IN THE GRAND COURT OF THE CAYMAN ISLANDS
FAMILY DIVISION

FAM0118 OF 2022

BETWEEN:

AA

PETITIONER

AND:

BB

RESPONDENT

IN CHAMBERS

Appearances:	**Mr. David McGrath of McGrath Tonner for the Petitioner** **Mr. David Holland of Cayman Family Law for the Respondent**
Present:	**The Petitioner and the Respondent**
Before:	**Hon Mr. Justice Alistair Walters, Actg.**
Date of Hearing:	**16-19 January 2024**
Draft circulated:	**25 March 2024**
Judgment Delivered	**17 April 2024**

JUDGMENT

1. This is my decision following the Final Ancillaries Hearing in this matter on 16 – 19 January 2024. I have considered the written affidavit evidence of the parties (the **Petitioner** or "**W**" and the **Respondent** or **"H"**) and of the Respondent's father, Mr. BR ("Mr. R"), as well as the various disclosure provided by the parties. I heard oral evidence from the parties, Ms. Alexandra Farrington

BSc (Hons) MRCS, the single joint valuation expert (**"Ms. Farrington"** or **"SJE"**), and from Mr. R. I have also considered the written submissions prepared on behalf of the parties.

2. Issues relating to the care of the children of the marriage and parenting were resolved by way of a co-parenting agreement after mediation in 2022 when a shared residence order was agreed on a 50:50 basis.

Background/Chronology

3. W is aged 41. She was born in Venezuela and moved to the United States of America in 1999 to pursue her university degree. She is a US citizen.

4. H is aged 40. He was born in 1983. He was a US citizen but renounced his US citizenship in 2012 after the R family moved offshore to the Cayman Islands in 2011. He holds Venezuelan and Slovakian nationalities.

5. The parties met in Miami. At the time, W was working with the Volkswagen Group in a marketing role, and H was studying at the University of Miami. W has an undergraduate degree with a minor in Marketing and an Associate's Degree in Baking and Pastry. H has an Undergraduate Degree and a Master's Degree in Finance. They started dating in 2006 and became engaged in May 2008 on a yacht in the South of France. W was 26 years of age, and H was 25.

6. Both parties come from wealthy families. They executed a pre-nuptial agreement (**"PNA"**) on 20th October 2008. The PNA is expressed to be subject to the laws of the State of Florida. It has not been suggested that the PNA is invalid, and there is no evidence of Florida law. Neither party has made any substantive effort to suggest that the parties were unaware of its contents. Indeed, both parties were advised by independent counsel at the time and disclosure of respective assets was given. The most that has been said is that W was reluctant to sign the agreement, but H insisted that it be entered into.

7. By the time that they were engaged in 2008, H was already working for the family business in the US, BNo, LLC. After their engagement, W also went to work for BN LLC.

8. The parties were married on 23 January 2009 in Miami, Florida.

9. The parties initially lived in rented accommodation in Miami. In 2009, a home was purchased at Eastern Shores, Miami, Florida, and the parties made that their matrimonial home (the **"Miami Home"**). Their first child was born in 2011 in Miami.

10. In 2011, the parties (along with H's parents and siblings) moved to the Cayman Islands for reasons Mr. B described in his oral evidence as relating to increased banking regulation in the US.

11. H and W moved into rented accommodation at Sea View, South Sound. The Miami Home was rented out and the rental income was used to fund the parties' day-to-day expenses.

12. In 2013, H and W moved to Panama, largely due, it seems, to issues arising from the relationship between H and his father, Mr. R. The same year the Miami Home was sold. H, W and W's mother purchased an investment apartment (Santa Maria) in Panama via a holding company (CB3 S.A.) for USD740,000. The purchase was financed with a loan from W's mother and funds provided by H. The parties' second child was born in 2015 in Panama.

13. In August 2018, the parties and their two children moved back to the Cayman Islands. The apartment in Panama was sold. H was repaid what he had provided for the purchase of the apartment. The balance of the sale proceeds remains to be distributed.

14. In July/August 2020, the former matrimonial home (**"FMH"**) at Banana Quay, Canal Point, was purchased, and the family moved into the property.

15. The parties separated in late January/early February 2022. W filed a divorce petition on 31 March 2022. H has remained in the FMH, and W currently resides in rented accommodation.

16. H holds a work permit with B International, a Cayman Islands company of which he is the sole owner. W holds a work permit with a local real estate company and has recently moved from an administration to a sales role.

PNA

17. The PNA is entitled "Antenuptial Agreement" and, on the Respondent's case, is a key component in this case. Paragraph 1 sets out some recitals as follows:

> *"A. Each of the Husband and Wife … may receive property from third parties as gifts, devises, inheritances and other transfers as inter vivos and testamentary dispositions, which property is also referred to in this Agreement collectively as "protected property" as defined in paragraph 19 below.*
>
> *B. Each of the parties intends to provide in this Agreement for all of their protected property (whether acquired before after the date of this Agreement).*
>
> *…*
>
> *D. Nothing contained in this Agreement is intended to address any property other than the protected property of the parties."*

18. The PNA continues to provide as follows:

"3 Control of Protected Property. Except as may otherwise be provided in this Agreement, each party retains the sole and exclusive rights of ownership, management, and control of his or her protected property now owned or acquired after the date of this Agreement by him or her, regardless of the source, including all increases or additions thereto and all active and passive appreciation or enhancement and increases in value, irrespective of whenever and however acquired.

A. Except as may otherwise be specifically and expressly provided in this Agreement, any and all protected property now owned or acquired after the date of this Agreement by a party shall remain, or be his or her property separate and apart from the property of the other party throughout the marriage, and after the marriage. In the event, the marriage is dissolved, and the other party shall not have or acquire any interest in such protected property at any time.

B. Each party may freely encumber, sell, give, transfer (in inter vivos or testamentary fashion) or otherwise dispose of his or her protected property (including to the other party) without the consent of the other party and as if the marriage had not taken place, and the other party shall not claim or acquire any interest in such protected property, except as may otherwise be specifically and expressly provided in this Agreement.

4. Joint Commingled Property. Notwithstanding any other provision of this Agreement, if the parties acquire property jointly (i.e., title is held in the names jointly), or if the parties make any contribution to property held in their names jointly, during the marriage, wholly or partially with protected property of either or both of them, or the proceeds of sale of protected property of either or both of them, or with income from protected property of either or both of them, the property acquired to which any such contribution is made, shall lose its character as protected property, shall (except as may otherwise be provided in paragraph 8 below). At that time and thereafter no longer be subject to the terms of this Agreement, and shall be held by them as provided in the instrument conveying or evidence in the title to the property or as provided in any written agreement at any time entered into and signed by them.

...

6. Homestead. Each party releases any claim, demand, right or interest that he or she may otherwise acquire because of the marriage in any real property, which is or may be protected property of the other party pursuant to the homestead property provisions of the

Florida Constitution or any Florida Statute concerning the descent of the property as homestead.

...

8. Marriage Dissolution. This Agreement shall be construed as a settlement agreement as to the parties' protected property in the event of the dissolution of marriage of the parties and shall not be subject to modification by the final judgement or after any such judgement.

A. Each party releases, waves, relinquishes and discharges all rights, claims or demands at either of them may otherwise acquire in the protected property of the other because of the marriage against the other four support, maintenance, temporary rehabilitative, lump-sum or permanent alimony or separate maintenance, or support or maintenance unconnected with dissolution of marriage or divorce, or support or maintenance connected with dissolution of marriage or divorce, division and assignment of property, any rights to marital property, any rights to non-marital property of the other,...

B. Upon or in connection with any such dissolution of marriage, neither party shall request, seek or receive or have any right to request, seek or receive from the other party's protected property support, maintenance, temporary, rehabilitative, lump-sum or permanent alimony or separate maintenance, or support or maintenance unconnected with dissolution of marriage or divorce, or support or maintenance connected with dissolution of marriage or divorce...

19. Protected Property. The term "protected property" of a party, as used in and throughout this Agreement, shall mean only:

A. All property and interests in property acquired by such party at any time from any third party, by gift, inheritance, bequest, devise or descent, by distribution to, through, by or from a trust, foundation, or any other domestic or foreign entity created by any third party, for such party's benefit, or by the exercise of the power of appointment, directly or indirectly by any third party, whether or not such property and property interests are were acquired prior to or subsequent to the date of the marriage of the parties.

B. The beneficial interest of any party in any trust, foundation or any other domestic or foreign entity created by third party, and the underlying corpus of any such trust,

transferred or to be transferred to any such trust that has been or is anticipated to be created by the benefit of the party by third party.

C. All property and interest in property at any time acquired by such party through funds derived from the sale or other disposition of, or exchange for property described in paragraphs 19 A and B above.

D. All property and interests in property acquired by such party as a result of financing or refinancing, or pledging, mortgaging or otherwise hypothecating such party's property as otherwise described in paragraphs 19 A, B and C above.

E. All income (including interest and dividends) from property described in paragraphs 19 A through D above, which may be earned or may accrue at any time.

