



**IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS
ON APPEAL FROM THE GRAND COURT OF THE CAYMAN ISLANDS
FAMILY DIVISION**

**CICA (Civil) Appeal No 3 of 2020
(FAM 143 OF 2015)**

BETWEEN:

N.J

Appellant

-AND-

D.S

Respondent

BEFORE: **The Rt. Hon Sir John Goldring, President
The Rt. Hon Sir Bernard Rix, Justice of Appeal
The Rt. Hon Sir Alan Moses, Justice of Appeal**

Appearances: **The Appellant in person
Mr. Waide DaCosta, Attorney-at-Law for the Respondent**

Heard: **11 November 2020**

Judgment delivered: **10 December 2020**

JUDGMENT

The Rt. Hon Sir John Goldring, President

Introduction

1. This is an appeal by the Husband from the judgment of Acting Justice Gunn in respect of the final ancillary orders she made following the irretrievable breakdown of his marriage to the Respondent, the Wife. When granting leave to appeal, the judge said she was “*persuaded that the Respondent can make an argument that [she] ... may have fallen into error when determining which assets should be deemed matrimonial, the level of financial award made to him and the order as to costs.*” Although the Husband, who represented himself below and before us, made a number of points in his skeleton argument regarding Justice Gunn’s conduct of the case, sensibly he did not pursue them before us. In what were balanced and well put submissions, he simply argued that the judge was wrong to find that the former matrimonial home at 45 Yates

Drive, and a parcel of land in Cayman Brac, were not matrimonial assets in which each party had an equal share. The Husband did not pursue, what on any view was the hopeless submission, that the court should reduce the Wife' share because of her misconduct since divorce proceedings began.

The Matrimonial Causes Law (2005 Revision)

2. In this 'clean break' case, in which the only issue was the division of property following the divorce, the relevant legislation in the Cayman Islands is contained in sections 19 and 21 of the **Matrimonial Causes Law**. 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.”

3. Section 21 provides that:

“...[T]he Court shall, as appropriate, make orders for-
(a) ...
(b) the disposition of matrimonial property, including the matrimonial home...”

4. It is now trite family law, both in England and Wales and in the Cayman Islands, that since the case of *White v White* [2001] 1 AC 596 in the House of Lords, the court will seek to achieve fairness in the division of property following a divorce. That requires the court to take all circumstances of the case into account. As Lord Nicholls of Birkenhead said at page 605:

“...whatever the division of labour chosen by the husband and wife...fairness requires that this should not prejudice or advantage either party when considering para. (f) of section 25(2) of the [Matrimonial Causes Act] 1973 [of England and Wales]. This is implicit in the very language of para. (f): ...the contribution which each of the parties has made or is likely...to make to the welfare of the family...If in their different spheres, each contributed equally to the family, then in principle it matters not which of them earned the money or built up the assets. There should be no bias in favour of the money-earner and against the home-maker and the child-carer....

As a general guide, equality should be departed from only if, and to the extent that, there is good reason for doing so. The need to consider and articulate reasons for departing from equality would help the parties and the court to focus on the need to ensure the absence of discrimination.”

5. Lord Cooke of Thorndon said (page 615):

“The most important point, in my opinion, in the speech of...Lord Nicholls is his proposition that, as a general guide, equality should be departed from only if, and to the extent that, there is good reason for doing so. I would gratefully adopt and underline it....”

6. In *Miller v Miller and McFarlane v McFarlane* [2006] 2 AC 618, Lord Nicholls identified three elements of fairness: financial need, compensation and, as presently relevant, sharing. As to that, Lord Nicholls said (paragraphs 16 and 17):

“16 ...[The] “equal sharing” principle derives from the basic concept of equality permeating a marriage as understood today. Marriage, it is often said, is a partnership of equals...The parties commit themselves to sharing their lives. They live and work together. When their partnership ends each is entitled to an equal share of the assets of the partnership, unless there is good reason to the contrary. Fairness requires no less. But I emphasize the qualifying phrase: “unless there is good reason to the contrary.” The yardstick of equality is to be applied as an aid, not a rule.

