

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS

2
3 IN CHAMBERS

4
5
6 CAUSE NO. D16 OF 2006

7
8 BETWEEN: SB-H

9 PETITIONER

10
11 AND: JSH

12 RESPONDENT

13
14 Coram: The Hon. Mr. Justice Foster

15
16 Appearances: Mrs. Eileen Nervik of Nervik & Company for the Petitioner
17 Mr. Shaun McCann of Campells for the Respondent

18
19 Heard on 10th, 11th, 12th, 13th, 16th and 17th February 2009

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21
22
23
24 JUDGMENT

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26
27 1. The issues before the Court in this matter concern the division of property
28 between the parties, who shall I refer to as the husband and the wife, on divorce
29 and the maintenance to be paid by the husband for the children of the marriage.

30 There is also an issue between the husband and the wife relating to a restrictive
31 condition attached by earlier order of the Court to the terms of access to the
32 children by the husband, which the husband seeks to have removed but, in view of
33 the unusual length of time taken by the hearing on the first two issues, that has
34 had to be adjourned for hearing on a future date.

35
36 2. The basic facts (on some of which I shall elaborate and comment later in this
37 judgment) are that the husband and the wife were married in Grand Cayman on

1 10th July 1993. There are 2 children of the marriage, both boys, born on 21st
2 March 1995 and 28th October 2000, who were accordingly almost 14 and 8 years
3 old respectively at the date of the hearing. The husband and the wife are both
4 now in their late 40s.

5
6 3. The husband is originally from England, where he was educated to university
7 level. He came to work in Grand Cayman in 1987. He was previously married
8 and divorced in England. When he first came to Cayman he was employed as
9 manager of a local office fit-out and furniture supply company which is when he
10 first met the wife. During 1990 he moved to work for a well-known local real
11 estate company owned by the wife's cousin, although retaining an interest in the
12 office supply business. The husband was granted Caymanian Status in 1999
13 through his marriage to the wife.

14
15 4. The wife was born in Honduras but came to live in Grand Cayman with her
16 parents at a young age. She has Caymanian family connections and as a result
17 acquired Caymanian Status. She was educated in Cayman and thereafter in
18 England where she was subsequently called to the Bar as a barrister. She then
19 returned to work in Cayman in about 1984. She was first employed in the
20 Attorney General's Chambers, latterly as a legislative draftsman, and then as the
21 Clerk of Court. In October 1990, almost 3 years prior to the marriage, she
22 established her own law firm, ("the Law Firm"), of which she remains the sole
23 principal. The Law Firm specialises mostly in matrimonial and family litigation.

24

1 5. When they were first married the husband and the wife lived for over 2 years in a
2 house owned by to the wife in the Breakers area ("the Breakers House"), to which
3 I shall refer later. Then, not long after the birth of their first child, they moved to
4 live in the former matrimonial home at Sandalwood Crescent, George Town ("the
5 Former Matrimonial Home") where they lived for approximately 10 ½ years until
6 the husband left in mid January 2006. The marriage therefore lasted about 12 ½
7 years. The wife and the 2 children continued to live in the Former Matrimonial
8 Home where they still reside.

9
10 6. During the course of the marriage several businesses were taken over or
11 established by the parties in which they were each involved to a greater or lesser
12 extent, and which I shall also discuss in more detail later. In summary, they were
13 the company International Relocation Group Ltd. ("International Relocation")
14 which, under a different name existed prior to the marriage with the husband as a
15 shareholder. It became wholly owned by the parties in 1994 and the shares were
16 and remain held as to 60% by the wife and 40% by the husband. The business of
17 this company was real estate sales and also providing consultancy and support to
18 investors and businesses moving to Cayman. Subsequently, in about 1997 the
19 real estate business was hived off into a new company, IRG Real Estate Ltd.
20 ("IRG Real Estate"), the shares in which were and remain held as to 50% by the
21 wife and 50% by the husband. In October 2005, approximately three months
22 before he left the Former Matrimonial Home and unknown to the wife at the time,
23 the husband incorporated a new company, International Realty Group Ltd.
24 ("International Realty") in which he held and continues to hold 100% of the

1 shares himself. The husband subsequently, also unknown to the wife at the time,
2 transferred the whole assets, employees and businesses of International
3 Relocation and IRG Real Estate to the new company through which he continued
4 to carry on the businesses. The circumstances of and reasons for this are hotly
5 disputed by the parties.

6
7 7. In about 1994 the parties together indirectly both took an interest in a pre-existing
8 company, in which the husband previously had an interest himself, called Cayman
9 Office Concepts Ltd. ("COC"). This company became and remains owned as to
10 50% by International Relocation (of which the wife owns 60% and the husband
11 40%) and 50% by an unrelated third party. The company has one full time
12 employee and carries on business providing office fit-out services and supplying
13 office furniture. I should also mention 2 companies incorporated by the wife, in
14 each case shortly after the birth of each of the children. It was intended that these
15 companies would hold assets of or on behalf of the child concerned. However,
16 although the companies remain in existence they have not to date been used for
17 this purpose and they have no assets.

18
19 8. A further enterprise, in which the parties are involved, which is very much in
20 issue, is IRG Development Company Ltd. ("Development Co.") in which they
21 each hold 50% of the shares. This company carried out and remains the owner of
22 a commercial office development in George Town, known as Artillery Court.
23 This comprises office suites divided into 6 strata lots in 2 buildings, the buildings
24 being occupied in part by the Law Firm in one case and in part by International

1 Realty and COC in the other case. The parties subsequently incorporated another
2 company, Palacades Development Company Ltd., for purposes of carrying out a
3 residential development in Prospect with a third party. The development is
4 complete and the parties' only remaining direct interest is in an apartment there.
5

6 9. Later in the marriage the parties established with others a coffee shop and wine
7 bar business, Carib Bean Ltd., in which they together held 50% of the shares.
8 That business was sold in 2008 and 50% of the net sale proceeds divided equally
9 between the parties. Accordingly there is no issue in relation to that business for
10 these purposes.
11

12 10. In addition to Artillery Court and the Former Matrimonial Home there are a
13 further 10 properties in the names of the parties or one or other of them, which are
14 in issue. Some of these properties, in addition to the businesses to which I have
15 referred, are the subject of significant dispute between the parties, either as to
16 whether or not they should be considered matrimonial property or as to their value
17 or as to both. There are also disputes about other assets and about monies
18 received and disbursed by the husband, including insurance proceeds in
19 approximately the year prior to and other monies in the period of approximately
20 12 months immediately after the separation of the parties, the wife alleging
21 significant dissipation of such funds by the husband, which he denies. The parties
22 are also in significant disagreement as to the appropriate level of maintenance
23 which the husband should pay in respect of the 2 children of the marriage. The
24 parties both now seek a clean break.

1 11. The wife filed her Petition for divorce on 16th February 2006, about a month after
2 the husband left the Former Matrimonial Home, on grounds of the husband's
3 unreasonable behaviour in conducting and then admitting to an extra marital
4 relationship with another woman. The Petition was not defended and was ordered
5 by the Court to have been proved on 12th September 2006. Since the filing of the
6 Petition there have been a number of hotly contested applications to the Court,
7 mainly relating to discovery and access and the parties and valuation experts have
8 also been extensively cross-examined in depositions. Over the course of the
9 proceedings each party has served some 20 or so substantial and often very
10 detailed affidavits, in many instances with numerous exhibits. There has been an
11 attempt, ultimately abortive, at mediation, and there is an outstanding application
12 for a finding of contempt of court against the husband in relation to the condition
13 attached to his access to the children, which is strongly opposed. There are a
14 number of conflicting valuation reports relating to the real properties and to the
15 various businesses. There is a myriad of conflicting allegations and counter-
16 allegations. The hearing of the matter before me lasted 6 days, including sitting
17 late on the final day. While a degree of animosity is often to be expected in
18 divorce proceedings, the extent of the bitterness, hostility, acrimony and emotion
19 exhibited by the parties in this case, not only in their conduct of the proceedings
20 and in the allegations contained in their affidavits and correspondence but as
21 clearly evidenced by their demeanour and behaviour in one way or another during
22 the hearing before me, is exceptional. This is clearly not only unfortunate and
23 very stressful for the parties but, more importantly, is particularly undesirable

1 having regard to the interests of their children who are obviously suffering
2 emotionally as a result.

3
4 12. The relevant legislation for these purposes is the Matrimonial Causes Law (2005
5 Revision) (“the Law”) and in particular Sections 19 and 21. Section 19 requires
6 the Court, in dealing with final ancillary matters, to have regard first of all to the
7 best interests of the children of the marriage and thereafter to the responsibilities,
8 needs, financial and other resources, actual and potential earning power and the
9 deserts of the parties. Section 21 requires the Court, at the time of pronouncing a
10 decree of dissolution of marriage, to make orders inter alia for the disposition of
11 matrimonial property, including the matrimonial home, to make financial
12 provision from the property of either spouse for the children of the marriage and
13 for the other spouse and to provide for periodic payments to be made by either
14 spouse for the benefit of the children of the marriage and for the other spouse. It
15 has been made clear by this Court several times that “This is a very wide
16 jurisdiction that enables this court, subject to the provisions [of Sections 19 and
17 21], to exercise an unfettered discretion to arrive at a just distribution of
18 matrimonial assets, including the matrimonial home.” (See for example: Ebanks
19 v Ebanks 1992-93 CILR per Smellie J. at 297).

20
21 13. There is no statutory definition of “matrimonial property” or, for that matter, of
22 “property of either spouse” as referred in Section 21 of the Law but it seems to me
23 that the wording of the Section effectively requires that, before I can make
24 appropriate orders in this case, I should first determine which of the property,

1 businesses and other assets in issue comprise matrimonial property and which is
2 the property of one or other spouse. There are in total 12 parcels of real property,
3 5 companies or businesses and various bank accounts, pension funds, vehicles, a
4 watch collection and other assets to be considered.

5
6 14. There has been considerable discussion of the concepts of matrimonial and non-
7 matrimonial property for these purposes in the reported cases, to many of which I
8 was helpfully referred by counsel for the parties at the hearing before me. It has
9 also been accepted that, although the provisions of the relevant legislation in
10 England (the Matrimonial Causes Act 1973 as amended in 1984) are not identical
11 to the provisions of Section 19 and 21 of the Law, nonetheless decisions of the
12 English Courts, particularly the judgment of the House of Lords in White v White
13 [2001] 1AC 596, may be relied upon for guidance by this Court (see the Court of
14 Appeal in Doak v Doak [2002] CILR 224 applied in Wight v Wight (Court of
15 Appeal 30th November 2007 – not yet reported). In Miller v Miller/McFarlane v
16 McFarlane [2006] 3All ER 1, which was referred to with approval by the Court of
17 Appeal in Wight v Wight, Lord Nicholls in the English Court of Appeal *inter alia*
18 considered the question of matrimonial property and non matrimonial property at
19 pages 9 and 10. In particular at page 9 he said:

20
21 *"This does not mean that, when exercising his discretion, a judge in this country*
22 *must treat all property in the same way. The [English] statute requires the court*
23 *to have regard to all the circumstances of the case. One of the circumstances is*
24 *that there is real difference, a difference of source, between (1) property acquired*

1 *during the marriage otherwise than by inheritance or gift, sometimes called the*
2 *marital acquest but more usually the matrimonial property, and (2) other*
3 *property. The former is the financial product of the parties' common endeavour,*
4 *the latter is not. The parties' matrimonial home, (even if this was brought into the*
5 *marriage at the outset by one of the parties) usually has a central place in any*
6 *marriage. So it should normally be treated as matrimonial property for this*
7 *purpose. As already noted, in principle the entitlement of each party to a share of*
8 *the matrimonial property is the same however long or short the marriage may*
9 *have been".*

10
11 15. Lord Nicholls went on to say that the matter [i.e. the length of the marriage]
12 stands differently with regard to non matrimonial property which the parties bring
13 with them into the marriage or acquire by inheritance or gift during the marriage
14 where, he says, the duration of the marriage will be highly relevant and he then
15 referred to White v White where the significance of non matrimonial property was
16 summarized. Having then made it clear that the difference in treatment of
17 matrimonial property and non matrimonial property does not mean that in every
18 case [in England] a clear and precise boundary should be drawn between these
19 two categories of property. Lord Nicholls continued (paragraph [27]):

20
21 *"Accordingly, where it becomes necessary to distinguish matrimonial property*
22 *from non matrimonial property the court may do so with the degree of*
23 *particularity or generality appropriate in the case. The judge will then give to the*
24 *contributions made by one party's non matrimonial property the weight he*

1 *considers just. He will do with such generality or particularity as he considers*
2 *appropriate in the circumstances of the case”.*

3
4 16. In the same case, (Miller v Miller/McFarlane v McFarlane in the English Court of
5 Appeal in 2006) Baroness Hale, in considering the nature of matrimonial
6 property, referred at page 38, apparently with approval, to the description of
7 “family assets” by Lord Denning in Watchel v Watchel [1973] 1All ER 829 at
8 836 when he said that:

9
10 *“It [family assets] refers to those things which are acquired by one or other or*
11 *both of the parties with the intention that there should be continuing provision for*
12 *them and their children during their joint lives, and used for the benefit of the*
13 *family as a whole”.*

14
15 Baroness Hale went on, having discussed examples of family assets, to say at
16 page 39 paragraph [153]:

17
18 *“This is simply to recognize that in a matrimonial property regime which still*
19 *starts with the premise of separate property, there is still some scope for one*
20 *party to acquire and retain separate property which is not automatically to be*
21 *shared equally between them. The nature and the source of the property and the*
22 *way the couple have run their lives may be taken into account in deciding how it*
23 *should be shared”.*

1 17. In the leading case in this jurisdiction, Wight v Wight (ibid), the Court of Appeal
2 themselves relied upon and apparently approved of the exercise of the
3 classification by the judge at first instance of the principal assets of the parties as
4 either matrimonial or non-matrimonial property and at the hearing before me
5 counsel for each of the parties urged me to do likewise in the present case. This
6 seems to me to be consistent with the provisions of Section 21 of the Law and I
7 have accordingly endeavoured to do so.

8
9 18. In my opinion it is clear, both from the remarks made in the various authorities
10 and as a matter of common sense that, in determining whether particular property
11 is to considered matrimonial property or separate property of one of the spouses
12 for these purposes, the Court must have regard to all the circumstances relating to
13 the property concerned. Such circumstances include but are not confined to, the
14 circumstances and timing of its initial acquisition, the party by whom and how it
15 was acquired, the apparent intentions of the parties with regard to and the use of
16 the property during the marriage, amongst other factors. For example, it does not
17 in my opinion automatically follow that just because the property concerned was
18 acquired solely by one spouse prior to the marriage, whether by purchase, gift or
19 inheritance, and the title remained throughout the marriage in the name of that
20 spouse, the property may not nonetheless in some circumstances be considered to
21 have become matrimonial property; “put into the melting pot of the marriage”
22 (see Levers J. at first instance in Wight v Wight (2006) CILR 1). Equally, as
23 Baroness Hale said, it does not follow that property acquired by and belonging to
24 one party automatically becomes matrimonial property on that party’s marriage.

1 The circumstances of the property's acquisition and the parties' respective
2 contributions, if any, to that are clearly significant and may often, even usually, be
3 determinative of the point but if other factors point the other way they may not be
4 conclusive. As Baroness Hale also said "*the way the couple have run their lives*
5 *may be taken into account*". It also seems to me important not to look at the
6 situation with hindsight but to consider the circumstances and the parties' use of
7 and apparent intentions with regard to the property at the time. It will all depend
8 upon the precise circumstances. Of course, as I have already mentioned, just
9 because a property is considered to be non-matrimonial it does not follow that it
10 thereby becomes irrelevant for these purposes and no longer taken into account in
11 determining a fair division of assets between the spouses. For example, it may be
12 considered fair in an appropriate case to provide for an interest by the other
13 spouse in the non-matrimonial property or to take non-matrimonial property of
14 one spouse into account in assessing that spouse's needs. Section 21(e) of the
15 Law makes that clear.

16
17 19. I shall consider first the 12 parcels of real property concerned. This will require
18 me to consider the circumstances of the parcels in issue and to express my view
19 on whether each of them is or is not matrimonial property and thereafter, where
20 disputed, on the appropriate value to be attributed to the properties for these
21 purposes.

22
23 20. In my opinion two of the properties in issue are clearly not matrimonial property.
24 They are:-

1 (1) Mountain Land (North Side 59A Parcel 11). This is a 6/32 share of an
2 undeveloped parcel of land the title to which share is in the names of the wife and
3 her mother jointly. Accordingly there is a right of survivorship as between the
4 wife and her mother. The agreed value of this share is \$37,000. The wife's
5 evidence was that her mother had gratuitously added her name to the title as a
6 joint proprietor. Although the Land Registry documentation indicates that a sum
7 of \$6,000 had been paid, probably in respect of stamp duty, the wife's evidence,
8 which was not successfully challenged in my opinion, was that any payment had
9 been made by her mother and that she, the wife, had paid nothing for her interest
10 in this property. It was argued by the wife that, although she had acquired her
11 interest in this property after the marriage, she had paid nothing for it and it had
12 not been subsequently used for any matrimonial purposes. It seems to me that
13 this property was in effect a gift to the wife by her mother and in all the
14 circumstances I consider that this clearly remained the property of the wife alone
15 and is not matrimonial property.

16 (2) Botanic Park Land (Midland East 59A Parcel 7). This is also a parcel
17 of undeveloped land. It was purchased by the wife herself in 1991, some 2 years
18 prior to the marriage. The title is in the wife's sole name. The value of the parcel
19 is agreed at \$100,000. There was no evidence from which to infer that this
20 property had, subsequent to or as a result of the marriage, been used or treated in
21 such a way as to be deemed matrimonial property and in the circumstances I
22 propose to treat this parcel also as property of the wife alone and not matrimonial
23 property.

