

1 THE GRAND COURT OF THE CAYMAN ISLANDS  
2 FAMILY DIVISION

3 CAUSE NO. FAM 0221 OF 2019

4  
5 BETWEEN: DS PETITIONER  
6

7  
8 AND: GE RESPONDENT  
9  
10 YM PERSON NAMED  
11  
12

13 Appearances: Ms. Sheridan Brooks Q.C. of Brooks & Brooks for the  
14 Petitioner

15 Mr. Dennis Brady of Brady Attorneys-At-Law for the  
16 Respondent

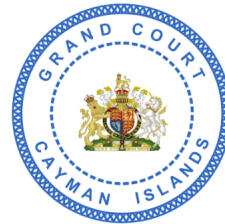
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18 Before: The Hon. Justice Cheryll Richards Q.C.  
19

20 Hearing: 8<sup>th</sup> January 2021, 11<sup>th</sup> and 12<sup>th</sup> January 2021, 14<sup>th</sup>  
21 January 2021, 21<sup>st</sup> January 2021, 4<sup>th</sup> February 2021  
22

23 Written Submissions of Respondent: 3rd February 2021

24 Written Submissions of Petitioner: 15<sup>th</sup> February 2021

25 Draft Judgment Circulated: 14<sup>th</sup> May 2021



26  
27 **HEADNOTE**

28 *Family Law- s.19 and 21 of the Matrimonial Causes Act Final Ancillaries, Applicable*  
29 *principles.*  
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31



1 **JUDGMENT**

2 **INTRODUCTION**

- 3 1. This is an application for Final Ancillaries. The parties are Jamaican nationals who are residents  
4 of the Cayman Islands. They have been together for some twenty years and have co-habited  
5 for most of this period, both before and after their marriage which was on the 31<sup>st</sup> July 2015.  
6 The Petitioner DS, (“the wife”) is forty-six years old. The Respondent GE (“the husband”, “Mr.  
7 GE”) is fifty-two years old. They have one child together, a daughter ‘O’ who was born on  
8 the 20<sup>th</sup> August 2003. She is now 17 years old. She has completed attendance at a local private  
9 high school and is seeking enrollment in an overseas institution to pursue a degree in medicine.  
10
- 11 2. The wife filed a Petition for divorce on the 12<sup>th</sup> September 2019. This referred to YM as a  
12 Person Named. YM is a witness in these proceedings. Service of the Petition was acknowledged  
13 by the husband and YM on the 24<sup>th</sup> September 2019 with the indication that neither of the two  
14 intended to defend the matter. The Petition was ordered proved on the 7<sup>th</sup> October 2019.  
15
- 16 3. At the time of the filing of the Petition the parties resided at the former matrimonial home in  
17 Spotts, Grand Cayman (“the FMH”). By Summons filed on the 15<sup>th</sup> May 2020, the wife sought  
18 a number of interim orders. By that point in May 2020, the disharmony between the two had  
19 grown to the point where they resided in opposite sides of the FMH and each accused the other  
20 of certain acts which made being in the same property either uncomfortable or difficult. The  
21 police were called in over one incident where the husband could not find his slippers in the  
22 place where he had left them and an argument between them escalated. For her part, the wife  
23 claimed that the husband was being careless in respect of O’s health issues in the midst of a  
24 pandemic and was also interfering with her. These issues are set out in the judgment issued on  
25 the making of those orders<sup>1</sup> and are not repeated in detail herein. I concluded that it was in the  
26 best interest of the child and all concerned that as a temporary measure the parties remain at a  
27 distance from each other and that the husband vacate the premises except for access during the  
28 day time to work materials stored in the attic of the house. The Orders made on the Interim  
29 Summons included the following:

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<sup>1</sup> Judgment dated 27<sup>th</sup> October 2020

- 1 i. The husband is to pay interim spousal and child maintenance to the wife of  
2 \$5,000.00 per month through the Court Fund's Office on or before the 28<sup>th</sup> day of  
3 each month.  
4  
5 ii. The husband is to pay the monthly school fees for 'O', the child of the marriage  
6 directly to the Service provider.  
7  
8 iii. The wife is to have the exclusive use of the Dodge Ram Truck registration number  
9 195 377 until the conclusion of the Final Ancillary proceedings.  
10  
11 iv. The husband shall forthwith vacate the former matrimonial home at Block 25B  
12 Parcel 100 which shall thereafter be exclusively occupied by the wife and 'O' until  
13 the conclusion of the Final Ancillary proceedings.  
14  
15 v. The husband shall forthwith disclose and identify the banks at which he has  
16 business and personal accounts and the account numbers for these accounts and  
17 shall provide on a periodic basis, records of all sums withdrawn and documents  
18 evidencing the purpose for such withdrawals.

19  
20 4. There is agreement between the parties as to the custody of, and financial support for, their  
21 daughter 'O' until she completes tertiary education and it is evident that both care deeply for  
22 her and that each in their own way will make every effort to provide for her. In the course of  
23 this hearing, the husband gave evidence that his position with respect to 'O', is that in the future  
24 he will be fully responsible for her education as he has been throughout her life.  
25

26 5. The primary issue before the Court on this application is whether certain items of real estate  
27 and certain businesses constitute matrimonial property and, if so, how any such assets should  
28 be fairly divided.  
29

30 6. Throughout their relationship, the parties purchased several properties in the Cayman Islands  
31 and in Jamaica and operated a number of businesses. It is clear on the evidence that the husband  
32 has been the driving force, energy and acumen in respect of all their acquisitions. Prior to  
33 moving into the FMH the parties resided together at a home at Mahogany Way in Prospect.



1 This first home was purchased by both of the parties by means of a mortgage obtained at a local  
2 bank and is registered in their joint names. This is the only property in both their names. They  
3 lived in one part of the property and rented out other parts. The rental income was used to pay  
4 the mortgage. Shortly after their marriage in 2015, they moved from this home leaving it as  
5 entirely rental property. The relatives of both the wife and husband have rental units at the  
6 property and it is a source of disagreement that the relatives of the wife are expected to and pay  
7 rent while the relatives of the husband including his mother, brother and nephew are not  
8 required to pay rent and live rent free. More properties were purchased over time in the Cayman  
9 Islands and in Jamaica.

10  
11 7. The husband began with the operation of one landscaping business and expanded into a second  
12 such business, as well as a construction, and an event planning business. It is a matter of dispute  
13 as to the level of contribution of the wife to these businesses. Both parties are now self-  
14 employed, the wife having left long term employment in about 2012. She was encouraged and  
15 supported by the husband to open her own retail establishment. He provided startup capital of  
16 \$45,000.00. The husband also left his long term employment about four or five years ago.

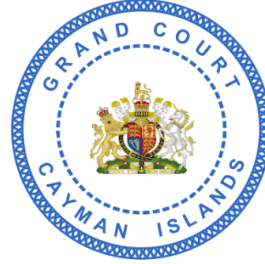
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18 8. In addition to pension entitlements and vehicles, the properties and businesses in issue are,  
19 properties in the Cayman Islands:

- 20 i. Bock 25 B, Parcel 100 – rental property, Mahogany Way Prospect;
- 21 ii. Block 24 D, Parcel 120 – FMH in Spotts;
- 22 iii. Block 25 B, Parcel 266 – bare land in Spotts;
- 23 iv. Block 48 C, Parcel 144 – Breakers property.



- 24  
25 9. The properties in Jamaica are:
- 26 i. House in New Town, Black River, St. Elizabeth;
  - 27 ii. House in Fullerswood Black River, St. Elizabeth;
  - 28 iii. Land at Montpelier, St. Elizabeth in name of the husband;
  - 29 iv. Land at Montpelier in name of the wife;
  - 30 v. House in Black River in name of the wife.

- 1        10.    The businesses are:
- 2            i.     Retail establishment operated by the wife;
- 3            ii.    Landscaping business 1 – E;
- 4            iii.   Landscaping business 2 – TLM;
- 5            iv.    Construction business;
- 6            v.     Event planning business.
- 7



8        **THE POSITIONS OF THE PARTIES**

9

10       11.    The husband’s position by way of an open offer in the course of these proceedings and again  
11       repeated in closing submission is that the FMH be transferred into the sole name of the wife  
12       together with his commitment to pay the applicable mortgage, until ‘O’ attains the age of 21  
13       years or completes her tertiary education, whichever is the later. He stated in evidence that he  
14       would not offer the wife the Mahogany Way property because that is where he now resides as  
15       does his mother in a house that he built for her. With respect to the properties in Jamaica he  
16       proposes that the wife retains the properties which are already in her name, to wit the land at  
17       Montpelier and the house in Black River. He also proposes that the wife retains the retail  
18       establishment operated by her and all its earnings. Should she wish it, he also offers the E.  
19       landscaping business.

20

21       12.    The husband also offers to pay all school fees and provide health insurance for ‘O’ under his  
22       insurance policy until she is 21 years of age and to pay any additional costs for dental and  
23       optical coverage not covered by insurance. They should each retain their pension funds. He  
24       seeks the return of the Ram truck which was purchased for \$66,000.00 for use in his  
25       landscaping business.

26

27       13.    The wife’s position is that the husband has dissipated matrimonial funds since the filing of the  
28       Petition such that she should be awarded a lump sum payment of \$250,000.00 as well as  
29       specific assets as follows:

- 30            •     The FMH free and clear from the outstanding mortgage of \$90,653.00 which is to  
31            be paid by the husband before transfer.

- The Mahogany Way property free and clear from the outstanding mortgage of \$92,120.00 which is to be paid by the husband before transfer.
- One half the sale proceeds of the bare land.

Her position would require the husband to make payments totaling \$432,773.00.

14. The wife also asks that the husband be responsible for the college fees and educational expenses for 'O' up to age 21 and that this be done by way of continued periodical payments of CUS\$ 5,000.00 per month to be paid directly into her bank account.

15. The wife asserts that all the assets acquired by them were acquired from income earned when they were both employed and from rental income from their first property.

16. With respect to the businesses, it is her position that all are matrimonial businesses and that the income and expenditure relating to each of these are so inter-related and intermingled that an accurate division of the finances relating to each is impossible without the use of forensic accounting. She states that the parties cannot afford to employ a forensic accountant to value each business. Moreover the event planning business has no separate account and the husband used the construction business accounts for this business. Additionally through Counsel the wife states that she does not have either the practical day to day experience or the time to operate any of the four businesses operated by the husband. She anticipates that her time will be even more limited due to the responsibility for travelling which is necessary to assist with settling in 'O' into her studies overseas. There is also the complicating factor that a number of the current employees of these businesses are either related to the husband or friends with him or with YM. Thus the wife states that she would not be comfortable taking over these businesses. Her position is that the husband retains the four businesses while she would retain her retail establishment.

17. The wife agrees that each party should retain their pension entitlement. As to motor vehicles, she seeks to retain the Ram truck and requests that the title be transferred into her name.





1 THE LAW

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18. The *Matrimonial Causes Act* (2005 Revision) sets out the powers of the Court on the final distribution of marital assets. Section 19 provides that 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.

19. Section 21 provides that 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
- (g) costs.”

20. The subsections which are most relevant to this application are (b) and (e).

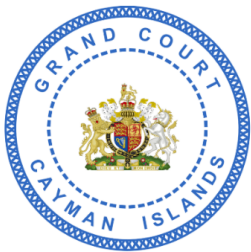
21. In the leading case of *McTaggart v. McTaggart*<sup>2</sup> the Cayman Islands Court of Appeal (CICA) provided guidance as to the interrelationship between these two provisions of the Law and their application. This includes that a court will need to consider whether having regard to the s.19 factors, an order under s.21(b) of the Law for the disposition of matrimonial property will make appropriate provision for the relevant party with regard to their needs, the level of compensation and sharing. If disposition of matrimonial property will not allow for the appropriate provision to be made, then the court should go on to consider whether to make an order under s.21(e) that financial provision be made from the property of either spouse. A court should not make an order for periodic payments under s. 21(f) without good reason. Such good reason would arise where the

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<sup>2</sup> *McTaggart v. McTaggart* [2011] (2) CILR 390

1 combination of orders under s.21(b) and (e) are insufficient to satisfy the three strands of need,  
2 compensation and sharing<sup>3</sup>.

3  
4 22. Additionally the Appellate Court made it clear that although the s.19 factors are less extensive than  
5 those in England and Wales, in the *Matrimonial Cause Act 1973* as amended by the *Matrimonial*  
6 *and Family Proceedings Act 1984*, the approach in the Cayman Islands should be the same as in  
7 that jurisdiction.<sup>4</sup> A court in exercising its powers under the statutory provisions should therefore  
8 consider all the circumstances of a case to include the following:  
9



- 10 “a) *the income, earning capacity, property and other financial resources*  
11 *which each of the parties to the marriage has or is likely to have in the*  
12 *foreseeable future, including in the case of earning capacity any increase*  
13 *in that capacity which it would in the opinion of the court be reasonable*  
14 *to expect a party to the marriage to take steps to acquire;*  
15 (b) *the financial needs, obligations and responsibilities which each of the*  
16 *parties to the marriage has or is likely to have in the foreseeable future;*  
17 (c) *the standard of living enjoyed by the family before the breakdown*  
18 *of the marriage;*  
19 (d) *the age of each party to the marriage and the duration of the*  
20 *marriage;*  
21 (e) *any physical or mental disability of either of the parties to the*  
22 *marriage;*  
23 (f) *the contributions which each of the parties has made or is likely in*  
24 *the foreseeable future to make to the welfare of the family, including*  
25 *any contribution by looking after the home or caring for the family;*  
26 (g) *the conduct of each of the parties, if that conduct is such that it*  
27 *would in the opinion of the court be inequitable to disregard it;*  
28 (h) *in the case of proceedings for divorce . . . the value to each of the*  
29 *parties to the marriage of any benefit which, by reason of the*  
30 *dissolution or annulment of the marriage, that party will lose the*  
31 *chance of acquiring.”*<sup>5</sup>  
32

### 33 APPLICABLE PRINCIPLES

34 23. In considering the division of matrimonial property pursuant to s.21 of the *Matrimonial Causes*  
35 *Law* (2005 Revision) a court should first determine what constitutes matrimonial property.<sup>6</sup>

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<sup>3</sup> *McTaggart v. McTaggart* [2011] (2) CILR 390 - Paragraphs 42 and 43

<sup>4</sup> *McTaggart v. McTaggart* [2011] (2) CILR 390 - Paragraph 39

<sup>5</sup> Statutory Factors in England and Wales

<sup>6</sup> See *Wight v. Wight* [2010] CILR 60 and *McTaggart v. McTaggart* [2011] (2) CILR 390 – paragraph 34, *B-H v. H.* [2009] CILR 185

1 24. The leading cases from England and Wales which have been cited with approval in this  
2 jurisdiction are the cases of *White and White*<sup>7</sup> and *Miller v. Miller, McFarlane v. McFarlane*.<sup>8</sup>  
3 In *White and White*, Lord Nicholls of Birkenhead stated that fairness requires the court to take  
4 into account all the circumstances of the case. The learned Judge under the heading of equality  
5 stated:

6  
7 *“But there is one principle of universal application which can be stated with confidence.*  
8 *In seeking to achieve a fair outcome, there is no place for discrimination between husband*  
9 *and wife and their respective roles. Typically, a husband and wife share the activities of*  
10 *earning money, running their home and caring for their children. Traditionally, the*  
11 *husband earned the money, and the wife looked after the home and the children. This*  
12 *traditional division of labour is no longer the order of the day. Frequently both parents*  
13 *work. Sometimes it is the wife who is the money-earner, and the husband runs the home*  
14 *and cares for the children during the day.*

15  
16 *But whatever the division of labour chosen by the husband and wife, or forced upon them*  
17 *by circumstances, fairness requires that this should not prejudice or advantage either party*  
18 *when considering paragraph (f), relating to the parties' contributions. This is implicit in*  
19 *the very language of paragraph (f): ‘... the contribution which each has made or is likely ...*  
20 *to make to the welfare of the family, including any contribution by looking after the home*  
21 *or caring for the family.’ If, in their different spheres, each contributed equally to the*  
22 *family, then in principle it matters not which of them earned the money and built up the*  
23 *assets. There should be no bias in favour of the money-earner and against the home-maker*  
24 *and the child-carer.”*

25  
26  
27 25. This important principle that there is no place for discrimination between a husband and wife  
28 and their respective roles in considering division of financial property was reiterated in the case  
29 of *Miller v. Miller, McFarlane v. McFarlane*. The homemaker role should be given equal  
30 weight. Additionally a court should consider the three strands of need, compensation and  
31 sharing which should guide the court in arriving at a fair division of property on the dissolution  
32 of a marriage.

