

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 HOLDEN AT GEORGE TOWN
3 IN CHAMBERS
4

5 CAUSE NO. FAM 0143 of 2015
6 LACV 0074/2016

7 BETWEEN

8
9 DANA TERESSA SMITH

10 Petitioner

11 AND

12
13
14 NEIL BRIAN GORDON JOHNSON

15 Respondent

16
17 Before Hon Justice Kirsty-Ann Gunn (Actg)
18 Appearances: Mr A. Akiwumi for the Petitioner
19 The Respondent in person
20 Heard: 19 – 21 March 2019, 2-5 September 2019, 11 September 2019
21 and 13 September 2019
22 Closing submissions: 23 September 2019
23 Draft Judgment circulated: 24 December 2019
24 Judgment handed down: 13 January 2020
25



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27 **HEADNOTE**

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29 *Family law – Final ancillary orders – deserts of the parties – relevance of*
30 *the parties’ intentions to determination of matrimonial assets – is the*
31 *wife’s post-separation conduct reason to depart from the yardstick of*
32 *equal division.*
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36 **JUDGMENT**

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38 1. This is the judgment of the court with respect of final ancillary orders following the irretrievable
39 breakdown of the parties’ marriage. I mean no discourtesy to the parties when I refer to them
40 as the husband and the wife in this judgment.
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- 1 2. Section 21 of the Matrimonial Causes Law ("The Law") provides that *"at the time of pronouncing*
2 *a decree under this Law, the Court shall, as appropriate, make orders for –*
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4 (a) the custody, care and control of the children of the marriage;
5 (b) the disposition of matrimonial property, including the matrimonial home;
6 (c) varying any settlement of the property of the spouses made in consideration of the
7 marriage, whether such settlement was made before or upon the treaty of the said
8 marriage;
9 (d) varying any other settlement of matrimonial property;
10 (e) *making financial provision from the property of either spouse for the children of the*
11 *marriage and for the other spouse;*
12 (f) *providing for periodic payments to be made by either spouse for the benefit of the*
13 *children of the marriage and for the other spouse; and*
14 (e) *costs."*
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16 3. Both parties have adult children from previous relationships. Only the husband's two youngest
17 children are currently in education. There is no application for periodic payments, with both
18 parties seeking a clean break. These proceedings are therefore primarily concerned with
19 subsections (b)-(d). (e) "costs" has also featured as the wife is in receipt of legal aid and the
20 husband is seeking reimbursement of his costs incurred in these and criminal proceedings in the
21 Summary Court.
22
23 4. The power conferred by section 21 of the Law should be read in conjunction with section 19 of
24 the Law which provides that *"in dealing with all ancillary matters arising under this Law, the*
25 *Court shall have regard ... to the responsibilities, needs, financial and other resources, actual and*
26 *potential earning power and the deserts of the parties."*
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28 5. The final ancillaries hearing focused on the following issues -
29 (i) What was the duration of this marriage?
30 (ii) What are the matrimonial assets?
31 (iii) Have either of the parties dissipated or hidden any of the matrimonial assets?



- 1 (iv) Is there reason to depart from the yardstick of equal division of matrimonial
 2 assets?
- 3 6. The husband seeks an order that -
- 4 (a) Assigns 45 Yates Drive and all remaining equity to him;
- 5 (b) The wife pays him half the proceeds of the sale of the wife's Brac land (\$23,487.50);
- 6 (c) The wife pays him an amount equivalent to a half-share of the pension benefits
 7 accumulated during the course of the marriage¹ (\$23,487.50);
- 8 (d) The wife pays his costs relating to the occupation order application (CI\$8212.50);
- 9 (e) The wife pays his costs resulting from the wife's application for maintenance which she
 10 subsequently abandoned (CI\$11,542.50);
- 11 (f) The wife pays his costs arising from the criminal proceedings in the Summary Court.
- 12
- 13 7. The wife argues that she should not be ordered to pay the husband any amount as all assets are
 14 non-matrimonial or, alternatively, the occupational rent owing by the husband extinguishes any
 15 share in any assets he may have.

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18 **Background**

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- 20 8. The following are agreed events which are relevant to these proceedings.
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June 2002	The parties meet and begin dating.
(exact date not provided)	The husband moves into the wife's home at 233 Powery Road, West Bay.
2006	The wife purchases a parcel of Brac Land (102A/231) ("the Brac land"). The purchase is made using a combination of cash and loan which was secured against the land. Total value of charge CI\$38,000.
December 2007	The husband purchases and moves into the residence at 5 Ribbon Close, Omega Bay Prospect.
July 2008	The husband and his former wife reach a settlement in respect of

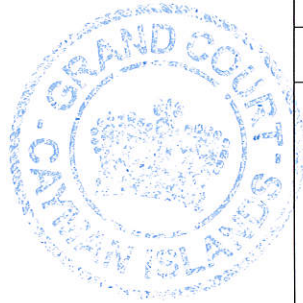
¹ This is based on husband's calculations. I was not provided with any benefits statement covering the period of the marriage alone.

