application of the rule, challenges were also directed at the valuation of specific items of property. The most significant was in the valuation of the principal assets of the parties – the parcel of land at George Town South, Block 14D, Parcel 318 RM2. The husband owned a half-share in that property.

In her affidavit in reply, the wife stated –

“2. This property which is comprised of approximately 3.37 acres, is zoned commercial and is valued in the region of US\$2,900,000.00. I have been reliably informed and verily believe that an offer to purchase this land for US\$2,000,000 was refused by the Respondent sometime in 1996.”

In his affidavit in response the husband stated in paragraph 2 –

“As to paragraph 2 of the Petitioner’s affidavit, the facts as stated are to all extents and purposes correct. However, it should be clearly stated that my half share in the property on Elgin Avenue ... was inherited by me from my father’s estate as a result of a Deed of Family Arrangement duly registered.”

(Emphasis supplied)

There was, therefore, no dispute as to the value of this parcel of land. The fact that an offer of US\$2,000,000.00 was refused cannot be taken as final evidence of the value of the land, more so when the husband, in effect, admits that there had been a valuation of US\$2,900,000.00 in 1996. This should have been accepted as the value of the land in the absence of any other evidence. The husband’s share on that valuation would have been US\$1,450,000.00 or C\$1,160,000.00.

The valuation of the parcel at Prospect Block 23C Parcels 66 and 67 was also challenged. The evidence relating to the valuation of those parcels was not all one way as was the evidence of the value of the Elgin Avenue parcel. Accordingly, it is not possible to conclude that the Chief Justice failed properly to assess the evidence in arriving at the conclusion which he did.

The Chief Justice did not analyse in detail the evidence relating to the bank accounts. The wife gave the balances for certain specified accounts as of 4th June 1997. The significance of that date could not be demonstrated. The husband’s affidavit was sworn on 13 January, 1997 and the balances he gave were stated to be those of the latest balances available. In his judgment the

Chief Justice stated that he accepted the figures given by the wife in her oral evidence and by the husband in his affidavit dated 13 January, 1998. We have no basis for changing these figures.

In the result we calculate the sum to be awarded to be as follows:-

<u>Wife's</u> (all in C1\$)		<u>Husband's</u> (all in C1\$)	
<u>Capital</u>		<u>Capital</u>	
Former matrimonial home Block 21C Parcel 55	160,000.00	Assets: GT South Block 14D Parcel REM2	1,160,000.00
Parcel at North Sound Estates Savannah Block 27C Parcel 276	33,600.00	Prospect Block 23C Parcels 66 & 146	170,000.00
1992 Subaru Legacy	8,000.00	Bank Account	<u>15,038.42</u>
Shares in Allied Aviation Inc.	8,000.00	Total of husband's assets	<u>1,345,038.42</u>
25% share in land in West Bay	21,000.00		
Bank Accounts	<u>74,315.00</u>		
Total of wife's assets	<u>304,915.00</u>		
Total of husband's assets			1,345,038.42
Total of wife's assets			<u>304,915.00</u>
Total of joint assets			1,649,953.42
One third of joint assets			549,984.47
Deduct share held by wife			<u>304,915.00</u>
			<u>245,069.47</u>

The sum to be paid by the husband to the wife will therefore be \$245,069.47.

This amount can be said to be substantial and accordingly the respondent will pay to the applicant the costs of this appeal. Payment of the additional amount may pose cash flow difficulties for the respondent in the short term. If that proves to be the case and payment by reasonable instalments cannot be agreed between the parties, there will be liberty to apply to the Grand Court for the determination of an appropriate instalment payment order.

Zacca, P.



Georges, J.A.



Collett, J.A.