IN THE SUPREME COURT OF BELIZE, A.D. 2003

ACTION NO. 309

IN THE MATTER **of section 148A of the Supreme Court of Judicature (Amendment) Act, No. 8 of 2001**

AND

IN THE MATTER **of section 16 of the Married Women's Property Act, Chapter 176 of the Laws of Belize, 2000**

SARI VIDRINE **Applicant**

BETWEEN **AND**

THOMAS VIDRINE **Respondent**

—

BEFORE the Honourable Abdulai Conteh, Chief Justice.

Mr. Michael Young SC for the applicant.
Mrs. Magali Marin Young for the respondent.

—

JUDGMENT

The applicant, **Sari Vidrine**, by an Originating Summons made pursuant to section 148A of the Supreme Court of Judicature Act (Amendment Act

No. 8 of 2001) and section 16 of The Married Women's Property Act, Chapter 176 of the Laws of Belize, Revised Edition 2000, is seeking the following relief and orders against **Thomas Vidrine**, as the respondent:

> *"1. A Declaration under section 148A of the Supreme Court of Judicature (Amendment) Act and/or under section 16 of the Married Women's Property Act that the Applicant is beneficially entitled to a one-half share or interest in the following properties:*
>
> *a) San Pedro Registration Section, Block 7, Parcels 732, 733, 734, 735, 736, 1815, 1817, 1818 and 1819 purchased from Harold Decker/Bernard Pederson;*
>
> *b) San Pedro Registration Section, Block 7, Parcels 730, 731, 1813 and 1814 purchased from sea Gal Boutique Ltd.;*
>
> *c) San Pedro Registration Section, Block 7, Parcels 3884 and 3885 purchased from Bernard Pederson;*
>
> *d) …*
>
> *e) …*
>
> *f) All that property located in the Boca Del Rio area North of San Pedro Town Ambergris Caye containing six acres more or less and previously belonging to and purchased from James Phipps;*
>
> *Or such Order as to ownership thereof as may be just.*
>
> *2. An Order that the above-mentioned properties be sold and the net proceeds of sale be divided equally between the Applicant and Respondent or otherwise as may be just.*

3. *An Order that one-half of the proceeds or such portion thereof as may be just from the sale of all that property being 1.6 acres more or less situate on the east coast of Ambergris Caye being lot number 6A on a subdivision plan by A.R. Marin, Surveyor dated May 2, 1975 and recorded in Surveyor's Plan Book No. 7 at folio 60 and all buildings, erections, fixtures, furnishings and chattels whatsoever shall belong to and be paid to the Applicant by the Respondent.*

4. *An Order that the personal property being a tractor, eight (8) speed boats with engines all used by/for the business called "Island ferry" and all other personal property used to carry on the Island Ferry business and/or the Boat Yard Ltd. business are owned in equal shares by the Applicant and the Respondent or in such portion/shares as may be just.*

5. *An injunction prohibiting the Respondent from selling transferring leasing or in any way disposing of any of the real properties above-referred to and any of the assets of the or used for business carried on by The Board Yard Limited, Sunset Harbor Limited, or Island Ferry, until this action is heard and concluded.*

6. *An Order that if the Respondent sells any of the above-referred to properties before this action is brought to the Respondent's attention by due service, that one-half of the proceeds of any such sale or such portion thereof as may be just shall belong to and be paid to the Applicant.*

7. *An Order that the Respondent do pay to the Applicant such monthly or weekly sum in respect of maintenance of the Applicant as may just.*

8. *Such order or further Order or relief this Honorable Court deems just.*

9. *Costs.*

2. At the commencement of the trial, Mr. Michael Young SC for the applicant, Sari Vidrine, applied to have **Laguna Vista Ltd.** joined as second defendant as it is holding certain of the properties Ms. Vidrine is claiming interest in. Ms. Marin Young for Thomas Vidrine had no objection. Laguna Vista Ltd. was accordingly joined.

Background: the Parties and their Relationship and the acquisition of the Properties

3. I shall, for convenience, refer to the parties respectively as **Sari** and **Tom**. Both were originally from the USA but are now naturalized Belizeans and domiciled here.

Tom started his career as a banker, first as am assistant cashier in 1978 in his family-owned bank called American Security Bank in the State of Louisiana, USA. By 1995 when he first met Sari, he had risen to the position of the president of the bank; by which time from the evidence, he had accumulated significant assets which included a substantial stockholding in the said bank, a house in Ville Platte, Louisiana. He was also a beneficiary of his father's trust. Tom was therefore, before meeting Sari and his subsequent marriage to her, a man of some means and worth. He states in para. 4 of his witness statement that in 1994 (the year before meeting Sari) his net worth was US$1,255,954.00. Tom was then divorced and had four children by his previous marriage.

4. Tom and Sari met in September 1995 when she went to work as a consultant (in motivational training) for American Security Bank, in Louisiana. They started dating shortly after and from November of that year cohabited in Tom's house in Ville Platte as man and wife.

5. Sari, from the evidence, holds a Bachelor's degree in Sociology, with a minor in business, from Rutgers University in New Jersey, USA. She also

hold a stockbroker and insurance licence. By the time she and Tom met in September 1995, she was a partner in a firm called First Institutional Marketing Inc. She had always been employed or working. She says in para. 6 of her affidavit filed on 14th June 2002, in support of her application in these proceedings, that when she met Tom, she was earning a salary of over US$100,000.00, inclusive of fringe benefits such as travelling expenses, and she exhibited copies of her US income tax returns for the years 1993 – 1995. She further states in para. 9 that between January 1996 and October 1997, she worked at American Security Bank and made approximately US$80,000.00 during this period. This period presumably coincide with the time she worked for the said bank as a motivational trainer.

6. It is manifest therefore that when Sari met Tom, she was not without means, though not certainly on the same scale as Tom.

7. After cohabiting briefly in Ville Platte in Louisiana where Sari had moved to from her own residence in Houston, Texas, USA, both Tom and Sari travelled to Belize, and on 29th July 1996, were married in San Pedro, Ambergris Caye.

8. Sari's services with American Security Bank were however later terminated. Perhaps in solidarity, Tom had a falling-out with the Board of that bank and later resigned as its president.

9. Both Tom and Sari decided to relocate in San Pedro, Ambergris Caye in Belize, where Tom already had a property called the **Blue Dolphin**. This property had been purchased by Tom in 1994 for $150,000.00. It measured 1.6 acres and had a complete two storey white house on it. Tom states in para. 7 of his witness statement that he paid an additional

$75,000.00 for all the furniture, art, curtains, diesel generator and fixtures that were in the house at the time of its purchase.

10. It was to San Pedro, Ambergris Caye, that Mr. and Mrs. Thomas Vidrine (Tom and Sari) moved in 1997 as husband and wife and occupied the Blue Dolphin as their matrimonial home. A "guest house" or "caretaker's house" (the respective description of a house that was on the property of Sari and Tom) was reconstructed and repaired and refurbished. Sari claims to have spent US$5,000.00 of her own money on this exercise. Both might have intended to live in San Pedro in retirement or semi-retirement, perhaps to enjoy the sun, sand and sea that the ambience of that Caye offers. They were however, both relatively then in good health and at the prime of their lives. At the time of their marriage Tom was 47 and Sari 40.

11. Life in retirement would no doubt have proved somewhat unfulfilling for both of them. (See in particular para. 15 of Sari's further affidavit of 13th October 2005).

12. From the evidence, between 1997 and 2000, when they eventually separated, a number of properties were acquired and businesses set up and operated by Tom and Sari.

13. However, to **fund** their life style and activities in Belize, including the expenses of their matrimonial home, their personal expenses and purchase of some real properties on Ambergris Caye, the parties set up joint bank accounts in their names in both Belize at the Belize Bank and the American Security Bank in Louisiana, USA (see in particular, paras. 14, 17, 20 and 21 of Sari's affidavit of 14th June 2002, in support of her application and para. 35 of her further affidavit of 13th October 2005; and

paras. 9, 10, 20, 21, 25, 26, 28, 29, 30 and 31 of Tom's affidavit of 19th September 2002).

14. From the evidence, it is undeniable that Tom and Sari operated **joint bank accounts** at the Belize Bank in Belize and the American Security Bank in Ville Platte in Louisiana, USA. They also had some **Certificates of Deposit (CDs)** in their joint names (see in particular, para. 31 of Tom's affidavit of 19th September 2002, where he refers to several term deposits in their joint names; and para. 27 of Sari's further affidavit of 13th October 2005).

