

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **HOLDEN AT GEORGE TOWN, GRAND CAYMAN**
3 **FAMILY DIVISION**
4

5 **CAUSE NO. FAM 215 OF 2011**

6 **BETWEEN:**

7 **WINSTON WADE HUGGAN**

8 **Petitioner**

9 **AND**

10
11 **MOVINE THERESA HUGGAN**

12 **Respondent**
13
14

15 **Appearances:**

Mrs. Karin Thompson for the Petitioner

16
17 **Ms. Stacy Parke from Brooks & Brooks for the**
18 **Respondent**

19
20
21 **Before:**

Hon. Mr. Justice Richard Williams

22
23 **Heard:**

2nd May 2013 & 4th December 2013

24
25 **Date of Written Closing Submissions:**

7th & 8th January 2014

26
27 **Request for Clarification of Submissions:**

17th January 2014

28
29 **Clarification submissions received:**

10th & 17th February 2014

30
31 **Due date for final submissions:**

19th February 2014

32
33 **Date of Circulation of Draft Judgment:**

12th March 2014

34
35 **Date of Judgment:**

14th March 2014
36
37

38 **JUDGMENT**

39
40 1. This is an application, brought by way of Summons dated 14th November 2012, for
41 financial provision made by Winston Wade Huggan, against his wife, Movine Theresa
42 Huggan. The wife is a Jamaican national but she has acquired Cayman status. The
43 husband, who is also a Jamaican national, initially obtained residency through the

1 marriage to the wife who by that time had been granted Cayman status. The husband has
2 since, despite the wife's written opposition to his application submitted to the
3 Immigration Department, after residing in the Cayman Islands for sixteen years, acquired
4 permanent residence status.

5
6 2. I hope that the parties will not be offended if from now on I refer to them for convenience
7 as husband and wife.

8
9 3. Regrettably, it has taken quite some time for the hearing to deal with ancillary matters to
10 be concluded. The first day of this hearing, fixed relying upon an overly conservative
11 time estimate, was back on 2nd May 2013.

12
13 4. On 2nd May 2013 it became clear that there was an issue in relation to usage of the funds
14 in a Credit Union account held in the wife's sole name and that the documentary
15 evidence to support each party's contentions then before the Court was inadequate. The
16 Court ordered the wife to disclose bank statements from 3rd June 2009 to April 2011 in
17 advance of the adjourned hearing date. Due to a delay in supplying this information, it
18 was not until August 2013 that the adjourned final day of the hearing was fixed for 4th
19 December 2013. As a consequence, there has been a considerable delay in my being
20 in a position to prepare this judgment. This has left me in the unsatisfactory
21 position of having to write this judgment over ten months after receiving the oral
22 evidence on the first day of the hearing.

1 **BACKGROUND**

2 **THE PARTIES**

3 5. The parties were married in the Cayman Islands on 27th July 2002. The difficulties within
4 the marriage began to surface in or around 2009. The parties disagree about the date of
5 their separation. The Court has been requested by the parties to determine the date of
6 their separation, a task greatly complicated by each party giving inconsistent dates within
7 their own written and oral evidence as well as in the submissions made on their behalf.

8
9 6. The wife contends that the husband was violent towards her and exhibits police reports.
10 The wife in her affidavit sworn on 3rd January 2012 indicated that their relationship
11 became strained in around 2009. At paragraph 9 of the affidavit she said that the marriage
12 started breaking down around September 2009 and contends, despite her efforts to make
13 things work, that the husband was not interested in the marriage and that after some time
14 they basically started living separate lives. In an exhibited police report dated 2nd
15 September 2010, the wife stated that there had been marital problems for over two years.
16 Despite these marital incidents, the wife stated in her oral evidence that in that same
17 month the parties travelled together as a couple on vacation, visiting relatives in Jamaica,
18 and that they tried to act like a couple in an attempt to resolve their issues up to
19 December 2010. It is submitted on behalf of the wife that the marriage finally ended in
20 December 2010 after a Christmas family function.¹ However, at paragraph 2 of her
21 earlier affidavit sworn on 14th March 2012 the wife had stated that the parties separated
22 officially in or around April 2011.

23
24 7. The husband contends in his affidavit evidence that he left the property at that time
25 following an assault on him by the wife. In his Amended Petition the husband contends

¹ Paragraph 25 wife's written reply for further clarification on written submissions.

