

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

Cause No. FAM0227/2017



M.S.

Petitioner

AND

F.S.

Respondent

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

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

31 HEADNOTE

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

38 JUDGMENT

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

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

4
5 3. I thank both teams for their meticulous preparation and efforts to narrow the issues before the
6 Final Ancillaries Hearing (“FAH”), which avoided a number of witnesses being called for cross-
7 examination and saved the Court significant time. The teams’ thorough skeleton arguments and
8 the quality of advocacy have been of enormous assistance in reaching my decision on the
9 various issues. After the conclusion of the hearing, the parties have diligently kept me informed
10 of various developments that affect my determination of the issues and filed further
11 submissions as necessary.

12
13
14 **A. INTRODUCTION**



15
16 4. The parties met in Canada in 1994. The wife was 21 and the husband 27 when they married in
17 1996. The husband had not completed any formal post-secondary education. He had held a
18 number of jobs before and during the early years of the marriage, predominately as a salesman.
19 Upon their marriage, the wife dropped out of her college course to take up employment. They
20 each had a modest income. The husband had a small investment in two residential properties.
21 The parties purchased their first home in 1997 which they renovated and sold for a profit later
22 that year. They ‘flipped’ their second house in 1998.

23
24 5. In 1999, the husband set up company P and he purchased his first domain name in August of
25 that same year. The husband lost his employment in June 2000 after which he focused full-time
26 on purchasing domain names. The wife continued working and her income, together with a
27 rental income, provided the necessary funds to cover their mortgage and living expenses. In
28 June 2000, company P purchased a significant share in a valuable domain name and by the end
29 of that year the business generated sufficient income to allow the wife to cease employment.

30
31 6. For tax purposes the parties relocated to the Cayman Islands in 2002. They now hold Caymanian
32 Status. The parties’ first child, E, was born in 2004 and their second, L, in 2005. They are now

1 aged 16 and 14 respectively. L was diagnosed as having significant developmental challenges as
2 a toddler. From that time onwards the parties' roles became that of breadwinner/homemaker,
3 as the wife's attention was on ensuring that L received the necessary treatments to facilitate his
4 recovery, as well as caring for E, while the husband continued to run the businesses. This
5 arrangement continues to this day.
6

7 7. Like many marriages, this marriage had periods of disharmony. It is unnecessary for the
8 purposes of this judgment to detail the marital problems, save to say that the parties separated
9 in 2011 and 2014, always reconciling soon after. The discord returned and the parties finally
10 separated in September 2017.
11

12 8. This has been a long marriage, some 21 years in total. The wife is aged 45 and the husband is
13 aged 50. The husband and wife are in the very fortunate position that their accumulated wealth
14 far exceeds the sums needed to meet their own and their children's needs.
15

16 9. It is common ground that all of the family's wealth has been accumulated during the course of
17 their marriage. Prior to the final hearing, the parties agreed which assets were matrimonial and
18 fell to be distributed. The total value of the matrimonial assets is estimated in the region of
19 US\$290 million, therefore, this is a "big money" case.
20

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

1 third parties (“the residual business”). The husband estimates the residual business to be worth
 2 US\$ XX million.

3
 4 11. Prior to the FAH the parties had made asset adjustments to allow the wife to purchase a new
 5 home comparable to that of the FMH in which the husband continues to reside, as well as a pre-
 6 judgment division of cash held in the joint ZBK account in the amount of US\$45,000,000. The
 7 parties have agreed that the Geneva Yacht Club membership shall be transferred to the husband
 8 and the Pebble Beach membership to the wife. The parties have not been able to agree to the
 9 division of the remaining assets which I must now determine. These assets are as follows:

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

² Values based on joint valuation reports and are after deduction of 5% sales costs.

³ The husband disagrees with some of the valuations in the joint reports and has provided his own opinions on the values of the disputed properties.

⁴ Each party has received US\$45 million from this account in a further pre-judgment distribution leaving a balance of US\$1,429,132.59.



1 12. This is only the second “big money” case in the Cayman Islands in which a spouse seeks to
2 establish that their generation of wealth and/or post-separation endeavour was a *special*
3 *contribution* to the marriage warranting an unequal division of assets. The value of the assets in
4 this instance exceeds the previous case by a multiple of 10 and, is likely to be the largest “big
5 money” family case litigated in this jurisdiction.
6

7 13. There are five significant issues in the case-

- 8 (i) Whether or not the husband made a *special contribution* such that the amount
9 now payable to the wife should be less than it otherwise might have been.
10 (ii) Whether or not the husband’s *post-separation endeavours* (whether in isolation
11 or in conjunction with a *special contribution*) is such that the amount now
12 payable to the wife should be less than it might otherwise have been.
13 (iii) Whether the wife’s contribution to the family, in particular the care of their
14 youngest child, constitutes a contribution which matches or even exceeds the
15 husband’s contribution to the family.
16 (iv) How to monetize the matrimonial assets and over what period.
17 (v) Whether it is appropriate to make an order for periodic payment for the
18 maintenance of the children, and if so, the quantum of such payments.
19
20
21

22 B. CHRONOLOGY OF PROCEEDINGS

23

24 14. The wife filed her petition for dissolution of marriage on 3 October 2017. The matter came on
25 for First Appointment and the Petition was found proved on 7 November 2017, after which the
26 case was adjourned into chambers for the settling of ancillary orders. On 26 March 2018 W
27 served a draft summons seeking to stop the husband from taking a salary, reducing the
28 matrimonial property, to cause the company to alter its accounting practices and seeking other
29 relief. On 8 May 2018, the husband issued a cross summons seeking to restrain the wife from
30 interfering with the businesses. At the hearing on 29 May 2018, the wife pressed for her
31 summons (which still had not been issued) to be heard urgently. The Court rejected the wife’s
32 application and directed that the both summonses be heard on 11 September 2018 and ordered



1 the wife to pay the costs of the hearing on the 29 May 2018 on the indemnity basis. When the
2 summonses came on for hearing on 11 September 2018 the parties were able to agree a
3 consent order. On 22 November 2018, the wife filed originating summonses against company N
4 and company U alleging company information was being withheld from her and seeking copies
5 of company records. Ultimately, this summons was not pursued. On 1 February 2019, the wife
6 filed another summons seeking clarification and enforcement of the consent made on 11
7 September 2018 as well as further directions in preparation for the FAH. That summons was
8 adjourned with directions given by consent on 8 February 2019 and was not further pursued. On
9 6 September 2019, the husband filed a summons for a specific issue order concerning one of the
10 children which I need not detail further. A Case Management Conference was held on 11
11 September 2019. The FAH commenced on 4 October 2019 and lasted six days.