F. All appreciation or increases in value, active or passive, of any property or interests in property described in paragraphs 19 A through D above.

G. All additions and contributions which are added to property described in paragraphs 19 A, through D above.

H. Any other property designated as protected property by the valid written agreement of the parties."

19. Appended to the PNA were lists of the respective parties' assets. W listed various personal items and two motor vehicles as well as an option on an apartment on Brickell Avenue (the apartment had an estimated value of US$750,000) and joint ownership of another apartment on Brickell Avenue with an estimated value of US$500,000. W also disclosed a 401K account with an estimated value of US$18,000 and stocks with an estimated value of US$300,000. Accompanying this were copies of various of her tax returns. H disclosed cash and investments with an estimated value of US$260,000 along with personal items. His net worth was valued at just under US$300,000. H also disclosed a monthly gift of US$5,000 from his grandfather and gross monthly wages from BN, LLC of US$5,300 (net US$4,000).

20. What is not covered by the PNA is provision for any children that may result from the marriage.

Law relating to PNA and Matrimonial Causes Act

21. The parties have provided helpful summaries of the relevant English and Cayman Islands law and do not differ on its substance.

22. Mr. Holland's submissions are as follows:

22.1 The English law's approach to nuptial agreements derives essentially from the decision of the Supreme Court in ***Radmacher (formerly Granatino) v Granatino***[1]. In delivering the judgment of the Court, Lord Phillips set out the clearest statement of how such agreements should be viewed going forward and the principles which the courts should apply in determining the weight to be given to them. The relevant paragraphs [68-83] have been considered in a number of subsequent cases since but remain the definitive statement of the law as it is currently applied.

22.2 At paragraph 75 of *Radmacher*, the Supreme Court expressed what Mr. Holland described as the following crucial principle, which he says remains the basis on which the courts will assess any nuptial agreement:

> *'The court should give effect to a nuptial agreement that is freely entered into by each party with a full appreciation of its implications unless in the circumstances prevailing it would not be fair to hold the parties to their agreement.'*

22.3 He says that the overarching reason for this is explained in the judgment under the heading 'Autonomy' at para. 78:

> *'The reason why the court should give weight to a nuptial agreement is that there should be respect for individual autonomy. The court should accord respect to the decision of a married couple as to the manner in which their financial affairs should be regulated. It would be paternalistic and patronising to override their agreement simply on the basis that the court knows best. This is particularly true where the parties' agreement addresses existing circumstances and not merely the contingencies of an uncertain future.'*

22.4 Paragraph 79 deals with property received from third parties, stating as follows:

> *'Often parties to a marriage will be motivated in concluding a nuptial agreement by a wish to make provision for existing property owned by one or other, or property that one or other anticipates receiving from a third party. The House of Lords in White v White and Miller v Miller drew a distinction between such property and matrimonial property accumulated in the course of the marriage. That distinction is particularly significant where the parties make express agreement as to the disposal of such*

[1] [2010] UKSC 42

property in the event of the termination of the marriage. There is nothing inherently unfair in such an agreement and there may be good objective justification for it, such as obligations towards existing family members.'

22.5 Thus, he says, the exclusion from division of property received by either party before or after the marriage from third parties, is something which the court will in principle respect and uphold, provided it is satisfied that it remains fair to do so in all of the circumstances prevailing.

22.6 Mr. McGrath explored this in a little more detail in his submissions by saying that this involves, in the first instance, a 3-stage test. Is the Court satisfied that:

22.6.1 The agreement was freely entered into?

22.6.2 The parties had a full appreciation of the implications of the agreement?

22.6.3 It is fair to hold the parties to their agreement in the circumstances prevailing?

In relation to the third question, he argues that, in general terms, the longer a marriage lasts following a nuptial agreement being signed, the greater the chance it may not be fair to hold the parties to its terms because of unforeseen changes in circumstances. This is more likely to be an issue where the parties to an agreement are a young couple starting married life with few assets than where, for example, a couple who have both been married previously each brings significant assets to a second marriage (paragraph 80 of *Radmacher*).

22.7 Mr. Holland's position is that this provision in fact does little more than make express in the context of marital agreements how the courts in England and Wales, and so also in the Cayman Islands, will differentiate between matrimonial and non-matrimonial property in any case. He says that this principle will however give way where appropriate to the principle of need, whenever a party's needs exceed what the sharing principle would otherwise entitle them to. And in meeting needs, the courts may look to non-marital assets, including assets specifically protected by a nuptial agreement, although such protection will be relevant in determining the generosity with which the claimant's needs fall to be assessed.

22.8 He goes on to say that the consideration of needs is addressed by the Supreme Court in paragraph 81 in *Radmacher*, where it is stated that:

'The parties are unlikely to have intended that their ante-nuptial agreement should result, in the event of the marriage breaking up, in one partner being left in a

predicament of real need, while the other enjoys a sufficiency or more, and such a result is likely to render it unfair to hold the parties to their agreement.'

22.9 His position is that whilst the phrase 'real need' has caused some discussion amongst English judges and lawyers, it is seemingly not intended as a test to be applied, but rather an illustration of a situation where there would be manifest unfairness, and a court would be likely to intervene. If the parties' needs as assessed by the Courts are properly met by the agreement, then there may well be no reason to go beyond its terms, even if the outcome is not one which the Court would otherwise have arrived at. He says that as the Court made clear at paragraph 82 of *Radmacher*:

'Where... each party is in a position to meet his or her needs, fairness may well not require a departure from their agreement as to the regulation of their financial affairs in the circumstances that have come to pass. Thus, it is in relation to ...sharing, that the court will be most likely to make an order in the terms of the nuptial agreement in place of the order that it would otherwise have made.'

22.10 Mr. Holland points out that, in this jurisdiction, the Grand Court considered the various English authorities and the appropriate approach to prenuptial agreements *DJ v BJ* (Grand Court) and then in the CICA in the same case, *AH v AW* (28 OF 2019). The CICA approved the approach taken by the UK Supreme Court in *Radmacher* and, amongst other English authorities, endorsed the decision of King LJ in ***Brack v Brack***[2] and, in particular, paragraph 102 of her judgment where she made clear that:

'Even where there is an effective prenuptial agreement, the court remains under an obligation to take into account all the factors found in s25(2) MCA 1973.'

22.11 He says that in assessing fairness, the Court will therefore still have to give consideration to the relevant statutory factors. The relevant legislation in the Cayman Islands is contained in sections 19 and 21 of the MCA. Section 19 MCA provides:

'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.'

22.12 Section 21 provides:

[2] [2018] EWCA Civ 2862

'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.'

22.13 He argues that whilst the Court is still required to consider every factor, where there is an otherwise unvitiated agreement, it is very likely to depart from it only if the claimant's needs require it. The Court will look to uphold nuptial agreements where it can do so fairly, and only depart from them where it considers that it would unfair not to, because the needs of one party require some departure.

22.14 The recent English cases of ***HD v WB***[3] and ***M v A***[4] confirms the general trend of the courts continuing to give weight to prenuptial agreements and only interfering with them to the extent necessary to meet needs.

23. Mr. Holland referred to ***HD v WB***, in which, although departing from the PNA terms to meet needs, Mr. Justice Peel highlighted how the terms of the PNA would still *'operate as a limiting factor'* when considering needs. Had the parties been married without a PNA he acknowledged that the H's award may have been significantly higher, but his decision reflected, '*a proper recognition of the limiting consequences of the PNA against all the other s25 criteria*.'

24. In ***M v A*** Mr. Justice Moor summed up the current status of prenuptial agreements and how they will be treated before the English courts when he said as follows at paragraph 85 of his judgment:

'Litigants must realise that it is a significant step to instruct top lawyers to prepare a pre-nuptial agreement prior to marriage. It is highly likely they will be held to these

[3] [2023] EWFC 20
[4] [2023] EWHC 613

agreements in the absence of something pretty fundamental that vitiates the agreement. These agreements are intended to give certainty. Those signing them need to know that the law in this country will provide that certainty. Litigants cannot expect to be released from the terms that they signed up to just because they don't now like what they agreed.'

25. After assessing if any vitiating factors exist and the extent to which they may impact on the weight to be given to the agreement, the second stage is to assess if the agreement is fair by reference to the statutory considerations. As Mr. Justice Moor explained at para 86 in ***M v A***:

'Nevertheless, I do still have to perform the Brack exercise and take into account the factors in section 25 to see if there is anything in this agreement that leads me to decide that I should vary or amend it in some way. The watchword in financial remedy litigation is fairness. The test therefore is whether it is still fair to hold this Wife to this PNA given the passage of time and the circumstances today, whilst always remembering the significance of the fact that I have found no vitiating factor in relation to the agreement itself.'

26. Mr. Holland says that given today's mobile population, the English courts are frequently presented with applications to enforce agreements made in foreign jurisdictions. In ***Radmacher***, Lord Philips noted at paragraph 74 that the *'foreign element'* served to enhance the weight to be accorded to the agreement because the agreement would have been binding in Germany and France. The foreign element enabled the court to find with greater certainty that the parties had intended the agreement to be effective.

