

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. M331 OF 2000

BETWEEN

PAMELA HABIB

PETITIONER

AND

RAYMOND HABIB

RESPONDENT

Before The Honourable Mr. Justice Stollmeyer

Appearances:

Mrs. H. Griffith for the Petitioner

Mrs. G. Morean for the Respondent.

JUDGMENT

It is not an uncommon feature of marriages in which the relationship between the husband and wife breaks down that there then follows acrimonious, if not protracted, litigation with respect to the children of the family and ancillary relief, particularly the division of family assets and the matrimonial home. The latter all the more so when the family, its standard of living and lifestyle, were provided for by a single business entity. This is one such case.

The applications before me for determination concern the financial position as between the husband and wife. I think it necessary, however, to first give brief details of the various applications which have been made by each of the parties during the course of these proceedings.

By Summons of 9th August 2000, the Petitioner sought custody of the three children of the family and by Notice of the same date she sought payment of lump sums and periodical payments for both herself and the three children. Thereafter, by Notice of 6th February 2001 she applied for a transfer to her of an interest in the matrimonial home at 78-79 Fairmount Drive, Fairways,

Maraval. By Summons of 14th March 2001 she applied for an order restraining the Respondent from disposing of any of the equity from the sale from the matrimonial home and that the proceeds of sale be held in escrow pending determination of the applications for ancillary relief. On 30th April 2001 she filed a Summons seeking certain particulars of the Respondent's income and assets.

The Respondent, by Summons of 24th August 2000, sought an injunction restraining the Petitioner from entering into the matrimonial home, a sale of the matrimonial home and the division of the proceeds of sale thereof, and custody of the three children. By Summons of 30th August 2000, the Respondent sought custody of the youngest child of the family, Matthew, pending determination of the Summons of 24th August. Thereafter by Summons of 23rd January 2001 he applied for orders that this child be made a ward of court and that the Petitioner be restrained from removing him out of the jurisdiction without the Respondent's consent, pending determination of the custody applications.

Subsequently, by Summons of 27th April 2001 the Respondent applied for the payment out to him of \$200,000.00 of the amount then being held in escrow by his attorneys, representing the net proceeds of sale of the matrimonial home, a sale of the latter having been completed some time previously.

The applications relating to custody and access were heard by me and are the subject of various orders made on 7th February 2001. Those applications now stand adjourned to 21st June 2001 for compliance by the parents of certain of the orders made on 7th February. The Respondent's summons of 23rd January 2001 was withdrawn, with leave, on 7th February 2001.

The property at 78-79 Fairmount Drive, Fairways, Maraval has been sold. A net amount of \$800,000.00 was apparently realised and, by agreement of the parties, was lodged with the Respondent's attorney-at-law to be held in escrow in an interest bearing account pending the determination of the ancillary matters herein.

Effectively, therefore, there were before me for determination the Petitioner's Notice of 9th August 2000 for the payment of lump sums and/or periodical payments and her Summons of 30th April, 2001 seeking certain particulars. Some, but not all of the particulars sought by that Summons were supplied, as well as certain other particulars which were made available upon request during the course of the proceedings. Ultimately, Mrs. Griffith for the Petitioner, having indicated that she did not wish to proceed any further on this Summons sought leave for the issue to Republic Bank Ltd. of a subpoena *duces tecum* relating to accounts of the Respondent, held either solely or jointly. Mr. Morean having indicated that she was objecting to this application, which was made

on 14th May during the course of hearing the applications, I ordered that written submissions be delivered by midday on 14th May. These were delivered on behalf of the Petitioner, but Mrs. Morean indicated by telephone that the Respondent would agree to the Petitioner being given this documentation. In the event, I gave leave should it be necessary and so as to save time. I therefore made no order on the Summons of 30th April but will rule on the costs of both applications later in this judgment.

As to the Respondent's applications, I am to determine his Summons of 27th April 2001 for the payment out to him of the amount of \$200,000.00 from the monies now being held by his attorney representing the net proceeds of sale of the matrimonial home. It should be stated here that an amount of \$100,000.00 has already, by consent, been paid to the Petitioner on account of any lump sum which may be awarded to her on the determination of her Notice of 9th August 2000. The only other of the applications made by the Respondent outstanding as at the commencement of the hearing of these applications was the second limb of his Summons of 24th August 2000 which sought an order directing the sale of the matrimonial home and the division of the net proceeds between the parties. Mrs. Morean sought leave to withdraw this application on 9th May 2001 prior to commencement of cross examination of the parties on the basis that this property had been purchased by a limited liability company, Emergency 24 Security Services Ltd. ("Emergency 24"), and was an asset of that company. As will be seen, the entire shareholding of this company is owned by the Petitioner and the Respondent. Having been sold it was her view that it was no longer necessary to determine this particular application. However, in view of the Respondent, and not the company, having applied for the sale of this property and the division of the proceeds of sale, and there being an issue apparent from the affidavits as to whether this property was in fact an asset of the company or of the Petitioner and the Respondent, I did not think it appropriate to grant the leave sought. I refused it on the basis that I should first hear the evidence by, and the addresses on behalf of, the parties before coming to any determination of the application or the Summons since, had the need arisen, it might have been possible to order a sale (see e.g. *Nicholas v. Nicholas* [1984] FLR 285).

Before me were the Petitioner's affidavits of 20th September 2000; 19th February 2001; 21st February 2001; 14th March 2001; 4^h May 2001 and 7th May 2001. There were also the Respondent's affidavits of 24th August 2000; 26th September 2000; 7th February 2001; 12th March 2001; 1st May 2001 and 4^h May 2001. Both the Petitioner and the Respondent were cross-examined on their various affidavits.

The Parties

Mr. and Mrs. Habib met in 1973 while both at school in Canada. Mrs. Habib was and is a Canadian citizen and was 15 years old at that time. Mr. Habib was and is a citizen of Trinidad and Tobago and was then about 17 years old. They came to Trinidad in 1978 and were married on 12th August that year. Prior to coming to Trinidad they had both worked in Canada, and had lived together for some time, perhaps longer than one year.

At the time of their marriage Mr. Habib was a travel agent employed in his father's business and continued to work there until 1986 when the entire shareholding of the company, Emergency 24 Security Systems Ltd., ("Emergency 24") was purchased. Mrs. Habib worked variously at Bank of Commerce Trinidad and Tobago Ltd., Mc Eneaney Alstons Ltd., the University of the West Indies and the forerunner of BWIA (West Indies) Airways Ltd., as it is now known. Her employment was almost continuous up to the birth of the first of their children, Raymond Jr., in June 1984. Thereafter, and subsequent to the birth of their daughter Natalie in June 1988, she resumed working from 1990 until 1994 when their second son, Matthew, was born in June of that year. As from March 2001 she has worked at Maple Leaf International School for one hour, three days a week, and for three hours, two days a week. For this she is paid \$18.00 per hour. Mr. Habib has been the Managing Director of Emergency 24 since the acquisition of the shareholding in 1986.

