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IN CHAMBERS
IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: D42 of 2003

BETWEEN:

DEBORAH M. WIGHT

Petitioner

AND:

IAN A. N. WIGHT

Respondent

BEFORE: The Honourable Madam Justice Levers

APPEARANCES:
Counsels for the Petitioner: Mr. Mostyn QC and Mr. Bradley instructed by Mr. David McGrath of LA Samson & Co.
Counsels for the Respondent: Mr. Barry Singleton, QC and Ms. Debra Eaton instructed by Ms. Zena Merren of Appleby Spurling Hunter

Heard: 27th October to 4th November 2005

GRAND COURT - CAYMAN ISLANDS

JUDGMENT

Levers J.

This is an application for ancillary relief by the Petitioner, Deborah Wight. She did not file a Summons for ancillary relief, but her Petition for Dissolution of Marriage contained the relief sought:

LEGAL DEPARTMENT DEC 08 2005 Cayman Islands

1. That the said marriage be dissolved.

2. That the Petitioner and the Respondent have joint custody of the children of the marriage with the Petitioner having care and control thereof.
3. That the ancillary matters be adjourned to Chambers.
4. That the costs of and incidental to the Petition be paid by the Respondent.

The ancillary relief she seeks is a clean break settlement for herself and maintenance for the minor child of the marriage.

History of the marriage

The husband is 54 years old, and the wife is 48 years old. The husband was born on the 23rd July, 1951 in Guyana and the wife was born on 7th September, 1958 in Trinidad. The wife moved to the Cayman Islands with her father, a banker at the age of ten. She was educated in England and returned permanently to Cayman in 1976 when she gained employment as a secretary with the Royal Cayman Islands Police Force.

In or around September 1979, the wife left for England to begin working there. The husband who had come to Cayman in 1973, at the age of 22 subsequently returned as an Articled Clerk for Rawlinson & Hunter. At the time, Deloitte Haskins Sells who were associated with Rawlinson & Hunter, Butterfield & Company, established a joint office in Cayman and in 1977, he was asked to become the manager of the Cayman joint offices of Deloitte, Rawlinson & Hunter and to act as a representative of the Bank of Butterfield. It was a small venture with himself and the secretary being the only employees. In January 1980, the husband became the resident equity partner of Deloitte and its associated firm of Rawlinson & Hunter on Cayman.

The parties met in September 1978 and began a relationship. Subsequently, the husband pursued the wife to England and they married on the 1st March, 1980 in Grand Cayman. There was no pre-martial cohabitation. There are four children of the marriage. Matthew, born on the 25th May, 1981 now 24 and a half years old. Allan, born on the 16th February, 1984 now 21 and odd years old. Michelle, born on the 15th May, 1985, 20 and a half years old and Claire, born on the 12th January, 1992; thirteen years old. For the purposes of this application, Claire is the only relevant child of the marriage.

I have already informed counsel that the law does not give me jurisdiction to deal with the first three children of the marriage, although they may be still at university. They are over 16 years old. If there was an order already in existence then I could extend it, but I have no jurisdiction to make a new order once they are over 16. Claire is thirteen and is presently at boarding school in Ascot, in the United Kingdom and the Court has jurisdiction over her.

It appears that after the marriage, the wife continued working till 1995. She worked as a secretary and subsequently, as a personal assistant. Although, I have held that the first three children of the marriage are not relevant for purposes of this application, I will for completeness outline their careers to-date.

Matthew was educated in England and he then obtained an associate degree in Business Administration at the Cayman Islands College. He now attends the International College of the Cayman Islands and works for Mr. Naul Bodden as Project Manager for NCB Consultants Ltd. He lives in George Town with his girlfriend outside the matrimonial home.

The second child, Allan was also educated in the UK and he commenced a degree at the Bristol University which he did not complete. He now works full time as a banker and has moved out of the matrimonial home.

Michelle was also educated in the UK and she commenced her degree at Newcastle University, which she did not complete. She returned to Cayman and is employed with Cable and Wireless and presently, lives with her mother at the former matrimonial home. She apparently hopes to undertake a business and marketing degree in the United States of America.

Claire, the fourth child, has just moved from Farleigh School to St. Mary's Ascot, a boarding school in the UK. It is acknowledged that the husband undertook the responsibility of all the educational expenses for the children in the UK.

From 1980 to 1985, the Petitioner was working and caring for the home with no help. In 1985, when Matthew was born, the parties hired live in help, primarily to help with the child. That continued and grew to the extent that by 1995, in addition to the live-in nanny, the parties also had a maid service,

a gardener and maintenance staff, and contractors to look after the home. The wife remained in control and supervised the smooth running of the home and the family life.

It is the wife's position that she paid the children's school fees while they were at prep school in Cayman and was also responsible for the remuneration of the domestic help. By the time she ceased working in 1995, the parties had bought substantial properties and it is alleged that the wife had the responsibility for the purchases, renovations, furnishings, decorating, and management of those properties. This responsibility together with the need to visit the children abroad while in boarding school frequently was not compatible with the continuance of her employment, and therefore, after discussion with the Respondent, she ceased working.

In 1991, the husband received his appointment as an Official liquidator for BCCI. This brought with it generous rewards and as such, it was at this stage, that the earning capacity of the husband dramatically exceeded that of the wife. He is now the managing partner and one of seven partners in the Cayman office. The business grew exponentially to the point where it now employs 180 people in its Cayman office. This does not include the

Barbados office, recently acquired, which was a significant achievement for the firm.

During the course of the marriage, the parties acquired substantial properties and substantial wealth which will be detailed later in this judgment. But, suffice to say that when the marriage broke down abruptly on the 30 December, 2002; the parties were wealthy. That fact brings this matter into what is now commonly known as the "big money cases". A phrase that I am hesitant to adopt because in the view of this Court, the only differentiating factor between a normal application for ancillary relief and a so called "big money case" is the question of the surplus of the assets (after dealing with the needs or reasonable requirements of the parties) that is left to be distributed on the basis of "fairness".

As stated, the marriage broke down abruptly on the 30th December 2002, when the wife confronted the husband who confessed that he was having an affair and wanted a divorce. The next day, the husband moved into the guesthouse in the grounds of the former matrimonial home and in January 2003, he moved out altogether. The husband has formed a liaison with a lady whom he readily admits he supports fully even, extending to purchasing

an apartment in his name in her hometown in New York. Presently, the wife continues to live in the former matrimonial home and continues to have access to the various properties owned by the parties. It is true to say that both husband and wife after separation have spent large sums of money on themselves liberally. The wife apparently chose to indulge the children, buying Michelle a car without the husband's permission, buying herself clothes and travelling extensively. Whereas the husband indulged himself in travel including cruises, and purchase of properties on the basis that any money that he earned after separation was his entirely to do with what he wished.