27. In ***Versteegh v Versteegh***[5], the Court of Appeal held a wife bound by a Swedish PNA about which she had received no legal advice, on the basis that such agreements were commonplace there and legal advice was not a strict requirement of the court in Sweden.

28. At the start of the trial, the position of H was that the PNA is binding and enforceable and left little room for the Court to exercise any discretion over the assets of the parties, save as to needs. The position of W was reserved in the sense that it was argued that the PNA should have little impact, if any, on what the Court considers a fair result. I will go into more detail about this below.

How to approach making Final Ancillary Orders

[5] [2018] EWCA Civ 1050

29. When making Final Orders pursuant to section 21 of the MCA, the Court should determine what constitutes matrimonial property. The leading authority in this jurisdiction is ***McTaggart v McTaggart***[6].The CICA defined matrimonial property as follows (p.376):

> *'It can be seen that the section gives recognition to the concept of 'matrimonial property'. That concept is not defined in the Matrimonial Causes Law, but it is generally understood in the sense described by Lord Nicholls of Birkenhead in Miller v Miller(5), that is to say, it comprises 'property acquired during the marriage otherwise than by inheritance of gift' ([2006] 2 AC 618 at para 22). Its distinguishing feature is that it is 'the financial product of the parties' common endeavour".*

30. Mr. McGrath set out in detail the sequential process laid down by Chadwick P in ***McTaggart,*** which he says can be summarised as follows:

    30.1 Identify the assets and liabilities to be treated as matrimonial property at the date of separation (paras.56-57 and 71).

    30.2 Value those assets and liabilities at the date of allocation (paras.38 and 71).

    30.3 Divide the matrimonial property equally in aliquot shares or in specie, save where there is good reason to do otherwise (paras.37 and 91).

    30.4 Consider whether (having proper regard to the Section 19 factors – responsibilities, needs, financial and other resources, actual or potential earning power and the deserts of the parties) an order under s.21(b) for the disposition of matrimonial property will make appropriate provision for the relevant party in respect of the three strands: needs, compensation and sharing (paras.42 and 98-100).

    30.5 If an Order under s.21(b) does make appropriate provision, then the court does not need to make any Orders in respect of the non-matrimonial property under s.21(e). If an Order under s.21(b) does not, then the Court will need to go on to consider whether to make an additional Order under s.21(e) for financial provision for that party out of the property of the other party (para.42 and 98-100).

    30.6 Consider whether the division of matrimonial (and non-matrimonial) property makes appropriate provision for the parties in respect of needs, compensation and sharing, and if not, consider whether an Order should be made for spousal periodical payments under s.21(f) (paras.43 and 101).

[6] [2011] 2 CILR 390

30.7 Deal with the question of litigation costs by reference to the ***McTaggart*** CICA Ruling on Costs handed down in February 2015. A point which he says is not relevant at this stage of the case.

31. McTaggart did not however involve a prenuptial agreement.

The parties' assets

32. With that backdrop, there then needs to be undertaken a review of the parties' assets to the extent that they may fall within or without the PNA and the extent to which they might properly be treated as matrimonial assets.

33. As mentioned above, it is common ground that both W and H come from wealthy families. During the course of their marriage, they both enjoyed the benefits of luxury vacations and travel with and paid for by their families. This has continued after separation. When giving evidence, both W and H were guarded when answering questions about their respective families' wealth. Of the two, it was H who sought to portray W as coming from a particularly wealthy family. There was no material evidence as to family wealth, and all that can be said is what I have set out above, and at least in this regard, there is something of a level playing field.

34. Set out below is a composite schedule setting out what I hope is a comprehensive list of assets and showing in whose name they are held. No assets are held by the parties as joint legal owners[7]. The value attributed to CP, (the FMH), was subject to some dispute, and I will deal with that later in the Judgment. Ultimately, despite lengthy cross examination, the only disputed items of significance are 1, 3 and 22. I will, however, go through the list of assets and summarize the evidence in relation to each.

Property	**In name of**	
1. C P Property (FMH)		3,368,292.00
less CIBC mortgage		-$1,180,968.68
costs of sale		-$168,414.60
Stamp duty		-$27,437
		$1,991,471.72
2. MA Lane	W, W parents and siblings	**$223,410.00**
Personal Bank accounts and investments		

[7] Not included are Wells Fargo #8012 and Wells Fargo #3832 which are college savings funded by W's family. Which are subject to a tax penalty if not used for the children's tertiary education and in relation which there appears to be no argument that they can constitute matrimonial property.

3. Banque Pictet (718) (net)		H		$399,438.91
4. Wells Fargo (081)		W		$37,599.41
5. Wells Fargo brokerage 0670		W		$109.654.28
6. Wells Fargo 'A' Family Life Account		W		$1,595,931.21
7. FTIG LLC		W and family		$300,000.00
8. Wells Fargo Brokerage (Four TC)		W and family		$133,326.88
9. Wells Fargo 2132 IRA				
10. Generali		W	Children's educational funds	
11. Banco General (*0316)		W	Panama	$89.34
12. CIBC W KYD (201)		W	34,709.50	$41,998.50
13. CIBC W USD (202)		W		$7,891.12
14. Butterfield CI (*0013)		W	21,789.95	$26,365.84
15. Butterfield US (*0025)		W		$30.60
16. Tax refund from Panama		W		$23,000.00
17. Banco General (*255)		H		$284,872.07
18. FCIBC		H		$2,740.30
19. FICBC		H		$12.40
20. Butterfield (010) (AB)		H		$2,106.75
21. DIG		H		$33,105.38
22. BIL group	Business		*530 WF and City national	
23. C G	Business			$23,500.00
24. BBE Advisors	Business			
				$3,021,662.99

Amex Southwest H asserts loan to H's parents W asserts loan from W's parents for legal fees	
	$0.00

Chattels	
25. Nimbus boat	$125,000.00
Art collection*	Divide *in specie*
Furniture, family heirlooms and silverware*	Divide *in specie*
	$125,000.00
	$5,361,544.71

SJE

35. Ms. Farrington was called to give evidence. She is a Chartered General Practice Surveyor and Registered Valuer with 20 years' experience, 19 of which have been in the Cayman Islands. She has been instructed jointly by the parties to produce two reports valuing the FMH. The valuation date for the first report is 17 June 2022, and provides a market valuation of CI$2,250,000 or US$2,744,000. The valuation date for the second report is 3 October 2023 and provides a market valuation of CI$2,762,000 or US$3,368,000.

36. The position of Mr. Holland on behalf of H is that the first valuation is to be preferred because he argues that (i) W (who works in real estate) agreed to the first valuation in her affidavit filed 27 September 2023, (ii) the property market had cooled off since the first valuation, (iii) the SJE used just one sales comparison from the 12 Months prior to her second valuation and, (iv) the latest CIREBA sales information for comparable canal front properties in the Seven Mile Beach corridor showed a lower adjusted price per square foot than the SJE's second valuation. He put to Ms. Farrington a number of factors that he said all supported reliance on the first valuation. These included in particular a cooling property market and the sales prices of what he says are comparable homes sold and listed for sale in the same location as the FMH and in other adjoining locations and the condition of the FMH.

37. Ms. Farrington agreed that in some areas of the Cayman Islands, the property market has cooled off recently. She explained the process that she followed when preparing her valuations as the reports themselves set out. She explained that the variables that are taken into account when considering value include: the size of the property in question, its specification, condition, location and reason for sale. My notes and my recollection of Ms Farrington's evidence was that she said that she did not agree that it was reasonable to use as comparables, values for homes sold in different locations to that of the FMH or prices of homes listed for sale in different locations. When commenting on the draft of this judgment Mr. Holland said that had noted that Ms. Farrington said that the latest sales comparable presented to her were not available in October 2023 when she prepared her second report and was not in a positon to comment on them and say whether her second valuation would be different without considering them more closely. Ms. Farrington said that she could not say for certain what the valuation of the FMH

would be if it was reconsidered now but did say that she thought that it was unlikely that the second valuation figure would come down. What she did reiterate is that every location in the Cayman Islands is distinct and much of the pricing of homes is determined by supply and demand.

38. At the end of her evidence, I asked Ms. Farrington whether, in light of the fact that she had not been instructed to prepare a more recent third valuation, she believed that it was reasonable for the Court to rely on the second valuation. She replied that she thought that it was reasonable to do so.

39. Ms. Farrington seems to be well qualified to act as an expert, and although understandably a little defensive at times, I felt that she answered Mr. Holland's questions clearly and consistently.

40. In the absence of a third valuation report from Ms. Farrington (which may or may not have differed from the second valuation) or a report from another valuation expert and in light of the response from Mr. Farrington to my question as set out above, I see no basis to rely on anything other than the second valuation dated 3 October 2023 as a reasonable guide to the value of the FMH.

W

41. W was called to give evidence and was examined in chief for some time by Mr. McGrath and then cross-examined by Mr. Holland.