17. This principle is applicable as much to short marriages as to long marriages...A short marriage is no less a partnership of equals than a long marriage. The difference is that a short marriage has been less enduring. In the nature of things this will affect the quantum of the financial fruits of the partnership.”

7. In the following paragraphs, Lord Nicholls deprecated the distinction which had previously been drawn between “family” and “business or investment” assets. He said, in paragraph 20, that:

“...In all cases the nature and source of the parties’ property are matters to be taken into account when determining the requirements of fairness...The rationale underlying the sharing principle is as much applicable to “business and investment” assets as to “family” assets.”

8. Lord Nicholls went on to say that while all the assets are to be taken into account, that does not mean they must be treated in the same way. He said at paragraph 21 and following:

Matrimonial property and non-matrimonial property

21 ...By section 25(2)(a) [of the Matrimonial Causes Act 1973] the court is bidden to have regard, quite generally, to the property and financial resources each of the parties to the marriage has or is likely to have in the foreseeable future.

22. This does not mean that, when exercising his discretion, a judge in this country must treat all property in the same way. The statute requires the court to have regard to all the circumstances of the case. One of the

circumstances is that there is a real difference, a difference of source, between (1) property acquired during marriage otherwise than by inheritance or gift, sometimes called the marital acquest but more usually the matrimonial property, and (2) other property. The former is the financial product of the parties' common endeavour, the latter is not. The parties' matrimonial home, even if this was brought into the marriage at the outset by one of the parties, usually has a central place in any marriage. So it should normally be treated as matrimonial property for this purpose. As already noted, in principle, the entitlement of each party to a share of the matrimonial property is the same however long or short the marriage may have been.

23. *The matter stands differently regarding property ("non-matrimonial property") the parties bring with them into the marriage or acquire by inheritance or gift during the marriage. Then the duration of the marriage will be highly relevant. The position regarding non-matrimonial property was summarised in the White case...*

"Plainly, when present, this factor is one of the circumstances of the case. It represents a contribution made to the welfare of the family by one of the parties to the marriage. The judge should take it into account. He should decide how important it is in the particular case. The nature and value of the property, and the time when, and the particular circumstances in which the property was acquired, are among the relevant matters to be considered. However, in the ordinary course, this factor can be expected to carry little weight, if any, in a case where the claimant's financial needs cannot be met without recourse to this property."

24. *In the case of a short marriage fairness may well require that the claimant should not be entitled to a share of the other's non-matrimonial property. The source of the asset may be a good reason for departing from equality. This reflects the instinctive feeling that parties will generally have less call upon each other on the breakdown of a short marriage..."*

9. The position in the Cayman Islands was summarised by the President in this court at paragraph 31 of *Wight v Wight* 2010 (1) CILR 60 (in a judgment delivered in November 2007) in the following terms:

"The Matrimonial Causes Law, unlike the English statute, does not mention "the contribution of the parties." It speaks [in section 19] of "the deserts of the parties." This does not affect the principle to be considered in ancillary relief proceedings in the Cayman Islands. The courts in the Cayman Islands have always taken into account the contribution of each party in deciding on the division of assets."

10. In *McTaggart v McTaggart* [2011] (2) CILR 366, the President said (paragraph 33 and following):

“33. It is...important to keep in mind when considering observations made by judges in England and Wales...that the underlying statutory provisions here, although similar to, are not the same as those in England and Wales. Section 23(1) of the Matrimonial Causes Act 1973 provides that, on granting a decree of divorce or at any time thereafter, the court may make...

“(a) an order that either party to the marriage shall make to the other such periodical payments...as may be specified in the order;
(b) an order that either party...shall pay to the other such lump sum or sums as may be so specified.”

Section 24(1) provides that the court may make a property adjustment order, that is to say...

“(a) an order that a party to the marriage shall transfer to the other party...property to which the first-mentioned party is entitled...”

