

Smellie

13.3.98

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN**

CAUSE NO. D23 OF 1997

BETWEEN: MITZI MARGUERITE PANTON PETITIONER

AND: ALBERT COLIN PANTON RESPONDENT

For the Petitioner - Mrs. Karin Thompson
For the Respondent - Mrs. Eileen Nervik

JUDGMENT

I will say at the outset that I have no doubt that both Mr. and Mrs. Panton are truthful and estimable people who sadly have gone their separate ways after some 40 years of marriage.

There are some differences in their views as to the value of certain assets but on the whole they are not substantial. I think both seek to be fair in that regard, according to their lights. The issue is how their respective assets should be divided.

Dwarfing all the other assets is a valuable 3.37 acre plot in Elgin Avenue, Central George Town. The respondent accepts that the value of US\$2,900,000 put upon it by the petitioner is "to all intents and purposes correct". He emphasises, however, that this was land inherited from his father. Nevertheless, I am entitled to take it into account in assessing the factors set out in the Matrimonial Causes Law, and in accordance with the wide discretion established by Miller v. Miller 1980-83 CILR

The respondent owns other real estate, the most valuable item of which is Prospect Block 23C Parcel 66 recently valued at US\$204,000 by JEC Building Consultants.

The respondent disputes the professional valuation, giving his own as CI\$100,000 because of the expense of filling it. Elsewhere he has given evidence of sums already expended on fill and I have no evidence of how much, if any, fill was taken into account in the JEC valuation. In support of this his valuation the respondent's evidence is that his brother, Gurney Panton purchased a half share for CI\$50,000, but that was part of a special family arrangement arising from the sale of another plot, Block 23C Parcel 148 as described in paragraph 7 of the respondent's second affidavit.

The petitioner estimates the value of Parcels 66 and 146 as being, together \$250,000. I have taken a figure of both plots of CI\$170,000. Historic or not, I do not think doing the best it I can on the evidence which I have, that it can be right that no value can be attached to parcel 146.

It is agreed that three additional parcels formerly owned by the respondent were sold. They were Prospect Block 23C Parcels 147, 148 and 149. The respondent says that the proceeds were used for living expenses and to promote a condominium development at Prospect Block 23C, Parcel 66. In his oral evidence the respondent said that he hoped that from this he would acquire one of the 6 proposed apartments as a residence of his own, free and clear, from the profit of the venture. He estimated the value of the apartment prospectively at US\$425 - 450,000.

The former matrimonial home South Sound Block 21C Parcel 55, known as Belair Manor was purchased and improved with money of the respondent. The title is held jointly between the parties.

The respondent also owns a plot in North Sound Estates, Savannah Block 27C Parcel 276. The respondent, in his second affidavit, has given the latest figures in his bank statements as of the date of his affidavit. They are these -

CI\$	573	at Cayman National Bank	2,928.93
	13957	at Bank of Butterfield	1,422.22
	507-297-0	at Royal Bank of Canada	<u>2,149.06 o/d</u>
		NET TOTAL	<u>CI\$2,202.09</u>
US\$	13956	Bank of Butterfield	9,020.98
	343-216-8931	Nations Bank, Tampa	
		(Money Market Savings A/C)	<u>7,204.43</u>
			<u>US\$16,045.41</u>

The respondent does not dispute the petitioner's evidence of the balances in bank accounts at 4th June 1997 but says that these have been reduced by expenditure on developments since, and travel and medical expenses. I accept that.

I also accept his estimate of living expenses of CI\$3,197 per month and that he receives a pension of CI\$590.47 per month.

On this basis, and estimating values as best I can on the evidence which I have, I calculate that the respective positions of the parties as to capital and income after implementation of the offer made by the respondent would be as follows -

<u>Petitioner</u> (all in CI\$)	<u>Respondent</u> (all in CI\$)
<u>Capital</u>	<u>Capital</u>
Former matrimonial home Block 21C Parcel 55	GT South 1,000,000 Block 14D Parcel 318 REM2 (1/2 share)
160,000	
Parcel at North Sound Estates Savannah Block 27C Parcel 276	Prospect Block 23C Parcels 66 & 146
33,600	170,000
1992 Subaru Legacy	8,000
8,000	
Shares in Allied Aviation Inc.	Bank accounts (CI\$ and US\$ in accordance with respondent's affidavit dated 13.1.98
8,000	15,038.42
25% share in land in West Bay	
21,000	
Bank Accounts (US\$ and CI\$ in accordance with Petitioner's oral evidence)	
74,315	
Cash offer by respondent	
8,000	
<u>312,915</u>	<u>1,185,038</u>
Earned income say 5-900 per month	Pension income 590.47

Living Expenditure per MonthPetitioner

Wife has not given her estimated expenditure. Bearing in mind she will have some upkeep expenses on the home I think 2,000 reasonable.

Respondent

3,197 including
1,350 per month
rent.
Net of rent 1,847.

This was a long marriage. The petitioner had a reasonably good earning potential throughout. She sacrificed some of that in order to make a home for the family over many years. Leaving Cayman for a while following the death of a son was perfectly understandable and reasonable. Using the so called 1/3 rule as a starting point and exercising the wide discretion permitted under Miller v. Miller I think that she is entitled to somewhat more than that on the basis of her contribution to the marriage. She has no prospect of a pension. She is 61 years old. Both parties have health problems. His pension will continue. Her earning capacity is likely to decline. I take all that into account.

One third of 1,185,038 is 395,013. My calculation of what the petitioner's capital would be if what the respondent has already offered is left in place as part of the settlement is 312,915. The difference between these sums is 82,096.

In view of my conclusion that the petitioner is entitled to rather more than one third of the joint assets I conclude that the respondent should provide an additional CI\$90,000 to the respondent. That capital sum would provide a clean break. The respondent does not have that sum in liquid form at present and the resolution of his present financial position is dependent on the success of his business development. I should not do anything to prejudice that and I have left it to the attorney's to seek to arrive at an arrangement which avoids that detriment, with liberty to apply.



13th March 1998

G.E. Harre
Chief Justice