

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

4 **Cause No. FAM 160 of 2011**

5
6 **BETWEEN** **ELSIE MARIE KYNES** **PETITIONER**
7 **AND** **RONALD KYNES** **RESPONDENT**
8 **AND** **DIANE HARRISON** **CO-RESPONDENT**
9

10
11 Coram: Hall, J (Actg.)

12
13 **APPEARANCES:**

14 *The Petitioner appearing in person*

15 *Daniel Altneu instructed by Samson & McGrath appearing for the*
16 *Respondent & Co-Respondent.*

17
18 **JUDGMENT**

19 The Petitioner and the Respondent herein were married in the Cayman
20 Islands on November 26, 2005. By Petition filed July 21, 2011, the
21 Petitioner sought an Order that the marriage be dissolved and that she be
22 granted Orders pursuant to the Matrimonial Causes Law (2005 Revision).
23 By Order dated August 16, 2011, the Petition was proved.

24
25 The only issue which remains for the Court is the determination of
26 ancillaries. Each side argued for the fair disposition of matrimonial
27 property.



1 The parties have an acrimonious relationship. This is fueled by allegations
2 of infidelity leveled against the Respondent by the Petitioner and
3 allegations of a lack of concern and an unwillingness to send funds on the
4 Petitioner's part when the Respondent was ill and seeking treatment in
5 Cuba.

6

7 A significant issue raised by the Respondent was the allegation that the
8 Petitioner had not made full and frank disclosure of her assets and
9 further, that during the marriage she had made significant withdrawals
10 from the joint accounts of the parties without the consent of the
11 Respondent. These allegations were denied.

12

13 **The Law**

14 The applicable legislation is found in sections 19, 20 and 21 of the
15 Matrimonial Causes Law (2005 Revision). These provide as follows:

16

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

22

23 *20. The Court may make orders pending the outcome of any suit in*
24 *respect of which a petition has been presented providing for –*

25 *(a) the care and control of the children of a marriage;*

26 *(b) the use of the matrimonial home;*



- 1 (c) periodic payments to be made by one party to another pending suit;
2 (d) an injunction for the protection of settled and other property in which
3 either spouse claims an interest;
4 (e) the protection of one spouse from interference by the other; and
5 (f) security for costs.

6 21. At the time of pronouncing a decree under this Law, the Court shall,
7 as appropriate, make orders for –

- 8 (a) the custody, care and control of the children of the marriage;
9 (b) the disposition of matrimonial property, including the matrimonial
10 home;
11 (c) varying any settlement of the property of the spouses made in
12 consideration of the marriage, whether such settlement was made before
13 or upon the treaty of the said marriage;
14 (d) varying any other settlement of matrimonial property;
15 (e) making financial provision from the property of either spouse for the
16 children of the marriage and for the other spouse;
17 (f) providing for periodic payments to be made by either spouse for the
18 benefit of the children of the marriage and for the other spouse; and
19 (g) costs.”

20

21 There are no children of the marriage for the consideration of the Court.

22

23

24





1 **The Evidence for the Petitioner**

2 In her affidavit filed March 14, 2012, the Petitioner stated that she was of
3 limited means and was unable to secure meaningful employment in
4 Cayman Brac which is where she resides. She indicated that she had
5 sought financial assistance from the Department of Children and Family
6 Services ("DCFS"), family and friends.

7

8 According to the Petitioner, at the start of the marriage she had been
9 employed as a sales clerk at Paramount. The Respondent was an artist
10 known as "Foots" and was employed as a maintenance man at the Divi
11 Tiara Hotel. Subsequently the couple started a construction company, E&F
12 Construction; named for them both and from which they made a good
13 living. The Petitioner stated that they used the business to pursue
14 opportunities to build on and sell several properties in Cayman Brac.
15 Following Hurricane Paloma in late 2008 the company did particularly well
16 and the Petitioner left her job at Paramount.

17

18 The Petitioner stated that following this period, she worked for six days a
19 week doing various tasks of physical labour and assisting the Respondent
20 with various projects. She also claimed that she assisted with the
21 necessary paperwork and anything else that the job entailed. According to
22 her, she did not receive a salary for this work. The Petitioner claimed that
23 at times, she would do extra work outside the business so as to
24 supplement the income from the business. This was not done on a large
25 scale.

26

27 In her Affidavit of Means filed May 7, 2012 the Petitioner elaborated,
28 stating that between February 2008 and mid-2011, when the marriage
29 effectively ended, she worked for six days a week doing painting and



1 other physical labour as well as assisting the Respondent with various
2 jobs and projects. She claimed to have assisted the Respondent with
3 tasks such as roofing repairs.

4

5 According to the Petitioner when the marriage effectively ended in mid-
6 2011, she no longer received any meaningful source of income. She
7 stated that the Respondent retained a licence for the business but
8 changed the name (Allantis Construction). In a subsequent affidavit she
9 stated that she had no knowledge of the status of the business. She
10 claimed to have neither pension nor health insurance.

11

12 The Petitioner claimed that at the time of her marriage she had "a good
13 job, a car, a pension and CI \$12,000.00 in savings". She stated that at
14 the time of the preparation of her affidavit, her only asset was the
15 dwelling house in which she resided and which she had owned for a
16 number of years prior to meeting the Respondent. Upon leaving her job at
17 Paramount in 2007 she cashed in her pension for a total of \$15,000. She
18 claimed that these funds were invested in property described as
19 registration section Little Cayman West, Block 81A, Parcel 30 which is
20 registered in the joint names of herself and the Respondent. The
21 Petitioner claimed that this property had formed the bulk of her father's
22 estate and it had been given to her by her mother with the consent of her
23 siblings.

