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

**CAUSE NO: D 113 OF 2000**

**BETWEEN:**

**JH**



**Petitioner**

**AND**

**YH**

**Respondent**

**Appearances:** Mrs. Stacy Thompson for the Petitioner  
Ms. Vanessa Allard of Brooks & Brooks for the Respondent

**Before:** Hon. Mr. Justice Richard Williams

**Heard:** 19 May 2017 & 13 July 2017

**Petitioner's Written Submissions filed:** 18 August 2017

**Respondent's Written Submissions filed:** 8 September 2017

**Clarification Submissions received:** 24 November 2017, 4 & 28 December 2017

**Circulation of Draft Judgment:** 10 January 2018

**Date of Judgment:** 15 January 2018

**HEADNOTE**

*Financial Provision - Ancillary relief - spousal maintenance - matrimonial debts- clean break*

**JUDGMENT**

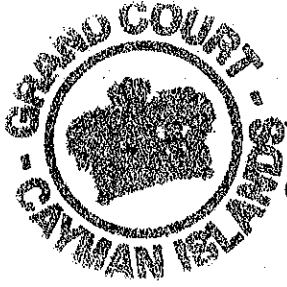
## BACKGROUND - APPLICATION AND PARTIES

1. The Court is dealing with the remaining issues of ancillary relief within divorce proceedings brought by the Amended Petition for the Dissolution of Marriage filed on 16 May 2017 by the Petitioner husband, JH. The Respondent wife, YH, made her application for ancillary relief by her Summons dated 28 February 2017.
2. JH is aged 42 and is a Caymanian national. YH is aged 40 and is a Honduran national and a Caymanian status holder. They were married on 5 March 1997. It has been an unsettled marriage, characterised by a number of separations and apparent reconciliations, with YH leaving for extended periods to live in Honduras. The parties finally separated in October 2014<sup>1</sup>.
3. 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.
4. Three children of the marriage were born to the parties. DH aged 21 (DOB 8 November 1996), JH Jr aged 19 (DOB 4 February 1998) and JH aged 11 (DOB 2 November 2006). The parties agree that any Children Law issues have been resolved by the Order of Worsley J. made by consent on 6 April 2017, wherein a Shared Residence Order was granted in respect of JH Jr. and JH, with the arrangement being thereunder that the husband be their primary carer. Unfortunately, it appears that the parties had wrongly requested the Learned

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<sup>1</sup> Paragraph 9 of Amended Petition brought on ground of 2 years separation by consent.





Judge to approve the making of a residence order in relation to JH Jr. when the Court no longer had the jurisdiction to do so, as he was aged 19 at the time.

5. In his oral evidence in chief the husband stated that he was "*content for there to be a nominal sum for child maintenance until the wife was in a better position financially.*" At paragraph 24 in his Written Closing Submissions the husband seeks a child maintenance order of \$500 per child per month in relation to JH Jr. and JH, such order to commence after "*the mortgage burden has been alleviated.*"
  
6. JH Jr. has a number of health issues. At the time of the hearing he was living with the husband and he is not in full-time education. During the hearing the Court offered the husband, with whom JH Jr. was residing at the time, an adjournment to enable him to consider whether he wished to make an application to extend the duration for child maintenance payments for JH Jr. to beyond aged 21 pursuant to s.22(1) of the Matrimonial Causes Law (2005 Revision) ("the Law"). The husband's attorney confirmed, in her Written Closing Submissions, that the husband's "*informed decision*" was to not make such an application. This means that, as JH Jr. is beyond 18 years of age and is not in full-time education, the Court no longer has jurisdiction to make a child maintenance order in relation to him under the Law. The Court was informed by the husband's Counsel during the hearing that the husband intended to talk with JH Jr. about him bringing his own application for financial orders pursuant to Schedule 1 of the Children Law. The Court has been informed by the parties, after the conclusion of the hearing, that

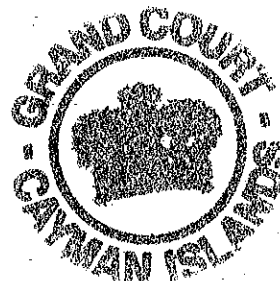
from September 2017 JH Jr. has been residing with the wife. No applications have since been made to extend the duration for child maintenance payments for JH Jr. to beyond aged 21.

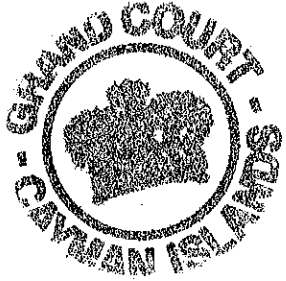
7. The Court retains the jurisdiction to make a child maintenance order in relation to JH who is aged 11.

### PROCEDURAL BACKGROUND

8. On 23 August 2003 the husband filed his Petition for Dissolution of Marriage. The husband subsequently sought to amend his Petition, thereby proceeding by consent on the ground of two years separation from October 2014. Leave having been given to amend the Petition by Hall J. on 17 August 2016, on 6 April 2017 Worsley J. ordered, by consent, that the "*amended petition is agreed.*" On 19 May 2017 the Amended Petition was proved.

9. Prior to the amendment of the Petition, orders had made within the original Petition proceedings. On 13 March 2015 Hall J. made Interim Shared Residence Orders in relation to the two youngest children and an order for the husband to pay the wife \$300 per month "*to assist with paying the loans on the matrimonial assets.*" The Learned Judge also made cross non-molestation and other cross-protective injunctions.





10. On 22 April 2015 Hall J. ordered that the husband pay \$750 spousal maintenance to the wife, in addition to the \$300 ordered in March 2017. Hall J. made no separate orders for child maintenance. The wife states that at some stage in 2016 the husband unilaterally reduced the payments made by him from the ordered \$1,050 per month to \$500 per month. In her affidavit sworn on 31 March 2017 the wife contended that 24 payments totalling \$25,200 should have been made and that only \$18,850 had been made, leaving arrears of \$6,350. However, it is evident from paragraph 11 of the Order of Worsley J. made on 6 April 2017 that the Learned Judge assessed the arrears accrued under the order of Hall J. to be \$5,850 as at 6 April 2017. Although the husband highlights that in 2016 he took over the joint Fidelity Loan, Worsley J. still ordered (not by consent) that the husband was to pay, by means of an Attachment of Earnings Order, the sum of \$300 per month towards the assessed arrears "*until paid in full*". It would be inappropriate for me to now go behind that recently assessed arrears figure. Having regard to the passage of time, there should have been approximately 8 payments of \$300 made by Attachment of Earnings (totalling \$2,400) leaving a balance of arrears of \$3,450. However, Worsley J.'s Order of 6 April 2017 for the husband to pay \$300 per month by an Attachment of Earnings Order to clear the arrears will be discharged having regard to my findings in paragraph 62 herein in relation to the joint debt element of the Fidelity loan taken out by the husband.

