



**In The Supreme Court of Bermuda**

**DIVORCE JURISDICTION  
2008 No: 202**

**BETWEEN:-**

**JUANITA JOANNA JONES (*formerly 'Campbell'*)** **Petitioner**

**And**

**HENRY LESLIE CAMPBELL** **Respondent**

**And**

**FRANCEZIA PATRICIA LOUISE CAMPBELL** **1<sup>st</sup> Third Party**

**And**

**CAPITAL G BANK LIMITED** **2<sup>nd</sup> Third Party**

**RULING**

**(In Chambers)**

**Section 41 of the Matrimonial Causes Act 1974-  
Enforcement**

Date of Hearing: 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> November 2013 and 10<sup>th</sup> & 11<sup>th</sup> October 2016  
Date of Judgment: December 19<sup>th</sup> 2017

Mrs. Georgia Marshall, Marshall Diel & Myers Limited, attorney for the Petitioner  
Mr. Michael Scott, Browne & Scott, attorney for the Respondent and 1<sup>st</sup> Third Party  
Mr. Jai Pachai, Wakefield Quin Limited, attorney for the 1<sup>st</sup> and 2<sup>nd</sup> Third Party

**A. INTRODUCTION**

1. The case concerns parties who divorced after some 14 years of marriage; though, I shall still refer to them as 'the Husband' and 'the Wife' in this judgment. I hope that they excuse this shorthand.

2. Decree Nisi was granted 29<sup>th</sup> May 2009 and soon thereafter the Wife filed Notice of Application for ancillary relief. Decree Absolute was granted on 10<sup>th</sup> July 2009.
3. In April 2011, during the hearing of the Wife's application for ancillary relief in which she claimed maintenance for the one child of the marriage, lump sum provision for herself, periodical payments order for herself and a property adjustment order, the matter was adjourned to enable settlement discussions to take place between the parties. A settlement was reached in the form of a Consent Order dated 9<sup>th</sup> June 2011 ('the Order').
4. It was an agreed term of the Order, *inter alia*, that the Wife would not enforce specified obligations of the Husband for a period of 6 months in order to enable the Husband to put himself in a better financial position to fulfil his obligations.
5. The Husband did not meet his financial obligations even after the 6 months agreed period.
6. By way of a Summons filed on 20<sup>th</sup> February 2012 the Wife now seeks to enforce payment of the outstanding sums due under the Order; namely:-
  - i. Pursuant to Paragraph 1 a. of the Order the sum of \$46,431.48 being the Husband's 50% share of a debt owed to the Wife's mother @ rate of interest of 2.5% as of 30<sup>th</sup> January 2003 to the date of the Order = \$59,986.89
  - ii. Interest accrued on the sum of \$59,986.89 as at the date of the hearing namely \$4,899.00
  - iii. Pursuant to Paragraph 1 c. of the Order the sum of \$35,157.50 being the Husband's 50% share of sums owed to Capital G Bank @ rate of interest of 3.5% as of 22<sup>nd</sup> March 2007 to the date of the Order = \$39,566.83
  - iv. Interest accrued on the sum of \$39,566.83 as at the date of the hearing namely \$4277.00
  - v. Pursuant to Paragraph 6 of the Order the sum of \$11,800 being the outstanding balance due for legal fees.
7. By way of a further Summons filed on 23<sup>rd</sup> July 2012, the Wife also seeks that:-
  - i. the Voluntary Conveyance dated 20<sup>th</sup> December 2000 whereby the Husband transferred the property located at 38 Horseshoe Road, Southampton Parish to his sister, the Third party, be set aside for the purpose of enabling the Petitioner to enforce the terms of the Order;
  - ii. the ongoing payments referred to at paragraphs 2 a. and 2 b. of the Order be paid by way of an Attachment of Earnings Order;

iii. any arrears in relation to the payments required per paragraphs 2 a. and 2 b. of the Order shall be paid to the Petitioner forthwith together with accrued interest thereon at the statutory rate.

iv. the costs of this application be awarded to the Petitioner.

