The Judgment was delivered in private, but the Judge hereby gives leave for it to be published.

The Judgment in this matter is being distributed on a strict understanding that in any report no person other than the attorneys (and any other person identified by name in the judgment itself) may be identified by name or location and in particular the anonymity of the child and the adult members of their family must be strictly preserved.

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FAMILY DIVISION

CAUSE NO: FAM 18 OF 2017

BETWEEN:	**RD**	**Petitioner**
AND:	**YY**	**Respondent**

Appearances: **Ms. Louise Desrosiers from Travers Thorp Alberga for the Petitioner**
Mr. James Kennedy from KSG Attorneys for the Respondent

Before: **Hon. Mr. Justice Richard Williams**

Heard: **3-6, 10-13, 16-17, 23-24 August 2021**
6-7, 11-13 October 2021
25-26 January 2022

Petitioner's Written Submissions filed: **6 May 2022**
Updated Schedule of Assets filed: **6 May 2022**
Respondent's Written Submissions filed: **18 May 2022**
Parties inform Court no further submissions: **22 June 2022**
Anti-suit injunction hearing: **12 December 2022**

Date of Circulation of Draft Judgment: **30 March 2023**
Date of parties' comments pursuant to PD: **1 May 2023**

Date of Judgment: **2 May 2023**

HEADNOTE

Financial provision - ancillary relief - matrimonial or non-matrimonial assets - costs of sale on real estate assets - duration of child maintenance orders - Guidance given by Peel J in WC v HC [2022] EWFC 22.

JUDGMENT

The Application

1. This is the hearing to determine ancillary relief claims made by RD, the 61 year old Petitioner husband and YY, the 51 year old Respondent wife. RD is a Cayman national and YY is a Chinese national.

2. I hope that the parties will not be offended if I hereafter refer to them, for convenience, as the husband and the wife.

The family background and the procedural background

3. Following the death of the husband's former wife in March 2001[1], the parties met online in November 2003 and were married on 18 May 2004 in Guangdong Province, China when they were aged 43 and 33 respectively.

4. The wife states that at that time she was a Company Administration Manager for a company in China, with whom she had started work as secretary thirteen years previously. She stated that her monthly salary was the equivalent of US$2,700. After the marriage, she became a housewife, but also gave some practical assistance to the husband in relation to a few of his business endeavours. She has not entered independent employment since the marriage. At the time of the marriage, the wife had little pre-marital wealth. I am satisfied that although the husband clearly took on the primary income earning role through his various endeavours, the wife's role as a home-maker freed up his time, thereby enabling him to concentrate on his work. In such circumstances, I find that both parties have equally contributed to the majority of the family wealth amassed during the marriage.

5. The husband, having left banking, became and remains occupied as a land developer and he involves himself in building, construction, and development projects. When his former wife was ill, for one to two years, the husband commendably prioritised his care for her over work and therefore most of his income at that time came from rental

[1] The husband had been married to his former wife for 21 years prior to her passing. At the time of her passing he was aged 40 and he inherited the wife's estate as they had no children. He has an adult daughter born prior to his first marriage and four grandchildren.

properties.[2] The husband asserts that the bulk of his wealth was accrued during his previous marriage.

6. There are two children of the marriage: A aged 17 and B aged 15. The children reside with the wife in the Cayman Islands pursuant to a Consent Residence Order made in her favour on 3 November 2017.[3] Orders were made for defined contact for the children with the husband. The orders provide that the s.10 Children Act Orders will remain in place until the respective child reached 18 or aged 21 if in full-time education, as the Court was satisfied that there were exceptional circumstances as the husband was ordinarily resident in the Cayman Islands and the children were ordinarily resident with the wife in China. However, the Court should not have approved that part of the submitted Consent Order, as s.10 orders cannot extend, even if there are exceptional circumstances, beyond a child's 18th birthday. Despite the orders, unfortunately, the children's relationship with the husband has broken down. Possibly partly due to the ages of the children, the Court is not now asked to make any s.10 orders.

7. The Court, of course, must consider financial provision for both children and this may be up to the age of 21 if the relevant child is in full-time education. At different stages during these proceedings, the wife's wishes as to where the children should live and be educated have varied, with her preference ranging from the Cayman Islands to China, the United States or the United Kingdom. A is in her final year at school and has submitted applications for universities in the USA and the UK.[4] It is likely that B will

[2] In his Affidavit sworn on 23 August 2017 the husband said that, prior to the marriage, he owned: (i) Georgetown 14CF 186, which was purchased in 1984 and in 2020 was valued at US$239,024; (ii) the property at Patrick's Island 24E 447, which was purchased in 1998 and was valued at US$329,268 in 2020; (iii) the property at East End 68A 92, purchased in 1985 and was valued at US$67,073 in 2020; (iv) the property at East End 66A67 REM 1, which was purchased in 2002/2003 and was valued at US$1,236,585 in 2021; (v) the Rosedale residential rental property, purchased in 2003, which was valued at 2020 US$451,220 in 2020; and (vi) the Parkside Close residence 13B 168 which was purchased in 1997 and was valued at $880,488 in 2020.

[3] The Residence Order made in relation to A has expired due to her age.

[4] On 23 December 2022, Chief Justice Ramsay-Hale ordered the husband to take all reasonable steps required from him to apply for financial aid for A's proposed undergraduate studies in UK or USA. The Chief Justice also ordered that the husband should use his best efforts to obtain Caymanian Status for both children (such status to be obtained by 25 January 2023) presumably as this may enable them to apply for scholarships for funding of studies abroad.

wish to take a similar route. The mother has not made it clear where she intends to live after the divorce proceedings have concluded, although she did infer that such a decision may be dependent on where the children are being educated. If the children were to study in the UK or the USA, the wife would need the requisite immigration status to also reside there.

8. From July 2004 until 2011, the parties lived together in the Cayman Islands. In 2011, they agreed that the wife and the children should move to China. The wife does not accept that the intention was that she set up her and the children's permanent home in China; instead she states that the move was a temporary one to enable the children to experience life in China for five to six years before returning to the Cayman Islands to further their high school education. However, I note that this is highly inconsistent with what one of her former attorneys, Mr. Holland, wrote in an email to the Court dated 19 June 2019 when he said it was intended to be a permanent move to China and that the only reason why the wife and children had not returned there was due to these proceedings being protracted.[5] In China, the wife and children resided in a property that the parties purchased for US$250,000 in or around 2005/2006 in the wife's name as she was the Chinese national. The wife returned to the Cayman Islands with the children in August 2017, it appears primarily to enable her to properly participate in these proceedings. She says that the husband refused to let her return to the matrimonial home. The parties in effect separated in 2017.

9. On 1 February 2017, the husband filed his Petition for the Dissolution of the Marriage**.** On 3 February 2017, the husband paid $177,122.34 to the wife. The wife filed her Cross-Petition on 27 March 2017. The husband filed his Answer to the Cross-Petition on 7 April 2017. The first directions relating to these ancillary relief proceedings were made on 22 June 2017. On 18 July 2017, the husband filed his Amended Petition. The husband's Amended Petition was not opposed, and it was proved on 5 September 2017. The parties were therefore married for around thirteen years, so it was a medium length marriage arguably on the cusp of being a long marriage.

[5] See paragraph 22 below.

10. On 22 June 2017, the Court having been informed that there were no s.10 Children Act issues, gave directions timetabling the matter to a final ancillary relief hearing on a date to be fixed.

11. At the same time that the wife was granted a Residence Order[6], on 3 November 2017[7], it was agreed that the husband would pay for:

(i) the reasonable accommodation expenses for the wife and children;

(ii) the children's school and tutoring fees;

(iii) the children's health insurance; and

(iv) US$500 per month as a contribution to the children's food expenses. Further comprehensive case management directions were given[8] to a three day final hearing to be fixed on any date after 1 December 2017.

12. On 1 March 2018, the Notice of Hearing setting down the ancillary relief final hearing for 3-4 days commencing on 23 April 2018 was issued by the Listing Officer.

13. On 14 March 2018, upon an application by the wife[9], a contested global Interim Child Maintenance/Maintenance Pending Suit Order was made.[10] The husband was thereunder required to pay US$5,739 to the wife by or on the 14th day of each month. That figure was based on the husband's undertakings:

(i) to have the wife placed on his health insurance policy or failing that to contribute up to US$243 per month towards a health insurance policy for her; and

(ii) to have the wife's motor vehicle promptly inspected and to pay for any reasonable repairs to it to ensure that it is safe to drive.

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[6] See paragraph 6 above.

[7] A mention hearing that had been fixed pursuant to the Court's directions made on 22 June 2017.

[8] The wife's new attorneys, Sinclairs, having come on the record on 4 October 2017.

[9] An enforcement, financial provision/interim capital adjustment and costs allowance Summons issued on 27 February 2018.

[10] Ex Tempore Ruling given by Williams J, a transcript provided to the parties. Ordinarily I do not make global maintenance figures as the child and spousal maintenance figures require separate considerations. In this matter it appears that the parties had made submissions inviting the Court to make a rolled-up figure.

In relation to disputed "arrears" arising under the November 2017 Order, the husband agreed to:

(i) refund the wife with rent already paid on the rental accommodation and for the deposit for her accommodation (on the basis that the deposit would return to him when refunded);

(ii) refund reasonable airfares for the wife and children's flights to China in June/July 2018;

(iii) refund the wife US$856.75 for her payment of a Holiday Inn bill in January 2018; and

(iv) pay US$500 to the wife to cover any shortfall that may have arisen from the November 2017 Order.

14. In April 2018, it became apparent that the 23 April 2018 final hearing would need to be vacated. The wife initiated the application for that to happen, partly due to issues arising from documentation that she had submitted which had not been translated from Mandarin into English. On 20 April 2018, Carter J (Actg) vacated the ancillary relief hearing. The Learned Judge also gave directions in relation to disclosure[11] and directed that the matter be listed for a four day hearing on the first available date. The Order contained a provision for the husband to file and serve a Supplemental Affidavit providing disclosure of additional financial information with documentary evidence concerning bank accounts, liabilities and about all of the companies.[12] **The Learned Judge ordered the wife to pay, by way of set-off from any sum awarded to her in the final ancillary relief, the husband's wasted costs arising from the adjournment on a standard basis to be taxed if not agreed.** That Order was not challenged, and the parties should have regard to it when perfecting the Final Ancillary Relief Order emanating from this hearing.

15. On 23 April 2018, the Notice of Hearing setting down the ancillary relief final hearing for four days commencing on 17 July 2018 was issued by the Listing Officer. Around 23 April 2018, company records in respect of any income or payments made to the husband

[11] Attached to the Order was a schedule setting out specific disclosure questions for the husband which he gave responses to on 26 May 2018.

[12] The husband provided the responses on 26 May 2018.

were examined at the relevant Registered Office by the wife's attorneys. Shortly thereafter, the wife again changed her attorneys, with her present attorneys, KSG Attorneys, coming on the record for her on 10 May 2018.

16. On 21 June 2018, the wife's new attorneys requested a mention hearing, as they felt that the ancillary relief hearing could not proceed as they were still seeking to obtain certain information about **Grand Caymanian Ltd ("GCL")[13].** The husband opposed any application to adjourn the ancillary relief hearing arguing that the disclosure had been provided and that he was ready for trial. On 3 July 2018, a Notice of Hearing was issued for a pre-trial review hearing to be heard on 13 July 2018. That hearing was administratively transferred by me to Carter J (Actg), as she was the Judge scheduled to have conduct of the final hearing listed for 17 July 2018. On 13 July 2018, Carter J (Actg) again vacated a final ancillary relief hearing and directed the wife to provide certain disclosure and directed replies by a due date. The Learned Judge also made a Costs Order against the wife, amounting to 50% of the husband's costs occasioned by that hearing.

17. On 6 August 2018, Mrs. Karin Thompson came on the record as joint Co-Counsel with Murray & Westerborg, Attorneys-at-Law on behalf of the husband. On 27 August 2018, Carter J (Actg) approved a submitted Consent Order extending the time for the husband to file his Reply to the wife's Request for Further and Better Particulars to 31 August 2018.

18. On 7 September 2018, the Notice of Hearing setting down the ancillary relief hearing for four days commencing on 20 November 2018 was issued by the Listing Officer. However, only six days before the final hearing date, on 14 November 2018, the wife issued a Summons seeking a Specific Issue Order that the children attend a school in China from January 2019. Other orders for education costs, child/spousal maintenance,

[13] GCL was formed in relation to the running of the the Grand Caymanian Resort (also known as the Holiday Inn Hotel) with associated timeshare/vacation apartments. The parties are both Directors of GCL and they are each 25% shareholders in it. Mr. and Mrs. Nixon are both also 25% shareholders.

flight fares, legal costs allowance[14], disclosure and to instruct an expert to carry out a valuation of GCL's accounts were also sought. In addition, the wife applied for a non-dissipation injunction in relation to the proceeds of sale from the Holiday Inn.

19. The effect of this Summons resulted in the third listing for the final relief hearing having to be vacated. The hearing of that Summons was initially listed for 21 November 2018.

20. On 21 November 2018, the Court was informed that the wife's Summons had been listed for 17 December 2018 and the Court gave directions about the filing of relevant evidence for that hearing. The Court gave the parties leave to fix the ancillary relief hearing for 5 days on the first open date and stated that the 17 December hearing would also be used as case management hearing. The parties were directed to disclose bank statements for the period of 1 February 2017 to the date of that hearing for accounts in which they had an interest, and which had not already been provided. The parties were asked by me to consider whether they should instruct an expert to review the financial information that was already available about the companies.

21. It appears that the 17 December 2018 hearing did not proceed as I am unable to locate any relevant Minute of Order on the Court file. However, a Summons filed by the husband dated 7 December 2018 was issued on 21 December 2018 with a hearing date of 15 January 2019. On 10 August 2018, the husband filed a Summons for the Court to make orders pursuant to s.4 of the Confidential Relationships Preservation Act (2015 Revision) ("CRPA") and that Summons had also been issued with a 15 January 2019 hearing date. At the January hearing, the interim child/spousal maintenance figure was varied upwards by consent from US$1,000/month to US$6,739/month and the husband agreed to be responsible for the children's increased school fees. It was decided that it would be better for the disclosure issues to be heard by Carter J (Actg), as there was a dispute about what she had previously ordered. The s.4 CRPA Summons could not be heard because it had not been served on the Attorney-General. There was to be an

[14] The husband contends that the evidence given at this time in relation to financial relief was misleading as the wife had $19,617.16 balance in her bank account at a time when his accounts were significantly overdrawn and whilst there was a risk of bankruptcy due to the GCL difficulties.

arranged inspection of corporate documents and the wife could make any amended requests.

22. The case then went dormant for around five months due to the parties' inaction, which may have been caused by the parties concentrating on child issues. On 21 May 2019, the final ancillary relief hearing was again fixed, this time for five days from 25 October 2019. The parties contacted the Court in mid-June 2019. At some stage prior to June 2019, the husband dispensed with the services of his attorney and began acting in person. He filed a Summons on 11 June 2019 seeking a Prohibited Steps Order to prevent the children from leaving the jurisdiction as well as wide ranging s.10 Children Act orders and he requested that there be a Court Welfare Report commissioned. He also requested that the s.4 CRPA Summons be dealt with. On 19 June 2019, Mr. Holland, the wife's attorney at the time, wrote:[15]

> *"I would just wish to reiterate to the Judge that our client is Chinese, the parties own a home there, the children have lived there with our client previously, the children's grandparents are there, and it was agreed by consent earlier in these proceedings that the children would reside in China permanently with their mother. The only reason the children and our client have not already returned to live in China is because these proceedings have been protracted…"*

23. On 19 June 2019, Richards J made orders about the children's travel arrangements between China and the Cayman Islands to enable them to spend time in China and also preserve some contact with the husband. The Learned Judge adjourned consideration of the rest of the Summons to a future date. She directed the parties to attend mediation.

24. The case came on before this Court on 6 September 2019 for the Court to deal with the parts of the Summons which Richards J had adjourned for later consideration. It was also very clear that the parties were not in a position to deal with a final ancillary relief hearing in October 2019. At the hearing I noted, with a degree of frustration, that the parties had not been able to reach any agreement on any of the substantive or procedural issues. In

[15] Email 19 June 2019 from the husband to the Listing Officer copied into the wife's attorneys and to Richard J's Personal Assistant.

relation to the Court Welfare Officer Report, I made the overdue referral to the Department of Children and Family Services ("DCFS") and directed that a report on the issues of residence and permanent removal of the children be filed by 8 November 2019. I noted that when the interim financial orders were made, the intention was that they would be applicable for a relatively short period of time pending the final financial hearing, and that if, due to the passage of time, any variation or new orders were sought then the relevant Summonses needed to be filed. I stated in relation to the wider ancillary relief issues that:

> *"They all revolve around disclosure issues which both parties have in relation to the other party. They (are) the same issues the parties have been raising for over two years and which are the subject of a number of court orders.*
>
> *Unfortunately, the time may have come for there not to be general disclosure orders, but a protracted disclosure hearing going through line-items and determining about the relevancy of certain disclosure and then, if it is relevant, ordering that that specific disclosure be given.*
>
> *An additional factor is that at that hearing which may be a three-day hearing at least having regard to the issues of the parties now raising today, if the Court directs certain disclosure from the husband which he feels is not disclosure from him, but from the company, and if the company objects to that then the (company) will then at that stage need to make an application under the confidentiality provisions and follow the appropriate procedure in relation to that. It should be made by the company (and it) should be served on the Attorney General.*
>
> *Having regard to the issues re the children I am not going to give leave for any disclosure to be set down at this time because I need to have the children issues are* (sic.) *resolved finally, before I determine what disclosure may or may not be necessary.*
>
> *An issue has even arisen in relation to paying the translation of Chinese. - If that issue persists also (will have to have) regard to whether at a disclosure hearing to see if the relevant disclosure is relevant. It may also be something for MPS hearing especially if it is being argued by the husband that the wife pay for all of them. One of the things the court would have to ascertain is whether the wife has the means to give that and if she doesn't have the means and it (may) be they*

need to make an increased maintenance pending suit order against the husband so that he covers expenses which would be classified as legal expenses, which form part of maintenance pending suit consideration."

I noted that neither party acted upon the Court's recommendation that they should seek a disclosure hearing if any issues about disclosure persisted.

25. The matter was listed to next come on before this Court for a mention hearing on 14 November 2019, which was one day after the Welfare Report had been filed and just after a month after Priestleys had come on the record for the husband.[16] On 8 November 2019, the parties asked for the hearing to be vacated, as Priestleys had been newly instructed, and the parties were negotiating the children issues. The mention hearing was vacated and re-listed for 28 November 2019. The matter was case managed at the hearing with directions to a final hearing on the first date after 17 February 2020. Provision was made for a 2 day disclosure hearing to be held on the first available date after 3 February 2020. Leave was also given for the parties to list a specific issue hearing in relation to the children's education.

26. Likely as a consequence of the Covid-19 pandemic, the case again went dormant. On 1 September 2020, upon reviewing all the 'live' Family Division files, I instructed my Personal Assistant to write to the parties stating that:

"As the above-referenced matter has been drifting, Justice Williams would like this matter to be listed for a mention hearing on a family mention date…"

A Notice of Hearing containing a mention hearing date for 17 September 2020 was then issued on 9 September 2020. At the hearing, the Court directed that any Replies to a Request for Further and Better Particulars be extended to 9 October 2020. Upon the wife's application, the parties were given leave to jointly instruct an expert (an accountant) to report on what disclosure may be required and the potential scope of the marital estate, particularly in relation to the companies. Provision was made for a

[16] Notice of Change of Attorney dated 14 October 2019 – The husband's second firm of attorneys in the case.

disclosure hearing (if one was required by either party) to be listed on the first available date after the receipt of the expert's report and for the parties to fix a final ancillary relief hearing with a realistic time estimate.

27. On 27 November 2020, the husband issued a Summons seeking Specific Orders concerning the children's education in the Cayman Islands. That Summons came on before the Court on 14 December 2020. It was adjourned to a hearing on 28 January 2021 for review of the s.10 Children Act applications and, if needed, further directions about the ancillary relief proceedings.

28. On 5 January 2021, the wife changed her attorneys from KSG Attorneys to Cayman Family Law[17]. On 12 January 2021, the wife again changed her attorneys, this time from Cayman Family Law back to KSG Attorneys[18], and her present Counsel, Mr. James Kennedy, has represented her since that time. On 15 January 2021, the husband filed a Notice of Intention to Act in Person and informed the Court that Priestleys were no longer representing him. On 26 November 2021, Travers Thorp Alberga came on the record for the husband[19] and his present Counsel, Ms. Louise Desrosiers, has represented him since then. The knock-on effect of these changes was that the ancillary relief hearing set for 28 January 2021 had to be administratively vacated and relisted for 11 February 2021 and then again for 4 March 2021.

29. At the hearing on 4 March 2021, the Court timetabled the matter to a three week ancillary relief hearing and directed that there be a pre-trial review on 22 April 2021. Although the wife stated at the final ancillary relief hearing that this matter *"was complicated by the fact that the husband has significant interests in a number of businesses,"* she indicated at the March 2021 hearing that she no longer sought an expert assessment to be conducted by an forensic accountant to value the companies[20] and stated that she was

[17] Notice of Acting filed by Cayman Family Law as her attorney Mr. Holland moved to that firm.
[18] Notice of Acting filed by KSG Attorneys.
[19] Notice of acting filed by Travers Thorp Alberga.
[20] The husband agreed with her taking this course.

producing and relying upon a quantity of Land Registry documents[21] which she contended would assist with determining the value of the companies that the husband had an interest in. It appears that the wife made that decision as she did not see a need to ascribe an underlying value to the shares of the companies or to assess the value of any intangible assets. Counsel for the wife stated in his Written Closing Submissions:

> *"In light of the struggles faced by (the wife) to obtain discovery, it is difficult to see how anything other than a forensic analyst could have penetrated the financial workings of the MCR Group. That was never an option on the table and would have been prohibitively expensive for the parties and would no doubt have been frustrated by (the husband)."*

My directions made on 17 September 2020 actually referred to instructing such an expert as they mentioned an:

> *"expert accountant to report on disclosure issues and potential scope of the marital estate. Parties to agree the terms of joint instruction."*

The wife contends that the correct approach is now to undertake a balance sheet exercise of adding the real assets (cash and land) and subtracting any liabilities. Although the husband states that the wife's proposed approach was that the Court should reach valuations after her placing documents before witnesses and cross-examining them is an *"inappropriate and unsafe exercise for the court to conduct"*, he did not push for the forensic analysis to be carried out by an expert due to his view that there was no need for the Court to fix a value for the majority of the companies (save for GCL) as they are non-matrimonial.

30. When attempting to deal with the issues and very different positions taken by the parties concerning the status and the valuations of the companies and the difficulties that have been caused to this Court in the absence of any assistance that would clearly have been

[21] The documents included (i) Land Registry documents to establish the extent of the Smith Road Center still owned by TPC; (ii) Land Registry documents establish the parcels owned by AIP; and (iii) a copy of the redacted rental agreement for the Health Service Authority at the Smith Road Centre via a Freedom of Information Request.

provided by a report following a forensic review conducted by an instructed accountant, it is regrettable that the wife did not pursue the instruction of the expert.

31. In circumstances in which the husband appears to have been willing to cooperate with such an appointment, I do not agree with the wife that there was no option but to depart from that approach. If the husband had not cooperated in a manner that an expert would have reasonably expected or required to enable him to carry out his assessment, even where limited companies are involved, then the accountant would have been able to report that fact and the Court could have taken that into account. The expert may also have greatly assisted in ascertaining the sources of investment into the companies as well as the lending made by the companies. Such evidence may well have substantially reduced the length of the overly protracted hearing and helped the Court in the task of determining the value for each asset and whether it is to be regarded as matrimonial or not which has been a difficult and time consuming one for this Court to undertake.

32. On 30 March 2021, the husband filed a Summons seeking copies of exhibits mentioned in two 2017 Affidavits filed by the wife and extending time to file the final affidavits. On 7 April 2021, the Court ordered, by consent, that the exhibits should be deemed to be lost and that the parties should use their best endeavours to recreate the exhibits by attaching the same to their final affidavit[22] if they were going to rely upon them. Costs of the Summons were reserved. No submissions have yet been made relating to those reserved costs.

33. In his Affidavit sworn on 15 April 2021, the husband summarised his position in relation to the assets in the context of the above pre-marital historical background as follows:

> *"I also produce a schedule of all assets owned by me now. On occasion I have tried to identify assets that were previously owned by me where I consider they are likely to be relevant. A comprehensive account is not always possible as, throughout my career, which has spanned over 35 years, I have owned assets both personally and professionally. Most were acquired and/or sold prior to the*

[22] Time for filing of the final affidavit was extended from 1 April 2022 to 12 April 2022.

marriage. In fact I undertook my largest land projects between 1988 and 2002. My late wife of 21 years had a 5-year battle with cancer and when she passed in 2001 I took an 18-month sabbatical. In November 2003 I met the Respondent and we married in May 2004 and most of the assets being discussed were either purchased prior to this date, or were purchased with the fruits of my marriage to my late wife, which were acquired long before this marriage. These assets are detailed in an attached spreadsheet, and I will explain my position in respect of each with detailed reference to that schedule in this Affidavit".[23]

This summary, which is not accepted by the wife, forms the grounding of many of the husband's submissions (which are outlined later in this Judgment) about the valuation of the assets, the status of the assets and his disclosure, with him stressing that he came to the marriage independently wealthy, and it is that pre-marital wealth that was utilised during the marriage.

34. At the 22 April 2021 review hearing, both parties took an arguably more pragmatic view in relation to outstanding issues about disclosure, agreeing that should either party choose not to provide appropriate disclosure, an adverse inference may be drawn as to the level of assets at the final hearing. The wife did not highlight what disclosure she felt was missing from the husband at the hearing and no orders were sought by her in that regard. The husband agreed to pay for the translation of the materials which the wife had produced which were written in Mandarin, on the basis that the wife will upon settlement bear that full cost.[24] Detailed directions were given concerning the valuation of the property in China. The wife was directed to provide documentation about four of her disclosed investments by 5 June 2022. At the husband's suggestion made in March 2021, although not a course of action immediately embraced by the wife, the parties eventually agreed that there should be an agreed Joint Asset Schedule for the final three week hearing which was listed to commence on 3 August 2021.[25] Ms. Desrosiers is to be

[23] Paragraph 2 of the Affidavit.

[24] The order from the hearing recorded that the credit for the translation costs to be provided to the husband when the Court determined the capital division would be no less than 50% of the costs paid. See paragraph 1 17 elow under the heading "Set-off/Add-backs".

[25] Notice of Hearing issued on 31 May 2021.

commended for recognising the need for such a schedule in this case and for being the person who undertook the task of drafting the same from the pre-existing disclosure evidence. If this task had been undertaken at an earlier stage by any of the previous attorneys on record, it would have brought far greater organisation to each party's (to that date unclear) approach and would have required them to better disclose what each party's cases was. There would have been greater focus on identifying the real issues and it would likely have prevented some of the repetitive requests for too wide disclosure.

35. I note that the husband, shortly before the April 2021 review hearing, commendably provided[26] comprehensive asset schedules, attempting to put in a more concise format the detail extracted from the provided disclosure dating back to 2017. There have since been some points of departure by the husband from the submitted figures set out therein in the updated schedule filed after the hearing. That said, I agree with the husband's Counsel's observation that, before the task undertaken to prepare that schedule and although there had been a great deal of disclosure given by the parties (mostly in a rather disorganised fashion), little time had been properly spent by either party to adequately review the material to decide what was truly relevant to the issues in the case. The result of this was repetitive requests for wide disclosure and a failure to set out in a way that was helpful to the Court (or to each other) what the actual assets might be.

36. Only the husband and his Counsel attended the hearing on 14 May 2021. By an email sent that morning, the wife's attorney indicated that the wife no was longer applying for a child relocation order. Therefore, no children orders were made, but the costs of that summons were reserved. No submissions have yet been made relating to those reserved costs.

The hearing

37. Due to present Counsels' endeavours, the fixed final hearing date commencing on 3 August 2021 was effective. Despite the clear improvements to the conduct of their respective client's case following the current Counsel 'coming on board', and even

[26] As an attachment to the husband's 14th Affidavit.

considering the effect that the Covid-19 pandemic had on Counsels' availability[27] and Hurricane/Tropical Storm Ian, the final hearing occupied too many non-consecutive days of Court time (appearances on at least 24 days), with hearing days spread over almost six months. This is one of the reasons why there was duplication in the oral and written/documentary evidence that I have had to consider post-trial and why it has been such a difficult and time-consuming task to try to:

(i) deduce each party's case;

(ii) assess the valuation of assets; and

(iii) identify evidence which might support the varying contentions being made.

Events post the conclusion of the hearing

38. It appears that, post-hearing, Counsel have also had to grapple as best they can with trying to:

(i) comprehend what the other party's case is from the evidence;

(ii) identify documentary evidence (if there actually is any) to support each contention; and

(iii) confirm what assets exist and ascertain their valuations.