1 21. Of the remaining 10 parcels of real property, the parties accept for these purposes
2 that 7 of the parcels should be treated as matrimonial property. These are:

3 (1) The Former Matrimonial Home (South Sound 7C Parcel 58), the value
4 of which is disputed.

5 (2) Manse Road Land (Lower Valley 38D Parcel 85) which has an agreed
6 value of \$175,000.

7 (3) Apartment 3 Palacades (Prospect 23C Parcel 168 H3) which has an
8 agreed value of \$1.3m but is subject to a promissory note in favour of a third
9 party individual. This property is already subject to an order of the Court made
10 on 30th October 2006 (Sanderson J.) for its sale which provides that the net sale
11 proceeds, after payment of the promissory note and of real estate commission,
12 should be held in trust pending the agreement of the parties or further order. It is
13 currently rented but is listed for sale. A previous lease purchase agreement which
14 was in place at the time of the order on 30th October 2006 appears to have lapsed
15 after several extensions.

16 (4) Lots 6 and 7, Grand Harbour (not yet registered). These are 2
17 undeveloped and unregistered Lots the values of which for these purposes are
18 disputed.

19 (5) Artillery Court (George Town Central OPY Parcel 78 H1-6) the total
20 value of which is agreed at \$1,066,000 but there is a dispute over the value of
21 each of the 2 buildings of which the property consists.

22 (6) Apartment B208, Careenage, Grand Harbour (Prospect 22E Parcel
23 148H12) which has an agreed value of \$350,000.

1 (7) Apartment 802 Metropolis, Miami the valuation of which is agreed as
2 \$196,000 (although the wife for these purposes has used the figure of \$190,800 to
3 take account of the fact that since the separation she has paid the condominium
4 fees herself).

5 22. There is a dispute between the parties as to whether the 3 remaining parcels of
6 real estate comprise matrimonial property for these purposes or remain the
7 property of one or other of them. These are:

8 (1) The Breakers House (Breakers 56C Parcel 23). The title to which is in
9 the sole name of the wife and which has an agreed value of \$200,000. The
10 wife claims that this is her property and not matrimonial property. The
11 husband claims it should be treated as matrimonial property for purposes
12 of the division of assets between them.

13 (2) Apartment 7, South Palms (15B Parcel 291 H7). The title is in the sole
14 name of the wife and the property has an agreed value of \$130,000. The
15 wife again claims that this is her own property and not matrimonial
16 property; the husband again claims it shall be treated as matrimonial
17 property.

18 (3) Apartment 4, Bristol Courts (South Sound 7C Parcel 96 H4). The
19 title is the sole name of the husband. The property has an agreed value of
20 \$255,000 but it is subject to a mortgage (charge), the current balance of
21 which the husband says is approximately \$44,154. The husband claims
22 that this is his property and not matrimonial property although he is
23 prepared to agree that it should be taken into account as such if the

1 Breakers House and Apartment 7 South Palms are taken into account. The
2 wife contends that it should be considered matrimonial property anyway.
3

4 23. Before setting out my views on these particular properties I should say something
5 about the way in which the parties arranged their financial affairs during the
6 marriage prior to the separation in January 2006. It appears that, although they
7 maintained a joint savings account, the husband and the wife never had a joint
8 current account but each maintained their own personal accounts out of which
9 they made payments in respect of expenses arising and into each of which most of
10 their respective income was ultimately paid. The husband's evidence was that he
11 paid most of the household bills and for regular holidays while the wife paid the
12 school fees and most of the children's costs. Accordingly there was in practice no
13 general pooling of monies for payment purposes and a tendency, at least with
14 hindsight at times in these proceedings, for each party to see their own earnings as
15 their own money and to consider payments out of their own accounts as payments
16 by them alone, whether or not made for the benefit of both of them or the family
17 as whole. This was further complicated by the very informal way in which they
18 each conducted the particular businesses which they principally operated. There
19 appears to have been little or no distinction made by them between company or
20 partnership income and expenditure on the one hand and their own income and
21 expenditure on the other hand. They each largely carried on business as if they
22 were trading as sole individuals and not through a company or a firm as the case
23 may be. Furthermore they did not generally keep detailed and accurate financial
24 records. As a result, in their affidavits and in their oral evidence, at times when it

1 suited their case, the parties each contended that certain payments made in respect
2 of costs and expenses during the period of their co-habitation had been made by
3 them out of their own individual income or earnings and should be treated as
4 individual, not matrimonial, payments. It was clearly not practical, indeed
5 probably impossible, to identify separately in most instances which particular
6 payments over a period of some 12½ years had been made from which particular
7 party's own earnings or income and I am not persuaded that it would be
8 appropriate to try to do so. In her oral evidence the wife was emphatic that as a
9 married couple she and the husband had been partners and the husband's affidavit
10 evidence is to much the same effect in parts. In my view, that concept should in
11 fairness apply to the way in which the parties income and expenditure during the
12 marriage and prior to the separation should be viewed for these purposes. It
13 seems to me inappropriate and also inconsistent with the usual concept of
14 marriage as a partnership in a case like this for the Court to attempt in the present
15 case to determine whether it was ultimately from the husband's earnings or from
16 the wife's earnings that, for example, particular utility bills or loan installments
17 were paid during the period of their martial cohabitation. In my view it is
18 consistent with the current approach of the courts both here and in England that a
19 wife should not be discriminated against because she may have a lesser income
20 than her husband, or even no income at all because she has been looking after the
21 children of the marriage, to treat the income available, whether derived only from
22 the husband or only from the wife or from both, as matrimonial income and not to
23 endeavour to separate it out into the income of one of other of the parties unless
24 there are special circumstances which warrant that. In my opinion,

1 notwithstanding that the parties in this case did not in fact pool their respective
2 earnings in the sense that they did not have a joint current account into which
3 such earnings were paid and out of which expenses were paid, for these purposes
4 their respective earnings prior to the separation should be seen and treated as
5 income of the matrimonial "partnership". Accordingly, in my view of this case,
6 payments made in respect of expenses during the period when they were living
7 together as a married couple should not be treated as payments by one party or the
8 other but payments out of a matrimonial asset pool, namely the matrimonial
9 income, being the combined income of the parties, and constituting matrimonial
10 property for these purposes.

11
12 24. In light of these comments my views on the 3 disputed properties are as follows:

13 (1) **Breakers House:**

14 (a) This is a small 2 bedroom house at Breakers which was purchased by the
15 wife on her return from England after qualifying. This was well before she had
16 even met the husband. The title to the property has always been in her sole name
17 and according to the wife, at the time of the marriage the property was free and
18 clear of any encumbrance. The property has never been rented. However, as I
19 have already mentioned, for a period of some 2 years or more after the marriage
20 the parties lived in the property as their first matrimonial home. Towards the end
21 of that period the property was used to provide security by way of a mortgage
22 (along with the apartment at South Palms referred to below) for bank borrowing,
23 which was used towards the purchase of the a new matrimonial home (the Former
24 Matrimonial Home) and also the acquisition of the Manse Road Land, both of

1 which were registered in joint names of the parties and both of which are rightly
2 accepted by them as being matrimonial property. According to the husband,
3 matrimonial funds were used to pay the utility bills in respect of the Breakers
4 House not only while the parties lived there but even after they ceased to live
5 there and matrimonial funds were also used to make the monthly payments on the
6 mortgage over the property. The wife maintained that she had paid off the
7 mortgage herself, presumably meaning with money out of her own income,
8 during the marriage. That was disputed by the husband but, even if correct, I have
9 already commented on my approach to the parties' financial resources in this
10 context and explained why, in my view, that should nonetheless be treated for
11 these purposes as payment out of matrimonial income.

12
13 (b) The wife argued strongly that the Breakers House always had been and
14 remained her own property and was not matrimonial property. She argued that
15 the husband had made no contribution towards the purchase of the property which
16 had been well before the marriage and that she had permitted him to live there
17 after the marriage free of rent so as to enable him to rent out his own apartment at
18 Bristol Courts (referred to below) and thereby pay off the mortgage on that
19 property. However, the wife herself contends that the apartment at Bristol Courts
20 is matrimonial property and if that is so it was as much in her interests as the
21 husband's that the mortgage over the apartment at Bristol Courts should be
22 reduced or paid off. Furthermore, it does not seem to me that this argument is
23 consistent with the way in which the relationship of marriage is usually now
24 viewed by the courts, namely as a "partnership" between the spouses, which, as I

1 have already pointed out, is how the wife herself strongly urged the Court to view
2 the marriage in this case. Although this property was purchased by the wife
3 herself without any contribution to it by the husband and the property was
4 obviously not acquired at the time in order to benefit the spouses or the family
5 since it was acquired some time before the marriage, nonetheless after the
6 marriage it was used in several significant ways in order to benefit the spouses
7 and the marriage. It was used as their first matrimonial home not only for them to
8 live in together as a married couple but also to enable the apartment at Bristol
9 Courts, which the wife contends is a matrimonial property, to be rented out and
10 the rental income used to pay off the mortgage over that apartment so increasing
11 its net value as a matrimonial asset. Furthermore, consistent with the wife's view
12 that the marriage should be viewed as a partnership, with which I agree, the
13 Breakers House was then used to raise funds with which to purchase the Former
14 Matrimonial Home and other matrimonial property for the further benefit of both
15 spouses and subsequently the whole family. It also appears that income, whether
16 deriving from the wife or from the husband or both, but which in my view is
17 properly to be considered matrimonial income for these purposes, was used to pay
18 utility bills and to pay off the mortgage even after the parties were no longer
19 living in the property. In these circumstances, although there was no express gift
20 of the house or of any interest in it to the husband, the use of the house after the
21 marriage and the application of matrimonial income to it, in my view amounted to
22 adding it to the pool of matrimonial assets and is sufficient in my judgment for it
23 to have become matrimonial property. While I am sympathetic to the wife's
24 emotional attachment to the house as her first property acquisition and her first

1 home of her own, the fact of the matter, in my assessment, is that after the
2 marriage the house was used and treated by both parties as a married couple as if
3 it were a matrimonial asset for the benefit of both of them and their marriage and
4 ultimately the whole family. It became part of the matrimonial property pool. In
5 all the circumstances I have concluded that it constitutes matrimonial property for
6 these purposes.

7 (2) Apartment 7, South Palms

8 This is a one bedroom apartment which was purchased by the wife from her sister
9 several years prior to the marriage. Since then the title has always been in the
10 wife's sole name. It was initially subject to a mortgage which the wife paid off
11 herself also prior to the marriage. The wife has never lived in the apartment
12 herself apart from a period when the whole family lived there for a time after
13 Hurricane Ivan in September 2004. The husband subsequently arranged for the
14 apartment to be rented to a man who was employed by the parties in repairing
15 hurricane damage to the Former Matrimonial Home, who then remained a tenant
16 in the apartment for approximately 3 ½ years, paying a monthly rent of \$1,250.
17 The apartment has not been rented since then, although the wife she said she is
18 now attempting to find a tenant for it. This property was also used as collateral
19 for the same bank borrowing which was also secured by the Breakers House and
20 which was used to purchase the Former Matrimonial Home and the Manse Road
21 Land, both matrimonial properties. The husband's evidence was that during the
22 marriage he had looked after the management of the apartment, its leasing,
23 payment of strata fees and its maintenance and in particular had arranged and
24 administered the 3½ year tenancy shortly after Hurricane Ivan. The wife was

1 more ambivalent about the husband's alleged involvement. She argued strongly
2 that this property was hers alone and not a matrimonial property. The
3 circumstances surrounding this property are obviously similar to those of the
4 Breakers House but not identical. The parties did not live there, apart from the
5 temporary period immediately after Hurricane Ivan, in the way they did in the
6 Breakers House. On the other hand, the property was, in the same way as the
7 Breakers House, used to benefit both of the parties as spouses, and ultimately the
8 whole family, in raising money to acquire the Former Matrimonial Home and
9 another matrimonial property. I also accept that the husband did maintain and
10 administer the property, although it could be argued that he was simply helping
11 his wife look after her own property. The husband also gave evidence that even
12 after the parties' separation he himself paid a sizeable utility bill in respect of the
13 apartment. The wife disputes the circumstances of that but on balance I am
14 prepared to accept that he did so. There would have been no reason for him to do
15 so at that stage unless he had considered the apartment to be matrimonial
16 property. Although clearly arguable either way and perhaps less clear than the
17 position with respect to the Breakers House, it appears to me that this property
18 was willingly used or allowed to be used by the wife for the benefit of both parties
19 as spouses and the family as a whole in various ways and on balance I am of the
20 view that it came to be treated by both parties as a matrimonial asset. In my
21 opinion in all the circumstances this property should also be considered
22 matrimonial property for these purposes.

1 (3) Apartment 4 Bristol Courts

2 This condominium apartment, which is located across the road from the Former
3 Matrimonial Home, was allocated to the husband on his divorce in England from
4 his first wife and the title is in his sole name. There was evidence that after the
5 marriage and while they were living at the Breakers House the parties used this
6 apartment from time to time when they were in town for functions rather than
7 driving back to the Breakers House. However, most of the time the apartment has
8 been rented out and the rent used to pay down the mortgage and for payment of
9 strata fees. The wife herself emphasized in her evidence, that the parties had
10 agreed to live in the Breakers House so as to enable the Bristol Courts apartment
11 to be rented out and the rent used towards payment of the mortgage, thereby
12 increasing the equity in the property. It seems to me that the parties would not
13 have done this unless they had both considered this apartment to be an asset for
14 the benefit of both of them, in effect a matrimonial asset. There was conflicting
15 evidence concerning the mortgage. According to the husband, on his divorce in
16 England, as well as the Bristol Courts apartment, he had also been allocated a
17 house in England which he had subsequently sold and used the sale proceeds to
18 pay off the balance of the mortgage over the apartment at Bristol Courts at that
19 time. He said he subsequently re-mortgaged the apartment as security for a loan
20 which was used to pay an award of damages payable in respect of a liability
21 incurred by an employee of the parties' company, International Relocation, for
22 which the company was vicariously liable (see Nike Real Estate Limited v De
23 Bruyne and Others [2002] CILR 31). The wife disputed or at least said she had
24 never previously heard that on his divorce the husband had also been allocated a

1 house in England as well as the Bristol Courts apartment or that he had acquired
2 funds by selling such a property. She also stated that she had not been aware of
3 any subsequent re-mortgaging of the Bristol Courts apartment to enable payment
4 of the award of damages, although she was prepared to accept that may have been
5 done. If it is correct that the apartment has been used as collateral for a loan to
6 enable payment of the award of damages, which I am prepared to accept, such
7 damages were a liability of International Relocation which, I consider and the
8 parties apparently agree, is a matrimonial asset. Although there are again
9 arguments both ways, in light of the way this apartment has been used throughout
10 the marriage to generally benefit the parties and their general pool of assets and
11 treated by them as in effect a joint asset, I consider on balance that this property
12 also constitutes matrimonial property and should be treated as such for these
13 purposes.

14
15 25. Accordingly I have concluded that of the 12 properties in issue, 2 should be
16 considered non-matrimonial for these purposes, namely the Botanic Park Land
17 and the Mountain Land, both of which remain the property of the wife and that
18 the remaining 10 properties should be considered matrimonial property for these
19 purposes. I propose to proceed on that basis. As I have already explained, the
20 parties are agreed as to the value of the 2 non-matrimonial properties belonging to
21 the wife. They are also agreed about the values of 8 of the 10 matrimonial
22 properties. However there is a dispute about the values to be attributed to the
23 Former Matrimonial Home and to Lots 6 and 7, Grand Harbour and before

1 considering the other matrimonial assets I shall now consider the values to be
2 used for these purposes in respect of these 2 matrimonial properties:

3

4 (1) Valuation of Former Matrimonial Home

5 Both parties produced valuations of the Former Matrimonial Home at 18
6 Sandalwood Crescent, George Town. The husband produced a valuation by
7 Deloitte dated 10th August 2007 concluding that the market value was \$650,000.
8 The wife produced a valuation by Andrews Key dated 16th August 2007 valuing
9 the property at \$450,000. The wife also produced a report by Cardiff & Co. (the
10 same individual who carried out the valuation on behalf of Andrews Key but
11 under a different company name) dated 23rd January 2007 comprising a schedule
12 of repairs still outstanding following the damage to the property by Hurricane
13 Ivan. The valuation report by Andrews Key estimates the cost of “immediate”
14 repairs at \$60,000. The reports goes on to say that for “incurable elements” they
15 have calculated a further deduction of \$71,000 in using the Cost Approach to
16 valuation, although the report does not explain what is meant by “incurable
17 elements”. Unfortunately the 2 opposing valuation reports were not only some 18
18 months out of date by the time of the hearing but they each principally rely upon
19 different valuation methods in reaching their conclusions, namely the Sales
20 Comparison method in the case of the Deloitte valuation and the Cost Approach
21 in the case of the Andrews Key valuation. Furthermore, the Deloitte report does
22 not mention the outstanding remedial work outlined in the Cardiff & Co. report
23 and reiterated in the Andrews Key valuation and it is not apparent whether
24 Deloitte took that into account. This is somewhat surprising since, according to

1 the wife's unchallenged evidence, the uneven condition of the flooring due to
2 having been standing for some time in floodwater after the hurricane, and also the
3 current poor condition of the kitchen cabinets and appliances are all very evident
4 even from a cursory inspection. For purposes of the division of property between
5 the parties, the husband proposed, as a compromise, using the average of the 2
6 valuations, namely \$550,000. The wife, on the other hand, maintained that the
7 value of the property is as assessed by Andrews Key, namely \$450,000. Neither
8 valuer gave evidence and accordingly were not cross-examined on their reports.
9 In my opinion it is well established that the appropriate valuation method for
10 residential property of this nature is the Sales Comparison method of valuation as
11 used in the Deloitte valuation. On the basis of that valuation method Deloitte
12 valued the property in the region of \$646,800 and accordingly arrived at a value
13 of \$650,000. Although, as I have said, it is not apparent from the Deloitte report
14 that the cost of the outstanding remedial repairs was taken into account, in my
15 opinion their valuation is nonetheless to be preferred. I shall therefore proceed
16 upon the basis of the husband's proposed average figure (which I do not
17 understand to have been arrived at on any scientific basis but is simply an attempt
18 at compromise) of \$550,000 for these purposes. I shall address the cost of repairs
19 later.

