

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT

FAMILY DIVISION
2018/FAM/div/00042

BETWEEN

J C

Petitioner

AND

G C

Respondent

Before: The Hon. Madam Justice G. Diane Stewart

Appearances: Ms. Roshar Brown for the Petitioner
Mr. Edward Turner for the Respondent

Ruling Date:

RULING ON ANCILLARY RELIEF

1. On the 19th November 2018, a Decree Absolute was granted to the parties dissolving the marriage which had been solemnized on 14th April 2001. The marriage lasted seventeen years from 2001 to 2018 and there were no children of the marriage.
2. The parties seek a property adjustment orders with reference to the matrimonial home, shares in Master Technicians Ltd., and Commonwealth Brewery.

Petitioner's Affidavit of Means filed 18th February 2019

3. The Petitioner averred that prior to her marriage to the Respondent he owned a home with his former wife situate at Nassau East. The Respondent gave his share and interest in that home to his former wife.
4. Prior to her marriage to the Respondent, she owned a home situate at Perpall Tract which she had sold and received a profit of sixty thousand dollars. The profit was used towards the deposit of the purchase price for the matrimonial home situate at #6 Sienna Drive, Highland Terrace (the "Matrimonial Home"). A mortgage exists over the Matrimonial Home with a current payout balance of one hundred and forty-seven thousand seven hundred and eighty five dollars and eighty five cents. Monthly payments are five thousand and fifteen dollars.
5. She has been unemployed since 31st December 2016 but assists her daughter with her catering business and receives an average stipend of six hundred dollars per week. The

Respondent retired from Master Technicians in February 2016 but gained employment in July 2018 but she was not aware as to where he was employed.

6. Since January 2017, the mortgage over the Matrimonial Home has been paid solely by her daughter. She entered into an agreement with her daughter for her daughter to lend her the monthly mortgage amount. This loan represents her daughter's interest in the Matrimonial Home. She pays one hundred and eighty dollars per month for cable, telephone and water.
7. The Petitioner averred that she paid for the gardener, electricity, gas, housekeeper and any other maintenance for the Matrimonial Home. Her family's business pays for the health insurance for both the Respondent and herself. The value of the Respondent's portion of the health insurance plan is seven hundred dollars per month.
8. Prior to their retirement, her monthly contribution towards the bills of the Matrimonial home was six thousand eight hundred dollars. The Respondent's monthly contribution towards the Matrimonial Home was three thousand eight hundred dollars.
9. Her monthly bills and expenses are:-

"a. Life Insurance/Term	\$185.00
b. Mortgage	(\$5,015.00 loan from daughter)
c. Credit Card	\$1,200.00
d. Car Maintenance	\$125.00
e. Real Property Tax	\$100.00
f. BEC	\$300.00
g. Gas for Vehicle	\$120.00
h. Gas for cooking	\$70.00
i. Vacations	\$200.00
j. Groceries	\$600.00
k. Housekeeper	\$200.00
l. Tithes/Offering	\$100.00
m. Hair/Nails/Personal Grooming	\$50.00
n. House Miscellaneous Maintenance	\$200.00
	\$3,450.00"

10. Some of her bills were paid by credit card and the shortfall in expenses would be paid by her daughter and gifts from other family members.

Respondent's Affidavit of Means filed 22nd July 2020

11. The Respondent, a retired pensioner, averred that he earned a monthly pension from the National Insurance Board in the amount of one thousand three hundred and ninety one dollars and twenty cents. He further averred that the Petitioner was self-employed and that they jointly owned the Matrimonial Home. His principal monthly expenses were:-

(a) Electricity	\$250.00
(b) Grocery	\$250.00
(c) Cable	\$145.00
(d) Vehicle Gas	\$100.00
(e) Tithes	\$130.00
(f) Cell Phone	\$75.00
(g) Medications	\$100.00
(h) Laundry	\$100.00
(i) RBC Visa Credit Card	\$300.00
(j) Citibank Master Card	\$200.00
(k) JC Penny Credit Card	\$160.00
(l) Car Insurance	\$26.00
(m) Car License & Inspection	\$20.00
	TOTAL \$1,856.00