At the time of their marriage on 12th August 1978 Mr. Habib was 23 and Mrs. Habib was 20. They separated on or about 7th December 1997 and a decree nisi was pronounced on 21st September 2000. Mrs. Habib is now 43 years old and Mr. Habib is now 46 years old. It was a marriage of some 22 years to the pronouncement of the decree nisi. There are three children of the family, Raymond Jr. born 15th June 1984; Natalie born 1st June 1988; and Matthew born 25th June 1994. All three children are still at school. Raymond Jr. attends the American International School, the annual school fees for which are \$40,288.50; Natalie attends Maple Leaf International School, the annual school fees for which are \$20,265.00 and Matthew attends Maple Leaf International School, the annual school fees for which are \$18,165.00. The children attend these schools having been moved from other schools where the fees were very considerably lower. There is joint custody of the children. Raymond Jr. lives at the home at one of Mr. Habib's sisters; Natalie and Matthew both live with Mrs. Habib, she having care and control of them. These two children are asthmatic and see their doctor regularly.

Mrs. Habib occupied the property at Fairways, Maraval up to March/April 2001. She now lives in a rented apartment in Petit Valley in respect of which the Respondent is paying \$6,000.00 per month up to 11th July 2001. In addition, he pays \$4,000.00 per month by way of financial support

for the Petitioner and the two younger children. Mr. Habib apparently now lives with his mother, having lived for some time at his sister together with Raymond Jr.

The Matrimonial Home

After their marriage in 1978 Mr. and Mrs. Habib lived in an apartment they purchased at Valleton Avenue, Maraval. The apartment was outfitted, at least partly, with their savings, leaving a balance of perhaps \$4,000.00. After the acquisition of the shareholding in Emergency 24 in 1986, it is evident that their means increased.

The property at 78-79 Fairmount Drive, Fairways Maraval was purchased in August 1989 and the family moved there, disposing of the property at Valleton Avenue. It was the intention of the parties that this would be the family home. Mr. Habib himself said so in cross-examination. The purchase price is stated in the conveyance to be \$700,000 .00 and was satisfied by a payment of \$337,116.54 and the assumption of the then outstanding liability of the former owners under a mortgage to United Security Life Insurance Company Ltd. Mr. Habib says that this property was acquired by Emergency 24 because he "personally could not afford it" but there was at that time approximately US \$105,000.00, equivalent to some TT \$445,000.00 at the then official rate of exchange, standing to the credit of the joint account which the parties then held at Banque Audi which would have been available for this purpose. Additionally, Mr. Habib's evidence is that he paid a rent of \$3,500.00 per month to Emergency 24 for the use of this property, but it would seem to me that this sum could well have been used to pay the monthly instalments on the mortgage. I therefore do not accept that he could not afford to purchase the property and vest it in his name. It was, however, vested in Emergency 24 which paid all of the outgoings and expenses related to the property. It was so vested for convenience and, as will be seen from the evidence, for taxation purposes.

Subsequent to the acquisition of this property Mr. and Mrs. Habib carried out renovation works costing approximately US \$50,000.00 utilising funds which had been deposited into the joint account in their names at Banque Audi. This amount represented approximately 50% of the monies standing to the credit of that account at that time, and the deposits into that account were made during the period 1986 to 1989 which was a period when the business of Emergency 24 "boomed", to use Mr. Habib's expression.

I am not told when the mortgage to United Security Life Insurance Company Ltd. was repaid, but the property was mortgaged on two further occasions. The first was to the Bank of Nova Scotia Trust Company of Trinidad and Tobago Ltd. in February 1996 and the second was to Republic

Bank Ltd. in June 1997. The first mortgage was to secure repayment of \$800,000.00 and the second mortgage was to secure an amount of \$325,000.000. Again, I have not been told the purpose of these loans or facilities granted by these two banks which were secured by these mortgages but it appears that the latter was to secure a loan of \$325,000.00 to Emergency 24.

The property was sold for \$2,900,000.00 in March 2001. I was given no detailed breakdown by Mr. Habib, even when he was cross-examined, as to how the proceeds of sale were disbursed save that the following were paid: real estate agent's commission; Scotia Bank Trinidad and Tobago Ltd.; Victor Habib; Joseph Habib; Republic Bank Ltd. (Amforce Security Ltd. overdraft); creditors.

Indeed, he said in cross-examination that the second mortgage to Republic Bank Ltd. was not satisfied. After the conclusion of addresses, however, there came into evidence by consent copies of the releases of both mortgages. This did nothing to enhance Mr. Habib's credibility. Indeed, it served only to induce it.

As to these payments, and in the light of the Respondent's evidence of the salary paid to his brother Victor Habib, I am left to wonder how Victor Habib funded the loan of \$50,000.00 on 4th November 2000. In any event, this loan which is purportedly due to Emergency 24 is stated to be for "legal costs, psychologist's fee and valuation". I have no evidence of Emergency 24 obtaining any valuation, and the other two items are clearly the Respondent's personal expenses, not those of Emergency 24, in connection with the matrimonial proceedings. I do not accept that this was a loan to Emergency 24 which was due for repayment.

Further, there is the matter of the Petitioner's Summons of 30th April 2001 seeking certain particulars, including those relating to the loan supposedly made by Joseph Habib to Emergency 24 on 23rd March 1998. No material particulars of this loan were supplied in response to the request previously made, nor under the Summons. Mrs. Griffith cross-examined the Respondent on this aspect of the matter. His evidence was that documentation exists in connection with this loan, including an I.O.U., but he produced none to support his evidence, nor could he recall when the loan was made. His failure to meet the request for particulars and to produce the documents, he said, was because it "was virtually impossible to comply" with, since it would mean supplying a truck load of documents and the company would not have been able to conduct business. I find that not only improbable, but impossible to accept. He then said that he had given the I.O.U. to his attorneys. If he did so, it has not progressed to the Petitioner's attorney, far less to the sight of this Court. In the circumstances I am unable to accept that was a loan to Emergency 24 which was due for repayment.

Returning to the disbursement of the proceeds of sale, in his affidavit filed 7th February 2001 Mr. Habib listed certain payments which "have to be made before payment can be made to the Petitioner of a settlement figure". No mention is made of "creditors" but there are details of the two mortgages, and two overdrafts, one of which turns out a facility made available to Amforce Security Ltd. by Republic Bank Ltd. for which, said Mr. Habib in cross-examination, Emergency 24 is responsible. Mr. Habib also said in cross-examination that the second mortgage to the Republic Bank Ltd. had not been paid off.

I find all this quite incredible. First, if the loan were not paid off and this mortgage released, the purchaser of the matrimonial home could not get clear title. It is unlikely that there would be such a release if the loan was an amortised loan repayable over five years and not paid off. As I have said, however, a copy of the release of this mortgage subsequently came into evidence by consent so it is either that this loan was repaid or that Republic Bank Ltd. does not require security for the outstanding balance. If it is the latter, then it would seem reasonable to infer that the company's bankers are not unduly concerned about its financial stability or future. If it is the former, then Mr. Habib's credibility is further reduced. Second, I do not accept that Emergency 24 is responsible for the overdraft owed to Republic Bank Ltd. by Amforce Security Ltd. There was no evidence as to this and it emerged only in cross-examination. Third, I am given no details in cross-examination as to which creditors were paid off, nor even the total amount paid to them, only that none of these creditors were owed money prior to January 2001 and that these creditors (whoever they may be) were paid instead of those set out in her affidavit of 7th February on the advice of his accountants. In his affidavit of 1st May 2001, however, Mr. Habib says that the additional equipment was bought by Emergency 24 between January and March 2001.

