

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Family Division

2023/FAM/div/00068

B E T W E E N:

T.I.T.

Petitioner

AND

T.R.T.

Respondent

Before: The Honourable Justice C.V. Hope Strachan

Appearances: Ranard Henfield for the Petitioner

Ellen Serville for the Respondent

Hearing date: 8th October, 2025

Matrimonial proceedings, property adjustment, agreement made between the parties after court order, question of when the order becomes executable, variation of order after order is signed and sealed, Re: Barrell's principle.

RULING

Background Facts

[1.] The Petitioner, TIT (“the wife”), obtained a Decree Nisi on the 11th October 2023 from TRT, the Husband (“the husband”), on the grounds of the husband’s cruelty. There are two (2) children of the marriage for whom arrangements were agreed by the parties, and the Court ordered that the parties should reduce those terms to writing for the court to ratify. Upon the Court being satisfied as to the arrangements for the children, a Decree Absolute was issued to the parties on 23rd September, 2025.

[2.] The property adjustment evidence was received by Affidavits filed on behalf of the respective parties and submissions made by counsel, resulting in the court issuing its Ruling on 2nd April, 2025. The terms of the order made on the property adjustment are critical to these proceedings, so I have particularized them hereunder:

“9. The party’s respective interests in the matrimonial home, being a single-family residence on Lot No. 13, Reivax Subdivision, Southern District on the Island of New Providence, The Bahamas, shall be divided as 60% to the petitioner and 40% to the Respondent.

10. The Petitioner shall pay a sum equal to 40% of the appraised value of the said matrimonial home to the Respondent within three (3) months of the date hereof, whereupon the husband shall transfer all his right, title, and interest in the said home to the wife.

11. Should the Petitioner fail or refuse to purchase the Respondent’s interest within Three (3) months the Respondent shall have Three (3) months from that date expires to purchase the Petitioner’s interest for a sum equal to 60% of the appraised value of the said matrimonial home, whereupon the Petitioner shall transfer all her right, title and interest in the said matrimonial home to the Respondent.

12. The costs associated with the transfers in the case of either paragraph 10 or 11 above shall be divided on the same 60% to 40% ratio.

13. Further or in the alternative and after the time given in [10] and [11] has expired and neither purchase has been accomplished, then the matrimonial home shall be sold and the net proceeds therefrom shall be divided between the Respondent and the Petitioner as 60% to the Petitioner and 40% to the Respondent.

14. Should either party fail or refuse to execute the necessary documents to effect the relevant transfer, then the Registrar of the Supreme Court is appointed to execute the said documents.

15. A Declaration is granted pursuant to S. 73(1) (b) (i) of the Matrimonial Causes Act that the arrangements made for RGT (m) born on the 9th April, 2015, and RGT (f) born on the 6th August, 2020, the children of the marriage are the best that can be devised in the circumstances.

16. Each Party shall bear their own costs of these ancillary proceedings."

[3.] The Order was filed on 25th July, 2025, and the divorce matter was thereby concluded. However, it is significant that based on the court order, the wife would have until 2nd July 2025 to purchase the husband's interest. If the wife failed to do so, the husband would have had until 2nd October, 2025, to purchase the wife's interest. Failing either of the purchases, the court's order was for a sale of the property. However, as will become apparent, the timelines set by the Court were altered by agreement of the parties, and it is the non-adherence to the terms of that agreement which has led the parties to return to this court.

[4.] On 23rd September, 2025, a Summons was filed on behalf of the wife seeking an extension of time to comply with the Court's Order pursuant to the inherent jurisdiction of the Court. The wife's Affidavit, filed in support of that Application, came under the rubric of the Affidavit in Support of Variation and/or Extension to Comply. I have extracted the pertinent contents of the wife's Affidavit, which clarifies the wife's dilemma, which has led her here:

"2. The Court ordered that I purchase the Respondent's interest within three months; however, while aggressively attending to the same, the delay has been at no fault of mine or the Respondent, as we secured an appraisal, the mortgage payoff balance, and agreed on the payout figure, and I then instructed the Bahamas Mortgage Corporation to process the loan.