Respondent's Supplemental Affidavit filed 2nd September 2020

12. On 8th December 1997 he purchased the Highland Park Lot and instructed the vendor to draw the conveyance in the Petitioner's name. On 17th April 2000, the Petitioner conveyed the lot in both of their names in contemplation of financing the building of the Matrimonial Home. On 8th August 2002 he and the Petitioner secured a mortgage in the amount of four hundred and eighteen thousand dollars to build the Matrimonial Home.
13. A further charge was secured on 17th October 2002. A second further charge was subsequently secured on 21st April 2005 totaling one hundred thousand five hundred dollars. He and the Petitioner serviced the mortgage and further charges from their respective salaries. As at 20th September 2017, the Matrimonial Home was valued at four hundred sixty thousand dollars. It was equipped with state of the art appliances and other furnishings valued in the region of one hundred thousand dollars.
14. During the marriage he and the Petitioner established a joint bank account at the Royal Bank of Canada ("RBC") for the household expenses. They both deposited their salaries therein and paid all expenses relative to the household from this account. He and the Petitioner were also the joint owners of three hundred shares in Commonwealth Brewery Limited purchased at eight dollars per share and one thousand eight hundred and fifty shares in Master Technicians Limited valued at one hundred and forty thousand dollars. The total value of the shares are approximately two hundred sixty one thousand four hundred dollars.
15. The Petitioner was the day to day household administrator. She paid the mortgage from the joint savings account at FINCO and all other bills, shopping and normal expenses from the joint chequing account at RBC. This was the state of affairs during the marriage. He rarely checked the savings account. He was aware that the household bills were being paid in a timely fashion and that a problem only arose towards the end of the marriage when the Petitioner developed a gambling habit which led to her depleting the joint account.

16. On 13th February 2015, he retired from Commonwealth Brewery and received a settlement of fifty two thousand seven hundred and twenty two dollars and forty three cents (\$52,722.43) in addition to pension contributions of fifty thousand dollars six hundred and twenty six dollars and ninety two cents (\$50,626.92) which sums were both deposited into their joint savings account at FINCO. Such funds would be normally used to service their mortgage. He was unaware that they were being used by the Petitioner to fund her gambling habit.
17. In November 2016, he became aware that sums in excess of one hundred and three thousand dollars were withdrawn from their joint account at FINCO. The Petitioner informed him that she withdrew the sums to repay her employer, Master Technicians, to satisfy her gambling debt with the company. He did not consent to the payment.
18. On 1st March 2019 he moved out of the Matrimonial Home and left the Petitioner and her daughter as the sole occupants where they remain to date. He seeks the division of the assets of the marriage on a sixty/fifty basis in his favor.

Respondent's Affidavit in Response filed 1st October 2020

19. On the 9th February 2000 he received of fifty eight thousand five hundred and seventy-seven dollars and ninety cents (\$58,577.90) from Master Technicians. He had used this to pay his portion of the down payment for the Highland Park Lot.
20. In early 2016 he deposited one hundred and three thousand dollars in the parties' joint account at FINCO for the sole purpose of making payments towards the mortgage of the Matrimonial Home for at least twenty months. This sum was made up as follows:

“(a) a deposit on 1st March, 2016 of \$50,626.92 (pension proceeds from my employment at Commonwealth Brewery.
(b) a deposit on 25th May, 2016 of \$52,722.43 (settlement received from Commonwealth Brewery on retirement).”

21. Between 1st March 2016 and November 2016 mortgage payments were made from the FINCO account. The remainder of the money deposited was squandered by the Petitioner to feed her gambling habit; specifically to repay Master Technicians for using money from their account to gamble online. The Respondent had no objection to the Petitioner's daughter purchasing the Matrimonial Home. However, because he no longer resided there, rental payment was due and owed to him from March 2017 to the present. The Respondent added that he had not been in the group health insurance plan since 2017.

