

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Family Division

2021/FAM/div/00506

B E T W E E N

La- Roda

Petitioner

AND

La-Roda

Respondent

Before: The Honourable Madam Justice C.V. Hope Strachan,
Justice of the Supreme Court of the Commonwealth of the Bahamas

Appearances: Nicholette Burrows for the Petitioner
Marylee Braynen-Symonette for the Respondent

Hearing date: 3rd June, 2024; 3rd October, 2024

Matrimonial Causes Act, property adjustment, s.29 considerations, yardstick of equality, obligation to be fair, needs of the parties, justification for transfer of legal title from one party to the other

RULING

C.V.H. STRACHAN, J

BACKGROUND FACTS

[1.] The subject application is predicated upon a Notice of Intention to Proceed with Ancillary Relief filed on 9th August, 2022, by the wife. She filed three (3) Affidavits to support the Notice on 9th August 2022, 11th December 2022, and 31st May, 2023. The husband relies on Affidavits he filed on 24th March, 2023; 13th September, 2023, and 4th March, 2024. The wife and the husband were cross-examined on the contents of those Affidavits, and what was revealed during the process is also significant to the final determination of this matter.

[2.] The sole issue to be addressed by this ruling is property adjustment, as all other matters in the divorce proceedings concerned the minor child of the marriage, and they were settled by a Consent order dated 9th August 2022. The issue of property adjustment has also been narrowed in that the parties are on common ground that there are two (2) properties which comprises of the matrimonial property and that the property should be divided so that each one takes one of them. However, as both of them want the same one of those properties the court is being asked to settle the issue.

[3.] The parties were married on 26th October, 2007. The Decree Nisi was granted to the husband on the grounds of cruelty on 15th December, 2021, so this issue is being decided more than 3 and 1/2 years after the grant of the Decree. The marriage lasted Fourteen (14) years. The Husband is now Sixty (60) years old and the wife is Fifty-five (55) years.

[4.] The Two properties in question are;

- (i) **Lot Number 1460, Windgate Drive, Golden Gates Subdivision Section 2**, New Providence, (“the Golden Gates property”), where the parties resided together (“the matrimonial home”) during the course of the marriage until the marriage broke down in 2019 when the husband moved out. The property comprises a single-family dwelling with two (2) bedrooms and two (2) bathrooms, a living room, kitchen, and a porch. The wife continues to reside in this home with the child of the marriage and her sister.
- (ii) **Lot Number 15, Country Club Road, Coral Harbour, New Providence** (“the Coral Harbour property”). The property is comprised of a foundation for a single family home with a detached one bedroom, one-bathroom loft with a living room and a kitchen. It also includes a swimming pool and a garage. The garage with a loft has apparently been constructed on the property where the husband resides since the date of the breakdown of

the marriage. The swimming pool is said to be inoperable. This is the property that both of the parties are desirous of having.

[5.] The parties' evidence was detailed and contained much minutiae upon which very little turns. I have summarized below the salient parts of their evidence gleaned from their respective affidavits and their testimonies in cross-examination and re-examination. As has become the norm in these disputed property adjustment matters, each party undertakes a denigration of the other party's role in the marriage and an enhancement or even an exaggeration of their own role.

The Golden Gates Property – What the wife said.

[6.] To summarize the salient parts of the wife's evidence, after marriage to the husband she moved into a house that he owned which was the former matrimonial home of he and his former wife. His sole ownership remained the same throughout the Twelve (12) years of their marriage. She says the husband was secretive and refused to reveal anything to her about the mortgage or the details of the utilities of the home. He paid them all himself as he agreed to do except she says there were often times when the light and water payments were delinquent and she had to step in and make arrangements with the utility company to pay them herself. The home was under mortgage for the duration of the time but she suspects that the mortgage at Fidelity Bank is now in arrears. Since 2019 when the husband moved out of the home, she continues to live there with their minor child and her own sister. She is now obliged to pay the utilities but has to guess the bill since she is unable to get any information from the utility company. She says she has paid all of the school fees and other expenses related to their child ALR, over the years as this was the agreement made with the husband since he was to be responsible for the utilities.

[7.] At the time of the breakdown of the marriage she received a letter from the husband requesting that she vacate the home. The letter was exhibited as "Exhibit P1" which contents read as follows;

Re Dissolution of Marriage

Further to our ongoing issues between us, I am no longer comfortable with your presence in the home and as you have verbally stated on numerous occasions that you "do not wish to be in the marriage any more" I am directed to request that you vacate the residence at Windgate Drive by Saturday, 30th November 2019.

I hope we can resolve the marriage amicably. You will be served in due course with the appropriate summons as the Two (2) previous court dates were missed and the matter is awaiting a new date"

The husband contends that he wrote the letter when he found out about the wife being involved in an extra marital affair.

[8.] At the breakdown of the marriage the husband moved out of the Golden Gates home and unbeknown to the wife moved to the Coral Harbour Property.

