

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

Claim No. SLUHMT 2003/0153

BETWEEN

JOSEPHINE RAMBALLY

Petitioner

AND

CLARENCE RAMBALLY

Respondent

Appearances:

Brian Stephen for Petitioner
Vandyke Jude for Respondent

.....
2005: April 25, 26, 29
May 13, 27
July 15
.....

JUDGMENT

[The parties each produced bundles of documents for use at the hearing: I shall refer to page references as P/1 and R1/1 etc]

Introduction

[1] The husband and wife in this case were born in 1948 and 1964 and they are now 57 and 41 years old respectively. In the 1980s they became lovers and had two children (Miguel born 19 September 1985 and Kevin born 17 May 1988). The husband already

had four children by three other women including a son Sunil who was born in 1983. The parties started living together in about 1989 and married on 22 August 1993. Sunil was treated as a child of the family.

- [2] By May 2003 the relationship had broken down and the husband left the family home. In November 2003 the wife petitioned for divorce and a decree nisi was granted on 2 July 2004. On 20 December 2004 the wife filed this application for ancillary relief under the Divorce Act 1973. During the marriage the parties were involved in numerous business ventures and complex property transactions and between them they enjoy substantial wealth but unfortunately they have been unable to agree on a sensible division of assets following the breakdown of the marriage and have instead resorted to bitterly fought litigation.

The hearing of the application

- [3] In addition to the very substantial affidavits sworn by the parties themselves, the husband filed affidavits from at least 13 other witnesses and issued witness summonses against a further six. In the event, save for the parties, only one witness (namely Bibiana Cox, who is Sunil's mother) was called and cross-examined and the affidavits of a further five (John Roland, Earl Gadjadhar, Martha Augustin, Thomas Walcott and Rudolph Rambally) were admitted without cross-examination. Nevertheless the hearing took up several days of court time spread over a month, time mainly taken up with the cross-examination of the parties on events taking place over a 20 year relationship, many of which were of no or only peripheral relevance to the real issues.

[4] The flavour of the hearing was unpleasant and antagonistic: for example, the skeleton argument filed for the husband at the close of the evidence describes the wife (at page 11) as “greedy and deceitful”; the wife accused the husband of being violent and consistently humiliating her (see para 3 of affidavit at P/8) and at a late stage introduced an allegation that the husband had started an intimate relationship with her when she was only 12 years old (see para 3 of affidavit at R/8A/789A).

[5] I cannot help observing that this is a highly unsatisfactory way of dealing with the fallout from a failed marriage. Not only is the process obviously not conducive to future peace and tranquillity but as litigation it is highly unsatisfactory and unmanageable since the court is faced with a mass of evidence but no clearly defined issues. It seems to me that some form of compulsory mediation would be highly desirable in cases like this. It may also be that the court itself ought to take a more proactive line in giving directions under rule 59 of the Divorce Rules 1976.

The nature of the application

[6] The relief claimed in the wife’s notice of application comprises 12 substantive paragraphs in somewhat unusual form. By paras (a) and (c) she seeks a half share in certain identified immoveable properties (listed in Schedules 1 and 10 to her affidavit at P/18 and P/141) and bank accounts (listed in Schedule 3 at P/47). By paras (h) and (i) she seeks a half share in any unidentified bank and other accounts held by the husband and in any properties, shares and bank accounts held on trust for him by others. By paras (j) and (k) she seeks an unquantified lump sum payment for her maintenance and \$3,000 (per month I assume) for the maintenance of Kevin. Paras (b), (d), (e), (f) and (g) seek accounts of money received in the past by the husband

from various sources and orders that she be paid either a one half or "appropriate" share thereof. The sources identified are the sale of various properties listed in Schedule 2 to her affidavit (para (b)), repayments of loans listed in Schedule 4 (para (d)), funds withdrawn from any bank account held in the husband's name or held on trust for him (para (e)), profits of businesses listed in Schedule 5 (para (f)) and profits made by companies listed in Schedule 6 (para (g)). By para (l) she seeks in the alternative an order that she be given such share of the identified immoveable properties as will reflect the cash value of the other relief she seeks.

