IN THE GRAND COURT OF THE CAYMAN ISLANDS
BEFORE JUSTICE KIRSTY-ANN GUNN
IN CHAMBERS

Cause No. FAM0227/2017

M.S.

Petitioner

AND

F.S.

Respondent

Appearances:	Mr Todd QC and Mr Yates QC instructed by Mr D. McGrath and Miss S Ismail of McGrath Tonner for the Petitioner Mr Cusworth QC and Mr Southgate QC instructed by Mr K Broadhurst and Miss Y Mullen of Broadhurst LLC for the Respondent
Heard:	4 – 11 October 2019
Further written Submissions:	25 November 2019, 24 January 2020, 17 and 19 February 2020
Draft Judgment circulated:	27 March 2020
Judgment delivered:	28 April 2020

These proceedings were heard in private. The judge has given permission for a redacted version of the judgment to be released at this time. Redactions have been made to protect the privacy of the children and to prevent commercially sensitive information from being made public. Nothing shall be published which may lead to the identification of the children.

HEADNOTE

Final Ancillary Orders – division of matrimonial property – special contribution – monetisation of assets - financial provision for children

JUDGMENT

1. This is the Petitioner's application for financial relief after the breakdown of the marriage to the Respondent. I hope the parties are not offended that I refer to them as husband and wife for the purposes of this Judgment.

2. Mr Todd QC and Mr Yates QC with Mr McGrath and Miss Ismail appeared for the wife. Mr Cusworth QC and Mr Southgate QC appeared along with Mr Broadhurst and Miss Mullen for the husband.

3. I thank both teams for their meticulous preparation and efforts to narrow the issues before the Final Ancillaries Hearing ("FAH"), which avoided a number of witnesses being called for cross-examination and saved the Court significant time. The teams' thorough skeleton arguments and the quality of advocacy have been of enormous assistance in reaching my decision on the various issues. After the conclusion of the hearing, the parties have diligently kept me informed of various developments that affect my determination of the issues and filed further submissions as necessary.

A. INTRODUCTION

4. The parties met in Canada in 1994. The wife was 21 and the husband 27 when they married in 1996. The husband had not completed any formal post-secondary education. He had held a number of jobs before and during the early years of the marriage, predominately as a salesman. Upon their marriage, the wife dropped out of her college course to take up employment. They each had a modest income. The husband had a small investment in two residential properties. The parties purchased their first home in 1997 which they renovated and sold for a profit later that year. They 'flipped' their second house in 1998.

5. In 1999, the husband set up company P and he purchased his first domain name in August of that same year. The husband lost his employment in June 2000 after which he focused full-time on purchasing domain names. The wife continued working and her income, together with a rental income, provided the necessary funds to cover their mortgage and living expenses. In June 2000, company P purchased a significant share in a valuable domain name and by the end of that year the business generated sufficient income to allow the wife to cease employment.

6. For tax purposes the parties relocated to the Cayman Islands in 2002. They now hold Caymanian Status. The parties' first child, E, was born in 2004 and their second, L, in 2005. They are now

aged 16 and 14 respectively. L was diagnosed as having significant developmental challenges as a toddler. From that time onwards the parties' roles became that of breadwinner/homemaker, as the wife's attention was on ensuring that L received the necessary treatments to facilitate his recovery, as well as caring for E, while the husband continued to run the businesses. This arrangement continues to this day.

7. Like many marriages, this marriage had periods of disharmony. It is unnecessary for the purposes of this judgment to detail the marital problems, save to say that the parties separated in 2011 and 2014, always reconciling soon after. The discord returned and the parties finally separated in September 2017.

8. This has been a long marriage, some 21 years in total. The wife is aged 45 and the husband is aged 50. The husband and wife are in the very fortunate position that their accumulated wealth far exceeds the sums needed to meet their own and their children's needs.

9. It is common ground that all of the family's wealth has been accumulated during the course of their marriage. Prior to the final hearing, the parties agreed which assets were matrimonial and fell to be distributed. The total value of the matrimonial assets is estimated in the region of US$290 million, therefore, this is a "big money" case.

10. The parties have settled on the division of chattels and cars. It is important to note that, from the outset, the parties did agree that the two most valuable assets, namely their two companies, company N and company U (together the "operating companies") should be monetized and the proceeds divided, although they disagree as to the apportionment of the proceeds between each other and the timeline for monetisation. Since the conclusion of the FAH the parties have accepted an offer to sell company N and company U's Registrar, Brokerage, IPV 4 addresses, Parking and [other assets] to G Incorporated ("G Inc"). Company N's business has been sold for approximately US$ 89 million while the sale of company U's assets will complete in April 2020 at a price of US$ 46.6 million thereby monetizing a significant portion of the parties' corporate assets. The parties will retain ownership of company U's registry with 21 generic top-level domain names ("gTLDs") as well as some joint ventures with third parties ("the residual business"). The husband estimates the residual business to be worth US$ 70 million.

11. Prior to the FAH the parties had made asset adjustments to allow the wife to purchase a new home comparable to that of the FMH in which the husband continues to reside, as well as a pre-judgment division of cash held in the joint ZBK account in the amount of US$45,000,000. The parties have agreed that the Geneva Yacht Club membership shall be transferred to the husband and the Pebble Beach membership to the wife. The parties have not been able to agree to the division of the remaining assets which I must now determine. These assets are as follows:

Asset	W's valuation[2]	H's valuation[3]
Stone Island property	US$2,100,000	US$2,000,000 to US$2,500,00
331 Lower Bench Road, Penticton, Canada	US$2,029,655.72	US$2,029,655.72
1243 Evans Road, Penticton, Canada	US$997,023.86	US$997,023.86
2 Parcels Malibu - Broad Beach Ranch and Lechuza	US$1,330,000	US$2,000,000 – US$3,000,000
4102 Enchinal Canyon Malibu	US$3,610,000	Up to US$5,000,000
31959 Pacific Coast Highway	US$1,615,000	US$2,500,000 to US$3,000,000
2162 San Joquain Hills, Newport Beach office	US$6,840,000	H disagrees with joint valuer's report and wishes to obtain another valuation.
274 Deansgate, Manchester	US$7,286,261.70	US$7,000,000
15 Bloom Street, Manchester	US$3,554,274	US$4,000,000 – US$5,000,000
Joint ZBK account	US$1,429,132.59[4]	US$1,429,132.59
Lady Wild Book Rights	US$15,000	No estimate given
Funds held by Holding companies (fluctuates)	US$321,000	US$321,000

12. This is only the second "big money" case in the Cayman Islands in which a spouse seeks to establish that their generation of wealth and/or post-separation endeavour was a *special contribution* to the marriage warranting an unequal division of assets. The value of the assets in

[2] Values based on joint valuation reports and are after deduction of 5% sales costs.
[3] The husband disagrees with some of the valuations in the joint reports and has provided his own opinions on the values of the disputed properties.
[4] Each party has received US$45 million from this account in a further pre-judgment distribution leaving a balance of US$1,429,132.59.

this instance exceeds the previous case by a multiple of 10 and, is likely to be the largest "big money" family case litigated in this jurisdiction.

13. There are five significant issues in the case-

(i) Whether or not the husband made a *special contribution* such that the amount now payable to the wife should be less than it otherwise might have been.

(ii) Whether or not the husband's *post-separation endeavours* (whether in isolation or in conjunction with a *special contribution*) is such that the amount now payable to the wife should be less than it might otherwise have been.

(iii) Whether the wife's contribution to the family, in particular the care of their youngest child, constitutes a contribution which matches or even exceeds the husband's contribution to the family.

(iv) How to monetize the matrimonial assets and over what period.

(v) Whether it is appropriate to make an order for periodic payment for the maintenance of the children, and if so, the quantum of such payments.

B. CHRONOLOGY OF PROCEEDINGS

14. The wife filed her petition for dissolution of marriage on 3 October 2017. The matter came on for First Appointment and the Petition was found proved on 7 November 2017, after which the case was adjourned into chambers for the settling of ancillary orders. On 26 March 2018 W served a draft summons seeking to stop the husband from taking a salary, reducing the matrimonial property, to cause the company to alter it accounting practices and seeking other relief. On 8 May 2018, the husband issued a cross summons seeking to restrain the wife from interfering with the businesses. At the hearing on 29 May 2018, the wife pressed for her summons (which still had not been issued) to be heard urgently. The Court rejected the wife's application and directed that the both summonses be heard on 11 September 2018 and ordered the wife to pay the costs of the hearing on the 29 May 2018 on the indemnity basis. When the summonses came on for hearing on 11 September 2018 the parties were able to agree a consent order. On 22 November 2018, the wife filed originating summonses against company N and company U alleging company

information was being withheld from her and seeking copies of company records. Ultimately, this summons was not pursued. On 1 February 2019, the wife filed another summons seeking clarification and enforcement of the consent made on 11 September 2018 as well as further directions in preparation for the FAH. That summons was adjourned with directions given by consent on 8 February 2019 and was not further pursued. On 6 September 2019, the husband filed a summons for a specific issue order concerning one of the children which I need not detail further. A Case Management Conference was held on 11 September 2019. The FAH commenced on 4 October 2019 and lasted six days.

C. OUTLINE OF DISPUTE

15. The husband has not pursued a pre-matrimonial contribution argument as part of his case, so I need not determine the source of the funds which were used to purchase domain names in the early days of the businesses. He does, however, rely on the success of the operating companies and the family's other investments to establish that he has generated such wealth that it constitutes a *special contribution*. Specifically, the husband argues that he has such exceptional skills and vision that, if he is not the most successful domain name investor ever, he is at least one of only a handful of people who have achieved the same level of success he has achieved.

16. The wife accepts that the husband is hard-working and has led the companies to great success and wealth; however, she argues that the husband's skills are not exceptional. While there was no pre- or post-nuptial agreement, the wife asserts that the parties always intended and had agreed to share the proceeds of the companies and investments equally and that the husband should not be allowed to depart from that agreement.

