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

Neutral Citation Number: [2025] CIGC (Fam) 5

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FAMILY DIVISION **CAUSE NO: FAM 241 OF 2023**

BETWEEN:	**ADRIENNE ELIZABETH POLITOWICZ**	**PETITIONER**
AND:	**RICHARD CHARLES KURIGER IV**	**RESPONDENT**

Appearances:	**Mr. David McGrath from McGrath Tonner LLP for the Petitioner** **Ms. Lynne McDonagh from KSG Attorneys for the Respondent**
Before:	**Hon. Mr. Justice Richard Williams**
Heard:	**On the papers**
Petitioner's Written Submissions filed:	**18 March 2025**
Respondent's Written Submissions filed:	**21 March 2025**
Date of Circulation of Draft Judgment:	**7 April 2025**
Judgment Delivered:	**11 April 2025**

Financial provision - ancillary relief - costs

COSTS JUDGMENT

The Application

1. This is the hearing to determine the Summons filed on 17 March 2025 by Adrienne Elizabeth Politowicz, the Petitioner wife ("the wife"), in which she seeks an order for costs of the ancillary relief proceedings between herself and Richard Charles Kuriger IV, the Respondent husband ("the

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

The historical and procedural background

2. The one-day Final Ancillary Relief Hearing commenced and concluded on 7 January 2025. Written Submissions were received from the attorneys on 15 and 24 January 2025. On 7 February 2025 the draft Judgment was sent to the attorneys for their comments (per Practice Direction No 1/2004 'Correction to Judgments').

3. On 14 February 2025 the husband filed a Summons requesting the Court to review the discrete issue of US capital gains tax upon the sale of the former matrimonial home ("FMH") before it perfected the Judgment. That Summons came before me on 24 February 2025 and was adjourned to enable the parties to instruct a joint expert on the tax issue. At the hearing, I agreed to postpone the perfecting of and delivery of the Judgment.

4. On 7 March 2025 the parties submitted a draft Consent Order determining the issues in the February 2025 Summons which they invited me to consider on the papers. On 10 March 2025 I approved that Consent Order on the papers. That Consent Order contained the following terms:

> *"…**UPON** the parties agreeing that:*
>
> *(i) The late filing fees payable to the Inland Revenue Service in respect of the tax filing year 2022, presently USD3,046.84 and accruing interest at the daily rate of c.USD5.84, be debited from the funds presently held in the client account of McGrath Tonner to the joint credit of both parties for onward payment to the IRS.*
>
> *(ii) The balance of the proceeds held to the parties' joint credit in the client account of McGrath Tonner be distributed equally to the parties.*
>
> *(iii) The Petitioner's summons seeking a review of the Court's judgment be dismissed with no order for costs.*
>
> *(iv) The parties are individually responsible for their IRS tax filing and liability in respect of capital gains due on the sale of the former matrimonial home.*

IT IS HEREBY ORDERED THAT:

1. *The Petitioner's summons dated 12 February be dismissed with no order for costs."*[1]

5. On 10 March 2025 the parties confirmed that they were content for the Court to perfect the Ancillary Relief Judgment and to then hand it down by email. The Judgment was delivered on 11 March 2025. That Judgment sets out the relevant historical and procedural background and I see no merit in repeating that detail herein. At paragraph 89 in the Judgment, I stated the following in relation to costs:

> *"If either party seeks a departure from the standard no order for costs order, then that party must file a costs summons no later than 5 working days after the delivery of this perfected judgment. If the parties agree to any costs application which is brought being dealt with on the papers without affidavits, the party seeking the order should file their written costs submissions at the same time that they file their costs summons. The other party will then have 5 working days after service to file their written costs submissions in reply."*

6. On 12 March 2025, I approved the signed[2] draft Final Ancillary Order arising from the Judgment which had been drafted and filed by the wife's attorneys. The terms from that Final Ancillary Order which may be relevant to the present costs application are:

> *"**AND UPON** the Petitioner's post-judgment summons dated 12th February 2025 seeking a review of a specific aspect of the judgment having been dismissed by consent with no order for costs on 7 March 2025.*
>
> ***AND UPON** the parties agreeing that all assets and liabilities not dealt with by this Order shall be the property of the party in whose name, custody or possession of the property is at the time of this Order.*
>
> ***AND UPON** the parties being removed as the beneficiaries of their respective pension plans by consent.*

[1] My emphasis by underlining.
[2] The Order was signed by each party's attorney.

IT IS HEREBY ORDERED THAT:

> 1. *The net proceeds of the sale of the former matrimonial home shall be divided equally between the parties.*
> 2. *The net rental proceeds of the former matrimonial home shall be divided equally between the parties."*

7. On 13 March 2025 the Decree of Dissolution of Marriage was granted.

8. The Written Submissions prepared on behalf of the wife were filed on 18 March 2025 and her attorneys also filed a Bundle for Hearing on Costs. The Written Submissions prepared on behalf of the husband were filed on 21 March 2025. Both parties agreed that I could deal with the application for costs on the papers. Therefore, I have carefully considered the content of the Written Submissions and the Bundle, and I have re-read my Ancillary Relief judgment. This is my written ruling on the application for costs.

The Law

9. The parties rightly accept that the jurisdiction to make orders for costs with respect to ancillary proceedings arises by s.21(g) Matrimonial Causes Act (2005 Revision) ("the Act"). At paragraph 19 in ***Roy Michael McTaggart v Mary Elizabeth McTaggart*** CICA 14 of 2010 *("**McTaggart**"),* Sir John Chadwick, President, made it clear that:

> *"(i) costs in ancillary relief proceedings are governed by the Grand Court Rules ("GCR") and in particular the principles contained in GCR O.62, r.4; and*
>
> *(ii) that s.21(g) of the Law must be read in conjunction with that Order."*

I note that the vast majority of the GCRs do not apply to any proceedings which are governed by the Matrimonial Causes Rules (2021 Revision). However, GCR O.1, r.2(4) provides that O.62 is an exception and therefore applies.

