IN THE GRAND COURT OF THE CAYMAN ISLANDS
FAMILY DIVISION

CAUSE FAM NO: FAM 275 of 2020

BETWEEN:

J.M.

PETITIONER

-AND-

K.M.

RESPONDENT

IN CHAMBERS

Appearances:	**Ms Sheridan Brooks-Hurst KC for the Petitioner** **Mr Clayton Phuran of CP Attorneys for the Respondent**
Before:	**Hon Mr Justice Alistair Walters, (Actg.)**
Hearing Date:	**22 September 2022**
Draft circulated:	**13 October 2022**
Judgment Delivered:	**25 October 2022**

HEADNOTE

Final ancillaries, division of matrimonial assets - whether to depart from basic principle of equal sharing of matrimonial assets - whether wife made special contribution to assets of marriage - whether wife entitled to occupational rent in relation to former matrimonial home.

JUDGMENT

1. This is the financial ancillaries hearing in connection with the divorce proceedings commenced by the Petitioner on 24 November 2020. There are no children of the marriage and the only issues before the court are the extent to which assets of the parties are to be treated as matrimonial assets and, once identified, the extent to which those assets should be divided on anything other than an equal basis. The parties had sworn various affidavits in connection with the proceedings and both gave oral

evidence at the hearing. The affidavits stood as the parties' evidence in chief and they were cross examined at some length about their contents.

Background and summary of evidence given at hearing

2. The Petitioner is a banker and currently works for one of the local high street banks. The Respondent is a plumber. He now runs his own business as a sole proprietor but previously worked for a variety of contractors on what appears to have generally been a project basis, meaning that once a project was finished, he may have had a period without work until the next project began.

3. The parties commenced their relationship in 2006 and got married on 20 May 2009. When their relationship started both had minor children from previous relationships. The Petitioner's daughter resided with them. The Respondent's son was living in Jamaica. Initially the parties lived either with the Petitioner's grandmother or in rented accommodation. There was some disagreement between them about who paid for what during that period.

4. In October 2006 the Petitioner took out a loan for CI$45,500 with Royal Bank of Canada ("RBC") (the "Land Loan") for which she worked at the time in order to purchase a piece of land (the "Land"). The matrimonial home (the "Former Matrimonial Home") was subsequently constructed on the Land in 2014. It was agreed by the Petitioner in her evidence that as an employee of banks, when borrowing money from them, she has benefited from preferential interest rates.

5. It is not disputed that, at all times, it is the Petitioner who met the loan payments for the Land Loan and the loan payments for the mortgage over Former Matrimonial Home (the "Mortgage"). Although disputed by the Petitioner, the Respondent maintains that prior to the marriage, he met the rental costs of the couple. His evidence was that by meeting their initial rental costs, it assisted the Petitioner to be able to afford to service the Land Loan. His evidence is that after they were married he contributed to the marriage in a number of ways although not all financial. It is accepted by the Petitioner in her affidavit dated 31 January 2022 that the Respondent has contributed to electricity, water and landscaping expenses although she says that his contributions were sporadic and often late.

6. The Petitioner confirmed in her evidence that she paid off the Land Loan in May 2012, in part by using monies withdrawn from her Silver Thatch Pension account.

7. The parties moved into the Former Matrimonial Home in May 2014. There was considerable time taken during cross examination on the question of the names in which the Mortgage was taken out and the names in which the title to Former Matrimonial Home was registered. The Mortgage was initially taken out in joint names. This changed when the Petitioner moved to work for FCIB in 2018 but the Respondent said that he understood that the mortgage would be put back into joint names.

8. The title to the Former Matrimonial Home has always been registered in the sole name of the Petitioner. There was some disagreement between the parties as to whether there was any agreement that the Respondent would or would not have an interest in the Former Matrimonial Home. The Petitioner is of the view that it was always understood that the Former Matrimonial Home was hers and hers alone, to pass on to her daughter. The Respondent (who appears less sophisticated than the Petitioner in relation to business and financial matters) was quite clear that his expectation was that the Former Matrimonial Home would ultimately be put into joint names and that, regardless, it was as much his home as the Petitioner's. The Respondent was pressed in cross-examination about why he did not make an application or take action to get the title transferred into joint names. His position was that he understood that it would be put into joint names and saw no reason to take any action about that and was not certain, in the circumstances, what application he could have made or action he could have taken.