	their divorce ² .
December 2008	The husband sells a parcel of land (24B/80) and retains the profit.
November 2008	The wife sells her property at 233 Powery Road, West Bay and moves into the husband's property at 5 Ribbon Close.
December 2008	The wife purchases the empty parcel of land at 45 Yates Drive, West Bay for CI\$85,500 using the proceeds of the sale of 233 Powery Road. 45 Yates Drive is registered in the wife's name and construction of a residence is commenced.
March 2009	The wife obtains her first mortgage with RBC towards construction of 45 Yates Drive – value CI\$299,000.
March 2009	The wife refinances her other debt with RBC securing the loan against the Cayman Brac land – value CI\$49,000.
April 2009	The wife secures an additional loan from RBC towards construction of 45 Yates Drive – value CI\$25,000.
Summer 2009	The wife refinances her mortgage to access further funds for construction of 45 Yates Drive - total mortgage now CI\$411,000.00
August 2009	The construction of 45 Yates Drive is completed and the wife and her daughter move in.
February 2010	The husband sells 5 Ribbon Close, Omega Bay Prospect (Block 24E, parcel 155) and retains the profits.
February 2011	The wife transfers her entire debt (mortgage and loan) to HSBC – new mortgage amount CI\$436,000
2011	The husband's employer advises him that they would not be applying for the husband to be given "key employee" status.
24 June 2011	The parties marry in Miami Beach, Florida.
March 2012	The wife transfers her debt from HSBC to CNB – new mortgage amount CI\$450,000.
October 2014	The wife transfers her debt from CNB to RBC – total mortgage CI\$495,000.
September 2014	The wife sells the Brac land and deposits the funds into an account on

² Page 823



	which she is the sole signatory.
23 June 2015	The wife files her Petition for dissolution of the marriage.
18 August 2015	The wife moves out of 45 Yates Drive, West Bay.
5 April 2016	The husband files his answer to the wife's petition and cross-petition.
30 September 2015	The husband applied for and is granted an occupation order in respect of 45 Yates Drive, prohibiting the wife from renting the property to third parties.
2 October 2015	Directions hearing
5 October 2015	The wife files an application for MPS and/or interim child maintenance for her daughter and "outstanding monthly contributions"
23 October 2015	The summons of 5 October 2015 is adjourned
4 December 2015	Further directions hearing
16 December 2015	Summons of 5 October 2015 further adjourned.
17 December 2015	The husband is ordered to give the wife access to 45 Yates Drive.
31 March 2016	<p>The wife files a summons seeking to strike out the husband's Cross-Petition and the husband's files a cross—summons seeking a declaration that the omission to file a Verifying Affidavit is an irregularity that does not serve to nullify this Cross-Petition and/or leave to file his Verifying Affidavit.</p> <p>The summonses are heard together. The Cross-Petition is struck out but the husband is granted an extension to re-file his cross-petition and verifying affidavit and a schedule if set for Answers and Replies.</p>
7 June 2016	<p>The wife files a summons for a Non-Molestation Order and a declaration as to the wife's right to occupy and prohibiting the husband from occupying 45 Yates Drive.</p> <p>The summons is heard and an interim order in terms sought is made.</p>
27 June 2016	Inter partes hearing of summons of 7 June 2016. Non-molestation Order to continue.
10 August 2016	By consent the matter proceeds on the basis of mutual petitions and the contents of the Amended Petition and Amended Cross-Petition



	are found proved.
27 September 2016	The wife files a summons seeking continued access to 45 Yates Drive.
1 October 2016	The question of a declaration as to occupational rights is heard and determined by Williams J.
4 October 2016	Summons of 27 September 2016 heard. Order made concerning wife's access to 45 Yates Drive.
22 December 2016	Summons for Directions filed.
9 March 2017	Directions hearing.
22 February 2018	Further directions hearing.
19 April 2018	Further directions hearing.
29 May 2018	First listing of Final Ancillaries Hearing adjourned at request of the husband.
8 February 2019	CMC
19 March 2019	Final Ancillaries Hearing commenced.



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9. As can be seen from the forgoing, the parties co-habited at various times prior to their marriage. The husband asserts that the parties most recently co-habited February 2008 to August 2015. The wife asserts that the husband was absent from 45 Yates Drive between summer 2010 and February 2013. The wife has produced statements from others with a view to corroborating her account. But in addition to that evidence, when the petition and cross-petition were proved the agreed facts included that the parties did not reside together at 45 Yates Drive after their marriage. In any event, at four years this was a short marriage
10. These have been very acrimonious proceedings. Both parties have alleged impropriety during the marriage and after separation, as well as dishonesty in their disclosure and their evidence in these proceedings.
11. The parties were unable to agree on the facts of many events that are said to have occurred during their relationship. The trial lasted nine days and involved a detailed look at the parties' financial arrangements during their co-habitation and marriage to determine the parties' intentions with respect to the various assets. I am only required to determine such factual disputes as are necessary for me to determine the issues in the case. Consequently, many

1 factual issues which were raised during the trial are omitted from this judgment as they are not
2 relevant.

3
4 12. The parties also sought to re-litigate factual matters which formed part of the consensual
5 proving of the petition and cross-petition. This is not permissible. The tribunal determining the
6 final ancillary orders is bound by the findings of the tribunal which adjudicated upon the
7 petition, whether the facts were proved by consent or following a contested hearing. I will set
8 out the agreed facts which are relevant to these ancillary relief proceedings -

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11 (a) While the wife and her daughter were residing with the husband at 5 Ribbon
12 Close it was agreed that she would purchase groceries for the household,
13 perform the household chores by keeping the home clean, and also pay the
14 utilities³.

