

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

Cause No: FAM 0055/2010

4  
5 BETWEEN:

6 LAURIE KAYE JACKSON

7  
8 PETITIONER

9  
10 JACK HARWOOD JACKSON

11  
12 RESPONDENT



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14  
15 Appearances:

16 Ms. Vanessa Allard of Brooks & Brooks for  
17 the Petitioner

18 Mr. Waide DaCosta for the Respondent

19  
20 Before:

The Hon. Mr. Justice Charles Quin

21 Heard:

22 22<sup>nd</sup> February, 15<sup>th</sup> March and 4<sup>th</sup> May  
2011; and 30<sup>th</sup> March 2012

23 Written Submissions:

24 Petitioner's – 30<sup>th</sup> April 2012; Respondent's  
– 29<sup>th</sup> May 2012

25  
26 **JUDGMENT**

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29 1. The Petitioner's Summons was issued on the 16<sup>th</sup> September 2010 for the  
30 settlement of final ancillary matters and for such further and other relief as this  
31 Honourable Court deems just.

32 2. In addition to the four hearings and Written Submissions listed above, the Court  
33 read and took account of:

34 a. the Petitioner's Petition and Verifying Affidavit dated the 25<sup>th</sup> February 2010;

35 b. the Respondent's Answer dated the 23<sup>rd</sup> March 2010;

- 1 c. the Petitioner's Reply to Answer dated the 1<sup>st</sup> April 2010;
- 2 d. the Petitioner's Amended Petition filed on the 7<sup>th</sup> September 2010;
- 3 e. the Petitioner's Affidavit of Means dated the 21<sup>st</sup> September 2010;
- 4 f. the Respondent's Affidavit of Means dated the 15<sup>th</sup> February 2011;
- 5 g. the Petitioner's Affidavit in Reply dated the 17<sup>th</sup> February 2011;
- 6 h. the Petitioner's Affidavit dated the 21<sup>st</sup> February 2011;
- 7 i. the Respondent's Supplemental Affidavit of Means dated the 21<sup>st</sup> February  
8 2011;
- 9 j. the Petitioner's further Affidavit dated the 15<sup>th</sup> March 2011.

#### 10 *HISTORY AND CHRONOLOGY*

- 11 3. The parties were married on the 15<sup>th</sup> October 1994. At the time of the marriage the  
12 Petitioner was 42 years of age and the Respondent was 53 years of age.
- 13 4. Shortly after the marriage the parties moved into their first home at Amity Drive on  
14 Patrick's Island, which is Registration Section Spotts Block 24E Parcel 443, which  
15 they purchased in joint names. In 1997 the parties sold their first matrimonial home  
16 for the sum of US\$580,000.00. From the net proceeds of this sale the parties built  
17 their second home, 22 Palm Island Circle, which was also on Patrick's Island and  
18 was again purchased in joint names. When they sold their second home for  
19 C1\$1,147,500.00, they used the proceeds to purchase the Mallard Drive land, at the  
20 time, several years into the marriage, and then began building there in 2006. The

1 parties moved into the Mallard Drive matrimonial home in mid 2007, which was  
2 the home in which they planned to spend their retirement.

3 5. The Respondent is a businessman and an owner of a heavy equipment firm  
4 Harwood Excavating Limited (“HEL”). He is the 80% shareholder whilst his  
5 daughters from a previous marriage – Jennifer and Stephanie – own 10% each.  
6 HEL is a Company which, according to the Respondent is now barely operational  
7 although, in previous years, it has been successful. The company was particularly  
8 successful for the years 2005, 2006 and 2007 – the years immediately following  
9 Hurricane Ivan in 2004 – and at one stage employed seven or eight heavy  
10 equipment operators and mechanics. Aside from dividends the Respondent earns a  
11 salary of C\$60,000.00 per year from HEL.

12 6. The Petitioner is an assistant financial controller with a Cayman Islands law firm  
13 and earns a salary of C\$93,463.00 per annum and she is due for retirement in 2012.  
14 The Petitioner is now 60 years of age and the Respondent is 71.

15 7. Both parties have contributed to the matrimonial home and expenses.

16 There is evidence that since 2008 the Petitioner has been paying all the household  
17 expenses, including water, electricity, landscaping costs, pool maintenance, as well  
18 as all the grocery bills for the entire household.

19 The Respondent pays the housekeeper’s salary, the dish network television  
20 subscription, general maintenance and repairs to the house, and HEL pays for the  
21 phone and internet services at home.

22 8. In 2010 irreconcilable differences began to arise and both parties accept that there is  
23 no prospect of any reconciliation.

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*DISPOSAL AND DISTRIBUTION OF MATRIMONIAL ASSETS*

9. In this case there is a fundamental dispute between the parties as to what assets are to be regarded as matrimonial assets – with the Respondent claiming that under the Matrimonial Causes Law (“the Law”), the bulk of the properties referred to in the Affidavits, the company, HEL, and, the funds in the bank accounts, are the Respondent’s property, whereas, the Petitioner claims that, save for one account at Butterfield Bank, all the other assets are matrimonial assets, and therefore, there should be an equal division of all the assets between them.

*AGREED MATRIMONIAL ASSETS*

10. Spotts Block 24D Parcel 29 Patrick’s Island – 115 Mallard Drive: The Petitioner and the Respondent are joint owners of this property, which is the matrimonial home and in which they both currently reside. I note that the parties jointly purchased the raw land in January 2002 with a loan which they jointly obtained from Scotiabank. In June 2006 the parties sold their second home in Patrick’s Island and the proceeds from this sale assisted in providing the joint funds to build the current matrimonial home at 115 Mallard Drive. The parties moved into the Mallard Drive property in July 2007 and have been residing there ever since. The home is a five-bedroom property with a pool and landscaped gardens. There is no dispute regarding this property. The Mallard Drive property was originally listed for sale in the sum of US\$5,950,000.00, but the sale price has since been reduced to US\$4,950,000.00.