I do not doubt for a moment that there may be very worthwhile reasons for paying these creditors but to do so in the light of what he had said previously on affidavit and in the circumstances of these pending applications I find to be at the very least in poor taste. Mr. Habib, however, is not content to leave it at that. Having spent these further monies (he makes no mention of purchasing the new equipment on credit), he then files his Summons of 27th April seeking payment to him of \$200,000.00 out of the proceeds of sale being held in escrow by his attorneys pending determination of these applications.

There are certain other aspects of the disbursement of the proceeds of sale which require comment. Mr. Habib's affidavit of 7th February 2001 sets out the payments which he says Emergency 24 was required to make out of the proceeds of sale and holds out that these are debts due for repayment by Emergency 24. I have already set out my conclusions as to certain of these. Additionally, he says that he needs to "plough back at least 40% of the net proceeds of sale of the property into the

business in order to continue in operation" leaving \$871,740.84 available to rehouse himself and pay a lump sum to the Petitioner. His accounting in cross-examination of the funds disbursed indicates that the real estate agents' fee (\$87,000.00); the first mortgage (approximately \$728,325.00 at 31st March 2001), an Amforce Security Ltd. overdraft (\$46,697.00) and the supposed loans from Victor Habib and Joseph Habib (\$200,000.00) were settled. These total approximately \$1,062,022.00, and \$800,000.00 was paid over to his attorneys to be held in escrow. He says in cross-examination that the other moneys were used to pay creditors of Emergency 24, having said in his affidavit of 1st May, 2001 that he spent US \$150,000.00 on equipment for the company.

The invoices for this equipment which he exhibits to that affidavit are dated 9th January, 2001 and 15th March 2001 respectively and total slightly less than US \$145,000.00. Mr. Habib makes no mention of the January purchase in his affidavit of 7th February, nor does he in that affidavit give any indication of further purchases. Knowing full well that there are proceedings pending relating to his wife's claims (and his in relation to the matrimonial home), he proceeds to expend another \$900,000.00 to acquire equipment for the company. Additionally, his affidavit of 7th February talks of needing 40% of the net proceeds of sale to plough back into the business, but instead of spending approximately \$546,000.00 (representing 40% of the net proceeds after paying the items listed in his affidavit) he spends \$900,000.00.

I do not doubt the need to upgrade the company's equipment, but to spend these monies in this fashion in these circumstances does not impress me as being in good taste or good faith. It serves only to further damage his credibility.

The evidence shows clearly that Emergency 24 is a family company, and that the Respondent regards it as being his in particular, given his frequent references to "my company", and his to with as he pleases. It is his alter ego. Given the evidence before me, I have come to the perhaps regrettable conclusion that he has not been as forthcoming as he should or could have been when giving his evidence as to his financial affairs or those of Emergency 24. The consequence of this is that I am properly to draw certain references, at the least, as to his earning capacity and that of the company. In the same manner, indeed, as he was not forthcoming in supplying particulars which requested, nor even in answer to the Summons. Copies of bank statements were only made available, for example, on issue of a subpoena to his bankers. I am yet to receive full copies of the documentation relating to the two mortgages despite my requests for same. I will return to the Respondent's forthrightness presently.

How Mr. Habib, and Mrs. Habib for that matter, cared to arrange their business and personal affairs and allocate certain expenses to Emergency 24, does not fall for this Court to determine in hearing these applications. What the evidence does however, is demonstrate very clearly that Emergency 24 is a classic example of a family business and a family asset. It is well known that in the ordinary course of events arrangements such as making the matrimonial home available to secure the company's borrowings, or vesting the matrimonial home in the company, are frequently arrived at.

It is also well known that a matrimonial home is very often used as collateral to enable the family business to continue operating and, indeed, to be used in furtherance of that business. As to ascertaining the net proceeds of sale it is in my view appropriate to allow for repayment of these two mortgages.

In all the circumstances, I have come to the conclusion that the property at 78-79 Fairmount Drive, quite apart from falling within the definition of a matrimonial home as it appears at section 51 of the Matrimonial Proceedings and Property Act Chap. 45:51, (which in my view it does), was always intended to be and was in fact the matrimonial home of this family, and that it was vested in Emergency 24 solely for the purposes of convenience and in particular relation to taxation matters. The payment of a monthly rent by the Respondent out of his monthly salary of \$4,000.00 was nothing more than another arrangement for taxation purposes.

It is my further conclusion that the Respondent's summons of 24th August 2000 seeking, *inter alia*, a division of the proceeds of sale of the matrimonial home requires determination, even if only for the purpose of assessing the proprietary interest of each party therein as a precursor to quantifying a lump sum payment to be made to the Petitioner (see e.g. *M v B (Ancillary Proceedings: Lump Sum)* [1998] 1 FLR 53). Given the length of the marriage and the Petitioner's contribution to the home in particular, I would have assessed the Petitioner's beneficial interest in the matrimonial home, and the net proceeds of sale, at 45%. In my view, the net proceeds of sale available for distribution would, allowing for settlement of the amounts secured by the mortgages and the real estate agent's fee totalling approximately \$953,466.00, be some \$1,946,534.00 and 45% of that amount would therefore be \$875,940.00.

Emergency 24

I turn now to a more detailed examination of Emergency 24.

It is clear from the evidence that this entity provided all of the financial resources for the family, from the time of the acquisition of its shareholding in 1986. I can come to no other conclusion other than Emergency 24 provided the family with all of its needs and luxuries. Indeed, this is the evidence of both the Petitioner and the Respondent. There is no evidence of any other source of income for either Mr. or Mrs. Habib since 1986. All of the business and their personal expenses, as well as those relating to the matrimonial home, were paid by Emergency 24 and, with few exceptions, were claimed by the company as expenditure for tax purposes. Mr. Habib said those expenses were school fees, medical expenses and miscellaneous, minor personal, expenses, such as birthday gifts when the children were going to parties. The matrimonial home was vested in Emergency 24 for taxation and convenience purposes. The speedboat, which Mr. Habib had bought some years prior to 1986 was also so vested for these purposes. Mr. Habib enjoys the use of this boat for his personal use, and that of the family. He says that is used by the company for its business operations but details of same are not at all extensive. The family's food, clothing, vacations, were all paid for by the company and treated by it as expenses for taxation purposes. I have no doubt that all this was done in an effort and as part of an effort to arrange the affairs of the Petitioner and the Respondent in particular so as to minimise liability to taxation. While there is nothing necessarily inherently wrong or illegal about adopting such a strategy, it must at the same time be appreciated that so closely interweaving the personal affairs of the family with those of the business operations of a company such as Emergency 24 can result in unforeseen and often unhappy consequences.

In brief, the history of Emergency 24 from the time of the acquisition from its shareholding is that it has been a success. The Respondent's evidence is that this is still so. Indeed, so successful was it that some US \$105,000.00 had been deposited into an account at Banque Audi in the joint names of the Petitioner and the Respondent between the years 1986 and 1989. Even if I accept the Respondent's evidence that the "coup" of 1990 resulted in the loss of clientele, Emergency 24 was in a sufficiently sound position to acquire 49% of the shareholding in Amforce Security Ltd. in 1998 or thereabouts. The expansion of its customer base from about 500 after the "coup" to over 800 now, and the increase in its gross income bear testimony to this improvement and does not support the Respondent's evidence of an uphill battle during this period.