10. GCR O.62, r.4 contains the following terms under the subheading "General Principles":

> *"4.*
> *(1) This rule shall have effect unless otherwise provided by any Law.*
> *(2) The overriding objective of this Order is that a successful party to any proceeding should recover from the opposing party the reasonable costs*

incurred by the successful party in conducting that proceeding in an economical, expeditious and proper manner unless otherwise ordered by the Court.

(3) A person who claims to be entitled pursuant to a contract to recover the legal fees and expenses incurred in enforcing that contract shall be entitled to judgment for the amount found due under the contract and such amount shall not be subject to taxation pursuant to this Order.

(4) Except as provided in paragraph (3), no party to any proceedings shall be entitled to recover any of the costs of those proceedings from any other party to those proceedings except under an order of the Court.

(5) If the Court in the exercise of its discretion sees fit to make any order as to the costs of any proceedings, the Court shall order the costs to follow the event, except when it appears to the Court that in the circumstances of the case some other order should be made as to the whole or any part of the costs.

(6) The amount of the costs which a successful party shall be entitled to recover from any other party is -

(a) the fixed costs prescribed in rule 7;
(b) the amount assessed by the Judge in accordance with rule 8;
(c) the amount allowed after taxation on the standard basis; or
(d) the amount allowed after taxation on the indemnity basis.

(7) The orders which the Court may make under this rule include an order that a party must pay -

(a) a proportion of another party's costs;
(b) a stated amount in respect of another party's costs;
(c) costs from or until a certain date only;
(d) costs incurred before proceedings have begun;
(e) costs relating to particular steps taken in the proceedings;
(f) costs relating only to a distinct part of the proceedings[3];
(g) interest on costs (at the prescribed rate for Cayman Islands dollars) from or until a certain date, including a date before judgment; and
(h) where the Court orders the paying party to pay costs subject to taxation, a reasonable sum on account of costs, such sum to be assessed summarily.

(8) ...
(9) ...
(10) ...
(11) ..."

11. At paragraph 21 in ***McTaggart***, the President reemphasised that the position in this jurisdiction is that:

[3] My emphasis by underlining.

"If the court in the exercise of its discretion sees fit to make any order as to costs in ancillary relief proceedings, it shall order the cost to follow the event (save where there are some special circumstances)."

At paragraph 24, the President said that it was:

"important to keep in mind:

(i) that GCR, O.62, r.4 recognizes that the court has a discretion whether or not to make any order as to the costs of any proceedings-the mandatory requirement that 'the court shall order the costs to follow the event' arises only 'if the court in the exercise of its discretion sees fit to make any order as to the costs of any proceedings'; and

(ii) that the mandatory requirement is, itself, qualified by the words 'except where it appears to the court that in the circumstances of the case some other order should be made as to the whole or any part of the costs.'"

12. At paragraph 23 the President stated that in ancillary relief proceedings:

"..,generally, a successful party to any proceeding should recover from the opposing party the reasonable costs incurred by him in conducting that proceeding in an economical, expeditious and proper manner"

and he indicated that the guidance as to the way in which "costs follow the event" principle should be applied is that set out by Butler-Sloss LJ in ***Gojkovic v Gojkovic. At paragraph 5, the President referred to his earlier judgment in McTaggart which was handed down in November 2011 and he shared the following remarks which he had set out therein:***

"The effect of a requirement that "costs follow the event" - although not, at the time, directly applicable in matrimonial proceedings in England and Wales (see R.S.C., O.62, r.3(5)) - was considered at some length by Butler-Sloss, L.J. in Gojkovic v. Gojkovic (No. 2)…. She concluded that the general principle was that if, after contested proceedings, a party obtains an order which is more beneficial to him or her than an offer made by the other party under the Calderbank procedure, then the other party should pay the costs of the proceedings: conversely, if a party fails to obtain an order which is more beneficial than that which could have been accepted under the Calderbank procedure, then that party must expect to pay the costs of the offeror from the date of the offer."

The wife's position

13. The wife contends that she is entitled to her costs of the ancillary relief proceedings due to:

    (i) her being the successful party and the principle of "*costs follow the event*";[4] and

    (ii) to the communicated offer that she made to settle, an offer which she submits was *"significantly"* less favourable to her than the order later made by the Court.

She relies upon the initial offer made in a letter dated 11 December 2023[5] stating:

> *"The Court should need to look no further than W's offer to H that he should receive the first USD160,000 plus 55% of the net proceeds of sale* (from the FMH). *In view of its decision, the Court will rightly think that this was an extremely generous proposal by W and one that H should have accepted without hesitation, equivocation or demur."*

And then adding that:

> *"It is no exaggeration for W to state that this has been a complete and utter waste of 15 months and KYD85,975[6]."*

The husband's position

14. The husband opposes the wife's application for costs and contends that *"the only appropriate order is no order as to costs"* primarily because:

    (i) The wife has *"failed to provide the Court with reference to all of the relevant "without prejudice" correspondence wherein the husband accepted the Petitioner's proposed terms of settlement by email on 9 May of 2024"*.[7]

    (ii) The wife failed to *"actively engage in non-court-based resolution, unilaterally and without substantive reason withdrew her offer of settlement in April 2024 and unilaterally sought to have the matter listed for mention and thereafter final hearing despite the parties' ongoing negotiations"*.

    (iii) The wife, *"subsequent to receiving the Court's judgment, issued an application for the judgment to be reviewed on the issue of US taxes despite being fully informed of the husband's position with respect to same. That application, which was capable of sensible*

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[4] Requiring the Court to follow the guidance given in *Gojkovic (No.2)*.
[5] See **paragraph 19** below.
[6] This being the Cayman legal fees that the wife said had been incurred.
[7] This correspondence will be reviewed below.

resolution (and agreed thereafter by consent), resulted in the parties' attendance before the Court which increased the parties' costs".

15. The husband contends that, as he appropriately engaged with the mediation process and sought unsuccessfully to persuade the wife to continue/return to mediation, no criticism could properly be levied at him about failing to resolve the matters out of Court. He added that costs should not be made against either party which arose during their attendance at mediation adding that they both have an ongoing obligation to try and resolve matters utilising that route. He states that an analysis of the without prejudice correspondence between the parties illustrates that he consistently attempted to have this matter resolved by negotiations without a final hearing. The husband submits that the wife resiled from a clear offer that she made to settle in April 2024 and which he had accepted, and that the wife refused to further engage in mediation or enter a proper dialogue about the draft consent orders which had been presented to her. He, therefore, does not agree with the wife's contention that he is the party that has wasted the parties' time and incurred wasted costs over a 15-month period.

