

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
 2 **FAMILY DIVISION**

3 **CAUSE NO. FAM 177 OF 2013 (RMJ)**

4
 5 **SC**

6 **PETITIONER**

7 **AND:**

8 **SR**

9 **RESPONDENT**

10
 11 **Appearances:** **Ms Vanessa Allard of Brooks & Brooks for the Petitioners**

12
 13 **The Respondent in Person**

14
 15 **Before:** **The Hon. Mr. Justice Robin McMillan, IN CHAMBERS**

16
 17 **Heard:** **31st May and 14th July 2016**

18
 19 **Draft Judgment**

20 **Circulated:** **4th Oct 2016**

21
 22 **Judgment Delivered:** **4th Nov 2016**



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 24
 25 **Preamble**

26 *This Judgment is distributed on the strict understanding that in any report of this kind no*
 27 *persons other than the counsel or the attorneys instructing them (and other persons*
 28 *identified by name in Judgment itself) may be identified by name or location and, in*
 29 *particular, the anonymity of the child and the adult members of the family must be*
 30 *strictly preserved.*

31
 32 **HEADNOTE**

33
 34 *The division of Matrimonial Property and the principle of a clean break- The relevant aspects of*
 35 *need, compensation and sharing- The equitable nature of Notional Occupational Rent –The*
 36 *appropriate division of pension contributions paid during the course of the marriage.*

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JUDGMENT

4 Introduction

5 1. The Petitioner's application is for a final determination of ancillary matters.

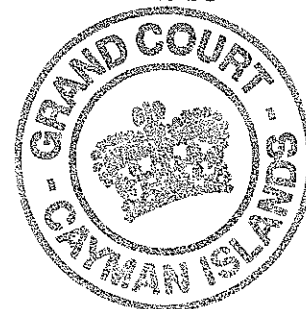
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7 2. The parties have one relevant child and there are assets that the Court is requested to
8 consider in order to make a final determination as to the respective interests of the
9 parties. The Petitioner's position is that, of the assets, the property at Secret Gardens,
10 George Town, Grand Cayman, registered in the joint names of the parties, and along with
11 the relevant portion of a Roth Account her local pension, are matrimonial assets are and
12 therefore subject to division along with a Roth IRS Account. The Respondent however
13 disputes the scope of the assets and their apportionment.

14
15 3. The Petitioner seeks an Order as follows:-

16
17 (a) A declaration that her Merill Lynch and Wells Fargo accounts in the USA are not
18 marital assets and therefore not subject to division.

19 (b) That each party is entitled to 50% of the net equity in the property located at Secret
20 Gardens, Fairbanks Road, George Town, Grand Cayman.

21 (c) That the Respondent be ordered to pay "*notional rent*" in respect of his sole
22 occupation of the former matrimonial home and that this sum for notional rent be



1 set off against any sums ordered due and payable to him by the Petitioner in
2 particular, the value of his share in the net equity of the former matrimonial home.

3 (d) That the award of costs (and the sum for costs of CI \$39,145.50 taxed by the Taxing
4 Officer) per Order dated November, 2015, be set off against any sums ordered due
5 and payable by the Petitioner herein.

6 (e) That the Respondent shall pay towards the Petitioner's legal costs for the Florida
7 legal proceedings, in the sum of USD \$13,000.

8 (f) That the relevant commuted portion of each party's pension be set off against the
9 other.

10 (g) That any relevant commuted portion of the Petitioner's local pension be set off
11 against the award of costs made against the Respondent, and

12 (h) That each party keeps the benefit of any and all bank accounts registered in his or her
13 name.

14 (i) That the Petitioner is entitled to $\frac{1}{2}$ the value of the Respondent's motor vehicle in the
15 USA.

16 (j) That each party keep any other motor vehicle registered in their name.

17 (k) That the Petitioner be allowed to travel with the minor child out of the jurisdiction,
18 for a period of two weeks, in July, 2016.

19 (l) That there shall be a joint residence Order in favour of both the Petitioner and the
20 Respondent regarding their child.

21 (m) The child shall spend his time with his parents in a 2-weekly cycle as follows:



1 Week 1: With the Respondent from Saturday morning at 11:30 am until
 2 Wednesday morning when the Respondent will drop the child off at Day Care/School.
 3 With the Petitioner from Wednesday afternoon when she will collect the child from
 4 Day Care/school, until Monday morning when she will drop the child off to Day
 5 Care/School.