Respondent's Supplemental Affidavit in Response filed 28th October 2020

22. The Respondent exhibited copies of the FINCO bank statements from 11th January 2016 to 11th November 2016 together with all cheques drawn by the Petitioner during the period.

Petitioner's Supplemental Affidavit of Means filed 13th January 2021

23. The Petitioner averred that she paid the deposit for the Highland Park Lot but that she could not recall the amount paid. The balance of the purchase price for the Highland Park Lot was paid by her. It was around that time that she had sold her house in Perpall Tract and used the entire proceeds towards the Matrimonial Home.
24. The Matrimonial Home was constructed in 2001. The furniture and appliances purchased were twenty years old and were replaced at least once since the completion of the Matrimonial Home. Their present value is not comparable to the value when first purchased. Many of the replacements were purchased by her without any contribution from the Respondent.
25. During the marriage, she earned more than the Respondent. She earned six thousand eight hundred dollars per month whereas the Respondent earned approximately thirty eight hundred dollars per month. Their net salaries were deposited into a joint account held at RBC and was used to pay household expenses. Despite her earning more than the Respondent, his monthly expenses exceeded hers.
26. The Respondent had an additional monthly expense of eight hundred dollars a month towards a credit card payment. Although she was a card holder, she rarely used her card during the marriage but the Respondent did. Her credit limit was approximately seventeen thousand dollars. The Petitioner never saw a statement for the card and the Respondent never showed her any information regarding the card. However, it was her belief that she was still named as a cardholder making her legally liable if the bank was unable to collect payment from the Respondent.
27. The Respondent spent approximately two hundred dollars a month on a JC Penny store card and another two hundred dollars a month on a Sears store card. She did not use either of them but was still named as a cardholder. The Respondent also spent four hundred and twenty one dollars a month on life insurance as well as approximately two hundred and fifty dollars a month on medication which represented his medical co-payment.
28. It was common for the Respondent to withdraw approximately one hundred and fifty dollars to two hundred dollars every week from their joint account which he used as his pocket change. He did not account to her for how it was spent. The Respondent contributed approximately four hundred dollars a month towards groceries, two hundred dollars a month towards the electricity, one hundred twenty dollars a month for the gardener, fifteen dollars a month to the phone bill and one hundred dollars a month towards propane gas.
29. There were also additional payments towards the housekeeper, painting of the house and pumping of the septic tank. The latter occurred every three months as a consequence of a serious problem with their septic tank. Until November 2018, the Respondent was covered under her Master Technicians' group medical insurance plan at a cost of seven hundred and thirteen dollars. The combined cost of medical insurance

coverage for her and the Respondent was one thousand one hundred and eighty dollars. The Respondent's coverage was discontinued in November 2018.

30. The Respondent never purchased a vehicle during the marriage and instead drove Master Technicians' vehicles which were licensed and insured by her. On two separate occasions, the Respondent gave the vehicles to members of his family. In January 1985, her father had given her two hundred and fifty shares in Master Technicians. In 1997, her father gave her an additional one thousand shares. In 1993 and 1997, the Respondent acquired a total of seven hundred and ninety five shares in Master Technicians.
31. In September 2005, she and the Respondent became joint tenants of all the Master Technicians shares which totaled two thousand four hundred and sixty five shares. In January 2010, they sold six hundred and sixty five of the shares to her sister, Daneen Southworth. There were currently eighteen hundred shares owned by her and the Respondent. The three hundred Commonwealth Brewery shares were purchased by the Respondent and herself but she did not wish to keep them.
32. She acknowledged the Respondent's contribution of one hundred and three thousand three hundred and forty nine dollars and thirty five cents by mid-2016. However, the Respondent was not employed since early 2016. During that time she was the only spouse working. The Respondent remained in the Matrimonial Home until his departure in October 2018. Since sometime in 2017, her adult daughter, paid the mortgage on the Matrimonial Home.
33. Her daughter also assisted her with the utilities and general maintenance of the Matrimonial Home. During this time, the Respondent's only contribution towards the Matrimonial Home was one hundred and eighty dollars. She maintained that the Respondent was not entitled to an equal division of the equity in the Matrimonial Home since he left in March 2019. Since his departure he did not contribute to the mortgage nor the upkeep of the home.
34. The Petitioner averred that she and the Respondent owed the Department of Inland Revenue outstanding real property tax in the amount of sixteen thousand six hundred and sixty seven dollars and twenty one cents.

