

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **HOLDEN AT GEORGE TOWN, GRAND CAYMAN**
3 **FAMILY DIVISION**

4
5 **CAUSE NO: FAM 34 OF 2012**

6 **BETWEEN:**



7
8 **AT**

9 **Petitioner**

10
11 **AND**

12 **JT**

13 **Respondent**
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16 **Appearances:** The Petitioner in person
17 Ms. Vanessa Allard from Brooks & Brooks for the Respondent
18

19 **Before:** **Hon. Mr. Justice Richard Williams**
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21 **Heard:** **21 August 2013, 29 October 2013, 11 March 2014, 14 May 2014**
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23 **Due date for final submissions:** **30 August 2014**
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25 **Additional written comments/submissions:** **20 January 2015**
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27 **Date of Circulation of Draft Judgment:** **3 March 2015**
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29 **Date of Judgment:** **6 March 2015**
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33 **JUDGMENT**

34 1. This is an application, brought by way of Summons dated 18 September 2012, for
35 financial provision made by the Respondent, JT, against her husband, AT.
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37 2. I hope that the parties will not be offended if from now on I refer to them, for
38 convenience, as husband and wife.
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1 **PROCEDURAL BACKGROUND**

2 3. Regrettably, it has taken quite some time for the hearing to deal with ancillary
3 matters to be concluded and this delay, coupled with piecemeal disclosure, has
4 hindered the Court which has, as a consequence, had to review very dated and
 conflicting oral and written evidence in order to reach a decision. It is trite law
 that assets should be valued at the date of trial and that the Court should have the
 most up-to-date evidence. Thorpe L.J. in *Cowan v Cowan* [2001] 2 FLR 192, para
 70 stated:

9 *"The assessment of assets must be at the date of trial or appeal. The*
10 *language of the statute requires that. Exceptions to that rule are rare*
11 *and probably confined to cases where one party has deliberately or*
12 *recklessly wasted assets in anticipation of trial."*

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14 4. In a case where the parties' evidence, in particular the husband's, has changed
15 during the course of the proceedings, the Court's task has been made more
16 difficult by the parties' failure to provide at the outset and at the end of the
17 hearing a brief and clear schedule of agreed and not agreed matrimonial assets in
18 which they also set out the value of every asset, any encumbrances upon that asset
19 and the equity in that asset.¹ The Court has had to embark on the considerable
20 time consuming exercise of trying to extrapolate this detail itself from the
21 inconsistent and conflicting evidence in the parties' written evidence, oral
22 evidence and written submissions. Having carried out that exercise, the Court
23 circulated to the parties a schedule prepared following its review of the evidence

¹ They should have submitted an agreed schedule or their own schedule if it could not be agreed.





and invited the parties to comment upon the same. The parties' written comments were received by the Court by or on 20 January 2015.

4 5. The first day of this hearing was back on 21 August 2013. That date was fixed
5 relying upon the parties' overly conservative time estimate of half a day.² The
6 delay has been contributed to by the unrealistic time estimate, issues concerning
7 disclosure, requirement for valuations of property and the husband's late filing of
8 affidavit evidence.

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10 6. At the outset of the hearing on 21 August 2013 I referred to my comments
11 concerning disclosure made at the mention hearing on 5 March 2013. Having
12 done so, I lamented the fact that the normal disclosure process had not taken place
13 and, as a consequence, there might be gaps in the parties' evidence. Despite this,
14 both parties confirmed to the Court that they wished the hearing to proceed
15 without the requirement for any further disclosure as they felt it had been
16 sufficient to enable them to run their cases. As the parties were content and
17 wished to proceed on the evidence that was then before the Court, I permitted the
18 hearing to commence. Regrettably, that half day hearing became a full day
19 hearing and even then had to be adjourned part-heard. Having regard to fact that
20 the hearing would have to recommence when a later date could be found, as no
21 delay would be occasioned by it, the Court directed the husband to file and serve

² The Order of 5 March 2013 required the parties to confirm whether the hearing should be listed for a half or full-day. The Listing Officer was informed on 18 April 2013 that parties required only a half-day for the final hearing.

1 an affidavit exhibiting any documents which he intended to rely on which were
2 not contained in the bundle within 14 days.

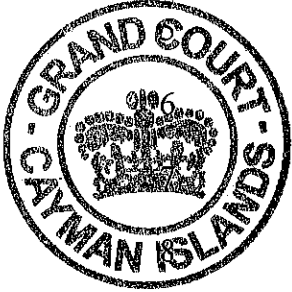
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4 7. The husband failed to properly comply with the direction as he did not file an
affidavit. However, he did serve a bundle within the 14 days. That bundle
contained a number of documents which he wished to refer to in his evidence.
Although not in affidavit form, I indicated at the outset of the second day of the
hearing that I would permit him to refer to any of those documents during his oral
evidence.

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11 8. During the hearing it became clear that the parties no longer agreed the valuation
12 in relation to the property located in George Town, Block 13D, Parcel 223 (“the
13 George Town property”). The parties were informed that the matter would have to
14 be adjourned to enable a joint valuation to be obtained. At the hearing the husband
15 sought to file an affidavit witnessed by an overseas Justice of the Peace. Ms.
16 Allard wrongly contended that this did not comply with GCR O.41 r.8(1) and,
17 although conceding that the content was potentially relevant, she objected to the
18 filing of the affidavit. I ruled that the affidavit could be filed; recognising that the
19 matter already required an adjournment to enable the joint valuation of the George
20 Town property to be obtained, and I afforded the wife an opportunity to file
21 evidence in reply. The hearing was adjourned part-heard with a further direction
22 that the husband produce copies of all bank statements for his accounts in



1 Jamaica, which should be exhibited to an affidavit to be filed by or on 6
2 December 2013.

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4 9. The husband filed an affidavit on 6 December 2013. The joint valuation report in
5 relation to the George Town property was filed at the outset of the third day of the
6 hearing, namely on 11 March 2014. The Court was also provided with the wife's
Request for Further and Better Particulars dated 16 December 2013 and the
husband's Reply to the Request for Further and Better Particulars dated 17
January 2014. The parties concluded their evidence and leave was given to them
to file written submissions by or on 1 April 2014. The Court indicated that if no
written submissions were received from them by 4 April 2014 it would proceed to
prepare its judgment on the information then before the Court.

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14 10. The wife filed her supplemental written arguments in relation to the ancillary
15 relief hearing on 9 April 2014. The husband filed his closing written submissions
16 on 15 April 2014.

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18 11. On 8 April 2014 the husband filed a Summons in which he sought leave to furnish
19 further information with respect to assets disputed during cross-examination. He
20 sought leave to serve an affidavit sworn on 8 April 2014 by or on 11 April 2014.
21 He sought a direction that "*the settlement of the ancillary relief be dispensed with*
22 *and that a date be fixed for the hearing of the petition for divorce filed on the 12th*
23 *February 2012.*"



1 12. The wife opposed the husband's application for leave to adduce further
2 information and to file an additional affidavit. The wife's arguments were set out
3 in written submissions submitted on 14 May 2014. At a hearing held on 14 May
2014, when Ms. Brooks attended, holding the case for Ms. Allard, leave was
given to the husband to file the affidavit. Leave was then given to the wife to file
any Request for Further and Better Particulars by 22 September 2014 and for the
husband to file any Reply by 27 October 2014. The ancillary relief hearing was
8 adjourned until 10 November 2014 with a one-day time estimate; a delayed date
9 was provided in the directions due to the unavailability of the wife's Counsel. The
10 husband was ordered to pay the costs occasioned by his application on the
11 indemnity basis.

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13 13. On 13 August 2014 the wife's attorneys wrote to the Court indicating that she did
14 not seek to file a Request for Further and Better Particulars, on the basis that her
15 written submissions of May 2014 adequately dealt with the content of the
16 husband's affidavit. The wife's attorneys invited the Court to proceed to
17 judgment. On 25 August 2014 both parties were informed that, unless they sought
18 to persuade the Court otherwise by 30 August 2014, the Court intended to then
19 commence preparation of the judgment. Neither party communicated with the
20 Court thereafter save to provide the written comments mentioned in paragraph 4
21 above.

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1 **BACKGROUND**

2 **THE PARTIES**

3 14. The parties were married in the Cayman Islands on 26 July 2003.