6 Week 2: With the Respondent from Monday afternoon after Day Care/School,
 7 until Wednesday morning when the Respondent will drop the child off to Day
 8 Care/School.

9 With the Petitioner from Wednesday afternoon when she will collect the child from
 10 Day Care until Saturday morning at 11:30 am, when she will drop the child off with
 11 the Respondent.

12 (n) In the holiday periods, the child's time shall be shared equally between his parents.

13 (o) In addition to the above arrangements, The child's shall spend the following "special
 14 days" with his parents, as set out below:

- 15 (i) Canadian Thanksgiving: the child to be with the Respondent
- 16 (ii) American Thanksgiving: the child to be with the Petitioner
- 17 (iii) Christmas Eve: the child to be with the Petitioner
- 18 (iv) Christmas Day: the child to be with the Respondent
- 19 (v) New Year's Eve: the child to be with the Respondent
- 20 (vi) New Year's Day: the child to be with the Petitioner
- 21 (vii) The child's birthday Both parents to have time with the child
- 22 (viii) Mother's Day: the child to be with the Petitioner



- 1 (ix) Father's Day: the child to be with the Respondent
- 2 (x) Additional days when the child will be with the Respondent: March 26th,
3 October 10th, November 8th and Divali (2 days).
- 4 (xi) Additional days when the child will be with the Petitioner: the Easter break
5 period (Good Friday to Easter Monday inclusive) and 1 other day of her
6 choosing each year).
- 7 (p) There shall be other arrangements for time spent by the child with the parties, as can
8 be agreed.
- 9 (q) The child is to remain in Day Care.
- 10 (r) That the Respondent father shall pay 50% of the costs of the child's school fees,
11 directly to the school.
- 12 (s) A specific issue Order, that the Petitioner mother is to seek to enroll the child in a
13 school within the Cayman Islands, as she deems appropriate. The child shall attend
14 the school in which he is appropriately enrolled, in due course.
- 15 (t) A specific issue order that the Respondent father shall not be entitled to participate
16 in the process of choosing the school to enroll the child.
- 17 (u) That once the child is enrolled in school, the Respondent father shall pay ½ of the
18 child's school fees.
- 19 (v) That the Respondent father shall be responsible for ½ of the minor child's medical,
20 dental and optical expenses.
- 21 (w) The Prohibited Steps Order made against the Petitioner, shall be discharged.



1 (x) The Prohibited Steps Order made against the Respondent shall remain in place. The
2 Respondent is prohibited from removing the child from the Cayman Islands without
3 the express written consent of the Petitioner, or in the absence thereof, without
4 further Order of this Court.

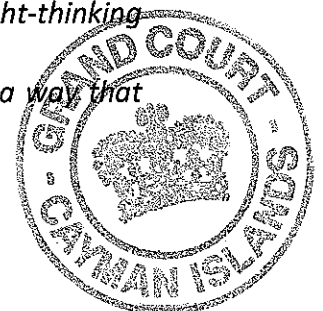
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6 4. In addition, it appears that the Respondent disagrees with the Petitioner as to her
7 position in relation to (a) what assets are/are not marital assets (b) the distribution of the
8 marital assets and (c) a further request for maintenance contribution from the
9 Respondent towards the child's school expenses.

10
11 5. The parties were married on 26 March 2010 and by December 2012 according to the
12 Petitioner, or possibly until around July 2013, according to the Respondent, they lived
13 together in the matrimonial home in George Town, Grand Cayman.

14
15 6. On 26 August 2013 the Petitioner filed her Petition for Dissolution of the Marriage on the
16 grounds of the Respondent's unreasonable behaviour.