Respondent's affidavit filed 22nd July 2021

35. The Respondent denied that the profits the Petitioner received from the sale of her property in Perpall Tract were used towards the deposit of the property for the Matrimonial Home. He averred that the property was already bought and paid for by him since 1997, three years before the Petitioner sold the Perpall Tract Home.
36. By conveyance dated 8th December 1997 the Highland Park Property was conveyed to the Petitioner by Canzo Properties as he had instructed. By a conveyance dated 17th April 2020 the Highland Park Lot was then conveyed to both parties and he facilitated

the mortgage on 8th August 2002. By conveyance dated 8th June 2000, the Petitioner sold her Perpall Tract Home for the sum of one hundred and sixty five thousand dollars.

37. The Respondent averred that the value of the Commonwealth Brewery shares was two thousand four hundred ninety nine dollars (\$2,499.00). As of 1st March 2016, when he deposited in excess of one hundred and three thousand dollars in the joint account the balance of the FINCO mortgage accounts were:-

“(a) Mortgage Account	\$186,243.36
(b) Further charge account	\$34,747.89
(c) Second further charge account	\$25,831.16”

SUBMISSIONS

PETITIONER’S SUBMISSIONS

38. The Petitioner submitted that the well settled equality principle should not apply in relation to the Matrimonial Home because the property on which it was built was purchased and conveyed to her approximately two and a half years prior to the marriage.
39. She and the Respondent were not financially equal during the marriage, adding that for four years he made little to no contributions to the maintenance and upkeep of the Matrimonial Home. Despite his depositing his salary into the joint account he could not afford to equally share in its upkeep.
40. The Petitioner submitted that the Respondent's interest in the Matrimonial Home diminished since 2017 and was now no more than 30%. The shares owned by her and the Respondent should not be divided equally as a significant number of the shares were given to her by her father and those shares should be viewed as inherited property.
41. She relied on the findings of Turner J in **MW v DW 2016/FAM/div/667** where he adjudged:

“[t]he Respondent.....acquired an interest in [the property], but not an equal share.....I find that the evidence justifies a departure from the principle of equality in respect of this property.”

RESPONDENT’S SUBMISSIONS

42. The Respondent contended that the equality approach should be taken when making a division of the matrimonial assets. He seeks a sixty percent share of the net equity value of the Matrimonial Home. He cited **White v White [2001] ALL ER 1** where the House of Lords established that the Court's aim or objective in property adjustment matters should be to achieve a fair result.

43. In **Miller and McFarlane [2006] 3 ALL ER 1** the Court considered **White v White** and provided further guidance on the achievement of a fair result for both parties. The Court should look at the principle of needs and give consideration to the financial needs, obligations and responsibilities of the parties. The Court should also look at the principle of compensation because if either party is likely to be exposed to prospective financial disadvantage upon divorce the court may consider whether such party should receive some sort of compensation.

44. Thirdly, the Court should look at the principle of sharing which is based on the criterion of fairness. A starting point being the entitlement to an equal share of the assets unless there is a good reason to the contrary.

DECISION

45. Section 29 (1) of the **Matrimonial Causes Act (“MCA”)** sets out the statutory guidelines which the Court must consider when exercising its powers to make an order for financial provision or property adjustment. Section 29 states:-

“29. (1) It shall be the duty of the court in deciding whether to exercise its powers under section 25(3) or 27(1)(a), (b) or (c) or 28 in relation to a party to a marriage and, if so, in what manner, to have regard to all the circumstances of the case including the following matters that is to say —

(a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;

(b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;

(c) the standard of living enjoyed by the family before the breakdown of the marriage;

(d) the age of each party to the marriage and the duration of the marriage;

(e) any physical or mental disability of either of the parties to the marriage;

(f) the contribution made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family;

(g) in the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring; and so to exercise those powers as to place the parties, so far as it is practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other.