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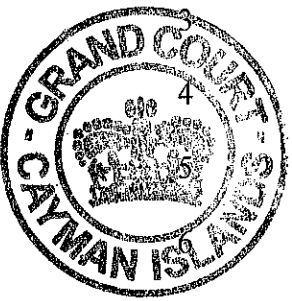
5 15. On 17 February 2012 the husband filed his Petition for the dissolution of the
6 marriage. This is not a lengthy marriage as the parties had been married for less
7 than nine years at that time. On 16 March 2012 the wife filed her Answer and
8 Cross-Petition. On 6 November 2012 leave was given to the husband to amend his
9 Petition. The wife withdrew her Answer and by consent the matter proceeded by
10 way of mutual Petitions. On 13 August 2013 the husband's Amended Petition and
11 the wife's Cross-Petition were proved.

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13 16. There are two children of the marriage, namely 11-year old D (born on 6 February
14 2004) and 7-year old E (born on 19 October 2007). On 27 August 2012 Smellie
15 C.J. ordered the husband to pay CI\$800 per month interim child maintenance. He
16 also ordered the husband to continue paying the mortgage from the end of August
17 2012 as well as the property insurance for the matrimonial home.

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19 17. In his Amended Petition the husband prayed that there be an order "*in relation to*
20 *the custody, care control, maintenance and general well/being of the two children*
21 *as may be agreed between the parties or is otherwise made by the court.*" The
22 wife in her Cross-Petition prayed that the Court should "*make orders in relation*
23 *to the children.... as it deems just.*" During the course of the proceedings the



1 family remained living in the former matrimonial home. As a consequence no
2 interim s.10³ orders were made in relation to the children. At the hearing the Court
3 was told that the parties consented to a residence order being made in favour of
4 the mother and a flexible contact order with their father. Both parents have
5 parental responsibility. Detailed submissions were not received in relation to child
6 arrangement orders. In light of the settled arrangements for the children and the
7 parties' agreement, I am content to make a residence order in favour of the wife
8 and a flexible contact order in relation to the husband. Accordingly, having regard
9 to the welfare checklist set out at s.3(3) of the Children Law (2012 Revision), I
10 make those two s.10 orders by consent.

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

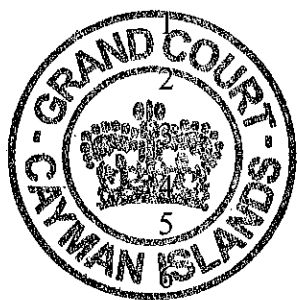
13 18. The Law pertaining to the making of periodical payment orders and to the division
14 of matrimonial assets is governed by s.19 of the Matrimonial Causes Law (2005
15 Revision) ("the Law") , which reads as follows:

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

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

³ S.10 of the Children Law (2012 Revision).



"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;*
- (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 for the other spouse: and*
- (g) *costs."*

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15 20. Lord Nicholls of Birkenhead in *White v White* [2001] 1 A.C. at 596 ("*White*")
16 stated that:

17 *"The purpose of these powers is to enable the court to make their*
18 *financial arrangements on or after divorce in the absence of*
19 *agreement between the former spouses."*

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21 21. S.19 and s.21 of the Law give the Court a wide discretion when it comes to
22 financial provision and any awards made to the parties. The Courts in the Cayman
23 Islands, in deciding whether to exercise their powers under s.21 and, if so, in what
24 manner have, when considering what is fair in all the circumstances of the case,
25 traditionally had regard not only to the matters set out in s.19, but also the relevant
26 factors raised in s.25(1) of the Matrimonial Causes Act 1973, and now s.3 of the

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Matrimonial and Family Proceedings Act 1984 in England and Wales.⁴ The

factors to be considered include:

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

⁴ *Doak v Doak and Riley* [2002] CILR 224, [17], [21], [22], *Wight v Wight* CICA 6 of 2006 [62], *Wood v Wood* [2009] CILR 255, [12] and *McTaggart v McTaggart* (2011) 2 CILR 366[39].

⁵ *Wight v Wight*, 2006 CILR 1 Zacca P. at paragraph 33.

1 22. Sir John Chadwick P. in *Valerie Ayala Gordon v Jefferson Raymond Watler*
2 CICA (Civil) 13/2014 ("*Gordon*") paragraph 12 reiterated the principles set out
3 in *McTaggart v McTaggart* [2011 2 CILR 366] ("*McTaggart*") and the approach
4 to be taken to the case law emanating from England and Wales. These restated
5 principles are most helpfully intended to guide Courts in the Cayman Islands on
6 the proper approach to ancillary relief applications. I am greatly guided by these
7 important principles and therefore make no apology for now repeating in full the
8 President's following analysis set out in paragraph 12 of *Gordon*⁶:

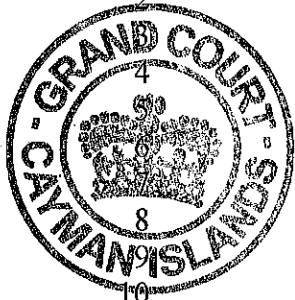
9 "12. *The correct approach to the division of property in ancillary*
10 *relief cases was set out by this Court in McTaggart. At paragraph*
11 *40 of the judgment in that case the Court said this:*

12 "40. *We were referred by the parties, both in the skeleton*
13 *arguments lodged on their behalf and in oral submissions*
14 *made in the course of the hearing, to a plethora of judicial*
15 *decisions in England and Wales and to a few decisions in this*
16 *jurisdiction. Observations made by experienced judges are, of*
17 *course, of assistance to an understanding of the application of*
18 *the section 19 factors; but it must be kept in mind that most*
19 *cases in this field are decided on their own facts and that there*
20 *is a risk that extensive citation may confuse rather than*
21 *illuminate. It is not necessary, I think, to look further than the*
22 *decision of the House of Lords in Miller - and in particular the*
23 *speeches of Lord Nichols and Baroness Hale - in order to*
24 *identify the principles. Leaving aside, in this context, the best*
25 *interest of the children, which (as I said) are paramount, there*
26 *are three strands: need, compensation and sharing [2006] 2*
27 *AC 618 at paragraphs [10]-[16] per Lord Nichols and at*
28 *paragraphs [138]-[143] per Baroness Hale. The ultimate*
29 *objective, as Baroness Hale explained at paragraph [144], is*
30 *to give each party an equal start on the road to independent*
31 *living. She said this:*

32 *[144] Thus far, in common with my neighbour and learned*
33 *friend Lord Nicholls of Birkenhead, I have identified three*

⁶ I accept that this decision was handed down very shortly after the close of the proceedings and that ordinarily the parties would be asked to comment upon the same prior to judgment. However, the case does not raise any new law but neatly summarises the uncontentious principles emanating from earlier guiding cases which were already known to the parties.



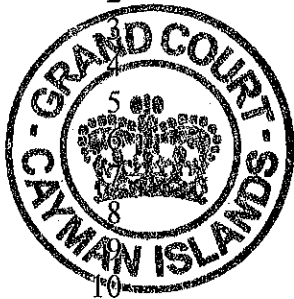


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principles which might guide the court in making an award: need, generously interpreted, compensation and sharing. I agree that there cannot be a hard and fast rule, but whether one starts with equal sharing and departs when need or compensation supplied 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.”

When Baroness Hale referred to “sharing” in that context, she had in mind - as her speech demonstrates - sharing of all the assets; not simply sharing the assets which could be classified as matrimonial property. This court went on in McTaggart to say this, at paragraphs 42 and 43:

“42. In this jurisdiction a court will need to consider whether, having proper regard to the section 19 factors, an order under section 21(b) of the Law for the disposition of the matrimonial property will make appropriate provision for the relevant party in respect of the three strands: need, compensation and sharing. If not, then the court will need to go on to consider whether to make an additional order under section 21(e), that is to say, an order making financial provision for that party out of property of the other party. 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 of 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.



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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 that the other of equal importance is the principle of clean break, the law now encourages spouses to encourage bitterness after family breakdown 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.”

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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.”

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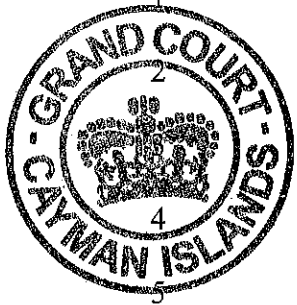
23. In the combined House of Lords appeals of *Miller v Miller* and *McFarlane v McFarlane* [2006] 2AC 618, 634 (“*Miller*”), Lord Nicholls identified three strands of principles for the purpose of achieving fairness between the parties, namely, financial needs, compensation and sharing. Lord Nicholls dealing with the concept of fairness stated that:

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“Divorce creates many problems. One question always arises. It concerns how the property of the husband and wife should be divided...the outcome ought to be fair in all the circumstances...”