15. All this, I think, is highly suggestive at least, if not conclusively, probative, that both Tom and Sari intended to pool their resources together as man and wife. This picture is what they must have conveyed to the bank officials in opening and operating the bank accounts and in making the term deposits in their joint names in respect of the CDs.

16. In my view, the fact that the lion share, if not the whole of the proceeds in the accounts and the CDs came, as is shown by the evidence, if not exclusively from Tom's US-based financial resources such as his own personal bank accounts at American Security Bank, the Federal Savings Bank, Morgan Keegan and his father's trust account with Hancock Bank of which he Tom was a beneficiary, would not disentitle Sari to a share in these funds.

17. There is as well, that as between Tom and Sari as husband and wife, the presumption of advancement in her favour as the wife of the former: see **Snell's Equity 31st ed**. at para. 23-13.

18. What is undoubted, from the evidence, is that it was **during** the **marriage** of Tom and Sari that most of the properties the subject of Sari's application, were acquired and the businesses established.

The marriage between Tom and Sari and their separation and divorce

19. From the evidence, and this is common ground between the parties, Tom and Sari were married in July 1996 and stayed together as husband and wife until October 2000, when Sari left the matrimonial home. The circumstances of her leaving are not agreed between them and they each states conflicting versions. But Sari later on **7th July 2002**, petitioned for divorce, but had on **16th June 2002**, launched the present proceedings seeking the several declarations and orders that are the subject of this judgment. Eventually, their marriage was dissolved by the Court on **2nd September 2004**. Therefore, though Sari had moved out or being forced out of the matrimonial home (according to her own version), or left the same according to Tom, by end of **October 2000**, they were, in law, husband and wife. They lived apart from **October 2000** until **September 2004**, when their marriage was formally dissolved by a decree absolute of the Court on the grounds that since the marriage their union had irretrievably broken down by their living separate and apart for more than three years. They had however, in effect, been married for eight years (1996 to 2004). There was however, the issue of Sari's application for declarations and orders relating to the distribution of properties she claims were acquired during the marriage. This, as I have said, is the subject of this judgment.

20. At the trial in addition to their respective affidavits and copious exhibits, and witness statements, both Tom and Sari testified and were extensively cross-examined by the respective attorneys for either side. Three other witnesses testified for Sari in addition to their witness statements which

were tendered in evidence. Three other witnesses testified as well in addition to their witness statements for Tom.

The Properties and businesses acquired or operated during the marriage

21. From the evidence, several properties and businesses were acquired and established **during** the marriage of Tom and Sari.

22. The first property was the **Blue Dolphin**. This property was in fact acquired by Tom in 1994 from one Lottie Maria Diaz. This property is situate on grounds of 1.6 acres. However, on their marriage in 1996, it became **their matrimonial home** in late 1997 when they both relocated to live in Ambergris Caye. It was in fact the first matrimonial home the couple shared in San Pedro, Ambergris Caye.

23. There is however, some contention between Tom and Sari regarding the refurbishing and renovation of this property, including the guest house or caretaker's house on it. But Tom testified that Sari contributed $5,000.00 to the renovation and remodeling of the guest house.

24. Tom stated that after Hurricane Keith which struck Ambergris Caye in October 2000, he repaired the **Blue Dolphin** and sold it in 2001 for the sum of US$458,000.00. He stated that the repairs and reconstruction were done solely by him and with his own resources as Sari had gone away by end of October 2000.

25. The next piece of property is what both sides have referred to as the **Boat Yard Property**. It comprises several parcels of land and these are the subject of Sari's prayer in paragraph 1(a), (b) and (c) in the Originating Summons. It is situated in San Pedro Registration Section, Block 7. The parcels of land were bought between 1998 and 2000 when the parties

lived together as husband and wife. The object behind the purchase of this property was to establish a marina, nightclub, restaurant and bar business. The acquisition and development of this property led to the establishment of other businesses owned by Tom and Sari after incorporating the property itself as the **Boat Yard Ltd**.

Tom and Sari later built a second home on the **Boat Yard** property as the base for operating the businesses they had incorporated. These businesses were the **Sunset Harbour Ltd.** as a bar, restaurant and nightclub; and the **Island Ferry** for providing ferry services along the coast of Ambergris Caye.

26. There is some dispute as to the source of funding for this property. Tom says that he had the purchase money wired from the USA, while Sari says that the purchase price could have come from their joint accounts.

27. From the evidence however both Tom and Sari worked to develop the **Boat Yard** property. Sari, for example, states that Tom drove tractors, (presumably for clearing and filling the land), while Tom, under cross-examination, admitted that when he started to make investment in Belize, he relied on Sari's shopping and that she made several shopping trips to the USA for the **Boat Yard** property. and that while he provided the money she did the shopping and was very effective at it.

28. The businesses that were spawned off from the **Boat Yard Property** were in fact owned jointly, for example **Boat Yard Ltd.** was owned 99.9% by Tom and 0.1% by Sari. But the **Sunset Harbour Ltd.** was owned in equal shares by both of them. Sari also stated that the **Island Ferry** service which owned at one time several boats was her idea, as was the tokens used on the ferries, and that she did promotional marketing for it.

29. From the evidence, during their marriage, both Tom and Sari made contributions towards the development and operation of the businesses they ventured into at **Board Yard**. For example, Sari says she put in the sum of $20,000.00 procuring stock for the bar at the **Sunset Harbour** establishment. (See para. 20 of Sari's further affidavit filed on 13th October 2005).

30. Given their relative financial standing, their financial contributions were not of course equal. But contributions in cash and kind they each made to the **Boat Yard** property and the businesses associated with it.

31. The bone of contention between the parties is that whatever contributions Sari might have made, towards the acquisition and operation of the **Boat Yard** and its associated companies, Tom insists that he provided the bulk if not the whole of the money for the property. Sari maintains however, that she made significant contributions to the **Boat Yard** (see in particular paras. 15 and 16 of her further affidavit filed on 13th October 2005).

32. At the conclusion of the trial of this case both sides agreed to have Mr. Armin Cansino as the valuer to submit a valuation of the **Boat Yard Property**. This Valuation Report by Mr. Cansino dated 12th December 2008, was eventually forwarded to the Court on 5th February 2009.

33. The **Boat Yard Property** and associated businesses were largely destroyed by Hurricane Keith in October 2000. I have decided to reproduce here verbatim parts of the Valuation Report which include estimates of value of the property just after the hurricane and its current valuation as of 12th December 2008:

(B) OCTOBER 2000 (JUST AFTER HURRICANE KEITH

The hurricane caused damage to most of the improvements on the property. The piers and the palapa bar were badly damaged. The three-storey building also suffered damage mostly to the roof. The san filled was also affected. The estimated values after the hurricane are as follows:

Value of land	*$286,350.00*
Value of improvements	*$473,650.00*
Total	*$760,000.00 Belize dollars*
	$380,000.00 U.S. dollars

(C) JULY 2004

By July 2004, most of the damage caused by the hurricane had been corrected. New thatched roofs were replaced; the roof of the three-storey building was repaired, mostly with same material of the original structures. The following are the estimated values:

Value of land	*$709,000.00*
Value of improvements	*$929,000.00*
Total	*$1,638,000.00 Belize dollars*
	$ 819,000.00 U.S. dollars

(D) DECEMBER 2008

The piers on the property are new structures, say 1.5 years old. The palaba **(sic)** *bar has been upgraded since 2004 and sections of the seawall are new. The estimated values are as follows:*

Value of land	*$ 925,000.00*
Value of improvements	*$1,333,000.00*
Total	*$2,258,000.00 Belize dollars*
	$1,129,000.00 U.S. dollars

34. Mr. Cansino also in his report states that in July 2004, by which time most of the damage done by the hurricane had been corrected: new thatched roofs were replaced; the roof of the three-storey building was repaired, mostly with same material of the original structures and estimated total value at that date to be $1,638,000.00.

35. From this, it is evident that the current value of the **Boat Yard Property** is **$2,258,000.00**. This is inclusive of the value of the land and improvements. This compared to the valuation of the property as at October 2000, just after Hurricane Keith at **$760,000.00** shows that the property has greatly increased in value.

36. This increase in value may reasonably be attributed to the repairs, restoration and rehabilitation work carried out on the property after Hurricane Keith by Tom.

37. Tom testified as to the restoration and rehabilitation of the property and the costs were all borne by him and that Sari was not involved in this as she had by them departed the property.

38. The third piece of real property to which Sari is laying a claim of half a share or interest in these proceedings is a cluster or tracts of land located in the **Boca Del Rio** area, North of Ambergris Town containing six acres more or less. This is the **Boca Del Rio Property**.