1 that the relationship between the parties finally came to an end in April 2011 when he
2 discovered that the wife had, unknown to him, taken steps to terminate an ectopic
3 pregnancy during a period of time which would have made it impossible for him to have
4 been the biological father. The husband indicates that, as a result of what he felt was a
5 betrayal and a breach of trust, he was unable or unwilling to try to continue the marriage.
6 However, the husband contends in his oral evidence that, although he physically left the
7 property in April 2011, separation occurred in July 2010, as from that date they lived
8 separate lives, albeit residing in the same property.

9
10 8. Significantly, the wife accepts that in November 2010 she started putting her entire salary
11 into the Credit Union account in her sole name. The wife says that this was after the
12 husband had changed his account. The parties arranging their affairs in this way is a good
13 indication of both parties positioning themselves in a separation. This evidence, coupled
14 with the state of affairs highlighted in the police reports concerning the breakdown of
15 their marriage, supports a contention that they were living separate lives, albeit still both
16 'living under one roof'. Although difficult to earmark a precise date, as is highlighted by
17 the fact that each party themselves gave different dates at various parts of their evidence,
18 I find that the parties separated in November 2010.

19
20 9. On 21st September 2011 the husband filed his Petition for the dissolution of the marriage.
21 Following sensible negotiations between the parties, this was replaced by the husband's
22 uncontentious Amended Petition filed on 3rd February 2012. In her Acknowledgement of
23 Service Form filed on 23rd February 2012, the wife indicated that she did not intend to
24 defend the Amended Petition, but stated therein that the ancillaries were defended. On
25 2nd March 2012, the Court found the Petition proved.

26

1 10. There are no children of the marriage.

2

3

HUSBAND AND HIS EMPLOYMENT

4 11. The husband was born on 24th April 1971 and is aged 42. He is employed as an IT
5 Business Analyst by the Cayman Islands Health Authority. He discloses a gross fixed
6 annual salary of \$50,474 and a net income is \$3,950 per month.

7

8 12. The husband has a pension from his employment which, as of 6th March 2012, had a
9 value of \$62,512.62.

10

11 13. The husband outlines his basic monthly outgoings at paragraph 7 of his affidavit sworn
12 on 6th March 2012. Those figures include the full mortgage payment of \$1,861 and total
13 \$4,883. In addition, he has outgoings resulting from his recent enrolment on an online
14 course for a Bachelor's Degree in Business Studies at the University of the West Indies.

15

16

WIFE AND HER EMPLOYMENT

17 14. The wife is aged 43. The wife is also employed by the Cayman Islands Health Authority.
18 She currently holds the post of Accounts Payable Officer. The wife discloses a gross
19 annual salary of \$47,460.

20

21 15. The wife has a pension from her employment which, as of 30th January 2012, had a value
22 of \$62,299.76. Therefore, the parties have almost identical pension provision and neither
23 party seeks any orders in relation to their respective pensions.

24

25 16. The wife outlines her basic monthly outgoings at paragraph 15 of her affidavit as sworn
26 on 14th March 2012.

1 17. Having regard to the similarity of the parties' ages, income, outgoings and pension
2 figures I do not see a need to analyse this evidence. The figures support a contention that
3 there should be a clean break.

4

5

ISSUES

6 18. The issues in this case are fairly narrow. There are no spousal or child maintenance
7 orders sought. One issue concerns the jointly owned former matrimonial home located in
8 Prospect. There is an issue relating to liabilities accrued by the wife for past mortgage
9 payments by the husband. There is an issue about the usage of the property and/or
10 payment for occupation of the property pending the sale of the property. There is an issue
11 about compensation sought by the husband for property which he contends was damaged
12 by the wife. There is also an issue concerning alleged matrimonial savings which the
13 husband contends were held by the wife in her sole Credit Union account and which she
14 has dissipated.

15

16

THE LAW

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

20

21

22

23

24

25

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

26

27

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

1 *“At the time of pronouncing a decree under this law, the court shall, as*
2 *appropriate, make order for:*

3 (i) ...

4 (ii) *the disposition of matrimonial property, including the*
5 *matrimonial home;*

6 (iii) ...