15 C. OUTLINE OF DISPUTE

- 16
- 17 15. The husband has not pursued a pre-matrimonial contribution argument as part of his case, so I
18 need not determine the source of the funds which were used to purchase domain names in the
19 early days of the businesses. He does, however, rely on the success of the operating companies
20 and the family's other investments to establish that he has generated such wealth that it
21 constitutes a *special contribution*. Specifically, the husband argues that he has such exceptional
22 skills and vision that, if he is not the most successful domain name investor ever, he is at least
23 one of only a handful of people who have achieved the same level of success he has achieved.
- 24
- 25 16. The wife accepts that the husband is hard-working and has led the companies to great success
26 and wealth; however, she argues that the husband's skills are not exceptional. While there was
27 no pre- or post-nuptial agreement, the wife asserts that the parties always intended and had
28 agreed to share the proceeds of the companies and investments equally and that the husband
29 should not be allowed to depart from that agreement.
- 30
- 31

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

6
7 18. The parties also disagree on the role the wife played in the operating companies from the time
8 of their inception. While the wife asserts that she was actively involved in the businesses
9 working alongside the husband as his partner until their children were born, the husband asserts
10 that she was minimally involved and did not materially contribute to the creation of wealth.

11
12 19. The wife asserts that her care of the children, in particular her role in their youngest child's
13 rehabilitation, constitutes an equal if not greater *special contribution* to the family, weighing
14 against the husband's argument that she should receive a smaller share of the matrimonial
15 assets. The husband asserts that the wife's contribution to the family is not exceptional as he
16 was also heavily involved in caring for the children.

17
18 20. The husband proposes that he should be awarded 65% of the total assets and that he will invest
19 the additional funds for the benefit of the children. The wife is seeking an equal share of the
20 assets.

21 22 23 D. THE LAW – GENERAL



24
25 21. The Court's power to order ancillary relief upon dissolution of marriage is conferred by section
26 21 of the Matrimonial Causes Law (2005 Revision) ("MCL") which provides that –

27
28 *"at the time of pronouncing a decree under this Law, the Court shall, as appropriate,*
29 *make orders for –*

- 30 (a) *the custody, care and control of the children of the marriage;*
31 (b) *the disposition of matrimonial property, including the matrimonial home;*
32 (c) *varying any settlement of the property of the spouses made in consideration*
33 *of the marriage, whether such settlement was made before or upon the*
34 *treaty of the said marriage.*
35 (d) *varying any other settlement of matrimonial property;*

- 1 (e) making financial provision from the property of either spouse for the
2 children of the marriage and for the other spouse;
3 (f) providing for periodic payments to be made by either spouse for the benefit
4 of the children of the marriage and for the other spouse; and
5 (g) costs.”
6

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

9
10 *“In dealing with all ancillary matters arising under this Law, the Court shall have*
11 *regard first of all to the best interests of any children of a marriage and*
12 *thereafter to the responsibilities, needs, financial and other resources, actual*
13 *and potential earning power and the deserts of the parties.”*
14

15 23. The parties have reached their own agreement as to the care, custody and control of the
16 children of the marriage which has been documented in a parenting agreement and neither
17 party is seeking spousal maintenance. In fact, other than the wife’s application for child
18 maintenance, both parties are seeking a clean break. I am, therefore, concerned with the
19 powers conferred by section 21 (b) and (e) of the MCL.
20



21 22 23 E. CHILD MAINTENANCE 24

25 24. The wife seeks a periodic payment towards maintenance of each child. This application is
26 entirely isolated from the other aspects of the case and it is convenient to deal with this
27 application first.
28

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

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

2
3 27. The husband disputes the wife's calculations as to the children's division of time between the
4 households. He also asserts that he has also spent significant amounts on maintaining the
5 children, although he has not conducted any specific calculations. During the course of his
6 evidence, the husband suggested that a payment of US\$50,000 per child per annum to the wife
7 should cover any disparity in spending between the parties, if there is one.

8
9 28. I am mindful that the parties' expenditure on the children, for example on clothing and
10 entertainment, far exceeds the norm. However, the children have a reasonable expectation
11 that they will maintain the high standard of living they have enjoyed with either parent. This is a
12 question of fair distribution of these costs between the parties.

13
14 29. The parties have agreed that the parties shall be equally responsible for –

- 15 • School fees
- 16 • Medial costs
- 17 • Health Insurance



18
19 30. They have also agreed that each party shall –

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

28
29 31. It is the last three categories (travel, food and clothes, etc.) that are the focus of the wife's
30 complaint. The wife's schedule was not pro-rated to reflect those sums attributable to the
31 children only and included items and services she would normally incur even without the
32 children being in her care. For example, the wife has included the costs of maintaining her

1 accommodation, a vehicle and utilities. The children's presence for the additional time (even if
2 they were in her care for 80% of the time) does not significantly impact these expenses given
3 the level of expenditure generally. *De minimis non curat lex* applies in this instance and I exclude
4 the residential costs and travel costs from my calculations.
5

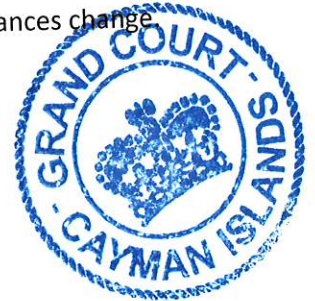
6 32. The children's remaining expenses (food, clothing, spending money, sports, activities and
7 entertainment) borne by wife in 2018/19 are said to have totalled around US\$287,000. While I
8 have no reason to doubt that the wife spent US\$121,000 on groceries and restaurants over 12
9 months, given the extraordinarily high sum and the fact that the wife did not pro-rate expenses
10 (see above), I will draw the inference that the true cost of food for the children is likely to be
11 around 1/3 less than that stated. On the wife's calculations, the children spent just over 3/4 of
12 their time with her. While the husband disputes the accuracy of the division of time between
13 the households, he conceded that there has been some imbalance given the terms of the
14 parenting agreement.
15