39. This property was acquired by Tom in April 2002. At the time though, Sari and Tom were living separate lives, they were however still married. I do not however understand Sari to be saying that she made any contribution, financial or non-financial, towards the acquisition of this property. Therefore any claim she may have would derive from statute relating to title or rights in respect of property acquired by **either the husband** (Tom) or the wife **during the subsistence of the marriage**. Sari has pitched her claim to a share of this property on this basis: see para. 36 of her further affidavit of 13th October 2005. She exhibited at **SV 28** the title to this property which is in Tom's name solely.

40. Tom states in his affidavit and witness statement that in fact it was his acquisition of this property and the fact that he was back on his feet recovering from the devastation of Hurricane Keith that caused Sari to bring these proceedings claiming a share in the properties in this case.

41. However, at the close of the trial Tom admitted that some tracts of the **Boca Del Rio Property** had been sold as follows: Track 4 for **US$1,300,000.00**; Track 9 for **US$185,000.00**; another Track for **US$60,000.00**; and that Track 2 was the subject of litigation before the courts.

42. What is evident from all this is that the **Boca Del Rio Property** is of some appreciable value.

43. In the Originating Summons, Sari claims as well an equal share or such other portion or shares the Court may deem fit in certain **personal properties**, viz, a **tractor**, **eight speed boats with engines** used in the "Island Ferry" business and or in the **Boat Yard Ltd.** business.

44. These properties no doubt refer to the business set up by Tom and Sari to operate the **Boat Yard Ltd**. Sari exhibited as **SV 13** a colour photograph of the tractor.

45. These are the properties in issue between the parties and the subject of her summons in these proceedings. I must state here however that these have not been put before the court in a helpful manner despite the voluminous documentation in this case by both sides.

The principal issue joined between the Parties

46. From the summons commencing these proceedings, the evidence including the several affidavits filed and the testimony of both Tom and Sari and their respective witnesses, the principal issue between Tom and Sari is her claim to half the properties she says were acquired during the course of her marriage to Tom. For Tom on the other hand, it has been strenuously contended that Sari, in essence, made no financial contributions towards the acquisition of the properties, save and except the $20,000.00 she put up in relation to the **Sunset Harbour Ltd**. It is further contended that Tom had opened and operated the joint bank accounts with Sari only for convenience and that all the funds in the accounts were deposited by Tom from his US based resources which he had acquired long before meeting Sari, and that the purchase price of these properties came from Tom's resources only. The logical conclusion of this contention though not stated so starkly would be that Sari is not entitled as she claims.

47. For a determination of this case, I must set out the statutory provisions on which Sari hopes to anchor her claim and analyze these in the light of the parties' marriage and their relationship viz-a-viz the properties.

48. There are no children of the marriage between Tom and Sari.

The Statutory Schemes

49. Sari's claim is based **first**, on the **Married Women's Property Act**, Chapter 176 of the Laws of Belize, Revised Edition 2000. Section 16 of this Act provides, as far as it is material, as follows:

> ***16.-(1)In any question between a husband and wife as to the title to or possession of property, either party, or any such bank, corporation, company, public body or society as aforesaid in whose books any stocks, funds or shares of either party are standing, may apply by summons in a summary way to a judge of the court who may make such order with respect to the application as he thinks fit, or may direct such application to stand over from time to time, and any inquiry touching the matters in question to be made in such manner as he thinks fit.***
>
> *(2) Any such order shall be subject to appeal in the same way as an order made by the judge in a civil action in the court.*

50. I cannot help but observe that today much is taken for granted in terms of **married women** and their right to hold and own property. It was not always so. It may be remarkable that in Belize up until 8th May 1953, a married woman was legally incapable of holding or possessing property in her own right. She, like her property, was regarded as belonging to her husband. But this was not the case for her **unmarried** sister; she as a *fem*

sole, could own property. A married woman was therefore under a severe and discriminatory disability with regards to property. But in 1953 in Belize, a great gender equalizing and female emancipation measure was enacted in the **Married Women's Property Act**. This for the first time broke the shackles on married women holding and owning property in their own right. Section 3 of this Act struck a signal blow for women's rights, at least married women. It granted women the same capacity as men in respect of acquiring, holding and disposing of any property whatsoever. It also abolished all the rights powers and authorities of a husband at common law over and in relation to the property of a wife acquired before or after her marriage. Section 4 of this Act granted to a married woman full rights over her property as if she were a single woman.

51. **Section 16** of the Act (the material parts of which are set out at para. 49 above), provides that in any question between a husband and wife regarding title to or possession of property then, either the wife or husband may apply by summons (in a summary way) to a judge of the Supreme Court who may summarily make such order with respect to the application as he thinks fit or may stand the application over and he may direct an inquiry into the issue to be made in such manner as he thinks fit.

52. Belize's Married Women's Property Act is itself a linear descendant of the English Married Women's Property Act 1882. Section 17 of this English statute is, in effect, similar to section 16 of the Belize legislation. It would in fact be true to say that the latter was informed and patterned after the former.

53. In practice, certainly in England, the interpretation and application of section 17 (under the English Married Women's Property Act 1882) were not without difficulties regarding what jurisdiction exactly did the section

confer on the Court. Lord Denning MR was convinced that it conferred a discretionary power over family assets. As he stated in **Hine v Hine (1962) 3 All ER 345** at 347; **(1962) 1 WLR, 1124, CA** at 1127-8:

> *"… the jurisdictions of the court over family assets is entirely discretionary. Its discretion transcends all rights, legal or equitable, and enables the Court to make such orders as it thinks fit. This means, as I understand it, that the Court is entitled to make such orders as appears to be fair and just in all the circumstances of the case."*

54. However, Lord Denning's approach to the English section 17 was controversial. And in two subsequent cases on that section, the House of Lords delivered what has been called "a death blow" to Lord Denning's approach (see **Bromley's Family Law 9th Ed.** at p. 136). In two important decisions bearing on the effect of the English section 17, the House of Lords held in **Pettit v Pettit (1970) AC 777**; **(1969) 2 All ER 385**; and **Gissing v Gissing (1971) AC 886**; **(1970) 2 All ER 780**; that properly interpreted section 17 is purely a **procedural provision** designed to facilitate a speedy resolution of disputes between married couples, whereby the Court could make a declaration of ownership; but that the Courts have no jurisdiction under section 17 to pass proprietary interests from one spouse to the other.

55. As Lord Reid states in **Pettit** supra:

> *"It is perfectly possible to construe the words as having a much more restricted meaning and in my judgment they should be so construed. I do not think that a judge has any more right to disregard property*

rights in section 17 proceedings than he has in any other form of proceedings" at p. 387.

56. Given this judicial authority, which I find especially persuasive at least, if not binding, I am prepared to find that though the Courts in Belize, under section 16 of the Married Women's Property Act, cannot make orders under it to alter property rights, they can, however, given the discretion to make orders regarding the property in issue, make different types of orders, which may effectively control the way in which the property is used, without departing from the principle that they cannot, under this section, **alter title** to it.

57. Therefore, I find that though section 16 is not a **title-to-property-altering** provision, it may in an appropriate case however, enable the courts to make **other types** of orders regarding the property. See **Perera v Perera (1994) 1 BLR** where Brown CJ made an order under section 16 granting the wife applicant, 50% share in the equity of their matrimonial home based on her contributions, on the facts of that case. It is to be noted, however, that there are no provisions or guidance to the Courts in the exercise of the discretion under this section. There is nothing, for example, in it that could be regarded as a marker or road map for the Court in the exercise of the discretion it confers such as the parties contributions towards acquiring the property or their respective conduct leading to the breakdown of the marriage, other than as the judge "thinks fit". And given the **summary** nature of proceedings under section 16, this may be an unsatisfactory provisions that may be fraught with difficulties and inconsistencies for a conclusive determination of property rights and distribution between couples on divorce.

58. However, in these proceedings the **second** string in Sari's bow, as it were, in her application is **section 148A of the Supreme Court of Judicature**

Act. In the light of the provisions of this section, and the circumstances and evidence in this case, it is fair to say that it is, in fact, the main plank in her platform in this case. This much is evident in the written submissions of her learned attorney, Mr. Michael Young SC.