[7] The relief sought by paras (b), (d), (e), (f) and (g) is not relief of the type set out in sections 22 to 24 of the Divorce Act 1973. It also introduces an enormous and difficult area of factual inquiry into past transactions going back many years such as one would not normally expect in an application for ancillary relief. The relevant factors identified at section 25 of the Divorce Act 1973 do not require the court to inquire into past transactions (save possibly if they were relevant to the "contributions" made by the parties (see section 25(1)(f)) or to "conduct") and, although the court is to "have regard to all the circumstances", I would not normally regard it as helpful or relevant to inquire into every receipt by one party to the marriage over a period of many years.

[8] When I asked Mr Stephen (who appeared for the wife) about the basis for claiming this relief, he reminded me of the community property regime which applies in St Lucia and referred me to the relevant provisions in the Civil Code which are to be found at Arts 1188 to 1307. His contention was that in so far as any property had during the marriage been property of the community and been disposed of or taken by the husband without the consent of the wife he was liable under the Code to compensate

her. It was therefore necessary, he would say, to inquire into every single transaction during the marriage (and some before) to establish whether the relevant property was community property, whether it had been taken or disposed of by the husband without the consent of the wife and what compensation she should receive.

[9] The “community of property” (to give it the proper title) regime is complex and difficult. What follows is therefore my own best understanding from reading the Code of how it is meant to work, with all due caveats and apologies to those who know the Code better.

[10] Community of property commences on marriage (Art 1189) and is dissolved by death, dissolution of the marriage or various other causes (Art 1228: it was agreed that dissolution of the marriage probably refers to final dissolution at the decree absolute stage). There is a presumption that all property of husband and wife is community property, but this presumption can be rebutted if it is shown that it belonged to one of them before the marriage or that it is their own income or acquired by one of them by succession or that it was derived from any of those sources, in which case it is “separate property” (Arts 1192 and 1193). The liabilities of the community are those liabilities contracted by the husband as head of the community or the wife with his consent or judicial authorization and liabilities incurred for the maintenance of the spouses and children and all other charges resulting from the marriage (Art 1200). It may surprise some to learn that the Code provides that the husband alone administers the property of the community but neither spouse can encumber or dispose of any community property without the consent of the other and no encumbrance or other disposal of any immovable property of the community is valid at all unless both

spouses sign the relevant documents (Art 1211). If separate property somehow finds its way into the community the relevant spouse has a right of compensation for the value thereof (Art 1221); and, by the same token, if monies are taken out of the community and used for the exclusive benefit of one spouse, the other spouse has a right of compensation out of the property of the community (Art 1222).

[11] After the community is dissolved the wife has the right to renounce it subject to various conditions: if she does so her personal liability in respect of liabilities of the community is limited or extinguished (the provisions are complex: see Arts 1256 to 1270 and 1285 to 1299). If she accepts the community, there is a general accounting not unlike that provided for in the law of partnership: once the spouses have compensated the community and the community has compensated them where necessary and "pretakings" have been effected and community debts paid, "the *remainder* is divided equally between the spouses" (Arts 1271 to 1278: my emphasis). The partition is effected subject to the same rules as a partition among co-heirs provided for at Arts 632 to 694 of the Code (Art 1280).

[12] It seems to me that it must be squarely faced that the regimes for dividing up the property of spouses which are provided by sections 22 to 25 of the Divorce Act 1973 on the one hand and by Arts 1188 to 1307 of the Code on the other are really inconsistent and mutually exclusive systems. The Divorce Act assumes that all the property is owned by one or other spouse or jointly owned and it effectively gives the court a total discretion (subject to section 25) as to how such property should be divided between them on a divorce regardless of who owns what. The Code provides that property is either owned by one or other of them as separate property or that it is

owned by a different legal entity ("the community") which has to be wound up and anything remaining divided equally between them at the end of the marriage in accordance with strict rules and with the court having no discretion in the matter (save for the rather incongruous provisions at Part IV of the Divorce Act).

[13] It seems to me that, at least in this case where she has brought ancillary relief proceedings under the Divorce Act relating to the entirety of the property owned by the spouses, the wife is effectively precluded from seeking to rely on the rules about community of property. She has not pleaded anywhere that she is seeking to rely on Art 1222 of the Code (which might have entitled her to compensation from the community) or what compensation she seeks and there has been no suggestion that the community should be wound up and partitioned under Arts 1271 to 1278. It may also be that bringing an application for ancillary relief under the Divorce Act amounts to some kind of renunciation of the community. In any event I am satisfied that any attempt to resurrect the community now and bring some further proceedings based on it would be an abuse of the process under the rule in *Henderson v Henderson* (1843) 3 Hare 100. Furthermore, if there was a full partition of the community in accordance with the rules in the Civil Code it would still be open to the court to exercise its discretion under the Divorce Act to readjust matters so as to reach a fair and just result regardless of the strict legal position under the Code, so that the Divorce Act can in a sense always "trump" the Code.