33  
34 26. In his judgment in that case, Lord Nicholls of Birkenhead stated that fairness requires that when  
35 a partnership ends, each partner is entitled to an equal share of the assets of the partnership  
36 unless there is good reason to depart from equality. The learned Judge emphasized that the

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<sup>7</sup> [2000] UKHL J1026-3

<sup>8</sup> [2006] UKHL 24



1 yardstick of equality is not a rule but an aid.<sup>9</sup> The learned Judge further stated that there is a  
2 real difference between matrimonial property and non-matrimonial property and pointed to the  
3 difference being the source of the acquisition. Property which is acquired during the marriage  
4 otherwise than by inheritance or gift would usually be matrimonial property. Matrimonial  
5 property is the “*financial product of the parties’ common endeavor.*” As to the matrimonial  
6 home, the Learned Judge said this:

7 “*The parties’ matrimonial home even if this was brought into the marriage at the outset by*  
8 *one of the parties, usually has a central place in any marriage. So it should normally be*  
9 *treated as matrimonial property for this purpose. As already noted, in principle the*  
10 *entitlement of each party to a share of the matrimonial property is the same however long*  
11 *or short the marriage may have been.*”

12  
13  
14 27. The Learned Judge went on to say that the position is different with regard to non-matrimonial  
15 property. This is property which the parties bring with them into the marriage or acquire by  
16 inheritance or gift during the marriage.

17  
18 28. In discussing the approach which should be taken to the question of contributions, Baroness  
19 Hale of Richmond in her judgment in the said case concluded that these should be approached  
20 in much the same way as conduct, to wit that it was of such a level that it would be inequitable  
21 to disregard it. The learned Judge stated:

22 “*Coleridge J’s words were rightly influential in the later retreat from the concept of special*  
23 *contributions in Lambert v. Lambert [2003] Fam 103. It had already been made clear in*  
24 *White v. White [2001] 1 AC 596 that domestic and financial contributions should be treated*  
25 *equally. Section 25(2)(f) of the 1973 Act does not refer to the contributions which each had*  
26 *made to the parties accumulated wealth but to the contributions they have made (and will*  
27 *continue to make) to the welfare of the family. Each should be seen as doing their best in*  
28 *their own sphere. Only if there is such a disparity in their respective contributions to the*  
29 *welfare of the family that it would be inequitable to disregard it should this be taken into*  
30 *account in determining their shares.*”<sup>10</sup>

31  
32  
33 29. In **McTaggart v. McTaggart**<sup>11</sup>, the Appellate Court provided guidance as to the way in which a  
34 Court should approach the issue of what is matrimonial property under s.21 of the Law:  
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<sup>9</sup> Miller v. Miller, McFarlane v. McFarlane [2006] UKHL 24 - Paragraphs 16 and 17

<sup>10</sup> Miller v. Miller, McFarlane v. McFarlane [2006] UKHL 24 - paragraph 146

<sup>11</sup> [2011] 2 CILR 377



1                   *“It can be seen that the section gives recognition to the concept of “matrimonial*  
2 *property.” That concept is not defined in the Matrimonial Causes Law, but it is*  
3 *generally understood in the sense described by Lord Nicholls of Birkenhead in Miller*  
4 *v. Miller (5), that is to say, it comprises “property acquired during the marriage*  
5 *otherwise than by inheritance or gift” ([2006] 2 A.C. 618, at para. 22). Its*  
6 *distinguishing feature is that it is “the financial product of the parties’ common*  
7 *endeavour”*<sup>12</sup>

8  
9  
10 30.       The Court further stated:  
11

12                   *“It is necessary therefore to identify those assets which are owned or under the*  
13 *control of one or other (or both) of the parties as at the date when the order is made*  
14 *and then to identify which of those available assets are matrimonial property and so*  
15 *capable of being the subject of an order under s.21(b).*<sup>13</sup>

16                   *“There may be cases (of which, as I shall explain, the present provides an example*  
17 *in relation to the husband’s potential retirement benefits) where an asset which did*  
18 *exist at the date of final separation does not exist—or does not exist in the same*  
19 *form—at the date of the hearing. In such cases it will be necessary to consider*  
20 *whether the former asset can be traced into an after-acquired asset which can itself*  
21 *be treated (in whole or in part) as matrimonial property; and, if not, whether some*  
22 *other order (say, under s.21(e)) should be made to reflect the fact that the former*  
23 *asset has ceased to exist.*

24  
25                   *The power conferred under s.21(b) of the Law is a power “to make an order for the*  
26 *disposition of matrimonial property.” There is no requirement under the Law that*  
27 *the disposition should give effect to an equal division of the matrimonial property as*  
28 *between the parties; and there is no invariable rule that the power should be*  
29 *exercised in a manner which achieves that effect. The requirement—imposed by s.19*  
30 *of the Law—is that, in exercising the power, the court shall have regard to “the*  
31 *responsibilities, needs, financial and other resources, actual or potential earning*  
32 *power and the deserts of the parties.” It is plainly open to the court—if, having*  
33 *regard to those factors, it thinks it appropriate to do so—to make an order which*  
34 *effects an unequal division of the matrimonial property as between the parties. The*  
35 *order made in Wight v. Wight (11)—and upheld in this court—provides an example*  
36 *of such a case. In Miller (5) ([2006] 2 A.C. 618 at para. 16), Lord Nicholls observed*  
37 *that “the yardstick of equality is to be applied as an aid, not a rule.” But, as Lord*  
38 *Nicholls had pointed out in White v. White (10) ([2001] 1 A.C. 596, at 605)—in a*  
39 *passage expressly adopted by Lord Cooke of Thorndon (ibid., at 615)—“as a general*  
40 *guide, equality should be departed from only if, and to the extent that, there is good*  
41 *reason for doing so.”*  
42



<sup>12</sup> McTaggart v. McTaggart, Supra at Page 376

<sup>13</sup> McTaggart v. McTaggart, Supra - Page 390



1 *them to raise money to finance purchase of other property and spent money on them and*  
2 *generally treated them as assets for the benefit of both of them.”*

3  
4 34. I now turn to consider the issues and facts in the instant case with the law and general principles  
5 in mind while noting that each case must be decided on its own facts with the objective being  
6 to arrive at financial arrangements which are fair to both parties. I must identify the matrimonial  
7 and non-matrimonial assets and consider a fair and equitable distribution of the matrimonial  
8 assets in light of the statutory factors taken as a whole and of the three strands of need,  
9 compensation and sharing. If the matrimonial assets are not sufficient to meet the needs, I may  
10 then go on to consider whether any further disposition should be made from non-matrimonial  
11 property. The desirable aim is for there to be a clean break between the parties if this can be  
12 achieved in the circumstances of this case and to give each party an equal start on the road to  
13 independent living.

14  
15 **EVIDENCE IN THE CASE**

16 35. The material before the Court consisted of the following written material:

- 17  
18 i. Affidavit of husband dated 20<sup>th</sup> May 2020  
19 ii. Affidavit of husband dated 8<sup>th</sup> June 2020  
20 iii. Affidavit of husband dated 23<sup>rd</sup> September 2020  
21 iv. Affidavit of husband dated 16<sup>th</sup> December 2020  
22 v. Affidavit of husband dated 18<sup>th</sup> December 2020  
23 vi. Affidavit of YM dated 4<sup>th</sup> February 2021  
24 vii. Affidavit of wife dated 19<sup>th</sup> May 2020  
25 viii. Third Affidavit of wife dated 3<sup>rd</sup> June 2020  
26 ix. Fourth Affidavit of wife dated 24<sup>th</sup> September 2020  
27 x. Updating Affidavit of wife dated 8<sup>th</sup> December 2020  
28 xi. Requests for and Responses to Requests for Further and Better Particulars



29  
30 36. In addition, evidence was heard from the following witnesses in addition to the wife and  
31 husband, HD, BE, YM and CB. The matter was adjourned on a number of days at the request

1 of Counsel for the wife in order that additional banking documentation could be obtained and  
2 produced by the husband and YM.

3  
4 **IDENTIFYING MATRIMONIAL PROPERTY – FAMILY AND BUSINESS ARRANGEMENTS**

5  
6 37. A family asset is defined by reference to the landmark case of *Wachtel v. Wachtell*<sup>16</sup> :-

7  
8 *“It refers to those things which are acquired by one or other or both of the parties, with*  
9 *the intention that there should be continuing provision for them and their children during*  
10 *their joint lives, and used for the benefit of the family as a whole.”*  
11

12 38. The evidence in this case is that the relationship between the parties began while they were  
13 both resident in Jamaica at a time when the wife was just out of High School. The husband  
14 moved to the Cayman Islands in 1993 to take up employment. The wife visited him every year  
15 until she too secured a job at the same establishment where the husband was employed. She  
16 moved here to live with him in 1998 or 1999. When the husband sought to purchase their first  
17 property in Mahogany Way, he was unable to secure a mortgage on his salary alone. He  
18 discussed the matter with the wife (they were then unmarried) and both agreed to obtain the  
19 mortgage together.

20  
21 39. In addition to their respective incomes, the husband collected rent initially from Mahogany  
22 Way and then from their various properties as they acquired them. From the rental income and  
23 his earnings from the businesses, he paid all the household bills including mortgage, utility and  
24 other bills as well as school fees for ‘O’. The wife from her own income bought groceries and  
25 other household necessities. This was the agreement and arrangement of long standing between  
26 them. It is evident from this division that each played a significant role in the relationship with  
27 the wife taking care of the home and feeding and caring for the family. The evidence is that she  
28 did so on her own without the assistance of a helper. The husband does not disagree that the  
29 wife was a good mother to ‘O’. He gave evidence that he respects the fact that she cared for  
30 their child and states that he would never be mean to her or deny her anything which should  
31 come from the marriage.<sup>17</sup>



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<sup>16</sup> [1973] Fam. 72

<sup>17</sup> Affidavit of H. dated 20<sup>th</sup> May 2020, para 21



1       40.     The wife stated in evidence:

2  
3               *“Traditionally I have trusted the Respondent to collect the rental income from all of our*  
4               *properties including those in Jamaica, and to use the proceeds to make other investments*  
5               *on our behalf and also to pay household and other expenses.”*<sup>18</sup>  
6

7       41.     The husband’s evidence is that he would invest from his earnings into the properties. He has  
8               said repeatedly throughout these proceedings that the wife would always dissuade him from  
9               these investments saying that all he was interested in was ‘house and land’. He said that he  
10              used to approach the bank all by himself to get loans because she was not interested. He  
11              criticizes the wife for being unsupportive of him, his efforts and investment ideas while  
12              enjoying the fruits of his hard work. He said that not only was she unsupportive of his ventures,  
13              she would always discourage him. There is much bitterness on his part about this. It is plain  
14              from the evidence and it is an aspect of the evidence of the husband which I accept as a truthful  
15              account that the husband it was who sought to ensure that investments were made and wealth  
16              accumulated. One example which the wife did not deny is that it is the husband who encouraged  
17              her to open her own business after she left her long term employment, rather than to seek further  
18              employment to work for someone else.

19  
20       42.     For her part, the wife denied not encouraging the husband and her evidence in cross  
21              examination when it was suggested to her that she never encouraged his investments was:

22  
23               *“We have been together when we had nothing, sir, and we have been together achieving*  
24               *everything. I never left my husband’s side. I have worked toe to toe with him and helped*  
25               *him and I contribute my money as well to it. It might not be as much as he would think but*  
26               *I contribute what I have and I work with him in all his businesses.”*  
27

28       43.     She gave evidence that the Mahogany Way property was acquired by them together, that the  
29              funds which were generated from that property were used to help them to get the FMH so that  
30              the husband would not have to be under stress about paying the mortgage. She said that the  
31              money that was collected from the property in Mahogany Way and from all the businesses that  
32              they had started, gave them everything they have today and that she had worked tirelessly with  
33              the husband.

---

<sup>18</sup> Third Affidavit of W. dated 3<sup>rd</sup> June 2020

1 44. She said that when they started their first business they did not have anything much to their  
2 names, they began by buying an old bus from their former employer. She said that that one bus  
3 started everything. She was the one who bought and printed letters and cards, and went around  
4 to the neighborhood, dropping them off and telling people that they were starting a little  
5 business. She said also that she did a lot of the accounting work while the husband is good with  
6 his hands. She spent hours at night on West Bay Road, and in the district of West Bay working  
7 together with the husband on projects in order to earn money to invest in their business.

8  
9 45. She would make supplies for their decorating projects on her dining table at home. She said  
10 that she worked with the husband and would go out on jobs with him. When he would go out  
11 on landscaping jobs, she would go and help to rake up the grass. When they started the  
12 construction business she would sometimes drive the construction truck. She has been on sites  
13 with him. She did the paper work for him. She worked with him together in everything.

14  
15 46. The husband gave evidence in chief that they initially started a retail supply business together  
16 with \$45,000.00 from his account. After a while that business was not doing well and then they  
17 decided to divert the business to a retail store. He said that the wife took care of the food for  
18 the family and O's lunch and personal items and he did everything else.

19  
20 47. He has been operating the first gardening business since 2004, just after Hurricane Ivan. The  
21 wife was a signatory on the account for that business and would sign cheques. He subsequently  
22 took her off the account completely because she went behind his back and withdrew \$8,000.00.  
23 He thought that it was dishonest for her to do this without telling him. The wife denied doing  
24 this and said that she had his permission to make the withdrawal. He said that if she wants the  
25 landscaping business, they had both started it and he would not have a problem giving it to her.

26  
27 48. In cross-examination, the husband said that the first business which they started together was  
28 E Landscaping. The second was the retail store operated by the wife which was about 10 years  
29 ago. The next one was the construction company which was around the same time. The wife  
30 did not assist him with contracts for that company which were done by the quantity surveyor  
31 and other persons. She did help him with payroll for that business. He would write a cheque



1 and she would go to the bank and get the cash whenever he could not go as he was still then  
2 working at his regular job.

3  
4 49. The next business which he started was TLM. He said that the wife did not help with the payroll  
5 for this company as she used to do for the first business. By that time he had developed the  
6 expertise for himself and he had also established an online system for payroll so he was able to  
7 do it himself by putting in the amount of hours worked by each employee.

8  
9 50. He agreed that it could be that it was the wife who set up the payroll system for the business  
10 for him on the computer as she always had more experience than he did in computers so  
11 whenever he needed assistance she would always show him what to do. She assisted him until  
12 he developed the expertise to do it.

13  
14 51. He agreed to the suggestion that in relation to all the businesses, both of them worked together  
15 in putting in what expertise they each had. The intention was that the income from these  
16 businesses would be used to pay the bills for the family and take care of whatever needed to be  
17 taken care of. This is an arrangement which began before they were married and continued  
18 after, as to how finances were shared.

