

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
 2 HOLDEN AT GEORGE TOWN, GRAND CAYMAN
 3 DIVORCE AND MATRIMONIAL CAUSES
 4 CAUSE NO: DI13 OF 1997



5
 6 BETWEEN: JENNIFER DIANE EBANKS-HAMMOND PETITIONER

7 AND: GERALD DALTON HAMMOND RESPONDENT

8

9 **Appearances:**

10 Mrs. Eileen Nervik for the Petitioner

11 Mr. Clyde Allen for the Respondent

E. Nervik
C. Allen

12 **RULING**

13
 14 By this application the Petitioner is seeking an order that the matrimonial home
 15 located in the Registry Section West Bay North West, Block 4E, Parcel 266, be
 16 transferred into the sole name of the Petitioner.

17 On 3rd. November 1998 the Petitioner applied for, and was granted, a number of
 18 ancillary reliefs under Section 22 of the Matrimonial Causes Law (1997 Revision).

19 However, paragraph 3 of that summons, which related to the disposition of the
 20 matrimonial home, and paragraph 4, relating to the disposition of the other properties,
 21 were deferred. Paragraph 3 is now the subject of this application as the Petitioner is
 22 seeking no order regarding the other properties.

23 Under section 22(b) of the law, the Court is obliged to make an order for the
 24 disposition of the matrimonial property, including the matrimonial home. Although

1 this order is being sought regarding the matrimonial home only, the other properties
2 mentioned above are all situate in the United States of America. Notwithstanding the
3 singular nature of the Petitioner's application, section 2(b) of the Law (supra)
4 specifically states the duty of the Court as far as such property is concerned. The
5 section provides as follows:

6 At the time of pronouncing a decree under this Law, the Court shall,
7 as appropriate, make orders for the disposition of the matrimonial property,
8 **including** the matrimonial home.
9 Due to the nature of the evidence before me as provided by numerous affidavits of the
10 parties, I consider it not only appropriate, but also necessary to take the other
11 properties into consideration in determining the disposition of the matrimonial home.
12 In so doing, the disposition of all aspects of the matrimonial property, can be brought
13 to a final conclusion.

14 As disclosed by the Petitioner, when the parties separated there were six properties
15 that could have been considered as being matrimonial. The first is the former
16 matrimonial home purchased in 1985, and situate at Heather Lakes, Brandon, Florida,
17 U.S.A. This is valued at approximately US\$100,000.00 and jointly owned by the
18 parties. The second is a house on Climate Drive, Brandon, Florida, U.S.A. and is
19 valued at US\$85,000.00. According to the Petitioner, this land was originally owned
20 by her before it was transferred to their joint ownership. The third is a house at
21 Fayetteville, North Carolina, U.S.A. which has now been sold by the Respondent. The
22 fourth is an undeveloped property in Brooksville, Florida. This was solely owned by
23 the Petitioner, and which she has now sold for US90,000.00. The fifth is lot 041 Unit
24 18 Rio Ranchos Subdivision in the State of Colorado, U.S.A. This land was purchased

1 for US\$1,975.00. Finally there is the matrimonial home which I have already
2 described above, and which is the subject of this application..
3 For the sake of clarity, a succinct history of these issues will suffice. In December
4 1979, some years before the parties met, the land on which the matrimonial home is
5 built was given to the Petitioner by her father. The parties were married in 1984, after
6 having lived together for a few years. In her first affidavit the the Petitioner
7 avers that she had previously been making every effort to build a house of her own.
8 She eventually approached the British American Bank for a loan of \$126,800.00,
9 which, to obtain, a charge had to be made on the property. Because she was now
10 married to the Respondent the bank insisted that his name be added to the property
11 before the loan would be granted.. This was done, and six days after the transfer they
12 both signed the loan agreement placing the charge over the property.
13 Paragraph 9 of the Petitioner's First Affidavit shows that since then she has been
14 paying the mortgage, except for a few occasions when, in her words," the burden of
15 the financial expenses on the matrimonial home became so great that I would demand
16 some payment from the Respondent, and after much begging and pleading, he assisted
17 with a few payments." Indeed, the records show that in January 1986 he contributed
18 \$1,000.00 towards the monthly mortgage payment of \$1,600.00. In April 1986 he
19 contributed another \$1,000.00, and in July 1986 he contributed \$500.00, making his
20 total contribution \$2,500.00. The Petitioner also avers that in order to meet the
21 monthly mortgage payments, plus the weekly bills, telephone, food and support for
22 the child of the marriage, she was forced to take a second part time job. Later, on 13
23 April 1986 a further charge of \$26,176.00 was placed on the property. The respondent

1 denied any knowledge of this until, at the hearing of this application, he was shown
2 his signature on the charge.

