

This judgment was delivered in private, but the Judge hereby gives leave for it to be published.

This judgment in this matter is being distributed on a strict understanding that in any report no person other than the attorneys (and any other person identified by name in the judgment itself) may be identified by name or location and in particular the anonymity of the child and the adult members of their family must be strictly preserved.

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FAMILY DIVISION**

CAUSE NO: FAM 35 OF 2015

BETWEEN:

DL

Petitioner/Cross Respondent

AND

KL

Respondent/Cross Petitioner

Appearances: Mr. Delroy Murray from Murray & Westerborg for the Petitioner

Mrs. Stacy Thompson for the Respondent

Before: Hon. Mr. Justice Richard Williams

Heard: 18 - 20 January 2017 & 8 - 9 May 2017

Written Submissions filed: 7 & 8 June 2017

Request from husband to file additional submissions: 29 June 2017

Court's notice to parties of intention to proceed with judgment in absence of additional Written Submissions: 29 September 2017

Clarification Submissions received: 1 & 7 December 2017

Circulation of Draft Judgment: 26 January 2018

Date of Judgment: 31 January 2018



HEADNOTE

Financial Provision - Ancillary relief - effect of purported agreement, whether there was a binding agreement - application for occupational rent - payment of mortgage when one party is able to exclusively occupy the matrimonial home - clean break - duration of periodic payments for child pursuant to s.22(1) Matrimonial Causes Law (2005 Revision) - requirement to comply with Practice Direction No 11/2014 "Court Bundles in Family Proceedings In the Family Division of the Grand Court."

JUDGMENT

Background - Application and Parties

1. This is an application for ancillary relief made by DL, the 47 year old Petitioner/Cross-Respondent wife, who is a Caymanian national. The application is made against her 49 year old Caymanian husband KL. The parties married on 15 January 1992.
2. I hope that the parties will not be offended if from now on I refer to them, for convenience, as the husband and the wife.



Procedural Background

3. On 5 March 2015 the wife filed her Petition for the Dissolution of the Marriage. The husband filed his Acknowledgement on 27 March 2015, indicating his intention to defend. The husband filed his Answer and Cross-Petition to the Petition on 30 March 2015. The wife filed her Reply to the Answer and Cross-Petition on 21 April 2015. Almost a year later, on 6 April 2016, both parties sensibly agreed to the husband withdrawing his Answer to the Petition and to the wife withdrawing her Answer to the Cross-Petition. The Petition and Cross-Petition were then both proved on an uncontested basis. It has been a lengthy marriage.
4. On 29 July 2015 the husband filed a Summons seeking interim orders for the wife to pay occupational rent in relation to the former matrimonial home ("FMH") or,

in lieu of that, to make all off the mortgage payments. He also sought an order for the wife to return all marital cash assets to the parties' joint accounts.

5. On 7 August 2015, the wife filed a Summons for interim orders for the husband to pay toward the mortgage and outgoings on the FMH. At around that time she also voluntarily moved out of the FMH to rented accommodation, leaving the property vacant.
6. The Summonses for interim relief came on before Mangatal J. on 21 September 2015, when they were adjourned to a date to be fixed for hearing. Mangatal J. made substantive directions to the final ancillary relief hearing.
7. The Summonses for interim relief came on before me on 16 April 2016, when the parties agreed to a further adjournment. An extension of time was given for compliance with the substantive directions to the trial date fixed for 27 July 2016. The costs of the husband's application to extend time for him to comply with the directions in relation to pleadings were reserved to enable a later review of his required subsequent compliance.
8. The final hearing date scheduled for 27 July 2016 had to be vacated due to the non-assignment to a Judge to hear it. On 11 October 2016 the final hearing was fixed for three days commencing on 18 January 2017.



9. The final ancillary relief hearing was spread over five days. The parties were then afforded the opportunity to file Written Closing Submissions by or on 6 June 2017. The husband's Written Submissions were filed on 7 June 2017 and the wife's were filed on 8 June 2017.

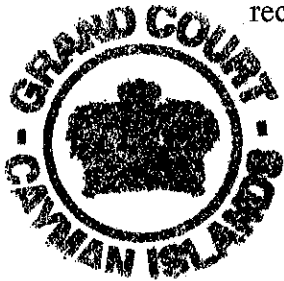
10. On 29 June 2017 the Court received a written request from the husband's attorney for leave to file further Written Submissions to deal with issues surrounding a Land Rover Defender motor-vehicle. Leave was given to the parties to make additional Written Submissions to be filed by 3:00 PM on 7 July 2017. On 12 July 2017 the husband's attorney wrote to the Court seeking an extension for the filing of the additional Written Submissions to 17 July 2017.

11. Although no further submissions had been filed, on 28 September 2017 the husband's attorney wrote to the Court concerning the status of the Judgment. On 29 September 2017 the Court wrote to the parties stating:

“After receiving closing written submissions I received further email correspondence from the parties indicating that there was a wish to serve further written submissions. No agreement was reached between the parties in that regard and it does not seem that this is now being pursued. Having regard to the latest email I do not expect to be receiving any further written submissions and accordingly I am now in a position to commence writing the judgment and I will do so upon my return to the jurisdiction at the end of October.”



12. An email was received later on 29 September 2017 from the wife's attorney, in which he indicated that she had not sought, and still did not seek, to add anything further to her June 2017 written submissions. Having received no further submissions concerning the Land Rover, I have regard to the fact that my notes recorded that at the end of the hearing on 9 May 2017:



"Both parties agree that the other can keep the vehicle which they are currently using. The wife will sign the transfer form so the husband can have the car transferred into his name. He will pay the transfer fees."

13. When reviewing the Written and Oral Submissions it became clear that certain areas needed clarification to enable the Judgment to be completed. As a consequence, on 10 November 2017, a note detailing the information sought was sent to the parties. The husband submitted his replies on 1 December 2017. The wife submitted her replies on 7 December 2017.
14. This is my reserved Written Judgment prepared after careful consideration of the parties' oral and written evidence, their Written Skeleton Arguments, their June 2017 Written Closing Submissions and later written comments. Preparation of this Judgment has been made more difficult due to the shifting positions of the parties during the course of the hearing in relation to their respective cases and the orders sought and their fluctuating valuations of the assets provided in their evidence and various submissions. Despite the inconsistency of some of the detail set out in the documents, I have paid close regard to the fact that each party relies

heavily on their respective written closing submissions filed in June 2017 and their written comments filed in December 2017.



Background – K, the Parties’ Daughter

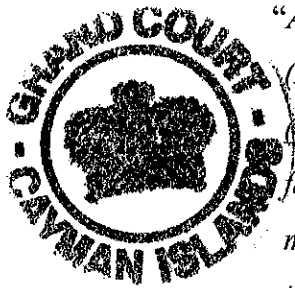
15. The parties have a daughter, K, aged 24 (DOB 31 December 1992).

Unfortunately, K suffers from Asperger’s syndrome. Initially the husband contended that, although K was over 21 years of age, an order for the wife to make periodical payments should still be made pursuant to s.22(1) of the Matrimonial Causes Law (2005 Revision) (“the Law”) as K was unable to maintain herself independently. However, as confirmed in the Closing Written Submissions submitted on his behalf, the husband has abandoned that claim. This is an understandable position to have now taken, as K was able to study away from home as a college student in the United States and gain, at times, some employment in the Cayman Islands upon her return.

16. The wife stated that in August 2013 she told K, who was then 20 years of age, that if her grades fell she would have to leave her college, Nova South Eastern in South Florida (“NSE”), especially as the husband was unemployed at the time. Upon K’s return to the Cayman Islands in December 2013 the wife states that they had a further discussion as K had been placed on academic probation by NSE due to her low grades. The wife states that she informed K that she was not willing for her to stay at NSE and that she should transfer back to the Cayman Islands to attend either UCCI or ICCI. The husband felt that K should be able, as

she wished to, to return to NSE. The wife said that he indicated that he would pay the fees out of his own share of the matrimonial assets or from his income. K returned to NSE in January 2014. The mother said K had to leave at the end of that academic year due to failing grades. The father said that K had been put on academic probation in December, but had then managed to improve her grades and therefore was not asked to leave NSE. He said that she left NSE as he could no longer afford to pay the fees by himself. Both parties agree that there is currently no fees liability remaining directly to NSE despite the fact that K did not complete her course there.

17. The husband's initial position in relation to K's education costs, as communicated to the wife at the time, is contained in an email that he sent to her on 16 April 2014. In that email he was referring to college fees and meal allowances which were due at NSE. He stated:



"As I am aware this bill is my responsibility. When I made a commitment to (K), I had hoped that I would have been paid by (his former employer), (29K) Sold the Backhoe (38K) or gotten a job. Any of these would have facilitated me paying the fees. (I don't claim that all of the proceeds are mine. Only that I have sufficient equity to help her.) It was my last option to pay her fees out of the Scotia deposit. I reasoned that she needed to achieve at least two years of college credits at worst, and if she was able to get a scholarship I would be able to help continue at school. Two years of college credit would allow her a better standing at any of the local universities and allowed her to continue. It was not my intention to obligate you to do something that you did not want to do. I committed only what I felt was mine to commit...." (my emphasis added).