8. The Wife's applications are supported by two affidavits; the First affirmed 20<sup>th</sup> July 2012 and the Second affirmed 21<sup>st</sup> November 2012.

9. The Husband filed affidavits sworn 13<sup>th</sup> August 2012 and 6<sup>th</sup> February 2013.

**B. ESSENTIAL BACKGROUND**

10. Some three years prior to the marriage, the Husband and his sister (the 1<sup>st</sup> Third Party)' were conveyed a joint remainder interest in a family homestead located at 38 Horseshoe Road, Southampton Parish together with the mortgage from their mother and great-uncle, who maintained a life interest in the property. This Voluntary Deed of conveyance is dated 17<sup>th</sup> January 1991.

11. At the time of the Voluntary Conveyance the Husband's sister was over the age of 21 years old and enrolled in university. The Husband was solely responsible for the monthly mortgage payments.

12. The Husband and Wife married on 1<sup>st</sup> June 1994. The Wife was self-employed as owner/operator of a nursery school business whilst the Husband provided a broad range of day-to-day assistance, including participating in the mind and management of the business.

13. By this time the Husband had already fallen into significant arrears of the monthly mortgage payments on the Horseshoe Road property.

14. By letter dated 2<sup>nd</sup> January 1996 the 2<sup>nd</sup> Third Party formally demanded payment of all sums due under the mortgage and advised the Husband that if the entire sum was not paid proceedings would be initiated to obtain possession of the Horseshoe Road property with a view to auctioning it to repay the sum due.

15. Unfortunately, the Husband was unable to repay the sums due under the mortgage. As a result, on or about 27<sup>th</sup> February 1997 the Bank obtained judgment against the Husband and his sister in the sum of \$219,554.72. At the time of judgment, the Horseshoe Road property was occupied by the Husband's elderly parents, great uncle and his sister (the 1<sup>st</sup> Third Party).

16. Around this same time, the Husband and Wife ran into their own financial difficulties. The Wife had a debt associated with her business and the Husband had debts in excess of \$500,000. So, they explored consolidation of all their debts into one loan with the Bank at a total value of \$1.8 Million.

17. The Bank informed the Husband and Wife that further collateral or guarantees were required in combination or multiple parts to support a consolidated loan.
18. The Wife approached her elderly parents to assist with the collateral. The Wife's parents provided the additional security requested which included guarantees, pledges and deposit of deeds to a lot of land owned by them.
19. Unfortunately, the Husband and Wife fell into arrears of their consolidated monthly loan obligation and by letter dated 8<sup>th</sup> November 2000, the Bank made a formal written demand for payment of the outstanding arrears. The Bank also gave notice that, failing payment a Writ would be issued to recover the sums owed and security and guarantees would be called in.
20. One month later, the Husband's 50% remainder interest in the Horseshoe Road property was transferred to his sister. This Deed of Voluntary Conveyance is dated 20<sup>th</sup> December 2000.
21. The Bank enforced the terms of the loan and called in the security and the guarantees attached to the consolidated loan. The Wife's' elderly parents lost cash deposits totalling \$185,000 and had a second mortgage imposed on one of their properties in the sum of \$190,000. Assets of the Husband and Wife provided as security were also seized by the Bank and sold.
22. In total the Husband and Wife were left with a debt of \$1,000,000 after the Bank sold off the assets. The Husband and Wife were forgiven a total of \$850,000 of the said debt by the Bank and left to pay \$150,000 in full and final settlement. This amount was subsequently borrowed from the Wife's parents.
23. Sometime in 2005 and 2007 the Husband's mother and great-uncle passed away respectively, with the remainder interest in the Horseshoe Road property vesting in the Husband's sister, the 1<sup>st</sup> Third party.

