

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Family Division
2020/FAM/div/00034
BETWEEN**

**CR
Petitioner**

AND

**IR
Respondent**

BEFORE: The Honourable Justice Petra M. Hanna-Adderley

APPEARANCES: Miss Constance McDonald for the Petitioner
Mr. Carlson Shurland for the Respondent

HEARING DATES: November 11, 2020, December 23, 2020

SUBMISSIONS: Petitioner: December 7, 2020 and February 1, 2021, Respondent: July 14,
2021

DECISION

Hanna-Adderley, J

This is an application for Ancillary Relief

Introduction

1. The parties were married on June 15, 1999 in the City of Freeport, on the Island of Grand Bahama. The Petitioner was 22 years old and the Respondent was 30 years old. The Petitioner is now 44 years of age and the Respondent is 52 years old. There are 3 children of the marriage, namely, ZAJR born on June 15, 1998 who is sui juris, IZR born on February 13, 2007, who is 14 years old and EZR born on February 16, 2011, who is 10 years old (**"the minor children"**).
2. The Decree Nisi was granted herein on September 9, 2020 by this Court in favour of the Respondent on the ground that since the celebration of the marriage the Petitioner

had treated the Respondent with cruelty. The parties were married for approximately 22 years up to the date of the grant of the Decree Nisi. A Notice of Application for Ancillary Relief was filed by the Petitioner on September 9, 2020. The Petitioner relies on her Affidavit of Means filed on September 8, 2020, and her Affidavits filed November 3, 2020 and December 23, 2020. The Respondent relies on his Affidavit of Means filed on November 30, 2020 and his Affidavit filed on December 18, 2020. At the substantive hearing of the Ancillary Relief Application on December 23, 2020 the Respondent gave viva voce evidence to rebut the Petitioner's assertions contained in her Affidavit filed on December 23, 2020. There was no cross-examination of the Petitioner on her Affidavit evidence by the Respondent. The Petitioner also relies on Skeleton Arguments filed December 7, 2020 and Submissions filed on February 1, 2021. The Respondent relies on his Submissions filed on July 14, 2021.

3. Further to an application by the Petitioner for a matrimonial injunction for, inter alia, an order removing the Respondent from the matrimonial home, on March 2, 2020, having given the Court an undertaking not to assault, molest or otherwise interfere with the Petitioner, the Respondent was ordered to vacate the matrimonial home and move into Villa A, situated on Lot 3, Block 11, Unit 4, Bell Channel Subdivision, Freeport, Grand Bahama, property jointly owned by the parties and not to re-enter the matrimonial home or to come within 50 feet thereof. The Court reserved its ruling on the issue of the costs of this application.
4. On November 11, 2020 the Court made an Interim Order ordering, inter alia, that the Respondent pays to the Petitioner the sum of \$500.00 per week every Monday commencing November 11, 2020, the said payments to be set off against the Petitioner's beneficial interest in EZ Imports Limited.
5. The Petitioner seeks the following orders:
 - (1) That the parties have joint custody of the minor children;
 - (2) That the Petitioner has care and control of the minor children;
 - (3) That the Respondent exercise access to the minor children every alternate weekend picking them up from school on Friday evening and dropping them to school the Monday morning and on every alternate holiday;
 - (4) That the Respondent shall pay the Petitioner maintenance for the minor children;
 - (5) That the Respondent pay her for her interest in EZ Imports Limited;

- (6) That the Respondent conveys his interest in Lot 3, Block 11, Unit 4, Bell Channel Subdivision, Freeport Grand Bahama ("**the 7Plex**");
 - (7) That the Petitioner shall convey her interest in the following properties to the Respondent:
 - (1) Lot 8, Block 22, Unit 5 Lincoln Green Subdivision, Freeport, Grand Bahama;
 - (2) Lot 8, Block 17, Unit 4, Fortune Bay Subdivision, Freeport, Grand Bahama;
 - (3) Lot 6A, Block 8, Replats of Lot 5 and 6 ("**the 4Plex**");
 - (4) 1.00 Acre being Lot 4, Block "L" Central Area, Freeport, Grand Bahama.
6. The Respondent seeks the following orders:
- (1) That the parties have joint custody of the minor children;
 - (2) That the Respondent has the care and control of the minor children;
 - (3) That the Petitioner pays the Respondent \$2,000.00 per month for the maintenance of the minor children;
 - (4) That upon the final disposition of EZ Imports Limited the school fees and college tuition for the minor children be shared equally between the parties;
 - (5) That the school supplies, uniforms and extra-curricular activities be agreed beforehand and each party makes equal contributions;
 - (6) That the cost of clothing required by the minor children are to be divided equally between the parties on a demand basis;
 - (7) That the vacation experiences are to be agreed by the parties beforehand and equal contributions should be made for the costs associated;
 - (8) That the parties agree to take out medical insurance inclusive of vision and dental and the premiums be shared equally between the parties;
 - (9) That the Petitioner conveys her interest in Lot 3, Block 11, Unit 4, Bell Channel Bay Subdivision, to him and all other properties sold and the proceeds be held in trust for the minor children;
 - (10) That EZ Import Limited be dissolved and the assets be divided equally among the parties.
7. On November 13, 2020 the Court instructed the Department of Social Services to prepare a Social Inquiry Report to assist the Court in determining the issues of the custody, care and control of the minor children. By a Report dated the November 30, 2020 prepared by Mrs. Paige V. Gibson, Trainee Welfare Officer and Miss Dorothea Gomez, Chief Welfare

