

1. This is the Petitioner Wife's (**the Wife's**) application for ancillary relief. Both parties are seeking a "clean break".

2. By her Open Proposal dated 17 April 2018, the Wife sought a lump sum award of HK\$2 million together with the transfer of a BMW car which the Husband had leased for her. This is no longer possible as the car has been repossessed by the lessor.

3. The Husband contends that there are no matrimonial assets.

Background

4. The Wife was born in 1981 and is 39 years old. The Husband was born in 1974 and is now 47 years old.

5. Both parties were originally from Australia. They came to work in Hong Kong and met at a conference in Singapore in June 2008. There is a dispute as to when the relationship began. The Wife says that their relationship began almost immediately or soon after they met. She alleged that she was cohabiting with the Husband by October 2008. The Husband, on the other hand asserted that the Wife was involved in a long term relationship with another banker at the time and that the parties only started dating in December 2008.

6. The Husband was an investment banker (specializing in real estate). In addition, he had various other investments, including real estate and stocks and shares. The Wife also worked in real estate at the time that

A they met. She had been operating a fashion business since 2006. This
B involved purchasing clothes from Shenzhen and reselling them to the
C Wife's friends in Australia.
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E 7. In late 2008 or early 2009, the parties moved back to
F Australia where they cohabited. In January 2010, the Wife started her
G University Degree in Chiropractic.
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I 8. The parties were married in Australia on 10 December 2011.
J There are no children of the family.
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L 9. After the wedding and in about February 2012, the Husband
M took up employment in Hong Kong. This was a short term role which only
N lasted for a year. The Husband then became the leader of the real estate
O department in a well-known private bank. He was made redundant in May
P 2014. According to his tax returns, the Husband had an income of
Q HK\$3,238,472 in 2012/2013, HK\$3,368,109 in 2013/2014 and
R HK\$1,968,839 in 2014/2015.
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T 10. In the meantime, the Wife remained in Australia to complete
U her University Degree. The parties began to split their time between Hong
V Kong and Australia.

11. The Wife came to live with the Husband in about December
2012, where she continued her University degree on a part time basis.
However, within 5 to 6 months of her return to Hong Kong, the Wife
informed the Husband that she wanted to return to Australia for her

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B Masters Degree full time. This would commence in January 2014 and
C would last for 2 years. The Wife returned to Australia in late 2013. Upon
D return to Australia, the Wife re-started her fashion business.

E 12. The parties separated in the latter half of 2014. The exact
F separation date is in dispute. The Husband alleged that the decision to
G separate was made in June whilst the Wife stated that this only happened
H in August 2014.

I 13. The Wife petitioned for divorce on 15 August 2014. A
J Decree Absolute has already been granted.

K 14. By the time of the trial, the Wife had qualified as a
L Chiropractor. She had a new partner and she gave birth to their child half
M way through the trial. She is now working in a private clinic owned by her
N brother on a consultant basis.

O 15. The Husband said that he was unemployed for quite some
P time. He is now the Chief Executive Officer of an Amusement Park
Q company. He also has a new partner and a child with her.

R *Disputes*

S 16. Apart from being and student and an investment banker, the
T parties were involved in a number of investments. Here lies the heart of
U the disputes between the parties.
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Commencement of Relationship and Cohabitation

17. The Wife says that their relationship commenced soon after they met and they were already in cohabitation in October 2008. The Husband says that the relationship only commenced in December 2008.

Breakdown of the Marriage

18. The Wife says that the breakdown was caused by the Husband's extra-marital affair. There were other allegations of unreasonable behavior. The Husband said that it was caused by the prolonged long distance relationship, the Wife's persistent refusal to find even part time employment, failure to contribute towards their expenditure and attempts to purchase luxury goods.

Date of Separation

19. The Wife says that the parties separated in August 2014 whilst the Husband said that separation took place weeks earlier, in June 2014.

The Wife's Fashion Business

20. The Wife had been operating a fashion business since 2006. This involved purchasing clothes from Shenzhen and reselling them to the Wife's friends in Australia. She started a similar business after they moved back to Australia. Initially, the business was operated as a pop-up store in hotel suites. Subsequently, the parties rented a property which was in excess of their needs, so that the Wife would have a shop in their home. The shop would be open every other weekend.

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B 21. Two companies were established to facilitate the operation of
C this business. A company called WDS was set up to open an account with
D a shipping company to ship the clothing purchased from Shenzhen to
E Australia. Another company called BHB was set up to sell the clothes in
F Australia. At the time, the business was called PB.

F 22. She admitted that Husband provided her with funds to start
G this fashion business in Australia. The extent of the funding was however
H in dispute. The Wife says that the Husband paid for the initial purchase of
I clothing (no estimation of the Husband's funding was given). She
J estimated the amount given by the Husband to be around AUD 10,000 to
K 20,000. From then on, the business was so successful that not only did it
L fund itself, it also generated sufficient profits to pay for their rented
M residence and a luxury lifestyle, including 5 star holidays 3 to 4 times a
N year, a lavish wedding and all living expenses.

M 23. The Husband asserted that he provided at least AUD80,000
N (in 2 tranches) as funding for the Wife's business. Not only did he pay for
O the purchase of the clothing, he also paid for the fitting out of her
P subsequent shop as well as the Wife's trips to Hong Kong and Shenzhen.
Q He denied that the Wife's business paid for their living expenses. To the
R contrary, he alleged that the Wife could barely make anything other than
S an immaterial contribution towards the rental of their home. He asserted
T that it was his income that was used to pay for all their expenses. He says
U that this business provided the Wife with a monthly income of about
V AUD5,000.

24. When the Wife returned to Australia in 2013, she re-started the fashion business in the name of BH. The Husband said that he provided the Wife with a further SAUD 40,000 for her business.

25. Shortly before the Petition, the Wife transferred her interest in the fashion business to her mother. She explained that she was too busy with her Master Degree and the business was in fact making a loss. This is not accepted by the Husband. He alleged that the Wife was still involved in the business and her interest was only transferred by the Wife in an attempt to enhance her claims in these proceedings.

26. The Husband also accused the Wife of failure to make full and frank disclosure. He said that the Wife had a number of undisclosed businesses registered under her name. There is also a company called FP which holds the lease to the fashion shop which the Wife alleged was transferred to her mother.

27. The Wife stated that those business registrations either related to the fashion business when the parties were still living in Australia or were inactive. She denied that she was still involved in the business.

The Husband's Companies

Disclosed Companies

EC

28. There is no dispute that after the parties' return to Australia in 2009, the Husband invested in a business venture known as EC. There appears to be no dispute that this investment was sold shortly prior to the

A marriage. There is no dispute that the Husband left this company in July
B 2011. Upon departure from EC, the Husband received a capital payment
C of AUD 1,688,500. Initially, the Husband stated that the “exit” from EC
D resulted in a loss of capital. He later stated that he left with a “marginal
E increase” in the amount of the initial investment. The Wife questioned
F the source of funds for this investment and the allegation that the Husband
only received a ‘marginal increase’ of capital.

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H 29. The Husband admits that he held 100% of the beneficial
interest (either directly or indirectly) in the following companies:

- I (1) PDGH;
J (2) PDP 1; and
K (3) MSH

L **PDGH**

M 30. This is a company incorporated in Hong Kong in 2012. It is
N not a trading company, but is a corporate vehicle used to hold investments.
O There is no dispute that it held about HK\$13 million of stock and shares
and those stock and shares were liquidated shortly prior to the Petition.