In light of the above, Counsel required substantial time to prepare and submit the various Schedules and Written Closing Submissions, the latter being filed three to four months after the hearing. The husband's 78-page Written Submissions were filed on 6 May 2022 as well as the Updated Schedule prepared by him. The wife's 119-page Written Submissions were filed by her on 19 May 2022. Ms. Desrosiers had indicated at that stage that the husband may wish to make submissions in reply and that he was still considering his position on that. On 22 June 2022, following a communication sent from the Court to the parties asking whether there were to be any further submissions to be made, the husband eventually indicated that he no longer wished to seek to file/make any submissions in reply. Following that indication and then upon my return from medical leave in late July 2022, I was able to start to work on the Judgment.

[27] The Covid rule in place at the time meant that if any member of a person's household hade covid they should remain at home. That happened to one of the Counsel.

39. On 6 December 2022, I updated the parties in correspondence about the unfortunate delay in the delivery of this pending Judgment and I expressed that was partly due to problems being encountered concerning the submissions made when relating them to the evidence filed and partly due to the:

> *"loose ends/lack of clarity about each party's position about some of the other party's submissions/contentions/suggestions (especially the very fresh ones or changed ones which have not been addressed by them)."*

In light of that, I stated that I did not wish for either party to feel that they had been deprived of an opportunity to address the Court if they felt that one was required. I remarked that:

> *"…the parties may want to consider their positions and have a discussion to see whether they wish to further address the Court"* and I added: *"If they do not, then I feel that I just need to move on and complete the judgment based on the information/submissions before me."*

40. On 9 December 2022, the wife filed an application for an anti-suit injunction in relation to a Civil Complaint ("the Complaint") filed by the husband's Chinese lawyers in the Tianhe District People's Court of Guangzhou City, Guangdong Province, People's Republic of China on 5 May 2022. The Complaint was filed one day before the husband's attorneys filed his Closing Submissions in the matter before me. The husband stated in his Affidavit sworn on 12 December 2022 that, prior to preparing the supporting Affidavit, his attorneys had been unaware of his actions taken in China. He should, of course, have promptly informed his attorneys and the wife about those proceedings. The husband informed in his Affidavit that he had made the *"request"* to the Chinese Court because he had understood that he needed to commence proceedings in China for his divorce to be registered there. I understand that the situation may be that Chinese Courts may recognise a foreign divorce in cases where one of the spouses is a Chinese national, but they may not recognise distributive awards of marital properties/assets located in China or child custody orders.

41. The Complaint set out the wife's address as being one in China, although she has been residing in the Cayman Islands for over five years. The Complaint contained a request for permission to divorce the wife and sets out the facts and reasons to ground that application. The husband has, of course, already conducted the same exercise in the Cayman Islands proceedings and has had his Petition proved by the Court. The Complaint also contained a request for an order *"to divide the joint marital property"* of the parties;

> *"in accordance with the Chinese laws, including the deposits, the real estate, the securities funds, the insurance policies and other property under the defendant's name."*

42. The content of the Complaint contained detrimental allegations about the wife's marital and financial conduct. On the face of the pleading, it does not read as a simple request to recognise a foreign decree and financial order, but as a request to grant the equivalent of a decree and to make free-standing orders in relation to the distribution of the assets located in China. Although the husband agrees that the assets in China are all in the wife's name and that in the ancillary relief proceedings before me his contention is that all of the Chinese assets should remain with the wife, the concern is that, on the pleadings, the Chinese Court could be asked to make orders inconsistent with that contention and with any resultant order of this Court which might be made based upon that contention.

43. An urgent date, 13 December 2022, was provided for the hearing of the wife's Summons to ensure that the on-notice application could come on before me prior to my departure from the jurisdiction. Mr. Alberga 'stood in' for Ms. Desrosiers on behalf of the husband and Mr. Kennedy again appeared for the wife. Following discussions at Court, the husband agreed to give undertakings, the content of which enabled this Court to be satisfied that, if proceedings for recognition must be brought later in China, the husband would not be seeking to take a different position in relation to the Chinese assets to that set out in his Closing Written Submissions and ordered by this Court.[28] The written undertakings given by the Court were:

[28] The following was stated in the comments of the draft judgment submitted by the Husband's Counsel "Signed undertakings were offered by the Husband prior to the hearing by email sent to the court on

(i) The husband shall, as soon as reasonably practicable, and in any event by 31 December 2022, take such steps as are necessary to withdraw the Chinese proceedings by writing forthwith to his lawyers in China and instructing them to apply to withdraw the proceedings;

(ii) Shall the Chinese proceedings be incapable of being withdrawn; the husband shall provide suitable evidence of this to Counsel for the Respondent by 15 January 2023;

(iii) The husband shall not commence, pursue, or assist or procure the pursuit of any proceedings including the current Chinese proceedings relating to the dispute in any Court, Tribunal or other dispute resolution forum, other than the Grand Court of the Cayman Islands save for the purposes of recognition and/or enforcement of the Judgment of the Cayman Islands Court in Cause No. FAM 18 of 2017 and any subsequent appeal, and shall not seek any relief inconsistent with the Orders of the Grand Court or Court of Appeal or Privy Council with respect to the dispute.

The Court accepted the undertakings, and having explained their content to the husband, and upon being satisfied that he understood the promises that he was making to the Court and what the consequences of any proved breach might be, the Court made an opposed order that the husband pay the wife's costs of the Summons, with costs being on the standard basis, to be taxed if not agreed.

44. The nature of the issue raised in the Summons and the time expended in preparation for the hearing regrettably 'put a hold' on the Court progressing the Judgment writing exercise, thereby resulting in a loss of the Judgment writing days which had been allocated for that purpose prior to my extended overseas absence from December 2022. By email of 10 March 2023 with an attached draft Motion, the wife's attorneys informed the Court that they wished there to be an urgent listing of a committal application alleging a breach by the husband of his undertakings. On my instructions, the parties were

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Monday, December 12, 2022 4.56pm. They were rejected by the Wife's attorneys by email to the Court on Monday, December12, 2022 6.26PM. So, for the avoidance of doubt, the Husband agreed to give undertakings prior to discussions at Court, although an amended version was ultimately signed by the Court."

informed that a draft of the Judgment would be circulated for comment[29] within the next two weeks and that the hearing of any such Motion, if it was necessary, should be heard after the release of this Judgment.[30]

45. A further post-hearing Summons was filed by the wife on 21 December 2022. It is surprising that the wife did not file this application at the same time as her earlier Summons filed only 12 days earlier. In the Summons the wife sought:

(i) an upward variation of child maintenance to CI$10,000 from 1 January 2023;

(ii) a legal costs allowance order of CI$50,000[31];

(iii) a lump sum payment of CI$9,430.50 by 23 December 2022 to meet one-off expenses of the wife and children[32];

(iv) a discharge of the Prohibited Steps Order which requires consent or Court order to remove the children from the jurisdiction;

(v) an order requiring the husband to use his best efforts to obtain Caymanian status for the children by 25 January 2023[33]; and

(vi) an order that, prior to 31 December 2022, the husband take all steps required from him for A to apply for financial aid for university studies in the USA and/or the UK.[34]

The Summons was supported by an Affidavit sworn by the wife on 23 December 2022.

46. The Summons was heard by Chief Justice Ramsay-Hale during my absence from the jurisdiction. As mentioned at **Footnote 4** above, orders were made in relation to applying for Caymanian status and in relation to financial aid for A. The Prohibited Steps Order was varied but apparently not discharged. The husband was ordered to pay the

[29] Pursuant to Practice Direction 1/2004.
[30] No affidavit was provided to the Court and they were informed that, on what was provided by the wife, the application was not urgent and that Williams J did not have Court time available prior to the release of the Judgment due to his hearing a 2-3 week contested family matter.
[31] Payments to be on account of the wife's entitlement in the final ancillaries.
[32] CI$5,000 of this payment to be on account of the Respondent's entitlement in the final ancillaries.
[33] See Footnote 4 herein.
[34] See Footnote 4 herein.

CI$9,430.50 lump sum payment. The Chief Justice ordered that CI$5,000 of this payment to be on account of the Respondent's entitlement in the final ancillaries. Costs of the Summons were reserved. No submission on these reserved costs have been received. All other paragraphs in the Summons were adjourned to be heard at a later date. It appears that the wife did not seek to have that Summons re-listed pursuant to the Chief Justice's direction until her attorneys wrote to the Court, two and a half months later, on 10 March 2023. After I was shown that email on 14 March 2023, I instructed my Personal Assistant to inform the parties that the Judgment would be completed within two weeks and that I could not hear that Summons before the Judgment would be circulated as I was dealing with two-three weeks of another contested family matter. They were also informed of my view that:

(i) as the release of the Judgment was imminent, it would not be a good use of Court time to list a hearing for interim financial orders; and

(ii) issues of maintenance and costs allowance were intrinsically linked with capital division. I have decided not to delay the completion of this Judgment further and therefore I have completed it without hearing the Summons. As I have not received any submissions in relation the content to the wife's latest Affidavit, the content therein does not form a part of my deliberations.

47. This is my reserved Written Judgment given after careful consideration of the parties' oral and written evidence as well as the oral and written evidence presented on their behalf by their witnesses.[35] I have also carefully reviewed the oral submissions as well as the Opening and Closing Written Submissions provided by Counsel. I have reviewed the Authorities Bundle which contains 48 case authorities.

[35] Including, but not limited to, Mr. Rene Hislop (Chairman of the Board of Directors of Buffa Ltd, Rosedale Expediters and R&R Expediters) and Mr. William Cuthbert (Chairman of the Board of Directors of MCR Investments Ltd, TPC Ltd and AIP Limited) who gave oral and written evidence on behalf of the husband.

Issues

48. The husband's Statement of Issues, which was provided prior to the hearing, was analysed in his Written Closing Submissions at which time he stated that the issues for the Court to consider and determine were:

(i) What are the matrimonial assets;

(ii) How should these assets be divided or apportioned between the parties;

(iii) The future level of child maintenance and if that is to be paid in equal shares by the parties depending upon the resources post separation, further, if such sums can be capitalised to achieve a clean break[36];

(iv) The future proportionate share of the responsibility of the parties to provide for the reasonable and properly incurred medical, dental and optical needs of the children of the marriage;

(v) The sum of maintenance paid to date, and how (or whether) that is to be offset against any final capital award[37];

(vi) Residence/contact arrangements in respect of the children of the marriage[38]; and

(vii) Costs.

49. The wife did not file a Schedule of Issues, but it did not appear that she takes a different view as to the general issues for determination. The wife has a very different view about how those issues should be determined.

50. The parties' positions are polarised on most of the issues, a few examples being:

(i) the historical events related to the wealth growth;

(ii) each party's financial position whether that be in relation to the assets or their income capacity;

(iii) the valuation of assets;

[36] The husband argues that this is a case in which there should be a clean-break with no ongoing spousal maintenance.

[37] The wife contends that there should be no offset resulting from maintenance paid.

[38] Consideration of the making or variation of s.10 Children Act orders was not pursued at the final hearing by either party.

(iv) whether assets are matrimonial or non-matrimonial; and

(v) how the Court may exercise its powers of division.

51. The parties were not able to fully agree the content set out in the detailed Updated Assets Schedules ("the Schedules"), which were prepared by the husband and presented after the hearing. It cannot be regarded as being an agreed schedule of the assets; instead, it is a schedule which highlights what assets exist and then sets out the parties' differing views about the status and the valuation of each asset. The wife's attorney labels the husband's position which is set out in the Schedules as being *"contrived"* and adds that, after all the evidence given at the hearing, there remains:

> *"a substantial discrepancy between H and W's figures on the Updated Schedule. Very few valuations are agreed, even following trial, and both parties have levelled accusations of non-disclosure."*

In addition to the differences highlighted in the Schedules, the wife points out what she sees as being three errors in the Schedules.[39]

52. The degree of conflict in the parties' respective positions about the status and quantum of assets is vividly highlighted by the below summary of the value of assets found at paragraph 10 of the wife's Closing Written Submissions and in the summary of matrimonial/non matrimonial assets found at paragraph 12 of the same submissions.

Summary of the Value of Assets

Category of Asset	H Position	W Position
Personal Matrimonial Assets to be divided	$4,499,693	$11,599,108
Personal Non- Matrimonial Assets of H	$6,042,892	$754,185
Personal Non-Matrimonial Assets of W	$0	$0
Non-Matrimonial Assets in Companies of H	$6,124,660.81	$0

[39] At paragraph 9 in the Written Closing Submissions the wife identifies the errors as being: (i) the valuation of TPC and future income from TPC being put at CI$306,154 per month when in fact it was per annum; (ii) potential rental income for the Chinese home is entered by the wife in the schedule as being US$2,000 per annum whereas it should be $20,400/annum; and (iii) there is an error in the wife's valuation of Buffa as she there failed to account for the Company's bank balance.

Category of Asset	H Position	W Position
Non-Matrimonial Assets in Companies of W	$0	$0
Matrimonial Assets in Companies to be divided	$226,559.34	$14,485,111.81
Total:	**$16,893,805**	**$26,838,404.81**

The above figures highlight the wife's view that there exists a dispute over the existence of almost US$11M of assets.

Summary of Matrimonial/Non-Matrimonial Assets

Category of Asset	H Position	W Position
Husband's share of Matrimonial Assets	$2,363,126	$13,042,109.90
Husband's Non-Matrimonial Assets	$12,167,553	$754,185
Total for Husband:	**$14,530,679**	**$13,796,294.90**
Wife's Non-Matrimonial Assets	$0	$0
Wife's share of Matrimonial Assets	$2,363,126	$13,042,109.90
Total for Wife:	**$2,363,126**	**$13,042,109.90**

53. The polar opposite positions of the parties can also be gleaned from the husband's stance. The husband states that there is a discrepancy of US$758,000, as he values the personal assets at a total of US$10.8M and the wife values them at $11.6M. He then states that there is a discrepancy of US$5.3M between the parties for determination by the Court, as he values the non-matrimonial assets at US$6.04M (55.93% of his US$10.8M total) and the wife values them at US$754,200. Based on his valuations, the husband contends that 44.07% of the $10.8M total is available for division.

54. The wife, unlike the husband, states that the properties which were owned by the husband prior to the marriage should be treated as matrimonial assets because the income from the same has been commingled and used to fund the parties' lifestyles and been used as security for their matrimonial financial ventures. She rightly adds that the husband's pre-marital residence became the matrimonial home for the parties and should be treated as being a matrimonial asset. That view is consistent with Lord Nicholls' statement in the

combined House of Lords appeals of ***Miller v Miller; McFarlane v McFarlane*** [2006] 1 FLR 1186, [2006] 2 AC 618 (**"*Miller*"**) that:

> *"The parties' matrimonial home, even if this was brought into the marriage at the outset by one of the parties, usually has a central place in any marriage. So it should normally be treated as matrimonial property for this purpose. As already noted, in principle the entitlement of each party to a share of the matrimonial property is the same however long or short the marriage may have been."*

55. Ms. Desrosiers highlights the difficulties imposed on the Court if it is required to try to make *"specific findings line by line"*. This remark and those of the wife's Counsel shared in **paragraph 291 below** vividly illustrate the time-consuming and problematic task that has been placed on this Court. Although a large number of case authorities have been submitted, the assignment for the Court in this case does not involve the review of any novel piece of law, but involves it trying to make sense of and reach conclusions from the mostly conflicting voluminous evidence about the numerous assets.

The Husband's proposal about how to approach the division exercise

56. Despite the content of his Statement of Issues[40], with reference to ***SK v WL (Ancillary Relief: Post-Separation Accrual)*** [2011] 1 FLR 1471, FD and ***Hart v Hart*** [2018] 1 FLR 1283, CA, the husband encourages the Court not to take the line by line approach advocated in ***N v F (Financial Orders: Pre-Acquired Wealth)*** [2011] 2FLR 533, FD of:

    (i) categorising the property as matrimonial or non-matrimonial property;

    (ii) dividing the same equally; and

    (iii) then drawing on the non-matrimonial property if that is required to meet the other spouse's needs.

The husband advocates what he terms a "more holistic" and less *"categorical/formulaic"* approach when assessing the available property and the approach to the division of non-matrimonial property; thereby adjusting the overall division of property on divorce from an equal to an unequal one to reflect the existence and source of non-matrimonial

[40] See paragraph 47 above.

property. He contends that if such an approach is taken a party does not, in every case, have to prove the existence of pre-marital property by clear documentary evidence. It is submitted that this more *"broad brush approach"* would still ensure fairness and meet the needs of the parties and their children. Such an approach might favour the husband, as there is a lack of some evidence to supports his contentions about the status of some of the assets and borrowing/lending in relation to some businesses.

57. If the Court were to take the approach suggested by the husband, he submits that the following orders would be fair and meet the needs of the parties and the children**:**

(i) Wife to retain the China property (total value US$1.56M).

(ii) The Slate Drive Apartments and Land[41] to be transferred into the wife's sole name. The Slate Drive assets are valued at US$2.75M and generate an annual net income of US$152.7K on the husband's case or $183.4K on wife's case.[42]

(iii) All other bank accounts, investments, loans, liabilities, pensions, vehicles, or the like, to remain in the name of the party to whom they are registered.[43]

(iv) The GCL shall continue to be held in 25% shares by each party, with the husband giving a formal undertaking to the Court to discharge the debts as set out herein directly and the final sums be shared equally. This is to include a payment to the husband in respect of a loan into GCL from 7 Mile Holdings following the sale of a property purchased in 1988.

(v) The wife to retain all maintenance and other lump sums paid to her by the husband to date.

(vi) The husband to retain his business assets.[44]

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[41] Which the husband contends is not a matrimonial asset.

[42]The annual income from the Slate Drive apartments and the China property be utilised by the wife to maintain herself and the children (this is to include all education, travel, healthcare, and other. The husband states that this would give the wife 82.2% of the total family income (total income including China = $258,727p.a. Wife = $212,745 (82.2%) and husband = $45,982 (17.8%). N.B this does not include Wife's earning capacity). The Husband contends that in such circumstances there should then be a clean-break on child and spousal maintenance. The wife contends that the income figure for the China property needs to be corrected to an annual potential income of US$20,400.

[43] For the avoidance of doubt this would irrespective of what the positions in the Husband's Asset Schedule state on sharing because his advocated holistic approach is being taken.

[44] All of which he claims are non-matrimonial assets.

(vii) There otherwise to be a clean-break.

(viii) Costs: all costs orders already made, paid by the party ordered to pay, taxed if not agreed.

58. The husband contends that his suggested settlement offer means that almost 100% of what he views as being matrimonial assets would be for the benefit of the wife and give her a total identified asset base of $4.42M made up as follows:

China House	$1.56M
Slate Drive	$2.75M
GCL	$113,279

59. The husband adds that if further adverse inference and findings of non-disclosure were made against the wife, along with the husband's add back claims, this would arguably give the wife a potential further asset base of $2.17M, made up as follows:

Wife's cash/investment/loan assets	$1.66M
Wife's Offsets	$504.6K

60. The husband states that, over and above her personal earning capacity and capital sums due to her from the loans that she made to third parties, his proposal would mean that the wife would have an income more than US$15,000-18,000 per month from Slate Drive and the China property. He says that this sum would be more than her and the children's needs, as she has showed that she was not going into debt when receiving the child maintenance at the current level of US$6,739. He says that the children's tertiary education needs would be met from the AIA policies taken out by the wife, who in her evidence stated that they are *"education funds"*.

61. The husband contends that his suggestion would leave him with an annual income of US$45,982 from the other assets, which are riskier. He would also have to meet debts by selling, mortgaging and/or refinancing developments to stabilise his income. With this in mind, he contends that the GCL loans would have to be paid (the loan to GCL from the sale of his 1988 property is repaid to H (7 Mile Holdings)).

62. Without analysing in greater detail the husband's *"broad brush"* approach proposal, there is a significant issue with it as it is made only on the premise that there is a clean-break in both child and spousal maintenance. Although a clean-break can be agreed (and attempts made by the Court to achieve it) to cover all financial claims between the ex-spouses, the welfare of any children in the marriage is a priority, and it is not possible to order a clean break in respect of any obligation to provide maintenance to eligible children. Child maintenance continues regardless of the dismissal of spouse's claims for lump sums, property, pensions and maintenance. In England and Wales, s.23(4) of the Matrimonial Causes Act 1973 ("the MCA") provides that the Court may make an order for a lump sum in favour of a child on more than one occasion. Although in ***AZ v FM*** [2021] EWFC 2, Mostyn J agreed that the Court had the power to make a lump sum payment for a child in lieu of maintenance, he commented that such an order would remain *"very rare bird"*. Despite the jurisdiction existing in England to make it, the making of a capitalisation order would only be considered in exceptional circumstances. The reason for that is:

(i) a child maintenance capitalisation, unlike a spousal maintenance capitalisation, is not watertight and a child cannot be prevented from coming back for more,

(ii) there is a possibility that predications about a child's future may all turn out to be incorrect, and

(iii) child maintenance is meant to be variable to address the current circumstances prevailing relating to a child's needs and the paying parent's income. Even if such a jurisdiction exists in the Cayman Islands, the matter before me should not be regarded as being an exceptional case. This is not a case where the Court, even if it was able to, would grant a clean break in relation to child maintenance.

63. Apart from the fact that the husband's suggestion is grounded on the highly contentious issue of what he identifies and values the relevant asset for division to be, the husband's proposals are based on a premise of a global clean-break (i.e., including a cessation of child maintenance payments by him). If child maintenance were ordered, presumably the suggestions would no longer be made by him. Although the approach suggested by the husband would involve a much more straightforward exercise for this Court and although it may result in a division similar to that which may eventually be ordered, due to the

nature of the substantial evidential issues that exists in this case and the disputed valuations, it is not one that I can in the circumstances simply adopt at the outset, especially in the absence of agreement from the wife and considering her submissions which must be addressed.

64. The husband also accepts that there may be a need for greater specificity resulting in a more analytical approach to the assets than the one advocated above. He states that this more laborious approach may now be necessary due to the nature of the requests for disclosure which he states the wife has made. He said with that in mind he submitted the 46-page Affidavit sworn on 15 April 2021 in which he set out the disclosure he has given and provides asset schedules dealing with every bank account, land, business and other asset category owned by him.

The Wife's proposal about how to approach the division exercise

65. The wife states that, due to the polarised positions of the parties, it is impossible at this stage for her to make an informed suggestion about the division. She made a rather general proposal that she retain the property purchased in China and *"either further income producing assets or cash equivalent"*. This general proposal is not different in principle to the husband's above suggestion, save that the wife significantly disagrees with the husband's view concerning which assets are matrimonial or not and their values.

The law and the relevant general principles applied in ancillary relief cases

66. The law pertaining to the making of periodical payment orders and to the division of assets is governed by s.19 of the Matrimonial Causes Act ("the Act"), which reads as follows:

> *"In dealing with all ancillary matters arising under this Law the court should have regard first of all to the best interests of any children of the marriage and thereafter to the responsibilities and financial and other resources, actual and potential earning power and deserts of the parties."*

67. Section 19 of the Act must be read in conjunction with s.21 of the Act, of which the relevant parts for my consideration in this matter provide as follows:

"At the time of pronouncing a decree under this law, the court shall, as appropriate, make order for:

(a) ...
(b) the disposition of matrimonial property, <u>including the matrimonial home</u>[45];
(c) ...
(d) ...
(e) making financial provision from the property of either spouse for the children of the marriage and for the other spouse;
(f) providing for periodical payments to be made by either spouse for the benefit of the children of the marriage and the other spouse: and
(g) costs."

68. Section 19 and s.21 of the Act give the Court wide discretion when it comes to financial provision and any awards made to the parties. The Courts in the Cayman Islands, in deciding whether to exercise their powers under s.21 and, if so, in what manner have, when considering what is fair in all the circumstances of the case, traditionally had regard not only to the matters set out in s.19, but may also been guided by the relevant factors raised in s.25(2) of the MCA in England and Wales.[46] The factors to be considered include:

(i) The income earning capacity, property and other financial resources which each of the parties has or is likely to have in the foreseeable future;

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

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

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

(v) Any physical or mental disability of either of the parties to the marriage;

(vi) The contributions made, or is likely in the future to be made, by each of the parties to the welfare of the family (to include contributions made by each of the parties to the accumulation of matrimonial assets as well as non-matrimonial property) and any contribution made by looking after the home caring for the family;[47]

[45] My emphasis by underlining.
[46] ***Doak v Doak and Riley*** [2002] CILR 224, [17], [21], [22], ***Wood v Wood*** [2009] CILR 255, [12] as commented upon by Sir John Chadwick P. in ***McTaggart v McTaggart*** (2011) 2 CILR 366, [39].
[47] ***Wight v Wight*** [2006] CILR 1, Zacca P. at paragraph 33.

(vii) The conduct of each of the parties. If that conduct is such that it would in the opinion of the Court be inequitable to disregard; and

(viii) The value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution of the marriage, that party will lose the chance of acquiring.

69. A succinct analysis of the general law was conducted recently by Mr. Justice Peel in the case of ***WC v HC*** [2022] EWFC 22 paragraph 21[48]. I see merit in this case and to assist future litigants in ancillary relief proceedings to herein set out in some detail Mr. Justice Peel's helpful and concise summary of the law:

"21. The general law which I apply is as follows:

i) As a matter of practice, the court will usually embark on a two-stage exercise:
(a) computation and (b) distribution; ***Charman v Charman [2007] EWCA Civ 503.***

ii) The objective of the court is to achieve an outcome which ought to be "as fair as possible in all the circumstances"; per Lord Nicholls at 983H in ***White v White [2000] 2 FLR 981****.*

iii) There is no place for discrimination between husband and wife and their respective roles[49]; ***White v White*** *at 989C.*

iv) In an evaluation of fairness, the court is required to have regard to the s25 criteria, first consideration being given to any child of the family.

v) S25A is a powerful encouragement towards a clean break, as explained by Baroness Hale at [133] of ***Miller v Miller; McFarlane v McFarlane [2006] 1 FLR 1186.***

vi) The three essential principles at play are needs, compensation and sharing; ***Miller; McFarlane****.*

vii) In practice, compensation is a very rare creature indeed. Since ***Miller; McFarlane*** *it has only been applied in one first instance reported case at final hearing of financial remedies, a decision of Moor J in* ***RC v JC [2020] EWHC 466*** *(although there are one or two examples of its use on variation applications).*

viii) Where the result suggested by the needs principle is an award greater than the result suggested by the sharing principle, the former shall in principle prevail; ***Charman v Charman.***

[48] A copy of the case was provided to the parties by the Court at the hearing.
[49] See paragraph 4 above.

ix) In the vast majority of cases the enquiry will begin and end with the parties' needs. It is only in those cases where there is a surplus of assets over needs that the sharing principle is engaged.

x) ……

xi) ……

xii) Needs are an elastic concept. They cannot be looked at in isolation. In ***Charman (supra)*** *at [70] the court said:*

> *"The principle of need requires consideration of the financial needs, obligations and responsibilities of the parties (s.25(2)(b); of the standard of living enjoyed by the family before the breakdown of the marriage (s.25(2)(c); of the age of each party (half of s.25(2)(d); and of any physical or mental disability of either of them (s.25(2)(e)".*

xiii) The Family Justice Council in its Guidance on Financial Needs has stated that:

> *"In an appropriate case, typically a long marriage, and subject to sufficient financial resources being available, courts have taken the view that the lifestyle (i.e "standard of living") the couple had together should be reflected, as far as possible, in the sort of level of income and housing each should have as a single person afterwards. So too it is generally accepted that it is not appropriate for the divorce to entail a sudden and dramatic disparity in the parties' lifestyle."*

xiv) In ***Miller/McFarlane*** *Baroness Hale referred to setting needs "at a level as close as possible to the standard of living which they enjoyed during the marriage". A number of other cases have endorsed the utility of setting the standard of living as a benchmark which is relevant to the assessment of needs: for example,* ***G v G [2012] 2 FLR 48*** *and* ***BD v FD [2017] 1 FLR 1420.***

xv) That said, standard of living is not an immutable guide. Each case is fact-specific. As Mostyn J said in ***FF v KF [2017] EWHC 1093*** *at [18];*

> *"The main drivers in the discretionary exercise are the scale of the payer's wealth, the length of the marriage, the applicant's age and health, and the standard of living, although the latter factor cannot be allowed to dominate the exercise".*

xvi) I would add that the source of the wealth is also relevant to needs. If it is substantially non-marital, then in my judgment it would be unfair not to weigh that factor in the balance. Mostyn J made a similar observation in ***N v F [2011] 2 FLR 533*** *at [17-19]."*

70. Mr. Justice Peel's guidance is consistent with the approach that has consistently been adopted in our Courts. In ***McTaggart v McTaggart*** [2011 2 CILR 366] ***("McTaggart")*** the Court of Appeal clarified the law as it applies in the Cayman Islands in ancillary relief financial claims. Sir John Chadwick, President of the Court of Appeal, at paragraph 12 in ***Valerie Ayala Gordon v Jefferson Raymond Watler*** CICA (Civil) 13/2014 ***("Gordon")***, reiterated the principles set out in ***McTaggart*** and the approach to be taken to the case law emanating from England and Wales when he stated:

> *"12. The correct approach to the division of property in ancillary relief cases was set out by this Court in McTaggart. At paragraph 40 of the judgment in that case the Court said this:*
>
> > *"40. We were referred by the parties, both in the skeleton arguments lodged on their behalf and in oral submissions made in the course of the hearing, to a plethora of judicial decisions in England and Wales and to a few decisions in this jurisdiction. Observations made by experienced judges are, of course, of assistance to an understanding of the application of the section 19 factors; but it must be kept in mind that most cases in this field are decided on their own facts and that there is a risk that extensive citation may confuse rather than illuminate. It is not necessary, I think, to look further than the decision of the House of Lords in Miller - and in particular the speeches of Lord Nichols and Baroness Hale - in order to identify the principles. Leaving aside, in this context, the best interest of the children, which (as I said) are paramount, there are three strands: need, compensation and sharing [2006] 2 AC 618 at paragraphs [10]-[16] per Lord Nichols and at paragraphs [138]-[143] per Baroness Hale. The ultimate objective, as Baroness Hale explained at paragraph [144], is to give each party an equal start on the road to independent living. She said this:*
> >
> > > *'[144] Thus far, in common with my neighbour 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, but whether one starts with equal sharing and departs when need or compensation supplied a reason to do so, or whether one starts with need and compensation and shares the balance, much will depend on 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. <u>The ultimate objective is to give each</u>*

> > *party an equal share start on the road to independent living*.[50]'"

When Baroness Hale referred to "sharing" in that context, she had in mind - as her speech demonstrates - sharing of all the assets; not simply sharing the assets which could be classified as matrimonial property. This court went on in McTaggart to say this, at paragraphs 42 and 43:

> *"42. In this jurisdiction a court will need to consider whether, having proper regard to the section 19 factors, an order under section 21(b) of the Law for the disposition of the matrimonial property will make appropriate provision for the relevant party in respect of the three strands: need, compensation and sharing. If not, then the court will need to go on to consider whether to make an additional order under section 21(e), that is to say, an order making financial provision for that party out of property of the other party.*
>
> *43. It seems to me reasonably clear (and I would so hold) that, if satisfied that an order under section 21(b) of the Law (or the combination of orders under section 21(b) and (e)) would make appropriate provision for the relevant party in respect of the three strands (need, compensation and sharing), the court should not, without good reason, make an order for periodic payments under section 21(f)[51]. To make an order for periodic payments - in circumstances where such an order is unnecessary because appropriate provision can be made by the disposition of matrimonial property either (under section 21(b) or by a capital adjustment from the separate property of the other party (under section 21(e)) - would be inconsistent with the principles of clean break to which Lord Scarman referred in Minton v. Minton, ([1979] AC at 608).*
>
> > *"There are two principles which inform the modern legislation. One is the public interest that spouses, to the extent that their means permit, should provide for themselves and their children. But the other - of equal importance - is the principle of 'the clean break.' The law now encourages spouses to avoid bitterness after family break-down and to settle their money and property problems. An object of the modern law is to encourage each to put the past behind them and to begin a new life which is not overshadowed by the relationship which has broken down. It would be inconsistent with this principle if the*

[50] My emphasis by underlining.