3. Since instructing the attorneys Bowe Partners, the legal documents for the lender, the said Bahamas Mortgage Corporation has requested several documents and details, which, coupled with the speed at which mortgages take, have caused a delay.

4. Attorney Colin Thompson of Bowe partners has requested an extension of time from the Respondent's attorney in all the circumstances; however, the Respondent, through his Counsel, has refused to grant the extension in the circumstances and has threatened to commence the very same mortgage process.

5. I humbly petition this Honourable Court to grant an extension to November 1st 2025, which would allow the Bahamas Mortgage Corporation (and Bowe Partners) ample time to complete the mortgage payout process that has been ongoing for several months, and now at the tail end.

6. There would be no inconvenience to the Respondent in permitting the extension; however, there would be a significant loss to me as I have already paid the bank the

necessary funds to facilitate this mortgage and payout. Furthermore, as I have day-to-day care and control of the minor children, if the Respondent were permitted in the circumstances to refuse the reasonable request for extension and buy me out, the children would then have to relocate in the midst of a school term.

7. Attached and marked as "Exhibits TIT 1-4" are the correspondence between the Bahamas Mortgage Corporation, Bowe Partners, and Serville & Co., which should assist the Court in verifying that the mortgage is approved and being finalized, the request for extension, and the refusal of further extension.

8. The contents of this Affidavit are to the best of my knowledge, information, and belief, correct and true."

[5.] The husband is now poised to purchase the wife's interest, having already been approved by his financial institution based on the premise that the wife's time has expired to purchase his interest. In his Affidavit filed 6th October, 2025, he laid out his rationale for the position he has taken. It was common ground that the parties and their attorneys agreed that there was a need to obtain a current appraisal for the property for the parties to properly assess the dollar amount the wife had to pay to the husband for his forty percent (40%) interest in the matrimonial home. Time lines were likewise altered to allow for time for the appraisal to be conducted. A summary and /or extracts from the husband's affidavit help explain the agreement the parties reached.

"3. That the parties agreed by emails both dated the 29th May, 2025, that as the Appraisal was critical in determining the value of each party's respective interest, time would begin to run not from the date of the Order but rather from the date of the Appraisal, which was dated 22nd May, 2025. This made the agreed expiration date for the Petitioner to complete her purchase 22nd August, 2025. There is now produced and attached as TRT 1 a copy of the said emails and the relevant portion of the said Appraisal."

[6.] According to the husband, his attorney attempted to find out from the wife's counsel the status of the wife's efforts to obtain the mortgage to purchase by way of emails dated 3rd July, 7th July, and a letter dated 21st July, 2025. It was not until 18th August 2025 that they received a response from the wife's counsel, which simply explained that the wife was awaiting word from the Bahamas Mortgage Corporation ("BMC").

[7.] On 22nd August, 2025, the deadline for the wife to complete the purchase came and went. Three (3) days later, on 25th August, 2025, the husband's lawyer wrote to the wife's attorney advising that the time had expired and they were given seven (7) days, what the husband describes as a further extension, to the wife to complete the payment to the husband; time was made of the essence. A copy of that letter is attached to the husband's affidavit.