24

25 It was the Petitioner's evidence that she had been the holder of an
26 account at Cayman National Bank in which she added the Respondent as
27 a joint holder in February 2005. She stated that following the breakdown
28 of the marriage, in June 2011, she removed her name from the account.
29 She opened an account at the same bank in her sole name. She is also a



1 joint holder of three savings accounts with each of her three children
2 being: Thomas Sevik; Timothy Sevik and Patricia Sevik. She stated that
3 the balances in these accounts are minimal. She also identified a term
4 deposit account at the same bank which had been opened for her mother
5 in December 2005. She claimed that the initial deposit amounts of over
6 \$11,000 came from her mother's pension. She claimed that in September
7 2010, her mother agreed to loan herself and the Respondent \$3000 to
8 assist with their living expenses and that further funds were taken out to
9 purchase a motor-vehicle for her sister Eldeen Banks who had been caring
10 for their mother.

11

12 In her evidence, with respect to allegations made by the Respondent that
13 she had siphoned funds from their accounts for her own purposes, the
14 Petitioner countered that two years prior to separation, the Respondent
15 had gathered all bank papers and had made no complaint that all was not
16 in order. She also testified that most withdrawals had been made by her
17 at the direction of the Respondent, for the business and was largely spent
18 on building materials. She claimed that she had not kept proper records
19 concerning her withdrawals and spending.

20

21 The Petitioner categorically denied stealing any money from the
22 Respondent. In relation to a withdrawal of over \$100,000, she again
23 claimed that she had acted at the Respondent's behest.

24

25 In responses given during her testimony, the Petitioner suggested that
26 funds were intermingled. She referred to: using money from her
27 children's accounts at times to purchase items for the Respondent and
28 subsequently repaying it; purchasing building materials from her daughter

1 for the Respondent's work with funds that they had and using money that
2 they held, on various homes that they had contracts to repair.

3
4 The Petitioner's comments on the real property which formed part of the
5 matrimonial assets are noted below.

6
7 **The Evidence for the Respondent**

8 The Respondent filed an affidavit on March 26, 2012. Thereafter, he filed
9 an Affidavit of Means, a Request for Further Information and an Answer to
10 the Petitioner's Request and Second Request for Information. Counsel for
11 the Respondent invited the Court to consider the last document in
12 particular, along with written submissions.

13
14 According to the Respondent, he went to reside on Cayman Brac full time
15 in 2003. He had a full time job as head of maintenance at the Divi Tiara
16 Resort, the income from which in addition to his savings were sufficient to
17 satisfy his financial needs.

18
19 With reference to the construction company, E&F Construction, the
20 Respondent claimed that he alone owned and operated that company,
21 starting it in February 2005, prior to his marriage. He stated that as he
22 was living with the Petitioner at the time, the "E" in the name of the
23 business was in fact an acknowledgment of her. He stated that he
24 continued to use the business on contracts for the repair and maintenance
25 of homes in Cayman Brac and Little Cayman throughout the marriage. He
26 stated that he and the Petitioner lived off the business income and
27 savings; which he accused the Petitioner of depleting prior to their
28 separation.



1 According to the Respondent, in 2006/2007, he and the Petitioner agreed
2 that he would commence a major building project in Little Cayman called
3 Blossom Village. The plan was for four residential structures, however at
4 the time of the filing of his affidavit only one had been completed and the
5 other three were "shells". The Respondent stated that due to the physical
6 difficulties which he is experiencing; he was unable to continue the work
7 and he has abandoned the project for the time being. He stated that
8 hopefully they would eventually be completed and sold.

9

10 He maintained that throughout the marriage, the business, now called
11 Atlantis Construction, brought in a satisfactory income. He stated that it
12 was only upon the decline of his health in September 2010 that his ability
13 to work had been affected and his income reduced. In his evidence, the
14 Respondent referred to his several medical difficulties, treatments which
15 he had sought for them and the current poor state of his health.

16

17 According to the Respondent, given the world economy and the state of
18 his health his future income earning potential will suffer. He continues to
19 require extensive medical treatment.

20

21 The Respondent stated that he neither had any income nor any capital.
22 His money was tied up in matrimonial assets with one home having been
23 placed on the open market for sale. He claimed to have no money to live
24 off. He stated that the Co-Respondent assisted him with food and income.
25 Additionally, a good friend, Robert Groh has assisted him financially and
26 the Respondent hoped to repay him once the matrimonial assets were
27 sold.

28



1 The Respondent categorically denied that the Petitioner worked with him
2 in the business and stated that throughout the marriage she hardly
3 worked. He stated that she made a unilateral decision to leave her job in
4 2008 and has not worked since then.

5

6 The Respondent subsequently conceded that on occasion the Petitioner
7 had assisted him with the business. He denied that this had ever been
8 full-time occupation and he further denied that she had ever undertaken
9 physical labour. He stated that at that time the Petitioner lived full-time
10 on Cayman Brac while he lived and worked almost full-time in Little
11 Cayman. He pointed to the bank statements for verification.

12

13 The Respondent subsequently conceded that the Petitioner had performed
14 a few physical tasks which included painting, raking in a yard and
15 assisting with roofing. He also conceded that the Petitioner had acted as
16 Secretary for the business. He stated that she controlled the financial side
17 of matters while he controlled the physical side of the business. He
18 conceded that the Petitioner did not receive a salary for the work that she
19 did in the business but rather, took whatever funds she required from the
20 business.