11. On 6 April 2017 Worsley J. made a comprehensive order ("the Order"), partly by consent. Rather confusingly the Order was headed "*Further Interim Order.*"

Paragraph 17 of the Order provides “... for the avoidance of doubt, this is an interim order, and is made without prejudice to the issues being dealt with at the next hearing of the matter.” The Order did not clearly specify which issues were to be dealt with at the next hearing. The confusion arises because the majority of orders set out therein have, by their nature and their terms, the characteristics of final orders. If they were not intended to be final orders, one might ask what was the purpose of asking the Learned Judge to place the terms in the Order at the time?

12. Some clarification about the reasoning for the interim nature of the Order is found in an email from the husband’s attorney to the Listing Officer on 6 April 2017. Therein, commenting upon the hearing before Worsley J., she stated that:

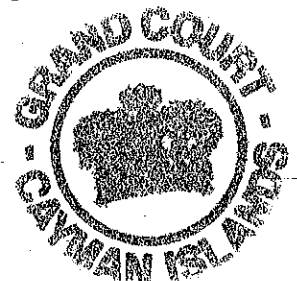
*“It was in fact set for final ancillaries. However, due to some information that was not previously disclosed by (the husband) in which is important to the final hearing, (the Judge) could not make a final Order.”*

Also, in an email to the Court dated 12 May 2017 Counsel for the wife stated:

*“The final ancillary relief hearing scheduled for April could not proceed to a final hearing, as (a) the amended petition which I had been agreeing to for months, had not been provided by Counsel, and (b) at the hearing itself, there was an attempt by Counsel to introduce new evidence of which I have not been advised of previously, and to which I took exception..... Hence, the Order of April, was a further interim order.”*

13. The financial terms in the Order are as follows:

“ASSETS



5. That the Respondent shall retain the benefit of the property registered at West Bay North East, Block 9A, Parcel 16H 2 (#2 Mizpah Apartments), in her own name.

6. That the Petitioner shall retain the benefit of the property registered at West Bay North West, Block 4D, Parcel 459, in his own name.

7. That the parties shall, within seven (7) days, approach the Cayman Islands Co-operative Credit Union, and seek to separate the respective loans in respect of the properties mentioned in 6 and 7 above. That once the loans are separated, that each party shall be responsible for the loan and all other outgoings in respect of their property.

8. The parties shall retain the benefit of any and all bank accounts in their respective names.

9. The parties shall retain the benefit of their respective pensions.

**BY ORDER OF THE COURT**

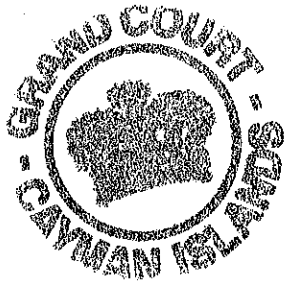
10. ...

11. That the arrears of maintenance under Order dated April, 2015, is calculated at \$ 5,850, as at April 06, 2017.

12. That the Petitioner shall pay to the Petitioner, from 1st May, 2017, the sum of \$ 300 per month toward the arrears, until paid in full. The payment of this sum shall be secured by means of an Attachment of Earnings Order.

13. That the sum of \$ 300 payable by the Petitioner under Orders dated March 2015 and April 2015, to assist the Respondent with payments on the parties' joint loans, is discharged.





14. *That the Petitioner shall pay to the Respondent, the sum of \$ 550 per month as contribution to the payment of the loan for the land at West Bay North West, Block 4D Parcel 459, until separation of the parties joint loan liability at the Cayman Islands Co-Operative Credit Union. That once the loans are separated as envisioned in 8 above, he will take over the full liability for the land loan.*

15. *That the Order of April 2015 is varied, in so far as the Petitioner shall now make payment of the sum of \$ 600 per month to the Respondent, as spousal maintenance. The payment of this sum shall be secured by way of an attachment of earnings order.*

16. *That the Petitioner shall disclose details of his loan in the sum of KYD \$47,000.00 obtained from Fidelity Bank (Cayman) Limited in 2016, within 21 days. That as part of this disclosure, he shall provide copies of the loan application form*

17. *That for the avoidance of doubt, this is an interim order, and is made without prejudice to the issues being dealt with at the next hearing of the matter."*

14. The husband is technically obligated to pay any arrears that may have accrued on the \$550 monthly payment, that being his contribution to the borrowing on the land at West Bay North West Block 4D Parcel 459 ("the Land") until the envisaged separation of the joint loan liability at Credit Union recently ordered by Worsley J. at paragraph 14 of the Order. The wife contends that as of the end of August 2017 when her written supplemental submissions were filed the arrears under paragraph 14 of the Order amounted to \$2,750<sup>2</sup>. That figure is not

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<sup>2</sup> Page 5 of the wife's Supplemental Written Submissions.

challenged by the husband who accepted during cross-examination that he may not have made these payments as, in error, he felt that the payments were being made by an Attachment of Earnings Order. The wife contends that the arrears should be repaid by an Attachment of Earnings Order in the sum of \$200 per month. She also now contends that the Court should order that the \$550 per month payments continue to be made until the two properties are sold and the liabilities to the Credit Union discharged. There is nothing before me to show why Worsley J. assessed the figure to be \$550 and I have the discretion to assess what, if any payment, should be made from the date of this hearing.



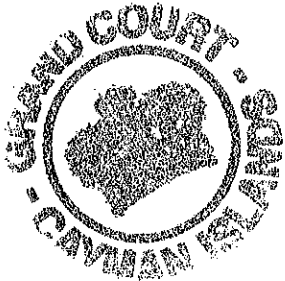
15. At paragraph 62 herein I deal with a credit being given to the husband due to the joint debt element of the Fidelity loan. This credit will discharge the arrears assessed at \$2,750 as of August 2017. As a consequence, I discharge the order of Worsley J. in relation to the \$550 payment each month and will later review what, if any payment, should be made under this head. However, if any further arrears have accrued since August 2017 to the date of this Judgment, then those arrears should be repaid by the husband by means of an Attachment of Earnings Order in the sum of \$200 per month.

16. On 13 July 2017 the Credit Union informed the parties in writing that the loans for the Mizpah Apartments, Block 9A Parcel 16 H2 West Bay North East ("the FMH") and the Land cannot be detached from each other in the way that the parties had hoped at paragraph 7 of Worsley J.'s Order. This has had a knock on

effect on the feasibility of the orders made therein at paragraphs 5 and 6 in relation to each party's future interest in each property and may explain why Worsley J. and the parties felt that the Order may need to be regarded as being an interim one.

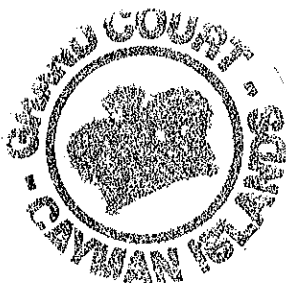
17. The hearing was listed for two hours on 19 May 2017. Prior to the hearing, due to the nature of the Order made by Worsley J., the parties were requested by the Court to file a Schedule of the Issues still requiring determination. The husband filed a Schedule in which he outlined that the issues were:

- (i) whether the spousal maintenance order should be discontinued in its entirety and immediately;
- (ii) whether the arrears in the spousal maintenance order should be remitted; and
- (iii) whether the wife should pay child maintenance for the children of the marriage.