[8.] It was not until Three (3) days before the extended time expired that the husband's attorney heard from the firm engaged to carry out the mortgage for the wife and the BMC that the husband's attorney was informed by Colin Thompson of Bowe Partner's & Associates that they were representing BMC in the mortgage and requesting a copy of the Court Order in the proceedings and also a Draft Conveyance. The response given to Bowe Partners was apparently that the time had expired for the wife to purchase the husband's interest and that the husband was going to avail himself of the right given in the court order to purchase the wife's interest. The husband makes the point that Mr. Thompson did not seek an extension. Indeed, the husband goes on to recite that, in fact, his attorney was made privy to an email Mr. Thompson sent to the BMC in which he informed them that he was unable to complete the Mortgage within the specified time. A chronological account of the relevant activities follows to demonstrate the situation lucidly:

- i. 22-08-2025 – Deadline agreed by the parties.
- ii. 25-08-2025 – Letter from husband's attorney giving Seven (7) days extension (1st September, 2025).
- iii. 29 -08-2025 – Email from Mortgage Attorney requesting a copy of the Court Order and Draft Conveyance.
- iv. 05-09-2025 – Confirmation by email from Mortgage attorney to husband's attorney confirming, they have instructions to complete the mortgage for the wife.
- v. 05-09-2025 - Letter to C. Thompson, Mortgage Attorney, from husband's attorney informing time had expired for the wife's purchase.
- vi. 10-09-2025 - Email shared by C. Thompson to Bahamas Mortgage Corporation (BMC) that he is unable to complete the mortgage within the specified time.
- vii. 22-09-2025 - Husband's Loan approved by his Financial Institution.
- viii. 26-09-2025 - Husband's Instructions from his Financial Institution go out to his Mortgage attorneys.

ANALYSIS AND DISCUSSION

Counsel's Submissions for the Wife

[9.] The court received Submissions from both parties. The crux of the argument concerns the time when the Order began to run. It is obvious, as previously stated, that the parties agreed to

alter the times of performance of the obligations under the Court Order to facilitate obtaining an appraisal.

[10.] Initially, the way the wife's counsel made the case was that under the altered terms, time began to run from the date of obtaining the appraisal, which was 22nd May, 2025. Ultimately, though he argued that time began to run on 24th/25th July, 2025, when the reviewed and approved order was perfected and filed. The husband's attorney contended that whether the operative date is 22nd May 2025 or the date of the court signing the order, or it being filed and sealed, which is the 24th/25th July 2025 respectively, the time for the wife to purchase the husband's interest had expired.

[11.] The wife's counsel also asked that the court take note of the fact that the husband's position throughout the proceedings was to be paid for his interest in the home rather than to retain the home for himself. That the court should be mindful of the fact that the wife will be occupying the house with the children, with whom they will have their principal place of residence, and that the wife has qualified to purchase the husband's forty percent (40%) interest in the home.

[12.] The wife's attorney also makes the case that the delay in the filing of the Court order came about as a result of the husband being out of the jurisdiction, and despite receipt of the order on 2nd July 2025, it was not returned with the husband's signature until 22nd July 2025. The order, being necessary for BMC to process the wife's application for the mortgage, contributed to the overall delay in attaining approval. The court is being asked to find that the perfecting of the order and obtaining the appraisal were crucial to the mortgage process to pay out the husband. Further, to find that it was not the wife who caused the delay in the process.

[13.] The wife's attorney reiterated their position, submitting that the Ruling dated 2nd April 2025 represents the Court's decision but that the perfected Order on 24th July 2025 is the formal, executable command of the Court that was required for the lending institution. The suggestion being that the wife's hands were tied in her negotiations at the bank due to the delay in perfecting the order. The delay is laid at the feet of the husband, who never returned the order with his required signature until 22nd July, 2025, notwithstanding that he received it on 2nd July 2025. Moreover, Counsel says that the Court retains the power to reverse or alter its decision at any point before the Order is perfected (as per the foundational principle of the **Re Barrell** Jurisdiction).

[14.] The wife's attorney also pointed out that the husband's attorney communicated with Bowe Partners (Attorney Colin Thompson), the mortgagee's attorneys, that the time for the completion of the transaction "was up" and, in addition, served a Notice to Complete on the wife's attorney on 25th August 2025, which he termed premature. The Notice gave Seven (7)

days to complete the purchase of the husband's interest. The seven (7) day period meant that the wife had until at least 29th August, 2025, to complete the purchase. This apparently precipitated Bowe Partners' advising the mortgaging bank that the seven (7) days were insufficient to complete the mortgage, and the rest is history.