7 (iv)

8 (v) *making financial provision from the property of either*
9 *spouse...for the other spouse:*

10 (vi) *providing for periodical payments to be made by either*
11 *spouse...for the other spouse: and*

12 (vii) *costs.”*

13
14
15 21. As highlighted by Sir John Chadwick P. at para. [32] in *McTaggart v McTaggart* CICA
16 14 of 2010 (“*McTaggart*”), the Court when exercising those powers could make an order
17 for the disposition of matrimonial property or could make an order for financial provision
18 out of the property for one of the parties for the benefit of the other.

19
20 22. In deciding whether to make an order under s.21(b), and from where any such order
21 should be made, I am required to consider and decide which of the parties’ assets is
22 matrimonial property. In the combined House of Lords appeals of *Miller v Miller* and
23 *McFarlane v McFarlane* [2006] UKHL 24, [2006] 2AC 618, 634 (“*Miller*”) Lord
24 Nicholls of Birkenhead described matrimonial property as:

25 *“property acquired during the marriage otherwise than by inheritance*
26 *or gift.”*

27
28 Its distinguishing feature is that it is:

29 *“the financial product of the parties’ common endeavour.”*

30

1 23. There is no dispute in the matter before me concerning the alleged matrimonial assets.
2 The issues in relation to those assets were highlighted in section 17 above.

3

4

PRINCIPLES TO BE APPLIED

5 24. S.19 and s.21 of the Law give the Court a wide discretion when it comes to financial
6 provision and any awards made to the parties.

7

8 25. The Courts in the Cayman Islands, in deciding whether to exercise their powers under
9 s.21 and, if so, in what manner have, when considering what is fair in all the
10 circumstances of the case, traditionally had regard not only to the matters set out in s.19,
11 but also the relevant factors raised in s.25(1) of the Matrimonial Causes Act 1973, and
12 now s.3 of the Matrimonial and Family Proceedings Act 1984 in England and Wales.²

13 The factors to be considered include:

14 (i) The income earning capacity, property and other financial resources which each
15 of the parties has or is likely to have in the foreseeable future;

16 (ii) The financial needs, obligations and responsibilities which each of the parties to
17 the marriage has or is likely to have in the foreseeable future;

18 (iii) The standard of living enjoyed by the family before the breakdown of the
19 marriage;

20 (iv) The age of each party to the marriage and the duration of the marriage;

21 (v) Any physical or mental disability of either of the parties to the marriage;

22 (vi) The deserts of the parties, including contributions made by each of the parties to
23 the welfare of the family (to include contributions made by each of the parties to

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

- 1 the accumulation of matrimonial assets as well as non matrimonial property) and
2 any contribution made by looking after the home caring for the family;
- 3 (vii) The value to either of the parties to the marriage of any benefit (for example, a
4 pension) which, by reason of the dissolution of the marriage, that party will lose
5 the chance of acquiring; and
- 6 (viii) The conduct of each of the parties. If that conduct is such that it would in the
7 opinion of the Court be inequitable to disregard.

8

9 26. Lord Nicholls of Birkenhead in *White v White* [2001] 1 AC 596 (“*White*”) held that:

10 *“The purpose of these powers is to enable the court to make their*
11 *financial arrangements on or after divorce in the absence of agreement*
12 *between the former spouses.”*

13

14 27. Lord Nicholls dealing with the concept of fairness stated that:

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

18

19 28. In *Miller*, Lord Nicholls identified three strands of principles for the purpose of achieving
20 fairness between the parties, namely, financial needs, compensation and sharing. I now
21 concentrate on these elements, for there is no child of the marriage whose best interests I
22 would otherwise have had to consider first.

23

24 29. I respectfully adopt the approach taken to the case law emanating from England and
25 Wales by Sir John Chadwick. P. in *McTaggart*.³

26

³ See also Forte J. in *Wight* (supra) para., 62 and Sir John Chadwick P. in *W v W* [2009] CILR 255 at para.12.

1 30. So when I now move on to consider the issues and the parties' evidence I have regard to
2 the above principles which establish that overall, the Court is charged with dividing the
3 assets in a fair and equitable manner, whilst trying to see if there can be a clean break.