16 33. I am persuaded that the children have been and are likely to continue to spend more time with
17 the wife than the husband. The expenditure for the children is likely to fluctuate given their
18 lifestyle and, therefore, it is difficult to arrive at a precise figure for the additional cost the wife
19 will incur over the husband. I must, therefore, take a 'broad brush' approach to arrive at a fair
20 sum.
21

22 34. I am satisfied that US\$70,000 per child per annum is a reasonable figure to offset any additional
23 expenditure the wife has incurred to date and may incur in future. Consequently, in addition to
24 those matters pertaining to the children as the parties have agreed (see above), I order that the
25 husband shall pay the wife the sum of US\$70,000 per child per annum. The first payment shall
26 be paid within 14 days of this Judgment for 2019. All future payments shall be due on 1 July
27 every year starting 1 July 2020.
28

29 35. Neither party has addressed the question of whether the periodic payments should continue
30 beyond the children's eighteenth birthdays. Assuming the children do move on to tertiary
31 education, it is possible that they will attend institutions overseas which will significantly impact
32 the children's expenses and the division of time between the parties' two households.

1 Consequently, it is more appropriate to have maintenance payments end on each child's 18th
2 birthday or completion of secondary education (whichever is later) and giving the parties leave
3 to return the matter to Court should an extension be required. Of course, either party is at
4 liberty to apply to the Court for a variation prior to that date should circumstances change



8 F. SPECIAL CONTRIBUTION – THE LAW

9
10 36. I have been provided with a significant number of *special contribution* cases from England and
11 Wales. While the courts there have continued to confirm that the principle survives societal
12 changes, there have been only a very few occasions in the past 20 years when the courts have
13 found that a spouse had made a *special contribution*. Of course, the number of cases in which
14 the parties agreed a *special contribution* had been made is unknown.

15
16 37. By contrast, there have been only two reported special contribution cases in the Cayman
17 Islands, of which only one was successful (**Wight v Wight [2006] CILR 1** *infra*).

18 19 20 The UK position

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

24
25 *"the contributions which each of the parties has made or is likely in the foreseeable*
26 *future to make to the welfare of the family, including any contribution by looking*
27 *after the home or caring for the family"*

28
29 39. The legislative intention of sections 19 and 21 of the MCL is *ad idem* with that of the MCA and
30 consequently, the UK authorities are of some considerable assistance. I have been provided
31 with twenty-eight UK authorities which I have considered. It is evident that over the two
32 decades the courts in the UK have moved towards the principle of division of assets on the basis
33

1 of equality, rather than focussing on the parties' financial contributions. This sea change was
2 most evident in the dicta of Lord Nicholls in **White and White [2000] 2 FLR 981** :

3
4 *"Self-evidently, fairness requires the court to take into account all the circumstances*
5 *of the case. Indeed the statute so provides. It is also self-evident that the*
6 *circumstances in which the statutory powers have to be exercised very widely... But*
7 *there is one principle of universal application which can be stated with confidence. In*
8 *seeking to achieve a fair outcome, there is no place for discrimination between*
9 *husband and wife and their respective roles. Typically a husband and wife share the*
10 *activities of earning money, running their home and caring for their children.*
11 *Traditionally, the husband earned the money and the wife looked after the home*
12 *and the children. This traditional division of labour is no longer the order of the day.*
13 *Frequently both parents work. Sometimes it is the wife who is the money-earner,*
14 *and the husband runs the home and cares for the children during the day. But*
15 *whatever the division of labour chosen by the husband and wife, or forced upon*
16 *them by circumstances, fairness requires that this should not prejudice or advantage*
17 *either party when considering paragraph (f), relating to the parties' contributions...*
18 *If, in their different spheres, each contributed equally to the family, then in principle*
19 *it matters not which of them earned the money and built up the assets. There should*
20 *be no bias in favour of the money-earner and against the home-maker and the child*
21 *carer.... As a general guide, equality should be departed from only if, and to the*
22 *extent that, there is good reason for doing so."*

23
24
25 40. Thus far special contribution arguments have been limited to instances when one spouse,
26 usually the husband, has generated great wealth. The courts acknowledge that successful
27 *special contribution* cases are inherently discriminatory towards the homemaker, usually
28 women, which is why the threshold is high and such instances should be rare. It must be noted
29 that *special contribution* is not confined to cases of wealth, although, without wealth, there may
30 be little benefit to pursuing such an argument. The issue was considered in detail in **Charman v**
31 **Charman (No.4) [2007] EWCA 503** -

32
33 *"[70] It was inevitable, so it seems to us, that the notion of a special*
34 *contribution should have 'survived' the decision in Miller. The statutory requirement*
35 *in every case to consider the contributions which each party has made to the welfare*
36 *of the family, as well as those which each is likely to make to it, would be*
37 *inconsistent with a blanket rule that their past contributions to its welfare must be*
38 *afforded equal weight. Nevertheless the difficulty attendant upon a comparison of*
39 *their different contributions and the danger of its infection by discrimination against*
40 *the home-maker led the House in Miller heavily to circumscribe the situations in*
41 *which it would be appropriate to find that one party had made a special*
42 *contribution, in the sense of a contribution by one unmatched by the other, which,*



1 for the purpose of the sharing principle, should lead to departure from equality. In
2 this regard the House was unanimous. First it approved, at [67], [68] and [146], the
3 decision of this court in *Lambert*, in which Thorpe LJ had ventured, at [46], “a
4 cautious acknowledgment that special contribution remains a legitimate possibility
5 but only in exceptional circumstances”. Then it reached for the criterion by which the
6 court determines whether a party’s conduct is relevant to the enquiry and suggested
7 that it should also be applied to identification of the linked and in effect obverse
8 feature, namely the special contribution. When, by s.3 of the Matrimonial and
9 Family Proceedings Act 1984, Parliament had recast the reference to conduct in s.25
10 of the Act of 1973, it had provided in s.25(2)(g) that conduct should be taken into
11 account if it was “such that it would in the opinion of the court be inequitable to
12 disregard it”. On one view that criterion is of fair width. In practice, however, its
13 meaning has largely been interpreted in line with the narrow criterion for
14 determination of the relevance of conduct set by this court prior to 1984, in
15 particular in *Wachtel v. Wachtel* [1973] Fam 72, in which, at 90C, it approved the
16 trial judge’s suggestion that conduct was relevant only if it was “obvious and gross”:
17 indeed see the current re-affirmation of this criterion by Baroness Hale in *Miller* itself
18 at [145]. It is therefore in the light of the very limited ability of a party to establish a
19 case of conduct under s.25(2)(g) that we must have regard to the statements in
20 *Miller* both of Baroness Hale, at [146], that contributions should be approached in
21 much the same way as conduct; and of Lord Mance, at [164], as follows:

22
23 *“[S]ection 25(2)(g) recognises the difficulty and undesirability,*
24 *except in egregious cases, of any attempt at assessing and weighing*
25 *marital conduct. I now recognise the same difficulty in respect of*
26 *marital contributions – conduct and contributions are in large*
27 *measure opposite sides of a coin.”*

28
29 In saying that he “now” recognised the same difficulty, Lord Mance no doubt had in
30 mind the wider room for special contributions which, as a member of this court, he
31 had identified in *Cowan*, at [160] and [161].

32
33 [80] The notion of a special contribution to the welfare of the family will not
34 successfully have been purged of inherent gender discrimination unless it is accepted
35 that such a contribution can, in principle, take a number of forms; that it can be non-
36 financial as well as financial; and that it can thus be made by a party whose role has
37 been exclusively that of a home-maker. Nevertheless in practice, and for a self-
38 evident reason, the claim to have made a special contribution seems so far to have
39 arisen only in cases of substantial wealth generated by a party’s success in business
40 during the marriage. The self-evident reason is that in such cases there is substantial
41 property over the distribution of which it is worthwhile to argue. In such cases can
42 the amount of the wealth alone make the contribution special? Or must the focus
43 always be upon the manner of its generation? In *Lambert* Thorpe LJ said, at [52]:

44
45 *“There may be cases where the product alone justifies a conclusion*
46 *of a special contribution but absent some exceptional and individual*
47 *quality in the generator of the fortune a case for special contribution*
48 *must be hard to establish.”*

1
2 *In such cases, therefore, the court will no doubt have regard to the amount of the*
3 *wealth; and in some cases, perhaps including the present, its amount will be so*
4 *extraordinary as to make it easy for the party who generated it to claim an*
5 *exceptional and individual quality which deserves special treatment. Often, however,*
6 *he or she will need independently to establish such a quality, whether by genius in*
7 *business or in some other field. Sometimes, by contrast, it will immediately be*
8 *obvious that substantial wealth generated during the marriage is a windfall – the*
9 *proceeds, for example, of an unanticipated sale of land for development or of an*
10 *embattled take-over of a party's ailing company – which is not the product of a*
11 *special contribution."*
12

13 41. The UK position can be summarised as follows:

- 14 (i) The yardstick of equality of division of assets should be forcefully applied.
- 15 (ii) There may be characteristics or circumstances of a case that justify departure
- 16 from the yardstick of equality, but they must be so marked or wholly
- 17 exceptional that it would be unfair to ignore them.
- 18 (iii) A good reason for departing from equality is not to be found in the *minutiae* of
- 19 married life.
- 20 (iv) The *special contribution* may be financial and non-financial.
- 21 (v) There is no blanket rule that the parties' contribution to the welfare of the
- 22 family must be afforded equal weight.
- 23 (vi) Exceptional earnings are to be regarded as a factor pointing away from equality
- 24 of division if it would be inequitable to proceed otherwise.
- 25 (vii) The amount of the wealth alone may be so extraordinary as to justify a
- 26 conclusion of a *special contribution*. However, often the party will need to
- 27 independently establish that the wealth was generated by their exceptional and
- 28 individual quality, whether by genius in business or some other field.
- 29 (viii) There is no threshold for a claim of *special contribution* by generation of wealth.
- 30 (ix) A party whose role has been exclusively that of a homemaker can make a
- 31 special contribution.
- 32 (x) The court should be careful to avoid discrimination against a home-maker.
- 33 (xi) Only if the disparity in each spouse's respective contributions, whether by the
- 34 generation of wealth or otherwise, to the welfare of the family is such that it
- 35 would be inequitable to disregard it, should the court take such disparity into
- 36 account.



1 (xii) The issue is one of equity not whether the contribution is “unmatched”.

2 (xiii) If the court finds that a party has made a special contribution the disparity in
3 division could be as small as 55%/45% but is unlikely to venture beyond
4 66.6%/33.3%.



6 The Cayman Islands position

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

13
14 43. It is of some benefit to review the facts in **Wight v Wight** ([2006] CILR 1 and CICA No 6 of 2006 -
15 unreported - 30 November 2007). When the parties met in 1978, the husband was the manager
16 of the Cayman joint offices of Deloitte, Rawlinson and Hunter, later to become Deloitte and
17 Touche. The wife was also employed. The parties married in 1980 and in the same year the
18 husband became an equity partner in the firm. The husband and wife had 4 children. The wife
19 was responsible for the children’s school fees and domestic staff salaries. In 1991, the husband
20 received a significant appointment which significantly increased his earning capacity. The wife
21 ceased working in 1995 after which she supervised the running of the house and the family life
22 as well as undertaking the management of properties acquired by the parties during the
23 marriage. When the parties separated in 2002 they had acquired substantial properties and
24 wealth valued at around CI\$16.5 million. Levers J at first instance found that this case
25 constituted a “big money” case and concluded that the wife could not have done more and that
26 she was the “*backbone of the family*”. Nevertheless, Levers J held that the husband had made a
27 special contribution, in part because of his achievements prior to the marriage –

28
29 *“74 The husband was already an accountant at the time of marriage. He came to*
30 *the Cayman Islands at the time when the Cayman Islands was not a financial centre*
31 *... By virtue of his hard work, skill and it has to be said a certain expertise was*
32 *appointed liquidator, for BCCI (one of the largest liquidations the world has ever*
33 *seen). The husband, had he just being (sic) appointed as a liquidator for BCCI and not*
34 *taken the matter any further (keeping it within the local jurisdiction) may have*

1 earned substantial monies but not the enormous wealth that that particular
2 assignment generated. What the husband did was to endeavour with others to
3 come to a global liquidation, which was, I believe one of the few cross borders
4 liquidation ever been undertaken (sic).”