15 (b) The husband sold 5 Ribbon Close in February 2010 and moved in with the wife
16 into 45 Yates Drive⁴.

17 (c) As the husband was approaching “rollover” in December 2011 his employer
18 advised him that they would not be applying for him to be granted “key
19 employee” status⁵.

20 (d) The parties married on 24 June 2011.

21 (e) After the marriage the parties did not live together⁶.

22 (f) The husband would verbally and emotionally abuse the wife⁷.

23 (g) The wife facilitated the husband and the wife establishing a number of
24 successful business ventures⁸.

25 (h) Despite the success of their business ventures and full-time employment, the
26 husband refused or neglected to properly assist the wife financially⁹.

³ Wife’s amended petition, paragraph 9(d)

⁴ *Supra* at 9(e)

⁵ *Supra* at 9(n)

⁶ *Supra* at 9(x)

⁷ *Supra* at 9(z)

⁸ *Supra* at 9(bb)

⁹ *Supra* at 9(cc)



- 1 (i) The parties verbally agreed that the husband would contribute CI\$1,500.00 per
2 month towards his living expenses at 45 Yates Drive, including but not limited to
3 utilities, pool service, gardening, and assistance with the purchase of food¹⁰.
4 (j) The husband at times provided less than the agreed contribution and was
5 inconsistent as to the timing of his payments¹¹.
6 (k) The parties ceased sharing a bed in February 2016¹².
7 (l) The wife has often fabricated stories about the husband's behaviour¹³.
8 (m) The wife has a bad temper and has made threats to have the husband removed
9 from the Islands¹⁴.
10 (n) The husband has been loving and supportive of the wife and his step-daughter,
11 including when the wife was unwell (including Easter 2016)¹⁵.
12 (o) The husband has enjoyed a loving relationship with his step-daughter¹⁶.
13 (p) The wife is very ungrateful and selfish to the husband and is a selfish person
14 who cares about no one but herself and her daughter¹⁷.
15 (q) The husband has at all times treated the wife with kindness and generosity,
16 buying her expensive gifts¹⁸.
17 (r) The wife did not buy the husband nice gifts¹⁹.

18
19 13. There is an obvious inconsistency between facts (f), (n) and (q) but they are not material to the
20 matters I have to determine. Facts (e), (i) and (j) were key areas of dispute during the final
21 ancillaries hearing.
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¹⁰ *Supra* at 9(cc)

¹¹ *Supra* at 9(cc)

¹² Husband's amended cross-petition dated 10 August 2016 at 5a

¹³ *Supra* at 5c

¹⁴ *Supra* at 5d

¹⁵ *Supra* at 5g

¹⁶ *Supra* at 5c

¹⁷ *Supra* at 5e and 5e

¹⁸ *Supra* at 5e

¹⁹ *Supra* at 5e



1 14. As I have already mentioned, each party has accused the other of giving false evidence about
2 many aspects of their marriage. Having heard their account and seen the exhibits, I find that
3 they have both knowingly and repeatedly made false statements to this court in an attempt to
4 obtain a favourable outcome. In particular, they have both misstated or failed to disclose key
5 financial information at various stages of these proceedings.

6
7 15. The husband has also admitted obtaining bank statements for the wife's accounts from RBC
8 directly, knowing he was doing so in breach of the bank's duty to maintain confidentiality. This
9 is reprehensible behaviour, particularly given that the husband has worked in this financial
10 sector for many years and was very aware of the bank's duty. His concern that the wife was
11 withholding financial information is no excuse for such action; he should have come to the court
12 for assistance.

13
14 16. Each party has also used interim applications and the disclosure process to cause delay and
15 create opportunities to cause distress to the other.

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17 17. In order to determine the true facts in this case, I have had to rely heavily on the documentation
18 to find corroboration for their various accounts.

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The Final Ancillary Hearing

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18. When the matter was called on for the final ancillary relief hearing before me on 19 March 2019, the parties requested time to enter into negotiations with a view to settlement. This request was granted. The following day, I was advised that the parties had agreed most of the matters in dispute concerning matrimonial property and that the court only need determine whether –

- (i) 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.
- (ii) Whether the husband should be awarded a portion of the wife’s pension benefit.

19. The parties had also agreed that there should be a set-off for occupation rent which was owing by the husband to the wife.

20. On that basis the hearing commenced with the wife giving evidence on those narrow points. During the course of cross-examination by the husband on the second day, the husband declared that, in his opinion, the wife was telling untruths and that he could no longer stand by the agreement reached the day before. The hearing was therefore adjourned part-heard and continued in September 2019 for the court to determine which of their assets are matrimonial and how to distribute them.



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Non-matrimonial assets

21. The parties agree that the husband's condos in Barbados and Miami and the wife's parcels of land which were gifted to her are non-matrimonial assets.
22. The parties have operated several businesses over the course of their relationship but all have now ceased trading and the assets sold and the funds expended. With the exception of the black Range Rover sold for \$19,000, I have not been asked to assess these former assets.
23. The husband cashed in a pension fund some years ago and, despite being employed since then, he asserts that he did not join another pension plan.
24. The husband also purchased and sold parcels of land both in Grand Cayman and Cayman Brac during the relationship, always using his own funds and retaining the full proceeds of the sales. These are also agreed to have been non-matrimonial assets.

