

**IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS**

**CICA No. 6 of 2006**  
Grand Court D42/03

**BETWEEN:**

**DEBORAH M. WIGHT**

**APPELLANT**  
(Petitioner)

**AND:**

**IAN A.N. WIGHT**

**RESPONDENT**  
(Respondent)

**BEFORE: The Right Hon. Mr. Justice E. Zacca, President**  
**The Hon. Mr. Justice I. Forte, Justice of Appeal**  
**The Hon. Mr. Justice E. Mottley, Justice of Appeal**

Appearances: Nicholas Mostyn, Q.C., instructed by Michael Bradley of Samson & McGrath for the Petitioner/Appellant. Andrew Jones, Q.C., instructed by Wanda O'Connor of Solomon Harris for the Respondent.

Heard: 30<sup>th</sup>, 31<sup>st</sup> July & 1<sup>st</sup> August, 2007      Judgment and Reasons delivered: 30<sup>th</sup>  
November, 2007

**JUDGMENT AND REASONS**



**PRESIDENT:**

1. Mrs. Wight (the wife) appeals against an order made by Levers J in the Grand Court upon an application for ancillary relief brought by the wife against Mr. Wight (the husband). The Judge found that the parties' assets amounted to \$16,479,773. The Judge's order was

that in full settlement of all her claims the husband should pay to the wife a lump sum of \$7,415,898.00 (45% of the parties' assets) together with 45% of the proceeds of Sunrise Landing and Frank Sound properties which is deferred.

2. In arriving at this order the Judge stated:

"Fairness demands that I depart from equality and that the assets which I have held to be matrimonial assets, a fair division would be by way of a split of 45% to the wife and 55% to the husband. There are enough liquid assets for the wife to receive a lump sum immediately. In monetary terms, the wife will therefore receive \$7,415,895.00 together with 45 % of the proceeds of Sunrise Landing and Frank Sound properties which is deferred.

In departing from equality Levers J held that there was a "special contribution" on the part of the husband.

3. At the time of the hearing in the Grand Court the husband was 54 years old and the wife 48 years old. The husband was born in Guyana and the wife in Trinidad. The wife came to the Cayman Islands at the age of ten. She was educated in England and returned to live permanently in the Cayman Islands. She gained employment as a secretary with the Royal Cayman Islands Police Force. In 1979 she returned to England and gained employment there.

4. The husband came to the Cayman Islands in 1973 at the age of 22. He became an articled clerk for Rawlinson and Hunter. At that time, Deloitte Haskins Sells who were associated with Rawlinson and Hunter, Butterfield and Company, established a joint office in Cayman and in 1977, the husband became the manager of the Cayman joint offices of Deloitte, Rawlinson and Hunter.

He and a secretary were the only employees. In 1980, the husband became the resident equity partner of Deloitte and its associated firm of Rawlinson and Hunter in Cayman. More will be said about the husband's progress later.

5. The parties met in 1978 and they were married on the 1<sup>st</sup> March 1980 in Grand Cayman. There are four children of the marriage, one of which, Claire born on the 12<sup>th</sup> January 1992, is the only relevant child of the marriage in so far as the application was concerned.

6. After the marriage the wife continued working until 1995. From 1980 to 1985, she worked and also cared for the home without any help. In 1985 when the first child, Matthew was born, the parties hired a live-in helper. That continued until 1995, when in addition to the live-in helper, the parties also had a maid service, a gardener and maintenance staff. They also had contractors to look after the house.

The wife supervised the running of the house and the family life. The wife stated that she paid the children's school fees at preparatory school and also was responsible for the remuneration of the domestic help.

7. The wife ceased working in 1995 after discussion and agreement with the husband. By this time the parties had bought substantial properties and she was required to attend to these properties including the management.

8. In 1991 the husband received his appointment as an official liquidator for B.C.C.I. The earning capacity of the husband dramatically increased. The husband is now the managing partner and one of seven partners in the Cayman Office. They now employ some 180 people.

9. During the course of the marriage, the parties acquired substantial properties and substantial wealth. When the marriage ended in December 2002, the parties were wealthy.

10. The marriage broke down as a result of the husband confessing to having an affair and wishing to have a divorce. The wife continued to live in the matrimonial home. After separation both husband and wife spent large sums of money on themselves.

11. The wife on appeal contends –

(a) The Judge failed to categorize certain property as matrimonial property.

(b) The Judge ought to have divided the matrimonial property equally.

(c) The Judge was in error in finding that there was a special contribution on the part of the husband.

(d) The Judge ought to have considered the husband's substantial earnings in arriving at the division.

(e) A portion of the husband's substantial earnings after separation should be regarded as matrimonial property.

12. In an application for ancillary relief the Court's computation of the parties' assets must necessarily precede the division of property.