21

22 The Respondent provided details of his income and assets. He made
23 various allegations about the Petitioner's handling of their joint bank
24 accounts over the years. The essence of these allegations was the strong
25 assertion that during the marriage, the Petitioner had depleted their
26 accounts of funds for her own benefit, unbeknownst to him.

27



1 The Respondent alleged that over the years the Petitioner transferred
2 funds from their savings account to her children's accounts and accounts
3 held in her sole name. He claimed that he rarely accessed the joint
4 accounts. He also accused the Petitioner of trying to dispose of
5 matrimonial assets by transferring them into the names of her children.
6 In particular, he referred to a land transfer document dated September
7 30, 2011 in relation to Cayman Brac East, Block 106D Parcel 11, which
8 was transferred into the names of the Petitioner and her son after the
9 divorce petition had been filed.

10

11 According to the Respondent, despite his initial refusal, following the
12 marriage, the Petitioner insisted that his name be transferred to property
13 which she already owned in Little Cayman. He stated that her purpose for
14 this was for them both to construct rental properties. According to the
15 Respondent, since the Petitioner took these steps, including removing the
16 names of family members from the property so as to give him an interest,
17 he decided to add her name to the Title for properties which he owned in
18 Cayman Brac.

19

20 The Respondent's comments on the real property which formed part of
21 the matrimonial assets are noted below in greater detail.

22

23 **The Real Estate**

24 In the documents filed by each party several properties were identified.
25 These properties were the only real assets of the parties. Not all were
26 asserted to be matrimonial assets.

27

28



1 **1. Re: Block 102A, Parcel 137, South Side, Cayman Brac**

2 There is no dispute that at the time of the marriage, the Respondent
3 owned this land solely. Additionally, both parties referred to the property
4 as "the matrimonial home". It is also not in dispute that on June 8, 2009
5 the property was transferred into the joint names of the parties.

6

7 According to the Petitioner, at the time of the marriage, present on the
8 land were an unfinished house and a small unfinished apartment.
9 According to the Petitioner, the Respondent tricked her into using a gift of
10 US \$1000 from his father along with US \$4000 from her personal savings
11 as funds sent to his father to purchase building materials to complete the
12 house. Allegedly, this total of US \$5000 was a partial repayment of a loan
13 made to the Respondent by his father and no materials were ever
14 purchased.

15

16 The Petitioner stated in her affidavit that she used her best efforts to
17 assist in completing the house however it was severely damaged in a
18 Hurricane Paloma and the partially completed apartment was completely
19 destroyed.

20

21 According to the Petitioner, the house, a two-bedroom two bathroom unit
22 which was treated as the matrimonial home was subsequently repaired.
23 She claimed that the following funds were applied towards these repairs:

- 24 1. \$36,000 received from the Paloma Hurricane Fund;
25 2. \$7000 from the Petitioner's mother.

26



1 The Petitioner claimed to have assisted the Respondent in the various
2 developments using \$6500 from funds received by the Petitioner for her
3 home in Spot Bay. She also claimed that he was paid \$13,000 out of the
4 \$36,000 which had been received.

5

6 The Petitioner claimed that the home was valued at \$250,000 and had
7 been listed on the market for \$275,000.

8

9 According to the Respondent, this property, located at 1508 South Side ,
10 Cayman Brac was built by him in 1994. After June 8, 2009 when it was
11 transferred into the joint names of himself and the Petitioner, it was the
12 Petitioner who mainly occupied it while he spent most of his time in Little
13 Cayman. The Petitioner vacated the home in June 2011 and the
14 Respondent returned in November 2011. The Respondent stated that he
15 spent almost two months cleaning and remodeling the property which had
16 been left in a bad condition; so as to put it on the market for sale.

17

18 The Respondent submitted that this property, although owned jointly by
19 himself and the Petitioner, should be excluded from consideration as
20 matrimonial property based on his assertion of the existence of the
21 following facts.

- 22 1. He owned the property for almost twelve years prior to the
23 marriage and built a house thereon.
- 24 2. Although both parties lived in the house following the marriage,
25 after 2006 they no longer shared a home or any physical
26 relationship with the relationship being merely a business one.



1 3. Although the Respondent added the Petitioner's name to the Land
2 Register in June 2009, it was she who remained in the house while
3 he worked on construction projects in Little Cayman.

4 4. The Petitioner vacated the property in June 2011 leaving it in poor
5 physical condition.

6 5. The Respondent returned to the property in November 2011.
7 Originally planning to sell the property, he spent time cleaning and
8 remodeling the property he thereafter made it his place of
9 residence. It is his plan to remain on the property for the rest of his
10 life.

11 6. The Petitioner made no contribution towards the upkeep and
12 maintenance of the property. The Respondent has been solely
13 responsible for these expenses.

14 7. Any claims that the Petitioner assisted the Petitioner in building the
15 house or used money she received from Hurricane relief on the
16 house are disproved by the pleadings in the case.

17 8. The parties only lived in the house for one year after marriage and
18 thereafter lived in separate residences. As such the property was
19 not a true matrimonial home.

20

21 During cross-examination, the Petitioner stated that she was not seeking
22 an interest in this property, subject to her being able to reclaim her own
23 property.

24

25 **2. Re: Block 81A, Parcel 30, Blossom Village, Little Cayman**

26 The value of this property is unclear and the differential in estimates
27 given by both parties is significant.



1 In her Affidavit of Means, the Petitioner stated that this property had
2 formed the bulk of her deceased father's estate. There were currently
3 three incomplete wooden structures thereon and it was the subject of a
4 "stop notice" issued by the Planning Department. She stated that the land
5 was valued at \$90,000.