[9.] The wife alleges that the Golden Gates property is in a dilapidated state, needing significant comprehensive repairs to the roof. There is a black mold infestation requiring remediation, and work needs to be done on the interior and exterior walls. An appraisal obtained by her from Frank Carey Real Estate Company in 2023 describes the condition of the home as “below average.” Notwithstanding the remarks, his appraisal cites the value of the home as One Hundred and Seventy-seven Thousand Dollars (**\$177,000.00**). She emphasized that the husband refused to allow her to conduct repairs to the home despite the fact that she was residing there with their child, and *that “For the duration of the marriage, the Respondent behaved as if the home was his alone.* “She recalls one occasion when she had a contractor come to the home to put a tarp on the roof. She says the husband phoned her and asked who was it that she had on the roof? She explained that the contractor came to provide an assessment of the damages to the roof and install the tarp, but the husband aggressively demanded that *“no one is to come to his house to do any work unless he instructs them to do so.”*

The Golden Gates property – what the husband said;

[10.] The husband says he and the wife moved to Golden Gates before he had completed the divorce proceedings with his former wife. He renovated the house completely, and once he and the wife got married, she moved into premises which were in very good condition. He produced an appraisal he obtained from James Newbold of Neub’s Investment (“the Golden Gates Appraisal”) in April 2007 (about 6 months before the marriage) but more than Eighteen (18) years ago, describing the condition of the property at the time as *“Building has been renovated including new tiles, ceilings, cabinets, etc. It is in good condition.”* The value stated then was One Hundred and Fifty-four Thousand (**\$154,000.00**). Yes, the husband says he agreed to pay all of the utilities at first, but when he became unemployed and during Covid in 2019 he was under financial pressure and he sought assistance from the wife, who refused. He contradicted the wife about who paid the expenses related to their daughter. He said he paid her school fees, all the household expenses, and the utilities. He also had to pay a housekeeper and a nanny for his daughter. The wife, he said, spent most of her time dressing up and attending various balls. He said he even purchased Two (2) vehicles for the wife. The wife lived her life without regard to their financial obligations and took multiple vacations each year. He also financially supported the wife’s sister and her nephew. He did all of this for Eleven (11) of the Thirteen (13) years of their marriage. He says that the wife’s refusal to assist financially was *“the most vexing problem in their failed marriage.”* The husband denies the incident the wife told about the roofing contractor and avers that the wife never paid attention to the upkeep of the home at all. The husband agrees with the wife that he always paid the mortgage of Golden Gates but denies frequent periods of delinquency. He refutes that the house was in jeopardy of loss.

[11.] The husband argues that since he was paying all of the bills in the home when he lived with the wife in Golden Gates, the wife should have considerable savings. If she is financially drained, which she claims, it could only be that she has unilaterally chosen to live above her means with an unreasonable expectation that he would have continued to support her lifestyle. The wife did nothing to upkeep and maintain the home when they resided together in it, and the same remains the case, notwithstanding that she resides there now with the child of the marriage and her fully employed adult sister. This has been the case for the last seven (7) years. The disrepair of which the wife speaks is attributable to that occupation.

[12.] The wife contends that a report from Fidelity, which she acquired in 2023, indicates that the mortgage balance was \$47,318.57 with a maturity date of 30th January, 2025. The husband did not refute either of her statements nor did provide any evidence to contradict that this balance remains on the mortgage.

The Coral Harbour Property, in summary, the wife says:

[13.] This property contains a foundation for a single-family home, a detached one bedroom one-bathroom loft with a living room and a kitchen, a swimming pool outside and a garage. This property is in her name alone; she is the sole legal owner. It was put in her name alone because either he could not qualify because he had too many other loans, or he had a history of delinquency of loans with the bank. She acquired the property through the proceeds of a mortgage with Fidelity Bank in the sum of **\$115,000.00**. The mortgage payments are made through salary deductions from her salary in the sum of **\$932.00**. She has made 100% of the mortgage payments. The husband has not contributed at all to the mortgage payments, notwithstanding that he agreed when the mortgage was obtained to pay half of the monthly payments. She insists that she contributed to the deposit for the property to the tune of \$7,000.00, of which she borrowed \$4,500.00 from her sister. She admits that the husband contributed about \$5,000.00 of the deposit. She also says that she paid to clear the property, filled it in, and purchased building materials. She also acknowledges that the husband did much of the physical work constructing the foundation and the pool; however, the project was a joint effort, even though she disagreed that the pool should've been constructed at the time. She complains that the husband, since he moved there in 2019, now enjoys the Coral Harbour property exclusively, knowing that the mortgage is being deducted from her salary while she and their daughter are on "*pins and needles*," not knowing whether the mortgage at Golden Gates is being paid. Since 2019, when the husband left the matrimonial home, whenever she showed any interest in completing the structure at Coral Harbor, the husband hindered her. He has denied her access by changing the locks on the walking gate and did not provide her with a key, causing the BPL bill to be put in his name alone, excluding her, and making unilateral decisions about the property.