42. In relation to the PNA, it seemed clear that W was asked to sign the PNA by H. She said that she understood that it was to protect H's inherited wealth and acknowledged that it would also protect her inherited wealth. At the time, W did take independent legal advice about the PNA and was advised that this was its purpose. However, she said that she did not understand or expect that the PNA would result in her receiving nothing in the event that her marriage to H came to an end.

43. W said that when the FMH was bought in 2020, she regarded it as the parties' matrimonial home. She said that H insisted that it should be held in his sole name for US tax purposes, to which she agreed but still regarded the FMH as their joint asset.

44. W was asked by Mr. McGrath about the title to the FMH. She explained that the property was still in the name of the previous owner because there was a dispute with the Cayman Islands Government about stamp duty, and until that was resolved, the title could not be transferred. She also went on to say that in 2021 it was agreed that the FMH should be registered in the joint names of W and H and that all of the relevant Land Registry paperwork was completed by them and provided to Walkers who

were acting in relation to the stamp duty dispute. The paperwork was submitted by Walkers to the Land Registry but apparently could not be processed because of the continuing stamp duty dispute[8].

45. W was asked about the purchase of the Miami Home. She explained that her understanding was that it had been bought using money that had been provided to H by Mr. R. Although W accepted that the money was said to have been provided by way of a loan (the **"Loan"**), her view was that this was just for US tax reasons. She said that until they moved to the Cayman Islands in 2011, H paid interest on the Loan, but that after they moved to the Cayman Islands, those payments stopped. W explained that when the Miami Home was sold, the proceeds of sale were paid into H's account with Deutsche Bank and ultimately ended up in his account with Banque Pictet & Cie SA (the **"Pictet Account"**). The proceeds of sale of the Miami Home were used for family expenses and investments. In particular, they supported the family when they moved to Panama and H was looking for employment. In cross-examination, W said that H referred to those monies as *"theirs"*. She said that she believed that the monies were kept separately in H's name for US tax purposes.

46. W was asked about the impact on her resulting from the move to the Cayman Islands. W said that she felt lonely, and although they had help with the household, she also felt that she was solely responsible for what was then their first child.

47. W explained that the relationship between H and Mr. R deteriorated, which lead to W and H deciding to move to Panama so that H and Mr. R could have some space. After arriving in Panama, W knew a few people who lived there, but H did not have a job. The family expenses were met from the proceeds of the sale of the Miami home. W felt that the bulk of the childcare fell on her shoulders. Eventually H invested in a company called ITC that was in the local food distribution business. W said that she offered to find a job, but that H said that there was no need to do so.

48. The investment in ITC was unsuccessful, and H became depressed and decided that he wanted to move back to the Cayman Islands to have a more active role working with his father. W said that she was happy in Panama but was prepared to move back to the Cayman Islands if that was what H wanted to do. W said that they had a comfortable (as opposed to lavish) lifestyle in the Cayman Islands, initially renting in Snug Harbour before moving to the FMH. W said that they travelled frequently and got into a routine with the children in school, and bought a boat. H obtained treatment for depression and re-

[8] Trial Bundle 1, p 365. H was asked about the dispute by Mr McGrath in cross examination. It seems that the dispute is over approximately CI$22,500 and that H has already spent approximately CI$10,000 on related legal fees which does raise a question about the rationale behind continuing to dispute the amount of stamp duty due.

established his relationship with Mr. R, although H's parents subsequently decided to move to Panama for a few years.

49. After the parties discussed separation, H took W to look at apartments, the proposal being that one would be bought for her to live in with H remaining in the FMH. H had already viewed at least one of the properties with his mother, who was looking to make an investment.

50. When asked by Mr. McGrath about the various assets in her name set out in the schedule that is referred to above, W gave the following evidence:

    50.1 Item 2

    W explained that this is her parents' home. For estate planning reasons, her parents have transferred ¼ share to each of her and her sister. W said that as far as she is concerned, she will only benefit from this asset after her parents are both deceased.

    50.2 Item 4

    This is W's checking account that she has had since before her marriage to H.

    50.3 Item 5

    W explained that this is an account set up with a gift from her grandfather to assist her with college-related expenses. The original gift was US$300,000, and what remains in this account is after paying for her education, her wedding to H and making an investment in Item 7.

    50.4 Item 6

    This is an account which W explained holds funds related to two life insurance policies for her parents. W is the trustee of the policies but will only benefit after the death of both of her parents. During the trial, an email from a Mr. Merwyn Abssi, a Registered Client Associated with Wells Fargo dated 8 January 2024, was handed up. It is to W and her father and stated that:

    > *"The A Family Life Insurance Trust is a brokerage account at Wells Fargo Advisors.*
    >
    > *The account holds two life insurance policies with Lincoln National Life Insurance Company. The funds are held and invested directly with/by Lincoln."*

    50.5 Items 7 & 8

    FTIG is a real estate holding company that owns two townhomes in Houston. W explained that the account identified in the schedule is used by the company to pay operational expenses such as taxes and receive rental income from the properties. The first investment property was purchased in 2019/2020. Her parents run the company, and W invested US$100,000 in the

company using funds in the account referred to as Item 5. W holds a 22.5% interest in the company.

50.6 Item 9

This is W's IRA account which was opened when she started working with Volkswagen prior to the marriage.

51. W was asked about her late grandfather, who H has claimed was an *"oil tycoon"*, a claim with which W disagreed. Indeed, W was cross-examined about her grandfather's business interests at some length. It is clear that he was involved with a US company called HMS Ltd which was sold to another company in 2018. However, there is no evidence as to what, if anything, her grandfather received as a result or what relevance that might have to these proceedings. Other than confirming that W's family has some wealth (as does H's family), I do not believe that this line of questioning provided much assistance to H.

52. W said that her parents provide her with a monthly stipend of US$2,000 and have historically paid for their grandchildren's school fees. W was asked about this in cross-examination, and Mr. Holland characterized the payment as a monthly contribution to the family budget with which W agreed. In response to a question from me, W confirmed that the US$2,000/m was paid into her US$ account and was used to meet credit card and family related expenses. She says that the money was treated as their (family) money.

53. W works for a local real estate company. She started part time and once full time she was earning CI$5,000/month. Now she has her Cayman Islands Real Estate Brokers Association ("CIREBA") licence and is on a lower monthly wage of CI$2,500/m with commission on sales.

54. W was taken to the budget that she provided,[9] and she confirmed that she is of the view that it is reasonable in the circumstances and based on her lifestyle when married. I will review this in more detail when considering any provision for maintenance.

Monthly	Rental	Purchase		Rental	Purchase
Mortgage/rent	4000	2,500			
Strata	0	1500			
Water	70	70			
Electricity (average of last 4 bills)	718.26	718.26			

[9] Bundle 1, Tab B1, p 145.

Mobile phone	90	90			
TV/internet	100	100			
Maintenance	50	50			
Renewals (appliances)		25			
Houseware linen and bedding	8.33	8.33			
Re-decorating Internal (every 5 year)	50	50			
External (every 5 year)	50	50			
				5136.59	5161.59
Food W & children	1500		1500	1500	1500
Car insurance			100		
Maintenance			41.67		
Fuel			200		
Service/maintenance			20.83		
Membership (e.g. RAC/AA)			5.83		
Car cleaning			10		
			378.33	378.33	378.33
Personal expenditure					
Medical – psychologist			492		
GP			155		
Dentist			33.33		
Health insurance			100		
Clothing and accessories			416.67		
Footwear			208.33		

Laundry and dry cleaning			60		
Hair and beauty – hairdressing			166.67		
Cosmetics			100		
Beauty/nails			215.25		
				1455.25	1455.25
Leisure – meals and take away			300		
Theatre, cinema, concerts			24		
Christmas expenses			50		
Birthdays and other gifts			12.50		
Entertaining			20.83		
Gym			600		
				1007.33	1007.33
Childrens expenses					
School uniform			75		
School trips incl gymnastics			400		
Clothing and footwear			300		
Sporting equipment			116.67		
Birthdays for children			83.33		
Toys/games			40		
Pocket money			60		
Gifts: Birthday, Hanukah/Christmas			300		
Entertainment			105		
Prescriptions, toiletries, cosmetics			20		

Lunch money/eating out			350		
Holidays			833.33		
Personal nails & waxing			120		
				2823.33	2823.33
Total CI$				12300.85	12325.85
Total US$				14844.02	14914.27
W income US$				8050	8050
W estimated shortfall (US$)				6834.02	6864.27
Assuming that H pays for helper, children medical costs and school fees.					

55. W said that she is driving a second-hand Kia Sorrento. She lives in a rented 2-bed apartment and would prefer a 3-bed unit. It is important for her to be reasonably close to work and the children's school, so she would prefer to live in the Seven Mile Beach Corridor.

56. In cross-examination, W was asked by Mr. Holland about two items that she disclosed in the PNA. She explained that a down payment had been made on the option on the apartment in Brickell Avenue but was never proceeded with and the deposit was forfeited. The other apartment in Brickell Avenue is jointly owned with her parents.