59. I now turn to this second statutory scheme and its relationship to the present application.

Section 148A of the Supreme Court of Judicature Act

This section is itself of recent provenance and in the context of an application during divorce proceedings between a husband and wife, it confers undoubtedly novel and wide discretionary powers on the Court as regards to **title** or **rights** in respect of property acquired by the husband and the wife **jointly during the subsistence of the marriage, or acquired by either of them during the subsistence of the marriage.**

60. The long title to this provision which came into force on 23rd February 2001, states among other things, that it is **"to provide guidelines to be used by** (the Court) **when distributing property upon the divorce of married spouses."**

61. I might add here in parenthesis that this provision in section 148D for the first time statutorily recognized the common law union between a man and a woman if neither is married to another person and have cohabited together continuously for at least five years. Couples to a common law union are by **section 148E**, given the same rights as to distribution of property on separation, as a married couple.

62. Tom and Sari were as I have stated, married until 2004 and her application is made pursuant to **section 148A**. This section provides:

"***148A.(1)*** ***Notwithstanding anything contained in this Part or in any other law, a husband or wife may during divorce proceedings make application to the court for a declaration of his or her title or rights in respect of property acquired by the husband and wife jointly during the subsistence of the marriage, or acquired by either of them during the subsistence of the marriage.***

(2) ***In any proceedings under subsection (1) above, the court may declare the title or rights, if any, that the husband or the wife has in respect of the property.***

(3) ***In addition to making a declaration under subsection (2) above, the court may also in such proceedings make such order as it thinks fits altering the interests and rights of either the husband or the wife in the property, including:-***

(a) ***an order for a settlement of some other property in substitution for any interest or right in the property; and***

(b) ***an order requiring either the husband or the wife or both of them to make, for the benefit of one of them, such settlement or transfer of property as the court determines.***

(4) ***The Court shall not make an order under subsection (3) above unless it is satisfied that, in all the circumstances, it is just and equitable to make the order.***

(5) In considering whether it is just and equitable to make an order under section (3) above, the court shall take into account the following:-

(a) the financial contribution made directly or indirectly by or on behalf of either the husband or the wife in the acquisition, conservation or improvement of the property, or otherwise in relation to the property;

(b) the non-financial contribution made directly or indirectly by or on behalf of either the husband or the wife in the acquisition, conservation or improvement of the property, including any contribution made in the capacity of housewife, homemaker or parent;

(c) the effect of any proposed order against the earning capacity of either the husband or the wife;

(d) the age and state of health of both the husband and the wife, and the children born from the marriage (if any;

(e) the non-financial contribution made by the wife in the role of wife and/or mother and in raising any children born from the marriage (if any);

(f) the eligibility of either the husband or the wife to a pension, allowance,

gratuity or some other benefit under any law, or under any superannuation scheme, and where applicable, the rate of such pension, allowance, gratuity or benefit as aforesaid;

(g) the period when the parties were married and the extent to which such marriage had affected the education, training and development of either of them in whose favour the order will be made;

(h) the need to protect the position of a woman, especially a woman who wishes to continue in her role as a mother;

(i) any other fact or circumstances that in the opinion of the court, the justice of the case requires to be taken into account.

(6) Where the court makes an order under subsection (3) above, it may also make such consequential orders in respect thereto, including orders as to sale or partition, and interim or permanent orders as to possession, and may further order that any necessary deed or instrument be executed, and that such documents of title to the property be produced or such other things be done as are necessary to enable the court's order to be carried out effectively, or that security be provided for the due performance of an order.

> ***(7) Any order may by the court under this section shall be binding on the husband and the wife, but not on any other person.***"

63. Perhaps because of its relatively recent origins, the courts in Belize have not had an opportunity to explore in depth the effect and application of section 148A, except, as I am presently advised, the case of **Jovita Novelo v Alonzo Novelo et al** (Supreme Court Action No. 623 of 2002 decided on 15th November 2004, unreported). In that case, the application by the wife under both section 148A and section 16 of the Married Women's Property Act was for the equal division of properties. The learned trial judge declined to make any order declaring any interest of the wife in any of the properties in issue in that case; he ordered instead, the payment of a lump sum of $40,000.00 to the wife. The decision was not appealed. Mr. Young SC perhaps, not unexpectedly, in the present proceedings, in his written submissions on behalf of Sari, respectfully cavils at that decision as being too "narrow and focused", and that instead of approaching the issue of distribution of assets with the broad brush which the law intends in such cases the learned judge *"focused virtually exclusively on identifying financial contributions by the wife to the acquisition of the properties in question"* in that case.

64. This no doubt is the central plank as advanced by Ms. Marin-Young for Tom in the instant case, that is, he provided the bulk, almost all of the purchase price for the properties Sari now claims one half share in.

65. Be that as it may, I am convinced and satisfied that section 148A grants to the Court, in determining the distribution of property between a married couple on divorce, a wide canvas on which is etched the several **factors** stated in sub-section (5) of section 148(A). **Sub-section (1)** clearly authorizes the Court that "(N)otwithstanding anything contained in "Part

IX" of (the Supreme Court of Judicature Act), or in **any other law**, a husband or wife may during divorce proceedings make application to the Court **for a declaration of his or her title or rights** in respect of property acquired by the husband and wife jointly during the subsistence of the marriage **or acquired by either or them during the subsistence of the marriage**." (Emphasis mine). The correct reference, I think, should be to **Part XI** of Chapter 91 which deals with Matrimonial Causes and Matters.

Sub-section (2) of section 148A provides that "in any proceedings under sub-section (1) … **the court may declare the title or rights**, if any, that the husband or the wife has in respect of the property." (Emphasis mine).

Sub-section (3 provides that "(I)n **addition to making a declaration** under subsection (2) … the **court may also** in such proceedings **make such order as it thinks fits altering the interests and rights of either the husband or the wife in the property including**:

> *"(a) an order for a settlement of some other property in substitution for any interest or right in the property; and*
>
> *(b) an order requiring either the husband or the wife or both of them to make, for the benefit of one of them, such settlement or transfer of property as the court determines."* (Emphasis mine).

66. I am convinced therefore that whatever may be the position under section 16 of the Married Women's Property Act, these subsections (1), (2) and (3) of section 148A undoubtedly and expressly confer on the court the discretionary power to **alter title to, rights or interests in property** in favour of either the husband or the wife by its declaration or orders, and this is so, **notwithstanding anything in any other law**.

67. However, a limiting and perhaps controlling factor in the exercise of the court's somewhat wide discretion under **subsection (3)** is **subsection (4)** which provides:

> *"(4) The Court shall not make an order under subsection (3) …* ***unless it is satisfied that, in all the circumstances, it is just and equitable to make the order****."* (Emphasis mine).

68. Importantly, **subsection 5** provides that "(i)n considering whether it is just and equitable to make an order under subsection (3), the Court shall take into account the following: there are then enumerated **nine factors** in sub-paragraphs (a) to (i), which are meant to inform and guide the court in the exercise of its discretion as to whether it thinks fit, to **alter** the interests and rights of either the husband or the wife in the property in question.

69. It is my considered view that in listing in subsection (5) the factors or matters that must inform the exercise of the courts' discretion under subsection (3), the textual provisions or teleological rationale for these factors do not intend any hierarchy between them. But the Court must have regard to them in the exercise of its discretionary powers. The listing is therefore, not in terms of importance of any one factor as against another: no hierarchy or sub-hierarchy is intended – see **Piglowska v Piglowski (1999) 1 WLR 1360** where at p. 1370 Lord Hoffmann speaking for a unanimous House of Lords on section 25(2) of the English Matrimonial Causes Act, 1973, comparable to section 148A (5) of the Belize's Supreme Court Act said:

> *"Section 25(2) of the Act of 1973, while listing the various matters to which particular regard should be had, does not rank them in any*

kind of hierarchy. Which of them will carry most weight must ***depend upon the facts of the particular case.***" (Emphasis added).

70. I respectfully adopt this view in relation to section 148A, subsection (5), in enumerating the various factors to which the Court must have regard in deciding whether to make an order under subsection (3). Therefore, given the facts of any particular case, **the financial contribution** of one or the other of the parties may for example be as important as the **non-financial contribution** either might have made directly or indirectly, in the acquisition, conservation or improvement of the property in question. It is, in my view, a matter for the Court to determine whether to make an order under subsection (3). This determination must however be informed and guided by any one or more of the factors listed in subsection (5) and what in the opinion of the court **the justice of a particular case requ**ires. Needless to say, it must not be capricious or whimsical. Significantly also sub-paragraph (i) of subsection (5) enables the court to take into account "**any other fact or circumstances that in the opinion of the court, the justice of the case requires to be taken into account**."