The Coral Harbour Property, in summary, the husband says:

[14.] The husband denies that he has denied the wife access to the Coral Harbour property. He says that the property purchase was his idea. He followed through, paid the entire \$12,000.00 deposit, and the \$9,000.00 closing costs. The mortgage should be for the difference after subtracting the deposit. He drew the architectural plans for the house, submitted them to the Ministry for approval, and contributed to buying materials and to the physical construction of the foundation, pool, and garage/loft. He says further that the property was only put in the wife's name alone because his divorce from his previous wife was incomplete at the date of purchase, and legal advice was that to put it in his current wife's name alone would avoid complications. The husband contends that he and the wife agreed that she would pay the mortgage installments while he focused on the construction of the house. He further avers that at all times the wife had free access to his bank account and that occasionally she withdrew funds from that account to reimburse herself for the mortgage payment later however, he admitted that the funds were withdrawn but that he could not say whether it specifically went to the mortgage or other household expenses.

[15.] The husband denies that he has denied the wife access to the Coral Harbour property. The husband did not dispute that the balance due on the mortgage is \$51,551.55 and is in good standing.

[16.] According to an appraisal report, the wife obtained from Frank Carey Real Estate Ltd. dated 10th November, 2023, this property is valued at One Hundred and Twenty-four Thousand Dollars (**\$124,000.00**). The husband disputes this value. His Appraisal put a value of **\$98,000.00** for the vacant land and **\$ 54,437.00** for the improvements for a total of **\$152,000.00**. The wife's appraisal was devoid of a value for the improvements, as she said she was unable to access the property to assess the building improvements. Those improvements would be the pool, garage and loft. The husband lives in the loft over the garage, which the husband describes as a *"jail cell."*

THE RELEVANT LEGISLATION;

[17.] A solution to the sole issue between the parties can be settled by the Matrimonial Causes Act, Chapter 125 Statute Laws of the Commonwealth of the Bahamas ("the Act") in conjunction with the wealth of authorities from this jurisdiction and the United Kingdom.

[18.] In divorce proceedings any transfer of matrimonial property from one spouse to the other is subject to the provisions of s 25 and s 28 of the Act and only after taking into account the considerations detailed in s.29 (1) (a – g).

[19.] s.25 (2) - The property adjustment orders for the purposes of this Act are the orders dealing with property rights available (subject to the provisions of this Act) under section 28 to adjust the financial position of the parties to a marriage and any children of the family on or after the grant of a decree of divorce, nullity of marriage or judicial separation, that is to say —

(a) any order under subsection (1) (a) of that section for a transfer of property;

[20.] s.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;

[21.] s.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 which are specified (1) (a) –(g) as outlined below:
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.

ANALYSIS AND DISCUSSION

[22.] s 29 (1) (a) - Mandates that the court looks at 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;
Presently the wife is a Data Controller. She earns **\$4,900.00** per month. The husband is a Project Officer at University of the Bahamas. He earns **\$4,616.67** per month. This **\$284.00** difference is insignificant. Notwithstanding, other properties mentioned by both parties, in passing during these proceedings, the circumstances of those properties put them far beyond the reach of the parties to such an extent that no serious claim of an interest was made by either of the parties. Neither own any other property nor was any expression made as to the likelihood of possessing the same in the foreseeable future.

[23.] s. 29 (1) (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. Again there is little appreciable difference between the husband and the wife as to their financial needs, obligations, and responsibilities that they have or are likely to have in the future. The husband puts his obligations at **\$731.83** monthly, more than the wife's. It is important to note, however, that based on the information put before the court, both parties are paying banks for mortgages on the respective properties, although the mortgage for Golden Gates is due to mature shortly (if it has not already done so). The evidence also reveals that whomever is awarded the Golden Gates property will have extensive renovations to carry out on the property while the party awarded the vacant land in Coral Harbour will have the task of completing the building planned for the property or if they chose to sell, will have the expense of acquiring living accommodation. Of greatest importance of the needs of either of the parties is the wife's need to provide a home for the child of the family, since by way of agreement between the parties reduced to Consent Order dated 27th March, 2023 the wife will have custody care and control of the minor child of the marriage. A consideration that adds considerable weight to the scales of determining this matter. The "needs" of the respective parties is potentially central to the assessment as "needs" forms part of the three-prong approach enunciated by the authorities, which dominate the legal position as it relates today in assessing property adjustment. This is demonstrated hereinafter. [Emphasis Mine]

[24.] s 29 (1) (c) - The standard of living enjoyed by the family before the breakdown of the marriage. Looking at where the parties resided during the marriage, the private school their daughter attended, the yearly vacations taken, and the purchase of the second property to build another home, the couple enjoyed what is characterized as a middle-class standard of living. I apprehend that, given the work history of the parties, there is little distinction to be made in the standard of living they will enjoy at the end of these proceedings.