(2).....

(3)

(4) Where a party to a marriage has a beneficial interest in any property, or in the proceeds of sale thereof, and some other person who is not a party to the marriage also has a beneficial interest in that property or in the proceeds of sale thereof, then, before deciding whether to make an order under section 25(3) in relation to that property, it shall be the duty of the court to give that other person an

opportunity to make representations with respect to the order; and any representations made by that other person shall be included among the circumstances to which the court is required to have regard under this section.

(5) Without prejudice to subsection (1) where the court grants a divorce on the basis of the ground specified in section 16(1)(d) the court, in exercising the powers referred to in subsection (1), shall have particular regard to the conduct of the petitioner where the evidence discloses that but for the misconduct of the petitioner the parties would not have lived separate and apart.”

46. Section 28(1) sets out the types of property adjustment orders the court has jurisdiction to make. This section provides:-

“28. (1) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute), the court may make any one or more of the following orders, that is to say —

(a) an order that a party to the marriage shall transfer to the other party, to any child of the family or to such person as may be specified in the order for the benefit of such a child such property as may be so specified, being property to which the first-mentioned party is entitled, either in possession or reversion;

(b) an order that a settlement of such property as may be so specified, being property to which a party to the marriage is so entitled, be made to the satisfaction of the court for the benefit of the other party to the marriage and of the children of the family or either or any of them;

(c) an order varying for the benefit of the parties to the marriage and of the children of the family or either or any of them any ante-nuptial or postnuptial settlement (including such a settlement made by will or codicil) made on the parties to the marriage;

(d) an order extinguishing or reducing the interest of either of the parties to the marriage under any such settlement;

subject, however, in the case of an order under paragraph (a) to the restrictions imposed by section 33(1) and (3) on the making of orders for a transfer of property in favour of children who have attained the age of eighteen.”

47. Any decision to adjust an interest in matrimonial property under Section 28 must be determined after considering Section 29. In **Jupp v Jupp** the Court of Appeal stated:-

“It must be remembered that authorities from the United Kingdom cannot trump what the statute law of The Bahamas says. It is only if these cases are consistent with the statute law can they apply. Section 29 is very clear as to what a judge must take into consideration when considering whether to exercise her powers under section 27 or 28 or even section 25 of the Act. Any sharing principle enunciated by case law must be construed in this light. The statute requires that you look at all the circumstances and you make the order which puts the parties in the financial position so far as it is practicable that they would have been in if the marriage had not broken down. The division of the assets must be fair in its entirety. It is not the role of the trial judge to list the assets of the family and to divide them one by one. The trial judge must look at the circumstances on the whole, examine the entire context of the case and make an award accordingly, stating sufficient reasons for the same.

48. In **A v B [2010] 2 BHS J No.18**, **Barnett CJ**, reaffirmed **White v. White** by holding that the modern day approach to the division of assets in The Bahamas is equal sharing of property unless there is a compelling reason to depart from it.
49. The starting point therefore for the division of the matrimonial home and the shares is the general rule that they are marital assets and are subject to the equal sharing principle unless there is a compelling reason to depart from it.
50. The established approach of an equal sharing may sometimes be departed from in order to ensure that the assets are shared fairly after considering the guidelines set out in Section 29(1). The factors which must be considered when determining whether and how to divide matrimonial assets have been the subject of many decisions.
51. The law is well settled. The Court must also consider, in addition to the above, the contributions made by each party as stated in **White v White [2001] 1 All ER** where Lord Nicholls of Birkenhead stated:-

“Divorce creates many problems. One question always arises. It concerns how the property of the husband and wife should be divided and whether one of them should continue to support the other. Stated in the most general terms, the answer is obvious. Everyone would accept that the outcome of these matters, whether by agreement or by court order, should be fair. More realistically, the outcome ought to be as fair as is possible in all the circumstances. But everyone’s life is different. Features which are important when assessing fairness differ in each case. And sometimes different minds can reach different conclusions on what fairness requires. Then fairness, like beauty, lies in the eyes of the beholder.”