Officer, the Court was informed that after Counselling the parties had agreed to joint legal and physical custody of the minor children the terms of which are set out below:

- (1) That commencing Friday October 16, 2020 at 6:00 p.m. the children will have alternate weeks with each parent;
- (2) That should either parent foresee a need to vary the visitation schedule, they will communicate same to the other parent at least 2 days in advance of their schedule;
- (3) That the parents will discuss and decide the children's religious, educational, health, medical, and other social needs;
- (4) That the parents will continue with co-parenting sessions offered by the Department of Social Services;
- (5) That the parents will alternate all major holidays inclusive of Christmas, New Year's Day, Easter and summer breaks.

Statement of Facts

8. The Petitioner's evidence is, in part, that she is a part owner of and was employed in EZ Imports Limited and paid a weekly salary of \$500.00 until May 22, 2020 when the Respondent shut her out of the business and cut off all financial support for her and the minor children who reside with her. That the Respondent is part owner and operator of EZ Imports Limited and is paid \$500.00 per week. In addition to receiving an income from EZ Imports Limited the parties received an income from their 2 rental properties, namely, a four-plex in Bahamia, in the City of Freeport and a seven unit complex at Bell Channel Road, in the City of Freeport. The minor children of the marriage attend Lucayan International School, a private school. That as of February 28, 2020 the Respondent totally cut her off financially and has not contributed to the upkeep of the matrimonial home or maintenance for the minor children.
9. That as of May 27, 2020 the Respondent had the accountant remove her from the payroll of EZ Imports Limited.
10. That her monthly expenditure for herself, the minor children and the matrimonial home is \$6,286.00, inclusive of electricity, water, pool maintenance, cable and internet, landscaping for the matrimonial home, grocery, school fees for the children, garbage, gas for the car, home repairs, entertainment for the children, lunches for the children, housekeeper, extra-curricular activities for the minor children, cell phone, and the beauty and nail salon. Her annual expenses total \$18,330.00 inclusive of gym fees, car license

and insurance, homeowners insurance premiums, clothing for herself and the minor children and vacation costs.

11. That the Respondent also placed all of the rental income from the 4plex and the 7plex into an account in his sole name instead of in the EZ Imports Limited accounts, where these monies had always been deposited and used to pay the family expenses. That the Respondent has been trying to "starve" her out and "oppress" her. That additionally, the Respondent removed all of the unit keys from the holding location and now keeps them in his possession. That he has been renting the units and withholding the funds from her. From what she has observed that he has collected the following income:

7Plex

- (1) Villa B rented monthly to Elnet Maritime from March 10, 2020 to July 10, 2020 at a monthly rent of \$3,300.00, totaling \$13, 200.00 for said period.
- (2) Villa D rented for a one year contract to Bahamas Faith Ministries, totaling for the period May to October 2020 \$18,000.00.
- (3) Villa F rented for 1 night March 15, 2020 at \$175.00.
- (4) Villa E rented for 3 nights from April 3-6, 2020 for \$525.00.
- (5) Villas F& H for 2 nights from June 5-7, 2020 at \$700.00.
- (6) Villas E& F rented for 3 nights from July 3-6 2020 \$1,050.00
- (7) Villas E, F, G, & H rented for 4 nights from July 9-13, 2020 at \$2,800.00.

4Plex

- (1) Apartment 1 September to October 2020 \$1,500.00 per month for a total of \$3,000.00.
- (2) Apartment 2 rented to the Culmers for \$675.00 per month for April to October 2020, for a total of \$4,725.00.
- (3) Apartment 3 rented to Dr. Collie for \$1,000.00 per month from May to September 2020, totaling 5,000.00.
- (4) Apartment 4 rented to the Wallace family for \$850.00 per month from May to October 2020.