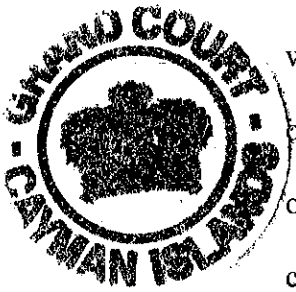


18. The husband says that on 10 October 2014, which was after the 2013/2014 academic year at NSE referred to above, he borrowed US\$18,390 from a friend ("DM" and Eagle Asset Investments Ltd.) to enable K to attend a different college, Flagler College in St. Augustine in Florida ("Flagler"). The husband said the loan was required to pay off the fee debt owed to NSE to enable him to get her academic transcripts which needed to be sent to Flagler for her admission. The loan is therefore not for the education costs at Flagler. He stated that at Flagler most of her tuition and accommodation fees were covered by scholarships and financial aid, and airfare and spending money and other day-to-day living costs amounting to \$4,500 had to be met by him by means of cashing in his pension at Butterfield Bank for \$1,500 and using \$3,000 on his credit card. That loan is evidenced by an email from the lender transmitted to the husband on 10 September 2015. The wife said that she formed no part of that decision and that she had not agreed to make any contribution to expenses relating to K's education. The husband accepted that the wife had not agreed with K returning to college, as she did not feel there was a need for her to continue her education there. The husband says that this loan was supposed to be paid off by or on 10 October 2015, but no payments have been made towards the loan and the balance remains at US\$18,390.

19. The wife claims that it was unreasonable for the husband to take out this loan at a time when he was unemployed and after she had made it clear that she would not be funding the cost of further education for K in the United States and therefore

he should bear the full responsibility for the loan. The husband in his oral evidence accepted that he had indicated that K was his responsibility, but then added that it was his opinion that the wife should also take care of her daughter and that she should also pay for K's education.

20. I note that when the husband had indicated in April 2014 that he would pay for the fees at NSE that he did so on the basis that he would be able to do so after the sale of the backhoe for around \$38,000 and receipt of payment of \$29,000 from his former employer. The backhoe has still not been sold and he did not receive \$29,000 from his employer. It is clear that when K started in September 2013, for what turned out to be her final year at NSE, she was 20 years of age and that orders for education/child maintenance could have been made in relation to the outset of the 2013/2014 academic year requiring both parents to contribute to the costs related to her education for the 2013/2014 academic year. I say this having regard to s.19 of the Law and the requirement for the child's interests to be first. No evidence has been placed before the Court to confirm whether or not the parents would be responsible for the fees to NSE for the full academic year if K left NSE before the end of that year. It is evident, albeit without the support of the wife, K remained at NSE for that academic year and that payment for fees fell due for the rest of that academic year. That fee obligation to NSE legally remained and was not dependent on whether or not K attended Flagler for the 2014/2015 academic year. It is evident that the husband was only able to pay for the fees by taking out a loan from DM for US\$18,390. I am satisfied that, having regard to



the greater income of the wife and despite the husband's indications given at a time when he was emotionally and financially vulnerable, both parents have an equal obligation to meet these expenses which were for the benefit of their daughter, and accordingly I regard the outstanding loan of US\$18,390 to be a matrimonial debt for which each party remains equally responsible.

21. Regrettably K had to leave Flagler College after only one semester due to poor grades. Fortunately, as indicated at paragraph 18 above, most of K's fees and education expenses at Flagler were met by scholarships and financial aid with the father meeting the balance by realising some of his capital assets. Upon her return to the Cayman Islands, K has been able to obtain temporary employment in the Library, but is currently unemployed. At the time of the hearing K was residing with her maternal grandmother. The father says that he would like to be able to purchase a property large enough for both himself and K to reside in.

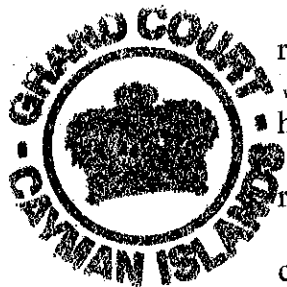
Further Background

(i) Background - Events in 2013

22. In around September 2013 the husband lost his employment as an Office/Business Manager (a post he had held since around April 2005) and he stated that between April and November 2013 his then employer had only been able to pay him sporadically. The business had been owned by the wife's brother¹ and that it was a "very intimate" business and, due to discussions about it, the wife was "very

¹ Although in 2012, as he is a politician and Government minister, the wife's brother divested himself of his interest in the business, the husband said that the brother was still aware of what was happening with the business.





aware" of what was going on. The husband said difficulty with payments for the rental of the parties' backhoe and his salary commenced in around 2012. The husband contends that the CI\$3,600 per month backhoe rental income, when received, was used to directly pay for K's educational costs and to meet credit card charges related to family vacations.

23. The husband had made a number of financial contributions to the employer's business to try to keep running and to buy raw materials. He did not seek to immediately recover the CI\$4,700 per month rent payments which were usually made into the Scotiabank account for the backhoe leased to the business. The husband hoped that his injections of cash and his flexibility on receipt of rental payments for the backhoe would help the business to stay afloat and stabilise, thereby preserving his job security and ensuring regular and longer term income benefit for the family.
24. The wife contends that it was not until around December 2013 that the husband informed her that he had not received a salary for nine months and that there were many months of outstanding rent on their backhoe outstanding from his employer.
25. The husband disagreed with the wife and said that she was aware of the arrangements with the business before August 2013, the date suggested by the wife. It is clear from emails in April 2013 that the husband and wife were sending emails to each other concerning the former employer's difficulties and that the

husband was giving some financial support to the employer. The wife said that in May 2013 she had told the husband to stop making such payments and he informed that he would do so as well as ensure that he received repayments from his employer.² The wife said that this did not happen and in September she realised that he had still been making payments to the employer. The husband stated that the wife was fully aware of the predicament the business was facing and of his contributions to it at the time and of the knock on effect on his income, and that is why they borrowed money against the land with the Credit Union to meet K's education expenses. He accepted that she may not have then known about all of the contributions he had made to his employer, but added that there are occasions when she had lent money to people that he was not aware of. He said that although the wife did not approve of him making payments he said that *"she was not comfortable, but she understood."* He said that by the end of 2013 the wife had been reviewing all of their finances and was then fully aware of the payments he was making, and she told him that he should stop making them as she did not think it was worth the effort he was putting in to try to make the business work.



The husband's payments to his employer and approach to collecting the backhoe rent, when one has regards to the historical nexus with the business and the wife's family, are understandable. It is accepted that, when he received a steady flow of income from that employer, he made his full contribution to the family's expenses. It is clear that his actions were not made for personal gain but

² Email from the husband - Tab 12, page 135 of the bundle.

motivated by to trying to retain this employment and income flow for the benefit of the family.

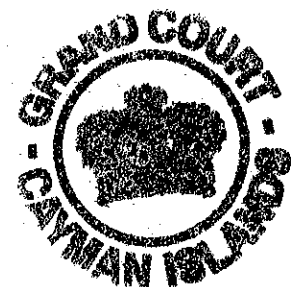
(ii) Background - Purported Agreement December 2013

27. The wife contends that "In December 2013 after I informed the Respondent that I wanted to separate our financial interests"³ the parties agreed to separate their financial arrangements. The wife contends that the parties agreed that the sums in the accounts as of 31 December 2013 represented all of the "*cash monetary assets*" which would be shared equally between the parties. The wife told the Court that in December 2013 they totalled up what their liquid assets were in a spreadsheet, and agreed that each party was entitled to half of that amount. She indicated that this schedule was set up concerning how the monthly expenses going forward would be met by the parties. With this in mind, the wife said it was agreed that moving forward the husband would pay his share of the joint expenditure and for all of his personal expenses from his share in the liquid assets until he found employment.

28. The wife contends that the cash in their joint bank accounts totalled CI\$103,166, giving them CI\$51,583 each.⁴ The wife contends that the husband has received or utilised CI\$77,654.55 of these monetary assets, a sum of CI\$26,071.55 in excess of what she says was agreed.

³ My emphasis - paragraph 30 of wife's Affidavit sworn on 21 October 2015.

⁴ Paragraph 13 of the wife's Skeleton Submissions.



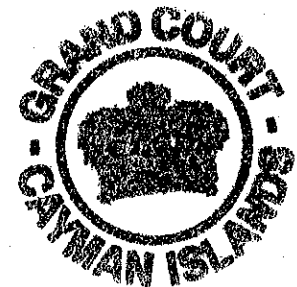
29. The wife contends in her evidence that the parties agreed that the liquid assets as of the end of December 2013 were:

| | |
|--|----------------|
| Scotiabank US\$ fixed deposit account xx61 | CI\$ 49,239.22 |
| Scotiabank cheque account xx15 | 6,836.18 |
| Butterfield Bank savings account xx700 | 32,007.39 |
| Butterfield Bank savings account xx297 | 2,266.27 |
| Butterfield Bank US\$ savings account | 2,044.15 |
| Credit Union savings account | 4,872.68 |
| Credit Union shares account | 8,452.29 |

Total: CI \$105,718.28

Each party's share: CI\$ 52,859.14

30. In addition to these assets the wife said that the husband asked her and K to sign a document which permitted him to collect CI\$8,000 from a life insurance policy of which she was a beneficiary. She contended that the premiums for the policy had been paid from the joint accounts, but she never received a part of the payment which were never placed into the said accounts, although she said it was agreed that she had a 50% interest in the proceeds from the policy. The husband states that the proceeds were used to make payments to the mortgage due to his limited income.