- 1 11. Cayman Brac West, Block 95C Parcel 189H9 (Carib Sands): It is accepted that the  
2 parties purchased this property on the 31<sup>st</sup> May 1999 and it has always been  
3 registered in their joint names. There is a valuation on this property in the sum of  
4 C\$190,000.00.
- 5 12. Cayman Brac Central, Block 101A Parcel 6: The parties are joint registered owners  
6 of eighteen (18) acres of this portion of undeveloped land in Cayman Brac, which  
7 they purchased in joint names on the 16<sup>th</sup> March 1999. The parties had intended to  
8 have the property subdivided and sold as individual lots, and they received an  
9 informal valuation of the property, once it is subdivided, in the amount of  
10 C\$2,490,000.00.
- 11 13. The parties are agreed that these three properties should be sold and the sale  
12 proceeds divided equally between them.

13 ***DISPUTED PROPERTY***

- 14 14. Savannah Block 28b Parcel 254: The Petitioner maintains that this property was  
15 purchased during the marriage in joint names on the 19<sup>th</sup> August 1997 and is  
16 registered jointly to the parties. The land is 3.22 acres. The Land Registry shows  
17 that the parties obtained a loan of \$195,000.00, which was used primarily for  
18 purchasing the lot on Mallard Drive for the matrimonial home, and also used to pay  
19 off various loans to Scotiabank.

20 The Petitioner maintains that the loan was taken out by the parties in 2002 and the  
21 property was held as security for a loan from Scotiabank. The Court notes that both  
22 parties signed a promissory note for repayment of the loan jointly and severally,  
23 and the repayments from the loan are from a joint account with Scotiabank. The

1 Petitioner maintains that the house on the property is rented, and the Respondent  
2 collects the rent of approximately C\$2,000.00 per month from the tenants living in  
3 the house on the property, with no accounting to the Petitioner. However, the  
4 Petitioner submits that, based on her own calculations, the Respondent should have  
5 collected some C\$26,000.00 over thirteen (13) months. It is the Petitioner's  
6 position that the property has always been a joint asset, and was intended to be for  
7 their joint benefit.

8 It is the Respondent's position that he purchased this land from two of his cousins,  
9 with the intention to use the property as a compound for HEL. The Respondent  
10 contends that, on or about 1997, the Petitioner persuaded him to enter her name on  
11 the Register, even though she had not contributed any money whatsoever to the  
12 purchase or maintenance of this property.

13 The Court notes that there is a letter from the director of Lands and Survey, dated  
14 the 25<sup>th</sup> June 2008, which the Lands and Survey Department are recommending a  
15 payment of C\$150,000.00 because the parties elected for a two-stage assessment of  
16 compensation, under which a maximum of 75% of the agreed compensation is  
17 payable at the first stage – in which case, the Lands and Survey Department was  
18 prepared to make a payment of C\$117,000.00, including professional fees at that  
19 time.

20 During his evidence, the Respondent stated that he does *“not see why he needs to*  
21 *give [the Petitioner] anything which he had before.”* However, during cross  
22 examination the Respondent agreed that all the loans during the marriage were  
23 applied for by both himself and the Petitioner jointly, and that the loans were

1 granted in both their names. Furthermore, both parties signed the necessary  
2 paperwork at the bank, admitting liability for these loans.

3 The Respondent, under cross examination, also agreed that the loans from  
4 Scotiabank were serviced from the various accounts which the parties had with the  
5 bank, and he also agreed that various loan payments came out of the joint account  
6 #910309, HEL accounts #446912, #85625 and #1048511, in sums varying between  
7 C1\$1,358.38 to C1\$1,937.68.

8 15. Savannah Block 27E Parcel 6: This was purchased by the Respondent in 1988. It is  
9 5.1 acres of land and the Petitioner claims that the Respondent farmed several cows  
10 on the property and has always done so during the marriage.

11 The evidence is that this property has been subject to several charges over the years  
12 from Scotiabank. These charges are dated the 21<sup>st</sup> February 1995, in the sum of  
13 US\$83,350.00; another charge dated the 22<sup>nd</sup> April 1997, where the principal sum  
14 was reduced to US\$51,380.00 and then increased by US\$17,862.00 to total  
15 US\$230,000.00; and, on the 2<sup>nd</sup> May 2000, there was a charge in the sum of  
16 US\$65,000.00, again with Scotiabank.

17 The Petitioner maintains that it has been income earned from HEL that has assisted  
18 the parties in making payments on the mortgage for this property.

19 The Respondent submits that he acquired this parcel from his mother out of natural  
20 love and affection. The Respondent submits that this parcel of land was never  
21 brought into the marriage and was never intended to be treated as a matrimonial  
22 asset. The Respondent claims that the Petitioner has not contributed anything  
23 financially to the purchase or maintenance of this property.

1       16.     East Interior Block 63A Parcel 23: This is 36 acres in the East interior purchased by  
2       the Respondent on the 21<sup>st</sup> March 2000. In May 2002 the Respondent entered into  
3       an agreement with Seaside Realty for the sale of this property to Seaside Realty for  
4       the sum of US\$10,000.00 per lot. It was agreed that five (5) lots per year were to be  
5       subdivided by Seaside Realty Limited. These sums are paid yearly in the sum of  
6       US\$50,000.00 per year. Since the agreement the Respondent has been paid  
7       US\$50,000.00 per year and therefore, to date, he has received over US\$500,000.00.

8       The Petitioner submits that the Respondent brought this land into the marriage.  
9       During the 2-year period before the Respondent entered into the agreement the  
10      parties discussed what they would do with property and, the Petitioner, states that  
11      they have treated it as part of their growing list of assets for their joint benefit. The  
12      Petitioner claims that they discussed their plans for the property and that she was  
13      part of the decision to sell the property, as well as recommending changes in the  
14      contract that they prepared and ultimately agreed. In addition, the Petitioner  
15      maintains that the funds collected yearly from Seaside Realty were deposited into  
16      the joint account, which the parties held at Scotiabank, namely, Account #910309  
17      in their joint names. Indeed, this account shows deposits of the sum of  
18      US\$50,000.00 in May 2008, in May 2009, and in May 2010. The Petitioner has  
19      given evidence that out of this account the parties pay joint expenses including  
20      holidays and credit card expenses, and also mortgage payments on some of the  
21      properties that are in joint names.