13. The Matrimonial Causes Law (2005 Revision) provides in ss. 19 and 21.

S.19 "In dealing with all ancillary matters arising under this law, the Court shall have regard first of all to the best interest of any children of a marriage and thereafter to the responsibilities, needs, financial and other

resources, actual and potential earning power and the deserts of the parties.”

S.21 “At the time of pronouncing a decree under this law, the Court shall, as appropriate, make orders for:

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

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

(f) providing for periodic payments to be made by either spouse for the benefit of the children of the marriage from the other spouse.”

14. The wording of the English statute is somewhat different. The present position in the exercise of the Court's power in ancillary matters is to be found in s. 25 (a 1984 amendment) of The Matrimonial Causes Act 1973, section 25 provides:

S.25 (1) “It shall be the duty of the Court in deciding whether to exercise its powers under s23, 24, or 24A (24A or 24B) (any of sections 22A to 24B) above, and, if so, in what manner, to have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who is not attained the age of eighteen.”

S.25 (2) “As regards the exercise of the powers of the Court under s 23(1) (a), (b) or (c) (section 22A or 23 above to make a financial provision order in favour of a party to a marriage or the exercise of its

powers under s 23A) 24 or 24A [24A or 24B] [24B or 24BB] above in relation to a party to the marriage, the Court shall in particular have regard to the following matters:-

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

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

(c) the standard of living enjoyed by the family before the breakdown of the marriage;

(d) the age of each party to the marriage and the duration of the marriage;

(e) any physical or mental disability of either of the parties to the marriage;

(f) the contribution which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution of looking after the home or caring for the family;

(g) the conduct of each of the parties [whether the nature of the conduct and whether it occurred during the marriage or after the separation of the parties or (as the case may be) dissolution or annulment of the marriage], if that conduct is such that it would in the opinion of the Court be inequitable to disregard it;

(h) In the case of proceedings for divorce or nullity of marriage, the value to each of the parties to the marriage of any benefit (for example, a pension) which by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

15. **Matrimonial Property:**

In her judgment Levers J defined Matrimonial Property as:

“Property that was acquired during the marriage or if it was before marriage put into the melting pot of the marriage and all other assets directly traceable to the income earned during the marriage”.

Unless the claiming spouse can trace the assets after the marriage directly to the earning during the marriage in my judgment it is unfair to say that she has an equal claim to that property as the partner acquired that property from income earned after the marriage. In this jurisdiction there is authority to say that the date of separation is the cut off point”.

16. Mr. Moyston Q.C. on behalf of the wife submits that no such authority has been identified. In his attempt to assist the Court, Mr. Moyston referred to a number of cases decided in England.

17. In *Miller v Miller [2006] 2 A.C. 618*, Lord Nicholls stated:

(22) “This does not mean that, when exercising his discretion, a judge in this country must treat all property in the same way. The statute requires the Court to have regard to all the circumstances of the case. One of the circumstances is that there is a real difference, a difference of source, between (1)

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

(23) The matter stands differently regarding property ("non matrimonial property") the parties bring with them into the marriage or acquire by inheritance or gift during the marriage. Then the duration of the marriage will be highly relevant. The position regarding non matrimonial property was summarized in the White case [200] 1 AC. 596, 610:

"Plainly when present, this factor is one of the circumstances of the case. It represents a contribution made to the welfare of the family by one of the parties to the marriage. The judge should take it into account. He should decide how important it is in the particular case.

The nature and value of the property, and the time when and circumstances in which the property was acquired, are among the relevant matters to be considered. However, in the ordinary course, this factor can be expected to carry little weight, if any, in case where the claimant financial needs cannot be met without recourse to this property".

(26) This difference in treatment of matrimonial property and non matrimonial property might suggest that in every case a clear and precise boundary should be drawn between those two

categorizes of property. This is not so. Fairness has a broad horizon....."

18. In *White v White* [2001] A.C. 596 Lord Nicholls at p. 610

stated:

"I must also mention briefly another problem which has arisen in the present case. It concerns property acquired during the marriage by one spouse by gift or succession or as a beneficiary under a trust. For convenience I will refer to such property as inherited property. Typically, in countries where a detailed statutory code is in place, the legislation distinguishes between two classes of property: inherited property, and property owned before the marriage, on the one hand, and "matrimonial property" on the other hand. A distinction along these lines exists, for example, in the Family Law (Scotland) Act 1985 and the (New Zealand) Matrimonial Property Act 1976.

This distinction is a recognition of the view, widely but not universally held, that property owned by one spouse before the marriage, and inherited property whenever acquired, stand on a different footing from what may be loosely called matrimonial property. According to this view, on a breakdown of the marriage these two classes of property should not necessarily be treated in the same way. Property acquired before marriage and inherited property acquired during marriage come from a source wholly external to the marriage.

In fairness, where this property still exists, the spouse to whom it was given should be allowed to keep it. Conversely, the other spouse has a weaker claim to such property than he or she may have regarding matrimonial property".