31. The wife states that the marriage was starting to breakdown in December 2013 and that the primary reasons for her wishing to set up this financial arrangement were:

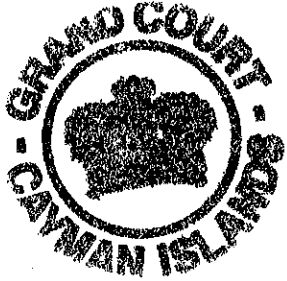
- (i) her concern that the husband was removing the funds as well as taking out loans and making other financial commitments affecting the joint accounts without any consultation with her;
- (ii) her concern that the husband was refusing to provide details about the sums he had taken out and pay back into the joint accounts which he described as being necessary for funding the daily operations of his former employer.
- (iii) the concern that the husband had failed to inform her of his total salary earned and payments made from his employer for the jointly owned backhoe; and
- (iv) the parties' lack of agreement as to how the sums in the accounts should be expended.



32. In these circumstances and with these concerns the wife also wished to ascertain each party's assets in December 2013 as, when she told the husband that she could not afford to send K back to NEC in Florida, he told her that he would use his own share of the assets or his own income to pay K's fees.

33. The husband does not agree that there was a binding agreement to separate the parties' finances in December 2013. The husband does not agree that the

purported December 2013 agreement was one freely reached. He says that, during the negotiations, the wife was the one demanding the putting in place of the arrangement and he felt compelled and under duress to comply with her wishes as he was still trying to save his marriage at the time. In December 2013 he was at his most financially vulnerable, having lost his employment, whilst the wife was in her secure and well paid employment. It was also at a time where he felt that the wife was forcing him to be the only one to bear the burden of the financial responsibility for K's education which he understandably believed to be in her best interests.



34. The husband refers to an email sent to the wife on 15 May 2014. He stated in the email that he felt that the wife was being unreasonable when she asked that he stop considering their interest as being shared since December 2013 as he had contributed everything he had earned during the marriage and that he paid more than half the bills that they had in 2013. He stated that he agreed with the wife that there should be a divorce, but they must now establish how the assets and liabilities were to be separated and that he did not agree with her proposal that the cash held be used to pay off loans at the Credit Union and the Scotiabank credit card liability.

35. Interestingly, when considering whether the arrangement was freely reached, I note that early on in her evidence in chief on 18 January 2017 the wife stated that she told him in around August and September 2013 that "*we need to separate*

*finances as I [do] not agree how he spends it, or I would file for divorce.”⁵ The wife stated later in her evidence in chief that when they were discussing the assets as of December 2013 that the husband said to her “*don’t file for divorce and I will find a job.*”*

36. The husband in his oral evidence accepted that the wife, who is a Finance Manager, produced the spreadsheet in December 2013, but added that “*throughout the marriage these sort of spreadsheets were prominent.*” The husband stated that the wife had told him that this was the way forward and that if he wanted to spend money, the schedule set out how he could do it. He said that there was some back and forth about the content, but he was “*not fighting*” it. He added that he went along with it, as he wanted to save his marriage and that the only way to do that was “*to do exactly what she said*” and “*in the manner in which she wanted to do it.*” He said that that period of time was the “*most devastating*” for him as he had recently lost his job and his wife shortly thereafter told him that she wanted a divorce. He said that everything:



“crashed at that moment. I had to do the best that I could, it meant doing everything that she wanted. If I had not been under this stress I would not have agreed to the schedule this way. I would not have prejudiced myself in anyway.”

37. I am satisfied that the husband’s replies contained in the following exchange during cross-examination on 9 May 2017 reflect the reasons why he felt

⁵ My emphasis by underlining.

compelled at the time to state his acceptance of the spreadsheet approach to his finances and the matrimonial assets proposed by the wife:

Husband: It is clear that I understood her intent and I am saying to you that the only way bills would be paid is me agreeing to this. If I did not care about it not getting paid I would ignore the whole thinking. This is the only way we were able to communicate and move forward.

Mr. Murray: December 2013 was when the genesis of the agreement was arrived at, the wife said she wanted the divorce.

Husband: Yes. After some discussion she said we are going to separate assets. I went along with it.

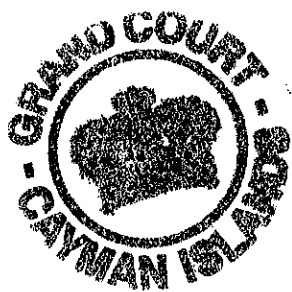
Mr. Murray: You decided to separate the assets so she could use her money and you could use your money.

Husband: She want us to separate assets and I had no choice. I could go along or not. I could ignore it. In the end I went along with it. She cornered me into an agreement. She made it clear that the only way we discuss it is if you do it this way, so yes, I agree.

Mr. Murray: It was a voluntary agreement, she said she wanted a divorce and needed to separate the assets. There was no force, threat or coercion on her part.

Husband: Then as I said you before, I love my wife and everything we were and the prospects that we had. When I lost my job I did not want to lose my wife and my life, so I go along with what she suggested. Figures agreed - schedules agreed - eventually I agree - gave her what she wanted. I do this with a view to save the marriage."

38. Having reviewed the evidence it is clear that the wife was "uncomfortable with the way he was handling" their savings including paying for K's education, spending funds from the joint accounts and "for other reasons" including those set out in paragraph 31 above. The wife was, and remains, unsympathetic to the



difficulties the husband had encountered with his previous employer, with whom she had strong family ties, concerning unpaid salaries and leading him to lend money from their accounts to try to keep the business afloat with the hope that it would result in long term security of employment for himself which would in turn be beneficial to the family. Rather than having any empathy for the husband who, after many years in employment and making his full contribution to the family's expenses, had recently become unemployed, the wife was primarily motivated to act by a desire and focus to protect her share in the matrimonial capital as a time when the vulnerable husband's income capacity and financial security was greatly reduced. Despite her considerably greater income, the wife felt it appropriate for her husband, who she accepts had been a considerable financial contributor to the family over the years of the marriage, to make equal payments to the family's outgoings and pay for all of K's education debts from his negligible income and by significantly depleting what she viewed to be his share of the capital assets at the time.

39. It is clear from the wife's evidence that this arrangement was one suggested by and driven solely by her and, as indicated at paragraph 30 of her affidavit sworn on 21 October 2015, she was the one that wanted to separate their financial matters. The wife prepared the spreadsheet containing the details of the account and she said that the husband reviewed it and agreed it. Under this arrangement the wife would secure the monetary value of her share of the matrimonial capital assets as she had a good income from her employment enabling her to meet her





share of the expenses, whilst the then unemployed husband's share of the capital would be considerably depleted as he had no income to meet "his share" of the expenses. This was not a just and fair arrangement and one might ask whether it would be so viewed and countenanced if it had been a wife who was unemployed or on a far less income than the husband. Normally when one party in a marriage, whether that be the husband or the wife, has a lower income or suffers a reduction in income due to losing employment one would expect the other spouse to make a greater contribution to the outgoings whilst the party tries to find employment rather than the capital reduction approach imposed by the wife in this case.

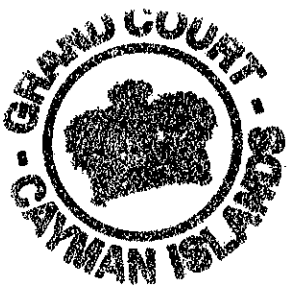
40. From her own evidence, the wife accepts that she told the husband that if he failed to agree to her terms in relation to separating the finances in the way that she wished, she would then file for divorce. The wife offered the arrangement on a 'take it or leave it basis' at the time of great financial vulnerability for the husband and it was stipulated to be the only way in which to save this marriage. It was also in play at a time when the parties were living in the same household and were arguing about finances and K's education. I am satisfied that the "agreement" was one that was not freely reached by the husband, especially as he was in such a vulnerable financial position at the time the wife imposed her desired financial arrangement upon him.

41. The arrangement was never formalised in either a written post nuptial agreement or in a deed of separation or signed written agreement. I am satisfied that the

husband did not view the arrangement, which commenced at the request of the wife in December 2013 without the benefit of any legal advice, as being a separation or post nuptial agreement in legal terms. I accept that it is more likely he saw it as a basis for setting out the terms of reconciliation. Within the context of the divorce proceedings, for the wife, the idea of an agreement evolved and it hardened into a legal, post nuptial agreement.

42. Even if the arrangement had been incorporated in a formal signed agreement, it may fail on what have become known as *Edgar*⁶ grounds the burden of establishing a ground with the party relying upon it. So, the circumstances surrounding the making of the agreement are relevant. These include:

- (i) where the agreement imposes terms of substantively unfair, in other words outside the range of orders that would be made by a court in the broadest exercise of its discretion under s.19 of the Law; and
- (ii) where the agreement was achieved in a manner that was procedurally unfair which includes by means of undue pressure⁷. It is clear that when the parties were discussing the arrangement they did not have in mind the factors set out at s.19 of the Law.



Although the arrangement, which has never formalised in the form set out above, should still be taken into account as one of the circumstances of the case, it does not fetter the Court's responsibility to ensure that any order divides the assets in a

⁶ *Edgar v Edgar* [1980] 1 WLR 1410.

⁷ *NA v MA* [2007] 1 FLR 1760.

fair and equitable manner when making appropriate provision for the relevant party in relation to the three strands of need, compensation and sharing. Consequently, in this case, I will apply the Law in accordance with s.19 of the Law as interpreted through case authority and, although considering it as a part of the evidence in all the circumstances of the case, not be fettered by the December 2013 arrangement.

(iii) Background - Separation

43. The wife contends that the parties separated in December 2013 when she says they agreed to separate their financial arrangements. The husband contends that they separated in 2014.