[14] For those reasons I do not propose to spend time considering whether any particular property was property of the community or whether the husband breached the rules in relation to such property so as to give rise to a right of compensation on the part of the

wife. Nor do I propose to embark on the factual inquiries raised by paras (b), (d), (e), (f) and (g) of the wife's notice of application save in so far as I judge them relevant to the discretion I am asked to exercise under section 25 of the Divorce Act.

The evidence

[15] Particularly in the light of that conclusion I do not think it would be helpful to embark on a general review of the evidence about the history of the marriage and the business and property transactions of the parties. I propose instead to make only such findings of fact as are necessary in the course of considering factors relevant to the section 25 discretion. It is necessary nevertheless to make some general findings as to the credibility and reliability of the witnesses before turning to those factors.

[16] The wife gave the impression of being almost totally disconnected from the proceedings as she gave her evidence. Even taking account of the fact that witnesses and parties can be intimidated by court and that she is considerably younger than her husband, I found this very telling. There were numerous examples where she changed position in the course of the proceedings or introduced wholly new points or admitted to not telling the truth on a previous occasion, of which possibly the most glaring are these: (a) in her affidavit of 4 March 2005 she introduced for the first time the allegation that the husband started an intimate relationship with her from the age of 12 (see paras 3, 6 and 8: R8A/789A and 790A); this was entirely inconsistent with para 5 of her affidavit of 20 December 2004 (P/9) which stated that she first met him when she was working as an insurance underwriter with West Indies General Insurance Company (it was accepted she began this employment in 1983 aged 19); (b) at answers 13 and 14 to some interrogatories (which she confirmed in the witness box) she stated that the

husband was not a good provider for her or his children (see R/5/550); at paras 27 and 29 of the affidavit of 20 December 2004 (P/14 and 15) she stated that she never had any financial difficulties and always had access to money to meet all her and the family's expenses; in cross-examination she said that that there had been times when she had not been provided with enough money to pay medical bills; a few minutes later she resiled from this and confirmed that the evidence at para 27 was after all true; (c) in the course of cross-examination she said at one stage that she did not recall whether the husband had any assets when they met; the next minute she said neither of them had any substantial assets as in para 5 of the affidavit of 20 December 2004 (P/9); and a few minutes later she accepted that he owned several properties before he met her and stated that she was not claiming any interest in them; (d) in the course of cross-examination she admitted that answer 5 to the interrogatories which stated that she had not deposited community funds into her personal bank accounts (see R5/549) was not true and that she had in fact deposited rental income from the jointly owned condominiums into personal accounts at First Caribbean, Royal Bank of Canada and Scotia Bank (e) at answer 25 to interrogatories at R5/547 she stated that she was not entrusted with banking responsibilities for community property and businesses: this was patently incorrect and inconsistent with para 8 of her affidavit of 20 December 2004 (P/9). On 13 January 2005 in the presence of the wife I made an order that she disclose any bank accounts not already disclosed (para 3) and that she serve copies of all her bank statements from 1 January 2003 (para 1): she admitted in the course of cross-examination that she had not disclosed the First Caribbean or Scotia Bank accounts I mention above in accordance with that order and I found her explanation that her lawyer had told her that she only needed to disclose named bank accounts unimpressive. I conclude from all this that throughout the proceedings she

was prepared to say anything that she believed would assist her case and that I cannot rely on anything she put forward unless it was admitted or supported by other compelling evidence. I also find that she has not disclosed all her property and income as required by para 3 of my order of 13 January 2005 and if necessary I will be prepared to draw inferences from that when assessing her financial position.

[17] The husband had, I think, a higher regard for the truth than the wife and in general I accept his evidence. The picture he presented was of an energetic and acute businessman with an encyclopaedic memory for the details of transactions entered into sometimes years before. These transactions were almost invariably structured in a complex and intricate way for fiscal or similar reasons. Although he was and remains a lawyer by profession it was clear that he had little regard for the separate legal identity of companies that he was responsible for setting up and that he was prepared to place properties, bank accounts and loans in the names of others (in particular his wife) for reasons of convenience (eg so that he could act as attorney if a loan defaulted), with little or no regard to the underlying realities of particular transactions.