71. I am therefore convinced and satisfied that from a close study of the provisions of section 148A of the Supreme Court of Judicature Act adopted in 2001, the Legislature in Belize has completed the circle of enlarging the married woman's right to property somewhat tentatively first advanced in the provisions of the Married Women's Property Act (as I have briefly discussed at paras. 50 – 52 above in this judgment). It must be remembered that the exercise involved in section 148A is aimed at dividing the assets on the breakdown of the marital relationship between the parties. This state of affairs is sometimes marked by separation of the couple, then ultimately in divorce.

72. I cannot but agree with Mr. Young SC in his written submission on behalf of Sari that today in Belize, by the provisions of section 148A of the Act, Parliament has expanded the powers of the Supreme Court and given it the flexibility to make **fair**, **just** and **equitable** financial provisions for spouses on the breakdown of their marriage. This power with its accompanying flexibility is to be exercised **fairly**, **justly** and **equitably**, having regard to the facts of a particular case and any other fact or circumstances which in the opinion of the Court, **the justice of the case** requires to be taken into account.

An Aid to understanding and applying the guidelines provided in Section 148A of Chapter 91

73. Given its recent origins and the relative lack of local judicial authority on the interpretation and application of the provisions of section 148A, it is I think helpful and instructive to draw upon the exposition of comparable law, especially from sister jurisdictions in the Commonwealth with comparable provisions on the distribution of property of married couples on the breakdown of their relationship. I have mentioned the local case of **Novelo v Novelo** (2004 unreported) at para. 63.

74. All these sister commonwealth Countries have legislation similar to the provisions now contained in section 148A of Chapter 91. It would not be out of place, I think, to hazard a guess that in fact, the provisions in Belize's statute on the division of assets on the breakdown of marriage were inspired by these other Commonwealth legislation. In this regard, the provisions of **section 25(2) of the English Matrimonial Act 1973** are much in point. These provisions, though not exactly *ipsissima verba* as the provisions of Belize's statue, however, bear close similarity. The provisions in both statutes provide a list of matters to which a court must have regard to in deciding how to exercise its broad discretionary powers regarding the division of assets on the breakdown of a marriage.

75. The English Courts have had, not unnaturally, quite some experience in interpreting and applying these provisions. The experience has been informed by decisions especially of the House of Lords, whose composition when it sits as Her Majesty's Privy Council, the present highest Court of Appeal for Belize, is invariably the same.

76. The first case of some seminal importance on the interpretation of and the relationship of the matters the court must have regard to in this exercise is **White v White (2000) 3 WLR 1571**. This case is especially instructive on the approach the courts should take in determining financial provisions for spouses on divorce. Because of this I have taken the liberty to quote extensively excerpts from the judgment of the House of Lords, particularly the lead judgment of Lord Nicholls of Birkenhead with whom all the other members of the House agreed. His Lordship stated at para. 23 of the judgment:

> *"… the legislation does not state explicitly what is to be the aim of the courts when exercising these wide powers.* ***Implicitly, the objective must be to achieve a fair outcome. The purpose of these powers is to enable the court to make fair financial arrangements on or after divorce in the absence of agreement between the former spouses*** *(see Thorpe LJ in dart v Dart [1997] 1 FCR 21 at 29). The powers must always be exercised with this objective in view, giving first consideration to the welfare of the children."* (In this case, there are no children of the marriage). (Emphasis added).

And at para. 24:

> *"Equality:*
>
> *Self-evidently, fairness requires the court to take into account all the circumstances of the case. Indeed, the statute so provides. It is also self-evidence that the circumstances in which the statutory powers have*

to be exercised vary widely. As Butler-Sloss LJ (at 39) said in Dart's case, the statutory jurisdiction provides for all applications for ancillary financial relief, from the poverty-stricken to the multi-millionaire. 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. 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 para (f) of s 25(2) of the 1973 Act, relating to the parties' contributions. This is implicit in the very language of para. (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.' (My emphasis.) If, in their different spheres, each contributed equally to the family, then in principle it matters not which of them earned the money and built up the assets. There should be no bias in favour of the money-earner and against the homemaker and the child-carer.

And at continues at para. 25:

A practical consideration follows from this. Sometimes, having carried out the statutory exercise, the judge's conclusion involves a more or less equal division of the available assets. More often, this is not so. More often, having looked at all the circumstances, the judge's decision means that one party will receive a bigger share than the other. . ***Before reaching a firm conclusion and making an order along these lines, a judge should always be well advised to check his tentative views against the yardstick of equality of division. As a general guide, equality should be departed from only if, and to the extent that, there is good reason for doing do. The***

need to consider and articulate reasons for departing from equality would help the parties and the court to focus on the need to ensure the absence of discrimination. (Emphasis added).

And at para. 35:

The statutory provisions lend no support to the idea that a claimant's financial needs, even interpreted generously and called reasonable requirements, are to be regarded as determinative. Another factor to which the court is bidden to have particular regard is the available resources of each party. As my noble and learned friend Lord Hoffmann observed in Piglowska v Piglowski [1999] 3 All ER 632 at 642, [1999] 1 WLR 1360, s 25(2) of the 1973 Act does not rank the matters listed in that subsection in any kind of hierarchy. ***The weight, or importance, to be attached to these matters depends upon the facts of the particular case. But I can see nothing, either in the statutory provisions or in the underlying objective of securing fair financial arrangements, to lead me to suppose that the available assets of the respondent become immaterial once the claimant wife's financial needs are satisfied****. Why ever should they? If a husband and wife by their joint efforts over many years, his directly in his business and hers indirectly at home, have built up a valuable business from scratch, why should the claimant wife be confined to the court's assessment of her reasonable requirements, and the husband left with a much larger share? Or, to put the question differently, in such a case, where the assets exceed the financial needs of both parties, why should the surplus belong solely to the husband?* ***On the facts of a particular case there may be a good reason why the wife should be confined to her needs and the husband left with the much larger balance. But the mere absence of financial need cannot, by itself, be a sufficient reason. If it were, discrimination should be creeping in by the back door. In these cases, it should be remembered, the claimant is usually the wife. Hence the importance of the check against the yardstick of equal division.***" (Emphasis added).

77. In his concurring opinion at paras. 57 and 58 of the judgment, Lord Cooke of Thorndon took the opportunity to refer to the statutory schemes in both New Zealand and Australia. At para. 57 he stated:

> *"In outline the scheme of the New Zealand Matrimonial Property Act 1976 is that after a marriage of more than three years, the values of the matrimonial home (whenever acquired) and the family chattels are shared equally unless there are extraordinary circumstances rendering equality repugnant to justice. Other matrimonial property is shared equally unless one party's contribution to the marriage partnership has clearly been greater; the bringing into the matrimonial partnership of separate property acquired by one spouse by inheritance or gift may rank as a contribution. If the New Zealand regime had applied to the facts of the present case, I would expect an award to the wife of certainly no less than 40% of the total available property, which is approximately what the Court of Appeal have ordered."*

And at para. 58 his Lordship referred to the Australian statutory scheme:

> *"While a fairly broad discretionary jurisdiction does have the merit of flexibility, it will not be satisfactory unless exercised with a reasonable degree of consistency. On this aspect attention was focused in argument on Mallet v Mallet (1984) 156 CLR 695, since the Australian statutory regime is similar in pattern to the English one. But not long after that decision a somewhat differently approach in Norbis v Norbis (1986) 161 CLR 513."*

And His Lordship concluded at para. 61:

> *"The most important point, in my opinion, in the speech of my noble and learned friend Lord Nicholls* ***is his proposition that, as a general guide, equality should be departed fro, only if, and to the extent that, there is good reason for doing so. I would gratefully adopt and underline it****. Widespread opinion within the Commonwealth would appear to accept that this approach is almost inevitable, whether the regime be broad or detailed in its statutory provisions."*

78. I am fortified from these statements to find that although the words **fairness**, **equality** and **non-discrimination** are not expressly used in any of the statutory provisions, a court is required to have regard to in exercising its discretionary powers in deciding on the distribution of assets on the breakdown of a marriage, it is undoubted that these considerations form the desiderta that Parliament must have had in mind when enacting these provisions to empower the courts to make the necessary orders regarding the distribution of assets on divorce.

79. These considerations of **fairness, equality and non-discrimination** between husband and wife on divorce were expressly expounded again by the House of Lords in **Miller v Miller**; **McFarlane v McFarlane** **(2006) UKHL 24**; **(2006) 3 All ER 1**, conjoint appeals the House decided on 24th May 2006. This is the second major case when the House had to consider the interpretation, application and interplay between the statutory provisions courts must have regard to in determining the distribution of asserts on divorce.