[51] The Husband wrongly submits at paragraph 72 of the Written Closing Submissions that the Court of Appeal was referring to both spousal and child periodic payments. The Court cannot make clean-break orders in relation to periodic payments for relevant children and it is clear that this statement by the Court of Appeal, when highlighting the clean-break principle, was only referring to periodic payments for spouses.

> *court could not make, as between the spouses, a genuinely final order…."*"
>
> *Those observations must be read in the light of the observations in Miller - and in particular those in the speech of Baroness Hale to which I have referred - that the ultimate objective is to give each party an equal start on the road to independent living."*

71. In ***W v W*** [2009 CILR 225], Sir John Chadwick P. reiterated the importance of the principles set out in (i) ***Wight v Wight*** 2006 CILR 1 ("***Wight***"), (ii) in ***White v White*** [2001] 1 A.C. 596 ("***White***"), and in (iii) ***Miller***. Referring to Forte J.A.'s ruling in ***Wight***, the President stated that the Court should construe s.19 of the Act:

> *"On the basis of the new approach to the institution of marriage and the fact that it is a union of partners.…Each therefore would be entitled to equal share of the assets acquired in the marriage, unless there is a good reason to depart from that principle."*

72. The position is that the Court should strive to determine, whilst reminding itself that it must have regard to the best interests of the children first at the outset as well as when considering the other factors in s.19 of the Act, what the matrimonial assets are and their values and then deciding how they should be divided in a fair manner. If those assets do not appropriately meet the needs of the children and each party, then the Court may consider making a spousal periodical payment order under s.21(f) of the Act. On the other hand, Sir John Chadwick P., stating the importance of the clean-break principle and confirming its applicability to ancillary relief cases in the Cayman Islands, made clear that if the division of the assets would make appropriate provision when considering need, compensation and sharing then the Court should not make a spousal periodical payment order *"without good reason"*.

73. I have regard to all of the general principles outlined above, much of which was set out in similar detail and terms in my Judgment dated 6 March 2015 in ***AT v JT*** Fam 34 of 2012 and in my Judgment dated 18 February 2016 in ***RE v CD*** Fam 119 of 2012. As stated by me succinctly at paragraph 29 in the latter case:

"The principles highlight that the Court is charged with dividing the assets in a fair and equitable manner, whilst trying to see if there can be a clean break."

The approach to be taken in relation to matrimonial and non-matrimonial property

74. In ***Miller***, Lord Nicholls indicated[52] that the Court should have regard to all the circumstances of the case[53] and that one of the circumstances is that *"there is a real difference, a difference of source, between certain properties"* and this means that it does not necessarily have to treat all property in the same way. With this in mind, he described matrimonial property as *"property acquired during the marriage otherwise than by inheritance or gift"*. Its distinguishing feature is that it is *"the financial product of the parties' common endeavour"*. He commented at paragraph 20:

> *"…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 source of the parties' property are matters to be taken into account when determining the requirements of fairness.….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."*

I have regard to Lord Nicholls' above guidance and am satisfied that this Court may also review the husband's business assets and interests when considering division.

75. Baroness Hale noted in ***Miller*** that the source of the assets may be taken into account, but its importance will diminish over time. She added that there is still some scope for one party to acquire and retain separate property which is not automatically to be shared equally between them. The nature and the source of the property and the way the couple have run their lives may be taken into account in deciding how it should be shared. I am conscious that in the parties before me married in 2004 and separated about thirteen years later.

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[52] At paragraph 22.
[53] See paragraph 65 above and footnote 46.

76. Lord Nicholls in ***Miller*** emphasised the need for a flexible approach when considering different type of property. He stated that:

> *"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.…*
>
> *27. Accordingly, where it becomes necessary to distinguish matrimonial property from non-matrimonial property the court may do so with the degree of particularity or generality 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."*

77. Mr. Justice Peel in ***WC v HC*** paragraphs 21 (x) and (xi) also helpfully summarised the approach to be taken when considering matrimonial and non-matrimonial property as follows:

> *"(x) Pursuant to the sharing principle, (i) the parties ordinarily are entitled to an equal division of the marital assets and (ii) non-marital assets are ordinarily to be retained by the party to whom they belong absent good reason to the contrary;* ***Scatliffe v Scatliffe*** ***[2017] 2 FLR 933*** *at [25]. In practice, needs will generally be the only justification for a spouse pursuing a claim against non-marital assets. As was famously pointed out by Wilson LJ in* ***K v L*** ***[2011] 2 FLR 980*** *at [22] there was at that time no reported case in which the applicant had secured an award against non-matrimonial assets in excess of her needs. As far as I am aware, that holds true to this day.*
>
> *(xi) The evaluation by the court of the demarcation between marital and non-martial assets is not always easy. It must be carried out with the degree of particularity or generality appropriate in each case;* ***Hart v Hart*** ***[2018] 1 FLR 1283****. Usually, non-marital wealth has one or more of 3 origins, namely (i) property brought into the marriage by one or other party, (ii) property generated by one or other party after separation (for example by significant earnings)*

and/or (iii) inheritances or gifts received by one or other party. Difficult questions can arise as to whether and to what extent property which starts out as non-marital acquires a marital character requiring it to be divided under the sharing principle. It will all depend on the circumstances, and the court will look at when the property was acquired, how it has been used, whether it has been mingled with the family finances and what the parties intended."[54]

78. Mostyn J, indicated[55] that the process to be followed in the circumstances prevailing in ***N v F*** was:

> *"i) Whether the existence of pre-marital property should be reflected at all. This depends on questions of duration and mingling.*
>
> *ii) If it does decide that reflection is fair and just, the court should then decide how much of the pre-marital property should be excluded. Should it be the actual historic sum? Or less, if there has been much mingling? Or more, to reflect a springboard and passive growth, as happened in Jones?*
>
> *iii) The remaining matrimonial property should then normally be divided equally.*
>
> *iv) The fairness of the award should then be tested by the overall percentage technique."*

He added that this process was subject to the question of need and whether the spouses' financial needs cannot be met without recourse to this property.

79. The husband contends that there is clear evidence of pre-marital wealth and that this must be taken into account when the Court determines the overall division of assets. He submits that almost all the parties' assets were funded by pre-matrimonial wealth which he brought to the marriage, or realised by risks assumed by him post-separation. The husband states that he had:

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[54] My emphasis by underlining.
[55] Paragraphs 14 and 15 in ***N v F.***

"brought significant cash, land, properties and business assets accrued during the course of his life with his first wife and from his successful business endeavors spanning over 20 years before meeting (the wife)."

80. In relation to the exercise to be carried out when trying to determine what property is marital and non-marital, the husband refers to Moylan J's Judgment in ***CC v RC*** and his observations following an analysis of Lord Nicholls' speech in ***Miller.*** Moylan J found that the Court is not required to identify property as being matrimonial or non-matrimonial and that a more flexible approach is required so that the focus is on achieving a fair result. He commented that the guidance given by Lord Nicholls did not result in a rigid application of any specific formula coupled with a requirement to find clear and precise boundaries. He advocated that the approach to follow in that case was:

"to set out the relevant factors drawn from s.25 and then consider the principles of need and sharing."

In the circumstances of that case, Moylan J found that the husband had significant resources through his company at the date of the marriage and that should result in a departure from the sharing principle. He made a division of the property on a percentage basis rather than analysing each property separately. I do not feel that the percentage approach is appropriate in the matter before me, but I recognise that the Court may treat the businesses established before the marriage from pre-marital investment differently to the businesses that were formed and were using matrimonial funds during the marriage, especially if the wife played a meaningful role in the operation of the business.

81. The wife contends that her needs should result in a substantial settlement in her favour but adds that a needs review in itself would fail to account for the full wealth which she states should be divided equally based on the sharing principle. She accepts that parties would ordinarily expect there to be an equal division of the matrimonial assets and that assets from a source wholly external to the marriage would likely be retained by the party to whom they belong unless the needs of the other spouse require a departure from that. This is consistent with the approach regarding non-matrimonial property which was summarised in the ***White v White*** case [2001] 1 AC 596, 610:

"Plainly, when present, this factor is one of the circumstances of the case. It represents a contribution made to the welfare of the family by one of the parties to the marriage. The judge should take it into account. He should decide how important it is in the particular case. The nature and value of the property, and the time when and circumstances in which the property was acquired, are among the relevant matters to be considered. However, in the ordinary course, this factor can be expected to carry little weight, if any, in a case where the claimant's financial needs cannot be met without recourse to this property."

82. Although acknowledging the general position and noting that the source of the asset is a factor to take into account, the wife highlights that non-matrimonial property is not always to be excluded from the Court's calculations. With this in mind, the wife counters the husband's assertion that he should obtain a larger proportion of the assets due to his contribution to the businesses. The wife highlights the principle that there should be no discrimination between the spouses, especially in a situation where she had some role in the business ventures and was also the primary caregiver for the children. She highlights Baroness Hale's observation at *paragraph 150* in ***Miller***, when she said:

"149. …To this list should clearly be added family businesses or joint ventures in which they both work. It is easy to see such assets as the fruits of the marital partnership. It is also easy to see each party's efforts as making a real contribution to the acquisition of such assets…

150. 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 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 money's 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 in either way during the marriage as family assets to be divided equally between them unless some other good reason is shown to do otherwise."

83. The wife's efforts in the home and caring for the children have enabled the husband to concentrate on his business endeavours. In addition, although the husband has clearly been the person driving the business, the wife did assist him in an admittedly limited capacity with the running and equipping of some of the business assets. I am conscious that the circumstances in relation to the businesses in each case may be different. In this case, there are different businesses. Some were established prior to the marriage and were funded by pre-marital assets. Such businesses may arguably be treated differently when it comes to division when compared with businesses which were established during the marriage, especially if the wife's needs can be met by the equal division of the matrimonial assets. This may be viewed as amounting to a good reason for not treating certain businesses of one spouse as being subject to equal division.

84. The wife rightly highlights that each case is to be considered on its specific set of facts to reach a decision that is fair. When determining whether a property remains separate property, this includes an exploration into the extent and length of time to which the property has been commingled with matrimonial property. As stated by Mostyn J at *paragraph 9* in ***N v F***:

"The reason that pre-marital property should be taken into account is, as is explained by Lord Nicholls in ***White****, because it represents a contribution made by one party unmatched by an equivalent contribution by the other. But the longer the marriage goes on the easier it is to say that by virtue of the mingling of that property with the product of the parties' marital endeavours the supplier of that property has, in effect, agreed to share it with his spouse."*

The Assets

85. The dispute between the parties about the valuation and status of the assets is considerable. To assist the Court, post- hearing, the parties provided six schedules ("the

Schedules").[56] The Schedules deal with each asset on an individual, line by line, basis. The Schedules submitted were:

(i) a Personal Assets Schedule;

(ii) a Sums to be Offset Against any Settlement Schedule,

(iii) a Husband's Net Equity Position: Companies Schedule;

(iv) a Buffa Limited Company Value Schedule;

(v) a Grand Cayman Ltd Company Value Schedule; and

(vi) a R & R ltd Company Value Schedule.

86. In light of the parties' different positions, it has been necessary to try to analyse the figures and comments found in the Schedules. Due to the substantial detail in the Schedules, the most efficient approach is to set out significant parts of each Schedule in this Judgment and to then elaborate thereon. I will commence with the Personal Assets.

Personal Assets –The parties' general contentions

87. The husband's case in relation to personal assets is that all the wealth that is available to the parties comes from cash, assets or businesses that he owned prior to the marriage. However, he accepts that some assets may be viewed as being matrimonial due to:

i. the length of the marriage;
ii. funds being used to meet the family's needs and lifestyle; and
iii. some of the properties being matrimonial homes.

He states that those assets are:

i. Butterfield Bank account ending in 30033 [husband];
ii. Butterfield Bank account ending in 0010 [husband]
iii. **Wells Fargo account ending in 4740 [husband];**
iv. Wells Fargo account ending in 2657 [husband/wife];
v. Wells Fargo account ending in 1011 [husband /Shahondra Gopal];

[56] The Schedules commendably drafted by the husband's attorney were amended and updated versions of schedules previously drafted by the husband's attorneys which had been provided to the Court for the hearing.

vi. Royal Bank account ending in 7005 [husband];

vii. Royal Bank account ending in 2840 [husband];

viii. Cayman National Bank account ending in 6535 [husband];

ix. CIBC Bank account ending in 8341 [husband/wife];

x. Butterfield Bank account ending in 60033 [wife];

xi. **Butterfield Bank account ending in 30021 [wife];**

xii. Cayman National Bank account [husband];

xiii. Caribbean Utility Company shares ending in 5426 [husband];

xiv. China Construction Bank ending in 9897 [wife];

xv. China Construction Bank account ending in 7377 [wife];

xvi. China Construction Bank account ending in 1181 [wife];

xvii. Bank of China account ending in 4925 [wife];

xviii. Bank of China account ending in 3935 [wife];

xix. Huatai Securities ending in 3208 [wife];

xx. China Merchant Bank account [wife];

xxi. AI Kaola Funds Investments [wife];

xxii. TenCent Funds Investments [wife];

xxiii. Merchant Funds Investments [wife];

xxiv. Imperial Commercial Bank of China account ending in 3560 [wife];

xxv. Huatai Securities account ending in 3209 [is reflected in Wife's 3208 Acct];

xxvi. Huatai Securities account ending in 3210 [is reflected in Wife's 3208 Acct];

xxvii. "Other Funds" Investment account ending in 4925;

xxviii. First Trade Investment account ending in 10;

xxix. In alternative to sums against accounts above: Inference drawn on funds invested by wife in above accounts (funds paid to wife 2013-2017) minus US$400K (below) and ($177K (RD 14-191);

xxx. In alternative to sums against accounts above: Inference drawn on wife's potential rental income;

xxxi. East End -66A 53 [husband];

xxxii. House in Guangzhou China;

xxxiii. Pasadora Place Commercial 14D406H29 [Charge by RBC];

xxxiv. Savannah Residential Rental 28B 326 [Charge by Fidelity];

xxxv. Pembroke Pines Residential Rental [Loan by R&R];

xxxvi. Palm Dale Residential Rentals 20D 449 [Charge by RBC];

xxxvii. AI Insurance - 2339 (surrender value);

xxxviii. AI Insurance - 7198 (surrender value);

xxxix. AI Insurance - 2764 (surrender value);

xl. AI Insurance - 2984 (surrender value);

xli. AI Insurance - 7208 (surrender value);

xlii. Ping An Life - 9789 (surrender value);

xliii. Silver Thatch (Husband's Pension Contribution);

xliv. Tian An Life Pension;

xlv. Toyota FJ Cruiser – 2013;

xlvi. Toyota Tundra - Work Truck;

xlvii. Toyota Highlander;

xlviii. Ford F350 Flatbed - Work Truck;

xlix. Yamaha Scooter;

l. Wife's Car;

li. **Loan to wife's sister that was repaid to wife solely; and**

lii. **Loans made to friends/family that wife is anticipating repayment of.**

88. Having regard to the above personal assets which the husband states total $4,729,573, he suggests that those shown in bold print should remain with the wife or be divided equally. He calculates that, if his suggestion was followed, the wife would receive assets totalling $3,427,625. He, adopting similar reasoning to that outlined **at paragraphs 56-61** herein, advocates that the wife's needs would not require the Court to:

> *"embark on an attempt to adjudicate the individual dispute and delineate between marital and non-marital property."*

89. The husband contends that, if the Court did not to agree with his approach, then it would need to delineate between marital and non-marital assets. In his Written Submissions, the husband sets out a list of the assets for which he says there is a dispute as to their

matrimonial or non-matrimonial status. He places a value of $6,883,851 on these assets, which are set out below with his additional comments:

i. Butterfield Bank account ending in 30021 [husband] - Husband states this is a late insertion by wife post-trial to the Asset Schedule;

ii. Royal Bank account (Fixed Deposit: Term 2022) [husband] [funded by Buffa Cheque #68 to be repaid to Buffa];

iii. Huatai Securities account ending in 3209 [is reflected in wife's 3208 account];

iv. Huatai Securities account ending in 3210 [is reflected in wife's 3208 account];

v. In alternative to sums against accounts above: Inference drawn on funds invested by wife in above accounts (funds paid to wife 2013-2017) minimum US$400K (below) and ($177K (RD 14-191);

vi. In alternative to sums against accounts above: Inference drawn on wife's potential rental income;

vii. Inference about the husband's additional accounts and additional funds available to husband. Cheques from Hotel Scotiabank account xx3925 not paid into any account listed above (cheque numbers 000649; 000661; 000689). Husband states that this is a late insertion by the wife post-trial to the Asset Schedule;

viii. Inference about husband's additional accounts and additional funds available to the husband. Cheques to husband from Buffa and R&R (said by husband to be for the benefit of GCL) were not paid into any accounts listed above. Husband states this is a late insertion by wife post-trial to the Asset Schedule;

ix. Bodden Town Parcel 43A 131 [Husband says he and Dr. C. Cummings each have a half share];

x. Patrick's Island - 24E 447 [husband];

xi. Slate Drive Land - 13E 167 [husband];

xii. East End - 66A67REM 1,140,144,146,148-150 [husband] [charge Cayman National Bank];

xiii. Crewe Road (Prospect) Land 22E 237 [husband says a third share himself/Hislop/Culbert];

xiv. Parkside Close Residence 13B 168;

xv. Slate Drive Apartments 13E 167;

xvi. Rosedale Residential Rental 20D 428H24;

xvii. Windsor Park (Temporary apartments/land owned by Christian Brothers Ltd);

xviii. North Sound Estates Residential Rental 27C 323 [loan by R&R];

xix. Loan to wife's sister that was repaid to wife solely [$400,000 originally included in the $910K figure];

xx. Husband's Reimbursement from GCL for pre-matrimonial property sold to pay GCL bills - that being EE 66A 142 $59,523.81, EE 66A 141, $75,000;

xxi. Loan to husband to repay loan exhibited at F(iii) 1053;

xxii. The husband signed as a loan Guarantor for a loan that Daphne Orrett took from Royal Bank of Canada; and

xxiii. Loan from wife's parents to wife.

90. The husband highlights the items (upon which he places a net value of US$4,483,553) for which he says there is a dispute about who should retain them as follows:

i. Huatai Securities account ending in 3209 [is reflected in wife's bank account];

ii. Huatai Securities account ending in 3210 [is reflected in wife's bank];

iii. In alternative to sums against accounts above: Husband says Inference to be drawn on funds invested by wife in above accounts (funds paid to wife 2013-2017) minimum US$400K (below) and ($177K (RD 14-191);

iv. In alternative to sums against accounts above: Husband says inference to be drawn on wife's potential rental income;

v. Wife says inference to be drawn about husband's additional accounts and additional funds available to husband. Cheques from Hotel Scotiabank account xx3925 not paid into any account listed above (cheque numbers 000649; 000661; 000689) - Husband say that this is a late insertion by wife post-trial to the Asset Schedule;

vi. Wife says inference to be drawn about husband's additional accounts and additional funds available to husband. Cheques to RD from Buffa and R&R (said by husband to be for benefit of GCL) were not paid into any accounts listed above. The husband says that this is a late insertion by wife post-trial to the Asset Schedule;

vii. East End - 66A 53 [husband];

viii. Bodden Town Parcel - 43A 131 [half Share each for husband and Dr. Cummings];

ix. Patrick's Island - 24E 447 [husband];

x. Slate Drive Land - 13E 167 [husband];

xi. Slate Drive Apartments 13E 167;

xii. Palm Dale Residential Rentals 20D 449 [Charge by Royal Bank Canada];

xiii. North Sound Estates Residential Rental 27C 323 [Loan by R&R];

xiv. Loan to wife's sister that was repaid to wife solely [$400,000 originally included in the $910K figure];

xv. Husband's Reimbursement from GCL for pre-matrimonial property sold to pay GCL bills - that being EE 66A 142 $59,523.81, EE 66A 141, $75,000

xvi. Loan to husband to repay loan exhibited at F(iii) 1053;

xvii. Husband signed as a loan Guarantor for Daphne [Orrett] - Husband says that this is a late insertion by wife post-trial to the Asset Schedule; and

xviii. Loan from wife's parents to wife. Husband says that this is a late insertion by wife post-trial to the Asset Schedule.

91. In relation to the items listed in paragraph 90 above the husband asks the Court to find that:

(i) the husband's assets are non-matrimonial;

(ii) that the wife's assets do exist and that they are matrimonial; and

(iii) that the late insertions by the wife do not exist and that the wife's case in relation to them be rejected.

92. The husband also lists the items for which there are disputed valuations as below and he places a net value on these items at US$4,698,946:

i. Butterfield Bank account ending in 0010 [husband];

ii. Wells Fargo account ending in 1011 [husband/Shahondra Gopal];

iii. Royal Bank account (Fixed Deposit: Term 2022) [husband] [Funded by Buffa Cheque #68];

iv. Cayman National Bank account ending in 6535 [husband];

v. CIBC account ending in 8341 [husband/wife];

vi. Cayman National Bank account [husband];

vii. China Construction Bank account ending in 9897 [wife]. Husband contends that there should be adverse inferences for lacking-disclosure across five accounts;

viii. China Construction Bank account ending in 7377 [wife];

ix. China Construction Bank account ending in 1181 [wife];

x. Bank of China account ending in 4925 [wife];

xi. Bank of China account ending in 3935 [wife];

xii. Huatai Securities account ending in 3208 [wife];

xiii. China Merchant Bank account ending in ?????[wife];

xiv. AI Kaola Funds Investments [wife];

xv. TenCent Funds Investments [wife];

xvi. Merchant Funds Investments [wife];

xvii. Huatai Securities 3209;

xviii. Huatai Securities 3210;

xix. "Other Funds" Investment account 4925;

xx. In alternative to sums against accounts above: The husband contends that inferences be drawn on funds invested by wife in above accounts (funds paid to wife 2013-2017) minimum US$400K (below) and ($177K (RD 14-191);

xxi. In alternative to sums against accounts above: The husband contends that inferences be drawn on the wife's potential rental income;

xxii. The wife contends that inferences be drawn about husband's additional accounts and additional funds available to husband. Cheques from Hotel Scotiabank account xx3925 not paid into any account listed above (cheque numbers 000649; 000661; 000689). The husband says that this is a late insertion by wife post-trial to the Asset Schedule;

xxiii. The wife contends that inferences be drawn about husband's additional accounts and additional funds available to husband. Cheques to RD from Buffa and R&R (said by husband to be for benefit of GCL) were not paid into any accounts listed above. The husband says that this is a late insertion by wife post-trial to the Asset Schedule;

xxiv. Bodden Town Parcel 43A 131 [half Share husband with Dr. C. Cummings];

xxv. Costs of sale broadly applied at 7.5%;

xxvi. House in Guangzhou China;

xxvii. Pasadora Place Commercial 14D406H29 [Charge by RBC];

xxviii. Pembroke Pines Residential Rental [Loan by R&R];

xxix. Windsor Park (Temporary apartments /Land owned by Christian Brothers Ltd);

xxx. North Sound Estates Residential Rental 27C323 [Loan by R&R];

xxxi. AI Insurance - 7198 (surrender value);

xxxii. AI Insurance - 7208 (surrender value);

xxxiii. Tian An Life Pension;

xxxiv. Toyota FJ Cruiser – 2013;

xxxv. Toyota Highlander;

xxxvi. Loan to wife's sister that was repaid to wife solely [$400,000 originally included in the $910,000 figure];

xxxvii. Husband's Reimbursement from GCL for pre-matrimonial property sold to pay GCL bills - that being EE 66A 142 $59,523.81, EE 66A 141, $75,000;

xxxviii. Loan to husband to repay loan exhibited at F(iii) 1053;

xxxix. Husband signed as a guarantor for Daphne Orrett - Husband says that this is a late insertion by wife post-trial to the Asset Schedule; and

xl. Loan from wife's parents to wife. The husband says that this is a late insertion by wife post-trial to the Asset Schedule.

93. In relation to the items in paragraph 92 above, the husband again invites the Court to accept his valuations of the assets set out in the Personal Asset Schedule and again asks the Court to find that the late insertions by the wife do not exist and that the wife's case in relation to them be rejected.

Personal Asset Schedule

94. Turning to the content of the Asset Schedule, the assets in it are categorised as follows:

(i) cash assets;

(ii) personal real property (land) (non-income producing);

(iii) personal real estate;

(iv) annuities insurance;

(v) retirement accounts;

(vi) vehicles; and

(vii) other assets and liabilities.

95. The Schedule highlights where items are agreed or in dispute. The values attributed to properties are net of liabilities and are all expressed in US dollars.

96. When I looked at each section of the Schedule, I reviewed each party's comments about each asset and endeavour to determine whether that asset is matrimonial or non-matrimonial and what its value is.

Personal Assets Schedule – Cash Assets

97. Firstly, in relation to the cash assets, the Schedule identifies each asset, who is the named owner(s) of the asset and the date that the asset was acquired as follows:

CASH ASSETS		TYPE OF ACCOUNT	DATE OPENED/ ACQUIRED
1.	Butterfield Bank xx 30033 [husband]	US$ Savings	1996
2.	Butterfield Bank 0010 [husband]	KYD Checking	1996
	Butterfield Bank 30021 [husband[57]]	*KYD Savings*	*2016*
3.	Wells Fargo 4740 [joint account]	US Checking	1996 (W says opened in 2009)
4.	Wells Fargo 2657 [joint account]	US Savings	1996 (W says opened in 2009)
5.	Wells Fargo 1011 [husband and Shahondra Gopal]	US Checking	2017
6.	**Royal Bank (Fixed Deposit: Term 2022) [husband] [Funded by Buffa Cheque #68]**	**US Deposit**	**2017**
7.	Royal Bank 7005 [husband]	CI Checking	2017
8.	Royal Bank 2840 [husband]	US Checking	2017
9.	Cayman National Bank 6535 [husband]	CI Checking	1995
10.	CIBC 8341 [joint account]	CI Checking	2015
11.	Butterfield xx60033[wife]	US Savings	Unknown
12.	Butterfield 0021 [wife]	CI Savings	Unknown

[57] The wife asked that this be inserted into the Schedule after the close of evidence. The wife states that no recent statements had been provided for the account and therefore its importance relates to the issue of drawing of inferences resulting from non-disclosure. The husband states that this was a loan account which has been closed and the closing statements were produced in the additional evidence bundle and no challenge was made concerning that in evidence. The account does not affect the calculations concerning the assets.

