

IN CHAMBERS

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
CAUSE NO. D 50/97

BETWEEN: ALLAN BUSH

PETITIONER

AND: CARLA BUSH

RESPONDENT

Mrs. A. Hernandez for the petitioner
Mrs. I. Nervik for the respondent

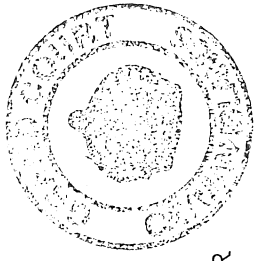
BEFORE DOUGLAS J.

RULING

This is an application on behalf of the petitioner for orders for ancillary relief under Section 21 of the Matrimonial Causes Law (Law 9 of 1976). Section 21 of the Laws is as follows:-

At the time of pronouncing a decree under this Law, the Court shall, as appropriate, making 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



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spouses 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 provision from the property of either spouse for the benefit of 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

(e) costs.

Sub-section (a) does not apply as there are no issue of the marriage. The next sub-section is most relevant in this matter as it refers to the disposition of the matrimonial property, including the matrimonial home. At this point it is necessary to relate to the facts leading up to the application.

The parties were married in July 1991 both parties were at that time divorcees. It is clear from the evidence that the respondent came out of her previous marriage relatively financially secure, having been the beneficiary of three parcels of land and over a hundred thousand dollars. According to the respondent she soon discovered that the petitioner was in financial difficulties, both personally, and with his construction company. This is denied by the petitioner. However, the respondent claims that throughout the two years they were together, until their first separation in 1993, she loaned him various sums of money to purchase his trucks and a boat. This is all denied by the petitioner.

The evidence is that in 1993 the parties separated, the respondent claiming that the petitioner having found another woman, ejected her from the matrimonial home. She soon thereafter decided to build her own house on a piece of the property which she owned. For this purpose she borrowed \$150,000.00 from a bank and put the job out to tenders. There were two bidders. Her husband's construction company, whose bid was \$175,500.00, and another whose bid was \$175,000.00. According to the respondent she accepted the bid made by her husband's company as she knew that he was in need of money. Her records show that she expended a total of over \$169,000.00 on the construction of the building. As the main thrust of the petitioner's claim is that he has an equitable interest in the matrimonial home, it is necessary to examine closely his claim in this regard.

In both his affidavit and his viva voce evidence he claims to have devoted all his time and expertise to the construction of the matrimonial home. He also claims that he did no other job during that six month period and as a result his income fell drastically and he was unable to meet his objectives. He went on to produce copies of various receipts and statements which he claims support his contribution to the construction of the matrimonial home. He alleged that as a contractor he was able to get material at a reduced rate, all of which accrued to her benefit. He also contends that had he been contracted to do the job it would have cost \$233,000.00. Notwithstanding this he has produced a report from Alastair Paterson, a Chartered Quantity Surveyor stating that in his opinion the construction cost of the house would have been CI\$200,000.00 and that

it would now be assessed at CI\$240,000.00. It is submitted by his attorney that he now has an equitable interest in the difference between the actual cost to the respondent and the present value.

I will first deal with his claim regarding the loss sustained by him during the construction. Exhibit 3 of the petitioner's affidavit contains a number of sheets for Cayman Construction Ltd., the company which he owns. These time sheets show that starting from 14th January 1994 the petitioner's company was engaged in three jobs including that of the respondent, these other appear to be of much greater magnitude than of the respondent's. These time sheets continue in this manner and clearly show that the petitioner's company was engaged in other construction work during the period as alleged by the respondent. In this respect he has clearly not been honest with the Court. If, as he says, he is unable to pay his mortgage and other loans during this period, it certainly was not due to any work that he and/or his company carried out on behalf of the respondent. His effort to deceive the Court becomes even more obvious when we look at the receipts and statements on which he is relying. Most of the expenditure made on the respondent's behalf is mingled with that of his company's other clients, and as he has admitted, a claim for block laying is for another job, not hers. What I consider most damaging to the petitioner's claim is his statement that he will not admit anything of which the respondent can show no proof. How often do spouses document their domestic dealings with each other?

I now come to the actual construction of the matrimonial home. The

valuation of the surveyor showing that the construction cost of the house in 1994 would have been CI\$200,000.00 flies in the face of the evidence. We have seen there were two tenders, one for \$175,500.00, the other for \$175,000.00. The respondent's expenditure for the construction was \$169,521.00, sufficiently close to these tenders to indicate the true cost of construction. It is my opinion that the valuation of the surveyor is, as is not unusual, much in excess of the actual cost. This is borne out by the surveyor's estimate of the present cost. At CI\$240,000.00, with his valuation the increase in value of a house of this cost and size would only have been \$40,000.00 over a period of four years. Anyone acquainted with the inflated price of real estate in this Island would find this difficult to believe. Certainly, an increase of CI\$70,000.00 over this period would be far more realistic. What is more obvious is that contrary to what he would have us believe the petitioner was doing the respondent no favour in the construction of this house. Firstly, his company's bid was higher than that of his rival. Secondly, the fact that he was able to purchase materials at a discount price is nothing exceptional, the evidence shows that he obtained this concession with all the building material he purchased, regardless of who the client was. Thirdly, his tender must have included his wages. I find that this entire project was a business venture, that in reality it was between a corporation, Cayman Construction Limited, and the respondent, one that only came about due to her sympathy for her impecunious husband, the owner of the company. This does not entitle him to any equitable interest at all in the matrimonial home, not even under the provisions of Section 21 (b) of the Law.