### **Litigation History**

24. In order to make sense of the length of time between commencement of these proceedings in 2012 and rendering this decision in 2017, it is necessary to summarize the litigation history as follows:-
  - By Consent Order for Further Directions dated 28<sup>th</sup> January 2013, it was ordered, *inter alia*, that the Third Party, Francezia Campbell file her affidavit on or before 1<sup>st</sup> February 2013 and that the Wife file her affidavit in reply to the Third Party's affidavit within 14 days of receipt of same.
  - The sister's affidavit was filed on 7<sup>th</sup> February 2013 and the Wife's affidavit in reply was filed 17<sup>th</sup> April 2013. The Husband filed an affidavit, sworn 6<sup>th</sup> February 2013, in reply to the Wife's affidavit of 21<sup>st</sup> November 2012.

- By Order dated 18<sup>th</sup> April 2013 the Wife was authorized to request directly for the Bank the deeds in relation to the Horseshoe Road property.
- On 6<sup>th</sup> June 2013 the matter was remitted for hearing, estimated length of two days.
- The Wife's applications came before Wade-Miller, J on the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> November 2013. The parties attended for cross examination and the matter was adjourned part heard to be fixed for continuation.
- By Summons dated 29<sup>th</sup> November 2013, the Bank made application to be party to the proceedings.
- By Order dated 6<sup>th</sup> December 2013 the Bank was made a Third party to the action and permitted to submit an Affidavit. An affidavit of Mr. A. David Frith, Manager of Loans/Mortgages, dated 18<sup>th</sup> December 2013 was filed.
- The Husband filed an affidavit in reply sworn 16<sup>th</sup> January 2014.
- During the period February 2014 through to September 2015 Counsel for the parties were unsuccessful in agreeing mutually convenient dates for the continued hearing of this matter.
- By way of Summons dated 5<sup>th</sup> July 2016, the Husband's sister, the 1<sup>st</sup> Third Party, applied for the Wife's (part heard) Summons of 20<sup>th</sup> February 2012 and 23<sup>rd</sup> July 2012 to be fixed for continuation.
- Wade-Miller, J retired *with effect* May 2016. Shortly thereafter, Mr. Pachai was appointed to act for the 2<sup>nd</sup> Third Party, bank.
- On or about 30<sup>th</sup> June 2016, I was invited by all Counsel to listen to the oral evidence of the parties via 'Court Smart', an electronic recording system, of the earlier part-heard proceedings before Wade-Miller, J on 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> November 2013.
- On 10<sup>th</sup> October 2016, the matter resumed before me with the oral evidence of A. David Frith, Manager of Loans/Mortgages of the 2<sup>nd</sup> Third Party.
- Closing legal submissions were made before me on 10<sup>th</sup> and 11<sup>th</sup> October 2016. Judgment was reserved.
- Between June 2016 and November this year, the administrative team of the Judicial department carried out the extraordinary task of resurrecting and transcribing the November 2013 proceedings before Wade-Miller, J. In this regard, I am most grateful for the efforts made by the administrative team.

25. From the outset, I must acknowledge the inordinate and regrettable delay on my part in delivering this decision.

**C. THE ISSUES**

26. The issues for determination are:-

- i. Whether the Court should set aside the Voluntary Conveyance dated 20<sup>th</sup> December 2000 so that the Wife can enforce against the Husband sums owed to her under the Order?
- ii. How is the Husband going to discharge his obligation under the Order now totalling \$152,877 payable to the Wife, and
- iii. Whether the ongoing sums due under paragraphs 2 a., 2 b. and 4 of the Order should be paid by an Attachment of Earnings.

***Whether the Court should set aside the Voluntary Conveyance dated 20th December 2000?***

27. Section 41 of our Matrimonial Causes Act 1974 is in substance a replica of Section 37 of the United Kingdom Matrimonial Causes Act 1973. Therefore in deciding this question, reliance may be placed on the principles that have emerged from the United Kingdom decisions.

28. Section 41 (2)(b) of the Matrimonial Causes Act provides that:-

(2) *"Where proceedings for financial relief are brought by one person against another, the Court may, on the application of the first-mentioned person*

(a)...

(b) *"if it is satisfied that the other party has, with that intention, made a reviewable disposition and that if the disposition were set aside financial relief or different financial relief would be granted to the applicant, make an order setting aside the disposition".*

(c) ....