[18] I found Ms Cox, who had a relationship with the husband from 1980 to 1989 and bore him a son, an impressive, honest and reliable witness. I bear in mind in making that assessment that, as the mother of another of the husband's children and his ex-lover she may have had an axe to grind as against the wife.

[19] The evidence of the other five deponents I have mentioned was admitted without objection. I should mention in particular the valuation evidence of Mr Walcott which I accept and rely on.

[20] I turn to consider the familiar section 25 factors.

Income, earning capacity, property and other financial resources

Property

[21] The first thing to do in a case like this is to identify all the existing property of substance which still belongs to the parties. Unfortunately despite my encouragement the attorneys did not feel able to list it in a convenient form in one document but my best effort at reconstructing the position is this:

<i>Item of property</i>	<i>Name(s)</i>	<i>Value</i>
(1) family home at Rodney Bay (1255B 393)	half each	\$1.913m
(2) five condominiums at Rodney Bay (1255B 60)	half each	\$1.668m
(3) adjoining land at Rodney Bay	half each	\$219,095
(4) lot at Balata (1249B 387)	half each	\$414,000
(5) ½ share in land at Beausejour (1256B 251/252)	half each	\$724,000?
(6) lot at Rodney Bay Marina	half each	\$117,000
(7) lot at Rodney Bay Marina	H	\$117,000
(8) ½ share of two (or three) lots at Pavee	half each	\$60,000
(9) two lots at Marigot Bay (0433B 43/44)	H	none given
(10) lots 1256D 250, 1456B 486 and 851	H	none given
(11) CICB/First Caribbean bank accounts (Schedule 3?)	joint	\$547,000
(12) bank accounts at Bank of St Lucia (see R/8A/786)	H	c\$400,000
(13) property at Anse la Raye (see R/8A/764)	to be H	c\$120,000
(14) land at Laborie (see R/8A/764)	trust for H	none given
(15) land at Marquis (see R/8A/765)	H	none given

(16) CLICO bank account (R/8A/787)	H	\$400,000
(17) shares in Rambally & Sons Ltd	H and W	none given
(18) shares in RASCO Ltd (P/139)	H	

[22] Given the rather unsatisfactory nature of the evidence presented on both sides I am not clear whether there may be a few other assets in the husband's name in the form of businesses and/or shares and immoveable properties. It will also be apparent that valuations have not been provided for a large number of properties held by or on behalf of the husband. However, no request was made by the wife for valuations to be obtained and on the view I have taken of the matter I do not think there is any need for further clarification or valuations.

[23] As I indicate below when dealing with the respective contributions made by the husband and wife I am satisfied that all these assets, regardless of whose name they are in, are substantially the fruit of the husband's own investments and entrepreneurship.

[24] There were also a series of other bank accounts (some in joint names, some in the wife's name) which were the subject of analysis by Ms Augustin but which currently have nothing substantial left in them. The wife admitted in cross-examination to having at least two other bank accounts (Scotia Bank no 522428 and an account with First Caribbean) which were not disclosed and to which I cannot give a value.

[25] The wife stated in her affidavit (para 20 at P/12) that she is an employee of a spare parts company called Josie's Auto Spare Parts Co Ltd which is owned by a Trinidadian

called Ricky Ramnarine for which she receives a salary of \$1,500 per month. Mr Ramnarine was the person who had introduced the husband to Powermaster of Trinidad, which was the introduction which formed the basis for a battery shop business which he established in 1996 (paras 50 and 51 at R/8A/760). This battery shop was also run by the wife and it is quite apparent that Josie's Auto Spare Parts is a successor business: for example it initially operated from the same premises and the accounts of the new business have been continued on exactly the same basis as that of the old one for reasons the wife was quite unable to explain. I deduce from all this and from the fact that it is clear that Josie's Auto Spare Parts is named after the wife that in fact she has a substantial interest in the company, no doubt along with Mr Ramnarine, and is not a mere employee. Since she was not willing to admit to this I am unable to say what the nature or value of that interest might be.

Income

[26] For the reasons already indicated I do not accept that the wife is simply an employee of Josie's Auto Spare Parts or that she earns only \$1,500. She accepted in cross-examination that while she was running the battery shop for the husband it made about \$100,000 profit per year. Based on this figure I would guess (as I must) that she is making \$5,000 per month (roughly a half share of such profit) from the business.