16. Before I move away from the husband's position, I can deal with his contention set out in paragraph 9 (iii) above in short order. Any costs arising from the signing of the tax Summons by the wife dated 12 February 2025 are not relevant to or to be considered under the present Summons before me because the parties dealt with those at paragraph 1 of the Consent Order dated 10 March 2025[8] in which they agreed that that Summons would be dismissed with no order for costs.

Introduction to the background

17. The husband is critical of the content of the bundle provided by the wife which he infers does not include all of the relevant correspondence but instead contains selected correspondence that supports the wife's case. The husband states that the correspondence that has been produced and/or set out in the wife's chronological schedule seems to concentrate on the *"hypothetical situation"* concerning the husband buying out the wife's interest in the FMH and thereby gives an inaccurate portrayal of the circumstances and that such an approach was *"designed to mislead the court"*. The husband contends that the schedule in the wife's Written Submissions fails to refer to any of the

[8] See **paragraph 4** above.

without prejudice correspondence which occurred between the parties in May 2024. He contends that:

> *"In fact, inexplicably, the Petitioner jumps from late April 2024 to the 26 of June 2024, when the Petitioner sought unilaterally (and without properly terminating mediation) to have the matter fixed for a mention hearing during summer vacation. At this juncture, the Respondent was prepared to accept the Petitioner's heads of terms proposed in correspondence in late April 2024. The Respondent did so by:*
> *(i) communicating that to the Petitioner; and*
> *(ii) inviting her to agree the terms of a final ancillary order."*

18. Having regard to the above contentions made by the husband, as well as each party's submissions which they ground upon offers of settlement which they say they made and/or which they say were either ignored or not accepted, in the circumstances of this case, there is a need to go through the inter partes correspondence in some detail.

Background - written negotiations and written offers made - 11 December 2023 to 15 July 2024 - costs order for costs incurred in ancillary relief proceedings to 15 July 2024

19. The wife first relies upon a *"without prejudice save as to costs"* letter sent by her attorney to the husband by email on 11 December 2023. Attached to that letter was a draft final ancillary relief order which her attorney said in the letter set out the basis upon which the wife *"is prepared to and proposes that ancillary issues are dealt with"*. The attorney suggested that the husband take legal advice in relation to the content of the draft order. The attorney went on to say the following in the letter:

> *"Put shortly, our client proposes that:*
> - *The Property* (the FMH) *is sold for the best price reasonably obtainable.*
> - *The parties have joint conduct of the sale.*
> - *The net proceeds of sale are divided such that:*
> - *The first US$160,000 will go to you.*
> - *The balance of the net proceeds of sale are divided 55%-45% in your favour.*
>
> *We suggest that this is a far more favourable and generous financial outcome than you will receive if the matter is litigated. If the matter proceeds to final hearing, a Cayman court is likely to order that the net proceeds of sale are divided equally.*
>
> *This offer will remain open for 14 days. We respectfully invite you to take urgent legal advice on its content. <u>Should you reject this offer or should you fail to respond to this correspondence, in due course we put you on notice that we reserve the right to rely on the content of this letter and our client's offer in relation to the question of the costs of the</u>*

> *Cayman proceedings. If the Grand Court determines that you unreasonably rejected this financial proposal, it has the power to and we will invite it to make an order that you be responsible for our client's legal costs in pursuing ancillary relief in the Grand Court."*[9]

20. In her submissions, the wife also refers to and relies upon the following subsequent correspondence in support of her costs application. The husband's attorney sent a *"without prejudice save as to costs"* letter on 13 February 2024, *"in order to come to an amicable and swift resolution"*, in which a counter-offer was made which his client believed was *"fair in the circumstances"*. The husband suggested that the FMH be sold and the net proceeds be divided with the first $160,000 going to him and the balance being divided 70/30 in favour of him. On 16 February 2024, the wife sent a letter in reply rejecting the husband's counteroffer as it was *"unfair"* and was based on a *"factual premise"* that was not agreed. The letter reiterated the 11 December 2023 offer stating that *"there are no circumstances in which the Court will make an order where your client beats"* that offer and added that the husband's attorney *"must be on notice that all of our client's substantial legal costs should be at his account"*. It is evident from the note dated 26 March 2024 prepared on behalf of the wife for the mediation session that her offer and the counteroffers were 'on the table' as well as the wife's view that it was *"likely, if not inevitable, that the Court will order that H pays W's legal costs"* because the Court would likely order that the net proceeds be divided equally.

21. Despite the initial offer having initially only been open for 14 days, in a letter dated 23 April 2024, the wife's attorney reiterated that offer *"on a clean break basis terminating all litigation or pending proceedings or issues between the parties anywhere"*. The attorney said that *"this is her best and final Calderbank position on the sale of the house"*. The attorney also indicated that the wife would agree to a 55/45% split of the rental profits in the husband's favour on the basis that agreed house costs are debited from the proceeds being held on account. The letter also mentioned an email of 17 April 2024 from the husband in which an enquiry had been made as to whether the wife would agree to the husband having 90 days to raise finance to buy out the wife's interest in the FMH. In the letter, the wife's attorney sought clarity from the husband about the quantum of a buyout figure before his client would be able to respond to the husband's enquiry.

22. On 25 April 2024, the husband's attorney replied to the 23 April 2024 letter and expressed his client's agreement with the proposed rental split. In the letter he also appeared to agree to the wife's

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[9] My emphasis by underlining.

proposed 55/45 split of the equity of the FMH and him receiving he first $160,000. The letter also mentioned a figure for the husband to buy out the wife's interest using the appraisal value resulting in the husband's share being $1,887,389 and the wife's share being $1,413,318 net of all expenses. He asked whether 120 days would be acceptable for funds to be raised if there was to be a buyout. The letter stated that the husband did not agree with the wife being reimbursed for her share of home-owners insurance from the rental proceeds that were being held in client account as he had paid the same for seven years without any contribution from her.