CASH ASSETS		TYPE OF ACCOUNT	DATE OPENED/ ACQUIRED
13.	CICSA Co-Op Credit Union 1771 [husband]	Shares	1988
14.	Caribbean Utility Company 6625 [husband & Carol D.]	Shares	1990
15.	Cayman National Bank [husband]	Shares	2006
16.	Caribbean Utility Company 5426 [husband]	Shares	2015
17.	China Construction Bank 9897 [wife] *Husband contends that should be adverse inference drawn for lacking-disclosure across 5 accounts*	Unknown	Unknown
18.	China Construction Bank 7377 [wife]	Unknown	Unknown
19.	China Construction Bank 1181 [wife]	Unknown	Unknown
20.	Bank of China 4925 [wife]	Unknown	Unknown
21.	Bank of China 3935 [wife]	Unknown	Unknown
22.	Huatai Securities 3208 [wife]	Investments	Unknown
23.	China Merchant Bank [wife]	Unknown	Unknown
24.	AI Kaola Funds Investments [wife]	Investments	Unknown
25.	TenCent Funds Investments [wife]	Investments	Unknown
26.	Merchant Funds Investments [wife]	Investments	Unknown
27.	Imperial Commercial Bank of China 3560 [wife]	Unknown	Unknown
28.	Huatai Securities 3209 [is reflected in Wife's 3208 Account]	Unknown	Unknown

CASH ASSETS		TYPE OF ACCOUNT	DATE OPENED/ ACQUIRED
29.	Huatai Securities 3210 [is reflected in Wife's 3208 Account]	Unknown	Unknown
30.	"Other Funds" Investment account 4925	Unknown	Unknown
31.	First Trade Investment account 912-82408-10	Unknown	Unknown

98. In the Cash Assets part of the schedule provided to the Court, the husband also states at line-item 32 in that schedule: *"In alternative to sums against accounts above: Inference drawn on funds invested by W in above accounts (funds paid to Wife 2013-2017) minus $400K (below) and ($177K (RD 14-191)"* and he gives it a gross and net value of $219,243. He states at line-item 33*"In alternative to sums against accounts above: Inference drawn on Wife's potential rental income"* and he gives a net and gross value of $190,000 concerning the potential rental income.

99. Further to the above, at line-item 34 in the Cash Assets part of the schedule provided to the Court, the wife invites the Court to draw inferences about additional accounts of the husband and additional funds available to the husband. She points to cheques[58] from the Grand Cayman Scotiabank account 7003925 which she says have not been paid into any of the other accounts in that schedule. At line-item 35 in the schedule provided to the Court the wife asks the Court to draw inferences about the husband's accounts and funds available to him arising out of cheques to him from Buff and R & R (which he says are to be for the benefit of GCL) which were not paid into any of the above accounts.

100. Using the same line-item numbers for each numbers as used in the table at paragraph 97 above, this part of the Cash Assets Schedule contains:

(i) the husband's figures for the gross and (after deducting the husband's view about the liability share) his net valuation of the cash assets;

[58] Cheque numbers 000649, 000661 and 000689.

(ii) the husband's identification of the cash assets that he says each party has the same percentage interest in,

(iii) his views about who should retain each of those cash assets (set out in the proposed split column in the Schedule); and

(iv) what value benefit the retaining person would receive for that asset:

	GROSS VALUE	LIABILITY/ SHARE	NET VALUE (Est. in green text)	COMMUNITY (see *proposed split for allocations)			
				HUSBAND		WIFE	
1.	$2,659	-	$2,629	$2,629	50%		50%
2.	$18,573	-	$18,573	$18,573	50%		50%
3.	$115	-	$115	$57	50%	$57	50%
4.	- $2	-	- $2	- $(1)	50%	- $(1)	50%
5.	$17,407	-	$17,407	$17,407	50%	-	50%
6.	**$350,700**	**-$350,000**	**$700**	- $	0%	- $	0%
7.	$4,874	-	$4,874	$4,874	50%	-	50%
8.	$82	-	$82	$82	50%	-	50%
9.	- $	-	- $	- $	50%	-	50%
10.	- $	-	- $	- $	50%	- $	50%
11.	$5,743	-	$5,743		50%	$5,743	50%
12.	$3,192	-	$3,192	- $	50%	$3,192	50%
13.	$132,497	-	$132,467	-	0%	-	0%
14	$165,298	-	$165,298	-	0%	-	0%
15.	$185,776	-	$185,776	$92,888	50%	$92,888	50%
16.	$5,447	-	$5,447	$5,447	50%	-	50%
17.	$147,000	-	$147,000	-	50%	$147,000	50%
18.	As above	-	As above	-	50%	As above	50%
19.	As above	-	As above	-	50%	As above	50%
20.	As above	-	As above	-	50%	As above	50%
21.	As above	-	As above	-	50%	As above	50%
22.	$35,719	-	$35,719	-	50%	$35,719	50%
23.	$8,138	-	$8,138	-	50%	$8,138	50%
24.	$147,670	-	$147,670	-	50%	$147,670	50%

GROSS VALUE		LIABILITY/ SHARE	NET VALUE (Est. in green text)	COMMUNITY (see *proposed split for allocations)			
				HUSBAND		WIFE	
25.	$22,506	-	$22,506	-	50%	$22,506	50%
26.	$147,272	-	$147,272	-	50%	$147,272	50%
27.	$883	-	$883	-	50%	$883	50%
28.	Unknown	-	Unknown	-	50%	-	50%
29.	Unknown	-	Unknown	-	50%	-	50%
30.	$162,493	-	$162,493	-	50%	$162,493	50%
31.	$12,475	-	$12,475	-	50%	$12,475	50%
32.	$219,243	-	$219,243	-	50%	$219,243	50%
33.	$190,000	-	$190,000	-	50%	$190,000	50%

In addition to these assets, there is a CI$ savings Butterfield Bank account 3002 in the husband's name.

101. Taking into account what is commented upon in the Cash Asset Schedule in paragraph 100 above , the husband:

(i) totals the gross value of the cash assets to be $1,985,701:

(ii) totals the liability figure to be $350,000 for a loan to Buffa; and

(iii) totals the net cash assets figure to be $1,635,701.

102. Based on the details in paragraph 100 above, the husband sets out in the Cash Asset Schedule that the value of the assets in which each party has an equal interest which he would retain is $141,957 and for the ones which the wife would retain, it would be $1,195,278.

103. In another part of the Schedule, in relation to cash asset line-item 6 (net value US$700), line-item 13 (net value US$132,467) and line-item 14 (net value US$165,298), the husband contends that he has a 100% interest in what he views as being non-matrimonial assets totalling US$298,465 that he would retain. There is no dispute about line-items 13 and 14 which were both acquired prior to the marriage.

104. The next part of the Cash Asset Schedule contains detail about the assets which the husband says are matrimonial and non-matrimonial, as well as his proposals as to what should happen to each asset or highlighting any division of an asset that has already occurred as follows[59]:

Matrimonial /Non-Matrimonial Assets		*Proposed Split (balancing payments not considered)
1.	Matrimonial	Remain with H
2.	Matrimonial	Remain with H
3.	Matrimonial	Closed/divided
4.	Matrimonial	Closed/divided
5.	Matrimonial	Remain with H
6.	Non-Matrimonial	Remain with H
7.	Matrimonial	Remain with H
8.	Matrimonial	Remain with H
9.	Matrimonial	Remain with H
10.	Matrimonial	Closed/divided
11.	Matrimonial	Remain with W
12.	Matrimonial	Remain with W
13.	Non-Matrimonial	Remain with H
14.	Non-Matrimonial	Remain with H
15.	Matrimonial	Divided
16.	Matrimonial	Remain with H
17-33.	Matrimonial	Remain with W

[59] Using the same line-item numbers for each cash asset as used in the table at paragraph 97 above.

105. The Cash Asset part of the Schedule then contains the wife's contentions about:

(i) the matrimonial/non matrimonial status of each asset; and

(ii) who should retain that asset or details.

The Schedule records whether there exists a dispute or not between the parties about the status or retention of the assets, as follows[60]:

	W's Position	Dispute re Position? YES/NO	*W's Proposed Split (balancing payments not considered)	Dispute re Proposed Split? YES/NO
1.	Matrimonial	No	Remain with H	No
2.	Matrimonial	No	Remain with H	No
	Matrimonial	Yes		
3.	Matrimonial	No	Closed/divided	No
4.	Matrimonial	No	Closed/divided	No
5.	Matrimonial	No	Remain with H	No
6.	Matrimonial	Yes	Remain with H	No
7.	Matrimonial	No	Remain with H	No
8.	Matrimonial	No	Remain with H	No
9.	Matrimonial	No	Remain with H	No
10.	Matrimonial	No	Closed/divided	No
11.	Matrimonial	No	Remain with W	No
12.	Matrimonial	No	Remain with W	No
13.	Non-Matrimonial	No	Remain with H	No
14.	Non-Matrimonial	No	Remain with H	No
15.	Matrimonial	No	Divided	No
16.	Matrimonial	No	Remain with H	No
17-27.	Matrimonial	No	Remain with W	No

[60] Using the same line-item numbers for each cash asset as used in the table at paragraphs 97 above. The line between 2 and 3 was an insert by the Wife post-trial.

	W's Position	Dispute re Position? YES/NO	*W's Proposed Split (balancing payments not considered)	Dispute re Proposed Split? YES/NO
28.	Non-Matrimonial	Yes	W denies hers	Yes
29.	Non-Matrimonial	Yes	W denies hers	Yes
30.	Matrimonial	No	Remain with W	No
31.	Matrimonial	No	Remain with W	No
32.	W denied exists	Yes	W denied exists	Yes
33.	W denied exists	Yes	W denied exists	Yes
34.	H denies existence	Yes	H denies existence	Yes
35.	H denies existence	Yes	H denies existence	Yes

106. From the Schedule, concerning the assets which both parties agree exist or which they agree is in one of their names or jointly owned, there is little dispute about which assets should be regarded as being matrimonial or non-matrimonial. The only dispute is in relation to the husband's Royal Bank account (line-item 6) which the wife claims is a matrimonial asset.[61] I find that this is not a matrimonial asset as the funds injected[62] into it came from Buffa, which I view as being a non-matrimonial asset.

107. The Schedule sets out as below what the:

(i) wife's valuation is for each cash asset; and

(ii) whether each valuation is agreed;[63]:

[61] See paragraph 108 (iii) below.
[62] See paragraph 247 below.
[63] Using the same line-item numbers for each cash asset as used in the table at paragraph 97.- line 3 is a new insertion

	Valuation Agreed? YES/NO	Proposed valuation (W)
1.	Yes	2,629.00
2.	No	30,487.80
3.		-
4.	Yes	114.93
5.	Yes	(1.97)
6.	No	28,005.00
7.	No	350,700.00
8.	Yes	4,874.18
9.	Yes	82.47
10.	No	424.00
11.	No	3,276.00
12.	Yes	5,742.52
13.	Yes	3,191.85
14.	Yes	132,466.88
15.	Yes	165,298.40
16.	No	185,776.00
17.	Yes	5,447.23
18.	No	762.95
19.	No	2,666.14
20.	No	(175.80)
21.	No	469.21
22.	No	0.10
23.	No	19,363.00
24.	No	294.00
25.	No	-
26.	No	-
27.	No	-
28.	?	282.00

	Valuation Agreed? YES/NO	Proposed valuation (W)
29.	No	-
30.	No	-
31.	No	-
32.	Yes	12,474.89
33.	No	-
34.	No	-
35.	No	229,096.39
36.	No	1,250,000.00

108. It is evident that the parties have very differing views. Their reasons for that (with cross references to the bundles) and any comments about the other party's contentions are set out in the Notes section in the Cash Assets Schedule. I have reviewed the same and related that to the evidence given and I comment as follows:

(i) In relation to **Butterfield Bank account ending in 0010 (line-item 2)**, the wife stated in her oral evidence on 25 January 2022 that she had checked the account on the previous evening and the balance was CI$25,000. She did not produce any documentary evidence or screenshots of the account balance to verify that figure and the husband indicated that the account was in his own name and for her to have seen any balance she would have had to have accessed his private banking. Although the husband gave the balance of the account as US$18,573 in the schedule, the best evidence is the statement dated 10 March 2021, found at D928 in the bundle and mentioned by the husband in the Notes part of the Cash Asset Schedule**,** which gives the balance as CI$25,631.05.

(ii) In relation to **Wells Fargo account ending in 1011 (line-item 5)**, the husband gives the value of US$17,407. He explains that the previous balance had reduced because the Pembroke Pines property had been untenanted, and repairs had to be undertaken. The wife stated that the figures should be US$28,005 as there was no proof of the expenditure. Despite the absence of that evidence, I am satisfied that the property had been untenanted and that it is reasonable to accept that repairs

would have had to be undertaken, especially if the property was being marketed for sale. I, therefore, accept the US$17,407 figure set out in the Schedule.

(iii) In relation to **Royal Bank account ending in 2022 (line-item 6)**, the Schedule shows a gross value of US$350,700. The husband contends that the balance should be zero as there is a US$350,000 loan to be repaid to Buffa from cheque number 68. He states that the actual balance is now only US$700 as funds had been withdrawn to pay his legal fees. The husband said that there was evidence to show that the balance had been reduced, but rightly added that if the Court felt that it had, then the deduction should appear in the set-off schedule. I find that the balance in the account has been mostly used up in payments towards the husband's legal fees. The husband will have to account to Buffa for the loan from his own assets and not matrimonial assets. He has used the funds which were in the account for personal expenses (i.e. mostly to meet his legal fees).

(iv) In relation to **Cayman National account ending in 6535 (line-item 9)**, the husband claims it has a zero balance in the Schedule. The wife states that the balance should be regarded as being US$424. Although the account has been closed, the husband does not challenge that as being a figure to be used in the calculations, so I allocate a US$424 balance for that account.

(v) In relation to the **joint CIBC account ending in 8341 (line-item 10)**, which has been closed, the husband states that it has a zero balance in the Schedule. He says that the wife is aware that the balance was used to pay school fees. The wife asks that the schedule record the balance as being US$3,276. I am aware that the husband was required to pay the school fees, so I am satisfied that the balance of this now closed account should be zero.

(vi) In relation to the **Cayman National Bank shares (line-item 15)**, the Schedule has a value of US$185,776. The value of the shares fluctuate. The best way to deal with the shares, rather than resolve a dispute about their changing valuation, is to order that they be divided equally. The parties may divide the shares equally and I will not include them in my calculations. Following my findings made in this Judgment concerning the extent of the matrimonial pot, noting the view expressed by Mr. Kennedy in the last paragraph of his Written Closing Submissions, I later

in this Judgment[64] set out my decision to afford the parties the opportunity to agree the assignment of each asset. Therefore, the parties should not be fettered by the above if they decide to allocate the shares unequally as part of their overall division calculations.

(vii) In relation to the **China Construction Bank and the Bank of China accounts (line-items 17-21)**, the husband entered the balance as US$147,000 because that was the balance as of August 2017, when he says that the wife informed the Court that the balance was only US$70,000. The wife puts the total figure at around US$3,722.60 and she refers to a number of more recent banks statements. The husband takes issue with those statements as only some are translated into English. The best evidence to affix a figure is from the more recent bank statements and that gives the total balance for the accounts as US$3,722.60.

(viii) In relation to the **Huatai Security investments (line-item 22),** the Schedule records the husband's valuation of US$35,719, which he has taken from the account statement printed on 8 August 2017. The Schedule records the wife's valuation of US$19,363, which she has taken from a statement showing the balance as of 12 April 2021. Again, the best evidence to affix is the more recent figure of US$19,363**.**

(ix) In relation to **China Merchant Bank (line-item 23)**, the Schedule records the husband's valuation of the balance at US$8,138, a figure taken from a December 2020 statement written in Chinese. The Schedule records the wife's valuation of US$294 which figure she has taken from a statement showing the balance as of April 2021. Again, the best evidence to affix is the more recent figure of US$294.

(x) In relation to **Al Koala Funds Investments (line-item 24), TenCent Funds Investments (line-item 25)** and **Merchant Funds investments (line-item 26)**, the husband puts the values at US$147,670, US$22,506 and US$147,272 respectively. These figures are taken from the RMB figures contained in the translated breakdown sheet found at F(iii) 2231 in the non-core bundle. A great deal of time was taken up at the hearing analysing these figures and discussing what these funds actually were. However, the analysis of the document as well as the movement of

[64] See paragraph 280 below.

the funds mentioned therein established that these are in fact not investment accounts themselves but are consistent with the wife's evidence that these are online apps or vehicles used for investing money back and forth which, in reality, do not realise much profit. The funds that were invested were returned to the wife's Chinese savings account. Accordingly, I allocate no value on these three items**.**

(xi) In relation to **Imperial Commercial Bank of China, (line-item 27),** the Schedule records the husband's valuation of the balance at US$883, a figure taken from a March 2021 statement written in Chinese. The wife puts the figure at $282, but the more recent figure is from the March 2021 statement, so I fix the figures as being US$883.

(xii) In relation to the **Huatai Securities accounts (line-items 28 and 29)** the Notes section of the Schedule records that the wife contends that these accounts are unknown, whereas at paragraph 7 in her Affidavit sworn on 13 April 2021 she states that they are her parents' accounts. Although I am unable to ascertain a value (if there is one) to be attached to these accounts or to determine ownership of them on the evidence before me, I note them as being an instance of the wife's presented case being inconsistent.

(xiii) In relation to **"other funds" Investment account ending in 4925 (line-item 30)**, the husband highlights a lack of transaction evidence from the wife and he states that the value is RMB 1,026,519.01 which is around US$162,493.31. During the hearing in January 2022, the wife stated that: *"There were term deposits, the money came back, this was invested, one per month, totally"* and that the balance was RMB 5,500. She states that the current balance is zero. I find that the balance is zero and I am not satisfied from the husband's submissions that an inference should be drawn and that I should make a finding that the account should be regarded as having the value he seeks to allocated to it.

(xiv) In relation to the husband's claim that there should be an inference made in the alternative concerning the wife's invested funds (funds paid to the wife between 2013-2017) minus the $400,000 loan to wife's sister and $177,000 alternative claim in relation to the **First Trade Investment account (line-item 32)**. I agree with the wife that, due to the disclosure and accompanying explanation given by

her during her oral evidence and in particular when cross examined at length, there is no reason for an inference to be drawn.

(xv) In relation to the **husband's claim that there should be an inference drawn into the wife's potential rental income (line-item 33),** the husband states that the children had informed him that there was a tenant in the property and he assesses the rent from his online comparable research at US$5,000/month, giving a total of US$190,000. The wife states that although she had allowed someone to stay at the property, they were not paying rent and, even if they had been, the rent for that private property and that area would only be around US$2,000 per month. There is insufficient evidence for me to determine whether there was a tenant at the property and, even if there was, there is a lack of meaningful evidence to enable one to determine the level of rent. Therefore, I do not consider this line-item to be a relevant one and it does not form a part of my calculations.

(xvi) In relation to the **wife's claim at line-item 34 that there should be an inference drawn that the husband** has additional accounts and additional funds available, she states that cheques[65] from GCL's Scotiabank account were not paid into any of the accounts listed in the cash assets schedule. The husband highlights that these were not mentioned until 20 February 2022 and states that no questions were put to the husband in relation to the evidence. Although the wife may have indicated that she had not seen the cheques deposited into any joint accounts, I am not satisfied that inferences should be drawn, especially as this was not put to the husband during cross-examination.

(xvii) In relation to the **wife's claim at line-item 35 that there should be an inference drawn** that the husband has additional accounts and additional funds available, she refers to cheques to him from Buffa[66] and R & R[67] (which he had said were paid for the benefit of GCL) were similarly were not paid into any of the accounts listed in the Cash Assets Schedule, the husband make clear that the cheques were not paid into GCL as they would have been immediately 'swallowed up' in the bank debt. He said that it would have been double accounting for him to apply the

[65] Cheque numbers 000649, 000661 and 000689.
[66] Cheque number 67.
[67] Cheque number 1087.

cheques to both the Personal Assets Schedule and the Company Assets Schedule. Upon reviewing the wider evidence, I accept the husband's explanation and I do not draw the inference requested by the wife.

109. Having conducted the above review, I find that the value of each cash asset is as follows (those in bold are the matrimonial assets):

	GROSS VALUE	LIABILITY/ SHARE	NET VALUE
1.	**$2,659**	-	**$2,629**
2.	**$25,631**	-	**$25,631**
3.	**$115**	-	**$115**
4.	**- $2**	-	**- $2** ***(treat as zero)***
5.	**$17,407**	-	**$17,407**
6.	$350,700	-$350,00	$700
7.	**$4,874**	-	**$4,874**
8.	**$82**	-	**$82**
9.	**$424**	-	**$424**
10.	**- $**	-	**- $**
11.	**$5,743**	-	**$5,743**
12.	**$3,192**	-	**$3,192**
13.	$132,497	-	$132,467
14	$165,298	-	$165,298
15.	**Variable**	-	**Variable***
16.	**$5,447**	-	**$5,447**
17.	**$3,722**	-	**$3,722**
18.	**As above**	-	**As above**
19.	**As above**	-	**As above**
20.	**As above**	-	**As above**

(see paragraph 112 (vi) herein

	GROSS VALUE	LIABILITY/ SHARE	NET VALUE
21.	**As above**	**-**	**As above**
22.	**$19,363**	**-**	**$19,363**
23.	**$294**	**-**	**$294**
24.	**- $**	**-**	**- $**
25.	**- $**	**-**	**- $**
26.	**- $**	**-**	**- $**
27.	**$883**	**-**	**$883**
28.	Unknown	-	Unknown
29.	Unknown	-	Unknown
30.	**Zero**	**-**	**Zero**
31.	**- $**	**-**	**- $**
32.	**- $**	**-**	**- $**
33.	**- $**	-	**- $**

110. Having reached these conclusions, I find that:

(i) the total net value of cash assets is $388,272 (minus $115 for item 3 which is a closed/divided account = $388,157) - (not including the Cayman National Bank shares (line-item 15) - (including only $700 for the disputed line-item 6 which had a balance of $350,700 but now has only $700);

(ii) the net value of the matrimonial assets are $89,806 (not including the disputed line-item 6 which had a balance of $350,700 but now has only $700 and the $115 at line-item 3);

(iii) the net value of the non-matrimonial assets are $298,465 (including the disputed line-item 6 which had a balance of $350,700 but now has only $700);

(iv) the value of the non-matrimonial assets the parties agree should remain with the husband are $297,765 (not including the disputed line-item 6 which had a balance of $350,700 but now has only $700;

(v) the value of the matrimonial assets the parties agree/suggest should remain with the husband are $256,94 (not including the disputed line-item 6 which had a balance of $350,700 but now has only $700); and

(vi) the value of the matrimonial assets the parties agree/suggest should remain with the wife are $33,196 (not including the disputed line-item 6 which had a balance of $350,700 but now has only $700).

The Personal Assets Schedule – Personal Real Property (land) (non-income producing)

111. This section in the Assets Schedule contains the parties' positions concerning income producing personal real property. The Schedule:

(i) identifies the relevant properties;

(ii) sets out who is the registered owner(s) of each property;

(iii) states whether there is a charge against each property;

(iv) states when a valuation was carried out; and

(v) provides the date when each property was acquired.

	ASSETS		DATE OPENED OR ACQUIRED
1	East End - 66A 53 [Husband]	Valuations: 30/04/20 09/10/14	2009
2.	Bodden Town Parcel - 43A 131 [Husband 1/2 Share with Dr. Cummings]	Valuation: None	2007
3	George Town - 14CF 186 [Husband]	Valuations: 01/05/20 / 17/04/20	1984
4	Patrick's Island - 24E 447 [Husband]	Valuations: 04/07/13 / 24/04/20	1998
5	Slate Drive Land - 13E 167 [Husband]	Valuation: 28/08/18	2000
6	East End - 68A 92 [Husband] [Charge by Cayman National Bank]	Valuation: 17/04/20	1985

	ASSETS		DATE OPENED OR ACQUIRED
7	East End - 66A67REM 1,140,144,146,148-150 [Husband] [Charge Cayman National Bank]	Valuation: 05/01/21	2002/2003
8	Crewe Road (Prospect) Land 22E 237 [1/3 Share Husband/Hislop/Culbert]	Valuation: 30/04/20	2006
9	West Bay 1D 390 [Husband] Inherited	Valuation: 15/04/20	2011

112. Using the same line-item numbers for each property as used in the table at paragraph 111 above, the Schedule sets out as below:

(i) the husband's gross and net valuations for each property;

(ii) the liability/share in each property;

(iii) the husband's identification of the properties which he says each party has the same in percentage interest in,

(iv) the husband's views about who should retain each property (set out in the proposed split-column in the Schedule); and

(v) what the value benefit would be for the retaining party.

	GROSS VALUE	LIABILITY/ SHARE	NET VALUE	COMMUNITY (see *proposed split for Allocations) HUSBAND		WIFE	
1.	$150,000	-	$150,000	$150,000	50%	-	50%
2.	$48,780	- $24,390	$24,390	-	0%	-	0%
3.	$239,024	-	$239,024	-	0%	-	0%
4.	$329,268	-	$329,268	-	0%	-	0%
5.	$847,710	-	$847,710	-	0%	-	0%
6.	$67,073	-	$67,073	-	0%	-	0%
7.	$1,236,585	-	$1,236,585	-	0%	-	0%

	GROSS VALUE	LIABILITY/ SHARE	NET VALUE	COMMUNITY (see *proposed split for Allocations) HUSBAND		WIFE	
8.	$859,756	- $573,11	$286,585	-	0%	-	0%
9.	$103,659	-	$103,659	-	0%	-	0%

113. In this part of the Schedule, the husband contends, with reference to Wilson LJ's observations in ***Behzadi v Behzadi*** [2008] EWCA Civ 1070, that the costs of sale should be deducted before reaching a gross figure for the properties. In ***Behzadi***, the *"conventional"*[68] notional 3% costs of sale were deducted from the value of the property. In England and Wales, determining the true net value of a property requires analysing the realistic selling price, ascertaining the outstanding mortgage figure, calculating the capital gains tax that would accrue and deducting the notional costs of sale. The costs of sale are the costs of selling the property, principally the realtors' charges, the cost of conveyancing lawyers and their disbursements. In England and Wales, it appears that judges make a notional deduction of 3% of the gross sale of the property. The wife argues that deducting costs of sale is the wrong approach as there is no evidence from the husband that he intends to sell the properties and he has not provided any detailed evidence to ascertain what the costs for sale might be.[69] In relation to there being no disclosed intention to sell the properties, in ***SJ v RA*** [2014] EWHC 4054 (Fam) the court deducted the conventional notional 3% costs of sale in relation to the former matrimonial home in circumstances where the husband was going to retain and remain residing in the property. In relation to the provision for evidence about the costs of sale, in ***Behzadi*** the court below did not deduct the costs of sale for a property held in Iran as there was no evidence about what that would be in Tehran, but Wilson LJ disagreed and applied the conventional 3% figure to that property.

114. In England and Wales, there does not appear to be any case in which the figure of 3% is stated to be an accurate figure. There are merely indications from judges that it is the

[68] For ancillary relief cases in England and Wales.

[69] Save for his oral evidence that if he were to sell the Pembroke Pines property located in Florida that the costs *"would probably be something similar to here, 5% for realtor fees"*.

convention to use a figure of 3%. It is not clear how this figure became to be adopted and why it is persisted with, especially as there are now a number of estate agents/online agency services that will market a property for reduced commissions of around 1 to 1.5%. It appears that the courts have not approached it as being an exact science.

115. In ancillary relief cases brought in the Grand Court, I am not aware of any conventional notional costs of sale figure being applied by the Court. In fact, I have found that, more often than not, parties do not invite the Court to deduct an amount for costs of sale. From the England and Wales authorities there seems to be good reason why, especially if requested by a party, there should be a costs of sale deduction from the reasonable projected gross sale price. In ancillary relief cases, even if the property is not being sold, the attorneys should be alert to the possible costs of sale deduction and provide the relevant figures in the valuations that they submit to the Court. In the absence of a notional conventional figure, what should the costs of sale figure be in the Cayman Islands? It would be extremely helpful if evidence was provided about what the likely realtor's and conveyancing attorney's fees would be. In the absence of such evidence, the Court could take judicial notice that the real estate fees in the Cayman Islands, for companies selling property that are members of the Cayman Islands Real Estate Brokers Association (CIREBA), are set by the Association and as part of the CIREBA regulations, member companies are not allowed to deviate from these fees when listing a property. The real estate commission for residential properties is set on a sliding scale, which is dependent on the list price of the property and is set out below applying to sales made in both Cayman Islands dollars and United States dollars:

CI$494,999 and under	7%
CI$495,000 to CI$994,999	6%
CI$995,000 to CI$9,994,999	5%
CI$9,995,000 and over	4%

116. Unless the parties agree on what figure should be used for the costs of sale, depending on the gross sale vale of the property, the declared percentage table could provide a starting base figure for the costs of sale of a particular property. To that figure the Court

could add the figure for what might be the reasonable fees and disbursements of a conveyancing attorney. Therefore, parties who seek a costs of sale deduction to a property equity figure may want to present their cases with the above in mind.

117. The husband has not informed the Court why his "*broadly applied*" percentage costs of sale figure of 7.5% is applicable for each property. I do not know how that figure has been reached in the Schedule. I do note that Mr. Hislop, at paragraph 10 in his affidavit sworn on 5 October 2021, estimates the costs of sale at 6% for the Buffa land lots. There is no meaningful evidence before me presented by the husband as to the costs of sale in this case whether that be realtor fees or any other of the abovementioned related expenses. There is no evidence to show that any sale would use a CIREBA realtor, or in fact any realtor, if any property was to be sold. Therefore, although I feel that it is appropriate to deduct potential costs of sale, I, in the circumstances of this case, use the 5% figure suggested by the husband at one point during his oral evidence. If he wished the figure to be more precise, then he should have supported that with evidence.