4

5

MATRIMONIAL ASSETS

6 31. The matrimonial home was built on a piece of land⁴ purchased by the parties shortly after
7 their marriage. The wife contends that, as the husband had no savings, she paid for the
8 deposit and the closing costs totalling CI\$39,350 and took out a loan from the Credit
9 Union in her sole name. The husband states that the wife has failed to accurately disclose
10 the source of the monies used to pay for the deposit and closing costs.

11

12 32. The husband contends that the land was purchased in the parties' joint names in 2003 for
13 CI\$60,000 by means of a loan taken out with the First Caribbean Bank.⁵ The parties
14 provided a charge over a jointly owned separate property. The land loan was later
15 converted to a mortgage in 2005 and, in December 2008, the mortgage was transferred to
16 Cayman National Bank.

17

18 33. I do not intend to herein carry out a detailed exploration of the source of the funds to be
19 used for the purchase or contributions, as each party agrees that the starting point is an
20 equal division of the equity in the former matrimonial home.

21

22 34. The property was originally comprised of three-bedroom and two bathrooms with a back
23 porch which was converted into a study. Further improvements were made converting the
24 front porch into a foyer, adding a back porch and a laundry/guest bathroom. The wife

⁴ Purchased for \$60,000 in 2003.

⁵ Originally called Canadian Imperial Bank of Commerce.

1 agreed to the husband's suggestion to convert the back section of the home into a two
2 bedroom one bath efficiency apartment, so that there would be two properties for rent,
3 thereby covering mortgage, insurance and property maintenance payments. The husband
4 contends that the property improvements were funded from the parties' savings up until
5 August 2010, whereas the wife contends that happened right up until April 2011. After
6 this work had been done, a realtor was contacted to rent out the front section of the
7 property and, save for a period of two weeks, the parties moved into the rear section up
8 until April 2011.

9
10 35. The wife contends that the home has a value of \$365,000. No recent valuation⁶ has been
11 provided to the Court, but it was initially listed for sale at \$385,000 and is now 'on the
12 market' for \$365,000. Although the property has been listed for sale on the Multiple
13 Listing System pursuant to the Court order of 2nd February 2012, it has not been sold and
14 it has attracted little interest. On the evidence before me, I do not accept the husband's
15 contention that the wife has been obstructive to any showings of the property. The 2nd
16 February order also provided that each party was to pay one half of the monthly mortgage
17 payments. All of the payments have since been made pursuant to the February consent
18 order.

19
20 36. Despite the property currently being marketed at \$365,000, the husband contends that it
21 has a value of \$425,000. At the outset of this hearing in May 2013, I raised the issue of
22 the valuation with the parties. The parties accepted that there was no recent valuation.
23 Mrs. Thompson indicated that there was an agreed valuation of \$400,000 but the property
24 was marketed for \$385,000 furnished. As a consequence, I indicated to the parties that, in
25 the absence of a valuation, the Court would consider \$385,000 as the appropriate

⁶ Valuation report from DDL Quantity Surveyors dated 14th August 2008 stating value to be \$365,000.

1 valuation at that time. The parties then indicated to me that, as of 2nd May 2013, the
2 outstanding mortgage was in the region of \$252,000 and that the agreed equity in the
3 former matrimonial home was approximately \$133,000.

4
5 37. Having regard to the above, including the current market price and in the absence of any
6 up to date valuation or apparent willingness of the parties to obtain one, I now approach
7 this matter on the basis that the valuation of the property is \$365,000 furnished. Due to
8 the mortgage repayment figure of \$252,000 given by the parties to the Court in May
9 2013, I find that the equity in the property is around \$110,000. I set this figure being
10 conscious that it may well be reduced, as the sale price may have to be lowered due to a
11 lack of real interest from any potential purchaser at the current listed price.

12
13 38. Prior to the husband leaving the property, and for a period of time⁷ after he had left the
14 property, it was partially rented and income derived used to contribute to the mortgage
15 payments. It appears that a tenant who rented the property terminated the tenancy in
16 October 2011. It appears that the conduct of the parties towards each other had impacted
17 on the tenant's enjoyment of the property. Each party blames the other for the tenant
18 leaving. The wife says that the husband was then uncooperative in her attempts with a
19 letting agency to lease out the property.

20
21 39. The husband contends that the wife had vacated the back part of property between
22 September and November 2011, leaving it in a state of disrepair. The husband indicated
23 that he cleaned the property to enable it to be rented. The husband contends that he found
24 a tenant who was prepared to pay \$1,200 rent per month and that the wife refused to sign
25 the rental agreement.