*an application for the purposes of paragraph (b) shall be made in the proceedings for the financial relief in question.*

[Emphasis mine]

29. Subsection (4) of Section 41 defines "a reviewable disposition" to mean:-

...."Any disposition made before or after commencement of proceedings is a reviewable disposition for the purposes of subsection (2) (b) and (c) unless it was made for valuable consideration (other than marriage) to a person who at the time of the disposition acted in good faith and without notice of any intention on the part of the other party to defeat the applicant's claims for financial relief".

[Emphasis mine]

30. In granting an application to set aside a reviewable disposition the court must be satisfied that the disposition had been made with the intention of defeating the applicants claim for financial relief.
31. Such an intention was explained in **Kemmis v Kemmis (Wellands and Others, Interveners)** [1988] 1WLR 1307, where NOURSE LJ on examining Section 37 of the United Kingdom Matrimonial Causes Act 1973 stated as follows:

*"I agree with Purchas and Lloyd L.JJ. that what the judge had to find was a subjective intention on the part of the husband. Moreover, I think it clear that it did not have to be his sole or even his dominant intention. It was enough if it played a substantial part in his intentions as a whole. If it were otherwise, section 37(2) would fail to catch the case where a husband makes a disposition with the dominant intention of gratifying his mistress and only the subsidiary intention of defeating his wife's claim for financial relief. I feel sure that that was not the intention of Parliament*

32. ORMROD LJ, in the UK Court of Appeal decision of **K v K (avoidance of reviewable transaction)** (1982) 4 FLR 31 at 36, stated that the word 'satisfied' was to be given its ordinary meaning without the addition of any adverbial qualification such as 'beyond reasonable doubt' or 'on the balance of probability.
33. Therefore, the question that I must ask myself, having read the affidavit evidence in these proceedings, the transcribed notes of the oral evidence and the oral evidence heard before me of the 2<sup>nd</sup> Third Party, analysed it and listened to the submissions of counsel is: Am I satisfied that the Voluntary conveyance dated 20<sup>th</sup> December 2000 was made with the intention of defeating the Wife's future claim?
34. I am therefore concerned with the husband's state of mind/intention at the time of the Voluntary Conveyance in December 2000.
35. The Wife's position as to the Husband's state of mind at the time of the Voluntary transfer is that the husband was in pressing financial difficulties and needed consolidation of his debts and called upon her to assist him. Had the husband disclosed his interest in the Horseshoe Road property, the Wife contends that she would have insisted that it be used to secure the husband's debt rather than requesting her elderly parents to put up security.

36. The Wife states in her affidavit dated 20<sup>th</sup> July 2012 at paragraphs 18 to 21:-
18. *"During our marriage, I never knew that the Respondent and Francezia owned the Horseshoe Road property as he had always told me that it belonged to his mother and uncle".*
  19. *"Subsequently, the property was transferred from the Respondent to his sister on 20<sup>th</sup> December, 2000. I was not aware until the divorce proceedings that the Respondent had indeed owned the Horseshoe Road property and subsequently transferred the Horseshoe Road property to his sister. Moreover, I believe that the Respondent transferred his half share to his sister without receiving any payment from her...."*
  20. *"I believe that the timing of the transfer of the Respondent's interest in the Horseshoe Road property to his sister was undertaken in an attempt to hide his interest in it from Capital G so that his interest therein would become Judgment proof.."*
  21. *"I believe that the Respondent hid this asset from me in the divorce proceedings as well as to reduce any claims, more importantly and relevant to this application, the Respondent is now claiming that he does not have the financial ability to pay me my lump sum and costs per the Consent Order".*
37. Upon cross examination, the Wife had difficulty recalling the details of meetings she attended with the Husband regarding their financial difficulties. In response to whether she recalled attending early meetings with bankers, the Wife stated " *...I'm sure I was in at least one, I had to be.....You've got to remember that when they were discussing at that level around the debt of Henry and this and that, that was his level up there, he understood, I did not understand it"*.
38. This lack of understanding on the part of the Wife is corroborated by the Husband's evidence. During his oral evidence, the Husband stated that *"when it came to legal and financial matters these were things that she did not understand.....she had her strong points in dealing with the children and business.....I trusted her with that side and she trusted me to take care of the legal and financial things..."*.
39. The Husband's position is set out at paragraph 10 of his affidavit filed 26<sup>th</sup> September 2012 , he states that:
- ..in December 2000 the marriage was intact and I was working in the family business with the petitioner attending to church ministries with the Petitioner as a supportive husband and business partner. The Petitioner also knew that I owned several properties inherited from my grandmother and the Petitioner knew that my sister had no property she knew that I supported my sister with the financing of her education cost and the Petitioner knew that it was my intention to transfer*



