

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**

2 **FAMILY DIVISION**

3 **CAUSE NO. FAM. 84 OF 2012**

4

5 **BETWEEN VALERIE AYALA GORDON PETITIONER**

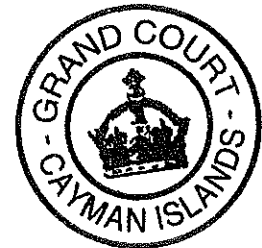
6 **AND JEFFERSON RAYMOND WATLER RESPONDENT**

7

8 *Conor Fee instructed by Samson & McGrath appearing for the Petitioner*

9 *Keva Reid appearing for the Respondent*

10



11

**JUDGMENT**

12 The application before the Court is for the determination of the  
13 outstanding ancillary matters pursuant to the application of the Petitioner  
14 ("the wife").

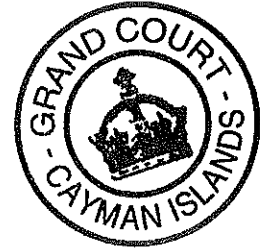
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16 The parties disputed the factual circumstances of the commencement of  
17 their relationship and the progress of the marriage. There is no dispute  
18 however about the following:

- 19 1. the parties met in Columbia, the wife's homeland, in 2006;  
20  
21 2. the wife moved to the Cayman Islands in May 2006 to commence  
22 employment;  
23  
24 3. the parties were married in Florida on December 5, 2008 and they  
25 separated on January 1, 2012;

1 4. the wife filed for divorce on April 26, 2012 and the order that the  
2 Divorce Petition was proved was filed on June 27, 2012;

3  
4 5. there are no children of the marriage.



8 **The Law**

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

11

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

17

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

20 *(a) the custody, care and control of the children of the marriage;*

21 *(b) the disposition of matrimonial property, including the*  
22 *matrimonial home;*

23 *(c) varying any settlement of the property of the spouses made in*  
24 *consideration of the marriage, whether such settlement was made*  
25 *before or upon the treaty of the said marriage;*

26 *(d) varying any other settlement of matrimonial property;*

1           (e) making financial provision from the property of either spouse for  
2           the children of the marriage and for the other spouse;

3           (f) providing for periodic payments to be made by either spouse for  
4           the benefit of the children of the marriage and for the other spouse;  
5           and

6           (g) costs.”

7

8

9   Albeit denied by the husband, it was submitted on behalf of the wife that  
10 together, the parties had built up the husband’s business from scratch  
11 between 2006 and 2012/13. This was done by each playing different but  
12 equally important roles. Decisions were made together as a married  
13 couple and the parties made investments in property ventures together.  
14 The wife sought an order for the equal division of the matrimonial assets  
15 in addition to an order for periodical payments to meet her needs which  
16 at trial she quantified at CI \$2892.00 per month.

17

18   On behalf of the wife, it was submitted that the Court was required to  
19 determine the following:

- 20       1. Which assets were matrimonial assets as opposed to non-  
21       matrimonial assets?
- 22       2. What values should be described to those assets?
- 23       3. How should the assets; matrimonial and non-matrimonial be  
24       divided?
- 25       4. What is the husband’s true income?
- 26       5. What level of periodical payments if any, should the wife received  
27       from the husband and for how long?

28



1 There were disputes between the wife and the Respondent ("the  
2 husband") concerning what constituted matrimonial property. Other  
3 disputes included: the date that the parties commenced cohabitation;  
4 whether or not the husband had been tricked/coerced into marriage;  
5 whether or not the husband prevented the wife from working outside the  
6 home during the marriage; the husband's behaviour towards the wife  
7 throughout the relationship; the level of support provided by the husband  
8 for the wife and her mother, the role played by the wife in Jeff's Heavy  
9 Equipment and whether or not Jeff's Heavy Equipment was a family  
10 business.

11

12 Given the various factual disputes, it was necessary to make specific  
13 findings of fact concerning the relevant issues. Each party testified and I  
14 had the opportunity to view their demeanours during testimony,  
15 particularly cross-examination. I assessed the credibility of each.