[25.] s. 29 (1) (d) - The age of each party to the marriage and the duration of the marriage. The husband is Sixty (**60/61**) years old and the wife Fifty-five (**55/56**). Their respective ages may impact their ability to procure long-term mortgages if needed, either to repair the Garden Hills Property or to complete the building at Coral Harbour. Notwithstanding the Five (**5**) year difference in their ages, by current banking standards with which this court is familiar, they are on equal footing when it comes to obtaining a long-term mortgage. The marriage lasted fourteen (**14**) years, which in the scheme of things cannot be considered short but is not particularly long either. But what is certain is that the acquisition of property rights is not so easily dismissed in a marriage lasting fourteen (**14**) years if circumstances permit.

[26.] s. 29 (1) (e) - Any physical or mental disability of either of the parties to the marriage. No concerns were expressed about any physical or mental disability of either the wife or the husband.

[27.] s. 29 (1) (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. Both the husband and wife have based their claims on the contributions made to the welfare of the family. These have to be considered against the backdrop of the ownership of the legal title of the respective properties. This is addressed in detail further on in this ruling.

[28.] s. 29 (1) (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. No evidence was presented or application made by either party that they needed the court to address the loss of any benefit due to the dissolution of the marriage.

[29.] In resolving the issue before the court the clear mandate in s. 29 of the Act is to exercise these 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.

[30.] The arguments put forth by the respective parties focused on their contributions to the family invoking s. 29 (1) (f) of the Act.

CONTRIBUTIONS MADE BY THE PARTIES

[31.] The swath of contributions to the family discussed by the husband and wife included, mortgage payments for the Golden Gates property, mortgage payments for the vacant land at Coral Harbour, utilities at the Golden Gates property, expenses related to the one child of the family inclusive of private school tuition, purchase of vehicles for the respective parties, yard maintenance, home maintenance and groceries. Life insurances, health insurances, medications, car loan, car gas, credit card payments, personal grooming, nannies and housekeepers, and in the case of the wife, tithes. Some of the payments were common to both of the parties and others were peculiar to them. However, the husband's expenses were said by him to amount to \$4,921.90 while the wife says her monthly expenses were \$4,190.00 a difference of **\$731.90**, more each month being spent by the husband than the wife and exceeding his monthly income by \$325.00. The wife's income now exceeds the husband's a reversal from the formative years of the marriage when the husband earned considerably more than the wife.

[32.] It is common ground that the mortgage for Golden Gates was always paid by the husband. However, the wife alludes to the husband's being particularly possessive about the property, excluding her from any decisions about the property, refusing her the ability to carry out any maintenance of the home, or the ability to effect any repairs to the home. She says that the husband forbade her when she tried to hire persons to effect repairs and to carry out mold remediation. It stands to reason that she did not invest in this property by effecting renovations or repairs. This speaks to a lack of financial contribution to the sustaining of the mortgage and the upkeep of the house.

[33.] The wife did not dispute that her sister and nephew lived with the couple during the marriage, but denied that the husband specifically assisted with the wife's nephew financially. Additionally, she did not acknowledge that the husband's financial contributions to the family benefited her sister

[34.] The wife contradicted the husband when he said he customarily paid the utilities at Golden Gates. However, and coincidentally, the wife's evidence about the delinquency in the utilities made the husband's account more believable. When she recounted that arrears accumulated at the light company, and that on occasions the power would be disconnected or they would be threatened with disconnection and that she would have to go into the company to make payment arrangements to get the light reconnected, she inadvertently lent credence to the husband's contentions that he was responsible for paying the utilities. How could she blame the husband for the trouble with the utility company if she was responsible for paying the bills? I prefer the husband's account about the payment of the utilities to the wife's.

[35.] The invoices and receipts, which the wife relies on to prove that she paid the school fees exhibited to "P1" as GSKL 2-6 are not entirely dispositive of her contention, as although some of the receipts are made out to her, G.K., or G.K.L.R. (the wife's maiden name), some are made jointly to her and the husband indicated by G.S.L.R. and A.B.L.R., and also several are made to A.L.R., their daughter. Additionally, the receipts are all dated in 2019 and after, which begs the question, who was paying the fees prior to the breakdown of the marriage. Moreover, the wife's contention that she assumed responsibility for their daughter's expenses is belied by the statement she made, *"He stated that he could not pay his portion of the mortgage as he now had to pay for the nanny who cared for our daughter. However, even when the nanny's services were no longer required, the Respondent still made no contributions to the mortgage."* She inadvertently corroborated the husband's suggestion that he was so much the bill payer in the home that he paid for a third party, a nanny, to assist with the child of the family, casting doubt on the wife's assertions that she took on the entire responsibility for their child.

[36.] I am satisfied that the wife's contributions to the welfare of this family relative to the The Golden Gates property was limited. **I accept** the husband's contention that it is only since the husband has moved out and she now resides in the Golden Gates home with her sister and daughter that she has the consistent responsibility for those utilities.