118. The husband contends that the gross costs of sale figure at 7.5% would be US$291,139. Having regard to that and taking into account what is commented upon in the Schedule, it sets out:

(i) the husband's view that the total gross value of this personal real property is US$3,590,717;

(ii) the husband's view that the figure due to him needs to be reduced by US$597,561 due to his interest in two of the properties only being a percentage share in them; and

(iii) the husband's view that the total net value figure for these properties would then be US$3,037,973.

119. The Personal Real Property (non-income earning) Schedule also set out:

(i) the wife's valuation is for each property;

(ii) whether each valuation is agreed; and

(iii) where the valuation is not agreed what is the differential between each party's valuation.

120. As already mentioned, the wife did not agree with the net costs of sale were relevant and therefore that created a $246,322 differential in the Schedule. However, I have ruled that there should be costs of sale deductions, albeit set at 5% in this case, and not the submitted 7.5%. There is also a differential in the Schedule as the wife challenges the valuation placed by the husband of $48,780 on the **Bodden Town Parcel 43A 131** (line-item 2), with her contention being that it is US$80,000. The wife has not sought to challenge the husband's valuation by obtaining a formal valuation and therefore I value the land at US$48,780.

121. In relation to **West Bay ID 390 (line-item 9),** both parties agree that this is an inherited property which should be treated as being non-matrimonial. This property was inherited from the husband's brother for the benefit of his brother's bipolar son. I note that the small wooden home that had been built on the land burnt down in 2018. It appears that the wife may not agree with the husband's valuation. On the evidence before me, the husband's evidence is the best evidence concerning its value, which he puts at $103,659. I am satisfied that this property should not form a part of the Court's calculations when it comes to dividing assets.

122. Based on the husband's figures in the Schedule, using the 5% sale figure applied by this Court, the costs of sale would be reduced to US$194,093 and the gross value of this personal real estate would be increased to US$3,687,763. Based on the husband's figures in the Schedule, using the 5% sale figure applied by this Court, the costs of sale on the net value would reduce to US$164,215 and the net value figure for these properties would increase to US$3,120,080. Apart from the challenge to the 7.5% rate for the costs of sale figure, I prefer the husband's contentions about the valuation of these properties. Therefore, the above totals are applied by me.

123. The husband sets out in the Schedule that the value of the only matrimonial property in which he says each party has an equal interest[70], which he says he would retain, is US$138,750.[71] Using the 5% costs of sale figure applied by this Court, the costs of sale would reduce to US$7,500 and the property figure would increase to US$142,500.

124. In relation to all of the other personal properties in the section, all of which the husband claims to be non-matrimonial, namely line-item 2 (net value US$24,390), line-item 3 (net value US$239,024), line-item 4 (net value US$329,268), line-item 5 (net value US$847,710), line-item 6 (net value US$67,073), line-item 7 (net value US$1,236,585), line-item 8 (net value US$286,585) and line-item 9 (net value US$103,659), the Schedule records that the husband contends that these property assets total US$2,899,222[72]. The husband submits that the wife has no interest in these properties and that that he should retain them all.

125. Based on the husband's figures in the Schedule, using the 5% sale figure applied by this Court, the costs of sale would be reduced to US$156,715 and the value of this personal real estate would be increased to US$2,977,580.

126. Having conducted the above review, I find that the value of each personal real estate (non-income producing) property is as follows:

	GROSS VALUE	DEDUCT 5% Costs of sale and share amount	NET VALUE
1.	**$150,000**	**- $7,500**	**$142,500**
2.	**$48,780**	**- $24,390 & - $1,220**	**$23,170**
3.	$239,024	- $11,951	$227,073
4.	$329,268	- $16,463	$312,805
5.	**$847,710**	**- $42,386**	**$805,324**

[70] East End property 566A 53 - line-item 1.
[71] This is based on a costs of sale figure at 7.5%, US$11,250.
[72] Figure reached on 7.5% costs of sale total US$235,073.

	GROSS VALUE	DEDUCT 5% Costs of sale and share amount	NET VALUE
6.	$67,073	- $3,354	$63,719
7.	$1,236,585	- $61,829	$1,174,756
8.	**$859,756**	**- $573,171 & - $14,329**	**$272,256**
9.	$103,659	- $5,183	$98,476

The total gross value is US$3,881,855 and, after deduction of costs of sale of 5%, amounts to US$3,687,762. The net value having regard to the size of the husband's share with third parties in two of the assets is US$3,284,294 which, after deductions of cost of sale of 5%, amounts to $3,120,079.

127. The Schedule highlights below which of the non-incoming producing personal real property the husband says are matrimonial and are non-matrimonial assets as well as his proposals as to what should happen to each property[73]:

	Matrimonial/Non Matrimonial Assets	*Proposed Split (balancing payments not considered)
1.	Matrimonial	Remain with H
2.	Non-Matrimonial	Remain with H
3.	Non-Matrimonial	Remain with H
4.	Non-Matrimonial	Remain with H
5.	Non-Matrimonial	Remain with H
6.	Non-Matrimonial	Remain with H
7.	Non-Matrimonial	Remain with H
8.	Non-Matrimonial	Remain with H
9.	Non-Matrimonial	Remain with H

[73] Using the same line-item numbers for each property as used in the table at paragraph 111 above.

128. The Schedule contains the wife's views about:

(i) the matrimonial/non matrimonial status of each property; and

(ii) who should retain that property.

The Schedule records whether there exists a dispute or not between the parties about the status or retention of the property, as follows[74]:

	W's Position	Dispute re Position? YES/NO	*W's Proposed Split (balancing payments not considered)	Dispute re Proposed Split? YES/NO
1.	Matrimonial	No	Transfer to W	Yes
2.	Matrimonial	Yes	Remain with H	Yes
3.	Non-Matrimonial	No	Remain with H	No
4.	Matrimonial	Yes	Transfer to W	Yes
5.	Matrimonial	Yes	Transfer to W	Yes
6.	Non-Matrimonial	No	Remain with H	No
7.	Matrimonial	Yes	Remain with H	No
8.	Matrimonial	Yes	Remain with H	No
9.	Non-Matrimonial	No	Remain with H	No

129. Therefore, the wife, unlike the husband, contends that line-items 2 (Bodden Town 43A 131), 4 (Patrick's Island - 24E 447), 5 (Slate Drive Land - 13E 167), 7 (East End - 66A67REM 1,140,144,146,148-150) and 8 (Crewe Road (Prospect) Land 22E 237) are all also matrimonial properties. The wife, unlike the husband, contends that she should have the property at line-item 1 (East End - 66A 53) which the parties agree is a matrimonial asset) and the properties at line-items 4 and 5 all transferred to her.

[74] Using the same line-item numbers for each property as used in the table at **paragraph 111** above.

130. In relation to the **Bodden Town Parcel (line-item 2),** the husband says that it is land owned with a half share with a Dr. Cummings, who was not joined to these proceedings. Although it was acquired in 2007, the husband claims that it is a non-matrimonial property as it was a share transferred to him after he had exchanged a parcel of land acquired by him in 2002. In her oral evidence, the wife expressed her surprise at this contention, as it had not been mentioned in the past and she questions the veracity of the statement. There appears to be no documentary evidence that assists the Court or any affidavit filed by Dr. Cummings concerning the assertion made by the husband about the land swap. Therefore, on the evidence before me, I consider the husband's interest in the property to be a matrimonial asset acquired during the marriage.

131. In relation to the **Patrick's Island land–Parcel 24E 447 (line-item 4),** the wife contends that, although this property was clearly acquired prior to the marriage, it should be treated as a matrimonial asset as the land was used as security to a loan for a matrimonial business, GCL. The husband highlights that he purchased the land with his late wife in 1998 and the fact that it was placed as temporary security for a loan against GCL does not mean that it should be reclassified as a matrimonial asset. Although it was used to facilitate the operation of a matrimonial asset, I am satisfied that this should not be treated as being a matrimonial asset. It was clearly acquired prior to the marriage and no matrimonial funds have been spent on it.

132. In relation to **Slate Drive land - Parcel 24E 447 (line-item 5),** the land for this property was acquired just over three years prior to the marriage. However, apartments were built on the land during the marriage with the first phase 2006 and the second being around 2013 to 2015. The apartments generated income that was utilised to meet family expenses and financial obligations. The wife also helped with the running of the apartments such as paying utility bills and acquiring furnishings. The tenants in their apartments were employees of the Bank of China and I am satisfied that the wife played an important role in acquiring these tenants. I am satisfied that, although the land was acquired pre-marriage, due to the family's approach to and usage off the land throughout the marriage, the property should be treated as being a matrimonial asset.

133. In relation to **East End - 66A67REM 1,140,144,146,148-150 (line-item 7),** the wife also contends that, although this property was acquired prior to the marriage, it should be treated as a matrimonial asset as the land was used as security to a loan for a matrimonial business, GCL. The husband states that the land was purchased in 2002/2003 and again contends that the fact that it was placed as temporary security for a loan against GCL does not mean that it should reclassified as a matrimonial asset. I am, for the same reasons expressed in paragraph 131 above, satisfied that this should be treated as being a non-matrimonial asset.

134. In relation to **Crewe Road (Prospect) Land 22E237** (**line-item 8**), the husband states that this was acquired with Mr. Hislop and Mr. Culbert in 2006 using funds which he says were accrued before the marriage. In his Affidavit sworn on 15 April 2021, the husband states that the property was purchased with an advance from R & R Expediters and that:

"None of the fruits of the marriage went into purchasing the parcel."

I have not been able to locate any reliable evidence to support his contention about this advance. The husband states that the acquisition was *"shortly after the marriage"*. However, the parties were married at least two years earlier. I would not characterise the property as being one acquired shortly after the marriage and I am satisfied that the husband's share in this asset obtained during the marriage should still be regarded as being a matrimonial asset.

135. Having conducted the above review, I find the status of each property in the Personal Real Property (non-income earning) section in the Schedule to be as follows,[75] I those in bold are the matrimonial assets:

Matrimonial/Non Matrimonial Assets		
1.	**Matrimonial**	**Parties are in dispute about who should retain**

[75] Using the same line-item number as set out in **paragraph 111** above.

Matrimonial/Non Matrimonial Assets		
2.	**Matrimonial**	**Wife says can remain with Husband who has ½ share with Cummings**
3.	Non-Matrimonial	Agreed to remain with husband
4.	Non-Matrimonial	Husband should retain
5.	**Matrimonial**	**Parties are in dispute about who should retain**
6.	Non-Matrimonial	Agreed husband should retain
7.	Non-Matrimonial	Husband should retain
8.	**Matrimonial**	**Agreed husband should retain**
9.	Non-Matrimonial	Husband to retain

Although I set out above the views of the parties concerning who can retain which property, I do so to simply record that in the judgment. As I will be affording the parties with an opportunity to further discuss the assignment of all of the relevant properties following my finding about the extent of the matrimonial pot, I am not ordering that division at this stage.

136. Having reached these conclusions, I find that:

(i) the total net value of this personal real estate net value having regard to the size of the husband's share with third parties in two of the assets is $3,120,079;

(ii) the total net value of this matrimonial personal real estate is $1,243,250; and

(iii) the total net value of this non-matrimonial real estate is $1,876,829.

The Personal Assets Schedule – Personal Real Estate

137. This section in the Assets Schedule contains the parties' positions concerning personal real estate. The Schedule:

(i) identifies the relevant properties;

(ii) sets out who is the registered owner(s) of each property;

(iii) states whether there is a charge against each property;

(iv) states when a valuation was carried out; and

(v) provides the date when each property was acquired.

	ASSETS	TYPE OF ACCT	DATE OPENED /ACQUIRED
1	Parkside Close Residence 13B 168	Valuation: 14/04/20 & s28/08/18	1997
2	House in Guangzhou China	Valuation expiry 05/12/2017 & valuation 24/04/20	2005
3	Slate Drive Apartments 13E 167	Valuation: 28/08/18 & 20/04/20	2006
4	Pasadora Place Commercial 14D406H29 [Charge by RBC]	Valuation: 29/03/17	2015
5	Savannah Residential Rental 28B 326 [Charge by Fidelity]	Valuation: 05/05/20	2016
6	Pembroke Pines Residential Rental [Loan by R&R]	Valuation: None Valuation: 17/04/20	2016
7	Rosedale Residential Rental 20D 428H24	Valuation: 21/06/13 & 22/04/20	2003
8	Palm Dale Residential Rentals 20D 449 [Charge by RBC]	Valuation: 16/06/16	2017
9	Windsor Park (temporary apartments /Land owned by Christian Brothers Ltd)	Valuation: None	2005
10	North Sound Estates Residential Rental 27C323 [Loan by R&R]	Valuation: 04/05/20	2018

138. Using the same line-item numbers for each property as used in the table at **paragraph 137** above, the Schedule sets out below:

(i) the husband's gross and net valuations for each property

(ii) the liability in relation to each property;

(iii) the husband's identification of the properties which he says each party has the same in percentage interest in;

(iv) the husband's views about who should retain each property (set out in the proposed split column in the Schedule); and

(v) what the value benefit would be for the retaining party.

	GROSS VALUE	LIABILITY / SHARE	NET VALUE (Est if not known in green text)	COMMUNITY (see *proposed split for allocations) HUSBAND		WIFE	
1.	$880,488	-	$880,488	-	50%	-	50%
2.	$1,560,000	-	$1,560,000	-	50%	$1,560,000	50%
3.	$1,902,290	-	$1,902,290	-	0%	-	0%
4.	$408,537	- $269,763	$138,774	$138,774	50%	-	50%
5.	$232,927	- $46,137	$186,790	$186,790	50%	-	50%
6.	$575,400	- $200,000	$375,400	$375,400	50%	-	50%
7.	$451,220	-	$451,220	-	0%	-	0%
8.	$545,122	-$179,842	$365,280	$365,280	50%	-	50%
9.	$60,000	-	$60,000	-	0%	-	0%
10.	365,854	-$295,006	$70,848	-	0%	-	0%

139. In this part of the Schedule, the husband again contends that the costs of sale should be deducted before reaching a gross figure for the properties. He states that the gross costs of sale figure at 7.5% would be $523,638. Having regard to that and taking into account what is commented upon in **paragraphs 138 above,** the Schedule sets out:

(i) the husband's view that the total gross value of the personal real property is $6,458,199;

(ii) the husband's view that the total liability/share figure is -$990,748; and

(iii) the husband's view that the total net value figure for these properties to be $5,541,757.

140. However, for the reasons already expressed above herein, I again allocate only a 5% costs of sale deduction to the properties in the Personal Real Estate section. Based on the husband's figures in the Schedule, using the 5% sale figure applied by this Court, the costs of sale would be reduced to US$349,092 and the gross value of this personal real estate would be increased to US$6,632,745. Based on the husband's figures in the Schedule including liabilities he totals at US$990,748, using the 5% sale figure applied

by this Court, the costs of sale on the net value would reduce to US$299,554 and the net value figure for these properties would increase to US$5,691,535.

141. Based on the details in paragraph 138 above, the husband sets out in the Schedule that the value of the properties in which each party has an equal interest which he would retain is $986,275. However, using the 5% costs of sale figure applied by this Court, the costs of sale would reduce to US$53,312 and the property figure would increase to US$1,012,931. He says that the value of the property that the wife would retain, namely the property in China, would be $1,443,000.

142. In relation to personal real estate which the husband claims to be non-matrimonial, namely line-item 1 (net value $880,488), line-item 3 (net value $1,902,290), line-item 7 (net value $451,220), line-item 9 (net value $60,000) and line-item 10 (net value $70,848),), the Schedule shows that the husband contends that these property assets total $3,112,482. The husband submits that he has a 100% interest in these properties that he would retain.

143. Based on the husband's figures in the Schedule, using the 5% sale figure applied by this Court, the costs of sale would be reduced to US$168,242 and the value of this personal real estate would be increased to US$3,196,603

144. The Schedule highlights below which of the personal real estate the husband contends are matrimonial and which are non-matrimonial assets as well as his proposals as to what should happen to each property[76]:

Matrimonial/Non Matrimonial Assets		*Proposed Split (balancing payments not considered)
1.	Non-Matrimonial	Remain with H
2.	Matrimonial	Remain with W
3.	Non-Matrimonial	Remain with H
4.	Matrimonial	Remain with H

[76] Using the same line-item numbers for each property as used in the table at **paragraph 137** above.

Matrimonial/Non Matrimonial Assets		*Proposed Split (balancing payments not considered)
5.	Matrimonial	Remain with H
6.	Matrimonial	Remain with H
7.	Non-Matrimonial	Remain with H
8.	Matrimonial	Remain with H
9.	Non-Matrimonial	Remain with H
10.	Non-Matrimonial	Remain with H

145. The Schedule also contains the wife's views about:

(i) the matrimonial/non-matrimonial status of each property; and

(ii) who should retain that property.

The Schedule records whether there exists a dispute or not between the parties about the status or retention of the property, as follows[77]:

W's Position		Dispute re Position? YES/NO	*W's Proposed Split (balancing payments not considered)	Dispute re Proposed Split? YES/NO
1.	Matrimonial	**Yes**	Remain with H	No
2.	Matrimonial	No	Remain with W	No
3.	Matrimonial	**Yes**	Transfer to W	**Yes**
4.	Matrimonial	No	Remain with H	No
5.	Matrimonial	No	Remain with H	No
6.	Matrimonial	No	Remain with H	No
7.	Matrimonial	**Yes**	Remain with H	No
8.	Matrimonial	No	Transfer to W	**Yes**
9.	Matrimonial	**Yes**	Remain with H	No
10.	Matrimonial	**Yes**	Transfer to W	**Yes**

[77] Using the same line-item numbers for each property as used in the table at **paragraph 137** above.

146. Whilst accepting that a pre-marital property may be initially viewed as being non-matrimonial, the wife contends that it may take on a matrimonial character if income derived from the property has been used to support the family and its standard of living during the marriage and/or the other spouse has performed duties in relation to the management or running of the property. There is, for example, evidence in emails in 214 from the wife to Aida Dacoco (the family's helper who later worked at the Grand Caymanian) giving her instructions for things to be done about the running of Windsor Park property, which counters the husband's assertion that the only role the wife played was to collect rent. When the emails were put to him in cross-examination, the husband accepted that that the wife's role at that time in relation to the rental properties was greater than simply collecting rents. Another example of the wife's involvement is evidenced by her email to the husband in 2014 concerning her purchasing kitchen parts in China for the **Slate Drive Apartments.**

147. The Schedule sets out as below what the wife's valuation is for each property and whether each valuation is agreed[78]:

	Valuation Agreed? YES/NO	If No, please insert proposed valuation (W)
1.	Yes	880,487.80
2.	No	1,330,000.00
3.	Yes	1,902,290.29
4.	No	178,774.00
5.	Yes	186,790.06
6.	No	575,400.00
7.	Yes	451,219.51
8.	Yes	365,279.95
9.	No	60,000.00
10.	No	365,854.00

[78] Using the same line-item numbers for each property as used in the table at **paragraph 137** above.

148. As already mentioned, the wife did not agree with net costs of sale should be deducted and therefore that created a $449,331.66 differential in the Schedule. However, I have ruled that there should be costs of sale deductions, albeit at 5% and not 7.5%. There is also a differential in the Schedule as the wife challenges the net valuations placed by the husband on:

(i) the China property (line-item 1);

(ii) Pasadora Place Commercial (line-item 4);

(iii) Pembroke Pines (line-item 6); and

(iv) North Sounds Estates Residential Rentals (line-item 10).

149. It is evident from the above that the parties have very differing views about these personal real estate assets, whether it be about their valuation or their status, and so I will turn to the specific disputed properties. The husband states that that the wife only decided to seriously dispute the valuations or status or income figures for the Guangzhou house, Pasadora Place, Pembroke Pines, Windsor Park and North Sound Estates in the final Schedule.

150. In relation to **Parkside Close (line-item 1)**, which became the sole former matrimonial home, the husband states that the parties resided in the home for seven years. The husband still resides there. He says that the land was purchased in the mid-1990s, built on in 1996 and that he moved there with his late wife in 1997. He states that he purchased the home and that it did not derive from the fruits of the present marriage, it was part inherited from his former wife and that it should not be considered as a matrimonial asset. He informs that, with this in mind, he purchased the Guangzhou home for the children and the wife in China. The wife contends that the Parkside Close property is a matrimonial asset as it was the marital home and the intention was that she and the children would be returning to live there after their extended stay China. She stated that when they came to the Cayman Islands from China that they would stay at Parkside Close and that this only ended when she said the husband prevented her from entering the property in January 2017. As already mentioned at paragraph 54 above, I am satisfied that this property should be treated as a being a matrimonial asset.

151. In relation to the valuation of the **Guangzhou/China property (line-item 2), the parties had agreed a formal valuation of US$1.56M** and that is why the husband states that the figure was placed in the agreed schedule in the hearing bundle. He highlighted that the wife's position changed on 23 January 2022 and that was not clarified until 1 April 2022, even though the wife did not take the opportunity to get an expert valuation report pursuant to the opportunity provided by earlier Court directions. The wife stated in January 2022 and April 2022 that, following research by her on the internet, she believed that the value had dropped. However, as the wife failed to provide any formal valuation, the best and only reliable valuation remains the earlier one of US$1.56M obtained and agreed by the parties.

152. The husband places an annual rental figure of $60,000 on the China property. The wife states that the property is not currently rented. She states that the Notes section in the Schedule states that the potential rental income is put at 85% of US$2,000 per month, but the Schedule wrongly lists this as an annual potential figure. She states that the potential income is $2,000/month (US$24,000/annum) and on the limited evidence before me concerning the level of rent in China that may be charged for such a property, I feel obliged to accept that figure. However, I accept that for a house of that value, if a formal rental estimate had been obtained, it I possible that it could show that on the open market the rent sought could be higher.

153. The **Slate Drive Apartments (line-item 3)** are made up of two blocks, each containing four units. There is an agreed valuation due to the Valuation Report dated 24 April 2020. The land[79] was purchased by the husband prior to the marriage in 2000 with pre-marital savings, but the buildings on it were constructed during the marriage[80], and the wife argues that this activity during the marriage converted a potentially non-matrimonial asset into a matrimonial one.

154. The husband states that the properties built on the land were also funded by non-matrimonial funds. The wife disagrees with the husband's contention that this property

[79] This development comprised of two parcels which were combined in 2011.
[80] The first building constructed in 2006 and the second building in around 2015.

is non-matrimonial. She says this is because loans were taken out during the marriage for the construction and because rental income coming in during the marriage was used to pay debts and support the family, which in turn makes the property a matrimonial asset. The wife also relies upon the fact that the land was used as security to fund lending for the matrimonial asset, GCL. The wife stated that she played a hands-on maintenance role in relation to the property, for example by paying the utility bills and by travelling with the husband to buy and choose the furniture in the US. I accept the wife's evidence that it was her efforts that bought the Bank of China to enter long term tenancy agreements for its employees at the property as she was the one who reached out to the management at the Bank. Accordingly, I take a similar view to the expressed when considering Slate Drive at paragraph 132 above, and I am satisfied that the land and properties on it are all to be regarded as being matrimonial assets.

155. The Schedule now shows that the parties agree that the **Pasadora Place (line-item 4**)[81]and the **Savannah Residential Rental Properties[82] (line-item 5)** are matrimonial assets, and they agree on the valuations. However, post-hearing a dispute has arisen in the Schedule about the equity figure, as it is argued by the wife that it should have increased due to mortgage payments. It was only post-trial that the wife sought further disclosure in relation to the mortgage for the Pasadora Place property. However, although that is possible that the equity in the property may have increased, there is no evidence before me about that or about the possible amounts, and therefore, the figures I will apply are those set out in the Schedule and which were canvased at the hearing.

156. The **Pembroke Pines property in Florida (line-item 6)** was under offer for US$575,400 and the gross property value is agreed. The wife contends that if there are to be any costs of sale deducted then they should be calculated at 5% because there is no evidence concerning the likely costs to be deducted in Florida property sales. The husband accepts that it is a matrimonial asset, but contends that the value should be reduced because he says that there is a $200,000 loan to R & R due to a wire transfer processed on 27

[81] At paragraph 52 in his Affidavit sworn on 15 April 2021 the husband had contended that Pasadora Place purchased in 2015 should not be considered as being matrimonial connecting that the source of funds was CI$100,000 from R & R Expediters and a bank loan form RBC serviced by the tenant.

[82] Purchased in 2016 with a bank loan form Fidelity Bank and serviced by the tenant.

February 2017. The wife does not agree that it was a loan, but says that it was his share of the profit that he received after selling the Tropical Center. She highlights the absence of any record of the loan and/or of the terms of any loan. She also mentioned that at one stage the husband was, in his oral evidence, unsure whether the purported loan came from Buffa or R & R. I have considered paragraph 19 in the husband's Affidavit sworn on 5 October 2022. I have also reviewed the evidence of Rene Hislop and when dealing with sums owed to R & R he indicates that the husband was:

> *"borrowing money left right and centre when the Grand Caymanian was in trouble."*

I am not satisfied that there is linkage between the Pembroke Pines property in Florida and the purported R & R loans. Accordingly, I value the Pembroke Pines property at US$575,400, pre 5% costs of sale in my calculations. It is a matrimonial asset.

157. The **Rosedale Rental property (line-item 7)** is a single level, two-bedroom apartment which the husband purchased in 2003, around the time that he says he was completing the Rosedale project. The wife does not agree with the husband that it is non-matrimonial property. She contends that it is matrimonial because the rental income was used to support the family and because she again was involved in the management and rent collection for the property. In support of her contention that the property is a matrimonial asset, the wife also relies on the fact that the property was used as security for a loan with Butterfield Bank in 2013 and varied in 2014 for the benefit of GCL, being matrimonial property. I see force in the wife's submissions and I am satisfied that this property acquired very shortly before the marriage has been used and maintained by the parties in a manner consistent with it being regarded as a matrimonial asset. Accordingly, this property will be treated as being a matrimonial asset with a value of US$451,220 pre-5% costs of sale in my calculations.

158. The **Windsor Park Apartments (line-item 9)** were built on land owned by Christian Brothers Ltd since 1995. The apartments are made up of twelve units constructed after the parties were married. Although Windsor Park has been marked on the updated schedule as valuation not agreed, it appears to be agreed. The husband gives his net

income in 2019 from the Windsor Park apartments rentals as being $33,979 in the Net Personal Income Schedule. This figure is arrived at with reliance being placed on the Windsor Park US Net Income Sheets[83] provided to the Court. The wife states that there are 12 units rented as CI$600/month and she gives the figure as being CI$86,400 gross which could be reduced to CI$60,480 (US$72,000) to take into account 30% for maintenance costs. Having looked at the Net Income Sheets and considered the supporting evidence, I conclude that the net income for the apartments is $33,979.

159. The wife states that the property is a matrimonial asset. I am satisfied that, although the land was acquired pre-marriage, due to the family's approach to and usage off the land and apartments throughout the marriage, the husband's interest should be treated as being a matrimonial asset.

160. The **North Sound Estates Residential Rental Property (line-item 10)** is a single family two-bedroom property which was purchased post-separation, in 2018. The parties agree its valuation due to the content of the May 2020 Valuation Report, but they do not agree on the net figure. The husband stated in his oral evidence on 17 August 2021 that this was done using a US$295,006 loan from R & R or Buffa, but the wife does not accept that. The husband contends that it was not a joint endeavour and is a non-matrimonial asset. The wife argues that it is a matrimonial asset as matrimonial assets were used to purchase it, namely income received from R & R by way of shareholder distribution. This property is a post-separation acquisition and, on the balance of probabilities on the limited evidence before me, I am satisfied that it was purchased with a loan rather than by a way of shareholder distribution. Accordingly, I treat it as being a non-matrimonial asset.

161. Having conducted the above review, I find that all of the properties, save for line-item 10 (North Sound Estates) are matrimonial assets subject to equal division.

[83] The Net Income Sheets contain a month by month analysis of the rent from each unit and set out the various maintenance and utilities outgoings.

162. Having conducted the above review, I also find that the value of each personal real estate property to be as follows, those in bold are the matrimonial assets:

	GROSS VALUE	LIABILITY/SHARE & 5% COSTS OF SALE DEDUCTIONS	NET VALUE
1.	**$880,488**	**- $44,024**	**$836,464**
2.	**$1,560,000**	**- $78,000**	**$1,482,000**
3.	**$1,902,290**	**- $95,115**	**$1,807,175**
4.	**$408,537**	**- $269,763 & - $20,427**	**$118,347**
5.	**$232,927**	**- $46,137 & - $11,646**	**$175,144**
6.	**$575,400**	**- $28,770**	**$546,630**
7.	**$451,220**	**- $22,561**	**$428,659**
8.	**$545,122**	**- $179,842 & - $27,256**	**$338,024**
9.	**$60,000**	**-$3,000**	**$57,000**
10.	365,854	-$295,006 & - $18,293	$52,555

163. Having reached these conclusions, I find that:

1. the total net value of this personal real estate having regard to the loan liabilities and 5% costs of sale is $5,841,998;
2. the total net value of this matrimonial personal real estate is $5,789,443; and
3. the total net value of this non-matrimonial real estate is $52,555.