19  
20 52. He said that he opened the retail store for the wife with the intention that it would assist the  
21 family and all the financial strain would not be on him alone. The investments which he made  
22 in the properties came from the income from these businesses together with whatever he had  
23 saved from before.

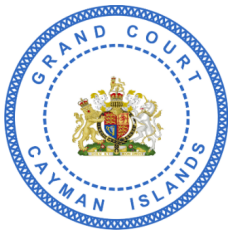
24  
25 53. In summary all of the evidence points to this being a partnership, with the wife undertaking the  
26 more traditional home maker role for close to twenty years. She it was who ensured that food  
27 was purchased for the family and took care of their child and home. This role is of equal  
28 importance to the financial investments and real estate purchases made by the husband.

29  
30 54. I also conclude that there is no evidence in this case that the parties lead separate economic  
31 lives. They had an arrangement which belies this. While they assigned themselves separate  
32 areas of financial responsibility, there was the general pooling of resources to meet the needs



1 of the family. Even in respect of those accounts to which the wife did not have signatory access,  
2 funds from these were utilised for the benefit of the family.

3  
4 55. For the husband’s benefit, it might be helpful to refer again to the applicable legal principle as  
5 stated in the cited case of *Miller v. Miller, McFarlane v. McFarlane*:  
6



7 “150. *More difficult are business or investment assets which have been generated solely*  
8 *or mainly by the efforts of one party. The other party has often made some*  
9 *contribution to the business, at least in its early days, and has continued with her*  
10 *agreed contribution to the welfare of the family (as did Mrs Cowan). But in these*  
11 *non-business-partnership, non-family asset cases, the bulk of the property has*  
12 *been generated by one party. Does this provide a reason for departing from the*  
13 *yardstick of equality? On the one hand is the view, already expressed, that*  
14 *commercial and domestic contributions are intrinsically incommensurable. It is*  
15 *easy to count the money or property which one has acquired. It is impossible to*  
16 *count the value which the other has added to their lives together. One is counted*  
17 *in money or money’s worth. The other is counted in domestic comfort and*  
18 *happiness. If the law is to avoid discrimination between the gender roles, it should*  
19 *regard all the assets generated in either way during the marriage as family assets*  
20 *to be divided equally between them unless some other good reason is shown to do*  
21 *otherwise.”*  
22

23 56. There is no evidence that the husband acquired any of the properties, investments or businesses  
24 by way of gift or inheritance. I accept what I found to be the clear and credible evidence from  
25 the wife that the starting point for all that was later acquired by them was the rental income  
26 from their first and jointly-acquired property at Mahogany Way. This helped to pay the bills  
27 for the family and provided the launching pad for all later acquisitions. I accept her evidence  
28 that she supported her husband not only in the role of homemaker but also in the establishment  
29 and growth of each business. I consider that each of the five businesses listed above constituted  
30 matrimonial endeavours.  
31

### 32 IDENTIFYING MATRIMONIAL PROPERTY – THE BUSINESS ACCOUNTS

33  
34 57. The evidence is that the husband had accumulated significant sums in his personal and business  
35 bank accounts prior to the commencement of these proceedings. Thereafter the balances in  
36 these accounts have fallen in a major way. The wife submits that this evidences dissipation of  
37 assets.

1 58. At the time of the filing of the Petition in September 2019, the TLM business account ending  
2 in 592 had a balance of \$4,863.71. The pattern of activity was regular deposit of cheques  
3 usually less than \$5,000.00 in most instances, withdrawals and transfers to a personal account  
4 of \$2,000.00 per month and payments to individuals of weekly sums.

5  
6 59. On the 30<sup>th</sup> September 2019, the balance in the TLM business account ending in 017 was  
7 \$133,690.18. This was the case through all of August and September, with small sums being  
8 withdrawn and credited and the amount remaining relatively stable. On the 15<sup>th</sup> October 2019,  
9 the sum of \$66,000.00 was withdrawn by way of a draft to Car City dealership. This was about  
10 one half of the account balance, the remaining balance was then \$68,540.18. On the 26<sup>th</sup>  
11 November 2019, \$50,000.00 was withdrawn by way of a draft payable to a local law firm. The  
12 balance in the account through to February 2020 was \$29,451.86.

13  
14 60. The balance in the construction account ending in 352 was \$310,385.78. Between 31<sup>st</sup> July  
15 2019 and September 2019, it remained relatively stable at just above \$300,000.00. On the 1<sup>st</sup>  
16 of October 2019 a cash amount of \$20,000.00 was withdrawn reducing the balance to  
17 \$290,000.00. In October 2019, there were a series of withdrawals, the largest of which was  
18 \$5,000.00 to CD, identified to be an administrative assistant to the husband. In November there  
19 were three large withdrawals as follows:

- 20 • 14<sup>th</sup> November 2019 - cheque \$16,740.00
- 21 • 20<sup>th</sup> November 2019 - cheque \$30,000.00
- 22 • 27<sup>th</sup> November 2019 - draft \$220,000.00



23  
24  
25 61. The end result was that as at 29<sup>th</sup> November 2019 the balance in the account was \$2,703.00.  
26 Despite some credits, by 31<sup>st</sup> January 2020 the balance in the account was \$529.67.

27  
28 62. The account ending in 901 for E business as at the 30<sup>th</sup> September 2019 had \$1,028.92. Between  
29 August 2019 and January 2020, the amount ranged between \$50.00 and \$5,000.00.

30  
31 63. Personal accounts for the husband had small balances of under \$5,000.00.

- 1       64.     In September 2019, the wife’s main account had about US\$17,000.00 falling to \$4,000.00 in  
2             February 2020.
- 3
- 4       65.     On 26<sup>th</sup> June 2019, the husband by cheque withdrew the sum of \$189,823.00 from an unnamed  
5             account which was put towards the purchase of a house with YM.
- 6
- 7       66.     In respect of the withdrawals from the construction business account on the 20<sup>th</sup> November  
8             2019 of \$30,000.00, and on the 26<sup>th</sup> November 2019 of \$220,008.25 and from the account of  
9             TLM on the 26<sup>th</sup> November 2019 of \$50,000.00, the husband’s evidence is that this amount of  
10            \$300,000.00 was funds owed to his brother BE and which BE put towards the purchase of a  
11            house at Mangrove Avenue.
- 12
- 13      67.     In respect of the withdrawal on the 15<sup>th</sup> October 2019, by way of a draft payable to Car City  
14             for \$66,000.00 for the purchase of a Ram truck, the husband claims that this amount was paid  
15             in furtherance of a loan agreement with and in order to purchase the truck for HD.
- 16
- 17      68.     The wife’s evidence is that since the commencement of these proceedings H has bragged to  
18             her about buying a bucket truck for \$60,000 and a Ram truck for \$50,000.00<sup>19</sup>. She further  
19             states that the husband has told her that he will use all the funds available and will see that she  
20             gets nothing.
- 21
- 22      69.     The husband denied telling the wife that he was going to use all the money that he had so that  
23             ‘she would not get a cent’. He agreed that as at the 30<sup>th</sup> September 2019, the balance on the  
24             account for the construction business was \$310,385.75 and that by 31<sup>st</sup> January 2020 it was  
25             \$529.67. He agreed that after the divorce was filed he spent \$309,856.09, roughly \$77,000.00  
26             per month from this account.
- 27
- 28      70.     The use of these funds and the resulting purchases as to whether or not they constitute  
29             matrimonial property are significant issues in dispute in these proceedings.



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<sup>19</sup> Paragraph 55 of Affidavit of 15<sup>th</sup> May 2020

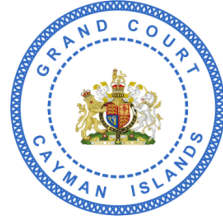


1 **i) THE FMH**  
2

3 71. The FMH located at Block 24D Parcel 120 is valued at \$312,000.00 as at January 2020. There  
4 is an outstanding mortgage in the amount as stated above. It was registered in the sole name of  
5 the husband on the 25th August 2010. This was five years before the marriage at a time when  
6 they had been together for some ten years and were residing together at the Mahogany Way  
7 property. The evidence of the husband was that he used the equity in Mahogany Way to get the  
8 FMH. He approached the bank himself and built it as a surprise for the wife who was unaware  
9 of the purchase. By that time he was operating various businesses with the primary one being  
10 a landscaping business. He says that the house was built by the sweat of his back, cutting  
11 peoples' yards. It was purpose built in part to accommodate storage in the attic for his various  
12 businesses in particular his event planning business. Counsel on his behalf submitted in closing  
13 that the husband is particularly hurt and frustrated that the wife applied for him to be ousted  
14 from the FMH which is the "jewel and pride" of his hard work. In his oral evidence the husband  
15 said that he had decided to give the wife that house. He said that although he has his items  
16 stored there, it is a nice house and she would like that.

17  
18 72. The wife gave evidence in line with the husband that she had not known about the purchase of  
19 the land for the FMH because it was a surprise for her. There was some divergence in that she  
20 spoke of having knowledge of it before the construction was completed and thus at an earlier  
21 stage than appeared to have been indicated by the husband. She testified that at the time they  
22 were living at Mahogany Way and it had become uncomfortable because there were a lot of  
23 tenants. Importantly their daughter was growing up and they wanted a house for her. She said  
24 when she first went to the property the foundation for the home was being prepared. She said  
25 that she knew of the contractor for the house. She went to the AL Thompson hardware store  
26 and together they selected the fixtures for the home and in the process decided to upgrade and  
27 to have nicer fixtures. They discussed the matter and the agreement was that she would make  
28 periodic payments towards the upgrades while the house was being built which she did from  
29 her bank card. She was not yet self-employed. She denied that the house was fully built when  
30 she first saw it and said that she bought the chandelier which was put on the stairs and chose  
31 the different tiles for the house.  
32

1 73. The FMH was evidently purchased for the benefit and use of the family following on the joint  
2 endeavors of the parties over the years. This was the family home through to the date of their  
3 separation in September 2019. I conclude that the FMH constitutes matrimonial property and  
4 the mortgage is a matrimonial debt.



5  
6  
7 **ii) MAHOGANY WAY PROPERTY**  
8

9 74. The Mahogany Way property is located at Block 25B Parcel 100. It was registered in the joint  
10 names of the parties on the 4<sup>th</sup> December 2003. A valuation obtained in January 2020 values  
11 this property at \$240,000.00 (unfurnished).  
12

13 75. There was some initial disagreement as to the level of income from this property. The husband  
14 initially asserted that the rental income being collected was CI \$2,300.00 per month from four  
15 tenants one at \$1,000 per month, two at \$450.00 and one at \$500.00.<sup>20</sup> He said that there had  
16 been payment issues because of the effects of the pandemic. The wife visited the property and  
17 collected signed documents from most of the tenants. It was her calculation that the total rental  
18 to be collected is \$3,700.00 per month.  
19

20 76. In his further Affidavit of 9<sup>th</sup> June 2020, the husband indicated that he had omitted to mention  
21 two tenants in error due to them being extended family. He maintained that most of them were  
22 not paying rent due to pandemic issues. He said that he paid utilities for the property from the  
23 rental income and on average this was \$800.00 per month. Following a review of the utility  
24 bills which he produced, I concluded that the monthly rental income after deduction of utilities  
25 was \$2,850.00.  
26

27 77. The purchase of this property was the joint endeavor of the parties and was up to 2010 their  
28 family home. It constitutes matrimonial property.  
29  
30  
31

---

<sup>20</sup> Affidavit filed 21st May 2020



1 **III) BARE LAND IN SPOTTS**

2  
3 78. This land in Spotts at Block 25 B, parcel 266 was registered in the sole name of the husband  
4 on the 20<sup>th</sup> April 2017. It is valued at \$70,000.00. The evidence of the husband is that he  
5 purchased it with monies which he received by way of a redundancy payment when he left his  
6 long term job to become self-employed.

7  
8 79. This property was acquired during the marriage. It was not acquired by gift or inheritance but  
9 through the regular employment of the husband. There is no indication that the parties intended  
10 or agreed that this was to be for the sole use and benefit of the husband. The fact that it is in  
11 his sole name is not indicative of this given the way in which the parties conducted their lives.  
12 For example the FMH which was for their joint use and benefit was in his sole name.

13  
14 80. This land constitutes matrimonial property.

15  
16 **iv) THE BREAKERS PROPERTY**

17  
18 81. The Breakers property at Registration section Block 48C Parcel 144 was registered in the  
19 names of YM and GE on the 12<sup>th</sup> July 2019 in the shares of 3/10 and 7/10 respectively. It is  
20 described by the valuator as a newly-constructed residential dwelling. As at the 9<sup>th</sup> January  
21 2020, the market value on completion is \$248,000.00.

22  
23 82. The evidence of the husband is that YM approached him in relation to the purchase of the  
24 property. He said that she invested 30% in it which was all she had. He said that he invested  
25 70% of the purchase price. In cross-examination by Counsel for the wife, he acknowledged  
26 that a cheque stub, numbered 000987 for \$189,823.00 dated 26<sup>th</sup> June 2019, payable to a firm  
27 of local attorneys were the funds which he paid towards its purchase. This was a cash purchase  
28 and there is no mortgage on the property.

29  
30 83. As to the rental income, he said that the wife is incorrect that the property is rented out at a rate  
31 of \$2,800.00 per month. The actual rental is \$1,900.00 per month with this being shared  
32 between himself and YM according to shareholding after bills are paid.

1 84. It is unclear from the evidence from which account the funds were taken by the husband to  
2 purchase this property. The issue is whether it is in fact entirely owned by the husband and  
3 whether any contributions were made by YM towards the purchase.  
4



5 **EVIDENCE OF YM**  
6

7 85. Ms. YM gave evidence that she contributed CI \$50,000.00 towards the purchase of the property  
8 in Breakers. She said that she saw the property, liked it and went to the husband about  
9 purchasing it. She has been in a relationship with him since 2009. Initially she said that the  
10 property had been purchased for \$168,000.00 and that she has 30% interest in it. This was a  
11 cash purchase and she dealt with the real estate agent herself. She confirmed the rental amount  
12 stated by the husband and said that it is rented on a one year lease. She receives \$600.00 per  
13 month from the rental income.  
14

15 86. She said that she was granted early retirement in 2018 and as a result received a pension. She  
16 said that she gave the husband \$20,000.00 from her pension and \$15,000.00 from a savings  
17 partner that she had and she also gave him \$25,000.00 to hold for her.  
18

19 87. She said that she made \$3,000.00 per month from her shop before the pandemic, \$2,000.00 per  
20 month since then and she also does farming. She has a janitorial company and has also received  
21 monthly funds of \$1,000.00 per month since the onset of the pandemic.  
22

23 88. Her evidence was somewhat confusing to follow. Having said that she gave the husband  
24 \$20,000.00 from her pension, she then said she received \$12,000 in August 2018 and another  
25 \$12,000.00 in August 2019 and gave the money to him. She was asked and answered as  
26 follows:

27 **Q.:** *Okay. You said you have documents showing that you took some*  
28 *money out of your pension?*  
29

30 **Ms. YM:** *I gave him the last pension. I think Mr. Brady has that one and*  
31 *also the last one I didn't give them the last pension because I draw*  
32 *the cash from the bank. When I went and changed the \$12,000.00,*  
33 *I gave it to G.*  
34

1 89. Then she said that the \$12,000.00 was given to the husband to buy some materials to contribute  
2 to the house. Each time that he was going to buy materials, she would withdraw the money  
3 from her account using her card, “like \$3,000.00 or \$2,000.00 and give it to him whenever he  
4 needed anything for the house”.