9. In paragraph 9 of the Petitioner's Amended Petition dated 13 December 2021, she claims that she owns the Former Matrimonial Home and that on 17 December 2018, the Respondent signed a waiver renouncing any claim on the property. There is no reference to any other alleged agreement in relation ownership and when the document purporting to be the waiver was turned to at the hearing it became clear that, in fact, it is no more than a "Postponement of Claim" form countersigned by the Respondent in favour of the new mortgage lender as one of its requirements in relation to the re-mortgage of the Former Matrimonial Home. It is certainly not an agreement between the Petitioner and Respondent and not a waiver of any legal or beneficial interest in the Former Matrimonial Home.

10. The Petitioner gave evidence that it was agreed that the Respondent would purchase a separate piece of property on which to build a home and that he would pass that on to his son. In cross examination the Respondent agreed that the parties had had a discussion regarding providing a property for their children, but according to him, the intention was that they would purchase a property and give it to both of their respective biological children in order for them to avoid the escalating prices of property in the Cayman Islands. This was disputed by the Petitioner,

11. Prior to the construction of the Former Matrimonial Home the parties obtained an estimate from a contractor, Reliable Roofers (the "Contractor") for the cost of its construction. One category of cost related to the plumbing works. Again, there was some disagreement between the parties about the details surrounding this but it does seem clear that the parties agreed that the Respondent would undertake the plumbing works rather than the Contractor. Despite that, the Contractor was still paid the amount budgeted for the plumbing works but effectively sub-contracted the work at the contract price to the Respondent. At the time, the Respondent was not a licensed plumber so he was assisted with the work by a colleague, who was a licensed plumber. A number of cheques were written by the Contractor to the Respondent to cover the costs of the plumbing works. One was paid over to the licensed plumber, the rest were put towards the costs of the plumbing works.

12. The Petitioner's evidence was that the Respondent was paid for his time doing that work. The Respondent was quite adamant in his evidence that he received no personal remuneration for the plumbing works. He said that all monies were either used to pay for materials or to pay the licensed plumber and that any surplus was re-paid to the Petitioner. The Respondent estimated that by organising the plumbing work that way the parties had saved a sizeable amount of money, possibly cutting the actual cost in half. Besides copies of the cheques written to the Respondent by the contractor, the only evidence in relation to this issue was the oral evidence of the parties. On balance, my view is that the evidence of the Respondent in relation to this issue was more credible and is to be preferred.

13. There was also disagreement about the extent to which the Respondent had been involved generally with the construction of the Former Matrimonial Home and tasks such as landscaping. The Petitioner

seemed, in my view, to be deliberately playing down his involvement to a point at which, when presented with what appeared to me to be clear photographs of the Respondent taken on site during the course of construction, the Petitioner suggested that she did not recognize him. What seemed clear from the evidence is that the parties did work together on tasks such as landscaping and that the Respondent assisted with work involving sanding walls and installing or painting base boards.

14. The closing submissions of both parties have sensibly approached the issue on the basis that the Former Matrimonial Home is a matrimonial asset and, in my view, it clearly is. The remaining dispute is over the extent to which the value of the equity in the Former Matrimonial Home should be divided and the date upon which the Former Matrimonial Home should be valued.

15. The Petitioner gave evidence that when she first met the Respondent she was working in banking but was studying for her banking qualifications. She said that she took a break from studying at the University College of the Cayman Islands between 2004/2005 and re-started in 2014. In June 2021, the Petitioner also completed an online Masters Degree. Although the Petitioner was somewhat vague about this she did accept that whilst working and studying, the Respondent assisted with collecting her daughter from school, cooking meals and child care generally. In his evidence the Respondent went further and described treating the Petitioner's daughter as his own.

16. In relation to the Respondent's son, the Petitioner explained that she had assisted him financially when he was still in Jamaica and had also assisted with obtaining a visa for him. The Petitioner's daughter moved out of the Former Matrimonial Home approximately 3 years ago. The Petitioner said because of the Respondent's aggressive behaviour. The Respondent's son has been living at the Former Matrimonial Home (as are the Petitioner and Respondent themselves) since September 2020 and one aspect of the Petitioner's claim is for occupational rent in respect of the son.