80. I have quoted liberally again from Lord Birkenhead's lead judgment in **Miller** **supra**. I believe I would not do full justice to the helpful and instructive opinion of his Lordship if I attempted to paraphrase.

His Lordship stated at the beginning of his judgment:

> *"[1] My Lords, these two appeals concern* ***that most intractable of problems: how to achieve fairness in the division of property following a divorce****. In White v White [2001] 1 All ER 1, [2001] 1 AC 596 your Lordships' House sought to assist judges who have the difficult task of exercising the wide discretionary powers conferred on the court by Pt II of the Matrimonial Causes Act 1973.* ***In particular the House emphasized that in seeking a fair outcome there is no place for discrimination between a husband and wife***

and their respective roles. Discrimination is the antithesis of fairness. In assessing the parties' contributions to the family there should be no bias in favour of the money-earner and against the home-maker and the child-carer. This is a principle of universal application. It is applicable to all marriages." (Emphasis added).

He continued at paras. [4] *et seq* of the judgment on the requirements of fairness:

"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.

[8] Fort 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 this put in place was shattered by the decision of your Lordships' House in White's 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****.* (Emphasis added).

[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.*** (Emphasis added).

[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-make and child-carer.*

[14] When this is so, fairness requires that this feature should ne taken into account by the court when exercising its statutory powers. The Court of Appeal decision in SRJ v DWJ (financial provision) [1999] 3 FRC 153 at 159-160 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 *(rape: marital exemption) [1991] 4 All* ER *481 at 484, [1992] 1 AC 599 at 617.* ***This is now recognised widely, if not universally. The parties commit themselves to sharing their lives. They live and work together. When they 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 required 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***.

[17] ***This principle is applicable as much to short marriages as to long marriages: see Foster v Foster [2003] EWCA Civ 565*** *at [19], [2005] 3* FCR *26 at [19] per Hale* LJ. ***A short marriage is no less a partnership of equals than a long marriage. The difference is that a short marriage has been less enduring. In the nature of things this will affect the quantum of the financial fruits of the partnership***.

[18] A different approach was suggested in GW v RW *[2003] EWHC 611 (Fam) at [40], [2003] 2* FCR *289 at [40] There the court accepted the proposition that entitlement to an equal division must reflect not only the parties' respective contributions 'but also an accrual over time'. It would be 'fundamentally unfair' that a party who has made domestic contributions during a marriage of 12 years should be awarded the same proportion of the assets as a party who has made the domestic contributions for more than 20 years: see [43]. In M v M (ancillary relief: division of assets accrued post-separation)*

[2004] EWHC 688 (Fam) at [55] (7), [2004] 2 FLR 236 at [55] (7), this point was regarded as 'well made'.

[19] I am unable to agree with this approach. This approach would mean that on the breakdown of a short marriage the money-earner would have a head start over the home-maker and child-carer. To confine the White v White approach to the 'fruits of a long marital partnership' would be to introduce precisely the sort of discrimination White's case was intended to negate.

[20] For the same reasons ***the courts should be exceedingly slow to introduce, or re-introduce, a distinction between 'family' assets and 'business or investment' assets. In all cases the nature and sources of the parties' property are matters to be taken into account when determining the requirements of fairness****. The decision of Munby J in P v P (inherited property) [2004] EWHC 1364 (Fam), [2005] 1 FLR 576 regarding a family farm is an instance. But 'business and investment' assets can be the financial fruits of a marriage partnership as much as 'family assets. The equal sharing principle applies to the former as well as the latter. The rationale underlying the sharing principle is as much applicable to 'business and investment' assets as to 'family' assets."*

81. His Lordship then considered "Matrimonial Property and Non-Matrimonial Property.

"MATRIMONIAL PROPERTY AND NON-MATRIMONIAL PROPERTY

[21] A complication rears its head at this point. I have referred to the financial fruits of the marriage partnership. In some countries the law draws a sharp distinction between assets acquired during a marriage and other assets. In Scotland, for instance, one of the statutorily prescribed principles is that the parties should share the value of the 'matrimonial property' equally or in such proportions as special circumstances may justify. ***Matrimonial property means the matrimonial home plus property acquired during the marriage otherwise than by gift or***

inheritance: *Family Law (Scotland) Act 1985, ss 9 and 10.* ***In England and Wales the 1973 Act draws no such distinction. By s 25(2)(a) the court is bidden to have regard, quite generally, to the property and financial resources each of the parties to the marriage has or is likely to have in the foreseeable future***.

[22] This does not mean that, when exercising his discretion, a judge in this country must treat all property in the same way. The statute requires the court to have regard to all the circumstances of the case. One of the circumstances is that ***there is a real difference, a difference of source, between (1) property acquired during the marriage otherwise than by inheritance or gift, sometimes called the marital acquest but more usually the matrimonial property, and (2) other property. The former is the financial product of the parties' common endeavour, the latter is not. The parties' matrimonial home, even if this was brought into the marriage at the outset by one of the parties, usually has a central place in any marriage. Sot it should normally be treated as matrimonial property for this purpose. As already noted, in principle the entitlement of each party to a share of the matrimonial property is the same however long or short the marriage may have been***.

[23] The matter stands differently regarding property (non-matrimonial property) the parties bring with them into the marriage or acquire by inheritance or gift during the marriage. Then the duration of the marriage will be highly relevant. The position regarding non-matrimonial property was summarised in White v White [2001] 1 All ER *1 at 14, [2001] 1 AC 596 at 610:*

> *'Plainly, when present, this factor is one of the circumstances of the case. It represents a contribution made to the welfare of the family by one of the parties to the marriage. The judge should take it into account He should decide how important it is in the particular case. The nature and value of the property, and the time when and circumstances in which the property was acquired, are among the relevant matters to be considered. However, in the ordinary course, this factor can be expected to*

carry little weight, if any, in a case where the claimant's financial needs cannot be met without recourse to this property.'

[24] In the case of a short marriage fairness may well require that the claimant should not be entitled to a share of the other's non-matrimonial property. The source of the asset may be a good reason for departing from equality. This reflects the instinctive feeling that parties will generally have less call upon each other on the breakdown of a short marriage.

[25] With longer marriages the position is not so straightforward. Non-matrimonial property represents a contribution made to the marriage by one of the parties. Sometimes, as the years pass, the weight fairly to be attributed to this contribution will diminish, sometimes it will not. After many years of marriage the continuing weight to be attributed to modest savings introduced by one party at the outset of the marriage may well be different from the weight attributable to a valuable heirloom intended to be retained in specie. Some of the matters to be taken into account in this regard were mentioned in the above citation from White's case. To this non-exhaustive list should be added, as a relevant matter, the way the parties organized their financial affairs."

82. At paras. 26 to 27, His Lordship underlined the need for **flexibility** in exercising the statutory powers by the Court.

"FLEXIBILITY

[26] ***This difference in treatment of matrimonial property and non-matrimonial property might suggest that in every case a clear and precise boundary should be drawn between these two categories of property. This is not so. Fairness has a broad horizon.*** *Sometimes, in the case of a business, it can be artificial to attempt to draw a sharp dividing line as at the parties' wedding day. Similarly the 'equal sharing' principle might suggest that each of the party's assets should be separately and exactly valued. But valuations are often a matter of opinion on which experts differs. A thorough investigation into these*

differences can be extremely expensive and of doubtful utility. The costs involved can quickly become disproportionate. The case of Mr and Mrs Miller illustrates this only too well.

[27] Accordingly, where it becomes necessary to distinguish matrimonial property from non-matrimonial property the court may do so with the degree of particularly or generally appropriate in the case. The judge will then give to the contribution made by one party's non-matrimonial property the weight he considers just. He will do so with such generality or particularity as he considers appropriate in the circumstances of the case.

83. His Lordship then considered the **conduct** of either party in bringing the marital relationship at an end, at paras. 59-65.

In Belize however, the conduct of one or the other of the parties, is not unlike the new section 25(2) of the United Kingdom Act, one of the factors to which the Court should have regard. This perhaps is reflection of the irretrievable breakdown of marriage as a ground for divorce. But surely where the misconduct leading to the breakdown of the marriage is "obvious and gross", can a court in Belize disregard it in exercising its powers to order a distribution of the assets of the marriage? This is a grey area in the present statutory provisions in this respect. It is not, however a factor in the instant case as both parties from the evidence may not be without some fault.

84. His Lordship then at paras. 66 to 68 considered the **contributions** of the parties as a factor in exercising the statutory discretion on distribution of assets on the breakdown of the marriage.