5
6 75...

7
8 76 ... It may be argued that to become senior partner in Deloitte and Touche in
9 another jurisdiction may not be particularly exceptional but it cannot be said that to
10 be a senior partner in a jurisdiction such as the Cayman Islands, to have obtained a
11 world-wide liquidation and to have solved it on a rare cross border liquidation, is not
12 exceptional. He now not only is senior partner and has been for many years, but his
13 firm is one of the largest in the Caribbean. He is possibly one of the high earners of
14 the accounting profession in the Caribbean... I have no difficulty in concluding that in
15 the circumstances of this case it would be unfair not to recognize the husband’s
16 special contribution.”

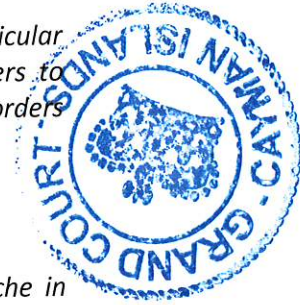
17
18 44. The husband was awarded a 55% share of the matrimonial assets.

19
20 45. On appeal [2010(1) CILR 60] the Court of Appeal had the benefit of the judgments in **Miller v**
21 **Miller and McFarlane v McFarlane [2006] UKHL 24; [2006] 2 AC 618** and **Charman**. Forte J in his
22 judgment addressed the presumption of equal division –

23
24 “47. ... It is the presumption of equal contribution of spouses that now forms the
25 basis of the new approach to a fair and equitable division of matrimonial property.

26
27 48. The current concept that a marriage is a union of equals (and the consequent
28 departure from the view of marriage, where traditionally, the husband’s role as
29 breadwinner and viewed as ‘superior’ to the wife’s role as homemaker) must now
30 form the basis of arriving at a fair and equitable approach to the division of family
31 property. When a man and a woman join themselves in matrimony it is inarguably a
32 partnership in which they see themselves as equals, with the ambition and desire to
33 build that partnership for their mutual benefit and the general welfare of the family.
34 Usually they decide the methods of conducting the marriage. In some cases,
35 depending on the circumstances, they both may develop their own careers, and in
36 that way make their individual contributions to the marriage. In other cases, where
37 children have become a part of the family, one spouse may make the sacrifice of
38 cutting his or her career short in order to stay home and take care of the needs of
39 the home and the family. In such cases the other spouse will no doubt continue with
40 his or her career and make his or her contribution in direct financial terms.

41
42 49. ... The criteria are not merely what financial contributions were made by each
43 spouse; but more so what contributions to the welfare of the family were made by
44 each spouse.”



1
2 46. Zacca P, giving the principal judgment of the Court, affirmed Levers J’s finding of special
3 contribution, concluding -

4
5 *“45. The notion of “special contribution” is now an accepted principle and I agree and*
6 *accept the notion of special contribution. It is a matter for the judge at trial to*
7 *consider whether special contribution has been established. This will depend on the*
8 *facts of each particular case.”*
9

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

20
21 48. To date there has been no attempt in this jurisdiction to articulate a definition or test to
22 determine what constitutes a *special contribution*. The English courts have struggled in this
23 regard. It is widely accepted that a spouse must have done more than had a good idea,
24 initiative, entrepreneurial skill or done extensive hard work in order to be a ‘special contributor’
25 (per Thorpe LJ in **Lambert v Lambert [2003] All ER 342** at paragraph [52]). Over the years
26 *special contribution* has been described as being exceptional⁵, genius⁶ (now disapproved⁷),
27 stellar⁸, extraordinary⁹, really special¹⁰, and ‘obvious and gross’¹¹. What is apparent from the UK

⁵ Lambert v Lambert [2003] 4 All ER 342

⁶ Lambert v Lambert *supra*

Sorrell v Sorrell [2006] 1 FLR 497

⁷ Work v Gray [2017] EWCA Civ 270, at [103]

⁸ Cowan v Cowan [2001] 2 FLR 192

⁹ K v L [2011] 3 All ER 733

¹⁰ H v H (Financial Provisions: Special Contribution) [2002] 2 FLR 1021

¹¹ G v G (Financial Provisions: Equality Division) [2002] EWHC 1339 (Fam);

Miller v Miller; McFarlane v McFarlane *supra*.



1 decisions is that the court should not have to undertake a detailed analysis of the *minutiae* of
2 the marriage, rather a special contribution will be readily apparent.

3
4 49. In this instance, both the husband and wife are asserting that they have made a special
5 contribution. The husband argues that, if he is not the most successful investor, then one of the
6 most successful domain name investors in the world; that the creation of vast wealth for the
7 family warrants him receiving a significantly larger proportion of the matrimonial assets.

8
9 50. I find Roberts J's five questions which she posed in **Cooper-Hohn v Hohn [2015] 1 FLR 748** to be
10 very fitting in this instance and so I adopt them –

- 11
12 (i) Can it properly be said that the husband is the generating force behind the
13 fortune rather than the product itself?
14 (ii) Does the scale of the wealth depend upon the husband's innovative vision as
15 well as on his ability to develop those visions?
16 (iii) Has the husband generated truly vast wealth such that their business success
17 can properly be viewed as exceptional?
18 (iv) Does the spouse have a special skill and effort which is special to them and
19 which survives as a material consideration despite the partnership or pooling
20 aspect of the marriage?
21 (v) Would it, in all the circumstances, be inequitable for me to disregard that
22 contribution?

