BRITISH VIRGIN ISLANDS

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 23A OF 2001

BETWEEN:

TIMOTHY STONICH

Petitioner

and

TAMARA STONICH

Respondent

Appearances:

Mr. J. Carrington for Petitioner
Mrs. T. Davis for Respondent

2002:October 24 and 31.

JUDGMENT

[1] MATTHEW J. (Ag.).: After the hearing pertaining to the distribution of property between the Parties, the Court made an Order on August 2, 2002 and the Registrar of the High Court on October 11, 2002 entered the said Order as follows:

"IT IS ORDERED THAT the marital assets of the parties comprising:

(a) The value of the Morgan Stanley account number 379-033846 as at 2 August 2002;
(b) The value of the IRA account number 379-031269 held at Morgan Stanley as at 2 August 2002;
(c) Condominium in Steamboat Springs valued at $70,000;
(d) Investments in United Bank and CDP1 valued at $105,000.00;
(e) Boat named Rendezvous Cay valued at $5000,000.00 and
(f) Real Estate in Florida valued at $90,000.00 to be apportioned between the parties with 70 per cent being awarded to the Petitioner and 30 per cent to the Respondent thereof.

[2] By summons filed on September 28, 2002 the Petitioner applied for clarification of the following aspects of the order made on August, 2002 namely –

(i) that all the marital assets that are to be valued as at August 2, 2002 and that the Respondent is to receive 30 per cent of such value
(ii) the Respondent's obligation to transfer her share in PRI Inc. to the Applicant's nominee upon the Applicant's compliance with the order;
(iii) the treatment of the monies advanced by the Applicant to the Respondent after the break down of the marriage in April, 2001;
(iv) the treatment of the debts incurred by the Applicant as a result of the Respondent's freezing of the trust account in the Florida Courts;
(v) the treatment of the account which the Respondent realized during the course of the proceedings.

[3] The authority for the application was quite rightly based on Halsbury's Laws of England, Fourth Edition, Volume 26, paragraphs 556 and 557. Part of paragraph

556 which deals with amendment after entry of judgment or order reads: "The Court has inherent jurisdiction to vary or clarify an order so as to carry out the Court's meaning or make the language plain, or to amend it where a party has been wrongly named or described unless this would change the subsistence of the judgment."

[4] Paragraph 557 deals with amendment of clerical or accidental mistakes. It reads in part: "After the judgment or order has been entered there is power, both under the rules of Court and inherent in the judge or master who gave or made the judgment or order, to correct any clerical mistake in it or some error arising in it from any accidental slip or omission or to vary the judgment or order so as to give effect to his meaning and intention."

[5] Rule 42.10 of the Civil Procedure Rules, 2000 also provides for correction of errors in judgments or orders. It reads –

(1) The Court may at any time (without an appeal) correct a clerical mistake in a judgment or order from any accidental slip or omission.

(2) A party may apply for a correction without notice."

[6] The rule is pertinent to paragraph (ii) if the Petitioner's summons. PR1 Inc. is the company that owns the boat referred to in paragraph (e) of the Order. There are two shares in the Company and the Parties own one share each. The boat is the only asset of the Company. The effect of the Courts' order is that the Petitioner should receive 70 per cent of the value of the boat and the Respondent to receive 30 per cent. It would inevitably follow that the Respondnet would be obliged to transfer her one share in PR1 Inc. to the Petitioner.

[7] This matter need not have reached the Court as learned Counsel for the Respondent had recognized that obligation of her client. This can clearly be dealt with under the ship rule and for the avoidance of doubt I order the Respondent to transfer her share in PR1 Inc. to the Petitioner or his nominee upon the Petitioner's compliance with the order .

[8] Learned Counsel for the Petitioner quite rightly recognized that the matters falling under paragraphs (iii), (iv) and (v) of his summons do not fall within the jurisdiction of the Court. Indeed these were matters which were argued at the hearing and were subsumed in the judgment and taken into consideration in arriving at the final distribution of the 70:30 ratio.

[9] So the only matter left to be dealt with in the Petitioner's summons is the one at paragraph (1). In making his submissions under that head learned Counsel for the Petitioner said that his understanding was that the marital assets were to be valued as at the date of ruling but the properties at (c) to (f) were not valued as at August 2. Counsel referred in this context to paragraph 62 of the Courts' judgment made on August 2, 2002. Counsel later referred to paragraphs 63-66 of the judgment.

[10] Learned Counsel for the Respondent referred to paragraphs 60 and 62 of the judgment in particular and submitted that there was nothing to clarify in the order. She said paragraph (ii) was not an issue and the last three paragraphs were withdrawn. I agree with that submission.

[11] As stated in the judgment the bulk of the marital assets were those in the Morgan Stanley Accounts, that is those at paragraphs (a) and (b) of the Courts' Order. Their value as at the date of the judgment was about $2,656,217.68 compared to the assets at (c) to (f) which were found as a fact to value approximately $765,000.

[12] The properties at (a) and (b) did form the bulk of the assets. The other assets could only be found to be such at the date of the judgment which was August 2, 2002. So in effect that was the date of their valuation.

[13] The reason why a date was specifically put on (a) and (b) is because as the judgment says at paragraph 62, the Court was told and the Court believed that market fluctuations would affect the bulk of the assets, that is (a) and (b), and the Courts' thinking at the time was if a clear break had to be made and the Respondent had to be paid off, a date had to be fixed for the valuation.

[14] I do not think there was any merit in the summons. It is therefore dismissed with costs to the Respondent in the amount of $600.00

A.N.J. MATTHEW
High Court Judge Ag.