*my...interest to her given that I already had property and she had no property and so the transfer of the family home to her was both normal and logical within the setting of the Campbell family property affairs."*

40. At paragraph 11, the Husband states:

*"I transferred my {interest} to my sister for the consideration of love and affection by voluntary conveyance; it is an utterly spurious charge that I made the transfer in contemplation of divorce or in order to defeat the claims for financial relief of the Petitioner."*

41. And, at Paragraph 12.

*"..I deny that I transferred my interest in 38 Horseshoe Road to my sister to hide it from Capital G. I disclosed to Capital G as my bankers and to their attorneys or Agent Mr. John Hourston my said interest in the Southampton property and the Petitioner was aware of my said disclosure, . . ."*

42. Moreover, the Husband contends that his instructions regarding the transfer of the Horseshoe Road property to his sister had been provided sometime prior and that the transferred was made with full and frank disclosure and participation of the Bank.

43. The Husband contends that his sister paid valuable consideration for the property by accepting to pay all the liabilities owing to the Bank in relation to the mortgage on the property thereby relieving him of that debt.

44. During cross examination *when asked whether he offered the Horseshoe Road property as available security in combination or multiple parts, the Husband stated that "there was no need to" and goes on to say "At the end of the day, Gibbons Company had the opportunity to use it and they decided not to use it. I just cannot remember the exact details why it was left out and not to be considered"*.

45. The Husband's position is corroborated by his sister in her third affidavit where she states at paragraphs:-

7. *"In light of the delinquency under the mortgage and the legal action by Gibbons Deposit Company limited, it was agreed between my mother (who lived at the property at the time with my father) and great-uncle (who was living in the hospital at the time) and in view of my brother's inability to make the mortgage payments, that I would take over the responsibility for financing and paying off the mortgage, which I have done continuously through to the current date."*

9. *"I can confirm that after the original conveyance in 1991, my mother, my father and I continued to live in the property until my mother passed away in October 2005, my great-uncle passed away in November 2007 and my father passed away in September 2015."*

12. *"I can confirm that the intention of the original Conveyance into my name and my brother's name was simply to preserve the*

*property within our family (without money passing hands) and the Conveyance from my brother Henry into my name in 2000 was to avoid a foreclosure and sale of the property and not for any other reason. It was certainly not done in order to defeat any interest which the Petitioner might or might not have had in the property as a result of her subsequent marital breakdown with my brother”.*

46. The Husband and the sister’s evidence is further corroborated by the affidavit evidence and exhibits, dated 18<sup>th</sup> December 2013, of A. David Frith, Manager of Loans/Mortgages to the 2<sup>nd</sup> Third Party where he states at paragraphs:-

5. *“I can further confirm by reference to the file records at Gibbons Deposit Company Limited that I met with Henry Campbell and his wife Juanita Campbell on the 30<sup>th</sup> December, 1997. A copy of my file note of that meeting is now produced and shown to me marked Exhibit DF-3”. It is clear from that file note that Juanita Campbell was aware at the time of Henry Campbell’s interest in the property at 38 Horseshoe Road and the fact that a mortgage was held over the property by Gibbons Deposit Company Limited. The purpose of that meeting was to discuss the serious mortgage delinquency and to explore whereby the mortgage payments could be serviced”.*

6. *“I am also aware that, as a result of the seriously delinquent state of the mortgage, Henry Campbell’s interest in the property was conveyed to Francezia Campbell by way of a Voluntary Conveyance dated 20<sup>th</sup> December 2000..”.*