6

7 According to the Petitioner, when her father owned the property, he built
8 two small cottages on it. At his death it devolved to her mother. In May
9 2002, title passed to the Petitioner, her mother and the Petitioner's
10 daughter. In June 2004 the Petitioner became the sole owner of the
11 property. The Respondent did not dispute the Petitioner's version about
12 how she came to acquire ownership of this property in her sole name.

13

14 It was the Petitioner's position that she and the Respondent having
15 agreed to start a business together, E&F Construction, they agreed to add
16 the Respondent's name as co-owner of this property so that they could
17 jointly secure financing and building permission to build two cottages and
18 a block of apartments on the property. The income from these buildings
19 was meant to benefit the couple as well as the Petitioner's mother.

20

21 According to the Petitioner, she invested all of her income and pension
22 into the buildings on the property. She claimed that the Respondent, as a
23 member of the Development Control Board (Cayman Brac & Little
24 Cayman) had the responsibility of ensuring that the necessary plans and
25 permits were in place and she assumed that he had carried out his role.
26 She stated that it was shortly before the parties separated that the
27 Respondent advised her of an enforcement notice from the Development
28 Control Board requiring that the buildings on the property be demolished
29 due to the failure to obtain planning permission.





1 It is the Petitioner's desire that this property be returned to her.

2

3 The Respondent contended that it was at the Petitioner's insistence that
4 the names of her family members were removed while his was added as a
5 joint owner. He stated that his name was added to the title after they
6 jointly agreed to commence a huge building project in May 2006 and
7 which spanned five years.

8

9 According to the Respondent the Petitioner's reason for adding his name
10 to the Register was to enable him to obtain the requisite planning
11 permission. He also claimed that since he already owned E&F Construction
12 prior to the marriage he was meant to use this expertise and contacts to
13 manage the project and provide both parties with rental income.

14

15 The Respondent claimed that between early 2007 and November 2011 he
16 spent a great deal of time clearing the land and building structures on it.
17 It was his position that the Petitioner had significantly overstated her role
18 in the renovation project. He stated that while he occasionally received
19 help from persons that he would employ, he received no assistance from
20 the Petitioner who he claimed remained on Cayman Brac. The work on
21 this property has not been completed. It contains two small one-bedroom
22 cottages and one large four bedroom two storey house. There is an
23 additional one-bedroom cottage at the back. Issues arose with the
24 Development Control Board which coincided with the progression of the
25 Respondent's ill health and his travels abroad for medical treatment.

26

27 The Respondent placed a value on the property of US \$994,964. It was
28 his submission that the value of the property should be shared equally. It

1 was submitted that although the Petitioner had brought the land into the
2 marriage he had made a significant contribution in both financial and
3 physical endeavors over a five-year period.

4

5 The Respondent expressed the view that the design of this property did
6 not allow for it to be divided between the Petitioner and himself. It was
7 submitted additionally that the division of this property would be
8 complicated because of the nature of the buildings thereon which are in
9 various stages of completion. Due to ill-health the Respondent has been
10 unable to continue any construction work himself. Additionally there is
11 still substantial work required and an estimate would be needed in order
12 to accurately calculate the costs of these works. Further, the enforcement
13 notice served in June 2011 has not yet been resolved.

14

15 **3. Re: Block 105A, Parcel 59, Cayman Brac (Land)**

16 The Petitioner identified this property as being a parcel of land jointly
17 owned by herself and the Respondent and valued at \$16,000. Despite a
18 somewhat ambiguous statement from the Respondent that the parcel of
19 land was purchased by him in December 2007 yet constitutes matrimonial
20 property subject to equal division; it would appear that it is jointly owned.
21 The property is however designated as Land for Public Purposes.
22 According to the Respondent, it has no resale value because construction
23 cannot take place on it.

24

25 **4&5. Re: Block 110A, Parcel 150, Cayman Brac (Land) & Block**
26 **110A, Parcel 151, Cayman Brac (House).**

27 The Respondent sought to exclude the properties: Block 110A, Parcel
28 150, Cayman Brac (Land) and Block 110A, Parcel 151, Cayman Brac





1 (House) from consideration as matrimonial assets based on his assertion
2 of the existence of the following facts.

3

4 1. He purchased all the land as a single parcel in 1997 and subdivided
5 it into three properties. Then, through his sole financial and physical
6 efforts, he built structures on each parcel.

7 2. The house on one subdivided parcel was sold in June 1998.

8 3. A contract of sale for the house on Parcel 151 was entered into on
9 November 28, 2007 for US\$100,000. US \$75,000 has been received
10 to date; \$50,000 paid on November 28, 2007 and \$25,000 paid on
11 November 10, 2010. Formal transfer is on hold, pending payment of
12 the final installment.

13 4. There is an unfinished structure on Parcel 150 which houses the
14 Respondent's building materials.

15 5. The Petitioner made no contribution towards the acquisition or
16 improvements of these assets.

17 6. The parcels of land have only been held in the joint names of the
18 Respondent and the Petitioner since June 2009.

19

20 According to the Petitioner's version of events, during the marriage, she
21 and the Respondent built and sold a home for US \$100,000 to one Jimmy
22 Dezauche. She claimed that she had not benefitted from the proceeds of
23 sale thus far and she is aware that US \$25,000 is still outstanding.

24

25 It was submitted on behalf of the Respondent in the alternative, that
26 should it be considered that the Petitioner was entitled to any portion of
27 the outstanding sales proceeds, that she had already been compensated.