There is no doubt that the expenses of the company will also have increased over this period of time but the point to be made, to be stressed, is that in reality the earning capacity of the company is in fact Mr. Habib's earning capacity, the family's earning capacity, and that it is a very substantial earning capacity. An examination of its audited financial statements shows that its gross income increased from \$1,872,364.00 in 1994 to \$2,269,664.00 in 1999, and the unaudited financial statements for the year ended 31st December 2000 reflect a further increase to

\$2,643,519.00. According to those financial statements, the company's net assets at 31st December, 2000 are said to be \$1,510,975.48 but that figure is, of course, very substantially improved by the consequences flowing from the sale of the matrimonial home. It obviously has worth, even though I am not inclined to place total reliance on its net asset worth, given that the company is a service company.

There are two further matters which the Respondent failed to mention in any of his affidavits but which in my view he is required to disclose, since the duty to disclose is to be full and clear and continues up to and during the course of a trial. It is that there are two immediate and beneficial consequences of the matrimonial home being sold. The first is a very substantial enhancement to Emergency 24's balance sheet as a result of the removal of certain liabilities exceeding the value of the matrimonial home by some \$1,800,000.00. The matrimonial home appears there as an asset of \$1,009,119.00 and the sale price was \$2,900,000.00.

Second, and perhaps more important, is that there is an immediate reduction in the company's outgoings as a result of the first mortgage having been paid off and there no longer being any expenses relating to the matrimonial home. I am not told the monthly instalment on the former, but a loan of \$800,000.00 repayable over 15 years with interest at 12% will normally result in a monthly instalment of \$9,601.34 if the loan is "amortised" with interest payable on the reducing balance. I am prepared to assume this figure, particularly since it appears as a regular payment out of the company's bank account, for the purpose of determining the monthly payment which will no longer have to be met. As to the expenses of the matrimonial home, rates and taxes, insurance, repairs and telephone are expenses shown in the financial statements which no longer have to be met. A reading of the unaudited financial statements for the financial year ended 31st December 2000 places these at \$5,881.00; \$13,055.00; \$73,332.00 and \$18,219.00 respectively, or a total of approximately \$9,300.00 per month.

The consequence of the sale of the matrimonial home is therefore a minimum savings in terms of expenses amounting to some \$18,900.00 per month. This does not include the additional savings which would have been effected had there been settlement of the loan secured by second mortgage and of the overdraft which Mr. Habib referred to in his affidavit of 7th February. There is also to be a somewhat smaller saving effected by the motor car PBA 8259 now used by Mrs. Habib becoming "surplus" to the company's requirements. She has had the use of this car and with the "parting of the ways" I think it appropriate to infer that it will no longer be required by the company. It is important that the reduction in responses be kept in mind when having regard to the continuing viability of Emergency 24 and its earning capacity.

Also to be taken into account is Mr. Habib's evidence that the unaudited loss of some \$221,000.00 suffered by Emergency 24 in its last financial year is due in great part to him having spend a great deal of time with his lawyers in connection with these matrimonial proceedings and not being able to devote sufficient time to the affairs of Emergency 24. His evidence in cross-examination that he has attended court on at least 50 occasions was intended to support this, but this last assertion is contradicted by the dates of hearing noted on the flysheet of the proceedings before me and does nothing to enhance the Respondent's credibility. I regret to say that when he volunteered this evidence he could only have been attempting, once again, to emphasise the hardships he and "his company" may have suffered without also volunteering the good times enjoyed. He is quick to volunteer details of the bad times, but yet is unable to say how the proceeds of sale of the matrimonial home were disbursed. Indeed, he suffers failure of recollection as to the good times and in my view exaggerates the bad times. With the resolution of the issues in these proceedings, Mr. Habib will, however, be able to devote his fullest attention the business operations of Emergency 24. It is perhaps unusual for him not to have made mention of the company's overdraft having increased to in excess of \$200,000.00 by mid-May 2001. It would perhaps be reasonable to infer that he did not regard this of any significance.

There are other aspects of Emergency 24's expenses which require scrutiny when regard is had to Mr. Habib's credit card statements. Suffice it to say, Mr. Habib's evidence in cross-examination (which was not as extensive as it might have been) does not necessarily accord with what appears in the company's financial statements nor in his credit card statements. An examination of the latter indicates an expenditure well in excess of \$31,867.00 which is said to be the company's expenditure in meals for its 17 staff during the year 2000. Further, as to his credit card statement for the period ending 20th April 2000, he says that the payment to the Trinidad and Tobago Yacht Club is a personal expense, yet in re-examination he says that he is trying to have the speedboat (which he says is the company's) moved there because of security considerations. Why then would this be a personal expense?

I have considered Mrs. Habib's position with respect to Emergency 24 and the submission that she is entitled to a declaration as to beneficial ownership of a shareholding in that company. It has not been demonstrated to me that she was to hold beneficially any particular proportion of the issued shares in this company. She was not cross-examined as to this issue. I therefore have little or nothing better to go on other than the Petitioner's affidavit evidence as to there being an intention that Emergency 24 was always intended to be a "family company" and that she and the Respondent had bought the company in June 1986. The purchase, she says, was from their joint financial resources and that she worked at the company in the manner I have already set out.

The Respondent's affidavit evidence is that his family helped him acquire Emergency 24; that the Petitioner was never an active participant in the business; and that she was only a director for three years.

The evidence, however, is that she was a director for nine years, from 1st September 1990 - October 1999. While it must be accepted that she was not a director from 1986 when the shareholding was acquired, it must also be kept in mind that it was only after coming into force of the Foreign Investment Act 1990 on 19th August 1990 that a Canadian citizen could be a director of a locally incorporated limited liability company without first obtaining a licence from the government to do so. Nor could a Canadian citizen own real property without such a licence. This lends weight to the Petitioner's assertion in her affidavit of 19th February 2001 as to having to obtain such a licence when the matrimonial home was being purchased, but that doing so was cumbersome and time consuming. The Respondent does not deny the existence of the intention that Emergency 24 was to be a family company, or the Petitioner's assertion as to the need to obtain such a licence. Further, he accepts that the Petitioner is a shareholder, but says that her shareholding is only one share because she was never an active participant in the company's affairs and a director for only three years. It is perhaps not without significance that notice of the Petitioner's appointment as a director is reflected in a notice of particulars of change of directors of the company signed by the Respondent and filed in Companies Registry on 1st October 1990. Again, the Respondent's credibility is not enhanced.

Further, there is no doubt that Mrs. Habib made some form of contribution directly to the company by working for it, even if it was only on the basis which Mr. Habib set out in his evidence. But I regret that I find his evidence in that regard to have been tainted with his failure to disclose and certain other inconsistencies or contradictions in his evidence.

Finally, Mr. Habib's evidence is that funds taken out of Trinidad and Tobago and deposited into the joint account Banque Audi were subsequently brought back to Trinidad, not only for the purpose of renovating the Matrimonial Home, but also for the purpose of being invested in the business. The account at Banque Audi was a joint account held and operated by the Respondent and the Petitioner. The evidence of Mr. Habib is that the moneys deposited there were derived out of the profits of the company. I appreciate that he may have regarded Emergency 24 as his personal fiefdom, but that does not detract in any way from the fact that Emergency 24 was the source of everything which the family enjoyed, both in the short and the long term. Mrs. Habib undeniably made a contribution to the company and would in normal circumstances be very probably entitled to some form of declaration as to beneficial ownership. I accept that this was the intention of the parties when the shares were bought in 1986.

