

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS : PART J.H.O.

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X  
CATHERINE ANGELOPOULOS, INDEX NO. 12229/01  
Plaintiff, MEMORANDUM  
- against - DECISION  
DEAN ANGELOPOULOS,  
Defendant. X  
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**STANLEY GARTENSTEIN, JUDICIAL HEARING OFFICER:**

This matrimonial action inaugurates the "Shorty Ballero" defense.

Shorty Ballero is a horse, specifically, a race horse. Whether or not ". . . one may begin to doubt whether this horse is really a horse (of course, of course) . . ." [plaintiff's closing memorandum, (p. 34)], his existence is conceded , at least for this litigation.

Defendant claims that his 80% interest in Shorty Ballero was purchased for \$50,000, all cash (no receipt). He also claims that it was paid in \$100 bills (500 of them) from cash hidden by him in the ceiling of the marital domicile behind a loose removable panel. This cash was given by him to one "John" ("John" apparently has no last name), who showed up at his doorstep unannounced one day claiming that he came from defendant's brother George, who lived in Florida. Defendant had never laid eyes on "John" (no last name) before. "John" would then, it was claimed, take this cash to

brother George, who would apply it toward defendant's purchase of an 80% interest in Shorty Ballero. Brother George, apparently an astute businessman, at least in dealing with his brother, only became the owner of Shorty Ballero one year prior thereto for the total sum of \$2,000. Defendant's claimed purchase of an 80% interest in Shorty Ballero for \$50,000, when full 100% ownership had cost brother George only \$2,000, only marks the beginning of brother George's astuteness. In exchange for his \$50,000 (all cash, no receipt) taken, of course, from marital assets and given to "John" (no last name) who he had never laid eyes on before, defendant never inquired nor was he ever told about Shorty Ballero's pedigree or even whether or not he had ever raced before.

Shorty Ballero ultimately left brother George's possession less than a year later; this for a total "sale" price of \$1,000. Shorty, it seems, was lame and presumably headed for the glue factory. Nevertheless, as established on cross-examination, it appears that he miraculously recovered just in time to run in 47 races - all after his "sale" for \$1,000 - and, in fact, found himself in the winner's circle on a significant number of occasions.

Defendant never claimed this devastating loss on his tax returns. He never called his brother George, presumably a favorable witness, to testify at the trial. He never received,

even according to his own testimony, any portion of the \$1,000 allegedly realized for the sale of the lame Shorty Ballero.

In overwhelming measure, this trial has been characterized by a relentless parade of contradictory evidence even down to the collateral issue of whether or not plaintiff-wife attended the closing of title on the first marital domicile.

On the record before us, we determine defendant's credibility to be non-existent (cf., Estate of Wilson v Turner, 50 NY2d 59; People v Bruno, 77 AD2d 922). We do so even without reference to defendant's invoking his constitutionally guaranteed privilege against self-incrimination in this civil suit, an act which justifies an unfavorable inference (cf., DeBonis v Corbisiero, 155 AD2d 299). This determination of zero-credibility necessarily foreshadows the Court's rulings on virtually every issue presented by this protracted and complex trial which, in the long run, came down to a series of "he said's" and "she said's."

All claims involving conflicting testimony are resolved in favor of plaintiff with the exception of valuation of certain stocks and other security interests whose valuation is fixed as of the date of trial for reasons to be articulated herein.

CURRENT MARITAL RESIDENCE LOCATED AT  
170-35 PIDGEON MEADOW ROAD, FRESH MEADOWS, NY  
11365:

In identifying the current marital domicile as a marital asset, we necessarily find that defendant has no valid claim to any

purported separate property contribution to its purchase. This claim is based upon an assertion that \$170,000 realized from the liquidation of the first marital domicile at 43-70 165th Street, Flushing, New York is traceable into the purchase of the current residence. The first (prior) marital domicile was originally purchased immediately prior to this marriage and was effectuated by deed to defendant's brother James and himself to the exclusion of plaintiff-wife and James' wife.