The wife did not provide a Schedule of Issues as requested. At the outset of this hearing, the parties agreed that the Children Law Orders made by Worsley J. should be treated as being final.

18. The general impression given when reading the terms of the Order, in the circumstances now before the Court, is that the remaining issues for determination revolve around the FMH, the Strata Plan No. 570 ("the Strata") debt, the Land,

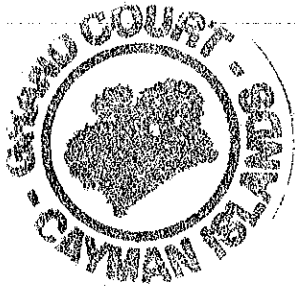


the consolidated Credit Union loan (taken out to meet expenses on (i) the FMH, (ii) the Land, (iii) the car purchase and (iv) other purchases) and ongoing spousal maintenance/contribution payments, when having regard to the Credit Union loan liabilities which the wife has and the Fidelity Loan liability of the husband. It is evident from the written closing submissions filed by the parties that, despite the final nature of some of the Orders made by Worsley J., they agree that further orders in relation to the parties' assets can now be made.

19. At the hearing on 19 May 2017 the husband gave his oral evidence. The hearing was adjourned part-heard to a date to be fixed. In May 2017 the wife sent a Request for Further and Better Particulars relating to the husband's affidavit filed on 11 May 2017 and to bank documents provided for the first time on 16 May 2017. Although the Order of Worsley J. did not specify the dates for further disclosure, it is still concerning that the same was so belatedly filed. Again, although not directed, the wife filed an affidavit on 30 May 2017 and the husband filed a response to that affidavit on 6 July 2017. Again, I note the proximity of the filing of affidavit to the date of continuation for the part-heard hearing on 13 July 2017.

20. At the outset of the restored hearing on 13 July 2017 leave was given to further cross-examine the husband. The wife then gave her oral evidence. The hearing was adjourned for a Reserved Judgment to be provided after the parties had filed their Written Closing Submissions, which were due by or on 18 August 2017.

21. Following the hearing, and upon request of the Court, the wife's attorney provided the Court with a Valuation Report dated September 2010 in relation to the FMH.
22. The husband's Written Submissions were filed on 18 August 2017. For reasons unknown, those Submissions were not placed before the Judge until 28 August 2017. The wife's Written Supplemental Submissions were filed by email on 8 September 2017. For reasons unknown, those submissions were not placed before me until 14 November 2017.
23. In the wife's Written Supplemental Submissions she stated that the issues still requiring determination were:



*"(a) Whether the Petitioner should pay spousal maintenance, and if so, the level of spousal maintenance and for what period.*

*(b) Whether the properties at Mizpah Apartments and West Bay North West, are marital assets, and if so, how should the properties be dealt with?*

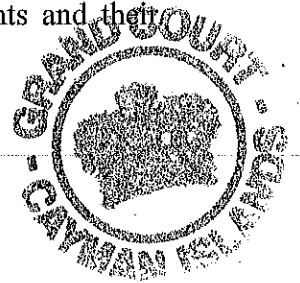
*(c) Is the agreement for the division of the assets, as outlined in p. 5, 6 and 7 of Order dated April 2017 achievable, or a fair and equal division of the assets?*

*(d) Whether the outstanding strata fee due and owing in respect of the Mizpah Apartment a marital debt and is thus subject to division between the parties?*

*(e) That if the strata fees are determined to be a marital debt, what is a fair and equitable division / sharing of that debt between the parties?*

*(f) How best to deal with arrears of payments due by Petitioner under the Order of April, 2017."*

24. On 14 November 2017 and 21 November 2017 the Court wrote to the parties seeking some clarification about the content in the Written Submissions. The wife's attorney provided her clarification in writing on 24 November 2017 and the husband's attorney provided his clarification in writing on 4 December 2017. Additional clarification was required from the wife as her replies concerning what should happen to the FMH and the Land were highly inconsistent with her clear position set out in her Closing Written Supplemental Submissions. A further reply was then received from the wife on 28 December 2017.
25. This is my reserved Written Judgment prepared after careful consideration of the parties' oral and written evidence, their Written Skeleton Arguments and their Written Closing Submissions.



### **THE LAW AND PRINCIPLES TO BE APPLIED**

26. 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."*

27. 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 home<sup>3</sup>;*
- (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.”*



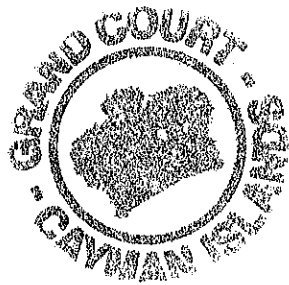
28. Section 22(1) of the Law provides for the making of child maintenance orders until a child reaches the age of 21 if the child is receiving education.

29. 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.<sup>4</sup> 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;

<sup>3</sup> My emphasis by underlining.

<sup>4</sup> *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].



- (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 non-matrimonial property) and any contribution made by looking after the home caring for the family;<sup>5</sup>
- (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.

30. Sir John Chadwick, President of the Court of Appeal, in *Valerie Ayala Gordon v Jefferson Raymond Watler* CICA (Civil) 13/2014 ("*Gordon*") at paragraph 12 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:

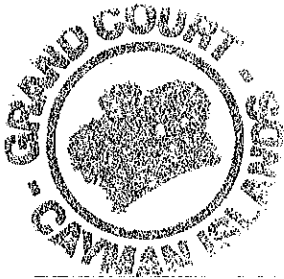
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<sup>5</sup> *Wight v Wight*, Zacca P. at paragraph 33.

“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 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.<sup>6</sup>”



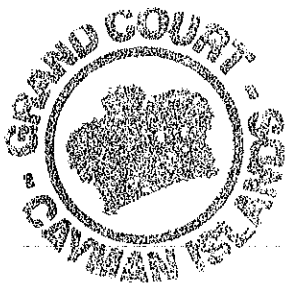
31. Chadwick P. then went on to discuss the approach to non-matrimonial assets when sharing the assets. As this is not a case in which there is an issue about non-

<sup>6</sup> My emphasis by underlining.

matrimonial assets, although aware of the same, I need not set out the President's reference to paragraph 42 in *McTaggart* set out at paragraph 12 in *Gordon*.

32. At paragraph 10 in *W v W* [2009 CILR 255] Chadwick P. 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* [2006] 1 FLR 1186 ("*Miller*"). At paragraph 12 Chadwick P. repeated Forte J.A.'s observations, set out at paragraph 62 in *Wight*, that the Court should construe s.19:

*"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."*



33. The approach is that the Court should determine, whilst reminding itself that it must have regard to the best interests of any relevant child 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 decide 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.