1 Reference was made to allegations of large cash withdrawals, a US \$7000
2 shopping trip taken to the USA and transfers directly originating from the
3 sale proceeds in the sum of US \$14,655.97.

4

5 **6. Re: Cayman Brac East, Block 106D, Parcel 11**

6 In her affidavit of means filed May 7, 2012 the Petitioner identified this
7 property as non-matrimonial property.

8

9 At that time the title was registered in the joint names of herself and her
10 son Timothy Sevik. She originally claimed that it was acquired by her in
11 1996 from James W. Peters Jr. for the sum of US \$40,000. Subsequently
12 in other evidence, the Petitioner claimed that the property had been a gift
13 from Mr. Peters and that the sum of US \$40,000 had merely been
14 endorsed on the land register because a value had been required.

15

16 The Respondent pointed to the variance in the Petitioner's evidence
17 concerning ownership as proof that her evidence in these proceedings was
18 less than truthful.

19

20 There is no dispute that following the separation in May/June 2011 and
21 the filing of the Petition for divorce in July 2011, the Petitioner added the
22 name of her son Timothy Sevik to the land register in September 2011 as
23 a joint owner. The property was subsequently sold for US \$150,000 on
24 February 6, 2013. The Respondent submitted that the Petitioner's actions
25 were an attempt to exclude him from any entitlement to a share in the
26 property.

27



1 This is the same property described by the Respondent in his documents
2 as North East Beach House (the "Creek"), Block 106E, Parcel 11, Cayman
3 Brac. The Respondent claimed a beneficial entitlement in the property. He
4 asserted that during the marriage he made several improvements to the
5 property especially after the hurricane of 2008. These improvements were
6 as follows:

7 "a. Totally remodelled the bathroom with new shower and sink and
8 ceiling.

9 b. Totally remodelled the kitchen with new cupboards and countertops
10 and ceiling.

11 c. Totally remodelled the upstairs loft – walls, ceiling and new windows.

12 d. Repainted the downstairs bedroom – added closet and new ceiling.

13 e. Added laundry room on the back of the house.

14 f. Added a new roof over the back porch.

15 g. Removed all the old screws from roof and refashioned with new
16 screws.

17 h. Added three new ceiling fans downstairs.

18 i. Painted the entire exterior of house.

19 j. Put hurricane clips on all the rafters and bracing on the roof."
20

21 The Respondent claimed that the Petitioner was awarded CI \$15,648.75
22 for repairs and he assumed that these funds had been deposited into their
23 joint accounts. He alleged that he later discovered that the Petitioner had
24 retained all of the money. He did also state that she used other
25 matrimonial funds in order to carry out the necessary work to the
26 property.



1 Following a Court order made on August 1, 2013, the sum of US \$67,500
2 is being held in an escrow account pending resolution of this matter. This
3 sum represents half of the sale proceeds less realtor's commission of US
4 \$15,000. It was submitted by the Respondent that the Petitioner retained
5 an equal sum in cash, being the other half of the sale proceeds.



6
7 **7. Re: House at Spot Bay**

8 A house in Spot Bay is included in the Respondent's claim as being
9 matrimonial property. According to the Respondent, the Petitioner has
10 advanced contradictory statements concerning ownership of this property.
11 The Respondent contends that it is the Petitioner's home. According to the
12 Respondent he had spent a great deal of time and money renovating the
13 property for the Petitioner's mother when she was alive. The court was
14 asked to adjudicate upon whether the Respondent has any entitlement to
15 a share in this property.

16
17 It is correct that the Petitioner in her Affidavit of Means filed May 7, 2012,
18 referred to "my own home in Spot Bay". However, in her Response to the
19 Respondent's request for further information, filed April 26, 2013 she
20 categorically denied owning a home in Spot Bay. Neither side assisted the
21 Court with a copy of a land register which would settle the issue of
22 ownership of the said property.

23
24 However, in her testimony, the Petitioner stated that while she lived
25 there, the property had been registered in the name of an uncle, who had
26 offered to transfer it to her. She went on to state that she was "given" the
27 house during the previous year. Then during cross-examination, the
28 Petitioner stated that her name and that of her brother have been
29 registered as the owners of this property.

1 She further claimed that the Respondent had been paid \$10,000 for the
2 work that he did repairing the Spot Bay home. She claimed that he did
3 not complete the work.



4
5 **Submissions**

6 Although the Petitioner had the assistance of Counsel in the preparation
7 of her documentation in this matter, at the final hearing for ancillaries she
8 was unrepresented. As such, formal submissions were only made by
9 Counsel for the Respondent.

10
11 For her part, during her testimony, the Petitioner claimed that she only
12 desired the return of her money which was being held on escrow and the
13 re-transfer to her of her property in Little Cayman.

14
15 It was submitted on behalf of the Respondent that the Court had to
16 determine the following:

- 17 1. The extent of and value of assets which are the subject of the
18 Court's dispositive powers. This issue could involve the following
19 sub-issues:
- 20 2. Which of the seven relevant properties or portions thereof are to be
21 classified as matrimonial and non-matrimonial property and
22 consequently the percentage shares to which each party is entitled;
- 23 3. Whether account should be taken of the wife's alleged dissipation of
24 joint matrimonial funds and adverse inferences drawn from the
25 wife's lack of disclosure to the contrary and if so, whether and to
26 what extent the husband is entitled to recoup his share of these
27 joints matrimonial funds from the wife's award of matrimonial
28 property.