22      The Petitioner's evidence is that, since these proceedings commenced the  
23      Respondent has withdrawn substantial amounts of cash from this account and has  
24      used the money for his personal expenses. The Petitioner highlights as an example  
25      the withdrawals of \$15,000.00, \$5,000.00 and \$29,155.37 in May 2010. The

1 Petitioner submits that these sums lodged in accounts opened in the Respondent's  
2 own name.

3 The Respondent, on the other hand, submits that he entered into the agreement with  
4 Seaside Realty to develop this piece of land, and for Seaside Realty to purchase lots  
5 from him in the sum of US\$10,000.00 per subdivided lot, with a minimum of five  
6 (5) lots per annum. The Respondent contends that the Petitioner did not contribute  
7 anything financially to the acquisition of this parcel of land. The Respondent  
8 submits that the Petitioner did not contribute to agreement with Seaside Realty, and  
9 it is his recollection that the documentation for Seaside Realty was all prepared by  
10 the attorneys.

11 The Respondent, in his first affidavit, accepted that he received approximately  
12 US\$400,000.00 up to February 2011 but added that, in any event, these monies do  
13 not form part of the matrimonial assets. The Respondent said he used the money  
14 received to pay off bills and debts of HEL, and he has used the funds for his  
15 personal use. The Respondent contends that he never intended for these funds or the  
16 property to be treated as matrimonial assets and he denies that the Petitioner is  
17 entitled to any interest in this property or the proceeds of sale of the subdivided lots.

18 17. East Interior Block 28B Parcel 217: This property was purchased by the  
19 Respondent on the 15<sup>th</sup> September 1987. It is 4.80 acres in Savannah.

20 On the 22<sup>nd</sup> April 1997 a mortgage was placed on this property with Scotiabank in  
21 the sum of US\$230,000.00. On the 2<sup>nd</sup> May 2000 a second mortgage, again with  
22 Scotiabank, was placed on this property in the sum of US\$65,000.00.

1 The Petitioner's evidence is that the loans on these accounts have been serviced  
2 from the joint account of the parties at Scotiabank. The Petitioner maintains that  
3 this property was treated by the parties as being for the benefit of both of them,  
4 even though it was purchased by the Respondent a couple of years before they were  
5 married.

6 The Respondent contends that this property is his sole property and was never  
7 intended to be treated as a joint matrimonial asset. It is the Respondent's case that  
8 he has two children from his previous marriage, along with grandchildren, and that  
9 he wishes to provide for them. It is his intention that, provided he is able to  
10 continue working, he wants to pass this property on to children and grandchildren,  
11 and therefore it was never intended to be treated as a joint asset.

12 The Respondent accepts that this property was used as collateral for a joint loan on  
13 the matrimonial home, however, he only intended for the property to be used as  
14 additional security, and not to bestow a beneficial interest in this property to the  
15 Petitioner.

16 18. Property in Honduras: The Respondent admitted purchasing a property in  
17 Honduras. There is evidence to suggest that the Respondent has a relationship with  
18 a lady who lives in this home with her three grown daughters. The Respondent  
19 claims that the house cost US\$65,000.00. The Respondent contends that the  
20 property in Honduras is for his retirement and is not matrimonial property but his  
21 alone.

22 The Petitioner submits that funds taken from the parties' joint account were placed  
23 in a sole account opened in the name of the Respondent and monies were  
24 transferred to the account of the Respondent with HSBC in Honduras. This is not

1 denied by the Respondent, and the Petitioner claims to be entitled to 50% of this  
2 particular asset.

3 The Petitioner maintains that joint matrimonial funds, namely US\$100,000.00 that  
4 the Respondent withdrew from the Credit Union account, and US\$54,155.37,  
5 removed from the joint account at Scotiabank account, were deposited by the  
6 Respondent into a newly opened account in the Respondent's sole name at the  
7 Credit Union at Scotiabank. The sum of US\$54,155.37 was deposited into an  
8 account with HSBC which bears the Respondent's name. Therefore the Petitioner  
9 maintains that these accounts, and the property in Honduras, are matrimonial assets.

10 ***HARWOOD EXCAVATING LIMITED ("HEL")***

11 ***The Petitioner's Position on HEL***

12 19. In the Petitioner's Affidavit of Means filed on the 21<sup>st</sup> September 2010, she deposed  
13 to the fact that she and the Respondent ran the business of HEL from the date they  
14 were married until the present day. HEL is an excavation company.

15 20. The Petitioner accepts that the company was incorporated before she and the  
16 Respondent were married. In fact, the Respondent's first wife had an interest in the  
17 Company and, after they divorced her interest was transferred to the Petitioner.

18 21. In this Affidavit the Petitioner avers that she was an intimate part of the  
19 administration of the business. She maintains that she assisted the Respondent in  
20 the running of the business – from the outset of their marriage, and even after the  
21 marriage broke down.

1       22.     The Petitioner claims that, throughout all the years of their marriage, she was  
2             responsible for the corporate administration of all work done by HEL, all aspects of  
3             the accounting including work in progress, accounts receivables, accounts payables,  
4             payroll, preparing client quotations, preparing work permit applications for  
5             employees, and general secretarial work for the Company.

6       23.     In her evidence, taken on the 15<sup>th</sup> March 2011, the Petitioner affirmed that she  
7             received a degree in accounting from Balor University, Texas, and, having qualified  
8             as an accountant, has been practicing since 1973. She confirmed that she prepared  
9             all the financial statements, the billings, the payroll, the reports to the banks and did  
10            all the secretarial and administration work for HEL. She confirmed that HEL never  
11            paid for her time or services. The Petitioner said she wanted to help her husband in  
12            the business and therefore confirms that she never asked for a salary. The  
13            Petitioner's evidence was that she was supposed to receive a salary of C\$5,000.00  
14            per month, but the parties decided to keep these funds in the Company. The  
15            Petitioner's evidence is that they were trying to make a success of the business and  
16            save money. She said that the Respondent's ex-wife was paid out of the business.  
17            The Petitioner adds that she and the Respondent obtained a loan in 1994 and a  
18            second loan on or about 1994/1995 to pay the ex-wife out of the business. The  
19            Petitioner confirmed that the Respondent bought his ex-wife's shares. The  
20            Petitioner also confirms that there was a joint loan for the purchase of a big Hitachi  
21            excavator.

