

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA**

CLAIM NO. ANUHMT 2012/0019

IN THE MATTER of the Divorce Act 1997, No. 10 of 1997

And

IN THE MATTER of an Application for Spousal Support pursuant to s. 13

BETWEEN:

MONA FRISELL FREY

Applicant

-and-

CARLO FREY

Respondent

Appearances:

**Mrs. Laurie Freeland-Roberts for the Applicant
Mr. Ralph Francis for the Respondent**

2013: June 12
2013: July 23

JUDGMENT

- [1] **Remy J.:** Mrs. Mona Frisell Frey and Mr. Carlo Frey were married on the 3rd day of December 2005. There are no children of the marriage.

BACKGROUND

- [2] On the 1st day of April 2009, Mrs. Frey filed a claim by way of Fixed Date Claim seeking, among other things, an Order that Mr. Frey make monthly periodic payments or a lump sum payment to her for support. An "Affidavit in Support of Application for Ancillary Relief" accompanied the Fixed Date Claim.

- [3] On the 19th May 2009, Mr. Frey filed an Affidavit in Response.
- [4] On the 22nd May 2009, before Blenman J. as she then was, an Interim Order by Consent was made, in which the Respondent Mr. Frey agreed, among other things to pay to the Applicant Mrs. Frey a monthly maintenance payment of \$5000.00 (U.S.) . After several failed attempts by the parties to settle the claim (namely the Fixed Date Claim) by Mediation, the hearing of the matter was adjourned to a contested Chamber hearing on the 7th June 2011. On the 7th June 2011, the matter was adjourned to the 14th June, 2011.
- [5] When the matter came up for hearing on the 14th day of June, 2011, Mr. Ralph Francis, Learned Counsel for Mr. Frey took a preliminary point. He argued that since the parties were still married and were not divorced, and further since the Applicant Mrs. Frey had not even filed any proceedings for divorce, that the matter could not properly be entertained by the Court, as it was an application pursuant to the Divorce Act and the parties were neither divorced, nor had there been a petition for divorce filed by either party. The Court agreed and ruled that the application be dismissed.
- [6] Mrs. Frey subsequently filed a Petition for Divorce on the 14th February 2012, seeking a Divorce on the ground of breakdown of the marriage due to the fact that the parties had lived separate and apart since May 2010. On the 13th day of May, 2013, the Court granted a Decree Nisi of Divorce on the stated ground of separation and further ordered that the Divorce was to take effect 31 days thereafter.

PRESENT APPLICATION

- [7] The present application before the Court is an application for ancillary relief filed by Mrs. Frey on the 14th February 2012, seeking, among things an Order that the Respondent Mr. Frey make monthly periodic payments or a lump sum payment to her for her support.

The grounds of the application were as follows:-

1. The Applicant requires reasonable spousal support.

2. The Respondent has failed to provide adequate spousal support for the maintenance and upkeep of the Applicant, to which she claims entitlement, and has threatened her physical ejection from the matrimonial home.

- [8] The application was accompanied by an Affidavit in Support. In that Affidavit, Mrs. Frey affirmed the information contained in her Affidavit of 1st April, 2009. She further stated that she resided at the matrimonial home, situated at Isaac Hill, and owned by Mr. Frey. Mrs. Frey sought spousal support in the amount of EC \$27,000.00 if the Respondent was required to maintain the house or the sum of EC \$53,000.00 if she was required to maintain the said house.
- [9] Several Affidavits were filed by both Mr. Frey and Mrs. Frey subsequent to the application for spousal support by Mrs. Frey.
- [10] On the 13th day of April 2012, an Interim Order was made in which Mr. Frey was ordered to pay the monthly sum of \$5,000.00 (U.S.) to Mrs. Frey by way of spousal support.
- [11] On 26th April 2013, Mr. Frey filed a Further Affidavit in which he deposed, among other things, that when he was in Italy in October 2012, he received a call from Mrs. Frey complaining that the windows of the house where she resided at Isaac Hill were leaking and the furniture was getting wet and he advised her what to do. When he returned to Antigua in December 2012, he found that all of Mrs. Frey's furniture and belongings and some of his furniture, had been removed from the house and that the leakage from the windows did not necessitate the removal of the furniture.
- [12] Mrs. Frey filed an Affidavit in Reply on 8th May 2013. She deposed, among other things that the furniture was removed because of the leakage of the windows and that she did not remove any of Mr. Frey's furniture. She added that she moved out of the house at the end of November, prior to Mr. Frey's arrival at the beginning of December. At paragraph 24 of the said Affidavit, she deposed inter alia that:-

"...I have certainly become dependent on the interim monthly maintenance sum of US \$5,000.00 to live fundamentally within my norm. This reduced amount of US \$5,000.00 has made me change my lifestyle. The last three months have been unbearable for me when I have received hardly anything. I have gone into debt borrowing money from friends and family. My business closed in the spring of 2012 and I have no other source of income. I have no medical insurance."