5  
6 90. Later in her evidence she said that she contributed to the renovation of the house by purchasing  
7 items herself at the hardware store. She said that she went and bought the bath tub and the tiles  
8 out of her own money. She withdrew small sums from her account to do this, \$400, \$500 or  
9 \$1,000.00. She would not have receipts because these were bought under the name of the  
10 husband’s construction company because the company receives a discount.

11  
12 91. She said that the husband had \$25,000.00 for her from her partner savings, \$20,000.00 of which  
13 was saved in 2018. She has been giving him money to save for her since 2012 because she  
14 wanted to save for a house for herself and she spends money freely, usually on her family.  
15 There were about four occasions when she received money from her partner savings and if she  
16 made any extra money such as during the holidays. She has no independent record of what she  
17 gave him. She does not have to keep a record because he is very honest.

18  
19 92. She said that she did not feel that her money was in jeopardy because of the divorce proceedings  
20 because the money that he had for her is already spent in the house which they purchased  
21 together. She said that the remainder of the money which he had for her was about \$6,800.00  
22 which she had asked him to use to buy appliances for the property.

23  
24 93. She maintained that she thought the husband an honest person despite the fact that when he  
25 married the wife she did not know anything about the marriage. There was also the second  
26 matter that he had allowed the wife to use the business license which had been obtained for  
27 YM’s own use. He did not tell her that he had given the wife permission to use it. She became  
28 aware that this was happening when there was confusion among the two sets of customers.  
29 Both stores had the same name, one had an online business. The other did not.

30



- 1 94. She said that she did not challenge the inclusion of the house in these proceedings. She did not  
2 know that she had the option to do so. She was not thinking that her 30% would be involved in  
3 this.  
4
- 5 95. She said that her bank statements should show the withdrawals of the amounts given to the  
6 husband.  
7
- 8 96. In answer to questions from the Court, she clarified the payments made as follows. In 2017 she  
9 received \$10,000.00 and \$5,000.00 in partner savings which she gave to him. He collected  
10 these in cash directly from the “banker” for the partner savings. The “banker” is no longer on  
11 Island and has migrated. There is no document which evidences this. In 2018 he had funds  
12 from two partner savings which she had for \$20,000.00. This was the first money that he got  
13 and the last \$5,000.00 was from another partner savings. She said that the only document  
14 which she would have is the \$12,000.00 withdrawal from her pension. This was not paid in a  
15 lump sum. She withdrew sums, and gave him cash to purchase items for the house.  
16
- 17 97. She said that when the husband was making the down payment on the house, he had monies  
18 for her which he could use to do this. She said that she could not give a figure as to how much  
19 was spent on renovations for the house as she was not checking how much was spent. The  
20 house needed windows, doors, tiles, bathroom fixtures and kitchen cabinets. It took a year and  
21 more to renovate it.  
22
- 23 98. In further cross-examination, she said that the husband paid the deposit but she does not  
24 remember how it was paid. They went through an attorney at Solomon Harris. She was asked  
25 to produce documents which would show what was spent on the house and the pension amount  
26 being received by her, in particular bank statements from June 2019 to March 2020 when the  
27 renovations were completed.  
28
- 29 99. There then followed multiple adjournments, some of which were due to waiting on the bank to  
30 provide the requested statements and in other circumstances where she had accounts in two  
31 currencies and only the documents for one currency account had been provided.  
32



- 1 100. Upon her return to Court on the 11<sup>th</sup> January 2021, further questions were put to her in  
2 examination in chief, she said that she had given the cost of the property as \$168,000.00 but  
3 fees added up. It was put to her that the actual cost was \$189,000.00 and that 30 % of this was  
4 about \$55,500.00 which was less than what she had said that she had given to Mr. E. She said  
5 that most of the time she would give him small amounts in cash whenever she has it. There is  
6 no record of these amounts because she would give him cash.  
7
- 8 101. Upon her return to Court on the 21<sup>st</sup> January 2021, she produced a pension statement to show  
9 the payment to her of \$24,000.00 and bank statements for the period 1<sup>st</sup> May 2019 through to  
10 1<sup>st</sup> May 2020 for her US account only. This is the account into which she said that the pension  
11 withdrawal had been paid. There was no record of this payment on the statements.  
12
- 13 102. In response to questions from the Court she said that the bank statements showed six  
14 withdrawals of cash amounts adding up to US \$5,600.00 which were withdrawals of cash that  
15 was used for the house.  
16
- 17 103. On the 4<sup>th</sup> February 2021, YM produced further bank account documentation which showed a  
18 deposit of \$12,000.00 in September 2019. This came from her pension. This was after the house  
19 had been purchased. She said that she had not said she had given the husband \$12,000.00  
20 towards the purchase of the house. She said that the money that she gave to him was the money  
21 that he had saved for her and that the \$12,000.00 was the amount from which funds were drawn  
22 as needed for the repairs. She agreed that she had absolutely no documentation to show that  
23 she had contributed to the purchase of the house.  
24
- 25 104. The evidence of the husband as to property ownership ratios is supported by YM's account. In  
26 the absence of documentation, particularly as to the collection and saving of funds, much turned  
27 on an overall assessment of YM's credibility. YM was not the clearest of witnesses. The  
28 sequence of her evidence as set out above highlights the small but significant changes at each  
29 stage. The initial impression which she gave was that the pension withdrawal amounts in total  
30 had been given to the husband towards the purchase and made up the \$50,000.00 which she  
31 had contributed. The bank account records did not show any such lump sum payment activity.  
32



1 105. It transpired that she was saying that the husband had himself collected her partner savings  
2 directly from the “banker” and that she had asked him to save these amounts for her as she is  
3 not good with saving money. There is no documentation in support of this.  
4

5 106. Then she said that the \$12,000.00 from her pension was contributed towards purchases for  
6 repairs to the house. It had been expected from this evidence that the statements would have  
7 shown multiple purchases at hardware stores and other suppliers. They did not.  
8

9 107. I considered whether there is any truth to the account that she gave. She was quite clear in her  
10 account of the informal savings scheme which operated among the workers at her place of  
11 employment. I accept that she did participate in this scheme and would have had savings.  
12 Whether these were all collected on her behalf by the husband is not without doubt. My  
13 impression is that very likely the truth lies somewhere in between, that she did make some  
14 contribution to the down payment for the house from these savings but perhaps not on the scale  
15 urged.  
16

17 108. However I do accept her evidence that she did assist financially with the repairs to the property.  
18 I found her to be credible on this aspect. The pension documents produced from the Pension  
19 Plan provider do show the withdrawal of the \$24,000.00 over a two year period. She was readily  
20 able to say what was needed for the house, such as tiles, fixtures and other items.  
21

22 109. This purchase was before the divorce Petition was filed and in my view very likely represents  
23 the approximate contributions made by the husband and YM.  
24

25 110. There is no indication that the husband had any other source of income other than income from  
26 the businesses. I conclude that the husband’s 70 % contribution to the purchase was made using  
27 matrimonial funds and that 70% of the value of the Breakers house constitutes matrimonial  
28 property.  
29





1 **v) MANGROVE AVENUE PROPERTY**

2 111. The Mangrove Avenue property is at Block25 B, Parcel 213. The evidence of the husband in  
3 his May 2020 Affidavit was that this property is owned by his brother who bought the house  
4 and he was simply giving his brother free labour in making the house livable.<sup>21</sup>

5  
6 112. The purchase price of this property was \$300,000.00 which funds were withdrawn from the  
7 accounts stated above. The issue in respect of this property is whether it is in fact owned by the  
8 brother of the husband and in particular whether the funds used for the purchase were funds  
9 which were owed to the brother of the husband such that they do not constitute matrimonial  
10 funds.

11  
12 **EVIDENCE OF BE - BROTHER OF THE HUSBAND**

13 113. BE testified that he is the brother of the husband, he is a carpenter by occupation and works for  
14 his brother. He gave evidence that Mr. CB is his co-worker but his brother is his boss so he  
15 deals directly with him rather than with Mr. CB.

16  
17 114. He said that he lives at the family home which is the Mahogany Way house and does not pay  
18 rent or utility bills and has never done so. He does all the general maintenance on that building.  
19 His son, the nephew of the husband also lives there and assists him with maintaining the  
20 building. He also does the maintenance on other properties owned by Mr. E.

21  
22 115. He became the owner of the property on Mangrove Avenue because his brother was saving  
23 some money for him from jobs that he gave him over a six year period. In most cases he is not  
24 paid by the hour, he charges a fixed price for a job. He is sometimes paid by Mr. E, when he  
25 needs money to spend but most of the time he tells him to save the money towards the property.  
26 He has been saving so that he could buy a property to qualify for an application for a grant of  
27 status.

28  
29 116. He said that his work permit is renewed every year but he does not know the amount of his  
30 earnings as stated on the permit. There had been no discussion or agreement with his brother

---

<sup>21</sup> Paragraph 36 of Affidavit of husband dated 20<sup>th</sup> May 2020

1 as to how much he would be paid because he is family. They trust each other so that there is  
2 nothing in writing.

3  
4 117. He said that his brother would have had about \$315,000.00 in savings for him in the bank. The  
5 property was purchased for \$300,000.00 so he should still have \$15,000 for him. The property  
6 is an unfinished duplex with 4 bedrooms, 2 upstairs and 2 down stairs. He was shown Exhibit  
7 1, real estate documents and agreed that it was advertised as having 4 bedrooms upstairs and 4  
8 downstairs. He said that he did not quite remember how much it was advertised for initially.

9  
10 118. He said that since Mr. E. paid him the majority of the money owed, he is now being paid for  
11 the work that he does. He said that he is purchasing materials and paying for the renovations  
12 himself from his work earnings. His friends from and outside of his workplace are assisting  
13 him.

14  
15 119. He said that for the six years, he is not sure how much in salary he would have been paid. He  
16 does not remember all of that as it has been so long. He said that he has no receipts for any of  
17 the materials which he has bought for the refurbishment of the property.

18  
19 120. He denied that the property really belongs to his brother. He said that he paid \$50,000.00 to the  
20 law firm Bodden and Bodden, which firm he went through for the closing of the property. That  
21 was just a fee. In order to purchase the house he said that he paid \$220,000.00 for the house  
22 and \$30,000 in real estate fees. He was shown documents which indicated that the selling price  
23 of the house was \$300,000.00 for which \$30,000.00 was required as a deposit.

24  
25 121. He was given time to produce the paperwork which he said that he had in relation to the  
26 \$50,000.00 which was paid. He left and returned to Court in the afternoon and the following  
27 day and said that he could not find it. He said that he had been cleaning up his room over the  
28 Christmas holidays and may have thrown it out.

29  
30 122. The husband gave evidence that he had no written record of the money that he had been holding  
31 for his brother but that he had it in his head and his brother knew how much he was owed based  
32 on the amount earned from the various jobs. He was asked how many jobs his brother had done



1 to amount to the \$220,000.00 owed. He said that it is a lot but he does not remember how many  
2 jobs. He said that he paid a further \$30,000.00 to the real estate company and that in all he paid  
3 \$300,000.00 towards the purchase of the property on behalf of his brother.

4  
5 123. The husband was cross examined extensively about the money spent on the property including  
6 as follows:

7 **Q.** *Why didn't you mention the Mangrove property in any of the*  
8 *correspondence or Affidavits that you did initially?*

9 **Mr. E.:** *Why would I need to?*

10 **Q.:** *It would explain the \$220,000.00 cheque, wouldn't it?*

11 **Mr. E.:** *You didn't ask me anything about that.*

12 **Q.:** *We didn't ask you for the cheque?*

13 **Mr. E.:** *You asked me to present the cheque and I presented the cheque.*  
14 *Everything that you asked me to present, did you get it?*

15 **Court:** *Mr. E., don't ask any questions, please.*

16 **Mr. E.:** *Okay.*

17 **Q.:** *Mr. E., we asked you what was this \$220,000.00 spent on.*

18 **Mr. E.:** *And what did I tell you?*

19 **Q.:** *You couldn't remember.*

20 *So we requested a copy of the cheque so that we could find out what it was*  
21 *about and even then it was just payable to Bodden and Bodden.*

22 *So I am putting it to you that you tried to deceive or disguise at least the*  
23 *payment that was made in relation to that property. You never said*  
24 *anything in these proceedings about that property, did you?*

25 **Mr. E.:** *You did not ask me."*

26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40 124. In the earlier judgment in these proceedings the evidence given in interim proceedings was  
41 summarised as follows:



1           *“The husband was cross-examined extensively about the bank account records which he*  
2           *had eventually provided.*

3  
4           *He was asked about an account for the construction business which he said he also used*  
5           *for event-planning. This had been marked by him as not operational. He said that the*  
6           *account was not being used because he does not presently have any ongoing construction*  
7           *work. On the 30<sup>th</sup> September 2019, that account had a balance of \$310,385.78 and in six*  
8           *months on the 31<sup>st</sup> January 2020, the balance was \$529.67. In response to a specific*  
9           *question, he said that he could not remember what the money had been spent on. He was*  
10           *then taken to specific withdrawals. He said that he could not recall what the amount of*  
11           *\$220,008.25 withdrawn by way of a draft on the 26<sup>th</sup> November 2019 had been spent on,*  
12           *neither could he recall the purpose for which withdrawals of \$16,740.00 on 14<sup>th</sup> November*  
13           *2019 and \$30,000.00 on the 20<sup>th</sup> November 2019 were made.*

14  
15           *He said he was the only person who used the account so he knows that the money was*  
16           *spent, most likely it was on payroll or to buy equipment. It is possible some of it may have*  
17           *been used on the house at Breakers. He was asked about a withdrawal of \$20,000.00 made*  
18           *on the 1<sup>st</sup> October 2019. He said that he is the one that deals with all the financial matters.*  
19           *He pays the bills and sometimes forgets, but pays them as soon as he remembers.<sup>22</sup>”*  
20

21       125.    It was not until November 2020 that the husband responded to the request to explain various  
22            transactions in relation to the construction business bank account and identified a significant  
23            number of withdrawals for the period August 2019 through to January 2020 as being for project  
24            expenses, personal or work related bills except for the cheque for \$220,008.25 on the 26<sup>th</sup>  
25            November 2019 which he said was money that had been owed to his brother BE.

26  
27       126.    I observed both witnesses closely as they gave evidence on this important issue. I did not  
28            believe either the husband or his brother. Neither could remember, mention or name a single  
29            project or series of projects which would have generated income on such a large scale. I found  
30            it surprising that initially the husband claimed on oath not to recall the purpose for which the  
31            large sum of approximately \$220,000.00 had been spent. This was about 70 % of the amount  
32            which he then had in the construction business account. Surely it would have been difficult to  
33            forget this. I had the impression of an effort at concealment.

34  
35       127.    Additionally I considered the timing of the withdrawal to be of significance, being within two  
36            months of the filing of the Petition. I accept the evidence of the wife as truthful that he told

---

<sup>22</sup> Paragraphs 58, 59 and 61



1 her that he was going to withdraw all the funds so that she would be left with nothing to get. I  
2 did not believe the husband's account on this aspect.

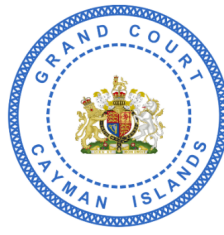
3  
4 128. As to the absence of records of the amounts owed to his brother, while one can readily  
5 understand that given the family connection there may not have an emphasis on records, it is  
6 questionable that neither would have kept even a rough note where the sum in question was so  
7 significant. It is also of import that purely from a mathematical standpoint, the owner of the  
8 business appeared to have less savings in the business account than his employee.

9  
10 129. Having considered all the evidence on this point I did not find either the husband or BE to be  
11 credible witnesses. I do not accept as truthful the evidence that \$300,000.00 was owed by the  
12 husband to BE and find that this use of funds was a deliberate effort by the husband to denude  
13 the accounts of funds to get them away from the reach of the wife. My overall impression is  
14 that the explanation proffered for its withdrawal was one that appeared to have been contrived.