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24. In deciding whether to make an order under s.21(b), and from where any such order should be made, as made clear by the Court of Appeal in *McTaggart*, I am required to consider and decide which assets can be considered as being matrimonial property. In the combined House of Lords appeals of *Miller* Lord



1 Nicholls described matrimonial property as “*property acquired during the*
2 *marriage otherwise than by inheritance or gift.*” Its distinguishing feature is that
3 it is “*the financial product of the parties’ common endeavour.* In *McTaggart*, Sir
4 John Chadwick P. approved Lord Nicholls’ view.
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6 25. When carrying out this exercise I am again fortunately assisted by further
7 guidance given by Sir John Chadwick P. In *W v W* [2009] CILR 225 the President
8 reiterated the importance of the principles set out in: (i) *Wight v Wight* 2006
9 CILR 1 (“*Wight*”); (ii) *White*; and (iii) *Miller*. Referring to Forte J.A.’s ruling in
10 *Wight*, the President stated that the Court should construe s.19 “*on the basis of the*
11 *new approach to the institution of marriage and the fact that it is a union of*
12 *partners. ...Each therefore would be entitled to equal share of the assets acquired*
13 *in the marriage, unless there is a good reason to depart from that principle.*”
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15 26. The President understandably then referred to the guidance given in the English
16 cases concerning property brought into the marriage by one of the parties. This
17 included reference to what Lord Nicholls stated at page 610 in *White* at 610 and
18 repeated by him in *Miller* at paragraph 23, namely:

19 “*Plainly, when present, this factor is one of the circumstances of the*
20 *case. It represents a contribution made to the welfare of the family*
21 *by one of the parties to the marriage. The judge should take into*
22 *account. He should decide how important is in the particular case.*
23 *The nature and value of the property, and the time when and*
24 *circumstances in which the property was acquired, or among the*
25 *relevant factors to be considered. However, in the ordinary course,*



this factor can be expected to carry little weight, if any, in a case where the family's financial needs cannot be met without recourse to this property."

5 27. In *Miller* a notion was introduced by Baroness Hale at paragraph 148 that
6 property brought into a marriage can later be regarded as being a matrimonial
7 property through the mixing of the parties' funds. It is not always appropriate to
8 pre-determine at the outset of a marriage what might later be determined to be a
9 non-matrimonial asset, for one must take into account how the parties have treated
10 that asset and their income in relation to the asset during the marriage. The wife
11 submits that the husband has mixed funds during the marriage. The importance of
12 such a submission ordinarily increases with the length of the marriage as the
13 longer the marriage the more likely the non-matrimonial property will become
14 mingled with matrimonial property. Although one may not term this marriage has
15 being a short one, it would not be accurate to characterise it is a long marriage. It
16 is also important to consider how long before the marriage the property was
17 acquired, especially if the parties were not in a relationship, the greater the period
18 of time may strengthen a submission that it was not intended to be treated as a
19 matrimonial asset.

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21 28. So when I now move on to consider the parties' evidence and what financial
22 arrangements to order I have regard to the above principles which establish that
23 overall, the Court is charged with dividing the assets in a fair and equitable

1 manner, whilst trying to see if there can be a clean break. I have also carefully
2 considered the case authorities which the parties have referred me to.

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4 29. Both parties agree that this case is one in which there should be a clean break,
5 with the only ongoing obligation being provision for the children of the marriage.

6 Any order I make is designed to enable the parties to do that and move on with
7 their lives independent of each other. Fortunately, as for reasons which I will

8 elaborate on I find that the George Town property is to be regarded as being a
9 matrimonial asset, there are sufficient matrimonial assets to be shared which will

10 enable the parties', and most importantly the children's, needs to be met and to
11 accommodate their mutual desire for there to be a clean break. This is not a case

12 where either party merits compensation for any special contribution. I therefore
13 need not consider making an order in respect of non-matrimonial assets.

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15 **HUSBAND'S EMPLOYMENT, INCOME AND OUTGOINGS**

16 30. The husband is approximately 56 years of age. At the outset of the proceedings
17 the husband was employed as a Police Constable⁷ with the Royal Cayman Islands

18 Police Service with a base salary of CI\$35,376 per annum and allowances of
19 CI\$650 per month, he also received other allowances totalling CI\$150 per month.

20 However, the husband due to a broken vertebrae and other injuries sustained in a
21 motor vehicle accident in August 2012 was forced into early retirement from the

22 Service on 10 December 2012. The husband produced a letter from the



⁷ Joined the police in 1994.



Commissioner of Police confirming his retirement after 18 years of service. As a consequence, he no longer receives his police salary of CI\$4,208.16.

4 31. In his affidavit sworn on 8 February 2013 the husband said that he received rental
5 income of CI\$3,050 per month from the George Town property registered in his
6 sole name. The husband stated he also received CI\$150 from Hot Stuff Variety
7 Store (“the store”), a mobile clothing business in which he says he is a “*part-time*
8 *salesman.*” The wife says he told her it was “*his company.*” The wife contends
9 that although there may be difficulty establishing any value for this potential asset,
10 it should at least be regarded as an alternative source of income for the husband. It
11 is evident that he is more than just a part-time salesman and that he now plays a
12 far more integral role in the business, for example as the buyer of its stock on
13 overseas trips. In February 2013, the husband indicated that he was not at the time
14 receiving his police pension, and that it may take six months post-retirement to
15 “*sort out.*” However, it is evident that he received CI\$6,236.74 as a refund for
16 overpaid pension payments on 25 April 2013.

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18 32. In her oral evidence, the wife accepted that the husband did not work on a day-to-
19 day basis, but she felt his injuries should not prevent him from doing so. Although
20 I do not agree with her view that he could take on any type of work, it is clear that
21 he is fit and able to undertake work of a non-heavy physical nature to a greater
22 degree than he seeks to suggest. Although the wife conceded that he never
23 discussed with her his income from the store, she felt that he earned more than he

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was disclosing in his evidence as she believed he took a number of overseas trips to purchase inventory⁸. She contended at paragraph 16 of her affidavit sworn on 27 February 2013 that Cayman Broadcasting Ltd/Love 103.1 FM (“the radio station”) provided a source of income for the husband. She accepted that his employment with the Police Service had come to an end due to ill-health, and that his police salary had formed the major part of his income. The wife stated that she knew little about the particulars of his finances.

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33. During cross-examination on 11 March 2014, the husband stated that his monthly income totalled CI\$4,490, comprising: (i) CI\$3,050 rent from the George Town property; (ii) CI\$840 from his pension; and (iii) on a good month, CI\$600 from the store. The husband stated that AS, his partner in the store, holds the trade and business license, and that she takes a two-third share of any profits. There are no proper accounts for this business, but having regard to the frequency of his overseas buying trips and the amount of money taken to then buy stock, even if one were to accept his incomplete evidence concerning the nature of the partnership arrangement with AS, I am satisfied that the income potential is greater than the disclosed CI\$600. The oral evidence from JT, his partner in the radio station, was consistent with the husband’s assertion that no personal income/dividends have to date been derived from that enterprise. That said, I note the document headed “Profit and Loss January 1, 2009 through August 20, 2013” purports to show a net income of CI\$35,045.82 during that period, so there is

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⁸ The wife said he had travelled with around US\$3,000 in April, June and July.



some future income potential. I am satisfied that his foreseeable income capacity is in the region of CI\$5,000- CI\$5,100.

4 34. In his affidavit the husband said that his monthly outgoings at the time totalled
5 CI\$8,076, which included CI\$800 child maintenance and CI\$390 for Court
6 ordered maintenance for BT, his daughter from a previous relationship. The wife
7 contends that as that daughter may be sixteen years of age he is no longer required
8 to maintain her.⁹ However, the husband confirmed in his oral evidence that she
9 was still in full-time education at high school and intended to thereafter attend
10 university. I am satisfied that this is an ongoing liability for him. His projected
11 monthly outgoings also now included CI\$150 for tithes to the church and around
12 CI\$200 to support his elderly mother in Jamaica. He stated that his changed
13 financial position had resulted in him being unable to pay his household
14 insurance, funds into the Credit Union account, life assurance payments to Sagicor
15 and the payments to help support his mother. He stated that he had fallen behind
16 in payments for cable television and his telephone bill.