[13] Mrs. Frey further deposed that she believed that Mr. Frey was in a position to "increase her maintenance and restore her normal lifestyle." She asked the Court to increase the interim monthly sum of U.S. \$5,000.00.

[14] When the matter came up for hearing on the 12th day of June, 2013, the parties were cross-examined. I must state at the onset that I was impressed with Mr. Frey as a witness. I found him to be a forthcoming and credible witness. Mrs. Frey did not impress me as being similarly forthcoming.

[15] At the conclusion of the cross-examination, the Court ordered that written Submissions be filed by Counsel within 14 days and reserved its decision on the application.

THE STATUTORY FRAMEWORK

[16] I will now set out the relevant statutory material relative to this application, all of which fall within the Divorce Act 1997 (the Act).

Section 13 (2) of the Act, which sets out the power of the Court to make an Order for spousal support states:-

"A court of competent jurisdiction may, on application by either or both spouses, make an order requiring one spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums as the court thinks reasonable for the support of:-

- (a) the other spouse;
- (b) any or all children of the marriage; or
- (c) the other spouse and any or all children of the marriage."

[17] In exercising its powers to make orders for spousal support, it is the statutory duty of the Court under Section 13 (5) of the Act to consider:-

"the condition, means, needs and other circumstances of each spouse and of any child of the marriage for whom support is sought, including:-

- (a) the length of time the spouses cohabited;
- (b) the functions performed by the spouse during the cohabitation; and
- (c) any order, agreement or arrangement relating to support of the spouse or child."

ANALYSIS AND FINDINGS

- [18] As stated above, by Section 13(5) of the Act, the Court is required to take into consideration the condition, means, needs and other circumstances of each spouse...including the length of time the spouse cohabited and the functions performed by the spouse during the cohabitation and any order, agreement or arrangement relating to support of the spouse.
- [19] While Section 13(5) speaks of "other circumstances" of each spouse, the sub-section does not give an exhaustive list of all these circumstances. What is apparent therefore is that each case depends upon its own special facts, and the Court will look at several factors, look at all the circumstances of the case and make a determination of what will achieve a fair result.

A. THE FINANCIAL MEANS AND NEEDS OF EACH SPOUSE.

- [20] In making an Order for spousal support, the means and needs of each spouse are some of the "circumstances" which the Court must take into account.
- [21] It is common ground that, prior to their marriage and their cohabitation, the parties in the instant case were persons of independent means. Learned Counsel for Mrs. Frey contends that "Mrs. Frey is now, at age 75, not in a position to start all over and seek work or a new business venture, and that, according to her evidence, she is "no longer a woman of means." The Court will address the issue of the means of Mrs. Frey later in the judgment.
- [22] The Court must take into account the needs of the parties. The needs must be the reasonable needs or reasonable requirements of the spouses, but what is "reasonable" depends upon the circumstances of each case.

[23] According to Halsbury's Laws of England (5th edition, Vol. 73, page 77, paragraph 610)¹:-

"In most cases, where the parties are of limited means, their needs will be a central feature of the case. In particular, the housing needs of the parties and of the children of the family will often be focal."

The learned writers continue page 78, paragraph 611:-

"In assessing financial needs the court will have regard to a person's age, health and accustomed standard of living....."

[24] With respect to the age of the parties, the Court notes that, as stated above, Mrs. Frey is presently 75 years old; Mr. Frey 77 years old. At the date of their marriage, Mrs. Frey was 67 years old; Mr. Frey was 69 years old. There are no children of the marriage. There is no evidence before the Court that either party suffers from any physical or mental disability; nor is there any evidence that either party is incapacitated or is suffering from a seriously disabling illness.

[25] Learned Counsel for Mrs. Frey, Mrs. Freeland-Roberts, submits that the age of the Applicant, Mrs. Frey "affects her ability to work and embark on a new path to independence post marriage." She contends that Mrs. Frey has become solely dependent on the Respondent for maintenance during the last six years of their relationship. She further contends that Mrs. Frey is entitled to spousal support, in light of the fact that she is a woman "of advanced age without means," who has become dependent on the Respondent during their entire relationship and more so after their separation.

[26] Learned Counsel for Mr. Frey, Mr. Ralph Francis disagrees. He submits that both Mr. Frey and Mrs. Frey are "persons of advanced years", and that the marriage was of a short duration. Learned Counsel contends that the Court should take into consideration "that this was a marriage based on a desire for companionship and not one based on a desire to acquire worldly goods and raise a family."

¹ Halsbury's Laws of England 2008
5th edition
Lexus Nexis
David Josiah-Lake

[27] The Court is to have regard to the standard of living enjoyed by the family before the breakdown of the marriage. It will usually be unavoidable that the standard of living of both parties will diminish following their separation. However, the qualitative assessment of the parties' standard of living during the marriage...may influence the court's determination of the appropriate provision that should be made after separation – (Halsbury 5th edition, Vol. 73, Page 79, parag. 614) – (Supra).

