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IN THE GRAND COURT OF THE CAYMAN ISLANDS

HOLDEN AT GEORGE TOWN, GRAND CAYMAN

CAUSE NO. D 99/91 In Chambers

BETWEEN:	EDEN COOK-BODDEN	PETITIONER
AND:	ANA MARIA LOPEZ-COOK-BODDEN	RESPONDENT

For the petitioner: Mr. D. Murray
For the respondent: Mrs. E. Messer

HARRE C.J. **JUDGMENT**

This is a summons to settle ancillary matters. The parties have been married for fourteen years but have lived apart since about March 1990. The wife has since bought a house in Miami. She says the price was US$79,000.00.

The respondent contends that the petitioner owns substantial property, in particular a house in Snug Harbour, Grand Cayman which was purchased for $350,000.00, properties on Little Cayman, a shop which she helped to run for eight years and another recently purchased shop in the Ramada Hotel.

The petitioner denies owning any property during the marriage at all. He says that the Snug Harbour property was purchased by him on behalf of his 92 year old mother who had sold another house for $1 million and turned the proceeds over to the petitioner with instructions to purchase another house in his own name but for her use and that of the petitioner and his sons. The rest of the money was used substantially for the benefit of the petitioner in paying, among other things, certain debts which he had. He denies owning personally any property on Little Cayman. It is a matter of record that there are properties there to which he has made a claim as administrator of the estate of a deceased forbear. That is not relevant to these proceedings. He admits owning a business which failed and was succeeded by a business in which the petitioner has a 30% shareholding. He admits also that the respondent did work from time to time in both businesses, that she was paid for such work and that his own reward from the business amounted to a salary of $300.00 per week, plus periodic payments from the profits which he estimated at $12-1500.00 paid about three times a year. I accept that he does not draw money from a business run by his sons at the Ramada hotel, that his annual income is about US$20,000.00 and that hers is about US$6,240.00 from her earnings, together with contributions from her son. It is not contested that some adjustment of the disparity of income is necessary. The respondent's son should be relieved of at least some of this financial burden. A more difficult question is how to deal with the house now in the petitioner's name which was bought from part of the proceeds of sale of his mother's house in 1991. The parties lived in the house which was sold as their matrimonial home for some time, but

unfortunately the evidence does not reveal just how long. Before that they lived in other rented accommodation. The wife says that she looked after the petitioner's mother, worked without pay in the clothing business which her husband ran and performed normal wifely duties, including bringing up his sons by a previous relationship. To the extent that this is in conflict with the husband's evidence, I prefer that of the wife.

At no time while the parties were living together did they own a matrimonial home, but the petitioner has now acquired title to a substantial property in the way which I have described. His income is not large, but his adult sons are in business and there is no evidence as to what, if anything, they contribute to the family finances.

The evidence in this case is lacking in detail, particularly with regard to the expenditures of the parties. I must do the best I can on the basis of my assessment of the contributions made by the parties to the marriage during the ten years during which they lived together, and their respective positions now. As always, I start with the so-called "one third rule" as a guideline.

It was not in dispute that some adjustment of the income of the parties needed to be made in order to achieve a just result for the wife. The major issue is the house which the petitioner owns. On his behalf it was submitted that it should not be taken into account as a matrimonial asset. The opposite view was urged on behalf of the

respondent.

There is little weight to be attached to the issue of which assets of the parties fall to be dealt with under s 21 (b) of the Matrimonial Causes Law as matrimonial property and which under s. 21 (e) in "making financial provision from the property of either spouse for the children of the marriage and for the other spouse". In Miller v Miller (Cause No.68 of 1980), Sir John Summerfield CJ had this to say -

> "In my view, "matrimonial property" in section 21 (b) roughly equates with "family assets" in Wachtel v Wachtel (1973) 1 All E R 829.
> However, that does not mean that other assets owned by either spouse are left out of consideration or are otherwise immune when making ancillary orders under section 21. Paragraph (e) of that section specifically otherwise provides.".

There being only adult children of the marriage, the factors which I have to take into account are those set out in s. 18 of the Matrimonial Causes law - the responsibilities, needs, financial and other resources, actual and potential earning power and the deserts of the parties.

After his mother's death the petitioner will have no responsibility for the maintenance of anyone other than his wife and himself. He will not need a $300,000 house in Snug Harbour. Indeed he described his financial position succinctly when he said in his evidence that he

had the building but no money. His affairs are not in equilibrium. There is no reason to think that the potential earning power of the parties is likely to increase and indeed as they grow older the opposite trend is the more likely.

The respondent is entitled to a share in the value of the Snug Harbour house. The marriage lasted 10 years. The petitioner himself says that it went well for eight of these years. The respondent helped to bring up two of the petitioner's boys and one of her own. She worked in the family business. The parties lived, during the marriage, in the petitioner's mother's house.

I conclude that I have to deal with the following two matters -

1. The sharing of the only substantial assets available, the Snug Harbour property owned by the petitioner and the Miami property owned by the respondent.
2. The adjustment of the respective incomes of the parties.

There is nothing, in my judgment, in this case which calls for a departure from the guideline of 2/3: 1/3 as the basis for apportionment. In respect of the Snug Harbour Property, I offer the petitioner the following two alternatives -

1.EITHER -

That the property registered as Block 18A Parcel 18 in the name of the petitioner be sold within 1 year of the death of the petitioner's mother, or of this judgment, whichever is the later, at a price which shall not, without the leave of

the court, be less than US$350,000.00. The net proceeds of such sale shall be divided as to 2/3 to the petitioner and 1/3 to the respondent, subject to paragraph 2

OR - The said property shall be valued by a valuer in recognised practice as such in the Cayman Islands and agreed upon between the petitioner and the respondent (or, in default of such agreement two valuers, one of whom shall be appointed by each of the parties). The net value arrived at (which shall, in the event of two valuers being appointed, be the average of their valuations) shall be shared as to 2/3rds to the petitioner and 1/3rd to the respondent and the petitioner shall make a payment to the respondent within 30 days of the said valuation a sum representing 1/3rd thereof, subject to paragraph 2.

2. That any apportionment under paragraph 1 take account of the value of the respondent's home in Miami, which shall be deemed to be US$79,000.00, so that the Petitioner shall be awarded 2/3rds and the respondent 1/3rd of the sum of the net proceeds or net value arrived at in accordance with paragraph 1 and the said US$79,000.00.

Until one or other of the alternatives provided for in paragraph 1 comes to pass the considerable disparity between the incomes of the parties must be addressed. The petitioner earns about CI$20,000.00 per annum. The respondent earns about US$6,240.000. Her income is supplemented by her son, but he is under no obligation other than necessity to do that. I disregard that aspect. I order -

That the petitioner pay interim maintenance to the respondent of $350 per month, first payment to be on 1st June 1994 and thereafter on or before the 1st day of each month until a final division of the assets of the parties as set out in this judgment has been made.

Liberty to apply.

G. E. Harre
Chief Justice

5th May 1994.