"CONTRIBUTION

[66] A point of a similar nature concerns the approach to be adopted when evaluating the contributions each party made to the welfare of the family. Apparently, in this post-White era there is a

growing tendency for parties and their advisers to enter into the minute detail of the parties' married life, with a view to lauding their own contribution and denigrating that of the other party. In the words of Thorpe LJ, the excesses formerly seen in the litigation concerning the claimant's reasonable requirements have now been 'transposed into disputed, and often futile, evaluations of the contributions of both the parties': Lambert v Lambert [2002] EWCA Civ 1685 at [27], [29003] 4 All ER 342 at [27], [2003] Fam 103.

[67] On this I echo the powerful observations of Coleridge J in G v G (financial provision: equal division) [2002] EWHC 1339 (Fam) at [33]-[34], [2002] 2 FLR 1143 at [33]-[34]. ***Parties should not seek to promote a case of 'special contribution' unless the contribution is so marked that to disregard it would be inequitable. A good reason for departing from equality is not to be found in the minutiae of married life.***

[68] This approach provides the principled answer in those cases where the earnings of one party, usually the husband, has been altogether exceptional. The question is whether earnings of this character can be regarded as a 'special contribution', and this as a good reason for departing from equality of division. The answer is that exceptional earnings are to be regarded as a factor pointing away from equality of division when, but only when, it would be inequitable to proceed otherwise. The wholly exceptional nature of the earnings must be, to borrow a phrase more familiar in a different context, obvious and gross. Bodey J encapsulated this neatly when sitting as a judge in the Court of Appeal in Lambert v Lambert [2003] 4 All ER 342 at [70]. He described the characteristics or circumstances which would bring a departure from equality 'those characteristics or circumstances clearly have to be of a wholly exceptional nature, such that it would very obviously be inconsistent with the objective of achieving fairness (ie it would create an unfair outcome) for them to be ignored'.

85. Baroness Hale of Richmond also in her concurring judgment, with respect, gave an instructive and helpful opinion on how a Court should approach the exercise of its statutory powers on the redistribution of assets on the

breakdown of marriage. She stated at paras. 137 et seq of the judgment the rationale for redistribution. She states at para. 138 to 140:

> *"[138]* ***The most common rationale is that the relationship has generated needs which it is right that the other party should meet. In the great majority of cases, the court is trying to ensure that each party and their children have enough to supply their needs, set at a level as close as possible to the standard of living which they enjoyed during the marriag****e (note that the House did not adopt a restrictive view of needs in White's case, see [2001] 1 All ER 1 at 12, [2001] 1 AC 596 at 608-609).* ***This is a perfectly sound rationale where the needs are the consequence of the parties' relationship, as they usually ar****e. The most common source of need is the presence of children, whose welfare is always the first consideration, or of other dependent relatives, such as elderly parents. But another source of need is having had to look after children or other family members in the past. Many parents have seriously compromised their ability to attain self-sufficiency as a result of past family responsibilities. Even if they do their best to re-enter the employment market, it will often be at a lesser level than before, and they will hardly ever be able to make up what they have lost in pension entitlements. A further source of need may be the way in which the parties chose to run their life together. Even dual career families are difficult to manage with completely equal opportunity for both. Compromises often have to be made by one so that the other can get ahead. All couples throughout their lives together have to make choices about who will do what, sometimes forced upon them by circumstances such as redundancy or low pay, sometimes freely made in the interests of them both. The needs generated by such choices are a perfectly sound rationale for adjusting the parties' respective resources in compensation.*
>
> *[139] But while need is often a sound rationale, it should not be seen as a limiting principle if other rationales apply. This was the error into which the law had fallen before White's case. Need had become 'reasonable requirements' and thus more generous to the recipient, but it was still a limiting factor even where there was a substantial surplus of resources over needs: see Page v Page (1981) 2 FLR 198.*

Counsel would talk of the 'discipline of the budget' and suggestions that a wife's budget might properly contain a margin for savings and contingencies, or to pass on to her grandchildren, were greeted with disbelief.

[140] ***A second rationale, which is closely related to need, is compensation-generated disadvantage****. Indeed, some consider that provision for need is compensation for relationship-generated disadvantage. But the economic disadvantage generated by the relationship may go beyond need, however generously interpreted. The best example is a wife, like Mrs. McFarlane, who has given up what would very probably have been a lucrative and successful career. If the other party, who has been the beneficiary of the choices made during the marriage, is a high earner with a substantial surplus over what is required to meet both parties' needs, then a premium above needs can reflect that relationship-generated disadvantage."*

Baroness Hale continues at para. 143 as follows:

"[143] But there are many cases in which the approach of roughly equal sharing of partnership assets with no continuing claims one against the other is nowadays entirely feasible and fair. One example is Foster v Foster [2003] EWCA Civ 565, [2005] 3 FCR 26, a comparatively short childless marriage, where each could earn their own living after divorce, but where capital assets had been built up by their joint efforts during the marriage. Although one party had earned more and thus contributed more in purely financial terms to the acquisition of those assets, both contributed what they could, and the fair result was to divide the product of their joint endeavours equally. Another example is Burgess v Burgess [1997] 1 FCR 89, a long marriage between a solicitor and a doctor, which had produced three children. Each party could earn their own living after divorce, but the home, contents and collections which they had accumulated during the marriage could be equally shared. Although one party might have better prospects than the other in future, once the marriage was at an end there was no reason for one to make further claims upon the other."

86. Her Ladyship continues at para. 144 on the **ultimate objective of the exercise of the court's statutory discretion**:

> *"THE ULTIMATE OBJECTYIVE*
>
> *[144] Thus far, in common with my noble and learned friend, Lord Nicholls of Birkenhead,* ***I have identified three principles which might guide the court in making an award: need (generously interpreted), compensation, and sharing****, I agree that there cannot be a hard and fast rule about whether one starts with equal sharing and departs if need or compensation supply a reason to do so, or whether one starts with need and compensation and shares the balance. Much will depend upon how far future income is to be shared as well as current assets. In general, it can be assumed that the marital partnership does not stay alive for the purpose of sharing future resources unless this is justified by need or compensation.* ***The ultimate objective is to give each party an equal start on the road to independent living****."*

87. At paras. 145 to 152 of the judgment Baroness Hale commented on **conduct** and **contributions** towards the acquisition of the assets and the **source of the assets and the length of the marriage** thus

> *"In my view the question of contributions should be approached in much the same way as conduct. Following White v White [2001] 1 AC 596, the search was on for some reason to stop short of equal sharing, especially in 'big money' cases where the capital had largely been generated by the breadwinner's efforts and enterprise. There are references to exceptional or 'stellar' contributions: see Cowan v Cowan [2001] EWCA CIV 679. These, in the words of Coleridge J in G (Financial Provision: Equal division) [2002] EWHC 1339 opened a 'forensic Pandora's box'. As he pointed out p. 1155:*
>
> ***"What is 'contribution but a species of conduct … Both concepts are compendious descriptions of the way in which one party conducted him/herself***

towards the other and/or the family during marriage. *And both carry with them the same undesirable consequences. First 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 …But then, the facts having been established, they 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? … Is there such a concept as an exceptional/special domestic contribution or can only the wealth creditor earn the bonus … It is much the same as comparing apples with pears and the debate is about as sterile or useful."*

"A domestic goddess self evidently makes a stellar contribution, but that was not what these debates were about. Coleridge J's words were rightly influential in the later retreat from the concept of special contribution in Lambert v Lambert 2002 EWCA CIV 1685. It had already been made clear in White v White that domestic and financial contributions should be treated equally. Section 25(2)(f) of the 1973 Act does not refer to contributions which each has made to the parties accumulated wealth, but to contributions they have made (and will continue to make) to the welfare of the family. Each should be seen as doing their best in their own sphere. Only if there is such a disparity in their respective contributions to the welfare of the family that it would not be inequitable to disregard it should this be taken into account in determining their shares …"

"More difficult are business or investment assets which have been generated solely or mainly by the efforts of one party. The other party has often made some contribution to the business, at least in its early days, and has continued with her agreed contribution to the welfare of the family. But in these non-business-partnership, non-family asset cases, the bulk of the property has been generated by one party. Does this provide a reason for departing from the yardstick of equality? On the one hand is the view, already expressed, that commercial and domestic contributions are intrinsically incommensurable. It is easy to count the money or the property which one has acquired. It is impossible to count the value which the other has added to their lives together. ***One is counted in money or moneys worth. The other is counted in domestic comfort and happiness. If the law is to avoid discrimination between the gender roles, it should regard all the***

assets generated either way during the marriage as family assets to be divided equally between them unless some other good reason is shown to otherwise …"

Determination

88. I feel therefore fortified that from these high judicial authorities, in exercising the statutory discretion under section 148A of Chapter 91, a court in Belize must ensure that as far as it is possible, considerations of **fairness**, **equality** and **non-discrimination** between the parties to a marriage that has broken down are always borne in mind when ordering a distribution of the assets of the parties, so as to ensure a **fair** and **just outcome**.