17
18 7. The Petition was contested by the Respondent. In a lengthy Judgment dated 10th August
19 2015, Mr. Justice Williams concluded at paragraph 86 that the Petition was proved. The
20 learned Judge also stated at paragraph 86:

21
22 *"From the evidence, the wife has satisfied me at this hearing that any right-thinking*
23 *person would come to the conclusion that the husband has behaved in such a way that*



1 *she cannot not be reasonably expected to live with him, especially when having regard to*
2 *the impact of his conduct on her. Having established this, when considering the history of*
3 *this marriage and the characteristics of the parties, I am satisfied that this marriage has*
4 *irretrievably broken down."*

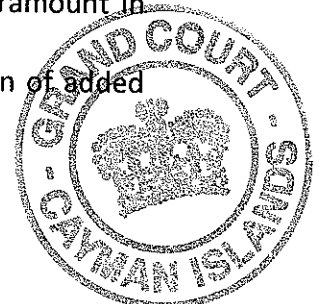
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6 8. It is clear that relations between the parties on an ongoing basis present challenges both
7 for the Court and for the parties themselves.

8
9 9. The difficulties of the relationship have been compounded by an incident in July 2013,
10 when the Respondent unilaterally took the child with him to Florida without returning.
11 Subsequent legal steps by the Petitioner both in Florida and the Cayman Islands were
12 taken to rectify the situation, which was in due course rectified.

13
14 10. By Order of Mr. Justice Williams the learned Judge directed that the child be returned to
15 the Cayman Islands and that the Respondent facilitate this return. This is reflected in the
16 subsequent Judgment of the Court dated 9th September 2013, at paragraph 43.

17
18 11. Notwithstanding this troubled history, it is necessary for the Court to decide the ancillary
19 matters which remain outstanding on the basis of the current legal principles as applied
20 to the facts and circumstances of this case, and on that basis only.

21 12. The Court notes that while the best interests of the child are of course paramount in
22 these matters, that does not appear necessarily to constitute a consideration of added



1 complexity in the instant case, where the child resides with the Petitioner and
2 Respondent and the contact is shared. In approaching this matter the Court bears in
3 mind the relevant terms of section 19 & 21 of the Matrimonial Causes Law (2005
4 Revision).

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6 **The General Principles of Law**

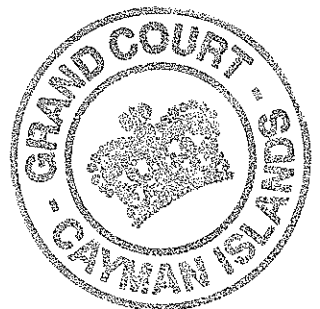
7 13. The Court of Appeal in the case of *McTaggart v. McTaggart, 2011 (2) CILR 366*, states at
8 paragraph 40 that in relation to the Court exercising its ancillary powers that are three
9 strands: need, compensation and sharing.

10
11 14. In terms of approaching what are found to be matrimonial assets, there is a presumption
12 of equality although having regard to equitable principles in relation to need and *inter*
13 *alia* to compensation this presumption may be displaced. Likewise in appropriate
14 equitable circumstances, redistribution of non-matrimonial assets may become
15 appropriate in order to take account once again of need, compensation and sharing.

16
17 15. In the instant case the Respondent claims that he is entitled to such a variation in his
18 favour.

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20 16. Therefore before proceeding further it is first necessary to consider whether the
21 Respondent's claim as to this particular issue is merited.

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23 **The Respondent's Evidence**



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17. The Respondent's evidence as to ancillary financial matters is set out at paragraphs 18 - 24 of his First Affidavit re financial provision dated 23 May 2016. He states as follows:

“Statement of Means:

18. In support of the financial provision application, I submit this updated Statement of Means.

19. I am currently employed with Radio Cayman and my monthly salary is \$3311. My mother has been assisting with monthly cash shortages.

My Outgoings:

Mortgage/Strata – Approx. \$1800

CUC - \$175

Water - \$80

Telephone - \$100

Food - \$550

Gas - \$50

Credit Card - \$ 350

Life Insurance - \$215

Car Insurance - \$150

Total - \$3470

20. In order to avoid further litigation costs from the strata and bank for the petitioner and myself, I have had to negotiate a high strata payment because of her refusal to pay the back fees which she is responsible for running up.