22       24.     The Petitioner submits that she became an officer of the Company in March 1995  
23             and was a signatory on the HEL accounts. The Petitioner confirms that she has,  
24             since 1995, been listed as a Vice President on the HEL Annual Returns to the  
25             Registrar of Companies. The Petitioner states that when the business was doing

1 well HEL had 7 or 8 heavy equipment operators and mechanics – most of who were  
2 Caymanians – but they did have a work permit for one non Caymanian.

3 25. The Petitioner states that she is still helping with the business and stays in regular  
4 contact with the bookkeeper, Jackie Seliga, who is a Filipino. The Petitioner  
5 maintains that it is only in the last two or three years that they employed a part-time  
6 bookkeeper, who was paid a salary from the company. The Petitioner maintains that  
7 she oversees the bookkeeper, and everything done by the bookkeeper is authorised  
8 and reviewed by her.

9 26. The Petitioner states that she prepared all the financial statements for HEL for the  
10 purposes of these proceedings and her evidence is that they ran the business as a  
11 family business throughout the years of their marriage, although, she confirms that  
12 she never received a salary from the business.

13 27. The Petitioner submits that she prepared all the balance sheets and the balance sheet  
14 for the year 2009 verifies that the company paid the Respondent \$60,000.00 per  
15 annum.

16 28. The Petitioner avers that she and the Respondent always treated HEL as a joint  
17 venture in which *“we would discuss the running of the business regularly.”* The  
18 Petitioner states that they were even loaned funds by HEL, listed on the balance  
19 sheet, which sum is sum is now approximately \$100,000.00, and is owned jointly  
20 *“by the Respondent and myself.”*

21 29. The Petitioner is concerned that the Respondent has been selling off equipment  
22 owned by HEL, and she has received no information or accounts in relation to these  
23 sales. For example, the Petitioner avers that the Respondent sold his 1987 Hatteras,



1           *"barely operating"* and he had to sell the majority of the equipment to be able to  
2           pay bills and expenses. The Respondent avers that he is currently living off the little  
3           savings that he has left.

4           34.     In his Affidavit of Means the Respondent deposes to the fact that he sold the  
5           Lowbed (truck) and tractor head for C\$50,000.00, a new Holland Rubber Tyre  
6           Backhoe for C\$25,000.00, and, a Hitachi excavator for C\$35,000.00, bringing the  
7           net total to C\$110,000.00. The Respondent said that he deposited C\$100,000.00  
8           into a credit union account, as he wanted to earn a better rate of interest than he was  
9           getting at the other banks.

10          35.     The Respondent deposed that he traded a truck in for the sum of C\$17,000.00. He  
11          then took \$10,000.00 of the C\$110,000.00 (referenced at line 14 above) and  
12          applied the total of C\$27,000.00 to the purchase of a new truck.

13          36.     In the Respondent's closing submissions filed on the 28<sup>th</sup> May 2012, he contends  
14          that HEL has a share capital of C\$300,000.00, divided into 300,000 shares of  
15          \$1.00 each. The Respondent maintains that, even after his first wife's shares were  
16          transferred to him, he owns 80% of the shares and 20% of those shares are held by  
17          his daughters Stephanie and Jennifer Jackson.

18          37.     In his evidence the Respondent admitted that HEL had many good years. He said  
19          the first three years were "not so good" but after Hurricane Ivan he was very busy.  
20          In his oral evidence given to the Court the Respondent accepted that the Petitioner  
21          did the accounting for the business. The Respondent stated that he would get the  
22          jobs and ensure that the jobs were done and the Petitioner would prepare the  
23          financials, the applications for Immigration and she would balance the books. The  
24          Respondent acknowledged that the Petitioner never took a salary, which was

1 obviously a significant financial benefit to HEL. The Respondent accepted that the  
2 Petitioner did the accounting for the business for over sixteen and a half (16 ½)  
3 years. The Respondent stated that the Petitioner would do the accounting because

4 *“...he did not know anything about that”*

5 and further, in his evidence the Respondent stated:

6 *“...what I get out of it is what she got out of it. We worked together.”*

7 The Respondent accepted that he and the Petitioner were trying to build up some  
8 money to retire together and therefore, he said,

9 *“...everything we got out of it [the business] we shared.”*

10 The Respondent admitted that the business benefitted both the Petitioner and the  
11 Respondent, and he accepted that the Petitioner is a smart woman and a smart  
12 accountant. About the Petitioner the Respondent said,

13 *“She did very good for me, and the business.”*

14 ***BANK ACCOUNTS***

- 15 38. Scotiabank US dollar account No. 910309: The Petitioner maintains that during the  
16 marriage the account was registered in joint names. The account serviced their  
17 various mortgages on the different properties with Scotiabank, throughout their  
18 marriage. The repayment of loans with Scotiabank was secured by promissory  
19 notes signed by the parties jointly. The deposits into this account were from various  
20 sources including funds from the sale of properties, as well as funds earned by

1 HEL. Debits and payments from this account were mostly for joint expenses,  
2 including AMEX credit card purchases for vacations and travelers' cheques.

3 The Petitioner maintains that there is no dispute that the Respondent withdrew  
4 funds totalling US\$54,155.37 from this joint account and used this amount to open  
5 a new Scotiabank account in his sole name. The Petitioner maintains that these  
6 funds included proceeds, up to US\$50,000.00 from payments they received for the  
7 East End lots in 2010.

8 The Respondent's position is that this bank account was in his name until the  
9 Petitioner was joined. The Respondent accepts that joint expenses such as holiday  
10 expenses, travellers' cheques and AMEX payments were paid out of this account.  
11 The Respondent maintains that the mere payment of joint bills does not give the  
12 Petitioner an interest in this bank account or in the properties that had loans repaid  
13 from this account. The Respondent maintains that, as the husband he paid some of  
14 his wife's expenses from this account and these payments were merely gifts  
15 throughout the marriage.

16 39. Scotiabank account Nos. 446912-85625 and 10485110 in the name of HEL: The  
17 evidence is that the payments into these accounts were made from income from  
18 HEL.