15  
16 130. Additionally if as appears to be the case, that this was a purchase made by the husband and not  
17 his brother, then it would be out of character for the husband. For years he had exercised care  
18 in his spending, such that the two houses purchased with the wife and family in mind were  
19 purchased by way of mortgages which remain ongoing, despite many years having passed. Yet  
20 shortly before the divorce Petition was filed he made a cash purchase of a house with YM and  
21 thereafter yet another cash purchase purportedly on behalf of his brother. This is against the  
22 background of his own evidence when in response to the suggestion that had he put some of  
23 the monies towards paying off the mortgage on the matrimonial home and other property, the  
24 loans would have been paid off, he said that this is not the agreement which he has with the  
25 bank and that he keeps up to his obligation every month. Having assessed him over his many  
26 days of giving evidence, noting his care for his mother, siblings and extended family and the  
27 size of this new purchase, some eight bedrooms, I consider it very likely that this purchase was  
28 part of a contingency plan.

29  
30 131. I conclude that the funds paid by the husband towards the Mangrove Avenue property were not  
31 due and owing to BE such that they constituted an employee expense. The funds constituted  
32 matrimonial funds which can be traced into an after-acquired asset.





1 **PROPERTIES IN JAMAICA**

2  
3 132. The following table lists the properties in Jamaica and the valuations provided:

4

				<b>Registered Owner</b>	<b>Value JD</b>	<b>Value KYD</b>
1	Lot 1- Montpelier, Manchester	Vol. 1432, Folio 277	Residential Land	GE	\$4 mill.	
2	Lot 175 Lower Works St. Elizabeth	Vol. 1336 Folio 282	Residential – Apartment building	GE and Mother	\$35 mill.	
3	Lot 2 – Montpelier, Manchester	Vol. 1432 Folio 278	Residential	DS	\$3.2 mill	\$19,599.43
4	Lot 42 – Hodges, St. Elizabeth	Vol. 1325, Folio 342	Residential (unfinished house)	DS	\$10 mill	\$61,248.23
5	Fullerswood	Vol. 1510 Folio 179		Commissioner of Lands (GE in possession)	\$16 - \$18 mill	\$94,012,57- \$105,764.14

5  
6 133. The husband's evidence is that of the properties in Jamaica, only one is owned by him and this  
7 is jointly with his mother. This is item 2 in New Town, Lower Works, St. Elizabeth and is  
8 rented for \$80,000.00 per month. He said that his mother is the backbone of his success. It is  
9 correct that she did not have a job but she made money from farming. Together they had  
10 secured a loan of JD \$18 million to purchase the property and there is a monthly loan repayment  
11 of JD\$233,697.34 which will end in 2032. The rental of the house covers a portion of the  
12 mortgage and he pays the balance.

13  
14 134. The husband also gave evidence that he bought and paid \$250,000.00 for a ¼ acre lot of land  
15 in Montpelier, Jamaica which is next to his family's property. It was placed into the wife's  
16 name and is now valued at JD\$3 million dollars. He has a piece next to hers which is valued at  
17 about \$5 million dollars.

18  
19 135. He further stated that the house owned by the wife in Hodges, Black River, Jamaica was  
20 purchased some ten years ago. He said that he was the one who stood surety by way of cash in

1 order for the wife to secure a loan to purchase it. It was in an unfinished state when she bought  
2 it and at his expense the cesspit and windows were installed. He encouraged the wife to  
3 complete it and rent it out to tenants but she has refused. The house remains incomplete to this  
4 day because the wife despite his encouraging her to complete it, is loathe for anyone else to  
5 live in her house except her.

6  
7 136. He stated that construction of the house on the property at Fullerswood in Black River was  
8 started by his father. The land on which it is built is referred to as “captured land” a term which  
9 describes land which remains in the ownership of the Government of Jamaica, being land for  
10 which no personal title has been obtained.

11  
12 137. By the end of the hearing and as stated in closing submissions both parties now agree that they  
13 should each keep their respective properties in Jamaica.



14  
15  
16 **THE RAM TRUCK AND OTHER VEHICLES**

17  
18 138. On the 15<sup>th</sup> October 2019, the husband withdrew \$66,000.00 from the TLM business account,  
19 just under one half of the amount in the account. The money was used to purchase a Ram Truck  
20 which is registered in the name of HD, a friend of the husband's. The wife contends that the  
21 truck is in fact owned by the husband. The husband states that it is owned by HD and that the  
22 money was a loan.

23  
24 139. In his May 2020 Affidavit the husband said this about the Ram Truck and other vehicles:

25  
26 *“I sometimes drive a Ram Truck which is not mine, and to correct the statements made, I*  
27 *do own a Noah Van, which was not mentioned in the list for vehicles and which is my*  
28 *personal vehicle. I also wish to point out that all of the other named vehicles, are what are*  
29 *used in connection with the Landscaping business and at times, with the construction when*  
30 *that business and the Event Planning were operational.”*

31  
32  
33 140. The vehicles listed in his financial disclosure booklet are 5 company trucks and a personal  
34 vehicle as follows:

		<b>Estimated value \$</b>
1 & 2	Two Isuzu vehicles	6,000.00
3	Mitsubishi vehicle	2,500.00
4	Peterbuilt 2000	8,000.00
5	International 2006	8,000.00
	Personal Noah Bus	1,500.00
	<b>Total \$</b>	<b>26,600.00</b>



1  
2 141. In September of 2020, the wife's vehicle, a 2013 Ford Explorer was in need of repairs. She  
3 applied to the Court for temporary use of the Ram truck. The husband objected on the basis  
4 that the truck was needed for his landscaping business. He said that in any event, the wife  
5 needed a special category of license to drive it. The wife confirmed the inaccuracy of this  
6 statement with the Department of Vehicle Licensing.

7  
8 142. On the 17<sup>th</sup> September 2020, the Court made an Interim Order for her to have temporary use of  
9 the truck. The terms included that the husband provide the wife with use of the Ram truck or a  
10 rental vehicle of similar size. This was made in order for the wife to have transport to take 'O'  
11 to and from school as well as to transport goods for her store. The husband initially refused to  
12 do either. The wife sought the assistance of the police. The husband then rented a vehicle which  
13 was not of similar size. The Order was amended to include a penal notice and the formal  
14 assistance of the Police. The husband handed over a key for the truck to the Police. On the  
15 arrival of the wife to collect the vehicle, the husband had moved it so that a large truck was  
16 parked in front of it which completely blocked access to it. Photographs were produced  
17 showing this.

18  
19 143. The husband explained that he had not initially read the Order, that he was angry because he  
20 needed the vehicle for use in his business. He had thrown the Order down but had subsequently  
21 become aware of the alternative option and had thereafter endeavored to comply but the wife  
22 refused to take the keys for the rental vehicle.

23  
24 144. In his further Affidavit dated 16<sup>th</sup> December 2020, he stated that since the making of that  
25 Interim Order his ability to carry on his landscaping business and earn a living is in jeopardy,  
26 that he has lost two contracts as a result because at times the truck that he is renting for \$250.00  
27 per week is not available thus forcing him to postpone landscaping services to his clients.

1 145. He said that the truck is crucial to the current operations of the landscaping business and that  
2 an arrangement had been entered into with Mr. HD in order to facilitate them both. By this  
3 arrangement he would have a vehicle for use in the business and HD could ultimately export a  
4 used vehicle to Jamaica rather than a new vehicle which would attract high rates of import duty.  
5

6 146. He gave oral evidence that HD had approached him about purchasing the truck from Car City  
7 dealership. He made a deal with him that he would loan him the money to purchase it and he  
8 would drive it here in the Cayman Islands. He would use it for landscaping to pull the trailer  
9 and to put landscaping equipment on it. The benefit to him would be to have the new vehicle  
10 to use which would be attractive to clients rather than the old truck which he had. They had an  
11 agreement which they signed in September 2019 before they purchased the truck in October  
12 2019. They had a written agreement so that he could be assured that HD was serious. He said  
13 that he paid for the vehicle by bank draft but when they went to Car City, he paid for the license  
14 for the vehicle using his credit card. HD was there when he did that.  
15

16 147. In cross-examination of the husband he agreed that neither of the two letters which he had  
17 produced as to termination of gardening contracts gave a reason for the termination so as to  
18 indicate that it was due to transportation difficulties. He said that despite needing the vehicle  
19 for his business he did not just buy it himself because he never thought about buying a new  
20 vehicle for himself.  
21

22 148. He produced an agreement dated 1<sup>st</sup> September 2019 which consists of a single paragraph after  
23 the identification of the parties as borrower and lender as follows:  
24

25 *“Terms and Conditions*

26 *The borrower promises to pay the lender six hundred dollars (\$600.00) monthly for a*  
27 *period of 110 months (9.2) years.”*  
28

29 149. It is not witnessed by any other person and had no other details. The husband acknowledged  
30 that there was nothing on paper, reflective of the use agreement which he had described.  
31



- 1 150. YM gave evidence that the truck does not belong to the husband, that he had leased it from  
2 HD. She said that she had seen both of them drive it.  
3
- 4 151. HD gave evidence that he is the owner of the Ram truck. He said that he went to Car City saw  
5 the truck and liked it and borrowed the money, \$66,000.00 from the husband who is his friend  
6 in order to purchase it. The husband came to Car City with him and used his card to purchase  
7 the vehicle. The husband allowed him to put the vehicle in his name right away.  
8
- 9 152. He said that he is not employed and has been unemployed since coming to the Cayman Islands  
10 from Jamaica close to three years ago. Over the past three years the only income he has had is  
11 from his part time employment with the husband. He has never worked with anyone else and  
12 is usually at home with his children. Whenever the husband has some work for him to do he  
13 calls him. He said that he is now unavailable as he has a young baby. The last time that he did  
14 some work for the husband was four months ago and he was paid \$1,000.00 in cash. He is paid  
15 at the rate of \$10.00 an hour.  
16
- 17 153. When asked how he was proposing to pay back the \$66,000.00 he said that he was planning to  
18 send the vehicle to Jamaica before the pandemic. His business is in Jamaica and that is where  
19 he does his farming. He said that he knew that the Court had made an order for the wife to be  
20 driving the vehicle now. He was wondering about the reason for this but he had not made any  
21 attempt to come to Court to get the truck back. He said that he had left it up to the husband and  
22 did not want to be here in Court.  
23
- 24 154. He said that to date he had made no payments towards the vehicle and that there was no  
25 agreement between them as to how he would repay the funds. He would pay when he gets the  
26 money. They were going to discuss this. The vehicle is licensed and insured in his name and  
27 he allowed the husband to drive it because he borrowed the loan from him and because he did  
28 not want to send a brand new vehicle to Jamaica. He said that he wanted the vehicle to have  
29 some mileage on it before it is sent to Jamaica.  
30
- 31 155. He said he did not know how much CI\$66,000.00 is in Jamaican dollars. There then followed  
32  
33



1 this sequence of questions and answers between Counsel for the wife and the witness:

2 **Q.:** *So you didn't check how much money you had to make in Jamaica*  
3 *in order to pay Mr. E. back?*

4  
5 **Mr. D.:** *If it takes me 10 years to pay back, it doesn't matter.*

6  
7 **Q.:** *It doesn't matter to you or it doesn't matter to him?*

8  
9 **Mr. D.:** *It doesn't matter to him either.*

10  
11 **Q.:** *How do you know?*

12  
13 **Mr. D.:** *I know Mr. E.*

14  
15 **Q.:** *I am putting it you Mr. D. that you did not borrow this money from*  
16 *Mr. E.*

17  
18 **Mr. D.** *I did not borrow it?*

19  
20 **Q.:** *No.*

21  
22 **Mr. D.:** *What did I do? How did I get it?*

23  
24 **Court:** *Please do not ask any questions, just answer.*

25  
26 **Mr. D.:** *Okay.*

27  
28 **Q.:** *I am putting it to you, that this is Mr. E.'s truck. He owns it.*

29  
30 **Mr. D.:** *That's what you are saying.*

31  
32 **Q.:** *Yes, and that's what I am putting to you.*

33  
34 **Court:** *Do you agree or disagree. It's a suggestion that Counsel makes*  
35 *to you. Do you agree or disagree?*

36  
37 **Mr. D.:** *About what?*

38  
39 **Court:** *The suggestion that Counsel is putting to you.*

40  
41 **Q.:** *That it's Mr. E's truck. You call it a van. I call it a truck.*  
42 *I am saying that it is Mr. E's'. He put it in your name because he*  
43 *didn't want to show his ownership.*

44  
45 **Mr. D.:** *Is that what you are saying?*

46  
47 **Q.:** *Yes. And is it correct?*





1  
2 **Mr. D.:** *No. I can't like the van and buy it?*

3  
4 **Q.:** *You can like the van and you pay, but how much money do you*  
5 *make at your farm per month in Jamaica?*

6  
7 **Mr. D.:** *There is lots of money can be made with that van.*

8  
9 **Q.:** *Do you have copies of any bank statements or anything with you?*

10  
11 **Mr. D.:** *No.*

12  
13 **Q.:** *Are you able to provide them to the court, your bank statements to*  
14 *show what money you've got in Jamaica?*

15  
16 **Mr. D.:** *I am not running it right now because I am in Cayman. My plan*  
17 *was to send it to Jamaica to start the farm as a business.*

18  
19 **Q.:** *You starting the business, you don't have a business now?*

20  
21 **Mr. D.:** *No. I am sending it to Jamaica to start my business.*

22  
23 **Court:** *Do you have a business in Jamaica or not?*

24  
25 **Mr. D.:** *I rent vehicles in Jamaica.*  
26

27  
28 156. He testified that he has two vehicles in Jamaica which are rented some of the time and he would  
29 sometimes earn JD\$10,000.00 per day but sometimes they would not be rented for three  
30 months. The money which he earns from the rental helps him with living expenses in the  
31 Cayman Islands.

32  
33 157. Subsequently he said that the money earned in Jamaica does not really assist with his living  
34 expenses here. Instead he gets money from his wife who is working here and from helping the  
35 husband on and off.

36  
37 158. He said that despite his owing \$66,000.00 to the husband he had received the \$1,000.00 from  
38 him for work done for him. He said that rather than the husband keeping it towards the loan,  
39 the money had been given to him because he needed it.  
40

- 1 159. He said that when the time is right he will pay him back and that will be when he starts doing  
2 his business in Jamaica. He has a group 4 license here. It was put to him that he did not need  
3 such a license to drive the Ram truck here in the Cayman Islands whereupon he said that he  
4 has further plans to drive a truck here. He said that as far as he was aware the husband had not  
5 taken out anything to protect himself and had not registered anything on the title.  
6
- 7 160. He answered yes to the question whether he found it unusual that the husband would give him  
8 \$66,000.00, allow him to work for him, pay him for the work that he did, while he still owed  
9 him this money, not paying him a cent. He said that the husband is a good man. The husband  
10 also paid for the insurance and the license. He paid for everything.  
11
- 12 161. HD said further that he has a two-bedroom house in Jamaica which is unfinished. He did not  
13 get a loan or mortgage to build it. His wife did. He did not do so because he could not qualify  
14 for the loan then because of his earnings. He runs a taxi and does a lot of other things there.  
15 He said that he is also putting in another two bedrooms on that house and that his wife needs  
16 to work to pay off for these two extra bedrooms. He was asked the reason why he had spent  
17 \$66,000.00 on a truck if he needed to finish his house and needed monies to live off, why would  
18 he spend that kind of money. He replied that you have to look on the long term.  
19
- 20 162. He agreed that the husband drives a small 2015 Noah vehicle and that the Ram truck is a 2019  
21 vehicle. He said that he did not find it unusual that the husband would lend him this money to  
22 buy a 2019 special edition Ram truck while the husband drove a 2015 Noah. He said that he  
23 explained to the husband that he wanted the truck to send to Jamaica because he wanted to start  
24 up a business. He denied that he was speaking untruthfully and that in fact the truck was owned  
25 by the husband.  
26
- 27 163. He was asked on more than one occasion whether he had signed anything in relation to  
28 borrowing the money from the husband and he said categorically no he did not sign anything.  
29 He was then shown the contract document which had been produced by the husband and he  
30 identified his signature on it. He said that it was for him to pay back for the truck and he was  
31 supposed to be paying back \$600.00 per month. He said that the basis on which he would be  
32 paying back the \$600.00 was when he got the truck to Jamaica. He agreed that there was



1 nothing in the agreement referring to that. He said that when he was at Car City, he saw the  
2 husband take out his card and hand it over to pay for the truck. It was put to him that the truck  
3 was paid for by bank draft and he said he did not know of the husband using any draft and did  
4 not see him use a cheque. He maintained that he saw him take a card out of his pocket. He said  
5 he had not remembered this agreement document when he answered earlier. He said that he  
6 had signed this document after the truck was bought. It was then pointed out to him that the  
7 document was dated 1<sup>st</sup> September 2019 which was more than a month before the truck was  
8 actually bought.