34. The 1973 [Matrimonial Causes] Act [of England and Wales] does not (in terms) require the court to give separate consideration to the question-What order (if any) should be made for the disposition of matrimonial property?-although, in practice, the court will usually do so. Section 21 of the Matrimonial Causes Law, on the other hand, plainly does require the court to give separate consideration to that question. The court must do so in order to decide what order (if any) it is appropriate to make under section 21(b)...

35. The need to determine which of the parties’ assets are to be treated as matrimonial property invites the question: As at what date is that determination to be made? As I have said, “matrimonial property” is not a concept which is defined in the Law. But it is, I think, generally accepted that- as Lord Nicholls observed in Miller...-its distinguishing feature is that it is the “financial product of the parties’ common endeavour...” On that basis, it may be expected that a line can be drawn at the date of final separation...”

11. Finally, I turn to the observations of Acting Judge Foster in the Grand Court in *B-H v H* [2009 CICR 185], which seem to me to encapsulate the position (paragraphs 23-4):

“23 ...in determining whether particular property is to be considered matrimonial property or separate property of one of the spouses...the court must have regard to all the circumstances relating to the property concerned. Such circumstances include, but are not confined to, the circumstances and timing of its initial acquisition, the party by whom and how it was acquired, the apparent intentions of the parties with regard to and the use of the property during marriage amongst other factors. For example, it does not, in my opinion, automatically follow that just because

the property concerned was acquired solely by one spouse prior to the marriage, whether by purchase, gift or inheritance, and the title remained throughout the marriage in the name of that spouse, the property may not nonetheless in some circumstances be considered to have become matrimonial property-“put into the melting pot of the marriage” ...

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

The background

The marriage

12. Both parties were previously married. Their relationship began in or around June 2002 (see the ex tempore ruling of Justice Williams of 1 October 2015). They married on 24 June 2011. The Wife filed her petition for dissolution of the marriage on 23 June 2015. The marriage was dissolved on 22 April 2020. There were no children of the marriage. Although each party had children, their ages are such that for present purposes it was not necessary for the judge to take them into account.

45 Yates Drive and the land at Cayman Brac

13. In 2006 the Wife bought a parcel of land in Cayman Brac. She paid for it by using a combination of cash and a loan of CI\$38,000 secured against the land. In November 2008 the Wife sold her home at 233 Powery Road, West Bay. She moved in to live with the Husband in his property at 5 Ribbon Close. In December 2008, she purchased the parcel of land upon which Yates Drive was to be built for CI\$85,500 from the proceeds of sale of her house at 233 Powery Road. In March 2009 she obtained a mortgage of CI\$299,000 in respect of Yates Drive. She also refinanced her loan on the land at Cayman Brac. The sum secured was CI\$49,000. In August 2009 Yates Drive was completed. The Wife and her daughter by her previous marriage moved in. By then the mortgage on Yates Drive was CI\$411,000,000. In February 2010, some 16 months before the marriage, having sold his property at 5, Ribbon Close, the Husband moved into Yates Drive. In February 2011, the Wife consolidated her entire debt into one mortgage on Yates Drive in the sum of CI\$436,000. That included the loan on Cayman Brac. Although the outstanding consolidated mortgage sum increased over time, the underlying position remained

the same. By March 2012 the mortgage, still in the Wife's sole name, was in the sum of CI\$450,000 with Cayman National Bank. The judge found that the increase in the mortgage amounts reflected fees incurred as a result of changes in the lending institution and some amalgamation of the Wife's credit card debts. In September 2014 the Wife sold the land in Cayman Brac for some CI\$96,000 net. The proceeds of sale were placed in an account of which she was the sole signatory. On 18 August 2015, shortly after filing her petition, the Wife moved out of Yates Drive. The Husband remained there until 1 August 2020.

Other properties in the names of the parties

14. Each of the parties had other properties in their names. While it is not necessary to set out the detail, I should refer to what the Husband stated in his affidavit of 25 January 2018 at paragraph 4:

“Properties in which I have an interest are: 1. House in Barbados built in 1995, valuation (US\$400K)... [with] outstanding loan balance (US\$220K). 2. Property in Miami...bought by me in December 2007 for US\$200K; Current valuation (US\$173K)...with...mortgage...outstanding (US\$173K)...3. FMH at 45 Yates Drive built by the Petitioner and myself in 2009. I contributed approx...CI\$150K and paid half the mortgage...”