23
24 51. The wife asserts that her care of L, in particular her active and extensive involvement in his
25 treatments, are exceptional also. This is, therefore, a rare case when a non-financial
26 contribution is to be considered. There is no guidance in any of the authorities before me as to
27 how I should assess whether a non-financial special contribution has been made. Without a
28 doubt, the high threshold still applies; the contribution must be exceptional, stellar, gross, etc.
29 As I review the evidence I ask myself these additional questions: -



- 1 (i) Can it properly be said that there has been or is there likely to be made, an
2 exceptional benefit (other than financial) to the welfare of the family?
3 (ii) Is/was that benefit derived from an exceptional contribution by the wife?
4 (iii) Is/was the contribution dependent on an exceptional characteristic or skill held
5 by the wife?
6 (iv) Was the wife's contribution to the welfare of the family such that it would be
7 inequitable to disregard it?
8

9 52. Only if the wife has established positive responses to those answers has she discharged her
10 burden to establish that her contribution was indeed special.
11

12 53. If both husband and wife are found to have met the criteria then I must not attempt to compare
13 one contribution to the other (to determine whether they are "matched" or "unmatched") as
14 this would be akin to comparing apples with pears and likely to reintroduce discrimination.
15

16 G. THE INTENTIONS OF THE PARTIES



17
18
19
20 54. Mr Todd QC, on behalf of the wife, also drew my attention to the Court of Appeals in **Parra v**
21 **Parra [2002] EWCA Civ 1886; [2003] 1 FLR 942** in which Thorpe LJ, at paragraph 27, concluded –
22

23 *"As a matter of principle I am of the opinion that judges should give considerable*
24 *weight to the property arrangements made during the marriage and, in cases where*
25 *the parties have opted for equality, reserve the exercise of the adjustive powers to*
26 *those cases where fairness obviously demand some reordering."*
27

28 55. I note that **Parra** was not a special contribution case; however, the judgment serves to reiterate
29 that fairness is always to be at the centre of the court's consideration and that intention is one
30 aspect to consider.
31
32
33
34

1
2
3 **H. POST SEPARATION ENDEAVOUR**

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

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



13
14
15
16 **I. THE EVIDENCE**
17

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

25
26 59. The wife freely admits that she has absolutely no trust that the husband will not take steps to
27 diminish her share in the matrimonial assets. This fear has been at the centre of her attempts to
28 gain access to information and become more involved in the operating companies since their
29 separation. The husband maintains that his goal is to generate as much wealth for both of them
30 and their children. He seeks to reassure the wife and this court that in his dealing with the
31 various companies, he will continue to grow the companies and keep both of their interests
32 safe.
33

1 60. Besides the evidence of the wife and the husband, they each relied on the evidence of other
2 people who knew them, were employees of the companies or familiar with the domain name
3 industry to substantiate their claims.
4

5 61. Mr J, company U's COO, provided evidence which was not contested. He has known the
6 husband since they were teenagers and he lived with the parties in late 2001/early 2002.
7

8 62. Mr B is the companies' intellectual property attorney. His evidence was also uncontested. He
9 spoke to his knowledge of the roles the husband and wife had in the operating companies.
10

11 63. Mr RS is company N's longest-serving employee and minority shareholder in company U. His
12 account was not challenged either. He was in a position to speak to the parties' roles in the
13 operating companies from inception.
14

15 64. Mr F, a current shareholder of company U, gave evidence about his own and the wife's
16 involvement in the businesses. Mr F had been company U's counsel for 6 years and was,
17 therefore, well placed to be familiar with the day-to-day running of the business. The husband
18 terminated Mr F's employment in 2017, which Mr F claims was without cause. For this reason, I
19 approached his evidence with caution.
20

21 65. The husband's sister, TS, also gave evidence. She was not involved in the businesses in any way.
22 She gave an account of the business and family arrangements which was largely based on
23 information imparted to her by the parties during the 20-plus years of their marriage.
24 Consequently, I did not give her evidence as much weight as if it were first-hand knowledge.
25

26 66. Mr N is the founder and CEO of X Co. which operates in buying, selling and monetizing domain
27 names and operating gTLD name registries for 12 gTLDs. Mr N started purchasing domain names
28 at the age of 12 and considers himself to be an industry leader. X Co. has a joint venture with
29 company U which earns X Co. \$2 million annually. His evidence spoke in more detail to the
30 workings of domain name industry as well as the husband's reputation and status as a domain
31 name investor. I was mindful that Mr N is not an independent witness, as he is not only a
32 business partner whose revenue is dependent on the husband's endeavours, but the men are



1 obviously good friends as well. Also, Mr N was advised before drafting his affidavit that the
2 purpose of his evidence was to establish the husband's *special contribution* and counter the
3 wife's claim to half of the assets. I was alive to the fact that his opinion evidence may be tainted
4 by this close relationship with the husband.
5

6 67. Mr H was called by the wife. He holds himself out to be an expert in the field of domain names
7 and the search engine marketing industry as well as other internet services. He gave his opinion
8 on the prevalence of the husband's investment strategies and business models, as well as the
9 husband's status within the domain name industry. However, Mr H's opinions largely relied on
10 his own limited experience of domain trading over the past 20-plus years and research he
11 conducted for this case. I was also troubled by his approach to the brief he was given by
12 instructing attorneys. Ultimately, I gave limited weight to his opinions on matters outside of his
13 personal experiences and the material he sourced during his research (which the husband did
14 not challenge).
15

16 68. The wife also adduced a number of testimonials from doctors and therapists speaking to her
17 role in L's rehabilitation. The husband did not seriously challenge the veracity of these letters
18 except that he felt that the authors may be placing more weight on the wife's role with the
19 intention of bolstering what the wife will have presented to them as an unfair claim by him.
20

21 69. I have also been provided with the Register of Members for both of the operating companies
22 and other holding companies, as well as correspondence between the husband and company
23 U's corporate secretary surrounding the transfer of shares in 2014.
24

25 26 27 J. THE FACTS 28

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





1 The Companies

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

9
10 72. Company U was incorporated in 2010 to be a retail Registrar of domain names. The company
11 has 125 employees, based on-island and overseas. The husband was the sole registered
12 shareholder until 2014 when all shares were transferred to be held by the husband and wife
13 jointly.

14
15 73. Company N and company U are distinct companies although the operations overlap
16 substantially. Company N acts as a registrant of over 350,000 domain names. Company N
17 purchases and sells domain names on a continual basis. At inception, company N received
18 revenue from "parking pages" linked to their domain names which were controlled by the
19 advertising networks. When parking revenue began to decline the business was restructured to
20 focus on sales.