57. W was also asked by Mr. Holland about the income that H receives and which he claims is protected property under the PNA. W said that if she had known that H would be asserting that it was protected property, then she would have taken steps to find a job. The income in question (US$15,000) is paid into the Pictet Account and then transferred by H to local accounts to meet family expenses.

58. Mr. Holland asked W about the boat at Item 26, which was purchased using a margin loan secured against the Pictet Account. W said that as far as she was concerned, although H bought the boat, it was their boat that had been bought with their money.

59. W was asked about the investment made in CG, which was also funded from the Pictet Account. W said that W and H had discussed the investment beforehand, and although it was in H's name, her view is that anything bought with funds from the Pictet Account was joint property. Besides the source of the original investment, W distinguished between CG and Four TC Investment Group on the basis that the latter does produce an income but it is reinvested in the business, whereas the CG does produce a small income.

60. W was asked about DIG, which is a US company in which H was involved. The interest was held in W's name on this occasion, W says, because she is a US citizen. The investment in DIG was made using funds paid via W's account, and H received consulting fees from DIG of US$3,100/m. This company has now been placed in liquidation, and there is litigation in the US over what interest H/W may have in the residual asset of approximately US$30,000.

61. W was asked about her real estate work and indicated that she does have some real estate listings. She agreed that if she does generate sales, then she will be entitled to sales commission subject to shared commission with other brokers and a commission split with her employer.

62. It was put to W that the decision to transfer title to the FMH into joint names was due to emotional pressure from her and the threat of divorce. W denied that and said that as far as she was concerned, the decision simply reflected how (subject to the stamp duty issue) the title should have been held from the date of purchase.

63. Overall, despite being somewhat circumspect about questions regarding her family's wealth, I felt that W gave clear and reliable evidence.

H

64. H was asked by Mr. Holland about the purchase of the Miami Home. H said that he and W had looked at the house, and both liked it. He said that he asked his parents if they would lend him US$1.3 million to buy it, and they said that they would lend it to him with interest payable. H said that whilst his family was still in the US, interest was paid on the Loan. After the family moved to the Cayman Islands, H started working for his father, and a notional amount of interest was deducted from what H was paid every month. H clarified that he is given US$10,000/m by his father and receives a further US$5,000 for the work that he does for his father, which he said is net of a notional contribution of US$5,200 to the interest on the Loan[10]. It is this income, paid into the Pictet Account which has been the primary source of income supporting the family. H receives a modest income from CG, currently amounting to

[10] In cross examination, H suggested that in fact the interest payment at 6% is US$6,500/m. Regardless, he also confirmed that in fact there is no movement of money to satisfy the interest payments, they are just notional credits.

approximately US$375/m. H also states that he has a potential liability in relation to this investment as it seems that he is a guarantor of the company's obligations under its lease.

65. H confirmed that the Miami Home was sold in 2012/2013 for US$1.39m less the expenses of sale. The net balance was deposited in his account with Deutsche Bank. That account was subsequently closed, and the proceeds transferred in 2018/2019 into the then newly opened Pictet Account. H has historically used the funds in the Pictet Account to invest in publicly traded securities to generate income, although the current margin loans secured against the Pictet Account (US$300,000 for the deposit[11] and expenses of buying the FMH and US$125,000 for the Nimbus boat) restrict his ability to trade on the account.

66. H confirmed the position in relation to Items 16 and 17 on the schedule of assets. When H & W moved to Panama, W's mother lent them US$200,000 to purchase a property there. H also took out a margin loan against the Pictet Account for US$310,000 to partly fund the purchase. The property that was purchased was held in the name of a company, "CB3 SA". W held 51% of the shares in the company, H held 34%, and W's mother held 15%. When the parties moved back to the Cayman Islands, the property was sold, although at a loss. By consent, the sum contributed by H was repaid to him. The balance of the proceeds of sale stands to be distributed as per the company shareholdings. The tax refund relates to a change in the Panamanian tax law which sought to mitigate loss in property values. The refund has been claimed but it is not clear if and when it will be received. If it is, then again, it stands to be shared based on the shareholdings in CB3 SA.

67. H was asked about the FMH. He indicated his preference not to have to sell it and disrupt further the lives of the children. He said that when viewing apartments with W after they had separated, he had been in discussions with W's father, who apparently indicated that he would be willing to fund half the purchase cost.

68. During cross-examination, H emphasised that he regarded Items 17 (pro-rated) to 20 and Items 22 to 26 as being covered by the PNA and constituting his protected property. He reiterated his position that the Miami Home, Pictet Account, FMH and Nimbus boat had all been acquired or funded using the proceeds of the Loan from his father and, in his view, are protected property.

69. H was asked about a series of spreadsheets that he had prepared on an annual basis which contain a list of all of his capital assets and their valuations. H said that the spreadsheets were prepared so that in the event of his death, his executors (his parents) would know what assets fell within his estate. It was put

[11] The balance of the purchase price being funded by a mortgage of US$1.26m with CIBC.

to him that he shared those spreadsheets with W because they were essentially treated as matrimonial assets. He denied that was the case.

70. H was also referred to the wording of an interim consent order dated 2 July 2022 signed by the parties. Paragraph 1 refers to the Pictet Account as a joint account. H stated that despite having approved the Order, he did not appreciate that that is what it said and that it must have been a mistake. He stands by his position that the Pictet Account is not a joint asset. He was also referred to a response to disclosure requests in which he referred to a reduction in value of the Pictet Account, which he said *"has been market driven due to the highly volatile investments we had."*

71. Mr. McGrath asked H what he does for a living. H said that he provides his opinion to his father about potential investments but does not provide investment advice. He characterized his role as acting as a *"sounding board"* for his father's investment decisions. He also made it clear that he does not run a family office and described himself as a businessman and entrepreneur. H was asked about some marketing material for a company referred to as BB Enterprises, but which H referred to as BBE Advisors (collectively **"BBE"**). BBE is described as an entity established to provide professional consulting and administrative services for a Single-Family Office. Reference is made to a "*Third generation Family currently based in Cayman Islands working under their own Single Family Office*." H is described as a company representative with the following background:

> *"BB has been involved in the Investment and Single Family Office environment since 2011. During that timeframe, B has had direct exposure in decision-making responsibilities in areas such as portfolio management, asset allocation, cash flow analysis and offshore fiduciary structures. B invested an actively managed several Consumer Stable businesses in North and South America. Leverage in on his business development and financial professional experience, he was able to successfully sell his main business. B serves as the Chief Investment Officer and Member of the Investment Committee of a Single-Family Office based in Cayman Islands. BB holds a BS graduate degree from the University of Miami with a Masters in Finance. His MBA was taken at the Walton School of Business graduating magna cum laude and top of his class. Further development in Family Wealth Management and Value Investing received at Columbia University in New York."*

72. Mr. McGrath sought to contrast the role that H suggests he has working for his father for US$11,500/m (US$5,000/m+US$6,500) with the description of his background and expertise in the BBE document suggesting that H's earning capacity exceeds what he is actually being paid. Mr. McGrath also cross-

examined H about a newsletter published by Day Pitney, a US law firm which contains an interview with H and which describes him as a *'family office executive'*, a role which H denied he fulfills.

73. H stated that BBE is an entity incorporated in Florida, owned by a colleague, SP. H said that Mr. P had struggled to raise finance in the US to invest in certain assets and that H and another colleague have been asked to be listed as the company's representatives to assist Mr. P in raising finance. H described the BBE document as *"fluff"*. My understanding from his evidence is that the description of his background is correct, but that, despite what was said in the document, he had no active involvement in any business of BBE.

74. Mr. McGrath asked H at some length why the B family moved to the Cayman Islands and why he renounced his US citizenship. H was reluctant to agree that the move had been for tax reasons or to protect what Mr. McGrath described as *"multigenerational wealth"*. H maintained that he moved to be close to his family and that the primary reason for the move was increased US banking restrictions on his father's business which he explained is trading in foreign exchange.

75. H was asked by Mr. McGrath about the basis on which he maintains that the FMH is protected property under the PNA. H claims that it was the proceeds from the Loan that were ultimately used to pay the deposit for the FMH. He said that the Loan is a *"distribution"*, a term used in the PNA and, therefore, within clause 19A of the PNA.

76. H explained that he had not had any discussion with his father about repaying the Loan. He stated that it would have to be repaid at some point, and until then, interest was being paid. When asked why the Loan was not repaid when the Miami Home was sold, H replied by saying that his father understood that the Loan was covered by the PNA, so there was no need to repay it and that his father wanted to benefit H's family. No demand has been made for repayment of the Loan.

77. Mr. McGrath asked H about a separate set of spreadsheets that he had prepared annually showing income and general expenses. The latest spreadsheet is for 2018. Income sources include "B" US$15,000/m, "A"US$2,000/m, "BN BerNiko Int'l" US$40,000 approx/yr, "Investments" US$157,000 approx/yr. with a total income of approximately US$400,000/yr and a net income of approximately US$117,000/yr.