19 The Petitioner maintains that she became a signatory at the request of the  
20 Respondent in March 1995 within six months of their marriage. The Petitioner  
21 maintains that she was the only one who understood accounting, and therefore,  
22 based on her work with HEL it was prudent to have her on as a joint signatory. The  
23 Petitioner maintains that many loan payments for the joint loans which were  
24 obtained from Scotiabank were serviced from these HEL accounts.

1 The Respondent maintains the monies were in these accounts for the benefit of  
2 himself and the two daughters from his previous marriage.

3 40. Scotiabank account No. 10015897: The parties are agreed that this account was  
4 opened in the sole name of the Respondent, using funds transferred from the joint  
5 account. The Petitioner maintains that although this account was open subsequent  
6 to the breakdown of the marriage, the sum of US\$29,155.37 was taken from the  
7 joint Scotiabank account Number 910309 on the 12<sup>th</sup> May 2010 to open this  
8 account, and these funds are matrimonial funds.

9 However, it is the Respondent's position that although Account Number 910309  
10 was a joint account, the contents of the account were not joint assets and were never  
11 joint assets.

12 41. Butterfield Bank Accounts with Numbers: 01201/122425 and 02201/122425: The  
13 Petitioner avers that these accounts – the former, a US account, and the latter, a CI  
14 account – were used to pay joint credit card bills and sundry expenses.

15 Account # 01201/122425 is in the sole name of the Petitioner. The source of funds  
16 in this account is primarily from the estate of the deceased mother of the Petitioner  
17 for the benefit of the Petitioner.

18 Additionally, funds were deposited into this account from the sale of the  
19 Petitioner's motor vehicle. A further sum of US\$37,985.00 was withdrawn from  
20 this account for the purchase of the Petitioner's motor vehicle.

21 Also, the Petitioner's salary of US\$93,000.00 per annum goes into this Butterfield  
22 Bank account #01201/122425. The Petitioner uses this account for personal  
23 maintenance and outgoings for the matrimonial home, including payments for

1 electricity (CUC), water (Water Authority), pool maintenance and Weststar TV,  
2 and for grocery, personal and joint expenses.

3 42. CICSA Co-Operative Credit Union Account: It is accepted by both parties that this  
4 account is in joint names.

5 The evidence from the Petitioner is that deposits to this account during the marriage  
6 came from various sources including the sale of the matrimonial home previously  
7 owned jointly by the parties at Palm Island Circle, which led to a deposit of  
8 C\$1,147,500.00 on the 6<sup>th</sup> June 2006.

9 The Petitioner maintains that funds deposited into this account were from work  
10 done by HEL as well C\$76,000.00 transferred from the Cayman National Bank  
11 (CNB account) (referred to in paragraph 40 of this Judgment). This amount was the  
12 net proceeds from the joint Bodden property. The Respondent points out that there  
13 are numerous debits from this account for the building of the matrimonial home at  
14 Mallard Drive between 2006 and 2007. Furthermore, the Petitioner maintains that  
15 in the early stages of their marriage her salary would go into this Credit Union  
16 account to assist in covering things such as the payroll for HEL. The Petitioner  
17 avers that the Respondent, without the consent of the Petitioner, withdrew  
18 C\$100,000.00 from this account in March 2010 without providing the Petitioner  
19 with any accounting.

20 The Respondent maintains that the funds deposited in this account belong solely to  
21 him, having been derived from funds earned by HEL. The Respondent contends  
22 that it was no longer convenient to utilize the Credit Union account and he  
23 transferred to his sole account.

1       43.     Cayman National Bank (CNB) Account No. 011-02099: There is a dispute between  
2       the parties as to which of them owned this account initially – with both claiming  
3       that they opened the account and added the other party’s name to the account.  
4       However, it is common ground that during the marriage they both had access to the  
5       account and the funds in the account.

6       The evidence shows that there were numerous debits from this account for the  
7       parties’ separate and personal expenses. For example, withdrawals from this  
8       account covered the Respondent’s medical expenses in Cuba in September 2010. It  
9       is accepted by the parties that debits were made for the parties’ joint expenses in  
10      relation to the matrimonial home.

11      In addition, there are numerous credits into this account from the sale of jointly-  
12      owned land, for example the sale of the joint Bodden Town land in September  
13      2009.

14      It is the Petitioner’s evidence that before she opened the Butterfield account her  
15      salary went into either this CNB account or the Credit Union accounts, which  
16      assisted in covering the payroll for HEL.

17      44.     HSBC Honduras SA accounts #630303004201 and #6303005356: The evidence is  
18      that these accounts were opened after the start of these proceedings and that funds  
19      in the sum of US\$54,155.37 were withdrawn from the joint Scotiabank account  
20      #910309 and deposited into these accounts.

21      It is the Respondent’s evidence that the funds he took to Honduras were used to  
22      build a home there, which cost US\$65,000.00 and he also furnished this home. The

1 Respondent contends that the funds in this account are not matrimonial assets  
2 because the funds were derived solely from “*his profits at HEL*”.

3 ***OTHER ASSETS***

4 45. *Ameritrade*: The Respondent maintains that the US regulatory authority was  
5 discouraging Ameritrade from doing business with offshore jurisdiction and,  
6 accordingly, the Respondent was forced to liquidate the portfolio and receive the  
7 sum of US\$24,500.99, which, the Respondent confirms, he deposited into his  
8 account at Scotiabank.

9 The Petitioner maintains that she is entitled to fifty percent of this investment,  
10 namely US\$12,299.57.

11 46. *Cryptolex*: The Respondent maintains that shares in Cryptolex were purchased with  
12 funds derived solely from the proceeds of HEL and for the benefit of the  
13 Respondent. The Respondent maintains that the Petitioner did not execute the  
14 stockholders’ agreement and that the shares were issued solely in the name of the  
15 Respondent. Accordingly, the Respondent submits this is not a joint matrimonial  
16 asset. Additionally, the Respondent submits that the value of these shares is  
17 unknown and the shares have no real value.

18 The Petitioner states that the Cryptolex shares are a total of one hundred and eight  
19 thousand (108,000) in total, and that she is entitled to fifty percent (50%) of this  
20 shareholding.

21 47. *Motor vehicles*: The Petitioner owns a Cadillac SRX, which the Respondent  
22 maintains was purchased from matrimonial assets, and its valuation is  
23 C\$43,000.00.