The History of the Litigation

The wife's petition is dated the 8th April, 2003. Since the filing of the petition to date of this hearing has been some 2 ½ years, and it is the wife's contention that this matter has taken 2 ½ years to come to trial because of the husband's obstructive behaviour in refusing to make disclosure. Several orders were made for discovery and applications for either extensions of time or breaches of orders came before the Court. It is perhaps right to say now that most of the discovery is complete, save and except for

documentary proof of the husband's partnership interest in Deloitte and Touche.

Shortly, before the trial commenced in October 2005, at the request of the partners of Deloitte and Touche Mr. Wight took out an application saying that the information requested by the wife's attorneys as to the partnership interest was subject to the Section 4 of the Confidential Relationships (Preservation) Law (1994 Revision). The Honourable Chief Justice gave his ruling severely curtailing the order previously made for disclosure. Mr. Mostyn QC, on behalf of the wife complains bitterly that despite the curtailing and despite the ruling being generous to the husband, the husband still did not comply with the full intent of the ruling in the affidavit that was filed by him. He complains that in numerous respects it falls short of complete full and frank disclosure. The respects are as follows:

(1) the husband failing to specify his income for 2001 and 2005;

(2) the husband failing to explain the dramatic drop in income in 2004;

(3) the husband not informing the Court what the projected income is;

(4) the husband failing to produce the ledgers of his capital and current accounts;

(5) the husband failing to specify what sums might be received in respect of the good will – were the firm to be sold in the circumstances contemplated in the partnership agreement.

(6) The husband simply ignoring the obligations to give a conscientious value of his present and future interests in the firm

(7) No verifying affidavit being supplied by one of the financial controllers of Deloitte and Touche as sought by the letter from the wife's attorneys.

These complaints were reduced to writing and the husband's attorneys replied in the following terms:

> *"------ The issues raised in your 14 September, 2005 letter be addressed. We have done so. If your client is not satisfied with the return and extent of our client's response, you can raise the issue at the hearing."*

Mr. Mostyn QC for the wife submits that it is a cardinal obligation that full and frank disclosure is made by both parties. He submits that the Court can only lawfully exercise its discretion on the basis of full disclosure and relies on the statement of Lord Brandon of Oakbrook in *Jenkins v Livesey* [1985] 1 All ER at page 106 HL 822:

> "...each party concerned in claims for financial provision and property adjustment (or other forms of ancillary relief not material, in the present case) owes a duty to the court to make full and frank

> disclosure of all material facts to the other party and the court. This principle of full and frank disclosure in proceedings of this kind has long been recognised and enforced as a matter of practice.
>
> .....
>
> The principle concerned does not depend in any way on the concept that the parties must, in reaching, an agreement for a consent order, show uberrima fides in the contractual connotation of that expression. It depends rather on the statutory requirement imposed by section 25(1), that the court must exercise its discretion to make orders under sections 23 and 24 in accordance with the criteria prescribed by that subsection, and on that, unless the parties make full and frank disclosure of all material matters, the court cannot lawfully or properly exercise such discretion."

Mr. Mostyn QC goes further, he says there is a duty to volunteer. In the cases of McFarlene and Parlour [2004] CA judgment EWCA (Civil) 872 [2004] 2 FLR 893, it was said, (where the husbands had not completed the discovery form in England, known as form E):

> "The practice had apparently grown for substantial earners to decline any statements of their needs on the grounds that they could afford any order that the Court was likely to make, an end must be put to that practice."

This Court is of the same view, that disclosure must be made. It is the obligation of both spouses in proceedings for ancillary relief to make full and frank disclosure and indeed, it is mandated that the Court must take into account the resources of the parties, in order to come to a decision. Section 19 of the Matrimonial Causes Law, 2005 Revision states:

> "In dealing with all ancillary matters arising under this Law, the Court shall have regard first of all to the best interests 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."

The word used is not 'may' but 'shall' and whilst the Hon. Chief Justice has given his ruling and the parties have accepted it, the Court would perhaps have greatly benefited from fuller disclosure from the husband as to his partnership interest in Deloitte which as an accountant, he surely must have been able to assess and supply to the Court with documentary proof. It should be said that he did so to a limited extent during the course of the hearing.

The jurisdiction to make these orders for ancillary relief is given to the Court under the Matrimonial Causes Law, (2005 Revision). Section 19 deals with

the general principles to be followed. I have already quoted this section when dealing with the question of discovery. Section 21 deals with the actual ancillary orders:

> At the time of pronouncing a decree under this Law, the Court shall, as appropriate, make orders for –
>
> (a) the custody, care and control of the children of the marriage;
> (b) the disposition of matrimonial property, including the matrimonial home;
> (c) varying any settlement of the property of the spouses made in consideration of the marriage, whether such settlement was made before or upon the treaty of the said marriage;
> (d) varying any other settlement of matrimonial property;
> (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 and for the other spouse; and
> (g) costs.

It is clear from the way the statute is drafted that this Court has a very wide discretion, but must initially deal with matrimonial property. I believe it must be true to say that it has a wider discretion than even the Courts in the United Kingdom. Although, that might be the case, the decisions of the English court made pursuant to section 25 of the Matrimonial Causes Act 1973 will be relevant and persuasive authority in this jurisdiction. In the

leading case of *White v White* [2003] 3 WLR at page 1571, Lord Nicholls said:

> "Self-evidently, fairness requires the courts to take into account all the circumstances of the case. Indeed, the statute so provides. It is also self-evident that the circumstances in which the statutory powers have to be exercised vary widely. In seeking to achieve a fair outcome, there is no place for the 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 the 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 parties' contributions. This is implicit in the very language of paragraph (F): ....the contribution which each of the parties 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 difference 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 homemaker and the child-carer. There are cases, of which the Court of Appeal decision in *Page v Page* [1981] 2 FLR 198

> is perhaps an instance, where the court may have lost sight of this principle.
>
> 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 parties and the court to focus on the need to ensure the absence of discrimination. But, there is one principle of universal application which can be stated with confidence. In seeking to achieve a fair outcome, there is no place for discrimination between husband and wife and their respective roles."

White [supra], it has to be said changed the entire complexion of the application of the principles in ancillary relief proceedings. The authorities in England are based on the statutory requirements of section 25(2). In this jurisdiction, cases must be decided on their own facts, applying our laws. The English authorities are guiding and persuasive as to the principles to be applied.

As in all cases, the Court must bear in mind the cultural and factual aspects of the jurisdiction in which it is exercising its discretion. I mean the geographical jurisdiction, the customs in that jurisdiction, the habits of the persons in that jurisdiction, the roles of the father and the mother in that jurisdiction. I say this because it can be argued on behalf of either one party

or the other, that both parties were money earners that his income was proportionately far higher than hers and therefore his contribution could be said to be greater especially as she did not play the role of fulltime wife and mother. It can also be said that she had substantial assistance in the home and that she was just an executive housekeeper. Equally, it can be argued to the contrary that the husband did not play a major role in the children's life because he was busy and that he frequently went out with his friends in the evenings, thereby detracting from his contribution to the family. But, I remind myself that these are the Cayman Islands, where the husband behaved as most men do and the wife accepted his way of life. It was nothing unusual for rich people to have substantial domestic help. Therefore, these factors should not entitle one party to succeed over the other.