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Matrimonial assets

25. The parties dispute, and so I must determine, which of the following assets are matrimonial -
- (a) The residence at 45 Yates Drive, West Bay.
 - (b) The chattels in the husband's Miami apartment.
 - (c) The proceeds of the sale of the Cayman Brac land in 2014 which had been registered in the wife's name and the funds retained by the wife.
 - (d) The wife's pension.
 - (e) The black Range Rover which was sold for CI\$19,000 and the funds retained by the husband.
 - (f) The wife's jewellery (for which there have been no valuations):
 - One Omega Watch purchased for US\$2,500;
 - One gold diamond ring purchased for US\$2,000;
 - One gold reversible necklace purchased for US\$2,500;
 - One Rolex watch purchased for US\$9,000;
 - One diamond cluster pendant purchased for US\$5,000; and
 - One engagement ring and one wedding ring purchased for US\$4,500.



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

6
7 27. When determining what constitutes matrimonial property I have regard to all of the
8 circumstances at the time the relationship existed, including circumstances and timing of the
9 acquisition of the property, the parties' contributions, their apparent intentions with regard to
10 and the use of the property during the marriage and how they organised their financial affairs.
11 Property which was acquired by one party before the marriage and the title remained in the
12 name of the party may become matrimonial property and, equally, not all property brought into
13 the marriage is automatically subject to division. (**B-H v B [2009] CILR 185**)

14
15 28. While the parties have been in a relationship for many years, they kept their finances quite
16 separate from one another, both before and after their marriage. At no stage did they share a
17 bank account or mix funds. There is a plethora of evidence corroborating both their accounts
18 that they would regularly reimburse the other for purchases made, particularly when one of
19 them had purchased items for the other overseas. The husband's evidence even spoke of the
20 wife *borrowing* money from him during the marriage –

21
22 *"The request for \$3,000 for August and September mortgage is misguided because I*
23 *asked her to take those funds from the \$5,000 she borrowed from me in February*
24 *and which she promised to repay in April but has not yet done so."* (Husband's
25 second affidavit dated 21 October 2015, paragraph 49)



1 29. The husband highlighted the parties' financial independence in an email eight years into their
2 relationship –

3
4 *"The only solution is marriage because our problem is that although we love each*
5 *other we remain too independent, we have no serious institutional bond, no joint*
6 *mortgage or loans etc."* (Email from the husband to the wife on 7 September
7 2010²⁰) -
8

9 30. It is noteworthy that, even after their marriage, the parties did not change their financial
10 arrangements.
11

12 31. The extent of the parties' financial independence is apparent when one considers their evidence
13 about the mortgage on 45 Yates Drive. Throughout the life of the mortgage charged against 45
14 Yates Drive, the wife remained the sole borrower/chargee, despite there being numerous
15 opportunities for the husband to be made a party to the various mortgage agreements or to add
16 him to the deeds. The husband claims that this was because he did not wish to disrespect the
17 wife by insisting that he be added to all of the documentation.
18

19 32. The husband also asserts that, while he did not sign any of the loan agreements with the various
20 banks, his correspondence to the bank confirming his CI\$1,500 per month "contribution" means
21 that the mortgage, which was in the wife's sole name, was enforceable against him. The
22 relevant emails post-dates their marriage and state -
23

24 *"This email serves to confirm that I provide Dana Smith with an amount of 1500*
25 *monthly to contribute towards payment of the mortgage loan with your*
26 *institution."* (Email to CNB August 2013²¹)
27

28 *"This letter serves to confirm that I provide my wife Dana Smith-Johnson with a*
29 *monthly contribution of \$1500.00."* (Email to RBC September 2014²²)

²⁰ Page 817

²¹ Husband's affidavit dated 17 September 2018 exhibit NJ 10

²² *Supra* NJ10



1 33. The husband did not provide any authorities for his proposition. The bank entered into a
2 contractual relationship with the wife and all documentation and correspondence from the bank
3 is to her. Despite one email from the husband referring to a mortgage contribution, I find that
4 these letters do not join the husband to the ensuing mortgage nor elevate his status to a
5 “guarantor” of the mortgage repayments either. Nor has either party suggested that the
6 husband had to provide consent to the charge, which he would have had to provide if he was an
7 acknowledged beneficiary of 45 Yates Drive. There was simply no contractual relationship
8 between the bank and the husband.

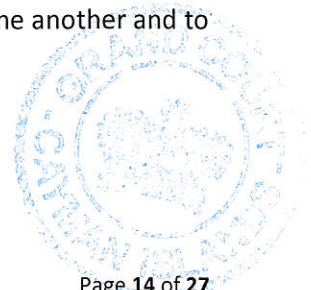
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10 34. Furthermore, the parties agree that the husband never inquired as to the amount of the
11 mortgage, why the debt was being refinanced or moved to new institutions. The husband’s lack
12 of interest is entirely inconsistent with someone that considers himself to be equally liable for a
13 considerable debt, which is charged against such a valuable asset, particularly when considered
14 in the context of the husband being an experienced investment manager.