78. H explained that BN Int'l was closed when the family moved to the Cayman Islands. Subsequent to that, H started up his own company, BIL incorporated in the Cayman Islands. BIL was in the business of providing administrative support for the export and distribution of wines and spirits in Latin America. Until fairly recently, the company had produced an income of approximately US$5,800 – $7,100 per

month. However, due to changes in the management of the company whose product was being distributed, the turnover of BIL has dropped to zero, and it produces no income. H accepted that when submitted in 2023, the renewal for his work permit with BIL was incorrect when it stated that his income from BIL remained at the approximate levels set out above.

79. H was asked about DIG. He said that the company had been in the business of selling exercise equipment in the US. Although, now no longer trading, he explained that it has been successful, but sales started falling. In order to save approximately US$60,000 in tax, he prepared an invoice in the name of BBE Advisors with a Cayman Islands address for consulting services *"performed"* outside the US for the year 2020. He readily explained that the services had not been provided and that the invoice was never intended to be paid and seemed somewhat proud of the fact that he had prepared the invoice at short notice on New Year's Eve whilst at his sister's house.

80. H stated that he pays US$1,000/m to rent office space in Camana Bay. When asked by Mr. McGrath what he does at his office, he responded by saying that he questions that himself. He said that he spends time with his psychologist, spends time gathering information, educating himself, reviewing the markets, speaking with his father, and meeting with the owners of CG.

81. H was asked about some of the assets that W has in her name. Ultimately, it seems that he does not dispute that what is in her name is protected or separate property. He does dispute the status of part of his income, the Pictet Account, the FMH and the Nimbus boat. The issue seems to be that he wishes to make reference to W's assets and her family wealth in order to suggest that she does not need (and under the PNA) is not entitled to any spousal support or distribution of what he says are his assets protected by the PNA.

82. H was also circumspect about his family's wealth and was cautious when answering questions about the reasons for his parents and family moving to the Cayman Islands and his precise role in providing advice to his father. I also note his willingness to create a significant, fictitious document to benefit DIG's US tax position and lend his name to BBE when he had no actual involvement. I also note the incorrect work permit renewal form. Finally, as noted below, it appears that despite being on oath and warned not to discuss his evidence with anyone, he did discuss that with his father prior to his father giving evidence. I am left with a feeling that H is quite comfortable creating or trying to create a perception that suits him of certain facts and circumstances.

Mr. R

83. Mr. R was asked about the monies provided for the purchase of the Miami Home. He reiterated that they were a loan to H. He was asked whether there was a promissory note evidencing the Loan. He

initially answered that there was not and then corrected himself to say that he believed that there was, and it was with an attorney in the US.

84. Mr. R confirmed that the notional interest payments of US$6,500 are made by reducing the amount that he paid H. Mr. R was asked when he had last talked to H about the Loan. He replied that it had been the previous evening. Mr. McGrath asked him whether they had talked about *"this"*[12], which I took to be a reference to this case and his evidence; and Mr. R said, *"yes"*. This was of some concern to me as the discussion would have taken place between H and his father whilst H was still under oath and being cross-examined by Mr. McGrath. The discussion took place despite the warning that I gave to H when Court adjourned the previous day reminding him that he was under oath and not to discuss his evidence with anyone.

85. Mr. R was asked about the status of the Loan. He said that it was the same and that no principal had been repaid. When asked about whether he had discussed with H when it might be repaid, he said *"maybe one day"*. Mr. R confirmed that he was familiar with H's financial circumstances and that he was aware that H did not have the means to repay him. He concluded his evidence by saying that he is the father and used to helping his children and grandchildren.

Status of the PNA

86. As outlined above, there do not appear to be any material vitiating factors that undermine the PNA, and it is, therefore, a relevant factor to take into account when considering how best to exercise discretion in this case.

Does the Loan constitute protected property for the purposes of the PNA

87. In his oral evidence, H suggested that the Loan might fall within the definition of *"distribution"* for the purposes of clause 19 of the PNA. In his closing submissions, Mr. Holland raises the fact that until trial W had maintained that the Loan was, in fact, a gift to both H and W. He refers to the affidavit sworn by Mr. R on 27 September 2023 in which Mr. R suggests that the intention was that the Loan would enable H to purchase the Miami Home in his own name and that when it was sold the proceeds were reinvested in the FMH. However, I am not satisfied that what Mr. R says that he intended has significant bearing on how the Loan is to be treated. As mentioned earlier, there is no evidence of Florida law and, therefore, no guide from that perspective as to how clause 19 might be interpreted. On that basis, a plain reading of the wording does not lead me to the conclusion that a loan can be treated

[12] When reviewing the draft judgment, Mr Holland pointed out that English is not Mr R's first language and that there may have been a misunderstanding and/or that H had to discuss with Mr R arrangements to attend court to give evidence. That may well be the case but my impression of what was said in the context of Mr McGrath's cross examination is as I have expressed.

as a distribution. The recital to the PNA clearly refers to receipt of "property" from third parties as gifts, devises, inheritances, and other transfers as inter vivos, and testamentary dispositions. A loan and a distribution seem to be quite distinct concepts, fundamentally different in nature.

88. In his closing submissions, Mr. Holland suggests that the Loan falls within the definition of "property" pursuant to the definition of "property" pursuant to the Matrimonial Causes (Property and Maintenance) Act 1958, s8 (1) under English law (ie. "a debt or other chose in action") and that clause 8 (c) of the PNA must also, by implication, apply to sole debts in relation to protected property. I am not sure that I quite understand that argument. A debt due to H or a chose in action to his benefit, might be regarded as his property. The Loan did result in money being provided to H, but it was not being given to him. Whilst, therefore, the proceeds of the Loan did become H's property; I don't see how that can change the basis upon which the funds were provided, certainly for the purposes of the PNA.

89. I am of the view, therefore, that the Loan and the money which was lent do not fall within the definition of protected property for the purposes of the PNA.

Should the Loan be included in a schedule of assets and liabilities as a debt due by H to Mr. R?

90. Mr. McGrath helpfully set out the relevant law on this point in his closing written submissions.

91. He says that this is a relatively common subject matter in divorce cases, and he refers to a summary of the law by HHJ Hess in the Central Family Court (England and Wales) ***P v Q***[13] found at paragraph 19, p8.

> *"(viii) The first question is whether these advances should be regarded (in strict legal terms) as gifts or loans. As a matter of general principle, for an advance of money to be a gift there must be evidence of an intention to give - the animus donandi. In neither instance in this case has either party produced persuasive evidence of such intention in the respective advancing parent and I am inclined to accept what the husband's mother told me and what is contained in the 2004 document. On the face of it, both these transactions are loans which could, in theory, be enforced.*
>
> *(ix) In the family court, however, that is not the end of the matter because the inclusion or exclusion of a technically enforceable debt in an asset schedule can depend on its softness/hardness. This is perhaps an elusive topic to nail down, but it falls for determination in the present case as in many others.*
>
> *(x) I have looked at a number of authorities which deal wholly or partly with this point and I include the following in that category: M v B [1998] 1 FLR 53; W v W [2012] EWHC*

[13] ZZ20D02734

2469; Hamilton v Hamilton [2013] EWCA Civ 13; B v B [2012] 2 FLR 22; Baines v Hedger [2008] EWHC 1587; and NR v AB [2016] EWHC 277. I have also looked at an article by Alexander Chandler (as it happens the FDR tribunal in this case) on the subject: Family Loans an intervener claims - taking the bank of mum and dad to court [2015] Fam Law 1505. I derive the following summary of principles from this reading:-

(a) Once a judge has decided that a contractually binding obligation by a party to the marriage towards a third party exists, the court may properly wish to go on to consider whether the obligation is in the category of a hard obligation or loan, in which case it should appear on the judges' computation table, or it is in the category of a soft obligation or loan, in which case the judge may decide as an exercise of discretion to leave it out of the computation table.

(b) There is not in the authorities any hard or fast test as to when an obligation or loan will fall into one category or another, and the cases reveal a wide variety of circumstances which cause a particular obligation or loan to fall on one side or other of the line. A common feature of these cases is that the analysis targets whether or not it is likely in reality that the obligation will be enforced.

(d) Features which have fallen for consideration to take the case on one side of the line or another include the following and I make it clear that this is not intended to be an exhaustive It.

(e) Factors which on their own or in combination point the judge towards the conclusion that an obligation is in the category of a hard obligation include (1) the fact that it is an obligation to a finance company; (2) that the terms of the obligation have the feel of a normal commercial arrangement; (3) that the obligation arises out of a written agreement; (4) that there is a written demand for payment, a threat of litigation or actual litigation or actual or consequent intervention in the financial remedies proceedings; (5) that there has not been a delay in enforcing the obligation; and (6) that the amount of money is such that it would be less likely for a creditor to be likely to waive the obligation either wholly or partly.