9  
10 164. Counsel for the wife put the following question to him:

11  
12 *“Q.: You are at home with your baby. You haven’t had a work permit since you came*  
13 *to the Cayman Islands. You are not earning this kind of money in Jamaica. How*  
14 *could you repay \$600 a week to Mr. E.?”*

15  
16 *Mr. D.: As things go by, better come.”*  
17

18 165. In answer to questions from the Court, HD said that he had known the husband for about 3  
19 years. He said that he had known him in Jamaica but they were not really close, he used to see  
20 him and a good friend here introduced them when he came to the Cayman Islands. Since he  
21 has been here, they have a very good relationship.

22  
23 166. I observed HD carefully as he gave evidence. I found it difficult to accept his evidence. The  
24 questions and answers set out in some detail above are illustrative of his demeanour in the  
25 witness box. I did not find him to be a credible witness. I found his answers incredulous in  
26 many respects. Firstly the agreement which he described simply made no commercial sense.  
27 That \$66,000.00 would be loaned to someone who is out of work, has not been employed for  
28 three years except for odd jobs, who is in such need of funds that he had to be paid \$1,000.00  
29 done at \$10.00 an hour four months ago, who has no means to repay except for a possible  
30 farming business which is not one which is ongoing but is one which he intends to start.

31  
32 167. The agreement which HD described was one that the funds would be paid sometime in the  
33 future after his farming business commenced. This appeared to be inconsistent with the written  
34 agreement which required payment at \$600.00 per month. Even if it could be said to have been

1 done out of friendship and because the husband is “a good man”, there were inconsistencies in  
2 the details as to how the funds were paid for the vehicle by bank draft or credit card and when  
3 the agreement was signed. HD claimed that the payment had been effected by credit card and  
4 said that he personally witnessed this payment being made. The husband who gave evidence  
5 after HD seemed to invite the conclusion that HD perhaps made a mistake between the payment  
6 for the vehicle and the payment for the license. I have considered this, but it still seems  
7 surprising that the borrower of the loan did not know how the payment was going to be effected.  
8

9 168. It was also surprising that HD would have forgotten that there was a written agreement which  
10 he had signed and when he had signed it. HD struck me as an intelligent, and articulate young  
11 man. He was never at a loss for words. I did not consider this to be an issue of memory as to  
12 what had actually occurred but one in relation to getting the agreed story straight. Despite his  
13 registered and declared ownership of the vehicle, he was reluctant to come to Court to challenge  
14 its use or to give evidence about it.  
15

16 169. In summary, I did not find HD to be a credible witness and do not accept his evidence.  
17

18 170. In respect of the evidence of the husband on this matter, it is unusual that he would have loaned  
19 these funds in this way. His claim is that the vehicle is integral to his landscaping business such  
20 that he is losing business because of its absence. This is inconsistent with the casualness of his  
21 initial position which was that he sometimes drives a Ram truck.  
22

23 171. If the vehicle is so necessary to his business, it is not surprising that he would buy it but it is  
24 surprising that he would do so for someone else. The circumstances of the loan are also  
25 questionable, that this would have been loaned, at such a high level, to someone who is  
26 unemployed and had been mostly unemployed for the past three years, has no regular monthly  
27 income, is largely a stay-at-home father and is in need of funds, for it to be used to work on a  
28 farm in Jamaica sometime in the future, which farm has not yet been started appears to be  
29 entirely inconsistent with the astute business man that the husband appears to have been over  
30 the years. It is also of note that no lien had been placed on the vehicle by the husband.  
31



1 172. This arrangement and agreement has all the hallmarks of a contrivance to conceal the fact of  
2 the ownership of the husband of the vehicle. In any event the funds loaned were withdrawn  
3 from the TLM account and appear to be funds earned by that business. There is no evidence or  
4 suggestion that these funds belonged other than to the business. These funds constitute  
5 matrimonial property which are traceable into the Ram vehicle.  
6



7 **THE WIFE'S VEHICLE**  
8

9 173. The wife initially rented a vehicle for \$1,719.84 and paid \$1,143.00 towards repairs of her own  
10 vehicle. She sold her vehicle on 19<sup>th</sup> November 2020 for \$12,000.00. She gave no reason for  
11 this sale which would have left her without a means of transport. She asks that the Court make  
12 an order that this amount be set aside for O's college fees because there is no pool of funds  
13 remaining for this.  
14

15 174. The husband says that he values his daughter and wants only the best for her. He says that he  
16 undertakes to fund his daughters' education and remains committed to doing so at all costs.<sup>23</sup>  
17 He ask that the Court deny the request of the wife and that she be made to apply the funds  
18 towards purchasing her own transport. He has provided proof that while the wife's vehicle was  
19 at the motor shop for repairs, in order to expedite its completion so that the return of the Ram  
20 truck to him could be advanced, he went into the shop and paid one half of the total repair cost  
21 of \$4,634.88.  
22

23 175. During the cross-examination of the husband, he agreed that he had failed to disclose until  
24 specifically requested to provide details of a further US\$ account which in his name. This  
25 contains US funds and as at 31st December 2020, it had a balance of US\$52,789.00. He said  
26 that the funds in this account belong to his daughter 'O' and that he had been saving these funds  
27 for her from her birth. He testified that he had no recollection of ever withdrawing money from  
28 this account and that he had not felt it necessary to disclose this account because it is his  
29 daughter's account. His attention was drawn to an amount withdrawn on the 16<sup>th</sup> October 2020  
30 which from the nature of the purchase, for novelty lights could not have been a purchase by

---

<sup>23</sup> Updating Affidavit of H. dated 18<sup>th</sup> December 2020 paragraph 26

1 her. Despite this withdrawal, he was asked and said that he would be prepared to place O's  
2 name on this account. He said that this was something which should have been done already.

3  
4 176. Taking the husband at his word that he will do this, there would already be in place an amount  
5 for O's use.

6  
7 177. I accept the submission of the husband on this point and would decline the proposed  
8 establishment of a separate account for 'O' into which the \$12,000.00 from the sale of the  
9 wife's vehicle is to be placed. I consider that all the vehicles and the proceeds from the sale of  
10 the wife's vehicle constitute matrimonial property.

11  
12 **EARNINGS OF THE BUSINESSES**

13  
14 178. At the time of the first hearing, the husband's evidence was that the construction and event  
15 planning business were not operational over the course of the pandemic and that the only  
16 business in operation was the landscaping business. He said that E landscaping has two  
17 employees and makes less money than TLM which has three full time employees and they add  
18 others as necessary. He said he bought this second business from someone who was leaving  
19 the Island and kept the contacts.

20  
21 179. He said that he was not able to provide the earnings from the landscaping or construction  
22 businesses and that the event planning business relies heavily on tourism so has seen a down  
23 turn since the pandemic.



27  
28 **THE CONSTRUCTION BUSINESS**

29 180. At the time of the interim maintenance hearing the husband provided account documentation  
30 for the construction business on which had been written the words "not operational". The thrust  
31 of his evidence at the time of that hearing was that the business was dormant because of  
32 pandemic issues and was not earning any money.

1 181. During this hearing in the face of additional account documentation which showed significant  
2 activity on the account in particular in relation to a large ongoing project which had commenced  
3 before the onset of the pandemic, he sought to explain that the business was not being operated  
4 by him but rather by one CB. The final evidential position is that the project generated close to  
5 \$2 million of deposits into the construction business account and upon completion the profits  
6 are to be shared between the husband and CB in an as yet undetermined ratio.  
7

8 182. In his signed response to Requests for Further and Better Particulars, dated 13<sup>th</sup> November  
9 2020, the husband stated:

10  
11 *“I had discussions in early August with CB, CB was hired as Technical Administrative*  
12 *Assistant and who was the Project Manager employed by E. Construction, since its coming*  
13 *into business and at the time, started taking on larger projects. We came to an agreement*  
14 *that he would take on a larger share of the profits by investing his earnings in the company*  
15 *and then giving me only a percentage of the profit after expenses. That way, I didn’t have*  
16 *to be involved in the day to day running of the construction company and therefore did not*  
17 *any longer consider it “my company” as he had taken over the lead; that I had previously*  
18 *performed in this company. That is why I referred to it previously as “not operational”.*  
19

20 **EVIDENCE OF CB**

21  
22 183. CB gave evidence that since 2017 he has worked with the husband’s construction business in  
23 the position of Technical Administrative Assistant, a title which he has held for more than two  
24 years through to the present. He said that his duties have remained somewhat consistent, that  
25 nothing in relation to his employment changed in 2019 and that he did not start taking on  
26 additional duties at that time. He has pretty much from day one and continues to do all the  
27 liaison between architects and other construction professionals. His earnings, which are in the  
28 form of a commission, vary, depending on the nature of a project.  
29

30 184. In response to the question whether he had ever invested any of his earnings back into the  
31 construction business in order to own a portion of the business, he said that it is more so that  
32 instead of cash, he buys equipment, such as computers and office supplies for the office. There  
33 has never been a time when he has given Mr. E. a percentage of the profits that have been made  
34 for the business and he kept the balance or invested the balance back in the business.  
35



1 185. He said that on paper he does not regard himself as a part owner of the business but in principle  
2 there is a gentleman's agreement. This is to the effect that if he brings in a client based on his  
3 liaison with the technical people in the industry, then his returns will be different from what is  
4 regularly the case. He would get more salary and a commission. He said that he has never  
5 taken the lead of the business over from Mr. E. who is the owner of it.  
6

7 186. He said that their discussions as to sharing the profits of the business had not yet occurred. Mr.  
8 E. knows what is happening but is not involved in the day to day running of the business. Mr.  
9 CB said that he is not a signatory of the business accounts, so if a cheque is required for  
10 payment, Mr. E. would have to sign it. His commission payments are signed by Mr. E. He is  
11 not able to make any withdrawals from the business account unless Mr. E, has signed them.  
12 Mr. E. would know about any funds coming out of the construction business account. He has  
13 never withdrawn cash from the accounts of the business as he is not authorised to do that.  
14

15 187. In the course of his evidence the husband was cross-examined extensively on this business. He  
16 explained that he did not know the details of the amounts paid for the most recent contract in  
17 which the construction business was engaged and that he did not know the value of the contract.  
18 He said that it was all being handled by CB and he did not have these matters in his head.  
19

20 188. In the course of cross-examination on the funds used after the Petition was filed, there was this  
21 exchange on the 12<sup>th</sup> January 2021:  
22

23 *Q.:* From the 30<sup>th</sup> September 2019 to the 31<sup>st</sup> January 2020, your account, E.  
24 Construction went from \$310,385.75 to \$529.00.  
25

26 *Mr. E.:* Have you seen the recent account where it went from \$1 million to --.  
27

28 *Q.:* I haven't seen any account with \$1 million at all.  
29

30 *Mr. E.:* That's the same one C. was telling you about with the contract.  
31

32 *So did you see where the money from ...going into the account?*  
33

34 *Q.:* So Mr. E., are you telling us now that the deposit that was paid for that  
35 contract is \$1 million?  
36

37 *Mr. E.:* No, I am not telling you it is.



1                    You asked me how much the contract value, so I am just telling --.

2  
3           **Q.:**    No I didn't.

4  
5           **Mr. E.:** What you are trying explain to me that there was that money in the account  
6                   and it goes down to that. But now you asked me what did, I do, with that  
7                   money.

8  
9           **Q.:**    No, I haven't.  
10                   I am interested to know which account am I supposed to see that there is  
11                   \$1 million in. Which account is that?

12  
13           **Mr. E.:** I did not tell you that there is an account with \$1 million.

14  
15           **Q.:**    You asked me if I saw the account that had a million dollars in it, and I  
16                   said, no.

17  
18           **Mr. E.:** I am just referring to this same account with the contract that he told that  
19                   it was.

20  
21           **Q.:**    So you got a million on that contract. You see earlier you told me you  
22                   don't know what percentage of that contract you have had.

23  
24           **Mr. E.:** Yes, I did.

25  
26           **Q.:**    How money was paid etc., now are you telling me that \$1 million was paid.

27  
28           **Mr. E.:** No I didn't tell you that.

29  
30           **Q.:**    So which account am I supposed to see that has a million in it? Which  
31                   account Mr. E.?

32                   My Lady can you direct the Witness to answer, please?

33  
34  
35           **Court:** I would expect he is thinking Mrs. Brooks.

36  
37           **Q.:**    I am sorry.

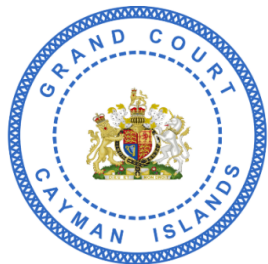
38  
39           **Mr. E.:** There is no account with a million dollars. I was just trying to explain  
40                   something to you.

41  
42           **Q.:**    You are trying to explain what to me. You asked me if I had seen the  
43                   account that has the million in it.

44  
45           **Mr. E.:** No.

46  
47           **Court:** I beg your pardon? You dropped your voice.





1 *Mr. E.:* She was asking me about this account Your Honour, the E Construction.

2  
3 *Court:* And you said, "Have you seen the account with a million dollars". You  
4 did say that Mr. E. So Counsel is asking you which account you are talking  
5 about.

6  
7 *Mr. E.:* I just referring to this same account.

8  
9 *Q.:* So at one stage there was a million dollars in that account?

10  
11 *Mr. E.:* No.  
12 I was just talking about the contract that C. was talking about.

13  
14 *Q.:* Well you didn't ask me, have I seen the contract for a million dollars.

15  
16 *Mr. E.:* The contract. I am just referring to the contract.

17  
18 *Q.:* You are just not telling the truth are you, and you are under your oath."  
19

20 189. The husband was cross-examined about his 13<sup>th</sup> November 2020 response to the Request for  
21 Further and Better Particulars mentioned above in which he said "*I have not been operating*  
22 *the construction business and as previously stated, the landscaping business is the only one*  
23 *now generating income.*"

24  
25 190. He said that what he meant by this is that the business was not under his control but under the  
26 control of CB. He was asked about bank statements for the construction business which he said  
27 he had previously provided but which had not been received by Counsel for the wife. The  
28 hearing was delayed on a number of occasions for him to produce them.