23. Greater clarity was given on 7 May 2024, when the husband's attorney sent an email[10] informing that they had instructions to accept the wife's offer in relation to the FMH sale set out in the wife's 23 April 2024 letter. The attorney added in the letter that, if a buyout was feasible, there should be a preamble in the order recording that the husband was at liberty to purchase the wife's interest in the sum of $1,413,318 <u>or such sum as may be agreed in writing between them.</u>[11] It was clear from that email that the husband was agreeing to the wife's proposals concerning orders about the FMH sale and division of the related proceeds of sale and the held rent. The only area that required further consideration or refining in a draft order was the husband's hope, if it was feasible, to be able to buy out at a figure he suggested but importantly which he accepted was still to be subject to agreement between the parties. As part of the suggested preamble in the order would record that any buyout by the husband would be for such sum as may be agreed in writing between the parties, if they could not agree that figure then the transfer would not be feasible, and they appeared to be *ad idem* that the third party sale would proceed on the agreed terms. The disagreement raised in the 23 April 2024 letter about reimbursement from rental proceeds for contributions to the home-owners insurance was not and should not have been a significant issue preventing the parties from reaching global agreement.

24. Later in the day on 7 May 2024, the wife's attorney replied by a letter[12] asking for an explanation as to how the husband had calculated the US$1,413,318 buyout figure, as the buyout figure the wife had calculated was a different one. In the Written Submissions prepared for the husband there is an expressed view that the wife's above 7 May 2024 letter was written before the email mentioned in paragraph 18 above. That appears to be an incorrect presumption because the letter

[10] This email is in the bundle provided by the wife.
[11] My emphasis by underlining.
[12] This letter is in the bundle provided by the wife.

specifically refers to the US$1,413,318 buyout figure which was mentioned for the first time in that email. The wife's attorney's letter informed that the wife would be prepared to wait for up to 90 days if a buyout figure was agreed, as long as the FMH remained on the market.

25. The wife's 7 May 2024 letter also stated that the case had been listed for a mention hearing on 31 May 2024 and that proposed draft directions to a final ancillary relief hearing would be provided closer to that hearing. I note that the wife's attorney first wrote to the Court to obtain a mention date on 23 April 2024. That was consistent with the wife's letter sent on the same day which contained her best and final offer[13], because therein it said that the wife's attorneys would be making enquiries with the Court to obtain a date. On 24 April 2024, the Court suggested available dates for the hearing. On 3 May 2024, the wife's attorneys asked that the hearing be listed for 30 or 31 May 2024. It is evident that this request to the Court for a mention hearing date was made after the husband's 25 April 2024 acceptance of the wife's core proposals for settlement about the FMH, but before the husband's attorney's email which gave greater clarity on 7 May 2024. The catalyst for the sending of the husband's 7 May 2024 email, which better reaffirmed his acceptance of the third-party sale proposals, may have been the parties being informed on Friday 3 May 2024 that a mention hearing had been fixed for 31 May 2024.

26. Consistent with the husband's belief that agreement had been substantially reached, on 8 May 2024, the husband's attorney indicated in an email[14] that she would be circulating a draft order to reflect the agreement that she believed had been reached. That email was not replied to.

27. In a letter sent on 9 May 2024[15] addressing the question raised in the wife's letter of 7 May 2024[16], the husband's attorney informed that the suggested buyout figure was based on a valuation figure of $4,133,000 obtained by a friend of the wife in October 2023. The letter also included a table setting out the deductions that the husband said would have to be made from the proceeds if there was a sale to a third party or transfer which was partly based on specialist US tax advice that the husband said that he had received. The deductions he highlighted were based on the realtor's fees at 5%, the redemption of the mortgage figure, a true capital expenditures figure, and adjusted cost

[13] See **paragraph 21** above.
[14] This email is in the bundle provided by the wife.
[15] This letter is in the bundle provided by the wife.
[16] See **paragraph 24** above.

basis figure, a capital gains exclusion figure and a capital gains tax figure. It was using these figures that he arrived at the $1,413,318 buyout figure. It was indicated in the letter that:

> *"Taking into account the actual net equity in the home and associated costs of transfer/sale including US capital gains tax costs, Richard is willing to include within the Preamble of the final order that he is at liberty, within 105 days[17], to purchase Adrienne's interest in the home for the sum of US$1,413,318 (or such other sum as may be agreed in writing between the parties) in consideration for all her legal and beneficial interest in the home."*

28. The husband's attorney attached to his 9 May 2024 letter a draft Final Ancillary Relief Order which set out the husband's suggested changes. I have not seen a copy of that draft order, but the husband indicates that paragraph 1 of the draft order invited the wife to implement her proposals for settlement as per her offer in the letter dated 23 April 2024. The husband indicated that paragraph 1 in the draft order provided:

> *"Family Home*
>
> 1. *The family home including its chattels save as listed in Schedule 1 hereto shall be sold for the best price reasonably attainable. The following conditions shall apply to the sale of the property:*
>   a. *both parties shall have joint conduct of the sale*
>   b. *the proceeds shall be applied as follows:*
>   i. *in payment of any attorneys' conveyancing costs and disbursements in respect of the sale;*
>   ii. *any outstanding liabilities in respect of the Property save as dealt with by paragraph 2 below;*
>   iii. *any capital gains tax due to the Internal Revenue Service of the United States of America including CPA expenses for the preparation and filing of tax returns for 2023;*
>   iv. *the first US$160,000 shall be for the Respondent's account, and thereafter;*
>   v. *the balance of the net proceeds of sale shall be paid into the client/trust account of the jointly instructed attorney and shall be distributed as to 45% to the Petitioner and 55% to the Respondent."*

29. In a letter dated 17 May 2024[18] the wife stated that if there was to be a buyout, the buyout figure should be $1,600,000, and the buyout would have to be completed within a hundred days. In the

[17] In the letter, the husband proposed 105 days rather than the 90 days suggested by the wife.
[18] This letter is in the bundle provided by the wife.

letter the wife changed her earlier written proposal for settlement relating to the net rental proceeds, as she was now seeking, on the basis that if she was responsible to pay half of all the FMH costs moving forward, that the net rental proceeds should now be divided equally. The wife's attorney indicated in the letter that the draft Consent Order had been amended to reflect the wife's position about an equal share of the rental funds.