[28] With respect to the standard of living enjoyed by the parties , Learned Counsel for Mrs. Frey submits as follows:-

(a) It is undisputed evidence that the Respondent has been the main bread winner throughout the duration of the relationship of the parties, more so during the marriage. The Respondent admitted under cross-examination that he took care of all the Applicant/Petitioner's expenses inclusive of medical and personal maintenance. He paid all the bills pertaining to the matrimonial home inclusive of vehicles.

(b) According to Mrs. Frey's evidence, the parties enjoyed an above average life style which included travelling around "the world to exotic locales" and entertaining "guests in Antigua both for parties and long-term visiting house guests and their families."

[29] It is the further submission of Mrs. Freeland-Roberts that, according to the Affidavit in Reply filed by Mrs. Frey dated May 8th 2013, Mrs. Frey had been "barely surviving "on the award of \$5000.00 U.S. per month, which in itself, has not enabled her to live at the standard of living to which she is accustomed before and during her relationship with the Respondent. Learned Counsel adds that Mrs. Frey has no business, no property, and no other means of income. The separation of the parties has placed Mrs. Frey "in a disadvantageous position, while it is apparent that the Respondent's means and standard of living have not been affected by it."

[30] Learned Counsel Mr. Francis disagrees. In his Submissions, he states:-

At paragraph 3 - "The Applicant (Mrs. Frey) asserts of a life style to be envied – Travel worldwide; staying in the best accommodation and wanting for nothing....."

At paragraph 14 - "It is to be noted even by the Applicant's own admission that this occurred prior to marriage. In fact, the evidence is that the Respondent is accustomed to spend roughly six months in Antigua and six months in Italy. Since the marriage the Applicant has spent no more

than a four week stay in Italy. This the Applicant attributes to the fact that she is alone in Italy. The Respondent says that it's due to her business commitments."

At paragraph 18 - "The Applicant's claim is based on the expectation of a life style to which she has become accustomed. She asserts that her personal monthly expenses over the years has amounted to approximately EC \$26,643.00. This, the Respondent denies and maintains is grossly exaggerated."

[31] At paragraph 30 of her Affidavit in Support filed on the 14th day of February 2012, Mrs. Frey deposed as follows:-

"My recurrent, personal **monthly** expense over the years has amounted to approximately EC\$26,642.00, as follows:-

(a) Health Insurance (ie BUPA)		\$7,817.00
(b) Annual Physical (\$1,000.00 p.a.)		\$ 83.00
(c) Routine tests –		
Blood		\$ 108.00
MRI		
Ultrasound, X ray	\$ 367.00	
Mammography	\$ 42.00	
Pap	\$ 13.00	
Colonoscopy	<u>\$ 134.00</u>	
		\$ 664.00
(d) Dental Care		\$ 150.00
(e) Eye Care		\$ 209.00
(f) Medicines		\$ 134.00
(g) Vitamins		\$ 235.00
(h) Herbs/Homeopathy		\$ 75.00
(i) Personal Doctor		\$ 250.00
(j) Clothing		\$3,250.00
(k) Toiletries		\$1,398.00
(l) Trainer/massage therapy		\$ 570.00
(m) Salon care		\$1,093.00
(n) Pet Grooming/Feeding		\$ 614.00
(o) Vet/Vaccinations		\$ 83.00
(p) Boarding		\$ 500.00
(q) Air Travel		\$1,965.00
(r) Trains/Car rental/Taxis		\$ 590.00
(s) Hotel		\$2,189.00
(t) Taxes		\$ 25.00
(u) Restaurants		\$1,200.00
(v) Entertainment		\$ 488.00

(w) Gifts	\$1,340.00
(x) Reading Material	\$ 432.00
(y) Cell Phone	\$ 300.00
(z) Computer Maintenance/Software	\$ 216.00
(aa)Vehicular Insurance, check up/gas	<u>\$ 772.00</u>
	\$26,642.00"