21
22 74. Company U markets and sells company N's second-level domain names and other names as well
23 as provides a brokerage service for other registrants of domain names around the world. It is
24 also a registry factory making "not-com" name endings. Additionally, company U provides an
25 infrastructure to manage domain names, email services, website building and other additional
26 paid services. Company U has yet to start turning a profit and, to date, company U's shortfalls
27 have been covered by funds from company N. The husband's evidence is that company U will
28 start showing a profit either later in 2019 or during 2020.

29
30 75. The husband has not historically drawn a salary from the operating companies. Instead, the
31 parties have used company N's funds as a collective pot from which funds were drawn to meet
32 all of the family's living costs and other investments. During these proceedings, the parties have

1 made several distributions from their joint account which has been paid to them in equal
2 amounts into their respective accounts. These distributions were made on the understanding
3 that the husband maintained his position that he was due a larger share of the matrimonial
4 assets and an adjustment could be made to the distribution of the remaining assets should the
5 court accede to his claim of *special contribution*.

6
7 76. In addition to the operating companies, company U has a number of subsidiary companies and
8 the parties have also set up companies for other business ventures. The husband and wife also
9 own a number of holding companies used to hold real estate and other assets. For the purposes
10 of this judgment it is not necessary to set out the company structures in any more detail than I
11 have already done. It is relevant to note that since these proceedings commenced the couple
12 has been treating all liabilities and benefits relating to their joint assets on an equal basis while
13 awaiting the final decision of the Court on the distribution of these assets.

14
15 77. Some of the properties held by the parties generate income; however, such funds are not
16 always enough to cover the costs of managing the properties. In those instances, the operating
17 companies cover the shortfall.

18
19 78. I will not venture to set a threshold at which the amount of wealth generated is *ipso facto*
20 exceptional in this jurisdiction. I do find that while generating US\$290,000,000 from a nominal
21 investment in the 21st century is impressive, it is not exceptional. Consequently, the husband
22 must independently establish that the wealth is a result of his innovative vision or a special trait
23 or skill he possesses.

24
25
26 *The early years of the business*

27 79. The husband first became aware of domain names in 1997. The internet was still in its infancy
28 and the husband began researching the domain names and speaking to people in the industry.
29 The husband focused full-time on purchasing domain names after he lost his employment. The
30 wife's income, together with the rental income, provided the couple with the funds to meet
31 their regular financial obligations. By the end of 2000, the business generated sufficient income
32 to allow the wife to cease employment. The company started hiring external staff in 2001. In



1 2002 the parties relocated to the Cayman Islands. The funds from the sale of their home in
2 Canada were used to purchase their first home in West Bay. The husband ran the companies
3 from that home. From 2002 the domain name business grew rapidly. The husband's evidence
4 was *"for the remainder of 2002-2004 I worked relentlessly and singularly to build the business"*.

5
6 80. The husband recounted that one of his first breakthroughs was when he discovered when and
7 how domain names would become available to purchase ("dropping"). His evidence was –

8
9 *"I discovered on my own that there was a period during which ... names would*
10 *suddenly become available... What it allowed you to do was, it allowed you to*
11 *understand that the zone file just updated, and you had to know when the zone file*
12 *had updated that you could do a DIF, a differentiation, what's in this zone file now,*
13 *or rather, what's not in this new zone file that was in the previous zone file that you*
14 *had ... The difference between the two would be the names that had suddenly left in*
15 *the last zone update... You would then be left with an enormous amount of names ...*
16 *You would then have to understand very quickly, run a subsequent scan to*
17 *understand what are the good names, possible good names ..."*
18
19



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

24
25 82. The husband described having "plenty of competition" and he, therefore, began using a
26 particular web interface which allowed him to create multiple purchasers on different browser
27 windows, thereby increasing his chances of a successful purchase. The husband created
28 webpages for the domain names he had acquired which generated revenue from internet traffic
29 landing on the page – known in the industry as "parking". The company hired its first staff in
30 2001, including Mr B, an IP lawyer, and Mr RS, the Chief Technology Officer whose evidence is
31 before me. In 2002 the husband, assisted by Mr J, created a process that allowed the company
32 to test domain names. That same year the husband negotiated an advertising contract which
33 tripled the business' income. That was also the year that the family relocated to the Cayman
34 Islands. The husband also engaged another company to purchase domain names on the
35 company's behalf, increasing the business by 10-20%. In 2002/2003 the husband devised the
36 idea of a "binger", a piece of software that would send out an audible alert if a desired domain

1 name was about to become available to purchase. At his direction, Mr RS then wrote the code
2 for the system -

3
4 *“So the binger would bing, [to] alert you that the zone file has run. [The binger]*
5 *would run the initial DIF. It would run the subsequent bump against the mega*
6 *dictionary which I created, and you then use your skill set to delineate the fool’s gold*
7 *from the gold, and then quickly have a window open to rush to register [the name].*
8 *That entire process would take about 40 minutes, but with one bing of the binger*
9 *you might make \$10,000.”*
10

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

13
14 *“Through the benefit of hindsight, I learned that... there are other people who had*
15 *software that was different, had similar characteristics, that these are the people*
16 *that I was competing against, these are competitors that I have long overtaken.”*
17

18 84. The husband also discovered that using SnapNames (a third-party tool) would give him priority
19 access to desirable domain names. Together these processes increased company N’s names
20 library by tens of thousands of names. In 2003 the husband also negotiated the purchase of a
21 competitor’s names library which further increased company N’s profitability.
22

23 85. By 2004 the husband was offered US\$110 million for company N which was turned down.
24

25 86. As already stated, in 2007 the husband’s shares in company N were transferred so that the
26 husband and wife held them jointly.
27

28 87. Between 2007 and 2009 “parking” revenue began to decline and the husband negotiated a
29 favourable contract with Google which once again increased revenue significantly.
30

31
32 *The growth of the company*

33 88. In 2011 the husband rented commercial property and moved the operations out of the family
34 home into this new space. Around this time the husband began working on a sales platform.
35



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

9
10 *“Winning new name endings was a “wildcatter’s greenfield” with often*
11 *unpredictable windfalls and pitfalls. Some of the “average quality” GTLD name*
12 *endings sold for millions of dollars while better quality name endings, if applied for*
13 *by only a single applicant, were often obtained for the application fee alone... The*
14 *prices garnered for many of these name endings were not grounded in the reality of*
15 *revenue but reflective of the zeal and mania which surrounded the name-space at*
16 *the time”.*
17