17. In relation to income, the Petitioner says that she started work earning around CI$2,300 per month (approximately CI$27,300 per annum) and is now earning around CI$80,000 per annum. There is no dispute that the Respondent has always earned less than the Petitioner. His income has been somewhat erratic for the reasons I mentioned above. Prior to starting to work for himself, the

Respondent was earning between CI$3,500 to CI$6,000.00 per month, with an average of CI$5,000.00 (CI$60,000.00 per annum).

18. In relation to the parties' separation, the Petitioner takes the view that the marriage had broken down by 28 May 2018 when she sent an email to the Respondent asking for a divorce. The Petitioner wrote to the Immigration Department on 14th January 2021 advising it that the marriage had broken down since May 2018. This will have implications for the Respondent who currently has Caymanian status through his marriage to the Petitioner. Despite this however, the Respondent did accompany the Petitioner to Miami in December 2019 when she had to travel there for a month of medical treatment. The Respondent's evidence was that he had accompanied her and that he had returned to the Cayman Islands to get naturalized and for work. In his opinion, the parties did not separate until around May 2019 which was when the Petitioner found out that she needed medical treatment. After the email of 28 May 2018, the Respondent said that they attended marital counselling and still went on staycations and had dinners together. As mentioned earlier, the petition was not filed until 24 November 2020. Although it appears that one reason that the marriage failed was because the Respondent had heard rumors and believed that the Petitioner had an affair. The Respondent also said that he hoped that they could resolve matters and resume their relationship.

19. In relation to the Respondent's new business, it appears that the Respondent obtained a Trade and Business Licence on 24 September 2019 ("TBL") but did not actually start trading until November 2021. The Petitioner said that she had assisted the Respondent with the paperwork to set the business up and that it has been run from the Former Matrimonial Home. In cross-examination, the Respondent disputed the level of the Petitioner's involvement in the business. He suggested that her only involvement was to assist with an application to a Bank for a credit card.

20. The Respondent was asked about a real estate investment that he made in Morritt's Resort in East End ("Morritt's). He had not previously disclosed that and explained that it had occurred in 2021 so he had thought that it was irrelevant and estimates its value at CI$5,000.

21. The Respondent was asked about his son who is living at the Former Matrimonial Home. The Respondent said that his son is a student and has an unpaid internship with a local electronics company.

22. Generally, in relation to questions about the parties' respective careers and earning capacities, the Respondent agreed that each had had the opportunity to pursue their careers. He agreed that his earning capacity was erratic and unpredictable but emphasized that he had made non-monetary contributions to the marriage. He estimated that his two pensions had been worth approximately CI$20,000 but that during the Covid-19 lock down he had withdrawn approximately CI$8,000 from one and approximately CI$10,000-12,000 from another, all of which had been used to cover household expenditure during that period.

23. During the course of cross-examination the Petitioner confirmed that she had an occupational pension, details of which she had not previously disclosed. Contributions into the pension started in 2018 and the fund was worth approximately CI$6,295 in July 2022. The Petitioner also confirmed during cross examination that during the course of the marriage she had made withdrawals from her Silver Thatch pension and used the money for renovations to the Former Matrimonial Home.

Relevant law and legal principles

24. The relevant legislation setting out principles for the Court to apply when considering the financial aspects of a divorce are ss. 19 and 21 of the Matrimonial Causes Act (2015 Revision).

> *"19. In dealing with all ancillary matters arising under this Law, the Court shall have regard first of all to the best interests of any children of a marriage and thereafter to the responsibilities, needs, financial and other resources, actual and potential earning power and the deserts of the parties.*
>
> ...
>
> *21. At the time of pronouncing a decree under this Law, the Court shall, as appropriate, make orders for —*
> *(a) the custody, care and control of the children of the marriage;*
> *(b) the disposition of matrimonial property, including the matrimonial home;*

> *(c) varying any settlement of the property of the spouses made in consideration of the marriage, whether such settlement was made before or upon the treaty of the said marriage.*
> *(d) varying any other settlement of matrimonial property;*
> *(e) making financial provision from the property of either spouse for the children of the marriage and for the other spouse;*
> *(f) providing for periodic payments to be made by either spouse for the benefit of the children of the marriage and for the other spouse; and*
> *(e) costs."*

25. The Court has a wide discretion in relation to such matters but before making any order it first has to identify, based on the date of separation, the matrimonial property that might be divided between the parties[1]. Once the matrimonial property has been identified then the court has to consider how it should be divided. The starting point is that matrimonial property should be divided equally between the parties and that approach should only be departed from if, and to the extent that, there is good reason for doing so[2].