30. On 24 May 2024 the husband's attorney replied by letter[19] enquiring as to how the wife's $1,600,000 buyout figure had been reached. The attorney said that if agreement could not be reached about the buyout calculation, the husband agreed that the FMH must remain on the market and the attorney attached an amended order with tracked changes. That amended order was not in the bundle before me but the husband contends that it had the same provision as the one set out in **paragraph 28 above**. Due the lack of consent about the buyout figure, it appears that the parties were recognising that a buyout might not be feasible and that they should proceed with the third-party sale and resultant division route. The husband's attorney indicated in the letter that the husband did not agree to the newly sought 50/50 division of the net rental income in light of the wife's previous agreement that it be a 55/45 split.

31. On 27 May 2024 the Court informed the parties by email that the 31 May 2024 Mention hearing, through no fault of the parties, had to be vacated. Prior to the hearing the Court had received an Interim Mediation Report dated 23 May 2024 which referred to the mediation which had been conducted on 27 March 2024. The Mediator reported that the mediation session had been adjourned for *"the parties to consider offers"*. The Mediator in the report stated that:

> *"On 23 May 2024 mediator was advised by counsel for (wife) that the parties remain in active settlement discussions would be informed if there is progress or if another session is required."*

Having read that report and having regard to the duty of the Court to consider at all stages of the proceedings whether the parties should attend mediation, the 27 May 2025 email from the Court to the parties also stated:

[19] This letter is in the bundle provided by the wife.

> *"Based on the attached Interim Mediation Report, and the Judge having reviewed the same, only provide the court with an update as to the status of the negotiations, and whether a new date will be required, or perhaps the parties will return to Mediation."*

32. In a letter dated 4 June 2024[20] the wife's attorneys indicated that the buyout figure suggested by the husband was not agreed and that if he did not agree with the wife's figure or make a further buyout figure proposal, then the FMH would have to be sold. The wife said that there can only be a 55% split in favour of the husband in relation to the rental proceeds if he was going to be responsible for 55% of the costs of the FMH.

33. On 24 June 2024 the husband's attorney replied by letter[21] and indicated that the wife's buyout figure was not accepted and that he was content for the FMH to continue to be listed for sale. He indicated that should the FMH be sold to a third party, she would likely receive less than $1,413,318 as there was a lack of interest at even the minimum appraisal value determined by the wife's friend. The husband, adopting the contention about the percentage split of the rent made by the wife in her 4 June 2024 letter, indicated that he agreed to a pay for 55% of the FMH expenses as long as he received 55% of the held net rental proceeds. This seemed to have resolved the issue about rent recently raised by the wife. Due to the lack of consent about the buyout figure, it again appears from the 4 June 2024 and 24 June 2024 letters that the parties were recognising that a buyout would not be feasible and that they should proceed with the third-party sale.

34. The negotiations, which I am now permitted to review, had reached an advanced stage. If both parties had been willing to fully and properly engage with the negotiations to their end, having regard to the stage that they had reached and the nature of the remaining periphery issues requiring refinement and having regard to the Overriding Objective, I would have expected the parties who had the benefit of experienced Counsel, to have successfully steered the case towards a consent order or failing that, to have been able to 'iron out' the finer minor detail by returning to mediation. I feel that the wife exaggerates somewhat when she says that there has been a *"complete and utter waste"* of fifteen months and seeks to lay the blame for that solely at the feet of the husband. The husband clearly meaningfully engaged in the negotiations to settle and made some sensible suggestions to try and resolve the matter. I do not accept the wife's portrayal of this as being a

[20] This letter is in the bundle provided by the wife.
[21] This letter is in the bundle provided by the wife.

situation where she made a sensible offer to settle which the husband failed to accept out of hand. It is clear that he did accept the core proposals made in the wife's 11 December 2023 letter as well as her changed position concerning the rental funds. The discussions about the buyout were not helpful, especially as both parties recognised that the buyout would only happen if it was feasible and that it would only be feasible if both parties agreed to a buyout figure, failing that, the FMH would be sold to a third party. The to-and-fro concerning the buyout figure diverted the parties' attention and focus away from the core agreement they had reached and it clouded the parties' thinking and ability to conclude an agreed order. I note also that on 24 June 2024 the husband filed the *'troubling'* Marital Fraud Petition in Texas, and this had a significant impact on the wife's approach to the ongoing negotiations. **With the above in mind, having regard to GCR O.64, r.4(7), I am satisfied that both parties should be responsible for their own costs incurred in the Ancillary Relief Proceedings up to 15 July 2024.**[22]

35. In an email dated 26 June 2024 to the Court the wife's attorney forcefully pushed for a Mention Hearing date to obtain directions to a Final Ancillary Relief Hearing. The husband contends that this approach was taken unilaterally by the wife *"without her properly terminating mediation"*. She said that this was because the husband had commenced divorce proceedings in Texas and was in the process of prosecuting those proceedings. I do not believe that the husband acted inappropriately in issuing his own divorce Petition in Texas - he was entitled to do that. The wife filed her Petition on 21 August 2023, but did not serve it on the husband until 11 December 2023. The husband was unaware of the filing of the wife's Petition[23] and filed his divorce petition in Texas on 9 November 2023. It is patently clear that the husband then surrendered to this jurisdiction as:

    (i) he filed his Acknowledgement of Service on 9 January 2024 in which he stated that he was not defending the wife's Petition; and

    (ii) by his engagement in the Ancillary Relief Proceedings. The fact that divorce proceedings had been issued in Texas, which had not been prosecuted by the husband, did not justify an urgent Mention Hearing, or a reason for departing from a negotiated settlement.

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[22] See **paragraph 36 below** - this is the date that the husband's Marital Fraud Petition was served on the wife.
[23] The husband did not become aware of the wife's Cayman divorce Petition until he contacted her on 18 November 2023 to tell her that he had issued a divorce petition in Texas on 9 November 2023.