[27] At the moment the wife is also in receipt of all the income from the five condominiums in Rodney Bay. There was a dispute as to how much income these properties would be generating. I find that the maximum rental available must be around \$15,000 as the husband maintains (see wife's document showing rent receipts from four apartments in April 2004 at R/5/497) but this will obviously depend on occupancy levels. The

expenses claimed by the wife at para 21 of her affidavit at P/12 are about \$2,500 but they will obviously fluctuate. I find that the average net monthly income from the condominiums is at least \$10,000.

[28] I accept the husband's evidence that he makes only a modest income from his legal practice (see para 93 at R/8A/770). He admits to receiving a pension of \$1,300 per month and interest from CLICO of \$2,300 per month (see para 156 at R/5A/779). As indicated above he has substantial real property assets and is a shrewd businessman and I have no doubt that he can and does make a substantial additional income from property dealings and other business deals.

Earning capacity

[29] The husband is, as I have said, an energetic and acute businessman. Although I accept that he is unlikely to resume his legal practice in a major way and he is now 57 and beginning to suffer with arthritis, I am of the view that he has a few years of productive capacity left during which he is likely to put his entrepreneurial skills to good use and continue to make substantial amounts of money.

[30] The wife has not had any formal training. But she clearly has some skill as a manager since on her own account she successfully managed the family businesses (see para 30 at P/15), in particular the battery shop business and the condominiums at Rodney Bay. At the moment, as I have found, she has an interest in Josie's Motor City Spare Parts. I have rejected her evidence that she receives a salary of just \$1,500 per month from this business and have found that her income from it is closer to \$5,000 per month. I see no reason why she should not continue to earn at least this amount and

possibly much more for many years. I also note the evidence at para 123 of the husband's affidavit that there are five incomplete suites on the ground floor of the family home which I take it can be used to rent out if completed.

[31] Her health is not all it might be and she has asked the court to find that this will substantially affect her earning capacity (para 22 at P/13). I deal with her health issues below in more detail: I do not believe that they need affect her earning capacity for the foreseeable future and they do not cause me to revise the conclusion I have reached as to her earning capacity.

Financial needs, obligations and responsibilities

[32] The husband's evidence (which I accept) is that his personal needs are only about \$6,500 per month, which includes the rent for a modest apartment (para 158 at R/8A/779A). He has various outstanding debts in respect of student loans for his daughters Nadia and Shanaze and owes \$40,000 in respect of a car purchased for Miguel. He also has a contingent liability in respect of a guarantee he gave for a company called Parts Depot which is owned by Earl Gajadhar and his son Sunil (see list of liabilities at R/8A/785A). He gave no other evidence of responsibilities, though I imagine he will want to continue to help any of his six children if they were in particular need and to pay for Kevin's further education.

[33] The wife's evidence was that her monthly expenses are \$20,250 (see para 25 at P/14 and P/146 and 147). That figure I find totally exaggerated if it was intended to indicate her "needs", even giving a reasonably loose definition to that word. In particular I cannot accept that she *needs* anything like \$5,200 for medical care, \$1,000 for hair

and nails, \$2,500 for food and clothes, \$800 for eating out and \$2,000 for unspecified credit card payments. I doubt she really needs much more than her husband does.

[34] The wife claims that she owes Ricky Ramnarine EC\$80,000 and US\$14,000 and a gentleman called Jack Renee \$120,000 in respect of loans made to her in 2003 and 2004 to tide her over her alleged difficulties after the husband left in May 2003. Letters were produced from Mr Ramnarine and Mr Renee which purport to confirm these loans but in the light of the cross-examination on this matter and in particular taking account of the fact that she was at all times in receipt of income from the battery business and the condominiums I do not accept her evidence about this. I therefore find that she has no liabilities to those two gentlemen and that, as the husband puts it, "...the loans are a fiction created by the [wife] to mislead the court" (see para 86 at R/8A/768A). The other debts listed at P/147 (credit cards, telephone and judgment in St Vincent) amount to about \$55,000. Nowhere in the evidence does she mention any responsibilities save for Kevin for whom she currently receives \$1,000 per month from the husband.

Standard of living enjoyed by the family before the breakdown of the marriage

[35] The parties were wealthy and successful and enjoyed a high standard of living. I can do no better than quote from the evidence contained in the wife's affidavit of 20 December 2004 at paras 27 and 29 which was not challenged and which I accept as conveying a true picture:

"Prior to the irretrievable breakdown of the marriage in May 2002, I had no financial difficulties whatsoever. The Respondent made all of the decisions in relation to our community property and I seldom questioned him.. While I was not permitted to make financial decisions, I always

had access [to] money to meet all of the expenses which were incurred by the family or myself".