19. Mr. Moyston submits that property acquired during separation prior to the marriage being dissolved should be regarded as matrimonial property. He also submits that the wife should be awarded a share of the husband's substantial earnings after separation, for a period of at least three years (until 2005) and treated as matrimonial property.

20. The Judge held that property acquired after separation and which could be attributed to earnings during the marriage, prior to separation, should be regarded as matrimonial property.

21. In my view the above quotations from Lord Nicholls speech in *Miller v Miller* and *White v White* do not assist in determining whether property acquired after separation or the husband's earnings after separation should be regarded as matrimonial property. Lord Nicholls specifically referred to property brought into the marriage or property acquired as a gift or inherited.

**Post separation accrual:**

22. In *Rossi v Rossi [2006] 3F CR 271*, Nicholas Moyston Q.C. sitting as a Deputy Judge of the High Court, stated:

[13] "Thus it has always been the case that, where a party has by virtue of his

own industry created further assets after separation, such sole unmatched contribution should be recognized and reflected by the Court in its award. On the other hand, if a matrimonial asset has simply increased in value during the period of separation as a result of passive inflationary economic growth (such as the increase in the value of a house) then it would seem obvious that such growth is an accrual to the original matrimonial property.

[24.3]

Assets acquired or created by one party after (or during a period of) separation may qualify as non-matrimonial property if it can be said that the property in question was acquired or created by a party by virtue of his personal industry and not by use (other than incidental use) of an asset which has been created during the marriage and in respect of which the other party can validly assert an unascertained share. Obviously, passive economic growth on matrimonial property that arises after separation will not qualify as non matrimonial property.

[24.4]

If the post-separation asset is a bonus or other earned income then it is obvious that if the payment relates to a period when the parties were cohabiting then the earner cannot claim it to be non matrimonial.

Even if the payment relates to a period immediately following separation I would myself say that it is too close to the marriage to justify categorization as non-matrimonial. Moreover, I entirely agree with Coleridge J when he points out that during the period of separation the domestic party carries on making her non-financial contribution but cannot attribute a value thereto which justifies adjustment in her favour. Although there is an element of arbitrariness here I myself would not allow a post-separation bonus to be classed as non matrimonial property unless it related to a period which commenced at least 12 months after the separation."

23. *In H v H [2007] EWHC 459 (Fam.)* it appears that the Judge found that pure earnings after separation did not qualify as matrimonial property. It is accepted that assets acquired after separation, but which are attributable to earnings during the marriage, are deemed matrimonial property. Levers J in fact made such an award in her assessment of what she considered to be matrimonial property. In my view the earnings of the husband after separation are not to be regarded as matrimonial property and the wife is not entitled to a share of his future earnings. The sum awarded to the wife is sufficient to meet her needs and to allow her to live in the life-style she was accustomed to during her marriage. She is also able to work

if she wishes to. The relevant child, Claire, is in boarding school and the husband has undertaken the responsibility of all the educational expenses.

24. In the exercise of her discretion the Judge failed to make any award with respect to the following:

- (a) Deloitte current account
- (b) Deloitte Pension
- (c) Husband's interest in Cypress Point Property
- (d) Two Porche motor cars
- (e) Horses
- (f) Regal Boat

25. In his written reply, Mr. Moyston accepted that the money in the current account represented money earned on the proceeds of money earned since separation but before trial. Having regard to my finding that money earned after separation is not part of matrimonial property, I would hold that the Judge was not in error in not allowing the wife a share in the Deloitte current account. In other words the current account did not form part of the matrimonial property.

26. It is conceded by Mr. Jones Q.C. that the Deloitte Pension is to be regarded as Matrimonial Property. I agree. The Judge was therefore in error in not giving the wife a share in this Pension fund.

27. As to the Cypress Point development, the husband invested the value of the land (\$600,000) in this development. He was to receive 25% of any profit derived from the development. The wife was entitled to a share of the \$600,000.00. She would therefore be entitled to a share in any profit received by the husband.

28. As to the purchase of the two Porche cars, the Judge exercised her discretion in not granting the wife a share of the purchase price which was estimated to be \$129,400.00. These cars were purchased seven and nine months respectively after the separation. Mr. Moyston submitted that the Judge having held that two properties purchased five months after separation were matrimonial property, ought to have found that the Porche cars were matrimonial property. It is suggested that the cars were paid for from the current account which existed at the time of separation. There is no evidence of this. The Judge was of the view that the purchase of the cars could have been from earnings of the husband after separation. I am unable to

say that the Judge wrongly exercised her discretion in not giving the wife a share of the purchase price.

29. As to the horses. The Judge held that the parties sold the horses that they owned jointly soon after separation and placed the money into the bank. Subsequently the husband re-purchased some of the horses that he wished to retain for himself. The wife did not receive a share of the value of the re-purchased horses. I am of the view that it cannot be said that the Judge wrongly exercised her discretion in not allowing the wife a share in the value of the re-purchased horses.