15. As Mr DaCosta on behalf of the Wife observed, although the Husband referred to having an interest in Yates Drive, he did not suggest he had any interest Cayman Brac.

A short summary of the relevant issues below

45, Yates Drive

16. It was the Wife's case that throughout Yates Drive was not a non-matrimonial asset. She bought the parcel of land upon which it was built from the proceeds of sale of her previous house. She paid for it to be built. She took out the mortgage on it and made all the payments without any contribution from the Husband. It was never intended to be a matrimonial asset. She also, it seems, questioned whether since the marriage they lived there together. It was the Husband's case he had a half share in what was the former matrimonial home. He relied on what he said in the affidavit to which I just referred (paragraph 14 above). As an alternative, he submitted that even if the house were not a matrimonial asset in which he had a half share, his contributions to the mortgage meant he had a beneficial interest in the house.

The land in Cayman Brac

17. It was the Wife's case that this was her land. It was never a matrimonial asset. At no time did the Husband have a share in it. The Husband disagreed. He contended it was artificial to separate Cayman Brac from the matrimonial home in which he had a half share. The loan on

Cayman Brac having been consolidated into the mortgage on Yates Drive, he was by his contributions to Yates Drive contributing to the purchase of Cayman Brac. Cayman Brac was, and was in those circumstances intended to be, a matrimonial asset.

The judgment below

18. The proceedings were very acrimonious. Although the petition and the cross-petition were proved on agreed facts, those facts were inherently contradictory. They included a fact that the parties never lived together after the marriage: in other words, never resided together in Yates Drive after the marriage. At one stage there was agreement that the only matter in dispute was whether “*when calculating the husband’s half-share of the equity in 45 Yates Drive, an adjustment should be made in his favour to reflect that the Brac land loan as well as other debt had been consolidated into the mortgage for the construction of the property.*” The Husband said he could not stand by that agreement in the light of what he said were the Wife’s lies.
19. The judge concluded that both parties “*knowingly and repeatedly made false statements to this court in an attempt to obtain a favourable outcome...they have both misstated or failed to disclose key financial information...*” The judge said that “*in order to determine the true facts of this case, I have to rely heavily on the documentation to find corroboration for their various accounts.*”
20. The judge summarised the law as relevant to the issues on appeal in the following terms (paragraphs 26-7):

“26. *Matrimonial property is the financial product of the parties’ common endeavour (per Lord Nicholls in **Miller v Miller and McFarlane v McFarlane [2006] UKHL 24** and approved by Chadwick P in **McTaggart v McTaggart**). Matrimonial assets are assets acquired for the use and benefit of the whole family and a party’s entitlement to a share in such assets will be the same whether the marriage was short or long (**Miller** *ibid*).*

*When determining what constitutes matrimonial property I have regard to all of the circumstances at the time the relationship existed, including circumstances and timing of the acquisition of the property, the parties’ contributions, their apparent intentions with regard to and the use of the property during the marriage and how they organised their financial affairs. Property which was acquired by one party before the marriage and the title remained in the name of the party may become matrimonial property and, equally, not all property brought into the marriage is automatically subject to division. (**B-H v B (sic) [2009] CILR 185**)”*

21. The judge went on to examine the facts as she found them. She highlighted how separate were the parties' financial arrangements:

“28. While the parties have been in a relationship for many years, they kept their finances quite separate from one another, both before and after their marriage. At no stage did they share a bank account or mix funds. There is a plethora of evidence corroborating both their accounts that they would regularly reimburse the other for purchases made, particularly when one of them had purchased items for the other overseas...”

29. It is noteworthy that, even after their marriage, the parties did not change their financial arrangements.”

22. Some assets were agreed to be non-matrimonial. They included the Husband's properties in Barbados and Miami. Although there was a dispute about Miami, it was limited to chattels. Before us, Mr Da Costa submitted that were the court to conclude Cayman Brac was matrimonial property, it would throw open the status of Barbados and Miami. However, that would be to go behind what was agreed below, when of course the status of the land in Cayman Brac was also in issue.