In this jurisdiction, the factors to be considered in arriving at a decision has been set out in several cases, but the judgment of Sanderson J. in the case of *Uzzell v Uzzel* (2001) CILR Note 12, D97/97 is frequently relied upon. It is perhaps convenient at this stage to review that authority. In his judgment the leaned judge itemized the principles to be applied in arriving at a fair decision. There are several, but the more important ones are:

1. The primary objective is an award that is fair to both parties. What is fair will depend on the particular circumstances of each case;

2. The length of marriage;

3. The age of the parties;

4. The income and earning power of the parties;

5. The amount of matrimonial and non-matrimonial property available to the parties;

6. The needs and obligations of the parties, but recognizing that an award need not necessarily be limited to a party's needs, when there is matrimonial property that exceeds both parties needs ('big money cases');

7. The liquidity of the parties, including one party's ability to pay any lump sum award without seriously impairing his or her ability to continue to generate sufficient income;

8. The desserts of the parties including the contribution that the parties have made to the accumulation of the matrimonial as well as non-matrimonial property. In considering what the relative contribution of each party is, the Court should:

    (a) examine the efforts made by each party;

    (b) examine the results achieved from the respective parties efforts;

    (c) examine the nature of the contribution, for example, was it 60 hours per week for 20 years or was it a brilliant idea that has created the wealth overnight;

    (d) not discriminate against one spouse on the basis that he or she did not work outside the

home but rather stayed at home to care for the family and attend to family matters. This choice would have given the other spouse, the opportunity to freely pursue his or her professional or business interests which would ultimately benefit the family; conversely, if both spouses have chosen to work outside of the home then it is proper to measure their respective contributions according to the evidence of what those contributions were. In some cases this may result in a spouse, who chooses to work or pursue their own career in receiving a smaller award than they would have, if they stayed at home and attended to the family. But, I do not think that is necessarily an unfair result. If a couple decides that one spouse would work outside the home, and the other will take care of the family and the family affairs, that is a joint enterprise with both parties contributing differently but equally to the accumulation of the family property. In those cases a fair award may be a 50% division of the matrimonial property. On the other hand, if both spouses work outside the home, for example, assume both spouses are professionals, physicians, accountants or lawyers, and one earns $100,000 per year and the other earns $200,000 per year, then in those circumstances both parties have had the opportunity to pursue their own careers. Both parties would have contributed to the accumulation of the matrimonial property, which likely would be much more substantial than if just one party had worked outside the home. In dividing that property it is right to consider the respective contributions the parties had actually made towards its accumulation and it is one of the factors that could fairly justify a division that is not equal.

9. The desserts of the parties, including the conduct of the parties, if that conduct is such that it would, in the opinion of the Court be inequitable to disregard it.

10. Liquidity, or the ability of one party to make a lump sum payment without putting the income generating asset at risk.

11. Before any final ruling is made, the Judge, as stated by Lord Nichols (in White):

> "Would always be well advised to check his tentative views against the yardstick of equality of division and as a general rule equality should be departed from only if there is good reason to do so."

With respect to the learned judge, I would apply all the principles enunciated above, save and except for that in paragraph 8(d). It is discriminatory to say that the wife who by a joint decision has chosen to pursue a career or a husband who has chosen to pursue a career, is to be discriminated against because unequal sums were put into the matrimonial pot. The Courts must give effect to the parties intention during the course of the marriage with the idea that marriage was a partnership and unequal contribution either by the wife or the husband should not be the subject of discrimination. That in itself should not be a reason for departure from equality.

Both counsel Mr. Mostyn QC and Mr. Singleton QC have taken me around the world with authorities from United Kingdom to Australia. Mr. Mostyn

QC urges this Court to follow the Australian and American authorities. Mr. Singleton QC on the other hand, urges this Court to say that the authorities can only be applicable within the context of the law in Cayman.

In this particular matter the issues the Court will have to determine are as follows:

(i) The extent of the pool of assets, the subject matter of the court's dispositive powers.

(ii) Whether the yardstick of equality should be applied to the existing assets or whether there should be a departure. Both parties argue for a departure from equality. Mr. Mostyn QC submits that the disparity between the husband's future income and that of the wife lends itself to a departure from equality. On the other hand, Mr. Singleton QC makes much of the husband's contribution categorizing it as a special contribution worthy of departure from equality.

(iii) The question of child support payable by the husband.

It is the duty of the Court in deciding whether to exercise its powers and if so, in what manner to have regard to all the circumstances of the case, first consideration being given to the welfare of the minor child of the family. The Court is required to go through a complex decision making process

designed to facilitate, in appropriate cases, the making of "clean break" between the parties to the marriage.

Although, the statutory requirements in England are not exactly the same, as in the Cayman Islands, the case of *Lambert v Lambert* [2002] EWCA (Civ) deals with the exercise of discretion in proceedings of this nature and is worthy of careful scrutiny. The case takes cognizance of the fact that parties can make a "special contribution" in the marriage. In *Lambert* [supra], the Court approved Lord Justice Connell (dicta) and said that the following was an impeccable exposition on the law:

> "The court's fundamental duty however remains to apply section 25 of the Matrimonial Causes Act, 1973 to all the circumstances of this case in its attempt to arrive at a fair outcome. Although the issue of the parties contributions to the welfare of the family has been uppermost in the minds of the parties and of their representatives, I observed that that issue can claim no statutory priority in the discretionary exercise. I must have regard to each of the eight matters separately specified in section 25(2) against the background of all the circumstances of the case. Since each of the children is now adult and wealthy as described, their welfare no longer requires 'first consideration'."

Lambert is in many ways similar to this case, in that, the wife's contribution was mainly as a wife and a mother with little or no contribution to the business of the husband. On the other hand, the husband developed his business and he played a significant role in achieving his success. In *Lambert*, their Lordships reviewed the recent authorities namely, *HJ v HJ* [2002] 1 FLR at page 415, and the case of *H v H (Financial Provisions: Special Contribution)* [2002] 2 FLR 1021 and finally, the case of *G v G*, a decision given by the learned judge Coleridge J. on the 2 July 2002, as yet unreported. None of these cases depart from the concept of "fairness". However, in the case of *H v H*, Coleridge J. at the conclusion of his judgment said this:

> "Underlying this appeal and my decision to allow it there seems to be two important points:
>
> The significance attaching to a particular fractional percentage is more than merely the monetary value it represents. It goes to the core of the party's understanding of fairness. So 50/50 resonates with fairness; both parties depart with the sense of being equally valued. There are no winners or losers. Once there is a departure of equality, as there often has to be, however small that departure, one party (more often the wife) is left with a sense of grievance, of her efforts having been undervalued. Understandably, at the time of divorce, these considerations matter a great deal to the parties. In this case, after a marriage which lasted in excess of 25 years, net assets, after

> deduction of notional sale costs, and capital gains tax, have been accumulated amounting to more than £2.7 million. Accordingly, there is ample to go around. It would indeed be sad if, in this category of cases (as opposed to those cases where the overall means are less than sufficient and so the needs of the children and their carers must inevitably remain predominant), the broad and sweeping reform underlying the speeches in *White v White* was to become bogged down in a welter of zealous, over-sophisticated and costly forensic analysis, or watered down by judicial reticence."