26. In relation to the question of identifying matrimonial property, the Court has to consider all of the circumstances in relation to the property concerned:

> *"23 In my opinion, it is clear, both from the remarks made in the various authorities and as a matter of common sense, that in determining whether particular property is to be considered matrimonial property or the separate property of one of the spouses for these purposes, the court must have regard to all the circumstances relating to the property concerned. Such circumstances include but are not confined to, the circumstances and timing of its initial acquisition, the party by whom and how it was acquired, the apparent intentions of the parties with regard to and the use of the property during the marriage, amongst other factors. For example, it does not, in my opinion, automatically follow that just because the property concerned was acquired solely by one spouse prior to the marriage, whether by purchase, gift or inheritance, and the title remained throughout the marriage in the name of that spouse, the property may not nonetheless in some circumstances be considered to have become matrimonial property—"put into the melting pot of the marriage" (see Levers, J. at first instance in Wight v. Wight (10) (2006 CILR 1, at para. 55)).*

[1] See e.g. *McTaggart v McTaggart* [2011 (2) CILR 366] and *B-H v H* [2009 CILR 185].
[2] *McTaggart* paragraph 38.

> *24 Equally, as Baroness Hale said, it does not follow that property acquired by and belonging to one party automatically becomes matrimonial property on that party's marriage. The circumstances of the property's acquisition and the parties' respective contributions, if any, to that are clearly significant and may often, even usually, be determinative of the point but if other factors point the other way they may not be conclusive. As Baroness Hale also said ([2006] 2 A.C. 618, at para. 153), "the way the couple have run their lives may be taken into account." It also seems to me important not to look at the situation with hindsight but to consider the circumstances and the parties' use of and apparent intentions with regard to the property at the time. It will all depend upon the precise circumstances."*[3]

27. When considering the distribution of matrimonial property, the court will apply three principles that were set out in *McTaggart*:

> *"It is not, I think, necessary to look further than the decision of the House of Lords in Miller [[2006] 2 A.C. 618]—and, in particular, the speeches of Lord Nicholls and Baroness Hale—in order to identify the principles. Leaving aside, in this context, the best interests of the children (which, as I have said, are paramount), there are three strands: need, compensation and sharing ([2006] 2 A.C. 618, at paras. 10–16 (per Lord Nicholls); and at paras. 138–143 (per Baroness Hale)). The ultimate objective, as Baroness Hale explained (ibid., at para. 144) is to give each party an equal start on the road to independent living. She said this:*
>
> > "Thus far, in common with my noble and learned friend, Lord Nicholls of Birkenhead, I have identified three principles which might guide the court in making an award: need (generously interpreted), compensation, and sharing. I agree that there cannot be a hard and fast rule about whether one starts with equal sharing and departs if need or compensation supply a reason to do so, or whether one starts with need and compensation and shares the balance. Much will depend upon how far future income is to be shared as well as current assets. In general, it can be assumed that the marital partnership does not stay alive for the purpose of sharing future resources unless this is justified by need or compensation. The ultimate objective is to give each party an equal start on the road to independent living."

---

[3] *B-H v H* paragraphs 23 – 24.

28. The principle of compensation is intended to address relationship-generated disadvantage where one party has suffered an economic disadvantage as a result of entering into the marriage[4]. I can say at this stage that I do not regard either of the parties in this case to have suffered any disadvantage as a result of the marriage. They both pursued their own careers and neither put those on hold or otherwise appears to have sacrificed opportunities for the benefit of the marriage. Therefore, in my view the focus is on sharing and needs with a view to achieving a clean break[5].