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Q 31. The Wife alleged that this HK\$13 million worth of shares has
R gone “missing” and accused the Husband of disposing of assets to defeat
S her claim. On the other hand, the Husband denied the Wife’s assertions
T and stated that the investment in shares was highly leveraged. The balance
U in PDGH’s bank account reflected the net position of his investments after
V the shares were liquidated.

PDP 1

32. This company was also incorporated in Hong Kong on 28 March 2014. There is no dispute that this was only used as an investment vehicle. The Husband was the holder of the only issued and allotted share in the company. According to the Husband, PDP 1 held 50% of the shares in MSH. PDP 1 was also used to channel funds from the parties' joint account to MSH.

33. On 25 November 2014, the Husband's share in this company was transferred to a BV1 Company called TCL. The Wife stated that MSH held the largest matrimonial asset, a piece of development land in Australia. The Wife alleged that this was also an attempt to dispose of assets to defeat her claims. By July 2014, shortly before the filing of the Petition, the PDGH account had a net position of HK\$8,353,443.29.

MSH

34. This company was registered in Australia on 25 March 2014. According to the Husband, PDP 1 held 50% of the shares in this company whilst the Husband held the remaining 50%. It was later demonstrated that only one share was issued and allotted. the Husband was the holder of that share.

35. This company was used to acquire a piece of development land in Australia. The Option to purchase was signed on 27 March 2014. The Option fee was AUD 5,000 and was paid on 2 April 2014 from the PDGH Account.

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36. The contract for the purchase of the land was signed on 14 October 2014. The purchase price was AUD 2.2 million. The deposit was AUD 220,000. The balance of the deposit in the sum of AUD 170,000 was paid shortly before the Petition. Settlement on the purchase took place on 26 November 2014 with AUD 744, 411.81 being paid through the PDP 1 account. The Wife says that all the funds used to pay for this purchase came from the parties' joint account. The balance of the purchase price in the sum of AUD 1,267,000 was financed by a mortgage.

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37. In May 2014, the Husband caused MSH to enter into a Deed of Call Option to dispose of the development land in return for an option fee and a percentage of the profits. The property was subsequently sold a later for over AUD 3 million. The Wife asserted that this alleged Deed of Call Option was a sham deliberately advanced by the Husband to protect what he regarded as his property. Alternatively, she alleged that the property had been sold at an undervalue. The Wife also accused the Husband of deliberate misstatements and failure to make full and frank disclosure.

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38. This is denied the Husband. He asserted that he did not have and never had sufficient funds to develop the property. There was no dispute that the parties were looking for investors from the outset. The Husband alleged that as a result of a change in legislation, he had no choice but to enter into the Deed of Call Option with the Grantee, as this was the only investor who would take on the project.

Suspected Interests in Other Companies

39. The Wife suspects that the Husband has substantial hidden assets. She has a theory that the Husband had engaged in an elaborate scheme designed to exclude her from making claims on a real estate development or to defeat those claims. The Wife's "theory" was heavily criticized by the Husband. He pointed out that those theories were based on:

- (1) "beliefs";
- (2) "non-acceptance" of reasonable and rational cogent explanations with supporting evidence;
- (3) "suspicions" and "assumptions";

40. According to the Wife, the following theories are "*at least possible*":

- (1) A theory of "concoction". A "*deliberately engineered*" scheme of moving money which prevented her from making an application to preserve the matrimonial savings;
- (2) A theory that the Husband was the "*ultimate beneficial holder of TPL*", suggesting that TPL was used to disguise the Husband, who in fact received the proceeds of sale of MSH's property;
- (3) A theory that the loss of investment in MSH was a "*fiction*" created by the Husband;
- (4) A theory that the Husband put up "*a convenient excuse*" to hamper the Wife's investigation into the sale of the property

by production of a redacted copy of the Deed of Call Option and not disclosing the identity of the Option Grantee;

(5) A theory that the Husband was “*heavily involved*” and had beneficial interest in a company called RPC, which is owned by the Husband’s friend, Mr. S;

(6) A theory that the husband had beneficial interests in a development called E Development and that the Husband acted as an agent of RPC;

(7) A theory that the Husband had beneficial interest in another property investment in P Street. This was based on the theory that the Husband had an interest in RPC;

(8) A theory that the Husband had a beneficial interest in another property development in R Street.

41. The basis of these theories was an assumption that the following entities or persons were related to and or involved in the Husband’s elaborate scheme aimed at defeating or reducing her claims in these proceedings:

(1) Mr. S, because he was a “*long-time friend*” of the Husband. The Wife alleged that Mr. S was involved in the “*not an arms-length transaction*” in the Deed of Call Option. Mr. S and the Husband were both acting as representatives of RPC in the E Development, P Street and other projects;

(2) FN and RN, because they were involved in the Deed of Option Agreement for the E development;

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- (3) Numerous contractors, including an architect, town planner, project manager involved in both the MSH project and the E development;
- (4) NW because he was an associate of the Husband and worked for the architects in the development of P Street;
- (5) Numerous contractors, including architect, landscape architects who were involved in the MSH project, the E Development and the R Street Development.

42. The Husband argued that despite the extraordinary lengths that the Wife has gone into over the 4 years between their separation and the trial and the voluminous documents that have been produced, there is no evidence in support of these theories.

Standard of Living

43. The Wife deposed to a lavish life style during the marriage. She asserted that this lifestyle was supported by the profits from her fashion business when they were living in Australia. When she came to live in Hong Kong, she was supported by the Husband and could spend without ever having to worry about finances. They lived in a house in excess of their needs in Australia. In Hong Kong, they lived in a spacious 3-bedroom apartment in the Mid-Levels, had a part time helper, went on luxurious holidays, travelling by business class and staying in 5 star hotels 3 to 4 times a year. They had memberships to private clubs, drove luxury cars and had a lavish wedding.

44. This is denied by the Husband. He explained that they had a house in excess of their needs in order to provide a shop for the Wife's fashion business. Although they had a part time helper, the flat in Hong Kong was modest. The private club memberships were part of the perks of his employment. He does not own any private club memberships. Apart from their honey money, they only travelled economy class and stayed mostly in 4 star hotels. Sometimes, the Wife would join him on business trips when they did not have to pay for accommodation. When the Wife came to Hong Kong to go to Shenzhen on her buying trips, she stayed in a hostel or motel which cost HK\$800 per night. Their cars were leased and he was still paying for them after separation. He also denied that the Wife's fashion business paid or made any significant contribution towards any of their expenditure.