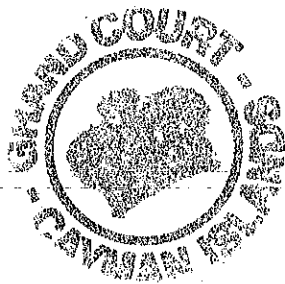
34. Importantly, in *McTaggart*, Chadwick P. made clear that, having regard to the considerations of need, compensation and sharing, if appropriate provision could

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):*

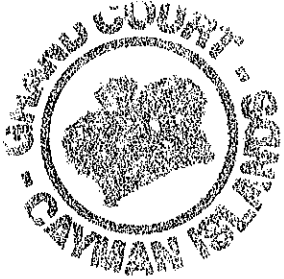
*"There are two principles which inform the modern legislation. One is the public interest that spouses, to the extent that their means permit, should provide for themselves and their children. But the other - of equal importance - is the principle of 'the clean break.' The law now encourages spouses 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.”*

35. 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...”*

36. 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. I have regard to the above, especially as a core issue is the husband’s submission that, as a spousal maintenance order has already been in place for over 2 ½ years, there should be a clean break in this case while the wife’s case is that there should be an order for \$600 per month spousal maintenance to be paid by means of an attachment of earnings for five years. In the alternative the wife seeks an order that, in addition to the \$600 per month maintenance, the \$550 payments towards the land loan be paid until the property is sold and the Credit Union debt liabilities discharged.

## **THE MATRIMONIAL ASSETS AND LIABILITIES**

### **(i) The FMH and the Land at West Bay North West Block 4D Parcel 459**

37. The FMH is registered in the wife’s sole name, but is clearly a matrimonial asset. The FMH was purchased on 24 March 2011. In September 2010 the FMH had a



value of \$215,000. A valuation from Quayside Surveyors prepared for the Credit Union in February 2017 advises that the market value of the FMH is CI\$179,000 (unfurnished). The husband initially contended that the valuation for the FMH should be \$215,000 which was the figure deemed acceptable by the government for stamp duty purposes. However, when asked to clarify whether he disagreed with the CI\$179,000 valuation he did not seek to challenge that figure in his written clarification dated 4 December 2017. Accordingly, I value the FMH at \$179,000 and view the recent valuation report as being the best evidence as to the valuation.

38. In March 2011 the parties borrowed \$171,200 from the Credit Union to buy the FMH. At the same time an additional \$28,000 was borrowed from the Credit Union to consolidate debts including the Land, pay out a Credit Union loan, vacation expenses<sup>7</sup>, purchase furniture and purchase a Toyota motor vehicle. The husband contends that the loan balance has reached its present level because the wife was able, as an employee of Credit Union, to easily take out a number of personal loans for herself. The \$28,000 tranche of the loan was not disbursed until May 2011.

39. The Land is registered in the husband's sole name for stamp duty waiver purposes. Payments have been made towards the Land during the marriage and it is clearly a matrimonial asset. In February 2010 the land had a value of \$59,000. In his evidence in chief the husband said that it has a value of \$40,000. However,

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<sup>7</sup> In the end the parties did not take the proposed vacation.

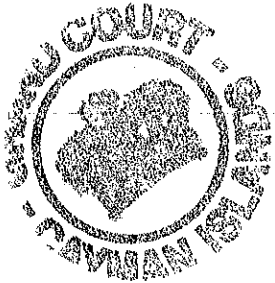


when asked to clarify whether he disagreed with the CI\$59,000 valuation he did not seek to challenge that figure in his written clarification dated 4 December 2017. Accordingly, I value the Land at \$59,000.

40. The FMH and the Land have, pre-costs of sale, a total value of around \$238,000.
41. It was agreed during the marriage that the wife would pay the mortgage on the FMH, the loan payments on the Land and the old Fidelity Bank loan. It is agreed that during the marriage the husband was responsible for paying the household bills (groceries and utility bills) and the Strata payments.
42. The FMH and the Land are collateral for the Credit Union loan, as well as for \$12,170 of the Credit Union share balance. The Credit Union had stressed that, if the loan was not discharged, the Land could not be sold unless \$71,499.10 was paid into the Credit Union from that sale. As of 21 March 2017 the Credit Union loan had a balance of CI\$233,631.75. The wife has been the party making the loan repayments of \$1,674 per month, which are deducted directly from her salary from the Credit Union. Although the Credit Union loan is in the wife's sole name, it is right that this Court follows the consistent approach of Hall J. and Worsley J. and regard it as being matrimonial debt.
43. The husband made an open offer to relinquish any interest in the FMH and the Land, the same to then be for the sole benefit of the wife. The Court was told by

the wife in her oral evidence that the Credit Union would only allow the sale of the FMH if \$71,499.10 is also paid towards the mortgage from the sale of the Land.

44. Although, at paragraph 5 of the Order made by Worsley J., the parties agreed that the benefit of the FMH should be retained by the wife in her own name and that the piece of land should be retained by the husband in his sole name. In his Closing Written Submissions the husband acknowledged that both properties may now have to be sold to enable the wife to clear the Credit Union loan liability, a position endorsed by the wife at the time in her Written Supplemental Submissions. At page 4 in her Written Supplemental Submissions the wife stated:



*"The split contemplated in the Order of April 2017 cannot be accomplished (according to the CICSA). The Court is faced with only one option, to order that properties be sold and the parties assume joint responsibility for any net proceeds obtained from the sale. If there is any indebtedness to CICSA after sale, the parties are jointly responsible for that debt."*

The wife added at page 6 in her Written Supplemental Submissions:

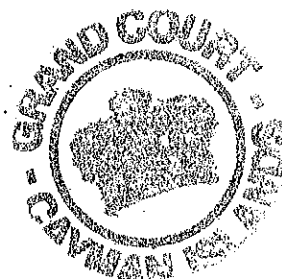
*"... Her current net salary is \$250 every two weeks (only \$500 per month), and this WILL NOT CHANGE until the both properties are sold and the loans paid off and the parties financial obligations at CICSA ended."*

45. The submissions from the wife about other assets, and about other payments to be made by husband, were made by her in the context that both properties be sold. Having regard to that and to the clarity concerning the dealing of the properties

set out in her Written Supplemental Submissions, it is rather surprising that the wife seems to have belatedly again changed her position, as in a clarification email from her attorney dated 24 November 2017 she stated that neither the FMH or the Land should be sold. In an email from her attorney dated 28 December 2017 the only clarification given about the glaring inconsistency with her stated position in the Written Supplemental Submissions was that the wife was now stating that “*she did not wish the apartment sold*”.

46. The husband contends that FMH and the Land be sold in light of the wife’s refusal of his open offer to give his interest in the same to the wife in exchange for cessation of spousal maintenance and arrears.

47. In light of the wife’s position about ongoing spousal maintenance, the arrears and having regard to the Credit Union’s stated position about the properties and discharging the loan, I find that she presented a more realistic view about what was reasonable when she clearly accepted in her Written Supplemental Submissions that the “*only one option*” was for both properties to be sold. It is evident that the parties have both approached this hearing on basis that the orders made by Worsley J. in relation to the FMH and the Land were not final orders. Accordingly, I find that the position advocated by both parties in their initial Closing Written Submissions is the appropriate one, and the Land and the FMH will need to be sold.