29. When considering the value to be attributed to the matrimonial property the Court of Appeal in *McTaggart* was quite clear that although the property has to be identified as at the date of separation:

> *"It is said that, having held that the date of final separation was March 2005, he should have based his division of the assets on their 2005 values. In my view that contention is not well founded. Although the assets which are capable of being matrimonial property will be identified by reference to the date of final separation, there is no reason in principle why those assets must be allocated to one party or the other for the purposes of the order that is made under s.21(b) of the Law on the basis of historic values, rather than on the basis of current values as at the date of allocation."*[6]

30. When considering the question of distribution of matrimonial assets, the Court will also consider whether one party has made a "*special contribution*" that might be sufficient reason to depart from the concept of equal division. The question of the concept of "*special contribution*" was considered in some detail in *B-H v H* as follows:

> *"92 In Wight v. Wight 2006 CILR 1, the Court of Appeal also dealt with the concept of special contribution. In his judgment the President said:*
>
> "However, the circumstances of the particular case under consideration may be such as to allow the court to depart from equality if there is good reason to do so. The special contribution of one party is a matter to be considered in departing from equality. The court reaffirms its acceptance of the principles of equality as expounded in the above English cases."
>
> *93 The President went on to quote again from Lord Nicholls in Miller v. Miller (4) who said ([2006] 2 A.C. 618, at para. 66):*

---

[4] *McTaggart* paragraph 41.
[5] *McTaggart* paragraph 45.
[6] *McTaggart* paragraph 71.

> "A point of a similar nature concerns the approach to be adopted when evaluating the contributions of each party made to the welfare of the family. Apparently, in this post-White era there is a growing tendency for parties and their advisers to enter into the minute detail of the parties' married life, with a view to lauding their own contribution and denigrating that of the other party. In the words of Thorpe, L.J., the excesses formerly seen in the litigation concerning the claimant's reasonable requirements have now been 'transposed into disputed, and often futile, evaluations of the contributions of both of the parties': Lambert v. Lambert ([2003] Fam. 103, at para. 27).
>
> *On this I echo the powerful observations of Coleridge, J. in G v. G (Financial Provision: Equal Division) ([2002] 2 FLR 1143, at para. 33).*
>
> "Parties should not seek to promote a case of 'special contribution' unless the contribution is so marked that to disregard it would be inequitable. A good reason for departing from equality is not to be found in the minutiae of married life."
>
> *94 Again in this context, the President referred to Charman v. Charman (1) and the judgment of Sir Mark Potter when he said ([2007] 1 FLR 1246, at para. 80):*
>
> "The notion of a special contribution to the welfare of the family will not successfully have been purged of inherent gender discrimination unless it is accepted that such a contribution can, in principle, take a number of forms; that it can be non-financial as well as financial; and that it can thus be made by a party whose role has been exclusively that of a home-maker."
>
> *95 The President concluded:*
>
> "The notion of 'special contribution' is now an accepted principle and I agree and accept this notion of special contribution. It is a matter for the judge at trial to consider whether special contribution has been established. This will depend on the facts of each particular case."

31. It is also the case that just because one party makes a greater financial contribution to a marriage it does not mean that this in itself displaces the principle of equal sharing. In the case of *Wight v Wight*[7] Levers J referred to what has been said about this in the English case of *White v White*

> *"... it was stated by Lord Nicholls ([2001] 1 All E.R. at 8–9):*

[7] [2006 CILR 1].

> "Self-evidently, fairness requires the court to take into account all the circumstances of the case. Indeed, the statute so provides. It is also self-evident that the circumstances in which the statutory powers have to be exercised vary widely ... But there is one principle of universal application which can be stated with confidence. In seeking to achieve a fair outcome, there is no place for discrimination between husband and wife and their respective roles. Typically, a husband and wife share the activities of earning money, running their home and caring for their children. Traditionally, the husband earned the money, and the wife looked after the home and the children. This traditional division of labour is no longer the order of the day. Frequently both parents work. Sometimes it is the wife who is the money-earner, and the husband runs the home and cares for the children during the day. But whatever the division of labour chosen by the husband and wife, or forced upon them by circumstances, fairness requires that this should not prejudice or advantage either party when considering paragraph (f), relating to parties' contributions. This is implicit in the very language of paragraph (f): '. . . the contribution which each of the parties has made or is likely ... to make to the welfare of the family, including any contribution by looking after the home or caring for the family.' If, in their different spheres, each contributed equally to the family, then in principle it matters not which of them earned the money and built up the assets. There should be no bias in favour of the money-earner and against the homemaker and the child-carer. There are cases, of which the Court of Appeal decision in Page v Page [1981] 2 FLR 198 is perhaps an instance, where the court may have lost sight of this principle.
>
> . . .
>
> As a general guide, equality should be departed from only if, and to the extent that, there is good reason for doing so. The need to consider and articulate reasons for departing from equality would help the parties and the court to focus on the need to ensure the absence of discrimination."