17. The husband also argues that his post-separation endeavour which has led to an increase of the companies' values over the past two years is such that it, in conjunction with his special contribution during the marriage, justifies him receiving a larger share of the matrimonial assets. The wife does not dispute that the operating companies continue to grow and succeed but refutes that this is sufficient to warrant a departure from equality.

18. The parties also disagree on the role the wife played in the operating companies from the time of their inception. While the wife asserts that she was actively involved in the businesses working alongside the husband as his partner until their children were born, the husband asserts that she was minimally involved and did not materially contribute to the creation of wealth.

19. The wife asserts that her care of the children, in particular her role in their youngest child's rehabilitation, constitutes an equal if not greater *special contribution* to the family, weighing against the husband's argument that she should receive a smaller share of the matrimonial assets. The husband asserts that the wife's contribution to the family is not exceptional as he was also heavily involved in caring for the children.

20. The husband proposes that he should be awarded 65% of the total assets and that he will invest the additional funds for the benefit of the children. The wife is seeking an equal share of the assets.

D. THE LAW – GENERAL

21. The Court's power to order ancillary relief upon dissolution of marriage is conferred by section 21 of the Matrimonial Causes Law (2005 Revision) ("MCL") which provides that –

> *"at the time of pronouncing a decree under this Law, the Court shall, as appropriate, make orders for –*
> *(a) the custody, care and control of the children of the marriage;*
> *(b) the disposition of matrimonial property, including the matrimonial home;*
> *(c) varying any settlement of the property of the spouses made in consideration of the marriage, whether such settlement was made before or upon the treaty of the said marriage.*
> *(d) varying any other settlement of matrimonial property;*
> *(e) making financial provision from the property of either spouse for the children of the marriage and for the other spouse;*
> *(f) providing for periodic payments to be made by either spouse for the benefit of the children of the marriage and for the other spouse; and*
> *(g) costs."*

22. The power conferred by section 21 of the MCL must be read in conjunction with section 19 of the Law which directs that –

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

23. The parties have reached their own agreement as to the care, custody and control of the children of the marriage which has been documented in a parenting agreement and neither party is seeking spousal maintenance. In fact, other than the wife's application for child maintenance, both parties are seeking a clean break. I am, therefore, concerned with the powers conferred by section 21 (b) and (e) of the MCL.

E. CHILD MAINTENANCE

24. The wife seeks a periodic payment towards maintenance of each child. This application is entirely isolated from the other aspects of the case and it is convenient to deal with this application first.

25. This is not a 'needs' case. While the wife concedes that upon distribution of the assets she will have ample funds to meet the children's needs, she seeks a periodic payment from the husband to reflect the fact that the children spend considerably more time with her, causing her to expend more funds on the children than the husband. The wife prepared a schedule of child-related costs which she says she has incurred over the past two years. The wife asserts that she expended over US$770,000 in 2017/18 and over US$810,000 in 2018/19 on the children. Since the date of separation, the wife has only received one payment of US$100,000 towards those costs. Prior to the FAH, the parties agreed not to pursue any back-pay for child maintenance.

26. The wife now seeks a contribution of US$150,000 per annum per child going forward.

27. The husband disputes the wife's calculations as to the children's division of time between the households. He also asserts that he has also spent significant amounts on maintaining the children, although he has not conducted any specific calculations. During the course of his

evidence, the husband suggested that a payment of US$50,000 per child per annum to the wife should cover any disparity in spending between the parties, if there is one.

28. I am mindful that the parties' expenditure on the children, for example on clothing and entertainment, far exceeds the norm. However, the children have a reasonable expectation that they will maintain the high standard of living they have enjoyed with either parent. This is a question of fair distribution of these costs between the parties.

29. The parties have agreed that the parties shall be equally responsible for –

- School fees
- Medial costs
- Health Insurance

30. They have also agreed that each party shall –

- Be responsible for the travel and hotel costs of the children when the children are with them.
- Use their vehicle to transport the children and, accordingly, will bear their own costs relating to the same.
- Be responsible for feeding the children when they are with them and cover the cost of the same.
- Pay clothing and electrical goods purchased and activities undertaken while the children are with them.

31. It is the last three categories (travel, food and clothes, etc.) that are the focus of the wife's complaint. The wife's schedule was not pro-rated to reflect those sums attributable to the children only and included items and services she would normally incur even without the children being in her care. For example, the wife has included the costs of maintaining her accommodation, a vehicle and utilities. The children's presence for the additional time (even if they were in her care for 80% of the time) does not significantly impact these expenses given the level of expenditure generally. *De minimis non curat lex* applies in this instance and I exclude the residential costs and travel costs from my calculations.

32. The children's remaining expenses (food, clothing, spending money, sports, activities and entertainment) borne by wife in 2018/19 are said to have totalled around US$287,000. While I have no reason to doubt that the wife spent US$121,000 on groceries and restaurants over 12 months, given the extraordinarily high sum and the fact that the wife did not pro-rate expenses (see above), I will draw the inference that the true cost of food for the children is likely to be around 1/3 less than that stated. On the wife's calculations, the children spent just over ¾ of their time with her. While the husband disputes the accuracy of the division of time between the households, he conceded that there has been some imbalance given the terms of the parenting agreement.

33. I am persuaded that the children have been and are likely to continue to spend more time with the wife than the husband. The expenditure for the children is likely to fluctuate given their lifestyle and, therefore, it is difficult to arrive at a precise figure for the additional cost the wife will incur over the husband. I must, therefore, take a 'broad brush' approach to arrive at a fair sum.

34. I am satisfied that US$70,000 per child per annum is a reasonable figure to offset any additional expenditure the wife has incurred to date and may incur in future. Consequently, in addition to those matters pertaining to the children as the parties have agreed (see above), I order that the husband shall pay the wife the sum of US$70,000 per child per annum. The first payment shall be paid within 14 days of this Judgment for 2019. All future payments shall be due on 1 July every year starting 1 July 2020.

35. Neither party has addressed the question of whether the periodic payments should continue beyond the children's eighteenth birthdays. Assuming the children do move on to tertiary education, it is possible that they will attend institutions overseas which will significantly impact the children's expenses and the division of time between the parties' two households. Consequently, it is more appropriate to have maintenance payments end on each child's 18th birthday or completion of secondary education (whichever is later) and giving the parties leave to return the matter to Court should an extension be required. Of course, either party is at liberty to apply to the Court for a variation prior to that date should circumstances change.

F. SPECIAL CONTRIBUTION – THE LAW

36. I have been provided with a significant number of *special contribution* cases from England and Wales. While the courts there have continued to confirm that the principle survives societal changes, there have been only a very few occasions in the past 20 years when the courts have found that a spouse had made a *special contribution*. Of course, the number of cases in which the parties agreed a *special contribution* had been made is unknown.

37. By contrast, there have been only two reported special contribution cases in the Cayman Islands, of which only one was successful (**Wight v Wight [2006] CILR 1** *infra*).

The UK position

38. In England and Wales the courts must have regard to the many specific factors set down in section 25(2) of the Matrimonial Causes Act 1973 (as amended) ("MCA"). The special contribution cases arise from paragraph (f) which provides that the court shall have regard to

> *"the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family"*

39. The legislative intention of sections 19 and 21 of the MCL is *ad idem* with that of the MCA and consequently, the UK authorities are of some considerable assistance. I have been provided with twenty-eight UK authorities which I have considered. It is evident that over the two decades the courts in the UK have moved towards the principle of division of assets on the basis of equality, rather than focussing on the parties' financial contributions. This sea change was most evident in the dicta of Lord Nicholls in **White and White [2000] 2 FLR 981** :

> *"Self-evidently, fairness requires the court to take into account all the circumstances of the case. Indeed the statute so provides. It is also self-evident that the circumstances in which the statutory powers have to be exercised very widely… But there is one principle of universal application which can be stated with confidence. In seeking to achieve a fair outcome, there is no place for discrimination between husband and wife and their respective roles. Typically a husband and wife share the activities of earning money, running their home and caring for their children.*

Traditionally, the husband earned the money and the wife looked after the home and the children. This traditional division of labour is no longer the order of the day. Frequently both parents work. Sometimes it is the wife who is the money-earner, and the husband runs the home and cares for the children during the day. But whatever the division of labour chosen by the husband and wife, or forced upon them by circumstances, fairness requires that this should not prejudice or advantage either party when considering paragraph (f), relating to the parties' contributions… If, in their different spheres, each contributed equally to the family, then in principle it matters not which of them earned the money and built up the assets. There should be no bias in favour of the money-earner and against the home-maker and the child-carer…. As a general guide, equality should be departed from only if, and to the extent that, there is good reason for doing so."

40. Thus far special contribution arguments have been limited to instances when one spouse, usually the husband, has generated great wealth. The courts acknowledge that successful *special contribution* cases are inherently discriminatory towards the homemaker, usually women, which is why the threshold is high and such instances should be rare. It must be noted that s*pecial contribution* is not confined to cases of wealth, although, without wealth, there may be little benefit to pursuing such an argument. The issue was considered in detail in **Charman v Charman (No.4) [2007] EWCA 503 -**

"[70] It was inevitable, so it seems to us, that the notion of a special contribution should have 'survived' the decision in Miller. The statutory requirement in every case to consider the contributions which each party has made to the welfare of the family, as well as those which each is likely to make to it, would be inconsistent with a blanket rule that their past contributions to its welfare must be afforded equal weight. Nevertheless the difficulty attendant upon a comparison of their different contributions and the danger of its infection by discrimination against the home-maker led the House in Miller heavily to circumscribe the situations in which it would be appropriate to find that one party had made a special contribution, in the sense of a contribution by one unmatched by the other, which, for the purpose of the sharing principle, should lead to departure from equality. In this regard the House was unanimous. First it approved, at [67], [68] and [146], the decision of this court in Lambert, in which Thorpe LJ had ventured, at [46], "a cautious acknowledgment that special contribution remains a legitimate possibility but only in exceptional circumstances". Then it reached for the criterion by which the court determines whether a party's conduct is relevant to the enquiry and suggested that it should also be applied to identification of the linked and in effect obverse feature, namely the special contribution. When, by s.3 of the Matrimonial and Family Proceedings Act 1984, Parliament had recast the reference to conduct in s.25 of the Act of 1973, it had provided in s.25(2)(g) that conduct should be taken into account if it was "such that it would in the opinion of the court be inequitable to disregard it". On one view that criterion is of fair width. In practice, however, its meaning has largely been interpreted

in line with the narrow criterion for determination of the relevance of conduct set by this court prior to 1984, in particular in Wachtel v. Wachtel [1973] Fam 72, in which, at 90C, it approved the trial judge's suggestion that conduct was relevant only if it was "obvious and gross": indeed see the current re-affirmation of this criterion by Baroness Hale in Miller itself at [145]. It is therefore in the light of the very limited ability of a party to establish a case of conduct under s.25(2)(g) that we must have regard to the statements in Miller both of Baroness Hale, at [146], that contributions should be approached in much the same way as conduct; and of Lord Mance, at [164], as follows:

> *"[S]ection 25(2)(g) recognises the difficulty and undesirability, except in egregious cases, of any attempt at assessing and weighing marital conduct. I now recognise the same difficulty in respect of marital contributions – conduct and contributions are in large measure opposite sides of a coin."*

In saying that he "now" recognised the same difficulty, Lord Mance no doubt had in mind the wider room for special contributions which, as a member of this court, he had identified in Cowan, at [160] and [161].