(f) Factors which may on their own or in combination point the judge towards the conclusion that an obligation is in the category of soft include: (1) it is an obligation to a friend or family member with whom the debtor remains on good terms and who is unlikely to want the debtor to suffer hardship; (2) the obligation arose informally and the terms of the obligation do not have the feel of a normal

commercial arrangement; (3) there has been no written demand for payment despite the due date having passed; (4) there has been a delay in enforcing the obligation; or (5) the amount of money is such that it would be more likely for the creditor to be likely to waive the obligation either wholly or partly, albeit that the amount of money involved is not necessarily decisive, and there are examples in the authorities of large amounts of money being treated as being soft obligations. (g) It may be that there are some factors in a particular case which fall on one side of the line and other factors which fall on the other side of the line, and it is for the judge to determine, looking at all of these factors, and maybe other matters, what the appropriate determinations to make in a particular case in the promotion of a fair outcome.

(xi) Applying these principles to the present case I have reached the following conclusions:-

(a) The debt owed by the wife to her father is very much at the soft end of the scale. It seems most unlikely that, these proceedings apart, the debt would ever have surfaced. It still seems most unlikely that the wife will be required to make any repayment and the fact that she had forgotten about it until January 2022 supports these conclusions, notwithstanding that there was a contemporaneous loan document.

(b) The debt owed by the husband to his mother, for me, falls very much into the same category - very much at the soft end of the scale. As the husband's mother told me herself, she was unlikely ever to demand repayment of the loan and would certainly not have contemplated going to court for its enforcement. I am satisfied that both the husband and his mother were quite content, until the intervention of the argument on the divorce, to leave things be without any repayment. They both were content to regard it as an advance on the husband's inheritance.

(c) Having heard and read the evidence I am satisfied on a balance of probabilities that the husband's primary motivation in making the payment of £150,000 to his mother in June 2020 was because he was concerned that the wife would share half of it if he did not do this. I do not accept that he had any significant sense of an obligation to make the payment at this point, either legally or morally.

(d) I do not think it would be right for me to raise the husband's debt to his mother to hard debt status simply because he has repaid it. To do that would be to reward and encourage manipulative behaviour and would, to my mind, unfair.

> *(e) My decision is that both of these debts were very soft and, for me to do fairness between the parties, the consequence of that is that I should not include the wife's debt to her father on the asset schedule, but should re-credit the £150,000 to the husband's side of the schedule."*

92. It seems to me that this case falls into a similar category as that referred to above. Mr. R appears to have no expectation that the Loan will be repaid or that H can or might be able to make repayment. In his affidavit, he suggests that the proceeds of the sale of the Miami Home were reinvested in the FMH. In fact, other than covering the deposit for the FMH and costs of purchase, they have not. Instead, they have been used to support H and W and their children and supplement H's income. Similarly, I do not get the impression that there is a serious expectation that the parties will repay the monies that they have apparently been *"lent"* by their respective parents to fund their legal fees. In my view, the Loan is the softest of soft loans and should not be taken into account in a schedule of assets and liabilities.

How should the Pictet Account, H's income, the FMH, Nimbus boat and shares in CG be treated?

93. Although the Miami Home and its proceeds of sale were kept in H's sole name, they have been treated as a matrimonial asset. As mentioned above, they have been used to support the family and purchase and invest in a variety of assets ranging from the FMH and Nimbus boat to the shares in CG. In my view, it is appropriate to regard all of those assets as matrimonial assets, which, for practical purposes, is how they have been treated and must, therefore, be regarded as being the product of marital endeavour[14]. Based on the evidence, these assets were acquired as a result of joint decisions by H and W. During the course of the marriage, W was the primary caregiver to their children and remained out of the job market at the request of H in order to fulfil that role. W moved to the Cayman Islands, to Panama and back to the Cayman Islands to support H. As Mostyn J put it *JL v SL [2015] EWHC 360*:

> *"Matrimonial property is the property which the parties have built up by their joint (but invariably different) efforts during the span of their partnership. It should be divided equally. This principle is reflected in statutory systems in other jurisdictions. It resonates with moral and philosophical values. It promotes equality and banishes discrimination."*

94. Specifically, in relation to the FMH, Mr. McGrath refers to Lord Nicholls' speech in ***Miller*** from where Chadwick P's definition of matrimonial property derives, and in particular paragraph 22, where he deals specifically with the matrimonial home.

[14] *McTaggart v McTaggart* [2011 2 CILA 390], paragraph 35, Chadwick P (adopting Lord Nicholls in *Miller and McFarlane*): *"As I have said, "matrimonial property" is not a concept which is defined in the Law. But, it is, I think, generally accepted that—as Lord Nicholls observed in Miller (5)—its distinguishing feature is that it is "the financial product of the parties' common endeavour"* ([2006] 2 A.C. 618*, at para. 22)."*

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

95. Based on the above, in my view, it is fair to treat the balance of the Pictet Account, equity in the FMH[15] and value of the Nimbus boat as matrimonial assets standing to be divided equally between W and H.

96. It is not clear what value the shares in CG have. They do appear to produce a small monthly income, but it also seems that when the business needs working capital it is the shareholders who provide it. Indeed, in his affidavit dated 31 January 2024, H says that there have been two "capital calls" on shareholders to support the business, neither of which he could meet. I am also conscious that I have no power to direct or cause the directors of the company to do anything in relation to the shares owned by H.

97. The Pictet Account is also the account into which H's monthly income is paid. As previously set out, H's current material income comprises a monthly payment of US$10,000, which H describes as a gift and the payment for the work for his father, which has been US$5,000 but is valued at US$11,500. In his oral evidence H referred to the US$2,000 received monthly from W's parents as "family income" and that is how H treated it when preparing income spreadsheets. I see no reason to treat his income any differently whether an element of it is correctly characterized as a "gift" or not. All such payments, whether from W's family or H's family, are, in reality, subsistence allowances upon which the family has relied to meet their needs.

98. In my view, the US$2,000/m received by W from her parents should be taken into account when considering her income. In the case of H, I am of the view his income should be treated as being the US$10,000/m and the gross amount of US$11,500 which he earns from working for his father as based

[15] Subject to a credit in favour of H for any reduction in the redemption balance of the mortgage between 20 July 2022 and the date of redemption (Consent Order dated 22 July 2022).

on the evidence from H and Mr. R, I regard the obligation to make interest payments, notional or otherwise as being as soft as the Loan.

Needs/maintenance

99. There have been mutual allegations of non-disclosure in this case, and both parties have attempted to rely on the perceived wealth of the other's family. In relation to needs, H made a one off, ex gratia lump sum relocation payment to W of US$45,000, pursuant to the interim consent order dated 20 July 2022. H was also to be responsible for the mortgage payments for the FMH and health insurance premiums for W and the children, uninsured medical expenses, agreed extra-curricular expenses for the children and the costs of the helper. W's parents were to continue to meet the school fees for the children for the year 2022/2023. By way of a further interim consent order dated 11 May 2023, it was ordered (subject to H reserving his position that W is not entitled to any maintenance and that she had an ability to meet her needs from her own resources) that H pay W interim periodical payments of US$4,000/m until further order. The school fees for the children for 2023/2024 were to be split between the parties.

100. As discussed, the PNA is in place, but I have to consider whether or not W's needs mean that, despite its terms, an order for spousal maintenance should be made. As also mentioned previously, the PNA makes no provision for child maintenance and the costs of caring for the parties' children, so that issue must be considered as well.

101. W was cross-examined on her schedule of expenses as set out above. In relation to the question of W's income and expenses, Mr. McGrath submits as follows:

    101.1 W's employment and her scheme of remuneration have recently changed. She has moved from working on a fixed salary of CI$60,000 p.a. in marketing for a real estate agency to being a real estate agent with a salary of CI$30,000 p.a. plus commissions based on sales. She has said that she hopes that in her new role, she will make at least as much as she did when she was on a fixed income. But her income will be dependent upon a multiplicity of variables, many of which are out of her control. Assessing her income involves some element of speculation. Based on W's evidence, Mr. McGrath invites the Court to proceed on the basis that W will be able to make not less than CI$60,000 p.a. and should assess her income at that level *pro tem*. Obviously, he says, if her real estate career takes off and in time, she is able to generate substantially greater income that would be a change. If the change is significant, it may warrant a review of the position.

101.2 In addition to her income from employment, W receives an allowance of US$2,000 (CI$1,640)/m from her parents. The Court will obviously have to take that into account in assessing her income, needs and any periodic payments which it may order H to pay.

101.3 W's budget is set out above and estimates W's expenditure at CI$11,073 or US$13,398/m. Mr. McGrath submits that her assessment of her spending needs is not unreasonable, and the Court should take a broad view as to whether she has exaggerated or over-egged her figures. He says there is nothing lavish or exorbitant in her budget. In his affidavit dated 21 April 2023, H reviews W's budget and takes the view that it is excessive and asserts that W and the children can get by on CI$8,590/m, of which CI$4,000 is in respect of her rent. Mr. McGrath says that his assessment is unrealistic and parsimonious. It is submitted that the Court should give credit to W's reasonableness and take comfort that her position is consistent with someone who is cutting her cloth appropriately and it is inconsistent with someone who is trying to pad their figures. She lives with the children in a 2-bedroom rented property, drives a Kia and in her property particulars, she is hoping to purchase appropriate 3-bed condos in nice but not lavish developments. This is not, he submits, the budget or the lifestyle of a litigant who is trying to persuade the Court towards the extravagant. On the contrary, he says that her reasonableness tends to make her more credible. Mr. McGrath says that W will have a monthly shortfall of expenditure over income (CI$12,300 minus CI$6,640 = CI$5,660) (**USD6,902**). W seeks periodic payments in such sum. Mr. McGrath says that whether the Court makes the award as child maintenance or spousal maintenance or some combination, in reality, it makes little difference to W.