> *"23 White v. White changed the entire complexion of the application of the principles in ancillary relief proceedings. The authorities in England are based on the statutory requirements of section 25(2). In this jurisdiction, cases must be decided on their own facts, applying our laws. However, the English authorities are guiding and persuasive as to the principles to be applied."*

The positions of the parties

Date of separation

32. For the reasons explained above, there is an element of disagreement in connection with the date of separation. The Petitioner says that it was 28 May 2018 when she wrote to the Respondent by email

indicating that she wanted a divorce. He replied on 3 June 2018 and seems to have accepted that they would be getting divorced. The Petitioner also confirmed this date in her letter to the Department of Immigration when she advised it that their marriage was at an end, presumably with the knowledge that this would have implications for the Respondent's immigration status in the Cayman Islands. In his oral evidence the Respondent suggested that they had, in fact, maintained a relationship after that date, going on a staycation and having dinner together culminating in him accompanying the Petitioner to Miami for medical treatment in June 2019. On balance, it seems to me that the date of separation was more likely 28 May 2018 rather than June 2019.

Matrimonial assets

33. The Petitioner identifies the matrimonial assets as potentially being the Former Matrimonial Home, the business that he set up (including the Respondents tools of the trade), any aspect of the parties' respective pensions that was acquired from the marriage and the time share at Morritt's. The Respondent has added the parties' vehicles to that list.

34. There seems to be no question that the Former Matrimonial Home is a matrimonial asset.

35. The Respondent's business is not a limited company, it is no more that the Respondent himself. There is disagreement between the parties as to any involvement that the Petitioner has had in helping the Respondent set up the business. There is no dispute about the fact that the Respondent did not start to work for himself until November 2021. Whichever way one looks at the business it is hard to see it as an asset of the marriage. It is not a business that was set up during the course of the marriage (pre-separation). When considering the desirability of a clean break between the parties and an ability for each to have the best chance at independent living I think that it must be the case that the Respondent's business (and the associated tools of the Respondent's trade) is not a matrimonial asset.

36. The Petitioner is of the view that as a result of her contribution to the business, she should be compensated for allowing the Former Matrimonial Home to be used as the registered office, actual physical office, storage space and generally for operating the business from those premises. She

argues that had the business not operated from those premises, there would have been substantial overheads.

37. She is also of the view that as she was not paid for any of the work carried out on behalf of the business to set up the bank accounts and take care of the paperwork, this should also be taken into account so that she is provided with compensation in relation to the above. As I have already mentioned, I do not regard the business as a matrimonial asset. It is noted in the Petitioner's closing submission that it was started post-separation because the Respondent continued to have difficulties being employed consistently. If, in the future, the parties agree that the Petitioner is to receive any remuneration from the business for assisting the Respondent with the paper work for the business then, in my view, that is a matter for them. I do not regard that as being a matter that should be subject of any order in these proceedings.

38. Both parties have withdrawn funds from their respective pensions during the course of the marriage. The Petitioner said that she used some of the money to refurbish the Former Matrimonial Home, the Respondent said that he used his withdrawal to help meet household expenses during Covid. It seems to be agreed that the balance of pension investments accumulated during the course of the marriage to the date of separation should be treated as matrimonial assets and shared.

39. The time share at Morritt's was acquired by the Respondent in 2021, well after the date of separation. It is not suggested that savings or other property from the marriage were used by him to acquire it so, it seems to me that this cannot be treated as a matrimonial asset.

40. The parties' motor vehicles comprise a 2020 Mercedes owned by the Petitioner subject to a lien in favour of FCIB with an estimated value of CI$46,000 and a 2012 Hyundai with an estimated value of CI$9,386. The Respondent's vehicles comprise a 2005 BMW 5 series with an estimated value of CI$4,500 and a Hyundai i10 with an estimated value of CI$3,500. It is not clear the extent to which they are or are not matrimonial assets and as I have indicated later in this judgment I intended to treat each parties vehicles as their own.

How should the matrimonial assets be shared?

41. The position of the Petitioner in relation to the Former Matrimonial Home is that the relevant value should not be shared equally for the following reasons:

    41.1 The Respondent made no direct or indirect contribution to the Land Loan or the Mortgage which means that the Petitioner made a substantial contribution to the asset base of the parties.