CONTRIBUTIONS MADE TOWARDS CORAL HARBOUR

[37.] The husband refutes the wife's allegations that he made no contribution to the Coral Harbour mortgage. It is not disputed that Coral Harbour is registered in the sole name of the wife and that she pays the mortgage by salary deduction. It naturally forms the major dispute between the parties since each wants the property, and while they are diametrically opposed as to the details of how the property came to be acquired by them, they are on common ground that the property was purchased to build a second home. The dispute over who paid the deposit to purchase the vacant land is of no moment because it is clear to me that both parties contributed to the acquisition and development of this property. The husband contends he has made his bank account available to the wife to withdraw funds to reimburse half of the mortgage payment, but such withdrawals are made, and he can't say definitively that the funds go to the mortgage or to other family expenses. I dare say that if the money is used for other family expenses rather than going directly to the mortgage payment, it still falls in the realm of contributions to the welfare of the family, for which the husband must be given credit.

[38.] One thing their respective positions do is to preclude the court from having to determine whether or not either of them has an interest in the properties, whether one should purchase the other's interest in either property, or whether a sale of either of the properties should be ordered.

COUNSEL'S SUBMISSIONS

[39.] The Husband's counsel pointed out that while the mortgage on the Golden Gates property is satisfied, the balance owing on the mortgage over the Coral Harbour property is **\$51,551.00**. The wife's printout from the bank shows a balance of **\$51,398.76** as of the 25th March, 2023, and as updated in April, 2025 a balance of **\$37,030.18**. There is also a difference in the appraisal reports obtained by the husband and the wife for the Coral Harbour property. The husband says the vacant land is **\$98,000.00** and the building and improvements are valued **\$54,437.00**; the wife's appraisal says vacant land is **\$124,000.00**. The husband admitted to certain inaccuracies in his appraisal. His counsel recommended that the difference in the appraised values could be resolved by taking the median of those values. **$\$98,000.00 + \$124,000.00 = 222,000.00 / 2 = 111,000.00$** . If the land value is taken at **\$111,000.00** and the value of the improvements is added at **\$54,437.00**, the gross value of Coral Harbour would be **\$165,437.00**. The husband did not confirm that the mortgage for the Golden Gates property was satisfied, but given his denial of any delinquency in the mortgage coupled with the wife disclosing that the mortgage maturity date was the 30th January, 2025, I am of the view that the mortgage is satisfied or it's satisfaction is imminent. I am also of the view that this is a practical solution to this difference.

[40.] Counsel offered the alternative that even if the court accepts the wife's valuation of the vacant land at **\$124,000.00** when the value of the improvements is added **\$54,437.00**. The gross value would be **\$178,437.00**.

[41.] In any event, a balance of **\$37,030.18** on Coral Harbour, as proffered by the wife, would affect the market-value. Just taking account of the raw figures, a net value would emerge of say between **\$128,000.00** to **\$141,000.00** give or take. The Golden Gates Property's value of **\$177,000.00** is affected by the **\$47,318.57** balance alleged and would be reduced to around **\$130,000.00**. The values are very much comparable. However, if the Golden Gates mortgage is satisfied as it should be, it would be of superior value to Coral Harbour.

[42.] The wife's counsel also submitted that "the circumstances of the case clearly support a *clean break*, with no redistribution of the party's legal or beneficial interests in the respective properties." **JT and GT and SH [2013/FAM/div/0084]**. Further, she posits, "The Petitioner has carried the full financial burden of the Coral Harbour property, from which she has been excluded by the Respondent, while the Respondent has retained control of the Golden Gates property and resisted her attempts to effect repairs. She continues that, in the absence of shared ownership, joint contributions, or common intention, and consistent with the principles of fairness. See **Miller v. Miller v McFarlane** [2006] UKHL 24.

[43.] The wife's counsel also commended to the court the case of **Pettitt v Pettitt** [1969] 2 ALL ER 385 and **Gissing v. Gissing** [1971] AC 886. Pettitt, she contends, makes the case that mere occupation and minimal contributions do not give rise to beneficial interests. This, she contends, is the case of the husband here. **Gissing**, she contends, supports the notion that there was no common intention existing between the parties, so there should be no redistribution of the properties. I will speak to this later in this ruling.

[44.] The husband's Counsel submits that the husband is seeking to transfer his interest in Lot No. 1460 Golden Gates Subdivision No. 2 to the wife free and clear of any mortgage and that the wife transfers her interest in Lot No. 15, Country Club Drive, Coral Harbour being responsible for the payment of the mortgage or alternatively that the husband be solely responsible for the repayment of the mortgage each party indemnifying the other upon the transfer. He further seeks that each party pay the cost of the respective transfers.

[45.] The husband's Counsel expressed the view that this court has the discretion to decide this case based on its own peculiar facts and circumstances. This was espoused in **Miller v. Miller/ McFarlane v McFarlane** [2006] UKHL24. where *Lord Nicholls* said "*Since the essence of judicial discretion lies in its application to particular facts, and since each case requires its own particular resolution, the concept of fairness becomes, essentially a matter of*

judgment.” [Emphasis mine]. and “Fairness is an elusive concept. It is an instinctive response to a given set of facts.each case requires its own particular resolution.” This case is therefore a matter of judgment she proffered.

[46.] The Husband’s counsel has also submitted that the “needs” principle ought to prevail in this case would mean that the husband should transfer his interest in the Golden Gates Property to the wife free and clear of any mortgage.