30. As to the Regal Boat. The Judge stated that it was accepted that this was non-matrimonial property. Mr. Moyston told the Court that there was no such concession. He submitted that the boat was purchased using the proceeds of a previous boat, which was matrimonial property. The wife's share in the Regal Boat was worth \$150,000. Accepting that there was no concession, the wife was entitled to a share of the value of the Regal Boat.

### EQUALITY

31. Levers J. held that there was a special contribution by the husband and this would justify a departure from equality. The judge

awarded the husband 55% of the assets and to the wife was given 45%. Mr. Moyston submits that the contribution of the husband should not be regarded as a special contribution and there should have been an award favouring equality i.e. 50% to each party. He also argues that as a result of the husband's future substantial earnings, there is a case for the wife to receive more than 50%.

32. The decisions of the English Court on the subject of equality are of persuasive authority and will be considered by this Court. Since the decision of *White v White* [2001] 1 A.C. 596 the Courts appear to be moving towards equality, but that can be departed from in certain circumstances. There is no presumption of equality.

In *White v White*, Lord Nicholls at page 605 said:

"But whatever the division of labour chosen by the husband and wife, or forced upon them by circumstances, fairness requires that this should not prejudice or advantage either party when considering paragraph (f), relating to the parties contributions. This is implicit in the very language of paragraph (f): "the contribution which each ..... has made or is likely ..... to make to the welfare of the family, including any contribution by looking after the home or caring for the family.

"If in their different spheres, each contributed equally to the family, then in

principle it matters not which of them earned the money and built up the assets. There should be no bias in favour of the money-earner and against the home maker and the child carer.

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

33. The Matrimonial Causes Law unlike the English statute does not mention "the contribution of the parties". However it speaks of "the deserts of the parties". This does not affect the principle to be considered in ancillary relief proceedings in the Cayman Island.

The Courts in the Cayman Islands have always taken into account the contribution of each party in deciding on the division of assets.

34. Lord Cooke at page 615 said:

"The most important point, in my opinion, in the speech of my noble and learned friend, Lord Nicholls, is his proposition that, as a general guide, equality should be departed from only if, and to the extent that, there is good reason for doing so. I would gratefully adopt and underline it. Widespread opinion within the commonwealth world appear to accept that this approach is almost inevitable,

whether the regime be broad or detailed in its statutory provisions."

35. In the case of *Miller v Miller* [2006] 2AC 618, Lord Nicholls at paragraph 1, page 630 said:

"My Lords, these two appeals concern the most intractable of problems: how to achieve fairness in the division of property following a divorce.

In *White v White* (2001) 1AC 596 your Lordship's house sought to assist judges who have the difficult task of exercising the wide discretionary powers conferred on the Court by Part 11 of the Matrimonial Causes Act 1973. In particular the House emphasized that in seeking a fair outcome there is no place for discrimination between husband and wife and their respective roles. Discrimination is the antithesis of fairness. In assessing the parties' contributions to the family there should be no bias in favour of the money-earner and against the homemaker and the child carer. This is a principle of universal application. It is applicable to all marriages."

Paragraph 16.

"A third strand is sharing. This "equal sharing" principle derives from the basic concept of equality permeating a marriage as understood today. Marriage, it is often said, is a partnership of equals.

In 1992 Lord Keith of Kinkel approved Lord Emslie's observation that "husband and wife are now for all practical purposes equal partners in marriage."

***R v R [1992] 1 AC 599, 617.*** This is now recognized widely, if not universally. The parties commit themselves to sharing their lives. They live and work together. When their partnership ends each is entitled to an equal share of the assets of the partnership, unless there is good reason to the contrary. Fairness requires no less. But I emphasize the qualifying phrase. "Unless there is good reason to the contrary". The yardstick of equality is to applied as an aid, not a rule."

36. In ***Doak v Doak [2002] CI LR 224***, this Court agreed and accepted that the principles established by the English authorities and particularly the decision in ***White v White*** were applicable in the Cayman Islands. The effect of the order in the Grand Court was to give the husband 75% and the wife 25% of the assets. Taylor J.A. at paragraph 21 said:

"We were of the view that the factors mentioned by the trial judge could not justify an unequal distribution of assets in favour of the former husband. We concluded that the application of the equality test "as a form of check" as advocated in the speech of Lord Nicholls of Birkenhead in ***White v White***

demonstrates that there is indeed, no sound basis in this case for any disparity as against the former wife in the distribution of assets accumulated during the relatively long period of the marriage. Applying the law laid down in ***White v White***, we are of the view that the Grand Court judge erred in principle in making what is effectively a 75/25% distribution of assets in favour of the former husband."

Paragraph 22:

"It seemed to us to be of particular importance that (i) the appellant worked and devoted her earnings to family needs, rather than acquiring assets of her own, while the respondent built up a valuable practice; (ii) the former husband now enjoys a much larger earning capacity than his former wife; and (iii) while he has a significant pension fund, she has almost none. These are among the factors which persuaded us that an unequal distribution of assets in favour of the former husband must, in this case be regarded as unfair."