23. The Husband said that the only reason Yates Avenue remained in the Wife's name was that he did not wish to disrespect the Wife. The judge did not accept that. At paragraph 37 she said:

“In summary, I reject the husband's assertion that the intention was for his C1\$1,500 contribution to have been specifically towards the mortgage so as to give him a beneficial interest in 45 Yates Drive, because not only is it in conflict with the facts as agreed when the petition and cross-petition were proved, but the evidence before me leaves me sure that the parties intended before and after their marriage to remain entirely financially independent of one another and to demarcate their respective assets leaving no joint assets...”

24. The judge went on to say (paragraph 45 and following):

“45 The matrimonial home is usually a matrimonial asset. While the wife says the husband was absent from the home for almost 3 years, her daughter's statement to the police and the payments cause me to conclude that it is more likely than not that the parties co-habited for longer than the wife asserts. But as I have already touched upon, when the petition and cross-petition were proved, it was agreed that the husband did not reside with the wife immediately after their marriage. I find it is more likely than not that the parties resided together in the home as husband and wife for less than 4 years.

- 46 *However, with the exception of one reference to the “former matrimonial home” in an affidavit, the wife asserts that 45 Yates Drive was never intended to be the matrimonial asset as it was built entirely using the proceeds of the sale of 233 Powery Road and a mortgage for which she was solely responsible...*
- 47 ...
- 48 ...
- 49 *The husband has produced two cheques written in 2010 and a deposit slip for 2011 which prove that he on occasion paid the wife C\$1,500. These payments were more consistent in 2015. Part of the agreed facts when the petition and cross-petition were proved was that these payments were not always complete and made in a timely fashion and they were for specific expenses, not the mortgage. The wife continued to be liable for life and house insurance as well as other expenses associated with the property. It is noteworthy that C\$1,500 per month is significantly less than half of the overall costs of the household and, given the husband’s higher income, the amount strongly suggests that the parties were not treating this as a joint venture. Given the facts previously proved and the matters I have already set out above, the husband’s argument that his payments created a trust or that he specifically contributed to the mortgage giving him an equitable interest in 45 Yates Drive must fail.*
- 50 *How the construction costs of 45 Yates Drive were met was another central issue over which the parties largely disagreed. The wife has produced cheques and invoices totalling almost C\$300,000 relating to the construction of the house. I have not been provided with a final costing schedule. The husband contends that the receipts are far short of the “C\$600,000 house” and that the shortfall in the wife’s records is because he had invested C\$150,000 of his own money into the house. The husband adduced a very few number of invoices and cheques, but it was evident that the cheques post-date the completion of the house and, therefore, could not have related to the house; a fact the husband eventually conceded.*
- 51 ...
- 52 *There is no independent evidence to corroborate the husband’s assertion that he invested in the region of C\$150,000 of his own money into the construction. On the other hand there is ample evidence, particularly the many cheques made out to the husband and drawn on the wife’s account, relating to the purchase of construction material and payment of wages by the wife. From this I am sure that any funds expended by the husband on 45 Yates Drive, whether for construction or furnishing, were reimbursed in short order...I am satisfied that the net proceeds of the sale of 233 Powery Road (C\$164,940.07) and the mortgage (C\$411,000) together were more than sufficient to purchase the land and construct the property at 45 Yates Drive. I reject the husband’s claim that he invested any significant funds in the construction or furnishing of the 45 Yates Drive house or that he project-managed the build in any significant way.*

53 *The husband's email after a breakup in 2010 (a year after construction of the house was completed) sheds some light on his understanding of the property's status:*

"Once the economy gets better we will build a new family home in both our names. Your existing house will be for [C] and my 2 in Barbados for [X] and [Y]. We'll give all three of them a start in life.... Let me first say that I am in no way, shape or form interested in your house or any part of it. That is yours and I guess one day [C]'s. Somewhere along the way and I believe the precursor to recent events is that you somehow feel that you could be exposed to me wanting some sort of interest in your house especially as I was co-habiting with you. That could not be further from the truth. ...Even if you had concerns you could have come to me and say [NJ] until we are married I feel vulnerable as far as my house is concerned. You know all of my hard work etc is caught up in the house.... It would then be for me to say, yes I understand and let's set a date, etc or go straight and get married... Please have no concerns and hence feel the need to hurry me to take the stuff away at the expense of renting storage etc as I have absolutely no interest in your house."