- [32] Mr. Frey's contention is that Mrs. Frey's expenditure as stated above is "grossly exaggerated." I agree. Mrs. Frey contends that she spends \$3,250.00 per month on clothing; \$1,398.00 per month on toiletries; \$1,093.00 per month on salon care. She further contends that she spends \$1,965.00 per month on air travel ; \$2,189.00 per month on hotels and \$590.00 per month on "trains, car rentals / taxis; \$1,200.00 per month on restaurants; \$488.00 per month on entertainment, \$432.00 per month on reading material and even \$1,340.00 per month on gifts. Further, while there is no evidence before the Court that Mrs. Frey owns a pet or pets, Mrs. Frey states that she spends \$614.00 per month on pet grooming / feeding; \$83.00 per month on vet/ vaccinations and \$500.00 per month on "boarding", presumably for the alleged pet or pets.
- [33] The Court finds that Mrs. Frey has unreasonably inflated her expenditure in order to exaggerate her requirements or needs. In the view of the Court, Mrs. Frey's contention that the said expenses are her "recurrent personal monthly expenses" is almost absurd. Even the medical expenses are unrealistic.
- [34] The undisputed evidence before the Court is that, during the marriage, and prior to Mrs. Frey's application for spousal support, Mr. Frey provided Mrs. Frey with the monthly sum of \$10,000.00 (E.C); \$5,000.00 was for her personal expenses and \$5,000.00 was for food.
- [35] Mr. Frey disputes the "above-average life style" which Mrs. Frey portrays as that enjoyed by the parties. He states that Mrs. Frey asserts that she enjoys a lifestyle which requires an exaggerated monthly financial support. In his Affidavit of 19th May 2009, Mr. Frey denied that Mrs. Frey and himself travelled extensively and always first class. He states that the travel which they did was associated with medical checkups. When they did travel first class it was because he was working with a company that had an agreement with Swissair.

[36] In his Affidavit of 19th May 2009, Mr. Frey deposed that he had repeatedly voiced his disapproval of the inefficiency with the way the household was being run, including unnecessary help; maids and gardeners. He stated that Mrs. Frey's business trips are trips to the United States and "have nothing to do with him." He stated that Mrs. Frey called him "controlling" because he took steps to ensure that he did not end up with an excessive phone bill.

[37] Mrs. Frey's evidence, as proof of the "above average life style" which she claims the parties enjoyed, is that this life style consisted of entertaining "guests in Antigua both for parties and long-term visiting house guests and their families." Under cross-examination as to whether or not Mrs. Frey entertained his guests, Mr. Frey replied:-

"Since we got married, we hardly had any guests. Before marriage, we had dinner with up to about 8 or 10 people and we had 2 big parties just about the pool."

[38] Mrs. Frey states that in April 2007, Mr. Frey stopped providing her with any monies for her personal needs, and that, in or about April 2008, he also stopped providing her with any monies towards food and necessities, claiming that since she worked, she had to pay for herself. By way of response, Mr. Frey stated that he stopped providing Mrs. Frey with household money in or around 2008 because she was still using his credit card and his Fed Ex account. Mr. Frey contended:-

"the Applicant (Mrs. Frey) has sought to secure the future of her children and grand-children and now looks to me to secure her future."

[39] Mr. Frey does not deny that he took care of the expenses of the home and of looking after the property, which, after all, was his property. He states that he had provided Mrs. Frey with one credit card prior to the marriage, but that he took it away from her, because in two (2) years, she spent about \$400,000.00 E.C. He added that, during the marriage, Mrs. Frey used his credit card number for his Visa card and also used the number of his FedEx account, to discharge debts associated with her business and related to the school of her grand-children. In the process she expended about \$48,000 E.C. When he asked her, by email, how she intended to settle the said amount of \$48,000.00, he never received an answer to his email.

- [40] The Court is therefore of the view that the "above average life style" alluded to by Mrs. Frey is totally devoid of merit. In any event, the life style enjoyed by the parties is only a factor to be considered by the Court in determining the reasonable requirements or needs of the parties. It is also clear that extravagance will not bolster a claim; neither will inflating or exaggerating expenditure.
- [41] The Court must also take into account the length of time the spouses cohabited.
- [42] The marriage of Mr. and Mrs. Frey was of short duration; no more than five years in total. The parties were married in 2005, but by 2008, the marriage had "effectively come to an end", and in fact, as alleged by Mrs. Frey in her Petition for Divorce, the parties had lived separate and apart from and since 2010. Further, Mrs. Frey gave evidence under oath at the hearing of the divorce petition, that the parties had lived separate and apart **"even before that time (2010)."** After they got married, the parties did not spend very much time together, even prior to their eventual separation.
- [43] The parties began cohabitation ten years prior to the date of the marriage, that is, sometime in or about 1995. According to Mrs. Frey, Mr. Frey proposed marriage on three (3) occasions before she was "finally persuaded" to marry him. After she finally agreed to marry him, she states that for some time they enjoyed the "former happy relationship", but then "matters took a turn for the worse." Mrs. Frey's further evidence is that their relationship became "strained" in or about 2004, one year before the marriage. The parties separated in 2004; Mrs. Frey left the house at Isaac Hill and went to her own house, where she remained for about 6 to 9 months. The parties got re-united and eventually got married in 2005.
- [44] Under cross-examination, Mrs. Frey testified: "I have spent 20-years with him (Mr. Frey) and I worked very hard with him." The Court is of the view that Mrs. Frey's assessment of the length of time spent cohabiting with Mr. Frey is not quite accurate; it is actually fifteen years rather than twenty years, as alleged by Mrs. Frey. In any event, the evidence of Mrs. Frey is that she was well aware even prior to the marriage, that Mr. Frey spent on average, about six months of the year in his native Italy and outside of Antigua. She testified that, before the parties were

married, she travelled with Mr. Frey "quite a lot." After the parties got married, the longest time that she spent with Mr. Frey in Italy was "maybe two months."