16

17 The findings of fact are noted in the penultimate section of this Judgment.

18

19

20 Schedule of Assets

21 At trial, the wife presented a schedule of assets. The content of that  
22 schedule is reproduced below.

23

24 The category "comments" are those made on behalf of the wife.  
25 Additionally, in the schedule, "H" signifies the husband, "W" signifies the  
26 wife and "FMH" signifies the former matrimonial home.

27



<u>Asset</u>	<u>Value (CI\$)</u>	<u>Comment</u>
<u>Property</u>		
1. Lot 48E Parcel 105H Duplex	279,000	In H's sole name
2. RBC loan against Duplex	-100,000	Approximate
3. Lot 48E Parcel 107 Pease Bay	102,000	To be transferred to H
4. Lot 48E Parcel 109 Pease Bay	180,000	To be transferred to H
5. Lot 48E Parcel 110 Pease Bay	90,000	To be transferred to H
6. Splendid View Heights, N Side	61,000	In H's sole name
7. 1 bed, Mcfield Lane (FMH)	160,000	Beneficially owned by H
8. 3 bed, Mcfield Lane	50,000	Beneficially owned by H
9. Studio, Mcfield Lane	90,000	Beneficially owned by H
<b>Sub-total</b>	<b>912,000</b>	
<u>Bank Accounts</u>		
W. Accounts	0	
H Accounts (RBC)	5,000	H's oral evidence
<b>Sub-total</b>	<b>5,000</b>	
<u>Chattels</u>		
1996 Excavator	50,000	H
1996 Hardee Dump Box	10,000	H
1999 Boaz Low Boy Trailer	15,000	H
2000 Freightliner	15,000	H
Excavator	10,000	H
Jackhammer	?	Bought for c. \$9,000
2009 Chevrolet	15,000	H drives
Hyundai Accent	19,900	W drives
Car loan on Accent	-16,000	W's loan
<b>Sub-total</b>	<b>118,900</b>	
<b>TOTAL ASSETS</b>	<b>1,035,900</b>	
<b>50% SHARE</b>	<b>517,950</b>	





1

2 The Real Estate

3 There is no dispute that the real estate properties noted in the wife's  
4 schedule of assets as: Lot 48E Parcel 107 Pease Bay; Lot 48E Parcel 109  
5 Pease Bay and Lot 48E Parcel 110 Pease Bay are registered in the name  
6 Chester Watler, cousin to the husband. The wife contended that Chester  
7 Watler had already been paid the full purchase price for these properties  
8 despite the claim made by Chester Watler that he was still owed  
9 \$10,000.00. There is no dispute however, that there are outstanding  
10 planning requirements stipulated by the Department of Lands and Survey.

11

12 It was submitted on behalf of the wife that the evidence established that  
13 to all intents and purposes these properties belonged to the husband and  
14 as soon as steps were taken to comply with the requirements they would  
15 be transferred into his name.

16

17 It was further claimed that the husband had paid for these three pieces of  
18 land during the course of the marriage and they should be taken into  
19 account in the division of assets as being matrimonial property and as  
20 assets that fall on the husband's side. It was strongly suggested that  
21 these properties have not been transferred solely for the purpose of  
22 establishing that they did not belong to the husband and thereby  
23 lessening the husband's list of assets.

24

25 It was the husband's claim that efforts had been made by him to transfer  
26 the properties from that of the legal owner into his name but this had  
27 been prevented due to the unfulfilled planning requirements. The husband  
28 asserted that the planning requirements involved a significant outlay of

1 capital for infrastructure such as roads, which he was not in possession of  
2 at this time. There also exists, significant charges registered against the  
3 properties which; it was submitted could also pose an additional problem  
4 in the transfer of these properties.



5

6 In any event, it was the assertion of the husband that the wife had made  
7 no contributions to the payments for these properties and that all  
8 payments had been made prior to marriage.

9

10 There is no dispute that the real estate properties noted in the wife's  
11 schedule of assets as: 1 bed, Mcfield Lane (matrimonial home); 3 bed,  
12 Mcfield Lane and Studio, Mcfield Lane were properties built by the  
13 husband on a plot of land which was originally owned by his grandfather.  
14 It is also not in dispute that none of these properties are registered in the  
15 husband's name.