The Court made an order transferring the title of the matrimonial home to the wife. The value amounted to an equal division of the assets.

37. In ***Miller v Miller Baroness Hale*** at paragraph 154 said:

"There is obviously a relationship between capital sharing and future income provision. If capital has been equally shared and is enough to provide for need and compensate for disadvantage, then there should be no continuing financial provision. In the McFarlane case, there has been an equal division of property, but this largely consisted of homes which can be characterized as family assets. This was not enough to provide for needs or compensate for disadvantage. The main family asset is the husband's very substantial earning power, generated over a lengthy marriage in which the couple deliberately chose that the wife should devote herself to home and family and the husband to work and career. The wife is undoubtedly entitled to generous income provision for herself and for the sake of their children, including sums which will enable her to provide for her own old age and insure the husband's life. She is also entitled to a share in the very large surplus, or the principle both of sharing the fruits of the matrimonial partnership and of compensation for the comparable position which she might have been in had she not compromised her own career for the sake of them all. The fact that she might have wanted to do this is neither here nor there. Most breadwinners want to go on breadwinning."

38. In my view the Court should strive for equality. The substantial future earnings of the husband could be taken into account in arriving

at equality and fairness. However the circumstances of the particular case under consideration may be such as to allow the Court to depart from equality if there is good reason to do so. Is the special contribution of one party a matter to be considered in departing from equality. The Court reaffirms its acceptance of the principles of equality as expounded in the above English cases.

### **Special Contribution**

39. In her judgment Levers J in considering the issue of special contribution at page 53 said:

"I now have to deal with the question of special contribution, if any, that will justify a departure from equality. I have heard full submissions from both Mr. Moyston Q.C. and Mr. Singleton Q.C. on why I should or should not allow the concept of special contribution in this particular case. A brief analysis of the husband's career is useful for purposes of coming to a conclusion on the facts of this case.

The husband was already an accountant at the time of marriage. He came to the Cayman Islands at the time when the Cayman Islands was not a financial centre. It perhaps, can now be called one of the biggest financial centres in the world. At the time, the husband commenced work, it was himself and one employee. Subsequently, he was appointed as liquidator for BCCI in 1991. He by virtue of his hard work, skill and it has to be said a certain expertise was appointed liquidator, for

BCCI, (one of the largest liquidations, the world has seen.) The husband, had he just being appointed as a liquidator for BCCI and not taken the matter any further (keeping it within the local jurisdiction) may have earned substantial monies but not the enormous wealth that that particular assignment generated. What the husband did was to endeavour with others to come to a global liquidation, which was, I believe one of the few cross borders liquidation ever been undertaken. That and his efficiency and his acumen in investments earned the family substantial wealth. I am fully cognizant of the need not to discriminate against the wife because she did not earn as much and because she must have played a crucial role in permitting the husband to undertake the hours of work that necessitated his success. However I must decide, in view of the husband's achievement whether his contribution was special enough to deviate from equality."

40. Levers J acknowledged that the Court had a discretion as to the percentage to be given to a special contributor. After making reference to the case of *Lambert v Lambert*, Levers J continued at page 56:

"Thorpe LJ therefore left it to the discretion of the Judge in a case by case basis. It may be argued that to become senior partner of Deloitte and Touche in another jurisdiction may not be particularly exceptional but it cannot be said that to be a senior partner in a jurisdiction such as Cayman to have

obtained a world wide liquidation and to have solved it on a rare cross border liquidation, is not exceptional. He now not only is senior partner and has been for many years, but his firm is one of the largest in the Caribbean. He is possibly one of the high earners of the accounting profession in the Caribbean. This does not mean just because one earns money, one is exceptional. I have already explained why I have come to the conclusion that his is a "special contribution". Thorpe L.J. did not suggest any guidelines for a percentage basis, if the Court held that there was a special contribution. I have a difficulty in concluding that in the circumstances of this case it would be unfair not to recognize the husband's special contribution. Indeed it would be reverse discrimination if I were not to allow it. Fairness demands that I depart from equality and that of the assets which I have held to be matrimonial assets, a fair division would be by way of a split of 45% to the wife and 55% to the husband."

41. In *Miller v Miller [2006] 2 AC 618*, Lord Nicholls at page 642, paragraph 66-68 said:

(66) "A point of a similar return concerns the approach to be adopted when evaluating the contributions each party made to the welfare of the family. Apparently, in this post White era there is a growing tendency for parties and their advisors to enter into the minute detail of the parties' married life, with a

view to lauding their own contribution and denigrating that of the other party. In the words of Thorpe L.J., the excesses formerly seen in the litigation concerning the claimant's reasonable requirements have now been "transferred into disputed and often futile, evaluation of the contribution of both of the parties."