15
16 35. The wife refinancing her debt so as to incorporate her personal loan into the mortgage is further
17 evidence that the wife did not consider the husband to be responsible for the debt.

18
19 36. I reject the husband’s evidence that he did not insist on being on the mortgage and land deeds
20 out of respect to the wife, that he considered them to have a joint mortgage or that he was a
21 guarantor. I accept the wife’s assertions that these emails were simply to confirm the extent of
22 her funds available to meet the repayments and that she was solely responsible for this
23 mortgage.

24
25 37. In summary, I reject the husband’s assertion that the intention was for his C\$1,500 contribution
26 to have been specifically towards the mortgage so as to give him a beneficial interest in 45 Yates
27 Drive, because not only is it in conflict with the facts as agreed when the petition and cross-
28 petition were proved, but the evidence before me leaves me sure that the parties intended
29 before and after their marriage to remain entirely financially independent of one another and to
30 demarcate their respective assets leaving no joint assets.

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1 A. Miami chattels

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3 38. The parties agree that the wife used her credit card to purchase some of the furniture in the
4 husband's Miami apartment. All purchases were prior to their marriage. While the wife seeks a
5 credit for half of the purchase price on the basis that the chattels became matrimonial assets,
6 the husband asserts that he reimbursed the wife for such purchases by paying the funds onto
7 her credit card. As I have already stated, the evidence before me discloses that the parties did
8 regularly reimburse one another when one party purchased items for use by the other.

9
10 39. I am satisfied that it is more likely than not that the wife was in fact reimbursed for the chattels
11 she purchased for the Miami condo with the express intention that they would be considered
12 the husband's property and that the wife would not have a claim to the same. Therefore, I
13 conclude that while the parties intended that they both enjoy the benefit of these purchases
14 when staying at the Miami property, like the condo itself, they did not intend for the wife to
15 acquire a beneficial interest in the fixtures and furniture and, consequently, they are not
16 matrimonial assets.

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19 B. The wife's Brac land

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21 40. Each party has held, purchased and sold land and residences and on every occasion they have
22 done so in their sole name. The Brac land was purchased before the parties married and was,
23 therefore, brought into the marriage. The wife asserts that she part-paid the purchase of the
24 Brac land with funds from an investment account she set up for her daughter, securing the rest
25 of the purchase with a loan charged against the land (CI\$38,000). Her intention was for the land
26 to be an investment for her daughter's future benefit. The husband asserts that the land was
27 purchased entirely by a bank loan and that it became matrimonial property because the loan
28 was refinanced into the mortgage on 45 Yates Drive which he asserts he paid half of.

1 41. The Brac land was sold in September 2014. The net proceeds of the sale (CI\$96,000) were
2 deposited into an account under the sole control of the wife. The husband asserts that there
3 should be an adjustment to his share in 45 Yates drive, the equivalent to 50% of the net profit of
4 the sale of the Brac land.

5
6 42. I am satisfied that while the wife brought this property into the marriage it was not intended to
7 become a matrimonial asset. I have already determined that the husband's CI\$1,500
8 "contribution" was not towards the mortgage and, therefore, does not create a trust to which
9 he can lay claim. The Brac land is not a matrimonial asset and, consequently, no adjustment
10 should be made to any matrimonial asset to reflect the profits from the sale or the debt arising
11 from the consolidation of the loan.

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14 C. Range Rover

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16 43. I reject the wife's evidence that the husband unexpectedly and maliciously withheld her Range
17 Rover vehicle which she had been driving prior to their separation. I am sure that the wife
18 abandoned the Range Rover and rented a vehicle while she awaited delivery of the car she had
19 purchased using funds she had received from her pension account.

20
21 44. In his affidavit evidence the husband accepted that this vehicle was an example of the expensive
22 gifts he purchased for her during their marriage²³, but at the final ancillaries hearing he changed
23 that account, asserting that the vehicle was a business asset which the wife was permitted to
24 drive until it was sold. I am satisfied that husband purchased the vehicle for the wife's personal
25 use and not as a business asset. It is, therefore, a matrimonial asset and he retained the
26 proceeds of the sale (\$19,000).



²³ Husband's affidavit dated 14 April 2016, at paragraph 37

1 D. 45 Yates Drive

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

10
11 46. However, with the exception of one reference to the "former matrimonial home" in an affidavit,
12 the wife asserts that 45 Yates Drive was never intended to be the matrimonial asset as it was
13 built entirely using the proceeds of the sale of 233 Powery Road and a mortgage for which she
14 was solely responsible.

15
16 47. The husband argues that the house is a matrimonial asset because -
17 (i) he contributed at least CI\$150,000 into the building of the house as well as
18 project-managed the build;
19 (ii) he has been paying half the mortgage since 2010; and
20 (iii) it was the matrimonial home.

21
22 48. Alternatively, the husband seeks return of the funds he invested into the house on the basis that
23 his contribution raised a resulting trust.