Even if I were to arrive at a determination of what her shareholding should be, however, I am of the view that it would be inappropriate in the present circumstances to make any order that such shareholding be vested in her beneficially. The relationship between Mr. and Mrs. Habib now is such that there is certainly little or no chance of any working relationship between them as shareholders.

Additionally, there is the matter of the shareholding which Victor Habib is supposed to receive. This supposedly flows from some agreement between Mr. Habib and his brother in March of 1993, the terms of which are set out in a letter of 18th March of that year from Mr. Habib to Victor Habib. According to this letter, Victor Habib was to join the company as Mr. Habib's "right hand" and become a 40% shareholder within six years i.e. by 1999. There is no evidence of Victor Habib having accepted this offer, nor that it was in return for services he had rendered to the company, as the Respondent says in his affidavit of 7th February, 2001. Nor is there any evidence of the agreement having been implemented, at least in so far as shares being issued to Victor Habib is concerned. It is perhaps unusual that if he was to play such a vital role in the company's affairs Victor Habib was appointed a director only when the Petitioner was removed from that position in 1999. It does not fall to me to determine the validity or effectiveness of that agreement, should there be one, but it would seem to me that it would be all the more impractical for all concerned to have Mrs. Habib as a shareholder of Emergency 24.

Having regard to all the circumstances, however, I would assess her beneficial ownership as being 25% of the issued share capital. Perhaps regrettably, I have not had the benefit of any expert evidence, nor extensive and intensive cross-examination on the company's financial statements and its affairs. This, and the lack of disclosure, has hampered me in ascertaining, or attempting to ascertain, the true financial position of both the company and, particularly, Mr. Habib. Accurate valuations of "private limited liability" companies are difficult to accomplish at the best of times, and the difficulty is increased exponentially in the case of a company such as Emergency 24. In all the circumstances I would have assessed a 25% shareholding in the company at, conservatively, \$600,000.00 but at the same time I accept that to be arbitrary figure.

The standard of living, contributions of the parties; needs and requirements, assets, future prospects

During the years of the marriage, the family enjoyed a high standard of living. The children attended good schools and the family enjoyed such facilities such as cable television, internet access, household help, gardening services and maintenance for the swimming pool. These

expenses on the house totalled some \$5,000.00 per month. They enjoyed vacations in Tobago, Barbados, Grenada, Tobago, Rio de Janiero and Miami. There were also numerous vacations in Canada when there would be visits with members of the Petitioner's family. As recently as July 2000, the Respondent took the three children with him on vacation to Miami, DisneyWorld and Nassau. As an example of the type of vacation enjoyed, in Nassau they stayed at an "all inclusive" facility for one week at a cost exceeding U.S. \$2,000.00. The Petitioner and the Respondent each had the use of a motor car and of a driver, if needed. The family had the use of a speedboat and a "jet ski". They spent time down the islands. The Respondent in particular enjoys this, and fishing, which he does regularly with his sons. The family had available to it prior to the breakdown of the marriage an amount of perhaps \$20,000.00 per month for it to expend as it saw fit. After the breakdown, the Respondent arranged for a reduced amount of \$5,000.00 to be paid to the Petitioner because of what he regarded as her overspending, and this was subsequently reduced to \$4,000.00 per month. This was in addition to the \$5,000.00 per month for the maintenance of the house to which I referred earlier.

It is a matter of contention as to what exactly the Petitioner may have done during the time she worked at Emergency 24. She claims to have been full-time while the Respondent asserts that she worked no more than perhaps two or three days per month helping to collect monies owed to the company. Income tax returns of the Petitioner for the years 1988, 1991, 1994 and 1996 were exhibited to the Respondent's affidavit of 12th March 2001 wherein he deposes that the Petitioner earned a salary of \$2,000.00 per month from 1978 (*sic*) 1998 working for Emergency 24. It is either that she did so work, which is contrary to the evidence of both parties, or that the Petitioner was paid a salary for the purposes of taxation efficiency. She says in cross-examination that she never in fact received this money herself; that it was paid direct to the bank account she held jointly with the Respondent. These returns show that the liability to income tax was minimal. In my view her "employment" and the payment of this "salary" was in reality designed principally to put money in the hands of the parties with minimal, indeed notional, liability to taxation. I do not doubt, however, that the Petitioner did work on the company.

What is not in contention, however, is that the Respondent regularly worked very long hours in developing and maintaining the company's business. He says that he is, was, and required to be available on a 24 hour basis and agrees that during the periods of time when he was not at home the Petitioner looked after all of the household matters. Whatever may be the correct position as to the length of time the Petitioner actually spent working at Emergency 24, there is no evidence to show that she did anything else other than spend her time attending to and looking after the needs of the family. She obviously made a very substantial contribution to the welfare of the family, and by so doing enabled the Respondent to build up a very successful business. There is no doubt that

Emergency 24, whatever financial vicissitudes it may have encountered from time to time, as do all businesses, is successful. Indeed, the Respondent used that word to describe it, and it is without doubt that this company provided the family with all of their necessities and luxuries.

The Respondent now pays voluntarily \$4,000.00 per month for the benefit of the three children and the maintenance of the Petitioner. There is also an order entered by consent on 10th April 2001 that he contribute the sum of \$6,000.00 per month towards the accommodation of the Petitioner. The last of these payments was to be made on 12th June, 2001. It has been submitted that these payments should be deducted from any lump sum awarded to the Petitioner. I do not agree the Respondent also arranges for payment of the school fees and all the other educational requirements of the children, and gives them an allowance of \$100.00 per week.

As to the future prospects of the parties, I have no evidence before me as to the Petitioner's academic qualifications and her functions at the various jobs she held other than at Emergency 24. Her present part-time job at \$18.00 per hour at the Maple Leaf International School might be described, as I remarked during the hearing, as an "Administrative Assistant" and this is in fact the description used of her by the Respondent in one of the documents filed in Companies Registry. But if this is a correct description, then the functions she performs are not unduly onerous nor complex, being limited to receiving and making telephone calls and generally helping in administrative matters. She deposes on affidavit to have experience of working in the Accounts Department of the Emergency 24 where she managed the accounts receivable, prepared billings and received payments due on invoices when due, or overdue. She is not, therefore, without some reasonable prospect of gaining employment on a permanent basis in the future but it does not appear to me that her earning capacity is likely to be anything substantial.

The Respondent on the other hand, is the managing director of Emergency 24. He deposes that his salary is a \$4,000.00 per month and that may well be so for the purposes of taxation if nothing else. He does not exhibit any of his income tax returns, although he does so in respect of the Petitioner. This, he says, is his sole source of income.