**(ii) The Strata Debt**

48. Arrears accrued in relation to Strata payments amounting to \$11,114.15<sup>8</sup>. This arrears figure was reached before the husband took out the Fidelity Loan on 8 April 2016. The pre-divorce proceedings agreement during the marriage was that the husband would make the Strata payments whilst the wife made other payments. It appears that he stopped doing so when an issue arose with the Strata company and the obtaining of property insurance. The husband indicated during cross-examination that he had not made payments on the Strata because he did not have enough money at the time. The wife became aware in around 2014 that the husband was not making these payments.



49. The wife rightly contends that the majority of the arrears accrued during the time when the husband was living in the FMH and when he was responsible for paying them. At the time the parties separated in October 2014 the Strata arrears stood at \$8,369.37<sup>9</sup>. The Strata statement dated 1 December 2015 shows that, as of 31 October 2015, the arrears had increased to \$9,989.37. The husband states that he was not able to pay any Strata expenses as and when they fell due after his departure from the FMH as he had to meet separate living expenses for himself and the children. The husband notes that although the wife moved out of the FMH into a one-bedroom apartment and placed the property up for sale, in March 2017 she moved back into the FMH.

<sup>8</sup> Figure taken from the latest statement provided in the evidence is 1 March 2016 – BCQS Statement Tab 5, page 9 of the bundle.

<sup>9</sup> CI\$8,669.37 balance as of 1 October 2014 contained in the BCQS statement dated 1 April 2015, but in letter from BCQS dated 7 October 2014 (bundle Tab 7, page 41) balance was put at CI\$8,369.37.

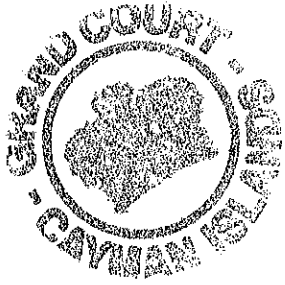


50. The Strata sued the wife and she was ordered to pay \$300 per month<sup>10</sup>, deducted by an Attachment of Earnings Order from her salary, towards the Strata obligations. I note from the 1 March 2016 statement that the regular amount due to be paid to the Strata each month was then \$284.31 (\$148.86 for the monthly Strata fee and \$135.45 for the monthly insurance). At paragraph 40 in her affidavit sworn on 10 August 2016 the wife said that the monthly strata payment was \$350 every month. The wife indicated at paragraph 58 in her affidavit sworn on 31 March 2017 that she was unable to meet full Strata payments of \$400 per month<sup>11</sup>, only being able to pay \$250 per month. However, in the clarification document dated 24 November 2017 drafted by the wife's attorney, it is contended on her behalf that she has to pay \$300 under the Court order as evidenced by the attachment of earnings receipt from the Court dated 24 September 2014. The numerous conflicting figures provided by the wife in relation to the monthly Strata figure are confusing, but in her evidence in chief when listing her outgoings she accepted that the Strata payments are \$284.31 as set out in the Strata Statement of 1 March 2016, that being the most recent exhibited statement. It is that figure I will rely on in these proceedings.

51. On 23 September 2016 a Charging Order was placed on the FMH in favour of the Strata due to the arrears in Strata payments. The Charging Order relates to an order for the wife to pay CI\$10,334.26, interest of \$140.40 to March 2016 with

<sup>10</sup> Wife exhibits Attachment of Earnings receipt for \$300 from the Court dated 24 September 2014.

<sup>11</sup> At paragraph 2(i) in the Written Supplemental Submissions filed on behalf of the wife the total monthly figure is given as \$450 per month of which the wife pays only \$250 per month.



interest accruing at CI\$1.08 per day until payment of the Judgment with costs assessed at \$225.

52. Upon the sale of the FMH, the statutory Section 6 notice will not be issued by the Strata until the Strata fees are fully paid up to date.

53. In the written clarification prepared by the husband's attorney dated 4 December 2017 she states that the husband agrees that:

*"Any balance from the sale of the FMH should be applied to the strata before any distributions are made to either party."*

The wife states at paragraph 38 of her affidavit sworn on 10 August 2016 that:

*"At our last hearing it was agreed that (the husband) would bring the strata up to date and this... has not been done."*

The last hearing before that affidavit was one before Hall J. on 22 April 2015. The Order of Hall J. makes no reference to the Strata payments and there is no minute of order in the Court file. However, at paragraph 11 in his affidavit sworn on 11 May 2017, the husband states that \$11,396.50 was paid from his Fidelity loan<sup>12</sup> towards the Strata and that this payment had been resubmitted due to an error in the draft. He said that he had been of the view that the parties could settle on the basis that after he had paid the parties' Fidelity medical loans and the Strata arrears, he would receive the Land and the wife would receive the FMH with a clean break.

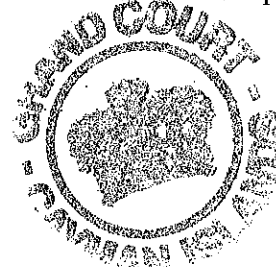
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<sup>12</sup> See paragraphs 58 & 59 below concerning the Fidelity loan.

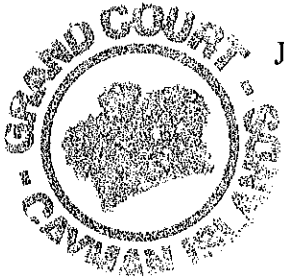
54. I am satisfied that the husband should be responsible for paying the arrears on the Strata up until 1 March 2016 when the arrears stood at \$11,114.15. Although I considered restricting the husband's obligation to \$8,369.37, which was the arrears figure in October 2014 when the parties separated, I noted his acceptance that he should be responsible for the arrears accrued until 1 March 2016 evidence by the payment he said was to be taken out of the Fidelity loan. The wife, who has benefited and is benefiting from remaining in the FMH, should be responsible for monthly Strata payments as they fall due and for any arrears that have accrued since the figure of \$11,114.15 was assessed, even for any period when she voluntarily temporarily left the FMH (save that as conceded by the husband - see paragraph 53 above - any arrears may be cleared if there is any balance from proceeds of sale of the FMH and the Land after the costs of sale and discharge of the Credit Union loan).

55. With this in mind, if the husband has processed the payment of \$11,396.50 from the Fidelity loan to the Strata, then his liability to the Strata arrears has been more than met. If the husband has not made a payment from the Fidelity loan, then he is to pay the arrears of \$11,114.15 within two months of the date of this Order.

This is because, from his own evidence, he budgeted for a slightly larger payment than that towards the Strata, recognising that it has been agreed that he would meet the Strata payments as his contribution to the marital household expenses.