89. It is with these considerations firmly in mind that I now turn to a determination of Sari's application in these proceedings in the light of the several factors listed in subsection (5) of section 148A of Chapter 91.

90. **First**, the **Blue Dolphin Property**. This was the parties' matrimonial home though from the evidence it was bought by Tom in 1994 before his marriage to Sari. But when they relocated to Belize, it became their **joint principal matrimonial home**, though they later lived on the premises in the Boat Yard Property. From the evidence Sari spent some of her own money, albeit, a modest sum, on the refurbishing of **Blue Dolphin**, no doubt, to make it amenable as a matrimonial home. From the evidence, Tom has sold this property for US$458,000.00.

91. Given the role of Sari as a wife and her contributions in that role and her non-financial contributions towards the improvements (of refurbishing and decorating) of this property, I declare that pursuant to subsection (2) of section 148A, she is entitled to a half share of the proceeds of the sale of

this property in the hands of Tom. This is 50% of the sum of US$458,000.00.

92. Secondly, the **Boat Yard Property**. This property comprises several parcels of land and was bought between 1998 and 2000, during the parties marriage. From the evidence, I am satisfied that it was intended to be the base of the several business ventures of both Tom and Sari such as the **Sunset Harbour Ltd**. (for marina, the **Sunset Bar** and the **Island Ferry)**. The property itself was incorporated as the **Boat Yard Ltd**. Both Tom and Sari had shares in it though not in equal shares. The title to this property was however not issued until 2004 after Tom and Sari had divorced, and was issued variously in the names of Tom and **Laguna Vista Ltd**. (the interested party in these proceedings joined by an order of the Court on Sari's application). Tom admitted that he owns Laguna Vista Ltd., of which he is really the *alter ego*.

From the agreed report of valuation produced by Mr. Amin Cansino dated 8th December 2008, the Boat Yard Property in valued at **$2,258,000.00** (US $1,129,000.00). Tom testified that as a result of the damage to this property wrought by Hurricane Keith in October 2000, he had to expend some $200,000.00 of his own money to rehabilitate this property. From the evidence, however, before the hurricane, both Tom and sari worked to develop the Boat Yard Property.

I am satisfied from the evidence that this property was meant to provide and did provide, albeit briefly, the source of employment for both Tom and sari in their stay in Ambergris Caye. She for example ran the **Sunset Bar** and helped with the bookkeeping; while Tom ran the marina and boating aspect such as the **Island Ferry**. It was the intention that this property, the **Boat Yard**, would be the base for their employment and possible

income. But this was short-lived as a result of their estrangement, separation and eventual divorce in 2004.

93. Accordingly, bearing in mind the expectations generated by their marriage, that Sari, who from Houston, Texas, USA, lived with Tom briefly in Villa Platte, Louisiana, USA, had to forego her career in business consultancy, married Tom with the expectation of later living together in Ambergris Caye, in retirement but with the expectation of a *new* career and a new life, based on the **Boat Yard**, and given their respective contributions first in developing the **Boat Yard** and Tom contributing solely to its rehabilitation, I am satisfied that in all the circumstances of this case and having regard to the matters set out in subsection (5), except paragraph (f), it is just and equitable that I make an order pursuant to subsection (3) of section 148A of Chapter 91, that Tom and Sari hold interests and rights in the **Boat Yard Property** in the proportion of 60% for Tom and 40% for Sari respectively. I subsume in this award of 40% interests or rights in **Boat Yard Property**, any share or claim or share by Sari in the personal properties in the **tractor**, **eight speed boats with engines** and any other property related to the **Boat Yard Ltd**. which she claims in her summons in these proceedings.

94. The **third** property in which Sari claims a half share in is the **Boca Del Rio Property**. This, from the evidence, was acquired by Tom in April 2002, when he and Sari were living separately. But they were legally married as they only divorced in 2004. It is therefore legally, property acquired during the "subsistence of their marriage" within the provisions of section 148A (1) of Chapter 91.

95. I do not, however, have a precise figure or an estimate of the value of this property. But there is evidence that this property is of some substantial value (see para. 41 of this judgment).

96. All things considered and given the fact the marriage partnership was by 2002 on the rocks and that Sari made no contribution, financial or non-financial, towards the acquisition of this property; and mindful of the fact that both Tom and Sari are now not exactly in the prime of their lives, he is said to be diabetic (although there is no evidence on this); and that by the marriage, Sari's career has been interrupted, possibly for good, and there has been no accounting of the proceeds in the bank accounts in their joint names both here in Belize and the USA, I think it is just and equitable in all the circumstances that I make an order pursuant to subsection (3)(b) requiring Tom to make a settlement of the sum of **$250,000.00** in favour of Sari in respect of this property. This I do in the circumstances, having regard to paragraphs (c), (d) and (g) of subsection (5) of section 148A.

97. Overall, in this case, the only reason for departing from equality is the undoubted contribution by Tom of what Lord Nichols called in **White** at paras. 41-45, *inherited property* under the rubric **"Inherited Money and property"**. This was the financial primer for both Tom's and Sari's resources, derivable largely from Tom's pre-marriage investment and high-earning capacity as president of his family-owned bank and his interest under his father's trust. All these, I have no doubt contributed to the parties' lifestyle, including the purchase of most of the assets in this case, and subsequently enabled Tom to plough back resources to rehabilitate the properties wrecked by Hurricane Keith. For this and only this reason, I am constrained by the facts of this case to depart from the equal sharing consideration. But I am satisfied that the justice of the case requires *some* sharing of the assets. I am satisfied that Sari's financial needs cannot be met without some recourse to all the assets in this case.

I am satisfied that the contributions of these sources to funds available to Tom and Sari are not in this case diminished by the length of their marriage. It was not exactly a long marriage

In fact on the evidence the parties had no other independent source of income other than those sources; none of the ventures they attempted while married, such as Boat Yard Ltd., Sunset Harbour Ltd. or Island Ferry, was productive of income

I trust my distribution of the assets in the proportions I have done will be a fair and just outcome in the circumstances of this case, such as to enable each of the parties to go their independent and separate ways without the need for dependence on the other.

I bear in mind as well that since separation in 2000 and eventual divorce in 2004, there is no evidence of any payments to Sari; but that she had to make do with earning commission from the sale of time shares in accommodation in San Pedro. The assets involved in this case are by Belizean standards, relatively a "big money" case. In the light of my awards there is no need to order maintenance or periodic payments in favour of Sari.

Conclusion

98. In exercising its discretion to order financial provisions on divorce, given the modern concept of equality of the marital relationship, be nonetheless astute to the solicitude of the law for the position of the female partner, especially the explicitly stated provisions in paragraph (h) of subsection (5) of section 148A, to take into account "the need to protect the position of a woman especially a woman who wishes to continue in her role as mother."

In this case, as I have stated, the marriage was childless, and am presently advised Sari has no children and her biological clock given her age may be ticking away; but I cannot however be unmindful of her position as a woman. This factor informs as well may awards in this case.

Accordingly, I declare that Tom holds 50% of the sum of **US$485,000.00** representing the sale price of the **Blue Dolphin Property**, for Sari as her beneficial interest in this property. I order the payment of the sum of **$485,000.00** (Belize Dollars) representing 50% of US$458,000.00 be paid by Tom to Sari on or by 1st January 2010 and thereafter with interest at 6% until payment.

99. I declare and order that Sari is entitled to 40% of the value of the **Boat Yard Property** as her total beneficial interest therein and the personal properties associated therewith viz a tractor and eight speed boats with engines. I order that a sum representing the 40% (as valued by Mr. Amin Cansino) in these proceedings be paid by Tom to Sari or the said **Boat Yard Property** be sold to realize this 40%.

100. I order Tom to pay Sari the sum of **$250,000.00** in settlement of her claims to any interest in the **Boca Del Rio Property**.

101. I award the costs of these proceedings to Sari in the sum of $25,000.00.

A. O. CONTEH
Chief Justice

DATED: 15th December 2009.