[80] The notion of a special contribution to the welfare of the family will not successfully have been purged of inherent gender discrimination unless it is accepted that such a contribution can, in principle, take a number of forms; that it can be non-financial as well as financial; and that it can thus be made by a party whose role has been exclusively that of a home-maker. Nevertheless in practice, and for a self-evident reason, the claim to have made a special contribution seems so far to have arisen only in cases of substantial wealth generated by a party's success in business during the marriage. The self-evident reason is that in such cases there is substantial property over the distribution of which it is worthwhile to argue. In such cases can the amount of the wealth alone make the contribution special? Or must the focus always be upon the manner of its generation? In Lambert Thorpe LJ said, at [52]:

> *"There may be cases where the product alone justifies a conclusion of a special contribution but absent some exceptional and individual quality in the generator of the fortune a case for special contribution must be hard to establish."*

In such cases, therefore, the court will no doubt have regard to the amount of the wealth; and in some cases, perhaps including the present, its amount will be so extraordinary as to make it easy for the party who generated it to claim an exceptional and individual quality which deserves special treatment. Often, however, he or she will need independently to establish such a quality, whether by genius in business or in some other field. Sometimes, by contrast, it will immediately be obvious that substantial wealth generated during the marriage is a windfall – the proceeds, for example, of an unanticipated sale of land for development or of an embattled take-over of a party's ailing company – which is not the product of a special contribution."

41. The UK position can be summarised as follows:

(i) The yardstick of equality of division of assets should be forcefully applied.

(ii) There may be characteristics or circumstances of a case that justify departure from the yardstick of equality, but they must be so marked or wholly exceptional that it would be unfair to ignore them.

(iii) A good reason for departing from equality is not to be found in the *minutiae* of married life.

(iv) The *special contribution* may be financial and non-financial.

(v) There is no blanket rule that the parties' contribution to the welfare of the family must be afforded equal weight.

(vi) Exceptional earnings are to be regarded as a factor pointing away from equality of division if it would be inequitable to proceed otherwise.

(vii) The amount of the wealth alone may be so extraordinary as to justify a conclusion of a *special contribution*. However, often the party will need to independently establish that the wealth was generated by their exceptional and individual quality, whether by genius in business or some other field.

(viii) There is no threshold for a claim of *special contribution* by generation of wealth.

(ix) A party whose role has been exclusively that of a homemaker can make a special contribution.

(x) The court should be careful to avoid discrimination against a home-maker.

(xi) Only if the disparity in each spouse's respective contributions, whether by the generation of wealth or otherwise, to the welfare of the family is such that it would be inequitable to disregard it, should the court take such disparity into account.

(xii) The issue is one of equity not whether the contribution is "unmatched".

(xiii) If the court finds that a party has made a special contribution the disparity in division could be as small as 55%/45% but is unlikely to venture beyond 66.6%/33.3%.

The Cayman Islands position

42. The Court of Appeal in **McTaggart v McTaggart 2011 (2) CILR 366** confirmed that, in the Cayman Islands, as in the UK, the starting point for the division of matrimonial assets is one of equal division; however, having regard to the principles of need, sharing and contribution and the deserts of the parties an unequal division may be appropriate. The principle of *special contribution* is captured by the requirement in the MCL to have regard to "*the deserts of the parties"*.

43. It is of some benefit to review the facts in **Wight v Wight** ([2006] CILR 1 and CICA No 6 of 2006 - unreported - 30 November 2007). When the parties met in 1978, the husband was the manager of the Cayman joint offices of Deloitte, Rawlinson and Hunter, later to become Deloitte and Touche. The wife was also employed. The parties married in 1980 and in the same year the husband became an equity partner in the firm. The husband and wife had 4 children. The wife was responsible for the children's school fees and domestic staff salaries. In 1991, the husband received a significant appointment which significantly increased his earning capacity. The wife ceased working in 1995 after which she supervised the running of the house and the family life as well as undertaking the management of properties acquired by the parties during the marriage. When the parties separated in 2002 they had acquired substantial properties and wealth valued at around CI$16.5 million. Levers J at first instance found that this case constituted a "big money" case and concluded that the wife could not have done more and that she was the "*backbone of the family*". Nevertheless, Levers J held that the husband had made a special contribution, in part because of his achievements prior to the marriage –

> *"74 The husband was already an accountant at the time of marriage. He came to the Cayman Islands at the time when the Cayman Islands was not a financial centre … By virtue of his hard work, skill and it has to be said a certain expertise was appointed liquidator, for BCCI (one of the largest liquidations the world has ever seen). The husband, had he just being (sic) appointed as a liquidator for BCCI and not taken the matter any further (keeping it within the local jurisdiction) may have earned substantial monies but not the enormous wealth that that particular assignment generated. What the husband did was to endeavour with others to come to a global liquidation, which was, I believe one of the few cross borders liquidation ever been undertaken (sic)."*
>
> 75…
>
> *76 … It may be argued that to become senior partner in Deloitte and Touche in another jurisdiction may not be particularly exceptional but it cannot be said that to be a senior*

partner in a jurisdiction such as the Cayman Islands, to have obtained a world-wide liquidation and to have solved it on a rare cross border liquidation, is not exceptional. He now not only is senior partner and has been for many years, but his firm is one of the largest in the Caribbean. He is possibly one of the high earners of the accounting profession in the Caribbean… I have no difficulty in concluding that in the circumstances of this case it would be unfair not to recognize the husband's special contribution."

44. The husband was awarded a 55% share of the matrimonial assets.

45. On appeal [**2010(1) CILR 60**] the Court of Appeal had the benefit of the judgments in **Miller v Miller and McFarlane v McFarlane [2006] UKHL 24; [2006] 2 AC 618** and **Charman**. Forte J in his judgment addressed the presumption of equal division –

"47. … It is the presumption of equal contribution of spouses that now forms the basis of the new approach to a fair and equitable division of matrimonial property.

48. The current concept that a marriage is a union of equals (and the consequent departure from the view of marriage, where traditionally, the husband's role as breadwinner and viewed as 'superior' to the wife's role as homemaker) must now form the basis of arriving at a fair and equitable approach to the division of family property. When a man and a woman join themselves in matrimony it is inarguably a partnership in which they see themselves as equals, with the ambition and desire to build that partnership for their mutual benefit and the general welfare of the family. Usually they decide the methods of conducting the marriage. In some cases, depending on the circumstances, they both may develop their own careers, and in that way make their individual contributions to the marriage. In other cases, where children have become a part of the family, one spouse may make the sacrifice of cutting his or her career short in order to stay home and take care of the needs of the home and the family. In such cases the other spouse will no doubt continue with his or her career and make his or her contribution in direct financial terms.

49. … The criteria are not merely what financial contributions were made by each spouse; but more so what contributions to the welfare of the family were made by each spouse."

46. Zacca P, giving the principal judgment of the Court, affirmed Levers J's finding of special contribution, concluding -

"45. The notion of "special contribution" is now an accepted principle and I agree and accept the notion of special contribution. It is a matter for the judge at trial to consider whether special contribution has been established. This will depend on the facts of each particular case."

47. All special contribution cases turn on their own facts and, therefore, a factual analysis is of limited assistance. Also, I consider that, fourteen years on, one should approach the decision in **Wight** with some caution. In 2020 the Cayman Islands is enjoying a great economic boom and is considered to be one of the foremost offshore financial centres. In that context, Mr Wight's financial and career achievements may not now be considered as exceptional as they once were. Also, unlike the husband in this case, Mr Wight came to the marriage having already achieved some measure of success. However, the decision does confirm that the legal position in the Cayman Islands is not dissimilar to that in England and Wales, albeit the contribution must be considered in the context of the societal norms and circumstances in the Cayman Islands and the Caribbean region rather than the UK or North America.

48. To date there has been no attempt in this jurisdiction to articulate a definition or test to determine what constitutes a *special contribution*. The English courts have struggled in this regard. It is widely accepted that a spouse must have done more than had a good idea, initiative, entrepreneurial skill or done extensive hard work in order to be a 'special contributor' (per Thorpe LJ in **Lambert v Lambert [2003] All ER 342** at paragraph [52]). Over the years *special contribution* has been described as being exceptional[5], genius[6] (now disapproved[7]), stellar[8], extraordinary[9], really special[10], and 'obvious and gross'[11]. What is apparent from the UK decisions is that the court should not have to undertake a detailed analysis of the *minutiae* of the marriage, rather a special contribution will be readily apparent.

49. In this instance, both the husband and wife are asserting that they have made a special contribution. The husband argues that, if he is not the most successful investor, then one of the most successful domain name investors in the world; that the creation of vast wealth for the family warrants him receiving a significantly larger proportion of the matrimonial assets.