44. In an email to the wife on the 15 May 2014 the husband stated he agreed to a divorce. He wrote:

"... if we are to co exist in the same house and be parents to (R), I need for the situation to be the best under the circumstances. We need not argue. I will continue to stay out of the bedroom and your way."

In the following month he opened a bank account in his sole name for the first time during the marriage.

45. I am satisfied that, on the evidence before me, the separation was in May-July 2014 and not December 2013, although the wife had clearly decided in December that her primary goal at the time was to secure her financial interests. By May



2014 the wife solely occupied the matrimonial bedroom. The fact that the parties reside in the same home does not mean that they are not separated and living separate lives at the time.



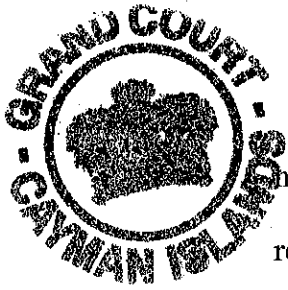
Background

(iv) Post December 2013

46. The wife says that it was not until April 2014 that the husband provided her with information that showed that he was owed CI\$33,183 in back pay from his former employee, as well as being owed CI\$18,600 for the rental of their backhoe. These amounts are consistent with figures he put in a schedule⁸ which the husband drafted and provided to her in or around April 2014. In his oral evidence the husband said that he was owed about \$38,000 in back salary, severance pay and rental for the backhoe. The wife said that, because her salary had been used to pay the bills and make payments into the joint savings account in 2013, it was agreed that, when these payments were received, they would be placed into the joint accounts and that each party would have a 50% interest in them.

47. The wife said that in around July 2014 she discovered that the husband had received a settlement payment of \$11,000 from his former employer. The wife said that the husband failed to notify which payments had been made or to put them into the joint bank account. The husband stated that when he received the cheque for US\$11,780, which was after he had been informed by the wife that she wanted a divorce, he cashed it and used some of it to pay his bills including the

⁸ Tab 12, page 50 of the bundle.



mortgage contributions. The husband contended that all but \$3,000 of the sum received went towards the mortgage on the FMH as the wife had demanded that he make payments towards it. The husband indicated that, despite trying, he did not receive any severance pay and that he did not pursue any payments for the backhoe as the company was "*liquidated and defunct, nothing there and has no assets.*"

48. The husband said that all of the payments from the joint accounts to his former employer had now been repaid and, during his cross-examination of the husband, Counsel for the wife conceded that it was not being put that they had not been paid as the wife could not say otherwise.
49. The wife indicates that, following authorisation from the husband, part of the funds in the Scotiabank account was transferred on 3 March 2014 to another fixed deposit account to secure a credit card debt of US\$15,000. That credit card liability was secured by a fixed deposit of \$60,000 in the Scotiabank account ending xx61. The balance was then placed in an account at Scotiabank in her sole name. This meant that as of March 2014 the monies under her sole control totalled \$34,000 at Scotiabank.
50. The husband contends that by May 2014 the wife had withdrawn all of the cash contained in the joint accounts and placed them into accounts over which she had sole control or over which she shared control with other parties other than the



husband. The wife denies allegations that she “siphoned off” funds or placed funds into joint accounts with any third person. She stated that she placed CI\$34,000 into an escrow account with the Credit Union to partly meet the CI\$47,419.30 loan with the Credit Union which had been taken out to pay for K’s college education, which was being serviced by monthly payments of CI\$575 from her income. The wife contended that the parties were equally responsible for this loan and the above-mentioned credit card debt and that it was agreed that both of these debts would be cleared using the sums in the cash assets.

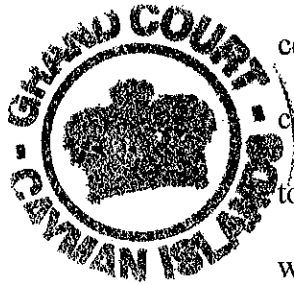
51. The wife said that she no longer contributes CI\$2,000 into the joint Credit Union account, instead using it to pay the monthly mortgage at Scotiabank. The wife indicated that they also agreed to then cease the operation of the joint accounts, although she accepted that the accounts were thereafter maintained on the understanding that the amounts in the account at that time represented all of the cash assets to be divided equally between them.

52. The wife said that in May 2014 the parties exchanged an updated expense spreadsheet. The wife contends that in May 2014 the husband removed, without consultation with her, CI\$17,000 from the Butterfield joint accounts. However the cheque dated 9 May 2015 exhibited to the husband’s affidavit of 16 September 2015 tends to show that the withdrawal was justifiably intended to be used to pay for K’s education fees. The wife conceded that the husband agreed to deposit the aforementioned CI\$17,000 cheque into the Credit Union account to be used for

the Credit Union college loan and that this was the only amount that he paid into that account between May 2014 and 21 October 2015. The parties' actions in relation to removing funds to make payments to the Credit Union loan were appropriate.

53. The wife said that in August 2014 she removed a corresponding sum of CI\$17,000 from the joint account at which time she decided to sever the joint accounts as she believed the husband had failed to pay in back salary and backhoe rent received from his former employer. The wife highlighted that the shares in the Credit Union as of 21 October 2015 totalling CI\$9,000 could not be withdrawn until the loan was fully repaid and the monthly contributions to the shares in the loan account also could not be changed until the loan was fully repaid.
54. The wife submitted that at the time in May 2014, based on the parties agreement, the husband was only due a balance of CI\$6,789.74 from those accounts and therefore had exceeded his entitlement by CI\$10,209.
55. In July 2014 the husband found employment as an inventory associate with his current employer, a large supermarket business in Grand Cayman. The wife drew the Court's attention to the spreadsheet prepared at the time at Tab 12, page 55 of the bundle. She said that a copy of this was provided to the husband, as were earlier versions between January and July 2014. She said the husband reviewed it





and then submitted his own schedule. In the schedule she reiterated the balances in the account as of December 2013, but also added the deductions that should come from the husband's share for his proportion of the joint expenditure and to cover his personal expenditure. The total amount that she said in the Schedule was to be deducted from his share of the assets by July 2014 was CI\$26,612.14. The wife said that the husband's schedule in reply was consistent with the figures, save for his failure to pay regard to the difference in relation to withdrawals he made from a Credit Union account when compared to the smaller deposit he made to the Scotiabank account.

56. The wife said that the parties agreed to close off the credit card in July 2014 when he found a job, with each of them also paying off half of the Credit Union college loan. Despite the great disparity in their income, the wife said in July 2014 that the parties continued splitting the bills by depositing equal amounts into the joint account which was used to service the mortgage, as well as equally contributing to the monthly utility bills. This arrangement continued until May 2015, at which time the wife said that the husband stopped paying his share.

57. In August 2014 the wife says that, as the husband refused to meet with her, she transferred CI\$23,000 into a Christmas Savings Account to prevent him removing any money without her knowledge. She felt that at that time he had spent nearly CI\$29,000 on his half of the bills and did not have enough money left in the accounts to pay his agreed half of the CI\$47,000 loan Credit Union. She contends

that the credit card was repaid with funds from the Scotiabank account and the deposit was used as security.

58. The husband says that during the marriage he had liquidated his pension accounts to pay off joint loans, including ancillary education costs for K when she was at Flagler. The wife did not accept this but said that, if he did, it was used in the family pot. He also says that he sold two properties which had been given to him by his parents which he invested into the construction of the FMH.

59. When reviewing the evidence it is clear that during the marriage the parties contributed to the expenses of the family in the normal way. This does not mean that they had to contribute equal amounts. One can expect to see, when one spouse's income drops, that the other spouse makes an increased contribution to meet the family's expenses. Even after the parties are separated, if one party has a greater income than the other and/or benefits from the use of the FMH or another asset, then that party may still be expected to discharge a larger proportion of their joint expenses, especially if that party was able to exclusively occupy the FMH.



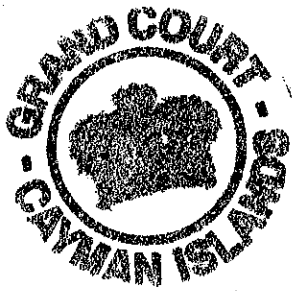
(v) **Background - FMH - Occupation of - Occupation Rent - Property Expenses**

60. The husband stated in his oral evidence that he left the FMH completely in February 2015. At paragraph 8 of his affidavit sworn on 16 September 2015 he said that he was forced to vacate at that time because of the wife's "*difficult and*

inflexible stance.” He stated that the wife would “*vacillate from complete hostility*” towards him and to “*seeking conversation at 2:00 a.m. and other odd hours of the morning*” which he found unbearable resulting in his departure from the home being “*both necessary and involuntary.*”

61. The husband said that when he felt he had to leave the FMH he had to rely upon friends and his girlfriend to stay for periods at their properties. At the time he had a monthly salary of about CI\$2,000 and, if paying half the mortgage on the FMH, only had only CI\$800 to meet his own living expenses and to fund K at Flagler College. This meant that he had no disposable income, so he could not contribute to the expenses at the FMH. He contends that the wife, who had the benefit of residing in the FMH, was far better able to and should meet those expenses from the cash savings of at least CI\$90,000 which were under her control, especially as she was in well paid employment. This is an acceptance from the husband that she could draw on the joint funds to discharge these expenses, although I note he did then make an application for occupation rent.