Before turning to the disposition of any other of the matrimonial property I must first mention the petitioner's contributions to the matrimonial home as listed in his affidavit. They include such items as utilities, helper, gardener, cable TV and food. I have omitted the other items listed as they represent his personal expenditure. Considering that he was living in the home free of charges, no mortgage to pay, as she paid it all, the items listed accrued to his personal comfort. Certainly he used the utilities, ate the food, enjoyed the garden and the benefit of a helper, and therefore cannot consider that such obligatory expenses entitles him to any equitable consideration by this or any Court.

I now come to the trucks and boat obtained during the course of the marriage. The petitioner claims to have purchased these items on his own. The respondent denies this. In order to purchase the two trucks at \$16,000.00 each in 1991 and a boat for \$25,000.00 in 1992, a fair amount of capital would have been required. The petitioner testified that he did have the money with which to purchase these items. The respondent testified that she loaned him these amounts along with several other sums to assist him to pay his debts. The petitioner has exhibited copies of his company's bank statements from May 1993 to August 1994 which show a perpetual debit. The evidence shows that late in July 1994 the petitioner sold the house and after paying off the mortgage, had a balance of \$20,000.00. According to the respondent the petitioner used \$10,000.00 to pay maintenance for two of his children and the other \$10,000.00 to go to the United States

and purchased horses. He denies buying two horses, testifying that he paid the money to the British American Bank. Whatever was done with the \$10,000.00 is now of little consequence. The fact is that the petitioner has not shown any bank statements for the first two years of the marriage. The evidence reveals that he possesses little conception of money management. It is not therefore difficult for me to accept that the respondent was expending sums of varying amounts at the request of the petitioner during these first years of marriage. I accept the respondent's testimony that she bought both trucks. He claims to have purchased them out of the company's money. I do not believe this. He has subsequently had to take out a loan from the bank on these vehicles. A year after obtaining the trucks the boat was purchased. I can see no reason for him to put the registration in her name other than for the fact that it was her money that went to the purchase of it. I accept what she said about the money paid to Mr. Leonard Ebanks. The evidence point to the fact that the boat, although now in the petitioner's possession, belongs to the respondent. Regarding the second vessel, it is clear that it is the property of the stepson Chad and therefore not subject to the provisions of the Matrimonial Causes Law.

Learned counsel for the petitioner has made certain submissions regarding what is required of the Court in dealing with such matters under the Matrimonial Causes law, sections 19 and 22. As already stated there are no children of the marriage, therefore the first requirement of section 19 is inapplicable. The same applies to section 22 (a) (e) and under sub-section (f) the periodic payments for

the benefit of the children. In fact the only matters now left for consideration are firstly, the responsibilities, needs, financial and other resources, earning power and deserts of the parties. Secondly, the disposition of the matrimonial home. I propose to first deal with the matrimonial home.

As I have already determined there has been absolutely no contribution on the part of the petitioner that would entitle him to any equitable interest in this property. The construction of the matrimonial home was carried out by Cayman Construction Ltd. a corporation whose tender was accepted. The petitioner happened to be the owner of the company, and in this capacity, carried out certain work therefor. The evidence shows that his company was paid for the job. Any money owed to him or the company is more than offset by that owed to her by them. What is blatantly obvious is that the petitioner is deeply in debt to the respondent, not only due to the various amounts that she had loaned him but also the fact she sold a parcel of her land in order to pay off a debt of \$38,000.00 owed by the petitioner. From the evidence it is clear that from the commencement of the marriage money has flowed from the respondent to the petitioner, first for the purchase of two trucks, then the boat, not to mention other sums of varying amounts. Whereas there is no evidence that the respondent derived any financial benefit from this marriage. There can be little doubt had she given in to the petitioner and added his name to the title of the matrimonial home, it she would have been lost to some mortgagee.

I find that the respondent is wholly entitled to the matrimonial home,

unencumbered by any interest claimed by the petitioner. She is also entitled to the truck that is now in her possession, also to the boat purchased from Leonard Ebanks in 1992 belongs to her.

I now come to section 22 (f) of the Law as it relates to the provision of periodic payments for the other spouse. The respondent's affidavit shows that she earns a salary of \$2842.00 per month. She shows her total expenditure as being \$2883.00 some forty dollars more than her income. This does not include other personal expenses such as clothes and travelling but due to the nature of her listed home expenses I have little doubt that she can make do on her present income.

On the other hand I can find no indication of the petitioner's present earnings. There is exhibited a statement from Cayman National Bank showing a balance of just over CI\$62,000.00 in his account. Until his income is determined it is not possible for me to order any periodic payments, as the only direction in which the evidence points is that both the petitioner and his company have been in financial difficulties ever since the marriage.

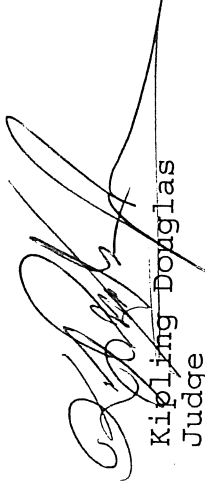
What I find regrettable is that the petitioner, although enjoying the affection and financial support of the respondent throughout the marriage, now seeks the aid of the Court to strip her even further of that which remains of her possession.

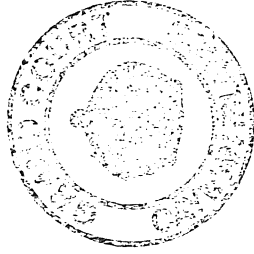
Order:

That the petitioner's claim for ancillary relief is hereby dismissed.

That there be liberty to the parties to apply to vary this order should circumstances warrant such variation.

Costs to respondent to be taxed or agreed.


Kipling Douglas
Judge



7th May 1998