1 *In my 5th Affidavit and submissions created with the assistance of my former attorney*
2 *Connor Fee, I laid out the financial position. In subsequent Affidavits I have submitted*
3 *further evidence to support these claims, namely a monthly budget created by the*
4 *petitioner which indicates our monthly outgoings when we were living together which*
5 *show that we were saving a significant amount of monthly funds. Further evidence via a*
6 *tabulation of the petitioner's bank withdrawals from her evidence which illustrate that*
7 *approximately \$300,000 is missing from our marital assets. I ask that the court draw*
8 *inference that the petitioner is hoarding these funds in an undisclosed account.*

9 *21. The petitioner has claimed that these funds were spent on household expenses, however*
10 *has steadfastly refused to provide any receipts to support this claim. To reiterate from*
11 *previous affidavits, no upgrades were made to our home and the amount of missing*
12 *funds is greater than the value of our home.*

13 *22. Justice Williams makes note of this above evidence in his judgment that this should be*
14 *taken into account in the final ancillaries hearing.*

15
16 ***To reiterate my position including the above referenced evidence, I am seeking:***

17 *a. Equal share in all property, bank accounts, investments, pension assets built up*
18 *during the course of the parties' relationship from April 2008 until September*
19 *2013.*

20 *b. I ask that the court draw inference that the petitioner is hoarding significant cash*
21 *assets in an undisclosed account, take consideration of the significant and*



1 unexplained cash withdrawals of close to \$300,000, to ensure that I am not
2 prejudiced in the division of assets.

3 c. I am willing to be flexible on who retains the marital home, subject to the other's
4 50% interest being taken into account.

5 d. A maintenance order for \$1000 per month from the petitioner.

6 e. I believe the capital split is a fair one, and in line with the law as set out in the
7 submissions filed by my former attorney Mr. Connor Fee.

8 f. In respect of maintenance, I have submitted a summons for the permanent
9 removal of [the child], and should this be granted, the maintenance is to
10 supplement our living expenses in the USA. This represents less than 20% of the
11 petitioner's monthly salary.

12 Should the petitioner pay the maintenance of CI\$1000 per month, she will still
13 have a monthly income of CI\$4200."

14 18. The Respondent's principal source of complaint is that the Respondent has secretly
15 withdrawn a sum of \$300,000 from the bank, and that this constitutes missing
16 matrimonial assets. There is no evidence before this Court of this sum being missing
17 other than a basic assertion that this has happened, and the Court finds no reason to
18 take this factor into account.

19 19. The Respondent also disputes, for the purposes of calculation, the duration of time
20 during where matrimonial assets were acquired and retained. He claims that the parties'
21 marital relationship ended no sooner than July 2013, or perhaps later. In this regard
22 having considered the evidence of both the Petitioner and the Respondent the Court



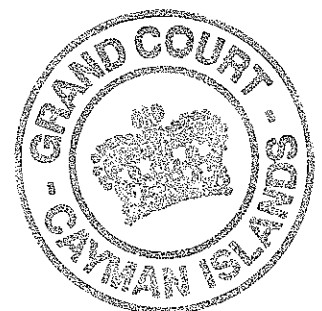
1 finds that as a matter of fact the relationship as such did end in December 2012,
2 notwithstanding any subsequent attempts up to August 2013 until the Petition was filed
3 to repair the relationship.

4 20. In addition, because as the Court understands it the Respondent is in more modest
5 circumstances that the Petitioner with regards to his means the Respondent now
6 contends that in terms of need, compensation and sharing the correct apportionment of
7 all matrimonial assets should be upon a basis of 70:30 in his favour.

8 21. The Court finds that time is no proper or conceivable basis for approaching the matter in
9 this way.

10 22. Far from giving each party an equal start on the road to independent living, what the
11 Respondent proposes would expressly and unjustifiably contradict the fundamental
12 principle of a clean break taking place. For the same reason, the Court rejects his
13 submission as to him being awarded maintenance.

14 23. This was a short marriage and although during the course of it the Respondent spent
15 some time at home while the Petitioner worked, I accept the Petitioner's evidence that
16 this was due to his temporary unemployment rather than due to a conscious plan that he
17 should function as the "*home maker*". Correspondingly as the Petitioner argues and as
18 the Court accepts there is no evidence proved on a balance of probabilities that this
19 period at home has enhanced the Petitioner's earning capacity or that it diminished the
20 Respondent's earning capacity.



1 24. Therefore no exceptional circumstances to support the Respondent's contentions on this
2 specific aspect have been made out, so as to justify a division of all assets in 70:30
3 proportions, or indeed of matrimonial assets other than in equal proportions.