The purchase of the first marital domicile was, at least on record, a conveyance to defendant and his brother James. Both plaintiff and defendant present logically constructed conflicting accounts of this transaction. Nevertheless, defendant's version is significantly flawed. A "missing" bankbook which might have corroborated his account of the pre-marital savings arrangements whereby the parties, then engaged to be married, contributed to a common fund, was the best evidence of how much had been accumulated therein. It was never offered into evidence. Defendant who was its sole custodian, is a banker, trained in the intricacies of financial record keeping. He produced cancelled checks documenting his own contributions to this account down to the most excruciating detail. Nevertheless, he never kept the bankbook which was crucially important and which would have been dispositive. He claimed first, that he threw it away; then that it was "lost." He did not call his sister-in-law, James' wife, presumably a favorable

witness, to testify that the respective wives were not listed as grantees in the deed of conveyance purportedly because the mortgagee demanded that title be taken solely in the names of the respective husbands. We find this claim to be incredible (cf., Placakis v City of New York, 289 AD2d 551).

SAVINGS BONDS/CASH:

The husband is charged with \$63,000 in United States Savings Bonds liquidated by him together with \$50,000 cash admittedly paid by him to "John" to acquire an 80% interest in Shorty Ballero.

Defendant claims that proceeds realized from his cashing a group of the U.S. savings bonds were diverted into the purchase of Shorty Ballero. This claim is totally unsupported by any hard evidence, thus leaving the court with no evidence other than defendant's own zero-credibility testimony. His claim combines two dissipated assets for which he is accountable into one in an attempt to limit his liability. His testimony is insufficient to rebut the presumption earmarking both assets as marital property. Once these are identified as two distinct assets, it is defendant's burden to account for them, a burden he fails to sustain. We reject as a total fabrication defendant's testimony that a number of these bonds were being managed by him for others and that his formal title was illusory and without any equity interest.

The court rejects as groundless the claim that \$16,277.78 which the husband liquidated from the parties' joint Fidelity Ultra account and transferred to the name of his sister belonged to defendant's mother. The funds represented by this account are subject to the presumption which defendant fails to rebut. Once he concedes liquidating this account, he is liable to account for it as a matter of law.

We reject defendant's claim that \$3,215 of joint Salomon Smith Barney funds which he withdrew by check to his own order on March 26, 2001 was his mother's money.

Defendant is charged with funds realized from a calendar-year 2000 joint federal income tax refund of \$4,684 and New York State refund of \$785. \$3,600 of this was concededly used to hire a private detective. It was claimed that the balance was used for payment of an insurance premium, proof of which could not be produced upon trial.

Defendant is charged with \$10,000 "loaned" to his brother James which was never repaid together with the sum of \$30,000 realized from sale of a radio car. The proceeds of the sale were also given to brother James. The entire transaction was subject to an unrebutted presumption that the car constituted a marital asset. Defendant's unilateral act giving the proceeds thereof to his brother James constituted an actionable dissipation. We make clear

that in so ruling, we disbelieve defendant's account of this transaction and his claim that he owed money to his brother.

Defendant is charged with \$5,000 of a unilateral Ameritrade investment made by him purportedly for his brother James (nothing backs up this claim). The fact that the value thereof fell to \$789 as of commencement is irrelevant in view of the reality that the funds in question constituted a dissipation of marital assets from inception of this transaction.

Defendant is charged the value of Greater New York Savings Bank stock options sold by him for \$14,371.11 and wired out of his Fidelity Ultra account, with no explanation of where the funds went.