Reckless Spending and Conduct

45. There are cross-allegations of Husband reckless spending. He had the following complaints:

- (1) The Wife withdrew the equivalent of HK\$448,000 from the Husband's account;
- (2) Between 26 July 2014 and 1 August 2014, the Wife withdrew over HK\$52,000 in cash from ATMs around Hong Kong;
- (3) Between 29 July 2014 and 1 August 2014, the Wife went to various high end boutiques in Hong Kong and spent HK\$143,936 with the Husband's credit cards;
- (4) Without the Husband's knowledge or consent, the Wife gained access to the Husband's frequent flyer account and transferred 400,000 frequent flyer points to her own account;

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- (5) The Wife drove the Husband's company car away, refused to tell him where the car was. The Husband eventually found it parked at the airport and had to arrange for a new key at the cost of HK\$3,600 together with parking costs of HK\$500;
- (6) The Wife went to the office of the Husband's former employer under the pretext of delivering flowers, in order to accost a third party aggressively at the reception as well as lied to the Head of Real Estate about the Husband's conduct during his employment;
- (7) The Wife approached Vodafone in Australia and committed the Husband to a 2 year contract and purchased a new iPhone;
- (8) The Husband's former employer allowed him to use the private club membership for a year after he was made redundant. The Wife and her mother came to Hong Kong at the end of 2014 and visited one of the private clubs and spent almost AUD 2,000 at the spa;
- (9) The Wife removed almost everything from the former matrimonial home and the Husband has had to replace the furniture;
- (10) The Wife incurred numerous traffic fines by driving the car registered in the Husband's name in Australia past a toll collection point without paying the toll. The Wife refused to pay the fines. This caused the Husband's vehicle registration to be suspended.

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B 46. The Wife admitted most of those allegations. She explained
C that she was very upset because she had just discovered that the Husband
D was having an affair. She used the frequent flyer points to upgrade her
E ticket to business class because she was upset and did not want to sit next
F to a stranger. She denied that she bad-mouthed the Husband in front of his
G former employer. She alleged that she had removed more than she
H intended from the former matrimonial home because of a mistake of the
I removers. She also stated that the notice for the toll fines were sent to the
J Husband's address in Australia.
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I 47. The Wife also accused the Husband of reckless spending.
J She asserted that it was extravagant for the Husband to stay in the former
K matrimonial home and spend what was left of the matrimonial assets. This
L is denied by the Husband. He stated that he had sublet the former
M matrimonial assets to reduce his expenditure.
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M **Discovery and Return of Documents**

N 48. There are again cross allegations of failure to make full and
O frank disclosure. Further, the Husband complained that all his financial
P documents have been removed by the Wife, who has refused to return
Q them. This is denied by the Wife. She admitted that the removers had
R packed more than she intended by mistake. Those were only some books.
S She said that she had made arrangements for the Husband to retrieve them
T from storage but the Husband refused.
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S **Earning Capacity**

T 49. There is a dispute as to the earning capacity of both parties.
U The Husband alleged that the Wife's visit to his former employers and
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bad-mouthing of the Husband in the real estate industry has made it extremely difficult for him to continue in his former profession. This is denied by the Wife.

50. On the other hand, the Wife is now qualified as a Chiropractor and the Husband does not accept the level of earnings that she has disclosed. He says that she has the capacity to make much more than she was prepared to admit. This is denied by the Wife.

Other Resources

51. The Wife is cohabiting with her new partner. They have a child together and the Wife is at least entitled to financial support for the child. The Husband argued that the Wife had made no disclosure of the support from her partner.

Issues

52. It will be obvious even at first glance that the parties have raised disputes in respect of almost every possible aspect of their marriage. This is the type of wholly improper litigation behavior that was discouraged by the Court of Final Appeal in *LKW v DD* [2010] 6 HKC 528 (*LKW*) (see below). It is not possible, nor is it necessary for the Court to resolve all the disputes in its consideration of the appropriate award for ancillary relief.

53. There are cross allegations of deliberate disposal of assets. However, despite the Court's repeated observations, both parties have adamantly refused or failed to take out the proper applications pursuant to section 17 of the MPPO. Apart from the voluminous documents that have

been filed and the number of days it has taken for the Court to hear the trial, the difficulties in this case was compounded by the quality of the Affirmations. The information is scattered across numerous Affirmations filed since the commencement of these proceedings. There has been no attempt to set out in one Affirmation, the matters which the Court is required to consider under section 7 of the MPPO.

54. The real issues in this application are:

- (a) Are there any matrimonial assets? If so, what are they?
- (b) Are either of the parties guilty of reckless spending or conduct? If so, should there be any add-back? What amount should be added back?
- (c) Did any of the parties fail in their duty to make full and frank disclosure? Should adverse inferences be drawn? If so, what inferences?
- (d) What are the parties' respective needs?
- (e) Are there surplus assets after the needs of the parties' have been met? If so, how should those assets be shared?
- (f) Are there are reasons for departure from the "sharing principle"?
- (g) What are the appropriate orders?

Applicable Legal Principles

55. In ancillary relief proceedings, the court is required to undertake an inquiry into all the circumstances of the case, having regard

to the factors set out in s.7 of the Matrimonial Proceedings and Property Ordinance, Cap.192 (**MPPO**):

(1) It shall be the duty of the court in deciding whether to exercise its powers under section 4.6. or 6A in relation to a party to the marriage and, if so, in what manner, to have regard to the conduct of the parties and all the circumstances of the case including the following matters, that is to say-

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

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

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

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

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

(f) The contributions made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family;

(g) In the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

56. The Court of Final Appeal in *LKW v DD* (supra), has established that that inquiry is undertaken having regard to the “underpinning principles” in *White v White* [2001] 1 AC 596, namely:

(i) The objective of fairness;

(ii) The rejection of discrimination;

(iii) The yardstick of equal division;

(iv) The rejection of minute retrospective investigation.

57. In *LKW* (supra), Ribeiro PJ referred to “the yardstick of equal division” and stated:

“58. The third principle is that, with a view to eliminating insidious discrimination and promoting fairness, judges should check their tentative views on distribution against a “yardstick of equal division” which should be departed from only for good, articulated reasons...

59. In Miller/McFarlene, the “yardstick” concept was elaborated into the “equal sharing principle”...However, it is worth emphasizing that according an equal status to the role played by each of the parties during the marriage does not necessarily or even usually mean that their assets should be equally divided. Thus, in White, Lord Nicholls stated:

“Sometimes, having carried out the statutory exercise, the judge’s conclusion involves a more or less equal division of the available assets. More often, this is not so. More often, having looked at all the circumstances, the judge’s decision means that one party will receive a bigger share than the other”

60. ...”The yardstick of equality is to be applied as an aid, not a rule”.

58. As to the “rejection of minute retrospective investigations”, Ribeiro stated thus in *LKW* (supra):

“62. The fourth principle is that the court should not countenance any attempt to engage in costly and often futile retrospective investigations of the failed marriage which tend to deplete the parties’ (and the courts’) resources and to increase antagonism and discourage settlement.

63. Such attempts have been encountered in various contexts, including disputes over the extent of a party’s assets, over the contribution made to the welfare of the family, over the parties’ conduct, over claims to be compensated for having suffered some disadvantage, and so forth.

64. The English courts’ response to allegations of “special contributions” by parties seeking to justify departure from an equal division is instructive. Referring in 2002 to the then growing practice of examining minutely the respective contributions of the parties, Coleridge J stated:

“The effect is not at all dissimilar to the ‘conduct’ debates of the 1970s. In those days, ‘conduct’ was similarly raised against wives to try and limit their claims. However, the court, recognizing the undesirable consequences inherent in those arguments and further the impossibility of fairly adjudicating upon them introduced the concept of ‘obvious and gross’ very effectively to limit their application. It is suggested by some that these current ‘special contribution’ debates are reintroducing conduct by the backdoor. I would say by the front door”

His Lordship added:

“...the parties are not assisted to achieve compromise when they are encouraged by the law to indulge in a detailed and lengthy retrospective involving a general rummage through the attic of their marriage to discover relics from the past to enhance their role or diminish their spouses.”