4 25. Having addressed this preliminary issue, the Court now turns to consider what is or is not
5 matrimonial property, and how the matrimonial property should be distributed in equal
6 shares. This primarily involves an analysis of the Petitioner's holdings, as explained in the
7 evidence.

8
9 **The Evidence of the Petitioner**

10 26. The Petitioner is employed as a Planning Officer at the Planning Department of the
11 Cayman Islands Government with a salary which is a little over CI\$ 5,000 per month .

12 27. The history of these proceedings has been extremely contentious, and in the course of
13 the time the Petitioner has adduced a great deal of affidavit evidence.

14
15
16 28. In terms of the Petitioner's relatively more recent evidence, the Court takes note of
17 paragraphs 3-18 of the Petitioner's Eighteenth Affidavit dated 7 March 2016, as follows:

18 **"My Present Financial Circumstances**

19 3. *That I remain employed at the Planning Department, Cayman Islands*
20 *Government, with the same salary as previously declared by me.*

21 4. *That my expenses, are, more or less the same, save and except, that as I have*
22 *previously made clear in prior affidavits that I would not be able to indefinitely*



1 *pay the mortgage for the house, I have now simply stopped paying. That as far as*
 2 *I am aware, the mortgage remains in arrears, and has been so for some time. As*
 3 *well, the strata are in arrears, as I have also simply stopped paying on that.*

4 5. *That as far as I know, the Respondent has started making payments towards the*
 5 *mortgage and strata fees, however I do not have full details on the payments.*

6 6. *That I have not received any legal papers from the bank, so I do not believe that*
 7 *they have taken formal steps to foreclose on the property.*

8 7. *That I am unable to say whether the Respondent has received any such notice or*
 9 *other legal papers of any kind. If he has, he has not told me.*

10 8. *That I am setting out below, a list of my expenses, for the benefit of this*
 11 *Honorable Court:*

12 *Rent: \$850*

13 *Utilities: \$150*

14 *Daycare: \$650*

15 *Credit Cards: \$800*

16 *Attorney: \$1000*

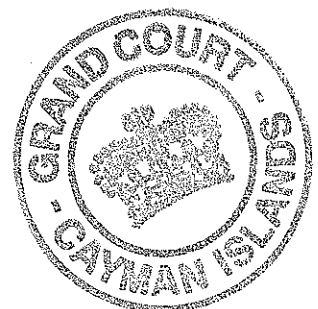
17 *Mom Loan: \$800*

18 *Insurance: \$120*

19 *Phone/Internet: \$75*

20 *Gas/Groceries: \$400*

21



1 9. *That I am also attaching, as many receipts verifying these expenses that I can*
2 *find, along with copies of some of my recent salary slips, and marking them "CS*
3 *1".*

4 10. *That based on an Order made by Mr. Justice Williams back in late 2014, when the*
5 *respondent claimed that his salary could not support that then order against him*
6 *to assist with the child's day care fees, the maintenance order was discharged*
7 *against him.*

8 11. *That as a result, since that time, I have borne the full brunt of the expenses for*
9 *the child's day care expenses.*

10
11 **Respondent's Present Employment Circumstances**

12 12. *That the Respondent, has, since some time in or about September, 2015, has*
13 *been employed with the Cayman Islands Government, in the position as Account*
14 *Executive with Radio Cayman.*

15 13. *That although I have asked him to start helping out with [the child's] day care*
16 *expenses, he has steadfastly refused to do so. I have asked several times. Please*
17 *see Exhibit attached for copies of letters between us on the issue as "CS 2".*

18 14. *That being a government employee myself, and since I have no other way of*
19 *knowing what his likely salary is, (as he will most definitely not tell me), I did*
20 *some checking on the government portal/website, and determined, that for his*
21 *position, the likely pay grade is between CI\$39,732 and CI \$53,436 per year, or*

1 *between CI\$ 3,311 and CI\$4,453 per month based on the attached information I*
2 *have downloaded, as "CS 3".*

3 15. *That it is clear therefore, that he has more than enough capacity to assist with*
4 *the child's day care expense.*

5 16. *That I need the help.*

6 17. *The Respondent as a parent has a legal and moral responsibility to assist with the*
7 *child's expenses, yet he is refusing to do so.*

8 18. *That I am therefore asking the Honorable Court do make an Order, as it did*
9 *before, that he assist with payment of ½ of the child's school fees, starting*
10 *immediately."*

11 29. In the course of cross- examination the Petitioner claimed that the marriage broke down
12 in late 2012, and that the Respondent "*deliberately failed to find work*".