20 **(2) Valuation of Lots 6 and 7 Grand Harbour**

21 (a) These comprise 2 undeveloped and as yet unregistered Lots at the
22 development known as Grand Harbour. In about September 2006 the husband
23 paid a total deposit of \$182,968 (US\$223,132) in respect of both Lots, which the
24 husband stated in evidence amounts to a deposit of 20% of the total price of the

1 Lots, which is accordingly \$914,814.20 (US\$1,115,660). He also stated that the
2 sales agreement for both Lots contains a special condition which permits him to
3 terminate the sales agreement without penalty provided that the deposit monies
4 are applied instead towards the purchase from the vendor of another lot or other
5 lots in the Grand Harbour development. The husband said that pursuant to that
6 provision, he may transfer the deposit to another lot or other lots at Grand
7 Harbour but it was not made entirely clear whether he has actually done so. The
8 balance of the purchase price of approximately \$731,872.96 (US\$892,528) is
9 payable on completion, which has obviously not yet taken place.

10
11 (b) The husband produced a letter from BCQS, surveyors, dated 2nd
12 September 2007 in which they expressed the opinion that as at that date the value
13 of the husband's interest in the Lots was equal to the deposit monies paid, namely
14 approximately \$182,968 (US\$223,132), although they did explain how they
15 reached that conclusion and gave no opinion on the actual market value of the
16 Lots. The wife produced market valuations of each Lot by Andrews Key dated
17 28th September 2007 valuing Lot 6 at \$480,000 and Lot 7 at \$460,000, making a
18 total of \$940,000 for the two Lots together. These values were expressed in the
19 Andrews Key's reports to assume the Lots to be "as though complete". Although
20 there was some discussion, even disagreement, between the parties in their
21 evidence as to exactly what Andrews Key meant in their reports by the expression
22 "as though complete", I have inferred from the terms of their reports and a
23 subsequent letter from them dated 8th October 2007, that what they meant is that
24 they assumed that the 2 Lots will be registered in due course as they were at the

1 time of the valuation and that in particular the parcel register in each case will
2 show each parcel's areas as being the same as the area indicated on a sub-division
3 drawing with inserted lot sizes provided to them by the husband. In her argument
4 in support of the Andrews Key valuations the wife also relied upon the fact that
5 Lot 6 is currently listed for sale through the Cayman Islands Real Estate Brokers
6 Association ("CIREBA") for approximately \$497,510 (US\$606,720), with the
7 husband being shown, along with others, as the listing agent.

8
9 (c) The husband argued strongly that the value of his interest in these 2 Lots
10 for these purposes is only the amount of the deposit of \$182,968 which he paid.
11 Although he also contended that as the deposit was paid after the separation of the
12 parties it was not therefore paid from matrimonial funds; he accepted for these
13 purposes that the deposit monies should be treated as matrimonial funds and I
14 consider that to be appropriate in the circumstances. It was pointed out on the
15 husband's behalf that until the hearing, in her previous proposals for division of
16 the relevant assets between the parties, the wife had proceeded upon the basis that
17 the value to be attributed to these Lots for these purposes was indeed the amount
18 of the deposit paid and it was argued that she should not now be allowed to go
19 back on that. It was also emphasized that the husband would not be in a position
20 to realize any value from the Lots without paying the outstanding 80% balance of
21 the purchase price, which is \$731,872.96. The wife, on the other hand, contended
22 that the value of the Lots for these purposes is the market value expressed by
23 Andrews Key in their valuations of September 2007. It was argued on her behalf
24 that those values are supported by the price for which Lot 6 is currently listed for

1 sale. The wife stated in her evidence that when she proposed a valuation of
2 \$182,968 for the Lots, being the amount of the deposit paid, in her proposed
3 subdivision of assets between the parties she had not been aware that Lot 6 was
4 listed for sale at that price, although she must have been aware by then of the
5 Andrews Keys' valuations. It seems to me that I should consider all of the
6 evidence before me and that it would be unrealistic and ultimately unfair to ignore
7 some of that evidence just because one party, namely the wife, now wishes to rely
8 on an aspect of it, having previously made a proposal which was not based on that
9 aspect of the evidence. It was further argued on behalf of the wife that the
10 husband would, simply have to sell the Lots and thereby get a "windfall" in the
11 amount of the profit made on the sale, in which the wife should participate since
12 the deposit was paid from matrimonial funds. It was also suggested on behalf of
13 the wife that as a listing broker the husband would, in addition to the profit on the
14 sale, also be able to claim commission on the sale of Lot 6, although it was not
15 entirely clear to me how the husband, being the owner of the property, could
16 properly also claim commission on its sale.

17
18 (d) The difficulty with regard to these 2 Lots is to determine their value as
19 matrimonial property. It is accepted, I consider correctly in the circumstances,
20 that the deposit of \$182,968 paid by the husband in about September 2006 is to be
21 treated as having been paid out of matrimonial funds and therefore constitutes
22 matrimonial property. However, the balance of the purchase price of \$731,872.96
23 which must be paid in order to realize the value of the Lots on sale has not yet
24 been paid, over 3 years since the separation of the parties. Accordingly, in my

1 view a payment of that balance by the husband even at this stage would not be a
2 payment made out of matrimonial funds. It would seem to follow that if the wife
3 wishes to share equally, or even at all, in the profit on sale of the Lots she would
4 have to make an equal, or at least a proportional, contribution to the balance of the
5 purchase price. There was no evidence as to when the Lots will finally be
6 registered (or alternatively when the deposit may be transferred to another Lot
7 and, if so, when it would be registered) and the balance of the purchase price
8 payable. However, such payment would, in my view, no longer amount to a
9 transaction involving matrimonial property. The wife argues that since the
10 deposit was matrimonial property, it is only as a result of payment of those
11 monies, in which she has an interest, that the husband will be able to make a
12 "windfall" profit. However, in my view that is not a correct analysis. The
13 husband will only be able to make any profit if he pays the balance of the
14 purchase price of \$731,872.96 which, unless the wife contributes, will not be
15 monies in which she has any interest. Given that both parties expressly stated that
16 they would like a clean and final break, it does not seem to me desirable to defer
17 this matter to await payment of the balance of the purchase price by the parties
18 and thereafter the ultimate realisation of the Lots to determine the actual resulting
19 profit and the appropriate amount of the wife's interest therein. That may take
20 some time and it is anyway not clear whether the wife would wish to participate
21 any further in this investment. On a broad brush approach, if the total market
22 value of the Lots is \$940,000 as Andrews Key say and if the total purchase price
23 is \$914,841, the profit on a sale at market value would be \$25,159. If it is
24 assumed that 20% of that profit is attributable to the 20% deposit paid that would

1 result in a profit of \$5,031.80 notionally attributable to payment of the deposit and
2 accordingly a total matrimonial asset of \$187,999.80. Allowing for the fact that
3 the Lots may be sold for a price in excess of their appraisal market value I will
4 round that up to \$190,000. On balance, in the circumstances, I consider the
5 appropriate and also the fairest and most practical approach with a view to
6 reaching some finality at this stage, is to proceed on the basis that the 2 Lots have
7 a value as matrimonial property of \$190,000.
8

9 26. As far as the parties' various businesses are concerned I do not understand it to
10 be disputed that for these purposes the 4 companies, International Relocation,
11 IRG Real Estate, COC and Development Co. should each be considered
12 matrimonial property and the parties in their proposals have proceeded on that
13 basis. They have also assumed that the Law Firm should be considered
14 matrimonial property too and on the analysis of matrimonial property which I
15 have adopted I consider that to be appropriate even though the Law Firm was
16 established by the wife before the marriage. Since the company International
17 Realty was incorporated prior to the party's separation and the assets, employees
18 and business of the matrimonial assets International Relocation and IRG Real
19 Estate subsequently transferred to it, I also consider it right to treat International
20 Realty as matrimonial property. The parties have done so in their proposals.
21 There are, however, disputes between the parties about the values of all these
22 assets.
23

1 27. By the order 8th November 2006 to which I have already referred an audit was
2 ordered of all the companies, including International Relocation, IRG Real Estate,
3 International Realty, COC and Development Co. The order also provided that if
4 the parties could not agree on the appointment of an auditor then each party
5 should pay for their own forensic audit. The parties were not able to agree on the
6 appointment of a single auditor and accordingly each party instructed their own
7 expert, in the case of the husband, Deloitte and in the case of the wife, Chris
8 Johnson & Associates (“CJA”). The various valuations, critiques thereof and
9 comments thereon by the valuation experts were produced at various different
10 dates during 2007 and 2008 and the parties also dispute the reasons for that.

11
12 28. For valuation purposes International Relocation, IRG Real Estate and
13 International Realty were treated together by both valuers as the “IRG Group”.
14 The initial valuations of the IRG Group, COC and Development Co. (Artillery
15 Court) by Deloitte were as at 30th June 2007. The first “preliminary” report by
16 CJA on the IRG Group and COC was as at 22nd August 2007. CJA were not
17 involved in the valuation of Development Co. The first valuation by CJA of the
18 Law Firm was at 31st July 2007.

19
20 29. Then at a hearing on 23rd October 2007 the Court proposed that the parties should
21 attempt mediation as a means of resolving the disputes over valuation of the
22 businesses. In due course Mr. Theo Bullmore, senior partner of KPMG in
23 Cayman (“Mr. Bullmore”) was appointed as mediator. In about February 2008
24 Mr. Bullmore apparently agreed or suggested (it was not clear which) that the

1 parties should obtain valuations of the various businesses as at 31st December
2 2007 for purposes of the mediation and the parties agreed to, or at least did not
3 dissent from, that at the time. I do not think it is necessary for these purposes for
4 me to go into the detailed history of precisely what happened thereafter which is
5 strongly disputed between the parties. A number of exchanges took place
6 between the parties and Deloitte and CJA. Suffice it to say that in July 2008
7 Deloitte produced further valuations as at 31 December 2007. On 25th September
8 2008 the wife made a written offer to the husband to purchase the IRG Group
9 from him and to sell the Law Firm to him, in each case for the amount of the
10 latest valuation by Deloitte. The wife apparently took the view that, in light of
11 her offer (which was not accepted) to purchase and sell at the husband's most
12 recent valuations of the IRG Group and the Law Firm there was no point in
13 proceeding further with a mediation, which it was estimated would cost over
14 \$15,000. The husband's case is that the wife did not wish to proceed further with
15 the mediation because she did not like the revised valuation of the IRG Group and
16 the valuation of the Law Firm produced by Deloitte and that her offer was not
17 practical. The husband complained that he had spent some \$11,800 in obtaining
18 the further reports from Deloitte as at 31st December 2007 for the mediation,
19 which he contended was wasted because the wife, having agreed at the time to
20 mediate then declined to proceed. Although it is unfortunate that Mr. Bullmore
21 was not given the opportunity to attempt to mediate between the parties, in the
22 end of the day, given the level of hostility and mistrust between the parties, it does
23 seem to me that he would most likely have had a major uphill struggle to achieve
24 consensus, to put it mildly. In fact the additional valuation evidence obtained

1 from Deloitte by the husband for purposes of the proposed mediation is now
2 before me in any event and has of course been taken into account by me in my
3 assessment of the relevant values, as has the valuation evidence submitted by the
4 wife.

5
6 30. Valuation of IRG Group

7 (1) The valuation by Deloitte (dated 13th August 2007) of the IRG Group as at
8 30th June 2007 estimated the fair market value to be in the range of \$430,000 to
9 \$505,000 and they suggested that if a specific value was required the mid point
10 should be taken, namely \$467,500. In a preliminary report dated 22nd August
11 2007 CJA firmly concluded that the financial statements of the IRG Group for the
12 years 2006 and 2007 were inaccurate, incomplete and misleading and that
13 substantial further information and additional work was required to correct the
14 errors and omissions before a valid opinion on value could be given. Accordingly
15 CJA considered themselves unable to produce a valuation report at that time. On
16 19th November 2007 CJA issued a report commenting on the Deloitte valuation as
17 at 30th June 2007. There is a dispute between the parties as to what transpired in
18 the period from early 2007 until the date of CJA's report in November 2007 as far
19 as the IRG Group's accounting and financial records and provision of information
20 is concerned. It appears that at some point in the first half of 2007 Deloitte also
21 recognised that the accounting and financial records of IRG Group were in
22 considerable disarray and that it would not be possible to produce a reliable
23 valuation on the basis of the documentary information then available. As a result
24 Deloitte made an offer to the husband to carry out the work of putting the records

1 of the IRG Group for the financial years 2004, 2005 and 2006 into proper
2 accounting order themselves. The husband accepted this proposal and
3 accordingly Deloitte issued an engagement letter to the IRG Group on 1st June
4 2007 and commenced this work during June of that year. However, CJA contend
5 that they were not informed of this and were still being obliged to rely upon the
6 records and information as they stood prior to Deloitte's work on them and as
7 supplied to them by the husband. There is a dispute over what was and was not
8 supplied to CJA. There was also criticism by the wife of Deloitte's apparent
9 conflict of interest in supposedly producing an independent valuation report while
10 at the same time undertaking work on the financial records of the IRG Group on
11 the husband's instructions. In my view it is unfortunate that Deloitte, who well
12 knew that CJA were also endeavouring to produce a valuation, did not liaise
13 regularly directly with CJA at all times so as to ensure that time and work were
14 not wasted or duplicated and that both firm's valuations, which after all had been
15 ordered by the Court, proceeded upon the same factual information. Ideally the
16 work of putting the financial records into an accurate and reliable form on the
17 instructions of the husband should have been carried out by a wholly independent
18 firm, albeit that may have been more expensive, particularly in circumstances
19 where it was clear that the parties instructing the valuations were involved in very
20 acrimonious and hostile litigation about the values. In fact, it appears to me that
21 the financial records as re-organized by Deloitte were not, at least entirely,
22 forwarded to CJA by the husband until late September 2007 as a result of which
23 considerable wasted time was spent and cost incurred by CJA in analyzing and
24 commenting on the original incomplete or inaccurate information. This approach

1 by the husband, and perhaps by Deloitte themselves, naturally exacerbated the
2 suspicion and mistrust already felt by the wife and, it appears, to an extent by CJA
3 too. I did gain the impression that unfortunately there developed, at least
4 generally, a degree of partiality and lack of professional co-operation on the part
5 of both valuation firms in this matter.

6
7 (2) In their report dated 19th November 2007 CJA agreed with some of the
8 analysis and comments of Deloitte but clearly did not agreed with others and they
9 concluded that Deloitte's valuation as at 30th June 2007 was understated. CJA
10 themselves valued the IRG Group at \$1,106,000. The CJA report did not
11 specifically state at what date this valuation applied but since they used financial
12 information for the IRG Group to 30th September 2007 it would seem that the
13 valuation of \$1,106,000 by CJA was as at 30th September 2007, some three
14 months later than the Deloitte valuation as at 30th June 2007. Most of the
15 difference between the two valuations is as a result of materially different
16 assessments by the two valuers of the IRG Group's sustained earnings and also
17 significant differences of opinion as to the appropriate multiplier to be used to
18 capitalise such earnings, in estimating the market value of the business. Both
19 valuers agreed that one of the most significant factors in determining the fair
20 market value is goodwill but they also disagreed over the extent to which the
21 husband's personal involvement in the business was a material factor in the
22 goodwill. There is clearly scope for differing views on all these factors.

1 (3) As I have already mentioned, there were various other exchanges of
2 comment between the valuers but ultimately on 28th July 2008 Deloitte produced
3 a further valuation of the IRG Group as at 31st December 2007, some seven
4 months previously, in which they concluded that the value at that time was in the
5 range of \$220,000 to \$260,000. By way of specific value they again proposed the
6 mid point, in this case being \$240,000. This clearly represented a very significant
7 reduction in value of almost 50% from their previous valuation as at 30th June
8 2007. The size of this reduction, not surprisingly, came as a considerable shock to
9 the wife and her advisers. Although Deloitte purported to set out the basis on
10 which they arrived at this reduced valuation, largely resulting from a reduced
11 assessment of sustained earnings and a deduction of \$100,000 said to be in respect
12 of pending litigation, it clearly greatly increased the wife's already considerable
13 mistrust and suspicion.