17
18 35. In his oral evidence the husband accepted that his outgoings were not over
19 CI\$8,000 as previously contended, stating that it was CI\$5,861, leaving him with
20 a monthly shortfall of CI\$1,371. The husband stated he has a credit card debt of
21 US\$1,200. In his oral evidence he said that he was able to survive, as he used the
22 balance in his RBC account and CI\$2,700 in interest that he received from Credit
23 Union in January/February 2014.

⁹ Paragraph 25 of the wife's affidavit sworn on 27 February 2013.

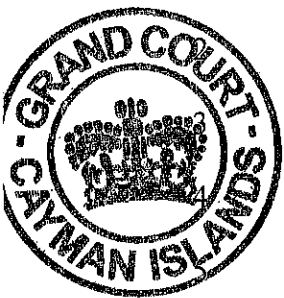
1 36. When I review the husband's outgoings detailed by him in his oral evidence on 29
2 October 2014 I find the following monthly figures to be reasonable:

3	(i)	Food	\$450
4	(ii)	TV	\$ 80
5	(iii)	Telephone	\$ 75
6	(iv)	Internet	\$ 40
7	(v)	Daughter's maintenance	\$390
8	(vi)	Gas for car	\$300
9	(vii)	Vehicle license and Insurance	\$100
10	(viii)	Cayman National Bank Loan IL-014-03713	\$1,911
11	(ix)	Credit Union loan	\$402
12	(x)	Insurance on George Town property	\$318
13		TOTAL: C\$4,066	



14
15 37. In August 2012 the husband made an open offer to pay to the wife a total of \$750
16 per month child maintenance (\$375 per child), as well as a percentage of the child
17 education, medical and after-school activity expenses.

18
19 38. I am conscious that the husband's main source of income is the rental income
20 from the George Town property, without which he would clearly be unable to
21 meet his daily needs. If he were unable to continue to receive the income from this
22 property, due to his age, his income capacity and capability to make provision for
23 his retirement would be less than the wife's. As it currently stands he has a higher
24 income than the wife but his personal outgoings are greater, especially to maintain
25 the George Town property.



1 39. I am satisfied that, as I find that the husband's foreseeable income is in the region
of CI\$5,000 to CI\$5,100 and his reasonable outgoings (not including utilities) to
amount to \$4,066, if the children's need required it, that an order could be made
totalling around CI\$800.

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

7 40. The wife is a civil servant aged approximately 41. She is roughly 14 years
8 younger than the husband and therefore she has many more years of potential full-
9 time employment than him. In her affidavit sworn on 17 August 2012 she
10 disclosed a bi-weekly salary of CI\$1,064 (CI\$2,305 per month).¹⁰ The wife stated
11 that at that time she also received CI\$400 contribution from her husband, and her
12 monthly outgoings amounted to CI\$2,746.77. I am satisfied that the wife has an
13 income capacity of CI\$2,305/month.

14
15 41. When I review the wife's stated outgoings, I am satisfied that the following are
16 reasonable monthly figures:

17	(i)	Grocery	\$900
18	(ii)	Light	\$250
19	(iii)	Water	\$ 50
20	(iv)	Personal expenses	\$300
21	(v)	Gas for car	\$250
22	(vi)	Credit card	\$ 80

23

¹⁰ Based on a 52 week year.



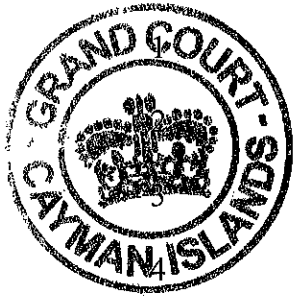
(vii)	Car Insurance and licensing	\$ 90
(viii)	Mortgage on matrimonial home	\$987
(ix)	Insurance on matrimonial home	\$200
TOTAL:		\$3,107

CHILD MAINTENANCE

7 42. The wife seeks monthly child maintenance of \$750 per child, \$1,500 total per
8 month. I note with interest that this is the same figure that she sought in her
9 affidavit of August 2012 when the husband was still in full-time employment with
10 the Police Service. The wife also states that if that amount is not ordered, the
11 quantum should “*at a minimum*” be the current sum ordered by the Court, namely
12 a total of CI\$800 per month.

13
14 43. The husband’s circumstances have changed to his detriment since August 2012.
15 On the evidence before me, I am satisfied that his income capacity is now reduced
16 due to his medical condition coupled with his age. Therefore, his income levels
17 are significantly lower than the wife believed them to be in August 2012 when she
18 was also submitting that CI\$1,500 was the appropriate total monthly figure for
19 child maintenance.

20
21 44. I am satisfied, having carefully reviewed all of the figures including the wife’s
22 income of CI\$2,305 and her reasonable outgoings of CI\$3,107, that the husband
23 be ordered to pay CI\$400 maintenance per child each month. I am satisfied that
24 the husband has the means to make the payment and that this sum is required to



meet the children's needs. The total of CI\$800/month is to be paid into the Court Funds Office on the same day that the existing interim payments are being made. The orders, unless varied by the Court, will last until the respective child reaches the age of 18 or ceases full time education up to the age of 21, whichever may be the later.

5

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7 **THE WIFE'S ASSETS AND THE PARTIES' MOTOR VEHICLES**

8 45. The wife has minimal personal/sole assets. As of July 2012 the wife held a CNB
9 share account valued at around \$1,665 and a share loan in which she owed \$600.
10 She owns a 2007 Kia Sorrento motor-vehicle, towards which she had been
11 obligated to make payments of CI\$517 per month. However, her financial
12 position has improved since the filing of her affidavit in August 2012, as she has
13 since discharged that liability. The wife values the motor vehicle at around
14 CI\$8,000, the husband values it at CI\$18,000, but he accepted in his oral evidence
15 that he has no evidence to support that contention. In the absence of a formal
16 valuation, I am content to accept the CI\$8,000 figure which is slightly less than a
17 Kelley Blue Book US\$ valuation for a good condition 2007 Kia Sorrento. The
18 wife contends that each party should retain their own primary motor-vehicle and
19 that the husband should sell his other vehicles and the parties share the net
20 proceeds. The husband indicates that his 2005 Honda CRV has a valuation of
21 CI\$5,000. He says he also owns a Hyundai H-1 bus valued at CI\$4,000 and an un-
22 roadworthy GMC box truck with no value. The husband contends that the motor-
23 vehicles should be sold and proceeds of sale be split equally. I am satisfied that all



of the motor vehicles are matrimonial assets. Having regard to the margin for error due to the absence of formal supporting evidence of the valuations and the fact that that they almost balance each other out in value, I order that each party retain the motor vehicles currently registered to them. I will not include them in my ongoing calculations of the parties' assets.

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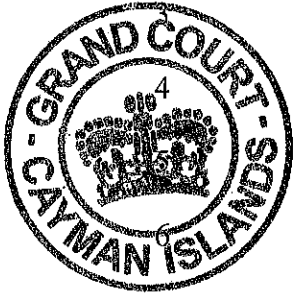
7 **POTENTIAL MATRIMONIAL ASSETS**

8 46. Both parties rightly agree that the four-bedroom matrimonial home in Newlands¹¹
9 purchased in or around 2005 and registered in their joint names is a matrimonial
10 asset. They were able to buy the property as, on 28 January 2004, FirstCaribbean
11 International Bank (Cayman) Ltd¹² granted them the joint mortgage loan number
12 100613331, in the sum of CI\$123,900 (with payments of CI\$960/month over 20
13 years). The loan was secured by a registered first charge against the property and
14 the parties assigning life insurance policies over each of their lives for
15 CI\$124,000.

16

17 47. The property had originally been a two-bedroom property, but it was extended to
18 its current size in 2010 after a \$112,734 joint loan (No. IN57), with 180 monthly
19 payments of CI\$998, was granted by CISCA Credit Union on 5 May 2009. The
20 collateral security for this extension loan is specified in the Loan Agreement note
21 as being the husband's Credit Union shares in account number 1357 and the North
22 Side Property which is registered in his sole name.

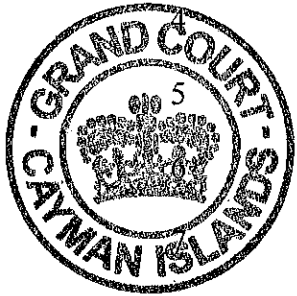
¹¹ Block 27E, Parcel 145: Savannah registration section.