62. The wife seeks a clean break with an equal division of the matrimonial assets which should be sold, but contends that she should be credited for the equivalent to what she perceives to be the husband’s half of the mortgage and insurance payments on the FMH which she had met from her salary after she says he had “*dissipated*” his half share of the liquid assets as they stood at 31 December 2013. As of the date of the Closing Submissions she calculated there to be a shortfall in



his contribution to the mortgage of CI\$12,000⁹. The husband claims that he paid into the mortgage from June/July 2014 when he found work until he was ill and had to have surgery in April 2015.

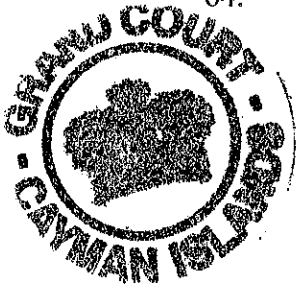
63. The wife also contends that, on the division of the assets, she should be credited as the husband had failed to pay his half of the house insurance premiums for two years, which amounted to CI\$2,876.¹⁰

64. The husband, on the other hand, claims a sum for occupation rent from the wife for the period after he left the FMH, or at least during the period February 2015 to May 2016¹¹. I note that he first made an application for occupation rent in his Summons dated 29 June 2015, when he also sought an order that the wife pay all of the mortgage and outgoings on the FMH. With this in mind, the husband also submits that the wife should be solely responsible for all the arrears on the electricity and water bills resulting in disconnection in 2016 and also for any reduction in the value of the FMH as a consequence of the disconnection as only she was living at the FMH. He said when he left the home there were no arrears for any of the utility bills. During his cross-examination of the husband, Counsel for the wife conceded that when the husband left the FMH no utility bills were outstanding, and Counsel accepted that it was his client's responsibility to pay the utility bills when she was in the FMH. I am satisfied that the wife should be solely

⁹ See paragraph 15 Written Closing Submissions.

¹⁰ See paragraph 17 Closing Written Submissions – However, in her note dated 30 November 2017 the wife claims a sum of CI\$8,628.84 for three years also claiming for 2017-2018, but this period is not in evidence as the new detail is provided after the evidence was closed in the case and after the relevant affidavit in which her evidence is contained at paragraph 20 was sworn on 4 May 2016.

¹¹ Paragraph 2 x. Written Closing Submissions.



responsible for discharging all the arrears on the electricity and water bills resulting in disconnection in 2016.

65. The wife says that, although they had an argument in the FMH at the time, he did not leave the home in February 2015. In her affidavit evidence she says that it was not until June or July 2015 when he stopped sleeping at the FMH. In her oral evidence she stated that was around March 2015. She said he retained a key to the FMH and, although he was not sleeping there, he still stored some of his possessions there and that he would sometimes come into the FMH. The husband accepts that he retained a key as he intended to visit his daughter and retrieve items of clothing on occasion, but he denied that he slept at the FMH post-February 2015. The wife said that he left the home of his own free will and therefore he is not entitled to make a claim for occupation rent. I prefer the husband's evidence to the wife's, and find that despite visiting the property he had left it and having regard to the hostility between the parties as evidenced by the content of their correspondence, it was unrealistic to say that he should be regarded as being free to return.

66. If a party is ousted from a property due to the other party then that person will have a *prima facie* claim for occupation rent against the occupying party who may become liable to pay a fair, but not rack, rent for his or her occupation of the other's share of the property. In *Dennis v McDonald* [1982] Fam 63, violence was found to be behaviour which justified the payment of an occupation rent to the



excluded party. On the evidence, despite the assertion at paragraph 2 ix of the husband's Written Closing Submissions, I do not find that he left because there was "violence" against him by the wife, but I do accept that the atmosphere in the home was unhealthy and detrimental to both parties' welfare.

67. A spouse may be excluded from property as a result of the service of a divorce petition on him. In *Re Pavlou* [1993] 1 WLR 1046, a married couple had separated but the wife was "willing and anxious" to have her husband back. She later served a divorce petition which the judge thought "...may well have been no more than a reluctant recognition of a fait accompli" on the part of the wife. The husband was then declared bankrupt and questions of equitable accounting arose between the trustee in bankruptcy and the wife. Millet J. stated, at 1050:

"I take the law to be of the following effect. First, a court of equity will order an inquiry and payment of occupation rent, not only in the case where the co-owner in occupation has ousted the other, but in any other case where it is necessary to do equity between the parties that an occupation rent should be paid. The fact that there has not been an ouster or forceful exclusion is therefore far from conclusive. Secondly, where it is a matrimonial home and the marriage has broken down, the party who leaves the property will, in most cases, be regarded as excluded from the family home, so that an occupation rent should be paid by the co-owner who remains. But that is not a rule of law; that is merely a statement of the prima facie conclusion to be drawn from the facts. The true position is that if a tenant in common leaves the property voluntarily, but would be welcome back and would be in a position to enjoy his or her right to occupy, it would not normally be fair or equitable for the remaining

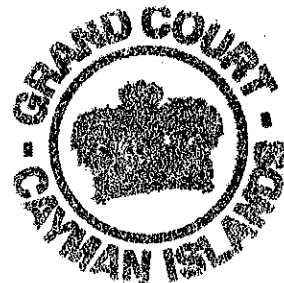


tenant in common to charge him or her with an occupation rent which he or she never expected to pay."

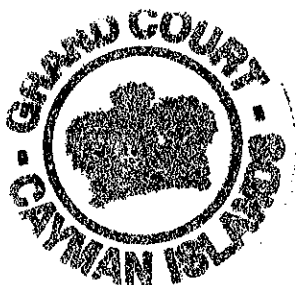
68. Millet J. went on to express the following view obiter as to the commencement date from which occupation rent should be paid:

"...the presentation of a petition for divorce by the party remaining in occupation of the matrimonial home should normally be taken to signify a refusal to take the other party back into the matrimonial home and a willingness to pay an occupation rent thereafter."

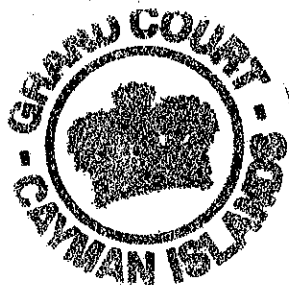
69. In *Byford v Butler* [2003] EWHC 1267 (Ch), [2004] 1 FLR 56, there had been no ouster or exclusion at all. Following the husband's bankruptcy, the trustee in bankruptcy simply failed to bring proceedings in respect of the matrimonial home for many years. The husband lived at the home until his death. Despite the court at paragraph 30 noting that in *"the typical case an occupation rent has been charged where the party in occupation has actually or constructively excluded the other party from occupation"* the widow still had to pay an occupation rent. The Court emphasised the words of Millet J., in *Re Pavlou*, that the finding of ouster or forcible exclusion were *"far from conclusive"*. The Court was exercising discretion to order occupation rent when necessary to do broad justice and equity to the parties. The widow had benefited for many years from the half share vested in the trustee in bankruptcy, who was not able to occupy the property for the benefit of the creditors.



70. The decision in *Re Pavlou* makes it clear that simply leaving the property on a voluntary basis cannot, in the eyes of equity, make the occupying party liable to an occupation rent, although the Court may well be driven to find that a party departing from a property following a relationship breakdown is not welcome back and so a liability to pay an occupation rent arises. If occupation rent is payable I find that, although three months after the issuing of the Petition, it would be from June 2015, namely the date when it was applied for by Summons. It appears that the Summons was never heard, as the case was timetabled to trial and there were wider issues due to the Petition being defended at the time.



71. There is an issue as to why the wife apparently vacated the FMH in March to May 2016. It is contended that the wife left the FMH as she felt insecure and unsafe there. The fact that the unoccupied house may have been broken into and vandalised after she voluntarily vacated the FMH does not support the contention that she was justified in vacating the FMH for that reason. She had the benefit of that FMH after the husband vacated and she could have remained there rather than finding rented accommodation. The husband having left the FMH, it was poor financial management for her to much later also vacate the home, not only because it was left empty, but also because of her unwillingness to maintain the FMH when she had a far greater income than the husband. The husband contends that, when dividing the proceeds of sale, the wife's share should be reduced to take into account any reduction in the sale value caused by the lack of maintenance of the FMH. He did not seek to quantify this, and although he



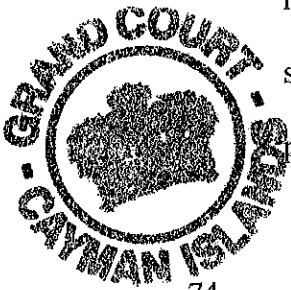
highlighted issues with maintenance of the swimming pool, he has provided insufficient evidence or submissions to enable the Court to reach an informed decision about this claim. I do not make any order in relation to any alleged devaluation of the FMH due to lack of maintenance.

72. The wife stated in her oral evidence that she left the FMH in March 2016¹². However prior to that date the husband had already issued his application for occupation rent which he had hoped would be dealt with at the hearing on 6 April 2016. The wife's application in her Summons dated 20 July 2015 for the husband to pay half of the outgoings on the home was also due to be heard. Rather surprisingly, at that hearing, no indication was given that the wife intended to or had vacated the FMH and the Court gave directions to a final ancillary relief hearing and adjourned the Summonses with liberty to list for hearing if either party wished to proceed with them. In her affidavits sworn on 4 May 2016 and on 4 July 2016 the wife again made no mention of her vacating the FMH, and at paragraph 30 in each affidavit she reiterated that her expenditure was the same as that set out in her affidavit filed on 22 October 2015. This gave the impression, or misimpression as the case may be, at that time to the Court that she was still residing in the FMH.