56. Having regard to the valuation plus the costs of sale, it is unlikely that the proceeds of sale from the FMH and the Land will be sufficient even to clear the balance of the Credit Union loan. It is clear that both properties must be sold and the parties recognised that at the hearing and in their Written Submissions filed in August and September 2017. My notes from the second day of the hearing, 13 July 2017, record that:



*"The parties seem to indicate that the properties must be sold – The issue is about what payments the husband should make in the interim."*

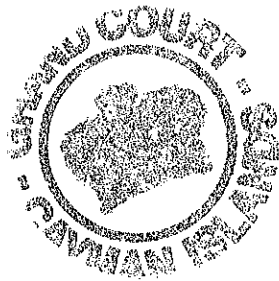
57. The proceeds of sale must first be used to discharge the loan to the Credit Union. If any debt remains under the Credit Union loan, then each party should be equally responsible for that. As highlighted in paragraph 56 above, I must then consider how the payments are to be met until sale.

**(iii) Fidelity Loan in Husband's Name**

58. In 2011 both parties had health issues due to their weight, which required them to receive medical attention. This resulted in medical expenses which were met by a loan for around \$20,000 being taken out with the Fidelity Bank. On 8 April 2016 the husband took out a new loan with Fidelity for \$47,000. The husband has to pay \$1,100 which is deducted from his salary towards the loan each month. In his affidavit sworn on 11 May 2017 the husband states that he applied for the loan immediately after the 22 April 2015 hearing when he was ordered to pay \$1,050 per month to the wife to offset the debt burden.

59. In paragraph 10 of the husband's affidavit sworn on 11 May 2017, he sets out disbursements from the Fidelity loan as follows:

|  |                    |
|--|--------------------|
| Attorney fees: Natasha Bodden            | \$ 3,000.00        |
| Credit Union loan (debts accrued on FMH) | 6,594.00           |
| Strata                                   | 11,396.50          |
| Fidelity loan                            | 12,579.86          |
| Current attorney's fees                  | 8,500.00           |
| Loan payment to Ezmie Smith              | 1,000.00           |
| Loan payment to Winston Solomon          | 1,500.00           |
| First month loan payment                 | 1,089.78           |
| Loan admin fee                           | <u>940.00</u>      |
| <b>Total:</b>                            | <b>\$46,600.14</b> |

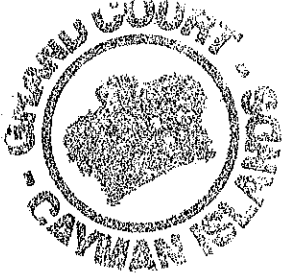


60. On 8 April 2016 the sum of \$12,579.86 was used from the loan to pay out and close the earlier Fidelity loan in the wife's name, thereby reducing the wife's outgoings by around \$250 per month.

61. The wife contends that, other than the \$12,579.86, the rest of the Fidelity loan should not be viewed as being a matrimonial debt. In the Written Closing Submissions filed on the wife's behalf, it is suggested that the husband deliberately took out that loan to worsen his financial circumstances. I do not accept the wife's submission that the husband deliberately took out this substantial loan simply to worsen his financial circumstances. He took out the loan to not only meet the parties' medical and Strata arrears expenses<sup>13</sup>, but also to meet reasonable expenses which he had incurred, including to consolidate other

<sup>13</sup> Following discussion with the wife, he said that he told her that he would be relieving her of the responsibilities and the Fidelity loan and the Strata arrears.

loans, and paying legal fees for his previous attorney, Natasha Bodden<sup>14</sup>. I note that the wife, unlike the husband, has the benefit of a Legal Aid Certificate, albeit with a contribution of \$3,000 payable in \$75 per month instalments which are due to commence at the end of the proceedings or once any property is sold. I am of the view that the Legal Aid payment from the proceeds of sale can only be made once the Credit Union loan been cleared as the properties are collateral for that loan, so it is likely that the wife will have to make payments of \$75 per month.



62. On the limited disclosure given by the husband concerning the use of the funds from the loan, I am not satisfied that he has established that the whole Fidelity loan should be regarded as being a matrimonial debt. The \$12,579.86 element should be regarded as a matrimonial debt, and the husband should be credited for 50% of that namely \$6,289.93. Due to the payments that the husband has had to make, and will still have to make, following the taking out of the Fidelity loan, something which Worsley J. may not have been able to take into account when he made his Attachment of Earnings Orders as he still required additional evidence about the loan, credit should be given to the husband's arrears liability under the Order. A part of the \$6,289.93 should be credited to completely discharge the balance of the spousal maintenance arrears assessed by Worsley J. in his Order on 6 April 2017 which, due to Attachment of Earnings payments, should now be reduced to be in the region of \$3,450<sup>15</sup>. This would leave a credit balance of \$2,839.93. The balance of \$2,839.93 should be used as a credit to clear the arrears

<sup>14</sup> A fee note dated 19 May 2016 shows a balance of \$12,450 due to that attorney.

<sup>15</sup> See paragraph 10 above.

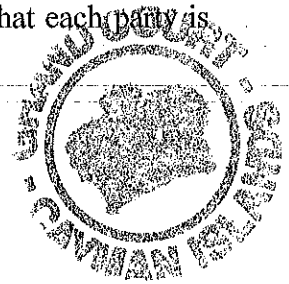
of \$2,750 accrued as of August 2017 which the wife stated had arisen due to non-compliance with the Order of Worsley J. for the husband pay \$550 per month as his contribution to the borrowing on the land<sup>16</sup>.

**(iv) Motor Vehicle**

63. The parties agreed during the hearing that the motor-vehicle, a 2014 Toyota 4 Runner, should be sold. The vehicle was purchased for \$9,500 using the 2010 Credit Union loan. The parties agree that it now has a valuation of \$1,500. The husband stated that he would advertise it at sale for that amount or best offer and that the proceeds of sale of the vehicle should be split. The wife in her Written Closing Submissions changed her position and contended that she should keep the full balance of the proceeds of sale. However, my note from the hearing on 13 July 2017 records that:

*“The parties agree in principle subject to further evidence that the vehicle should be sold, the wife would be kept informed about the progress of the sale – were sold, each party of principle entitled to 50% of proceeds of sale – what happens to that 50% will depend on any other capital liability capital distribution assessed in this matter.”*

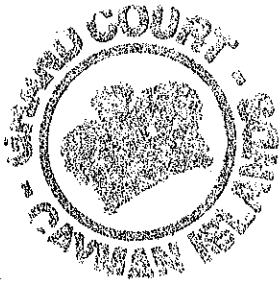
I am satisfied that the vehicle should be marketed for sale and that each party is entitled to 50% of the net proceeds of sale.



**(v) Bank Accounts and Pensions**

64. The parties agree that their pensions are almost equal value and therefore should be retained by them<sup>17</sup>. The parties agree that they should retain the contents of

<sup>16</sup> See paragraphs 14 and 15 herein.



their respective bank accounts. They agree that the values of their pensions and the contents of their bank accounts should not be taken into account when ascertaining the value of the assets that need to be divided.

### **THE HUSBAND'S EMPLOYMENT, INCOME AND OUTGOINGS**

65. Since November 2014 that husband has been employed by The Cayman Islands Government as an IT Support Administrator with a gross salary of around CI\$3,973 per month.<sup>18</sup> The husband stated that he gets the odd computer job "once in a while", but no details about any additional income from that source have been provided. \$1,100 is deducted directly from his salary towards the Fidelity loan, leaving a balance of \$2,818 per month. \$900 is also deducted by the current Attachment of Earnings Order and a further \$531.76 for miscellaneous deductions including his pension. His net income is therefore CI\$1,431.76 or \$2,331.76 if the current Attachment of Earnings Orders are discharged.