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[5] Lambert v Lambert [2003] 4 All ER 342
[6] Lambert v Lambert *supra*
Sorrell v Sorrell [2006] 1 FLR 497
[7] Work v Gray [2017] EWCA Civ 270, at [103]
[8] Cowan v Cowan [2001] 2 FLR 192
[9] K v L [2011] 3 All ER 733
[10] H v H (Financial Provisions: Special Contribution) [2002] 2 FLR 1021
[11] G v G (Financial Provisions: Equality Division) [2002] EWHC 1339 (Fam); Miller v Miller; McFarlane v McFarlane *supra.*

50. I find Roberts J's five questions which she posed in **Cooper-Hohn v Hohn [2015] 1 FLR 748** to be very fitting in this instance and so I adopt them –

(i) Can it properly be said that the husband is the generating force behind the fortune rather than the product itself?

(ii) Does the scale of the wealth depend upon the husband's innovative vision as well as on his ability to develop those visions?

(iii) Has the husband generated truly vast wealth such that their business success can properly be viewed as exceptional?

(iv) Does the spouse have a special skill and effort which is special to them and which survives as a material consideration despite the partnership or pooling aspect of the marriage?

(v) Would it, in all the circumstances, be inequitable for me to disregard that contribution?

51. The wife asserts that her care of L, in particular her active and extensive involvement in his treatments, are exceptional also. This is, therefore, a rare case when a non-financial contribution is to be considered. There is no guidance in any of the authorities before me as to how I should assess whether a non-financial special contribution has been made. Without a doubt, the high threshold still applies; the contribution must be exceptional, stellar, gross, etc. As I review the evidence I ask myself these additional questions: -

(i) Can it properly be said that there has been or is there likely to be made, an exceptional benefit (other than financial) to the welfare of the family?

(ii) Is/was that benefit derived from an exceptional contribution by the wife?

(iii) Is/was the contribution dependent on an exceptional characteristic or skill held by the wife?

(iv) Was the wife's contribution to the welfare of the family such that it would be inequitable to disregard it?

52. Only if the wife has established positive responses to those answers has she discharged her burden to establish that her contribution was indeed special.

53. If both husband and wife are found to have met the criteria then I must not attempt to compare one contribution to the other (to determine whether they are "matched" or "unmatched") as this would be akin to comparing apples with pears and likely to reintroduce discrimination.

G. THE INTENTIONS OF THE PARTIES

54. Mr Todd QC, on behalf of the wife, also drew my attention to the Court of Appeal's in **Parra v Parra [2002] EWCA Civ 1886; [2003] 1 FLR 942** in which Thorpe LJ, at paragraph 27, concluded –

> *"As a matter of principle I am of the opinion that judges should give considerable weight to the property arrangements made during the marriage and, in cases where the parties have opted for equality, reserve the exercise of the adjustive powers to those cases where fairness obviously demand some reordering."*

55. I note that **Parra** was not a special contribution case; however, the judgment serves to reiterate that fairness is always to be at the centre of the court's consideration and that intention is one aspect to consider.

H. POST SEPARATION ENDEAVOUR

56. The matrimonial partnership does not stay alive for the purposes of sharing beyond the point of separation by reason of the other party's continuing contribution to the welfare of the family (**Waggott v Waggott [2018] EWCA Civ 727**; **C v C [2018] EWHC 3186 at [40]**). In this instance, the husband's case is that his post-separation endeavours have significantly grown U and that overall the operating companies have continued to produce significant profits. While the husband opines that on a straight-line approach these efforts would warrant a 55% share of the assets, he does not seek a distinct adjustment on this account but invites me to take it into account alongside his overall *special contribution* during the marriage.

57. I had all of the above principles in mind as I considered the evidence and submissions of counsel.

I. THE EVIDENCE

58. The wife and husband both adduced numerous affidavits and gave *viva voce* evidence. I observe from the outset that both parties have been reluctant to give credit to the other for their respective roles in the marriage, each strongly dismissing the other's contribution as less valuable. The husband was particularly vocal in this regard, even suggesting that much of what the wife did for the family and the business could have been done by others with ease. Each party has accused the other of being less than forthright with the court about their marriage and the businesses.

59. The wife freely admits that she has absolutely no trust that the husband will not take steps to diminish her share in the matrimonial assets. This fear has been at the centre of her attempts to gain access to information and become more involved in the operating companies since their separation. The husband maintains that his goal is to generate as much wealth for both of them and their children. He seeks to reassure the wife and this court that in his dealing with the various companies, he will continue to grow the companies and keep both of their interests safe.

60. Besides the evidence of the wife and the husband, they each relied on the evidence of other people who knew them, were employees of the companies or familiar with the domain name industry to substantiate their claims.

61. Mr J, company U's COO, provided evidence which was not contested. He has known the husband since they were teenagers and he lived with the parties in late 2001/early 2002.

62. Mr B is the companies' intellectual property attorney. His evidence was also uncontested. He spoke to his knowledge of the roles the husband and wife had in the operating companies.

63. Mr RS is company N's longest-serving employee and minority shareholder in company U. His account was not challenged either. He was in a position to speak to the parties' roles in the operating companies from inception.

64. Mr F, a current shareholder of company U, gave evidence about his own and the wife's involvement in the businesses. Mr F had been company U's counsel for 6 years and was, therefore, well placed to be familiar with the day-to-day running of the business. The husband terminated Mr F's employment in 2017, which Mr F claims was without cause. For this reason, I approached his evidence with caution.

65. The husband's sister, TS, also gave evidence. She was not involved in the businesses in any way. She gave an account of the business and family arrangements which was largely based on information imparted to her by the parties during the 20-plus years of their marriage. Consequently, I did not give her evidence as much weight as if it were first-hand knowledge.

66. Mr N is the founder and CEO of X Co. which operates in buying, selling and monetizing domain names and operating gTLD name registries for 12 gTLDs. Mr N started purchasing domain names at the age of 12 and considers himself to be an industry leader. X Co. has a joint venture with company U which earns X Co. $2 million annually. His evidence spoke in more detail to the workings of domain name industry as well as the husband's reputation and status as a domain name investor. I was mindful that Mr N is not an independent witness, as he is not only a business partner whose revenue is dependent on the husband's endeavours, but the men are obviously good friends as well. Also, Mr N was advised before drafting his affidavit that the purpose of his evidence was to establish the husband's *special contribution* and counter the wife's claim to half of the assets. I was alive to the fact that his opinion evidence may be tainted by this close relationship with the husband.

67. Mr H was called by the wife. He holds himself out to be an expert in the field of domain names and the search engine marketing industry as well as other internet services. He gave his opinion on the prevalence of the husband's investment strategies and business models, as well as the husband's status within the domain name industry. However, Mr H's opinions largely relied on his own limited experience of domain trading over the past 20-plus years and research he conducted

for this case. I was also troubled by his approach to the brief he was given by instructing attorneys. Ultimately, I gave limited weight to his opinions on matters outside of his personal experiences and the material he sourced during his research (which the husband did not challenge).

68. The wife also adduced a number of testimonials from doctors and therapists speaking to her role in L's rehabilitation. The husband did not seriously challenge the veracity of these letters except that he felt that the authors may be placing more weight on the wife's role with the intention of bolstering what the wife will have presented to them as an unfair claim by him.

69. I have also been provided with the Register of Members for both of the operating companies and other holding companies, as well as correspondence between the husband and company U's corporate secretary surrounding the transfer of shares in 2014.

J. THE FACTS

70. Due to the factual complexities of this couple's personal and business affairs, it is necessary to review the facts in some detail. Where the parties have disagreed on material facts I have to determine where the truth lies. My recital of company N and company U's structures and activities are based on trading from inception to the FAH.

The Companies

71. The husband purchased the first domain name in August 1999. He set up company P (no longer trading) for this purpose. The husband lost his employment in June 2000 after which he focused full-time on purchasing domain names. In June 2000, company P purchased a significant share in a valuable domain name and revenue grew exponentially. Company N was incorporated in the Cayman Islands after the parties relocated here. Initially, company N was held in the husband's sole name, but in 2007 the husband's shares in company N were transferred to be held by the husband and wife as joint shareholders.

72. Company U was incorporated in 2010 to be a retail Registrar of domain names. The company has 125 employees, based on-island and overseas. The husband was the sole registered shareholder until 2014 when all shares were transferred to be held by the husband and wife jointly.

73. Company N and company U are distinct companies although the operations overlap substantially. Company N acts as a registrant of over 350,000 domain names. Company N purchases and sells domain names on a continual basis. At inception, company N received revenue from "parking pages" linked to their domain names which were controlled by the advertising networks. When parking revenue began to decline the business was restructured to focus on sales.

74. Company U markets and sells company N's second-level domain names and other names as well as provides a brokerage service for other registrants of domain names around the world. It is also a registry factory making "not-com" name endings. Additionally, company U provides an infrastructure to manage domain names, email services, website building and other additional paid services. Company U has yet to start turning a profit and, to date, company U's shortfalls have been covered by funds from company N. The husband's evidence is that company U will start showing a profit either later in 2019 or during 2020.

75. The husband has not historically drawn a salary from the operating companies. Instead, the parties have used company N's funds as a collective pot from which funds were drawn to meet all of the family's living costs and other investments. During these proceedings, the parties have made several distributions from their joint account which has been paid to them in equal amounts into their respective accounts. These distributions were made on the understanding that the husband maintained his position that he was due a larger share of the matrimonial assets and an adjustment could be made to the distribution of the remaining assets should the court accede to his claim of *special contribution*.

76. In addition to the operating companies, company U has a number of subsidiary companies and the parties have also set up companies for other business ventures. The husband and wife also own a number of holding companies used to hold real estate and other assets. For the purposes of this judgment it is not necessary to set out the company structures in any more detail than I have already done. It is relevant to note that since these proceedings commenced the couple has

been treating all liabilities and benefits relating to their joint assets on an equal basis while awaiting the final decision of the Court on the distribution of these assets.

77. Some of the properties held by the parties generate income; however, such funds are not always enough to cover the costs of managing the properties. In those instances, the operating companies cover the shortfall.

78. I will not venture to set a threshold at which the amount of wealth generated is *ipso facto* exceptional in this jurisdiction. I do find that while generating US$290,000,000 from a nominal investment in the 21st century is impressive, it is not exceptional. Consequently, the husband must independently establish that the wealth is a result of his innovative vision or a special trait or skill he possesses.