73. I am satisfied that the wife could have, and should have, remained in the FMH. I find, on the balance of probabilities, that she left the home to counter the husband's application for occupational rent and to bolster her contention that he

¹² Confirmed in a clarification letter from her attorney to the Court dated 24 January 2018.

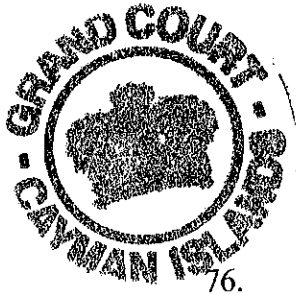
equally met the expenses of the home. I am satisfied that at the time the husband felt he had to leave the FMH and that the wife could, on her income, have afforded to meet the CI\$2,400 per month mortgage. From May to December 2015 when the wife was in the FMH she paid the mortgage of CI\$16,646. Between December 2015 and April 2016, despite not being in the FMH and on a far lower income than the wife, the husband commendably still paid CI\$6,000 towards the mortgage and the occupying wife paid CI\$5,890. Between April and July 2016 the wife paid a further CI\$7,134 towards the mortgage and from July 2016 to date it appears that the wife had paid CI\$20,026 and the husband has paid CI\$20,400. The last figures post-date the close of each party's case in this matter and reflect payments which are not in evidence. However, it is clear that as of the end of the hearing the wife is contending that the husband at that time owed CI\$12,000 as a shortfall in mortgage contributions and CI\$2,876 as a shortfall in insurance payments on the FMH.



74. Although the husband states that, whatever the reasons for the wife leaving sometime between March and May 2016, the occupation rent that he should receive from her should be for the period between February 2015 and May 2016, he has not sought to quantify what would be a reasonable sum for occupation rent. This is unhelpful and makes the Court's task problematic.

75. What I am satisfied is fair and just is that, during the periods when the husband did not make a 50% contribution to the mortgage payments, the wife, who was

able to benefit from use of the FMH, was responsible for taking over that shortfall on the payments of the mortgage and the house insurance as well as meeting the utility bills. Ordinarily, in such circumstances, the wife may have been able to expect to obtain some credit to the extent to which she had repaid the capital element of the mortgage on behalf of the husband. However, no capital element figure has been suggested to me by either party and in this case. I am satisfied that no such credit should be given due to the fact that the wife had been afforded the opportunity to fully enjoy the benefit of the FMH at a time when her income and financial circumstances were significantly stronger than the husband's. In such circumstances, I also do not make an order for occupation rent.



76. The wife also seeks a credit from the assets as she claims that the husband had failed to make 36 payments of CI\$276 towards the Stepping Stones property from July 2014, giving a shortfall of CI\$9,936.¹³ This property has a charge from Credit Union for an education loan.

77. The wife claims that, as a consequence, she had to pay CI\$24,812¹⁴ to meet the husband's shortfalls in making payments to the Stepping Stones property and taking into account her payments for the mortgage and house insurance. The wife seeks to recover that amount by it being taken into account when dividing the assets. Having regard to my above findings, I find that the wife should receive a credit for only the Stepping Stone payments.

¹³ See paragraph 16 of the Written Closing Submissions.

¹⁴ See paragraph 18 of the Closing Written Submissions.

The Law - General Principles to be Applied

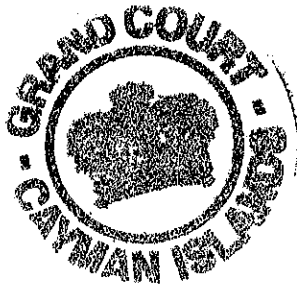
78. The law pertaining to the making of periodical payment orders and to the division of matrimonial assets is governed by s.19 of the Law, which reads as follows:

"In dealing with all ancillary matters arising under this Law the court should have regard first of all to the best interests of any children of the marriage and thereafter to the responsibilities and financial and other resources, actual and potential earning power and deserts of the parties."

79. Section 19 of the Law must be read in conjunction with s.21 of the Law, of which the relevant parts for my consideration in this matter provide as follows:

"At the time of pronouncing a decree under this law, the court shall, as appropriate, make order for:

- (a)
- (b) *the disposition of matrimonial property, including the matrimonial home¹⁵;*
- (c)
- (d)
- (e) *making financial provision from the property of either spouse for the children of the marriage and for the other spouse;*
- (f) *providing for periodical payments to be made by either spouse for the benefit of the children of the marriage and the other spouse; and*
- (g) *costs."*



80. Section 22(1) of the Law provides for the making of child maintenance orders until a child reaches the age of 21 if the child is receiving education. However, that may be extended as:

".... where the child of the marriage is, at the time of pronouncing a decree, under a disability of such a nature as to preclude it from maintaining itself independently, the Court may order that the payments

¹⁵ My emphasis by underlining.

shall be continued throughout the period of disability, notwithstanding the age of the child.”

81. Sections 19 and 21 of the Law give the Court a wide discretion when it comes to financial provision and any awards made to the parties. The Courts in the Cayman Islands, in deciding whether to exercise their powers under s.21 and, if so, in what manner have, when considering what is fair in all the circumstances of the case, traditionally had regard not only to the matters set out in s.19, but also been guided by the relevant factors raised in s.25(2) of the English Act.¹⁶ The factors to be considered include:

- (i) The income earning capacity, property and other financial resources which each of the parties has or is likely to have in the foreseeable future;
- (ii) The financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
- (iii) The standard of living enjoyed by the family before the breakdown of the marriage;
- (iv) The age of each party to the marriage and the duration of the marriage;
- (v) Any physical or mental disability of either of the parties to the marriage;
- (vi) The deserts of the parties, including contributions made by each of the parties to the welfare of the family (to include contributions made by each of the parties to the accumulation of matrimonial assets as well as



¹⁶ *Doak v Doak and Riley* [2002] CILR 224, [17], [21], [22], *Wood v Wood* [2009] CILR 255, [12] and *McTaggart v McTaggart* (2011) 2 CILR 366[39].

non-matrimonial property) and any contribution made by looking after the home caring for the family,¹⁷

- (vii) The value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution of the marriage, that party will lose the chance of acquiring; and
- (viii) The conduct of each of the parties. If that conduct is such that it would in the opinion of the Court be inequitable to disregard.

82. Sir John Chadwick, President of the Court of Appeal, at paragraph 12 in *Valerie Ayala Gordon v Jefferson Raymond Watler* CICA (Civil) 13/2014 (“*Gordon*”) reiterated the principles set out in *McTaggart v McTaggart* [2011 2 CILR 366] (“*McTaggart*”) and the approach to be taken to the case law emanating from England and Wales when he stated:

“12. The correct approach to the division of property in ancillary relief cases was set out by this Court in McTaggart. At paragraph 40 of the judgment in that case the Court said this:

“40. We were referred by the parties, both in the skeleton arguments lodged on their behalf and in oral submissions made in the course of the hearing, to a plethora of judicial decisions in England and Wales and to a few decisions in this jurisdiction. Observations made by experienced judges are, of course, of assistance to an understanding of the application of the section 19 factors; but it must be kept in mind that most cases in this field are decided on their own facts and that there is a risk that extensive citation may confuse rather than illuminate. It is not necessary, I think, to look further than the decision of the House of Lords in Miller - and in particular the speeches of Lord Nichols and Baroness Hale - in order to identify the principles. Leaving aside, in this context, the best interest of the children, which (as I said) are paramount, there



¹⁷ *Wight v Wight*, Zacca P. at paragraph 33.



are three strands: need, compensation and sharing [2006] 2 AC 618 at paragraphs [10]-[16] per Lord Nichols and at paragraphs [138]-[143] per Baroness Hale. The ultimate objective, as Baroness Hale explained at paragraph [144], is to give each party an equal start on the road to independent living. She said this:

'[144] Thus far, in common with my neighbour and learned friend Lord Nicholls of Birkenhead, I have identified three principles which might guide the court in making an award: need, generously interpreted, compensation and sharing. I agree that there cannot be a hard and fast rule, but whether one starts with equal sharing and departs when need or compensation supplied a reason to do so, or whether one starts with need and compensation and shares the balance, much will depend on how far future income is to be shared as well as current assets. In general, it can be assumed that the marital partnership does not stay alive for the purpose of sharing future resources unless this is justified by need or compensation. The ultimate objective is to give each party an equal share start on the road to independent living.¹⁸'

This is not a case in which an issue concerning non-matrimonial assets arises and therefore, although aware of the same, I need not also share the President's discussion as to the approach to the same at paragraph 12 in *Gordon*.

83. When carrying out this exercise I am assisted by further guidance given by Chadwick P. In *W v W* [2009 CILR 225] the President reiterated the importance of the principles set out in (i) *Wight v Wight* [2006 CILR 416] ("*Wight*"), (ii) *White v White* [2001] 1 A.C. 596 ("*White*") and (iii) *Miller v Miller; McFarlane v McFarlane* [2006] 1 FLR 1186, [2006] 2 AC 618 ("*Miller*"). At paragraph 12 the President shared Forte J.A.'s observations, made at paragraph 62 in *Wight*, that the Court should construe s.19:

¹⁸ My emphasis by underlining.



"On the basis of the new approach to the institution of marriage and the fact that it is a union of partners. Each therefore would be entitled to equal share of the assets acquired in the marriage, unless there is a good reason to depart from that principle."