Lord Nicholls statement is that there should be no bias in favour of the bread winner where both parties had equally contributed to the family’s welfare but in different ways.

52. Further in **Miller v Miller; McFarlane v McFarlane (2006) 3 All ER 1** the House of Lords stated:-

“This element of fairness reflects the fact that to greater or lesser extent every relationship of marriage gives rise to a relationship of interdependence. The parties share the roles of money-earner, home-maker and child-carer. Mutual dependence begets mutual obligations of support. When the marriage ends fairness requires that the assets of the parties should be divided primarily so as to make provision for the parties housing and financial needs, taking into account wide range of matters such as the parties ages, their future earning capacity, the family’s standard of living, and any disability of either party. Most of these needs will have been generated by the marriage, but not all of them. Needs arising from age or disability are instances of the latter.”

53. The consideration for such distribution begins at the break down of the marriage and when mutual support has ended. This was confirmed by Crane-Scott JA in **Rosemary Edith Burrows (nee Knowles) v Sylvester John Burrows SCCivApp No. 58 of 2021**:

“68. The legal principle is that the date when the marriage broke down and mutual support ended is the point in time at which the property and financial resources of the parties which are or will be available for equitable distribution is to be assessed. That overarching principle is, in our view, well established and not seriously in dispute.”

54. The parties were married for seventeen years. The matrimonial assets in dispute comprise the Matrimonial Home and shares in Commonwealth Brewery and Master Technicians. Neither party seeks maintenance from the other. Both parties are retirees, having retired from jobs that provided their main stream of income in 2016 and there are no children of the marriage. The Respondent left the matrimonial home in 2019.

The Matrimonial Home

55. The Highland Park Lot was conveyed to the Petitioner by Canzo Properties Limited by virtue of a conveyance dated 8th day of December 1997 for a consideration of fifty three thousand dollars. It was conveyed to both parties by the Petitioner by virtue of a conveyance dated 17th April 2000 some two years and four months after the initial conveyance to the Petitioner and a year prior to the marriage.

56. The Respondent claims that he instructed Canzo Properties Limited to convey the Highland Park Lot to the Petitioner, whereas the Petitioner claims that she purchased the Highland Park Lot after she sold property solely owned by her in Perpall Tract. The Respondent refutes the claim and provided the conveyance dated 8th day of June 2000 where the Petitioner sold the Perpall Tract Home to the purchaser.

57. Based on the conveyances provided, the sale of the Perpall Tract Home was completed some two years and six months after the Highland Park Lot was conveyed to the Petitioner and two months after it was conveyed to both herself and the Respondent. Therefore, it would have been impossible for the Petitioner to have used funds received from the sale of the Perpall Tract Home towards the purchase price of the Matrimonial Home.

58. The Petitioner stated that she provided money towards the purchase price which money was clearly received by her after the purchase. The Petitioner has not rebutted the Respondent's claim that the proceeds of her Perpall Tract sale could only have been used after the completion of the purchase and after the subsequent conveyance of the Matrimonial Home to both parties.

59. Accordingly, I accept the evidence of the Respondent and find that the Respondent alone provided the deposit towards the purchase of the Highland Park Lot and instructed that it be conveyed to the Petitioner solely prior to it being subsequently transferred in both of their names all of which took place prior to their actual marriage.