The case of *H v H (Financial Provisions: Special Contributions)* [2002] FLR 1021. The family asset was substantial, the husband was described as a successful city solicitor, and in *Lambert* the following passage is quoted from that case:

> "I have considerable sympathy for the husband, who has been highly successful and worked extremely hard over many years and no doubt feels that he ha0
>
> s created the wealth that exists today. I am unable to accept, though, that his contribution calls for special recognition, as in the cases of *Cowan* and *Lambert*.

The last case was that of *G v G* (supra). There again, the Court reviewed the contribution of the husband in order to decide whether it was a stellar and/or particularly remarkable contribution. I cite the following paragraph

from the judgment of Coleridge J. in full, not only to lay the ground work for deciding on "special contribution" but also to assist with the phrase "deserts of the parties" in our legislation.

> "The family assets were in the region of £8.5M. The wife sought a half share. The husband proposed that she should have 40%. The husband had built the family fortune through exceptional hard work and astute business acumen in the field of substantial development and construction projects. The case was largely fought on the issue of the husband's contribution. I cite paragraphs 33 and 34 of the judgment in full:
>
> But how should the court now evaluate those respective contributions in the context of section 25? It is in this area that, needless to say, enormous amounts of forensic energy have been expended. That this should have happened is largely due, of course, to the recent case law on the subject. I have had the benefit of being referred not only to *White* at length but also all the decided cases which have been reported since that case on this particular subject. The husband's counsel has helpfully produced a folder containing all the relevant authorities. He did this in aid of his argument that the husband's contribution should be not regarded as one of equality with the wife's but of a character and quality which marks it out as special or stellar or outstanding. This, he said, should lead to a finding that (after applying the equality crosscheck required since *White*) his client should end up with more than half the resources.
>
> In a number of decisions since *White* eg *Cowan* [2001] 2 FLR 192 and *L v L (Financial Provision;*

Contributions) [2002] 1 FLR 642, the court has recognized, in an appropriate case, the possibility of a (financial) contribution by one spouse or another at such an extra-ordinary level that it is entitled to special recognition and value. Unfortunately, this has led to this concept becoming the centrally important issue in almost every case particularly where the assets exceed the party's reasonable needs. Hardly a case is heard nowadays than that one party (usually the husband) seeks to establish that he has played a markedly more valuable part in the accumulation of the wealth and the marriage partnership so that he should be specially rewarded by way of a greater share of the assets. I wonder whether, with respect to the members of the Court of Appeal in *Cowan*, they would have made the extensive remarks they did (about the possibility of a special contribution) if they had realized the forensic Pandora's Box that would be opened in the actual practice. The effort is not at all dissimilar to the 'conduct' debates of the 1970's. In those days 'conduct' was similarly raised against wives to try and limit their claims. However, the court, recognising the undesirable consequences inherent in those arguments and further the possibility of fairly adjudicating upon them introduced the concept of 'obvious and gross' very effectively to limit their application. It is suggested by some that these current 'special contribution' debates are reintroducing conduct by the backdoor. I would say by the front door. For what is 'contribution' but a species of conduct. Conduct (subsection 2 (g)) refers to the negative behavior of one of the spouses. 'Contribution" (subsection 2 (f)) is the positive behaviour of one or other of the parties. Both concepts are compendious descriptions of the way in which one party conducted him/herself towards the other and/or the family during the marriage. And both carry with them precisely the

> same undesirable consequences. Firstly they call for a detailed retrospective at the end of a broken marriage just at a time when parties should be looking forward not back. In part that involves a determination of factual issues (and obviously the court is equipped to undertake that). But then, the facts having been established, they each call for a value judgment of the worth of each side's behaviour and translation of that worth into actual money. But by what measure and using what criteria? Negative 'conduct' is one thing (particularly where it is recognizably 'obvious and gross') but the valuing of positive 'contribution' varies from time to time. Should a wealth creator receive more because eg his talents are very unusual or merely conventional but well employed? Should a housewife receive less because part of her daily work over many years was mitigated by the employment of staff? Is there such a concept as an exceptional/special domestic contribution or can only the wealth creator earn the bonus? These are some of the arguments now regularly being played. It is much the same as comparing apples with pears and the debate is about as sterile as useful."

The following extracts from *Lambert* usefully address the principles to be borne in mind by the Court:

> "While I accept Mr. Pointer's submission that the judge has a duty to assess each and every one of the section 25(2) criteria that bear an outcome and equally the judges of the Family Division have great expertise in making value judgments, I do not accept that the duty requires a detailed critical appraisal of the performance of each of the parties

> during the marriage. Couples who cannot agree division are entitled to seek a judicial decision without exposing themselves to the intrusion indignity and possible embarrassment of such an appraisal. I fully agree with Coleridge J that any other approach and carriages are vain endeavours to recreate historic situations, choices and failings within the context of a long marriage can never be recaptured fully or accurately. I share the views of District Judge Million cited by Coleridge J in *H-J v H-J* at page 421A. I fully agree with the views expressed by McLaughlin J in the case of *M v M.* I do not consider that the approach which has been adopted by Coleridge J amounts to an impermissible judicial stride towards a presumption of equality. A distinction must be drawn between an assessment of equality of contribution and an order for equality of division. A finding of equality of contribution may be followed by an order for unequal division because of influence of one or more of the other statutory criteria as well as the overarching search for fairness."

Lambert finally came to this decision:

> "It would be both futile and dangerous to even attempt to speculate on the boundaries of the exceptional. In the course of argument I suggested that it might more readily be found in the generating force behind the fortune rather than in the mere product itself. A number of hypothetical examples were canvassed ranging from the creative artist via the superstar footballer to the inventive genius who not only creates but also develops some universal aid or prescription. All that seems to me to be more safely left to future case by case exploration."

These principles were explored and applied in the case of *Sorrel v Sorrel* [2005] EWHC (Fam) at 1717, Bennett J accepted the existence of a special contribution in a case where the husband had created the second biggest advertising agency in the world and had accumulated a fortune of £75M. Both *Lambert* and *Sorrel* are to be looked at carefully in the context of defining "special contribution".

As stated previously, in the UK, the Court is greatly assisted by the detailing of the considerations to be taking into account in matters coming under section 25 of that law. In this jurisdiction, the law gives the Court an extremely wide discretion, but does not set out in detail the matters to be taken into account in a statute. It is perhaps the wisest course for the Courts of this jurisdiction to be guided by the considerations as set out in the English Law. Having said that I bear in mind that the consideration of maintaining the standard of living in coming to a decision is specifically held not to apply to this jurisdiction.