84. The position is that the Court should determine, whilst reminding itself that it must have regard to the best interests of the children first at the outset as well as when then considering the other factors in s.19 of the Law, what the matrimonial assets are and their value and then deciding how they should be fairly divided. If those assets appropriately meet the needs of the children and each party, then the Court does not need to make any orders in relation to non-matrimonial property. If the Court has to consider the non-matrimonial assets and apportion those in such a way that it meets each party's needs, it may then also order a clean break between the parties.

85. Importantly, in *McTaggart*, Chadwick P. made clear that, having regard to the considerations of need, compensation and sharing, if appropriate provision could be made by order under s.21(b) and/or 21(e) of the Law, the Court should not make a spousal periodic payment order without good reason, as that would be inconsistent with the clean break principle which applied to the Cayman Islands despite there being no provision in the Law similar to s.25A(1) in the Matrimonial and Family Proceedings Act 1984 in England and Wales. At paragraph 43 in *McTaggart* Chadwick P. stated:

"43. It seems to me reasonably clear (and I would so hold) that, if satisfied that an order under section 21(b) of the Law (or the combination of orders

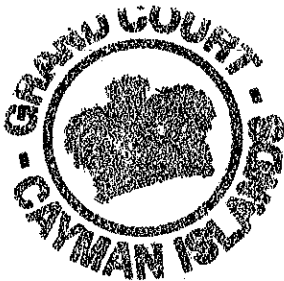
*under section 21(b) and (e) would make appropriate provision for the relevant party in respect of the three strands (need, compensation and sharing), the court should not, without good reason, make an order for periodic payments under section 21(f). To make an order for periodic payments - in circumstances where such an order is unnecessary because appropriate provision can be made by the disposition of matrimonial property either (under section 21(b) or by a capital adjustment from the separate property of the other party (under section 21(e)) - would be inconsistent with the principles of clean break to which Lord Scarman referred in *Minton v. Minton*, ([1979] AC at 608):*

“There are two principles which inform the modern legislation. One is the public interest that spouses, to the extent that their means permit, should provide for themselves and their children. But the other - of equal importance - is the principle of ‘the clean break.’ The law now encourages spouses to avoid bitterness after family break-down and to settle their money and property problems. An object of the modern law is to encourage each to put the past behind them and to begin a new life which is not overshadowed by the relationship which has broken down. It would be inconsistent with this principle if the court could not make, as between the spouses, a genuinely final order....”

*Those observations must be read in the light of the observations in *Miller* - and in particular those in the speech of Baroness Hale to which I have referred - that the ultimate objective is to give each party an equal start on the road to independent living.”*

86. Chadwick P. also referred to Baroness Hales’ observation made at paragraph 133 in *Miller* where she stated that:

“Section 25A is a powerful encouragement towards securing the court’s objective by way of lump sum and capital adjustment (which now includes pension sharing) rather than continuing periodical payments. This is good practical sense...”



87. I have carefully considered the above case authorities. The principles highlight that the Court is charged with dividing the assets in a fair and equitable manner, whilst trying to see if there can be a clean break. Both parties agree that this case is one in which there should be a clean break.

The Husband's Employment, Income and Outgoings

88. The husband is employed at a supermarket as an inventory associate with a net salary of around \$2,000-\$2,500 per month. At paragraph 18 of his affidavit sworn on 17 June 2016 the husband set out his monthly outgoings, which he totalled to be in the region of \$2,730. After paying 50% towards the mortgage, he was left with between \$700 and \$1,200 per month.

89. In his affidavit filed on 17 June 2017 and in his oral evidence the husband confirmed that his monthly outgoings were:

| | |
|--------------------------------|--------------------------------|
| Mortgage/rent | CIS 1,200 |
| Telephone | 170 |
| Petrol | 150 |
| Groceries | 300 |
| Lunch | 120 |
| Credit card repayments | 250 - 300 (\$250 in affidavit) |
| Vehicle maintenance | 100 |
| Life insurance | 310 |
| Car insurance | 60 |
| Personal loan to DW | no payments made yet |
| Registration for motor-vehicle | 20 |
| Total: | CIS 2,730 |



The Wife's Employment, Income and Outgoings

90. The wife is a Finance Manager in the Finance Division of a major statutory authority. She has net pay of around CI\$6,111 per month (basic annual salary of CI\$73,337.03 as per the letter from her employer dated 26 April 2016).

91. It has not been possible to ascertain what the wife's evidence is concerning her outgoings. Having reviewed her affidavits when preparing this Judgment I was unable to find figures for her outgoings. As a consequence, on 10 November 2017 a written request was made to the wife by the Court for a schedule listing the wife's income and outgoings and showing from where the evidence for the figures had come. The written clarification reply from the wife's attorneys filed on 1 December 2017 simply stated:

"Omitted from her affidavit at Tab 12 which was referred to at paragraph 30 of affidavit of 4 May 2016 at pg. 199 of Bundle A."

Having reviewed those references and in the absence of a schedule of her outgoings, I am still unable to find any helpful evidence to enable me to determine in an informed manner what the wife's outgoings are.

92. When I review and have regard to the parties' respective income and fairly limited disclosure about their outgoings I am conscious that they both seek a clean break.



The Matrimonial Assets

93. The primary asset appears to be the FMH. It has a value of around CI\$570,000 and at the hearing a balance on the mortgage of CI\$347,658.73. There appears to be no dispute that the updated mortgage redemption figure as of 30 November 2017 is CI\$324,892.83 and that the equity is therefore CI\$245,107.17.

94. The other assets are as below with approximate valuations. The parties have made the Court's exercise of ascertaining the value of the same most problematic by giving inconsistent valuations in their submissions and evidence:

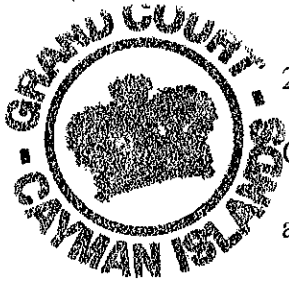
| | |
|---|----------------------|
| Northward Land Block 38B Parcel 84 | CI\$ 68,000 |
| Stepping Stones Land Block 55A Parcel 215 | 51,000 |
| Stepping Stones Land Block 55A Parcel 214 | 51,000 |
| Stepping Stones Land Block 55A Parcel 213 (equity) (property has a Charge from CICSA for education loan) | 14,826 |
| Backhoe (no formal valuation supplied) | |
| (wife's estimate) | 38,000 ¹⁹ |
| (husband's estimate) | 20,000 |
| Husband's Land Rover Discovery registered wife's name | |
| (wife's estimate) | 20,000 ²⁰ |
| (husband's estimate) | 14,000 |
| Husband's pension | 81,617 |
| Wife's pension | 120,000 |

The wife contends that the Suzuki motor vehicle, which is valued at CI\$19,500, is not a matrimonial asset, as it was purchased after the marriage had broken down and following the filing of the divorce proceedings and the purported December

¹⁹ This is the valuation in the wife's clarifying submission dated 30 November 2017 - although at paragraph 25 of her Written Closing Submissions she states that the value is \$20,000.

²⁰ Wife gave valuation of \$15,000 in her Written Closing Submission and a different figure of \$20,000 in her Clarifying Submission dated 30 November 2017.





2013 agreement between the parties. I also accept that her father lent her CI\$15,000 to purchase the vehicle. I am satisfied that it is not a matrimonial asset.

95. The balance of the joint bank account with funds is:

| | | |
|--|------|---------------------|
| Butterfield Bank CI\$ savings account ending xx297 | CI\$ | 46.47 ²¹ |
|--|------|---------------------|

96. The balance of the joint debt with the Credit Union (as of 24 June 2015) was:

| | | |
|--|------|--------------------------|
| Credit Union loan account ending xx441 | CI\$ | 41,650.68. ²² |
|--|------|--------------------------|

Further Assets in Wife's Sole Name

97. The wife has the following bank accounts in her sole name:

| | | |
|--|------|------------------------|
| CICSA Credit Union Christmas account ending xx11 | CI\$ | 2,251.62 ²³ |
| Butterfield bank account ending xxx 017 | | 4,787.85 ²⁴ |
| Butterfield bank account ending xxx 029 | | 2,493.37 ²⁵ |
| Scotiabank House insurance account ending xx59 | | 389.01 ²⁶ |

98. The wife contends, and I accept, that the funds in the joint bank accounts with Cayman National Bank and Scotiabank in her and K's names are K's and are not hers. I also accept that the funds in the bank account with CNB and with RB referred to by her father in his oral evidence and in his affidavit sworn on 7 June

²¹ Tab 17, pages 241-265.

²² Tab 17, page 278 statement balance as of 24 June 2015 - see also paragraph 51 herein concerning the wife's evidence that she place \$34,000 from the parties' joint account into an escrow account with Credit Union to pay towards this loan and the husband has processed a payment of \$17,000 towards the loan.

²³ Tab 17, pages 269-275.

²⁴ Tab 17, pages 284-297.

²⁵ Tab 17, page 298.

²⁶ Tab 12, paragraph 17 Bundle A.