29  
30 191. On the 4<sup>th</sup> February 2021 he produced additional bank statements. When asked about them he  
31 acknowledged that the statements showed the deposit of \$29,500.00 on the 13<sup>th</sup> November  
32 2019. On the 19<sup>th</sup> February 2020, the account had received \$193,750.00 and a second deposit  
33 of \$400,000.00.

34  
35 192. He admitted that there was substantial income coming into this business but said that he was  
36 not the one operating it, it was being run by CB. He said that by referring previously to a million  
37 dollars in the account, he was just referring to the fact that monies are received for the purpose  
38 of a project and that it is gone within a week because it is spent on the project. He agreed to the

1 suggestion that on the ongoing project over \$1.95 million had been deposited into the account  
2 for the construction business.

3  
4 193. He said that he had not thought that this was something which he should declare to the Court  
5 when he signed the 13<sup>th</sup> November 2020 document because CB is dealing with the construction  
6 business and the ongoing project. He has nothing to do with that. The only thing he does is to  
7 sign whatever cheques need to be signed. He has no interest and does not deal with it. At the  
8 end of the project whatever profit is left, he will get something out of that.

9  
10 194. As at 31<sup>st</sup> December 2020 only \$89,227.00 was left. He said that this was because the money  
11 had been spent on the project. He accepted that the business is his but maintained that he is not  
12 operating it. He admitted that he knew that over \$1 million had been received but denied that  
13 his intention had been to mislead the Court by failing to disclose the statements previously. He  
14 said that he thought that all the statements had been previously disclosed. He agreed that the  
15 bank statements showed receipt of funds on the 22<sup>nd</sup> April 2020 of four cheques for a total of  
16 \$10,604.00. When asked whether this was not evidence of the business making money he said  
17 that he would have to find out from CB.

18  
19 195. He agreed that amounts had been deposited into the account in respect of the ongoing project  
20 in February and July 2020 before the interim maintenance hearing. He said he knew about the  
21 project at the time and knew that money was being paid towards it.

22  
23 196. In response to the question as to the reason he had not mentioned the project during that hearing,  
24 he said that CB had been dealing with it. He said that to date, he has received three \$5,000.00  
25 cheques on separate occasions. He does not keep track of amounts paid out and relies entirely  
26 on CB for this. He sometimes writes a number of blank cheques and gives them to CB.

27  
28 197. He agreed that at the time that he wrote not operational on the E. Construction account, it had  
29 only \$529.57 that was on the 31st January 2020 but that nineteen days later the account received  
30 a deposit of \$200,000.00.

31  
32 198. In re-examination, he said that he received the funds of \$15,000.00 because he asked CB for  
33 these amounts. This will be deducted from what he is to receive at the end of the project.



1 199. In response to questions from the Court he said that he had been in the construction industry  
2 for 15-16 years. He said that he did not know the anticipated profit on the ongoing construction  
3 project. He said that he has no idea because this is dependent on when you spend whatever the  
4 project requires, whatever is left over after the project is completed. He said that you cannot  
5 determine the profit margin before the project is completed. He said that he did not know  
6 generally the percentage profit on a construction project such as a house. He said he could not  
7 say how the profit is going to be divided at the end between himself and CB because they have  
8 not yet discussed this.

9  
10 200. I found the evidence of the husband on this aspect singularly unconvincing. He appeared to be  
11 bent on distancing himself from the business in circumstances where it is plain that he cannot  
12 be. He maintains control over the bank accounts for the business. CB does not have access to  
13 this account without a signature from him. The project was ongoing before and after the interim  
14 maintenance hearing where the position he put forward was that the business account was not  
15 operational. It is fair to say that had Counsel for the wife not persisted in the search for  
16 documentation the true picture would not have been known. As to his not being aware of what  
17 was going on and leaving everything to CB, this was a single project and moreover one of  
18 significant value. Additionally I thought it surprising that after 15-16 years in the construction  
19 industry he was not able to give a range as to the likely profit margin on a project of this size.

20  
21 201. Regrettably it appears to me that he was being less than candid as to the on-going operation of  
22 this business and that he would very much wish to give the Court the impression that his earning  
23 potential from this business was and is limited. This does not appear to be the case. I do  
24 however accept his evidence that the deposits initially made on a construction project are used  
25 towards project expenses, to include the purchase of materials and payment of labour costs. I  
26 accept that it is at the end of a project after all expenses have been defrayed that profit is  
27 calculated to a firm degree and realised.



28  
29 **PENSION ENTITLEMENTS**

30 202. A pension statement provided by the wife indicates that as at 30<sup>th</sup> April 2020, her pension  
31 entitlement was \$39,855.24. Following certain redemptions, as at 30<sup>th</sup> October 2020, it was

1 \$25,212.24. The husband's pension entitlement as at 30<sup>th</sup> September 2020 was \$125,762.78.  
2 Both parties agree that they should each retain their respective entitlements.  
3

#### 4 SUBMISSIONS

5

6 203. Counsel on behalf of the wife pointed to the apparent failures of the husband to disclose the  
7 fact that the construction business had been operative prior to and over the period of time when  
8 the interim order had been made. Between February to December 2020, a period of 11 months  
9 the business account had received multiple deposits, amounting to some \$2.4 million, 10 of 12  
10 of these deposits appeared to be from the (purchaser of the) project.  
11

12 204. Counsel submitted that the husband has a much larger earning capacity than the wife and that  
13 after the divorce is granted, she will have financial needs, obligations and responsibilities  
14 including having to travel to assist 'O' to settle into college. It is submitted further that the  
15 parties had a fairly high standard of living prior to the breakdown of the marriage and that it  
16 would be inequitable to allow the husband to continue at that standard while not allowing the  
17 wife to do so.  
18

19 205. Counsel submitted also that the wife has always looked after the needs of the child and will  
20 continue to do so. This it is said will reduce her earning capacity.  
21

22 206. Counsel invites the Court to draw negative inferences from the failure to provide full and frank  
23 disclosure and relies on the case of *Glennis Hydes v. Halfrank Hydes*<sup>24</sup>. Counsel highlights  
24 the following passage:  
25

26 "15. *Section 19 of the Matrimonial Causes Law (2005 Revision) ("the Law") requires*  
27 *the Court to have regard, first of all, to the best interests of any children of the*  
28 *marriage and thereafter to the responsibilities, needs, financial and other*  
29 *resources, actual and potential earning power and the deserts of the parties. In*  
30 *exercising its discretion pursuant to section 19, of the Law, it is clear that where*  
31 *there is general failure by a husband to give full and frank disclosure in the course*  
32 *of the case the court may infer the existence of assets denied by such husband to*  
33 *exist or which he has failed to disclose (see Baker v Baker (1995) 2 FLR 829). It*  
34 *is also clear that the Court may take into account a husband's earning potential*



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<sup>24</sup> Grand Court Judgment dated 4<sup>th</sup> March 2009, D23/2007

1 *and fundraising capability, on the basis of his apparent business acumen exhibited*  
2 *in the past, to make fair and proper provision for a wife. In such a case the Court*  
3 *does not have to be in a position to quantify the assets dissipated or the existence*  
4 *of which has not been disclosed or denied or to quantify the future prospects but*  
5 *may draw inferences made on this basis for the purposes of making a fair and*  
6 *proper division between the parties (see Rye v Rye [2000] 2 FLR 981 referred to*  
7 *in B v B [2007] EWHC 594).”*

8  
9 207. In closing submissions Counsel on behalf of the husband submits that the allegations leveled  
10 at him are purely motivated by bitterness and a commitment to exact revenge. The feeling of  
11 the husband is that he was simply the “work horse’ and there was no appreciation by the wife  
12 of how hard he worked and the financial risks that he had undertaken in order that they would  
13 have a comfortable life. The husband maintains that the reason for the non-inclusion of the wife  
14 on a number of real estate and other business documents is not because he was seeking to  
15 exclude her but that she chose not to be involved and did not encourage or support his  
16 endeavors. It is his submission that in respect of the Mahogany Way property, the wife made  
17 no financial contribution to its acquisition or to the payment of the mortgage thereafter.

18  
19 208. Counsel asks the Court to take into account the husband’s statement as to how any monies  
20 which came into his account are disbursed and to accept as truthful his statements and  
21 Affidavits made in the matter. It is urged that his offer is a fair and reasonable one in all the  
22 circumstances. It is said that the Court ought not to accede to the application of the wife as it is  
23 uncalled for and is an effort to use the power and authority of the Court for reasons which are  
24 without merit. Additionally, Counsel on behalf of the husband requests that the Court take into  
25 account the contents of his Affidavit of 9<sup>th</sup> October 2020 as it relates to the survival of his main  
26 source of income and the one upon which he will need to rely in order to pay his financial  
27 obligations including any financial orders from the Court.



28  
29 **CONCLUSIONS AS TO MATRIMONIAL PROPERTY**

30  
31 209. Having considered all of the evidence and the submissions made I conclude in each case where  
32 property is identified to be a matrimonial asset, that given the way the parties conducted their  
33 lives as outlined above, the manner in which the businesses were started and the investments

made, that there is no basis to depart from the yard stick of equality. Each is entitled to one half share and each is responsible for one half of the mortgage debts. I also conclude that it appears that the husband has endeavored to dissipate and hide matrimonial funds.

210. There is agreement that each will retain the properties in their respective names in Jamaica and their respective pensions. I do note that the values are higher in respect of the properties held in Jamaica by the husband than those held by the wife. In respect of the Cayman Islands properties an equal division would be as follows:

	Property	Value \$	Less Mortgage \$	Equity	W	H.
1	FMH	312,000.00	90, 653.55	221,000.00	110,500.00	110,500.00
2	Breakers less 3/10 <sup>th</sup> share	173,600.00		173,600.00	86,800.00	86,800.00
3	Spotts- bare land	70,000.00		70,000.00	35, 500.00	35,500.00
4	Mahogany Way	240,000.00	92,120.00	147,880.00	73,940.00	73,940.00
5	Mangrove Avenue/\$ spent from matrimonial assets	300,000.00		300,000.00	150,000.00	150,000.00
				\$912,480.00	\$456,740.00	\$456,740.00

211. The wife seeks properties in addition to a significant lump sum. It is said that the lump sum is sought bearing in mind the husband's prior dissipation of the matrimonial funds. However, care must be taken not to double count. The funds withdrawn from the business accounts which were initially unexplained were to a large extent except for the purchase of the vehicle, put towards and have been traced into some of the above properties. The value of these properties is to be shared with the wife. The husband's explanation for a number of other withdrawals from the construction business account is project expenses.<sup>25</sup> I do not consider that this is an explanation which I can reject out of hand given the nature of that business. The wife has also submitted that in considering a lump sum payment the Court should have regard to the over \$2 million paid into that business account over the eleven month period February 2020 to December 2020. While noting that this is a period after the date of separation, again the evidence was that these funds were staged payments which would be used for the ongoing

<sup>25</sup> Paragraph 14, of Responses to Requests for Further and Better Particulars dated 13<sup>th</sup> November 2020



1 project pending the completion when the profit would be calculated. In these circumstances to  
2 arrive at a lump sum figure on the basis of amounts withdrawn or deposited may not be an  
3 entirely fair approach.  
4

5 212. I have considered the division which is fair and reasonable in all the circumstances of this case.  
6 The husband has offered the matrimonial home with an arrangement by which he would  
7 continue to pay the mortgage for some years into the future. Not only would this be the  
8 antithesis of independent living, it is unfortunately the case that the husband's record as to  
9 payment of bills on time is doubtful.  
10

11 213. In cross-examination, Counsel for the wife challenged him as to his evidence that he had been  
12 making the mortgage payments on time and referred to the loan account documents produced.  
13 He said that he has an account at the bank from which the mortgage payment amount is  
14 withdrawn. If there is insufficient money in this account, the account manager would call and  
15 remind him that he had forgotten to transfer funds and he would do this right away. He agreed  
16 that sometimes there would be late fees for a couple days. He was also asked about the  
17 mortgage account for Mahogany Way and the recordings thereon which stated payments past  
18 due. He said that Counsel was misreading the document, that everything was up to date on the  
19 account and that he has a good reputation at the bank. Overall I formed the view that he does  
20 make payments late from time to time. He is well meaning and willing but may forget to pay  
21 the bills in the course of busy work days.  
22

23 214. My view is that the better course is for each party to make any mortgage payments or future  
24 bank arrangements on an individual and separate basis. The mortgage on the FMH is \$1,262.01,  
25 on the Mahogany Way property it is \$1,008.63, a total of \$2,270.64.  
26

27 215. The wife seeks both the FMH and the Mahogany Way property free and clear from mortgages.  
28 This would require the husband to meet all of the outstanding matrimonial debt and make  
29 payments of about \$180,000.00. This is in circumstances where one of these properties is  
30 income producing, with sufficient funds to meet the monthly mortgage payments with a  
31 substantial balance remaining. In my view it would be a fair outcome for the husband to meet



1 one half of the matrimonial debt and to do so by paying off the mortgage balance on the FMH.  
2 The wife is to meet the other half of this debt.

3  
4 216. The husband seeks to retain the Mahogany Way property which would mean that he would  
5 have two income bearing properties in the Cayman Islands and a possible third when Mangrove  
6 Avenue is completed and the wife would have none. This cannot be a fair outcome. In  
7 considering all options, though income producing, I cannot see that it would be practical for  
8 the wife to acquire the Breakers property in which YM is a part owner or the Mangrove Avenue  
9 property.

10  
11 217. I conclude that the wife is to receive:

		\$
1	The FMH - (all of equity)	221,000.00
2	Mahogany Way- (all of equity)	147,880.00
3	½ of the proceeds of the bare land	35,000.00
	Total -	\$403,880.00



12  
13 218. The husband would receive:

		\$
1	Breakers - (all of 70%)	173,600.00
2	Mangrove Avenue-	300,000.00
3	½ of the proceeds of the bare land	35,000.00
	Total -	\$508,600.00

14  
15  
16 219. As a result of the unequal division, the wife would be entitled to receive a lump sum payment  
17 of \$51,860.00 which represents the difference in the value of the properties between both. The  
18 husband will have the option of paying one half the value of the bare land to the wife should  
19 he wish to retain it.

20  
21 220. As to the division of the businesses, it is agreed by both, that the wife will retain the retail  
22 establishment which she operates and all income in hand as at the date of separation. She has  
23 declined all other businesses. The husband will therefore retain the four other businesses.

1 Having reviewed the bank statements from all the businesses, I accept the evidence of the  
 2 husband that the two landscaping businesses combined do not make as much money as the  
 3 retail business operated by the wife. However there is still a disparity between what each will  
 4 have. The husband has a distinct financial advantage in retaining both the construction and the  
 5 event planning businesses, which had a combined account with a large balance as at the date  
 6 of separation and have far greater earning potential. He is also retaining all of the physical  
 7 assets of these businesses to include vehicles, tools and other equipment. The event planning  
 8 business has a quantity of assets which were said to be stored at the FMH. No figures are  
 9 provided to allow for a calculation as to values to be shared.

10  
 11 221. In respect of the vehicles, it emerged during the evidence that the Noah vehicle driven by the  
 12 husband is said to be owned by YM. Excluding this vehicle valued at \$1,500.00, the combined  
 13 value of all the vehicles used in the businesses is thus \$25,500.00 of which one half would be  
 14 \$12,750.00.