[15.] In conclusion, Counsel proffers that the overriding objective in the circumstances of the case was for the husband to receive forty percent (40%) of the appraised value of the matrimonial home, and to effect payment to the husband, there was a need for the appraisal and to perfect the order to provide to the lending institution. That the wife should not be disadvantaged as to time running against her until the order was perfected.

Counsel's Submissions for the Husband

[16.] The husband's counsel further submitted on his behalf that the wife's present application is an "abuse of the process of the court" as, apart from the egregious delay in her making this Application, she has offered no valid or compelling reason for the delay for the mortgage instructions, that the three (3) months given by the court contemplated such delays.

[17.] That the wife's loan was not approved until 26th August, 2025, almost five (5) months from the date of the Order and more than three (3) months since the agreed date and that is no excuse since the wife could've obtained an "approval in principle" based on the old appraisal done two (2) years before in 2023 with the final figures to be determined once the current appraisal was obtained. This would have facilitated her completing the purchase of his interest in time.

[18.] The husband's attorney states further that the wife's attorney "never requested an extension of time," notwithstanding the several requests for an update made by the husband's attorney. They say it is disingenuous for the wife to now rely on the date of the filing of the order, July 24th / 25th, 2025, as the effective date when time started to run.

[19.] They contend that to grant an extension of time now amounts to a variation of the Court's order, and the court would make a mockery of its own Order and create a grave injustice to the husband who is complying with the order. They submit that **Re: Barrell Enterprises** [1972] 3 AER is the authority that a judge can alter or reverse their decision up to the time that the Order is perfected. That this order was perfected on the 25th July, 2025, and for the Court to vary its order some two (2) months after the order was sealed is outside of that authority's jurisdiction, and on that basis the Application lacks validity, cannot be sustained, and should be dismissed.

[20.] The husband's attorney asserted that the rule is intended to demonstrate when judgments take effect and was described in **Holtby vs. Hodgson** QB 1889 which set out the principle that a

judgment is to take effect not from the date of the entry, but from the date of its being pronounced, the subject judgement was an effective judgment from the day when it was pronounced by the judge in court. Following this principle, the effective date of the judgment was 2nd April, 2025, when it was delivered orally. This counsel contends, in so many words, is what ousts the ‘**Barrell**’ jurisdiction and the Bahamian Supreme Court case of **Opac Bahamas Ltd. v Duane Bennett Parnham and Leigh Magdalene Parnham** 2019/CLE/gen 00127 supports this view, where *Charles J.* said;

*“In my judgment, the circumstances of this case are not such as to invoke the **Re; Barrell** jurisdiction to vary the ruling of the court. This is not a case of an oral ruling. As iterated, a written Ruling was signed, sealed, and issued to both parties---It seems to me it is too late to invoke the **Barrell** jurisdiction.” and at Paragraph 22:*

“Conversely, learned Counsel-- submits firstly that the Defendants are seeking a material variation of the Order which they have already ---The Defendants are stopped from reneging on their approval of the draft Order and seeking a variation of the Ruling.”

[21.] The husband’s counsel says further that in all of the circumstances of the case and the law surrounding those circumstances, any variation of the court order of 2nd April, 2025, at this time would be patently unfair and constitute a grave injustice to the husband as he now seeks to comply with the same court order. The wife’s application should be denied.

[22.] She further submitted that the wife has failed to pay her portion of the existing mortgage's monthly installments on the home, and the mortgage has fallen into arrears. He is requesting that these payments be deducted from the final payout to his wife when he purchases her interest in the matrimonial home.

Discussion and Analysis

[23.] There is little doubt that the agreement to alter the date relative to the effective date of the court’s ruling has convoluted the issue between the parties and has created an untenable situation for the wife. The husband now wants the house.