16

17 It was submitted on behalf of the wife that all of these are beneficially  
18 owned by the husband. It was further submitted and not disputed that  
19 the husband, having moved out of the former matrimonial home, collects  
20 rent on all three properties. As such it was contended that the only person  
21 who uses and rents the properties and collect the income from the rent is  
22 the husband. It was submitted that these properties were resources  
23 available to the husband, which provide him with an income and which  
24 the court should take into account in the division of the assets as being  
25 matrimonial property and as being assets that fall on the husband's side.

26

27 On behalf of the husband it was submitted that while the parties had lived  
28 together at these premises which are registered at Block 14CF, Parcel 85;

1 it should be listed as a non-matrimonial asset because it is owned by his  
2 family members. It was further submitted that the privilege extended to  
3 the husband allowing him to keep the rent from that property was one  
4 that could be withdrawn at any time by the legal owners of the property.

5

6 It was submitted by Counsel for the husband that only two items of real  
7 estate which appeared in the wife's schedule of assets could be  
8 considered to be matrimonial assets. These are: Lot 48E Parcel 105H,  
9 which is half of a duplex, and Block 49B, Parcel 213 which is property  
10 located at Splendid View Heights, North Side.

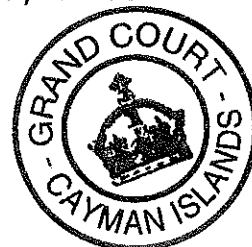
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12 It was submitted that Lot 48E Parcel 105H had been paid for and  
13 developed prior to the marriage. There had been initial difficulties  
14 transferring the property into the husband's name because of planning  
15 requirements but it was eventually transferred to the husband's sole  
16 name during the marriage. Having purchased the property from his cousin  
17 Chester Watler, a duplex was commenced on the property and it was  
18 partially completed prior to the marriage. During the course of the  
19 marriage, the husband obtained a loan in his sole name, to complete the  
20 duplex and he has made all payments on the loan.

21

22 Half of the duplex was sold in order to offset the mortgage and to  
23 purchase other things. It was submitted on behalf of the husband that the  
24 wife had not been employed at the time save for assisting at times in the  
25 husband's business. The property still has a mortgage against it of  
26 approximately \$100,000.00 and it is valued at \$279,000.00.

27



1 According to the wife, in early 2009 she went to several banks seeking  
2 financing for the construction of the duplex and the couple received it  
3 from Royal Bank of Canada (RBC). She claimed that they were advised by  
4 the bank that since they were both self-employed, only one of them could  
5 assume responsibility for the loan, that person was the husband.

6

7 According to the wife the husband started the foundation of the duplex in  
8 November 2008 when she was away from the Cayman Islands. However,  
9 they both poured a foundation for the duplex and continued the  
10 construction in 2009 together. She claimed that the materials were paid  
11 for from the proceeds of their business Jeff's Heavy Equipment and from  
12 rental income. She further claimed that the building had only reached up  
13 to the first floor when they received the loan from Royal Bank of Canada  
14 (RBC).

15

16 There is no dispute that the property at Splendid View Heights was  
17 purchased during the course of the marriage. It was agreed that the  
18 funds for purchase were derived partially from funds from the bank loan  
19 to build the duplex and funds received from the sale of half of the duplex.  
20 The wife claimed that "they" made payments on this property. On behalf  
21 of the husband it was submitted that he had made substantial  
22 improvements to the property since its purchase by filling it and further  
23 that the wife had made no direct contributions towards obtaining this  
24 property.

25

26

27

28



1 Periodic Payments

2 With respect to the wife's claim for periodic payments, her Counsel  
3 suggested that the Court had to determine the true income on the  
4 husband. The wife, having lost her job and being required to leave the  
5 Cayman Islands by the Department of Immigration, has no income.

6

7 Counsel for the wife pointed to the discrepancy between the income of  
8 \$7500.00 per month stated by the husband in his affidavit of means and  
9 the income disclosed by the husband in a document provided to RBC in  
10 the same month which stated that his income was \$9000.00 per month.  
11 Additionally, it was claimed that based on accounting information  
12 exhibited by the wife, the husband's income is higher than he claimed. It  
13 was submitted that this information established an income of CI  
14 \$98,929.00 per annum from his business and CI \$19,800.00 from rent  
15 totalling CI \$118,729.00 per annum or CI \$9894.00 per month.