    41.2 The Petitioner claims that the Respondent was paid to do the plumbing work on the Former Matrimonial Home when it was being constructed;

    41.3 The Petitioner claims that it was agreed that the Former Matrimonial Home was to be her home to pass on to her daughter and that the Respondent was to purchase a piece of land to pass on to his son. The Petitioner dismisses the Respondent's evidence that the agreement was that they would both buy another property to leave to their children. The Petitioner says that the fact that the Respondent's name was never on the title to the Former Matrimonial Home or, latterly the FCIB mortgage was because it was always agreed that the home was hers.

42. In her closing submissions the Petitioner's position is put forward as follows:

> *"It is the Petitioner's position that when her "responsibilities, needs, financial and other resources, actual and potential earning power and the just deserts of the parties" are taken in to account in this matter that due to her significant contribution as compared to the Respondent's, her health condition, being a cancer survivor, her earning capacity having a fixed income unlike the Respondent, who is free to make as much money as he is prepared to work for being self-employed; and the just deserts of the parties, in the sense again of the relative contributions of the parties especially during the periods in the marriage when the Respondent was without employment and she was the sole breadwinner, paying all of the household bills in addition to the mortgage, that she should be allocated 60% of the asset base and the Respondent should be allocated 40%."*

43. This is reflected in the approach that the Petitioner takes to potential treatment of the value of the Former Matrimonial Home. Her alternative scenarios are set out below and it seems that the effect

of the position that she takes in relation to the Former Matrimonial Home (a 60/40 spilt in her favour) is to treat it as if she has made a "*special contribution*" to the marriage.

Scenario 1	Value of property/mortgage CI$	Equity available CI$	Equal split CI$	60/40 Petitioner/Respondent CI$
19 November 2018 valuation	350,000			
Mortgage outstanding (May 2018)	266,250.35			
		83,749.65	41874.82	50,249.79/33,499.86
Scenario 2[8]				
July 2021 valuation	425,000	158,749.65	79,374.82	95,249.79/63,499,86
Mortgage outstanding (May 2018)	266,250.35			
Scenario 3				
Take the value of the Former Matrimonial Home at July 2021 and the mortgage as at July 2021 [9]	Figures were not provided by the Petitioner			

[8] Using the date of allocation as the date of valuation (see *McTaggart*) although the Petitioner argues that this scenario would be unfair to her as this would mean that the payments made on this asset by her from her post-separation, non-matrimonial income, between June, 2018 and July 2021 would be taken into account as matrimonial income as it is the result of those mortgage payments during that period that an increase in the value of the property has been obtained and those payments have also prevented the bank from foreclosing on the property for non-payment of the mortgage.

[9] An outcome which the Petitioner says would be equally unfair to her.

44. The Respondent's position is that, as outlined in the authorities referred to earlier, the starting point in relation to the division of matrimonial assets is that they should be shared equally. He argues that there is no basis upon which to depart from that basic principle. His counsel has referred to *White v White* and the clear statement that the court must consider all contributions to a marriage, not just those that are financial, the primary objective being to identify an outcome that is fair to both parties. In doing so the court must consider all of the circumstances of the case.

45. The following aspects of the Respondent's evidence have been highlighted:

    45.1 The Respondent had helped pay rent at the beginning of the parties' relationship facilitating the Petitioner meeting the cost of the Land Loan.

    45.2 The Respondent carried out the plumbing works to the Former Matrimonial Home when it was being constructed and was not remunerated personally for doing so.

    45.3 He also helped with other aspects of the construction including landscaping.

    45.4 During the course of the marriage the Respondent assisted with meeting household expenses such as water and electricity.

    45.5 The Respondent's assisted with child care and household chores such as cooking, thus assisting the Petitioner when at work or studying.

    45.6 The Respondent always expected to have his name added to the title to the Former Matrimonial Home and treated it as being as much his as that of the Petitioner.

46. Having considered the evidence, the Amended Petition and having heard the parties give evidence, I am not satisfied that the Petitioner has disclosed any evidence to support her contention that there was an agreement that the Respondent would not be entitled to share the value of the Former Matrimonial Home. Indeed, reliance by her on the Postponement of Claim form as being some sort of waiver in that regard seems to have been misplaced. I accept the Respondent's evidence in this regard.