"Throughout the course of the marriage, we took approximately four trips every year. The children, including Sunil, usually accompanied us on two of these annual trips. I was always able to eat out with my friends at high priced restaurants in Saint Lucia as well as abroad. I drove a Land Cruiser Prado, was a member of the local gym and purchased luxury items at leisure. I was also able to purchase basic and luxury items for the children of the family, including Sunil Rambally who was also accustomed to a particular lifestyle. We frequently had family outings and lavish affairs for special occasions such as birthdays, anniversaries and Christmas holiday".

Age of each party and duration of marriage

[36] The parties are 57 and 41 respectively. The marriage lasted about ten years. The relationship as a whole lasted about 20 years from 1983 to 2003: I reject the wife's later evidence to which I have already referred that the relationship started when she was only 12. The parties lived together from about 1989 until 2003; in this connection I accept the evidence of Ms Cox and the husband as well as the unchallenged evidence of Rudolph Rambally at para 4 of his affidavit and I reject the wife's evidence that they co-habited for the whole 20 year period (see para 2 of her affidavit of 20 December 2004 at P/7).

Physical and mental disability

[37] The wife was at pains to stress that her health was not good. She produced a number of medical reports which are at P/337-340 and a further one dated 21 April 2005 from Dr Saltibus. She has chronic sinusitis, diabetes mellitus which was diagnosed in 1993, hypertension diagnosed in 1999, poor circulation in her legs, anxiety and depression

and she suffered a fractured left ankle in 2003 which requires an operation which should lead to a full recovery within about 12 weeks. Her evidence was that she has not yet had that surgery carried out because she could not afford it (para 22 at P/13): for obvious reasons I reject that reason but I have no idea why in fact she has not had the operation.

[38] It is the wife's case that her health problems make it increasingly difficult for her to work and mean that at some stage she will be unable to work at all and that it will therefore be more difficult for her to maintain herself than for the husband (see para 22 at P/13 and 33 at P/16). Although all the conditions from which she suffers apart from the ankle are bound to affect her lifestyle, they can, as the doctors make clear, be controlled by medication and a "disciplined lifestyle". So far as lifestyle is concerned there is evidence of heavy drinking (see husband's affidavit at para 82 (R/8A/768A) and Johnny Boy's affidavit at paras 14, 17 and 18), which clearly does not help but which it is within her power to control. I would also suggest that the anxiety and depression (and possibly the other conditions) may improve somewhat if this stressful litigation is brought to an end. I therefore reject her case that her health is such that she will be unable to maintain herself as a normal healthy woman of her age and capabilities.

[39] The husband is in reasonable health for a man of 57 and should, as I have said, be able to earn a living for a few years.

Contributions to the welfare of the family (including any contribution made by looking after the home and caring for the family)

[40] The wife's case is that the husband is now a very wealthy man as a result of the marriage (para 33 at P/15) and that all the wealth was obtained by their joint money, work and management (para 7 at P/9). She also says that she was the one who managed all the businesses and cared for the children and the home while he carried on his legal practice (para 30 at P/15). It seems to me that the wife is substantially exaggerating her contribution.

[41] The wife's evidence was that when she met the husband neither of them had any substantial assets and that the seed from which their wealth grew was a property she purchased in Entrepot in Castries with her income from her employment with an insurance company (para 5 at P/9). I reject this evidence without hesitation. I accept the evidence of Ms Cox (at paras 9 to 12) and of the husband (at paras 11 to 28 at R/8A/743 et seq) that by the time he met the wife he was already well established and financially secure and that he continued to make money entirely by his own efforts up to the marriage in 1993. As he says at para 12 of his affidavit, when he met the wife she earned \$600 a month and the Entrepot property was purchased with \$4,000 he gave her. I doubt it was a matter of any significance in the overall picture.

[42] I am satisfied that any wealth built up after the parties married resulted from the husband's entrepreneurial flair in investing his money in property transactions, in the le Marche de France supermarket business in 1991, and subsequently in the battery shop and the various other car businesses in St Lucia and St Vincent, and in himself constructing the condominiums at Rodney Bay (see para 122 at R/8A/774A). I also accept the husband's evidence that he personally supervised and paid for the construction of the family home and the five condominiums in the Rodney Bay

although he and the wife selected the furniture and fittings for these properties (see paras 121 to 124 at R/8A/774).