12. That the Respondent has been managing EZ Imports Limited contrary to company policy since he excluded her from the operation of the business as follows:

- (1) He unilaterally employed a new member of staff and pays this staff member from the cash register;
- (2) He failed to utilize the following cheques for the purposes agreed by the parties:

- a. Cheque No. 1991-\$1,000.00;
 - b. Cheque Nos. 2062/2063 both in the sum of \$10,000.00. That these cheques were supposed to pay off the parties' credit cards. After the Petitioner signed the cheques the Respondent paid off his credit card with both cheques and refused to make a payment on the Petitioner's credit card;
 - c. Cheque No. 2064-That she wrote a cheque to Insurance Management for \$20,000.00 to pay the homeowners insurance. The Respondent drew a line through the payee and replaced that name with Royal Bank of Canada;
 - d. Cheque No. 2075-That she wrote a cheque for \$10,000.00 to RBC to pay her credit card bill. The Respondent put a line through the credit card number on the cheque and replaced it with his credit card number;
 - e. That the Respondent began requesting cash withdrawals from the cash register in excess of \$100.00.
13. That the matrimonial properties were appraised on December 12, 2019 at the instance of the Petitioner by Engel & Volkers having market values as follows:
 - (1) 4Plex South Bahamia- \$400,000.00;
 - (2) 8 Units including Matrimonial home, EZ Villas, Bell Channel Subdivision-\$1,150,000.00;
 - (3) Lot 8, Fortune Bay Subdivision-\$50,000.00;
 - (4) Lot 8, Lincoln Green Subdivision-\$35,000.00;
 - (5) Lot 4, Central Area Subdivision-\$270,000.00.
14. That for the period May 28, 2020 to October 29, 2020, the Respondent has failed to pay her the weekly stipend of \$500.00 resulting in arrears in the sum of \$10,500.00 for that period. That the Respondent has collected rent from the 7Plex but failed to deposit into the EZ Imports Limited account the rental income in the sum of \$45,700.00. That the Respondent has collected rent from the 4Plex but failed to deposit in the EZ Imports Limited account the rental income in the sum of \$17,827.00.
15. That the Petitioner has no income to take care of herself or the minor children. On October 29, 2020 the power company came to the 7Plex and disconnected the power. The Respondent came out of his unit and spoke to the meter man and within minutes the power was restored. The situation between the parties has affected their son to the point that the parties were informed by his school that he threatened to commit suicide. She

has had to ask friends to assist her with the cost of taking care of herself and the minor children.

16. The Respondent's evidence, in part, is that he is the Chief Executive Officer of EZ Imports Limited and that he earns a salary of \$500.00 per week. That the other funds earned by EZ Imports Limited were used to pay the household expenses, the housekeeper and the maintenance of the children. He accepts that the property appearing above at paragraphs 11 and 13, save and except for the 4Plex, are matrimonial properties. That his monthly expenses total \$6,440.00 inclusive of electricity, water, pool maintenance, cable and internet, groceries, school fees for the minor children, gas, home maintenance, cell phone, Tennis and Swimming camp for the minor children, life insurance, medication, the barbershop for himself and IEZR and Golf. That his annual expenses are \$19,659.00 inclusive of clothing for himself and the children, school uniforms for the children, gym membership, vacation, vehicle license and inspection and homeowners insurance.
17. The Respondent's evidence in respect to Lot 4, Central Area Subdivision is that the plaza constructed thereon is subject to a Mortgage between himself and RBC Royal Bank of Canada dated December 7, 2015. That the monthly payment under this loan is \$2,800.00 and that he used the 4Plex as security for the Mortgage.
18. The Respondent's evidence-in-chief in respect of the 4Plex was as stated in his Affidavit filed November 30, 2020 that it was matrimonial property. However, in his Affidavit filed on December 18, 2020 his evidence is that he purchased it on July 6, 2000 out of his personal funds derived from EZ Imports. That the construction of the 4Plex took 8-9 months and that he never promised the Petitioner an interest in it. That he is a Pilot and a businessman and that he operated as Ian E. Rolle trading as "EZ Imports". He exhibited a License from the Grand Bahama Port, Authority Limited dated December 1, 2000 in the name of Ian R. Rolle trading as "E. Z. Imports". That the company EZ Imports Limited was not formed until May 29, 2006 and he exhibited a copy of a Certificate of Good Standing dated January 8, 2018 that indicates the date of the incorporation of the company and copy of an Annual Statement and Return filed January 8, 2018 which indicates that the Petitioner and the Respondent each hold 1 of the 2 issued shares in the company. That the Respondent is the President, Treasurer and Director of the company and the Petitioner is the Vice-President, Secretary and Director of the company. That between 2007 and 2009 the Respondent went to jail and during that period the Petitioner managed the 4Plex and

collected the rent. The rent was used to maintain the building and sustain the Petitioner and the children.