47. During the course of the hearing and in closing submissions, much time was spent by the Petitioner on the detailed expenditure of each party in relation to the Former Matrimonial Home. In my view

that falls within the commentary from *White v White* set out above. In my view, a review of the minute financial details of the marriage does not assist in this case. I am satisfied that, having considered the evidence and heard and seen the parties give evidence that each made a contribution to the marriage. They were different contributions, but each made them. I am also not satisfied that this marriage was much different to many where there may be a disparity in earning capacity whether, as in this case, as a result of different career paths, or whether, as in others, one party may sacrifice their career to care for children. I do not find therefore that the Petition has made a case to show that she made a "special contribution" to the marriage which was so marked that to disregard it would be inequitable or that there are any grounds to depart from the basic principle of equal sharing.

48. Based on the above, in my view, the equity in the Former Matrimonial Home stands to be divided equally between the parties. I am also of the view that consistent with *McTaggart* the value attributable to the Former Matrimonial Home should be that from July 2021 being closest to the date of allocation. Using the Petitioner's various approaches, this is scenario 2 with a 50% split of the net equity taking the 2018 mortgage figure.

49. Taking into account the background to the parties, their respective careers and earning capacities, the Petitioner's ability to access preferential interest rates through her employers, the parties' needs and the importance of enabling both to move on with their lives. I think that this is a fair result as between the parties.

Occupational rent

50. The Petitioner also makes a claim for occupational rent based on the occupation of the Former Matrimonial Home by the Respondent's son. It is argued on her behalf that she did not agree to the Respondent's son coming to live at the Former Matrimonial home and that he has lived at the property for over 2 years. It had been suggested that an approximate monthly rent for the whole house might be CI$2750 – 3000 per month. On that basis the Petitioner argues that the Respondent or his son should pay CI$1000 per month for the period of his occupation and that this should be deducted from any amount awarded to the Respondent.

51. The authority cited in support of this argument is *DL v KL*[10]. In that case:

> *"The wife sought an equal division of the matrimonial assets, but contended that she should be credited for what she perceived to be the husband's share of the mortgage and insurance payments she had made on his behalf. The husband claimed a sum for occupation rent from the wife for the period in which she had continued to reside in the matrimonial home following his departure."*
>
> It was held that:
>
> *"If a party was ousted from a property due to the other party, the ousted party might have a claim for occupation rent against the occupying party, who might become liable to pay a fair, but not rack, rent for his or her occupation of the other's share of the property. Violence or the service of a divorce petition could be sufficient to exclude a spouse from a matrimonial property (Dennis v. McDonald, [1982] Fam. 63, referred to; Re Pavlou, [1993] 1 W.L.R. 1046, referred to). Simply leaving the property on a voluntary basis, however, was not sufficient to make the occupying party liable to pay occupation rent, although the court might well be driven to find that a party departing from a property following a relationship breakdown was not welcome back so as to give rise to a liability to pay an occupation rent.*

52. I am not sure that the authority is relevant to this case. As the parties confirmed when giving evidence, they are both living at the Former Matrimonial Home, as is the Respondent's son. The Former Matrimonial Home is matrimonial property. No one has vacated the property or been ousted from it. On that basis, I do not see any grounds for a claim for occupational rent.

Conclusions

53. For the reasons set out above I find as follows:

    53.1 The Former Matrimonial Home is a matrimonial asset that it is to be shared equally. Its value to be taken based on the July 2021 valuation and the equity is to be calculated using the value of the outstanding Mortgage as at May 2018. The equity to be shared equally is therefore 158,749.65 split equally between the parties CI$79,374.82 each.

    53.2 MBS is not a matrimonial asset and no order is made in relation to that.

    53.3 The remaining balance of pension investments accumulated by the parties during the course of the marriage to the date of separation should be treated as matrimonial assets and shared.

---

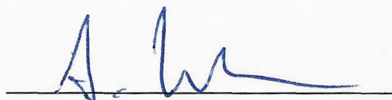
[10] [2018 (1) CILR Note 1].

53.4 The Morritt's time share is not a matrimonial asset and no order is made in relation to that.

53.5 Each party is to keep their own motor vehicles.

53.6 The application for an order for occupational rent in respect of the occupation by the Respondent's son of the Former Matrimonial Home is dismissed.

54. Finally, I am firmly of the view that this case could and should have been settled via mediation especially when considering the likely costs that have been incurred when compared to the value of the matrimonial estate.



Hon. Mr Justice Alistair Walters
Acting Judge of the Grand Court