[43] The wife worked as a manager of the supermarket business and the battery shop for which she received a relatively modest salary (\$2,500 from the supermarket: see para 42 at R/8A/759 and \$1,500 from the battery business: see para 52). She controlled the bank accounts for these businesses and other bank accounts which the husband opened (see para 36 at R/8A/752). She dealt with the household bills (see para 11 of John Roland's affidavit) and kept all the records (as she accepted in cross-examination). I accept that she is a shrewd and efficient manager and made a contribution in this way but the husband was undoubtedly, as he puts it, "the rainmaker" (see: para 36 at R/8A/752).

[44] As for looking after the home and bringing up the family I accept Mr Roland's evidence that he along with other employees (and not her) was the one who did the cooking and the household chores (see para 19 of his affidavit; see also the husband's evidence at para 93 at R/8A/770). Johnny Boy (as Mr Roland was known) also had a substantial role in looking after the children of the family. In relation to the children the wife accepts (at para 30 at P/15) that the husband was a father figure and interacted with them on a daily basis and I find that the roles of husband and wife were of equal value in this respect.

Value of lost benefits

[45] There does not appear to any evidence under this head.

Other potentially relevant factors

Conduct during marriage

[46] In general I am reluctant to take any substantial account of the conduct of the parties in assessing the appropriate division of assets, since the mutual allegations and recriminations which arise out of a failed marriage are highly subjective and driven by emotion and difficult to verify one way or the other.

[47] The wife alleged that the husband was violent and abusive during almost the entire marriage (see para 3 at P/8 and numerous references in cross-examination). Since this was vehemently denied by the husband and there was no independent corroboration I reject the allegation. It follows that I accept the evidence of the husband (at paras 119, 134/5 and 146 of his affidavit) and of Johnny Boy (at paras 13 and 14 of his affidavit) that she made false allegations against him to the police. Although that is a serious matter I do not propose to take any account of it in my decision: I have no doubt that it was the result of high emotion and, although distressing for him, I believe the husband is big enough to shrug such matters off.

[48] A large part of the hearing was taken up with investigating an allegation that the wife had somehow misappropriated over \$1 million from the battery shop business after it effectively stopped trading in 2003. While I am sure that she did not give a full account of her dealings and has not given full disclosure of all documents and that the business she has set up with Ricky Ramnarine is based on the business originally established by the husband and managed by her, I am not satisfied on the evidence I have seen that it would be right to categorise her conduct as theft or misappropriation. In this connection I note in particular the husband's own evidence that he told the wife to use

money from the battery shop to pay for household expenses (para 58 at R/8A/761) and that he placed no restrictions on her ability to withdraw money from accounts held in joint names (para 91 at R/8A/769). I note also that the husband, who claimed to be the owner of the battery shop business, took no steps to secure the assets of the business.

[49] The wife also alleged that towards the end of the marriage the husband started to transfer assets abroad in order to deprive her of them. There was no real evidence to support this allegation but it is the case that he used a substantial sum (he admitted \$250,000) from the joint deposit account at First Caribbean/CIBC to pay for land for Sunil in the name of Venus Estates Ltd and that he may well have depleted that account entirely if it had not been for a freezing order made by Edwards J on 17 March 2004. The general impression I have is that both parties were engaged in a rather unseemly rush to secure their positions in 2003/4: it seems to me that matters should lie where they have fallen in that rush and that I should take no further account of these points.

[50] While I do not think that it is generally a useful exercise to say much about it, it is perhaps worth saying in this case that the accounts given by the two parties as to the reasons for the breakdown in the marriage are on analysis not that far apart (see paras 3 and 28 of her affidavit at P/8 and 14 and paras 9 and 37 of his affidavit at R/8A/743 and R/8A/753). If one leaves out the allegations of violence and abuse it seems to me that both parties accept that the root of it was that the wife wanted more involvement in financial matters than the husband was prepared to give her and that she may have felt jealous and excluded by the husband's previous involvements and his other children. This is perhaps a common enough outcome of a marriage between a couple

in which the husband is some 16 years older and has four outside children and the wife is approaching her 40s and the children of the marriage are more or less grown up. It seems to me it is a matter for regret but understandable from both sides and not something for which anyone should bear moral blame.