[24.] It is common ground that the parties agreed to alter the deadlines set in the Court order to facilitate the obtaining of the appraisal. While the date when the order became executable is in dispute between the parties, it is evident that whether the 25th July 2025 (as the wife contends) or 2nd April 2025 (as the husband contends) is applied, the wife’s Ninety (90) days to purchase the husband’s interest has expired. The arguments advanced by the parties respectively are discussed hereinafter.

[25.] This court has an obligation to treat all litigants fairly, and in crafting the order in the manner that it did, was minded to be even-handed with the parties. If the parties stepped outside of the terms of the order to facilitate the appraisal so that the wife would know the amount needed to pay the husband for his interest, it became incumbent upon both parties to act reasonably, as they were no longer adhering to the timelines ordered by the court. Consequences flow from all actions, and unfortunately, the consequences for the wife are that she has lost the opportunity to retain the matrimonial home. I also take note of the husband's assertion that the wife has failed to adhere to the court's order to continue paying her portion of the mortgage payments in the interim and until the purchase of the husband's interest. The mortgage was thereby put in arrears. This has consequences as well.

[26.] The ruling of this court made on 2nd April, 2025, was unambiguous. Neither of the parties alluded to having difficulty understanding the order. However, for purposes which, between them, they deemed necessary, they agreed to formulate their own terms with respect to the operation of the Court order. As the court was not involved with or privy to their arrangement, the court is not in a position to vary the terms of that agreement.

[27.] As it stands, the parties agree that the Order dated 2nd April, 2025 was perfected by the fact that it was signed, sealed, and filed on 25th July 2025, notwithstanding the agreement made surrounding the obtaining of the appraisal to delay the date within which the wife was to purchase the husband's interest. The cause of the delay in perfecting the order lay at the feet of the husband, says the wife's attorney, who said the husband's wet signature was not applied to the order until the 22nd of July, notwithstanding it having been sent on 2nd July, 2025. This assertion carries little weight as this Court focuses on the delay experienced after the oral delivery of the Ruling, the delay after the order was perfected, and the delay after the Appraisal was obtained as material to the decision.

[28.] Despite the parties both submitting that the 25th July 2025 is the date the subject order was perfected, they differ as to the date when the Order became executable. The wife says that the order became executable on 25th July, 2025, while the husband's attorney submits that the order was executable from the date the oral decision was given. Relying on **re Barrell Enterprises** [1972] 3 AER, the wife contends that the court retains the power to reverse or alter its decision at any point before the order is perfected.

[29.] Counsel for the husband answered that contention by iterating that the operative words before are up to the time that the Order is perfected. **[Emphasis mine]**

She contends that **Re Barrell Enterprises** does not apply since the order has been signed, sealed, and filed, it was perfected on 25th July, 2025, and any alteration of that order two (2) months later is beyond this court's jurisdiction. Moreover, she submitted that the date of the

order being pronounced by the judge in court is, in fact, the effective date. She relied on *Lord Esher MR in Holtby v Hodgson QB 1889*, exposing, when he clarified the operation of judgments issued by the court;

“The intention of the rule clearly is that from the moment when the judge has pronounced judgment and the entry of the judgment has been made, the judgement is to take effect not from the date of the entry, but from the date of its being pronounced, it is an effective judgement from the day when it is pronounced by the judge in court.”

Counsel reiterated the point that the **Re Barrell** jurisdiction does not apply in this case as the judgment was pronounced in court on 2nd April, 2025, but only sealed on 25th July, 2025.