1 48. The husband contends that the matrimonial home was extended to create an
2 income from the two additional rooms and that the estimated earning capacity
through rentals of the extended matrimonial home is CI\$1,500.¹³ The wife does
not agree and says that the suggested rental figure of CI\$1,500 does not apply
solely to the extension, but to the renting of the entire property. The wife contends
that it would not be appropriate to rent out parts of the property if she and the
children remained living there. There is insufficient evidence placed before me to
7 enable me to deduce what rental income, if any, could be received from letting out
8 the extended area of the home. However, on the evidence before me I agree with
9 the wife that, if she and the children were to remain in the property, she should not
10 be compelled to rent and share the property in that way. However, if she retains
11 the property, once the children have left home, that might be a possible source of
12 extra income.
13

14
15 49. The husband initially contended that he had taken on sole responsibility for
16 paying the FirstCaribbean Bank mortgage on the matrimonial home for the
17 previous seven years and still paid the CI\$3,336.48 property insurance. By June
18 2012 the mortgage arrears stood at CI\$1,957.42. The wife states that she borrowed
19 CI\$1,900 from her sister and paid off the mortgage arrears in June 2012. The wife
20 said she borrowed a further CI\$2,000 from her sister to get the mortgage up-to-
21 date until the date of the first affidavit on 17 August 2012. By the time of the
22 affidavit the wife said that she was around CI\$4,000 in debt to her sister.
23

¹³ Valuation report BCQS International, April 2012.



1 50. In or around December 2012 the husband stopped, without recourse to the Court,
2 paying the CI\$946.71 monthly mortgage, although both parties were still residing
3 in the property with the children. Regrettably this was in breach of the August
4 2012 order made by Smellie C.J. However, it is evident that the husband's non-
5 compliance coincided with a significant detrimental change in his circumstances,
6 namely him being unable to continue employment with the Police Service for
7 health reasons in December 2012. The husband also states his problems were
8 compounded by there being a delay in him receiving his pension. The husband
9 said that without a police salary, and having to primarily rely upon his rental
10 income from the George Town property, he was unable to make the ordered
11 payments and the other loan payments which he had until that time been paying.

12
13 51. The wife indicated that she continues to pay the mortgage and that between May
14 2013 and August 2013 she could only pay interest at CI\$517 per month, but
15 thereafter she has paid the full mortgage payments of around CI\$946.71- CI\$987
16 per month. The wife states that she continued to pay the utilities for the home,
17 including electricity and water, totalling CI\$250 to CI\$300 per month, but now
18 they have been paying those equally.

19
20 52. The husband rightly points out that although he may have stopped paying the
21 mortgage, at the time he continued to pay a similar amount, CI\$998 per month for
22 the Cisca Credit Union loan taken out for the extension work on the matrimonial
23 home. In October 2013 he used CI\$60,000 of the shares in his Cisca shares



1 account number 1357 to restructure the loan and reduce the balance of loan to
2 \$35,187.06 and his monthly repayment amount to CI\$402 per month. It appears
3 from a letter from the Credit Union dated 31 December 2013 that on 21 October
4 2013 the loan was restructured into 10-year loan in the sum of CI\$35,000 with the
5 Credit Union which encompassed the balance of the original loan. As of 31
6 December 2013 the balance was CI\$34,165.17.

7
8 53. He said he also paid other family bills, including CI\$500 per month towards the
9 groceries solely for the wife and the children, lunch money for the children and
10 CI\$100 a month towards the utility bills. Despite his difficulties the husband
11 continued to pay child maintenance for the children of the marriage as well as the
12 Attachment of Earnings Order for his other daughter.

13
14 54. Although initially contending that he had also made the household insurance
15 payments on the matrimonial home, in his oral evidence on the 11 March 2014,
16 the husband confirmed that he had made no payments from 2013 onwards, and
17 that there was CI\$1,000 shortfall from 2012. Interestingly, although unable to
18 make payments on the matrimonial home, he confirmed in his oral evidence that
19 he felt it appropriate and that he was able to keep up the CI\$4,000 insurance
20 payments and the CI\$1,911 monthly mortgage payment on the George Town
21 property, which he claims is not a matrimonial asset, from the CI\$3,050 rental
22 income. This gives the impression that he was prioritising and securing what he
23 perceived to be his sole asset over and above the matrimonial home which is



indisputably a joint asset. He argued that he had to do so to protect his main source of income, namely the rental income.

4 55. The mortgage redemption figure shown in the FirstCaribbean Bank statement of 5
5 December 2013 is CI\$98,601.71, leaving equity of CI\$136,398.29. During the
6 hearing on 29 October 2013 and in their January 2015 comments, the parties
7 reconfirmed that they both accepted the CI\$235,000 valuation and there being
8 equity of CI\$136,398.29.

9
10 56. The wife values her interest at 50% of the equity, namely CI\$68,199.145. The
11 wife also claims that when calculating her percentage of the equity of the property
12 credit should be given to her for the payments she made to the mortgage when the
13 husband ceased paying. Although by failing to pay the husband was in breach of
14 the court order I am satisfied that at the time his income was rapidly and
15 dramatically reduced and that his remaining income was used to maintain other
16 matrimonial assets. Accordingly, each party remains entitled to a 50% interest in
17 the equity of the home.

18
19 57. However, when arriving at the equity figure, the wife failed to mention the
20 balance of around CI\$34,165 left on joint extension loan number IN57 with Credit
21 Union. It would be wrong to disregard that fact and that the collateral for the loan
22 is the North Side property and the husband's Credit Union shares account.

1 58. The wife contends that the matrimonial home should be transferred to her,
2 especially as it is the only home that the children have known, and this could be
3 taken into account when the Court decides what happens with the other assets.
When considering s.19 of the Law, there is some force in her contentions. When
determining the division of the matrimonial assets it would be preferable to do so
in such a way that enables the wife to retain the matrimonial home for her and the
children to reside in and enables the husband to retain the George Town property
which he could reside in and, having regard to his age, provide him a liveable
8 income.
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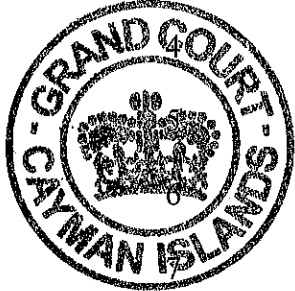
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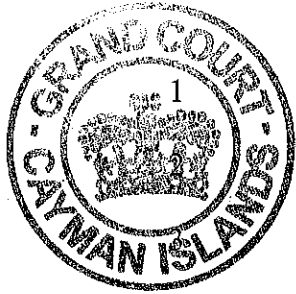
11 59. On 21 August 2013, the first day of this ancillary relief hearing, the husband told
12 the Court that he would be happy for the matrimonial home to be transferred
13 outright to the wife, so that she would receive his 50% interest as well as her own.
14 However, in his skeleton argument dated 2 September 2013 and in Court on 29
15 October 2013 he stated that this was no longer his position and that the property
16 should be sold and the net equity divided equally. The husband now contends that
17 each party should receive their 50% interest in the property.¹⁴

18

19 60. The wife contends that there are other assets for the Court to consider. Firstly the
20 George Town property which is registered in the husband's sole name and was
21 acquired by him only three years before the marriage, back in August 2000. The
22 wife contends that this is an apartment building, with all units rented and

¹⁴ See paragraph 69 below.





generating an income for the husband. The husband accepts that it is an eleven-bedroom, three-kitchen and six-bathroom tenanted property.

4 61. The husband argues that the George Town property is not a matrimonial asset
5 because: (i) it was purchased in August 2000 for CI\$175,000, before the marriage;
6 (ii) he has always been solely responsible for the maintenance of the property; and
7 (iii) he never intended the property's rental revenue to be used to offset
8 matrimonial debts or obligations. He also contends that the CI\$3,050 rental
9 income was used to pay: (i) the CI\$1,911 loan mortgage payment to Cayman
10 National Bank; (ii) house insurance payments of CI\$250; (iii) church tithes of
11 CI\$300; and (iv) CI\$390 for the care of his elderly mother and for the cost of
12 maintaining the property. The husband contends that during the marriage the wife
13 showed no interest in the property and refused to help him with cleaning or
14 preparing the property for rentals.