THE COURT’S OBJECTIVE IS FAIRNESS;

[47.] Achieving fairness between the parties is the fundamental objective of the court in deciding property adjustment issues between the parties. The principle was expressed in **A V. B** [2010] 2 BHS J No. 18, Bahamas Supreme Court, Family Division, by *Barnett, CJ*, when he said that:

“The objective of the court is to be fair. In my judgment, the modern-day approach to a division of property in a marriage is that fairness is an equal sharing of property unless there is a compelling reason to depart from that equality. The law is perhaps best summarized in the judgment of the English Court of Appeal in **Charman v Charman** [2007] 1 FLR 1246. *Barnett J* went on to repeat the exposé in *Charman* as follows:

"The yardstick of equality of division", first identified by Lord Nicholls in White at p. 605G, filled the vacuum which resulted from the abandonment in that decision of the criterion of "reasonable requirements". The origins of the yardstick lay in s. 25(2) of the Act, specifically in s.25(2)(f), which refers to the parties' contributions: see the preceding argument of Lord Nicholls at p. 605D-E. The yardstick reflected a modern, non-discriminatory conclusion that the proper evaluation under s.25 (2) (f) of the parties' different contributions to the welfare of the family should generally lead to an equal division of their property unless there was good reason for the division to be unequal. It also tallied with the overarching objective: a fair result.....

Although in White the majority of the House agreed with the speech of Lord Nicholls and thus with his description of equality as a "yardstick" against which tentative views should be "checked", Lord Cooke, at p. 615D, doubted whether use of the words "yardstick" or "check" would produce a result different from that of the words "guideline" or "starting point". In Miller the House clearly moved towards the position of Lord Cooke. Thus Lord Nicholls, at [20] and [29], referred to the "equal sharing principle" and to the "sharing entitlement": those phrases describe more than a yardstick for use as a check. Baroness Hale put the matter beyond doubt when, referring to remarks by Lord Nicholls at [29], she said, at [144],

"I agree that there cannot be a hard and fast rule about whether one starts with equal sharing and departs if need or compensation supply a reason to do so, or whether one starts with need and compensation and shares the balance."

It is clear that the court's consideration of the sharing principle is no longer required to be postponed until the end of the statutory exercise. We should add that, since we take "the sharing principle" to mean that property should be shared in equal proportions unless there is good reason to depart from such proportions, departure is not from the principle but takes place within the principle. [Emphasis mine].

N.B. S 25 (2) (f) of the U.K. provisions discussed in Charman, White and Miller *supra* mirror our S. 29 (1) (f).

- [48.] Notwithstanding that the husband and the wife both sought to negate or diminish the contributions of the other regarding the acquisition and or retention of the subject properties, all contributions made to the welfare of the family, whether made voluntarily or involuntarily, are of value to them.

In Pinder **nee Johnson v. Pinder** [2012] 1 BHS J. No. 74, Copy Citation, Bahamas Supreme Court, Family Division, 2007/FAM/div/580, per *Hepburn, J.*: Financial provisions made on a divorce by one party to the other are not in the nature of munificence. ... In the search for a fair outcome, it is pertinent to have in mind that fairness generates obligations as well as rights.

- [49.] (See too, **Lambert v Lambert** [2003] 1 FLR 139 per *Thorpe LJ* at paragraph [27]. and [38])

In **K v L**, the Court of Appeal, Civil Division (*Laws, Jacob and Wilson LJJ*) [2011] 3 All ER 733 at 739 and 740 (at paragraphs [15] [20] and [21]) explained that the principle cannot be departed from on the ground of ***superficial differences***.***on the contrary, it correctly recognizes a substantive difference.*** " [Emphasis mine.]

- [50.] I consider the significantly larger contributions of the husband not to be a superficial difference. The wife's failure to give a larger contribution in the circumstances seemed to have impacted the family negatively. Assistance was only rendered by the wife when it became critical. I prefer the husband's evidence that he not only paid the mortgage and the utilities at the Golden Gates home, but he also contributed to the daughter's school expenses. A departure from the equal sharing principle in the circumstances as it relates to the Golden Gates property is justifiable so that the husband's larger contribution should be compensated re; **Charman**, and **K v. L** *supra*.

- [51.] The wife legal title to the Coral Harbor property is irrefutable. It is in her name alone. She has been paying the mortgage through salary deduction. However, the

circumstances illustrated by the husband about the financial arrangements made when the property was purchased I find credible. I believe he did make his account available for the wife to avail herself of reimbursement funds. His evidence and the wife's evidence about the deposit points to his direct contribution even though the amount is disputed. The wife did not refute that he assisted with building of the foundation, he built the pool solely and they both contributed to the garage with a loft. When his indirect contributions to the welfare of the family as a whole in handling the bulk of the family's expenses at the same time as she paid the mortgage of Coral Harbour are factored in, the specter of "the legal title" diminishes.