The early years of the business

79. The husband first became aware of domain names in 1997. The internet was still in its infancy and the husband began researching the domain names and speaking to people in the industry. The husband focused full-time on purchasing domain names after he lost his employment. The wife's income, together with the rental income, provided the couple with the funds to meet their regular financial obligations. By the end of 2000, the business generated sufficient income to allow the wife to cease employment. The company started hiring external staff in 2001. In 2002 the parties relocated to the Cayman Islands. The funds from the sale of their home in Canada were used to purchase their first home in West Bay. The husband ran the companies from that home. From 2002 the domain name business grew rapidly. The husband's evidence was "*for the remainder of 2002-2004 I worked relentlessly and singularly to build the business*".

80. The husband recounted that one of his first breakthroughs was when he discovered when and how domain names would become available to purchase ("dropping"). His evidence was –

> *"I discovered on my own that there was a period during which … names would suddenly become available… What it allowed you to do was, it allowed you to understand that the zone file just updated, and you had to know when the zone file had updated that you could do a DIF, a differentiation, what's in this zone file now, or*

rather, what's not in this new zone file that was in the previous zone file that you had … The difference between the two would be the names that had suddenly left in the last zone update… You would then be left with an enormous amount of names … You would then have to understand very quickly, run a subsequent scan to understand what are the good names, possible good names …"

81. The husband also focused significant time on researching the popularity of different search terms used on the internet. He compiled a list of words and phrases ("the mega dictionary") which he then used to identify whether corresponding domain names were available to purchase. These purchases would have to be conducted during the night.

82. The husband described having "plenty of competition" and he, therefore, began using a particular web interface which allowed him to create multiple purchasers on different browser windows, thereby increasing his chances of a successful purchase. The husband created webpages for the domain names he had acquired which generated revenue from internet traffic landing on the page – known in the industry as "parking". The company hired its first staff in 2001, including Mr B, an IP lawyer, and Mr RS, the Chief Technology Officer whose evidence is before me. In 2002 the husband, assisted by Mr J, created a process that allowed the company to test domain names. That same year the husband negotiated an advertising contract which tripled the business' income. That was also the year that the family relocated to the Cayman Islands. The husband also engaged another company to purchase domain names on the company's behalf, increasing the business by 10-20%. In 2002/2003 the husband devised the idea of a "binger", a piece of software that would send out an audible alert if a desired domain name was about to become available to purchase. At his direction, Mr RS then wrote the code for the system -

"So the binger would bing, [to] alert you that the zone file has run. [The binger] would run the initial DIF. It would run the subsequent bump against the mega dictionary which I created, and you then use your skill set to delineate the fool's gold from the gold, and then quickly have a window open to rush to register [the name]. That entire process would take about 40 minutes, but with one bing of the binger you might make $10,000."

83. The husband eventually concurred with Mr H that the binger was not an entirely unique piece of software -

"Through the benefit of hindsight, I learned that… there are other people who had software that was different, had similar characteristics, that these are the people that I was competing against, these are competitors that I have long overtaken."

84. The husband also discovered that using SnapNames (a third-party tool) would give him priority access to desirable domain names. Together these processes increased company N's names library by tens of thousands of names. In 2003 the husband also negotiated the purchase of a competitor's names library which further increased company N's profitability.

85. By 2004 the husband was offered US$110 million for company N which was turned down.

86. As already stated, in 2007 the husband's shares in company N were transferred so that the husband and wife held them jointly.

87. Between 2007 and 2009 "parking" revenue began to decline and the husband negotiated a favourable contract with Google which once again increased revenue significantly.

The growth of the company

88. In 2011 the husband rented commercial property and moved the operations out of the family home into this new space. Around this time the husband began working on a sales platform.

89. That same year the Internet Corporation for Assigned Names and Numbers ("ICANN") which governs domain name registries, registrars and registrants introduced an auction for new gTLDs. Rather unusually, ICANN structured the auction so that the proceeds from a winning bid for a gTLD were distributed to the losing bidders. This meant that losing bidders could, in fact, make money from losing. The husband assembled a new team to capitalize on the gTLDs. Company U was the third largest applicant in the initial auction. The husband asserts that it was his well-considered strategic bidding and decision to team up with other bidders which resulted in company U acquiring 26 valuable gTLDs for little to no net cost to the company -

"Winning new name endings was a "wildcatter's greenfield" with often unpredictable windfalls and pitfalls. Some of the "average quality" GTLD name endings sold for millions of dollars while better quality name endings, if applied for by only a single

applicant, were often obtained for the application fee alone… The prices garnered for many of these name endings were not grounded in the reality of revenue but reflective of the zeal and mania which surrounded the name-space at the time".

90. The husband credited his letter to the US authorities questioning the lawfulness of the ICANN auction as the reason the auction was ultimately able to proceed in the proposed format. He opined that had he not made those enquiries then all of the domain names would have gone to public auction which would have priced out all but the largest internet companies and the profits would have gone to ICANN rather than unsuccessful bidders.

91. The husband explained his business success in these terms –

"You have to understand what it is you're creating. It's not just simplistic zeros and ones. You know, I often joke that … creating… 250 or so million dollars in the domain name business is a little like I'm working a 10 million string combination on a keyboard. You have to type on keys. You know, all I'm doing is typing on keys on a keyboard, but I'm doing it in the right order, at the right time, and creating … an enormous business out of it... I'm typing keystrokes on a keyboard, but it takes creativity to dream up software and understand how it will work and interact in the ecosystem, and then you need to understand the art of human behaviour so that you can make that work to your advantage … There are a lot of people who try to generate traffic in domain names… There's a big difference between trading a hundred dollars in a lifetime from parking and creating… 1.8 million a month from parking… You need to understand… traffic and the type of traffic, human behaviour. You have to have a great, great deal of creativity and that."

92. Around the time of the couple's second period of separation in 2014, company U and the couple's holding companies were restructured so that they held shares for most of the companies jointly.

93. The husband maintains that he is a "*hands-on manager*" making all significant decisions for the companies. The husband's evidence was that from inception the wife was not involved in operating companies in any material way, referring to her involvement as "*wholly negligible*". He stated that he repeatedly encouraged the wife to become involved but that she was disinterested. He described any discussions he had with the wife about the business as nothing more than 'pillow talk'. The husband recounted the wife once attempted to design a webpage but that it was not suitable and the design was abandoned. He also conceded that on another occasion she facilitated his participation in a domain names auction by "*pressing a button*" on his instructions but that she did not understand the process behind her actions. He did not dispute that the wife

had once built a database for advertising but claimed once again that this did not add any value to the business. While the husband accepted that the wife had conceptualized the 'wrapping' of a bus and the use of a billboard to advertise a particular gTLD, he asserted that a member of staff executed the bus idea and that neither idea added value to the business. The husband dismissed the wife's planning and execution of the staff Christmas parties as immaterial. He denied all other activities the wife has proposed she conducted. The husband asserted that any increases in the value of their real estate and investment portfolios were as a direct result of his investment decisions, not any contribution by the wife.

94. When asked whether the wife looking after the family aided the business by allowing him to focus on the business, the husband replied –

> *"…having [the wife] there with the children was certainly great for [the wife]. She wanted to be a mother. She wanted to be there for the children…. But [the wife]'s contribution to the children neither helped nor hurt the business."*

95. The wife's case is that she contributed financially and worked alongside the husband purchasing domain names from the beginning. She described her role as "pivotal" in making the family business a success -

> *"I was there with [the husband] from day one: learning, assisting and making critical joint decisions with [the husband] every step of the way."*
>
> *"…Although I would accept that [the husband] had a lot of ideas and was driving forward plans for the business, this was done following our daily discussions and decisions, and I was running other aspects of the company."*

96. The wife has produced a Christmas card written to her by the husband in 2010 to demonstrate that the husband's also believed that they were partners in the business –

> *"It goes without saying (but I'll say it anyway) you and I have been incredibly fortunate (and lucky together). Life has truly been a dream. We've built a great business, taken care of our families, and had two great kids!"*

97. The wife asserts that the statement that "*we've built a business*" is strong evidence that the husband as far back as 2010 was acknowledging her equal contribution to building the businesses. The husband accepted writing the card but asserted that little weight should be attached to his

words, as these were simply words of encouragement at a difficult time in their lives rather than a considered description of their history.

98. The wife's evidence about the early years of their marriage and the businesses was compelling. Her account was corroborated by a number of witnesses. Mr RS's evidence paints a picture of the wife being actively involved in the business until she gave birth to their first child. Mr J confirmed that the husband and wife had an office together in the basement and that the wife built the landing pages for the domain names they had purchased. He also confirmed that the husband consulted the wife before settling on their price limits for individual auction items (domain names). While I approached Mr F's evidence with caution I am satisfied that his account that the wife was materially involved in the selection and bidding of domain names is accurate. Mr B's lack of involvement with the wife does not trouble me as his role was a very narrow one, which she has never asserted to have been involved in.

99. I was not persuaded by the husband's attempts to minimize the wife's role in the business. I accept the wife's account to be true and accurate. I am satisfied that at inception, the wife was actively involved in the business while still maintaining employment to meet the family's financial needs. While the husband took on the lead in the business carrying out many of the day-to-day tasks and devising and realising processes and driving the company forward, I accept the wife's case that the domain name business was a joint endeavour to which she contributed in a meaningful way by -

(i) Being fully involved in all decision-making concerning the business, including deciding which names to target for purchase;

(ii) Spending "countless hours" alongside the husband researching 'generic keywords' to create the master list of names;

(iii) Designing lander pages for the domain names purchased;

(iv) Providing the financial safety net for the family as she continued to work to meet the mortgage repayments and other bill's; and

(v) Investing any surplus from her salary into the business.

100. I also accept the wife's evidence that after giving up employment in 2000 she focused on assisting in the business full-time and that this continued after their move to the Cayman Islands.