14
15 (4) The final position therefore in relation to the valuation of the IRG Group
16 is that there is a valuation by Deloitte as 30th June 2007 in the range of \$430,000
17 to \$505,000, with a mid range value of \$467,500. There is a valuation by CJA as
18 at 30th September 2007 of \$1,106,000 and there is a further valuation by Deloitte
19 as at 31st December 2007 in the range of \$220,000 to \$260,000, with a mid range
20 value of \$240,000. Accordingly there are 3 different valuations at 3 different
21 dates, with even the most recent being now over a year out of date. For purposes
22 of their latest proposals for division of the assets between them, the wife has used
23 a valuation of \$786,750, being the average between the Deloitte valuation of
24 \$467,500 as at 30th June 2007 and the valuation by CJA of \$1,106,000 as at 30th

1 September 2007. The husband has used the Deloitte valuation as at 31st
2 December 2007 of \$240,000. There is therefore a difference of \$546,750 between
3 them. The husband criticizes the wife's approach in using the Deloitte valuation
4 as at 30th June 2007 rather than their more recent valuation as at 31st December
5 2007. The wife criticizes the Deloitte valuation as at 31st December 2007 on
6 various grounds and urges to Court to adopt CJA's valuation as at 30th September
7 2007. In the end of the day it seems to me that given that the respective valuers
8 were not available for cross-examination, that they have used different valuation
9 dates and expressed different assessments of the company's sustained earnings,
10 have different opinions on the appropriate multiplier and on the extent of the
11 importance of the husband's continued personal participation in the company as
12 far as goodwill is concerned, I can only take a broad view based on my overall
13 impression. My impression of Deloitte's valuations is that, firstly, they did not
14 pay sufficient regard to the special and perhaps unique nature of the Cayman
15 market and used an approach which, while perhaps appropriate in the Canadian
16 market seemed to me less so in the specific Cayman market. Furthermore,
17 notwithstanding what Deloitte say in their valuation as at 31st December 2007, I
18 am not convinced that the value of the IRG Group can have dropped by almost
19 50% within the 6 month period from 30th June to 31st December 2007. On the
20 other hand, while I preferred CJA's more locally informed and based approach, it
21 does seem to me that the valuation of \$1,106,000 at 31st September 2007 is
22 somewhat overstated and, in particular, that a multiplier of 7 is somewhat high
23 and that the level of sustained income assessment was not wholly justified. I
24 accept of course that these are reports by experts and that it is not for me to

1 purport to act as an expert in this field myself but it equally does not seem to me
2 that in a situation like this I am bound to accept any one opinion on value in its
3 entirety as against any other. The approximate midway between the CJA
4 valuation as at 30th September 2007 and the Deloitte valuation only 3 months later
5 as at 31st December 2007, is \$675,000. On further reviewing the assumptions
6 made by the valuers, in all the circumstances I consider that a fair value for the
7 IRG Group now is \$625,000.

8

9 (5) I should also mention in this context that the husband made much of the
10 written offer made by the wife on 25th September 2008 to purchase the IRG
11 Group from him for the sum of \$240,000, being the amount of the Deloitte
12 valuation as at 31st December 2007. She also offered to sell to the husband the
13 Law Firm, again at the value attributed to it by Deloitte, which I shall discuss
14 below. It was argued on behalf of the husband that this indicated that the wife
15 accepted the Deloitte valuation of \$240,000 for the IRG Group. However, I do
16 not interpret the wife's action in making that offer as meaning that she accepted
17 the Deloitte valuation. My interpretation is that it was simply that, if the husband,
18 through his expert, was saying that IRG only had that value when her own expert
19 was attributing a very much higher value to the Group, it made financial sense for
20 her to purchase the IRG Group at what, in her view, was a very low price. In fact,
21 in the circumstances, the wife's actions seemed to me more consistent with
22 someone who believed the Deloitte valuation to be unduly low rather than
23 someone who considered the valuation to be correct. In my view the wife's

1 actions in making her offer at that time are not inconsistent with the position
2 which she takes with regard to the Deloitte valuation as at 31st December 2007.

3
4 31. **Valuation of Cayman Office Concepts Ltd. (COC)**

5
6 (1) COC is owned 50% by International Relocation which is in turn owned as
7 to 60% by the wife and 40% by the husband. Deloitte valued COC as at 30th June
8 2007 and concluded that its value was in the range of \$315,000 to \$360,000, with
9 the mid point value being \$337,500. As in the case of the IRG Group, Deloitte
10 revalued COC as at 31st December 2007 as being in the range of \$220,000 to
11 \$270,000, with the mid range value being \$245,000; again a significant drop in
12 value over the 6 month period. CJA reported on Deloitte's 30th June 2007
13 valuation but used the cash position of COC as at 30th September 2007 and
14 reached a value in the range \$430,000 to \$261,505. The mid range of would be
15 \$345,753. By letter dated 28th February 2008 CJA commented on the valuation of
16 COC further in light of the financial statements of the company for the year
17 ending 31st December 2007 and expressed the opinion that the value had
18 increased to \$534,254, to which should be added surplus cash and receivables of
19 \$166,000, represented by a recent dividend. However, on 10th September 2008
20 Deloitte criticized the basis on which CJA reached that increased valuation, which
21 was again significantly higher than the Deloitte valuation although of course
22 Deloitte's valuation had significantly decreased over the 6 months from 30th June
23 2007. As I have remarked already, in the absence of cross-examination of the
24 expert valuers and in light of the different valuation dates I shall adopt a broad
25 brush approach to the varying assumptions made. On that basis I propose to

1 attribute a value to COC of \$350,000 for these purposes which I consider to be a
2 fair compromise in the circumstances. Accordingly the value of International
3 Relocation's 50% interest in COC is \$175,000 (the other 50% being the interest of
4 the third party).

5
6 32. **Valuation of the Law Firm**

7 (1) The Law Firm was valued by CJA as at 31st December 2007 at \$74,433.
8 This value was subject to a critique by Deloitte in a letter 18th September 2008 to
9 Mr. Theo Bullmore in which they proposed a value for the Law Firm in the range
10 of \$175,000 to \$225,000. In their proposals for division of the assets between
11 them the wife has used CJA's value of \$74,433 for the Law Firm and the husband
12 has used the mid point of Deloitte's range of values, namely \$200,000. In their
13 valuation CJA expressly pointed out that the wife had drawn from the business
14 only those monies that she required, which do not represent an economic salary
15 for an attorney with her experience, reputation and contacts, and that to replace
16 her with a lawyer with similar attributes would involve a substantial salary cost to
17 the Law Firm with a seriously detrimental impact on its profitability. It was also
18 noted that the net assets shown in the Law Firm's balance sheet did not include
19 accounts payable, work in progress or fixed assets. Accordingly CJA made
20 estimates in respect of these items. At present the Law Firm comprises the wife
21 as principal and 2 salaried associate attorneys. In their valuation proposal
22 Deloitte attributed significant value to their opinion that the Law Firm would be
23 attractive to other law firms, whether in or outside the Cayman Islands, which
24 may be interested in merging with or acquiring such a firm. They considered that

1 a figure in the range of \$50,000 to \$100,000 should be added to the value of the
2 Law Firm in respect of this factor. They also suggested, as did the husband in his
3 evidence, that the wife could spend less time on civic duties and community
4 related activities and more time on increasing the profitability of the firm by
5 concentrating on more income producing activities. It was particularly in light of
6 these additional factors that Deloitte expressed the view that value of the Law
7 Firm was in the range \$175,000 to \$225,000.

8
9 (2) The wife gave, in my view persuasive, evidence about these two factors.
10 She said that she had no intention of merging with or selling her firm to anyone.
11 In light of the nature of the practice of the Law Firm, it does seem to me
12 improbable that another firm would anyway be interested in such a merger or
13 purchase. The evidence was that the business of the Law Firm is almost entirely
14 matrimonial and family law litigation which in this country is a notoriously
15 unprofitable practice area. Furthermore, the evidence was also that the Law Firm
16 is heavily dependent upon the reputation of the wife to bring in its business and
17 were she not part of the Law Firm it seems unlikely, as CJA state in their report,
18 that it would have much, if any, value. The suggestion that the Law Firm may be
19 marketable to another firm in this way and that this adds significantly to its value
20 seems to me to be far too speculative for these purposes. As far as the suggestion
21 that the wife could spend more time on income producing activities is concerned,
22 I do not consider that to be a fair or reasonable suggestion. The fact that the wife
23 commendably undertakes civic duties and community related activities enhances
24 her reputation and public profile, which in turn attracts clients to her firm. While

1 this is not necessarily the motive, it nonetheless benefits the Law Firm as a form
2 of marketing, which the wife could not undertake if she were to devote her whole
3 time to income producing legal work. Indeed there may well be less income
4 producing legal work available if the wife did not maintain her profile though her
5 civic and community related work. Furthermore, the type of legal work
6 undertaken by the Law Firm is not, as I have already pointed out, by its nature
7 very profitable and given that such work fills a clear social need, it represents a
8 form of community service in itself. To suggest that either the Law Firm should
9 stop or reduce this work in favour of, for example, more profitable commercial
10 litigation or even corporate work or that the wife should give up her civic
11 contributions so as to earn more income is not, in my opinion, reasonable or fair.
12 In the circumstances I do not accept the points made by Deloitte in this regard and
13 consider that the valuation of the Law Firm at \$74,433 by CJA, rounded up to
14 \$75,000, is a valuation which may fairly be used for these purposes.

15
16 33. **Valuation of Development Co. (Artillery Court)**

17 (1) The husband and the wife each own one half of the shares in Development
18 Co. This is the company which developed and owns the commercial office
19 development known as Artillery Court in George Town. Apart from its
20 ownership of Artillery Court, the company has funds in 2 bank accounts totalling
21 approximately \$211,261 but otherwise has no other assets. The value of all of the
22 shares of the company was assessed by Deloitte as at 30th June 2007 to be in the
23 range \$1,050,000 to \$1,090,000. This valuation was based upon inter alia a
24 valuation of the real property, Artillery Court, as at 10th August 2007 in the

1 amount of approximately \$1,923,720 (US\$2.34 million). As at that date the
2 outstanding mortgage on the property was approximately \$1,028,462
3 (US\$1,254,222). A valuation of the land and property of Artillery Court was also
4 carried out on behalf of the wife as at 29th April 2008 by DDL Studio Ltd. They
5 assessed the market value of the property to be \$1,945,000. However, for present
6 purposes the parties have agreed between themselves to proceed upon the basis of
7 the estimate of the value of the company's net assets by Deloitte as at 30th June
8 2007, namely \$1,066,000 (US\$1,304,139) as the total value of Artillery Court for
9 these purposes and I shall therefore use that value.

10
11 (2) Artillery Court consists of 2 buildings, namely Building A (sometimes
12 referred to as Building 1) consisting of 2 strata lots (OPY 78 H1-H2) and Building
13 B (sometimes referred to as Building 2) consisting of 4 strata lots (OPY 78 H3-
14 H6). In their report Deloitte did not value the 2 buildings or the strata lots
15 separately but DDL Studio Ltd. did value each building, attributing a value of
16 \$780,000 to Building A and a value of \$1,165,000 to Building B. Of course these
17 values do not add up to the total value of \$1,066,000 which the parties have
18 agreed as the total value of both buildings for these purposes. The husband has
19 assessed the value of each building for these purposes by using his own
20 assessments of their respective areas and pro-rated those to the agreed value of
21 \$1,066,000 for the whole property to arrive at values of \$435,602.88 for Building
22 A and \$630,397.12 for Building B. However the parties do not agree about the
23 precise areas of the 2 buildings. As a result of these various differences the
24 parties assessed the ratio as between the values of Building A and of Building B

1 slightly differently. The wife assessed the ratio in value between Building A and
2 Building B as 1 to 1.49. The husband assessed the ratio between Building A and
3 Building B as 1 to 1.45.

4
5 (3) There is also a dispute between the parties as to the relative quality of the
6 2 buildings. Part of Building B was previously leased to a bank which carried out
7 upgrades to the fit-out of the interior of the part of the building which it leased,
8 installing wood panelling and tiling. The bank has since vacated the premises and
9 that part of Building B is now occupied by International Realty, the business
10 which the husband operates. The wife contended that this is considerably
11 superior in quality to the space which the Law Firm occupies in Building A. On
12 the other hand, the husband gave evidence that there is no difference in the quality
13 of construction of the 2 buildings and that the fit-out by the bank was relatively
14 superficial and anyway only affected a part and not the whole of the Building B.
15 He also pointed out that part of the roof space of Building A has been converted
16 into useful storage space, in respect of which the Law Firm, as occupier of
17 Building A pays no rent. In the absence of evidence from the valuation experts
18 about these factors I propose to proceed on the basis that they more or less
19 balance each other out and I do not propose to make any adjustment as between
20 the values of the 2 buildings other than that based on my opinion of the
21 appropriate ratios between them.

22
23 (4) In all the circumstances therefore and having regard to the fact that the
24 parties have themselves agreed a total value for the whole of Artillery Court, in

1 my view the fairest approach to valuation of each building is to adopt a mean ratio
2 between the two ratios proposed by the parties, which would be 1 to 1.47. On this
3 basis the value of Building A would be \$431,578.97 and the value of Building B
4 would be \$634,421.05, together making the agreed total value of \$1,066,000. I
5 shall use those values. It should also be noted that both buildings are subject to a
6 charge in favour of Bank of Butterfield in respect of the outstanding balance of
7 the company's borrowing, the balance of which as at 20th October 2008, the
8 parties agreed was \$973,822.18. The monthly payment in respect of the mortgage
9 is approximately \$11,000.

10
11 34. There are various other assets which the parties have taken to be matrimonial
12 property, the values of some of which the parties have agreed and of some of
13 which they have not. There is also an extensive dispute between them concerning
14 the disbursement by the husband of insurance proceeds, a payment or dividend
15 from COC and as to the source and expenditure of other funds by the husband in
16 the 12 months or so following the parties' separation. I shall consider that
17 particular dispute later in the Judgment and will first consider the various other
18 assets:

19
20 (1) **Chattels, furnishings, appliances etc.**

21 The parties dispute the value to be attributed to some of these items as follows:

22
23 (a) **Former Matrimonial Home Contents:** there is a dispute about the
24 contents of the Former Matrimonial Home. The wife has not attributed any value

1 to these, the husband has proposed a value of \$40,000. There was evidence from
2 the husband that the contents of the Former Matrimonial Home are currently
3 insured for \$120,000 and that there are some valuable items in the property.
4 While I appreciate that, as explained above, some of the appliances, and perhaps
5 other contents, suffered damage as a result of Hurricane Ivan, it seems to me
6 appropriate, given the size and nature of the property, to allow a reasonable value
7 for the contents of the Former Matrimonial Home. On the basis of the evidence
8 available, I will use the husband's proposed figure of \$40,000.

9 (b) **Breakers House Contents:**

10 The husband estimated the value of the contents as being \$5,000; the wife
11 provided no estimate. Although this is a small 2 bedroom house, the contents
12 must again have some value and I consider the husband's value of \$5,000 to be
13 fair.

14 (c) **Apartment 7 South Palms Contents:**

15 The wife provided no estimate; the husband estimated the value of the contents at
16 \$5,000 and in the circumstances I will accept that value.

17 (d) **Apartment 4 Bristol Courts Contents:**

18 The husband estimated the value of the contents as being \$10,000 and again, in
19 the absence of any other estimate, I shall use that figure.

20 (e) **Apartment B208 Careenage Contents:**

21 Both parties estimated the contents as being worth approximately \$25,000 and I
22 shall accordingly adopt that figure.

1 (f) Apartment 802 Metropolis, Miami Contents:

2 The Respondent has estimated the value of the contents at \$5,000. The wife did
3 not agree with this and gave evidence that she had purchased the bare minimum to
4 furnish and equip this apartment and paid less than that in order to do so. In the
5 circumstances I will attribute a value of \$2,000 to the contents of this property.

6
7 (2) Motor Vehicles, Pensions, Shares

8 The parties each have a car, the values of which are agreed. The husband has a
9 Jaguar with an agreed value of \$35,500 and the wife has a Range Rover with an
10 agreed value of \$49,446. The parties also have pensions with the Chamber of
11 Commerce Pension Plan. As at 30th November 2008 the value of the husband's
12 pension plan was \$37,292.36, which I shall round to \$37,300. As at 1st July 2008
13 the value of the wife's pension plan was \$32,153.07, which I shall round to
14 \$32,200. The wife also has certain shareholdings in Cayman National Bank
15 ("CNB") and in Caribbean Utilities Company Ltd. ("CUC"). No up to date
16 valuations of these were made available. As at 31st December 2006 the wife's
17 shares in CNB had a value of \$7,805.20. It is not possible to be precise about
18 their actual value over 2 years later but in the circumstances, although it is
19 obviously not satisfactory, I will assume a present value of \$7,850. The latest
20 valuation of the wife's shares in CUC is as at 15th June 2007 when their value was
21 \$3,338.24. The same comments apply to the value of these shares and I will
22 assume a value of \$3,350 for these purposes.

1 (3) Jewellery

2 There is a dispute between the parties over the value to be attributed to certain
3 high value watches purchased by the husband. Three of these watches were
4 purchased by the husband shortly after the parties' separation for a total cost of
5 \$36,950. The wife produced a valuation of these watches by Kirk Freeport of
6 \$52,724. The husband argued that the appropriate value to be used for these
7 purposes is the purchase price, arguing that the Kirk Freeport valuation was an
8 insurance valuation which did not necessarily equate with market value.
9 However, there was no expert evidence on this topic and nothing in the valuation
10 by Kirk Freeport to indicate that they had valued the watches on anything other
11 than an open market basis. Accordingly I accept the valuation by Kirk Freeport
12 of \$52,724. The husband also gave evidence that he believed that the wife had
13 herself purchased expensive jewellery which should be taken into account, in
14 respect of which he assumed a value of \$15,000. However, although he
15 mentioned a particular necklace, he was unable to be specific about this and the
16 wife categorically denied that she had bought any jewellery for herself since the
17 parties' separation. In the absence of more specific evidence and in light of the
18 wife's denial under oath, I was not satisfied on a balance of probabilities that the
19 wife had purchased any such jewellery and therefore I will make no allowance for
20 that.