16

17 Counsel for the wife submitted that the husband had failed to provide  
18 disclosure of various documents on several occasions and has failed to  
19 provide any evidence which provides a clear picture of his earnings. The  
20 Court was asked infer that the husband's income was greater than he  
21 claimed.

22

23



24 Submissions on behalf of the Wife

25 Counsel for the wife, stated that in determining what are the matrimonial  
26 and non-matrimonial assets, one should refer to the Court of Appeal  
27 decision in **McTaggart v McTaggart [2011] 2 CILR 366**. He referred to  
28 the comments therein of Chadwick, P who in turn referred to the case of

1 **Miller v Miller [2006] 2 AC 618** wherein it was stated that matrimonial  
2 property comprises “*property acquired during the marriage other than by*  
3 *inheritance or gift*”. Further, it was stated in *Miller’s case* that the  
4 distinguishing feature of matrimonial property is that it is “*the financial*  
5 *product of the parties’ common endeavour*”.

6

7 Counsel also cited the case of **Wight v Wight No. 6 of 2006** as  
8 authority for the position that the modern concept of marriage is as “a  
9 *partnership of equals*”. This meant, it was argued that the parties were  
10 entitled to share in what the partnership had created by its economic  
11 endeavours, upon the dissolution of the partnership.

12

13 It was further submitted that it did not matter whether the funds used  
14 came from either party or whether the property, business or other assets  
15 was placed in the name of one party as opposed to the other. Anything  
16 acquired prior to the date of separation, other than by inheritance or gift  
17 was matrimonial property which should be divided.

18

19 Counsel for the wife submitted that pursuant to *Miller’s case* and  
20 **Charman v Charman (No 4) [2007] 1 FLR 1246**, the starting point for  
21 the division of matrimonial assets is equality. The court could only deviate  
22 from an equal division of the assets for a very good and clear reason  
23 since the overall aim of the court is fairness. It was submitted, that no  
24 such good reason existed here.

25

26 Counsel for the wife cited the case of **White v White [2001] 1 A.C. 596**  
27 as authority for the position that discrimination was the antithesis of  
28 fairness. He further submitted that in pursuance of fairness, it did not



1 matter if one party had made a greater financial contribution than the  
2 other and the length of the marriage did not matter as it related to  
3 matrimonial property.

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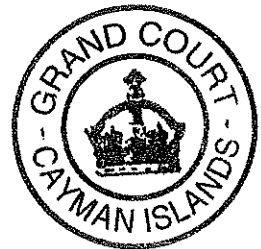
6 Submissions on behalf of the Husband

7 Counsel for the husband submitted that there were good reasons in this  
8 case for a departure from the equality principle.

- 9 1. The marriage was a short duration,
- 10 2. The assets were either brought into the marriage by the husband or  
11 greatly brought in by him,
- 12 3. The wife's contribution to the assets was not significant,
- 13 4. There was no intention that the assets should be treated as shared  
14 assets,
- 15 5. The parties are young and can sustain themselves.

16

17



18 It was submitted on behalf of the husband that the business, Jeff's Heavy  
19 Equipment, had been established by the husband many years prior to the  
20 marriage and the capital in it was solely established by the husband.  
21 Counsel for the husband pointed out that the wife presented no evidence  
22 that she had injected any funds into the business but rather had asserted  
23 that her contribution was made by working in the business.

24

25 Counsel for the husband submitted that the husband had brought  
26 substantial assets into the marriage while the wife had brought none. It  
27 was submitted additionally that a short marriage militated against equal

1 distribution. Counsel cited the case of **W v W [2009] CILR 255** a  
2 decision of the Court of Appeal of the Cayman Islands. The marriage in  
3 that case had lasted for over 20 years and had produced two children.  
4 The court at first instance had declared that the husband's retail business,  
5 which he had started prior to the marriage was not a matrimonial asset.  
6 The Court of Appeal held that the lower court had used an incorrect  
7 approach in arriving at this conclusion. It was held:

8

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

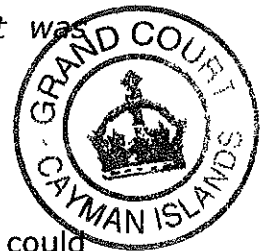
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18 Additionally it was submitted that the contributions of the husband could  
19 be considered "special contribution" and that it would be appropriate to  
20 depart from the equality principle. The case of **Wight v Wight 2010 1**  
21 **CILR 60** was referenced on this point. In that case Zacca, P stated as  
22 follows:

23 *"the notion of 'special contribution' is now an accepted principle and*  
24 *I agree with it and accept it. It is a matter for the judge at trial to*  
25 *consider whether special contribution has been established."*

26

27 Counsel for the husband submitted further that the principles to be  
28 applied in this instance had to do with contribution.