19. The Respondent's evidence is that the chattels of EZ Imports Limited comprise a truck, cargo van, office furniture and electronic equipment and that EZ Imports Limited accounts are comprised of a chequing account at Commonwealth Bank Limited, a chequing account at Royal Bank of Canada and two RBC Royal Bank of Canada Visa Credit Cards with a limit of \$15,000.00.
20. The Petitioner's response to the Respondent's evidence in respect of the 4Plex is contained in her Affidavit filed on December 23, 2020. The Petitioner agreed that the 4Plex was purchased in 2000 but denied that the Respondent paid for it from his personal funds derived from EZ Imports Limited. That EZ Imports Limited was jointly owned by the parties. That they were both employed in full time jobs along with a side job of importing goods and selling goods to customers. That they would on occasion have to rent a plane to bring goods in for customers. The business became so demanding in 2000 the parties decided to open EZ Imports Limited to facilitate the demand. The 4Plex was already being constructed prior to them opening EZ Imports Limited from monies from their respective jobs and the monies they pooled together from the "side hustle" of importing goods. That the parties both contributed to the purchase and the construction of the 4Plex while the parties were living together since 1995. That she did not need a promise from the Respondent because she knew that she had an interest in the 4Plex. As a result the Petitioner was shocked that her name was not on the 4Plex. That she and the Respondent maintained the 4Plex when they lived there together as a family in the former matrimonial home. She agreed that the Respondent did apply for the license as Ian E. Rolle trading as EZ Imports and that when the company was formed in 2000 they both agreed that she would quit her job to assist the Respondent with setting up and running the business.
21. The Petitioner's evidence is that when the Respondent was incarcerated not only did she manage the 4Plex, maintain the building and sustain the family, she managed EZ Imports Limited. She decided to take some classes and became a licensed broker to facilitate the running of the business and cut costs. The Petitioner exhibited her Broker's License dated January 6, 2020. That when the Respondent was incarcerated he lost his US visa and Pilot's License which was a blow to the business. The Petitioner had to find other ways of importing the goods during his absence, avenues which are still used in the business.

22. The Petitioner's evidence is that a plaza was never constructed on the matrimonial property. That when they purchased the property it already had a belt course structure on it. That to date the parties have done nothing to the property except hiring a landscaping company to clean the yard. That they agreed that they would obtain a loan to purchase the property. That she had to sign an agreement for the Respondent along with EZ Imports Limited to secure a loan to purchase the property and the loan is being paid from EZ Imports Limited.
23. That she agrees that EZ Imports Limited has bank accounts at Commonwealth Bank Limited and RBC Royal Bank of Canada as stated by the Respondent in his affidavit but that since the separation the Respondent has opened a separate account into which he deposits the rental income and the income from customers from EZ Imports Limited.
24. The Respondent's final Reply was given under oath at the substantive hearing on December 23, 2020 so that he could rebut the Petitioner's evidence contained in her Affidavit filed on December 23, 2020 and the Petitioner cross-examined him on this evidence. The Respondent stated that he originally operated the business from 1994 as Ian E. Rolle trading as EZ Imports. At the time the parties were working at the hotel. That he left his job at the hotel to start EZ Imports. That the Petitioner started working in the business around 97 or 98. That the Petitioner refused to sign cheques that he had drawn and so he had to find a way to keep the business going, if not he and the Petitioner and the employees would be out of a job. She would not sign the National Insurance cheque. That he had to open a personal account and pay the company bills from that account. That the Plaza had been built up to the belt course and he had to use the 4Plex to buy the property. That the parties signed on the loan but that he used the 4Plex to get the mortgage.
25. Under cross-examination by Miss McDonald, Counsel for the Petitioner, the Respondent stated that he got the EZ Imports license in 2000. That maybe he was doing business irregularly up to that time. He was a pilot and flying airplanes.

Submissions

26. Miss Constance McDonald submits in part that in respect of the 4Plex the parties were married in June 1999 and the property on which the 4Plex is constructed was purchased in July, 2000. That the Petitioner maintained that it was purchased from their jointly owned

business and was shocked by the fact that the Respondent put it in his sole name. That EZ Imports Limited and all other properties are in the joint name of the parties.

27. That the Respondent shared his appraisals for the properties prepared by Mr. Bert Lightbourne which show market values as follows:
 - (1) 4Plex \$274,000.00;
 - (2) 7Plex \$902,000.00;
 - (3) Lot 8, Fortune Bay Subdivision \$36,800.00;
 - (4) Lot 8, Lincoln Green Subdivision \$31,200.00;
 - (5) Lot 4, Central Area Subdivision \$230,000.00.
 - (6) EZ Imports Limited has yet to be valued.
28. That the Petitioner proposes that the Respondent conveys his interest in the 7Plex to her and that she will convey her interest in the other properties to him. If the 50/50 approach as expounded in *White v White* and the other cases is applied it would mean, using the Petitioner's valuation, that she will get matrimonial property worth \$1,150,000.00 and the Respondent would get property valued \$755,000.00, a difference of \$330,000.00. Using the Respondent's valuation would mean that the Petitioner would get property valued \$902,000.00 and the Respondent would get property valued \$752,000.00, a difference of \$330,000.00. Any shortfall in value to the Respondent can be offset by her interest in EZ Imports Limited once evaluated.
29. That after the parties have settled all of the properties the Petitioner submits that the Respondent pays the Petitioner \$2,000.00 a month for the maintenance, the school and college fees for the minor children of the marriage and that they equally share the cost of all medical and dental expenses. That the Petitioner's proposed property adjustment is consistent with the 50/50 rule and the clear break principle as set out in the cases.
30. Mr. Carlson Shurland, Counsel for the Respondent submits that the Court makes the orders set out in paragraph 6 above. He submits that the principles of equitable distribution in *White v White* [2000] UKHL 54 be adopted and that any distribution be based on the fair market value of the assets.