21
22 (4) CNB Deposits

23 Before I come on to the disputed aspects relating to bank accounts, I should
24 mention that there are two fixed deposits at CNB in the name of the wife, one

1 named as in trust for the elder of the parties' two children and one named as in
2 trust for the younger child. The deposit in trust for the elder child is for
3 approximately \$48,300 and the deposit in trust for the younger child is for
4 approximately \$46,000. The unchallenged evidence of the wife was that these
5 deposits had been funded by payments made by her and were intended by her to
6 make provision for the children's education, particularly their anticipated tertiary
7 education. However, there is a dispute between the parties as to whether these
8 deposits, totaling \$94,000 should be treated as matrimonial assets and be taken
9 into account in the division of matrimonial property between them. The husband
10 argued that they have in effect been funded by matrimonial funds derived from
11 matrimonial income and on the basis of my views concerning matrimonial
12 income, I accept that argument. The wife, on the other hand, argued that these
13 deposits were intended to be held only for the benefit of the children's education
14 not for her or the husband's benefit and that they should not be taken into account
15 in the division of matrimonial property. As I have already pointed out, Section 19
16 of the Law requires the court to have regard first of all to the best interests of any
17 children of the marriage and with that in mind it does seem to me both appropriate
18 and desirable that funds should have been set aside to be used for the benefit of
19 the children even if funded by matrimonial income. There are clearly sufficient
20 matrimonial assets available overall to make adequate provision for the parties
21 without recourse to these funds and accordingly, on the wife's assurance, given in
22 her evidence, that these funds will indeed be used by her only for the benefit of
23 the children's education and that she will not have recourse to them for any other
24 purpose, I accept her argument that they should not be taken into account in the

1 division of matrimonial assets between her and the husband. They shall be
2 retained as funds held in trust only for the children's benefit and not used for any
3 other purpose without the written consent of the husband, failing which without
4 the leave of the Court.

5
6 (5) **Bank Accounts**

7 The husband and the wife each have several bank accounts and deposits. There is
8 also a joint savings account with a small balance. I consider it fair that the
9 proceeds of the joint savings account should be divided equally between the
10 parties and that subject to my comments below they should otherwise retain the
11 proceeds of each of their accounts and deposits.

12
13 (6) **Credit Cards**

14 The husband and the wife also each have various credit cards. There was little
15 detailed evidence about those and no evidence at all about the wife's cards apart
16 from the fact that she has some. In the absence of any details and any specific
17 arguments, it seems to me that, other than making the point that the lack of
18 information about them is regrettable, I consider that each party should be
19 responsible for their own credit card liabilities as they stand at present.

20
21 (7) **Insurance proceeds, COC dividend and husband's expenditure**

22 (a) A considerable area of dispute between the parties relates to the
23 expenditure by the husband, firstly of the insurance proceeds received following
24 Hurricane Ivan, secondly of a payment or dividend from COC and thirdly,

1 generally over approximately the year following the parties separation in mid
2 January 2006. In this latter regard the wife points to the fact that the husband's
3 US\$ bank account was in credit in the amount of US\$466,997 (\$382,937) at the
4 date of separation in mid January 2006 but by early 2007 (after the wife had been
5 added as a signatory to all accounts except one by order of the Court made on 8th
6 November 2006) the amount in the account was only US\$160,974 (\$131,999).
7 The wife pointed out that this amounted to depletion of the account by
8 approximately \$251,000 or expenditure in excess of \$19,000 per month. She
9 argued that this was clear evidence of excessive spending by the husband and
10 amounts to dissipation of matrimonial assets. She contends also that the husband
11 has not accounted properly for the insurance monies which he received after the
12 hurricane or for a dividend of \$146,000 which he paid himself in several
13 installments from COC in late 2005 and early 2006. On this basis the wife
14 contends that the whole balance of the husband's US\$ account amounting to
15 \$131,999 should be allocated to her and that the amount of approximately
16 \$251,000 should be treated as a matrimonial asset dissipated by the husband. The
17 husband on the other hand claims that almost all of his expenditure in the period
18 following the separation was in relation to matrimonial related costs and
19 expenses. He does not deny that he received the total sum of \$146,000 in
20 installments from COC and he admits receiving the insurance proceeds but
21 contends they are all properly accounted for as legitimate matrimonial
22 expenditure. The parties hotly disputed the husband's purported accounting for
23 how these sums were used.

24

1 (b) There is no doubt that the total sum of \$341,878 was received from
2 Cayman General Insurance Ltd. in 3 installments in late 2004 and early 2005 in
3 respect of insurance proceeds after Hurricane Ivan. This was paid into the parties'
4 joint savings account and subsequently transferred by the husband using internet
5 banking into his personal account. By order made on 8th November 2006 the
6 husband was ordered to make full disclosure by affidavit of all properties in
7 respect of which he collected and/or received insurance proceeds as a result of
8 damage by Hurricane Ivan. By a further order made on 31st May 2007 the
9 husband was ordered to swear within 7 days a supplemental affidavit disclosing
10 every transaction in excess of \$1,000 relating to the proceeds of insurance which
11 he had received. The affidavit was required to provide details of how such
12 insurance proceeds were disbursed, to whom, on what date and by what means.
13 On 8th June 2007 the husband filed an affidavit pursuant to the orders of 8th
14 November 2006 and 31st May 2007 (6th Affidavit) by which he exhibited several
15 spreadsheets purporting to provide details of his disbursement of sums in excess
16 of \$1,000 out of insurance monies which he had received and dealt with in respect
17 of damage to various properties as a result of Hurricane Ivan, including the
18 damage to the Former Matrimonial Home.

19
20 (c) Some 5 months later, on 19th November 2007, the husband filed a further
21 affidavit (13th Affidavit) in which inter alia, he purported to explain how his
22 personal US\$ bank account had been depleted by such a significant amount in the
23 12 months or so following the parties' separation by producing further
24 spreadsheets itemizing every payment over \$500 from his personal accounts in

1 the years 2005, 2006 and 2007. The spreadsheets produced by the husband with
2 his 6th Affidavit purporting to explain his disbursement of hurricane insurance
3 proceeds and the spreadsheets produced with his 13th Affidavit purporting to
4 explain the significant diminution in his personal bank account showed the same
5 items of expenditure. The wife contended strongly that this amounted to double
6 accounting by the husband and was misleading and demonstrated the significant
7 dissipation of matrimonial assets by him, which should be reflected in the final
8 division of matrimonial property between them. The wife also argued that the
9 COC dividend which the husband paid to himself in late 2005 and early 2006 was
10 from a company of which she was the majority shareholder and a director yet she
11 had no knowledge of the payment until her valuation expert, CJA discovered it by
12 chance. She says that the husband has not accounted for it and that it should
13 accordingly be assumed to have been dissipated and that too should be taken into
14 account in the division of assets. The husband contended that this was all a
15 misunderstanding and that the spreadsheets which he had produced on the two
16 separate occasions were for different purposes and were intended to explain the
17 disbursement from his accounts of funds derived from insurance proceeds in the
18 one case and from all funds received, including the COC dividend, in the other
19 case. He argued that all of the money which he had received and ultimately
20 deposited into his personal accounts had been co-mingled and that there was no
21 element of double accounting. He claimed that, with the exception of some items
22 of specific personal expenditure which he had identified, such as his purchase of
23 the high value watches which he accepted should be considered matrimonial
24 property for these purposes, all the other expenditure was in respect of

1 matrimonial expenses such as the repairs to and ongoing day to day expenses in
2 respect of the Former Matrimonial Home in particular or legitimate personal
3 living expenses. He contended that the period in question had been a period of
4 particular heavy legitimate matrimonial expense generally and pointed to the
5 deposit on the apartment in Miami and the costs associated with the wife's new
6 car as examples. As far as the COC payment of \$146,000 was concerned the
7 husband said he had taken that as back payment of salary as he had received none
8 until then. The wife disputed his entitlement to such salary and contended that the
9 parties had previously agreed that they would not take salary from the business.
10 The husband contended that the \$146,000 had been co-mingled with other monies
11 in his bank account and, like the other monies, spent on matrimonial expenses or
12 legitimate personal living costs.

13
14 (d) A considerable amount of time was spent at the hearing going over the
15 spreadsheets produced by the husband in great detail and in endeavouring to
16 determine whether or not there was in effect double accounting by him. It would
17 have been of more assistance if the husband had produced a comprehensive
18 analysis showing all funds deposited into his accounts, from whatever source,
19 including the insurance proceeds, the COC dividend and all other deposits,
20 together with all payments out of the accounts from, what he asserted, were the
21 co-mingled funds. While the spreadsheet produced with his 6th Affidavit
22 identified the 3 cheques received from the insurance company, the spreadsheet
23 exhibited to his 13th Affidavit only identified cheques written on the accounts and
24 did not appear to include details of deposits into the accounts, or their source,

1 which would be more helpful in light of the husband's contention that in the
2 end of the day everything was co-mingled. The husband also relied on a letter
3 dated 18th October 2007 from Deloitte identifying items of expenditure by the
4 husband in excess of \$5,000 made at or about the time when payments had been
5 made into his account and inferring that that is how the funds deposited had been
6 spent. In the absence of a comprehensive analysis over the whole period, I did
7 not find this particularly helpful.

8
9 (e) There are items of expenditure by the husband from his bank accounts
10 during the period concerned which, in my opinion, should not be considered
11 matrimonial for these purposes. There are for example substantial payments to
12 Deloitte as his valuation advisors in these proceedings and, apparently, also in
13 respect of his legal costs. These do not seem to me, prima facie to be properly
14 categorized as matrimonial expenses. The husband also accepted that he had
15 made some payments out of the account in respect of liabilities of his extra
16 marital partner, some even prior to the parties' separation. Furthermore, the
17 justification for the payment of the whole COC dividend of \$146,600 to the
18 husband personally is not clear to me. The evidence was that \$16,600 of that total
19 was paid direct to the husband and the balance was paid in several installments to
20 the parties' company, International Relocation from where the husband
21 transferred it into his own account. The husband had no direct interest in COC,
22 his beneficial interest being through International Relocation in which he held
23 40% of the shares and the wife held 60%. The husband's argument was that the
24 wife played no part in the day-to-day business of either COC or International

1 Relocation and that the payment of \$146,000 was properly paid to him
2 retrospectively as salary. As I have said, the husband contends that the COC
3 dividend, the whole of which ultimately ended up in his personal account, was co-
4 mingled with other funds in his account and disbursed on matrimonial expenses.
5 However, there did not seem to me to be clear or entirely plausible accounting for
6 this sum by the husband. The husband's dealings with his personal US\$ bank
7 account during the relevant period, as I have already pointed out, lead to a
8 reduction of the sums in the account by approximately \$251,000 depending on the
9 precise dates used. Overall I regret to say that I did not find the husband's
10 purported explanations for his use of all these funds, whether insurance proceeds,
11 the COC dividend or otherwise, to be as clear, straightforward and persuasive as I
12 would have expected in light of his contentions. I was not wholly convinced that
13 it was all as he attempted to portray it. In all the circumstances, having regard to
14 the contentions of the parties, my comments above and given that the deposit on
15 the Miami apartment, the watches and the wife's car are already to be taken into
16 account as matrimonial property, I find that the husband has not clearly and fully
17 accounted to the necessary standard for, as matrimonial or legitimate personal
18 living expenditure over the relevant period, a total amount of \$85,000 of the sums
19 in the account at the time of the parties' separation. I proposed to assume that he
20 personally benefitted from or dissipated monies to the extent of such an amount of
21 matrimonial property and that that should be taken into account. I do not consider
22 it justified to assume that the whole of the expenditure from the accounts of
23 approximately \$251,000 was dissipated as the wife's proposed division of assets
24 appears to assume or that the balance of the account should be allocated to her,

1 which in itself appears to me to amount to double accounting on her part. I am
2 prepared to accept that there was co-mingling of monies in the husband's account
3 but, as I have said, I do not accept that all the funds concerned, including the COC
4 dividend and the insurance proceeds are all fully and properly accounted for at
5 least to an extent of \$85,000 in total.

6
7 Artillery Court

8 35. (1) A major matrimonial asset about which the parties strongly disagreed is
9 Artillery Court. This represents, at least in gross terms, the largest and most
10 valuable of all the matrimonial properties. In her asset division the wife proposed
11 that the whole of Artillery Court should be transferred to her. The husband
12 initially proposed that each party should keep the building which they currently
13 occupy, that is the wife would be allocated Building A (2 strata lots) and the
14 husband would be allocated Building B (4 strata lots). Recognizing that this
15 would give him majority voting power in the strata corporation, the husband
16 proposed that there should be some arrangement whereby he could not out-vote
17 the wife. However, in his closing submissions counsel for the husband suggested
18 as a compromise the possibility that the husband should be allocated building A
19 and the wife Building B. There is also, of course, the issue of the current charge
20 over both buildings in favour of Bank of Butterfield to secure the borrowing by
21 the parties' company, Development Co., the current registered owner of all the
22 strata lots in both buildings.

1 (2) It is clear that, at least since the separation of the parties, there have been
2 disagreements and difficulties arising out of the involvement of both of them in
3 the occupation and management of Artillery Court. Ultimately, the parties
4 agreed, and on 31st May 2007 the court ordered, that a representative of BCQS,
5 should be appointed to manage the whole property and to a large extent that
6 appears to have been successful in reducing the disputes, since both parties appear
7 to have confidence in him and to accept his mediation between them. However,
8 there was evidence that, at least in the past, neither party has been fully compliant
9 with their obligations as tenants through the businesses which they respectively
10 manage and it appears that at least the husband's businesses still have significant
11 rent arrears, although he contended that the wife's business, the Law Firm was
12 also in arrears with some of its obligations. The wife's position is that in all the
13 circumstances she is strongly opposed to Artillery Court being split between
14 her and the husband. She was adamant that she no longer trusts the husband and
15 that she could not continue to occupy premises in the same property as him and be
16 involved with him as a proprietor in the same strata corporation and the
17 management of the development. She said she remains of that view even if the
18 current manager, or someone similar, were to continue to manage the property as
19 at present; she would not be willing to remain in occupation of Artillery Court if
20 the husband was still there. The husband, on the other hand, felt that, particularly
21 if the property was to continue under the present management and there was no
22 question of either party being able to out-vote the other, once all of the financial
23 issues between the parties had been resolved, it would be possible and practicable
24 for them to each own one of the buildings at Artillery Court and to co-exist in a

1 professional manner. Unlike the wife, he was not in favour of an initial tentative
2 suggestion by me that a solution might be to hold Artillery Court in trust for the
3 children of the marriage. He felt that Artillery Court was a major matrimonial
4 asset and that it was too valuable to allocate the whole property effectively to the
5 children. He gave evidence that he did not believe in effectively gifting large
6 sums or assets to children, who he felt, should make their own way in life.
7 Equally, he was opposed to selling Artillery Court and dividing the sale proceeds
8 and he was certainly not in favour of the wife's argument that the whole property
9 should be allocated to her. He argued that that would be clearly unfair and
10 disproportionate having regard to its value in light of the overall value of the
11 matrimonial property available. However, in making his initial proposal that he
12 should keep Building B and the wife, Building A, he said he was willing to
13 assume responsibility for the greater proportion of the outstanding bank loan,
14 although clearly that would depend on the agreement of the bank in light of the
15 security available to it under any new ownership arrangement.

16
17 (3) The parties also made and disputed allegations as to which of them had
18 contributed more to the development, and establishment and success of Artillery
19 Court. The husband claimed that it was his idea and that he had effectively
20 managed the whole development, financed initially in part by a third party who,
21 2005, was bought out by the parties re-financing and that the development simply
22 would not have happened were it not for him. The wife, on the other hand,
23 contended that she had carried all out the relevant legal work for the project and
24 that the Law Firm was the lead tenant without which funding would never had

1 been obtained from the bank to enable the development. She contended that the
2 Law Firm contributed more to payment of the mortgage. In my opinion the
3 overall evidence demonstrated that both contributed to the Artillery Court
4 development in different ways and that the project was in effect a joint venture of
5 the parties as partners in the marriage and properly accepted by both parties of
6 them as matrimonial property. I shall say more about the arguments relating to
7 special contributions in the case generally later in this judgment but in my
8 judgment it would not be fair to attribute a greater contribution to the
9 development and success of Artillery Court to one party rather than the other for
10 these purposes. I did not find the parties respective contentions in that regard
11 particularly compelling. It should also not be forgotten that contribution to the
12 success of a project such as Artillery Court may be made through indirect support
13 in various ways as well as through direct input.

14
15 36. Before considering the relevant law and setting out my conclusions as to how the
16 matrimonial property should fairly be divided between the husband and the wife I
17 will make some general comments about the case and also about the conduct of
18 the parties. I have already commented briefly on the exceptional mistrust,
19 suspicion, acrimony and hostility evident in this case. This was not only reflected
20 in their demeanor as witnesses and in their conduct throughout these proceedings
21 but in my assessment it impacted to a certain extent on their objectivity and
22 sometimes their reliability and plausibility. It also seemed to me that some of
23 their evidence was clearly self-serving and on occasion was put forward in
24 hindsight in order to bolster their respective cases. The wife's continuing

1 bitterness towards the husband was clearly apparent, no doubt due not only to the
2 husband's conduct at or about the time of the parties' separation but also to his
3 previous lack of candour, frankness and clarity about some of his assets and his
4 somewhat unusual, convoluted and informal business dealings. This was hardly
5 calculated to assuage the wife's obvious mistrust and suspicion which was, in my
6 view, justified to a certain extent. I have already mentioned the difficulties
7 created by the husband as a result of his failure to maintain proper, reliable and
8 clear financial records, resulting in the need, not only for the wife and her
9 advisors but also to some extent for the Court, to speculate, draw inferences and
10 make assumptions about his expenditure, assets and financial position generally.
11 In fairness, it was apparent that the wife did not maintain proper financial records
12 for the Law Firm either. However, I did not find that the husband's oral evidence
13 in particular in this respect was always as clear and convincing as it should have
14 been. His purported explanations of some financial matters and transactions
15 seemed less than entirely convincing or satisfactory to me. Further difficulty was
16 created by, for example, the problem of reaching conclusions about valuations
17 when valuation reports were out of date and there was no cross-examination of
18 the valuation experts. I have had to assume in some respects that opinions of
19 value at least one year, and in some cases more than one year, out of date are
20 accurate opinions of value today. Another example is that, in some material
21 instances opposing contentions of the parties or the evidence of one of them was
22 not put to the other. I appreciate that these are matrimonial proceedings and that a
23 certain degree of informality in procedure is to be expected and I accepted as

1 much, however it would have been desirable and helpful if some of the more
2 significant allegations in the case of one party had been put to the other.