66. The husband met his partner in late 2015 or early 2016, after vacating the FMH during the previous year. They have a child aged approximately 16 months. The husband said that his partner works as an office assistant and has a monthly income of \$1,800, but he was not sure if that was net or gross. The husband indicated that his partner had a child before she met him and that she has to send money from her income for his care in the Philippines, especially as the biological

<sup>17</sup> The wife's position as expressed in her Written Closing Submissions and differs from her contention at paragraph 64 of her affidavit sworn on 31 March 2017.

<sup>18</sup> Monthly wage slip 26 March 2016 and letter from Chief Officer, Portfolio of the Civil Service dated 22 March 2016 showing annual income CI\$47,676.

father, who resides in Japan, makes no contribution. It was his responsibility to clarify his partner's income as well as the figure she is expending on caring for her child in the Philippines. Although it is not for his partner to contribute to spousal maintenance or to make payments to directly discharge the parties' matrimonial debts, she should be making a fair contribution to her household's expenses, thereby freeing up the husband's income to make any appropriate payments. The husband stated that his partner contributed to the household outgoings, by assisting him with his debts, contributing to the grocery bill and giving him his lunch money. On the limited evidence before me, including the husband's disclosed household expenses and his partner's responsibility to support her child, I find that a reasonable amount for the partner to be contributing to the household expenses is \$900.

67. In his oral evidence the husband updated his monthly outgoings which had been set out in his affidavit evidence, especially as he had moved home during the intervening period. The husband told the Court that his outgoings were:

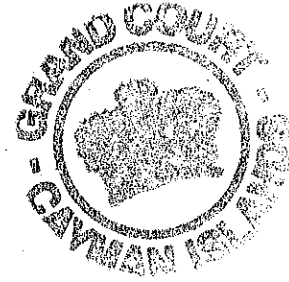
|                       |         |
|-----------------------|---------|
| Rent                  | \$1,200 |
| CUC                   | 350     |
| Water                 | 100     |
| Telephone             | 100     |
| Petrol                | 200     |
| Groceries             | 500     |
| Internet              | 110     |
| JH School             | 120     |
| JH bus and trips      | 25      |
| Baby pampers and food | 100     |



Caretaker for baby

600

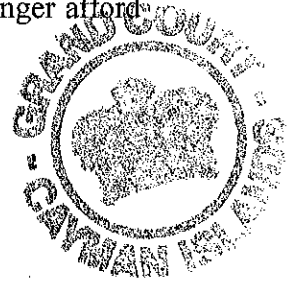
**Total: \$3,405**



These figures seem reasonable.

68. The husband added that for JH he usually has to spend about \$200 on school uniforms and supplies every year. He informed the Court that he still owes \$10,000 in fees to his former attorney. The wife's liability towards her legal expenses is far less, limited to a \$3,000 contribution by a Certificate granted on 29 September 2017.
69. The husband indicated that he can longer afford to run a motor-vehicle and is dependent upon his partner lending him her car. He sold a truck that he purchased in 2016 to the parties' eldest child, DH, for \$900.
70. Having regard to (i) the figure I have ascertained to be reasonable for the husband's partner to make to their household expenses (\$900); (ii) the husband's income figure after the deduction of the Fidelity loan payment (\$2,818); (iii) the husband's outgoing figures without taking into account any Attachment of Earnings Orders made by Worsley J. (\$3,405), he has a disposable income of only \$313. I remind myself that he is maintaining the only relevant child of the marriage, JH, without support from the wife.

71. Having regard to his income and outgoings, including the contribution to household expenses being made from his partner's income, the husband contends with some force that this should be a clean break case as he can no longer afford to support the wife.



### **THE WIFE'S EMPLOYMENT, INCOME AND OUTGOINGS**

72. The wife told the Court in her evidence in chief that she is employed at the Credit Union with a net salary of around CI\$2,675. The wife indicated that every six months, when they have to send out statements, there is an opportunity to do overtime but she may only then receive an extra \$100-\$150, depending on the hours worked. The husband's submission that the wife could earn extra income by cooking and selling food is an unreasonable one.

73. The wife has a boyfriend, with whom she has been in a relationship for one year. It appears to be an established relationship. The wife's evidence is that they do not live together and reside in separate properties, although sometimes he may give her some financial support.

74. It is evident that both parties have new partners and are moving on with their lives, after their lengthy separation of at least three years. Therefore, this is the type of situation in which a clean break should be promoted, especially after their joint debts are discharged.

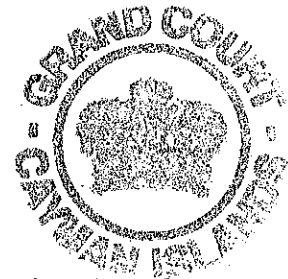
75. The parties' 21 year old son, DH, lives with the wife. At the hearing the Court was told that DH is unemployed and does not contribute to the household expenses. After the hearing the parties were asked to clarify the evidence of DH's employment. That father said that he was in full-time employment and the wife said that *"the parties gave live evidence that their adult son is not currently employed, and is in fact looking for work."* Approaching this based on the evidence at trial that he was not working, the fact that the wife allows DH to live at the FMH and grants him loans for his motor-vehicle, thereby increasing her outgoings, is a matter for her and is not something she should rely upon as a ground for spousal maintenance in these proceedings. It is clear from the evidence that DH has an income capacity which he is failing to utilise. It is evident that the husband shared his IT work experience with DH and that DH used to work with him. I accept the husband's evidence that the son is capable of working in network installation and wireless cable installation. The husband told the Court that the son had given up his employment as a technician for a fork lift service as he was *"tired"* of it and that DH had informed the husband that his mother had taken out a business licence to run an appliance and maintenance business. It does not seem that that business is up and running. I accept the husband's evidence that, although he has been attempting to assist him in finding employment, DH could do more to obtain employment, thereby enabling himself to properly contribute to the household expenses in the wife's property. It appears that, after the parties closed their cases, JH Jr. started living with the wife.

76. The husband contends that the wife has a disposable income. He states that she has been able to buy number of televisions and take overseas trips. She has been able to travel overseas. The wife says that her sister provides her with money to enable her to meet her expenses and any overseas travel expenses. She also says that from time to time she has taken out small personal loans from friends.

77. In her oral evidence the wife updated her monthly outgoings. The wife told the Court that her outgoings are:

|                       |                      |
|-----------------------|----------------------|
| CUC                   | \$200.00-\$300.00    |
| Water                 | 100.00               |
| Internet              | 100.00               |
| Telephone             | 100.00               |
| Petrol                | 200.00               |
| Car insurance         | 33.00                |
| Car Registration      | 15.00                |
| Groceries             | 400.00               |
| Hairdresser           | 25.00 <sup>19</sup>  |
| Clothing shoes        | 100.00               |
| Pension               | 80.00 <sup>20</sup>  |
| Life insurance        | 130.00 <sup>21</sup> |
| Strata/home insurance | 284.31               |
| Credit Union loan     | 1,674.00             |

**Sub Total: \$3,441.31 - \$3,541.31**



<sup>19</sup> During cross-examination the wife accepted that she did not have to pay \$50 for hairdressing, as her sister did this for free for her at her salon, but she did have to pay \$25 per month for her nails.