54 *The husband asks that I place no weight on this email as it was written at a time when he was trying to appease an angry partner and was not intended to be relied upon. He also says that when the parties reconciled they had agreed that 45 Yates Drive would in fact be their joint home. I found the husband's evidence on this point to be incredible. It is obvious from this email that the parties had no intention of 45 Yates Drive being a joint asset and I am sure that this intention continued after their marriage and it is only as a result of this acrimonious separation that he now argues to the contrary...*

55 ...

56 *While 45 Yates Drive was the matrimonial home for a short period, I am satisfied that it was the parties' intention that it should remain the wife's asset and that they would build a "family home" in the future using future joint funds. Consequently, I find that 45 Yates Drive is not a matrimonial asset..."*

25. As to Cayman Brac, the judge said (paragraph 40):

"40 Each party has held, purchased and sold land and residences and on every occasion they have done so in their sole name. The Brac land was purchased before the parties married and was, therefore, brought into the marriage. The wife asserts that she part-paid the purchase of the Brac land with funds from an investment account she set up for her daughter, securing the rest of the purchase with a loan charged against the land (CI\$38,000). Her intention was for the land to be an investment for her daughter's future benefit. The husband asserts that the land was purchased entirely by a bank loan and that it became matrimonial

property because the loan was refinanced into the mortgage on 45 Yates Drive which he asserts he paid half of...

41 ...

42 *I am satisfied that while the wife brought this property into the marriage it was not intended to become a matrimonial asset. I have already determined that the husband's C1\$1,500 "contribution" was not towards the mortgage and, therefore, does not create a trust to which he can lay claim. The Brac land is not a matrimonial asset and, consequently, no adjustment should be made to any matrimonial asset to reflect the profits from the sale or the debt arising from the consolidation of the loan."*

Analysis

Yates Drive

26. Although there was a dispute about it, and the divorce agreement suggested to the contrary, the judge concluded that Yates Drive was the former matrimonial home, albeit for something less than four years. While there may be circumstances in which the former matrimonial home is a separate asset of either husband or wife so as to exclude the sharing principle, those circumstances must, as it seems to me, be most unusual. The judge appears to have reached the conclusion that the present was one of those cases on the following basis.
27. First, she rejected the Husband's account, upon which he substantially based his case, that he had made a financial and other contribution to the construction of Yates Drive, and thereafter specifically contributed to repaying the mortgage. The judge went on to find that the Husband therefore had no beneficial interest in Yates Drive (see paragraph 37 of the judgment, paragraph 23 above).
28. Second, the parties kept their financial affairs separate. They each had their own assets. That continued during their marriage.
29. Third, the judge placed great reliance on the email of 2010, written after Yates Drive had been built but before the marriage in 2011 (see paragraphs 53-6 of the judgment, paragraph 24 above). She found it was evidence of an intention that Yates Drive should not be a joint asset. She rejected the Husband's account that it was agreed after the email that it should be. She found that the parties agreed they would build a future family home together. In the meantime, it was intended that Yates Drive would remain solely the Wife's.
30. As the authorities to which I have referred make plain, whether property is or becomes a matrimonial asset depends upon all the circumstances, both at the time of acquisition and thereafter. Those circumstances will include such things as the intentions of the parties at the

time of acquisition and thereafter, the parties' financial and other contributions and the use to which the property has been put during the marriage.