101.4 One proposal put forward by Mr. McGrath is similar to that ordered by Williams J in ***K v K***[16] where he awarded three years' spousal maintenance on an annually reducing basis along with child maintenance. (In that case, W was also in real estate sales). Child maintenance at the rate of USD2,000 per child per month plus spousal maintenance per the schedule below which he says may well commend itself to the Court.

Year 1 – USD2,500 pcm

Year 2 – USD2,000 pcm

Year 3 – USD1,500 pcm

[16] FAM 39 of 2015, unreported 7 February 2017.

102. In relation to H's income, Mr. McGrath submits that the position is somewhat opaque. On the one hand, as set out in the BBE and Day Pitney documents, H appears to have a solid and successful business and finance background. On the other, in their oral evidence both H and Mr. R appeared to downplay H's current occupation to the point of making it seem of little importance or consequence.

103. Mr. McGrath refers to the income and expenditure spreadsheet that H prepared for 2021. His projected gross income was US$401,780, including W's monthly allowance of US$2,000 and income from BIL. Deducting the latter two sums leaves a net income of US$337,466. H's estimated family annual expenses amounted to US$284,450[17], a difference of approximately US$53,000. It is not clear if the schedule includes the rent that H pays for office space in Camana Bay. In his evidence he said that it was $1,000/m although I did not note whether that was US$ or CI$. In any event, based on H's evidence, he seems to have little use for an office so the rent could be better used elsewhere. These figures also do not include the gross amount of H's income from working for his father, as I have mentioned the interest component I regard as soft as the Loan itself.

104. Mr. Holland approaches the question of W's income and needs as follows:

104.1 Aside from any additional support from her family, the following sources of income should be attributed to W:

104.1.1 US$6,050/m from her employment (plus potentially significant further commissions);

104.1.2 US$2,000/m from her parents; and,

104.1.3 US$4,228/m from W's parents in lieu of children's school fees payments.

These total US$12,278. Mr. Holland also speculates that W may earn a further US$50,000/yr as commission which adds a further US$4,166/m. On that basis he says, W's projected income will meet her needs as she has assessed them.

104.2 Mr. Holland refers to the PNA and argues that it would be manifestly unfair to H if its terms were not upheld and in particular clause 8 of the PNA in which W agreed not to make any claims for alimony against H's protected property.

105. This is a somewhat unusual case, and I am not sure that a detailed analysis of either party's schedule of expenses will be productive. I am of the view, as mentioned earlier, that W has made career and employment sacrifices to support H and her family. She is now back in the labour market, and those

[17] Similar to the schedule of expenses exhibited to H's affidavit dated 3 October 2023.

efforts are to be commended. In recognition of that position, I am of the view that W has short-term income needs that should be supported by H. On that basis, I Order that H pays the sum of US$2,000 to W by way of spousal maintenance for a period of 18 months.

106. There are also childcare expenses that need to be considered. In that regard, Mr. Holland referred to the unreported Grand Court case of ***AL v NL***[18] in which Williams J endorsed an extract from Butterworths highlighting the following:

> *"At paragraph [871] in the extract from Butterworths, the authors highlight that the Court should take into account that maintenance was for the child and not for the other parent and that each parent has a financial responsibility to meet the child's needs. The authors state that: .., solicitors representing the respondents to applications should, for their part, bear in mind, especially that:*
>
> *(a) periodical payments for children are meant to be for the children. Accordingly, there should be no "profit element" for the benefit of the custodial party;*
>
> *(b) it is clear from the statue that the cost of supporting and bringing up the child is not necessarily required to fall entirely on one parent. Both parents have resources the question before the court should be "what contribution towards the total cost should be borne by the respondent?"*
>
> *The Court will in such instances have to apportion a reasonable amount for the child benefit, whilst leaving the mother to pick up the greater balance. The purpose of child maintenance is not to provide for the mother a personal lifestyle similar or proportional to that which she believes the father to have."*

107. W has included amounts for child related costs in her schedule of expenses. As noted earlier, W's parents have historically met the children's school fees although they are now being shared equally. In my view that is a cost that should be shared by each side of the family. There are however other costs that each party will have to bear and, on that basis, I am of the view that H should pay W child support of US$2,000/m per child until they reach the age of 18.

108. I was of the view that H had also agreed to meet the health insurance premiums for the children, any uninsured medical costs or deductibles, the children's pre-agreed extra-curricular costs and all of the helper's costs including salary, immigration costs and health insurance until the youngest child reaches the age of 12. Indeed, this was outlined in H's closing submissions. Mr Holland says that his was on the basis that no other maintenance orders were to be made. W's budget as set out above was prepared

[18] 21 February 2020.

on the basis that H continues to meet these costs apart from children's pre-agreed extra-curricular costs which W does budget for. In my view, therefore, H should continue to meet health insurance premiums for the children, any uninsured medical costs or deductibles, one half of the children's pre-agreed extra-curricular costs and all of the helper's costs including salary, immigration costs and health insurance until the youngest child reaches the age of 12.

109. Set out below is a schedule showing the asset division that follows from the terms of this judgment:

Asset division

Property		In name of			To W (per ICO)		H	W	Total
CP Property (FMH)						3,368,292.00			
less CIBC mortgage						-$1,180,968.68			
costs of sale						-$168,414.60			
Stamp duty*						-$27,437.00			
						$1,991,471.72	$995,735.86	$995,735.86	$1,991,471.72
Personal Bank accounts and investments									
Banque Pictet (718) (net)		H				$399,438.91	$199,719.46	$199,719.46	
Wells Fargo (081)		W			$37,599.41				
Generali		W	Children's educational funds						
Banco General (*0316)		W	Panama			$89.34		$89.34	
CIBC W KYD (201)		W		34,709.50		$41,998.50		$41,998.50	
CIBC W USD (202)		W			$7,891.12				
Butterfield CI (*0013)		W		21,789.95		$26,365.84		$26,365.84	
Butterfield US (*0025)		W				$30.60		$30.60	
Tax refund from Panama		W				$23,000.00	$7,820.00	$11,730.00	
Banco General (*255)		H				$284,872.07	$96,856.50	$145,284.76	
FCIBC (*515)		H				$2,740.30	$2,740.30		
FICBC (*516)		H				$12.40	$12.40		
Butterfield (010) (AB)		H				$2,106.75	$2,106.75		
DIG		H				$33,105.38	$16,552.69	$16,552.69	
BIL	Business		*530 WF and City national						
CG	Business					$23,500.00	$23,500.00		
BBE	Business								
						$837,260.08	$349,308.10	$441,771.18	$791,079.27
Amex									
Southwest									
H asserts loan to H's parents									
W asserts loan from W's parents for legal fees									
Chattels									
Nimbus						$125,000.00	$62,500.00	$62,500.00	
Art collection						Divide *in specie*			
Furniture, family heirlooms and silverware						Divide *in specie*			
						$125,000.00	$62,500.00	$62,500.00	$125,000.00
					$45,490.53	$2,953,731.80	$1,407,543.96	$1,500,007.04	$2,907,550.99
					Add ICO NMP			$45,490.53	
								$1,545,497.57	

Panama property

To W's mother	$42,730.81
Tax refund	$3,450.00
	$46,180.81

*Additional sum sought by CIG

Conclusion

110. On the basis of the above it or ordered as follows:

110.1 The FMH be valued based on the second valuation prepared by the SJE.

110.2 The FMH, the balance of the Pictet Account and the Nimbus boat be treated as matrimonial assets and their value shared equally between W and H less any costs of sale.

110.3 No order is made in relation to any other assets of the parties.

110.4 H is to pay W spousal maintenance in the sum of US$2,000 per month for a period of 18 months from the date of this judgment.

110.5 H is to pay W child support in the sum of US$2,000 per child per month from the date of this judgment until the children reach the age of 18.

110.6 The children's high school fees be shared equally between W and H.

110.7 Until the children reach the age of 18, H is to meet health insurance premiums for the children, any uninsured medical costs or deductibles, one half of the children's pre-agreed extra-curricular costs and all of the helper's costs including salary, immigration costs and health insurance until the youngest child reaches the age of 12.The parties shall provide written submissions on the issue of costs with 14 days of the date of this Judgment.

Costs

111. The parties are at liberty to make submissions on costs to be filed 14 days after the date that this judgment is finalized.

Hon. Mr. Justice Alistair Walters (Acting)
Judge of the Grand Court