1 It was submitted that the Petitioner had been reluctant to provide full and
2 frank disclosure of her financial position and the Court was invited to draw
3 adverse inferences from this. The Respondent also submitted that the
4 Petitioner had hidden assets. With reference to documents filed herein,
5 the Respondent submitted that the Petitioner's evidence about her actions
6 and her assets had been extremely inconsistent.

7

8 With reference to documents filed herein the Respondent also submitted
9 that in 2009 the Petitioner made cash withdrawals and transfers totaling
10 CI \$109,871 to herself or to family members from the parties' joint
11 savings account with Cayman National Bank. During the same period it
12 was submitted the Respondent only withdrew CI \$16,720 for the purposes
13 of medical treatments that he received in Cuba in September, October
14 and December 2009.

15

16 The Respondent also alleged that despite the request for same, the
17 Petitioner had failed to disclose all relevant bank statements, from
18 accounts opened or closed between February 2005 and June 2011 and
19 held under her name or that of her children. It was submitted that these
20 were relevant because funds drawn by the Petitioner from the parties'
21 joint accounts without the consent of the Respondent were likely
22 deposited into these accounts.

23

24 It is noted that in her evidence, the Petitioner alleged that withdrawals
25 made by her were largely done in respect of the business, including the
26 purchasing of materials. She also alleged that she largely acted according
27 to the Respondent's directions.

28



1 The Respondent submitted that the total withdrawals and transfers made
2 by both parties in 2008 and 2009 amounted to CI \$158,220. The
3 Respondent claimed that he was entitled to a 50% share of this
4 amounting to CI 579,110, given the Petitioner's inability to account for
5 these funds. Since the Respondent only benefited in the sum of CI
6 \$16,720 in 2009, he sought a credit of CI \$62,390 to be applied to any
7 award that he is given upon the division of the matrimonial property and
8 for this sum to be deducted from the Petitioner's award. Alternatively the
9 Respondent sought an adjustment of CI \$46,575.50 (US \$56,800) in
10 respect of the 2009 values provided.

11

12 Following the Respondent's testimony, his Counsel made the additional
13 submission that the sum of \$71,000 owed to Robert Groh should be
14 treated as a matrimonial liability and the joint responsibility of both
15 parties.

16

17 By summons filed October 17, 2011, the Petitioner had sought an order
18 for interim maintenance. This issue had not yet been addressed.

19

20 For his part, the Respondent rejected the Petitioner's claim for spousal
21 maintenance. It was submitted that the parties were asset rich but cash
22 poor. The Respondent indicated that he had no funds and his ongoing
23 medical problems supported his position that he would likely never work
24 again. He has been relying on the assistance of a friend for loans.

25

26 According to the Respondent, throughout the marriage the Petitioner had
27 hardly worked and her decision to leave her job was not a mutual choice
28 which was made to benefit the marriage partnership. The Respondent



1 submitted that while he is unable to afford to pay the Petitioner spousal
2 maintenance; she, being in good health and at an age where she is able
3 to work; should be able to provide for herself.

4

5 It was noted that during her evidence-in-chief the Petitioner stated that
6 she did not want any money from the Respondent, other than the funds
7 that were being held for her. This could be interpreted as an
8 abandonment of her claim for spousal maintenance.

9

10 **The Court's Approach**

11 I accepted the submission of Counsel that there is a general principle of
12 equal division as the starting points in the matrimonial cases.

13

14 The decision of the Cayman Islands Court of Appeal in **Wight v Wight**
15 **No. 6 of 2006** is authority for the position that the modern concept of
16 marriage is as "*a partnership of equals*". This means that the parties were
17 entitled to share in what the partnership had created by its economic
18 endeavors, upon the dissolution of the partnership.

19

20 In determining what the matrimonial and non-matrimonial assets are, the
21 reasoning in the Court of Appeal decision of **McTaggart v McTaggart**
22 **[2011] 2 CILR 366** is instructive. There, Chadwick, P referred to the
23 case of **Miller v Miller [2006] 2 AC 618** wherein it was stated that
24 matrimonial property comprises "*property acquired during the marriage*
25 *other than by inheritance or gift*". It was also stated in *Miller's case* that
26 the distinguishing feature of matrimonial property is that it is "*the*
27 *financial product of the parties' common endeavour*".





1 In **B-H v H [2009] CILR 185**, the Grand Court held:

2 *"When ordering the division of matrimonial property pursuant to s.21 of*
3 *the Matrimonial Causes Law, the court would first have to determine what*
4 *constituted "matrimonial property". It would need to have regard to all*
5 *the circumstances, including the circumstances and timing of the*
6 *acquisition of the property, the parties' contributions, their apparent*
7 *intentions with regard to and the use of the property during the marriage*
8 *and how they organised their financial affairs. It was important not to*
9 *look at the situation with hindsight but to consider these circumstances at*
10 *the time the relationship existed. It did not automatically follow that,*
11 *because property had been acquired by one party prior to the marriage*
12 *and the title remained in the name of that party, it would not be possible*
13 *for it to have become matrimonial property. Equally, it would also follow*
14 *that not all property brought into the marriage would become*
15 *automatically subject to division. Non-matrimonial property would not be*
16 *irrelevant to the ordering of financial provision, however, because it would*
17 *have to be taken into account when assessing the owner's needs".*

18

19 An extremely helpful case is the decision of the Grand Court in **Ebanks v**
20 **Ebanks 1992-93 CILR 294**. It was authority for the proposition that the
21 court should deal equitably with a spouse who had not contributed as
22 much financially as the other party to the marriage. It assists in the
23 instant case because of the approach taken in determining the intent of
24 parties to a marriage, from their action.