13 30. Notwithstanding this the Respondent asserts that there was never a unilateral decision
14 made on his part not to work: he resided at home to provide home-schooling for the
15 child and that on this issue, where they had previously been agreed, the Petitioner
16 subsequently changed her mind in mid-2013.

17 31. On these specific matters as to when the marriage broke down and its background, the
18 Court finds on a balance of probabilities that it accepts and believes the evidence of the
19 Petitioner, as indeed the Court has previously indicated.

20 32. A further point of note is that school fees for the child are now in the sum of CI\$ 750 per
21 month, and the only child maintenance which she is seeking is for half of that ongoing
22 monthly sum.



1 **The Matrimonial Assets**

2

3 33. The Court has received from the respective parties detailed and extensive submissions

4 and evidence in relation to a varied group of potential matrimonial assets. It is

5 disappointing that these assets, in keeping with many other aspects of this case, give

6 rise to such irreconcilable and extensive disagreements. The Court will now set out the

7 position as it pertains to each asset, and the conclusions at which the Court has

8 respectively arrived. As the Court had previously indicated, it accepts and applies the

9 principles of equality of shares.

10 **Matrimonial Home**

11 A. The former matrimonial home is located at Secret Gardens, George Town, Grand

12 Cayman. Subsequent to the Court's Draft Judgment being circulated, it has been

13 brought to the attention of this Court that the matrimonial home is now subject to an

14 offer to purchase, agreed to in the sum of C.I \$180,000. The details are set out in the

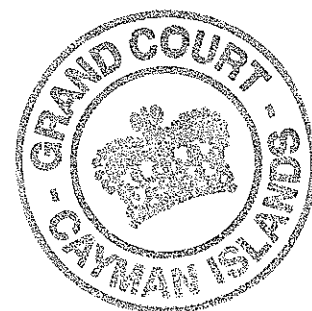
15 Twenty-First Affidavit of the Petitioner dated 13th October 2016, the contents of which

16 the Court accepts as true. Following payment of the outstanding balance on the current

17 mortgage of CI \$161,929.72 and of the balance owed on applicable strata fees the net

18 proceeds will be C.I \$755.34. The half share of each due to the Petitioner and the

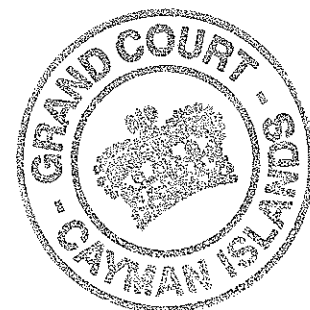
19 Respondent is C.I \$377.67 respectively.



1 **Notional Occupational Rent**

2 B. Following the departure of the Petitioner from the matrimonial home, the property has
3 subsequently been occupied up to at least last June 2016 by the Respondent living
4 alone. Therefore in respect of this period the Petitioner claims a total notional
5 occupational rent of CI \$54,356.48 less payments on the mortgage and strata fees of CI
6 \$ 8,087.31. The net claim is therefore for CI\$45, 769.17. Reliance is placed upon *G v. G,*
7 *2010 (1) CILR 365*, where Henderson J states at paragraph 4 that some occupational rent
8 should still be payable in light of the fact that the husband there continued to reside in
9 the matrimonial home after his wife had left. As a principle of law, I entirely accept the
10 learned Judge's pronouncement. In the present circumstances, however, I also must
11 have some equitable regard to the relative financial circumstances of the parties. The
12 Respondent has made some effort to mitigate the consequences of the marriage
13 breakdown by paying such outstanding amounts as he could, and for him to be liable for
14 an additional CI \$45, 769.17 or even a portion of it would be unduly onerous. It is clear
15 from the cited authority that Henderson J was able to exercise a judicial discretion in
16 any event, and accordingly the Court in the exercise of its own discretion considers that
17 it would ultimately be inequitable and unfair to make the award proposed and the Court
18 declines to do so.