I do not accept this as being correct. First, he claims that the rent for matrimonial home of \$3,500.00 was paid from his salary. If that is so, then it is inconceivable that he paid school fees, medical and miscellaneous expenses from his salary as he claims to have done. Second, there are all of the other expenses which the family incurred on food, clothing, vacations and the like. The Respondent says that all of these were paid by Emergency 24 and debited to his "Director's Loan Account", that account having been credited with the loans he made to the company. There are two aspects to this arrangement. First, whether paid to the Respondent in the form of salary or

otherwise, these amounts are to be properly regarded, ultimately, as his income. He does not say, for example, that they were loans to him by the company which offset the loans he made to the company. Second, the source of all funding for all of these expenses is the income of Emergency 24. The plain, stark, reality is that the income and earning capacity of Emergency 24 is the income and earning capacity of the Respondent and, indeed, of the Petitioner and their children. The fluctuating balances in this "Director's Loan Account" came about as a result of payments in and out, by and to Emergency 24, and by and to the Respondent. At the end of the day it is an account of convenience to both him and Emergency 24. If the Respondent made funds available to Emergency 24 from time to time as he says he did, those funds had only one source - the company itself.

For the purposes of examining his future prospects, it is sufficient to say that he has available to him in one form or another the opportunity to continue enjoying a high standard of living and to provide the same for his three children, based on his interest in Emergency 24 and that company's financial position.

Further, there is nothing to indicate that that the financial position of Emergency 24 is likely to change for the worse in the future. Indeed, given the savings effected by the sale of the matrimonial home and Mr. Habib being able to bring his full, and obviously capable (having regard to the company's past good fortunes), talents and efforts to bear on restoring and expanding its business, Emergency 24's future prospects are good and growing.

As to the assets of the parties, the evidence before me is that the Petitioner is now a joint signatory to her mother's bank account in Canada and that the balance standing to the credit of this account is some CAN \$100,000.00. This is an account which was originally solely her mother's and funded initially solely by her mother with an amount of some CAN \$20,000.00. The Respondent knew of this and gave his mother certain advice about it. So, too, did his father, Joseph Habib, who wrote to the Petitioner on 22nd August 1999 referring to the transfer to her by her mother of "the large amount of money some years ago" and expressing concern at possible breach of taxation laws. The Respondent says that this letter was written based on information he had given to his father. In cross-examination the Respondent gave evidence for the first time that the Petitioner had funded this, or some other bank account, by purchasing groceries for friends of hers who would then repay her in cash which she would then deposit to this or these accounts. I find it improbable that the Petitioner could have accumulated an amount as large as this in the manner the Respondent suggests. It is, after all, some \$420,000.00 at the current rate of exchange. This is not a matter to which the Respondent had deposed in any of his affidavits and was not put to the Petitioner when she was being cross-examined. The Petitioner's evidence, however, is that while

over the years monies were deposited to the credit of this account by the Petitioner for use of the family while on holiday in Canada, any moneys so deposited were withdrawn and used for the purposes of those holiday. She maintained this position in cross-examination and was not shaken on it.

I have come to the conclusion, on the evidence before me, that the funds now standing to the credit of this account belong to the Petitioner's mother and that Petitioner has no assets of her own to speak of.

I have also come to the conclusion that if there was any failure to disclose on the part of the Petitioner, in this regard or otherwise, then it was not sufficiently material so as to either allow or require me to draw any inferences adverse to her.

The Respondent on the other hand, failed to give full, frank and clear disclosure of his assets and income. The importance of that duty cannot be over-emphasied (See *Rayden & Jackson on Divorce and Family Matters* 16th Ed. para. 31.20) and it is not for a party or his or her attorney to decide whether there should be disclosure. The information given must be correct, complete and up to date. It must be clear. It is not for the Court to sift through documents with a view to establishing the existence of assets or their value, or of income. Failure to disclose as required leads both to delay and unnecessary measures in costs, as well as to the possibility of adverse inferences being drawn as against the party failing to disclose. Manoeuvring with accounts prepared for other purposes is not complying with the rule requiring disclosure. Far too much time is wasted in merely providing uninformative accounts of private companies and great efforts must be made to give a true picture of a party's financial position (see e.g. *Robinson v. Robinson* [1982] 2 AER 699). The Respondent did not do so.

When particulars of his assets were requested he provided some details of two insurance policies on his life, one of which is for \$400,000.00 and the other for \$250,000.00. In cross-examination it came to light that there were at least two or more such policies, the first with a sum assured of \$350,000.00 (and a cash surrender value of \$34,400.00 approximately) and the second of \$700,000.00, and that he also has a "Tax Incentive Savings Plan" with Republic Bank Ltd. with a balance now of some \$64,000.00 and to which monthly payments of \$1,500.00 continue to be made. Save for the one instance above, I am told nothing as to whether any other policy has a cash surrender value. The reasons he gave for not disclosing these assets were that he thought that the insurance policies had automatically fallen away, having been given to secure the mortgage over the matrimonial home, and the matrimonial home having been sold. When asked how the premiums were paid, he said that this was done by standing order, as are those for the two policies

he had disclosed, but that the standing order was for a lump sum and he did not know details of the individual amounts. In re-examination he said that when asked for particulars he went to his vault, took out the insurance policies which were there and sent them to his attorney, but that the \$350,000.00 policy was not among them. Hence he did not disclose it. This is much the same attitude expressed in relation to the disclosure of other assets which he clearly thought could properly be disclosed merely by sending certain copies of Emergency 24's financial statements to his attorneys. He said, further, that he did not think the Tax Incentive Savings Plan was an asset. I fail to see how he could arrive at that conclusion. He also failed to disclose that he is a creditor of Emergency 24, saying in cross-examination that this is revealed in its audited financial statements which he had given to his attorneys.

The Respondent has been in business for over 20 years. He cannot in my view lay claim to being an innocent in the world of business or naïve, certainly not if you can build up, as he did, the business of Emergency 24. He would have me to understand that when he uses his credit card to purchase items both for personal use and the use of Emergency 24, he then leaves it up to his accountants at the end of the financial year to decide which expenses will fall into which of those two categories. Yet further on in his cross-examination he said that he took the credit card statements home so that he could himself effect this categorisation.

I regret that the Respondent's failure to disclose, as well as his failure to provide particulars when requested, fully, frankly, clearly and up to date, has led me to the conclusion that his evidence with respect to his personal financial matters, as well as those of Emergency 24, cannot be relied on as being accurate. His failure to disclose allows me to make robust inferences as to his shortcomings. I am entitled to look behind the veil he drew to hide the true position. (See e.g. *Desai v. Desai* [1983] 13 Family Law 46; HCA M570 of 1986 *Sammy v. Sammy*). To suggest that a husband who has provided his family with a good, if not high, standard of living, and has arranged his financial affairs so that only a small fraction of his earning capacity is in the form of income for taxation purposes, should be able to set up that income as a barrier or defence against his wife's claims, is erroneous (see e.g. *Schlesinger v. Schlesinger* [1960] P 191). Although the evidence is not such that I am able to infer that the Respondent possesses other assets (see e.g. *E v. E (Financial Provision)* [1990] 2 FLR 233), it is sufficient to enable me to say that his shareholding in Emergency 24, and therefore indirectly Amforce Security Ltd. which according to the audited financial statements of Emergency 24 is 49% owned by the latter, are assets or investments of some substantial worth, as well as being a very substantial source of income available to him.