This aspect of the law has progressed considerably and since the case of *White,* the test is one of fairness. Fairness, however does not always mean

equality of assets for the simple reason that assets vary and the return on assets vary and therefore, the Court has to undertake a detailed examination of the matrimonial and other assets. Since *White* cases have imported a concept of special consideration to depart from equality. Mr. Mostyn QC submits in the case of *Lambert,* it was held that special contribution is such a rare commodity, and the consideration had to be that of a genius or so exceptional that one would not except to find it in the run of the mill cases. On the other hand, Mr. Singleton QC on behalf of the husband extracts the principal from *Lambert*, that the court left the door open for a finding of special contribution on a case-by-case basis. With respect – I agree with Mr. Singleton, QC.

The Wife's Case

On behalf of the wife it is submitted that this is a case about a fair division of a substantial estate built up over a twenty-three year marriage. It is submitted that there are no cultural considerations unique to these Islands that bear adjudication and Mr. Mostyn QC urges this Court to say that all the wife seeks from this Court is recognisation of the partnership of marriage being equal. He submits that the Court having identified what the

matrimonial assets are and dividing them equally, must in addition go on to identify a further lump sum payment that should be paid to his client, in view of the disparity between his future income and her future income. As I am purely outlining the wife's case at present, I will not go into further detail on this point till later in the judgment when I analyze the distribution to be made and the percentage to be given. Suffice it to say that the wife wishes the Court to trace all assets obtained from income earned during the marriage and also give her a percentage of the husband's future income, although it would be earned after separation.

The wife filed affidavit evidence and gave *viva voce* evidence which was subjected to cross-examination. She claims that she was a financial contributor albeit to a lesser extent than the husband for 15 years of the marriage. That she was an integral part of the children's life and that she was indeed the backbone of the family organization. That she ran three homes. It is Mr. Mostyn QC's contention that, the fact that she had helpers, gardeners, pool attendants matters not. She herself was an essential feature in the smooth running of the family's life. The husband does not detract from the wife's contribution but says that his was a greater or special contribution. I will come to that at a later stage. In her evidence, she states

that despite the fact that the children went to boarding school from 1991 onwards, she still played a major role in the care giving of the children and the running of the domestic affairs and that in fact her contribution was such that it permitted the husband to pursue his career earnestly and earn the enormous sums of money that he did. She concedes that he was a good father, in the sense, that he was a good provider. She denies that they were drifting apart and states that it came as a shock when he announced that he wished a divorce in December 2002. As far as the assets are concerned, she said they were mostly acquired during the marriage, (details of which will be outlined later) and she submits that she is entitled to 50% or more of them. She denies that she was excessive in her spending habits during the period of separation. She states that she spent no more than the husband did and that the Court must look at it from a global point of view and that if comparisons were to be made, both parties spent excessively. She denies that the husband was already a success when he came into the marriage, and she submits that his career took off after he was appointed as liquidator for BCCI. She does not wish to work again and is unsure at present as to what she wishes to do. That basically is her evidence.

I found the wife to be not as credible as she could have been. She did not concede that the husband already had a career when he married her and she wished the Court to believe that on her small income, she paid all the household expenses. She also tried to detract from the relationship that the father had with the children. This, in my view was not necessary. There is a presumption of equality in a marriage of 23 years and the fact that she didn't contribute as much as he did or indeed, if she didn't contribute at all would matter not. As was stated in *Lambert* and I quote:

> "I fully agree with the views expressed by McLaughlin J in the case of *M v M*, I do not consider that the approach which was adopted by Colderige J amounts to an impermissible judicial stride towards the presumption of equality. A distinction must be drawn between an assessment of equality of contribution and an order for equality of division. A finding of equality of contribution may be followed by an order of unequal division because of the influence of one or more of the statutory criteria, as well as the overreaching search for fairness."

As has been stressed frequently in this case and others since *Lambert*, the presumption of equality equates to a presumption of fairness when the court is in search of a division of assets in ancillary relief applications. I do not hold that that the wife in this case sacrificed a career to be a homemaker, but that matters not. Both parties took a decision as to their respective roles in

the marriage, and in this partnership the wife was to be "the homemaker" and the husband to be "the rainmaker".

The Husband' evidence

The husband too filed extensive affidavit evidence and gave viva voce evidence which was subjected to cross-examination. It is the husband's case that he bought a profession into the marriage, as well as a piece of land. The latter can be dealt with when I am dealing with the question of assets. For purposes of his evidence, however, it is his view that having been a professional and having being fairly well established at the time of marriage, he contributed substantially more to the marriage, than the wife did. He concedes that she was a good mother and a good homemaker, but he submits that his professional achievements and his business ventures have made his contribution "special" resulting in the enormous wealth that the family now enjoys.

The husband gave evidence as to the practice of doing business on a handshake in these Islands to illustrate the lack of documentary evidence to substantiate his ownership of some assets. He denied that his career only

took off and developed rapidly after he was appointed liquidator for BCCI. The husband was cross-examined strenuously about his delay in making disclosure. I have already addressed the question of disclosure, and in his evidence, the husband admitted that he was perhaps not as diligent as he should have been. There is not a scintilla of evidence that the husband tried to hide any assets. For obvious reasons the wife's attorneys were very anxious to obtain fuller disclosure. Eventually, the husband gave all the disclosure that he was ordered to give and although, the Court is to an extent left to speculate on the husband's future income, it is a speculation that perhaps is to be made in most matters of this nature. The Court must direct its attention to the parties assets in the broadest possible terms, and be guided by any expert evidence given, if it was going to make an award on future income.

Despite Mr. Mostyn QC's attempts to paint the husband in an extremely bad light because of the delay in disclosure, I am of the view that the husband was an honest witness who answered his questions to the best of his ability and gave as much disclosure as he could. Indeed, the wife was perfectly capable of making inquires as to most of the assets herself which she owned jointly. So, despite Mr. Mostyn QC's arguments as to the husband's

conduct and behaviour, I do not find that the husband was in anyway guilty of misconduct in the discovery process. I agree with Mr. Singleton QC, when speaking of the submissions made on behalf of the wife, he said:

> "She seeks to make points that it is submitted are more directed to prejudice the Court against the husband than actually trying to assist the Court to reach a just conclusion."

The next piece of relevant evidence given by the husband was the allegation of excessive spending by the wife. In his evidence, the husband admits that he did not take out a summons to stop the wife from spending nor, to ask the court to make an order for maintenance. Yet he complains that the wife was excessive in her expenditure after separation. A blind man can see that the wife was excessive in her expenditure. But, both parties seem to have spent freely, except that the husband makes the point that whatever he spent on were tangible assets which the wife now claims as part of the matrimonial property. The wife, it appears, indulged herself with clothes and trips. As much as Mr. Mostyn QC, tried to neutralize the expenditure of the wife, I am of the view that the wife did indulge herself to excess. However, as I have stated previously, since both parties have appeared to have indulged

themselves, I will not draw any adverse inferences against the wife for her apparent excess in expenditure after separation.