#### VALUATION OF FLUCTUATING ASSETS:

We consider now the issues centering on valuations to be assigned to a group of assets stipulated as marital in light of the fact that the positions of the respective parties are diametrically opposite. Plaintiff urges a date-of-commencement valuation while defendant argues that these are not passive assets, that by their very nature they are subject to volatile fluctuation causing them to dramatically diminish in value, thus justifying a date of trial (or distribution) valuation. He further argues that a stay in effect from the outset of this litigation prevented his trading them in a manner which would have minimized their loss in value. It is plaintiff's position that her application for the stay in the

first instance was occasioned by her husband's ongoing bad faith; that, as a consequence, he should bear the loss occasioned by any downward fluctuation.

This court now sets the date of trial (or distribution) as the valuation date.

The recent downward spiral of the stock market has devastated the holdings of many ordinary investors who were caught totally unawares. Punishing either party for a situation neither caused would be inequitable. It is relevant to note that plaintiff could have moved at any time for vacatur of the stay which was in place solely at her instance. The interests in question may appropriately be sold now or held further in the hope that they will recover value in a hopefully revitalized market. In either event, the Court believes it inappropriate for it to make this crucial investment decision for the parties, both of whom are vitally interested in an upturn in value of their investments. This should constitute sufficient incentive for them to agree. If they do not, however, the court will reluctantly be compelled to intervene upon the application of either party.

The Court's remarks as above are applicable to the following assets regardless of their current susceptibility or lack of it to distribution at this time:

- 1) Fidelity IRA Rollover 107-916919;
- 2) Putnam Hartford IRA 710269852;

- 3) Salomon Smith Barney joint account 428-01413;
- 4) Salomon Smith Barney IRA 428-62164;
- 5) Putnam Hartford Capital Manager IRA 710221368;
- 6) Astoria Federal Savings Incentive Savings Plan (managed by Cigna);
- 7) Putnam Voyager A07-1-053-46-3935-BBBG;
- 8) Astoria ESOP (Cigna) 053-46-3935;
- 9) One share of Astoria Preferred Stock.

Each party shall be entitled to a 50% distributive share.

Each party shall retain the car he/she currently drives.

Each party shall be entitled to credit for 50% of the combined stipulated values of the cars.

Both parties are entitled to pension benefits from their respective employers, the wife from the Board of Education, the husband from Astoria Federal Savings. Pursuant to stipulation, these shall be distributed equally pursuant to the Majauskas formula.

The Court makes no determination with regard to valuation of certain silver certificates and a coin collection pertaining to which there has been a lack of evidence by either side.

The value of plaintiff's master's degree has been stipulated. Defendant is to receive a credit in equitable distribution of \$19,384.

The parties bear joint responsibility for marital debts of \$20,955.

All stipulations between the parties are approved.

DISTRIBUTION:

The Court has decided all contested issues with the exception of distribution. It is deferring, at the parties' request to their prerogative of trading-off their respective credits and debits in a manner which will achieve appropriate distribution between them, given the fact that each may have emotional ties to any given asset for which he/she would be willing to make concessions. The court has been advised that the parties are in the midst of negotiations aimed at having plaintiff "buy out" defendant's equity in the marital domicile by trading off credits in her favor as established by the rulings herein in exchange for full unencumbered title. The Court will not intrude itself between them in their efforts to reach an accommodation. They are granted 30 days from the date hereof to reach an accommodation now that they are possessed of the Court's rulings on the key contested issues. Should there be no agreement by that time, it will render a decision distributing the assets as it sees fit.

For the guidance of the parties in their negotiations, should an agreement not be reached, it is the court's intention to award exclusive possession of the marital domicile to plaintiff until the last of the children is emancipated.

A ruling on the plaintiff's request for counsel fees is deferred until such time as the parties report to the court on the progress and/or result of their negotiations. With the exception of the issues of law articulated at the hearing on this issue, the court looks favorably upon this application.

It is appropriate, at this time, to note the court's gratitude for the privilege of having presided at a trial in which both parties were represented by eminent counsel each of whom brings to this litigation a deserved reputation as a dean of the matrimonial trial bar. It has been a unique learning experience.

Order accordingly.

Dated: October 21, 2003

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STANLEY GARTENSTEIN  
Judicial Hearing Officer

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