[52.] All of the authorities previously discussed demonstrate that the actual dollar amounts contributed by the respective parties are significant in helping to determine the extent of their contribution to the family. Where there is a difference which extends beyond the superficial to the significant, to ignore that difference might be the very discrimination the court is mandated to avoid. In assessing the respective capital money contributions alone, the husband emerges as a strikingly superior contributor. He has paid or is paying the entire mortgage for the Golden Gates property valued at **\$177,000.00**. The pool, garage, and loft at the Coral Harbour property, which he constructed or assisted in constructing, have been appraised at **\$54,437.00**. They total **\$231,437.00**. By comparison, the wife having borrowed either **\$115,000.00** or **\$103,00.00** which seem to be in question, but not withstanding she avers that she owes **37,030.18** on the mortgage showing that the pure money contributions, she made, was **\$57,909.82 or \$65,969.82**, much less than the husband's and would be even if the wife's appraisal of the vacant land at Coral Harbour is used. As indicated throughout this Ruling, pure money contributions alone are only a factor in deciding contributions to the welfare of the family. When the individual contributions (or lack thereof) made by the parties throughout the marriage are considered, departure from that 50/50 sharing in favor of the husband is justified.

[53.] Whatever the value of the Coral Harbour property, it is subject to a mortgage, and the balance of **\$37,030.18** has to be paid. This exercise, though not critical, given the one issue to be resolved by this decision, is helpful in illustrating the interest value that the respective parties acquired, which helps to determine what is fair in the circumstances.

[54.] I find that the wife's counsel submissions, when she says that there is no legal or equitable basis upon which the Respondent should be compelled to transfer his legal interest in the Golden Gates property to the Petitioner are at variance with the foregoing authorities **A V. B, White** and **Charman**, she commended the case of **T v P / FAM/ div/No 216 of 2010** to support her arguments. I find this was not particularly helpful in the circumstances.

[55.] The wife's counsel also posits that, based on the absence of any joint legal ownership in the Golden Gates property, there is no justification for, and it would not be inequitable and also contrary to the principles of fairness, ordering the transfer of the wife's legal interest. She quotes Miller and Macfarlane Supra. However, contrary to her view, the very cases relied on address circumstances wherein such justification resides; per *Baroness Hale*, when she put it succinctly, when she said at 128.

"First, the court is directed to give first priority to the welfare while a minor of any child of the family who has not attained the age of 18. This is a clear recognition of the reality that, although the couple may seek to go their separate ways, they are still jointly responsible for the welfare of their children. The invariable practice in English law is to try to maintain a stable home for the children after their parents' divorce...." and at 129: The court has to consider the party's needs, both now and in the foreseeable future."

In fact, Sir Mark Potter P in Charman supra indicated that *Baroness Hale* in Miller at [144] identified three main principles which together inform the second state of enquiry of distribution: "*need (generously interpreted), compensation and sharing.*" He emphasized the point by reiterating *Lord Nicholls* at [10] to [16]. "*The three principles must be applied in the light of the size and nature of all computed resources, which are usually heavily circumscribing factors.*"

We are not devoid of guidance as to how to achieve fairness in **Miller/Mcfarlane** supra. Both *Baroness Hale* and *Lord Nicholls* espoused three principles in seeking to achieve fairness; Firstly, the needs of the parties, secondly, compensation for any "sacrifice" (relationship-generated disadvantages), and thirdly, sharing the assets of the matrimonial partnership.

However, *Lord Nicholls* was of the view that the search for fairness begins and ends with needs in most cases.

[56.] The intention of the parties towards the property provides another avenue for determining interests therein. Intention may be gleaned from what is believed and actions taken as a result of that belief. In **Lightbourne v. Lightbourne** [2004] BHS J. No. 360, per *Isaacs J.* (Acting);

*The fact that a spouse who does not have a legal interest in a family asset such as the matrimonial home, can acquire a beneficial interest where that spouse acts to his or her detriment because of a belief that there was a common intention that that spouse was to have an interest, is demonstrated by the case of **Grant v. Edwards and Another** (1986) 2 AER 426. In that case, it was seen that even a mistress, not married to the legal owner of a home, can acquire an interest by indirect contributions, housekeeping, and household expenses, and by bringing up children.*

[57.] Prior to *Grant*, there was authority that espoused a contrary view. Counsel for the wife submits that the court follows **Pettitt v Pettitt** supra, to make the determination that there is no justification for transferring the Coral Harbour property to the husband. The facts of the case were that;

“The freehold of a cottage had been purchased entirely out of money provided by the wife, and the property stood in her name. The husband undertook internal decoration work and built a wardrobe in it. He also laid a lawn and constructed an ornamental well and a side wall in the garden. On the question of whether a summons under s.17 of the Married Women’s Property Act 1882, the husband was, by reason of his labour and expenditure, entitled to claim a beneficial interest in the proceeds of sale of the property, **HELD:** The husband’s claim failed. Per **Lord Morris of Borth-Y-Gest** and **Lord Diplock**, *“there was no justification for imputing to the spouses a common intention that the husband should acquire some beneficial interest in the property in respect of the work that he did.”* [Emphasis mine]

Counsel’s argument is contrary to the line of cases and authorities which define the modern-day approach, that even in cases where the property is in the name of only one of the parties to the marriage, transfer orders can be made depending on the circumstances of the case.