Before, I leave the question of the evidence filed and given in this case. I wish to say that it is regrettable that in applications of this nature which are matters which need to be looked at clinically, the parties tend to import unnecessary acrimony into the evidence. A good example of this is the wife's allegation that it was fortunate for the husband in 1991 when the directors of BCCI decided to be dishonest and that is why he was able to contribute this enormous wealth to the family. I find that unnecessary and patronizing. The test is one of fairness to decide on the division of assets unless there is a departure from equality for special reasons or the conduct is so gross as to merit it being taken into account. Any evidence, other than that needed to assist the Court on deciding on these matters, can only be said to be introduced to prejudice the Court.

In *Minton v Minton* [1979] AC 593 at 608, Lord Scarman stated that:

> "The law now encourages spouses to avoid bitterness after family breakdown and to settle their money and property problems. An object of the modern law is to encourage each party to put

> the past behind them and to begin a new life which is not overshadowed by the relationship that has broken down."

Assets and their accumulation

It is fundamental that the Court must first decide what the matrimonial property is and then proceed to divide the assets fairly. It would not be a difficult task if the assets were all accumulated during the marriage. Both parties are ad idem that those assets accumulated during the marriage must be matrimonial property. What perhaps complicates the issue is what the Court is to do with the property acquired after the separation. The English statute is different to that of Matrimonial Causes Law (2005 Revision) in the Cayman Islands. Here specific reference is made to the disposition of matrimonial property including the matrimonial home in section 21. Mr. Mostyn QC for the wife relies on section 19, which requires the court to first have regard to the best interest of any child of the marriage and thereafter to the responsibilities, needs, financial and other resources, actual and potential earning, and the desserts of the parties. This, of course, is the general principle to be followed. If, for example, the matrimonial property acquired during the marriage is insufficient to meet the party's financial responsibilities and needs, then this court is obliged to look at other property

acquired either by inheritance or earned wholly external to the marriage to meet the needs of the parties.

Wife's Needs

In this case, the wife filed an inflated statement of her needs which on a careful perusal did not give an accurate picture of her needs. For example, her miscellaneous expenses far exceeded her "needs". On cross-examination she admitted that she could live on $200,000 per annum. In cases of this kind, the Courts often make use of a computer programme to calculate the lump sum needed to produce the requisite annual level of spending power over the applicant's lifetime allowing for inflation and making certain assumptions about the yield from investments and other factors. (See *F v F (Duxbury Calculations: Rate of Return* (1996) 1 FLR 833). The Court finds as a fact that the figure of $200,000 per annum should be sufficient for the wife to meet her needs. This figure will be borne in mind when arriving at a lump settlement.

In dealing with the post-marital accrual, Mr. Mostyn QC submits:

> "Lord Nicholls does not refer to post-matrimonial assets, which is unsurprising given that the ability to accrue such assets can almost invariably be traceable to the utilization of marital assets or the ability to exploit earning capacity developed during the marriage. It is impossible, in this and every other case, to determine the extent to which an asset, which is accrued after separation owes its origin to one or other, or both, of these factors. In this case it is made doubly impossible since the post separation accrual of assets has been largely funded by H from income earned or work done before separation."

He goes on:

> "Even if some part of their consideration was supplied from truly post separation income, H was only able to make it by virtue of an earning capacity developed during the marriage. Not one of these assets can be said to come from a source 'wholly external to the marriage'."

Mr. Singleton QC, counters his argument by saying that the husband was already a qualified accountant when he got married earning approximately $50,000 per annum. It may not have been a hugely special contribution at that time but he submits that Mr. Wight brought his qualifications into the marriage, which enabled him to make this special contribution. It is a question of fact for the Court to decide whether the income was earned during the marriage.

Mr. Singleton QC also makes the point that in *White* where there was an unequal division, the House of Lords dismissed the appeal of both parties. Mrs. White was given 40% of the assets after a marriage of over 30 years which the parties had funded together throughout. He submits that this has been increasingly lost sight of in the Courts of whom it has been said, that the community of property system has been imposed by judicial decision.

At the conclusion of every case, the Court must look at the overall settlement to decide on the fairness of the settlement. Mr. Mostyn QC, agrees that there must be a cut off point to the assets to be included after separation. In another context in *GW v RW* [2003] 2 FLR, Mr. Mostyn QC sitting as a Deputy Judge of the High Court of England and Wales said at paragraph 34:

> "By the same token I am of the view that it is equally unreal to characterize the 18 month period of statement of estrangement, conducted under the umbrella of a divorce petition which alleged the irretrievable breakdown of the marriage, as counting as part of 'the duration of the marriage'. In my judgment a period of estrangement where there has been a formal separation should not count as part of the duration of the marriage."

I agree that the period of separation should not be counted as a period of marriage. Matrimonial property is 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. The land that the husband had before marriage was put into the marriage and therefore in my view becomes matrimonial property.

The parties total assets are as attached in Schedule A (matrimonial and non-matrimonial). Below is a list of the properties claimed as non-matrimonial having been acquired after the date of separation or which cannot be evaluated as it is a future income yet to come:

(i) Hurricane Alan, a horse – purchased 10 months after separation.

(ii) Cypress Pointe, the profit from the development, not the land that he purchased during the marriage.

(iii) Kaibo – completed 5 months after separation.

(iv) Brittannia – purchased 2 months after separation.

(v) Bronxville – purchased 5 months after separation.

(vi) 2 Porsche motor cars – purchased 7 and 9 months after separation.

(vii) The Husband's capital and current accounts with Deloitte.

(viii) Bank accounts commenced after separation.

The marriage ended in 2002. At the time of the hearing, the parties had been separated two months short of three years. Some of the properties were bought shortly after the separation. This is one of the issues that has to be addressed by this Court. The other issue is the question of the values attributable to the properties. Unless, the claiming spouse can trace the assets acquired after the marriage, directly to the earnings 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 cutoff point. I am not persuaded that assets purchased after the marriage, with income earned during the marriage, can be said to be non-matrimonial property. I must also bear in mind that some of the assets are illiquid and risk-laden assets. The husband urges that these assets, if they are held by the Court to be matrimonial assets should be discounted.

In *GW v RW* (supra) it was said:

> "Discounts comes up in a number of areas when the valuation of assets is undertaken in ancillary relief proceedings. They arise in relation to the

> valuation of minority shareholdings in private companies; in the valuation of substantial blocks of publicly quoted shares, where it is said that a sale would drive down the price; and, as here, where it is said that the assets are illiquid, risky or deferred. Although the technique has a respectable pedigree it must be recognized that it is one that is devoid of any science and is never more than a guess by the expert valuer of what lesser price than face value, a hypothetical purchaser would pay for the asset in question. And it is almost invariably the case that the expert will align his guess with his client's interest, so that expert for the owning party will always suggest a higher discount than the expert for the claiming party."