15  
 16  
 17 222. The cash received or spent on vehicles is as follows:



	Wife's vehicle (proceeds of sale)	\$12,000.00
	Money spent on Ram Truck	\$66,000.00
	Total	\$78,000.00

18  
 19  
 20 223. The Ram truck was purchased from the TLM business account. As at the date of the filing of  
 21 the Petition, using the date of the 30<sup>th</sup> September 2019, the balance on that account was  
 22 \$133,690.18. There is no evidence as is the case for the construction business account that this  
 23 account contained funds to be paid towards project expenses. An equal division at the time of  
 24 separation would mean that each would have been entitled to receive \$66,845.09. However of  
 25 the balance remaining in that account a further \$50,000.00 was withdrawn on the 26<sup>th</sup>  
 26 November 2019 and paid towards the Mangrove Avenue property. Thus that \$50,000.00 is  
 27 already taken into account for each party in respect of the real property conclusions detailed  
 28 above. Deducting this, each party would therefore be entitled to receive \$41,845.00<sup>26</sup> from this

<sup>26</sup> \$66,845 less \$25,000.00 = \$41,845.00 for each

1 account. Part of that money may be traced into the Ram truck. In the hands of the wife the truck  
2 at \$66,000.00 is \$24,155.00 more that she should receive. She also has \$12,000.00, one half of  
3 which should be shared with the husband for a total of \$30,155.00 more than she should receive.  
4

5 224. The husband seeks the return of the truck and refers to the critical need for it for his landscaping  
6 business. It may be returned to him on his payment to the wife of \$35,845.00<sup>27</sup>. With this  
7 amount in addition to the \$12,000.00 which she retains, the wife will have the option of  
8 purchasing a new vehicle of her choice.  
9

10 225. Should the husband not pay this sum to the wife in 30 days from the date of the Order arising  
11 from this judgment, the truck is to be transferred into the wife's name. This will reduce any  
12 lump sum payment which is payable by him to her by \$30,155.00.  
13

14 **INCOME AND EXPENDITURE OF WIFE**



15  
16 226. The wife previously gave her gross earnings from the business she operates as being about  
17 \$3,800.00. Following deductions for rent, storage, utilities, insurance and re-stocking costs she  
18 gave her net earnings as being about \$1,000.00 per month. However a previous review of her  
19 bank statements showed significant earnings between December 2018 and January 2019 with  
20 the account balance rising from \$8,515.67 on 29<sup>th</sup> November 2019 to \$29,112.15 on 31<sup>st</sup>  
21 January 2020.<sup>28</sup> She explained that this was seasonal and that her earnings would be higher  
22 over Christmas and New Year. In order to reflect her higher earnings over these periods, I  
23 assessed her income in July 2020 as being on average \$2,000.00 per month.  
24

25 227. The updated bank statements provided, for the period July 2020 to January 2021, show a  
26 starting balance of \$31,386.87. The balance as at 1<sup>st</sup> December 2020 was \$24,414.35.<sup>29</sup>  
27 Following what appears to be December sales the balance after the December period was on  
28 4<sup>th</sup> January 2021, \$57,607.55, indicating receipts of over \$30,000.00 for the Christmas period.  
29

30 228. The business is therefore able to generate significant income but only at certain times.

---

<sup>27</sup> \$41,845 less \$6,000.00 = \$35,845.00

<sup>28</sup> Account ending in 717

<sup>29</sup> Account ending in 717

1 229. Her monthly expenses to include mortgage on the FMH were previously indicated to be:

2

3 W's Monthly Expenses:

	\$
Food/Groceries	600.00
Hair & Personal expenses	370.00
Family vacation	400.00
Lunch	300.00
Social Expenses	100.00
Gasoline/car/insurance	341.66
Health Insurance	160.00
Life Insurance	63.10
Pension	60.00
Hospital bill	250.00
Phone	80.00
Medication	50.00
Clothing/shoes	250.00
House Mortgage (Full amount is \$1,241.34)	841.34
House insurance	288.16
Utilities-Electricity	133.34
Water	58.00
Gardening/Yard maintenance	150.00
Cooking gas	82.00
<b>Total</b>	<b>4,977.60</b>



4

5 230. No updated information has been provided. Deducting the mortgage payments which would no  
6 longer be payable or would be covered by rental income, her expenses would be about  
7 \$4,000.00 per month with some room for savings, for example on family vacations. There is  
8 no application for spousal maintenance.

9

10 **INCOME AND EXPENDITURE OF HUSBAND**

11

12 231. By his Affidavit of 20<sup>th</sup> May 2020, the husband denied having several sources of income. He  
13 said that the only business that he had in operation was the landscaping business. The other  
14 businesses – that is, the construction and event-planning businesses, were no longer in  
15 operation and had not been for some time. He gave his income from the landscaping business  
16 as \$3,500 to \$4,000 per month, from which he pays five full-time employees a total of  
17 \$2,365.00. Thus, his income and expenditure were then given as:

1  
2  
3  
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18

<b>INCOME</b>	<b>\$</b>
Landscaping business	3,500.00
Rental income	<b>2,400.00</b>
<b>EXPENSES</b>	
Employees	2,365.00
Utilities	480.00
Health and Pension	150.00
<b>Total</b>	<b>2,905.00</b>



232. In the financial disclosure form dated 2<sup>nd</sup> February 2020, he gave his overall income as \$5,000.00. He listed overall expenses as \$8,698.00 consisting of the following:

	<b>Amount \$</b>
Mortgage or rent (two properties)	2,000.00
Home Insurance (two properties)	422.00
Electricity	650.00
Water	600.00
Other utilities	100.00
Internet	100.00
Clothing and Shoes	150.00
Toiletries and cosmetics	75.00
Pharmaceutical and uncovered medical and therapeutic expenses	175.00
Hair dressing	30.00
Dental	50.00
Work lunches	200.00
Mobile phone	150.00
Automobile- licenses, insurances, gas, repairs	2,787.50
<b>Overall Expenses</b>	<b>8,698.00</b>

233. As detailed in the earlier judgment and continuing through to the present, the level of his income remains unclear but is evidently much higher than he declared. The expenses of insurance, electricity, water and utilities were said to be for all the properties. Excluding property and business expenses, his personal expenses amount to \$930.00.

1 234. In cross-examination in the course of this hearing he said that perhaps he had exaggerated  
2 previously when he had said on oath that the event planning business sometimes made as much  
3 as \$30,000.00 per month. I had difficulty accepting this late attempt to reduce the earnings of  
4 this business.

5  
6 235. While his testimony is accepted that the pandemic has resulted in the closure of the tourism  
7 industry which has significantly impacted this business, it is plain that in the future once matters  
8 return to normal, there is the potential for him to earn significant sums of money, more so than  
9 the wife.



10  
11 **CONSIDERATIONS**

12  
13 236. I have considered all the evidence and submissions made in this case, some of which I have not  
14 detailed herein. I am to give due consideration to the general principles in section 19 of the  
15 Matrimonial Causes Act, to the statutory factors in England and Wales and to the strands of  
16 need, compensation and sharing.

17  
18 237. Firstly the needs of 'O', who is still of school age are considered as a matter of priority. She  
19 requires assistance with her tuition, other educational and general living expenses.

20  
21 238. The husband has been very clear in his indication that he is willing and prepared to shoulder  
22 this responsibility and indeed has offered to do so. I believe that he is deeply sincere in his  
23 love for his daughter and take him at his word that he will pay what is required. The tuition  
24 figures provided indicate maximum payments for tuition, residence, meals, books and supplies,  
25 transportation and personal expenses combined of \$55,291.58 at the highest end. At the lowest  
26 end the figure is \$38,778.50. General living and personal expenses are included in these figures,  
27 thus I have considered these figures when considering child maintenance as a whole.

28  
29 239. Using the figures in mid-range, this would be \$40,524.83, or \$3,377.00 per month. The husband  
30 is therefore to pay through the Courts Funds Office the monthly sum of \$3,400.00 per month  
31 towards O's college education and general maintenance. The wife is to meet any additional  
32 maintenance costs. If the most expensive school option is chosen, then there would be a ratio

1 of 75/25%, and the wife would have to pay 25% or a total of \$1,151.89 per month. The husband  
2 has also offered and should pay for O's health insurance and any costs for dental, optical and  
3 medical fees not covered by such insurance.

4  
5 240. This was a five-year marriage but a period of close to 20 years of cohabitation in which the  
6 parties built economic stability together. Both are of middle age. Each contributed in their own  
7 way to the welfare of the family over the years with the husband on the investment and financial  
8 side, and the wife caring for the home and child and supporting the husband. In the future the  
9 wife will have the day to day oversight and responsibility for 'O'. However 'O' is now at the  
10 stage of tertiary education and once she is settled in college overseas, the wife's daily duties of  
11 care will become increasingly less except for during the vacation periods when she returns to  
12 the Island. There is no physical or mental disability on the part of either and no conduct which  
13 rises to the level such that it would be inequitable to disregard it. They are each self-employed  
14 and there is sufficient property and businesses that neither will have to start over in life. They  
15 each should be able to live at the standard of living to which they have been accustomed.

16  
17 241. The wife will have an ongoing income from operating her retail business. It is a modest one  
18 when spread over a year outside of the high season period. As proposed the mortgage debt on  
19 the former matrimonial home will be removed, leaving her with less expenses. Additionally  
20 she will have the rental income from the Mahogany Way property. This is more than \$2,000.00  
21 per month and sufficient to pay the mortgage on that property with a balance left over as  
22 additional income to assist in meeting her expenses. However, she has almost no savings and  
23 no safety net for contingencies or future investments. She has gone from a position where as a  
24 couple they had over a half a million dollars in savings. The husband has spent this on property  
25 purchases without her knowledge and agreement. In my view her needs require that she be paid  
26 a lump sum over and above the sharing of property detailed above. I arrive at a figure by using  
27 one half of six months of the notional earnings of the event planning business for a total of  
28 \$90,000.00. This is a broad calculation. I have considered whether the strand of compensation  
29 requires an additional sum. There is no evidence that the wife has suffered relationship  
30 generated disadvantage such that a high level of compensation is required. She has been  
31 provided by the husband with a means towards independent living. Is the lump sum payment  
32 proposed in order to assist in meeting her needs and the sharing of assets as calculated fair in



1 all the circumstances? The total to be paid to her is \$154,610.00<sup>30</sup>. As a cross check while it is  
2 primarily a needs based and a sharing calculation, it also goes someway to addressing the  
3 imbalance and inequity in the asset disposition and the likely future earnings of the parties,  
4 both of which are as a result of the proposed manner of division of the businesses. In my view  
5 the proposed disposition is a fair one and satisfies the three strands.

6  
7 242. I have considered the income, earning capacity and resources of the husband and his needs.  
8 The outcome should also be fair to him. Any payments to be made by him are to be affordable  
9 and in line with his income, assets and if necessary his future prospects. They should not be  
10 such as to excessively burden him. He is presently living at the Mahogany Way property and  
11 has options of residing at one of the other two properties which are mentioned above, both of  
12 which are mortgage free. He will have no rental or mortgage payments to make. His daily  
13 needs and monthly payments can be met from the income from his businesses. He is faced with  
14 the prospect of paying off the mortgage on the FMH and making an additional lump sum  
15 payment. The bank documents which were produced up to the date of this hearing do not show  
16 that he presently has savings or deposits in those accounts available to meet these payments  
17 immediately. However his actions in denuding these accounts of funds has led to the position  
18 of today. The funds are traceable into property held by him. He has property which can be used  
19 as security in order to pay off the mortgage on the FMH and or to make the lump sum payment.  
20 Additionally, he has the potential for earnings from his construction business in the near future.  
21 He is due profits from the large construction project detailed above. He will also have the event  
22 planning business once the economy reopens following the waning of the pandemic. He himself  
23 said that the latter business sometimes earned as much as \$30,000.00 per month. I am  
24 conscious that he may need time to pay the lump sum which time would allow for arrangements  
25 to be made or the completion of the construction project, and the receipt of profits as well as  
26 the re-opening of the economy. The outcome is a fair one for him.



---

<sup>30</sup> \$51,860.00 + \$12,750.00 + \$90,000.00 = \$154,610.00



1 **CONCLUSIONS**

2  
3 243. Having considered the best interests of the child of the marriage, the three strands of needs,  
4 compensation and sharing, and all the relevant factors as set out above, the conclusions are as  
5 follows:

- 6  
7 i. The husband is to pay through the Courts Funds Office on or before the 1<sup>st</sup> day of each  
8 month, commencing on the 1<sup>st</sup> day of August 2021, the sum of \$3,400.00 per month  
9 for child maintenance including educational costs in respect of the child of the marriage  
10 'O' until she reaches the age of 21 years.
- 11  
12 ii. The requirement to pay the sum of \$5,000.00 per month in accordance with the Interim  
13 Order dated 27<sup>th</sup> October 2020 shall cease following the payment to be made on the  
14 28<sup>th</sup> June 2021.
- 15  
16 iii. The husband is to add O's name to the US bank account with number ending in 692  
17 within 7 days of the date of the Order arising from this judgment. The account is to be  
18 transferred into her sole name upon her attaining the age of 18 years. In the interim  
19 prior to the addition of her name and the transfer into her sole name, the husband is not  
20 make any withdrawals from this account.
- 21  
22 iv. Commencing on the 15th day July 2021 and until she reaches the age of 21 years, the  
23 husband is to pay any health insurance costs for 'O' pursuant to any policy currently  
24 in force (i.e. by making payment to the wife) or if there is none in place to arrange and  
25 pay for such health insurance coverage. He is also to pay any optical and dental costs  
26 not covered by any such insurance.
- 27  
28 v. The matrimonial debt consisting of two mortgages is divided equally, the husband is  
29 to pay off the mortgage on the FMH within three months of the date of the Order arising  
30 from this judgment and the wife the mortgage on the Mahogany Way property in due  
31 course.
- 32

- 1 vi. Following payment by the husband of the mortgage balance on the FMH, it is to be  
2 transferred by the husband into the sole name of the wife.  
3
- 4 vii. By the 1<sup>st</sup> day of August 2021, the husband is to remove any personal or business items  
5 which he has left or stored at the FMH.  
6
- 7 viii. Subject to the consent of the Mortgagor, the Mahogany Way property is to be  
8 transferred into the sole name of the wife. Within one month after the Mortgagor has  
9 provided its approval to the transfer, the husband shall transfer the Mahogany Way  
10 property into the sole name of the wife.  
11
- 12 ix. The husband is to retain the Mangrove Avenue property.  
13
- 14 x. The husband is to retain 70% share of the Breakers property.  
15
- 16 xi. The husband has the option within six months of the date of the Order arising from this  
17 judgment to pay to the wife one half of the value of the bare land, Block 25 B, Parcel  
18 266, otherwise it is to be sold and the proceeds divided equally between the parties.  
19
- 20 xii. The parties are to each retain their respective properties in Jamaica.  
21
- 22 xiii. The parties are to each retain their respective pension entitlements.  
23
- 24 xiv. The husband is to pay to the wife a lump sum of \$154,610.00, by way of no more than  
25 five installments, within 18 months of the date of the Order arising from this judgment.  
26
- 27 xv. The Ram truck is to be returned to the husband on payment by him to the wife of the  
28 sum of \$35,845.00 within 30 days of the date of the Order arising from this judgment.  
29 Failing which it is to be transferred by the husband (and or HD) into the name of the  
30 wife and the lump sum payment which is payable to her be reduced by \$30,155.00.  
31



1 **COSTS**

2

3 244. The wife seeks an opportunity to apply for indemnity costs. If an application is to be made it is  
4 to be done within 14 days of receipt of the perfected judgment.

5

6

7 **ADDITIONAL MATTERS**

8

9 245. Following the release of the draft judgment in this case, there has been an exchange of  
10 significant correspondence between the parties raising a number of issues including as to the  
11 state of the Ram truck, any need for a mechanical examination and other matters some of which  
12 refer to new evidence. I do not propose to address these matters in this judgment. The parties  
13 have liberty to apply.

14

15 **Dated this 24th day of June 2021**



16

17

18 **Honourable Justice Cheryll Richards Q.C.**  
19 **Judge of the Grand Court**

20