The Law

I have had due regard to the matters I am required to consider as set out in Section 27 of the Matrimonial Proceedings and Property Act. I have also considered the decision of the judgment of the House of Lords in *White v. White* [2000] 3 WLR 1571 and the principles which are set out there. It is to be appreciated that both the statutory regime, and the factual matrix on which *White v. White* was decided, are in certain respects different to those which are before me. For example, unlike the position in *White v. White* the children here are not grown up and independent, nor can I say that the available assets substantially exceed the amounts required by Mr. and Mrs. Habib for their financial needs in terms of a home and income for each of them. But I accept, for the reasons set out in *White v. White* that the overriding principle in considering the outcome of these applications is that I should be as fair as is possible in all the circumstances. I also agree with Lord Nicholls where he says at page 1582 B that, having taken into account or all of the factors required in order to determine a party's financial needs, at the end of the day the financial needs of a party are to be regarded as only one of several factors to which a Court must have regard. It is clear to me that, given what is set out in the affidavits of the Petitioner and the Respondent respectively, there is a great need to effect, if it is at all possible, a clean break in the present case. Indeed, attorneys for the parties were themselves of this view.

As to Mrs. Habib's contribution to the welfare of the family over the 22 years of the marriage, there has been over the years an increasing tendency to give give greater weight to a party's non-financial contribution to the welfare of the family. Her contribution in this respect is acknowledged by the Respondent as her being the primary caregiver in his absence and the evidence is that he really had no fault to find with the manner in which she did this up to the breakdown of the marriage. The evidence is that he regularly spent long hours at work, being "on call" 24 hours a day, as he expressed it.

As Lord Nicholls said in *White v. White* in page 1581 G "*if a husband and wife by their joint efforts over the many years, his directly in his business and hers indirectly at home, have built up a valuable business from scratch, why should the claimant wife be confined to the court's assessment of her reasonable requirements, and the husband left with a much larger share*". I agree with that as a statement of principle.

Mrs. Habib needs to have accommodation for herself, Natalie and Matthew, and a means of transport for all of them. On the evidence before me the cost of reasonable accommodation is probably in the order of \$800,000.00 the legal expenses of a purchase at this price will be in the order of a further \$43,000.00. She now has the use of the motor car PBA 8259. She sets out the children's monthly needs at a total of \$6,100.00 excluding school fees, and hers at \$4,000.00. She

has a restricted earning capacity, by comparison to Mr. Habib, and will need some provision to tide her over until such time as she can more permanently re-house herself and the two younger children, for which I will allow a four months, and also to train or re-train herself and re-enter the job market. For this I will allow a further period of eight months. Indeed it may well be that to continue enjoying a reasonable standard of living she will need to have supplemented any income she may earn. She has, however, the capacity to earn and she must use and develop that capacity. I have, however, and not without regret, come to the conclusion that however desirable it may be to effect a totally clean break, it is not entirely appropriate in this case.

Mr. Habib also requires accommodation for himself, and some allowance has to be made for, particularly, the extended periods of access when Natalie and Matthew will be with him.

In determining the Petitioner's application for payment of a lump sum I am also to consider the Respondent's needs and requirements (see e.g. *M v. B (Ancillary Proceedings: Lump Sum)* [1998] 1 FLR 93). In assessing the financial provisions to be made, regard must be had to the needs of the wife and the children of a family, and the husband's ability to meet these needs must then be looked at in the light of the realities of all the circumstances (see e.g. *Delaney v. Delaney* [1990] FLR 457 at 461 E). It is the interests of the children, particularly in providing a suitable home for them, which are to be considered in priority to everything else. (see e.g. *Sharp v. Sharp* [1984] FLR 752). The two younger children will be living with their mother, the Petitioner, and there is therefore the necessity of ensuring as best I can that there is a suitable roof over their heads and that they are properly provided for. In this case, those needs are clearly greater than those of the Respondent, although it must be kept in mind that the eldest of the children may live with him and that the two younger children will be spending fairly lengthy periods of time with him on the occasion of access during the long school holidays.

It is clear, as I have said, that Emergency 24 has substantial resources available and that all of these resources are equally available to the Respondent. The company has met very substantial expenses on behalf of the family to the present time and there is nothing to indicate that its ability to do so will be in any way reduced in the future. Indeed, as I have also already said, the settlement of liabilities and the acquisition of new equipment presents it with a very healthy future, all other things being equal. Further, and as I have already also pointed out, the company and the Respondent – and the latter in particular – have already received, after settling the two mortgages and paying the real estate agent's commission, and spent, close to \$1,000,000.00 in such manner as they saw fit without regard, also it would seem, to the possible outcome of these applications.

Indeed, a very substantial sum has been made available to Mr. Habib and the company from the sale of the matrimonial home which has been used to settle liabilities and purchase equipment. These payments total (excluding the real estate agent's commission) in excess of \$2,000,000.00, leaving the \$800,000.00 paid to Mr. Habib's attorneys. The company has purchased equipment to take it forward into the future and this is a cost not likely to recur in the near future given Mr. Habib's evidence that the equipment that was replaced had been bought 15 years ago. It, and therefore Mr. Habib, appears, to have a very healthy, positive, financial future.

In short, Emergency 24, and therefore Mr. Habib, already have the benefit of a strengthened balance sheet, reduced expenditure, new equipment and consequently an increased earning capacity. To which must, of course, be added that Mr. Habib is now able to devote his fullest attention to the business. I am satisfied that the earning capacity of the company, and therefore Mr. Habib, is such that it will be able to provide him with reasonable accommodation and a standard of living which is reasonable in the circumstances.

There is one other aspect of the matter with which I must deal and that is the issue of the conduct of the parties. I have already commented upon Mr. Habib's approach to disclosure and the disbursement of the funds realised from the sale of the matrimonial home. There remains the issue of the allegations of damage or destruction of certain of the matrimonial fixtures and fittings which were in the matrimonial home. It is clear that the Petitioner broke into the safe, or vault, which was in the house and removed certain items from it. What is not as clear is whether she damaged the items of mahogany furniture and electronic equipment as Mr. Habib alleged. I have come to the conclusion that on a balance of probabilities at least some of this damage was caused by Mrs. Habib. I have also come to the conclusion, however, that when I have regard to the evidence of the relationship between the parties, and the events which have taken place between them particularly over the last two years, exasperation and frustration played at least some part in Mrs. Habib's actions. That, however, is not to condone what she did. It does not seem to me, however, that her conduct was so obvious and gross that it would be repugnant to justice to require the Respondent to give her financial support nor that her conduct, while it is a matter for me to consider, should substantially reduce any award which I might make in her favour (see e.g. *Wachtel v. Wachtel* [1973] 1 AER 829; *Robinson v. Robinson* [1983] 1 AER 391).

Further, although some division of the matrimonial fixtures had been suggested by the Respondent, there is no application before me to have this issue, if it is an issue, dealt with. Consequently, I do not regard Mrs. Habib now being in possession of certain items as affecting, at least materially, the outcome of the applications I am to determine.

Finally, it was submitted on behalf of the Respondent that the disposal of the matrimonial home may have certain consequences with respect to capital gains tax. Mrs. Morean did not, however, expand upon that submission and I am unable to see how it arises on the law as it stands. Also, I would think it speculative of me to decide what view the Board of Inland Revenue might take if presented with the sale of a house 12 years after it was acquired in all of the circumstances I have already set out and insofar as the sale might be regarded as trading income. I would also have thought that this is a matter which the Respondent and his accountant would have considered fully when the proceeds of sale of the matrimonial home were being disbursed in the fashion they were, given the Respondent's professed reliance on his accountant's advice.