2016 are his and the wife's mother and not the wife's. I found the wife's father to be a truthful witness and I accept his evidence about the CI\$15,000 loan he gave to the wife to enable her to purchase the Suzuki vehicle. I also accept his evidence that the wife was added to his account for convenience reasons, as she, unlike the father, resides in the Cayman Islands. If there were any issues remaining, the husband stated in his evidence in chief that, although he imagined that the wife had easy recourse to these funds when/if she needed it, the wife had a good relationship with her father and he concluded that "*I accept the money in (her father's) account is his money.*"



Order Sought by the Parties in Relation to the Assets

(i) By the wife

99. The wife in the Written Closing Submissions, despite all the various orders she claimed to be seeking at different parts of her evidence, summarised her final proposals about the assets and which ones she should keep as follows:

- (i) the Northwood property valued at CI\$68,000;
- (ii) her pension valued at CI\$120,000;

Total: CI\$ 188,000

100. The wife contends that the husband should keep:

- (i) the "*lands at Stepping Stone*" which she says have a total value of CI\$113,000 and that he be responsible for servicing the loan in respect to one of the pieces of that property. In fact the value of the three Stepping Stone properties totals CI\$154,000, with a CI\$38,000 loan still outstanding to Credit Union, giving a balance of CI\$116,000.

- (ii) the Land Rover CI\$15,000;
- (iii) the backhoe valued at CI\$20,000²⁷; and
- (iv) his pension valued at CI\$81,617

Total: CI\$ 232,617



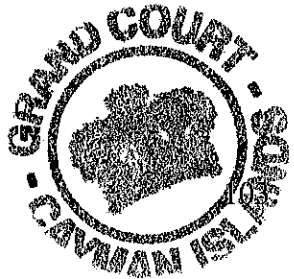
101. The wife contends that, until it is sold, both parties should equally contribute to the mortgage and insurance as well as the maintenance for the FMH. The wife claims that the husband should meet these payments from his more limited income or by selling one of the Stepping Stones parcels of land. The wife contends upon sale of the FMH that the net proceeds of sale, which could be in the region of CI\$224,000, be divided in such a way to meet the amount due to the husband. She appears to argue that the FMH proceeds figure should take into account the sum of CI\$24,812 arising from the husband's non-payment towards the mortgage payments, house insurance and the Stepping Stone loan to Credit Union, and also take into account CI\$41,000 difference arising from the division proposed in paragraphs 97-98 above. From my calculations, as I find the valuations for some of the assets to be slightly different to those given by the wife, I find the difference in division, if the wife's proposals were adopted, to be CI\$44,617.

(ii) By the Husband

102. Unfortunately, there is lack of helpful particularisation from the husband about how the assets should be divided and what precise figure in financial terms each party is entitled to. What the Closing Submissions on behalf of the husband

²⁷ In her clarifying comments the wife values the backhoe at CI\$38,000 – I will accept the CI\$20,000 figure in the Closing Written Submissions which is the same figure as that relied upon by the husband.

disclose as his core submission is that *“the evidence does not reveal any special circumstances for the Court to depart from the yardstick of equality.”* However, in the submissions he then failed to go on and assist the Court with any calculation or summary as to what this would mean ‘in dollar and cents’ or spell out in a meaningful way how the assets may be physically divided to reach his goal of equality. This has made the Court’s task when attempting to ascertain what orders he now wants, after his open offer to settle was rejected by the wife, much more difficult. The wife’s approach in her Written Submissions as to the possible division of assets has been more beneficial as it at least has given a helpful possible structure for the Court to work around.



The husband claims that the wife removed cash from the jointly operated accounts into accounts operated solely by her. He said that as of May 2014 there was CI\$34,317.27 in Butterfield account number ending X9700, CI\$20,748.78 in Credit Union account and US\$60,000 in Scotiabank term deposit account. He seeks an order for one half of these amounts. He refers to the wife’s Scotiabank account # ending x05 which had a balance of US\$121,5094 which he says was *“after the transfer of the jointly held funds (Scotia fixed deposit of US\$60,000 minus pay out of joint credit card = US\$41,763.82)”*. He then states that he claims *“a sum of one half of the amounts in this account as reflected in the pre-transfer balance, that is, US\$79,740.24.”* This claim is made in paragraphs 2 vi-vii in the Written Closing Submissions without any helpful analysis of how the wife improperly utilised those funds. He then fails to acknowledge payments the

wife was making towards the Credit Union loan and the amounts used from the joint accounts to meet some of the joint expenses not being met by him. He also fails to acknowledge that sums from the CI\$8,000 life insurance policy and the settlements sums from his employer were not paid into the joint accounts, although I accept it appears that they were used to make payments towards the mortgage.

104. I am not satisfied on the husband's brief submissions that an order should be made in relation to the accounts as sought by him. I do agree with the husband's submission that this is a case where the Court should strive to provide an equal distribution of the assets.



Conclusions

105. I approach this case on the basis that each party will retain their motor vehicle, their pension and the contents of their bank accounts. Each party will be responsible for their debts.
106. In light of the findings that I have made in relation to the purported agreement of December 2013, the husband's application for occupational rent, the new Fidelity loan and the wife's greater obligation concerning the household expenses I make the following orders in relation to the parties assets:
- (i) That the FMH be sold on the Multiple Listing System and the following consequential provisions shall apply:

- (a) the FMH shall be marketed for sale at \$570,000 or any other price agreed by both of the parties;
 - (b) both parties shall have conduct of the sale;
 - (c) the FMH shall be offered for sale by a realtor agreed between the parties;
 - (d) the first \$18,390 from the net proceeds of sale will be used to pay off the education loan to DM²⁸;
 - (e) The next \$54,553 from the net proceeds of sale will go to the wife (to make up the difference in the total value of divided assets resulting from my orders at paragraphs 106 (ii)-(iii) below (232,617²⁹-188,000³⁰) plus the \$9,936 arising under my order at paragraph 108 below); and
 - (f) the remaining balance of the net proceeds of sale shall be divided equally between the parties.
- (ii) That the husband will also receive:
- (a) the three parcels of land at Stepping Stone with a total value of \$154,000, but with a total equity of \$116,000
 - (b) the Land Rover \$15,000 (the husband is to pay the transfer fee³¹);



²⁸ See paragraph 20 above.

²⁹ See paragraph 106 (ii) below.

³⁰ See paragraph 106 (iii) below.

³¹ See paragraph 12 herein.

- (c) the backhoe valued at \$20,000³²; and
his pension valued at \$81,617

Total: C\$ 232,617



- (iii) That the wife will also receive
- (a) the Northwood property valued at \$68,000; and
- (b) her pension valued at \$120,000;

Total: C\$ 188,000

107. Each party will be responsible for making 50% of the mortgage and house insurance payments as and when they fall due until the FMH is sold. If the FMH is rented out then the rent should be used to firstly meet any expenses of maintaining the FMH and then secondly go towards the monthly mortgage payment.

108. The husband will be responsible for making any payments to the Credit Union for the loan charged against the Stepping Stone land Block 55A, parcel 213 until that loan is full repaid. The wife should be credited \$9,936 (\$276 x 36 months) resulting from the husband's failure to make his 50% contributions towards the loan for this property.³³

³² In her clarifying comments the wife values the back hoe at C\$38,000 – I will accept the C\$20,000 figure in the Closing Written Submissions which is the same figure as that relied upon by the husband.

³³ See paragraphs 76 & 77 herein.



109. Despite the wife's far superior income, and with the consent of the parties, there will be a clean break, with no orders being made for spousal maintenance in relation to either party. This is consistent with the approach advocated by Chadwick P. in *McTaggart* and can be achieved due to the fair division of the assets ordered herein.

110. The husband will receive assets in the region of CI\$358,592 (his share of the FMH proceeds CI\$125,975³⁴ plus CI\$232,617). The wife will receive in the region of CI\$368,528 (Her share of the FMH sale proceeds plus CI\$188,000). Having regard to the principles of need, compensation and sharing, this is a just and fair resolution when realising the matrimonial assets, fulfilling the objective of giving each party an equally share on the road to independent living.

Costs

111. I have reviewed the brief submissions made by the parties in relation to costs in their Closing Written Submissions. Having regard to (i) those submissions; (ii) to the conduct of the parties and (iii) to the content of my order resulting in an equitable division of the assets, I deem this to be a case suitable for no order as to costs.

Footnote

112. I accept that this has not been a straightforward case for Counsel, especially when one has regard to the nature of the instructions, which varied, from their

³⁴ Dependent on sale price and costs of sale of the FMH.



respective clients. This has been an unnecessary difficult reserved judgement to write partly due to the fluctuating evidence and submissions made by each party during and after the hearing. This has not been helped by the fact that the bundles, although paginated, were not prepared in compliance with *Practice Direction No 11/2014 Court Bundles in Family Proceedings In the Family Division of the Grand Court ("the PD")*. Regrettably, this approach to bundles is more the norm than the exception. It results in extended hearing times as witnesses wade through the disorganised bundles to locate documents and it greatly hinders the Judge when reviewing the material when judgment writing. Paragraph 4.1 of the PD clearly sets out the requirements for the contents of the bundle, which includes separate sections, each with separate pagination. Paragraph 4.2 of the PD sets out what preliminary documents are required. These preliminary documents are important as they assist the Court to properly ascertain what the issues are and precisely what orders are being sought by the parties and why they are sought. The content in these preliminary documents should be cross-referenced with the documents in the paginated bundle. It is also important that written closing submissions also contain a schedule of the issues still requiring determination, and what each party's position is in relation to those issues (whether they are agreed or not). There should also be a schedule of the assets with their valuations with cross reference to the paginated bundle or oral evidence. The Written Closing Submission should also contain a clear summary of the orders that are still sought and why they are sought. If in the closing submissions the schedule of issues are

different from those contained in the Skeleton Argument, then that should be highlighted and an explanation given as to the change.

A handwritten signature in black ink, consisting of a large, stylized loop at the top left that extends into a long, horizontal line across the page.

Honourable Mr. Justice Richard Williams
JUDGE OF THE GRAND COURT