- [45] Under cross-examination, in answer to the question whether the parties travelled together during the marriage, Mr. Frey's response was as follows:-

"No; we got married in December, 2005. On June 10th 2006, I received an email, from my wife, asking for the household money. I had left Antigua in May. In July 2006, I had another email saying that the gardener did not have any money. I paid. The last time she (Mrs. Frey) was in Italy was for 3 weeks in 2006 – maybe. In 2007, she did not come to Italy. In 2008, she went to Switzerland for a knee replacement. I have not seen her in Europe. In 2009 we went to Court."

- [46] In the view of the Court, the above response bolsters the assertion of Mr. Frey under further cross-examination that after the marriage, he was "left by himself" and that is where "all the trouble came in."

- [47] The Court must give regard not only to the period of cohabitation between the parties, but also to the contribution made to the marriage by the parties during that period. In the instant case, based on the evidence before the Court, little or no weight is to be given to Mrs. Frey's contribution to the marriage.

- [48] The Court must also take into account any order, agreement or arrangement relating to support of the spouse. Learned Counsel Mrs. Freeland-Roberts submits that the parties entered into two agreements: a Testamentary Agreement and a Marriage Contract. She adds that according to the Respondent during cross-examination, the Testamentary Agreement was executed to ensure that in the event he predeceased Mrs. Frey, she would not be thrown out on the streets "with nothing." He stated that it was his intention to provide for her the rest of her life, once they remained married.

- [49] In the view of the Court, the above is very significant. The testamentary agreement was clearly predicated on the assumption that the parties would remain married. Mr. Frey intended to provide for Mrs. Frey for the rest of her life, but only if they remained married. Mr. Francis puts it very succinctly:-

"Clearly, at the outset, the parties had noble intentions to spend the rest of their lives together sharing each other's company. The Respondent even sought to safeguard the future of the Applicant should he predecease her. The marriage did not progress to its expected conclusion, i.e. one caused by death."

- [50] The Court is of the view, therefore, that the above-mentioned "Testamentary Agreement" is not a factor to which much weight should be given by the Court in its determination of this application. The Court notes, however, that the Marriage Contract, to which Learned Counsel refers in her Submission, albeit without elaboration, is a factor to be taken into account. Paragraph 27 of the Affidavit of Mrs. Frey filed on the 14th February, 2012 is very telling:-

"He (Mr. Frey) has continued to harp over my having sold my Red Hill home and disbursing the proceeds as I saw fit. This was most peculiar AS HE HAD ALWAYS BEEN ADAMANT THAT OUR BUSINESS AFFAIRS BE KEPT SEPARATE. IN FACT, AT HIS INSISTENCE WE ENTERED INTO A SWISS PRE-NUPTIAL AGREEMENT WHEREBY WE AGREED THAT OUR RESPECTIVE ASSETS WHETHER OBTAINED PREVIOUS TO, OR DURING MARRIAGE, REMAINED TO THE BENEFITS OF SUCH OF US EXCLUSIVELY."(my emphasis).

- [51] The Court is of the view that Mrs. Frey's assertion that she "worked very hard" with Mr. Frey is inaccurate and grossly exaggerated. In the first place, as stated earlier, this was not a marriage that could be considered a true "partnership" in which the parties by their efforts and commitment, each contributed to the acquisition of a home or each other's welfare. Further, the evidence of Mrs. Frey herself, as stated in her Affidavit of 1st April 2009, is that, in 1995, before and during their cohabitation, Mr. Frey indicated that he did not wish her to work. It would appear that Mrs. Frey's responsibilities were to provide companionship for Mr. Frey and to ensure that everything in the household run smoothly. As stated later in the judgment, Mr. Frey ensured that Mrs. Frey was free of financial commitments in order that she could spend time with him. In any event, Mrs. Frey has not provided any evidence as to the nature of the "very hard work" which she alleges.

- [52] In his Affidavit of 10th November 2009, Mr. Frey deposed that, sometime in 2007, Mrs. Frey began working full time in her business. Mrs. Frey does not dispute this evidence. In fact, it is the evidence of Mrs. Frey that she used part of the proceeds of the sale of her home at Crawl Bay to "invest in her business." There is no evidence that Mr. Frey benefitted from Mrs. Frey's business. Mr. Frey also deposed that Mrs. Frey no longer cooked for him when he was in Antigua.

[53] Having examined the provisions of Section 13(5) of the Act, the Court must also examine the provisions of Section 13(7) of the Act. That sub-section provides that:-

"An order made under this section that provides for the support of a spouse should:-

- (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
- (b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above the obligation apportioned between the spouses pursuant to subsection (8);
- (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
- (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable amount of time."