Here it is impossible to make any decision discounting some of these assets that are deferred profit, or risky as this court is not equipped to decide on the fair discount to be applied. In those circumstances the question of undertaking a *Wells* distribution, as it is called can be considered. In the case of *Wells v Wells* [2002] EWCA (Civ) 476 at page 97, it was held:

> "The judge at first instance had failed to identify the husband's needs, and had erred in awarding the wife the bulk of those assets which were readily saleable at stable prices, leaving the husband with all those assets which were substantially more illiquid and risk laden. Separation of the family should not have terminated the sharing of the results of the company's performance; such sharing could have been achieved by a fair division of both the copper-bottomed assets and the illiquid and risk-laden assets. A substantial increase in the

> wife's shareholding in the company would have enabled her to participate in future prosperity by dividend receipts or capital receipts on sale or a cessation of trade, whereas if profitability were not recovered both parties would have shared a marked reduction in standards of living. If, however, the husband was to carry all the risk and all the disadvantage of the business, the judge's allocation of the risk-free realizable assets was not fair. The judge had not fairly identified and provided for the husband's needs, particularly income needs."

In this case, of course, there are ample monies to undertake and satisfy the requirements and needs of both parties. The total asset value of the estate is over $20 million dollars (matrimonial and non-matrimonial).

The list below includes the properties which I consider are matrimonial assets, with the values accepted by the Court. Those which were held not to be matrimonial assets will be dealt with below each set of items.

Nelson Quay	The parties do not take any issue as to Nelson Quay, which is to go to the wife.	$2,042,500
Breathless Hush	The wife wishes the property to be retained in the family. The husband wishes it to be sold. I am fully cognizant of the fact that the husband needs liquid cash to make any source of settlement and therefore, it is ordered that Breathless Hush be sold and the monies divided.	$1,543,500

Kimpton House	The value of the property is $686,000 (i.e. the 50% shareholdings of husband and wife). They own it with his sister and brother-in-law. The husband asks this Court to value it at the lesser value because it is unsaleable. I disagree. The husband can purchase the share from the wife if he so desire.	$686,000
Sunrise Landing, Block 27C	There is no issue as to this value.	$272,121
Kaibo apartment	The husband submits that this is not matrimonial property, having been purchased after the marriage. I disagree. It was so soon after the marriage that it can be said that it was from income earned during the marriage.	$171,000
Tanglewylde Ave, New York apartments	The husband purchased it after the marriage but once again it was so soon thereafter that it can be said that it can be traceable to the income earned by the husband.	$215,600
627 Britannia Villas	Purchased at $800,000 with a mortgage of $477,262 less selling cost is valued at $285,738. Once again, the husband submits that this should not be matrimonial property became it was purchased soon after for him with the intention of being his alone. But, I believe it is probable that he purchased it from income earned during the marriage and I therefore, allow it as matrimonial property.	$285,738

Little White Investment Ltd	There is no issue as to this.	$475,000

Second Section – Chattels

Contents – Nelson Quay	$133,000.00
Contents – Breathless Hush	$75,000.00
Contents – Kaibo	$15,000.00
Contents – Britinnia	$100,000.00
Contents – New York apartment	$15,000.00
Donzi Boat 27"	$50,000.00
Audi A8	$18,000.00
VW Golf	$6,000.00
BMW X5	$73,000.00
Mini	$6,200.00

The parties will notice that I have not allowed the horses, the Porsche Cayeenne and the Porsche Boxster cars, as part of the matrimonial property. As far as the horses are concerned, the parties sold all the horses that they owned jointly soon after the separation, and put the money into the banks. Subsequently, the husband repurchased some of the horses that he wished to retain for himself and therefore I will not give the wife the benefit of the horses twice. As far as the Cayeene and Boxster Porsche are concerned, I am of the view that the husband could easily have been made these two

purchases with the income earned after the marriage. Therefore, I do not allow these two as matrimonial property. There was a boat, which the parties conceded was not matrimonial property.

Bank Accounts

Scotia Bank # 7000091	$288,357.00
CNB #02101263	$4131.00
CNB #02301918	$126,010.00
CNB# 01103623	In debt ($3,635.00)
Lloyds # 00380440	$27,079.00
Wetherbys #210722W GB acc.	$141,088.00
Barclays #50729140	$10.00
Sun Trust #254011694901	$8,370.00

I have allowed most of the bank accounts as matrimonial property, save and except for Scotia Bank #7000301 and Scotia Bank #70000273, Lloyd's account number 11167360 and Wetherby's Account # 570180 and Citibank #0072276700 all commenced by the husband after the separation. I am not satisfied that the accounts are necessarily funded with monies earned during the period of marriage, as they are very small amounts and could easily have been started with income earned after the marriage.

Investment Portfolio

Clariden investment portfolio	$207,259.00
Barclays Sterling Bond Fund	$83, 368.00
Barclays Equities Fund	$147,001.00
Zurich Comos savings policies	$68,762.00

Monies Owed

Peter Wight	$25,000.00
Matthew Wight (Son)	$26,825.00
Cayman Financial Review	$64.425.00
Liz Whitelock	$12,902.00
Gloria McGonnell	$75,000.00

One item has not been allowed. The debt to Lisa Shemwell.

Deloitte

(ii) Capital account	$1,738.345.00

The next item that the Court needs to address is the Deloitte and Touche current account. This account funded the parties for some three years during separation, and it cannot be said that the monies in there now were all earned during the marriage. I therefore do not allow it as matrimonial property.

The husband submits that I should not allow the capital account either. I disagree. This account was funded during the marriage from the income earned during the marriage. Both parties benefited from that account and therefore it is part of the matrimonial property.

Mamid and other properties

One Capital Place – 21.74% interest	$714,739.00
CRABCLAWS Ltd. – 14.29% interest	$186,348.00
Sunrise Landing Ltd. – 10% interest	$554,620.00
Frank Sound Properties – 10% interest	$72,704.00
UBU Ltd. Mamid's 25% interest	$1,957,966
Mamid CNB acc. 2302972	$146,403.00
Mamid Scotiabank CD acc. 1068210	$540,424.00
Mamid Overseas Asset Management Fund	$586,838.00
Mamid Scotiabank CD acc. 1108278	$1,749,668.00
Mamid – $157,855 Kindred dividend received	0
Mamid – debt owed by Sunrise Landing Ltd.	$353,060.00

The properties owned by Mamid are One Capital Place, CRABCLAWS Ltd, Sunrise Landing Ltd., interests in Frank Sound Properties Ltd and a 25% interest in UBW Ltd. Sunrise Landing Ltd is subject to speculation and it is

a risk investment. Therefore it is my view that it is only equitable that the wife retains her shares in there till the time for completion of the project and payout. The same applies to the interest in Frank Sound Properties Ltd.

