

CHEFFERS -v- CHEFFERS

High Court of Solomon Islands

(Palmer J.)

Civil Case No. 142 of 1990

Hearing: 19 March 1993

Judgment: 5 April 1993

Philip Tegavota for Applicant

T. Kama for the Respondent

PALMER J.: This is an application for distribution of matrimonial property of the parties to this case, Joyce Cheffers and Jimmy Cheffers.

Attempts have been made by the Solicitors of both parties to settle distribution out of court but have failed.

The two properties in dispute are :

- (i) The matrimonial home at Panatina
- (ii) The 99 shares held by Joyce Cheffers in the private limited Company, Honiara Refrigeration and Air Conditioning Limited.

The residential property at Panatina has been estimated at about \$90,000.00. However, there has been no proper valuation done and it could be a lot less than what has been submitted. This is more so, where it has been stated that there would appear to be hardly any furniture in the house.

The shares of the company have been valued by an accountant firm, FPS Business Consultancy. The method of valuation used was the Asset Backing method of share valuation. The calculations have been conveniently set out in the affidavit of Fred Peter Seda in annexure "FPSI".

The net asset of the company has been calculated at \$71,284.00. The total number of shares issued is 100. The value of each share therefore is \$712.84.

HONIARA REFRIGERATION AND AIR CONDITIONING COMPANY LIMITED:

The company was incorporated on the 25th of September 1986. The shareholders then were Joyce Cheffers and her brother; Joyce Cheffers holding 99 shares and her brother one share. The company had been started off with a capital of \$1,000.00, at \$10.00 per share. The manager since incorporation has been Jimmie Cheffers.

It is clear that he has been the main cause for the success of the company until now. He had the necessary skill to run the company, as an electrician. He also stated that he had brought with him into the company tools worth about \$10,000.00.

It was also stated in evidence that the reason why the company was incorporated in the names of Joyce Cheffers and her brothers was because of the difficulty on his part as an expatriate to process the formalities required by the Foreign Investment Division. The company was clearly intended to be a family business. At the time of incorporation, both parties had been married for several years already, since 1982. Little thought then naturally was given to the shares that each partner should hold.

Now that the marriage partnership has been broken, the court is placed in a very difficult position to assess what the interest of the parties should be in the shares.

There is no doubt in my mind that Jimmie Cheffers has a beneficial interest in the shares held by Joyce Cheffers. The question is what should be the interest that the court should apportion in favour of Jimmie Cheffers and on the other hand what the share of Joyce Cheffers should be.

The contributions in the company are relevant considerations. One of the crucial contributions made by Jimmie Cheffers is his management and technical skills. He also contributed the tools into the company. What is obvious is that he has been the main stay or backbone of the company.

Joyce Cheffer's involvement on the other hand was very limited. At times it was to reconcile checks and perhaps do some odd clerical job and going to the banks.

At one stage both were signatories to the company checks, but this appears to have been changed so that only Jimmie Cheffers was the sole signatory.

I do take note too that there may be many unseen help that Joyce may have given by simply being the wife and doing domestic duties at house.

Taking all these into account a fair apportionment in my view would be on a two third : one third basis in favour of Jimmie Cheffers. In other words Jimmy Cheffers would be entitled to the proceeds of two thirds of the shares held by Joyce.

I have directed my mind to winding up the business and selling the assets for a final distribution between the parties. However, that would in my view be a waste, especially when the business is still operating under the capable hands of Jimmie Cheffers.

The only other logical thing to do would be to allow Jimmie Cheffers to purchase the shares of Joyce. He has put a lot of time, energy and money into the business and should be allowed to continue its operations. It is only fair and reasonable that that course of action be taken.

He has through the successful operation of the business been able to rent private accommodation for himself and his new family.

Joyce however appeared not to be working and has no other accommodation than the one at Panatina. She has been relying on the monthly payment made to her by Jimmie Cheffers.

This court upholds the principle of a clean break between the parties. The marriage has been dissolved absolutely. Jimmie Cheffers has a new family and should be allowed to run his own life without interference from Joyce. Similarly, Joyce should now start re-charting the course of her life without any interference from Jimmie Cheffers.

By giving her complete control over the property at Panatina, at least this Court is satisfied that she will have a roof over her head at the break-off point. If she should move away from Honiara, then she could either sell the house, and from the valuation placed by Jimmie Cheffers, in the minimum she should be able to get \$70,000 to \$80,000. The alternative would be to rent out the house.

In such marriage breakups, having title of a house is a very useful asset. Perhaps Joyce Cheffers may not appreciate that now but there are many people in town who do not even own a house and to get one even now costs a lot of money. If she should remarry then at least she has a house for her new family.

The value of her one third interest in the company is \$23,523.72 (i.e. one third of 99 shares multiplied by \$712.84).

The value of Jimmie Cheffers two thirds interest would be \$47,047.44.

I am aware that the overall distribution would be more weighted in favour of Joyce. However, it is balanced out to a certain extent by Jimmie Cheffers having sole control or majority of the company and the fact that the company is still trading.

The usual thing to do would be to try to bring the parties shares in the distributions of the matrimonial property to an equal basis.

The wife however does not work and appears not to have any means of income other than the regular monthly payments that Jimmie Cheffers have been making to her.

Jimmie Cheffers has agreed to let her have the house. That is a reasonable gesture and I agree with that.

As to the shares in the company. To pay off Joyce's one third interest would be \$23,523.72. If the values are added up it would mean that Joyce would be getting a lot more from the distribution. I will reduce the amount therefore to a round figure of \$20,000.00 for the consideration to be paid in cash to Joyce for the transfer of all 99 shares to Jimmie Cheffers.

The courts Orders therefore are as follows:

1. Title in the matrimonial home is to be transferred free from all encumbrances, charges etc. to Joyce within 30 days.
2. The title to the 99 shares in Honiara Refrigeration and Air Conditioning Ltd are to be transferred to Jimmie Cheffers within 30 days for the consideration of \$20,000.00. If alternative arrangements for payments in instalments are to be made then that amount should be paid off within 12 months.
3. A half of the legal costs of Joyce are to be paid by Joyce Cheffers.
4. If there is deliberate delay or a refusal in having the transfers executed then the Assistant Registrar will execute the documents on behalf of the Court.
5. No other costs allowed.

(A. R. Palmer)

JUDGE