15
16 62. The wife accepts that the husband uses some of the rent towards the mortgage for
17 the property and that the mortgage payments are not in arrears. The wife states
18 that some of the rent from the property was used to cover the joint extension loan
19 Number IN57 with the Credit Union which had been obtained to renovate the
20 matrimonial home. The wife contends that this is a further clear indication that the
21 husband considered the property to be for the benefit of the family and to be a
22 matrimonial asset. She also says that rent was used to assist with payments of loan
23 number IL-014-03713 with Cayman National Bank extended/increased with



1

additional borrowing of CI\$50,000 by the husband to set up the radio station, which he concedes is a matrimonial asset. The husband agrees that there was an extension to loan number IL014-03713 in April 2009¹⁵ in the sum of CI\$50,000 intended for the setting up of the radio station. The 81 monthly repayments were increased at the time to CI\$1,911. At the time of the increased borrowing the existing loan balance stood at CI\$80,041.48. The collateral for the loan is a first legal charge over the George Town property increased in April 2009 to cover CI\$130,041. It is clear that since 2009 the husband has been paying substantial amounts from his various sources of income which could have otherwise been used for the benefit of the family into this loan account, as its balance has reduced to CI\$61,445.50.

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13 63.

The wife also contends that the husband told her that he had been using his earnings from his employment in the Police Service to fund the additions to the rear of the George Town apartments.

16

17 64.

The wife rightly argues that all of this co-mingling of funds illustrates that the husband viewed the George Town property as being for the benefit of the family, thereby making it a matrimonial asset. The George Town property was purchased only three years before the marriage ceremony by means of a substantial mortgage into which significant payments have been made during the marriage from the husband's income. He has been able to arrange his affairs enabling him to make the payments from the rental income from the property, as the wife has used her

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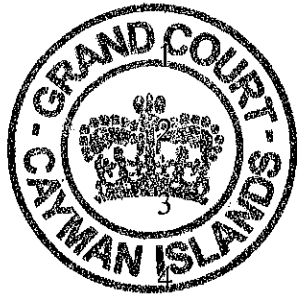
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¹⁵ Existing loan had a balance of CI\$80,041.48 in April 2009.



income to meet some of the family's other expenses. The husband has also used his income, including from that property, to invest in the radio station which he has conceded is a matrimonial asset.

5 65. Despite the submissions made by the husband set out in paragraph 61 above, I am
6 satisfied that due to the co-mingling of funds that the property purchased three
7 years prior to the marriage was intended to be and should be treated as a
8 matrimonial asset.

9

10 66. The wife contends that the equity is CI\$173,554.23, as the value is CI\$235,000¹⁶
11 and the balance of the mortgage with Cayman National Bank as of 4 December
12 2013 was CI\$61,445.5. The husband did not state in his evidence what he believes
13 the equity to be, but each party in their January 2015 written comments agreed the
14 equity to be CI\$173,554.23. I agree with the wife's submission that a 50% share
15 should be allocated to her, quantifying her interest at CI\$86,777.11.

16

17 67. The wife also claims a 50% interest in the piece of land situated in North Side.¹⁷
18 The wife contends that that property should be sold and each party paid 50% of
19 the proceeds of sale. The property is registered in the husband's sole name and
20 was purchased in 2005 using a loan of CI\$37,000 in the husband's name taken out
21 with the CISCA Credit Union. This property is collateral for the joint

¹⁶ BCQS International valuation report dated 10 December 2013.

¹⁷ Block 49A, Parcel 53: North Side registration section – registered in husband's sole name.

1 CI\$112,734.10 Credit Union loan number IN57 for the extension to the former
2 matrimonial home taken out in 2009.

3

4 68. The husband initially misleadingly stated in very clear terms in his affidavit¹⁸ that
5 this property was purchased for \$37,000, well before the parties' marriage in
1988, and it should not be considered as a matrimonial asset. On day one of the
hearing in August 2014, having been shown the extract from the Land Registry,
the husband conceded that his statement his affidavit was incorrect. He belatedly
agreed that the property should be regarded as being a matrimonial asset¹⁹ as it
10 was purchased during the marriage. I find it hard to understand, in the absence of
11 any proper explanation from him, why the husband initially contended that this
12 property had been purchased prior to the marriage when it clearly had not. I have
13 had to treat his evidence with a degree of caution due to this and due to the fact
14 that some other disclosure has only belatedly been forthcoming.

15

16 69. The husband went on to say on day one of the hearing that, as he then proposed
17 that the wife could take his interest in the former matrimonial home, he should
18 retain all of the interest in the North Side property. However, I note that the
19 husband's latest contention is that this property, as well as the former matrimonial
20 home, be sold and the net proceeds of sale be divided equally between the parties.
21 In the alternative he now contends that if one party wishes to retain either property

¹⁸ Paragraph 5 of the husband's affidavit sworn on 8 February 2013.

¹⁹ The husband reconfirmed this during the hearing on 29 October 2013 when he also restated that the radio station and the former matrimonial home were also matrimonial assets.

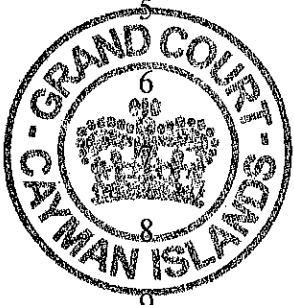


1 that they pay the 50% share to the other party *"in the form of equal instalment*
2 *payments or a cash lump sum payment."*

3
4 70. The husband estimated the value of the North Side property, as of February 2013,
5 to be CI\$45,000. The wife challenged this valuation for the first time during the
6 hearing on 21 August 2013, having failed to question the husband's valuation
7 prior to the hearing. However, during the hearing on 29 October 2013 and in her
8 Counsel's January 2015 written comments she accepted that, for the purpose of
9 these proceedings, the Court could attach a value of CI\$45,000 on the North Side
10 property. Therefore, the wife values her interest in the North Side property to be
11 CI\$22,500. That is the valuation I place on the North Side property and agree that
12 each party has a 50% interest in the same.

13
14 71. During the hearing on 21 August 2013, the husband conceded that his interest in
15 the radio station should also be considered as being a matrimonial asset. The wife,
16 who is the secretary for the radio station, had also been a 25% shareholder, but
17 that was purportedly changed without her consent or knowledge. In his evidence
18 JT, the husband's partner in the radio station who was called by the wife to give
19 evidence, stated: *"Three of us are signatories, us two and Mrs. Thompson has to*
20 *sign the cheques. Despite the divorce, we are still the signatories. She is the*
21 *Secretary to the company."*

22

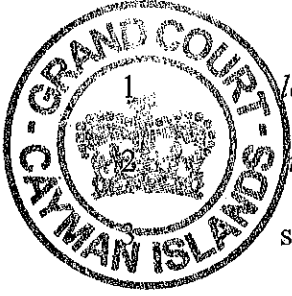




1 72. It is still unclear whether the wife's 25% shareholding has been properly
2 transferred to another. JT states that in 2009 that the husband informed him that
the wife had agreed to transfer her shares to his daughter. He said that a resolution
was made to that effect. JT admitted that there was nothing in writing about the
wife transferring the shares. He accepted that *"It may be that the shares
transferred since then may have been invalid due to lack of documentation.... We
need to meet as directors to see how to sort that out."* The husband did not seek to
cross-examine JT.

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8
9
10 73. The husband places no value on the radio station. The husband, in his oral
11 evidence, stated that over time since the radio station was set up he had invested
12 \$50,000 from the extended Cayman National Bank loan number IL-014-03713
13 secured over the George Town property, as well as making payments from his
14 own pocket and savings at the Royal Bank of Canada.

15
16 74. The wife contends that JT made it clear in his oral evidence that the two existing
17 shareholders were, as a consequence of their investment into it, owed over
18 CI\$71,000 by the radio station and they expected it to be repaid. JT said to the
19 Court in his oral evidence that *"I am hoping that at some time that from the
20 company be able to recover. I expect to be paid, that is at some stage- no interest-
21 no repayment date shown."* He later said that it was not a bad investment, that it
22 was a *"spiritual calling"* and that *"we not paid a salary, we are owed \$72,000."*
23 He then said that *"we hoping get repayment after 4 years on our shareholders."*



loans, but despite that... if not come we will continue to run the station. No refund
has been paid to neither of us. None at all." Again, I note that the husband did not
seek to cross-examine JT.

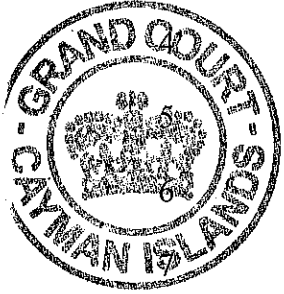
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5 75. The Financial Statements for the radio station for the year ended December 31,
6 2012 prepared by R.A. Thomas, Certified Management Accountant, has an entry,
7 under the heading of a long-term liability, for shareholders loans \$71,984.
8 Therefore, the wife contends that she has a 25% interest; a 50% share in relation
9 to the husband's declared interest. She values the husband's 50% interest at
10 CI\$35,992 and therefore her interest as being CI\$17,996.