1

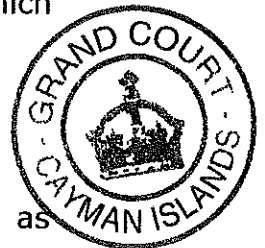
2 It was submitted that the evidence established that at times the wife was  
3 employed at places other than in the business or that she had been  
4 travelling. Reference was made to the husband's claim that he paid her  
5 for her work, although not always and took care of all her needs whether  
6 she was in the Cayman Islands or not. Counsel also argued that the  
7 wife's occasional administrative duties were not of type that would have  
8 affected the growth of the business since the business involved the use of  
9 heavy equipment. It was submitted that it was the husband's skills and  
10 reputation as a heavy equipment operator which was well-known in the  
11 country prior to his marriage, which was and remains the driving force of  
12 the business.

13

14 Counsel for the husband submitted that the local Grand Court case of  
15 **Frazier v Frazier 2006 CILR 112** was applicable. In that case, the  
16 parties had been in a relationship for 10 years and married for six years.  
17 Both made financial contributions towards the cost of their home but it  
18 was not disputed that the husband had made a larger contribution.  
19 Additionally, the husband still owed a large sum of money to his former  
20 wife in respect of buying out her share of their matrimonial home. The  
21 wife sought a 50/50 division of the marital property because these orders  
22 were usual and further she had made a significant financial contribution  
23 towards the matrimonial home and general course of the marriage which  
24 while not equal to her husband's contribution was still significant.

25

26 The court held that the husband had contributed more than twice as  
27 much as the wife to the cost of the new home and had also put more into  
28 their joint savings account. The court found that it was equitable to  
29 depart from the 50/50 benchmark and awarded the husband 60% of the



1 assets. Mr. Justice Henderson commented that from all the circumstances  
2 it was appropriate to depart from the 50/50 norm. He stated therein:

3

4 *"the starting point, of course, is a 50/50 division. In many cases,*  
5 *perhaps even in most cases, the appropriate order will be an equal*  
6 *division of assets.*

7 *The primary reason for departing from the equal division has to do*  
8 *with the respective contributions of the parties coming into the*  
9 *marriage. Those cases where an unequal division has been found to*  
10 *be appropriate usually are based upon situations where one party*  
11 *contributed significantly more at the outset."*

12

13 Counsel for the husband further submitted that all of the properties in this  
14 matter were held by the husband and that this was because he was sole  
15 contributor or they had been acquired prior to the marriage. In any event  
16 the husband had had no intention of treating the properties as  
17 matrimonial assets.

18

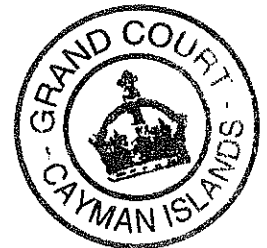
19 Counsel for the husband argued that since the marriage was a short one  
20 and there were no children this was an ideal case for a "clean break". She  
21 submitted that since the wife can and had been sustaining herself, there  
22 was no need for maintenance. It was submitted that the wife should be  
23 awarded a small lump sum.

24

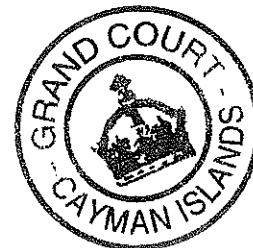
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27 **Findings of Fact**