[54] The Court must apply the criteria stated in the said sub-section to the circumstances of the case and arrive at a determination which is just and fair to both parties.

[55] The Court will now consider sub-section 13(7) (a) of the Act, namely that the Court should recognize any economic advantages or disadvantages to the spouse arising from the marriage or its breakdown. Firstly, with respect to any economic advantages arising **FROM** (my emphasis) the marriage, the Court notes, as stated above, that the parties entered into a marriage contract prior to the marriage. As stated in paragraph 50 above, Mrs. Frey gave evidence in her Affidavit that the parties had agreed that their "business affairs" be kept "separate and apart", and that their "respective assets remained to the benefit of each of them exclusively." Mrs. Frey did not contribute to his finances or his property, nor was there any intention that she should do so. In his Affidavit of 8th April 2011, Mr. Frey averred that, prior to the marriage, the parties recognized and agreed that they each had "financial means", and they agreed to keep separate their properties and assets.

[56] Learned Counsel for Mrs. Frey makes reference to the Testamentary Agreement entered into by the parties. As the term implies, this "Testamentary Agreement", was intended to provide for Mrs.

Frey (a) if Mr. Frey predeceased her and (b) if the parties remained married. Learned Counsel has conceded that this is so in her Submissions.

[57] Mrs. Frey has been the recipient of several acts of generosity on the part of Mr. Frey prior to the marriage. He voluntarily paid off her business loan to the bank; he made her a "gift" of \$20,000.00 (EC) for paying off what was left to pay on the roof of her building; he made her another "gift" of \$20,000.00 (EC) which she said could have been for "the credit line". . The Court finds that these were gestures made no doubt by Mr. Frey in an effort to win Mrs. Frey's hand in marriage and to ensure that she was debt free so that she would then be able to give him the companionship which he desired. Mr. Frey's evidence, which the Court accepts, is that he wanted a wife who would provide companionship. Mrs. Frey herself, under cross-examination, testified that "she supposed that it was true" that Mr. Frey wanted her to get out of the restaurant business so that they would spend time with each other. He cleared off her debts, provided her with money to renovate her home; all that as a gift to her, so that she would live comfortably with him.

[58] The Court is of the view that there has been no economic disadvantage to the parties arising **FROM** (my emphasis) the marriage. When the parties got married, they were both independent persons in their own right. They each had their separate property. They were not concerned with raising a family together. Mrs. Frey did not have to give up a career or make the kind of sacrifices necessary in order to have children and raise a family. They both had grown up children from former relationships. From the evidence before the Court, in particular, from the fact of the Marriage Contract between the parties, it is apparent that there was no intention between the said parties that they would treat the marriage as a partnership in the sense of working together to build a home and acquiring property together. I agree with the submission of Mr. Francis that "this was a marriage based on a desire for companionship and not one based on a desire to acquire worldly goods and raise a family."

[59] There has been no allegation from Mr. Frey that the marriage resulted in any economic disadvantages to him. It would appear to be the contention of Mrs. Frey from her Affidavits filed that she gave up her financial independence on her marriage to Mr. Frey. Indeed, in her

Affidavit filed on 1st April 2009, Mrs. Frey avers that she considered herself a successful business woman, but that she lost "any semblance of independence with the sale of the restaurant." Further, in her Affidavit filed on the 14th February 2012, Mrs. Frey deposed (at paragraph 8) as follows:-

"At the time I met the Respondent in 1990, I was the owner/operator of a successful restaurant concern operating at English Harbour known as "La Perruche", specializing in French Cuisine. I did not pay myself a salary; however I enjoyed the proceeds of ownership, and would easily look after my needs out of the restaurant profits." She further deposed that she was "pressured" by Mr. Frey to simply "give away" the restaurant, "the source of her independent income."

[60] Nowhere in her Affidavits does Mrs. Frey state the date at which she sold the restaurant business. That evidence was supplied by Mr. Frey who testified that Mrs. Frey sold the business in 1995, ten years prior to the date of the marriage. It is also significant that, while contending that she "reluctantly agreed to sell" the restaurant "in the face of the Respondent's (Mr. Frey's) incessant pressure," Mrs. Frey states, at paragraph 12 of her above mentioned Affidavit of 14th February 2012, as follows:-

"I myself was conscious of my own advancing years, and finally did appreciate that at some time or the other I would in any event have to slow down with respect to my involvement in the restaurant or other ventures."

[61] The Court is therefore of the view that there was no economic disadvantages to Mrs. Frey arising **FROM** (my emphasis) the marriage.

[62] With respect to any economic disadvantages to the spouses arising from the **BREAKDOWN** (my emphasis) of the marriage, it is the contention of Mrs. Freeland-Roberts that "the separation of the parties has truly placed her (Mrs. Frey) in a disadvantageous position, while it is apparent that the Respondent's means and standard of living have not been affected by it."