***Lambert v Lambert [2003] Fam. 103, 117 para. 27.***

(67) "On this I echo the powerful observations of Coleridge J in ***G v G (Financial provision: Equal Division)*** [2002] 2 FLR 1143 1154-1155, paras. 33-34. Parties should not seek to promote a case of "special contribution" unless the contribution is so marked that to disregard it would be inequitable. A good reason for departing from equality is not to be found in the minutiae of married life.

(68) This approach provides the principled answer in those cases where the earnings of one party, usually the husband, have been altogether exceptional. The question is whether earnings of this character can be regarded as a "special contribution", and thus as a good reason for departing from equality of division. The answer is that exceptional earnings are to be regarded as a factor pointing away from equality of division when, but only when, it

would be inequitable to proceed otherwise. The wholly exceptional nature of the earnings must be, to borrow a phrase more familiar in a different context, obvious and gross. Bodey J encapsulated this neatly when sitting as a Judge in the Court of Appeal in *Lambert v Lambert* [2003] Fam 103, 127, para. 70. He described the characteristics or circumstances which would bring about a departure from equality: "those characteristics or circumstances clearly have to be of a wholly exceptional nature, such that it would very obviously be inconsistent with the objective of achieving fairness (i.e. it would create an unfair outcome) for them to be ignored."

42. The notion of "special contribution" has been recognized in *Cowan v Cowan* [2001] EWCA Civ 679; *L v L (Financial Provision Contributions)* [2002] 1 FLR 642 and *Sorrell v Sorrell* [2005] EWHC 1717.

43. In *Charman v Charman* [2007] WL 1484094, a big money case, the wife conceded the husband had made a "special contribution" to the wealth of the parties. The trial Judge awarded the wife 36.5% of and the husband 63.5% of the parties' assets taking into account the "special contribution" of the husband. The matter went to

the Court of Appeal where the notion of "special contribution" was accepted.

44. Sir Mark Potter P. who read the judgment of the Court, at paragraph 80 said:

(80) "The notion of a special contribution to the welfare of the family will not successfully have been purged of inherent gender discrimination unless it is accepted that such a contribution can, in principle, take a number of forms; that it can be non-financial as well as financial; and that it can thus be made by a party whose role has been exclusively that of a home maker. Nevertheless in practice, and for a self-evident reason, the claim to have made a special contribution seems so far to have arisen only in cases of substantial wealth generated by a party's success in business during the marriage. The self-evident reason is that in such cases there is substantial property over the distribution of which it is worthwhile to argue. In such cases can the amount of the wealth alone make the contribution special? Or must the focus always be upon the manner of its generation? In *Lambert*, Thorpe LJ said at (52):

"There may be cases where the product alone justifies a conclusion of a special contribution but absent some exceptional and individual quality in the generation of the fortune a case for

special contribution must be hard to establish."

"In such cases, therefore, the Court will no doubt have regard to the amount of the wealth and in some cases, perhaps including the present, its amount will be so extraordinary as to make it easy for the party who generated it to claim an exceptional and individual quality which deserves special treatment. Often, however, he or she will need independently to establish such a quality, whether by genius in business or in some other field."

(88) " Like this Court in Lambert, we find ourselves unable to identify an figure as a guideline threshold for a special contribution of this character."

(89) If such a contribution is special, it follows that it is unmatched; and the greater the wealth, the greater is the extent to which it is unmatched and to which it calls for an unmatched, or unequal, division under the sharing principle."

(90) Although we decline to identify a threshold for the application of the principle of special contribution, we are nonetheless prepared to respond to the judge's post script to the extent of offering guidance on the appropriate range of percentage adjustment to be made in cases in which the Court is satisfied that the principle requires departure from equality; it is necessary however to bear in mind that fair

dispatch of some cases may require departure from equality; it is necessary however to bear in mind that fair dispatch of some cases may require departure even from the range which we propose. As it happens, our views on this subject are by way of endorsement and development of what in this case Coleridge J has himself said. As we have recorded at the end of paragraph at the of paragraph 60(d) above, the judge suggested that any adjustment for special contribution of this character should be significant as opposed to token. We agree. We find it hard to conceive that, where such a special contribution is established, the percentages of division of matrimonial property should be nearer to equality than 55% - 45%. Equally, in the course of Mr. Singleton's application to him for permission to appeal, the judge, in referring to percentage in cases of special contributions, observed "I think you need to be careful, after a very long marriage, to give a wife half of what you give the husband." Arbitrary though it is, our instinct is the same, namely that, even in an extreme case and in the absence of some further dramatic feature unrelated to it, fair allowance for special contribution within the sharing principle would be most unlikely to give rise to percentage of division of matrimonial property further from equality than 66.6% - 33.3%.