- 1 1. The parties commenced an intimate visiting relationship in May  
2 2006 but they did not live together from the outset.
- 3 2. The parties commenced cohabitation after the wife became ill and  
4 was forced to leave her employment at Kirk Freeport in July 2008.
- 5 3. Due to the wife's immigration status she had to leave the island  
6 until a new work permit was granted and as such she went to visit  
7 family in Florida.
- 8 4. The husband travelled to Florida, asked her to marry him there and  
9 this was done.
- 10 5. The parties returned to the Cayman Islands and resided at  
11 Apartment 3, 21 McField Lane George Town, a one bedroom unit  
12 which was registered at Block 14CF, Parcel 85 and which became  
13 the matrimonial home.
- 14 6. Both the marriage and the relationship prior thereto was  
15 tumultuous, largely due to the husband's behaviour and on several  
16 occasions, matters were reported to the police by the wife.
- 17 7. On January 1, 2012 the wife moved into rental accommodation due  
18 to the husband's behaviour.
- 19 8. Except in one instance, the husband did not prevent the wife from  
20 working outside the home. The husband's mother was employed at  
21 Pure Art and in Christmas 2009 she obtained a temporary job there,  
22 for the wife. The husband's mother subsequently became concerned  
23 that the wife could take away her substantive post. The husband  
24 ordered the wife not to return. Apart from this the wife only took  
25 the jobs that she was prepared to do and as a result she went  
26 through periods of unemployment.



- 1 9. The wife held part-time jobs in June 2010, between September  
2 2010 to November 2010, between July 2011 to August 2011 and  
3 between August 2000 and April 2012.
- 4 10. Jeff's Heavy Equipment is the current name of a heavy equipment  
5 business which was started by the husband years before he met the  
6 wife. He has a great deal of skill and experience in this business and  
7 has long held a good reputation for work in the Cayman Islands.
- 8 11. The wife did not assist the husband in either the start or the  
9 expansion of Jeff's Heavy Equipment.
- 10 12. The wife made no contribution either directly or indirectly towards  
11 acquiring any of the assets of the business.
- 12 13. At times prior to the marriage, during the marriage and after  
13 separation, the wife applied her administrative and computer skills  
14 to working in Jeff's Heavy Equipment. Her duties however did not  
15 extend on a *regular basis* to organizing the location of the builders,  
16 pricing the materials and other tasks such as she described in her  
17 testimony.
- 18 14. When the wife did work in the business, it was not on a daily basis  
19 or for long periods of time in a day. She was paid a salary when she  
20 worked.
- 21 15. The husband did not represent to the wife that the business was a  
22 family business; belonging to them both.
- 23 16. The husband did not represent to the wife that she would not  
24 receive a salary when she worked, because her money had formed  
25 a part of the business.
- 26 17. Proceeds from the business did assist in paying for household and  
27 other expenses for the parties.



- 1 18. The husband took care of the financial needs of the wife during the  
2 marriage.
- 3 19. Although some of the equipment for the business was purchased  
4 through the wife's bank account, this was because the husband had  
5 not been the holder of either a debit or credit card. All of the funds  
6 for purchase were provided by the husband.
- 7 20. The wife did not play a major role in decision making for the  
8 business.
- 9 21. The wife played a major role between 2008 and 2009 when she  
10 assisted Ms. Debbie Lee of Lee's Accounting Services in the  
11 preparation of a financial report on the husband's financial status in  
12 order for him to obtain a loan. She provided records which she had  
13 prepared to Ms. Lee and worked with her to prepare the final  
14 documents.
- 15 22. The husband is the beneficial owner of the properties known as Lot  
16 48E Parcel 107 Pease Bay; Lot 48E Parcel 109 Pease Bay and Lot  
17 48E Parcel 110 Pease Bay and he alone made payments for them  
18 both before and during the marriage. These are still legally owned  
19 by Chester Watler. The wife played a role in preparing the  
20 documents when the husband made an attempt to register the  
21 Transfer of the properties into his name.
- 22 23. The real estate properties referred to as: 1 bed, Mcfield Lane  
23 (matrimonial home); 3 bed, Mcfield Lane and Studio, Mcfield Lane  
24 and which are registered at Block 14CF, Parcel 85; were built by the  
25 husband on a plot of land which was originally owned by his  
26 grandfather. He is allowed to collect rents from these properties for  
27 the time being but he is not the registered owner of any.