Issues:

31. The Court must determine:
 - (1) whether the 4Plex is a matrimonial asset;
 - (2) the parties' rights to care and control of the minor children;

- (3) the monthly maintenance and the apportionment of other expenses payable by the parties in relation to the minor children;
- (4) the division of the matrimonial assets.

Analysis and Conclusions

The Law and Discussion

- 32. Sections 25 and 28 of the Matrimonial Causes Act ("**the Act**"), empowers the Court to make property adjustment orders.
- 33. Pursuant to Section 29 (1) of the Act the Court should take into account the following matters when determining a division of the matrimonial assets.

(a) The income, earning capacity and other financial resources.

The parties jointly own two income producing properties and a viable business from which they are deriving an income. At the close of these proceedings one of the parties may be in the position to buy out the other or failing which the matrimonial assets will be sold and the proceeds divided equally between the parties. The parties are both experienced businesspeople. The Petitioner is now the holder of a customs broker's license. Their respective earning potential and ability to realize their joint assets is good in the foreseeable future.

(b) The financial needs, obligations and responsibilities of the parties in the foreseeable future.

The parties have to provide for themselves and their two minor children. Their capacity to continue working combined with the money that the realization of the matrimonial assets will generate will put them both in a good position to meet their own needs and obligations and the needs and obligations to their children in the foreseeable future.

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

The parties shared a matrimonial home in a gated property, in an upscale area and derived an income from rental property and a viable business. Their children attend private school. From the list of monthly and annual expenses submitted to the Court by the parties it is fair to say that the family enjoyed an upper middle class standard of living before the breakdown of the marriage. The Court recognizes that this standard of living must be considered when making financial provision and property adjustment orders. The income of the parties will not be the same as it was during the marriage, when all of the family

expenses were paid entirely from the profits of the family business. The Court must seek to put the parties and their children in the position whereby they can continue to live in the style to which they had been accustomed to during the marriage. Upon the realization of the matrimonial assets by the parties they will be able to do so.

(d) The age of each party of the marriage and the duration of the marriage.

The parties are at ages 44 and 52 still “young” by today’s standards and, barring illness, have many years ahead of them during which they can be gainfully employed either in their own businesses or other similar business. The marriage lasted 22 years and is therefore not considered a short marriage.

(e) Any physical or mental disability of either of the parties to the marriage.

Neither party is presently undergoing any medical treatment and appear to be in good health.

(f) The contributions made by each of parties to the welfare of the family and any contributions made by the parties in looking after the home or caring for the family.

The Court is satisfied on the evidence that the parties worked together equally, even before the marriage, to acquire the joint matrimonial assets and that they worked together to provide a home for themselves and the minor children.

34. Section 29 (1) of the Act stipulates the manner in which the Court ought to exercise its powers under this section: “and so to exercise those powers as to place the parties, so far as it is practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other. ”

35. Section 29 (2) provides as follows:

“(2) Without prejudice to subsection (3) it shall be the duty of the court in deciding whether to exercise its powers under section 27(1)(d), (e) or (f), (2) or (4) or 28 in relation to a child of the family and, if so, in what manner, to have regard to all the circumstances of the case including the following matters, that it to say —

(a) the financial needs of the child;

(b) the income, earning capacity (if any), property and other financial resources of the child; Matters to which court is to have regard in deciding how to exercise its powers under sections 25, 27 and 28.

(c) any physical or mental disability of the child;
(d) the standard of living enjoyed by the family before the breakdown of the marriage;
(e) the manner in which he was being and in which the parties to the marriage expected him to be educated or trained; and so to exercise those powers as to place the child, so far as it is practicable and, having regard to the considerations mentioned in relation to the parties to the marriage in paragraphs (a) and (b) of subsection (1) just to do so, in the financial position in which the child would have been if the marriage had not broken down and each of those parties had properly discharged his or her financial obligations and responsibilities towards him.”

36. In **Watchel v Watchel** [1973] Fam. 72 the Court defined the term “**family assets**”. The phrase refers to things acquired by one or other or both parties of the marriage with the intention that they should be a continuing provision for them and their children during their joint lives and used for the benefit of the family as a whole. Family assets include capital assets such as the matrimonial home with the furniture in it and revenue producing assets, such as the earning power of husband and wife. That when the marriage ends, the family assets have to be reallocated.