The Personal Assets Schedule – annuities/insurance

164. This next section in the Assets Schedule contains the parties' positions concerning annuities and insurance. The section of the Schedule:

(i) identifies the relevant policies;

(ii) sets out the surrender values; and

(iii) where known, provides the date when each policy was taken out.

ANNUITIES/INSURANCE			
ASSETS		TYPE OF ACCT	DATE OPENED OR ACQUIRED
1	AI Insurance – 2339 (surrender value)	Annuity	Unknown
2	AI Insurance – 7198 (surrender value)	Annuity	Unknown
3	AI Insurance – 2764 (surrender value)	Annuity	Unknown
4	AI Insurance – 2984 (surrender value)	Annuity	2015
5	AI Insurance – 7208 (surrender value)	Annuity	Unknown
6	Ping An Life – 9789 (surrender value)	Life Insurance	1995

165. Using the same line-item numbers for each policy as used in the table at **paragraph 164** above, the Schedule sets out below:

(i) the husband's valuations for each policy;

(ii) the husband's identification of the policies which he says each party has the same in percentage interest in;

(iii) the husband's views about who should retain each property (set out in the proposed split column in the Schedule); and

(iv) what the value benefit would be for the retaining party.

				COMMUNITY (see*proposed split for allocations)			
				HUSBAND		WIFE	
	GROSS VALUE	LIABILITY/ SHARE	NET VALUE		% SHARE		% SHARE
1.	$5,993	-	$5,993	-	50%	$5,993	50%
2.	$29,099	-	$29,099	-	50%	$29,099	50%
3.	$1,525	-	$1,525	-	50%	$1,525	50%
4.	$1,524	-	$1,524	-	50%	$1,524	50%

	GROSS VALUE	LIABILITY/ SHARE	NET VALUE	COMMUNITY (see*proposed split for allocations) HUSBAND	% SHARE	WIFE	% SHARE
5.	$29,099	-	$29,099	-	50%	$29,099	50%
6.	$10,000	-	$10,000	-	50%	$10,000	50%

166. The Note part of the Schedule gives a different valuation from the wife for line-items 2 and 5 of $26,669.71 each, recording that she obtained those figures directly from the policy provider apparently after the hearing. I have not seen documentation concerning that and therefore will proceed on the basis of the two $29,099 figures relied upon at the hearing and contained in the Schedule. Having regard to that and taking into account what is commented upon in paragraph 163 above, the Schedule shows that the total gross and net values are $77,241. The husband states that these should be retained by the wife.

167. The wife contends that line-item 2 (value $29,099.29), line-item 3 (value $1,525), line-item 4 (value $1,524.15) and line-item 5 (value $29,099.29) are policies taken out to benefit the children. She specifically highlights that policies 2 and 5 in the Schedule are educational endowment policies taken out on behalf of the children in 2015 with the husband's consent and therefore should not be taken into account as an asset in her possession. The children appear to be the intended beneficiaries of those two policies. Her evidence in relation to the two policies is found at paragraph 16 of her affidavit sworn on 13 April 2021, where she states:

> *"I have invested some of my money into 2 educational endowment policies for our 2 girls. The payments are US$20,000 combined per annum under policies #G 381107198 and G 381107208 and are due every year.…This investment will complete in another 4 years (2025) and at that time can be cashed out by the kids to produce a lump sum of $100,000 each or retained with interest compounding. To be clear, I have paid US$100,000 for the benefit of the 2 girls over the past 5 years into these policies with no assistance from (the husband)."*

168. The husband disputes the wife's views about the policies, regarding them as being investment policies for her benefit. He states that it is wrong for the wife to contend that she alone has made the payments into the policies as the money came from funds provided by him. He claims that she is the beneficiary of the policies, rather than the children**.**

169. Albeit based on fairly limited material before me, I am satisfied that the policies at line 2 and 5 should be regarded as being for the benefit of the children and they will not be included in my calculations. I do so with the firm expectation that when they mature, the realised sums will be put aside for the children's education and not be for the benefit of either parent. Ideally, the payment instalments into funds should still be made post-hearing to ensure that the investment already made is preserved. The sums invested which can be utilised at the appropriate time should reduce the funds that will be needed to be found to fund the children's college education.

170. In relation to the Ping An Life policy at line-item 6, this was opened, pre-marriage in 1995 but it appears that investments may have been made during the marriage. There is little evidence to say when the AI policy at line-item 1 was taken out, but having regard to the timing of the other AI policies, I am satisfied that it was during the marriage. I therefore find that policies 1, 3, 4 and 6 should be regarded as being matrimonial assets and be included in the calculations.

171. Having conducted the above review, I find the value of the relevant policies to be $5,993 (line-item1), $1,525 (line-item 3), $1,524 (line-item 4) and $10,000 (line-item 6). I find all of the policies to be matrimonial assets totalling $19,042.

The Personal Assets Schedule – Retirement accounts

172. This next section in the Assets Schedule contains the parties' positions concerning retirement accounts/pensions. The Schedule identifies the relevant accounts and, where known, provides the date when each account was taken and was contributed to.

	ASSETS	TYPE OF ACCT	DATE OPENED OR ACQUIRED
1.	Silver Thatch	Pension	1986-2005
2.	Silver Thatch (Husband's Pension Contribution)	Pension	2005-2019
3.	Tian An Life Pension	Pension	Unknown

The wife states in the Notes section of the Schedule that the Tian An Life policy is not a pension but is a cash investment from which she will receive RMB 270,000 in February 2023. This RMB figure converted to US$ at the exchange rate at the time of the trial and in February 20233 was 0.15 is US$42,413

173. The parties agree that the Silver Thatch policy (line-item 1) is non-matrimonial and that it should remain with the husband. They agree that line-item 2 and line-item 3 are matrimonial. They agree that the Silver Thatch policy (line-item 2) should remain with the husband and that the Tian An Life policy (line-item 3) should remain with the wife.

174. The Schedule sets out the husband's view that the values of the relevant policies are:

(i) line-item 1: $42,664;

(ii) line-item 2: $$20,891; and

(iii) line-item 3: $21,661.

The wife only challenges the Tian An Life policy (line-item 3) figure. The Schedule records that the wife values it at US$42,431. I am content to accept the RMB 270,000 (about $42,413)[84] figure as the valuation for the Tian An Life policy as that will not prejudice the husband.

175. Having reached to the above, I find that:

(i) the total value of the 'retirement accounts' is $105,986;

(ii) the total net value of the matrimonial 'retirement accounts' is $63,332; and

[84] See paragraph 172 above.

(iii) the total net value of non-matrimonial retirement account is $42,664.

The Personal Assets Schedule – Vehicles

176. This next section in the Assets Schedule contains the parties' positions concerning vehicles. The Schedule identifies the relevant vehicles and provides the date when each vehicle was acquired[85]:

ASSETS		TYPE OF ACCT	DATE OPENED OR ACQUIRED
1	Toyota FJ Cruiser - 2013	Vehicle	2020
3	Toyota Tundra	Vehicle	2020
4	Toyota Highlander	Vehicle	2004
5	Ford F350 Flatbed	Vehicle	2018
6	Boat	Vehicle	1997
7	Yamaha Scooter	Vehicle	2018
8	Wife's Car	Vehicle	2019

177. The parties agree that all the items in this part of the Schedule should be regarded as being matrimonial assets, save for the boat (at line-item 6) which is a non-matrimonial asset that the husband should retain. They agree that the only item that should be retained by the wife is the wife's car (line-item 8). Accordingly, there are no issues concerning the status of the vehicles.

178. Using the same lime item numbers for each vehicle as used in the table at **paragraph 176** above, the Schedule sets out the husband's gross and net valuations for each vehicle:

GROSS VALUE		LIABILITY/ SHARE	NET VALUE
1.	$7,000	-	$7,000
3.	$5,000	-	$5,000

[85] There was no line-item 2 in the vehicle part of the Schedule and this is replicated in the extracts from that part of the Schedules included in the Judgment.

	GROSS VALUE	LIABILITY/ SHARE	NET VALUE
4.	$4,000	$7,623	-
5.	$2,000	-	$2,000
6.	$4,000	-	$4,000
7.	$1,800	-	$1,800
8.	$3,500	-	$3,500

The Schedule sets out the husband's view that:

(i) the total gross value of the vehicles is $27,300; and that

(ii) after his projection of the US$7,623 required for the costs of repair that he states are necessary to the Toyota Highlander, he puts the net value at $23,300.

The husband sets out in the Schedule that the value of the vehicles which he views as being matrimonial assets in which each party has an equal interest, which he should retain is $15,800 and which the wife should retain is $3,500.

179. The Schedule records that the wife agrees with the valuations for all the vehicles, save for the Toyota Cruiser (line-item 1) and the Toyota Highlander (line-item 4). No alternative valuations are supplied and there is no differential figure set out in the Schedule. The Toyota at line-item 1 is the husband's primary car and it appears that it was never put to the husband that his valuation was incorrect, but the wife believes that he was selling it for US$30,000. I have no details about the mileage or any formal valuation in relation to the 2013 Toyota FJ Cruiser and, in such circumstances, I will accept the husband's valuation of US$7,000. In relation to the Toyota Highlander, I note that the wife states that she thought that the husband had fixed it. The husband states that the vehicle in its present condition is worth only US$4,000 and that it requires US$7,623 to repair. It would seem to be illogical for him to spend that much money on that vehicle having regard to his view about its value. Therefore, I find that the value of the Toyota Highlander should be assessed as it in its current state, namely US$4,000. If the husband decides to repair it or sell it for only $4,000 in its state of disrepair, then that will be a matter for him.

180. Having conducted the above review, I find that the value of each asset in the vehicles section of the Schedule to be as follows[86]:

GROSS & NET VALUE	
1.	$7,000
3.	$5,000
4.	$4,000
5.	$2,000
6.	$4,000
7.	$1,800
8.	$3,500

181. Having regard to my findings in **paragraphs 179 and 180** above I conclude:

(i) The total figure for these assets to be US$27,300;

(ii) The total figure for non-matrimonial assets is US$4,000 (the boat which the husband will retain);

(iii) The matrimonial assets in this section total US$23,300; and

(iv) If the matrimonial assets were to be divided in the manner in which the parties suggest, then the wife's benefit would be US$3,500 and the husband's US$19,800.

The Personal Assets Schedule – Other assets and liabilities

182. The Schedule included a 'sweeping up' section setting out the parties' positions concerning other assets and liabilities. They were set out as follows:

	ASSETS	TYPE OF ACCT	DATE OPENED OR ACQUIRED
1.	Loan to wife's sister that was repaid to wife solely	Loan	2015

[86] Using the same line-item numbers as shown in paragraph 176 above.

	ASSETS	TYPE OF ACCT	DATE OPENED OR ACQUIRED
2.	Loans made to friends/family that the wife is anticipating repayment of	Loan	Unknown
3.	Husband's Reimbursement from GCL for pre matrimonial property sold to pay GCL bills - that being East End 66A 142 - $59,523.81 East End 66A 141 - $75,000	Loan from H to GCL	
4.	Loan to husband to repay loan *as at F(iii)1053 in bundle*	Loan from Buffa to Husband personal	1/13/2017
5.	Husband loan to D. Orrett	Loan from Husband to D. Orrett	2/13/2017
6.	Loan from wife's parents to wife	Debts wife owes her parents	-

183. The husband contends that line-items 1 and 2 are matrimonial and that line-items 3 and 4 are non-matrimonial. The wife on the other hand states that only line-items 2-4 are matrimonial, as line-item 1 should not be treated as being an existing asset. She says that line-items 2-4 should be divided equally between the parties, although she contends that the purported Buffa Loan at line-item 4 is not a loan.

184. Using the same item numbers for each asset as used in the table at paragraph 182, the Schedule sets out below:

(i) the husband's gross and net valuations for each asset;

(ii) the husband's identification of which of these he says each party has the same in percentage interest in;

(iii) the husband's view about who should retain each asset (set out in the proposed split column in the Schedule); and

(iv) what the value benefit would be for the retaining party.

	GROSS VALUE	LIABILITY /SHARE	NET VALUE	COMMUNITY (see *proposed split for allocations)			
					HUSBAND		WIFE
1.	-	-	$400,000	-	50%	$400,000	50%
2.	-	-	$77,000	-	50%	$77,000	50%
3.	*Pending - EE 66A 142, EE 66A 141	$59,523.81$ 75,000	$134,524	-	0%		0%
4.	*Pending - EE 66A 142, EE 66A 141	$59,523.81$ 75,000	$150,000	-	0%		0%
5.	-	-	**$461,524**	-		**$477,000**	

185. Having regard to that and taking into account what is commented upon in paragraph 184 above, the Schedule sets out the husband's view that the total net value of the assets after deducting the amount to be paid back to Buffa for a purported loan made by it to the husband of US$150,000 in January 2017 is US$461,524.

186. Based on the details in paragraph 184 above, the Schedule sets out the husband's view that the value of these assets which he views as being matrimonial assets in which each party has an equal interest, is US$477,000 and that they should be retained by the wife.

187. In relation to line-item 3 and line-item 4, post-discharge of liability, the husband contends that there would be a total negative value of US$15,476 due to the Buffa loan.

188. The below Schedule sets out what the:

(i) wife's valuation is for each asset;

(ii) whether each valuation is agreed; and

(iii) where the valuation is not agreed, what is the differential between each party's valuation[87]:

[87] Using the same line-item numbers for each asset as used in the table at paragraph 184 above.

	Valuation Agreed? YES/NO	If no, please insert proposed valuation (W)	Differential?
1.	No	- $	$(400,000.00)
2.	Yes	$77,000.00	- $
3.	No	- $	$(134,523.81)
4.	No	- $	$150,000.00
5.	No	$113,284.44	$113,284.44
6.	No	$(52,000.00)	$ (52,000.00)

189. In relation to **line-item 1**, the wife contends that the repayment to her of US$400,000 from the loan made to her sister (line-item 1) in 2015 no longer exists as an asset. She states that the repaid sums have been used up on her living expenses, legal fees, insurance for the children and investment into an endowment property. She said that she did not keep a running account, so it is difficult for the Court to determine if and how she may have used these finds. I am satisfied that this is a matrimonial asset which the wife has already retained. I do not treat this sum as maintenance pending suit and US$200,000 should be set off in the final calculations.[88]

190. The wife accepts in relation to **line-item 2** that the loan made to the wife's friends by her totalling $77,000 are still to be repaid, although in her affidavits sworn in April 2021, she said that she expected those sums to be back with her by the end of 2022. It appears that the sums that she lent came from the abovementioned $400,000 repaid to her. As I have found that the $400,000 paid to her should be treated as matrimonial asset which she has solely benefitted from which will be reflected in my calculation, this $77,000 is subsumed in that figure and is not therefore a separate asset for the wife.

191. The husband contends that the East End properties mentioned at **line-item 3**, which he says were sold for a total of $134,524 to pay off GCL were non-matrimonial assets as

[88] See paragraph 303 below.

they were acquired pre-marriage. Although the wife contends that they were not matrimonial assets, I am satisfied that they were premarital and should be treated a non-matrimonial. The husband contends says that those funds should be returned to him from the GCL asset and that the payment to him not be treated as being matrimonial. The wife argues that these were capital injections into GCL and were not loans or alternatively repeats her submission that as GCL is matrimonial property any loans to be repaid to the husband are therefore to be treated as being matrimonial property. In relation to the proceeds of sale of these two properties, I am satisfied that they were the husband's non-marital property sold and injected into GCL in 2016 and that the husband is entitled to $134,524 from the GCL funds.

192. In relation to the loan at **line-item 4**, the husband states he has a $150,000 loan to pay Buffa. The wife again disagrees that this was a loan. The husband states that Mr. Hislop's rather general evidence in his affidavit sworn on 5 October 2021 supports his contentions about his debt obligations to the companies. I am not satisfied that the Royal Bank Statement for the period around 31 March 2017 for the husband's personal US dollar account supports a contention that there is a $150,000 loan due to Buffa. Accordingly, this line-item does not form a part of my calculations.

193. The Schedule contains the wife's view that there are also two additional matrimonial assets that should be added as **line-items 5 and 6**. The first being a loan of $113,284.44 that she said was made by the husband to Mrs. D. Orrett in February 2017. The wife said that the husband described it as being a loan when he *"had guaranteed for someone, Daphne Orrit [sic]"*. The husband sates that it was never a loan, he was simply a co-signatory. He said that the bank was unable to recover from Mrs. Orrett so it made a claim in 2016/17 to recover against him. He believes that Mrs. Orrett, who is 81 years old, will never be able to pay him back and he writes of this item. I accept his evidence and therefore do not include line-item 5 in my calculations.

194. The second, line-item 6, is the purported debt of US$52,000 that the wife says she owes to her parents. This debt is mentioned in one short sentence in the wife's affidavit sworn on 13 April 2021 and it contains no detail about the debt other than the alleged amount.

There are no affidavits filed by the parents and no documentation, including bank statement entries, to verify the debts. When considering whether the wife required such financial assistance (whether it was by gift or loan) from her parents, I am aware that the wife had felt able to lend out $77,000 to others[89] and that between 2013 and 2017 she received over $756,000. Having regard to that background and the lack of meaningful evidence and details in relation to the loans, I am not able to find that these purported parental debts exist and I do not include line-item 6 in my calculations.

195. Having conducted the above review, I find that line-items 1 and 2 are matrimonial assets and the properties in line-item 3 are non-matrimonial assets. I find that in relation to the relevant line-items in the Other Asset Liability section:

(i) Line-item 1 is a matrimonial asset from which the wife has a $400,000 benefit which she has already received and this should be taken into account. This will be done by a $200,000 set-off in favour of the husband[90];

(ii) Line-item 2 is a matrimonial asset but should not be treated as being a separate $77,000 benefit as it is a part of the $400,000 repaid by her family and therefore already forms a part of my calculations; and

(iii) Line-item 3 are non-matrimonial assets and the husband should be credited $134,524 from the GCL funds, thereby reducing the pre-distribution value of GCL.

Personal Assets Matrimonial Totals

196. The total sums of the matrimonial assets in each section of the Schedule for equal distribution are as follows:

(i) the net value of the matrimonial assets is $89,806 (not including the disputed line-item 6 which had a balance of $350,700 but now has only $700 and the $115 at line-item 3)

(ii) the total net value of the non-income earning matrimonial estate is $1,243,250

(iii) the total net value of the personal real estate is $5,789,443

(iv) the total value of the matrimonial annuities is $19,042

[89] Line-item 2 and paragraph 180 herein.
[90] See paragraph 303 below.

(v) the total value of the matrimonial retirement accounts is $60,151

(vi) The total value of the matrimonial vehicles is $23,300

Total $7,224,992

The Business Assets –The parties' general contentions

197. The parties fundamentally disagree about the matrimonial status and valuation of almost every business asset as well as about what approach should be taken in relation to them.

198. The husband values the net company assets as at 2019-2020 at a total of US$6,124,660 and states that of US$5,898,101 of that should be treated as non-matrimonial and only US$226,559[91] as matrimonial available for division. He says that this figure is based on his evidence, which he contends is the best evidence as it was primarily grounded on information provided to him by the companies' accountant, reached by his own calculations and that Renee Hislop and William Culbert corroborated that. I note that the company accountant did not provide any written or oral evidence on oath. The husband contends that it would be *"unconscionable"* for the wife to receive 50% of all the personal assets and the business assets as he argues that the *"entirety"* of the *"matrimonial wealth"* was accrued prior to their marriage. He says that the business assets are either pre-matrimonial, post-separation or non-matrimonial assets generally. He states that the wife had no involvement in the vast majority of the businesses which were either established prior to their relationship or from pre-acquired funds. He highlights that Christian Brothers Ltd, R & R Expediters and Rosedale were established and, in his view, completed prior to the marriage. He submits that although MCR Group and Buffa were established post the date of marriage, that this was done with funds accrued before the marriage.

199. The husband concedes that GCL and La Penha Construction could be categorised as a joint endeavour, because the wife was a director of one and named on the bank account of the other but he adds that these are *"risk laden"* assets which should not be balanced equally against *"copper bottomed"* assets. The husband states that both GCL and La

[91] From GCL.

Penha Construction were depleted (along with much of his pre-acquired wealth) by the economic failure of GCL. He asks the Court to approve that GCL be divided in line with the parties' shareholding and states that the value does not need to be fixed. Although I agree that the parties should receive 50% of GCL's assets[92], there remains a need to value GCL.

200. The husband states that, if the Court does not agree with him and finds that any of the business assets are matrimonial, then his valuations should be accepted. He adds that the value should not be directly off-set against the *"copper-bottomed assets such as property"* in equal amounts, but instead the Court should conduct an evaluative approach in respect of contributions, to include the value that he has brought to the business having regard to the date of their establishment, the source of non-marital cash needed to establish it, his long standing business relationships and his personal endeavour in relation to it.

201. The husband contends that the wife's valuations, which he says have not been tested in evidence, are *"unsafe"* and *"speculative"* and they do not take into account debts or operating costs. He understandably states that there would be:

> *"practical difficulties in dividing the shares as the companies are trading and other shareholders who have not been joined to proceedings have expressed concerns."*

He argues that the wife's assertion that he had conducted through himself or other companies $55M of land sales is misleading, as it does not take into account debt payments. He states that the businesses should be valued at the 2017 point of separation and that the total value of his respective shares at that time was $1.6M. He contends that he has assumed all the risks associated with the businesses. The husband submits that if his submission is not accepted and it is found that the valuation point should be in 2021 then, post-add backs from GCL, the value of his shares in the businesses is $6.2M. He highlights that the bulk of the valuation increase is due to repayments of inter-business

[92] The Nixon's no longer each having 25% interest in GCL.

loans rather than being from capital growth. He submits that with loan reapportionment the business valuation is $3.6M.

202. The husband informs that he had been willing for a joint accountant expert to be appointed to value the company and had partaken in the preparation of a joint letter of instruction, only for the wife to indicate that she no longer wished for that route to be taken. He is critical of the wife's approach to the valuation of the companies adopted at the hearing, namely of producing a large number of Land Registry documents at a very late stage rather than continuing with the instruction of the forensic accountant as previously sought by her and directed. He felt that her view that the valuations of companies could better be ascertained by cross-examination in relation to Land Registry documents and aerial photographs of plots of land were *"wholly unsatisfactory"*. He suggests that this, as well as his view that there has been:

(i) a lack of cooperation with preparing an asset schedule for the hearing;

(ii) a failure by the wife to properly put her case to the husband about the valuation of the companies and;

(iii) a failure to properly translate her evidence, *"suits her narrative to have confusion rather than clarity in this case."*

203. The husband highlights that the wife's valuations of his share in the companies (which she totals at US$16,111,303) were not put to the husband, Rene Hislop or William Culbert during the hearing and he adds that the wife disclosing what she contended the valuations to be for the first time in the updated schedule was an "*unsound approach."*

204. Even though the wife had originally accepted that the smaller companies like Manna Holdings were non-matrimonial, in the updated schedule she contends that all the businesses should be treated as being matrimonial. She does not take issue with the husband's declared percentage holdings in the companies, but she does not agree with his assertion that the majority of the businesses are non-matrimonial assets and with his valuations, which she says *"cannot be trusted"*. The wife submits that the companies have been used to keep the husband's main assets *"away from judicial scrutiny"* and that his evidence in relation to their valuations has been amended upwards by him on various

occasions, which he only did after she had been able to search for and obtain documentation that put into question his previous valuations.

205. The wife expresses a view that the husband had not been forthcoming in disclosing material addressing the issues surrounding his interests in and valuations of businesses. When I note this submission, I am conscious of Moylan J's observations on ***CC v RC*** where there was a 19 year marriage that it would be:

> *"foolish after a long marriage or relationship either to expect or require a party involved in ancillary relief proceedings to produce detailed account of the state of affairs at the commencement of the marriage or relationship….I do not accept the general assault mounted by the wife on the evidence produced by the husband. The quest for historical certainty was never going to be achieved and, in my view, was not a necessary quest in any event."*

I feel that the sentiments expressed also relate to historical accounting during the marriage, especially in the early years of the marriage.

206. The wife claims that the parties' asset position has *"increased exponentially due to marital endeavours,"* adding that the husband has been very successful as a self-employed businessman in the real estate sector during the marriage. The wife states that she worked with the husband in various aspects of his real estate enterprises and that she also freed up his time to enable him to concentrate on the businesses as she was the children's primary care giver. Although I agree that her being the care giver for the children freed up the husband to work in his various business, her role in the primary real estate enterprises was at a low level and she played no role in the running of the companies, save for GCL. She submits that, although the level of wealth has fluctuated during the marriage, the Court should be concerned with the asset position now. She stated that the pre-marital business interests were growing concerns at the time of the marriage and that the husband continued to contribute to and grown them during the marriage. She added that the husband's:

> *"attempts to categorise other companies as non-matrimonial, despite their incorporation (and his contribution) post-marriage, based upon alleged post-*

marital funding by pre-marital assets, is contrived and disingenuous" and that *"this strategy demonstrates a concerted effort to place assets out of the reaches of (the wife)."*

207. The husband's assets basis approach of valuing companies based on a cash at bank and the value of real estate remaining less labilities is not challenged by the wife, save for in relation to Buffa Ltd. She accepts that, save for the assets and if the land holdings were sold, those companies would have no value. The wife argues that the husband has not fairly disclosed the value of the cash and real estate owned by the companies and that is where the dispute between them arises concerning the businesses. She states that Court should be capable of dealing with the disputes about the valuations of the companies from the provided details of the real estate owned and the produced valuation evidence.

The Schedules – Business Assets

208. Having briefly set out some of the background about the parties' general observations in relation to the business assets, it is necessary to look at each business. Schedules were provided pre-hearing and updated post-hearing for most of the businesses. All values attributed to the businesses therein are net of liabilities and expressed in US dollars. When I review each business and when it is necessary, I will seek to determine the value of the relevant matrimonial businesses from the, at times, confusing and incomplete evidence placed before me. When considering each business, I view it as again being helpful to replicate some of the relevant parts of the submitted schedules herein.

209. When looking at the updated Schedule, the husband accepts that the valuations for the companies are different to those set out in the initial Schedule which was produced for the hearing itself. He said that this is because, should loans be repaid from the funds in the GCL account, they have been adjusted to re-apportion cash into the correct company pot against debts owed. The husband states that if the funds are not reapportioned then the company valuations should remain as they were in the initial schedule prepared for the hearing. This is but one example of the changing "shifting sands" of the presentations I have had to face and work with since the outset of these proceedings.

210. The husband highlights the major reapportionment to be:

From GCL to:		
R&R		$2,210,000.00
Buffa		$650,000.00
Rosedale		$31,606.32
7 Mile Holdings		$1,298,060.60
Reimbursement to H for pre-acquired property sold		$134,523.81
From Buffa to:		
R&R (for land purchase)		$2,432,257.05
Personal Loans to be repaid by H to the companies also include:		
H to Buffa – re: RBC Fixed Term Deposit	Cheque 68	$350,000.00
H to Buffa – re: Loan as at F(iii) 1053	Cheque 68	$150,000.00
Husband's case is that the updated 2021 company valuations are:		
Manna Holdings – Pine Lake Apartment est. 1992		$103,660.80
Christian Brothers Ltd. – Windsor Park Apartments est. 199		$297,500.00
R&R Expediters est. 2002		$3,364,579.72
Rosedale Expediters est. 2002		$653,880.00
MCR GROUP (AIP,TPC, MCR Combined) est. 2005		$1,387,057.43
Grand Caymanian Ltd. – Hotel est. 2010		$226,559.34
Buffa Ltd. – Real Estate / Development etc. 2010		$482,456.02
TireMaxx - Tire Services est. 2018		$34,868.50
Caymera International est. 2018		$0.00
Designcraft Ltd. Est. 2020		($35,901.00)
Noriva Ltd. Est. 2021		($390,000.00)
	Total:	**$6,124,660.81**

The Business Asset – GCL Company

211. GCL was owned in equal 25% shares by the husband, the wife and Mr. and Mrs. Nixon. The wife is a board member of GCL. GCL purchased the Grand Caymanian hotel in 2010 with a US$6.5M secured loan from Cayman National Bank. In September 2010 a further US$1.2M was borrowed, with an additional US$3.3M borrowed in January 2014. The

Cayman National Bank loans totaling over $11M were paid off from the proceeds of sale after the hotel sold for US$20,500,000 on 13 October 2017. However, the husband contends that many of the other borrowings remain unpaid.

212. Unfortunately, problems soon arose as GCL inherited a hotel which had strata lots created over some of the rooms. This resulted in owners of 8 units suing GCL and a settlement having to be reached in 2015/2016. The hotel required significant renovations in order for it to become a branded hotel. The husband contends that the settlement payments, renovation expenses, and running costs to keep the hotel afloat were paid from:

(i) various bank loans secured by him and Mr. and Mrs. Nixon;

(ii) advances from other companies in which he was a shareholder;

(iii) advances from other companies that the Nixons owned;

(iv) from the proceeds of pre-marital land sales; and

(v) personal loans from his and the Nixon's wider family members.