25

26 In *Ebanks* the parties had been living together for six or seven years prior
27 to marriage. During this period the petitioner wife purchased the land on
28 which the matrimonial home was subsequently built. She obtained a
29 mortgage for the purpose of developing the property and she also



1 included the name of the respondent as guarantor. She argued that the
2 respondent's name had been included as guarantor to the mortgage loan
3 because the bank required this as additional security.

4

5 There was one child of the marriage. Throughout the marriage the
6 petitioner paid the mortgage and the expenses of the home generally
7 from her own income and with the assistance of a child from a previous
8 marriage. The respondent's contributions were minimal because of his
9 drinking and his lack of regular employment. The respondent did make
10 some payments towards house expenses and assisted in minor
11 improvements. The mortgage debt was increased when the balance of his
12 car loan was added but he defaulted on that loan.

13

14 Among its conclusions, the court noted that the incidence of legal title
15 being registered in the name of only one party was not definitive of the
16 manner in which the court would exercise its jurisdiction given the court's
17 virtually unfettered discretion to provide for a just distribution of
18 matrimonial assets including the matrimonial home under the Matrimonial
19 Causes Law.

20

21 It was held that while the petitioner wife from the outset had been the
22 one to mainly finance the purchase and development of the matrimonial
23 home, the addition of the respondent's name as guarantor to the
24 mortgage loan was an indication that the parties intended that he should
25 have an interest by virtue of and to the extent of his contributions.

26

27 Finally, there is the case of **W v W [2009] CILR 255** a decision of the
28 Court of Appeal of the Cayman Islands. The marriage in that case had



1 lasted for over 20 years and had produced two children. The court at first
2 instance had declared that the husband's retail business, which he had
3 started prior to the marriage was not a matrimonial asset. The Court of
4 Appeal held that the lower court had used an incorrect approach in
5 arriving at this conclusion. It was held:

6

7 *"The court had not had proper regard to the applicable principles*
8 *when dealing with the property brought into the marriage by one of*
9 *the parties. The factors to be considered depended upon the length*
10 *of the marriage, with fairness requiring in a short marriage that the*
11 *parties should not normally be entitled to a share of such property.*
12 *In a longer marriage, the court would have to consider the nature*
13 *and value of the property, the circumstances in which it was*
14 *acquired and how the parties organised their financial affairs."*

15

16 Having reviewed the documentation filed in this matter and in particular,
17 having listened to the testimonies of each party and viewed their
18 demeanor while giving same, I found neither side's account sufficiently
19 compelling to tip the balance totally in any one direction. I was not
20 satisfied that either the Petitioner or the Respondent was being wholly
21 truthful. I found that to differing degrees, on different occasions, each
22 party sought to avoid and minimize their actions in addition to
23 exaggerating the actions of the other. For example, I rejected the
24 concurrent allegations about trickery in the use of one party's money and
25 about one party being forced to have his name placed on property.

26

27 It was somewhat disingenuous for the Respondent to assert that the
28 marriage had effectively ended after one year and evolved into a business



1 relationship. It was after this period of time that he transferred a joint
2 share of his interest in three of his properties to the Petitioner.

3

4 Based on the Respondent's evidence, the Petitioner was merely an
5 unsalaried Secretary in the business. Yet he conceded that all financial
6 matters were left up to her and he that never queried what was
7 happening to the funds from the business.

8

9 There is a great deal of acrimony between the parties at this time. I found
10 however that the actions of the parties before and after marriage
11 demonstrates that which was their clear intentions. Each party owned
12 property in their sole names prior to the marriage. Post marriage, the
13 other party's name was added as a joint owner to some properties but not
14 to others. They also jointly purchased a property (LLP land). Joint
15 accounts were also opened.

16

17 The inescapable inference is that the parties intended that each would
18 benefit from the ownership of the jointly held properties. Further, they
19 would each utilize their individual skills in the operation of the
20 Construction business, E & F Construction. The Respondent had the skills
21 in construction and the Petitioner had some financial acumen.

22

23 Where each party owned property prior to the marriage and subsequent
24 to the marriage; added the other party as a joint owner and thereafter
25 the property was jointly utilized, the inescapable inference is that this was
26 done so as to give the other party an equal share therein; regardless of
27 the level of work or funds invested by either party. Property owned prior

1 to the marriage for which all of this was not done was intended to be
2 retained by the individual.

3

4 With the exception of any real estate excluded as matrimonial property, I
5 concluded that despite the short duration of this marriage, on the facts,
6 each party is entitled to a half share in the real estate of the marriage.

7

8 **Findings**

9 I find that the business E&F Construction while solely owned by the
10 Respondent was clearly started after both parties agreed that it would be
11 used in the business of construction, and repair and that they would both
12 be involved and derive income therefrom.

13

14 I find that the Petitioner worked in the business after leaving her job at
15 Paramount. She assisted the Respondent with some physical labour but
16 she mainly acted as Secretary. She took charge of the paperwork and the
17 financials while the Respondent supplied the majority of the physical
18 labour for the business. I also find that the Petitioner occasionally did
19 work on an ad hoc basis outside of the business. The Petitioner did not
20 receive a formal salary from the business.

21

22 I find that proper business records were not maintained but the Petitioner
23 did contribute to the business. E&F Construction is no longer in existence
24 and in any event, the Petitioner made no claim on business proceeds.
25 Consequently, no order is made with respect to the business.

26



1 I find that the Petitioner invested funds in the property formerly owned by
2 her father and registered as Little Cayman West, Block 81A, Parcel 30.
3 The Respondent supplied a great deal of labour on this property in the
4 project known as Blossom Village. I accept that he is entitled to a half
5 share in this property.