66. *Heeding Coleridge J’s “powerful observations” in G v G, Lord Nicholls held that:*

“Parties should not seek to promote a case of ‘special contribution’ unless the contribution is so marked that to disregard it would be inequitable. A good reason for departing from equality is not to be found in the minutiae of married life”

67. *Adopting the dictum of Bodey J in Lambert v Lambert, his Lordship explained that disregarding the contribution would not be inequitable unless the circumstances are “of a wholly exceptional nature, such that it would very obviously be inconsistent with the objective of achieving fairness (i.e. it would create an unfair outcome) for them to be ignored.*

68. *Baroness Hale took the same view, holding that the question should be approached by deploying a standard equivalent to the “obvious and gross” standard applicable in “conduct” cases.*

69. *The essence of this fourth principle is reflected in Thorpe LJ’s illuminating comment in Parra v Parra:*

“...the outcome of ancillary relief cases depends upon the exercise of a singularly broad judgment that obviates the need for the investigation of minute detail and equally the need to make findings in minor issues in dispute. The judicial task is very different from the task of the judge in the civil justice system whose obligation is to make findings on all issues in dispute relevant to outcome. The quasi-inquisitorial role of the judge in

ancillary relief litigation obliges him to investigate issues upon which he considers relevant to outcome even if not advanced by either party. Equally he is not bound to adopt a conclusion upon which the parties have agreed. But this independence must be matched by an obligation to eschew over-elaboration and to endeavor to paint the canvas of his judgment with a broad brush rather than with a fine sable. Judgments in this field need to be simple in structure and simply explained”

59. Applying those principles as the foundation, the inquiry is a five step process. In the first step, the court must ascertain the financial resources of each of the parties. These are calculated at the date of the hearing. At this stage the court does not attempt to distinguish between matrimonial and non-matrimonial property, that part of the exercise being undertaken, if necessary, when considering the distribution of the assets. The court should carry out this first stage exercise ‘with whatever degree is apt to the case’. The court should not turn the clock back to the pre=1970 position when the courts often had to attempt to unravel years of matrimonial finances and reach firm conclusions on who owned precisely what and in what shares. No such attempt is called for and generally, a broad brush approach will be all that is required. The parties have an important duty to ensure that the court has sufficient information regarding their assets. They must make full and frank disclosure. A party who fails to do so runs the risk of the court drawing adverse inferences and robustly attributing assets to him or her, or making adverse costs orders (See *LKW* at §§71-73).

60. In the second step, the court will assess the parties’ financial needs. This is an assessment which is made flexibly, having regard to the needs, obligations and responsibilities which each of the parties has or is likely to have in the foreseeable future. Their needs should be generously

interpreted (See *LKW* at §§77-79). Those needs should be set at a level that equates, in so far as the resources allow, to the standard of living that the parties enjoyed during the marriage (See *LKW* at §79).

61. In most cases, the exercise does not progress past this stage since the total resources may be insufficient to go beyond or even to meet both parties' needs. If so, there is no room left for the application of any sharing principle. In *LKW*, Ribeiro PJ stated:

"D.2 The exercise often stops at "needs"

54. *The second point is that in most cases, discussion of the guidelines is superfluous. Usually the available assets are insufficient to cater for the needs of both parties after termination of the marriage so that the exercise does not progress beyond consideration of their needs. As Lord Nicholls puts it in Miller/McFarlane:*

"In most cases the search for fairness largely begins and ends at this stage. In most case the available assets are insufficient to provide adequately for the needs of two homes. The court seeks to stretch modest finite resources so far as possible to meet the parties' needs.

55. *It is therefore only in cases where surplus assets remain to be distributed after seeing to the parties' needs that the guidelines may require consideration. The disposal of simple cases should not be pointlessly complicated by inappropriate attempts to apply such guidelines."*

62. The third step is the application of the sharing principle. If there are surplus assets after the parties' financial needs have been catered for, these must be shared amongst the parties. That sharing is undertaken on the basis that the total assets should be divided equally between the parties, unless there is a good reasons, capable of articulation, for departing from an equal division (See *LKW* at §§79-82).

63. The fourth step requires the court to consider whether there are good reasons for departing from equal sharing. In *i* at §§83 and 85, Ribeiro PJ said that this step is:

“...necessarily a complex question which raises a range of separate issues...

It cannot be over-emphasised that the matter is fact-specific and discretionary. The sharing principle must not be mechanistically applied.”

64. In the same case, Ribeiro PJ identified six particular factors that might be relevant to the issue of departing from equal sharing. The source of the assets was identified as one of the factors. However, effort and expense should not be wasted in trying to establish a sharp dividing line between what is and what is not matrimonial property (See LKW at §§87-88). He stated that the existing case-law identified two classes of assets as possible candidates for exclusion on the basis of source (See LKW at §89):

“The first involves property acquired during the marriage by one of the parties from a source wholly external to the marriage, such as by gift or inheritance. The second involves assets derived from a business or an investment conducted solely by one party (sometimes called ‘unilateral assets’).”

65. Conduct was also identified as one of the factors. The court is required by s.7 (1) of the MPPO to have regard to the conduct of the parties in exercising its discretionary jurisdiction. However, this does not permit the parties to indulge in a post-mortem of their marriage in order to find fault with each other, or to air their mutual recriminations. Conduct would only be regarded as a material factor if it is “gross and obvious” (See LKW at §§99 and 104).

A
B 66. The third factor identified was financial needs. Such needs
C may arise from the care of children, an inability to re-enter a job market,
D or some other particular responsibility.

E 67. The fourth factor is the duration of the marriage. Where the
F marriage was short, there is likely to be less call upon each other by the
G parties. In addition, in short marriages, the court may well be inclined to
H regard as excludable non-matrimonial property, assets acquired by one of
I the parties before the marriage or acquired in the course of the marriage
from some wholly external source. However, after a long marriage, those
factors are likely to have much less weight (See LKW at §93).

J 68. The fifth factor is the contribution made by each of the
K parties to the welfare of the family, including the contribution made by
L looking after the home or caring for the family. Where the parties to the
M marriage occupy the traditional roles of breadwinner on the one hand and
N homemaker or child-carer on the other, their contributions are of a quite
O different character and are very difficult to assess, particularly in money
terms. The argument that a financial contribution was special was dealt
with by the judge at §118 in these terms:

P *“In my view, our courts ought to proceed on the footing that the*
Q *parties’ respective contributions to the welfare of the marriage*
R *are implicitly recognized within the sharing principle itself and*
S *that there will, if at all, only be rare and exceptional cases*
T *where an issue can properly be raised in favour of departing*
U *from equality on the basis of ‘special’ or ‘stellar’ contribution”.*
V

S 69. The final factor is that of compensation. This factor will take
T into account issues such as the loss of a benefit, e.g. a pension, which a
U party to the marriage will lose as a result of the dissolution of the marriage.
V

But it also recognizes, and deals with, disadvantages incurred as a result of the way in which the parties arrange their affairs during the marriage. Thus, the inherent disadvantage in the traditional roles of a husband and wife in the marriage, to the wife, in being able to identify the production of income or assets, may be the subject of compensation.