1 The Respondent owns a 2009 Ford Ranger truck, purchased for C\$27,000.00. The  
2 Respondent contends that both parties should retain ownership of their respective  
3 vehicles.

4 This is one of the few items that both parties are agreed upon.

5 *PENSIONS*

6 48. In early 2011 the Petitioner's two pension packages – with Fidelity and the  
7 Chamber of Commerce were worth US\$52,868.08 and C\$27,520.86 respectively.

8 49. The Respondent receives a sum of approximately Cdn\$233.00 monthly from his  
9 Canadian pension plan.

10 *SUMMARY OF PETITIONER'S POSITION*

11 50. The Petitioner maintains that with respect to the East End lots at Block 63A Parcel  
12 23, US\$500,000.00 have been paid to the Respondent and another US\$420,000.00  
13 remains due and owing. The Petitioner maintains an entitlement to 50% of the  
14 future payments.

15 51. The total value of the real estate, based on the valuations conducted in March 2011  
16 is C\$568,000.00 and US\$2,350,000.00.

17 The Petitioner contends that the properties should be put up for sale and each party  
18 share equally in the net proceeds of sale.

19 52. The Petitioner maintains that this was a marriage of equals, and both parties  
20 contributed significantly to the development of HEL. The Petitioner maintains that  
21 both parties used funds from HEL which was placed in bank accounts. The

1 Petitioner also maintains that although the Respondent was the only shareholder in  
2 HEL (other than the Respondent's two daughters) the Company and its assets were  
3 brought into the marriage.

4 53. The Petitioner maintains that the bank accounts with CNB, the Credit Union and  
5 with Scotia Bank were treated as joint accounts, and that both parties used funds in  
6 these accounts to buy property, and, in addition, used funds from these accounts to  
7 meet other joint expenses.

8 The Petitioner's evidence is that "everything was co-mingled" and the parties made  
9 all their decisions together. The Petitioner's evidence is that they each knew when  
10 the funds were taken out.

11 Accordingly, the Petitioner submits that the bank accounts, including her own bank  
12 account, should be divided 50:50.

13 *SUMMARY OF RESPONDENT'S POSITION*

14 54. The Respondent maintains that the three (3) properties in joint names – that is, the  
15 matrimonial home, Spotts Block 24D Parcel 29; Cayman Brac West Block 95C  
16 Parcel 1891H9; and, Cayman Brac Central Block 101A Parcel 6 – should be sold,  
17 and the net proceeds be split equally between the parties.

18 It is the Respondent's position that the other properties in joint names, namely,  
19 Block 28B Parcel 254, should be transferred to the Respondent absolutely.

20 The Respondent maintains that the other properties which are in his name, namely,  
21 Savannah Block 27E Parcel 6; East Interior Block 63A Parcel 23; East Interior

1 Block 28B Parcel 219; and, the property built in Honduras, should remain for the  
2 sole benefit of the Respondent.

3 55. The Respondent submits that although HEL is barely operational, whatever  
4 valuation may be on the few remaining assets returns 80% to him and 20% to his  
5 two daughters.

6 56. In addition, the Respondent submits that the funds held in the bank accounts at  
7 Scotiabank, HSBC Honduras, and, the proceeds of the Ameritrade account and  
8 Cryptolex account should be for the sole benefit of the Respondent.

9 57. The Respondent contends that the proceeds of the sale of the boat should be for the  
10 sole benefit of the Respondent.

11 58. The Respondent submits that the motor vehicles should remain in the parties'  
12 respective names.

13 59. In relation to the pensions, the Respondent submits that the pensions held in the  
14 name of the parties should be split equally between them.

15 ***THE LAW***

16 60. The general principles to be followed by the Court in ancillary matters are set out in  
17 s.19 of the Law which reads:

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

22

23

1           61.     In addition, s.21 of the Law reads:

2                           *“At the time of pronouncing a decree under this Law, the Court shall, as*  
3                           *appropriate, make orders for-*

4                           (i) ....

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

7                           (iii) *varying any settlement of the property of the spouses made in*  
8                           *consideration of the marriage, whether such settlement was made*  
9                           *before or upon the treaty of the said marriage;*

10                          (iv) *varying any other settlement of matrimonial property;*

11                          (v) *making financial provision from the property of either spouse*  
12                          *.....for the other spouse;*

13                          (vi) *providing for periodic payments to be made by either spouse ..... of*  
14                          *the marriage and for the other spouse;*

15                          (vii) ....”

16           62.     The Cayman Island Court of Appeal in *Doak v. Doak and Ridley* 2002 CILR 244  
17                           has adopted the principles laid down by the House of Lords in *White v. White*  
18                           [2001] 1 All E. R. 1 and, Taylor JA said at paragraph 17-18 in *Doak v. Doak and*  
19                           *Ridley*

20                           *“The decision in White v. White has already been relied on in the Grand Court*  
21                           *in Barrett v. Barrett [2001] CILR 56 and Uzzell v. Uzzell [2001] CILR N (12).*  
22                           *In the latter case Sanderson J. compared the provisions of ss.19 and 22 of the*  
23                           *Matrimonial Causes Law of these Islands with those of s.25(1) and (2) of the*  
24                           *Matrimonial Causes Act, 1973, dealt with by the House of Lords in White, and*  
25                           *concluded that the discretion given to the court by the Cayman legislation is, on*  
26                           *balance, even broader than that granted by the English statute.”*

27                           Taylor JA went on to state:

28                           *“We agree that the principles established by English authorities, and*  
29                           *particularly the decision of the House of Lords in White v. White are*  
30                           *applicable here.”*

31

1           63.     The English legislation states:

2                     *“The Court shall, in particular, have regard to the following matters:*

3                     (i)     *the income, earning capacity, property and other financial*  
4                     *resources which each of the parties to the marriage has, or is*  
5                     *likely to have, in the foreseeable future, including in the case of*  
6                     *earning capacity any increase in that capacity which it would*  
7                     *in the opinion of the Court be reasonable to expect a party to*  
8                     *the marriage to take steps to acquire;*

9                     (ii)    *the financial needs, obligations and responsibilities which each*  
10                    *of the parties to the marriage has or is likely to have in the*  
11                    *foreseeable future;*