1 49. The husband has produced two cheques written in 2010 and a deposit slip for 2011 which prove
2 that he on occasion paid the wife CI\$1,500. These payments were more consistent in 2015. Part
3 of the agreed facts when the petition and cross-petition were proved was that these payments
4 were not always complete and made in a timely fashion and they were for specific expenses, not
5 the mortgage. The wife continued to be liable for life and house insurance as well as other
6 expenses associated with the property. It is noteworthy that CI\$1,500 per month is significantly
7 less than half of the overall costs of the household and, given the husband's higher income, the
8 amount strongly suggests that the parties were not treating this as a joint venture. Given the
9 facts previously proved and the matters I have already set out above, the husband's argument
10 that his payments created a trust or that he specifically contributed to the mortgage giving him
11 an equitable interest in 45 Yates Drive must fail.
12

13 50. How the construction costs of 45 Yates Drive were met was another central issue over which the
14 parties largely disagreed. The wife has produced cheques and invoices totalling almost
15 CI\$300,000 relating to the construction of the house. I have not been provided with a final
16 costing schedule. The husband contends that the receipts are far short of the "CI\$600,000
17 house" and that the shortfall in the wife's records is because he had invested CI\$150,000 of his
18 own money into the house. The husband adduced a very few number of invoices and cheques,
19 but it was evident that the cheques post-date the completion of the house and, therefore, could
20 not have related to the house; a fact the husband eventually conceded.
21

22 51. The property was valued in 2009 and the appraiser opined that the rebuild cost was
23 CI\$423,000²⁴. The external work was valued in 2010 to have a rebuild cost of CI\$78,000²⁵. In
24 2014 the property's market value was CI\$631,000. I draw from these reports that while in its
25 completed state the house is worth in excess of CI\$600,000, the cost of building it was
26 considerably less.
27
28
29



²⁴ Page 1078 and 1080

²⁵ Page 1103

1 52. There is no independent evidence to corroborate the husband's assertion that he invested in
2 the region of CI\$150,000 of his own money into the construction. On the other hand there is
3 ample evidence, particularly the many cheques made out to the husband and drawn on the
4 wife's account, relating to the purchase of construction material and payment of wages by the
5 wife. From this I am sure that any funds expended by the husband on 45 Yates Drive, whether
6 for construction or furnishing, were reimbursed in short order. While around CI\$100,000 of the
7 construction costs are not independently accounted for, I am satisfied that the net proceeds of
8 the sale of 233 Powery Road (CI\$164,940.07) and the mortgage (CI\$411,000) together were
9 more than sufficient to purchase the land and construct the property at 45 Yates Drive. I reject
10 the husband's claim that he invested any significant funds in the construction or furnishing of
11 the 45 Yates Drive house or that he project-managed the build in any significant way.
12

13 53. The husband's email after a breakup in 2010 (a year after construction of the house was
14 competed) sheds some light on his understanding of the property's status:
15

16 *"Once the economy gets better we will build a new family home in both our names.
17 Your existing house will be for Chante and my 2 in Barbados for Brad and Bry. We'll
18 give all three of them a start in life.... Let me first say that I am in no way, shape or
19 form interested in your house or any part of it. That is yours and I guess one day
20 Chante's. Some where along the way and I believe the precursor to recent events is
21 that you somehow feel that you could be exposed to me wanting some sort of
22 interest in your house especially as I was co-habiting with you. That could not be
23 further from the truth. ...Even if you had concerns you could have come to me and
24 say Neil until we are married I feel vulnerable as far as my house is concerned. You
25 know all of my hardwork etc is caught up in the house.... It would then be for me to
26 say, yes I understand and let's set a date, etc or go straight and get married... Please
27 have no concerns and hence feel the need to hurry me to take the stuff away at the
28 expense of renting storage etc as I have absolutely no interest in your house."*
29
30
31



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

8
9 55. I reject the husband's assertion that the wife was refinancing in order to realize the equity in 45
10 Yates Drive to keep for herself, as it is entirely without merit. It is common banking practice that
11 penalties for early repayment incurred with the original banking institution are incorporated
12 into any new mortgage facility with a different bank, causing the overall mortgage amount to
13 increase. The increases seen in the wife's mortgages every time she changed institutions is
14 entirely consistent with this and the amalgamation of credit card debt. I, therefore, accept the
15 wife's evidence on this point and find that she was not trying to withdraw equity from 45 Yates
16 Drive.

17
18 56. While 45 Yates Drive was the matrimonial home for a short period, I am satisfied that it was the
19 parties' intention that it should remain the wife's asset and that they would built a "family
20 home" in the future using future joint funds. Consequently, I find that 45 Yates Drive is not a
21 matrimonial asset.

22
23
24 *E. The Wife's Pension*

25
26 57. The wife has one pension account through her employer's plan. The pension value at 31
27 January 2018 was US\$193,047.69. The wife had made voluntary contributions in the amount of
28 US\$24,267.79. In October 2017 she withdrew US\$30,993.90.



1 58. Any pension benefits accrued during the life of a marriage are usually considered to form part of
2 the matrimonial asset pool (see **PHRS v SDS [2004-05] CILR Note 11**). This includes any benefits
3 accrued as a result of additional voluntary contributions. While the parties did keep their
4 finances distinctly separate, I accept the husband's evidence that the parties agreed that the
5 wife's pension would be used towards their joint retirement. I, therefore, find that any benefits
6 accrued during the time of their marriage (June 2011-August 2015) are part of the matrimonial
7 pot of assets. The wife's subsequent withdrawal of funds from the account does not affect the
8 benefit accumulated during the relevant period.

