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

CAUSE NO. D111/89

BETWEEN: DONNA SANCHEZ APPLICANT
AND: EDUARDO SANCHEZ RESPONDENT

For the applicant: Mr. J. Furniss
For the respondent: Mrs. Eleanor Messer and
Mrs. Twila Escalante

HARRE C. J. JUDGMENT

The respondent is the franchisee of a well-known international fast food operation. It was one of the conditions of his franchise that he make substantial improvements to his outlet in George Town at a cost of rather over one million dollars. As a result his personal assets are heavily encumbered. He does, however, draw an income of \$100,000.00 per annum from the business. His wife, the applicant worked before the marriage and took work for an airline after the parties separated at a salary of \$1200 per month.

There is some dispute between the parties as to the value of the various personal assets. The wife says that the matrimonial home was valued on the last appraisal some years ago at \$350,000.00 but the

husband has produced a professional evaluation done in 1989 which shows a market value in the region of \$240,000. The furniture at the matrimonial home is valued by the wife at \$100,000.00 and by the husband at \$30,000.00. There is no supporting evidence for either valuation other than the statement by the husband that he received from his insurers after Hurricane "Gilbert" \$65,000.00 which included some structural repairs. That does not help me much as there is no indication as to how much of the furnishing was involved in the hurricane damage.

There is a house in Miami which the wife said was purchased for US\$95,000. The husband maintains that it was purchased for \$89,500 and that given the depressed state of the housing market in Miami he would put a value on it (as of September 1991 when he swore his affidavit of means) of \$US70,000. He says that it is mortgaged to secure \$US57,500, giving an equity of \$US12,500.

The other properties in the Cayman Islands consist of the following -

- (a) A warehouse and apartment near the matrimonial home valued according to the husband at last appraisal at \$110,000. The wife puts no higher value on it and the parties agree that the rental income from the apartment is \$800,00 per month.
- (b) The wife says that the husband owns eight lots of land in the Prospect area. However, she has no supporting evidence for this and the husband says that he owns only five, for three of which he paid \$27,000 in all in 1987. Another, 0.23 of an acre in area, has a mortgage of \$25,000 registered against it.

(c) Land at Cayman Kai purchased according to the wife for \$US90,000 and sold for \$US250,000. The husband says that it was bought by him and his wife's brother for \$US102,000, and owned and sold jointly by them for \$US240,000 with the proceeds of sale divided equally. The \$120,000 which the husband got for the sale he says he used to repay a loan to Cayman National Bank. I accept that, and that the repayment is reflected in the amount of loans now outstanding.

(d) Land at Northwest Point. This was purchased, according to the husband for \$US108,000 in 1988, and according to the wife for \$US120,000.

(e) There are various cars and boats which the wife says the husband owns and she puts a value on each of them, again unsupported by any other evidence. The husband deals with them in more detail. I prefer his evidence. He says that he owns a Ferrari 1983 model worth approximately \$US23,000, a Chevrolet truck, 1988 model, worth about \$12,000 and a boat worth about \$10,000. He sold another boat in 1990 for \$US15,000 on which \$10,000 is still owed by the purchaser.

The husband has produced supporting evidence in relation to his assets and liabilities as a whole. There was an affidavit from an accountant, Mr. Philip Rankine, a statement of personal affairs prepared by Mr. Rankine's firm, a statement of current monthly income and expenses and a further summary of expenses.

The wife sought to show that the respondent's monthly income from his business was in the region of some \$75,000 a month but I accept that this was the gross income out of which all outgoings of the business

had to be met. Indeed, to the extent to which the evidence of the parties differs as to monetary matters, I prefer that of the husband. However, the accounting information originally submitted left certain important questions outstanding with regard to his business and these were addressed at an adjourned hearing.