70. Ribeiro J recognized the risk of double-counting in the application of this factor and gave this guidance at §130:

“Our courts ought to proceed on the footing that compensation for relationship-generated disadvantage is generally already factored in upon any application of the sharing principle. The extent of the compensation allowed for in applying that principle and deciding the extent of any possible departure from an equal division is, in any particular case, a fact specific question which will depend upon the nature, certainty, -permanence and other qualities of the disadvantage incurred, viewed in a broad brush way. It will only be in exceptional cases that a separate element of the award over and above the amount already factored in should be dedicated to such compensation on the special facts of the particular case. In such exceptional cases, the court should not attempt to try the issue evidentially or conceptually as if it were a damages claim. A broad brush attribution of some percentage of the award to the element of compensation would generally be sufficient.”

71. I shall now apply the above principles to the present case.

EC

72. The Wife has been pursuing discovery of information and documents in respect of EC throughout these proceedings. There was no dispute that the investment in EC took place soon after the parties returned to live in Australia. This was just after they started to cohabit and there was no suggestion that their relationship was anything other than harmonious. The sale of that investment occurred in July 2011, months

before the marriage. There was obviously no divorce and no claims and hence no reason for the Husband to dispose of assets to defeat any claims.

73. The complaint about EC was set out in paragraph 24 of Counsel's final submissions:

*“Following his departure from (bank), [the Husband] invested money and time in a company called [EC]. Little is known as to the financing of [EC] or its revenue structure for [the Husband] and his partners as no financial statements have been supplied despite being requested. **What is clear is that [the Husband] left [EC] in July 2011.** During the period, [the Husband] was building EC and [the Wife's] business supported their living expenses and lifestyle. Upon departure from [EC], [The Husband] received a capital payment of AU\$ 1,688,500 [CB3/1186]. **No evidence was provided by [the Husband] as to how he sourced his investment in [EC], nor to substantiate [the Husband's] description of the payout as a “marginal increase” in the amount of the initial investment**”.*

74. The Wife's pursuit as to the source of funds for the investment in EC was extraordinary in the light of the admissions whilst under cross-examination:

“Q: Did [the Husband] talk to you?

A: Absolutely. We discussed at length. [The Husband] was nervous...a new venture. I introduced him to marketing and PR companies in Hong Kong to help him set up [EC].

75. The Wife's admissions were in stark contrast to her allegations that she did not know about the source of the investment and revenue structure of EC. The Wife also eventually admitted under cross-examination that she knew about the division of the proceeds of sale of EC.

76. There was clearly no dispute that the Husband had left EC in July 2011. There is no allegation that the liquidation of that investment was a sham or that the Husband continued to be involved in EC. The amount he received upon departure was not challenged. In those circumstances, the source of the investment and the revenue structure between the Husband and his partners prior to the liquidation of the investment are wholly irrelevant to the Court's determination of ancillary relief. There is no merit in the Wife's complaint.

PDGH

77. This company was used primarily to hold savings and investments in stock and shares. Those savings and investments were held in its bank account with the Hong Kong and Shanghai Bank. There was no dispute that those shares were sold prior to the Petition. Bank statements from this account were disclosed in the Husband's first Form E.

78. Throughout these proceedings, the Wife has been complaining about the disposal of the stocks and shares in this account. She asserted that HK\$13 million worth of investments was missing and doggedly pursued disclosure.

79. The bank statements produced by the Husband show that in May 2014, there were shares in the sum of over HK\$13.6 million in PDGH's account. At the same time, there was an overdraft of close to HK\$7.9 million. The bank statement stated that the **NET POSITION** of this account was just over HK\$7.1 million. The shares were sold in June 2014. The bank statement for that month showed that there was just over HK\$836,000 in investments with **NO OVERDRAFT**. The net position

was just under HK\$7.85 million. By July 2014, the shares held in this account decreased to just over HK\$408,000 and the net position of the account increased to over HK\$8.35 million.

80. It was clear even from those initial bank statements that there was **NO** “missing” investments. All the costs incurred over the 4 years prior to trial in respect of discovery and questions regarding these alleged “missing” investments were a waste of costs. It was only at the time of trial when counsel had the conduct of the case did these allegations cease. Either the Wife and her solicitors are incapable of reading simple bank statements or it was a deliberate attempt to mislead the Court.

81. All the transactions for the purchase and sale of the shares in this account were conducted through the Hong Kong and Shanghai Bank and the transactions are set out in the monthly bank statements. The Husband explained that although there were shares worth HK\$13 million in the account, those investments were highly leveraged. This was also evident from the bank statements which were disclosed from the outset of these proceedings.

PDP 1 and MSH

82. Funds from PDGH were transferred to PDP 1 and subsequently to MSH for the investment in the property development project of MSH. The Husband stated that he was forced to sell the development project because of a lack of funds. This was challenged by the Wife, who alleged that the Deed of Call Option was a sham to deprive her of her claims. Alternatively, the Wife alleged that the project was sold at an under value.

83. There was no dispute that that the land was acquired through MSH, a company registered in Australia on 25 March 2014. The Husband was the registered holder of the one issued share in MSH until 17 November 2014 when the share was transferred to PDP 1.

84. PDP 1 was incorporated in Hong Kong on 28 March 2014. The Husband was the registered holder of the sole issued hare in PDP 1 when it was transferred to a BV1 company called TC. The Wife complained that there was no disclosure of TC's representatives or correspondence between the parties to confirm that the alleged sale of MSH was a legitimate business transaction and she was unable to discover the real beneficial owners of TC.

85. There was no dispute that the Husband entered into an Option to purchase the development land. The Option to purchase was signed on 27 March 2014. The Option fee of AUD 5,000 was paid on 2 April 2014. The purchase price of the property was AUD 2.1 million. The Option to purchased was subsequently exercised. The contract for the purchase of the development land was signed on 14 October 2014. The balance of the deposit in the sum of AUD 170,000 was paid with funds from PDGH through PDP 1. Settlement of the purchase took place on 26 November 2014 when a sum of AUD 744,411.81 was paid with funds from PDGH through PDP 1. The balance of the purchase price, in the sum of AUD 1,267,000 was expected to be funded by a mortgage [P3/1349].

86. The Wife has again doggedly pursued explanations as to the disposal of funds from PDHG's account. She does not dispute that these

payments had to be made and were in fact made. In October 2014, the conversion rate of Australian dollars to Hong Kong dollars was about AUD 1 to HK\$6.8. The Wife keeps questioning the disposal of the funds from PDGH's account. In fact, the payment of the above sums already accounted for HK\$6,218,000.31 out of the HK\$8.35 million in PDHG's account.

87. The Husband said that he was forced to sell MSH. He explained that because of a change in legislation, he was required to commence development almost immediately. Otherwise, there would be restrictions on the development. This is challenged by the Wife. She says that there was no need for the Husband to dispose of the property in a hurry and that he could have waited for a better deal.

88. Neither party produced any evidence in respect of the alleged change in legislation. The Court is simply not in a position to determine which party is correct.

89. A letter dated 20 October 2014, setting out the Mortgage terms offered was as follows:

"1. Amount of Advance – One million two hundred and sixty seven thousand dollars (\$1,267,000.00)

2. Interest rate – 11.5% per annum, but reducible to 7.5% per annum for payment within four (4) days of the due date...

3. Security – Registered First Mortgage to be provided to (the bank) over the property...

- Deed of Guarantee from (the Husband)

- We will require a current satisfactory Zoning (S149) certificate from the local Council prior to settlement...