9
10
11 *F. Jewellery*

12
13 59. Any jewellery purchased by one spouse for the other, whether before or during the marriage or
14 purchased with joint funds are usually matrimonial assets. The wife accepts that she still
15 possesses the pieces listed in paragraph 25(f) above. I find there is no reason to treat the wife's
16 jewellery in this instance in any other way and so they are part of the matrimonial pot of assets.
17 The husband asserts that the jewellery will have held if not increased in value. No valuation has
18 been done of the jewellery.



1 **Division of assets**

2
3 60. It is not appropriate to make an order for a periodic payment in this case. The parties need a
4 clean break so that they can begin to move on with their lives.

5
6 61. The principles applicable to the division of *matrimonial property* was settled by the Court of
7 Appeal in **McTaggart v McTaggart [2011] 2 CILR 366**. Chadwick P stated –

8
9 *“40.It is not, I think, necessary to look further than the decision of the House of*
10 *Lords in Miller (supra) – and, in particular, the speeches of Lord Nicholls and*
11 *Baroness Hale - in order to identify the principles. Leaving aside, in this context, the*
12 *best interest of the children, which (as I said) are paramount, there are three*
13 *strands: need, compensation and sharing ... The ultimate objective, as Baroness Hale*
14 *explained ... is to give each party an equal start on the road to independent living.”*

15
16 62. “Need” should be generously interpreted. I also have in mind the learned President’s
17 statements as to “compensation” at paragraphs 41 and 43 of his judgment. I may take into
18 account the parties’ non-matrimonial assets when determining their respective needs.

19
20 63. With regards to “sharing”, Lord Nicholls observed in **Miller (ibid)**-

21
22 *“The parties commit themselves to sharing their lives. They live and work together.*
23 *When their partnership ends each is entitled to an equal share of the assets of*
24 *partnership, unless there is a good reason to the contrary. Fairness requires no*
25 *less...The yardstick of equality is to be applied as an aid, not a rule” (at paragraph 16)*

26
27 *“In all cases the nature and source of the parties’ property are matters to be taken*
28 *into account when determining the requirements of fairness.” (at paragraph 20)*



1 64. Baroness Hale (*ibid* at paragraph 151) concurred -

2

3 *“Even for matrimonial property, the source of the asset and the length of the*
4 *marriage are relevant factors to determine whether to depart from equality.”*

5

6 65. The conduct of a party is only relevant in exceptional circumstances in which it would be
7 inequitable to disregard it (**AB v SB [2018] CILR Note 6** and **Miller supra**)

8

9 66. The husband complains that since their separation the wife has taken extraordinary steps to
10 ‘put him off the island’ including making malicious complaints to the RCIPS and Customs and
11 Border Control which have resulted in numerous criminal charges. He points out that to date
12 three of the prosecutions based on the wife and/or her daughter’s complaints have been
13 dismissed and that the Summary Court has made adverse comments about the wife’s credibility
14 and her “use” of the Immigration Department for her own benefit. The husband asserts that
15 her actions have left his character “totally destroyed”, caused irreparable damage to his
16 reputation and that the legal costs incurred in the criminal proceedings have left his savings
17 depleted. He invites me to find that the wife’s conduct is so egregious that the wife should be
18 ordered to pay the husband a lump sum equivalent to his legal costs incurred in the summary
19 proceedings and the lion’s share of the assets.

20

21 67. These proceedings are not the appropriate forum to litigate the issue of costs arising from
22 Summary Court proceedings. As with the costs order already made, the husband has recourse
23 in the Summary Court. I have considered the learned magistrate’s ruling dismissing the
24 allegation that the husband assaulted the daughter. The learned magistrate dismissed the
25 allegation having rejected the wife and daughter’s evidence as to the events of that day. It was
26 entirely a matter for the learned magistrate to assess the credibility of the witnesses within the
27 context of the trial. I am not in a position now to assess that evidence in the same manner
28 which here would be on the balance of probabilities, while the learned magistrate had to be
29 sure beyond a reasonable doubt of the veracity of their evidence.

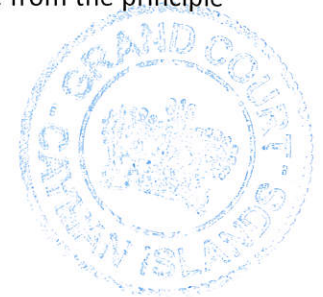
30



1 68. I have also considered the costs ruling given by the learned magistrate and, while she does
2 speak to the “incestuous” behaviour of the wife, her relatives and staff at the Immigration
3 Department, I do not have sufficient information before me to assess the degree of impropriety.
4

5 69. I have also considered Williams J’s decision pertaining to the wife’s attempt to have the husband
6 removed from the property.
7

8 70. Based on the evidence before me, I must conclude that none of the above allegations reaches
9 the high threshold to constitute such gross conduct as to warrant a departure from the principle
10 of equal division.
11
12
13