12                    (iii)   *standard of living enjoyed by the family before the breakdown*  
13                    *of the marriage;*

14                    (iv)    *the age of each party to the marriage and the duration of the*  
15                    *marriage;*

16                    (v)     *any physical or mental disability of either of the parties to the*  
17                    *marriage;*

18                    (vi)    *the contributions which each of the parties has made or is*  
19                    *likely in the foreseeable future to make to the welfare of the*  
20                    *family, including any contribution by looking after the home or*  
21                    *caring for the family;*

22                    (vii)   *the conduct of each of the parties (whatever the nature of the*  
23                    *conduct and whether it occurred during the marriage or after*  
24                    *the separation of the parties or (as the case may be) dissolution*  
25                    *or annulment of the marriage] if that conduct is such that it*  
26                    *would in the opinion of the court be inequitable to disregard it;*

27                    (viii)   *in the case of proceedings for divorce or nullity of marriage,*  
28                    *the value to each of the parties to the marriage of any benefit*  
29                    *(for example a pension) which by reason of the dissolution or*  
30                    *annulment of the marriage that party will lose the chance of*  
31                    *acquiring.”*

32

33           64.     In the second holding of *Wight v. Wight* 2010 (1) CILR 60 at page 61 the Court of  
34                     Appeal laid down the principles to be applied by stating:

35

1                   *"In exercising its broad discretion under ss. 19 and 21 of the Matrimonial*  
2                   *Causes Law (2005 Revision) in the distribution of matrimonial property, the*  
3                   *court would act in accordance with the modern view that a marriage was a*  
4                   *presumed union of equals, and that there should be no bias or discrimination as*  
5                   *to the nature of the role played by each spouse, e.g. breadwinner or*  
6                   *homemaker. Therefore, having provided for the needs of the parties (including*  
7                   *the needs of any children), the court would aim for equality and opt for an*  
8                   *unequal distribution only to the extent that inequality of distribution was*  
9                   *required in exceptional circumstances in order to achieve a fair result."*

10

11           65.     Forte J. specifically stated at paragraph 58 of *Wight v. Wight*:

12                   *"Each party, therefore, would be entitled to an equal share of assets acquired*  
13                   *in the marriage unless there is good reason to depart from that principle. In*  
14                   *coming to this conclusion I would reiterate that the principles espoused in the*  
15                   *(UK) cases of **White v. White**, **Charman v. Charman**, and **Miller v. Miller**, are*  
16                   *as applicable to this jurisdiction as they are to the English jurisdiction."*

17

18           66.     The most contentious issues before this Court are the Petitioner's claim to an  
19                   interest in HEL and her claim in relation to the disputed properties listed in  
20                   paragraphs 13 to 17 above.

21           67.     The Court of Appeal has provided helpful guidance on what constitutes  
22                   matrimonial property in *W v. W* (2009) CILR 255 and the Judgment of the  
23                   President, Sir John Chadwick, at paragraph 13 where he states:

24                   *"It is pertinent, therefore, to note the guidance given in the English cases in*  
25                   *respect to property which has been brought into the marriage by one of the*  
26                   *parties: that is to say property which is not "the financial product of the*  
27                   *parties' common endeavour", to adopt a phrase used by Lord Nicholls of*  
28                   *Birkenhead in **Miller(2)** ([2006] 2 A.C. 618, a paragraph 22). In relation to*  
29                   *property of that nature Lord Nicholls said this in **White (3)** ([2001] 1 A.C. at*  
30                   *610):*

31                   *"Plainly, when present, this factor is one of the circumstances of the*  
32                   *case. It represents a contribution made to the welfare of the family by*  
33                   *one of the parties to the marriage. The judge should take it into*  
34                   *account. He should decide how important it is in the particular case.*  
35                   *The nature and value of the property and the time when and*  
36                   *circumstances in which the property was acquired, are among the*



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*CONCLUSION*

70. It is agreed that *Spotts Block 24D Parcel 29 Patrick's Island – 115 Mallard Drive; Cayman Brac West, Block 95C Parcel 189H9 (Carib Sands); Cayman Brac Central, Block 101A Parcel 6*, are all matrimonial assets and, accordingly, should be sold and divided equally between the parties.

HEL

71. Although HEL was owned by the Respondent and his previous wife, together with their daughters, it had only come into existence a few years before the parties were married. The evidence is clear that the company's best years were in the 2000's and in particular in the years after Hurricane Ivan in 2004. At that time, the company had much more plant equipment than it has today, and further, the company provided work for 7 or 8 heavy equipment operators and mechanics. The company also provided a regular salary to the Respondent as well as dividends which were used to purchase further properties for the parties.

I find that matrimonial assets were invested in HEL for the benefit of the company. Furthermore, there is evidence that both parties put in their personal funds to cover the expenses of the company.

What is of particular importance is that the Petitioner has acted as the accountant and the corporate administrator of the company for some sixteen years. From her evidence the Petitioner was to be paid an initial salary of C\$5,000.00 per month, which is a perfectly reasonable salary for the specialist roles which she performed. There is no complaint from the Respondent or from any other person, before this Court, about the Petitioner's performance as accountant and corporate

1 administrator. In fact, it is to the Respondent's credit that he accepts that the  
2 Petitioner did all the accounting as he knew nothing about that. The Respondent  
3 candidly acknowledged that the Petitioner is a smart woman and a smart accountant  
4 and "*she did very good for me and HEL.*" It is clear from the Respondent's  
5 evidence that he and the Petitioner worked together and in fact, the Respondent  
6 stated that he and the Petitioner were "*trying to build up some money to retire*  
7 *together.*"

8 72. If one were to total the amount owed to the Petitioner by HEL on the basis of  
9 C1\$5,000.00 per month, it would amount to just under C1\$1,000,000.00 for all her  
10 work over the 16 years of their marriage. Even if the Respondent challenges the  
11 Petitioner's figure of C1\$5,000.00 per month as the remuneration for her over 16  
12 years of service as HEL's sole accountant and corporate administrator, her  
13 contribution to the company still amounts to a substantial sum of money which  
14 remained in HEL for the benefit of the Company.