⁷ Until the end of September 2011 when the tenants left.

1 40. The husband who had been living in separate rented property, decided to move into the
2 self-contained annex to the matrimonial home. The husband says that he did this to
3 enable him to pay the shortfall between the rent to be received and the monthly mortgage
4 payments.

5
6 41. The husband stated that during the first week in November the wife returned to the
7 property, claiming that she had never vacated it. The husband indicated that on 1st
8 November 2011 the door lock on the premises had been broken and the wife had
9 removed and damaged a number of items including furniture and appliances from the
10 property. In a police report dealing with the incident the officer recorded that the wife
11 “*admitted that she had damaged furniture because she bought them.*” The husband lists
12 the items at paragraph 18 of his affidavit sworn on 17th January 2012, paragraph 14 of his
13 affidavit sworn on 6th March 2012 and paragraph 8 of his affidavit sworn on 13th April
14 2012. The husband estimated the value of all these items to be \$14,650⁸ and he seeks a
15 sum for reimbursement of the same. The wife contends, after listing some items at
16 paragraph 14 and 15 of her affidavit sworn on 26th March 2012, that she participated in
17 the purchase of some of the furniture and appliances to a value of \$3,717.

18
19 42. The wife contends that around 2nd November 2011 the husband placed some of her
20 personal items in the garbage area. The husband denies this. The wife has exhibited a
21 photograph showing items apparently neatly packed by the garbage area. The wife
22 contends that the items were damaged, destroyed or missing. The wife sets out a list of
23 items with her valuations which amount to CI\$8,125.20. The wife seeks compensation
24 for the husband in relation to these items, but has only given estimates for the value
25 without any helpful supporting documentary evidence. The police report arising from that

⁸ Schedule of items and value at paragraph 8 affidavit sworn by husband on 13th April 2012.

1 incident notes that the wife informed the officer that the husband had removed items from
2 the house and that she had also removed items of furniture from the house on 1st
3 November 2011. The officer noted in the report that:

4 *“One (1) black bag and two (2) plastic clothes baskets were observed in*
5 *the garbage disposal area with items of clothing and shoes. They did not*
6 *appear damaged but the complainant stated that those items were only*
7 *some of her belongings from the house that she is not seeing the rest of*
8 *her belongings inside. She stated that she will not be removing the items*
9 *from the garbage disposal enclosure she took photographs with her*
10 *phone.”* “

11
12 The report notes that she attended at the police station on 3rd November 2011 and that she
13 then:

14 *“complained that the majority of her clothing and jewellery was*
15 *missing.”*

16
17 The note reflects that the husband denied putting the complainant’s clothing and
18 belongings in the garbage and he stated that the wife:

19 *“is the one who took all the furniture and appliances from the*
20 *matrimonial home without his consent.”*

21
22 Having regard to the state of the evidence given, I am not in a position to find on the
23 balance of probability what items of the husband or wife were actually damaged or have
24 gone missing and I am not in a position to put any informed valuation. I note that the wife
25 decided to leave and not to recover some of the items from that area. In the absence of
26 any criminal charges having been brought for criminal damage by the police, if the
27 parties seriously seek compensation for these items, then they may consider a properly
28 brought civil claim supported with the necessary valuation evidence.

1 43. The husband contends that both parties were equally responsible for making the monthly
2 mortgage payment of \$1,850, but that the wife failed to do so. The husband contends in
3 his affidavit evidence that, between 31st August 2011 and 23rd February 2012, he
4 contributed \$5,154 directly from his salary to the mortgage, whereas the wife's
5 contribution during that period totalled only \$1,637.09. However, during re-examination,
6 he contended that he paid \$3,927.54 and he accepted that the wife paid in an additional
7 \$852 in late February, making a total of \$2,489.09. Although in his affidavit he sought
8 reimbursement in the sum of \$3,468.91 from the wife in relation to these payments, in re-
9 examination the husband agreed that the amount should be reduced to \$1,438.40. After
10 this evidence was given, the wife through her Counsel, conceded that \$1,438.40 was an
11 appropriate figure to credit to the husband for mortgage payments and I so order.