[58.] Had the law not evolved beyond Pettitt, the wife’s contention that the husband failed to assist with the mortgage payments might have negated any hope he may have held of having an interest in Coral Harbour. Likewise, the husband’s clear intention that the wife would have no interest in the Golden Gates property, which he made pellucidly clear through his words, his actions and the letter he sent the wife at the time of the breakdown of the marriage, would have ruined any chance she had of acquiring an interest in that property. In other words, such property, in the circumstances, would not be considered a marital acquest. However, with the developments in statute and legal authorities over time, the husband’s intent was unsuccessful in preventing the wife from acquiring the interest in Golden Gates, although it might have curtailed the size and extent of her interest. Similarly, the husband’s interest might never have been revealed; If no enquiry was conducted beyond the holder of the legal title.

[59.] On the other hand, the intention that the parties should jointly own the Coral Harbour property was evident from the start of the transaction. Notwithstanding that there are portions of the evidence in dispute between the parties, it is clear that they had a common intention; they were both involved in the transaction to close on the purchase of the property and the subsequent development of the property. These conditions are more conducive to the idea of a transfer.

Further Commentary on Counsels' Submissions

[60.] Based on **White, Charman, and A v. B** supra, I reject the wife's position that a redistribution of the properties is not supported in law. I also reject the premise that the facts of this case warrant a clean break where a transfer is inappropriate and not warranted. I also reject the wife's counsel that there is no shared ownership in the Coral Harbour property or that there were no joint contributions to that property, as I have explained above.

[61.] I accept the husband's position that fairness dictates a departure from the equal sharing principle. The equity that I have found within the principle, as per *Baroness Hale* in **Charman**, leads me to conclude that the husband is in a superior position as it relates to contributions to the welfare of the family. Using the "yardstick of equality," in the particular circumstances, I find the husband's superior contributions to be deserving of a departure. In denigrating the Golden Gates property and the state of disrepair, the wife is oblivious that she leaves open to interpretation the fact that she was comfortable enough about the condition of the property to move her sister into it, where she apparently resides rent-free. It is difficult to reconcile these positions. The husband was forced to move out of the Golden Gates property and developed the Coral Harbour property sufficiently for his occupation in the meantime.

[62.] I prefer the husband's account of how the couple's finances were handled when they were living together. In the circumstances, it would be unfair at this stage, given his overall approach to dealing with the family's finances, to cause him to uproot from Coral Harbour and return to Golden Gates. More to the point it seems impractical to me, even in the face of the wife's protestations, to have her leave a home in which she can continue to raise their child, with only having to conduct repairs, than to cause her to have to build a home from the foundation up at this stage. Focusing on the wife's "needs" per *Lord Nicholls* in **Miller/McFarlane**, in my view, is the beginning and end in this case and outweighs any considerations of compensation and sharing.

[63.] I am also of the view that the contemplated arrangement of the properties in the manner contemplated is an exercise of the court's powers which places the parties, having regard to their conduct, 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. In addition to the wife's best interest, I also consider it to be in the best interest of the child of the marriage to have the stability of her present place of residence and since she will be residing with the wife it is clear that the wife "needs" a home that can accommodate herself and the daughter rather than just a loft (described as "a jail cell") over a garage as exists at the Coral Harbour property. Hence, the wife will have the Golden Gates property transferred to her pursuant to s. 28 of the Act. The property has an appraised value of **\$177,000.00** with a mortgage that should have already matured, but based on the wife's

occupation and account of the repairs needed in the home, the wife will have to bear the expense of those repairs. Coincidentally, she also acquires a property with an assessed value greater than Coral Harbour.

[64.] The husband will have transferred to him pursuant to S. 28 of the Act, the Coral Harbour Property valued at **\$165,437.00**, for which he must complete the payment of the balance of the mortgage of at least **\$51,551.55**.

[65.] **CONCLUSION AND DISPOSITION**

[1.] The Husband shall release all his right title and interest in Lot Number 1460 Golden Gates Subdivision Section 2, New Providence, to the wife within Sixty (60) days of the date hereof whereupon the wife shall assume the payment of the mortgage if any and shall indemnify the husband against any costs, claims or demands against the said property.

[2.] The wife shall release all her right title and interest in Lot Number 15 Country Club Road, Coral Harbour, New Providence, to the husband within Sixty (60) days of the date hereof whereupon the husband shall assume payment of the balance of the mortgage solely and shall indemnify the wife against any costs, claims or demands against the said property.

[3.] The costs of the Deeds of Release or transfer shall be shared equally between the husband and the wife.

[4.] Should either party fail or refuse to execute the documents of transfer the Registrar of the Supreme Court shall execute the said documents.

[5.] Each party shall bear their own costs of these proceedings.

Dated the 22nd day of July, 2025



The Honorable Justice Hope Strachan