60. There is no dispute that the parties secured a mortgage to construct the Matrimonial Home in 2002 and then secured two further charges. It is not disputed that the Petitioner earned more than the Respondent which resulted in her contributions towards the Matrimonial Home exceeding those of the Respondent's. This was the status quo since the commencement of the marriage.
61. The monthly payments came from a joint account at Finance Corporation and the monthly mortgage payment was shared equally. The Respondent provided the payment for the initial purchase of the Highland Park Lot in addition to the provision of two large sums of money which were designated to be used towards the monthly mortgage payments. Had these sums been used as intended, the Respondent's share of the monthly mortgage payment of \$4,889.79 would have been paid by him for 42 months if all the funds deposited were used each month. There is no question that the funds were not used for the mortgage for 42 months. The only evidence was that the mortgage was paid from the account until November 2016.
62. The Respondent moved out of the Matrimonial Home in 2019, it was not disputed that his contributions towards the monthly mortgage payments would have ceased in 2019.
63. A large sum of money was taken from the parties' joint account by the Petitioner, unbeknown to the Respondent, to facilitate the repayment of monies owed to Master Technicians. These repayments were supposedly made as a result of a gambling habit that the Petitioner had acquired and her having to repay Master Technicians because she had used their funds to gamble online.
64. Both parties are unable to service the mortgage as they are both retired. The Respondent's contribution was not used as it should as it was taken to repay a gambling debt of the Petitioner.
65. After considering all of the evidence, the statutory guidelines and the submissions of both parties I am satisfied that there should not be a departure from the equal sharing principle. In 2017 the Matrimonial Home was valued at \$460,000.00. The furnishings were valued at approximately \$100,000.00. The mortgage balance outstanding at November 2017 was \$183,762.93 leaving an equity in 2017 of \$376,237.07. If the Respondent's portion of the mortgage payments had been used properly, the equity as at 2019 would have been \$436,237.27. Thereafter the Petitioner paid the mortgage solely. Each party is entitled to one half of that sum namely \$218,118.54. The Petitioner is to remain in the home subject to the payment of the Respondent's equity.
66. The Petitioner is to pay the Respondent his interest in the equity in the Matrimonial Home within 90 days of the date hereof or any agreed extension, failing which the house is to be sold and the net proceeds divided to ensure that the Respondent receives his equity as determined above.

67. The loan to the daughter is the debt of the Petitioner. She has had the benefit of the home since 2019 solely and so the debt is not to be shared as any increase in the equity which resulted by these payments will inure to the Petitioner solely.
68. Any Real Property Tax which was outstanding at the end of 2019 is to be divided between the parties and the Respondent's share shall be deducted from his equity.

Commonwealth Brewery Shares

69. The Respondent is the owner of three hundred shares initially purchased at eight dollars per share. The value of the shares is approximately two \$2,499.00. The Petitioner does not wish any of the shares. To ensure fairness, I order that the Petitioner be given one half of the shares or one half of their value. She can choose to do what she wishes with the same. The costs of dividing the shares shall be borne equally. The value of the shares shall be determined by the Bahamas International Securities Exchange.

Master Technicians' Shares

70. The parties owned 1800 shares as joint tenants. 250 shares were initially purchased for the Petitioner by her father. Accordingly she submits that there should not be an equal division of the shares as they should be treated as inherited property. Assets acquired before marriage, whether inherited or purchased by one of the parties' solely, can be taken into account if it can be shown that they were used for the benefit of the marriage.
71. In **Julius Dianza Chisholm v Ophelia Arnette Chisholm (nee BATEMAN) SCCivApp No. 127 of 2020**, Barnett P considered this point:

"35. The fact that the Husband may have only a limited legal right to the income from those assets acquired before marriage and transferred to a company beneficially owned by him and his children before this marriage does not prevent the court from taking them into account in determining fairness. If the court credibly believes that the Husband could reasonably expect to receive some benefit from those assets that is fact the court is entitled to take into account. This point was made by Waite LJ of the English Court of Appeal in Thomas v Thomas [1995] 2 FLR 668 where he said:

