

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

CAUSE NO: D56 of 1995



BETWEEN : BEVERLEY EVADNEY HYMAN, PETITIONER

AND: MAXWELL HYMAN RESPONDENT

APPEARANCES: Ilene Nervik instructed by Nervik & Company for petitioner
John Furniss instructed by Collins Broadhurst & Furniss for
Respondent.

11th April, 1997

PATTERSON, J. (Actg.) IN CHAMBERS

JUDGMENT

The petition of the petitioner for dissolution of marriage was proved on the 14th July 1995, and ancillary matters were reserved for determination in Chambers. On the 3rd December, 1996, the Court approved a consent order in relation to the custody and maintenance of the children of the marriage. However, the matter of property division was adjourned, and it came on for hearing before me on the 11th April, 1997.

The property in question consists of two adjoining parcels of land in George Town, Grand Cayman. The first parcel is registered in the Cayman Islands Land Register as



Registration Section George Town South with Block and Parcel numbers 14D 270.

The approximate area is 0.35 acre. The other parcel is described as Registration Section: South Sound: Block 15C Parcel 211. The matrimonial home as well as other buildings are situated on the first parcel of land; the other parcel is undeveloped. The petitioner contends that the respondent has no equitable interest in the first parcel of land since he did not contribute either to its purchase or its development. However, she admits that the respondent has some interest in the second parcel of land, but says that his interest does not exceed one third of its value. The respondent on the other hand, claims that his interest in each parcel is 50 percent of the value.

I will consider their claims to the first parcel of land. The parties were married on the 26th January, 1989. But this parcel was bought by the petitioner long before she was married. There is documentary evidence which clearly established, that as a single woman, the petitioner entered into an agreement with Budget Homes Ltd on the 30th January 1986, to purchase the said parcel of land for CI\$10,000.00. She paid a deposit of CI\$2,250 and agreed to pay the balance of CI\$8,680 (including interest) in 18 monthly instalments of \$482.22 each. On the 3rd November, 1987, Budget Homes Ltd issued a receipt to the petitioner for the final payment on the said parcel of land. An absolute title was entered in the Land Register on the 23rd November, 1988 in the petitioner's maiden name, Beverley Evadne Ellis, as the sole proprietor of the said land. The respondent deponed that he contributed to the monthly instalments, at the request of the petitioner, but he failed to say what was his contribution and when it was made. I do not accept that he did. I am satisfied that the petitioner alone contributed the full amount of the purchase price of that parcel of land.

The petitioner obtained permission from Budget Homes Ltd to commence building on the land from the date of the agreement. Her evidence is that she established a credit account with suppliers of building materials and that by 1989 when she got married to the respondent, she had built a three bedroom house on the property. The respondent moved in after the marriage. But the respondent denies that to be so. He says that by the time they got married, "we had a two bedroom house which both of us had contributed to construct". The petitioner's contention seems more plausible. She says she did not meet the respondent before January, 1988. They became friends then. The respondent was having difficulties in getting a work permit, and consequently, he left the Island on the 28th January, 1988 but returned on the 28th July, 1988. They were not living together before marriage, and the respondent has not disclosed the nature of the contribution he said he made to the matrimonial home. I accept the petitioner's evidence that the respondent did not contribute anything towards building the house which eventually became the matrimonial home. Improvements were carried out to the matrimonial home before the respondent moved out in 1994 but again the evidence does not disclose what, if any, was the respondent's contribution to such improvements. It appears that the petitioner was quite resourceful, and was intent to improve her living standards. She worked at a regular job by day and at nights, she plied her taxi to earn extra money. She established credit with merchants to obtain building materials, and she borrowed money from the bank in 1988 by creating a charge on the property. She built additional rooms to the rear of the property after she got married. She rented them.