3
4 37. Conduct of the Parties

5 (1) As far as the conduct of the parties is concerned, each of them contended
6 that the conduct of the other was such that it should be taken into account in
7 having regard to their “deserts” in assessing a fair division of the matrimonial
8 property. The husband contended that the wife’s conduct at or about the time of
9 their separation was wholly inappropriate, detrimental to matrimonial assets and
10 should be taken into account. The wife does not dispute what she did but gives a
11 different explanation for her motivation and intentions. In early January 2006 the
12 wife wrote to two banks requesting them to freeze the operating accounts of the
13 two companies, International Relocation and IRG Real Estate. At about the same
14 time she also wrote to the Trade and Business Licensing Board instructing them
15 to withdraw the Trade and Business Licences for the two companies, copying her
16 letter to the real estate brokers association, CIREBA, of which the husband was
17 then the President. She also wrote separately to the husband, again copying
18 CIREBA, in her capacity as a director and majority shareholder of the companies,
19 purporting to terminate his employment with the companies. The husband
20 contends that this was a blatant attempt by the wife to close down the two
21 companies which he was operating and to prevent the husband from carrying on
22 business. He alleged that it was done entirely out of malice in order to try to
23 create maximum difficulty for and to hurt him. The freezing of the bank accounts
24 was only subsequently terminated by the order of the Court on 8th November 2006.

1 on the basis that the wife should be added as a required signatory to all but one of
2 the frozen bank accounts. Although the Trade and Business Licensing Board
3 apparently did not respond to the wife's letter, according to the husband it
4 subsequently became apparent to him that the Board had acted upon her request.
5 He further pointed out that in March 2006 the wife also wrote to the Caymanian
6 Status and Permanent Residency Board and informed them that she had petitioned
7 for divorce and that the husband was carrying on an extra marital affair. In
8 further support of his interpretation of the wife's conduct, the husband also
9 referred to an email sent by the wife in December 2007, to the attorney
10 representing a former employee of the company, International Relocation, who
11 had brought legal proceedings against the company for damages. The husband
12 contended that the information provided by the wife in the email was intended to
13 help the attorney concerned in pursuing the claim and amounted to a further
14 attempt to undermine him and his business. The husband pointed out that all of
15 these companies were, and were contended by the wife to be, matrimonial assets
16 and that any damage to them or their business amounted to damage to
17 matrimonial property. The husband's affidavit evidence was that it was as a result
18 of the withdrawal of the Trade and Business Licences for the two companies by
19 the Board in response to the wife's letter that he was obliged to activate his new
20 company, International Realty so as to obtain a Trade and Business Licence in
21 order to lawfully carry on business, although he did not disclose that to the wife.
22 The husband submitted that the wife's conduct was wholly inappropriate and that
23 it should be taken into account in determining a fair division of the matrimonial
24 assets.

1 (2) The wife contended that she had been simply trying to protect her own and
2 the children's position, given that the husband was the sole signatory on the
3 companies' bank accounts and she had no information and legitimate concerns
4 about what the husband was doing with the companies' funds. She said that as a
5 director and majority shareholder of the two companies she had no idea what the
6 husband was doing with the companies or their funds and that her actions were an
7 appropriate protective holding measure by her as such director and shareholder.
8 She pointed out that her letters had not been sent without the knowledge of the
9 husband since they had been copied to him. As far as her subsequent letter to the
10 Caymanian Status and Permanent Residency Board is concerned, the wife said
11 that she was simply providing that Board with information they required by law to
12 know, particularly since the husband had acquired Caymanian Status by virtue of
13 his marriage to her. With regard to her email in December 2007 to the attorney
14 representing the former employee of International Relocation, the wife contended
15 that she had been quite properly providing information to him as a director and
16 majority shareholder of International Relocation. The wife did admit that, not
17 surprisingly, she was very upset and distressed at the time she wrote these letters
18 as a result of the husband having confessed to an extra marital relationship and
19 then leaving her and the children. In an earlier affidavit she did say that she wrote
20 to the Trade and Business Licensing Board, the Caymanian Status and Residency
21 Board and to CIREBA in an effort to hurt, humiliate and embarrass the husband
22 but that she was also trying to limit her liabilities for the companies and to
23 terminate the husband's employment. She also stated that her actions in freezing
24 the bank accounts were because she had discovered dissipation of funds and also

1 payments by the husband to or on behalf of the woman with whom the husband
2 was conducting an extra marital affair.

3
4 (3) Having reviewed the affidavit evidence and heard the parties there is little
5 doubt that the wife was particularly distressed and upset (she used the term
6 devastated) by the husband's actions at or about the time of the separation and she
7 appears to have remained, to an extent understandably, bitter and hostile towards
8 the husband ever since. According to the husband the marriage was already in
9 difficulties when he left but, whether or not that is so, it was obviously a very
10 traumatic time for the wife and, no doubt also for the children. It was not
11 apparent to me that the husband fully appreciated or was as sensitive as he might
12 have been to the inevitable effect of his actions at the time, exacerbated since by
13 his conduct in these proceedings to which I will refer below. Nonetheless,
14 however understandable, I did form the impression that the explanations given in
15 her oral evidence for her actions at the time were only part of the motivation for
16 her conduct and that there was a strong element of acrimony and hostility towards
17 the husband on her part, which played a major part in what she did. While it is
18 understandable in the circumstances that she would be particularly concerned
19 about her own and her children's financial position as a result of the husband's de
20 facto control of the companies and their bank accounts, there were other less
21 damaging and public ways of obtaining financial information and appropriate
22 control as a director, if necessary through the Court, which would have been more
23 appropriate and less detrimental to the companies' businesses. It is difficult to see
24 how her actions in requesting termination of the companies' Trade and Business

1 Licences and in purporting to terminate the husband's employment could be said
2 to be in the best interests of herself and the children, since clearly the businesses
3 of the companies were important matrimonial assets. Nonetheless, in my opinion,
4 her conduct in the months immediately following the husband leaving the Former
5 Matrimonial Home should be seen in context.

6
7 (4) The wife argued strongly that the husband's conduct both prior to and
8 after the commencement of these proceedings warranted strong condemnation and
9 should be taken into account in determining an appropriate allocation of the
10 matrimonial property between them. She pointed first to his transfer, without her
11 knowledge, still less her consent, of the assets businesses and employees of
12 International Relocation and IRG Real Estate to his own solely owned company,
13 International Realty and his operation of the matrimonial businesses through his
14 own solely owned company. She also relied upon his conduct in misspending or
15 dissipating matrimonial funds and his failure, she contended, to account honestly,
16 fully and frankly, for the insurance proceeds, the COC dividend and his
17 expenditure from his US\$ bank account following the parties' separation. She
18 made particular reference to the husband's use of matrimonial funds to pay the
19 liabilities of his current partner and his extravagant expenditure on himself, for
20 example the purchase of the high value watches. In addition the wife particularly
21 relied upon the husband's conduct during the course of these proceedings. She
22 referred specifically to the husband's earlier failure to provide full and frank
23 disclosure of all assets in which he had an interest. She reminded the Court of the
24 husband's conduct at a hearing in October 2006 when he denied having any

1 interest in properties at Grand Harbour, where Lots 6 and 7 and the Careenage are
2 located. She pointed out that at a subsequent hearing when it came to light that he
3 did have such an interest, namely in Lots 6 and 7 and Apartment B208,
4 Careenage, the judge had expressly suggested to her the option of proceedings for
5 criminal contempt of court against the husband and she had only not proceeded
6 with that because of the upset it would cause to the children if the husband was
7 given a prison sentence as a result. She further reminded the Court that the judge
8 had described the circumstances surrounding the husband's business transactions
9 as "suspicious" and had made an order for indemnity costs against him as a result
10 of his unacceptable conduct. She contended that the husband had simply lied to
11 the Court and could not be trusted. She also reminded the Court that, albeit not
12 directly related to financial matters, a further motion for contempt of court against
13 the husband relating to his alleged breach of the condition attached to his access
14 to the children is still pending. That is of course strongly opposed by the
15 husband. She contended that the financial information which the husband has
16 purported to provide throughout the proceedings is not full and frank or reliable
17 and that her complete lack of trust in and suspicion of him is entirely justified. In
18 a supplemental affidavit filed by the wife on 3rd February 2009 she referred to
19 other alleged misconduct by the husband which she also requested the Court to
20 take into account.

21
22 (5) The husband, in his affidavits and also in his oral evidence denies and
23 seeks to explain the wife's allegations. In particular he contends that his transfer
24 of the assets businesses and employees of International Relocation and IRG Real

1 Estate to his own company, International Realty, in the months after the parties'
2 separation was necessitated because the Trade and Business Licence Board had
3 withdrawn the Trade and Business Licences of the companies at the wife's own
4 request and he therefore had no alternative but to transfer the businesses to his
5 own company in order to be able to continue to carry them on. He denies the
6 wife's allegation that he was attempting to strip International Relocation and IRG
7 Real Estate of their assets, although he admits that what he did was done without
8 the wife's knowledge or consent. I have already commented on these
9 explanations and his responses to the wife's allegations of dissipation and failure
10 to account and I need not repeat that here. As far as his non-disclosure in relation
11 to the 2 Lots at Grand Harbour and the apartment at the Carenage are concerned,
12 the husband put those to the Court at the time but the Court nonetheless clearly
13 had concerns and suspicions. As I have already commented I have not found the
14 husband's explanations of some of his unconventional and informal transactions,
15 for example involving alleged nominees or purely oral agreements concerning
16 relatively complex arrangements, such as advancing his own funds to purchasers
17 of property of which he was the listing agent, to be entirely satisfactory.

18
19 (6) I have not gone into the detail of all the allegations of misconduct made by
20 each of the parties against the other, particularly as set out in the numerous
21 affidavits. I have simply summarized the more significant conduct on which each
22 parties' counsel addressed me at the hearing and which they contended should be
23 taken into account. However, in my opinion, considered overall, it is clear that
24 some of the conduct of each party is indeed open to criticism. In the context of

1 acrimonious divorce proceedings with clear and obvious disputes about the
2 parties' financial circumstances and the matrimonial assets, I do consider the
3 husband's conduct in his apparent failure to give entirely full, frank and open
4 discovery previously, which clearly gave rise to serious concerns on the part of
5 the Court resulting in express censure of him, to be particularly discreditable and
6 inevitably gives rise to concerns about his reliability. The wife's conduct on
7 which the husband relied is of a rather different nature and occurred in a different
8 context. While not in any way to be condoned it was, in my view, more readily
9 understandable, although less so in the case of the email which she sent in
10 December 2007, which was long after the parties' separation. There has also been
11 other alleged inappropriate conduct by her since the parties' separation referred to
12 in the affidavits which, if true, also clearly reflects her bitterness and hostility
13 towards the husband and his present partner. Nonetheless, in my opinion the
14 particular conduct of each of the parties which they particularly relied on and
15 which I have outlined above, and which is anyway denied or purportedly
16 explained to a greater or lesser extent by each of them, is not of such gravely
17 critical significance in the overall context of this hotly contested case that it is a
18 factor of such weight as to affect my assessment overall of a fair division of the
19 matrimonial property between them. The whole circumstances of this particular
20 case are most unfortunate and in several respects the conduct of neither party
21 since their separation has been particularly commendable. Notwithstanding this I
22 do consider that there are other factors in this case which are more material in
23 assessing a just division of the relevant assets between them than the respective
24 conduct of the parties of which I was urged to take account. While, as I am

1 obliged by Section 19 of the Law to do, I have obviously had regard to the
2 conduct of the parties, particularly in considering their deserts, such conduct,
3 while clearly not to be condoned, is not, in my judgment in this case a factor of
4 such great weight one way or another in the determination of what is fair and
5 equitable in all the circumstances.

6
7 38. I therefore come now to “the difficult task of exercising the wide discretionary
8 powers conferred by [Sections 19 and 21 of the Law]” (see Per Lord Nicholls in
9 Miller v Miller/McFarlane v McFarlane (*ibid*)). Lord Nicholls also stated, in
10 relation to the general application of this discretion:

11
12 *“the legislation does not state explicitly what is to be the aim of the courts when*
13 *exercising these wide powers. Implicitly, the objective must be to achieve a fair*
14 *outcome. The purposes of these powers is to enable the court to make fair*
15 *financial arrangements on or after divorce in the absence of agreement between*
16 *the former spouses: see Thorpe LJ in Dart v Dart [1997] 1FCR 21 at 29-30. The*
17 *powers must always be exercised with this objective in view, giving first*
18 *consideration to the welfare of the children”.*

19
20 I have now identified the matrimonial assets and attributed values to them and
21 accordingly I must determine what seems to me to be the fairest distribution of
22 them between the husband and the wife on divorce in all the circumstances.
23 Considerable guidance on the general approach to be adopted by the Court in
24 undertaking this exercise has been given by the Court of Appeal in Wight v Wight

1 (ibid), in turn making reference to various English cases, particularly White v
2 White (ibid), the guidance in which was adopted as relevant to this jurisdiction,
3 bearing in mind that the discretion given to this Court by Section 19 and 21 of the
4 Law is arguably even broader than the discretion vested in the English courts by
5 the equivalent English legislation; our legislation is certainly more general. There
6 are several particular parts of the judgments in Wight v Wight to which it may be
7 of assistance for me to specifically refer in the context of the present case,
8 although this is not intended to be an exhaustive analysis.

9
10 39. Equality

11 (1) In Wight v Wight (ibid) the President of the Court of Appeal (Zacca P.), in
12 the leading judgment, considered the question of equality of division between the
13 spouses. Having stated that the decisions of the English court on the subject of
14 equality are of persuasive authority here and will be considered by these courts,
15 he made it clear at page 17 that “*There is no presumption of equality*”. However,
16 he then went on to refer to the judgment of Lord Nicholls in White v White (ibid)
17 at page 605 when he said that:

18
19 “*As a general guide, equality should be departed from only if, and to the extent,*
20 *that there is a good reason for doing so. The need to consider and articulate*
21 *reasons for departing from equality would help the parties and the Court to focus*
22 *on the need to ensure the absence of discrimination*”.

1 The President also referred to the judgment of Lord Cooke at page 615 when he
2 said:

3
4 *“The most important point, in my opinion, in the speech of my noble and learned*
5 *friend, Lord Nicholls, is his proposition that, as a general guide, equality should*
6 *be departed from only if, and to the extent that, there is good reason for doing so.*
7 *I would gratefully adopt and underline it. Widespread opinion within the*
8 *Commonwealth world appears to accept that this approach is almost inevitable,*
9 *whether the regime is broad or detailed in its statutory provisions”.*

10
11 After referring further to the judgment of Lord Nicholls and also to the judgment
12 in the earlier case R v R [1992] 1AC 599 and to the judgment of Taylor JA in
13 Doak v Doak [2002] CILR 244 as well as the judgment of Baroness Hale in
14 Miller v Miller/McFarlane v McFarlane (*ibid*) the President stated *“In my view*
15 *the Court should strive for equality”.*

16
17 (2) In his judgment in Wight v Wight (*ibid*) Forte JA specifically commented
18 that a marriage is a union of presumed equals and said (page 33) *“it is this*
19 *presumption of equal contribution of spouses that now forms the basis of the new*
20 *approach of a fair and equitable division of matrimonial property”.* He referred
21 also to the judgment of the English Court of Appeal in Charman v Charman
22 [2007] EWCA 503 when Sir Mark Potter P. said:

23

1 *"The yardstick [of equality of division] reflected is a modern non-discriminatory*
2 *conclusion that the proper evaluation under Section 25(2)(f) of the parties*
3 *different contributions to the welfare of the family should generally lead to an*
4 *equal division of their property unless there was good reason for the division to*
5 *be unequal. It also tallied with the overarching objective: a fair result".*

6
7 Forte JA continued, having referred to the terms of the Law:

8
9 *"consequently these provisions are open to be construed on the basis of the new*
10 *approach to the institution of marriage and the fact that it is a union of equal*
11 *partners. Each therefore would be entitled to an equal share of the assets*
12 *acquired in the marriage, unless there is good reason to depart from that*
13 *principle".*

14
15 He reiterated that the principles in the cases of White v White, (ibid) Charman v
16 Charman (ibid) and Miller v Miller/ McFarlane v McFarlane (ibid) "*are as*
17 *applicable to this jurisdiction as they are to the English jurisdiction".*

18
19 40. Special Contribution

20 In Wight v Wight the Court of Appeal also dealt with the concept of special
21 contribution. In his judgment at page 23 the President said:

22
23 *"However the circumstances of the particular case under consideration may be*
24 *such as to allow the Court to depart from equality if there is good reason to do so.*

1 *The special contribution of one party is a matter to be considered in departing*
2 *from equality. The Court reaffirms its acceptance of the principles of equality as*
3 *expounded in the above English cases”.*

4
5 The President went on to quote again from Lord Nicholls in Miller v
6 Miller/McFarlane v McFarlane who said at page 642:

7
8 *“A point of a similar return concerns the approach to be adopted when*
9 *evaluating the contributions of each party made to the welfare of the family.*
10 *Apparently, in this post White era there is a growing tendency for parties and*
11 *their advisors to enter into the minute detail of the parties’ married life with a*
12 *view to lauding their own contribution and denigrating that of the other party. In*
13 *the words of Thorpe LJ, the excesses formerly seen in the litigation concerning*
14 *the claimants’ reasonable requirements have now been “transferred into disputed*
15 *and often futile, evaluation of the contribution of both of the parties”.*

16
17 Lambert v Lambert [2003] FAM 103, 117 para 27

18 *“On this I echo the powerful observations of Coleridge J. in G v G (Financial*
19 *Provision: Equal Division) [2002] 2FLR 1143 at 1154-5. Parties should not seek*
20 *to promote a case of “special contribution” unless the contribution is so marked*
21 *that to disregard it would be inequitable. A good reason from departing from*
22 *equality is not to be found in the minutia of married life”.*

23

1 Again in this context the President referred to Charman v Charman (*ibid*) and the
2 judgment of Sir Mark Potter at paragraph 80 when he said:

3
4 *“The notion of a special contribution to the welfare of the family will not*
5 *successfully have been purged of inherent gender discrimination unless it is*
6 *accepted that such a contribution can, in principle take a number of forms: that it*
7 *can be non financial as well as financial; and that it can thus be made by a party*
8 *whose role has been exclusively that of a homemaker”.*

9
10 The President concluded: *“The notion of “special contribution” is now an*
11 *accepted principle and I agree and accept this notion of special contribution. It is*
12 *a matter for the judge at trial to consider whether special contribution has been*
13 *established. This will depend on the facts of each particular case”.*

14
15 41. **Further points**

16 There are some further specific points which are, in my opinion, also relevant in
17 the context of the present case which arise from a review of the authorities:

18
19 (1) **“Big money” cases**

20 It was suggested that the general application of the principles, identified by Lord
21 Nicholls in White v White (*ibid*) are more apt in a case involving very substantial
22 assets and/or large amounts of money (a “big money” case). In the context of that
23 case Lord Nicholls said:

24

1 *"I have already noted that this was a clean break case, where the children were*
2 *grown up and independent. The available assets substantially exceeded the*
3 *amounts required by Mr. and Mrs. White for their financial needs, in terms of a*
4 *home and income for each of them. The general observations I make later should*
5 *be read with this in mind".*

6
7 There are two points I would make about this in relation to the present case.
8 Firstly, I do not understand Lord Nicholls to have been saying that all of his
9 observations apply only to "big money" cases. Obviously if the special
10 contribution is of a financial nature is only likely to be relevant in such a case,
11 although it was made clear in Charman v Charman (ibid) that a special
12 contribution can take a number of forms and can be non-financial as well as
13 financial. However, in my opinion, there is no reason why the principle of
14 equality should be confined to "big money" cases and I do not consider that is
15 what Lord Nicholls was saying. Nor do I infer that was the view of the Court of
16 Appeal in Wight v Wight (ibid) even though that was in fact a "big money" case.
17 Secondly, in view of the fact that the total value of the matrimonial assets in the
18 present case is in excess of \$4 million, the present case this is anyway in this
19 jurisdiction, also a "big money" case and even though the children are not grown
20 up and independent as they were in White v White, this is also a "clean break"
21 case. In all the circumstances I can see no good reason why the principles set out
22 and the observations made by Lord Nicholls as adopted by the Court of Appeal in
23 Wight v Wight should not be applicable to the present case.

24

1 (2) Needs of the parties

2 Section 19 of the Law provides that one of the factors to which the Court should
3 have regard is the needs of the parties. In considering the English legislation Lord
4 Nicholls said in White v White (at page 1581):

5
6 *"The statutory provisions lend no support to the idea that a claimant's needs,*
7 *even interpreted generously and called reasonable requirements, are to be*
8 *regarded as determinative. Another fact to which the court is bidden to have*
9 *particular regard is the available resources of each. As my noble and learned*
10 *friend Lord Hoffmann observed in Piglowska v Piglowska [1999] 2FCR 481 at*
11 *493, [1999] 3 All ER 632 at 642, section 25 (2) [of the English legislation] does*
12 *not rank the matters listed in that sub-section in any kind of hierarchy. The*
13 *weight, or importance to be attached to these matters depends upon the facts of a*
14 *particular case. But I can see nothing, either in the statutory provisions or in the*
15 *underlying objective of securing fair financial arrangements, to lead me to*
16 *suppose that the available assets of the respondent become immaterial once the*
17 *wife's financial needs are satisfied".*

18
19 Several points arise from this. Firstly, in Section 19 of the Law the factors listed
20 to which this court is required, to have regard are also not, apart from the best
21 interests of any children of the marriage, which is always the first consideration,
22 in any hierarchy or order of significance. The weight or importance to be
23 attached to these factors depends upon the circumstances of the particular case.
24 Secondly, in making the point that the claimant's financial needs are not to be

1 regarded as determinative, it seems likely that Lord Nicholls had in mind one of
2 the previous tests, now no longer, applied by English courts, namely the
3 reasonable requirements of the spouse. In any event, Section 19 of the Law
4 expressly identifies the needs of the parties as one of the factors, albeit clearly not
5 determinative, to which this court shall have regard. Thirdly, Lord Nicholls also
6 makes it clear that where the available matrimonial assets exceed the financial
7 needs of both parties, that is not a reason why the balance of the assets should not,
8 in the absence of a special reason, be shared equally.

9
10 (3) **Deserts of the parties**

11 I was referred to the reported Note of Uzzell v Uzzell [2001] CILR Note 12 in
12 which the court apparently held that “the deserts of the parties” as referred to
13 Section 19 of the Law meant “what the parties fairly deserved in the
14 circumstances of the case”. Unfortunately the full judgment was not available to
15 me but according to the Note it was further said that:

16
17 *“A spouse who had stayed at home to look after the family, thereby allowing the*
18 *other spouse to pursue a career, might deserve a greater award than one who had*
19 *pursued his or her career but earned less than his or her partner. The former*
20 *situation would be viewed as a joint enterprise with both parties contributing*
21 *differently but equally, justifying an equal division of assets, whereas in the latter*
22 *both parties had had the opportunity to earn money, and the award would reflect*
23 *the actual monetary contribution of each”.*

1 In my opinion, however, as also apparently stated in that case, the primary
2 objective is always to achieve a fair award in the circumstances. The recurring
3 theme of the more recent authorities is that the differing contributions of the
4 spouses, whether wholly financial, wholly non-financial or partly one and partly
5 the other, are to be seen in effect as equal contributions to the marriage
6 partnership and the end result of those contributions, notwithstanding that one
7 spouse may have contributed more financially, are usually to be shared equally
8 unless there is some special reason which makes it unfair or inequitable to do so.
9 The apparent comments of the judge in Uzell v Uzell which I have set out above
10 must be seen in the particular circumstances of that case. According to the Note it
11 appears that the judge considered that both parties had had the opportunity to earn
12 money, and he presumably considered that they had had equal opportunity to earn
13 equivalent amounts. The wife had apparently been working full time for the
14 previous 17 years and the husband had, in effect, made a special contribution.
15 Accordingly the judge considered that in the circumstances a fair award would
16 reflect the actual monetary contributions of the parties. The judge also
17 emphasized the word "*might*" in his comments. In my view the circumstances of
18 that case were different from the present case. The fact that in the present case
19 the wife also worked full time is not in my opinion a reason for the division
20 between them reflecting their actual monetary contributions. I do not consider
21 that that would be appropriate or fair and I did not understand the husband to
22 argue that. He argued for equality. In any event, if it is necessary to distinguish
23 Uzell v Uzell the fact is that in the present case the wife was also the principal

1 carer of the children and contributed in that way as well as by working full time in
2 the Law Firm.

3
4 47. **Parties' Contributions**

5 (1) In the present case the husband contended that an equal division of the
6 matrimonial property between him and the wife would be fairest and most
7 equitable. The wife on the other hand contended that she had made a special
8 contribution herself or that, alternatively, in all the circumstances she should be
9 awarded a larger share of the matrimonial property and, particularly that she
10 should be allocated the whole of Artillery Court. She contended that, her
11 contribution to the accumulation and the value of the matrimonial property had
12 been significantly greater than the husband's and that in the final analysis the
13 parties would not be where they were financially were it not for her. She argued
14 that she had bought to the marriage 2 unincumbered properties whereas the
15 husband had brought one incumbered property. She argued that from the start of
16 the marriage it was she who had enabled the husband to live rent free in her
17 house, the Breakers House, so as to enable him to rent out his apartment at Bristol
18 Courts and pay off the mortgage. She contended that it was only due to her
19 properties that the parties were able to raise funds to purchase the Former
20 Matrimonial Home and the Manse Road land. She also argued that it was because
21 she was Caymanian that the establishment of the parties' first business venture,
22 through International Relocation, was possible and that it was through her that the
23 husband acquired Caymanian Status and thereby became able to work in the
24 Cayman Islands in his own right. She also contended that it was only because the

1 Law Firm, which was her business established before the marriage, was to be the
2 lead tenant at Artillery Court and because of her own local reputation and profile
3 that financing for the project could be obtained and that the development was
4 possible. She argued that the Law Firm was more regular and contributed more in
5 paying the monthly mortgage payments. She claimed out that she had carried out
6 all of the relevant legal work in connection with the development of Artillery
7 Court, as well as the parties' other business ventures, including the Palacades
8 development. It was pointed out on her behalf that it was also the case that
9 throughout the marriage she had been principally responsible for the children and
10 their education and welfare, without ever employing a nanny and while working
11 full time. She submitted that all of these factors taken to together amounted to a
12 special contribution and a reason why it would be unfair and inequitable to share
13 the matrimonial assets equally with the husband; she contended that she had made
14 a special contribution and should be awarded a larger share.

15
16 (2) The husband argued strongly that the wife had not made a special
17 contribution or at least had not made a contribution so significant that it would be
18 inequitable or unfair to divide the matrimonial assets between them equally. He
19 contended that in fact, if anyone had made a special contribution it was him and
20 not the wife, although he was nonetheless prepared to agree to a 50/50 division of
21 the matrimonial assets. He claimed that each of the various businesses, other than
22 the Law Firm, had been his idea and that he had been the driving force behind
23 them. He contended that without him they would not have been successful or,
24 indeed, even started. He expressed the opinion, in his evidence, that the wife

1 would not have been capable of starting any of the businesses, other than the Law
2 Firm, herself and that her role in those businesses had been confined to carrying
3 out some of the legal work (for some of which he claimed she had charged
4 latterly), although he claimed to have in fact dealt with various leases himself. He
5 claimed that it was his real estate experience and business acumen that were
6 behind the businesses and made them possible and successful. He pointed out
7 that he had brought the predecessor company of COC and International
8 Relocation to the marriage and voluntarily given the wife shares. In summary he
9 contended that the wife had been throughout effectively a sleeping partner in the
10 businesses and that she essentially contributed nothing apart from some legal
11 work. He also disputed the significance of the Law Firm as lead tenant. It was
12 argued on his behalf that it would be unfair and inequitable to award the wife a
13 greater share of the matrimonial assets than the husband.

14
15 (3) Having read the affidavits and heard the evidence of the parties and the
16 submissions of their counsel, I am not satisfied that either party made such a
17 disproportionate contribution to the creation, success and value of the various
18 matrimonial businesses and other assets that it would be unfair or inequitable to
19 divide them broadly equally in terms of value between them. I accept that the
20 wife did make important contributions to the businesses through carrying out
21 legal work and through her reputation and profile locally and I accept that the fact
22 that the Law Firm was to be lead tenant at Artillery Court was an important
23 contributing factor in the financing and therefore the success of that project. She
24 also made a significant and important indirect contribution, not only through her

1 income from the Law Firm and her civic roles but also in taking responsibility for
2 the principal care of the children and the home while working full time in her
3 legal practice, which enabled the husband to devote most of his time to the other
4 matrimonial businesses. However, I also accept that the husband clearly made a
5 significant and important contribution to the businesses and their success through
6 his hard work in putting together the various ventures, managing them and
7 making them a successful source of income and/or investment for the parties and
8 their family. He contributed his own business and real estate experience and
9 contacts, his energy and also the benefit of his own reputation in the real estate
10 and office supply fields. Having considered the evidence and heard the parties,
11 my assessment is that overall there was indeed very much a marital partnership,
12 with each spouse contributing in different and significant ways directly or
13 indirectly to the success of what were effectively joint ventures between them,
14 conceived, developed and carried on for their own joint benefit together and that
15 of the family as a whole. I accept the wife's assertion that she and the husband
16 were partners in their businesses. I do not consider that either of their
17 contributions whether directly or indirectly, were so significantly more important
18 or special than the other's in the overall context that it would be unfair or
19 inequitable for that reason to depart from what would otherwise be a broadly
20 equal division in terms of value of the matrimonial property; property created or
21 contributed largely as a result of each of their respective efforts.

1 (4) The Wife's needs

2 (1) The wife also addressed her future needs. She pointed out that her current
3 earnings, in the region of \$90,000, per annum from the Law Firm, together with
4 the small payments she receives for sitting on certain statutory boards, is very
5 significantly less than the husband's average earnings of approximately \$278,500
6 per annum, derived from the IRG Group and COC and his management of Zephyr
7 House. The husband argued that his earnings fluctuate considerably since they
8 are largely commission based. He also contended that, as a result of the current
9 general economic recession, property sales, prices and business generally were
10 dropping with a resultant adverse effect on the businesses he operates. While it
11 seems to me that I can take some judicial knowledge of the present economic
12 situation generally, there was no direct evidence, whether expert or not, of the
13 impact or likely impact of the current economic situation on the husband's
14 businesses or, for that matter, on the business of the Law Firm. In my view it is
15 not appropriate for me to speculate about that any more than about when the
16 economy will improve or get worse. The wife's position in any event was that
17 she would need to provide for herself on retirement and that those needs, having
18 regard to the parties' respective financial positions should be taken into account.
19 She urged the court to award her a larger proportion of the matrimonial property
20 in light of this. The husband pointed out that he has financial needs of his own
21 and similar concerns about retirement in due course.

22
23 (2) In my view, given that the husband's actual earnings are considerably
24 higher than the wife's and having regard to the nature of their respective

1 businesses it is reasonable to assume that the husband's potential earning power
2 will probably continue to be significantly greater than the wife's. The husband
3 rightly pointed out that, if they are allocated to her, the wife would have potential
4 rental income from the Breakers House, the South Palms Apartment and possibly
5 the apartment in Miami, by way of other resources. The wife emphasized, and the
6 husband did not disagree, that the purpose of acquiring the apartment in Miami
7 was mainly as a refuge in the event of a hurricane and that renting it out would
8 defeat that purpose. There was also the possibility that any rental income from
9 that property would be subject to United States taxation. For these reasons I
10 accept that the Miami apartment would not be likely to be a significant, if any,
11 source of income to the wife if allocated to her. However, it would seem that the
12 Breakers House and the Apartment at South Palms could well be sources of rental
13 income for the wife, or alternatively of capital if sold, if those properties were
14 allocated to her. She also has 2 other properties of her own which have some
15 capital value, which the husband submits should be taken into account in
16 assessing the wife's needs.

17
18 44. **Parties' Responsibilities**

19 Section 19 of the Law also requires the court to have regard to the responsibilities
20 of the parties. I will deal later with the question of maintenance of the two
21 children of the marriage but quite apart from that, it is apparent that the wife is the
22 party who has had and will continue to have the major responsibility for looking
23 after the children at least until they are adults and have completed any tertiary
24 education. I am not referring here to financial responsibility but to general

1 responsibility for their care, welfare and well being, which is and will inevitably
 2 continue to be very time consuming and demanding for the wife. Whatever
 3 access to the children the husband may have, it is probable that they will always
 4 ultimately depend upon the wife as their mother for their care and support and it is
 5 she who will bear much the greater burden in respect of them. It will be far easier
 6 for the husband to devote all or most of his time to his businesses and their
 7 development and to new business opportunities. He is a relatively young man and
 8 now effectively a single man without the restrictions which the wife inevitably
 9 has and will continue to have for some considerable time. This is not to say that
 10 the husband does not accept his responsibilities to maintain the children or that he
 11 does not wish to maintain a close relationship with them, which I accept he does.
 12 However, the practical reality is that as a result of her responsibilities as a clearly
 13 loving and committed mother there are, and will be for some time, considerable
 14 limitations upon the wife's potential future earning and savings prospects which
 15 the husband does not and will not have for the foreseeable future.

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45. **Property Division**

(1) The list below sets out the matrimonial property, with the values which have either been agreed or which I have attributed to it, the allocation of which has been agreed between the parties or which I have determined is fair and appropriate.

<u>Real Property</u>	<u>To Petitioner</u> <u>(wife)</u>	<u>To Respondent</u> <u>(husband)</u>
Former Matrimonial Home	\$550,000	
Manse Road Land	\$175,000	

<u>Real Property</u>	<u>To Petitioner</u> <u>(wife)</u>	<u>To Respondent</u> <u>(husband)</u>
Breakers House	\$200,000	
Apt. 7 South Palms	\$130,000	
Apt. 4 Bristol Courts		\$255,000
Apt. B208, Careenage		\$350,000
Lots 6&7, Grand Harbour		\$190,000
Apt. 802, Metropolis, Miami	\$190,800	
Apt. 3 Palacades:		

With regard to the order of 30th October I direct that the net proceeds of sale of this apartment are to be shared equally between the parties. Any rent in the meantime is to be applied to the strata fees, the promissory note and any ongoing costs of maintaining the property in good saleable condition.