7. *“I am also aware that during the relevant period, the property was occupied by Henry and Francezia Campbell’s parents as well as their uncle Basil”.*

8. *“I can confirm that, to the best of my knowledge and belief, the Voluntary Conveyance of 20<sup>th</sup> December, 2000 was agreed to by Gibbons Deposit Company Limited as a way of avoiding foreclosure and the resulting action of putting Henry and Francezia Campbell’s elderly family relatives out into the street and ensuring that the mortgage payments continued to be met by Francezia Campbell who was in a much better financial position than her brother to make the payments. I am advised by Capital G’s attorney, Mr. Pachai, and do verily believe that all mortgage payments since that date of that Conveyance on the 20<sup>th</sup> December, 2000 have been met on a regular and timely basis by Francezia Campbell”.*

47. Having assessed the totality of the evidence before me, and having had the opportunity to observe Mr. A. David Frith, Manager Loans/Mortgages of the 2<sup>nd</sup> Third Party, during his oral evidence before me on 10<sup>th</sup> October 2016, I am of the view that Mr. Frith is a generally more credible witness.

48. I accept his oral evidence that the Wife was present at the meeting and that the primary objective of the Bank at that time was to establish payment on the

delinquent mortgage as "If the Bank had foreclosed, it would have had old folks put out on the street".

49. I am satisfied that the Bank has provided clear and factual contemporaneous evidence that the Husband and the 1<sup>st</sup> Third Party (his sister) entered into the conveyance with the full knowledge and consent of the Bank. Consequently, I do not accept the Wife's claim that the conveyance was an attempt to hide the Husband's interest from Capital G so that his interest therein would become Judgment proof.
50. Further, I am satisfied that there is no evidence upon which this Court could properly conclude that the Husband was contemplating divorce at the time of the Voluntary Conveyance or that he knew or could have possibly known that in eight years' time the Wife would be petitioning for divorce.
51. I have come to the conclusion that the Husband's only intention at the time of the Voluntary Conveyance was to save the Horseshoe Road property from foreclosure and sale; a home in which the Husband's elderly parents, great-uncle and younger sister resided.
52. On the totality of the evidence, I am satisfied that the Voluntary Conveyance was not done to defeat the Wife's claim for financial relief during any divorce proceedings. The Voluntary Conveyance was done for very good reason and valuable consideration was paid.
53. Therefore, I dismiss the Wife's application to set aside the Voluntary Conveyance dated 20<sup>th</sup> December 2000.
54. In the circumstance, the next issue for determination is:-

***How is the Husband going to pay his obligation payable to the Wife under the Order totalling \$152,877?***

55. In this regard, the Wife's position was contingent upon the Court finding that the Voluntary Conveyance was a reviewable disposition and that Husband had net equity in the Horseshoe Road property which could have then been considered by this court for the purpose of ensuring that the sum of \$152,877 due and owing to the Wife pursuant to the Order are paid.
56. In light of my findings above, I am concerned with the Husband's means to satisfy this debt now totalling \$157,877.
57. The Husband contends that the Order does not impose a date upon which the debts should be paid and that in any event, since the date of the Order he has been unable to afford the sums owed to the Wife.
58. I am satisfied on the evidence that the Wife shall have leave to enforce the total sum of \$152,877 owed to her.

***Whether the ongoing sums due under paragraphs 2 a., 2 b. and 4 of the Order should be paid by an Attachment of Earnings***

59. I have examined the Rule 77(4) bundle and in particular the letter of the Husband's employers and accompanying earning statements found at pages 118-120. I have analysed the Husband's stated net income and I am satisfied that sums payable to the Wife under paragraphs 2 a., 2 b., and 4. shall be payable monthly via an Attachment of earnings . This shall commence 1<sup>st</sup> January 2018.
60. I shall hear the parties as to costs and implementation of the Attachment of Earnings.

Dated this 18<sup>th</sup> day of December, 2017

---

Stoneham, J