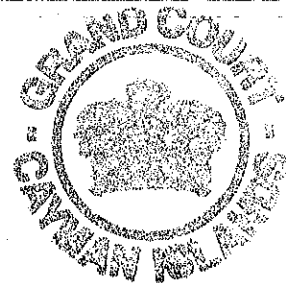
<sup>20</sup> In her evidence in chief, when outlining his outgoings, the wife accepted that the figure for her monthly pension payment was \$80 and not \$127.59.

<sup>21</sup> In her Statement of Means dated 31 March 2017 the wife said that her life insurance premium payment was \$67.

Although not mentioned by the wife when listing her outgoings, as the Legal Aid Certificate was not extended until 15 September 2017, I note that she may also have \$75 per month to pay after the Certificate of Dissolution to discharge a \$3,000 contribution to the Legal Aid Fund.

78. The wife claims \$80 for the clothing for the children and \$167 for her voluntary payment for a loan recently taken out for DH. These are not figures included when considering her outgoings children. I also disregard the \$80 loan the wife stated was taken out with "an individual" for repairs to the apartment as that loan was scheduled to be paid off by the end of September 2017.

79. If the wife does not live in the FMH she states that she would need to rent out a two to three bedroom property for \$1,800 to \$2,000, especially if all three of their children were to live with her.<sup>22</sup> However, I find that the wife only requires a two bedroom property, as DH should be treated as being fully independent, and that the rent would be less than the figures given by the wife. In addition, by that time the Credit Union loan would have hopefully been paid off or at the very least greatly reduced by the sale of the FMH and possibly of the Land and there would be no monthly Strata payment.



<sup>22</sup> Paragraph 43 of wife's Affidavit sworn on 10 August 2016.

## CONCLUSIONS

80. Having regard to the wife's income and outgoings, in the absence of any figure for assistance which a boyfriend may give her towards the household expenses, she has a shortfall each month of around \$766.31 to \$876.30.

81. Having regard to the husband's income and outgoings, including a figure I have assessed as being reasonable for his partner's contribution to the household expenses, he has a disposable income of around \$313. I note that he is currently the only one financially maintaining the only relevant (due to age under the Law) child of the marriage.

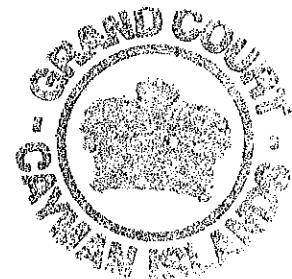
82. I have made provision crediting the husband for the joint debt medical loan element of the Fidelity loan by apportioning them to most of the arrears that have accrued under the Order. However, in relation to payment still being made to the most substantial matrimonial debt, the wife is bearing the responsibility for the Credit Union loan payments. If the husband made a contribution of \$600 towards that loan each month then he would have a shortfall of around \$287 per month and the wife would have a shortfall of around \$166.31 to \$266.31.

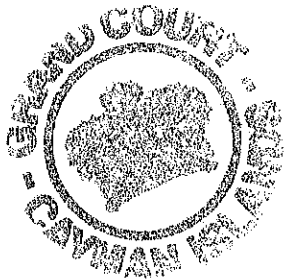
83. As firmly stated by Sir John Chadwick P., in *McTaggart*, the Court must try to give the parties finality, enabling to move on with their lives. This is a case in which there should be a clean break and therefore I make no order for spousal maintenance and discharge paragraph 15 of the Order of Worsley J. When reaching

this decision and about the level of payments to be made to the husband towards the parties' joint liabilities, I have regard to the joint ongoing liability to the Credit Union which will exist until the properties are sold, the length of time that has passed since separation, the fact that the wife has the benefit of living in the FMH and the fact that the husband is currently solely carrying the financial burden of bringing up the parties' only dependent child. I make an order for the husband to pay \$600 per month as his contribution directly to the Credit Union loan which. The wife is not to add any additional borrowing liability to that loan. Once the properties have been sold, if the proceeds discharge the Credit Union loan debt, then the monthly payments will come to an end. If they do not discharge the loan then each party will be equally responsible for discharging the balance of the loan. If the loan payments are reduced because either the FMH or the Land are sold then the \$600 monthly contribution should be reduced proportionally.

84. Over and above the various orders already mentioned above in this Judgment, I make the following orders.

- (i) By consent each party will retain their pension and the contents of their bank accounts.
- (ii) In relation to the ordered sale of the FMH and the Land, they are to be sold on the Multiple Listing System and the following consequential provision shall apply:





- (a) the FMH shall be marketed for sale at \$215,000 and the Land shall be marketed for sale at \$59,000 or any other price agreed by both of the parties.
- (b) both parties shall have conduct of the sale.
- (c) the properties shall be offered for sale by a realtor agreed between the parties.
- (d) the proceeds of sale of the properties shall be applied firstly to discharge the Credit Union loan, then to pay the conveyancing costs including the realtor's fees.
- (e) in the unlikely event that there is any equity remaining thereafter the balance should be put towards any existing arrears on the Strata.<sup>23</sup>
- (f) in the highly unlikely event that there is any equity remaining thereafter the balance should be shared between the parties in equal shares.

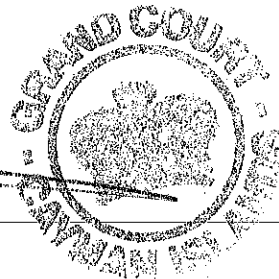
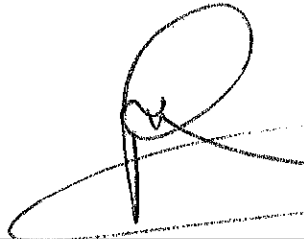
(iii) In relation to child maintenance, there is an obligation on the wife to make maintenance contributions for the care of JH. However, the husband concedes that possibly until the loan burden on the mother is alleviated by the sale of the two properties it may be appropriate for there to be a nominal maintenance order which can be reviewed by the Court upon application. Accordingly I order that the wife do pay a nominal maintenance for JH of \$1 per annum until he reaches 16 or ceases full-time education up to the age of 21 (whichever may be the later). This

<sup>23</sup> See paragraphs 54 and 55 herein.

order is of course reviewable, especially when the wife is released from her Credit Union loan payments. At that time the parties should use their best endeavours to agree a reasonable child maintenance figure without the need to come back to Court.

**LEGAL FEES/COSTS**

85. Unless I hear from the parties within seven days of the delivery of the perfected Judgment that they wish to make further submissions on the issue, I intend to make no order for costs.



**Honourable Mr. Justice Richard Williams**  
**JUDGE OF THE GRAND COURT**