31. The judge referred to the Husband not having acquired a beneficial interest in Yates Drive. That reference was no doubt in part a reflection of the way the Husband (who of course was not a lawyer) was putting his case. However, as is clear from the authorities, (see for example the observations of Acting Judge Foster in *B-H*) for property to be, or to become matrimonial property, does not require the acquisition by a party of a beneficial interest in the property in question. Indeed, the issue as to whether or not property is matrimonial is unlikely to arise if a party has acquired such an interest.
32. While the judge did not accept the Husband's evidence that he had made a financial and other contribution to the construction of Yates Drive, and thereafter specifically contributed to repaying the mortgage, she did, as I understand it, find that the Husband, albeit inconsistently, contributed some CI\$1500.00 per month towards the running costs of the home (being less than half those costs). The Husband's contribution towards the running costs of the matrimonial home was, as it seems to me, very relevant in deciding whether the home was a matrimonial asset. Having rejected the Husband's case that he had acquired a beneficial interest in Yates Drive, it is not clear to me that the judge considered the implications of his contribution towards its running costs. The position in short appears to have been this. The Appellant and Respondent were living together as husband and wife in their matrimonial home. The Wife was paying the mortgage. The Husband was contributing something towards the running costs. That, as it seems to me, was clear evidence that they were, in the language of Lord Nicholls, engaged in a 'common endeavour' as far as their home concerned. The fact that the Husband's contribution may have been less than that of the Wife's does not change that. Be that as it may, the Husband's contribution towards the matrimonial home's upkeep must have eased the financial burden upon the Wife of paying the mortgage.
33. Moreover, it does seem to me the judge placed too much emphasis on the email. It was written well before the marriage. The fact is that on the judge's findings the parties did live together at Yates Drive as husband and wife, whatever may have been said in the email. Yates Drive did, in other words, become the matrimonial home, albeit for something less than four years. I do think it is necessary in those circumstances to draw a sharp distinction between Yates Drive and other investment properties held individually by the Wife and the Husband.
34. In the result, I have concluded that Yates Drive was a matrimonial asset: that the judge should so have concluded. She may well have been diverted from that conclusion by the Husband's

argument that he had obtained a beneficial interest in the home. That being the case, I see no reason why equality should be departed from (see the observation of Lord Cooke in *White* (paragraph 5 above). In other words, in my judgment at the time of the separation the Husband should be considered to have a half share in Yates Drive.

The parcel of land in Cayman Brac

35. I can take this shortly.
36. It is clear, as the judge found, that Cayman Brac was at the outset an independent investment by the Wife. The fact that for the short time in which Yates Drive was the matrimonial home the Husband may, by his inconsistent contributions towards less than half the running costs of Yates Drive, have made a small indirect contribution to that fraction of the mortgage which could notionally be ascribed to the land at Cayman Brac, was not sufficient in my judgment to change the status of the land in Cayman Brac from that of a non-matrimonial asset to a matrimonial asset so as to give the Husband a share. Fairness as between Husband and Wife does not require such an outcome.
37. Moreover, I am fortified in that view by what the Husband said in his affidavit in September 2019, when he did not suggest he had an interest in that land. That does not suggest he regarded Cayman Brac as a matrimonial asset.

What should happen now?

38. On 10 July 2020 the judge, among other things, ordered the Husband to vacate 45 Yates Drive by 1 August 2020. He has done so. However, my conclusion means that he had the right to occupy the house without being liable to a mesne rent.
39. The parties should now seek urgently to agree what should happen in the light of this judgment. If (most unwisely) they cannot, the case will have to be remitted to the Grand Court for consideration of all the issues arising as a result of the judgment (including those relating to the rent paid by the Husband until he left 45 Yates Drive). If that has to happen, I think it sensible in all the circumstances, to order that the matter be remitted to Judge Williams for consideration. However, I emphasise that it really should be possible to avoid any further hearing.

Costs

40. In his appeal, the Husband has succeeded in respect of Yates Drive, but failed in respect of the land in Cayman Brac. My present preliminary view is that a fair outcome would be to make no

order for costs on the appeal. If either party wishes to make any submissions in respect of costs they should do so in writing to be filed within 21 days following the handing down of this judgment.

The Rt. Hon Sir Alan Moses, Justice of Appeal

41. I agree.

The Rt. Hon Sir Bernard Rix, Justice of Appeal

42. I also agree.