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1 **Public Service Pension Plan**

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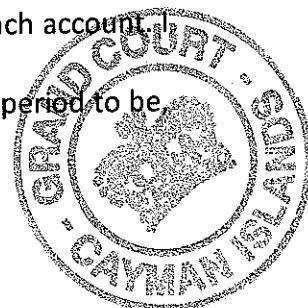
3 C. The Petitioner's contribution during the period of her marriage, for the duration which
4 the Court has now determined, is \$18,900.00. That period was from 26 March 2010 until
5 December 2012. The Respondent has however alleged that the calculation should be
6 based not on contributions being but rather upon the whole asset value of the pension.
7 It is clear from *P.H.R.S. v. S.D.S., 2004-05, CILR, Note 10* that the Respondent's
8 proposition is entirely erroneous. There Henderson J held that the pension asset is not
9 the whole pension but only a percentage of its commuted value calculated by dividing
10 the amount of the total contributions into the pension fund during the marriage by the
11 number of those contributions to the date of trial. In other words, the emphasis is on
12 contributions *per se*, and not on the whole value of the pension. Accordingly the
13 Respondent's 50% shall be 50% of the value of the asset contributions amounting to CI
14 \$9,450.00 only.

15

16 **Petitioner's Roth IRS Account and Rollover Account and other related Accounts**

17

18 D. As the Petitioner describes the position in her Eighth Affidavit, dated 7th August 2014
19 and adopted into sworn evidence in this hearing, at paragraphs 56-63, this Roth IRS
20 account is numbered 410-15763. It was first started and contributed to by her long
21 before she met the Respondent or indeed married him. This is a Merrill Lynch account.
22 accept that during the period of the marriage, as the Court has found that period to be

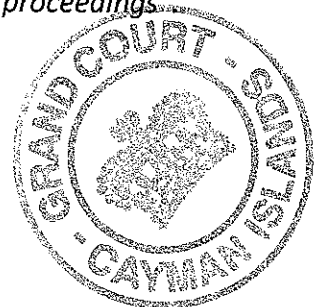


1 her actual contributions amounted to US \$7,000. Therefore in terms of equal shares the
2 Respondent's entitlement is to CI \$3,500 or CI \$2,940.00. It should perhaps be added
3 that although the Petitioner also had a further Merrill Lynch Rollover Account No 410-
4 15765. However, from the time the Petitioner's marriage took place there have been no
5 additional contributions made by her. I therefore accept on the basis set out at
6 paragraphs 48-55 of her Eighth Affidavit that the balance in the account never became a
7 matrimonial asset, nor was it ever intended to be, and the Court accordingly concludes
8 that it is not a matrimonial asset. Finally in this regard, the Petitioner has identified
9 further accounts and at the Bank of Butterfield, Cayman National Bank and Wells Fargo
10 Bank which have minimal balances. The Court accepts that it is fair and equitable that,
11 such as they are, they remain as the Petitioner's non matrimonial property. The Court
12 takes the same view of the minimal balance in an E Trade account.

13
14 **Invoice for Legal Services in US Proceedings**

15
16 E. As the Court has previously indicated, the Respondent's misguided intention to retain
17 the child with him in the United States have been amply described in the relevant
18 judgment of Williams J.

19 This highly distressing conduct resulted in the Petitioner having to engage in legal
20 proceedings in the Court of Florida. As the Petitioner has stated at paragraph 97 of her
21 Eighth Affidavit, she was "*forced to pursue the return of my son in these proceedings*"

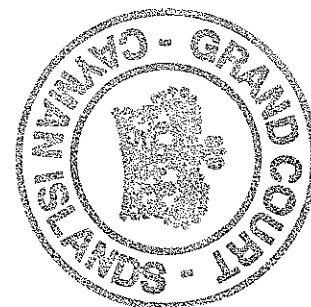


1 This episode resulted in the Petitioner incurring an invoice for legal services in these
2 proceedings in the sum of US\$ 13,527.25, or CI \$11,362.89. As she states at paragraph
3 99, this put her in significant debt. Therefore both as a reflection of the Petitioner's
4 need and by way of compensation for this expenditure, provoked by the Respondent's
5 own actions, the Court considers that this sum should be fully set off against what
6 would otherwise be the Respondent's notional share of matrimonial assets, reducing
7 that share proportionately.