The husband said that the wife was aware that hotel was under *"significant financial stress"*. And that they had to take out the borrowing from business partners in other ventures detailed in the schedule at paragraph 216 below which was *"often done by agreement and on a handshake"*. The husband stated that the wife was well aware of the difficulties that GCL was encountering and of how he had to fund and borrow money to keep it afloat. The husband contends that the loans to R & R, Buffa and Rosedale should be repaid in a normal way and the fact that he is getting divorced does not change that.

213. There was a Shareholder Meeting in 2020 at which the parties and the Nixons reached a settlement about the division of GCL's assets and liabilities. The husband said, with reference to a transcript of the meeting, that the tenor of the meeting was not to discuss profits, as it was recognised that there would not be any, but to concentrate on the apportionment of loss and how debts could be paid. Although they had invested around $3M into the venture, it was agreed that the Nixons would receive $1.2M as their share, leaving between $4-5M in the GCL bank accounts. The husband said that this payout

disparity was agreed because he had larger related debts than the Nixons and the intention was for him to repay the loans from the companies at the time totalling around $3.6M which had been taken out to meet GCL's debts. He said that at the time the parties knew that US$2.765M was owed to R & R, US$1M was owed to Buffa and CI$26,338 was owed to Rosedale and that the wife at the time had agreed with the GCL loans to these other companies. The husband said that the wife recognised the borrowing and agreed with that. The husband said that the other companies, in which he was a partial shareholder, are non-matrimonial in nature and should be repaid and that the divorce proceedings should not affect that. He states that, once the loans have been repaid, any remaining sums should be shared equally between the parties and the GCL accounts be closed.

214. The wife said that, apart from them all agreeing to the Nixons' payout, there was no other binding agreement reached at the Board meeting. There is a recording of the board meeting and although the wife generally accepted that GCL may have some loans to meet, she did not specifically agree with any figures and to which entity a debt existed. Although she accepted some of the positions being set out by the husband, there were some exchanges with the husband during the meeting in which she tried set out her own differing view, with the husband then seeking to convince her otherwise. The wife now argues, in the alternative, that she could only be regarded as having waived her claim in relation to her interest in GCL if she was able to do so in an informed way and that would not, in any event, be binding before a Court hearing the ancillary relief proceedings based on its duty under s.19 Matrimonial Causes Act. I am satisfied that the wife was aware of the fact that the hotel was at risk of 'going under' over an extended period of time and that the husband was having to borrow certain funds to try to keep the hotel running. She may not have known about each borrowing, but she must have known that the sums were significant. The wife was aware that the existence of GCL's continued loan liabilities was the reason why the Nixons were, at the Board meeting, willing to settle on receiving a payout reflecting less than their joint 50% holding. I accept some of the husband's evidence, which is consistent with Mr. Hislop's, that there were some loans and that any borrowing that I find exists for GCL arising from loans provided by another entity is not to be treated as being a personal debt for him but one for GCL which must be discharged

from the proceeds of sale. I will need to below review the evidence to determine which loans the husband has been able to satisfy me exist and should be considered as being a liability of GCL.

215. During the hearing I highlighted my concern about the manner in which the valuation of a company was being reached by the husband, with the valuation of one company being reduced due to a loan it owed but the valuation of the company to which it said the loan was owed not being did not reflect the sums that it had lent. The husband took that on board my concerns and adjusted the figures to account for the loans in the updated Schedule. However, in relation to the concerns about the lack of documentary evidence to verify the loans, there remains gaps and the Court is asked to rely on the wider evidence and to accept the husband's contentions especially concerning the more dated alleged borrowing/lending.

216. A post-hearing document has been provided which is headed GCL Company Value. The Schedule contains the husband's below breakdown about the GCL valuation and it lists the assets of the company and its liabilities:

Current Acct Bal as of 19 Mar 2018	USD	KYD
SCOTIA Checking US$ - 7003925	$5,676,506.22	
SCOTIA Checking CI$ - 7003926 - converted @.84	$109,688.46	$92,138.31
CNB Checking US$ - 06488	($85.99)	
CIBC Checking CI$ - 458129 - converted @.84	$641.38	$538.76
Current Acct Bal:	**$5,786,750.07**	
Piontex buyback	**($155,000.00)**	
Stamp duty on fractional share transfers	**($225,000.00)**	
	($156,000.00)	
Balance:	**$5,250,750.07**	
Payment to Mr. & Mrs. Nixon for Loans (2021):	**($1,200,000.00)**	
Re-introduction of holdback	**$500,000.00**	
Balance:	**$4,550,750.07**	

Current Acct Bal as of 19 Mar 2018	USD	KYD
Outstanding Liabilities		
Husband's Loans from other companies to GCL	**MINUS**	($3,600,000)[93]
R&R	$2,210,000.00	
Buffa	$650,000.00	
Rosedale	$31,606.32	$26,339
7 Mile Holdings	$1,298,060.60	
Husband's reimbursement for property sold	$134,523.81[94]	
Outstanding Payable due to LaPenha Construction		-$2,158,747.00
Total:	**$4,324,190.73**	
Minus Liabilities	**$226,559.34**	
50% share	**$113,279.67**	

217. When I look at a breakdown concerning the asset prior to liability for deductions I note that the wife highlights that the bank balances as of 16/08/21 are actually US$4,519,749.04 and CI$64,000 (US$78,049). This gives a rounded up total balance of $4,597,798. There is no evidence to show that the amounts that are shown as having been deducted in the Schedule were not processed before August 2021. There is no explanation from the husband as to why the accounts hold $47,048 more than the figure he states that the balance should be. I note that he used the account balance as of March 2018 as the starting point. I prefer the wife's position on this point, and I value the Company asset before any deductions for other liabilities as US$4,597,798.

218. Having made the above finding this would mean that, if I were to accept the husband's contentions about the liabilities to be deducted, the amended total rounded up figure would be US$273,607 and the 50% share figure would be US$136,803.67. However, as mentioned at paragraph 212 above, I must review the husband's contentions concerning the loan/liabilities of GCL. I do not accept all that he has been able to establish all of his contentions in this regard.

[93] Pending - R & R Expediters, Buffa Ltd, Rosedale, 7 Mile Holdings.
[94] East End - 66A 142 $59,523.8 & East End 66A 141 $75,000 - see paragraph 133 above.

219. Turning now to the husband's liability figures for GCL which he totals at US$4,324,190.73. In her written submissions, the wife elaborated upon her views concerning the purported loans made by other businesses to GCL and generally. The wife disputes the existence of the loans. She contends that significant amounts of money were transferred from marital accounts because the husband says that he loaned into GCL his personal assets totaling $2.139M and her primary submission is that the loans purportedly made to GCL never occurred.

220. The wife argues that if there were any payments made to GCL from any of the entities, they were not loans but were dividend payments made to the husband. I note that Mr. Culbert, in his affidavit sworn on 26 September 2018, stated that the husband had not received any dividend distribution from the Companies. She further adds that they are no longer intended by the husband to be repaid or in fact were never due to be repaid. Therefore, the wife says that any GCL debts which are established should be treated as being the husband's personal liabilities. In such circumstances the wife states that she is entitled to 50% of the funds currently sitting in the GCL bank account.

221. The wife's general submission is that the husband's evidence in relation to the purported various loans is unreliable, full of errors and not supported by appropriate documentary evidence. She highlighted this following exchange in cross examination to illustrate this:

> *"Mr Kennedy: (Copy of Butterfield bank statement F(iii) 606 and Capital injection spreadsheet F(iii)1596 shown to witness)*
>
> *Mr Kennedy: When you say 1.4 million was transferred to GC that's wrong, isn't it? See the last item.. personal property sold…That's clearly a mistake as well*
>
> *Husband: If it's deposited into that account then…400k clearly went to China.*
>
> *Mr Kennedy: So this entry is wrong?*
>
> *Husband: Yep, clearly the whole sum didn't go there.*
>
> *Mr Kennedy: I suggest that there is no evidence that any of the proceeds went there.*
>
> *Husband: You can suggest it. Mistakes may have been made. I have produced a lot of stuff.*

Mr Kennedy: The entire entry above of 400,000 is erroneous?

Husband: That's correct. Sale was 400,000, only 150,000 used to pay for the hotel.

Mr Kennedy: See Buffa advance cheque [F(iii)1596] Its clear you used that money for the hypothecated capital. Paid a debt for Ms Daphne that you secured. And the 500,000 is duplicated.

Husband: Yes

Court: Is this the Buffa advance cheque, number 68 in the evidence?

Mr Kennedy: That cheque was paid into RBC 2840 on the 12th Jan 2017. Correct? It appears at F(iii)1053.

Husband: I need to find it.

Mr Kennedy: You said it was payment for a loan to a friend Daphne, you also took a term deposit of 350,000. This still appears in the asset schedule. This money didn't go into GC either?

Husband: That's correct.

Mr Kennedy: Look at F(iii)1596 again. Second entry, Buffa ltd, advances from companies, 500,000 and 500,000…. 500,000 by cheque 68 is another error.

Husband: That appears to be the case.

Mr Kennedy: That error crept in between 2018 and 2020.

Husband: I have never had to do something like this, it has taken a lot… what can I say, it is there…. It's 500,000. It's a lot of money It is a lot of money.

Mr Kennedy: It's a lot when you are trying to convince the court that $4 million in a matrimonial asset shouldn't be shared because it is due back to companies that are not matrimonial.

This excerpt from the oral evidence given during the incisive cross examination of the husband by Mr. Kennedy illustrates again why the Court must be cautious when considering the evidence of the husband concerning the payments that he says are due back to GCL. Placing reliance on this cross-examination exchange, the wife contests the

existence of a purported loan of $650,000 from Buffa to GCL. The wife also does not accept that there was a $150,000 loan, contending that there is no evidence of that.

222. Although I do not agree with the wife's contention that payments were not sought by and provided to the husband from other entities, I accept that the existence of some of the purported loans has not been sufficiently established by the husband. I note the wife's observation that the husband's knowledge of the transactions and figures-involved is at times *"lacking",* as when cross examined about the same on a number of occasions the husband said that Mr. Culbert and Mr. Hislop were the people to ask. **Therefore, the issue is how does the Court ascertain on the evidence before it what relevant loans exist?**

223. When I look at the above cross examination and consider it in the context of the wider evidence, it creates uncertainty and unreliability in relation to the husband's submissions concerning borrowing from Buffa. I am not satisfied that the husband has sufficiently established the existence of a $650,000 Buffa loan to GCL. His evidence is confusing concerning this purported loan.

224. The wife casts doubt on the existence of any R& R, loans stating that the first time the alleged borrowing from R & R was mentioned was long after the divorce proceedings had commenced, namely in the statement of capital injections to the hotel, which was prepared on 20 April 2020. This was several years after the commencement of divorce proceedings. She states that the husband has:

> *"displayed a pattern of asserting the existence of loans owed (whether personally, or by assets clearly in the marital pot) to R&R, which was incorporated before the marriage began."*

She submits that:

> *"It is no coincidence that these alleged loans (primarily from R&R) come with no paperwork or records whatsoever, and apparently no particular lending/borrowing terms."*

225. In relation to R & R, the wife considers them to be either:

(i) funds received from R & R by the husband shareholder dividends with no expectation of any repayment; or

(ii) funds which originated elsewhere than from R & R and are therefore *"fictitious"* loans.

She contends that the husband is motivated to now advance the loan scenario as he would benefit. She states that if the R & R loan exists is paid back to R & R and if R & R is found to be a non-matrimonial asset the wife would arguably not be entitled to none of this value, whereas if the loan did not exist, she would be entitled to 50% of the value as a shareholder of GCL. The wife adds that if R & R is treated as being a matrimonial asset, even if the husband was able to persuade the Court that the loans had been made and that they should be repaid, then the loan scenario would still benefit him because she would only be entitled to 50% of the husband's share in R & R.

226. The wife contends that, for the loans it is contended that R & R gave to husband between 2001 and 2017, that R & R:

(i) did not document the loan by way of loan agreement or promissory note;

(ii) did not take any form of security over the land parcels bought by H with these funds;

(iii) did not enter into any repayment or commercial terms with respect to interest;

(iv) did not produce any corporate minutes demonstrating the request for a shareholder loan;

(v) in the case of GCL and Buffa, produced no contemporaneous documents acknowledging the sums allegedly received as loans;

(vi) has never produced a bank statement to the court evidencing these withdrawals;

(vii) did not include the loan amounts within its disclosed asset schedule as presented at trial; and

(viii) did not show how it would have the funds available to have outstanding loans of US$5,257,263,05.

227. The wife highlights in relation to the purported loans from R & R to GCL that not only did they not appear in the R& R accounts, but they did not also appear in:

(i) The GCL accounting report for 28 November 2013 *"being the only contemporaneous report from GC of the debt/loan position between (GCL) and (the husband)";*

(ii) The Capital injections report which appears in the husband's reply to a request for further and better particulars from 2018;

(iii) The Account of the Proceeds of sale at closing. The Husband disclosed a Balance sheet in March 2018 with no mention of loans to R&R or even to himself; and

(iv) Any company resolutions from either R&R or the GC in relation to the alleged loan.

228. The Valuation Schedule for R & R, prepared by Ms. Desrosiers, has been provided post-hearing. The valuation, as seen below, assumes the reallocation of funds from either the husband or GCL where the husband says the original funds derived from loans. It therefore contains more detail about how the husband reaches the total loan figures for GCL's US$2,210,000 liability to R & R[95]. The relevant excerpt from the Valuation Schedule is:

Date	Transaction	Cheque Number	Amount
11-Sep-16	Payment to RD (the husband) for GCL	1010	$ 250,000.00
21-Sep-11	Payment to RD for GCL	1014	$ 250,000.00
5-Oct-11	Payment to RD for GCL	1018	$ 120,000.00
20-Dec-21	Payment to RD for GCL	1026	$ 150,000.00
24-Apr-21	Payment to RD for GCL	1033	$ 50,000.00
5-May-12	Payment to RD for GCL	1036	$ 350,000.00
6-Aug-15	Payment to RD for GCL	1069	$ 200,000.00
11-Jun-12	Payment to RD for GCL	1038	$ 30,000.00
6-Jul-12	Payment to RD for GCL	1042	$ 30,000.00
16-Dec-14	Payment to RD for GCL	1059	$ 30,000.00

[95] See paragraph 214 above.

Date	Transaction	Cheque Number	Amount
7-Feb-17	Payment to RD for GCL	1087	$ 750,000.00
	Monies to be repaid from GCL:		**$ 2,210,000.00**

229. Having reviewed these figures and cross referencing to the pages in the bundles for each transaction and placing that in the context of the surrounding evidence of the husband and Mr. Culbert and Mr. Hislop, I am satisfied that the husband has established that these were loans provided by R & R and utilised for the running of GCL. I have reached that decision even after considering the wife's concerns set out in paragraphs 224 to 2027 above. Although the loans without interest terms from R & R may not have been set out in formal loan agreements or recorded in minutes, I accept the evidence that the arrangement between the husband and his R & R business partners was a flexible one with an informal approach adopted by them. I prefer the husband's evidence over the wife's blanket contention that there were no loans. These loans totalling US$2,210,000 will need to be paid back to R & R and, therefore, when I calculate the value of funds left for R & R, this will be taken into account.

230. Turning now to the other purported loans also made to GCL. There is an alleged loan of US$31,606.32 (rounded up, CI$26,339) from **Rosedale to GCL**. There is no satisfactory documentary evidence to corroborate this loan. There is a cheque in the sum of CI$26338.60 dated 22 March 2019 which is described as being *"Tag-Mazourca South Sound Development"*. This and the surrounding contentions are not enough to satisfy me that this cheque was a loan for GCL. The wife highlights that there is a record of a loan to *"Choppy*[96]*- RBC/Rosedale Expeditors"* being repaid at closing of $322,276 and the wife understandably states that one would have expected the smaller loan, if it actually existed, to have been paid at the same time. I am not satisfied on the material before me that the existence of this purported loan from Rosedale to GCL has been established.

[96] Choppy is the husband's nickname.

231. There is also a purported loan of $1,298,060.60 from **7 Mile Holdings** to GCL listed in the updated schedule. It was not listed in the husband's Advances Schedule dated 04/20/20 as being an advance made to the husband. The husband states that this relates to the proceeds of land purchased in 88 South Sound, which is said to have been injected into GCL on 3 March 2014. The wife contends that such a liability does not and cannot exist, because 7 Mile Holdings ceased to exist in 2015. If any "repayment" was made to 7 Mile Holdings it would in reality be a payment made to the husband. The wife says that the money was the husband's share of the proceeds of sale and was a final company dividend and that he paid the money into the parties' matrimonial joint account. The funds were then taken from the parties' account and used for various payees. In fact, the wife refers to the husband's evidence mentioned above where he stated that not all the proceeds of sale were placed into the GCL account as US$400,000 was transferred to the wife's sister as a loan to her. She rightly states that the husband still seeks to have a set-off for the $400,000 loan to the sister and still says that the full $1,298,060.60 was lent to GCL.

232. The husband has failed to establish on the balance of probabilities that these sums were a loan from 7 Mile Holdings. His evidence is too vague on the issue and in parts inconsistent. The sums were paid into the parties' joint accounts and then became, and there is evidence to show, that they were treated as being a joint matrimonial asset. 7 Mile Holdings no longer exists and unlike the other companies to which the husband contends that he has a liability there would be no obligation to refund that entity. I am not satisfied that this is a liability that GCL is required to meet from the proceeds that are held in the GCL accounts.

233. In relation to the two **East End properties** set out the liability section of the GCL Company Value Schedule, as mentioned at paragraph 189 above, I am satisfied that these were non- matrimonial assets and that the sums from the sale of the properties were injected into GCL to try to keep the hotel running. It is just and fair for that reimbursement of $134,524 be made to the husband and that it should be included as a GCL liability to be repaid before distributing the balance in GCLs accounts.

234. The husband said that $2,158,747 was owed to **La Pehna Construction** that was also discussed at the Board Meeting and that, as he is the 100% shareholder, he would be taking that loss. The husband states that this business was a sole proprietorship established in 1990 and that it no longer exists. He says that it has outstanding debts of $2.1M owed to it from GCL which are not going to be repaid and is a part of the burden that he will have to bear flowing from his GCL losses. Despite saying this, the husband does not categorically state that he is abandoning any claim. The wife comments in relation to the La Pehna entry, that La Pehna is the husband's "trading as" name and, therefore, to the extent that any payment would be made, it would be a matrimonial asset. She rightly adds that no relevant financial information and accounting has been provided. Having regard to all the circumstances, including the husband's confusing stance in relation to it, I am satisfied that this purported debt to La Pehna Construction is not one that should form a part of the calculations in these proceedings.

235. Having regard to my above conclusions, I find that pre-liability deductions that GCL has a valuation of US$4,597,798. I also find that the following are loans that must be repaid and deducted from the above figure before being distributed to the parties:

(i) R & R US$2,210,000; and

(ii) East End Properties US$ 134,524.

The balance left is US$2,253,274. Each party has a 50% interest and therefore is entitled to receive $1,126,637 from the proceeds of sale being held in the GCL accounts.

The Business Asset - R & R

236. R & R Expeditors was established in 2002, two years before the marriage. The husband owns 50% percent of the company and Julie and Renee Hislop own the other 50% between them. The business was formed to develop industrial land known as CayMarl in a two phased development, with the first phase taking two years and then a request made for the second phase to be undertaken. A large portion of the developed land was given to the developer and R & R Expeditors kept a portion as payment for the completion of the Rosedale project. The husband initially stated that CayMarl was completed in 2003 and produced just over $7M gross in land, this land being three

retained commercial lots[97] at CayMarl industrial. However, he later accepted Renee Hislop's evidence that the project was completed in late 2004/2005. He conceded that:

(i) he was on the site working on the project in 2004;

(ii) the work could have gone on until 2005;

(iii) on completion, the undeveloped land would be taken as payment; and

(iv) he had shown the wife and her parents around the project in around July 2004.

In August 2006 CayMarl made the payment to R & R's work on completing on the project when it transferred the three parcels of land and the value for stamp duty purposes placed on them was CI$706,500. I am satisfied when the parties married R & R was only involved in a part-performed CayMarl contract which was nearing completion.

237. The husband states that in 2009-2010 the company purchased a building with the proceeds of a $1.8M loan from Cayman National Bank which was renovated into two rental apartments and the Tropical Centre commercial rental space. That was sold in January 2017 and the husband states that the proceeds were used to pay back the bank loan as well as the renovation costs and debts, leaving some profit.

238. Although the wife agrees that R &R was established prior to the marriage, she disagrees with the husband about its status as she contends that it has become a matrimonial asset due to *"post-marital endeavours"* and the "*co-mingling of assets"* and because the husband spent a great deal of time working for R & R for no salary during the marriage.

239. This is a company that was established prior the marriage to develop CayMarl. The funding that came into R & R came from non-matrimonial assets. At the time of the marriage the project was reaching the end of completion, the endeavour having being performed prior to the marriage. The three remaining pieces of land owned by R & R were acquired prior to the marriage from pre-marital resources. Even having regard to the circumstances set out in paragraphs 236 and 238 above this is not a business which has been actively developed during the marriage. The primary *"co-mingling"* appears

[97] Parcels 19A 57, 58 and 73. It appears that CayMarl transferred these parcels in August 2006 and that they were at the time valued for stamp duty purposes at CI$706,500. The husband stated that he did not receive a salary for his work on the project and that the payments were the transfer of the 3 parcels.

to be the injection of significant sums to try to preserve the parties' GCL asset. This and the 2009 property purchase funded by a loan is not sufficient to convert this non-matrimonial asset into matrimonial asset.

240. Despite making this finding, for completeness' sake, I will comment on some of the valuation issues due to the overlap with some other areas. I need not reach a conclusion about R & R's valuation. The husband alleges that a large number of loans were made by R & R to fund other personal and business ventures. Following the hearing, the below abridged version of the business asset schedule was filed in relation to R & R**.** The schedule contains details concerning the value of the remaining parcels of land owned by R & R which the wife says is CI$1,471,896.38 and the husband says is US$1,471,896.38. It also contains the husband's contentions about the loans. The valuation assumes the reallocation of funds from either the husband or GCL where the husband says the original funds derived from loans.

Date		Cheque Number	
Produced 8-Aug-21	2020 R&R Valuation	N/A	$ 1,471,896.38
10-Oct-11	Buffa Loan for Land Purchase	1012	$ 2,070,006.00
Oct-11	Buffa Loan for Stamp Duty	N/A	$ 362,251.05
Various	Total of a number of Payments to RD for GCL[98]		$ 2,210,000.00
19-Oct-15	Pasadora Unit 29	3856	$ 120,000.00
27-Feb-17	Pembroke Pines	Wire	$ 200,000.00
21-Dec-17	North Sound Loan Repayment	Draft	$ 295,006.00
		Total:	**$ 6,729,159.43**
		Husband's 50% Share:	**$ 3,364,579.72**

241. The Schedule states that the total of the funds lent or reallocated are $6,729,159.43 and that the husband's share of that is $3,364,579.72. In the Schedule, the husband contends that GCL is to repay a total of $2,210,000 and I have found that to be a correct assertion.[99]

[98] Full list of the RD payments to GCL which were set out in the R & R Company Value Schedule is at paragraph 228 above.

[99] See paragraph 235 above.

The wife agrees Buffa was established with the proceeds of the loans in the schedule from R & R.

242. The husband contends that his share in R & R was valued at $850,670.59 at the point of separation, decreasing to $736,464.20 in 2018 and increasing to $3,364,579.72 at the time of the hearing if the loans from GCL are repaid to R & R. If those loans are not repaid, then the value of his share would be reduced to $735,948.19.

243. The wife contends that it is *"implausible"* for a company like R & R to make loans of the size relied upon by the husband in the manner set out above as the three parcels of land are non-income producing and, for example, could not have generated sufficient income to lend Buffa around $2.5M in 2011. She deduces that profit from the sale by R & R of the land at WBBS 19A 28 in 2011 is what enabled R & R to fund Buffa's land purchase and other of the husband's endeavours. That Parcel was purchased in May 2005 for CI$1,740,000 and sold for US$5,312,195, and it is contended that this is a product of marital endeavour. If the wife is right in her deduction, I am satisfied that the purchase of WBBS 19A 28 was very close to the parties' marriage date and that the sums used to purchase it were non-matrimonial. Therefore, the wife's contention does not change my above expressed view that R & R should be viewed as being a non-matrimonial asset.

244. The wife accepts the $1,471,896 valuation figure shown in the Schedule as the Cayman Islands dollar value of the three remaining parcels of land owned by R & R[100] and contends that is the appropriate valuation for the company, with 50% attributed to the husband. Therefore, she states that the valuation of the husband's interest in R & R is CI$735,948. In relation to the company's pre-marital value, the wife says that this should be done by using the $706,500 figure and then establishing the extent to which that sum was as a result of:

(i) endeavour that occurred between June 2002 (the date of formation) and May 2004 (the date of the marriage); and

(ii) May 2004 to August 2004 (the date of payment for services).

[100] Parcels 19A57, 19A58, 19A73.

The Business Asset - Buffa

245. Buffa Ltd was established in 2010. The husband owns 50% of the company and Renee Hislop owns the other 50%. The parties agree that Buffa was established with the proceeds of a US$2.5M loan from R & R. Buffa was set up to buy, develop and sell, after subdivision, a large piece of land. The husband worked hands-on on this project for extended periods of time. Buffa purchased a parcel of land in 2013 using that loan and sold 39 lots between 2015 and 2019. The husband contends that US$650,000 of the loan has been repaid and that US$1.85M is still owed. He states that to call in this loan would place Buffa in difficulty, so R & R is prepared to wait for the loan repayment in the sum of US$1M from the sale of the Grand Caymanian and from capital appreciation from three unsold lots. The cost for the lots of land and development was around US$11M. The sales realised about $14.5M gross and $13.1M net after commissions. The husband states that a loan of US$1M was made to GCL. In the GCL Company Value Schedule he puts the loan figure at only $650,000. When dealing with GCL's liabilities at **paragraph 223** above I found that the husband had failed to satisfy the Court about the existence of a Buffa loan to GCL.

246. The husband contends that his share in Buffa is a non-matrimonial asset as the venture was funded by non-matrimonial assets. The company received an almost $2.5M loan from R & R, which I have found to be non-matrimonial. The wife disagrees that this company, which was established in 2010, is non-matrimonial and states that the largest element of the funding came from a matrimonial asset, a Butterfield Bank account. She contends that, in any event, if money was lent to Buffa from a non-matrimonial asset which has to be repaid or which has been repaid does not convert the matrimonial asset into a non-matrimonial asset. It has already been set out that the R & R still retains the three pieces of land that it received as payment for its CayMarl project and the wife, therefore, argues that the if R & R did lend the money then it must have been generated during the marriage by marital endeavour. However, in relation to these submissions made by the wife, I have found herein that R & R is not a matrimonial asset generated by matrimonial endeavour.

247. Although Buffa was established during the marriage, I am satisfied that its funding came from a non-matrimonial source and I regard it as being a non- matrimonial asset. Having made this finding I, need not, and do not intend to go on and make a finding about the valuation figure for Buffa. However, I below briefly set out each party's contention about the valuation figure as a part of the review of what the parties state are their global financial circumstances.

248. The husband states that the Buffa assets total $3,397,169.09, but he contends that it has loans of $2,432,257.05 leaving a balance valuation of US$964,912.04. The husband says that his net equity figure is 50% of that total, namely $482,456.02.

249. The wife characterises Buffa Ltd as being a one venture company, which purchased the large piece of land in late 2011 (not 2013) for US$2.5M. She agrees that the company developed and subdivided the land and sold 39 of the resulting loss of land, but she says that was between March 2016 and March 2018. The wife states that, once subdivision and planning were in place, between October 2014 and March 2060 the company borrowed a total of $5,052,761.79 from Butterfield Bank. The wife states that loan was fully paid off by 2 August 2016 from the proceeds from the land sales and agrees that Buffa retained three of the parcels. She has a very different view as to how one should determine the valuation of Buffa, submitting that the *"pragmatic"* asset basis approach used when analysing the other companies would be the wrong one to adopt for this particular company as it would grossly undervalue the Buffa profits. Following the hearing a Buffa Company Valuation schedule was filed by the wife and I do not intend to go through that Schedule herein.

250. The Buffa Company Valuation Schedule sets out the wife's valuation of $7,699,745.45 with the husband's interests being valued at $3,849,872.73 by the wife.

The Business Asset - Rosedale

251. Rosedale Expeditors was established pre-marriage, around 2001/2002 by the husband and Rene Hislop[101] to progress the incomplete Rosedale Apartments Development. The

[101]Mr. William Culbert was later added as a 10% partner.

project was completed in 2002, again pre-marriage. The initial agreement was that payment for Rosedale Expeditors' involvement was 50% of the remaining undeveloped land adjacent to the completed apartments. This was changed to another piece of land in a second development agreement, and that land is the CayMarl land (industrial area). The husband states that in 2003 he, Rene Hislop and Billy Culbert developed warehouses on that land, and this was completed before the marriage.