101. I also accept the wife's account that -

(i) She contributed many ideas to grow the business;

(ii) She negotiated a revenue-generating deal with company A;

(iii) She built a database categorizing the many domain names company N owned for advertising and sales purposes thereby increasing the company's revenue by 20% overnight;

(iv) The parties discussed and agreed which gTLDs they would bid for;

(v) The gTLDs were purchased using their joint matrimonial assets;

(vi) She devised two marketing campaigns for two gTLDs;

(vii) The husband would seek her opinion of matters concerning the gTLDs on a daily basis;

(viii) She was heavily involved in choosing real estate to buy as well as other investments they made; and

(ix) She increased the value of their property portfolio by several millions of dollars by managing their redesigns.

The intention of the parties

102. Considerable time was spent at trial examining how the parties had intended to hold their equitable interests in the various companies. While the wife maintained that the parties always intended to be equal owners and acted accordingly, the husband denied this was so, asserting that in his mind the wife was a "*passenger [in his businesses] rather than a partner*".

103. This marriage had periods of disharmony. The husband accuses the wife of pressuring him into restructuring their many companies to "*feather her nest*".

104. In his *viva voce* evidence, the husband went so far as to insinuate that the transfer of company N's shares into their joint names in October 2007 was also as a result of pressure by the wife at a

time of matrimonial turmoil, although he did not provide any details. As this was the first time this was ever suggested, the wife did not have an opportunity to address this allegation.

105. The husband also made such allegations about the restructuring of their remaining companies in 2014. Critically the parties separated in May that year before reconciling in September, which coincided with the company U shares being transferred to be held by the parties jointly. The husband was questioned at length by Mr Todd QC about a series of emails in July and August 2014 between the husband and the wife leading up to the restructuring of the companies. In these emails, the husband speaks of "balancing" ownership, the even division of shares, equality and that these were "*our business*". The husband denied that he intended to create a binding final agreement for their separation. Instead, he alleged that the wife was luring him to make such statements so that she could improve her status *vis-à-vis* company ownerships. He described the wife's actions as "*ghost writing*" and applying "*duress*". The husband argued that he should not be bound by anything he stated in the emails as these emails were merely interim arrangements for their separation or words to simply placate the wife at a time of severe discourse and written without legal advice.

106. The wife acknowledged that she took legal advice from matrimonial attorneys in 2011, 2014 and 2017 when the marriage was in crisis. She also accepted that she did not disclose this to the husband. The wife did accept that she wrote the emails following and on legal advice. The wife asserted that throughout their marriage she considered herself to have a half-share of all the businesses, albeit she only found out in 2014 that she did not.

107. I accept the husband's contention that the emails in 2014 were the wife's attempt to cement her claim for half of all of the companies under their control by urging the husband to make the necessary structural changes to those companies to reflect the parties having an equal share in them and that it was a condition of their reconciliation. Without a doubt, the husband's emails left the wife with the impression that they were *ad idem* and that the husband was going to make the necessary arrangements for equal ownership.

108. On 2 September 2014, the husband wrote to their corporate administrator instructing her amongst other things to –

"… transfer half of my stock in [company U] to [the wife]…"

The wife was copied into this email. During the husband's evidence, he disclosed that he had met with family attorneys on 8 September 2014. The following day, the husband wrote a further email to the administrator speaking to the parties holding the stock "*jointly*". Once again the wife was copied in. No mention was made to suggest that this would make them anything other than equal beneficial owners. The very next day, the husband asks the administrator –

"Is there another form of co-ownership "other' than jointly...?

The wife was not copied into this email. The administrator replied that same day that there was the alternative option to issue an equal number of shares to each of them. The husband replied-

"It is not my intention to divide the tranches equally at this time…. It is my intention to have [the wife]'s name attached to my collective pot to show that she is a shareholder and that she has a minority interest in the collective tranche…"

The husband then proceeded to set out in detail why he wishes to deal with the shares in that way, including advising the administrator that -

"…[if] we were to file for divorce I would instruct my QC to seek some majority based on my exceptional contribution to our economic situation."

The husband rounded off his instructions to say –

"I'd like you to keep this note personal between you and I and my attorney above and to have it serve as a dateline as to my intention."

The wife was not copied into this email either. The attorney referenced was the husband's family attorney who is instructed in these proceedings.

109. The husband's narrative of the events surrounding these many emails between him and the wife and his instructions as to the transfer of shares was unconvincing. I am left sure that the email on 11 September 2014 documenting the husband's intention to pursue a special contribution case only arose after legal advice. I am sure that prior to obtaining legal advice, he, like the wife, had always proceeded on the basis of them being equal beneficiaries, which is why he freely agreed

in the emails with the wife to share assets equally on separation. Furthermore, he took measures to ensure that the wife remained unaware of his duplicity.

110. Without a doubt, the business was the husband's brainchild and he was the primary operative, but that does not change my conclusion that the businesses started as a joint endeavour from which they both intended to benefit equally.

The husband's special contribution

111. The husband's case for a larger share of the assets is not only based on the huge wealth he has created. He argues that he has "*exceptional natural capabilities, creative thinking, restless energy, innovation, drive and intellectual power*" which is reflected in the exercise of his skill in his chosen field and that he is now a "*revered legend of the industry*". In addition to the domain names acquisition and sales which I have detailed above, the husband asserts that he has made a special contribution by virtue of his other unique qualities also. The husband considers himself to be a "renaissance man". The husband gave numerous examples of his professed genius, including -

(i) He devised "the binger";
(ii) He utilised multiple bid account windows for an auction so that it increased his chances of purchasing desirable names;
(iii) He used SnapNames to improve his purchasing rate further;
(iv) He would temporarily acquire domain names and use software he devised to test their popularity and then discard any worthless names;
(v) He devised a new type of jewellery clasp in addition to other items for which he holds the patents; and
(vi) The success of his diverse investment portfolio.

112. During cross-examination, the husband agreed with Mr H's evidence that the husband's methodology for purchasing domain names was not unique because other investors had –

(i) Used automation technology;
(ii) Used similar bidding tactics to purchase domain names;

(iii) Used lander pages to generate revenue; and

(iv) Devised popularity testing processes for temporarily acquired names.

113. The husband also accepted that some of the other investors reviewed in the proceedings had also accumulated portfolios worth millions. The husband nevertheless maintained that he was the most successful 'domainer' because his ability to identify profitable names is a unique talent-

> *"… it is critical to understand the value of each domain name. It has become an art to consistently and correctly value domain names at auction. This is essentially in order to acquire names at good value, avoid overpaying and to turn a profit. Similarly, if a domain name is to be sold it is important to understand its correct value to maximize money earned."*
>
> *"You have to understand human nature, search science and desirability."*
>
> *"You need to understand human behaviour and [internet] traffic"*

114. Mr N opined that a successful domain name investor must be able to –

(i) Assess the value of any given name; what he called "market know-how";

(ii) Be able to acquire it (i.e. have the tools and funds to purchase); and

(iii) Know when, for what price and by what means to sell the name.

He also spoke to the unusual nature of the industry -

> "*The domain name industry is an unusual one in that it is extremely open for anyone to become involved. In the early days of the industry there was not much information available about how things worked, but anyone who wanted to could start acquiring domain names. Although the industry has changed a great deal, that remains true today*."

115. Mr J had a somewhat different view on the dynamics of the market and why the husband has been so successful –

> *"Often we were bidding against guys who were in the domain name business part time, and who would have to go back to their "real jobs". It was a war of attrition, putting in more screen time then our competitors. We would outlast the competition, one domain name after another."*
>
> *"I think [the husband] struck it big because he has an amazing belief in himself and that things will work out well. He has no fear of failure, with a huge tolerance for risk. He is also extremely driven. A lot of people got to the level [company N] reached and*

sold out – but he sees the bigger picture. Others are more conservative; but [the husband] was always willing to try to get to the next level."
"He found his niche in life and that coupled with determination, vision, and willingness to take a risk is what has bought him the extraordinary success he has enjoyed. For my money, there is nobody better in the world at picking domain names. He definitely is an expert in his field and an industry leader."

116. Mr RS touched upon the husband's business acumen also -

"I think the main reason for his success is that he is able to see opportunity where others do not. Once he identified such an opportunity, he takes it and will continue to work at it until he succeeds."

117. The husband asserts that his hard work, vision and adaptability were crucial to the business' success and are exceptional also -

"…it was my identification of the business opportunity in domain names and my subsequent execution of this plan that created the success we now enjoy. It was through my continued foresight and ability to adapt that I caused [company N] to grow into a sustainable business. It was my ongoing push into [company U] which has created additional wealth in the collective hundreds of millions. Over that time, in addition to increasing in value, [company N] has provided us with a substantial income which I have successfully invested and unilaterally invested in various ways."

"…I have always, and continue to be, intimately involved in maintaining the profitability of [company N]. I curate the domain names it possesses. I manage the sales and buying teams, I spearhead the improvements to sales infrastructure and I am closely involved in assessing the value of the names on both the inbound purchases and outbound retail sales. On the buying side I must assess what is the best investment (identifying inventory and deciding how much to pay before transfer consolidating the winning purchases to our master catalogue); on the selling side I consider not only what the best deal we can achieve is, at any given moment, but what the long term strategic value of a domain name might be, and I decide whether to sell or not."

"Much of [company N]'s ability to generate outsized sales revenues compared to its peers stems from the fact that I have continued to labor tirelessly on improving the sales process, and sales infrastructure at [company U]. The "storefront" which allows buyers access to the warehouse of domain names that [company N] holds was designed, improved and curated by me…[company U] makes [company N]'s outsized profitability possible because I am constantly pushing and trying to improve our sales infrastructure. "

118. The husband also spoke to his involvement in the other companies affiliated with company U which provide similar services around the world –

> *"Each of these companies is valuable in its own right and produces income for* company *U. They are an integral part of our collective platform and contribute to growth. I conceived, planned and executed the structuring, purchase and operation of these entities…some are in partnership with third parties and I negotiated and consummated these partnerships and hired a team of members to assist me."*

119. Mr N is one such business partner. He clearly holds the husband in high regard and supports the husband's claim to being exceptional –

> *"[The husband] has not followed any established business model or copied what others were doing but he has built his own business model and processes from the bottom up based on his ingenuity. [The husband]'s way of doing business is unique."*
>
> *"Most people who refer to themselves as "domain name investors" acquire names and then sit on them. If they are lucky, they manage to acquire a name that becomes valuable and are eventually able to sell it in effect winning a sort of lottery. If they are good, they may manage to do this in some volume. [The husband] isn't in the lottery business. He is constantly winning. He understands the market better then practically everybody else in it. But, importantly, he adapts and changes with the market, repeatedly finding a way to come out on top."*

120. The husband also highlighted his decision to diversify into gTLDs after parking revenue started to decline and how he acquired very valuable gTLDs at no cost to the company as yet further examples of his genius. The husband has not disputed and I accept that, as at 29 September 2019, company U owned the 35th and 65th most popular gTLDs out of a total of 1,202 gTLDs. The husband also points to his negotiations with Yahoo and Google as evidence of his business acumen.