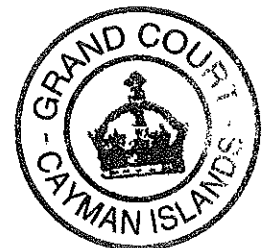
- 1 24. The land on which the duplex was built was purchased by the  
2 husband using his own funds prior to the marriage, although the  
3 property was not transferred to his name until after the marriage.
- 4 25. The wife played no part in the decision to build a duplex on the  
5 land.
- 6 26. The wife played a part in assisting the husband to obtain the loan to  
7 build the duplex from the Royal Bank of Canada (RBC) by the  
8 preparation of paperwork and accompanying him to the bank.
- 9 27. The wife made no direct contribution towards the payment of the  
10 loan obtained from Royal Bank of Canada (RBC) by the husband.
- 11 28. A substantial portion of the duplex had been completed prior to the  
12 marriage between the parties.
- 13 29. The wife did not contribute any physical labour towards the  
14 construction of the duplex.
- 15 30. The wife was aware of and was a part of the plans to purchase the  
16 property at Splendid View Heights.
- 17 31. The wife made no financial contribution towards the purchase of the  
18 land at Splendid View Heights.
- 19 32. The husband's monthly salary from his business and the rental  
20 income that he receives averages \$9000.00 per month.

21

22

23 **Conclusion**

24 In the instant case, I have found as a fact that the wife did not make any  
25 financial contribution towards the acquisition of any of the real estate  
26 during the marriage.



1

2 The Grand Court case of **Ebanks v Ebanks 1992-93 CILR 294** is  
3 authority for the proposition that the court should deal equitably with a  
4 spouse who had not contributed as much financially as the other party to  
5 the marriage.

6

7 I have also found as a fact that the wife did some work in the business  
8 Jeff's Heavy Equipment prior to her marriage.

9

10 **Thurner v Thurner (2006) CILR Note 15** is another Grand Court case  
11 and it is authority for the position that no interest accrues during  
12 cohabitation despite the inference of an intention to marry.

13

14 In the *Ebanks* case referred to aforesaid, the learned judge referred to the  
15 case of **Foley v Foley [1982] 2 All ER 857** commenting that  
16 cohabitation before marriage and contributions made during that time are  
17 not irrelevant. In *Foley's* case the Court of Appeal held that a court was  
18 entitled to take the view; that what happened during a period of  
19 cohabitation did not carry the same weight as the events which occurred  
20 during the period of marriage. In that case the judge at first instance had  
21 not dismissed a period of cohabitation as irrelevant but had decided to  
22 attach less weight to it than to the period of marriage. It was held that he  
23 had not been wrong in the exercise of his discretion.

24

25 Having found that the wife was paid for such work as she did in Jeff's  
26 Heavy Equipment, I find that I can ascribe little weight to her work in the  
27 business during the period of cohabitation. I also find that the wife's role



1 in preparing documentation for the RBC loan counts as a minimal  
2 contribution.

3

4 With respect to my findings of fact concerning the business Jeff's Heavy  
5 Equipment, I am unable to conclude that the wife is entitled to a share in  
6 that business or to a share in the value of the equipment for that  
7 business. I am persuaded by the pronouncement of the Court of Appeal in  
8 the local case of **W v W [2009] CILR 255** and the short period of the  
9 marriage factored heavily in my determination concerning the business.

10

11 With respect to the real estate.

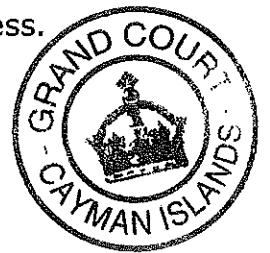
12 The husband is the beneficial owner of the pieces of property registered in  
13 the name of Chester Watler. It is not known however, when these  
14 properties can be transferred to him given the infrastructure requirements  
15 of the Department of Lands and Survey coupled with the existence of the  
16 charges registered against the land.

17

18 Consequently, while it is property that will likely, *eventually* inure to the  
19 husband's benefit in the future, that is not the position at this time. I  
20 consider that his financial position would be enhanced at such time as the  
21 properties are transferred into his name. However, I do not find that  
22 these properties can be considered as matrimonial property. Additionally,  
23 I did not find that the wife had contributed to the acquisition of these  
24 properties in any way which would entitle her to benefit in same.

25

26 The real estate registered at Block 14CF, Parcel 85 is property from which  
27 the husband presently derives some rental income. It is not legally owned  
28 by him despite the improvements that he had made to the property



1 during his lifetime. This real estate cannot be considered as matrimonial  
2 property.