37. Lord Nicholls of Birkenhead in his Judgment in **Miller v Miller; McFarlane v McFarlane** [2006] UKUL 24 at paragraphs 4-16 considered which are accepted as the general principles and the modern-day approach applicable to the division of matrimonial property:
“*The requirements of fairness*

4. Fairness is an elusive concept. It is an instinctive response to a given set of facts. Ultimately it is grounded in social and moral values. These values, or attitudes, can be stated. But they cannot be justified, or refuted, by any objective process of logical reasoning. Moreover, they change from one generation to the next. It is not surprising therefore that in the present context there can be different views on the requirements of fairness in any particular case.

5. At once there is a difficulty for the courts. The Matrimonial Causes Act 1973 gives only limited guidance on how the courts should exercise their statutory powers. Primary consideration must be given to the welfare of any children of the family. The court must consider the feasibility of a 'clean break'. Beyond this the courts are largely left to get on with it for themselves. The courts are told simply that they must have regard to all the circumstances of the case.

6. Of itself this direction leads nowhere. Implicitly the courts must exercise their powers so as to achieve an outcome which is fair between the parties. But an important aspect of fairness is that like cases should be treated alike. So, perforce, if there is to be an acceptable degree of consistency of decision from one case to the next, the courts must

themselves articulate, if only in the broadest fashion, what are the applicable if unspoken principles guiding the court's approach.

7. This is not to usurp the legislative function. Rather, it is to perform a necessary judicial function in the absence of parliamentary guidance. As Lord Cooke of Thorndon said in *White v White* [2001] 1 AC 596, 615, there is no reason to suppose that in prescribing relevant considerations the legislature had any intention of excluding the development of general judicial practice.

8. For many years one principle applied by the courts was to have regard to the reasonable requirements of the claimant, usually the wife, and treat this as determinative of the extent of the claimant's award. Fairness lay in enabling the wife to continue to live in the fashion to which she had become accustomed. The glass ceiling thus put in place was shattered by the decision of your Lordships' House in the *White* case. This has accentuated the need for some further judicial enunciation of general principle.

9. The starting point is surely not controversial. In the search for a fair outcome it is pertinent to have in mind that fairness generates obligations as well as rights. The financial provision made on divorce by one party for the other, still typically the wife, is not in the nature of largesse. It is not a case of 'taking away' from one party and 'giving' to the other property which 'belongs' to the former. The claimant is not a supplicant. Each party to a marriage is *entitled* to a *fair* share of the available property. The search is always for what are the *requirements* of fairness in the particular case.

10. What then, in principle, are these requirements? The statute provides that first consideration shall be given to the welfare of the children of the marriage. In the present context nothing further need be said about this primary consideration. Beyond this several elements, or strands, are readily discernible. The first is financial needs. This is one of the matters listed in section 25(2), in paragraph (b): 'the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future'.

11. This element of fairness reflects the fact that to greater or lesser extent every relationship of marriage gives rise to a relationship of interdependence. The parties share the roles of money-earner, home-maker and child-carer. Mutual dependence begets mutual obligations of support. When the marriage ends fairness requires that the assets of the parties should be divided primarily so as to make provision for the parties' housing and financial needs, taking into account a wide range of matters such as the parties' ages, their future earning capacity, the family's standard of living, and any disability of either party. Most of these needs will have been generated by the marriage, but not all of them. Needs arising from age or disability are instances of the latter.

12. In most cases the search for fairness largely begins and ends at this stage. In most cases the available assets are insufficient to provide adequately for the needs of two homes. The court seeks to stretch modest finite resources so far as possible to meet the parties' needs. Especially where children are involved it may be necessary to augment the available assets by having recourse to the future earnings of the money-earner, by way of an order for periodical payments.

13. Another strand, recognised more explicitly now than formerly, is compensation. This is aimed at redressing any significant prospective economic disparity between the parties

arising from the way they conducted their marriage. For instance, the parties may have arranged their affairs in a way which has greatly advantaged the husband in terms of his earning capacity but left the wife severely handicapped so far as her own earning capacity is concerned. Then the wife suffers a double loss: a diminution in her earning capacity and the loss of a share in her husband's enhanced income. This is often the case. Although less marked than in the past, women may still suffer a disproportionate financial loss on the breakdown of a marriage because of their traditional role as home-maker and child-carer.

14. When this is so, fairness requires that this feature should be taken into account by the court when exercising its statutory powers. The Court of Appeal decision in *SRJ v DWJ (Financial Provision)* [1999] 2 FLR 176, 182, is an example where this was recognised expressly.

15. Compensation and financial needs often overlap in practice, so double-counting has to be avoided. But they are distinct concepts, and they are far from co-terminous. A claimant wife may be able to earn her own living but she may still be entitled to a measure of compensation.

16. A third strand is sharing. This 'equal sharing' principle derives from the basic concept of equality permeating a marriage as understood today. Marriage, it is often said, is a partnership of equals. In 1992 Lord Keith of Kinkel approved Lord Emslie's observation that 'husband and wife are now for all practical purposes equal partners in marriage': *R v R* [1992] 1 AC 599, 617. This is now recognised widely, if not universally. The parties commit themselves to sharing their lives. They live and work together. When their partnership ends each is entitled to an equal share of the assets of the partnership, unless there is a good reason to the contrary. Fairness requires no less. But I emphasise the qualifying phrase: 'unless there is good reason to the contrary'. The yardstick of equality is to be applied as an aid, not a rule."