252. The wife states that Rosedale purchased Parcels 19A 44 and 45 from CayMarl for CI$160,024 and CI$160,576 in May 2005. These figures were accepted by the Department of Lands and Survey for stamp duty purposes and the wife says that it would be wrong to treat them as being transfers at an undervalue to represent the value of Rosedale's involvement with the development of CayMarl's land. She said that Rosedale then combined Parcels 44 and 45 into Parcel 19A 50 during the marriage in September 2005 and that the warehouses were built on this parcel. She, unlike the husband, argues that the value of Rosedale should be considered as being a matrimonial asset,

253. The husband states that the warehouses were sold in 2019 to cover debts (including Smith Road which was developed by Rosedale and Hudson Ltd), which negatively affected the balance sheet because the assets went down. Mr. Culbert stated that there were 12 warehouses and that four of them were sold for $160,000 each, and that the remaining eight were sold on 18 December 2019 for a total of CI$1,600,000. Mr. Culbert said that he sold his four units in the 18 December sale, and that he realised $800,000. He said that the husband and Mr. Hislop each sold units in the first sale and another two each in the 18 December sale. He also said that the owners received $4,200 per month as a dividend share from rent, once the loan was paid off.

254. Although Mr. Culbert in his evidence stated that there was nothing left in Rosedale after the warehouses were sold, the wife accepts the husband's interest in Rosedale should be valued at his conceded sum of CI$653,880. However, the closing submissions for the husband state that on information received by the husband from the company accountant, that post-sale of the company assets and the discharge of the debts the total company value is $1.4M. It then adds that the husband's 33% share of that is $466,667. The

husband's case is that his share of Rosedale at the point of separation was valued at $214,738 increasing to $653,880 due to the $322,276 repayment of a loan from GCL. However, I have found at **paragraph 230** above that the husband did not satisfy me that there was a GCL loan owed to Rosedale.

255. A separate a Business Asset Schedule was not filed in relation to Rosedale after the hearing.

256. I am satisfied that Rosedale was established pre-marriage and that its primary project was completed pre-marriage and that it should be treated as being a non-matrimonial asset.

The Business Asset - MCR Group

257. The MCR Group was set up in 2005, during the marriage, for the purposes of land development and sales. The MCR Group is made up of three companies AIP, TPC and MCR, some of which hold debts and some of which hold assets.

258. The MCR Group is an asset on the balance sheet of the R & R and Rosedale companies in which the husband has been a partial shareholder since their inception in 2002. The husband is not a listed shareholder in the MCR Group. The husband owns 33% of Rosedale in his name and 50% of R & R. AIP is owned 50% by Rosedale. TPC is owned 60% by Rosedale. MCR is owned 50% by R & R Expediters. In total, R & R and Rosedale hold a 45.37% shareholding in the MCR Group combined.

259. The husband stresses that it is the two companies (which he says are non-matrimonial) and not he who are shareholders of TPC or AIP. He emphasises that the companies who are the actual shareholders were established pre-marriage and therefore they should be regarded as being non-matrimonial assets. I have found that those two companies are non-matrimonial. The MCR Group is not a matrimonial asset.

260. The wife argues that MCR is matrimonial and that the husband's interest represents his marital endeavours which generated assets for MCR. The wife submits that the fact that the shares are held through Rosedale and R & R does not change this, as the mingling of

funds results in a *"matrimonialisation"* of Rosedale and R & R. I do not agree with the wife's submissions.

The Business Assets - Manna Holdings

261. Manna Holdings was established in 1992 to deal with Pine Lake Apartments and it holds one asset. The husband states that it is a *"pretty inactive"* company. The husband contends its net equity position is valued at $103,660 and that figure is reached by adding the annual net rental income generated to the property value. The husband says that it was agreed that this was a non-matrimonial property and that the Court was not asked to make any determination about the asset at the hearing. However, the wife argues that it is matrimonial as the husband, during cross examination, conceded rental income from the properties owned by Manna Holdings was used to support the family and that the wife helped with the collection of the rent.

262. Although this asset was established well before the marriage, I am satisfied that this should be treated as a matrimonial asset. The wife has actively assisted with the running of this business by assisting with the collection of the rent and the income from the property has been directly used to support the family. It has a value of US$103,660 which is subject to equal division in the calculations.

The Business Assets - Christian Brothers Ltd

263. Christian Brothers Ltd was established in 1995 and was associated with the Windsor Park Apartments. The husband owns 50% of it.[102] The Company owns 50% of the land on which the Windsor Park apartments and three other apartments are located. The husband stated at paragraph 104 in his affidavit sworn on 15 April 2021 that its total worth is $297,500 and it has no debts. The value is reached by adding the value of the land to the money in the bank which is used to maintain the property which comprises the concrete buildings. Temporary structures were built on the land in September 2004 (following Hurricane Ivan) and the husband states that he is solely responsible for their maintenance and the cost of that is met from the rent received. Some income is received from those structures and the husband accepts that the structures are matrimonial assets which he

[102] His partner passed away and that person's interest passed on to Mrs. Sharon Smith, his surviving spouse.

values at $60,000 if they were sold and moved from the land. However, he does not accept that due to the later build of the temporary structures that the company becomes a matrimonial asset.

264. The annual net income stream from this business is put at CI$20,400 per annum, and the husband's 50% share is CI$10,200 (US$12,142.86).

265. The details provided by the husband were consistent with the evidence in Mrs. Smith's affidavit sworn on 11 August 2021. Mrs. Smith stated that she thought that there was about $185,000 in the company's bank account but that the monies are left there in case of any large maintenance costs. Mrs. Smith stated that neither she nor the husband withdraw money from that account and neither takes a salary. She added that the temporary buildings are in bad shape and that that the rental income from them goes to the husband which he uses for maintaining those buildings.

266. The wife, like with Manna Holdings, argues that it is matrimonial as the husband, during cross-examination, conceded rental income from the properties owned by this company was used to support the family and that the wife helped with the collection of the rent. She says that her evidence that she collected the rent and took care of utilities and other property management tasks in relation to the properties owned by Christian Brothers Ltd was not challenged.

267. I treat the husband's interest in the only asset held by Christian Brothers Ltd, namely Windsor Park, as being matrimonial. I view the husband's interest in this property in the same way that I view Manna Holdings.

The Business Assets –Tiremaxx, Caymera International, Designcraft Ltd and Noriva Ltd

268. The husband indicates that these businesses were established in the period since the breakdown of the marriage and separation and should be considered as non-matrimonial assets. The wife criticises the lack of financial disclosure about these businesses and states that they:

"demonstrate his on-going ability and desire to generate income and wealth".

269. Tiremaxx was established in 2018 and is a tyre repair and replacement store with two employees. The trade and business licence for the business is owned by the husband. The husband states that his net equity position in the business is derived by adding the current bank account balance to the value of the inventory on hand and totals $34,868.50.

270. Caymera International was established in 2018 and has no value.

271. Designcraft Ltd was set up in 2020 to manage a commercial and residential property. The husband owns 33% of the company and he stated in his affidavit sworn on 15 April 2021 that the company was in negotiations with a bank to finalise borrowing of US$2,771,084 in order to purchase the building that it was managing and paying rent for. When he gave oral evidence at the hearing on 17 August 2021 the husband stated that they had purchased the building for around $2.1M. The husband states that the value of the business is $35,901. He said that his partners did not agree to share any information from the company's balance sheet.

272. Noriva Ltd is a new land holding company. The husband has no business partners in this company. The husband states that Noriva borrowed CI$739,000 on a facility of CI$739,000 loan with Cayman National Bank, post-separation, in January 2021 to purchase, for CI$739,000, a residential property on an approximately one-acre plot of land for conversion into apartments. The wife questions the ability of the husband, being 61 years old, to borrow $1M from the Bank without obtaining security of over $1M. In the absence of disclosure about the loan documents and about the funding arrangements, the wife invites the Court to conclude that the loan is secured against other assets and that those assets may be matrimonial thereby making Noriva a matrimonial asset.

273. The husband states in his Affidavit sworn on 15 April 2021 that his net equity position is derived from the land value (CI$610,000) plus $100,000 to discharge a charge, plus legal fees stamp duty fees and other ancillary expenses. He states that the project will cost in excess of $1M and that he will need to take out additional borrowing and that if he liquidated at this stage it would be a loss making venture. The husband puts the value

of this business at minus US$390,000, due to it carrying a loan for renovations which is larger than the land purchase. The land value was assessed at US$1M for the purposes of stamp duty and this figure, coupled with the husband's evidence about the pre-purchase valuations obtained, satisfies me that the land should be valued at US$1M and that after the company's debt is taken into account that the value of the asset is US$320,786.90. I am unable to find on the evidence before me that the wife's assertion that loan Noriva took out is secured against matrimonial assets.

274. I am satisfied that the post separation businesses, namely Tiremaxx, Caymera International, Designcraft Ltd and Noriva Ltd should all be treated as non-matrimonial assets.

Summary of valuations of the businesses to be treated as matrimonial assets

275. The shareholdings in businesses that I have found to be matrimonial assets are GCL, Manna Holdings, Christian Brothers Ltd.

276. The valuation of GCL was heavily disputed. Following my analysis conducted at paragraphs 211 to 235 herein I determined that the valuation of GCL to be US$ US$2,253,274. Each party has a 50% interest in that which amounts to US$1,126,637.[103]

277. The husband puts the valuation of Manna Holdings at US$103,660.80. The wife puts the valuation at US$123,495.71 (CI$103,660.80). On the submissions received and the evidence submitted it is unclear why the wife is now saying that the $103,660.80 figure (which was the US$ figure at the outset of the hearing) should now be changed to being a CI$ figure rather than CI$. I accept the husband's valuation. I am satisfied that having regard to the principle of equality that each party has an interest amounting to US$51,830.40.

[103] In the comments submitted after the draft Judgment was circulated The husband rightly points out that the husband and wife has a 25% shareholding in GCL. He goes on to claim that there is an agreement that the finds will be used by the husband and wife and Mr. and Mrs. Nixon, and upon that basis the Nixon's will not make a claim against the sums left in the account. I have not found that there was such an agreement including the wife and that is why there is a 50% interest mentioned in paragraph 276.

278. The valuation of Christian Brothers Ltd is also disputed. The husband values the business, in which he and Mrs Smith each have a 50% interest, at $595,238. He rightly says that it is not challenged that the building on the property are in a poor state of repair. The husband states that his 50% share is US$297,500. The wife value the business at CI$1M with a valuation of CI$800,000 for the raw land and CI$200,00 cash at the Bank. She therefore puts the husband's interest at CI$500,000. The Court has been placed in a difficult position by the parties as there are no land valuations to assist the Court to determine the value of the land held by the business. This absence may be because prior to the hearing the wife appeared to agree that this was a non-matrimonial asset. As mentioned earlier, the Court has throughout these proceedings had to try to grapple with the parties shifting their positions and changing their submissions, this is another example of the problems that are caused by such an approach. The wife states in a footnote in the Net Equity Position: Companies Schedule that her land value figure is based upon the size of the parcel (0.91188 acres) and the valuation of similar parcels in these proceedings. From my review of the evidence I am unable to find those other valuations. In such circumstances and in the absence of a valuation report, I find that the husband's figure that was in the pre-trial evidence and not properly challenged with counter evidence during the hearing, should be treated as the valuation figure. I am satisfied that having regard to the principle of equality that the husband's net equity position is US$297,500 and each party has an interest amounting to US$148,750. I imagine that when the parties come to allocate the assets, having regard to Mrs. Smith's expressed reluctance to work with the wife, that this business should remain with the husband (and Mrs. Smith) and the wife's interest can form a part of the calculation when dividing the wider assets.

279. This means that from the businesses the matrimonial pot has the amount of US$2,505,685** for equal division.

Division of Personal and business assets

280. Having reviewed the personal assets and the business assets and having determined their value and what assets should be reviewed as being matrimonial assets, I have considered whether I would be able, on the submissions before me, to make orders specifically

allocating each asset. I have noted the Schedules which contain the views of, in particular the husband, as to who should retain certain items. However, I agree with the following view expressed by Mr. Kennedy when he stated at the final paragraph in his detailed written closing submissions:

> *"Given the extreme differential in positions, a division is in our view impossible to sensibly propose at this time and a ruling on the extent of the matrimonial pot is in our view a pre-requisite to such division."*

281. I have herein expressed some provisional views about who should retain certain assets but feel it would be wrong for me to dictate to the parties what they should do with the large number of other assets. I feel that it would be wrong and impracticable for this Court, at this stage, to impose on the parties orders specifically allocating the items of property. The parties should first be provided with an opportunity to sit down with each other and try to decide who should retain which asset and tailor the allocation to their needs and personal wishes (which may be influenced by an emotional attachment to a specific asset or be influenced by the practicalities about who is able hereafter to manage/maintain a particular asset). The parties will now be better placed to conduct such an exercise, because I have made findings about the extent of the matrimonial pot which should be distributed equally. If they are unable to agree to a division between themselves, then I strongly advise that they utilise mediation to try to resolve the issue to keep the troubling growth of the level of legal fees at a minimum. If they are unable to agree on the allocation of assets in a non-adversarial manner, then they will need to come before the Court and assist the Court by making the related submissions which are not before the Court at this time on the issue, thereby putting the Court in a position to enable it to make informed orders for distribution.

Spousal maintenance

282. In his Skeleton Argument, the husband made very brief submissions about child and spousal maintenance. He argued that this was not a case for ongoing spousal maintenance. He rightly submitted that the Court would be required to determine the level of the parties' needs, the children's needs and whether the parties can meet their own needs from the assets available to them, before deciding whether a sum of

maintenance is required to meet needs and if so whether that sums should be capitalised. He rightly added that considering the extent of the parties' assets in this case and the apparent likelihood that they could be divided to meet needs, this primary division should be the Court's paramount concern.

283. The husband in his closing submissions correctly again highlights the obligation on the Court to try to make an order that enables a clean break. He reiterated his view there are sufficient assets to meet both the wife and the children's needs fairly from sharing the matrimonial resources. He acknowledges that, if the Court disagreed with him, there may need to be a top up to meet the wife and children's needs. The husband says that the Court could, in such circumstances, delve into the non-matrimonial assets to the extent that the wife's needs require, but he believes that such a course would be unnecessary and overly punitive.

284. No detailed opening or closing submissions were made by the wife in relation to spousal maintenance. She did highlight the difference in the income potential of the parties. The wife has not been independently employed since the commencement of the marriage and there is uncertainty about what income capacity would be. She is only 51 years of age and has experience at secretarial and management levels, so she is recruitable. I have insufficient information from either party about the type of income that the wife could earn if she sought employment after an almost 20 years break. There is also uncertainty about which country she might reside in post-divorce (i.e., Cayman, China, UK or USA) and this might well impact her ability to work. The husband's income potential appears currently greater than the wife's. However, again, there are no detailed submissions concerning that. The nature of his business dealings and his entrepreneurial talents mean that he has the capacity to generate a good income despite his age. As I have given the parties the opportunity to now consult with each other as to how the relevant assets should be allocated in the context of the findings that I have made on the extent of the matrimonial pot, they may see great merit in exploring how income generating property may be allocated to the wife to generate some income for her which may end or reduce the need for any spousal maintenance and possibly enable a clean break on an equal division of the matrimonial assets.

285. The parties hereto have been unable to make informed submissions about spousal maintenance and about how a clean break could be achieved. This is understandable, as hitherto there has been great uncertainty about the extent of the matrimonial pot due to the parties' very different positions concerning the approach to assets and what capital they should receive. This includes uncertainty about the division of income generating capital. Both parties in their brief written submissions relating to maintenance recognised that the issue of periodical payments was intrinsically linked with how the relevant assets are divided.

286. Having reviewed the evidence and the submissions, although primarily striving and wishing to try to give finality to the parties, I have thought long and hard about whether I am in the position to determine whether this is a clean break case or to decide what spousal maintenance order could be made. Regrettably, on the material before me I am unable to determine that issue in an informed manner. Now that the Court has made findings about the assets in the matrimonial pot, if the parties are able to divide the assets in such a way that those allocated to the wife will generate sufficient income for her, then this will likely be a clean break case with an equal division of the matrimonial assets. If an equal asset allocation is such that, even with investments being made by the wife from the assets she receives, there remains insufficient income for her, then consideration may need to be given as to whether there should be some spousal maintenance. This is something the parties should have in mind when hopefully sensibly discussing how the assets should actually be allocated. I would again urge the parties to also engage in mediation to resolve maintenance issues if they are otherwise unable to agree it in the negotiations between themselves. In their discussions, despite my findings, it would still be open to the husband to suggest dividing the assets by giving the wife a slightly larger percentage to achieve a clean break, especially if the properties to be allocated to her on an equal split would not generate sufficient income to meet her needs.

287. If there still remains an issue about spousal maintenance which cannot otherwise be resolved, then the parties will have to come back before the Court with an updated schedule of their income and outgoings. The Court would then be in the position to determine whether there can be the desired clean break or whether a spousal maintenance

order is necessary. The Court would hopefully be able to consider that with knowledge of what assets have been allocated to each party and what income those properties may generate for each party.

Child maintenance

288. Little or no time was spent on this issue in the oral evidence or submissions presented to the Court. This was not dealt with in the skeleton arguments or in the closing submissions save for the wife indicating she:

> *"seeks an order that the children be provided for until they complete their third level of education."*

There appears to be no dispute between the parties that they wish the children to undertake tertiary education. If that is in the United States, this is likely to last four years. The husband has not indicated that, if a child maintenance order is made, he would agree for it to remain in place until that time.

289. Section 22 of the Matrimonial Act under the heading "duration of periodic payments" provides:

> *"22. (1) Where an order is made under section 21 for periodic payments such order, unless varied by the Court, shall remain in force in respect of payments to a spouse, until the remarriage or death of such spouse and in respect of payments for the benefit of a child of the marriage until the death of such child or until such child attains the age of sixteen years:*
>
> > *Duration of periodic payments Provided that in the case of payments for the benefit of a child of the marriage, the Court may extend the period of such payments so long as the child is receiving education and is under the age of twenty-one years."*

290. In relation to the duration of child maintenance, parents who foresee their child going into tertiary education ordinarily submit ancillary relief consent orders containing a provision that child maintenance is to be paid until 18 (usually when they finish high school) or until the child ceases full time education (up to the age of 21). This prevents the need for them to come back to Court, although they may of course apply to vary the

level of maintenance as and when the child's or their circumstances change. However, in ***K v K*** CICA 3 of 2017, where the children were young and it appeared that the husband didn't agree with the date being until aged 21, Sir John Goldring P highlighted at paragraph 40 that the Court must exercise a discretion and that in that case:

> *"If the children's education continues outside the Cayman islands after they are 17, orders in their present form until 21 are not appropriate. However, that having been said, the orders can always be amended to reflect any changes in circumstances, whether by agreement or by application. I can see nothing presently to be gained by this court now interfering."*

291. Having regard to the President's above view expressed in ***K v K***, in the matter before me in which the husband is currently submitting that there should be no child maintenance order made, I am of the view that the maintenance order for the eldest child ("A"), who is due to start university in the Fall of 2023, should be extended until she ceases full time education or up until aged 21 (whichever is the later). However, that order is made on the basis that the parties may review the payment figure set in relation to that child when her university is known.[104] They may then agree a figure for her child maintenance or seek the assistance of the Court. In relation to the youngest child ("B"), who will be attending high school in preparation for university, the order for her will be made to last until she is aged 19 or ceases high school (whichever is the later). The wife can then apply to extend the maintenance order before the expiry date of the order having regard to the university plans for the youngest child and what her child related expenses will then be.

292. The wife filed an Affidavit sworn on 21 December 2022 in support of her Summons dated 21 December 2022. One of the orders sought in that Summons was an uplift for a global spousal/child maintenance figure to CI$10,000/month from the 15 January 2019 ordered amount of US$6,739. The existing order[105] had been made on the basis that the husband would be solely paying the children's private school fees in Grand Cayman.

[104] I am aware that the child is applying to universities in both the UK and the USA. It is clear from the order of Chief Justice Ramsay-Hale on 23 December 2022 where she direct the husband to apply for financial aid for university fees that the parties agree that the eldest child will go to university.

[105] The earlier order was a consent order which increased the previous order by US$1,000 to US$6,739.

US$6,739 remains the present interim global maintenance provision in place. I deem the payments to have been appropriate maintenance figures, they being primarily made having regard to the requirement for the children's best interests to be the Court's first consideration in a situation where the husband was clearly the dominant income earning financial partner and even though there had been capital transfers made to the wife by the husband. I find that it would not be appropriate to set-off the maintenance payments and make the wife account for them in the final ancillary order.

293. I note that the wife in her affidavit sworn on 21 December 2022, set out the details of her global outgoings figure for herself and the 2 children, which she said was CI$10,044 outgoing. She also set out the details of the universities to which the eldest child had applied. The level of the attendance costs for her college choices vary massively. For example, if her immigration status in Cayman is such that she can apply to UK as a domestic student, the annual tuition fees would be around GBP9,250 per year. This, plus accommodation and ancillary expenses, may well be more than the child's present school fees in Cayman. If she has to apply to a UK university as an overseas student, depending on the course, the tuition fees could be in the region of GBP28,000 to GBP35,000. This, even without accommodation expenses, will be more than the child's school fees in Cayman. If the child attends the type of prestigious college she has applied for in the US, for example Columbia, the all-in attendance cost per annum would likely be in excess of the US$86,000/year figure which is that college's estimated figure for the 2022/2023 intake.[106] This would be significantly more than the current amount being paid on school fees. Especially if financial aid is not forthcoming from Cayman (as that is unlikely to be offered by a US College for a non-US student), the parties will have to seriously consider whether they can afford that.

294. Although I continue the interim order that the husband continue to pay the high school fees for the children until they conclude their high school education (up to the age of 19, whichever is the earlier date), I am not in a position to make orders in relation to the university fees and ancillary costs:

[106] Cost & Aid | Columbia Undergraduate Admissions

(i) before the asset division (which I invite the parties to agree flowing from to my findings in this judgment) has occurred;

(ii) in the absence of updated details of the parties' income and outgoings once the income earning property division has taken place;

(iii) until offers of a place are made by any of the applied to universities and the attendance expenses are known; and

(iv) until the parties have had an opportunity to make informed submissions on the issue.

295. It does not appear that the husband has filed an affidavit in response to the wife's affidavit in support of her December variation Summons. When the Chief Justice considered the Summons, she adjourned the interim maintenance variation application to be heard at a later date. It does not appear that either party has since sought to restore that Summons. As the affidavit in support was filed post the ancillary relief hearing and because I have no affidavit in reply for the husband and because I have not received any submissions on the content of the Affidavit as well as on increase application, I do not rely upon the content of the same, save to make the general observations concerning it made above.

296. On the current very limited information before me and in the absence of sufficient submissions on periodical payments, I am going to continue the current global maintenance figure of US$6,739. This will ensure that the wife has significant income at this transition stage to maintain a home with the children whilst the parties agree the allocation of each relevant asset or until the Court determines that issue after hearing further submissions from the parties if they are unable to agree. If the parties sensibly divide the properties to enable the wife to generate some income this should be a clean break spousal maintenance case and hopefully the only figure that they will then need to agree or have the Court further deliberate is the child maintenance figure.

Summary of the Matrimonial assets for division

297. Having conducted the above review I have found that:

(i) G1The personal assets, as listed in the Asset Schedule and as summarised at paragraphs 195-196 herein that are matrimonial assets total **$7,224,992** for equal division; and

(ii) The business assets summarised at paragraphs 275-279 above herein that are matrimonial assets total US$2,505,685** for equal division.

Set-Offs/Add-backs

298. The husband seeks the following sums to be offset against any settlement of the assets:

(i) $177,121.24 - monies which the husband states were paid to the wife as settlement per an agreement they had reached about settlement and which wife, in her affidavit sworn on 9 March 2018, said could be taken into account when it comes to the final ancillaries;

(ii) $25,000 - The spousal support monies supplied to the wife and which she, in her affidavit sworn on 9 March 2018, said could be taken into account when it comes to the final ancillaries;

(iii) $5,365.06 - 50% of the Costs for valuation of assets;

(iv) $292,106 - Cost of maintenance expenses; and

(v) $5,000 - Estimate cost of translation of document form Chinese into English.

288. There is no dispute about the costs of the valuations and the costs of the transactions and therefore a total of $10,345 should be offset for those two items.

299. I have already ruled that the maintenance payments are not subject to clawback and therefore do not agree that there should be any set-off for maintenance expenses 2017-2021 (item (iv)).

300. Items (i) and (ii) are not agreed. The husband states that the $177,000 was paid on 3 February 2017 following a discussion between the parties with respect to settling the ancillaries. He states that the agreement was the time as that the wife would keep all of the monies that the parties had in China, including the $400,000 that had been leant to her sister and which had been repaid to the wife. He said she would also keep (i) the

balances of the over US$700,000 that he said she had transferred from 2013 onwards from their joint bank account; (ii) the home in China then valued at US1,200,000: and (ii) a further $500,000 that he would send her. He stated that the US$177,000 was the first instalment of the $500,000 payment. From the WhatsApp message exhibited to the husband's affidavit sworn on 13 March 2018, it does appear that the parties were discussing the $117,00 as being a part of a settlement that they were discussing at that time.

301. However, in the wife's Affidavit sworn on 9 March 2018 set out how the money received almost 5 years ago had been used. She stated that over $50,000 had been spent on legal fees in 2017, $31,000 had been spent on insurance/endowment payments, about $3,500 had been spent on her health insurance, $5,000 had been used for Cayman expenses, $65,000 were transferred to China and were used on household expenses, the running costs of the China home. She said that the $25,000 was a further interim payment of spousal support from the husband and that it was used to pay additional legal fees of $14,500, airfares to China and rent and deposits for her apartment in the Cayman Islands.

302. Although these payments at the time may have been considered to be part of the negotiations to a settlement, it is clear that the passage of time resulted in a part of them having to be used as to top up spousal/family support. In 2017 and 2018 the parties would not have expected the proceedings to have lasted as long as it has. The advice that they have received from their various lawyers over that time and the subsequent disclosure and the changing manner in how they have approached and argued their cases since then puts a totally different complexion on the case to the one that may have been envisaged by them back in 2017. The parties would not have expected in 2017 that they would have had to discharge legal fees at the disturbing levels that they have. The husband has been able to utilise some of the family resources and his readily available resources to pay towards his legal fees. I am satisfied that the wife, as she has shown that she did, should have been able to do so also. The character of these two payments in the circumstances that now exists and the way that the proceedings have developed can rightly now be treated as maintenance (that is how they were used save for some investing primarily

into endowments for the children) and therefore these two payments should not result in a set-off/pay back.

303. However, I feel that there should be a set-off of US$200,000 for 50% of the returned $400,000 lent to the wife's sister from matrimonial accounts.[107] Therefore, the husband is entitled to set off $200,000 as well as the $10,345 mentioned in paragraph 317 above. There is also a further $5,000 set off from the Chief Justice's order of 21December 2022 that CI$5,000 of the CI$9,430.50 one-off payment was to be on account of the Respondent's entitlement in the final ancillaries. There is there to be a total set-off of $215,345.

304. I remind the parties also of the costs orders that have been made against parties during these proceedings (for example see the costs orders detailed at paragraphs 14, 16, 43 and above).

305. The parties, if unable otherwise resolve them, have liberty to apply concerning any remaining issues which I have not been in a position to determine on the evidence presented and submission made in the Judgment, to include the allocation of the assets and spousal/child maintenance.

Legal Fees/Costs

306. Unless I hear from the parties within seven days of the delivery of the perfected judgment that they wish to make further submissions on the issue, I intend to make no order for costs.

Concluding observations

307. Although I had, when embarking upon the wide review which was required to prepare this Judgment, aimed to try to give the much needed finality for the parties by making determinations on all relevant issues, this has regrettably not been feasible on the evidence and submissions before me. I am frustrated that this is the position that I find myself in having spent so many hours reviewing the voluminous evidence. I am sure the

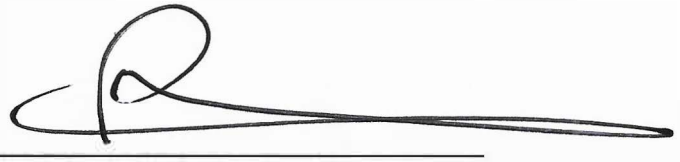
[107] See paragraph 189 above.

parties feel the same way. The preparation of the Judgment has required enquiry into an unusually large number of greatly disputed assets and the analysis of fundamentally different and changing submissions concerning the orders that should be made which have presented by the parties. I acknowledge that the parties have helpfully provided their views, with some limited agreement, concerning the allocation of some of the assets. However, I accept that, without the knowledge of which of the assets the Court finds to be available for division, the parties have been unable to make informed submissions about the allocation. As indicated above, I feel it fair and just to afford them the opportunity to try to reach an agreement/compromise about the allocation of the assets now that they have my findings.

308. I am unable to rule on whether there should be a clean break, but if there is a well thought out allocation of the assets (including income bearing assets) this arguably is something that could be achieved.

309. This is a case in which both parties are responsible for meeting the needs of the children and therefore there is a need for an ongoing child maintenance order. I am unable to ascertain the level of payment for a long term order prior to the allocation of the income earning assets and due to the lack of evidence concerning the parties' outgoings. The level of maintenance will soon also have to take into account the effect on the husband's income due to the level of university fees for the eldest child, which is currently very uncertain. That is why I have kept the interim order in place at this time.

310. I hope that the parties will embrace my suggestion that they first attempt to mediate any unresolved issues about the allocation of the assets and maintenance before again seeking the assistance of the Court.



Honourable Mr. Justice Richard Williams
JUDGE OF THE GRAND COURT