[63] In the instant case, the undisputed evidence before the Court is that, as stated above, prior to the marriage, Mrs. Frey was financially independent. She had a business, namely a restaurant and she owned property, namely property situate at Crawl Bay. Mrs. Frey states that Mr. Frey pressured her into getting rid of the restaurant business. The Court has dealt with this issue in

paragraphs 59 and 60 above. She also states that she had a clothing business, which she had to close down in 2012. This is presumably the business into which Mrs. Frey alleges that she invested part of the proceeds of the sale of her property at Crawl Bay. She does not allege that she was pressured into closing the clothing business by Mr. Frey. Indeed, Mrs. Frey states that the closure of this store was as a result of the economic downturn. It is therefore fair to state that the closure of this clothing business cannot be laid either at the feet of Mr. Frey or at the feet of the demise of the marriage.

[64] With respect to the property situate at Crawl Bay referred to above, the fact is that Mrs. Frey no longer owns this property. The evidence before the Court discloses that Mrs. Frey sold this property in 2007, two years after her marriage to Mr. Frey. The sale was not at the behest of Mr. Frey, nor, it would appear, was there any discussion between the parties prior to the sale of the said property. Mr. Frey gave evidence that Mrs. Frey sold the property for \$1,000,000.00 (U.S.), after tax. This was not disputed by Mrs. Frey. Mrs. Frey's evidence is that she used the proceeds of sale "as she saw fit". She states that she used the proceeds to settle an outstanding loan with Bank of Antigua, legacies for her children and grand-children, invest in her business and towards her support.

[65] The Court is of the view that since the sale of this property occurred during the marriage, the fact that Mrs. Frey alleges that she now has no property, no income etc. cannot be said to be the result of the breakdown of the marriage. In any event, the contention of Mrs. Frey that she now "has no property" is not accurate. Although it is not disclosed in her Affidavits before the Court, the evidence of Mrs. Frey, under cross-examination, is that she purchased another property at Enid's Gap after selling the property at Crawl Bay. Mr. Frey's evidence is that the first time that he heard that Mrs. Frey had bought land and was building a house was when she needed some technical advice. According to Mr. Frey, this shows that Mrs. Frey is "financially self-sufficient and not in need of spousal support." There is no evidence that this property at Enid's Gap has been disposed of by Mrs. Frey.

[66] Mrs. Frey contends that, because of her "advancing age and her bleak prospects," she is entirely dependent on Mr. Frey. The reality is however, that Mrs. Frey's decision to disburse the proceeds of sale of her property at Crawl Bay in the manner which she chose, including making

"legacies" to her family, was entirely her decision. A prudent and responsible person, in the position of Mrs. Frey, particularly at her age, would undoubtedly have saved a great part of this money, if not all, for "a rainy day".

[67] In assessing the economic disadvantage which may arise from the breakdown of a marriage, the Court may also consider whether a spouse will lose the chance of acquiring a pension or other benefit as a result of the said breakdown. The Court notes that, in the instant case, there is no evidence that Mrs. Frey was entitled to any such pension or other benefit arising from her marriage. She therefore cannot lose the benefit of something to which she was not entitled.

[68] Based on the foregoing, the Court does not endorse the submission of Learned Counsel for Mrs. Frey that "the separation of the parties has truly placed her (Mrs. Frey) in a disadvantageous position....."

[69] The Court will now consider Section 13(7) (c) of the Act, namely that the Order for spousal support should "Relieve any economic hardship of the spouses arising from the breakdown of the marriage." The Court is of the view that, based on the foregoing, there has been no economic hardship to the spouses arising from the breakdown of the marriage.

[70] The Court will now deal with Section 13(7) (d) of the Act. That sub-section states that the Court must have regard to the fact that any Order made must, in so far as is practicable, seek to promote the economic self-sufficiency of each spouse within a reasonable amount of time. This is no doubt a recognition that, once a marriage has ended, either spouse should be able to move on with his or her life, and start afresh, without having to be permanently financially dependent on the other spouse. It is clear, however, that the economic self-sufficiency of one spouse cannot and should not be achieved either at the expense of the other spouse or to his or her detriment. The purpose of the powers conferred on the Court in proceedings for financial relief is to enable the Court to make fair financial arrangements on or after divorce...' - Halsbury's page 62, paragraph 591 - (Supra).

[71] Mrs. Frey testified under cross-examination that, "he (Mr. Frey) promised he would take care of me." It would appear that Mrs. Frey's expectations were that Mr. Frey was to be her personal

source of income for life; that even though she had given away the proceeds of the sale of her property in the manner in which she deemed fit, that he would provide for her indefinitely, and that she had no responsibility to fend for herself financially. She appeared to be also of the view that, once married to Mr. Frey, she was entitled to a life of leisure and luxury and travelling first class to "exotic destinations." Travelling to Italy with Mr. Frey and providing him with companionship for the six months during which he lived there, was apparently not part of Mrs. Frey's plans and expectations.