*- Please provide a copy of the development Application and plans you **have lodged** with Council*

Please provide evidence of the Borrower's current income and a letter from its accountant addressed to (the bank) confirming the Borrower's capacity to meet the interest payments. Please also provide evidence of the Guarantor's income and a letter addressed to (the bank) from the accountant of each Guarantor confirming in the event of default by the borrower, the Guarantor has the capacity to meet the interest payments. The letter from the accountant should confirm their client's actual level of regular income, specify the basis on which the statement is made, include comments on previous earnings and the underlying information supporting the statement, and identify the period for which the accountant has been engaged by their client.

Please note it is a pre-condition of our lending Committee that income evidence and original letters are provided before settlement.

4. Insurance – All the improvements on the property are to be insured, for their full insurable value for the term of the loan with a reputable Insurance Company approved by the Mortgagee and noting the interest of (the bank) as the Mortgagee and the manager. Your insurance company must confirm in writing they will not cancel, suspend or alter the insurance policy without prior notice to (the bank). If your insurance company is unable to provide the requested confirmation within 14 days of settlement then (the bank) will apply for suitable cover at a further costs to you.

5. Costs and Expenses –You will be liable for all legal costs of ...of \$3,600 plus GST and fees incurred in connection with the preparation and stamping and registration of all security documents including state and federal taxes.

6. Fees:

(i) Management Fee – management fee of \$12,670.00 plus photocopying and petties plus GST is payable for the management of the facility, such amount to be paid on settlement of the loan and to be a debt due to the lender from your acceptance of the terms and conditions hereof (subject to satisfactory valuation);

(ii) License Compliance Fee – a compliance fee of \$2,3217.25 plus GST is payable for the license compliance fees, such amount to be paid on settlement of the loan and to be a debt due to the lender from your acceptance of the terms and conditions hereof (subject to satisfactory valuation);

(iii) Brokerage Fee – a brokerage fee of \$12,670.00 plus GST to be paid to your appointed broker...with whom you have signed

a mandate/agency agreement, such amount to be paid on settlement of the loan.

An initial application fee of \$2,000.00 plus GST is payable for the issue of this letter of offer and is to be paid on your acceptance when you forward to us a cheque on account of application fees, valuation fees and preliminary expenses. ..Should the matter not proceed then the application fee will be deducted from the aforesaid cheque in payment.

The legal costs are to be payable to the Solicitors after preparation of the documentation and the full amount of the management fee is to be payable after receipt of the satisfactory Valuation whether or not the matter proceeds to completion.

7. Term of Loan – Six (6) months but this term can be extended at the same rate to a term of one (1) year by providing the lender with one (1) months written notice at the expiration of four (4) months from the date of settlement of this advance. Subject to availability of funds and your good loan payment record and final agreement as to interest rates, the loan may be extended at the end of the term...”

90. It is evident from the terms above that in order to obtain the Mortgage loan, the Husband was required to apply for a number of licences and/or certificates. The development plans would have to be completed and submitted to the Council. There were also a number of fees to be paid. In other words, the Husband had no option but to engage professionals to comply with these terms before he would be given a loan. A schedule of professionals engaged by the Husband was produced as **P12**.

91. The initial term of the loan offered was only 6 months. The term can be extended but that was subject to good repayment record.

92. Further, the offer of the Mortgage was subject to certification from an accountant and production of supporting documents to so that the

Borrower (MSH) and the Husband (as Guarantor) had the capacity to repay.

93. The Husband was made redundant in May 2014, shortly after he exercised the option to purchase the development property. He had no income. It was more than obvious that he would not be able to satisfy the pre-conditions of the Mortgage loan. If the Mortgage loan were not granted, the Husband would not be able to complete the purchase of the property. The deposit would be forfeited and the Husband would be liable for damages.

94. Further, the initial payments for the property had already eaten up the bulk of the funds in PDGH's account. Without the Mortgage, it is a matter of simple arithmetic that the Husband does not have the resources to even complete the purchase, and much less to develop the property.

95. In those circumstances, it is extraordinary for the Wife to say that there was no urgency to locate an investor. In my judgment, this was not an attempt by the Husband to dispose of assets to defeat the Wife's claim. To the contrary, it was a genuine sale out of necessity. Because it was a "fire sale", the Husband was not in a position to bargain on the terms of the sale.

96. In fact, if the Wife and her solicitors have not been blinded by their over zealous and unreasonable attempts at discovery should have known this well before the trial. In her 6th Affidavit filed on 28 December **2017**, she said:

“Assuming, for the present, that the Respondent has not entered into a sham deal with the intention of diverting cash assets, and further assuming that the [MS] Project represented a net loss, it is still the case that [the Husband] entered into a Deed agreement and sold the matrimonial asset without consulting me.”

97. With respect to the Wife and her legal representatives, this is wholly irrelevant to the Court’s consideration. Despite all the matters above, the Wife persisted in her assertions right up to the end of the trial.

Transfer of Funds

98. The Wife also raised numerous questions about the transfer of funds overseas. She alleged that all the transfers were made by the Husband and that she had no knowledge of these transfers or the reason for such transfers. However, under cross-examination, she agreed that she knew that they were funds transferred from the Australian Joint Account to the Hong Kong Joint Account for her to make cash withdrawals and pay for the purchase of clothing from suppliers in Shenzhen. The amounts she withdrew were between HK\$30,000 to HK\$50,000 on each occasion. None of the Wife’s own transfers were identified prior to the trial.

Other Companies

99. The Wife alleges that the Husband continued to be involved in PDP 1 after the sale of the development project. She also has a theory that the Husband is involved in a number of other companies and development projects (see above). The Wife complains that her case has been hampered by the Husband’s failure to provide full and frank disclosure.

A
B 100. Firstly, there can be no dispute that the Wife had unfettered
C access to the former matrimonial home at the end of July 2014. After she
D went to remove what was in the former matrimonial home, the Husband
E alleged that his financial documents had vanished. That allegation was
F made from the outset of these proceedings. There was copious
G correspondence about this.

H 101. Initially, the Wife claimed that she “mistakenly” took the
I Husband’s documents to Australia. Then she suggested that it was the
J Husband’s fault for making her pack her things alone and within the space
K of 10 days. Then she blamed the removal company for packing more than
L she intended. The Wife then alleged that the documents fell out of the
M boxes. In the end, she said that she took nothing more than a few of the
N Husband’s books. The Husband was driven to making an application to
O Court. The Wife’s explanations in respect of the documents were
P inconsistent and self-contradictory. I do not accept her evidence. In the
Q end, no documents were returned.

R 102. Secondly, the Wife has gone to the most extraordinary and
S unconventional lengths to try to prove her “theories”. Her investigations
T included:

- U
V
- (1) Extensive company searches in both Hong Kong and Australia;
 - (2) Obtaining company resolutions and Forms filed;
 - (3) Engaging data search companies;
 - (4) Going to Sutherland Shire Council for records of the E development;

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- (5) Conducting internet searches, including websites, Instagram and Facebook searches;
- (6) Obtaining documents in relation to Architectural Review Advisory Panel meeting of the E development;
- (7) Obtaining a Joint Regional Planning Panel (Sydney East Region) Business Paper of the E Development;
- (8) Going for a site visit of the E Development;
- (9) Making a Government Information (Public Access) Informal Application in relation to the E development;
- (10) Obtaining minutes of a Meeting of the development Assessment Commission;
- (11) Obtaining Development Assessment Report of the P Street development;
- (12) Obtaining minutes of meeting of the P City Council in relation to the R Street development;
- (13) Obtaining documents from the NSW Land and Environment Court in relation to a conciliation conference of the R Street Development;

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103. In addition to the above, the Court was shown an email between the Wife and HSBC where the Wife used the Husband's signature to achieve her quest for confidential information. This was a flagrant attempt to mislead the bank into believing that the Husband had consented to the release of information. The Wife's cross-examination after a warning against self-incriminations was as follows:

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“Q: Your email to the bank. You wrote: original signature of the director. See attached a copy of an original signature of [the Husband]. Turn to 2643 we see the signature. Your evidence is, it was not original?”