38. In **Charman v Charman** [2007] 1 FLR 1246 and in the Bahamian Judgment of Barnett, CJ, as he then was, in **A v B** [2010] 2 BHS J No. 18, the Courts accepted the equal sharing principle as the modern approach to the division of matrimonial property and that matrimonial property be shared equally between the parties unless there is a compelling reason to the contrary.

Conclusions

39. The Respondent's evidence is that the 4Plex is not a family asset, that he bought the property and constructed it from his personal funds derived from EZ Imports which he started around 1994. The Petitioner disputes this. The Respondent does not deny the Petitioner's assertion that the parties lived together from 1995. He accepts that she was working in the business from about 1997. The parties were married on June 15, 1999. The property was purchased on July 6, 2000. His evidence is that the construction of the 4Plex took 8 to 9 months. The Petitioner's evidence is that the parties pooled their earnings from

their jobs at the hotel and from the “side hustle” of the import business and that the 4Plex was in fact the matrimonial home. That she was shocked that the Respondent had taken title to the property in his sole name. The Court accepts the Petitioner’s evidence on a balance of probabilities that the 4Plex is a matrimonial property. That prior to the marriage the parties lived together and pooled their incomes from their full time jobs and the import business that would later be incorporated as EZ Imports Limited. The 4Plex was purchased after the marriage and the construction completed after the marriage. The Respondent has not denied that the property comprised the matrimonial home. He accepts that the Petitioner collected the rent and maintained the property and the family residing at that property while he was incarcerated. The Court accepts and finds therefore that this property falls squarely into the **Watchel v Watchel** definition of “family asset”.

40. I accept, as advanced by Counsel for the parties, that the “equal sharing” principle as set out in **White v White, Miller v Miller; McFarlane v McFarlane, Charman v Charman and A v B** (supra) is the correct approach to the division of the matrimonial assets in this case. Three of the five properties were in the joint names of the parties and the one in the name of EZ Imports Limited, a company jointly owned by the parties. The Court has determined that the 4Plex is a family asset. The Court is satisfied that all of these assets were acquired through the joint efforts and hard work of the parties before and during the 22 year marriage. In the circumstances there is no reason to depart from the equal sharing principle.

41. The parties have competing appraisals. The differences in valuations are as follows:

	Petitioner	Respondent	Difference
7Plex	1,150,000.00	902,000.00	248,000.00
4Plex	400,000.00	274,000.00	126,000.00
Fortune Bay	50,000.00	36,800.00	13,200.00
Lincoln Green	35,000.00	31,200.00	3,800.00
Central Area	270,000.00	230,000.00	40,000.00

42. Applying the Median approach, the market value of the matrimonial properties would be as follows:

(1) 7Plex	\$1,026,000.00
(2) 4Plex	\$337,000.00
(3) Fortune Bay	\$43,400.00

- (4) Lincoln Green \$33,100.00
- (5) Central Area \$250,000.00

While the Petitioner is in favour of applying the Median approach the Respondent is not satisfied with the valuations by Mr. Bert Lightbourne. The Court hereby appoints Mr. Aston Jones to conduct a 3rd appraisal on each property at the expense of the Respondent. The Respondent shall have 7 days to properly retain Mr. Jones. If the new appraisals differ from the Petitioner's valuations the Median approach shall be applied in order to fix the market value and the parties will be bound by the same.

Disposition

43. Having considered all of the affidavit evidence filed herein, the oral evidence, all of the relevant statutes and case authorities, having heard Counsel and having read their submissions I make the following Orders that:

- (1) The Parties shall each have 120 days to buy out the others interest in Lot 3, Block 11, Unit 4, Bell Channel Subdivision, Freeport, Grand Bahama, failing which the property shall be sold and after payment of the costs associated with the sale, the proceeds of sale shall be divided equally between the parties. The Respondent shall account to the Petitioner for the rental income from this property from February 28, 2020 to date within the next 14 days. 50% of that said income less 50% of the maintenance costs of the rental units from February 28, 2020 to November 30, 2021 shall be paid to the Petitioner within 21 days. Until the final disposition of this property the Respondent shall pay to the Petitioner 50% of the monthly rental income commencing December 1, 2021. The parties shall share equally the cost of maintaining the property from their respective shares of the rental income until the property is finally disposed of.
- (2) The Parties shall each have 120 days to buy out the others interest in Lot 6A, Block 8 Replats of Lot 5, South Bahamia, Freeport, Grand Bahama, failing which the property shall be sold and after payment the outstanding mortgage at RBC Royal Bank of Canada and of the costs associated with the sale, the proceeds of sale shall be divided equally between the parties. The Respondent shall account to the Petitioner for the rental income from this property from February 28, 2020 to date within the next 14 days. 50% of that said income less 50% of the maintenance costs of the rental units shall be paid to the Petitioner within 21 days. Until the

final disposition of the property the Respondent shall pay to the Petitioner 50% of the rental income commencing December 1, 2021. The parties shall share equally the cost of maintaining the property from their respective shares of the rental income until the final disposition of the property.