6 The land registered as Block 105A, Parcel 59, Cayman Brac is jointly
7 owned matrimonial property and each party is entitled to a one half share
8 in same.

9

10 I do not accept the Respondent's assertion that the Petitioner at no time
11 contributed towards the maintenance and upkeep of the property known
12 as Block 102A, Parcel 137, South Side, Cayman Brac. I consider this
13 property to be matrimonial property to which each party is entitled to a
14 one half share.

15

16 The contract for the sale of the house located on Block 110A, Parcel 151,
17 Cayman Brac having been made by the Respondent prior to transferring a
18 share of his interest in same to Petitioner, the latter is not entitled to a
19 share of any funds which were paid prior to her joint ownership. I find
20 that following the establishment of joint ownership, this property became
21 matrimonial property. The Petitioner was entitled to a share of the
22 payment of US \$25,000 made in November 2010 but I will make no order
23 is made in respect of that sum. The Petitioner is definitely entitled to a
24 half share in the sum of US \$25,000 which is owed by the purchaser.

25

26 Based on the foregoing, I also consider the land located at Block 110A,
27 Parcel 150, Cayman Brac to be matrimonial property in which each party
28 is entitled to a one half share.



1 It was not necessary to make a finding of fact whether the Petitioner was
2 given the land registered at Cayman Brac East, Block 106D, Parcel 11
3 or whether she purchased it. The relevant fact is that it was land which
4 she owned prior to the marriage. It was also land that she had transferred
5 in September 2011, after the Divorce Petition had been filed, to the joint
6 names of herself and her son Timothy Sevik and then sold prior to the
7 conclusion of these proceedings.

8

9 I do not find from the evidence that the Respondent has established any
10 beneficial interest in Cayman Brac East, Block 106D, Parcel 11.
11 Additionally, the intent of both parties was clear from the manner in
12 which they handled all their properties. This property was excluded from
13 any attempt at joint ownership while other more valuable property was
14 shared between the two.

15

16 The Petitioner acted incorrectly in selling this property without notice to
17 the Court prior to the conclusion of divorce proceedings. However, she will
18 be allowed to retain the proceeds of the sale. I do not accept the
19 Respondent's claim on these funds.

20

21 I find that during the marriage and prior to separation, the Petitioner had
22 no legal interest in the house at Spot Bay. I further find that the
23 Respondent had been paid for any work that he previously did on the
24 house at Spot Bay. Consequently, I grant no beneficial interest to the
25 Respondent in the house at Spot Bay.

26

27

28



1 I find that the evidence taken together does not satisfactorily establish
2 that the Petitioner withdrew and utilized over \$100,000 of the parties'
3 funds without the Respondent's knowledge and without any of the funds
4 being utilized for the benefit of the business.

5

6 I am also unable to find as a fact that the Respondent had no knowledge
7 of the Petitioner's actions as it related to funds in their joint account.

8

9 Based on the foregoing, I am unable to draw adverse inferences
10 concerning the Petitioner's handling of the parties' funds. Further I have
11 drawn no adverse inference concerning the Petitioner's level of disclosure.
12 Consequently, I do not consider it equitable to make an order allowing the
13 Respondent to recoup any funds from the Petitioner.

14

15 I do not accede to the Respondent's submission that his debt to Robert
16 Groh should be satisfied by the assets of the marriage. Further, I do not
17 consider that it would be equitable to order that spousal maintenance be
18 paid to the Petitioner in light of the short duration of the marriage, the
19 Respondent's health issues and the status of the assets of the parties.

20

21 **Conclusion**

22 My final order in this matter is as follows:

23 1. Each party is entitled to a fifty percent interest in the following
24 properties:

25 (a) Block 81A, Parcel 30, Blossom Village, Little Cayman;

26 (b) Block 105A, Parcel 59, Cayman Brac;



1 (c) Block 102A, Parcel 137, South Side, Cayman Brac;

2 (d) Block 110A, Parcel 150, Cayman Brac;

3

4 Valuations are to be obtained for each of these parcels with the expense
5 of same to be shared equally by the Petitioner and the Respondent. Either
6 party has the option of purchasing the other's half interest based on the
7 valuations, in any or all of these properties. In the absence of any
8 agreement for purchase by either party for any property within three (3)
9 months of this Order, that property is to be listed for sale on the open
10 market with a reputable realtor. Proceeds of sale are to be equally divided
11 between the parties.

12

13 2. The Petitioner is entitled to a fifty percent interest in Block 110A, Parcel
14 151, Cayman Brac and as such; is entitled to receive half of the sum of
15 US \$25,000 when same is finally paid by the purchaser of the house.

16

17 3. The sum of \$67,500 representing half proceeds of sale of Cayman Brac
18 East, Block 106D, Parcel 11 currently held on escrow; is to be refunded to
19 the Petitioner less reasonable administrative expenses.

20

21 4. The Respondent is granted no interest in the house at Spot Bay.

22

23 5. No Order for Spousal Maintenance is made.

24

25 6. Each party shall retain the proceeds of any bank accounts, insurance
26 policy or other personal chattels in his/her possession.



1 7. The funds owed by the Respondent to Robert Groh will not be treated
2 as a matrimonial liability.

3

4 8. Liberty to apply.

5

6 Counsel for the Respondent had reserved the right to further address the
7 Court concerning costs. Leave to do so is granted and no Order for Costs
8 is made at this time. ✓

9

10

11

Nova Hall

12

Nova Hall

13

Acting Judge of the Grand Court

14

27th August 2014