"The discretionary powers conferred on the court by the amended ss 23-25A of the Matrimonial Causes Act 1973 to redistribute the assets of spouses are almost limitless. That represents an acknowledgement by Parliament that if justice is to be achieved between spouses at divorce the court must be equipped, in a society where the forms of wealth-holding are diverse and often sophisticated, to penetrate outer forms and get to the heart of ownership. For their part, the Judges who administer this jurisdiction have traditionally accepted the Shakespearean principle that "it is excellent to have a giant's strength but tyrannous to use it like a giant". The precise boundaries of that judicial self-restraint have never been rigidly defined - nor could they be, if the jurisdiction is to retain its flexibility. But certain principles emerge from the authorities. One is that the court is not obliged to limit its orders exclusively to resources of capital or income which are shown actually to exist. The availability of

unidentified resources may, for example, be inferred from a spouse's expenditure or style of living, or from his inability or unwillingness to allow the complexity of his affairs to be penetrated with the precision necessary to ascertain his actual wealth or the degree of liquidity of his assets. Another is that where a spouse enjoys access to wealth but no absolute entitlement to it (as in the case, for example, of a beneficiary under a discretionary trust or someone who is dependent on the generosity of a relative), the court will not act in direct invasion of the rights of, or usurp the discretion exercisable by, a third party. Nor will it put upon a third party undue pressure to act in a way which will enhance the means of the maintaining spouse. This does not, however, mean that the court acts in total disregard of the potential availability of wealth from sources owned or administered by others. There will be occasions when it becomes permissible for a Judge deliberately to frame his orders in a form which affords judicious encouragement to third parties to provide the maintaining spouse with the means to comply with the court's view of the justice of the case. There are bound to be instances where the boundary between improper pressure and judicious encouragement proves to be a fine one, and it will require attention to the particular circumstances of each case to see whether it has been crossed." [Emphasis added]

36. It is to be noted that the judge said at paragraph 27 and 28 of his judgment;
"[27] Without going into all the details of the ownership of the property in Acklins, I accept that the Petitioner and the Respondent jointly own the property on which is located the lodge. I also accept the evidence of the Respondent that: "... Over the past twenty (20) years of our marriage, the Petitioner has always exercised control over the company and the properties which he transferred to the company."
[28] The Court is not at all persuaded that the Petitioner would divest himself to the extent that he has virtually no say or control over what he had worked so hard to achieve thereby relying on his children to make up short falls. This is especially so in light of promising his wife the Respondent to care for her financially."
37. In the result I understand what the judge was trying to achieve. He took account of assets acquired before the marriage to assist in determining what income was available to the parties in order for them to live in the twilight of their years. He found that the wife was wholly dependent on the income from the Lodge but that the Husband had available to him other assets which would generate income to enable him to live.
38. It must be recalled that the court must address the needs of the parties before determining the division of assets."

72. While the Petitioner was gifted some of these shares by her father and she owned them solely, she freely made the decision to convert her sole ownership to a joint tenancy with the Respondent. By this act she clearly intended that she and the Respondent should share the ownership in them and jointly share in the benefit of them. They would have had to jointly make the decision to sell some of the shares which they previously did. Accordingly, it is ordered that the shares in Master Technicians be divided equally between the Petitioner and the Respondent.

CONCLUSION

73. I therefore make the following findings:

- 73.1 The Petitioner shall pay to the Respondent his interest in the equity in the Matrimonial Home as at 2019 in the sum of \$218,118.54 within 90 days of the date of this order. Should the Petitioner fail to pay the said sum to the Respondent within the time ordered or any agreed extension, the house shall be sold and after payment of the taxes in the manner set out above and all closing costs, the Respondent shall receive the sum stated as his equity and the balance shall be given to the Petitioner;
- 73.2 The Parties shall execute all necessary documentation to give effect to this order. Should any party fail to do so, the Registrar is empowered to sign on their behalf.
- 73.3 The Petitioner and Respondent shall equally pay the outstanding real property taxes due as at the end of 2019 on the Matrimonial Home, such sum owed by the Respondent shall be deducted from his interest in the Matrimonial Home. Any residual taxes owed post 2019 shall be the expense of the Petitioner;
- 73.4 The Respondent shall give to the Petitioner one half of his shares in Commonwealth Brewery or their value. The costs to transfer the shares shall be borne equally
- 73.5 The parties' shares in Master Technicians shall be divided equally between them. The costs to transfer the shares shall be borne equally;
- 73.6 There shall be no order as to costs.

Dated this 20 day of October 2022


Hon. Madam Justice G. Diane Stewart