- (3) The parties shall determine the fair market value of the company EZ Imports Limited and the business known as "EZ Imports", inclusive of the property comprising 1.00 Acre being Lot 4, Block "L" Central Area, Freeport, Grand Bahama and its's chattels and the parties shall each have 120 days to buy out the others interest in EZ Imports Limited, failing which the shares and assets of the company shall be sold and after payment of the costs associated with the sale, the proceeds of sale shall be divided equally between the parties. The parties shall agree on and retain an accountant or accounting firm within 14 days to carry out the valuation, failing which the parties shall engage the services of Chancery Corporate Services Limited to carry out the valuation. The accountant or accounting firm shall conduct a review of the accounts of the company from January 1, 2020 and further shall determine the net profits of the company from January 1, 2020 to date, together with the current market value of the shares of the company inclusive of its assets. The Respondent shall pay to the Petitioner 50% of the net profit for the period February 28, 2020 to date. This sum shall be set off by the sums paid to the Petitioner by the Respondent pursuant to the terms of the Interim Order.
- (4) Until the final disposition of EZ Imports Limited the Respondent shall continue to pay the Petitioner \$500.00 per week commencing forthwith, such sum to be set off against her 50% of the net proceeds of sale upon the sale of the property.
- (5) The Respondent shall forthwith turn over to the said accountant or accounting firm all bank statements for the account(s) into which he has deposited the income generated by EZ Imports Limited since February 28, 2020 to date. The Respondent shall resume making deposits into the company's operating accounts immediately. The Petitioner shall co-operate in signing cheques and documents necessary for the smooth operation of EZ Imports Limited until the final disposition of the company.
- (6) The Respondent shall pay to the Petitioner immediately all arrears of weekly payments of \$500.00 ordered to be paid to the Petitioner pursuant to the Interim

Order. Until the final disposition of EZ Imports Limited the Respondent shall pay the following expenses for the minor children and in respect of the matrimonial home from the income from EZ Imports Limited, that is, the school fees for the minor children, the cost of their extracurricular activities, the electricity bill, the water bill, the cable and internet bill, garbage bill, the housekeeper's salary, landscaping for the home, basic home repairs and the homeowner's insurance.

- (7) Lot 8, Block 22, Unit 5, Lincoln Green Subdivision, Freeport, Grand Bahama shall be sold and after payment of the costs associated with the sale, the proceeds of sale shall be divided equally between the parties.
- (8) Lot 8, Block 17, Unit 4, Fortune Bay Subdivision, Freeport, Grand Bahama shall be sold and after payment of the costs associated with the sale, the proceeds of sale shall be divided equally between the parties.
- (9) The parties shall have joint custody of the minor children of the marriage with joint care and control to the parties, the children spending alternate weeks with the parties.
- (10) Each party shall exercise access to the minor children for 4 continuous weeks in the summer school holidays and shall alternate all public and school half term holidays.
- (11) The parties shall share equally the cost of uniforms, books and supplies, lunch money and extra-curricular activities mutually agreed to by the parties for the minor children until completion of their secondary education.
- (12) That upon the final disposition of EZ Imports Limited the school fees and college tuition for the minor children be shared equally between the parties.
- (13) The parties shall share equally the cost of medical insurance premiums for the minor children and shall share equally the cost of all medical, dental and optical expenses not covered by the insurance.
- (14) The parties shall each contribute \$500.00 twice per year per child, every June 1 and December 1 towards the purchase of general clothing for the minor children. The Respondent's share of this expense shall be paid to the Petitioner who shall purchase the said clothing.
- (15) The Parties shall mutually agree the vacation arrangements for the minor children and the costs of such vacation shall be shared equally by the parties.

44. The parties shall have liberty to apply.

Costs

45. The Respondent's conduct towards the Petitioner necessitated the application for the matrimonial injunction even though the Court was minded to accept the Respondent's undertaking not to molest the Petitioner and did not grant the injunction. The Respondent shall in the circumstances pay the Petitioner's costs associated with the injunction application.

46. Each party shall bear their respective costs in the ancillary relief proceedings.

THE COURT HEREBY DECLARES pursuant to Section 73 (1) (b) (i) of the Matrimonial Causes Act, Chapter 125 of the Statute Laws of the Commonwealth of The Bahamas that there are two children of the marriage to whom the section applies namely, Ian Erskine Zarian Rolle born on February 13, 2007 and Eden Zenah Rolle born on February 16, 2011, and arrangements for their welfare have been made and are satisfactory.

Dated this day of A. D. 2021

Petra M. Hanna-Adderley
Justice