14 *The needs of the parties*
15

16 71. The wife has secure employment with a net pay of a little over CI\$6,500. If allowed to retain 45
17 Yates Drive the wife will be able to meet her needs from her salary. I am satisfied that she has
18 depleted the proceeds of the sale of her Brac land and the pension withdrawal in order to meet
19 the many bills for 45 Yates Drive since she left the property and make numerous payments
20 towards her daughter’s university education, medical bills, legal costs and purchasing a new
21 motor vehicle. The wife does have a number of properties which she could borrow against,
22 including raising a deposit for a new home.
23

24 72. The husband has been investment advisor for many years. I accept that as a result of his
25 extended unemployment he is likely to have depleted his savings by this point, including the
26 proceeds of the sale of the black Range Rover. However, it came to light during the trial that he
27 had in fact secured a consultancy contract securing an income of approximately CI\$6,000 per
28 month, which is only a little less than he received as part of his previous employment. While I
29 accept that this contract was terminated as a result of these proceedings, it has confirmed that
30 the husband is likely to be able to secure suitable employment or a contract again within a
31 reasonable period.
32
33

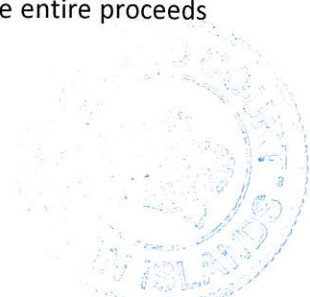
1 73. I note that the husband's older son graduated in 2017 which deceased the educational fees the
2 husband had to meet for his two sons which he met from the rental of the Barbados condo. The
3 husband's younger son is in tertiary education and is scheduled to graduate in 2020. Therefore,
4 those expenses will end soon and the husband's Barbados property should provide him a
5 regular source of income. The Miami condo should largely pay for itself once rented out.
6 Consequently, the husband should soon have sufficient funds to meet his daily expenses,
7 including maintaining his minor daughter. The husband will need accommodation on island but
8 does not currently have the necessary liquidity to purchase new accommodation.

9
10 74. As I have already stated, the husband asks that the court orders the transfer of 45 Yates Drive
11 into his sole name. I find that such an order would be inequitable given that it is a non-
12 matrimonial asset which the parties always intended to remain the wife's property.

13
14 75. Instead I find that a lump sum payment by the wife to the husband together with his half share
15 of the other matrimonial assets will provide him with the necessary funds to secure new
16 accommodation and maintain himself until he secures new employment. Given the husband's
17 current financial situation and their respective living arrangements, the husband has until 31
18 March 2020 to vacate the property by which time the wife shall have paid to him the sums
19 ordered below.

20
21 76. I take into consideration that the husband is liable to pay the wife occupational rent since 1
22 October 2015. At the current rate of \$2,000, up to, 31 December 2019 (51 months), the total
23 amount due is \$102,000. Even at the husband's "contribution" level (CI\$1,500) the total due
24 would be CI\$76,500, which I accept the husband can ill afford, in part as a result of the criminal
25 proceedings. Also, I accept that the husband paid approximately \$9,000 per year towards
26 maintenance of the house since the wife vacated the property. If the husband is required to pay
27 the full occupation rent then he will be left with no funds with which to secure new
28 accommodation. I am also mindful that the husband has had the benefit of the entire proceeds
29 of the sale of the Range Rover.

30



1 77. Rather than specific set-offs, I will order that the wife pay a lump sum of CI\$15,000 which
2 together with his share of the matrimonial assets will give him the liquidity to start his journey
3 to independent living.

4
5 78. Consequently, I order that -

6
7 (i) The wife shall pay the husband a lump sum of CI\$15,000 on or before 31 March 2020. Any
8 arrears of occupation rent accrued since the matter was heard in September 2019 shall be
9 set-off.

10
11 (ii) The husband shall vacate 45 Yates Drive together with his personal possessions on or before
12 31 March 2020. Occupation rent at CI\$2,000 per month shall be payable for January,
13 February and March 2020 unless the husband provides a minimum of 14 days' written
14 notice of his intention to vacate the premises sooner, in which case occupation rent shall be
15 prorated.

16
17 (iii) The wife shall have the jewellery identified in paragraph 25(f) above appraised by a suitable
18 individual/business agreed by the parties within 28 days of this judgment. If a suitable
19 person cannot be agreed then the parties shall each provide the court with one proposed
20 appraiser together with short submissions as to why that person/business is more suitable
21 by 31 January 2020 and the court will select one for them. The cost of the appraisal shall be
22 borne by the parties equally. The wife shall pay to the husband a lump sum of 50% of the
23 current value said jewellery or, alternatively, transfer to the husband such of these items
24 that she wishes together with cash to the value of 50% of their total value on or before 31
25 March 2020.

26
27
28 (iv) The wife shall obtain a calculation of the pension benefits accrued with her current pension
29 provider between June 2011 and August 2015 and serve same on the husband by 31 January
30 2020. The wife shall pay to the husband a lump sum of 50% of the total benefits accrued
31 under that plan on or before 31 March 2020. No allowance shall be made for the sums the
32 wife subsequently withdrew from the account.

1 79. I will consider the applications for costs on the papers.

2

3

4

5 Dated this 13th day of January 2020

6

7

8

9



10 Hon. Justice Kirsty-Ann Gunn

11 Acting Judge of the Grand Court

12

13

14