11

12 76. Interestingly the husband fails to address how this asset should be dealt with in his
13 skeleton argument filed on 2 September 2013 and his closing submissions filed on
14 15 April 2014. In his written comments submitted on 16 January 2015 he states
15 that the business has no value. I am unable on the oral and written evidence
16 before me to conclude whether the wife's 25% shareholding in the radio station
17 has been legally transferred. If it has not then she is entitled to her 25% interest in
18 the shareholder loan liability from the radio station. If the shares were transferred
19 it is accepted that this is a matrimonial asset and therefore the wife is again
20 entitled to the 25% interest in the loan liability, especially as the loans were taken
21 out and invested in the radio station during the marriage and were tied to other
22 matrimonial assets used as collateral.

23



1 77. The wife also claims a 50% interest in relation to what she terms as being
2 Jamaican investments. The wife contends that the husband told her during the
3 marriage that he removed funds derived from all of his sources of income in
Cayman and from his Cayman accounts and he would, when visiting Jamaica,
deposit them into his accounts there. She therefore claims, having regard to the
balance of the accounts, that they should be regarded as being matrimonial assets
and quantifies a 50% interest as being US\$23,936.03 (CI\$19,627.54). The
8 husband contends that the money invested in the accounts came from rental
9 income generated from the Jamaican rental property, and should not be regarded as
10 being a matrimonial asset.

11

12 78. The husband eventually disclosed the following details about his Jamaican
13 assets²⁰:

14 (i) Policy number S00100100 with Scotia Jamaica Life Insurance Company
15 Limited with a total accumulated value as of 18 April 2013 of
16 J\$873,080.03 (CI\$6,263.12)²¹. Nineteen months after the marriage, on 30th
17 December 2004, J\$102,500 (CI\$728.10) was invested into this account,
18 having been withdrawn from Scotia Savings account number 40896 on the
19 same day. J\$100,000 was intended to be the initial lump sum for the policy
20 and the balance of J\$2,500 was for the regular premium. On the balance
21 of probabilities I am satisfied that this was the J\$102,500 placed in the

²⁰ Both parties agree all the balances set out herein for all eight of the accounts in their January 2015 written comments.

²¹ Currency conversion using <http://www.xe.com/currencyconverter>.

1

account although the documents do not bear the word transferred.²² It appears from the policy date shown in the Anniversary Statement dated 18 April 2013 exhibited by the husband to his affidavit sworn on 8 February 2013 that this policy was properly opened during the marriage on 18 April 2005 and therefore whatever value there may be should be considered as being a matrimonial asset;

6

7

(ii) Regular savings account number 601470929 with Bank of Nova Scotia Jamaica Ltd. which was opened in March 1996 well before the marriage, showing in the most recent statement provided by the husband a balance of US\$12,369. This account was not closed on or around 11 June 2014 as originally alleged by the wife. It appears that the first passbook may have been closed at that time and the balance moved on to the new passbook which was also exhibited to the husband's affidavit sworn on 8 April 2014. At the time the parties married in July 2003 the account had a balance of \$9,324. I accept that it may be argued that the money in the account as of the date of marriage was the husband's and not a marital asset. However, sums were placed into the account after the marriage to such an extent that even after the \$10,000 was withdrawn in November 2004²³ there remained a credit balance of \$1,788.31. Thereafter, despite a withdrawal of US\$5,000 on 12 March 2009, due to further investment into the account the balance has risen to US\$12,369. I am therefore satisfied

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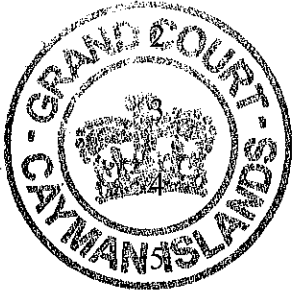
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²² See Scotia Insurance Receipt No. 5855 exhibit to husband's affidavit sworn on 8 April 2014.

²³ See paragraph 78 (vii) below.





that the US\$12,369 (CI\$10,149.87) in the account has amassed since the marriage and should be treated as being a matrimonial asset;

3 (iii) Regular savings account number 925217 with Bank of Nova Scotia
4 Jamaica Ltd showing the balance of J\$34,461.93 (CI\$245.09);

5 (iv) Time deposit with FirstCaribbean (Jamaica) Limited showing the balance
6 redemption value of US\$5,722.12 (CI\$4,695.51) as of 11 November 2013.
7 This investment was created by a deposit of US\$5,000 on 25 November
8 2004, about eighteen months after the marriage, and should be treated as
9 being a matrimonial asset;

10 (v) Time deposit with FirstCaribbean (Jamaica) Limited showing the balance
11 redemption value of J\$1,229,651.43 (CI\$8,820.97) as of 2 September
12 2013. This investment was created by a deposit of J\$1,000,000 made
13 during the marriage, on 13 March 2009 and should be treated as being a
14 matrimonial asset;

15 (vi) Save Smart account number 1265777 with Jamaica Money Market
16 Brokers Ltd. with a balance on 31 March 2013 of J\$59,297.45
17 (CI\$425.37);

18 (vii) Account number 8485435 with Bank of Nova Scotia Jamaica Ltd.
19 showing a maturity value of US\$11,392.61 as of 14 May 2012. I note from
20 a 'Term Deposit Agreement' document that US\$10,000 was paid into this
21 account on 25 November 2004. I also note that on the same date



1 US\$10,000 was withdrawn from his Scotia account 601470929.²⁴ On the
2 balance of probabilities I am satisfied that this was the US\$10,000 placed
3 in the account although the documents do not bear the word transferred.
4 Although at the time of the marriage the Scotia account 601470929 had a
5 balance just under \$10,000 (\$9,324) I am satisfied that the content of
6 account number 8485435 should be regarded as coming from pre-marital
7 savings and should not be viewed as a matrimonial asset. I say this despite
8 the issue of where the \$5,000 investment made on the same date into the
9 FirstCaribbean Bank came from; and

10 (viii) Account number 8486695 with Bank of Nova Scotia Jamaica Ltd.
11 showing a maturity value of US\$5,168.96 (CI\$4,241.59) as of 5 March
12 2012. I note from a 'Certificate of Deposit' document that US\$5,000 was
13 paid into this account on 12 March 2009. This money was withdrawn from
14 his Scotia account 601470929 also on 12 March 2009. On the balance of
15 probabilities I am satisfied that this was the \$5,000 placed in the account
16 although the documents do not bear the word transferred. I am satisfied
17 that the US\$5,168.96 in the account should be regarded as being a
18 matrimonial asset as the pre-marital savings amassed in 601470929 had
19 already been exhausted by the \$10,000 removed from that account in
20 November 2004.

21 79. Having carefully considered the very belatedly fully disclosed bank statements,
22 having regard to my comments above, I am satisfied that the accounts save for the

²⁴ See paragraph 78 (ii) above

1

Scotia account detailed at paragraph 78 (vii) may be regarded as being matrimonial assets. On the evidence before me, I am satisfied that the husband has directed income received during the marriage into those accounts and the current balances are traceable to that income. However, due to the balance dates, the transient nature of accounts and allowing for day to day use, any accounts with a balance of less than a CI\$1,000 will be disregarded. Therefore, when totalling the matrimonial assets, I exclude the Scotiabank Regular Savings account number 925217 and the Save Smart account number 1265777 with Jamaica Money Market Brokers. The remaining accounts total CI\$34,171.06. The wife is entitled to claim a 50% interest, namely CI\$17,085.53, a figure which is less than the CI\$19,627.54 claimed by the wife.

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13 80.