12

13 44. The wife remains in the property which she occupies with at least two members of her
14 family. The wife contends that she has maintained the property in good order and has
15 undertaken some work to make the back portion more attractive for rental. It is submitted
16 on her behalf that the approximate figures are CI\$1,200 for materials and CI\$1,000 for
17 labour. There is no helpful documentary evidence before the Court to substantiate these
18 figures.

19

20 45. The husband is residing in a room at a friend's property. The husband had intended that
21 this unsatisfactory arrangement would only be a temporary one. The husband contends
22 that this is an inequitable position, especially as his income is not sufficient to cover
23 payments for him for rent and half of the mortgage payments pursuant to the order of
24 February 2012. The husband states that he has had to run up a balance on his credit card
25 to subsidise his income and enable him to make these payments. The husband also
26 highlights the disparity between the parties' current accommodation, stating that he

1 should be in a position to rent a reasonable property rather than remain in his current
2 cramped circumstances. The husband puts the level of a reasonable rent to be in the
3 region of \$800 per month and reminds the Court that he would have also to raise
4 contractual deposits to enable him to rent.

5
6 46. As a consequence, the husband contends that the main part of the property be rented out
7 for the monthly figure of \$1,700 and that that figure should be applied towards the
8 monthly mortgage of \$1,650. The husband suggests a monthly rental figure of \$1,700, as
9 that was the rate at which the parties had rented out the property before their separation.
10 The husband also contends that if the small unit attached to the property was rented out
11 that an additional \$800 per month could be received from rent, which would also be
12 applied towards monthly mortgage payments and the cost of maintaining and running the
13 property.

14
15 47. Alternatively, the husband suggests that if the wife wishes to remain in occupation of the
16 property, then she should be ordered to pay occupational rent equal to the full amount of
17 the mortgage. He also contends that that a special allowance should be considered in his
18 favour, as he contends that he has had to pay rent whilst the wife and her relatives
19 enjoyed occupation of the property for the past 24 months.

20
21 48. The wife contends that there should be an equal division in the equity of the former
22 matrimonial home. Thereafter, any sums owed by one party to the other should be
23 deducted from the proceeds of sale. The wife contends that she should be credited for her
24 maintenance of the grounds, general property repairs, improvements to the back portion
25 of the property and repairs to the electrical meter. The wife contends that credit should be
26 given for the monthly payments of \$175 which she says have been made by her for

1 maintenance of the yard.⁹ The wife also claims \$60 per month for an air conditioning
2 service maintenance plan. It is submitted on behalf of the wife that this amounts to a
3 figure of \$7,050 over a two and a half year period and that she should receive credit for it
4 when there is distribution of matrimonial assets. However, I do not deem this to be
5 appropriate, as the wife for the majority of that time has benefited from occupation of the
6 property, and this includes the gardens as well as the air conditioning. In addition, when
7 reaching this decision, I note that the husband also contends that in October 2011 he had
8 to pay for extensive maintenance in the yard in order to get the property into a tenable
9 condition after the previous tenants and the wife had moved out. I also note that the
10 husband has exhibited a receipt dated 30 April 2011 in the sum of \$2,500 for installing an
11 air conditioning unit at the property.

12
13 49. The wife wishes to remain in the property prior to its sale and is content to submit to an
14 order that she be solely responsible for mortgage payments from January 2014 onwards,
15 and she will indemnify the Respondent from any liability in relation to the same. This is a
16 sensible approach which I favour, for it is better to have the property occupied by an
17 owner who will be better placed to look after the property and facilitate the sale of the
18 property than a tenant, and it is clearly better than having the property empty with the
19 disrepair that may arise through lack of occupation. The wife indicates that online
20 marketing of the property should now also take place on EcayTrade. However, it is likely
21 that this could only be done with the consent of the realtor, as it may be in breach of their
22 contractual arrangement. The wife also makes a reasonable suggestion that a key be
23 provided to the realtor who should be required to give her at least 24 hours notice of any
24 showing of the property.

⁹ Exhibit "MTH-3" to wife's affidavit sworn on 14th March 2012 – document headed "Lawn Maintenance Contract" dated 30th April 2011 reportedly signed by wife and Mr. Ruben Martinez.