3 The Petitioner has put forward several reasons why the matrimonial home should be
4 transferred to her name solely. From the evidence before me it does appear that,
5 throughout the marriage, she has received very little financial assistance, or
6 contributions towards the matrimonial home from the Respondent. This is in part
7 evidenced by her averment that when notified by the Respondent that he had found a
8 piece of farm land which was up for sale at a good price, she went to Florida, where,
9 to her surprise, the Respondent had no money to pay down on the land. She therefore
10 had to resort to her credit cards in order to raise the down payment . She further avers
11 that after she borrowed the money for that purchase, she sent the Respondent
12 \$1000.00 each month for him to pay off the credit cards . She claims that he made no
13 payments and had instead, put the money to his own personal use. This is denied by
14 the Respondent in his Fifth Affidavit, although he admits that from time to time he
15 may have been short of cash and asked her to send him some money. It is true that the
16 Petitioner sold the property in Brooksville, Florida for \$90,000.00. I accept that after
17 paying the 10% commission, repaying the \$15,000 which she owed the credit cards on
18 the down payment, and repaying the balance of mortgage, she was left with virtually
19 nothing. The Respondent cannot therefore claim that money from this property
20 accrued to his equity. As far as the other overseas properties are concerned the rent
21 seemed to have gone towards the repayment of the mortgages.

22 I now come to the Respondent's claim for an equitable interest in the matrimonial
23 home over and above those payments that he contributed towards the mortgage. He
24 claims that as a result of his financial contributions towards the matrimonial home his

1 entitlement to a share in it should be 50%. In his Fourth Affidavit the Respondent
2 avers that in addition to those payments made towards the mortgage, he has paid
3 \$1,500.00 to have trees removed, \$5,000.00 for top soil for the yard, \$500.00 for marl
4 for the driveway, and \$6,500 for building a three car garage. The Petitioner denies
5 that there have been any such contributions. Indeed the photograph of the property
6 leads one to wonder just where the top soil could have been placed, and for what
7 purpose. I do not believe that any such expenditure for marl or trees was made. The
8 Petitioner admits that a shed of some sort has been erected, but this merely consists of
9 a roof and walls. She also pointed out that no planning permission has been obtained
10 for this structure, which would mean that it could be demolished at any time.
11 Notwithstanding this, the structure seems to be of questionable value as the valuator
12 makes no mention of it in the valuation. Furthermore, the Petitioner contends that
13 even if that amount was spent, and such enquiry it may have created is extinguished by
14 the fact that the Respondent sold the house in Fayetteville, North Carolina, their first
15 matrimonial home, and which was in both their names. She now avers that since the
16 sale the Respondent has not acknowledged that he received the sum of \$21,686.60 as
17 the closing proceeds. He however, does claim that he sold the property known as 1108
18 Pleasant Oak, which appears to be the Climate Drive property registered in his name.
19 It is his evidence that the work carried out at the West Bay matrimonial home was
20 financed from US\$21,000.00 which he obtained from the Pleasant Oak sale. It is not
21 clear whether this is the same sum alluded to by the Petitioner which she claims came
22 from the sale of the Fayetteville property. In any event it cannot be disputed that the
23 money that he alleges that he used for the improvements to the matrimonial home,
24 came from the proceeds of a sale of matrimonial property in which the Petitioner had

1 equity, and could have constituted little more than what would have been her rightful
2 share. Accordingly, I do not find that any equity has been created by this particular
3 expenditure.

4 The cardinal question now is how much, equity, if any, does the Respondent have in
5 the matrimonial home at West Bay. His counsel, Mr. Allen has submitted that the
6 putting of their joint names on the title to the matrimonial home, raised the
7 presumption that the Petitioner was making a gift to the Respondent. Mr. Allen
8 further argued that the Respondent, as the spouse, was entitled to between 30% to
9 50% of the matrimonial home. In support of this he cited the case of *Preedy v.*

10 *Preedy*, reported at 1988-89 CILR. This was a Court of Appeal case in which it was

11 held that: (*inter alia*)

12 (1) While the marriage subsisted, in the absence of any evidence of a contrary
13 intention, the putting of the title of the matrimonial home in their joint
14 names raised a presumption that the husband was making a gift to the wife
15 off a share in the beneficial ownership. Moreover her entitlement to a
16 share was reinforced by her direct contribution to the purchase of the
17 home.

18

19 (2) On divorce the starting point for the division of capital assets between
20 husband and wife was allocation of one-third of their value to the wife
21 which would then be varied (in some cases giving her as much as half
22 share) according to the circumstances of the marriage.....