121. The husband accepted that there are a handful of people who have been as successful as he has in the domain names industry and opined that he may well be the most successful domainer referring to himself as "*the largest of the top 50 domain millionaires by a magnitude*" although he could not provide specific sources from which he drew this conclusion. Mr B describes the husband as "*one of the most dominant players in the domain name industry*". He spoke of having a number of clients in the industry and the husband being one of 4 or 5 major players, each of whom had their own approach. Only 2 or 3 of that group excelled to the husband's level of

success. Mr B distinguishes the husband from the competitors on the basis that the husband built up the businesses "*pretty much single-handedly*".

The family unit

122. The parties' youngest child, L, was identified at a young age as having multiple special needs. In addition to having significant developmental delays (speech and language delay), dyspraxia and Pervasive Developmental Disorder (mild autism spectrum disorder), he had digestive problems, immune imbalances, food sensitivity, nutritional needs and mercury poisoning.

123. It is accepted that from the time L was diagnosed, the wife's full-time attention was on ensuring he received the necessary treatments to address his many special needs. She spent many hours researching possible treatments, sourcing specialists and overseeing and maintaining his treatment programmes. With the benefit of the wealth the family had already accumulated by that time, they were able to provide L with a very comprehensive treatment plan which included attending overseas specialists and bringing specialist therapists and nurses to the Islands to administer treatments. It is agreed that the husband was largely responsible for the logistical aspect of implementing the treatment plan, such as sourcing and importing equipment and staff.

124. After many years of treatment L is now much improved. He no longer meets the DSM-V diagnostic criteria for autism spectrum disorder. While L still has some difficulties, he is considered fully recovered. The wife opined that her role of managing L's care was more onerous than the husband running the businesses because her tasks required a "*huge amount of time, energy and dedication*". She gave an outline of how she met L's needs -

> *"[L] was born in 2005. [L] was born with many special needs and challenges of a developmental nature. Managing these needs became my top priority and I spent a tremendous amount of time researching treatments online, meeting with a team of doctors, nurses, therapists and other professionals overseas. [L]'s treatment and therapies have included years of assessments, dietary and nutritional regimes, behavioural therapy, chelation therapy, hyperbaric treatment, educational, occupational and speech therapies. His care involved flying in a nurse from California on a bi-weekly basis for his IV treatment, daily dealings with practitioners, specialists and therapists, here and overseas, and dealing with his education, personal care and therapy daily. This was a focus of my time for the first 7+ years of [L]'s life which required a huge amount of time, energy and dedication. It was a gut-wrenching full-time job that did not end at six o'clock. It was an extremely stressful time for the family*

and it resulted in me becoming physically ill. I am proud to say that L is now fully recovered from these issues… although he still suffers from ADHD, anxiety and hearing sensitivity…."
"When [L] was born, I knew nothing about parenting a child with special needs. Without hesitation, I rose to the challenge and embraced the situation with which we had been presented with. I always remained [L's] main caregiver. I have never hired a nanny. I have never even taken a vacation without my children until after [the husband] and I separated."

125. During cross-examination, the husband conceded that the wife did an "*exceptional job*" raising the children, but at the same time suggested that the wife's contribution as the primary caregiver should be given less weight because the family could have employed a nanny to carry out many of the wife's functions. This was one of several occasions the husband tried to minimise the value of the wife's input to the family as the homemaker. It must be said that such a dismissive attitude towards the role of a stay-at-home parent is outdated.

126. The wife produced letters from some of the medical staff and therapists who were involved in L's care. They all confirm that the wife took the lead on L's treatment and that this was a significant undertaking requiring more than 40 hours of treatment every week. The professionals confirm that the wife learned new skills to assist the therapists and implement the programme in their absence. The wife is described as instrumental in L's rehabilitation –

"Overseeing a 40-hour a week ABA/VB program along with maintaining all other family duties is extremely difficult. I was always amazed by Mrs. [Mrs S]'s perseverance and determination to provide the best medical intervention and therapies and witnessed firsthand how she was able to coordinate so many of these different services simultaneously.

As the point of contact, Mrs. [S] was instrumental in coordinating multiple providers to work together continuously providing updates on [L]… I have zero doubt that his achievements and success were due to [the wife's] relentless dedication and integral involvement in providing [L] with a multitude of therapies and interventions for so many years. Mrs. [S] was not only a mother, but a fulltime behaviourist, a speech therapist, an occupational therapist, a nurse, a doctor – all to ensure [L]'s amazing recovery." [12]

"Mrs. S took the road less taken. As a result [L] is a creative and intelligent young man today."[13]

[12] Denise Eckman PsyD
[13] Dr Nancy Lin

"[The wife] was very proactive and committed to implementing several time and labour-intensive therapies including dietary interventions, supplement programs, behavioural and speech therapy, as well as researching other avenues of intervention that might prove useful to [L's] condition.

[The wife] was relentless in her pursuit of helping [L]. She devoted a significant amount of time and energy to improve his health. In my experience, the effort put forth by parents of special needs children to improve the health of their child is incredibly demanding physically, mentally and emotionally"[14]

127. The wife spoke of the toll L's care had on her own mental wellbeing and the burden she carried was evident during her *viva voce* evidence.

128. The husband spoke of the wife's contribution to the family in the same Christmas card exhibited in these proceedings. I accept his statements therein to be his genuinely held belief and a true reflection of the home situation at that time -

"As we came to realize the challenges [L] faces, our blessings sometimes looked like a curse, but you rose to the challenge of caring for our son like very few mothers could. I am constantly (and will always be) so very proud of you for the way you stepped up and creatively, but without weakness worked to help [L] and in turn deal with [L's] problems. It's been nothing short of angelic, and I will always love you in a special way because of that."

The wife submits that her efforts were exceptional in the legal sense also.

129. The wife has also spoken of her personal anguish at suffering multiple miscarriages during the marriage. Additionally, in recent times, the wife has had to provide increased care and support for E *[redacted to protect privacy]*

130. In her various affidavits, the wife described the husband's involvement with E and L as "*minimal*". She described how she would regularly remain home to care for the children so that the husband could travel to business meetings overseas.

[14] Kurt Woeller, bundle page 828

131. In cross-examination she eventually conceded that the husband "*tries to be a good father*", that the husband did handle the logistics of setting up L's various treatments, he did accompany her and L to some overseas appointments and that he supported L during certain treatments on island, such as the hyperbaric dives.

132. The husband's evidence was that he was fully involved in both children's lives, recounting his attendance at every one of L's overseas specialist appointments and L's treatments, as well as the time he spent with E. He explained his role thus –

> "*While [the wife] identified the course of treatment, it was a collaborative effort and execution of the treatment plan fell on my shoulders. I took care of all of the logistics, including payment, transportation, management, co-ordination and labour.*"

133. The husband described himself as holding down two full-time jobs: that of businessman and father. He asserted that because he was working from home when the children were younger it allowed him to be fully involved in raising the children. Yet that statement contradicted another statement he made –

> *"These businesses have been and remain my passion and obsession. I have focused much of my time and energy on them."*

134. TS's evidence was consistent with that last statement as she described the husband being "*fully absorbed in work*" so that the wife had to "*pick up all the other loose ends of life, family and business*". These two statements corroborate the wife's account of family life: the wife had to be the primary carer taking on the majority of the burden of raising the children in order for the husband to have the time and resources to build the successful companies he has. While the husband clearly assisted in certain aspects of L's recovery, the task of executing these complex treatment programmes on a daily basis fell on the wife and she executed her role exemplarily.

Conclusion

135. Without a doubt, both parties have made a great contribution to the welfare of the family. For most of their marriage the parties were a team. The husband has generated great wealth through his business acumen and the wife dedicated herself completely to the children and in particular L's rehabilitation which has been a great success. Without a doubt both will continue to

contribute in their roles for the foreseeable future and the entire family will benefit from their respective endeavours.

136. The husband, quite rightly, does not seek to argue that the level of wealth he has generated is itself exceptional. His case rests on how he generated it. Unquestionably, the husband is an extremely successful businessman in his field. He has great vision and has made many shrewd business decisions. He has worked hard to achieve what he has. The husband secured skilled employees who helped him realise his vision. While I am left in no doubt that the husband is one of the top ten domain name investors, I am not persuaded that his success is exceptional. The husband's own account was that he was a latecomer to the business, initially learning from others already active in the industry. Mr N is a prime example of the fact that in the early years of the internet anyone, even a 12-year old, had the potential to be a very successful domain investor. Considering all of the evidence before me about the niche industry in which the husband operates, Mr N's assessment of the skills required to be a successful domainer are the most accurate, but by no means do such skills reach the level of exceptional as suggested by the husband. The skills Mr N described are qualities I would expect most successful business people and investors to have had at some stage of their career. The husband did not invent the process of buying and selling domain names. His binger, purchasing strategies and processes were not unique. The husband took a great risk purchasing names in bulk and it has reaped great rewards. I find that the husband's pre- and post-separation endeavours, his vision, skills and many positive attributes do not individually nor collectively meet the high threshold to make him a *special contributor*.