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(2) This leaves Artillery Court. Having given anxious consideration to this, I have concluded that in all the circumstances it would be unfair to allocate the whole of this development to one or other of the parties. Artillery Court was clearly a significant and important joint project by the husband and the wife and I gained the impression from all the evidence, particularly their oral evidence, that they view it, not only as the largest and single most valuable matrimonial asset, which it is, but that, perhaps, other than the Former Matrimonial Home it means most to them. Not only do they both carry on their respective businesses there but clearly very considerable time and effort has been committed to the development directly or indirectly by both of them over several years. Furthermore, in light of the agreed total value of Artillery Court of \$1,066,000, having regard to the overall value of all the matrimonial property and how the parties have already agreed some of that should be allocated, I consider that the allocation of the whole of Artillery Court to one party would be disproportionate and would unduly and unfairly favour such party in the overall division of matrimonial property between

1 them. I have already outlined the position of the wife with regard to the
2 possibility of dividing Artillery Court with each party being allocated one of the 2
3 buildings. While I understand her concerns, nonetheless I consider that the Court
4 is entitled to expect, in particular once the financial issues in dispute have been
5 resolved, hopefully as a result of this judgment, that the parties should be able to
6 conduct themselves on a professional basis with regard to their occupation,
7 ownership and management of this important matrimonial asset. In my view, that
8 is particularly so if the current representation of BCQS or some other similar
9 independent person or entity in whom the parties have confidence, continues to
10 manage the property. For the reasons I have already outlined, I also do not
11 consider it fair or appropriate for the whole of Artillery Court to be sold at this
12 time and the net proceeds divided between the parties. In my judgment the fairest
13 and most equitable course is to allocate to each party one of the buildings at
14 Artillery Court. If the wife really feels that she simply cannot continue to occupy
15 one of the buildings at Artillery Court herself notwithstanding my comments
16 above it is of course open to her to move out and to rent out or even sell some or
17 all of the strata lots allocated to her. She may find that that more financially
18 attractive anyway. In light of my proposed allocation of the other matrimonial
19 property as set out above and as further set out below, I direct that Building B (4
20 strata lots) shall be allocated to the wife and Building A (2 strata lots) shall be
21 allocated to the husband. I consider that the allocation to the wife of the larger
22 building with the greater number of strata lots with the consequent income
23 therefrom and the capital value thereof will go a long way towards meeting the
24 needs and taking account of the responsibilities which she has and will have as

1 outlined above, particularly having regard to the other property allocated to her
2 and the property which she already owns. I appreciate that this allocation will
3 involve the inconvenience of each party moving their respective businesses from
4 one building to the other but in my opinion this is the fairest and most appropriate
5 way of dividing this property between them. For the avoidance of any issue, I
6 order that each party shall bear their own cost of moving the business or
7 businesses which they respectively operate from one building to the other. I also
8 further direct that irrespective of the size of the building or the number of strata
9 lots which they will now own, each party shall be responsible for payment of one
10 half (50%) of the monthly installments payable to the bank in respect of the loan
11 in name of Development Co. which will presumably be transferred into the name
12 of the parties or their nominees and that, subject to the parties' agreement
13 otherwise, in due course Development Co., having made the appropriate
14 payments and transfers of title, shall be dissolved or struck off as appropriate. In
15 the circumstances I consider it fair that the sums held by the Development Co. in
16 its bank accounts presently totalling approximately \$211,261 shall be divided in a
17 manner that more or less reflects the division of the property between the parties
18 so that the wife shall get 2/3 and the husband 1/3 of those monies, which on the
19 basis of the current total balances will mean that the wife will get \$140,840.67
20 and the husband \$70,420.33. Again, for the avoidance of any doubt, all legal
21 work relating to the necessary transfers of title to the parties or their nominees and
22 relating to any new or revised charges or other documentation and to the
23 dissolution, whether by winding or striking of Development Co., shall be carried
24 out by the Law Firm and charged for at its usual rates for such work, such cost to

1 be met equally by the parties. Lastly, in this respect I direct that the wife shall
 2 take such necessary steps as will ensure to the reasonable satisfaction of the
 3 husband that while the wife owns directly or indirectly the majority of shares in
 4 the strata corporation and accordingly, has a majority of votes, she may not be
 5 permitted to out-vote the husband or his nominee as a member of the corporation.
 6 On the basis of my decision as to the allocation of Artillery Court the list shall
 7 continue as follows:

8 (2)

<u>Real Property</u> (continued)	<u>To Petitioner</u> <u>(wife)</u>	<u>To Respondent</u> <u>(husband)</u>
Building B, Artillery Court	\$634,421	
Building A, Artillery Court		\$431,470
 <u>Businesses</u>		
IRG Group		\$625,000
COC (50%)		\$175,500
Law Firm	\$75,000	
 <u>Moveables</u>		
Jaguar Car		\$35,500
Ranger Rover Car	\$49,446	
Former Matrimonial Home contents	\$40,000	
Breakers House contents	\$5,000	
Apt. 7 South Palms contents	\$5,000	
Apt. 4 Bristol Courts contents		\$10,000
Apt. B208 Careenage contents		\$25,000
Apt. 802 Metropolis contents	\$2,000	
Jewellery (Watches)		\$52,724
 <u>Pensions and Shares</u>		
Husband's Pension		\$37,300
Wife's Pension	\$32,200	

<u>Pensions and Shares</u> (continued)	<u>To Petitioner</u> <u>(wife)</u>	<u>To Respondent</u> <u>(husband)</u>
CNB Shares	\$7,850	
CUC Shares	\$3,350	
 <u>Expenditure and Bank Accounts</u>		
Husband's deemed expenditure		\$85,000
Development Co. accounts	\$140,840	\$70,420
(total \$211,261)		
TOTALS	\$2,240,907	\$2,342,914

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(3) However, as explained above, there is outstanding damage to the Former Matrimonial Home as a result of Hurricane Ivan. In my opinion it is in the best interests of the children to continue to live in the Former Matrimonial Home and I consider it to be in their best interests that the damage to the house in which they live should be repaired. I have assessed the value of the Former Matrimonial Home at considerably more than the wife's valuer assessed it after taking into account the cost of repair of the damage. Furthermore it was the husband who dealt with the insurers and received the insurance proceeds and disbursed them from his personal bank account. In all the circumstances in light of my comments above I consider it fair and reasonable that the husband should meet the cost of repair, which amounts to \$60,000. I therefore order that he should pay that sum to the wife through her attorney within 42 days. In my judgment having regard to all of the factors in Section 19 of the Law in all the circumstances of the present case this will result in a fair and equitable broadly equal division of the matrimonial assets by value between the parties whereby the wife will have matrimonial assets and cash totalling \$2,300,907 and, after the payment of the said sum of \$60,000

1 the husband will have or be deemed to have matrimonial assets totalling
2 \$2,282,914. In addition the parties will share the net sale proceeds of the
3 Apartment at Palacades. Overall I am satisfied that this division is fair and
4 equitable.

5
6 46. **Maintenance of the children**

7 I now turn to the question of maintenance of the two children of the marriage. At
8 present, pursuant to an order of this Court made on 8th November 2006, the
9 husband is paying the sum of \$3,000 per month as interim maintenance for the 2
10 children and is also paying the electricity, telephone, water, cable TV and
11 swimming pool maintenance bills in respect of the Former Matrimonial Home.
12 The parties estimate those costs to be in the range of \$2,500 - \$3,000 per month
13 on average. Prior to that order the husband was paying the said costs in respect of
14 the Former Matrimonial Home but was not otherwise paying maintenance. There
15 was accordingly a period of approximately 11 months in 2006 during which the
16 husband was not paying maintenance other than the specific household costs. The
17 husband now seeks a variation of the order of 8th November 2006.

18
19 47. As I have already explained, the children of the marriage are both boys, aged
20 about 14 and 8 years respectively. They both live with their mother, the wife,
21 who, pursuant to an order made on 13th September 2007 has sole custody of the
22 boys and day to day care and control of them. Although the husband has applied
23 for access to be more regularised, particularly during school holidays, under the
24 present order the husband has access to the boys every Wednesday and Thursday

1 evening after school and on alternate Saturdays and Sundays. The husband has
2 also had access by agreement for about a month during the school summer
3 holiday and at other times during other school holidays and in principle this
4 appears to be accepted although, as I have said, the husband seeks an order
5 formalising the arrangements. Both boys attend a private school locally. They
6 have lived in the Former Matrimonial Home effectively all of their lives and,
7 given the likely detrimental effect on their welfare of further upset and disruption,
8 in my opinion it is in their best interests to continue to do so.

9
10 48. The wife seeks maintenance for the children of a total monthly sum of \$6,000.
11 She argued that rather than have the husband pay certain utility and other
12 household expenses direct as he has done for the past 2 years or so pursuant to the
13 present order, it would be preferable for him to simply pay her a specific lump
14 sum each month in respect of those expenses, which she would then assume
15 responsibility for paying. She further contended that, as under the present order,
16 the husband should, in addition to the cost of the specified household related
17 expenses, pay a monthly amount in respect of all the other costs of maintaining
18 the children and she argued that the present sum of \$3,000 per month paid by the
19 husband should continue in that respect. The wife assessed the total cost of the
20 specified monthly utility and other household related expenditure which the
21 husband is currently paying direct at approximately \$3,000 and, together with the
22 current additional monthly maintenance sum being paid, which is \$3,000 per
23 month, this would result in a total figure of \$6,000 per month. The wife also
24 submitted that the husband should in addition pay one half of the children's

1 education related costs and one half of their health related costs, including the cost
2 of their health insurance. There has not been any particular problem in his doing
3 so to date.

4
5 49. The husband maintained that the wife's demands were excessive. He proposed
6 that a total monthly maintenance sum of \$2,500 in respect of all relevant
7 maintenance costs for the children would be adequate and fair having regard to all
8 the circumstances, including his own monthly costs and his and the wife's
9 earnings. He would also continue to pay one half of the children's educational
10 costs and of their health insurance. He also pointed out that the children were or
11 would be spending at least one month each year during the summer living with
12 him as well as at other times when he has access to them and at such times he has
13 to meet all their expenses, including taking them abroad on vacation in the
14 summer. It was also argued on behalf of the husband that certain of the items of
15 monthly costs in respect of maintaining the children claimed by the wife were
16 unjustified or excessive and it was pointed out that some of those expenses
17 anyway also benefitted the wife and not just the children. While that is, of course,
18 true, it is also the case that if it is in the best interests of the children's welfare for
19 them to continue to live in the Former Matrimonial Home, as I consider it to be, it
20 is obviously necessary for the wife as their carer to live there too and the cost of
21 her doing so may accordingly be seen as part of the cost of their welfare and
22 maintenance. If the children were not living in the Former Matrimonial Home
23 clearly the cost of running the house would not fall within the ambit of
24 maintenance for the children but as long as they are living there I consider that it

1 would be artificial to reduce, for example, the amount payable by the husband in
2 respect of electricity for the house where his children live simply because the wife
3 is necessarily also using some of that electricity by living there as the children's
4 carer.

5
6 50. Although in principle it is, in my opinion, desirable that the standard of living to
7 which the children have become accustomed is maintained as far as circumstances
8 permit, clearly the cost of maintaining two households, even if one is smaller, is
9 inevitably greater than the cost of maintaining one. Also, while it will always
10 depend upon the particular circumstances, where the party having care of the
11 children is working full time and earning a relatively substantial income, it is not
12 unfair in my opinion to expect that party to make an appropriate contribution to
13 the cost of the children's maintenance. Whether that is so, and if it is, the amount
14 of any such contribution, will obviously depend upon a number of factors, not
15 least the relative earnings of the parties, but in the circumstances of the present
16 case, it is not unreasonable or unfair in my judgment to expect the wife to
17 contribute herself towards the cost of maintenance of the children, including the
18 monthly expenditure in respect of the household which she has identified. Having
19 regard to the factors set out in Section 19 of the Law, the parties respective
20 earnings and expenses, and in all the circumstances, in my assessment it would be
21 appropriate and fair for the husband to contribute a sum of \$1,500 per month
22 towards the costs of the specific items of monthly household expenditure
23 currently identified in the existing order.

24

1 51. As far as other costs in respect of the children and their welfare are concerned, I
2 do consider some of the items included on the list of monthly expenses produced
3 by the wife to be either inappropriate for the purpose of determining appropriate
4 maintenance for the children (for example the strata fees in respect of the South
5 Palms Apartment, which is a rental property now allocated to the wife) or
6 somewhat exaggerated (such as the amounts claimed for groceries for the 2
7 children and for petrol to take them to extra curricular activities and to and from
8 school). As far as educational expenses are concerned the husband proposed that
9 he should pay one half of such expenses, including school fees, uniform, school
10 trips, school clubs and activities and other education related expenses. Again the
11 wife would prefer that the husband pay her a monthly lump sum in respect of such
12 educational expenses rather than her having to request payment from the husband
13 as they arise as she does at present. Although payment of a pre-determined lump
14 sum each month may be practical in respect of regular and certain amounts such
15 as termly tuition fees, most of these expenses, such as the cost of school trips and
16 other extra curricular school activities and the need for school uniforms from time
17 to time, are not possible to predict with any certainty. It is also obviously not
18 known at this stage whether either or both of the boys will at some point in the
19 future be educated overseas with the costs which that entails. While I understand,
20 in light of the current poor relationship between the parties, the wife's wish to
21 minimize possible dispute with the husband concerning the payment or amount of
22 specific items of the boys educational costs, it nonetheless, does seem to me that,
23 as I have said before, this Court is entitled to expect that the acrimony between
24 the parties should and will reduce and that they will both make a concert effort to

1 cooperate at least as far as the best interests of their children are concerned. It is
2 clearly most desirable for their children's sake that they do so. It is obviously in
3 the best interests of both boys that they be given every opportunity to take
4 advantage of their educational potential and I can see no good reason why either
5 of their parents should think otherwise. They must act accordingly. It would be
6 of serious concern if there was any difficulty about the parties meeting their
7 respective obligations in respect of the costs of their children's education in the
8 broadest sense without reluctance or dispute. I consider it important that both
9 parties should be involved, and be seen by their children to be involved, in their
10 children's education and be seen to be contributing willingly and openly to the
11 costs of that. In the circumstances, I shall order the husband and the wife to each
12 pay one half of all fees and other costs relating to the education of their children
13 to the broadest sense and the husband shall remit his share of such costs to the
14 wife promptly upon being informed thereof and having regard to my comments
15 above. Similarly, if the husband meets the total cost of an item of educational
16 expenditure to which the wife should contribute she shall remit her share of such
17 cost to the husband in the same way.

18
19 52. My comments above about the children's education costs also apply to any
20 medical related costs, which shall also be met equally by the parties in the same
21 way except for the cost of their health insurance with their current insurer, British
22 Caymanian Insurance Co. Ltd. That specific cost is known and one half of it is
23 \$250 per month. The husband has offered to pay his share of that sum by way of
24 12 pre-dated cheques and I order that he should do so. He has also proposed that

1 if the cost of health insurance increases or decreases, the wife should inform him
2 of any change in the premium payable and he will provide her with cheques for
3 his share of the additional premium, or if the premium payable is reduced, the
4 wife will allow him credit for that amount in calculating the following year's
5 premium cheques. In my view that is reasonable and I shall so direct. I should
6 add that the wife should also inform the husband of any proposed change in the
7 provider of health insurance for the children, which should anyway be an
8 equivalent insurer in terms of quality of insurance and cost, at least 21 days before
9 committing to any such new insurer.

10
11 53. On the basis that the husband shall contribute the sum of \$1,500 each month to
12 towards the cost of the specific items of expense in respect of the matrimonial
13 home which he is currently paying pursuant to the order of 8th November 2006,
14 and in light of what I have indicated I shall order and direct in respect of the
15 children's educational and health related costs, I shall order that husband pay a
16 further sum of \$3,000 per month in respect of the other maintenance costs of the 2
17 children. This makes total monthly sum payable to the wife in respect of
18 maintenance for the children of \$4,500. For the avoidance of any doubt this sum
19 shall be inclusive of and not additional to the said sum of \$1,500. I should say
20 that in arriving at this sum I have taken account of the fact that the children do or
21 will spend time at weekends and during school holidays with the husband and that
22 he does and will incur costs as a result, including out of pocket costs in respect of
23 incidental expenditure as well as travel and related costs if he takes the children
24 away on vacation. I consider the amount I have determined to be fair and not only

1 having regard to the needs and welfare of the two boys but also the financial
2 resources and earning power of the parties.

3

4 54. For convenience the monthly maintenance total of \$4,500 shall be varied each
5 year in light of annual inflation as indicated by the Cayman Islands Government
6 Consumer Price Index. Furthermore, for the avoidance of any difficulty the
7 monthly maintenance shall also be paid by way of 12 pre-dated cheques to be
8 delivered to the wife at the beginning of each year, save for this year. The
9 maintenance I have ordered shall commence with effect from 1st May 2009 and
10 the existing order shall remain in effect until then. Accordingly on or before 1st
11 May 2009 the husband shall deliver to the wife 8 cheques, each for \$4,500, one
12 dated 1st May 2009 and the remainder pre-dated as at the first day of each of the
13 following 7 months of this year.

14

15 55. Lastly, in all the circumstances I shall make no order for costs, but of course
16 without prejudice to any pre-existing order for the payment of costs in any event.

17 The parties shall have liberty to apply for the purpose of working out the formal
18 order on this judgment if necessary.

19

20

21 Dated 7th day of April 2009

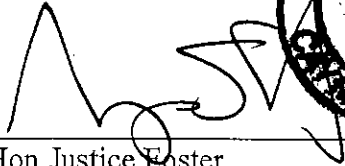
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Hon Justice Foster
Judge of the Grand Court (Acting)