3

4 The fact that the husband receives an income from this property is helpful  
5 in assessing his financial assets and that which he will be left with after  
6 the divorce. This is pertinent to the overall ancillary relief exercise. It is a  
7 reality however, that the legal owners can at any time cause the rental  
8 income which presently flows to the husband to cease and this must be  
9 taken into consideration. I would not award the wife, any portion of the  
10 rental income or any interest in the property. The factual circumstances  
11 concerning legal ownership, the short period of the marriage and the lack  
12 of financial contribution by the wife are all factors in this decision.

13

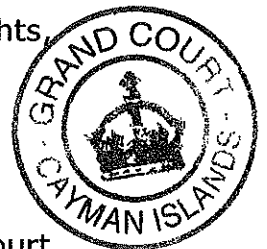
14 I consider that the half of the duplex registered at Lot 48E Parcel 105H;  
15 and Block 49B, Parcel 213, the property located at Splendid View Heights,  
16 North Side are matrimonial assets.

17

18 In the *Ebanks* case referred to aforesaid, among its conclusions, the court  
19 noted that the incidence of legal title being registered in the name of only  
20 one party was not definitive of the manner in which the court would  
21 exercise its jurisdiction given the court's virtually unfettered discretion to  
22 provide for a just distribution of matrimonial assets including the  
23 matrimonial home under the Matrimonial Causes Law.

24

25 It is noted that the wife's name was neither attached to the loan for the  
26 construction of the duplex nor to the title for the Splendid View Heights  
27 property. This indicates that while there was an obvious intention to allow  
28 the wife to enjoy the fruits of these transactions during marriage, there



1 was no intention to grant her any interest in the properties as either a co-  
2 owner or a contributor. I do consider however, that she should be granted  
3 an interest.

4

5 The case of **Frazier v Frazier 2006 CILR 112** was persuasive authority  
6 in my conclusions about how these last two pieces of real estate should  
7 be dealt with. I applied the equality principle as a starting point for  
8 division. Thereafter, it was my determination that was respect to both  
9 parcels of property; the husband had in fact made a special contribution  
10 towards the acquisition of these two properties. Unlike the circumstances  
11 of the *Frazier* case, here the husband has provided all the necessary  
12 financing for the property. The quantity of his financial contribution was  
13 so significant that it would not be equitable for it to be overlooked. The  
14 short duration of the marriage once again is a consideration but only a  
15 minor one when compared to the issue of contribution.

16

17 I therefore order a split in the equity of these two properties in terms of  
18 75% to the husband and 25% to the wife. Using the figures for the value  
19 of the properties, which were agreed by Counsel the formula therefore is:  
20 CI \$179,000.00(\$279,000.00 - \$100,000.00)+ CI \$61,000 = CI  
21 \$240,000.00 The wife's 25% share of this sum is CI \$60,000.00.

22

23 I was not addressed on these, but I consider it equitable for the husband  
24 to retain the assets in his bank account and for the wife to retain the  
25 small pension fund referred to in documents which were filed.

26

27 Lastly there is the claim for periodic payments.

28



1 The wife in this case, unlike the husband has received a University  
2 education. This education has allowed her to obtain jobs both in the  
3 Cayman Islands and in Colombia. She is still young and it has not been  
4 suggested that she would be unable to obtain a job upon her return to  
5 Colombia which is imminent due to her current immigration status.

6

7 Given these factors, the short duration of the marriage and the award  
8 otherwise made to the wife herein, it would be inequitable to order the  
9 husband to make periodical payments for any length of time. Doing so,  
10 would mean that the husband would continue to be a crutch for her  
11 during the period of her young working life. Consequently, no periodic  
12 payments are awarded to the wife.

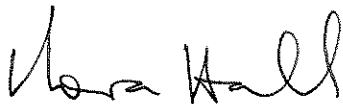
13

14 It is the order of the Court that the husband shall make arrangements to  
15 pay to the wife the sum of \$60,000.00 which sum shall be inclusive of the  
16 sum of CI \$2500.00 ordered payable on an interim basis; which sum  
17 should already have been paid at the end of January 2014. The interim  
18 order is otherwise discharged.

19

20

21



22

Nova Hall

23

Acting Judge of the Grand Court

24

25<sup>th</sup> February 2014.