A: It was a copy...

Q: Let me ask you this. We have your signature on Affidavits. How would you feel if someone took a copy of your signature to a bank to ask for your confidential information?

Ct: Didn't you think that...by providing a copy, you were making a representation to the bank that your ex-Husband consented to this?”

*A: No, I didn't think that.
So what were you thinking?*

A: There were unanswered questions from [the Husband].

Ct: Just between you and the bank, if not representing that your Ex-Husband consented to this, what is it?

A: I don't know. I thought it was honest...

Ct: Signature to HSBC, where did you get it from?

A: From invoices

Ct: So you blocked out other words and only copied the signature?

A: Yes...

A: ...I cut and paste it...

A: I did it on the computer”

104. Apart from producing a forged document to the HSBC, the Wife also produced documents obtained from AUSTRAC pursuant to her application under the Freedom of Information Act. According to the Wife, it took 60 days for AUSTRAC to process the request. The Husband would be given 2 weeks to make a reply to her application. He had a right to do so and this was the normal and proper procedure. Under cross-examination, the Wife admitted that instead of following the proper procedure, she put down an address for the Husband, knowing full well that the Husband had no or no regular access to. Contrary to normal procedure, the Wife failed to include a telephone number or email address

A
B for the Husband so that AUSTRAC was unable to contact the Husband for
C a response. Somehow, the Wife managed to persuade AUSTRAC to print
D out a report on the Husband even before the expiry of the 2 weeks for the
E Husband to respond, i.e. instead of the normal 60 days, she received the
F report 6 days after her application. The Husband suggested that this was
G achieved by another “cut and paste’ of his signature, which was denied by
H the Wife.

G 105. The Husband had been made redundant in May 2014. He had
H no income. Most of the funds in PDHG had to be used for the MSH
I development project. He did not have sufficient funds to complete the
J purchase of the development property. He was clearly not in a position to
K satisfy the pre-conditions of the Mortgage loan offered. In addition to his
L own living expenses, he had to pay for the extravagant shopping incurred
M by the Wife with his credit cards, pay for the lease of the car used by the
N Wife in Australia. He had no long term employment. Basically, he had no
O alternative but to accept any offer of income, even if they were short term
P positions. In fact, disclosed on his volition even as early as his 1st Form E
Q that he had accepted directorship and a consultant position in a company.
R Because he took up part time employment, the Wife asked the Court to
S infer that the Husband had invested in a number of property development
T projects.

Q 106. Despite the relentless measures adopted by the Wife there is
R basically no evidence for the Court to find that the Husband has hidden
S assets or is involved in other companies and developments. Nevertheless,
T the Wife pursued her allegations until the end of the trial.
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Reckless Spending and Behavior

107. There was no dispute that the Wife went on an extravagant spending spree in July-August 2014. Being upset is not an acceptable excuse for such behavior. It was quite clear that she intentionally caused the car registered in the Husband's name to incur traffic fines. She then deliberately left the fine unpaid. Her reckless spending will be added back to her side of the balance sheet.

108. The Wife complained that she had to live with her Mother and had no financial support for her most basic needs. She portrayed herself as a poor student "*living out of a suitcase*" the Wife's spending is inconsistent with someone who is short of funds.

109. The Wife also accused the Husband of extravagant spending. She argued that it was extravagant for the Husband to stay in the former matrimonial home. The Wife worked in the Real Estate Industry. She must know that the Husband cannot just move out when the lease was still in existence. Even if he were to move out, he would be responsible for the mesne profits. The Husband said that he had tried to reduce his expenditure by subletting the former matrimonial home. He subsequently moved to smaller premises. It is difficult to see what else the Husband could have done.

110. In my judgment, there is no substance in the Wife's allegations.

Disclosure

111. The Wife persistently complained that the Husband had failed to make full and frank disclosure. However, it was clear from Counsel's final submissions that the bulk of her complaints boiled down to late disclosure rather than non-disclosure. Part of the delay was caused by the Wife's refusal to return the documents. The Husband is in Hong Kong and some of the required documents had to come from Australia.

112. The Wife's assertion that the Husband has hidden assets is premised upon the fact that the MSH project was eventually sold for just over AUD 3 million. However, she has completely ignored the expenditure prior to the sale. The Deed of Call Option provided as follows:-

“(e) Construction Funds means the funds required to complete the development which will be in the order of \$AUD11.0m for 100% of the project. For the avoidance of doubt, Construction Funds include funds required to pay consultants, government charges or any expenses required to be incurred to develop the Property but excluding any expenses incurred in gaining the Development Application...”

(h) Development Application means the application to be lodged by the Grantor (i.e. MSH) with the Council...

(k) Grantor Remuneration means:

(i) where the project is seen through to construction, then 20% of the post tax Cash Flow of the development where the Grantee exercised an option for 1 share, (50%) or 10% of the post tax Cash Flows where the Grantee exercises an option for 2 shares (100%);

(ii) Where the development site is sold prior to completion, then 30% of the post tax Cash Flows of the Development where the Grantee exercised an option for 1 share, (50%) or 15% of the post tax Cash Flows where the Grantee exercises an option for 2 shares (100%)...

Grantor (i.e. MSH) Obligations:

The Grantor undertakes at its own costs, prior to the exercise of the Option by the Grantee, to:

- a) Obtain the necessary development approvals for the site with a minimum yield of 32 apartments with an average unit size of not less than 70 sqm. The design of the project must be broadly in line with the drawings contained in Attachment 1.*
- b) Obtain a building contract for the Development on a Gross Maximum Price basis no greater than \$2,400 psqm of Gross Building Area.*
- c) If the Grantor requires Land Finance, then, subject to (f) below, this should be at terms that are no worst than: a least 60% leverage, interest rate of 8% establishment fees of 3% and with an initial term of no less than 12 months.*
- d) All consultants during the initial design stage are to be paid and no consultant liabilities to exist.*
- e) All statutory charges to be paid, including, but not limited to local council contributions, development application fees and any stamp duty payable.*
- f) Subject to (f) below, where the Grantor engages in Land Finance, then the Grantor will continue to service the loan until the end of the development.*
- g) Subject to (f) below, where the Grantee wishes to register a 2nd of junior mortgage, then to assist in the registering of such mortgage.*
- h) Not, without the consent of the Grantee, to take on additional debt that would result in a charge, caveat, encumbrance or mortgage over the Property..."*

113. In other words, apart from the terms of the mortgage offered, the Husband had to bear all the pre-construction costs for the MSH project (including the mortgage of over AUD 1 million) even if the property were sold prior to development. The Wife only looked at the purchase price and the eventual sale price, ignoring all the expenditure prior to the sale. This also runs through the assertions of her contributions during the marriage. She referred to the amounts that were deposited into the joint account (which only reflects the turnover) but completely disregards the overheads of the fashion business (which are essential in calculating the net profits).