In 1991, the property was transferred from her name as a single proprietor to that of “Beverley Hyman and Maxwell Hyman., P.O. Box 1664 George Town, Grand Cayman as joint proprietors”. She gave an explanation for that transaction. Prior to 1991, the bank loans were obtained in her name alone. In November 1988, she had borrowed \$13,000 from the bank to complete the construction of her home. In May, 1989, March 1990 and September 1990 she also borrowed small amounts from the bank secured by the charge on her property created in favour of the bank in 1988. But when they decided to purchase South Sound Block 15C Parcel 211, the bank advised the transfer to facilitate a loan of CI\$15,680 in the names of both the respondent and herself. The petitioner exhibited a letter from the Cayman National Bank which confirmed her evidence as to the dates of the loans and their stated purposes. It showed further that in October, 1991 CI\$6,769.25 was advanced “to purchase 1991 Daihatsu Hijet”, CI\$8,000 in October, 1992 for “extension to home,” CI\$7,000 in July 1993 for “furniture for home” and CI\$5,000.00 in February, 1994 for “renovation to home”. The loans from 1991 onwards were all in the joint names of Maxwell and Beverley Hyman, but they were secured by (a) a charge over George Town South Block 14D Parcel 270 stamped to cover CI\$26,000.00; (b) a charge over South South Block 15C Parcel 211 stamped to cover CI\$15,600; (c) a Bill of Sale over 1991 Daihatsu Hijet for CI\$6,769.00. That was the position as at August 3, 1995.

I am satisfied that improvements were made to the matrimonial home and the other buildings on that parcel of land with the loans from the bank. The question that arises is how were the loans serviced. The petitioner contends that she is the person

who has been making the repayments. I do not think that the respondent is contending that he is making any direct payments towards the loan. What he seems to be saying is that the loans for the extension and renovation of the matrimonial home were obtained in the joint names of the petitioner and himself, and that the money from the rental of the rooms at the back of the property was what the petitioner used for the repayments. This is what he says in his affidavit in this regard:-

“The bills and debts it is correct were paid by the petitioner but with monies which both she and I had obtained”.

There is no evidence that the money from the rental was being used to service the loans; there is no evidence as to what was the rental . I go further, even if that was what the petitioner did it would not enure to the benefit of the respondent, since I am satisfied that he did not contribute to the construction of those buildings.

It is my judgment that the respondent has no beneficial interest in the property at George Town South Block 14D Parcel 270.

I turn now to the property at South Sound Block 15C Parcel 211. This was purchased sometime around April 1991 for C1\$19,600.00. The petitioner does not agree that the respondent contributed any amount to the purchase price. But the respondent produced a receipt which showed that on the 8th February, 1991, he paid to Ritch and Conolly, Attorneys-At-Law, the sum of \$2,350.00 as deposit and fees on the purchase price of this parcel. The petitioner produced a receipt in both parties names for

\$2,000.00 paid to the said Attorneys-at-Law on March 6, 1991 also as a deposit. The loan from the Cayman National Bank in the sum of CI\$15,680 was therefore enough to pay the balance owing on the purchase price. It seems clear that the respondent did contribute to the purchase price of this property. His contribution was made while the marriage subsisted, and I am of the view that the common intention of the parties was that they would hold that property in equal shares. But I must not forget that the repayment of the loan used to complete payment of the purchase price falls on the petitioner alone.

The Diahatsu Hijet motor vehicle seems to be in the possession of the petitioner, and not much is said about it. It will remain with the petitioner as her sole property.

Reference was made to property in Jamaica owned by the respondent. The petitioner is not claiming any interest in that property which was purchased by the respondent prior to the marriage.

The order of the Court is as follows:-

1. The petitioner shall discharge in full all amounts that may be due and/ or owing to the Cayman National Bank and secured by a charge on the property at George Town South: Block 14D Parcel 270, and South Sound: Block 15C Parcel 211, and the respondent shall be released from all such claims and demands.
2. Thereafter, the property at George Town South Block 14D Parcel 270 shall be

transferred from the names of Beverly Hyman and Maxwell Hyman, P.O. Box 1664 George Town, Grand Cayman as joint proprietors to the name of Beverley Hyman as sole proprietor.

3. The property at South Sound, Block 15C Parcel 211 shall be sold and the net proceeds of sale shall be divided equally between the parties, but there shall be deducted from the respondent's half share, the sum of CI\$7,840.00 (representing the portion of bank loan that he should have contributed), and the said sum shall be paid over to the petitioner.

Either party shall be at liberty to purchase the property, with the first option to the petitioner.

4. The Daihatsu Hijet motor vehicle shall remain with the petitioner as her sole property, and the respondent shall be released from all liabilities, claims and demands in connection with or arising out of the operation of the said vehicle.

5. Liberty to apply.

Dated this 18th day of April, 1997.


Actg. Judge of the Grand Court