8
9 **Petitioner's Loan from her Mother of US \$20,000**

10
11 F. This loan was obtained by the Petitioner in relation to the covering of family expenses.
12 She claims that they are attributable in part at least to the costs and expenses incurred
13 in resolving the issue as to the child's mandated return from Florida. While the Court
14 accepts that the loan occurred, nonetheless it cannot be shown on a balance of
15 probabilities that this loan was attributable, either directly or indirectly, to the
16 Respondent's actions in relation to him improperly keeping his son for a period
17 overseas. Therefore in the absence of the necessary degree of transparency the Court
18 declined to offset the particular sum against whatever funds and assets may be fairly
19 designated as belonging to the Respondent.

20
21 **Respondent's Property At Sundance Trails, U.S.A**



1 G. The Respondent purchased this property located in the United States prior to his
2 marriage. There is no clear evidence that during the marriage it was the common
3 intention of the parties to treat the asset as matrimonial property. Nonetheless, for
4 reasons which are not entirely clear, the Respondent requests the Court to regard this
5 property as such. In the absence of there being any probative and satisfactory evidence
6 as to the Respondent's contentions the Court declines to treat this asset as matrimonial
7 property.

8
9 **Motor Vehicles**

10
11 H. The parties own 3 vehicles, a 1997 Jeep Wrangler, a 2004 Jeep Wrangler and a 1999
12 Honda Civic. By consent, the parties have agreed that these are not matrimonial assets,
13 and therefore they will remain as at present with the respective parties.

14
15 **Costs of Petition Hearing**

16
17 I. A Default Cost Certificate against the Respondent dated 5th August 2016 has been
18 entered, in the sum of CI\$39,145.50. As the Petitioner has pointed out in her written
19 submissions dated 2nd September 2016, the Respondent has not appealed against the
20 Order. Therefore the sum of CI\$ 39,145.50 which is due and owing to the Petitioner by
21 the Respondent should be set off, once again, against such funds and assets as may be



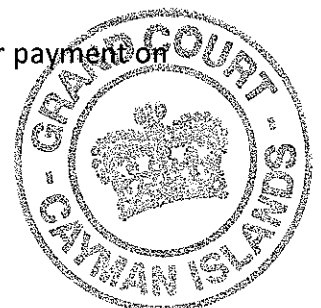
1 fairly designated as belonging to the Respondent. This means that the Respondent's
2 notional share of matrimonial assets is further reduced.

3
4
5 **Final Apportionment of Matrimonial Property**

6
7 34. In light of the individual findings which the Court has already made, the Court concludes
8 that a total amount of C.I \$38,118.39 is owed by the Respondent to the Petitioner. For
9 the avoidance of any doubt on the matter, the Respondent's interest in the matrimonial
10 home, the Public Service Pension Plan and the Roth IRS Account are extinguished.

11
12 **Maintenance for the Child of the Marriage**

13
14 35. In relation to the current school fees of C.I \$750.00 per month, the Court has been
15 informed that for some time the Petitioner has been paying exclusively for all these
16 ongoing educational expenses. Beyond a contribution towards these fees, the Petitioner
17 does not seek any additional child maintenance. Bearing in mind the Respondent's
18 respectively modest financial in circumstances in relation to those of the Petitioner and
19 also taking into account that no additional maintenance is being sought, the Court
20 considers that a fair and reasonable contribution by the Respondent to the Petitioner
21 should be set in the sum of C.I \$300.00 per month. This sum will be due for payment on
22 or before the 28th of each month, beginning in November 2016.



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Orders in Relation to the Child

36. In light of the very troubled history of this matter, and in particular the Respondent's misconceived behaviour towards the child's welfare, the Petitioner's requests for directions in accordance with (i) - (x) above are granted, subject to my specific direction as to school fees at paragraph 35.

Costs of the Hearing

37. The Court has considered and taken into account the submissions of both parties as to the matter of costs of this hearing, as set out in their written arguments. As the Petitioner has prevailed, the Court considers that the Petitioner's costs in the circumstances of this case should be paid by the Respondent on the standard basis. Accordingly, the costs of and occasioned by the proceedings are so ordered.



The Hon. Mr. Justice Robin McMillan
Judge of the Grand Court