The wife does not seek an interest in the Stony Hill apartment building in Jamaica, Counsel in her closing written submissions and orally at the hearing on 21 August 2013 conceding that it was unlikely to be a matrimonial asset subject to division. She accepts that this property was purchased before the marriage and that the mortgages registered against the property were discharged before the marriage. She does not dispute that this is a property owned jointly between the husband and his brother. It appears that this property brings in roughly US\$850 per month in total, if all of the apartments are rented. I accept the husband's evidence that the rent is used towards the running costs of the building and some is retained by his brother. He also said that some of the balance from the rental income is put into his accounts in Jamaica. He also said that the rental income

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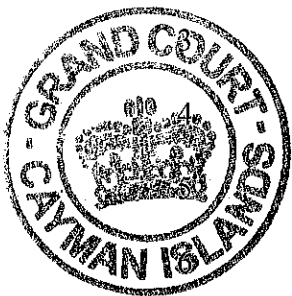
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1 "largely contributed" to the Jamaican investments, but that the fixed deposits
2 investments had come from savings accounts in which it invested prior to the
marriage." The husband, when giving evidence and making his submissions,
chose to not take me through the content of the accounts in such a way to satisfy
me that tenancy money was put into his accounts. Even if I accepted his evidence,
any sums for such investment would have been minimal after the making of
7 payments for the running costs of the property and the payments to his brother. I
8 do not regard this property as providing income to the husband when I calculate
9 the appropriate level of child maintenance.

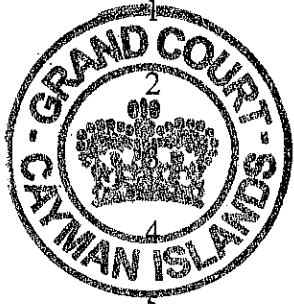
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11 81. I need not turn to deal in any great detail with the husband's accounts held in the
12 Cayman Islands. Although in the skeleton argument filed in support of the wife
13 dated 4 March 2013 the wife sought 50% of the net value of his investment
14 accounts in the Cayman Islands, this position had changed by the end of the
15 hearing. At the top of page 20 of the Supplemental Arguments filed on behalf of
16 the wife does not claim an entitlement to a share of the content of the husband's
17 accounts in the Cayman Islands. On the same page the wife seeks an order that
18 each party retain the benefit of any funds remaining in their bank accounts.

19

20 82. The husband in his written closing submissions dated 15 April 2014 seeks an
21 order that the content of each parties' bank accounts be divided equally. However,
22 the content of the wife's accounts in Cayman total CI\$2,335.81²⁵ and the

²⁵ Share account number 71340 at CISCA Credit Union which had a balance of CI\$1,565.68 as of 30 June 2012 & Account number 012-26799 at Cayman National Bank which had balance of CI\$770.13 as of 14 August 2012.



1 husband's bank account amounts to CI\$1,208.20 before one considers the large
2 balance held in his Credit Union share account. I will take the generous approach
3 advocated by the wife, which is in fact more favourable to the husband especially
4 when one considers the balance in his shares account and the number of
5 inadequately explained withdrawals from his Cayman accounts.

6

7 83. Before I move away from the Cayman accounts, I need to comment upon the
8 husband's Regular Savings account number 700-6315 with a balance on 27
9 November 2013 of CI\$528.64²⁶ with Royal Bank of Canada (Cayman) Ltd. As
10 highlighted by Counsel for the wife, in the week preceding the August 2012
11 financial hearing before Smellie C.J., the husband made unusual withdrawals on
12 three consecutive days from this account totalling CI\$20,000. This reduced, by the
13 date of the hearing, the balance of the account from CI\$21,568.98 to CI\$3,871.²⁷
14 The husband explains that one withdrawal of CI\$10,000 was used to assist his
15 first daughter with the purchase of their first home. Even if he is truthful, this is
16 not a transaction he should have carried out from a potential matrimonial asset,
17 especially in the midst of ongoing divorce proceedings, without the consent of the
18 wife. He does not account for the two withdrawals of \$5,000. His failure to
19 provide sufficient supporting disclosure to enable a proper tracing of the
20 movement of these sums, and the timing of these transactions, fortifies my view
21 that sums of money from his Cayman accounts which could be regarded as being

²⁶ See Statement Transaction History document dated 4 December 2013 attached to affidavit of husband sworn on 6 December 2013.

²⁷ Payroll salary of CI\$2,303 was paid directly into the account on the same days as the hearing.

1 matrimonial assets have been removed for his personal use, including investing in
2 his Jamaican accounts.

3
4 **PENSIONS**

5 84. The husband states that he receives a Government pension of CI\$830.93 per
6 month which he uses for his day to day upkeep and expenses. The husband states
7 that it is paid directly into the Credit Union account from which \$402 is taken
8 every month pay the mortgage on the Credit Union loan taken out for the
9 extension on the former matrimonial home.

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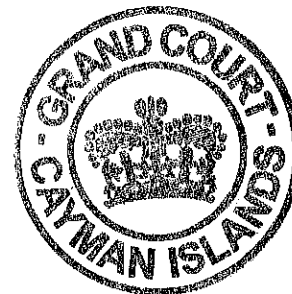
11 85. The wife does not give any disclosure about her projected pension. She indicates
12 that she pays CI\$127.72 per month. What is evident, due to her younger age,
13 unlike the husband, she has a number of years in which to continue to contribute
14 to her pensions.

15

16 86. Both parties contend that there should be a clean break and this includes their
17 intention that both parties should retain the benefit of their respective pensions.
18 Due to the insufficient evidence, I am unable to deduce a value on each pension
19 and due to the parties' agreed position in relation to how to treat the pensions, I do
20 not include them in my calculations.

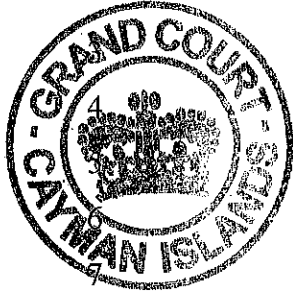
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1 **CONCLUSIONS**

2 87. When calculating the assets for equal division I have the following:



Matrimonial Home equity	CI\$136,398.29
George Town property equity	CI\$173,554.23
North Side property equity	CI\$ 45,000.00
Husband's Jamaican accounts	CI\$ 34,171.06
The Radio Station 25%	CI\$ 17,996.00

8

9 88. I am satisfied that the Credit Union loan IN57 with a relevant balance of
10 CI\$34,165.17 should be treated as being a matrimonial debt.

11

12 89. I order that the former matrimonial home be retained by the wife. I order that the
13 George Town property be retained by the husband. There is a difference in equity
14 of CI\$37,155.94. As I order the husband to be solely responsible for the Credit
15 Union Loan IN57 which has balance of CI\$34,165.17, the difference is reduced to
16 CI\$2,990.77. Having regard to the margin of error concerning the valuations and
17 the fact that the husband had made unspecified mortgage payments prior to the
18 marriage, that it is fair and just to discount the amount of CI\$2,990.77.

19

20 90. I order that the North Side property be marketed for sale forthwith with the
21 intention of it being sold as soon as possible. The parties should agree on the
22 realtor(s) to be used and have joint conduct of the sale. Each party will receive
23 50% of the equity from the sale.

24

1 91. I total the amount in the husband's Jamaican accounts treated as being a
2 matrimonial asset at \$34,171.06. The husband is to make to the wife a lump sum
3 payment of 50% of that figure which amounts to CI\$17,085 within 56 days of the
4 delivery of this judgment.

5
6 92. If the wife has retained her 25% shareholding in the radio station then she will be
7 entitled to receive the 25% shareholder loan repayment from the business as and
8 when it is paid. However, if it transpires that she is no longer a shareholder then
9 she should obtain the same from the husband. However, having regard to JT's
10 evidence, which I accept, there is uncertainty if and when this might be paid.
11 Therefore, it would not be fair and just to expect the husband to make those
12 payments at this stage. Therefore, if the wife is no longer a shareholder, I order
13 that the husband to make lump sum payments up to a total of CI\$17,996 to the
14 wife. Each payment should be 50% of the shareholder loan repayments when
15 made to him by the radio station and that must be done within 14 days of receipt
16 of such payments by him. I order the husband to provide the wife with a copy of
17 the radio station's certified annual balance sheet which will provide details of any
18 shareholder loan repayments made.

19
20 93. Each party shall retain property already in their sole name.

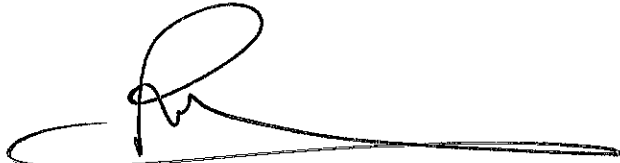
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22 94. There shall be a clean break, with no order for spousal maintenance made.
23



1 **LEGAL FEES/COSTS**

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

5
6
7
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9



HONOURABLE MR. JUSTICE RICHARD WILLIAMS
JUDGE OF THE GRAND COURT