1 50. The husband contended in his affidavit evidence that there were savings totalling
2 approximately \$40,000 in an account held in the sole name of the wife, an account to
3 which from July 2010 he did not have access. The husband claimed that the majority of
4 these funds came from the refinancing of the matrimonial home¹⁰ when the mortgage was
5 transferred to the Credit Union in December 2008 with the balance arising from savings
6 accrued over the years. During re-examination he stated that the claim was in relation to
7 \$38,660 which was the balance of the account as of 16th September 2009. He questioned
8 how that balance had reduced from then until their separation, alleging that the wife had
9 made large withdrawals for her own personal benefit. The husband when putting forward
10 this figure failed initially to have regard to payments that, from the face of the bank
11 statements, were clearly made to him from the account.

12

13 51. The wife denies the husband's claims in relation to what he terms "*savings*." She rightly
14 questions the \$40,000 figure relied upon by the husband. She contends that the funds in
15 the account benefited the husband. It is contended that the husband had signing privileges
16 on the account up until July 2010 at which time the balance on the account as \$25,361.88.
17 It is contended that by the end of August that figure had reduced to \$20,917.88 as he
18 received a total payment of \$4,000 in three separate increments of \$1000, \$1,500 and
19 \$1,500. The wife contended that the parties took joint overseas trips and that work was
20 done in the house which further reduced the amount. The wife was unable to provide any
21 helpful figures concerning the costs of renovations up to April 2011. The wife claims that
22 by the end of December the account had reduced to \$13,606.96. She concludes that the
23 relevant figure for the savings should be \$4,019.96 being the amount left in the account
24 on 13th April 2011, the date she gives as being that of their separation.

¹⁰A sum of \$34,003 was transferred into the wife's account at the Credit Union by means of a draft number 609593 on 3rd June 2009.

1 52. The husband in his oral evidence accepted that there were a number of withdrawals
2 totalling \$7,300 made by the wife from the Credit Union account which were appropriate
3 and therefore reduce the amount that he says he is entitled to. These withdrawals were:
4 (i) \$1,600 on 15th July 2009;
5 (ii) \$500 on 16th September 2009;
6 (iii) \$1,500 on 16th November 2009;
7 (iv) \$400 on 10th February 2010;
8 (v) \$900 on 16th February 2010;
9 (vi) \$300 on 16th March 2010;
10 (vii) \$100 on 2nd July 2010;
11 (viii) \$1,500 on 24th August 2010; and
12 (ix) a further \$1,500 on 24th August 2010.¹¹

13

14 At paragraph 55 below the husband also accepts that \$3,500 was transferred from the
15 Credit Union account to his account.

16

17 53. The husband makes a number of allegations that the wife has been moving funds from
18 her account to various family accounts. He contends that a sum of £5,000 taken out of the
19 Credit Union account on 19th May 2010 was placed into an account held by the wife's
20 aunt, Marlene Rankine, at the First Caribbean Bank. On the very limited unhelpful
21 evidence before me in support of this contention, I am unable to make such a finding.

22

23 54. The type of evidence given by the parties in support of their submissions concerning the
24 savings in the Credit Union account has caused the Court difficulties. It has been very

¹¹ This is set out in the additional written clarification submissions provided by the husband's Counsel dated 17th February 2014.

1 difficult to ascertain from the evidence what the funds in the account were used for. With
2 this in mind the Court, following the hearing, made a written request to the parties for
3 greater clarification on this specific issue. Both parties submitted further written
4 submissions in an attempt to clarify. These further submissions were of some limited
5 help, but it was clear that the parties still had difficulty in pointing in any great detail to
6 probative evidence that could greatly support their contentions. The Court has had the
7 same difficulty that Counsel clearly experienced when analysing the evidence to try and
8 deduce or explain how the funds were used. I have already found that the date of
9 separation should be regarded as being November 2010. I am satisfied for the purposes of
10 determining the level of the relevant savings in the account that the important date in
11 relation to the savings is therefore the balance just prior to the withdrawal on 2nd
12 November 2010, namely \$15,951.88. Although this is after the date when the husband's
13 right to access to the account came to an end, some significant payments were made to
14 him following that date. On the evidence before me, I am not satisfied that the wife made
15 any meaningful payments from the account towards improvements on the property after
16 November 2010. I therefore find that the husband has a 50% interest in \$15,951.88,
17 namely \$7,975.94. I add this figure to the figure of \$1,438.40 found due at paragraph 42
18 above to the husband for mortgage payments. This gives me a total of \$9,414.34 which
19 should be paid to the husband and deducted from the equity to be received from the wife
20 upon the sale of the matrimonial home.