Dealing with that aspect first, I accept that the \$100,000 was the sum drawn from the business as the husband's remuneration in the year ended 31st December 1992, as stated in the affidavit of his accountant, Mr. Philip Rankine, dated 5th October 1992. That consisted of \$50,000 salary and \$50,000 shown as a shareholder dividend in the accounts for that year. There is a heavy debt burden on the company which restricts Mr. Sanchez' drawings but the accounts as explained by Mr. Rankin show a basically healthy position. He cannot at present make a large lump sum payment out of his disposable income or encumbered assets. His most substantial assets, other than his interest in the company, consist of real estate, and I must, before seeking a formula for fair distribution arrive at a view as to what there is to distribute.

In his affidavit dated 24th September 1991 the respondent says that his asset position is clearly related to the assets and liabilities of his business operation. That observation is clarified in the accounts of that business for the year ended 31st December 1992. A loan of approximately US\$1.1 million was secured by a floating charge over the company's assets and, in addition, collateral charges over the respondent's real estate together with his personal unlimited

guarantee. His future prosperity and ability to provide for his family depends on the success of his business. The sums secured on his property as collateral for the loan to the company exceed the value of that property. The balance sheet at 31st December 1992 shows loans payable \$798,270 and comparison with the previous year shows that the company had been able to pay off \$162,309 during that year. If that pattern of keeping up a fixed repayment schedule of at least \$13,000 per month continues the company should be able to pay off the loan in a little over 5 years and Mr. Sanchez' present liquidity problem will be resolved. On that basis I find reasonable the payment by a purchaser of \$125,000 for 10% of the business, about which evidence was given, and a valuation of the remaining 90% at \$1,125,000. Approached in another way that gives a valuation at a multiple of a little under 6 times the net income for 1992.

The encumbered properties in Cayman, to which I have already referred, are Block 25B, parcel 174 at Spotts, the former matrimonial home; a warehouse and apartment, Block 25B parcel 265 also at Spotts; 0.23 of an acre at Spotts, Block 25B parcel 297; 1.00 acre at West Bay North West, Block 1D parcel 33. All these are mortgaged, to the extent and for the purpose which I have described. All are registered in the sole name of Mr. Sanchez.

There is also the town house in Miami. I accept the respondents's evidence that it was purchased for US\$89,500. Without expert evidence I take no judicial notice of what the husband has said about the Miami housing market and stay with his evidence of the purchase

price, converting it to CI dollars at the rate of .84:1 used by his accountant. That gives CI\$75,180 less a mortgage of US\$57,500 or CI\$48,300, leaving a net value of CI\$26,880. That calculation may be academic as at the last hearing the parties were prepared to agree that the property be sold and the net proceeds held in escrow.

Other remaining assets of the respondent set out in his affidavit dated 24th September 1991 are the Ferrari Mondial 1983 model, the Chevrolet truck and the 1980 Scarab boat. I take the respondent's value estimate for these items, which comes to US\$23,000 say CI\$19,300 for the Ferrari plus CI\$22,000 for the truck and the Scarab boat, making a total for all these items of CI\$41,300. I disregard the items which the respondent says were already sold by the time his affidavit was sworn.

From his monthly salary of \$8,333 the respondent claims that he has living expenses of \$7,705. These include \$1,530 for maintenance and living expenses for his present marriage. That figure was subsequently varied to \$1000 per month plus a rental subsidy of up to \$1500. The respondent also pays the children's school fees.

There was a little under six years between the marriage in December 1983 and the final separation of the parties in October 1989. The three children of the marriage were born in 1985, 1986 and 1989. The wife did not work during the period while the parties were together. I take all that into account in assessing the wife's rights.

The former matrimonial home is well adapted for the upbringing of young children. The wife in performing this duty and should continue to do so. This together with the fact that Mr. Sanchez is unable at the present time to make a substantial cash payment to enable Mrs. Sanchez to buy a home of her own and the difficulty which either party would have at present in acquiring further borrowed funds, I conclude that Mrs. Sanchez should be the spouse who should have the right, with her children, to live in the matrimonial home. She has an interest in it acquired by the performance of her wifely duties rather than working during the marriage, even though the house was acquired and built by her husband before that event. In the light of that I assess her interest as 1/3rd.