Regrettably, neither attorney addressed me on the aspect of income tax, as they are, it is well settled, duty bound to do. I therefore make only two observations: first, Mrs. Habib's disposable income will very probably be less than the amounts I propose to award by way of periodical payments because of her potential liability to income tax; second, any such amounts that Mr. Habib may be required to pay will be taken into account when his chargeable income is being computed. I have taken this, particularly the former, into consideration when making my orders.

Disposition

Payment out to the Respondent

I turn first to the Respondent's summons of 30th April, 2001 seeking payment out of an amount of \$200,000.00.

I am not satisfied that I should make the order sought. While I accept that the business of Emergency 24 must continue, and that the continuation of its business requires from time to time the addition of new equipment or the upgrading of existing equipment given the nature of its operation, I find it surprising that the Respondent should take it upon himself to expend the further sums he claims to have spent on new equipment knowing full well of the various applications before the Court for determination. The basis underlying the Respondent's application is that he needs this amount of \$200,000.00 to provide alternative accommodation for himself and Raymond Jr., as well as to pay school fees for Natalie and Matthew. Payment of school fees, however, has not presented any difficulty in the past and the current academic year is about to come to an end. He has been able to arrange for the payment of a further \$6,000.00 per month to the Petitioner for her accommodation and those payments will come to an end within the very near future. He has already had, directly or indirectly, the benefit of some \$2,000,000.00 paid to the company from the sale of the matrimonial home. He chose to utilise those funds in the manner he did.

While I appreciate the accommodation now enjoyed by Mr. Habib and Raymond Jr. cannot continue indefinitely, and now results in a measure of some inconvenience to all concerned, it is a matter, as he himself has said on affidavit, of all concerned having to do the best they can in all the circumstances. He and Raymond Jr. now have a roof over their head and have had one for some time. The Petitioner on the other hand, had no roof over her head on completion of the sale of the matrimonial home and is now in rented accommodation with the rent paid only to mid-July.

I am satisfied on the evidence before me that it is not impossible, nor will it cripple the finances of Emergency 24, to meet the continuing expenses of the Respondent and the school fees of the children in the short term. Indeed Mr. Habib has, as I understand his attorney to say, said very clearly that he will meet all of the future expenses of all of the children. The Respondent's summons of 27th April 2001 is therefore dismissed.

Payments of lump sum and periodical payments

As a consequence of the consent order entered on 10th April 2001, the Petitioner has already received the amount of \$100,000.00 from the proceeds of sale of the matrimonial home on account of whatever lump sum she may be awarded.

Having considered the circumstances and the law, I have come to the conclusion that the Respondent is to pay to the Petitioner a lump sum of \$950,000.00. Having already received an amount of \$100,000.00, a further amount of \$700,000.00 is to be paid to her out of the proceeds of sale now held by the Respondent's attorney within 14 days from date hereof, together with all interest accrued thereon to the date of payment to her. The remaining amount of \$150,000.00 is to be paid by the Respondent to the Petitioner by three equal payments of \$50,000.00 each on 30th September, 2001, 31st December 2001 and 31st March 2002. Any interest paid to the Petitioner as I have ordered is to be credited against the payment of \$50,000.00 to be made on 30th September 2001.

This lump sum payment is in determination of the Petitioner's Notice of 9th August 2000 and the Respondent's Summons of 24th August 2000.

On full payment of this lump sum of \$950,000.00, the Petitioner is to deliver to the Respondent a duly signed transfer of the one share in the company now registered in her name. In default of the Petitioner signing same, it is to be signed on her behalf by the Registrar of the Supreme Court.

The Respondent is to pay on presentation of the appropriate bills or receipts for all school fees, school uniforms, school books and all other educational requirements, as well as all medical, dental and optical expenses of each of the three children, until age 18 or further order.

The Respondent is to pay to the Petitioner for the welfare of each of the said children Natalie and Matthew the sum of \$2,000.00 per month, such payments to commence on 1st July, 2001 and to continue thereafter on the first working day of each successive month until age 18 or further order.

The Respondent is to pay to the Petitioner for her own use the sum of \$10,000.00 per month, such payments to commence on 1st July 2001 and to continue thereafter on the first day of each successive month until the 1st October 2001; thereafter, as from the 1st of November 2001 he is to pay the sum of \$4,000.00 per month on the first day of each successive month until 1st July 2002; and thereafter, as from 1st August 2002 he is to pay the sum of \$2,000.00 per month on the first day of each successive month until 1st July 2006.

The Respondent is to procure the transfer to the Petitioner on or before 15th July ownership in and to motor vehicle PBA 8259 free from all encumbrances and free of all or any expenses associated with or necessary for such transfer. In default of such transfer the Respondent is to pay to the Petitioner a further sum of \$60,000.00 on or before 31st July 2001.

This disposes of all of the outstanding applications filed in these proceedings save those relating to custody and access under the Petitioner's summons of 9th August, 2000 and the Respondent's summons of 28th August, 2000 which now stand adjourned to 21st June 2001. The issue of costs in relation to those applications will be dealt with on that date.

As to the costs of the other applications, I do not see any good reason to depart from the usual order that they should follow the event.

I am mindful of the fact that the Respondent has shown a tangible, financial, interest in so far as the benefit and welfare of the children are concerned. At the same time, however, his failure to make full, frank, clear and up to date disclosure has to some extent protracted the proceedings and is also a matter to be considered.

Clearly, the Petitioner has succeeded on her Notice of 9th August, 2000 for lump sum and periodical payments. The Respondent is to pay the Petitioner's costs of this Notice.

The Petitioner's Notice of 6th February, 2001 for a transfer of property was obviously superfluous, but did not occupy any of the Court's time. There will be no order as to the costs of this Notice.

The Petitioner's Summons of 30th April, 2001 seeking particulars, and her applications for leave to issue subpoenae brought forth production of certain documents and a some degree of disclosure. Although I made no order thereon the Respondent will pay the Petitioner's costs of this summons.

On the Petitioner's summons of 14th March 2001, in respect of which a consent order was entered on 16th March, 2001 it was agreed that there would be no order as to costs.

The Respondent's summons of 23rd January, 2001 was withdrawn with leave, with no order as to costs. His application by summons of 27th April, 2001 for payment out has failed. He must pay the Petitioner's costs of same.

The Respondent will pay the Petitioner's costs of the Respondent's summons of 24th August, 2000 for a sale of the matrimonial home and the division of the proceeds of sale.

20th June, 2001

C.V.H. Stollmeyer
Judge

Addendum

After delivery of my judgment, Mrs. Morean applied on behalf of the Respondent for a stay of execution of the orders for payment of monies on the ground that she wished to consider fully the judgment and advise her client as to an appeal. Given that the first of these money payments did not fall due for another 11 days; the periodical payments ordered were only \$4,000.00 more than the Respondent has been paying voluntarily; the payments to be made at the beginning of June 2001 had not in fact been paid (as I was informed from the Bar table); and that the first instalment of the lump sum payment was easily and readily available, I refused the application. I also refused Mrs. Morean's further application for a stay pending appeal.