137. Equally the wife has shown great dedication to the welfare of the family, in particular to L's rehabilitation. This contribution is more difficult to measure than money. She has worked tirelessly and achieved great things. The wife was the main breadwinner in the early years of the business which allowed the husband to pursue his business venture and she even worked alongside the husband when she could. The wife made material contributions to the business which added to its success. The fact that the wife took on the role of homemaker and childcarer after 2004 while the husband grew the businesses does not mean that her later contribution is any less valuable than the husband's, particularly when one considers L's remarkable recovery. Without a doubt, the family has had an exceptional benefit from her contribution, but it cannot

be said that the benefit was as a result of any special and individual or unique skill held by the wife.

138. For most of their married life the wife and husband considered each other to be equals in the marriage and both gave their all in their respective spheres. I am satisfied that at all stages of their marriage and to this day, the parties have been equal contributors to the family in their various roles and fairness demands an equal division of the matrimonial assets.

K. MONETISATION OF COMPANY N AND COMPANY U

139. Mr Cusworth QC spent a considerable time cross-examining the wife as to her knowledge of the financial interdependency between company N and company U. It was apparent that the wife had only limited understanding of the financial arrangements for these entities, which is not surprising given that, from the time of the birth of the children until their separation in 2017, she has not been intimately involved in the operating companies. I also accept that it is the lack of information as to the financial health of the operating and holding companies and her desire to protect her share of the matrimonial assets that caused the wife to take steps to try to curtail the husband's perceived extravagant spending and even commence proceedings against the companies. I am left in no doubt that the wife has lost all trust she had previously placed in the husband. While the wife did appear to be acting heavy-handedly by issuing proceedings against the companies and bringing the matter back before the family court, given the lack of trust and] inability of the parties to communicate effectively about almost anything and the husband's dismissive attitude towards the wife's concerns, I appreciate why the wife felt compelled to take action. While this part of the evidence did not take the matters in issue much further as company N's business and a large part of company U's assets have now been sold, it does give rise to serious concerns as to how the parties will be able to continue to act effectively in their capacities as directors, shareholders and joint owners until the residual business and other assets are monetised.

140. While the husband's post-separation endeavours do not reach the threshold of special contribution, equity does require that the husband be remunerated for running the family businesses after the parties separated. Given the size of the businesses and the work undertaken, including recently securing the sale of the assets of the operating companies, I find that the husband's suggestion of US$1,000,000 per annum is reasonable. I, therefore, order that the husband shall be awarded a lump sum of equivalent to US$83,333.33 per month from the proceeds of the sale of either company N's business or company U's assets calculated from the date of separation to the date that the G Inc sale concludes. The remaining proceeds of the sales due to the parties shall be applied to discharge any professional fees and tax liabilities due by the parties in connection with the sale. Thereafter, the proceeds of the sales shall be distributed equally to the parties. In the event of any disagreement concerning the distribution of the proceeds the parties are at liberty to apply.

141. The parties retain ownership of the residual business, those being the Registry of 21 gTLDs and joint ventures. Steps shall be taken forthwith to ensure that the parties are equal shareholders in and directors of the residual business and joint ventures with equal voting rights. The husband has confirmed that he has had three verbal offers to purchase the remaining business for between US$20,000,000 and US$33,000,000. The husband believes that these are significantly below value and opines that these low offers are as a result of potential purchasers wishing to profit from a forced sale arising from these proceedings. The husband is confident that given two years he can achieve a sale in excess of US$70,000,000 which would increase the wife's proceeds and so be to her benefit also. There is no independent evidence before me to support the husband's valuation.

142. The wife argues that the husband should use his proceeds of the sale of company N's business and U's assets to either buy her out of the remaining business or be required to sell the remaining business to a third party as soon as possible to achieve a clean break.

143. Chadwick P in **McTaggart** (ibid) at paragraph 43 cited with approval Lord Scarman's dicta in **Minton v Minton [1979] AC 593** (at 608) concerning the desirability of 'clean breaks' –

> *"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 '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 over-shadowed by the relationship which has broken down. It would be inconsistent with this principle if the court could not make, as between the spouses, a genuine final order…".

144. Mr Cusworth QC encourages me to find that the wife's mistrust in the husband as to his personal affairs should not influence my view of the husband's genuine intention and ability to achieve the best price for the residual business. He cites the G Inc deal as proof of this.

145. Without a doubt, this couple needs a clean break. The animosity and mistrust continues to cause great stress and unhappiness for both of them and has emotionally affected their children. Giving the husband two further years or more to realize the residual business will inevitably give rise to more conflict and significantly delay the parties being able to move on with their lives.

146. I am mindful that there are potential purchasers willing to acquire the residual business in short order, although it is likely that a quick sale to a third party will raise considerably less than the US$70,000,000 the husband estimates the value of the residual business to be. However, balancing the need for a clean break and fairness to the parties, a swift extraction of the wife from the residual business is necessary and appropriate. Consequently, I order that the parties in the first instance shall obtain a joint valuation report for the residual business, the costs of which shall be shared equally. Upon receipt of the report, each party shall have the option to purchase the other parties' 50% share of the business. Each party has the right to reject an offer made by the other party. If neither party buys the other's share, then the business shall be placed for sale immediately. As equal shareholders they should use their best endeavours to realize the value of their interests. Neither party shall withhold his or her consent to a reasonable offer. In the event of a dispute as to what is reasonable, the parties are at liberty to apply to the Court. If a sale cannot be secured within 12 months of this Judgment, then either party may apply to the Court for directions as to the means by which the value of the parties' interests shall be realized. Neither party shall without prior written consent of the other cause there to be any dilution of shares whether by script issue, further allotment or otherwise. If one party wishes to sell their share to a third-party investor, then there shall be a right of pre-emption at the sale price offered by the prospective third-party with a 56-day notice period.

147. The husband should be remunerated for his work running the residual business. Given the reduced size of the residual business, I find that a rate of US$60,000 per month is reasonable until the wife's shares have been transferred, whether to the husband or a third party. I order the husband and wife pass a resolution to this effect at the earliest opportunity.

L. DISTRIBUTION OF OTHER ASSETS

148. The parties have been unable to agree on the distribution of the majority of their matrimonial assets. A considerable amount of cash in savings has been distributed pre-judgment and the remaining cash held in joint accounts shall now be divided equally. The many real assets remain unsettled. In accordance with my finding that an equal division is called for, steps shall be taken forthwith to ensure that the parties are equal shareholders with equal voting rights for all remaining joint ventures and real property, save that as agreed by the parties:

(i) The wife shall retain as her own property -

- The property at the S Residences;
- The deposit in respect of one unit at the WM development;
- All personal bank accounts;
- Her jewellery;
- The Range Rover registered in her sole name; and
- All other chattels and personal effects as agreed.

(ii) The husband shall retain as his own property -

- The property at the WC Development (including parking lots and storage space);
- MT Building;
- The property in West Bay;
- Deposits in respect of three units at the WM development (which are separate and apart from the wife's deposit);

- All personal accounts;
- His watches; and
- All vehicles (save for the Range Rover registered in the wife's sole name); and
- All other chattels and personal effects as agreed.

149. The parties' joint ventures are

(i) CM Corp (and its subsidiaries)
(ii) Lady Wild Book Rights
(iii) Company I
(iv) The Grid
(v) Sticky Toffee Pudding
(vi) Kamoona (now in liquidation)

150. In accordance with the parties' agreement, the wife shall forthwith transfer all her shareholding in St George's Sticky Toffee Pudding to the husband as well as her legal and beneficial interest in the Lady Wild book/script. The parties shall take all reasonable steps to liquidate CM Corp and the net proceeds divided in accordance with the liquidation plans. The company I interest shall be purchased by company U at market value (assessed by SJE if necessary and costs shared equally). On the sale concluding, the wife shall be paid her equal share of the proceeds forthwith. The parties shall also endeavour to allocate the remaining joint ventures or alternatively liquidate them as agreed by them. If agreement is not possible, either party is at liberty to return to the Court for determination. The net proceeds shall be shared equally.

151. The parties shall endeavour to agree the allocation of real property listed below between them at net values to be agreed within three months of this Judgment and, in default, any property for which allocation cannot be agreed shall be sold forthwith on the open market for the best price reasonably attainable but expressly on the basis that either party may bid for the purchase of the same:

(i) Stone Island, Grand Cayman;
(ii) Broad Beach Ranch and Lechuza, Malibu, California;

(iii) 4102 Encinal Canyon Road, Malibu;

(iv) 31959 Pacific Coast Highway, Malibu;

(v) 2161 San Joaquin Hills Road, Newport Beach;

(vi) 331 Lower Bench Road, Penticton;

(vii) 1243 Evans Road, Penticton, Canada;

(viii) 15 Bloom Street, Manchester; and

(ix) 274 Deansgate, Manchester.

152. Any taxes due with respect to any matrimonial real estate before transfer (whether to one of the parties or to a third party) shall be borne by the matrimonial estate.

153. The following conditions shall apply to the sale of said properties:

(a) The properties shall be sold for such price as may be agreed between the parties or in default of agreement determined by the Court;

(b) The parties shall have joint conduct of the sale;

(c) The parties shall jointly appoint such solicitor or attorney, or, in default of agreement shall be determined by the Court, to have conduct of the conveyancing work relating to the sale; and

(d) The parties shall appoint joint estate agents or realtors, or in default determined by the Court, who shall offer the properties for sale.

154. The proceeds of the sale shall be applied to the discharge of any borrowing or mortgage secured against the properties, in payments of all professional fees and disbursements associated with the sale and meeting any tax liabilities or liquidation expenses arising from the sale. The balance of the proceeds shall be divided equally between the parties.

155. The costs arising from the sale of the Malibu properties are to be borne by the matrimonial estate.

156. In respect of any property which is assigned to either party by agreement, they owe the other a lump-sum equivalent to 50% of the agreed net value; and these lump-sums shall be comprised within a balancing payment.

157. As per the agreement reached by the parties, the parties shall execute such documents as are necessary to transfer the Geneva Yacht mooring and membership to the husband and the Pebble Beach membership to the wife.

158. Any assets not included in the above shall be assigned by agreement or liquidated and the proceeds shared equally.

Hon Kirsty-Ann Gunn
Acting Judge of the Grand Court

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