21
22 55. The husband contends that at the breakdown of the marriage there were two relevant
23 motor vehicles. The first vehicle was a 2000 Honda Accord which the husband values at
24 approximately C\$2,500. The wife says that she purchased that vehicle for the Petitioner
25 for \$3,500 from funds in the Credit Union account. The husband contends that he
26 purchased the vehicle for \$3,200. The funding came from a \$3,500 transfer into his

1 Credit Union account from the wife's account. The intended purpose of the transfer was
2 to fund travel to the USA with the children that they were fostering at the time. The trip
3 did not take place. The husband accepted at paragraph 20 of his affidavit sworn on 23rd
4 March 2012 that the \$3,500 formed a portion of the savings he claims the parties had
5 accumulated over the years. The second vehicle was a 1999 Dodge Durango motor-
6 vehicle purchased in the wife's sole name for CI\$11,500 although these funds were
7 transferred from the husband's account at the Credit Union. The wife valued the Dodge
8 Durango at CI\$2,200. It has been sold during the parties' separation and the wife has
9 used the proceeds towards purchasing her current vehicle. The wife indicates that she
10 now owns a 2004 Ford Escape which she values at CI\$4,500. The wife indicates that both
11 parties have their own vehicle and that each party should retain their own vehicle.

12
13 56. The wife initially contended that a sum of US\$12,000 should be deducted from the equity
14 available for division between the parties, as that is the amount borrowed to pay for
15 school fees for a course which the husband had never attended. The husband contends
16 that the amount was paid in early 2004 and was only US\$8,000. In the written
17 clarification submissions submitted on behalf of the wife, it is accepted that there is no
18 written evidence to support her contention and she indicates a willingness to accept the
19 value to be CI\$8,000.

20
21 57. The husband contends that the wife's evidence in relation to the education course fees is
22 misleading and requires clarification. He contends that the fees came from their joint
23 earnings and surplus funds of approximately CI\$20,000 that they raised as part of
24 refinancing of the other apartment. He contended that CI\$8,000 was used towards the
25 school fees and in any event a sum of \$11,200 was used to purchase the Durango motor-
26 vehicle for the wife. The husband submits, that whatever the figure the Court accepts, the

1 wife has been adequately compensated by her retention of the motor vehicle. I am
2 satisfied that the figure of US\$8,000 is an appropriate one for the education fees.
3 However when considering the motor vehicle purchases, especially the cost of the
4 Durango, that a credit figure should not be given to the wife for the education expenses.
5

6 CONCLUSIONS

7 58. I remind myself of the principles set out at paragraphs 19 to 29 herein.
8

9 59. I order that the former matrimonial home be marketed for sale forthwith with the
10 intention of it being sold as soon as possible. The parties should agree on the realtor(s) to
11 be used and have joint conduct of the sale. The wife, who may remain in the property
12 pending sale, is responsible for paying the full mortgage payments and utility bills as and
13 when the payments fall due. The wife must keep the property in good order and use her
14 best endeavours to make it available for viewings.
15

16 60. Subject to paragraph 61 below, each party will receive 50% of the equity from the sale of
17 the former matrimonial home.
18

19 61. The sums of \$7,975.94 (being the husband's interest in funds in the Credit Union
20 account) and \$1,438.40 (for mortgage payments made by the husband for mortgage
21 payments) are to be immediately deducted from the wife's share of the proceeds of sale
22 and transferred to the husband.
23
24

1 62. Each party shall retain property already in their sole name.

2

3 63. There shall be a clean break, with no order for spousal maintenance made.

4

5

LEGAL FEES/COSTS

6 64. There shall be no order as to costs

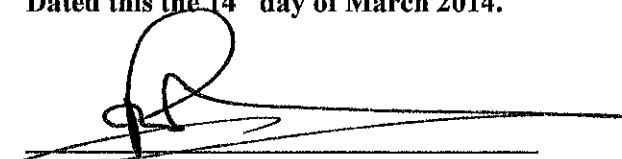
7

8

9 Dated this the 14th day of March 2014.

10

11

12 
13 **Honourable Mr. Justice Richard Williams**
Judge of the Grand Court