[72] In her Affidavit filed on 18th March 2011, Mrs. Frey deposed, among other things:-

At Paragraph 9:- " The Respondent did not know of the sale of my property until after the fact. I divided the proceeds between my children and grandchildren. This was my legacy to them. I am not claiming his property: merely that he honour the commitment he made to me. My lifestyle now is no different than that which he has known over the course of our relationship and / or than that which he has exposed to me too."

At. Paragraph 12 :- ".....I repeat that the Respondent is a businessman of tremendous wealth, who has at all times been in a position to easily make good on his promises held out to me, to maintain me in the circumstance to which I am accustomed."

[73] Learned Counsel Mr. Francis contends that Mr. Frey should not have to provide spousal support for Mrs. Frey. He submits that the Applicant has the financial capacity to be self sufficient. She is advancing in age, but so is the Respondent who is two years her senior. Counsel also submits that in law the Applicant is not entitled entirely to rely upon the Respondent for the fulfillment of her personal "wants".

[74] I agree with the submission of Mr. Francis that the Applicant is not entitled entirely to rely upon the Respondent for the fulfillment of her personal "wants." Mr. Frey is certainly not liable for any inflated and/or exaggerated needs of Mr. Frey.

[75] Mr. Francis has submitted that Mrs. Frey has the financial capacity to be self sufficient. When cross-examined by Mrs. Freeland Roberts as to whether he still maintained that Mrs. Frey is financially secure and able to provide for herself, Mr. Frey responded as follows:-

"I don't know what she has done with her money, but I am convinced that she's not applying for a green card without even awaiting the decision of the Court if she did not have some means to reside in the U.S.A. I can hardly figure out that you pack up your things, send them in a container without knowing what the Court is going to decide. I don't think she would make a decision like this without knowing the decision of the Court. I only suppose that by applying for a green card, paying for the transport, she must know how to finance this."

- [76] In his Affidavit of 8th April 2011, Mr. Frey avers that before the Marriage, conscious of their financial means and independence, the parties had agreed to keep separate properties and assets. He adds that it was not anticipated that Mrs. Frey would give away "a significant portion of her financial holding" and as a result seek financial support from him.

CONCLUSION

- [77] The Court recognizes that the reasons that persons embark upon marriage are many and varied. Whatever the reasons, in dealing with applications for spousal support, the Court's objective is to arrive at an outcome which is just and fair. To borrow the words of Lord Justice Thorpe in the case of North v North [2007] EWCA Civ 760: "there are of course two faces to fairness. The Order must be fair both to the Applicant in need and to the Respondent who must pay."
- [78] In arriving at a determination of the application before me , I have given regard to all the facts and circumstances which I am required to consider. I have considered the age of the parties, the duration of the marriage and the length of time that the parties cohabited; I have taken into account the fact that the parties entered into a Marriage Contract prior to the marriage , and that , at the date of their marriage, both Mr. Frey and Mrs. Frey had property in their own right and were financially independent . I have taken all these circumstances into account.
- [79] Section 13(7) of the Act mandates that I apply the criteria set out to the above facts and circumstances. I have stated and analyzed the criteria set out in the said sub-section and have applied them to the facts and circumstances of this case.
- [80] I have taken into account the fact that Mrs. Frey has indicated that she will be moving to the U.S.A, so that she can be close to her family. I cannot speculate as to what the circumstances of Mrs.

Frey will be once she takes up residence in the U.S.A. She may remarry; be eligible for some sort of social security benefit or benefits ; she may continue to engage herself in the business of clothing or other designing .

[81] Having regard to all the circumstances of this case, and bearing in mind that the overriding and over-arching objective of the Court is to deal with cases on the basis of fairness, and to reach a resolution which is just and reasonable as between the parties, I am of the view that the justice of this case requires that I make an Order in the following terms:-

"The Respondent Mr. Frey is to pay to Mrs. Frey a lump sum of \$30,000.00 U.S. by way of contribution towards her move to the U.S.A. and establishing herself there. The amount of \$30,000.00 is not an arbitrary one, but is based on a calculation of a payment of \$5000.00 U.S. per month for a period of 6 months. The said lump sum payment of \$30,000.00 U.S. is to be made within 21 days of this Order. The Court makes no order for spousal support."

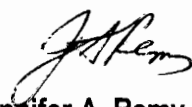
MY ORDER IS AS FOLLOWS:-

A.

(i) The Interim Order dated the 13th day of July, 2012 is discharged.

(ii) The Respondent Mr. Frey is to pay to the Applicant/Petitioner Mrs. Frey a lump sum of \$30,000.00 U.S, within 21 days of today's Order.

B. In the exercise of my discretion, I make no order as to costs.


Jennifer A. Remy
High Court Judge