Conduct in connection with litigation

[51] I have already given an indication of the conduct of the wife in connection with the litigation in the context of considering her credibility and reliability as a witness. There is also reason to believe that she may have instigated a break-in at the husband's office and the taking of a hand-written will from a cabinet (see para 71 of his affidavit at R/8A/763). I think Mr Jude's description of her conduct as "egregious" is not far off the mark. However, I do not think that this is one of those rare cases where a party's behaviour in connection with litigation is such that he (or she) should be deprived of what he would otherwise have been entitled to as a matter of law or discretion. It may well be a matter which should be reflected in any order for costs I make but at the moment I do not pre-judge any such application.

Other factors

[52] It seems to me of paramount importance in this case that there is a rapid and completely clean break between the parties as I am sure they agree. I will if possible therefore avoid allowing them to remain in any kind of co-ownership and avoid ordering the payment of money or the sale of any property which will require further co-operation. In deciding who should get what I shall also take account of particular features of the various items of property which I mention below.

Conclusions

[53] Taking account of all relevant factors I must endeavour to achieve a result that, so far as is practicable and just, places the parties in the position they would have been in if the marriage had not broken down.

[54] The solution I shall adopt is to divide up the property in which the parties have half shares or which is jointly owned in such a way that each is left with about 50% of the totality of such property and to allow the husband to retain all the property which is in his own name and the wife to retain whatever she has. Although I have found that the wife has exaggerated her contribution to the welfare of the family and that she has undisclosed assets and the capacity to make a reasonable living hereafter, she has been with the husband for all her adult life and has borne him two children and this must be properly recognised. By retaining all the property which is currently in his own name and half of the jointly owned property the husband will retain the majority of the family assets. Although he may say that he put bank accounts and properties in his wife's name purely for convenience it seems to me that he must take the consequences of acting in this way and acknowledge that the wife is prima facie legally entitled to the half shares which he brought into being (ignoring of course the effect of the law of trusts, the community property regime and the Divorce Act). The wife will be left with substantial assets (worth about \$2.87 million) which she will be able to put to use and which, combined with her other undisclosed assets and her ability to work and make a living, should enable her to enjoy a lifestyle not too far from that she enjoyed during the marriage.

[55] It seems to me that the wife should have exclusive ownership of the family house. She has lived there for about five years and the husband moved out in 2003 and, although it is a big house for one person, there is scope for making money out of renting the suites. The husband's evidence (para 154 at R/8A/779) is that the condominiums were designed to provide him with a pension; the wife has had the exclusive benefit of the income from them for the last two years and it seems to me fair that he should be given exclusive ownership of them from now. The land referred to at item (3) in the list of assets adjoins the apartments and so logically goes with them. The land in the Rodney Bay Marina (item (6)) is of particular interest to the husband because of his interest in fishing and should go to him (see para 105 at R/8A/771). The land referred to at items (5) and (8) is held in common with members of the husband's family and so would conveniently go to him. That leaves the bank account (item (11)) and the land referred to at item (4). If these two items are added to the value of the family house the result is roughly half the total (about \$\$2.87m). I therefore propose to grant the wife exclusive ownership of the family house, the bank account and the lot at Balata and the husband the balance of the jointly owned property.

[56] At the moment the husband is paying maintenance to the wife in respect of Kevin at the rate of \$1,000 per month. Given my findings and the decisions I have made it seems to me that there is no good reason for this to continue for the year or so until Kevin is 18. I see no reason why the wife should not support Kevin from her own funds so long as and in so far as he continues to live with her and remains dependent on her (in fact I understand he comes and goes between his father and her and continues to have his meals cooked by Johnny Boy). The parties are happily able to agree that

they should have joint custody of Kevin (see para 31 at P/15) and I am satisfied as to his welfare.

Result

[57] I will ask counsel to agree the precise terms of my order. In summary I will order that:

- (1) the husband is to transfer to the wife forthwith all his interest in items (1), (4) and (11);
- (2) the wife is to transfer to the husband forthwith all her interest in items (2), (3), (5), (6), (8) and (17);
- (3) the parties are to have joint custody of Kevin Rambally until he reaches the age of 18;
- (4) any order as to payment of maintenance is discharged;
- (5) there be a suitable declaration under section 41 of the Divorce Act.

I will hear counsel on costs.

Murray Shanks
HIGH COURT JUDGE (Ag)