Background - written negotiations and written offers made - 15 July 2024 to 19 August 2024 - Costs Order for costs incurred in Ancillary Relief Proceedings from 15 July 2024 to 19 August 2024

36. As mentioned above, the husband, for reasons best known to him, unwisely in the context of these Ancillary Relief Proceedings, issued a "Marital Fraud Petition" in Texas seeking $2.5 million in damages from the wife, which he filed on 24 June 2024 and served the same on the wife on 15 July 2024. He must have realised what effect that such an action may have on the wife and that it created an atmosphere not conducive to settlement of the Ancillary Relief Proceedings at a sensitive stage of the negotiations. The filing of Marital Fraud Petition, as will be discussed later herein, resulted in the wife's disengaging from the position taken in the discussions despite the core proposals for settlement again being expressly accepted by the husband.

37. On 7 August 2024 the husband's attorney emailed the wife's attorney stating that:

"It appears that the Texan proceeding has nothing to do with the divorce."

and asked whether there was *"scope"* for the Cayman divorce to be finalised without recourse to the Court. Having regard to Counsels' dates to avoid on the non-availability for earlier dates offered by the Court, the Mention Hearing was listed for 15 August 2024. Although the Texas proceedings were, strictly speaking, not related to the Cayman Islands divorce proceedings, the fact that a substantial claim for damages was being made, would have a knock-on effect on what figure the wife felt that she needed to obtain from the divorce proceedings in the Cayman Islands to give her financial security herself, and to meet legal fees that might be incurred in Texas.

38. The next piece of correspondence provided to the wife is a letter dated 14 August 2024 from the husband's attorney. This was a day before the fixed Mention Hearing at which directions were going to be sought to a Final Ancillary Relief Hearing. In that letter the husband repeated the contents of the 24 June 2024 letter namely, that he was prepared to agree to the net sale proceeds/rental proceeds and associated expenses on a 55/45 split in his favour, with the first $160,000 from the sale of the FMH being provided to him. The attorney made it clear in the letter that the husband was willing to withdraw the Texas proceedings with a view to finalising the Cayman proceedings as soon as possible. The attorney sought confirmation from the wife's attorney that his proposal was agreeable so that the attached 24 May 2024 version of the Consent Order could be refined and finalised.

39. On my reading of the 14 August 2024 letter and putting it in the context with the earlier correspondence, it seemed that the terms of an order suggested by the wife relating to a sale to a third party had been agreed by the husband. For the period 15 July 2024 to 19 August 2024, I am of the same view about the case and costs that I outlined at **paragraph 34** above for the period from the start of the proceedings after 15 July 2024. I hold that view despite the knock-on effect of the Marital Fraud Petition and am conscious that on 14 August 2024 the husband's attorneys indicated in writing that they were willing to accept the wife's settlement proposals for the Marital Fraud Petition. Despite the wife's clear annoyance at the husband's litigation conduct in Texas and the resultant US costs that have arisen in Texas as a consequence of him litigating in such a manner, in light of his indication that he was willing to withdraw those proceedings, I am still of the view that the parties had sufficient consensus to embark on further constructive negotiations to an agreement and secure a just and more expeditious and less expensive determination of the proceedings than would result from going to an Ancillary Relief Hearing. The husband's letter of 14 August 2024 illustrates that the core proposals that had been made by the wife to that date were not contentious. Accordingly, I am satisfied that both parties should be responsible for their own costs incurred in the Ancillary Relief Proceedings incurred between 15 July 2024 and 19 August 2024.

40. However, it is now evident that at the 15 August 2024 Mention Hearing, the wife was no longer willing to accept the 55/45 split which she had previously suggested and which both parties had appeared to eventually agree on. In the Written Note prepared on her behalf for the 15 August 2024 Directions/Mention Hearing, the wife's position was expressed as being that the FMH be marketed for sale at the best price reasonably obtainable and the net proceeds divided equally. The Note highlighted that there were some residual US tax issues but that those were matters of US law and could not be fully resolved until the FMH had been sold and any capital gain was *"crystallized"*. From the Note, one can see that the wife was still concerned about the divorce proceedings which the husband had initiated in Texas, although he had not prosecuted them, as well as the Marital Fraud Petition, despite the fact that the husband had recently said he was willing to withdraw it.[24]

41. At the Mention Hearing on 15 August 2024, the Court was informed that mediation had been unsuccessful and that an agreement had not been reached. The Court was, understandably, unaware

[24] See **paragraphs 31 above.**

of the above without prejudice negotiations, and correspondence which I have detailed above. Save for the content in the above-mentioned Interim Mediation Report,[25] I was not aware of the fact that the parties had got very close to a settlement or that, save for the buyout discussions, the husband had accepted the wife's proposals about the sale of the FMH to a third party and how the proceeds would be divided. He had also indicated that he would be willing to withdraw the Texas proceedings. Therefore, case management directions were given to a final hearing. Although the husband now raises that the agreement between the parties had reached such a level that the parties may be regarded as being ***Xydhias***[26] bound, that was not raised at the Mention Hearing. No application was made for a hearing to determine that and, in fact, the husband did not wish to be fettered by that arrangement when he unwaveringly sought a considerably larger percentage division (70/30 in his favour) in relation to the FMH and rental funds at the Ancillary Relief Hearing. In addition, the husband did not acknowledge that his own conduct in bringing the Marital Fraud Petition had created an atmosphere of distrust and insecurity which would inevitably harden the wife's position and partly led to reconsidering the terms of the offer which she had previously made.

Background - written negotiations and written offers made – from 19 August 2024

42. Following the Mention Hearing on 19 August 2024, the wife sent a further letter. The husband states that this letter, which came as *"quite a surprise to him"*, can be characterised as the wife's attorneys seeking *"to escalate the litigation"* and the husband doing *"what can only be described as a full "180""* as she *"withdrew her proposals for settlement"* and *"changed her position entirely"*. It appears from the content in that letter that the Marital Fraud Petition was a significant contributory factor for the wife not proceeding to settlement on the basis of her earlier suggested terms which the husband gave a further confirmation of accepting in his 14 August 2024 letter. During the Ancillary Relief Proceedings, the wife shared her view that the Marital Fraud Petition was *"frivolous, vexatious and meretricious"* and *"a crude and misconceived attempt to circumvent any final ancillary relief order in the Cayman proceedings"*.