[30.] *Charles J in Opac Bahamas Ltd. and Duane Bennett Parnham and Leigh Magdalene Parnham* 2019/CLE/gen 00127 directly stated the principle;

*“In my judgement, the circumstances of this case are not such as to invoke the **Re; Barrell** jurisdiction to vary the ruling of the court. This is not a case of an oral ruling. As iterated, a written ruling was signed, sealed, and issued to both parties....It seems to me it is too late to invoke the **Barrell** jurisdiction..... and at paragraph 22 Charles J said “Conversely learned counsel.... submits firstly that the Defendants are seeking a material variation of the Order which they have already approved.... The Defendants are estopped from reneging on their approval of the draft order and seeking a variation of the Ruling. I agree.”*

[31.] I accept the husband’s contention that **Re Barrell** does not apply in this case as the Order of the court dated 2nd April, 2025, was agreed while in its draft form by the parties, signed by the judge, sealed and filed at the Supreme Court registry on 25th July, 2025 and therefore out of this court’s jurisdiction and the order cannot be varied under the **Re: Barrell** jurisdiction. To that extent, it is an abuse of the process of the Court.

[32.] I also find that the application is in fact to vary the Order made on 2nd April, 2025, and, in the circumstances, and as the husband’s attorney submitted, the wife is estopped from obtaining a variation of that order per **Opac supra**.

[33.] I have considered the wife’s arguments, including her Counsel’s submissions about the cause of the delay in perfecting the order, as well as the inadvertence caused by the mortgagee using other counsel, and that this came to his knowledge late in the day. Notwithstanding, I am satisfied that a request and/or obtaining an extension of time to complete, from the husband’s counsel, could have saved the transaction for the wife. However, in all of the circumstances presented to this court, it is clear that the wife breached the terms of the Order dated 2nd of April 2025 and that her time for purchasing the husband’s interest has expired.

[34.] And for the purposes of clarifying the timelines based on their agreement to delay the timelines for the obtaining of an appraisal, and the time which has elapsed between hearing the application for the extension of time being 35 days, the parties are mandated to take that into consideration when calculating the completion date for the husband to purchase the wife's interest.

[35.] After issuing the Ruling herein orally, Counsel for the husband asked the court to determine the time when the wife should render vacant possession of the subject property to the husband. I am of the view that it is a matter usually determined by the time that payment for the purchase of the interest is made, and/or at the time of the exchange of the relevant legal documents necessary to complete the transaction, or as otherwise agreed between the parties. As this was not a matter that was determined in the Order dated 2nd April 2025 or an issue ventilated by the parties, before the oral decision was issued, and given the position taken by the husband, that the order became executable on the rendering of the oral decision, I make no order regarding that issue.

[36.] Pursuant to the Court's order dated 2nd April, 2025, at Paragraph [3] thereof, the Court ordered "Until then, the Parties shall continue payment of the mortgage as presently arranged." Given that Counsel for the Husband has raised the issue of the wife's non-payment of her portion of the mortgage installments resulting in arrears, and the wife has not denied that to be so, the arrears are accepted as due and owing.

Conclusion and Disposition

1. The Wife's Summons filed 23rd September, 2025, for an extension of time to comply with the Court's Order pursuant to the inherent jurisdiction of the Supreme Court is dismissed.
2. The husband is at liberty to proceed with the purchase of the wife's sixty percent (60%) interest in the matrimonial home situate Lot # 13 Reivax Subdivision, Southern District of the Island of New Providence, The Bahamas, pursuant to the Court's order dated 2nd April 2025.
3. Pursuant to Paragraph [3] of the Order dated 2nd April, 2025 relative to the payment of the mortgage, and any and all arrears that have accumulated in contravention thereof, the wife shall pay to the husband, the sum calculated to be due and owing, up to the date of release of her right title and interest in the said home. The amount due and owing shall be offset against the money owed to the wife for her said interest in the said home.

4. Costs of the application are awarded to the husband in the sum of Six Thousand Six Hundred Dollars and Fifty Dollars (\$6,650.00) as agreed between the parties.

Dated the 17th day of November 2025 A.D.



The Honorable Justice Hope Strachan