15 73. It is clear that many of the company's assets have been sold. There is no current  
16 valuation of the company and the Respondent freely admits that the company is  
17 "barely operating."

18 74. It does not appear that HEL has any significant debts and this can be credited to the  
19 Petitioner's careful and frugal housekeeping of the Company's finances, accounts,  
20 books and records.

21 75. Though it is difficult to establish what the company is worth I am entirely satisfied  
22 that the Respondent's interest in HEL is joint matrimonial property and,  
23 accordingly, I find that the Petitioner is entitled to 50% of the Respondent's 80%  
24 shareholding in HEL. If the Company is sold, the Petitioner is to be provided with

1 50% of the Respondent's interest in the Company. If, alternatively, the Company is  
2 not sold, the Respondent is to pay to the Petitioner a sum which is a fair and  
3 reasonable amount which would represent 50% of his interest in HEL.

4 Savannah Block 28b Parcel 254

5 76. The parties purchased this property in joint names on the 19<sup>th</sup> August 1997 and it is  
6 registered jointly in their names. As stated above, the mortgage obtained on this  
7 property was taken out by both parties and they both signed a promissory note for  
8 repayment of the loan jointly and severally.

9 77. I find that this is joint matrimonial property which I order to be sold and the  
10 proceeds of the sale divided equally between the parties.

11 Savannah Block 27E Parcel 6  
12 &  
13 Savannah Block 28B Parcel 217

14  
15  
16 78. These two parcels of land were purchased by the Respondent some five or six years  
17 before the marriage.

18 79. Block 27E Parcel 6 has been the subject of several charges over the years as set out  
19 in paragraph 12 above. The charges were in joint names and both parties were  
20 responsible for the repayment of the mortgage payments. Furthermore, there is  
21 evidence that income earned from HEL assisted the parties in making payments on  
22 the mortgage for this property.

23 80. Block 28B Parcel 217 is the subject of two mortgages, both in the parties' names.

24 81. I find that, as a result of the obligations incurred by both parties for their joint  
25 benefit, and as a result of the co-mingling of funds, this is also matrimonial

1 property, which should be sold and the proceeds of which are to be divided equally  
2 between the parties.

3 East Interior Block 63A Parcel 23

4 82. Some eight years into the marriage the Respondent entered into an agreement with  
5 Seaside Realty for the sale of this property in subdivided lots – the terms of which  
6 are set out in paragraph 13 above.

7 83. In view of the integral part that the Petitioner played in HEL and in all the other  
8 properties, I accept her evidence that this property was treated as part of their joint  
9 assets and for their joint benefit. It is clear from the evidence of both parties that  
10 they had many significant discussions about their retirement and this property was  
11 very much a part of their retirement plans.

12 84. I find that the Petitioner played an integral role in the sale of this property to  
13 Seaside Realty and the terms and conditions which led to payments to the  
14 Respondent of over US\$50,000.00 per year.

15 85. The Respondent has accepted that money he received from the sale of these lots  
16 helped to pay off bills and debts of HEL and further, that he has made personal use  
17 of the funds.

18 86. Additionally this property was used a collateral for loans from Scotiabank,  
19 including a loan for US\$65,000.00 for a bulldozer for HEL.

20 87. In light of the Petitioner's undoubted contribution to HEL, and her participation in  
21 loans and mortgages obtained from the bank for the business and the properties, I  
22 find that Parcel 23 was also a joint matrimonial asset which was seen as such during

1 the marriage. Accordingly I order that the annual proceeds from the sale of this  
2 property to Seaside Realty should be divided equally between the parties.

3 Property in Honduras

4 88. The money to purchase this property was taken from the parties' joint account at  
5 Scotiabank and placed in a sole account in the name of the Respondent before he  
6 transferred the monies down to Honduras.

7 89. I find that this property is matrimonial property, to be sold and the proceeds divided  
8 equally.

9 90. I find from the evidence adduced orally and by Affidavit that the parties acted and  
10 treated their marriage as an equal partnership. From the evidence, it is clear that the  
11 Respondent consulted the Petitioner on all aspects of matrimonial property,  
12 particularly as it concerned the purchase of assets, the sale of assets, the use of  
13 proceeds of sale of those assets and the running of HEL.

14 91. I find from all the evidence adduced that the Petitioner was intimately involved in  
15 the acquisition of funds for the purchase of property, the application for loans and  
16 the guarantee of the loans and their repayment.

17 92. The evidence discloses that there has been a co-mingling of funds, income and  
18 other monies generated by both parties, whether from their separate incomes or  
19 from the proceeds of the sale of assets. I find that during the marriage all the assets,  
20 including the disputed property, were treated as matrimonial assets for their joint  
21 benefit. Furthermore these assets were very much part of the parties' retirement  
22 plans which, in light of their respective ages, is not very far away.

1 93. From the evidence before this Court, this was a union of equals. I find that, in light  
2 of all the circumstances set out above, the Court should aim for equality, which I  
3 believe will achieve a fair result to both parties. Accordingly, I see no reason to part  
4 from the principle that they should both be entitled to an equal share of the assets as  
5 set out above.

6 94. I find that all the bank accounts are joint matrimonial assets and the funds in these  
7 accounts should be divided equally.

8 95. The Ameritrade and Cryptolex accounts are also joint matrimonial assets to be  
9 divided equally between the parties.

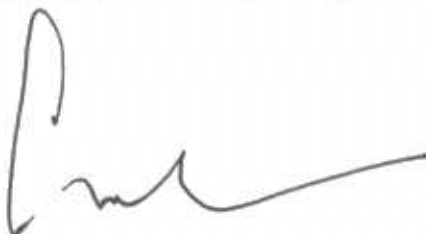
10 96. The only assets which I do not find are joint matrimonial assets are the pensions in  
11 the parties' respective names and their motor vehicles. I therefore find that they can  
12 each keep their own pensions and their own motor vehicles.

13 97. Should counsel wish to address me on the question of costs, I will hear submissions  
14 at a time convenient to both counsel and the parties.

15  
16

17 **Dated this the 31<sup>st</sup> day of August 2012**

18  
19  
20



21 **Honourable Mr. Justice Charles Quin**  
22 **Judge of the Grand Court**