43. In the 19 August letter, the wife stated that the filing of the Marital Fraud Petition could:

[25] See paragraph 25 above.
[26] ***Xydhias v Xydhias*** [1998] EWCA Civ 1966.

> *"…only have been to seek to undermine or unravel any final, financial order which the Grand Court will make in the Cayman proceedings."*

Her attorney added:

> *"Your client has chosen to conduct matters in both jurisdictions in a manner which is both legally and financially unreasonable. A consequence of his decision is that there has arisen an entirely unnecessary acrimony and adversariality in the process. The other obvious consequence is that our client has been forced to retain counsel in Texas and incur substantial legal costs in both jurisdictions in a case which ought to have settled in 2023 on terms which, we respectfully submit, were extremely generous to your client. The filing of the second Texas Petition is duplicitous in the extreme. We respectfully submit that your client must have been aware that when he recently filed that pleading, its filing meant that there could have been no prospect of settling the Cayman divorce by consent.*
>
> *….Separately, we are advised that the second Texas Petition alleging a marital fraud is proceeding and that our client will shortly be required to respond formally to the claim and file a 'special appearance' in Harris County, Texas. We are also advised that although the Texas divorce ought to have been dismissed, the Harris District Court still shows it as active. This is, of course, contrary to your client having accepted that the Cayman Court has jurisdiction and indicating no intention to defend the Cayman divorce.*
>
> *Needless to say, our client continues to incur costs in both jurisdictions. She can only reasonably assume that that is your client's specific intention."*

44. In my judgment I characterised that petition as being a *"further nail in the mediation coffin"* and it should have been obvious to the husband that the initiation of such proceedings would inevitably result in a defensive stance being taken by the wife and create financial uncertainty for her. Despite that, in the 19 August 2024 letter, the wife's attorney indicated that the offer made in the husband's 14 August 2024 letter was rejected and that *"for completeness, any previous settlement proposals made by our client formally withdrawn"*. They went on to set out the *"best and final offer"* to settle which if not accepted would result in the matter having to proceed to a final hearing. The wife's *"heads of terms"* were:

> *"1. The FMH is sold for the best price reasonably obtainable.*
>
> *2. The parties have joint conduct of the sale.*

3. *The current listing with Rhulens which expires at the end of August is not renewed.*
4. *The property is taken off the market for 30 days and relisted with Fleur Coleman of The Agency.*
5. *The property is listed with an asking price of USD3.95M.*
6. *Our client will agree a sales price of USD3.75M.*
7. *Pending sale, the property remains rented.*
8. *The net rental profits are divided equally, and any maintenance costs are divided equally between the parties.*
9. *The net proceeds of sale are divided such that:*
   - *The first US$160,000 will go to your client.*
   - *The balance of the net proceeds of sale are divided equally.*
10. *Any CGT*[27] *due in the USA is paid from the net proceeds of sale,*
11. *The parties are each responsible for 50% of the 2022 and 2023 reasonable costs of jointly instructing a CPA.*
12. *Our client receives her family crystal which, we are instructed, remains in your client's storage in Houston,*
13. *All other assets and liabilities 'lie where they fall'.*

In the alternative, if your client remains desirous of purchasing our client's interest in the FMH and is able to secure the necessary financing, he can purchase all of her interest for USD1.5M payable within 60 days of any final order. If your client elects this option, he will be responsible for all liabilities connected with the property including CGT, if any. The property shall remain on the market during the operative 60-day period above. In addition, in the event that your client agrees to purchase our client's interest but is not able to finance the transaction at the end of the 60-day period or if, for whatever reason, he does not purchase our client's interest, the property will be marketed for sale as set out above and the net proceeds of sale are divided such that:

- *The first US$100,000 will go to your client.*
- *The balance of the net proceeds of sale are divided equally.*

These alternate proposals are made on the conditions that:

1. *Both Texas Petitions are withdrawn with prejudice forthwith.*

[27] Capital gains tax.

> 2. *The proposal is accepted on or before Friday 23rd August 2024 after which date, our client will proceed to prepare for final hearing.*
>
> *This is Calderbank offer for the purposes of any costs orders in these proceedings. This letter will be disclosed to the judge after the Court has made its final determination on the ancillary relief hearing but before the Court rules on costs."*

45. The husband's attorneys replied by letter on 23 August 2024. They highlighted that in their letter of 24 May 2024 they had provided their client's acceptance to the wife's terms namely, a 55/45 split of the net proceeds of sale with the first $160,000 being paid to the husband. They further indicated that, in their 24 June 2024 letter, the husband had also agreed to the 55/45 split in relation to the rental proceeds being held in escrow and that he would be responsible for the cost of his portion of the 2022 and 2023 tax liabilities, with CPA prospect 50/50. They said that no reply was received to that letter and that the husband was of the view that an agreement had been reached on the key terms, to such an extent that a consent order could be drawn up and executed. In the letter they mentioned a letter dated 26 June 2024 from the wife's attorney, the letter which was not included in the bundle provided to the court by the wife's attorney. The husband's attorney mentioned that an indication was given in the 26 June 2024 letter that the wife wished to proceed with the litigation as she assumed that the husband had recommenced the Texan divorce proceedings. They went on to say that the wife had written in reply to the Mediator (who had reached out to the parties) and stated that they had written to the wife to inform her that they would still prefer to have the proceedings finalised without recourse to Court. The attorney reaffirmed that they had sent letters on 14 August 2024, 24 June 2024 and 24 May 2024 with the settlement proposals. The attorneys indicated that they had advised their client to withdraw both of the Texan petitions and were informed by the client that they were both on *"hold/pause"*.