Business interests

Jacques Scott (20,000 shares)	$53,722.00
Atlantis (6000 Class A shares	$6,000.00
Atlantis US $54,000 Class A Debt certificate	$54,000.00
Holiday Property bond	$31,500.00
Cayman Financial Review (50 shares of 100)	$0
Sunrise Golf Centre Ltd. (10 shares of 100)	$110,000.00
Monies owed by Sunrise Golf Centre to H	$55,934.00

Other Interest

Unite Investment Ltd.	$19,032.00
Interest in MIL Investments Ltd.	$20,000.00
Cypress Point land only	$600,000.00

The issue now arises as to Cypress Point. The husband contends that Cypress Point is still undeveloped. It is a risky investment and it is in his name. He is unlikely to get any monies out of the property for perhaps another 10 years. Mr. Mostyn QC submits, that the land that the husband

invested in the property is what gives him the benefit of the profit in years to come. I disagree. That profit will be earned in the future. It is a speculative value that the Court can best put on it and in the circumstances, I agree with Mr. Singleton QC that the matrimonial property at the time of separation must be the value of the land and no more. The Court bears in mind in making this order that the shares are in the husband's name alone, that the profitability and the success of the scheme may depend on several variables, including the husband injecting more capital into it. After the date of separation, the wife will have made no contribution to the profitability of the scheme. In those circumstances, she is only entitled to have the value of the land alone, which I accept at $600,000.00.

Pensions

Chambers of Commerce plan OSP4/0031	$35,965.00
Friends Provident Guernsey 127336349	$53,938.00
Friends Provident Guernsey 12720408-17	$4,575.00

The next item which the court needs to address is the question of the Deloitte Pension. Under normal circumstances, this Court would order that the pension is matrimonial property. However, Mr. Singleton QC, makes a

persuasive argument, in that this particular pension is only earned ten years prior to retirement. The husband has another six years to retire. At the date of separation it involved one year into the computation of the pension. The pension depends on the future income of the husband and many many variables. It is, of course, right to say that the Court needs to assess certain issues when dealing with ancillary relief, but as this particular pension comes into being only ten years prior to retirement and a wife would have been cohabiting with the husband for only the first year of that contribution, I hold that she is not entitled.

Liabilities

CNB MasterCard	($517.00)
Scotiabank Mastercard	($3,702.00)
American Express	($19,076)
Lloyd's TSB Mastercard	

Finally, in this section I need to address the question of Mr. Mostyn QC's submission that the Court needs to look at the future potential income of the husband. I disagree. It is my view that the Court in this jurisdiction needs to look at that source only, if there are not sufficient funds to meet the wife's requirements and needs. I simply do not agree that I need to step into the new world and look at the husband's income, as part of a tangible asset. It

cannot be said that he did not bring his professional qualification into the marriage. It cannot be said that the wife's requirement cannot be met and in those circumstances, I do not feel, I should look at the husband's future income when assessing a fair settlement.

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. Mostyn QC, and Mr. Singleton QC, 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 centers 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 liquidations 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. Mr. Mostyn QC, submits that for all practical purposes, the special contributor is now an extinct creature. In other words, because of *Lambert* the threshold is so high that very rarely does one or can one hold that a contribution can be special. He submits that by holding that one party's contribution is greater than the others, one is denigrating the other party who is usually the wife. I do not agree. Both could have done no more but one party could have made an extra special contribution, which requires the Court in the interest of fairness to acknowledge that. The wife is in this case was not qualified to do more than

earn a modest income, but she was the backbone of the family. It is my view that this is why the Court has a discretion as to the percentage to be given to a special contributor. Mr. Singleton QC submits, that the husband did in fact contribute sufficiently to permit me to consider a departure from equality. The question is, does this husband given the factual basis of this case meet the criteria? I bear in mind the words of Thorpe LJ in *White v White* when he said:

> "Having now heard submissions, both full and reasoned, against the concept of special contribution save in the most exceptional and limited circumstance, the danger of gender discrimination resulting from a finding of special financial contribution is plain. If all that is regquired is the scale of the breadwinner's success then discrimination is almost bound to follow since there is no equal opportunity for the homemaker to demonstrate the scale of her comparable success."

And then he went on:

> "It would be both futile and dangerous to even attempt to speculate on the boundaries of the exceptional. In the course of argument I suggested that it might more readily be found in the generating force behind the fortune rather than in the mere product itself. A number of hypothetical examples were canvassed ranging from the creative artist via the superstar footballer to the

> inventive genius who not only creates but also develops some universal aid or prescription. All that seems to me to be more safely left to future case by case exploration."

Thorpe J therefore left it to the discretion of the judge on 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 J did not suggest any guidelines for a percentage basis, if the Court held that there was a special contribution. I have no 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. However, it must be remembered that the wife nor the husband is to benefit from the assets at Sunrise Landing and Frank Sound Properties till the completion of the project, at which time 45:55 will be the split between the parties.

There are enough liquid assets for the wife to receive a lump sum immediately. In monetary terms, the wife will therefore receive $7,415898.00 together with 45% of the proceeds of Sunrise Landing and Frank Sound Properties which is deferred.

Custody of the Minor Child

I now come to the question of custody, care and control. Although the husband wished joint custody, care and control, he has agreed to let his wife have care and control. Therefore it now leaves me to deal with the question of maintenance for the child, Claire. The child is at boarding school and will be there for a few years to come. I have a list of the wife's requirements for the child and I believe the amount being suggested is excessive. The wife wants in the region of $36,510US per annum. I feel that the husband's offer of US$15,000 per annum is a little under what I would consider reasonable.

I award maintenance of US$20,000 per annum for the child, in addition to which the husband is to pay the school fees until the child completes Tertiary education. As I have divided the assets of the matrimonial home and the wife has received a substantial settlement I believe it is only fair that the wife is to pay the child's extra-curricular activities and anything over and above that which is required as clothing, which she cannot afford on the US$20,000 per annum. Further, the child's airfares are to be shared equally by the parties and the husband is to be responsible for the medical, dental and optical expenses, as covered by his insurance. Anything over and above the insurance policy, the parties are to share equally. I also order that the wife must consult the husband on major medical and educational steps to be taken in the child's life.

Access

The husband's proposal as to access is considered reasonable and I therefore order as follows:

(a) half Christmas holidays

(b) half Easter holidays and half summer holidays with the father. In the event that the father is unable to

accommodate this access, he is to give the mother at least 3 weeks prior notice.

Finally, I come to the question of costs. It is my view that neither party is guilty of misconduct. The husband may be slightly guilty of delay but the complicated issues which he needed to address as far as the confidential relations information was concerned, may have contributed to the delay. I am of the view that neither party has come from this litigation with such great success that an award of costs should be made. I therefore make no order as to costs.

Dated this 23rd day of November 2005

Judge of the Grand Court

GRAND COURT CAYMAN ISLANDS