45. The notion of "special contribution" is now an accepted principle and I agree and accept this notion of special contribution. It is a matter for the judge at trial to consider whether special contribution has been established. This will depend on the facts of each particular case. Levers J set out her reasons for holding that "special contribution" of the husband had been established. In doing so she exercised her discretion in dividing the assets 55% to the husband and 45% to the wife. This division is certainly in keeping with the guidelines in *Charman*.

46. I am unable to find any reason for disturbing Levers J finding that "special contribution" has been established in this case. On the facts established, I agree with the findings of Levers J. The decision of 55% - 45% is an equitable division and will not be disturbed.

47. Having regard to my finding as to what should be regarded as matrimonial property, the judgment of Levers J has to be varied to the extent that:

- (1) the Deloitte pension must be divided as to 55% to the husband and 45% to the wife. It is

suggested that an assignment be made with notice to Deloitte, of the wife's share and that Deloitte could then pay the wife's share directly to the wife. This is acceptable to the Court;

(2) the wife's share of the value of the land with respect to the Cypress Point development, valued at \$600,000 is to be deducted from the final figure awarded by Levers J. However she is to be entitled to 45% of the husband's 25% share of the profit, if any. This is deferred;

(3) The wife is entitled to a sum of \$150,000 being her share with respect to the value of the Regal Boat.

48. There has been no cross appeal and the husband has therefore accepted the division as found by the judge.

49. The appeal is allowed in part and the judgment of Levers J varied as set out above.

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Zacca, P.



**Forte JA:**

50. I have read the draft judgment of Zacca P. I agree with his conclusion and the reasons therefor. I however wish to make some comments about the application, to the jurisdiction of the Cayman Islands, of the principles adumbrated in the English cases of *White v. White*, *Miller v. Miller* and *Charman v. Charman*, which were cited by counsel during their course of submissions.

51. In order to fully appreciate the effect of these cases on our jurisdiction it is important to understand how the approach of the Courts that decided the cases, as it relates to the division of matrimonial property [between husband and wife] developed over time. The concept that a marriage is a union of presumed equals is a departure from what was previously held. It is this presumption of equal contribution of spouses that now forms the basis of the new approach of a *fair and equitable* division of matrimonial property.

52. The current concept that a marriage is a union of equal (and the consequent departure from the view of marriage, where traditionally, the husband's role as breadwinner was viewed as 'superior' to the wife's role as homemaker) must now form the basis of arriving at a fair and equitable approach to the division of family

property. When a man and woman join themselves in matrimony it is inarguably a partnership in which they see themselves as equals, with the ambition and desire to build that partnership for their mutual benefit and the general welfare of the family. Usually they decide the methods of conducting the marriage. In some cases, depending on the circumstances, they both may develop their own careers, and in that way make their individual contributions to the marriage. In other cases, where children have become a part of the family, one spouse may make the sacrifice of cutting his or her career short in order to stay home and take care of the needs of the home and the family. In such cases the other spouse will no doubt continue with his or her career and make his or her contribution in direct financial terms.

53. That is the background or the new philosophy to the achievement of fairness in determining the share of the family assets that each spouse should be entitled to, on the breakup of the marriage. The criteria are not merely what financial contributions were made by each spouse; but more so what contributions did each spouse make to the welfare of the family.

54. It is in that context, for example, that the English courts have construed the English legislation i.e. *the Matrimonial Causes Act*

1973, which provides for the relevant matters that a Court must consider in making its determination in such cases. In *Miller v Miller* (2006) 2 AC 618 at 630, Lord Nicholls, in his speech in the House of Lords, underscored the concept of fairness in these matters. He stated:

"In *White v White* (2001) 1 AC 596 your Lordships' House sought to assist judges who have the difficult task of exercising the wide discretionary powers conferred by Part II of the Matrimonial Causes Act 1973. In particular, the House emphasized that in seeking a fair outcome there is no place for discrimination between a husband and a wife and their respective roles. Discrimination is the antithesis of fairness. In assessing the parties' contributions to the family there should be no bias in favour of the money-earner and against the home-maker and child-carer. This is a principle of universal application. It is applicable to all marriages."

Section 25 (1) of that Act (now substituted by section 3 of the *Matrimonial and Family Proceedings Act 1984*) provides that it is the duty of the Court, in deciding whether and how to exercise these powers, to have regard to all the circumstances of the case. Section 25 (2) provides that as regards the exercise of these powers in relation to a party to the marriage, the court should, in particular, have regard to:

- (a) the income, earning capacity, property and other financial resources, which each of the parties to the marriage has, or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;
- (b) the financial needs, obligations and responsibility which each of the parties to the marriage has or is likely to have in the foreseeable future;
- (c) the standard of living enjoyed by the family before the breakdown of the marriage;
- (d) the age of each party to the marriage and the duration of the marriage;
- (e) any physical or mental disability of either of the parties to the marriage;
- (f) the contribution which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family;
- (g) the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it;
- (h)... the value to each of the parties to the marriage of any benefit ... which, by reason of the dissolution or annulment of the marriage that party will lose the chance of acquiring."