This will mean that a clean break cannot yet be achieved as a transfer to her of a legal title relating to this encumbered property is not practicable at this time. The ages of the children make it desirable that the wife should have the right to use the property for at least another seven years, when the eldest child will be 17 years old and will be at, or near, the end of his schooling. The husband will then, unless his business has gone seriously wrong, be in a position to make a substantial cash payment to the wife. An alternative considered at the hearing was that he should make such cash payments as he could afford while his business was encumbered, with a balloon payment at the end. I think that the alternative of giving her the use of the house, which fits her needs better than his, with the title and the obligation to service the outstanding loans which are in any event for the benefit of his business remaining with him, is far

The respondent has a history of arrears on payments on orders previously made and I regard this element of personal business interest in keeping up the mortgage payments and generally complying with the mortgage terms as an advantage. There is, unfortunately no order which I have been able to devise which arrives at the clean break at this stage which is one of the objectives which the court always seeks.

The respondent will need to find and finance alternative accommodation. His figures of monthly personal expenditure imply that he lives alone. The figure of CI\$1500 per month which he has been ordered to pay as a rental contribution for his wife seems to me to be appropriate also for a person in his station of life.

That element of his obligation to his wife will cease upon her moving into the matrimonial home. The norm for rental accommodation in Cayman is that it be furnished. The wife may therefore keep the furniture in the former matrimonial home while she is living there, the husband being allowed to remove his personal belongings.

The husbands statement of income does not take into account the rental of \$800 per month from the apartment on the site of the warehouse at Spotts. So his total income is not \$100,000 but \$109,600.

There is usually an element of uncertainty in matters of this kind. I have no evidence as to the market rental of a house such as the matrimonial home and I acknowledge that I am going to make what I hope

is an educated guess of CI\$2500 per month. That coupled with the petitioner's earnings of \$1200 per month gives her a notional income of \$44,400, marginally more than 1/3rd of the joint gross income of \$124,000. It is in fact 1/3rd of \$133,200. I think that is a fair result, bearing in mind that the husband retains use of 2 motor vehicles and a boat. It does not take into account the maintenance payments for the children, to which I now turn. \$250 per week for the three of them seems to me to be inadequate. This is a family which should be reasonably well provided for. I consider that the respondent can and should afford \$360 per week (\$120 for each child) and I so order. One item which I take into account in this connection is that payment for the University education for his daughter by a previous marriage should now in the natural course of events have ceased or be about to do so. An item which the petitioner and the children should have is a reasonable car. They should be able to afford one from what I am seeking to provide for them.

So today's order is as follows -

That the respondent vacate the former matrimonial home at Block 25B parcel 174 at Spotts within 30 days or such longer period as the petitioner may agree and give possession thereupon to the petitioner. Until the petitioner takes possession of the home the respondent should continue to pay up to a maximum of \$1500 per month towards the cost of rental accommodation for the petitioner.

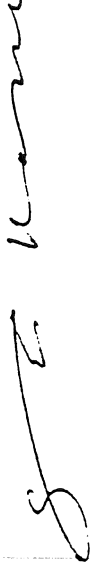
The petitioner to have custody care and control of the 3 children of the marriage with reasonable access to the respondent. Maintenance for each child to continue until that child reaches the age of 17 or ceases full time education, and the respondent to pay the educational, medical, dental and optical expenses incurred during that period.

The respondent shall use his best endeavours to free each parcel of real estate held in his name from the incumbrance with which it is burdened as security for the liabilities of this business in order that an equitable sharing of these parcels or their value may be arrived at between the parties by further order. The respondent shall not dispose of or further encumber any of the said property without leave of the court.

The Court assesses the petitioner's share of the respondent's interest in his fast food business, which it assesses as valued at \$1,125,000, as being one-third of that present value.

Liberty to apply generally.

6th January 1995.



G. E. Harre
Chief Justice