A
B Either the Wife has no business sense or is attempting to mislead this
C Court.

D 114. The Husband was unemployed until the end of 2017.
E Whether it was intentional or not, the Wife took away at least part of the
F furniture from the former matrimonial home. According to the Wife,
G their monthly expenditure during the marriage was in excess of
H HK\$150,000. In the light of that living standard, it was not unreasonable
I for the Husband to spend over HK\$200,000 on new furniture. Further,
J even if he were to reduce his monthly expenditure to a third of their
former monthly expenses, his own living expenses over the 3 years of
unemployment would amount to HK\$1.8 million. In addition to that, he
has had to pay for the Wife's car and credit card expenditure.

K 115. In the meantime, the Wife herself adopted a different
L yardstick for her own disclosure of her fashion business. She made bare
M assertions but produced little to no documentary support. Every company
N is required to keep proper books and accounts. When the Wife was asked
O to produce documents, she skirted the question by saying that the business
P had not yet registered for GST. No evidence on Australian law has been
Q produced to demonstrate that there was no need for the Wife to keep
proper books and accounts. As far as she was concerned, the Court and
the Husband simply has to accept her bare assertions.

R 116. The Wife complained that the Husband had sold the MSH
S development project without consulting her. Although her fashion
T business was at least partially funded by the Husband, she felt that she had
U every right to gift this business to her mother for nil consideration. The
V

A
B Wife has pursued the Husband relentlessly in respect of information, even
C in relation to investments made and sold before the marriage. She herself
D made no disclosure of the proceeds of sale when she sold her inventory
before coming to live in Hong Kong.

E 117. The Wife explained that she had gifted her business to her
F mother immediately after the Petition. She said this was because she was
G too busy with her Master degree and the business was making a loss.
H According to the Wife, she had operated a highly lucrative fashion
I business whilst she was studying for her Bachelor Degree. The business
J that she “gift” to her mother had the same modus operandi as her former
K business. They both had a shop in the same locality. In fact, the shops
were on the same street. The same people were involved in the business.
L No reasons were even suggested as to why this new business was no
successful.

M 118. The Wife should at least have a rough knowledge about the
N workload for her Masters degree. Despite that, she restated her business
O and rented a shop. The lease is still in her name. She continued to go to
Shenzhen. All of these undisputed facts are inconsistent with a genuine
transfer of the business.

P
Q 119. There is no dispute that the Wife now has a new partner and
R they have a child together. The Wife made no disclosure of her partner’s
S income and assets. In his final submissions, Counsel for the Wife tried to
T explain that the Wife was not entitled to support from her partner under
U Australian law. The Court understands that Counsel for the Wife is also
V qualified to practice in Australia. As Counsel well knows, it is most

A
B improper for him to give evidence from the Bar bench. He is Counsel and
C not expert witness in these proceedings. The Court will wholly disregard
D that part of his final submissions. The Petitioner chose to petition or
divorce in Hong Kong. This Court will apply Hong Kong law.

E 120. The Wife says that she has no assets or income and is not
F entitled to support from her new partner. Yet she can choose to take time
G off to look after her child. This is wholly inconsistent with her assertions
H of being in dire financial condition. In my judgment, the Wife has failed
I to make full and frank disclosure of her finances. The Court will draw
the adverse inference that her needs are being met by her new partner.

J **Earning Capacity**

K 121. The Husband's employment with the bank was terminated in
L May 2014. He was unemployed for an extensive period of time thereafter.
M He says that his employment prospects in the banking industry was
damaged by the Wife. He is now working for an entertainment park
company.

N
O 122. Although his employment was terminated in May 2014, there
P was no dispute that the Wife went to the office of his former employer in
Q August 2014 and asked to meet the Husband's former colleagues. She
continued to contact the Husband's colleagues thereafter.

R 123. There appears to be no dispute that the Husband was made
S redundant. There was no suggestion from that he was dismissed for cause.
T The Wife explained that she visited his former office and spoke with his
former colleagues out of care and concern for the Husband. It is noted that
U
V

A
B the visits and conversations with former colleagues all took place in
C August 2014, i.e. months after the termination of the Husband's
D employment was final, after the parties had decided to separate and just
E before the Wife issued her Petition.

E 124. If the Husband were made redundant, there was nothing for
F the Wife to discuss with his former colleagues. The Husband's former
G employers are an international private bank. The Husband was an
H experienced banker. If there were to be any further discussions, it would
I be between the bank and the Husband. There was no reason for a global
J institution to discuss the employment of staff with the wife of a former
K employee, especially when the Wife was someone who was unconnected
L with the bank and had no professional qualifications herself. Further, why
M would the Wife pretend to be delivering flowers to achieve a meeting?
N Did she not even have the basic courtesy to make an appointment? Or did
O she try to make an appointment but was refused? Was that why she had to
P visit under false pretences? If the Wife only wanted to find out why the
Q Husband's employment was terminated, why was it necessary for her to
R speak to so many former colleagues? Why were there further meetings or
S conversations?

P 125. The Wife then contradicted herself under cross-examination.
Q She admitted that she knew about the settlement of the Husband's
R redundancy when she was in Italy in June 2014.

S 126. This Court does not accept that the Wife made the visit and
T spoke to former colleagues out of care and concern for the Husband.
U Whatever she said or did not say during these conversations, her mere
V

presence in the office was an embarrassment not only for the Husband but also for his former employers. The only possible inference is that the Wife had spoken to the Husband's former colleagues to tarnish the Husband's reputation.

127. The Wife is now a qualified Chiropractor. Despite her constant complaints of impecuniosity, she has decided to take time off work after the birth of her child. She did not work for 8 months after qualification. She was working in her brother's clinic. She explained that she did not take over a practice with a client base because:

"I did not feel comfortable. They wanted me to do marketing, wear uniform and attend staff meetings. They wanted me signing a contractor contract, but behave like an employee"

128. There is nothing unusual about the terms mentioned by the Wife. To the contrary, according to the Wife, this was the norm in her chosen profession. Further, despite her alleged fears of employment, she is now an employee in her brother's practice, someone she said she could not even negotiate terms with. She could have maximized her earning capacity by taking over a practice with a client base. She simply decided not to.

Conclusion

129. I find that the Husband's assets are as set out in his Form E filed in January 2018. There are no matrimonial assets.

130. The Husband is now working for an Amusement Park company earning just under HK\$59,000. The Wife is a qualified

Chiropractor but has chosen not to work. As explained above, her needs are being met by her new partner.

131. By reason of the above mentioned matters, the Wife's claims are dismissed with costs, to be taxed if not agreed.

132. The Wife has been represented by a specialist firm throughout these proceedings. It is astounding that she has been allowed to continue with her unmeritorious claims when she is publicly funded. A copy of this Judgment shall be served on the Director of Legal Aid.

Orders

- (1) The Wife's claims are dismissed.
- (2) Cost of these proceedings (including all costs reserved) be borne by the Wife, to be taxed if not agreed.
- (3) The costs order be in the form of order nisi to be made absolute if no application for variation is received within 14 days from the notification of this order.
- (4) Certificate to Counsel.

(A. Tse)
District Judge

Petitioner: Mr. Peter Barnes instructed by M/S Haldanes
Respondent: Mr. Giles Surman instructed by PAYNE CLERMONT
VELASCO