46. In the 23 August 2024 letter, the husband's attorneys declined the terms of settlement set out in the wife's 19 August 2024 letter, stating:

> *"Our client also has no desire to take this to a final hearing either but does not accept that his conduct is such that there is a need to, in light of his many attempts to settle this matter on sensible terms. He is, regrettably, not in a position to accept your client's offer dated 19 August 2024 as he does not deem it fair in light of all of the above he refers to his previous acceptance of your client's offer in correspondence dated 24 May and 24 June*

> *2024 which he considers to be fair and reasonable. Should it become necessary this letter will be referred to on the issue of costs."*

The husband contends that the wife failed to respond to this letter and that by late August 2024:

> *"It became abundantly clear to the Respondent that he had been led up the garden path since the Petitioner's first offer to settle in January 2024, and certainly since May of 2024, and that the Petitioner had no intention of amending, signing and executing the order, and settling the matter in good faith."*

47. After the Final Ancillary Relief Hearing fixed for 16 October 2024, due to the non-availability of the wife's Counsel, on Friday, 3 January 2025 the husband's attorney sent a letter containing his final proposal to settle the matter. The proposal was made on the basis that:

    (i) all Texas Petitions would be *"withdrawn"* by him *"immediately"*;

    (ii) that it was accepted by close of business Monday, 6 January 2025; and

    (iii) the parties would be responsible for their own costs to date.

The proposal was also based on there being equity in the FMH in the region of US$1,900,428.00. That figure was reached using:

(i) a more recent valuation of the FMH obtained in October 2024 in the sum of US$2,400,000[28];

(ii) a mortgage redemption balance of US$303,665.06; and

(iii) deducting a realtor's commission (5%) of US$120,000.

The husband's equity figure for division was also calculated on the basis that capital gains tax was a joint responsibility of the parties, and the husband calculated tax to be in the region of US$76,907. The husband's *"final position"* shared by his attorney was that:

> *"The proceeds are split as originally offered between the parties and accepted by our client in May of 2024 - US$160,000 to our client: - Your client's 45% share of USD$783,192.40 will be paid to her within 100 days from the date of execution of the FACO."*

The husband's attorney added in relation to the proposal made:

[28] A valuation that was considerably less than the earlier valuation.

"Tax liabilities:

2022: we understand that our clients have jointly filed and paid portions of their2022 responsibilities. Our client was amenable to your client paying the penalties out of the net rental proceeds….

2023: both have already filed separately.

The above proposal will mean that your client will receive a payment to her of USD$783,192,40.00 by 13th April 2025. As the Cayman real estate market continues to deteriorate it is unlikely that the property will sell at valuation price. Our client will of course permit the court to supervise a sale in the event that your client declines his offer and the property remains marketed for sale, without any offers.

USD$783,192,40.00 is more than enough for your client to purchase a two bedroom or one bedroom unit in the SMB corridor area outright without financing; there being plenty of townhouses currently marketed for sale within that price range.

…. This is a Calderbank offer for the purposes of costs and we will refer the court to this letter on the issue of costs."

Conclusion - Costs order for costs incurred in Ancillary Relief Proceedings from 19 August 2024

48. The wife's letter of 19 August 2024 stated that the previous settlement proposals were withdrawn. As mentioned, that change came about due to the wife's reaction to the proceedings brought by the husband in Texas in which he sought considerable damages. The timing of the filing and service of those proceedings which the husband had brought was at a sensitive stage in the parties' negotiations. He said that he would withdraw those proceedings, but by 19 August 2024 they were still in place and the wife had incurred some US legal costs in relation to them. Importantly, the 19 August 2024 letter also set out the terms of the wife's final offer to settle; the proposals to settle were provided on a Calderbank basis and accordingly the letter contains the normal warning in relation to costs. The letter dealt with the primary issues that the Court was eventually asked to rule on at the ancillary relief hearing, namely whether the funds from the FMH and rent be divided equally. The husband's letter of 23 August 2024 rejected that offer and sought a 45/55 split of the rent and the proceeds of sale. At the hearing, the wife sought a similar percentage division, whereas the husband argued for a 70/30 split.

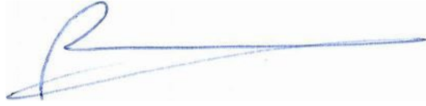
49. If the Court had ordered a 55/45 split in favour of the husband, arguably he may have been able to persuade the Court to make an order for costs in his favour, at least from the date of his 23 August 2025 letter. That said, the Court would have had to consider how long that offer remained open having regard to the fact that he was arguing a 70/30 split at the hearing. However, the fact that he declined the wife's proposals in her 19 August 2024 letter (which were also consistent with what she argued for the hearing), the orders made by the Court in the judgment meant that the wife was the successful party.

50. I am satisfied that this is a case where the Court should exercise its discretion to make a costs order and thereby have in mind the costs follow the event principle. Not only was the wife the successful party, but the Court made an order that was in line with the Calderbank offer which she made and which the husband declined. I accept the submissions made on behalf of the wife on this point and see no reason to depart from the principles extrapolated from ***Gojkovic.*** On the basis that costs follow the event, and having regard to the Calderbank principles, the wife is entitled to her costs. Where offers to settle have been seriously made then they ought to be considered seriously. In a case such as this that would have helped to curtail the cost of litigation and reduce the caseload of the Court by preventing the need for a final hearing. Although I have a degree of sympathy to the husband in relation to the negotiations that took place prior to him issuing the Marital Fraud proceedings in Texas, if the wife's revised offer to settle had been accepted (or possibly if he had not issued those proceedings in Texas which, to a degree, derailed the previous proposals made in constructive negotiations) the ancillary relief hearing would not have been required. I have considered whether the fair allocation of resources which I made in the ancillary relief judgment would be rendered unfair by the husband's need to meet the specific costs that I have ordered, and I have found that it would not. The timeframe discussed in ***Gojkovic*** is that costs would be from the date of the communication of the offer and after the other party has had a reasonable time to consider it. In this case, the costs I order are those that have accrued from after the husband's letter dated 23 August 2024, by which date the husband appears to have considered and made his response to the offer. The costs will be on a standard basis to be taxed if not agreed.

Costs in relation to the present application

51. The wife's position on the Costs Application was that the costs, at the very least, from the letter of 11 December 2023 should be awarded in her favour. The husband's position was that there should be no order for costs.

52. Having regard to the Costs Order having been made only from 23 August 2024 and not from December 2023, the wife has only partially been successful in her application. Given the partial success of the wife, the husband should pay 50% of her costs in respect of this application. Again, this order is on a standard basis to be taxed if not agreed.



THE HON. JUSTICE RICHARD WILLIAMS
JUDGE OF THE GRAND COURT