23

1 It is my opinion that the above *dicta* are hardly applicable to the present case as the
2 circumstances are quite different. Although the Petitioner did put the title of the
3 matrimonial home in their joint names, the presumption that it constituted a gift is
4 rebuttable. In this instance it is rebutted by the fact that his name was reluctantly
5 placed on the title on the demand of the loan company, hence it would be difficult for
6 anyone to presume the making of a gift. My understanding of a 'gift' is a voluntary
7 transfer of property, which this was not. Hence any equitable interest that could be
8 claimed by the Respondent therefrom would have to be proved. His situation in this
9 regard is not in anyway enhanced by his reluctance to contribute to the mortgage
10 which had to be mainly borne by the Petitioner. It is my view that any equity that
11 the \$2,500.00 he reluctantly contributed to the mortgage payments may have created,
12 would have been erased by the years during which he lived in the house without
13 making any further contributions to the home, and ought to be considered no more
14 than a contribution to his upkeep. Moreover, the first *dictum* specifically refers to the
15 husband making a gift to the wife. We also see that the second *dictum* alludes to the
16 benefit to be obtained by the wife. In neither of these *dicta* is the beneficiary mutable.
17 In both cases the advantage is directed at the wife. These practices clearly are a
18 hangover from the days when it was presumed that wives were in no position to make
19 much of a financial contribution to the home, and if she could, it would be
20 considerable less than that of the husband. In any event the presumption was that even
21 if the wife had no financial interest she was automatically entitled to an equity which
22 would be increased depending on the length of time for which she performed her
23 wifely duties. It seems to me that the practice of allocating one third of the capital
24 assets to the wife was in keeping with the English law allowing the wife one third of

1 their joint income. No such benefit accrues to the husband. For him to obtain any
2 equity in property previously solely owned by the wife, he is obliged to earn it. This
3 can be achieved in two ways. Firstly, by the expenditure of money and, or labour to
4 the benefit of the property sufficient to create a *bona fide* claim to an equitable
5 interest. Secondly, by an irrebuttable presumption that in putting of the matrimonial
6 home in their joint names the wife was making him a gift . Nowadays in some of the
7 more advanced jurisdictions where there is not only alimony, but also palimony, a
8 word that has crept into their judicial vocabulary) there are no hard and fast rules as to
9 how property is to be distributed. Whether or not these systems work fairly is a matter
10 of their concern. My purpose for mentioning them stems from my belief that in such
11 matters, including this application, each case ought to be treated according to its own
12 particular circumstances, and not by any rules which may have been applicable in a
13 different era.

14

15 Returning to the case at hand, as I have already determined, any presumption of a
16 gift being made by the Petitioner to the Respondent has been rebutted. From the
17 evidence before me I can find little on the part of the Respondent that would entitle
18 him to a claim of an equitable interest in the matrimonial home. Throughout the time
19 they lived together his only expenditure, as far as the home was concerned, was
20 coerced from him. During that time he enjoyed the benefits and comfort of the
21 matrimonial home with little noticeable contribution. Since early 1988 the Respondent
22 has been living in the matrimonial home, and does not deny that he has a tenant in one
23 of the rooms from whom he is collecting rent. It is however accepted that he is now
24 paying the mortgage. This does not in anyway entitle him to an equity in the property.

1 The evidence discloses that the Petitioner was forced to leave the home due to the
2 behaviour of the Respondent. The fact the she may have returned to perform certain
3 functions, does not in any way lessen the effect of his actions. He has gained sole
4 possession of the property through his own wrong doings, creating a situation from
5 which neither equity nor the law would allow him to profit. He cannot therefore claim
6 to have accrued equity from such a situation, regardless how much mortgage he may
7 be paying. Furthermore he is not only having the benefit of whatever rent he is
8 collecting, but at the same time enjoying rent free accommodation. What makes his
9 situation more tenuous is the fact that even were he in a position to prove that he had
10 any equity in the matrimonial home, there would be very little available to him. The
11 property has now been reliably valued at \$190,000. The land which was owned by the
12 Petitioner before the marriage is valued at \$30,000. The balance owing on the
13 mortgage is \$150,000, leaving an available equity of \$10,000. When one considers
14 how much of her own money the Petitioner has expended on this property, it is
15 abundantly obvious that his quest for equity must come to nought.
16 However the matter does not end there. There still remains the properties owned by
17 the parties overseas. The Petitioner avers that she does not know what the Respondent
18 has done with two of the properties, that in Brookville, and the other in Colorado.
19 There is also the question of the money collected on the sale of the property at
20 Climate Drive, Florida, for which she says, he has not accounted. She admits having
21 sold the property at Brookesville, Florida for US\$90,000.00, but says that after
22 deducting the mortgage repayment of US\$66,000.00, and the 10% Real Estate
23 commission, plus the US\$15,000 required to pay off the credit cards on which it was
24 purchased, there was virtually no money remaining.

1 Notwithstanding the fact that some of these properties are in the Respondent's name
2 solely, they are all matrimonial properties, which, the Petitioner, as a wife, is entitled
3 to claim equity. The fact that she has indicated her willingness to forego this claim
4 does not, ipso facto, extinguish it. What this Court can, and will do, is to transfer to
5 the Respondent whatever equity to which the Petitioner may be entitled in the
6 remaining overseas properties in complete extinction of her claim to them, or proceeds
7 therefrom. Conversely, any that the Respondent may have in the matrimonial home is
8 also hereby extinguished. In my view this is more than ample compensation to any
9 claim that he may have had, actual or imaginary, to the said home.

10

11 **Accordingly, it is hereby ordered** that the present matrimonial home located in

12 Registration Section West Bay North West, Block 4E Parcel 286 be transferred into
13 the sole name of the Petitioner.

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16 Kipling Douglas
17 Judge of the Grand Court

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20 12th March, 1999

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