55. In commenting on these provisions Lord Nicholls in *White v*

*White* (2001) 1 AC 596 at pg. 605 had this to say:

"... in seeking to achieve a fair outcome, there is no place for discrimination between husband and wife and their respective roles. Typically, a husband and wife share the activities of earning money, running their home and caring for their children. Traditionally, the husband earned the money, and the wife looked after the home and children. This traditional division of labour is no longer the order of the day. Frequently, both parents

work. Sometimes it is the wife who is the money-earner, and the husband runs the home and cares for the children during the day. But whatever the division of labour chosen by the husband and wife, or forced upon them by circumstances, fairness requires that this should not prejudice or advantage either party when considering paragraph (f), relating to the parties' contribution. This is implicit in the very language of paragraph (f): 'The contribution which EACH has made or is ... likely to make to the welfare of the family, including any contribution by looking after the home or caring for the family.' If in different sphere, each contributed equally to the family, then in principle it matters not which of them earned the money and built up the assets. There should be no bias in favour of the money earner and against the home maker and the child carer." (Emphasis added)

56. Lord Nicholls' conclusion could be said to have been influenced by the wording of the statute in so far as the contribution of the wife in taking care of home and family entitled her to balance that against the monetary contribution of the husband.

57. In **Charman v Charman** (2007) EWCA Cir 503, which followed **White v White** (supra) Sir Mark Potter P, delivering the judgment of the English Court of Appeal (Civil Division) (at para 64) speaks to "the yardstick of equality of division" having its origins in 'Section 25 (2) of the Act, specifically in section 25 (2) (f) which refers to the parties' contributions and also alludes to Lord Nicholls argument at pg 605 D-E in **White v White**. Then he continues:

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

58. The above dicta, in my view, clearly indicate that both Lord Nicholls in *White v White* (supra) and in *Miller v Miller* (supra), as also Lord Potter P in *Charman v Charman* (supra) relied heavily on the provisions of *section 25 (2)*, specifically *section 25 (2) (f)* in arriving at the principle that equal division should be the hallmark in the division of matrimonial assets, unless there is good reason to do otherwise.

59. What then of the Cayman legislation? Are the principles adumbrated by the learned English judges applicable to the Cayman jurisdiction? Or should those principles be confined to the English jurisdiction, since they are based on the construction of an English statute, as counsel for the respondent maintained?

60. **The Cayman Legislation:** *The Matrimonial Causes Law (2005)(Revision)* speaks to the general principles to be followed by the Court in ancillary matters. *Section 19* states:

"In dealing with all ancillary matters arising under the law, the Court shall have regard first of all to the best interest of any children of a marriage and thereafter to the

responsibilities, needs, financial and other resources, actual and potential earning power and the deserts of the parties."

Clearly there is no express provision relating to the contribution of the parties and specifically relating to contribution of a spouse where that contribution relates to "looking after the home and the family". However, it is argued that the reference to the 'deserts of the parties' should be considered on the basis that the 'deserts' would have been earned by virtue of contribution-not merely monetary-made in other ways to the welfare of the family, e.g. 'looking after the home and the family'.

61. This Court, in the case of *Doak v Doak and Riley* (2002) CILR 224 adopted and applied the principles in *White v White* (supra). In delivering the judgment of the Court, at pg 230 para 17, Taylor JA said:

"The decision of *White v White* has already been relied on in the Grand Court in *Barrett v Barrett* (2001) CILR 65 and *Uzzell v Uzzell* (2001) CILR 12. In the latter case, Sanderson J compared the provisions of sections 19 and 22 of the Matrimonial Causes Law of these islands with those of section 25 (1) and (2) of the Matrimonial Cause Act 1973 dealt with by the House of Lords, and concluded that the discretion given to the court by the Cayman legislation is, on balance, even broader than that granted by the English statute. Sanderson J referred particularly to the requirement of section 19 of the Cayman statute

that in all 'ancillary matters' regard be had to 'the responsibilities, needs, financial and other resources, actual and potential earning power and the deserts of the parties. Included in *section 22* among such ancillary matters is '(e) making financial provision from the property of either spouse for the children of the marriage and for the other spouse.'

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

62. There is no reason to depart from what this Court has said in *Doak v Doak* (supra). I agree that the discretion given to the Court by the provisions of the Cayman legislation is 'on balance even broader than that granted by the English statute.' Consequently, these provisions are open to be construed on the basis of the new approach to the institution of marriage and the fact that it is a union of equal partners. Each therefore would be entitled to an equal share of the assets acquired in the marriage, unless there is good reason to depart from that principle. In coming to this conclusion I would reiterate that the principles espoused in the cases of *White v White*, *Charman v Charman* and *Miller v Miller* (supra) are as applicable to this jurisdiction as they are to the English jurisdiction.

63. Zacca, P has dealt with the facts in the present appeal and has arrived at a conclusion with which, as I have said before, I am in