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

23
24 91. The husband explained his business success in these terms –

25
26 *“You have to understand what it is you’re creating. It’s not just simplistic zeros and*
27 *ones. You know, I often joke that ... creating... 250 or so million dollars in the domain*
28 *name business is a little like I’m working a 10 million string combination on a*
29 *keyboard. You have to type on keys. You know, all I’m doing is typing on keys on a*
30 *keyboard, but I’m doing it in the right order, at the right time, and creating ... an*
31 *enormous business out of it... I’m typing keystrokes on a keyboard, but it takes*
32 *creativity to dream up software and understand how it will work and interact in the*
33 *ecosystem, and then you need to understand the art of human behaviour so that you*
34 *can make that work to your advantage ... There are a lot of people who try to*
35 *generate traffic in domain names... There’s a big difference between trading a*
36 *hundred dollars in a lifetime from parking and creating... 1.8 million a month from*
37 *parking... You need to understand... traffic and the type of traffic, human behaviour.*
38 *You have to have a great, great deal of creativity and that.”*
39



1 92. Around the time of the couple's second period of separation in 2014, company U and the
2 couple's holding companies were restructured so that they held shares for most of the
3 companies jointly.
4

5 93. The husband maintains that he is a "hands-on manager" making all significant decisions for the
6 companies. The husband's evidence was that from inception the wife was not involved in
7 operating companies in any material way, referring to her involvement as "wholly negligible".
8 He stated that he repeatedly encouraged the wife to become involved but that she was
9 disinterested. He described any discussions he had with the wife about the business as nothing
10 more than 'pillow talk'. The husband recounted the wife once attempted to design a webpage
11 but that it was not suitable and the design was abandoned. He also conceded that on another
12 occasion she facilitated his participation in a domain names auction by "pressing a button" on
13 his instructions but that she did not understand the process behind her actions. He did not
14 dispute that the wife had once built a database for advertising but claimed once again that this
15 did not add any value to the business. While the husband accepted that the wife had
16 conceptualized the 'wrapping' of a bus and the use of a billboard to advertise a particular gTLD,
17 he asserted that a member of staff executed the bus idea and that neither idea added value to
18 the business. The husband dismissed the wife's planning and execution of the staff Christmas
19 parties as immaterial. He denied all other activities the wife has proposed she conducted. The
20 husband asserted that any increases in the value of their real estate and investment portfolios
21 were as a direct result of his investment decisions, not any contribution by the wife.
22

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

25
26 *"...having [the wife] there with the children was certainly great for [the wife]. She*
27 *wanted to be a mother. She wanted to be there for the children.... But [the wife]'s*
28 *contribution to the children neither helped nor hurt the business."*
29

30 95. The wife's case is that she contributed financially and worked alongside the husband purchasing
31 domain names from the beginning. She described her role as "pivotal" in making the family
32 business a success -
33





1 *"I was there with [the husband] from day one: learning, assisting and making critical*
2 *joint decisions with [the husband] every step of the way."*

3
4 *"...Although I would accept that [the husband] had a lot of ideas and was driving*
5 *forward plans for the business, this was done following our daily discussions and*
6 *decisions, and I was running other aspects of the company."*
7

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

10
11 *"It goes without saying (but I'll say it anyway) you and I have been incredibly*
12 *fortunate (and lucky together). Life has truly been a dream. We've built a great*
13 *business, taken care of our families, and had two great kids!"*
14

15 97. The wife asserts that the statement that *"we've built a business"* is strong evidence that the
16 husband as far back as 2010 was acknowledging her equal contribution to building the
17 businesses. The husband accepted writing the card but asserted that little weight should be
18 attached to his words, as these were simply words of encouragement at a difficult time in their
19 lives rather than a considered description of their history.

20
21 98. The wife's evidence about the early years of their marriage and the businesses was compelling.
22 Her account was corroborated by a number of witnesses. Mr RS's evidence paints a picture of
23 the wife being actively involved in the business until she gave birth to their first child. Mr J
24 confirmed that the husband and wife had an office together in the basement and that the wife
25 built the landing pages for the domain names they had purchased. He also confirmed that the
26 husband consulted the wife before settling on their price limits for individual auction items
27 (domain names). While I approached Mr F's evidence with caution I am satisfied that his
28 account that the wife was materially involved in the selection and bidding of domain names is
29 accurate. Mr B's lack of involvement with the wife does not trouble me as his role was a very
30 narrow one, which she has never asserted to have been involved in.

31
32 99. I was not persuaded by the husband's attempts to minimize the wife's role in the business. I
33 accept the wife's account to be true and accurate. I am satisfied that at inception, the wife was
34 actively involved in the business while still maintaining employment to meet the family's
35 financial needs. While the husband took on the lead in the business carrying out many of the

1 day-to-day tasks and devising and realising processes and driving the company forward, I accept
2 the wife's case that the domain name business was a joint endeavour to which she contributed
3 in a meaningful way by -

- 4
- 5 (i) Being fully involved in all decision-making concerning the business, including
6 deciding which names to target for purchase;
 - 7 (ii) Spending "countless hours" alongside the husband researching 'generic
8 keywords' to create the master list of names;
 - 9 (iii) Designing lander pages for the domain names purchased;
 - 10 (iv) Providing the financial safety net for the family as she continued to work to
11 meet the mortgage repayments and other bill's; and
 - 12 (v) Investing any surplus from her salary into the business.
- 13

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

16

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

- 18
- 19 (i) She contributed many ideas to grow the business;
- 20 (ii) She negotiated a revenue-generating deal with company A;
- 21 (iii) She built a database categorizing the many domain names company N owned
22 for advertising and sales purposes thereby increasing the company's revenue by
23 20% overnight;
- 24 (iv) The parties discussed and agreed which gTLDs they would bid for;
- 25 (v) The gTLDs were purchased using their joint matrimonial assets;
- 26 (vi) She devised two marketing campaigns for two gTLDs;
- 27 (vii) The husband would seek her opinion of matters concerning the gTLDs on a daily
28 basis;
- 29 (viii) She was heavily involved in choosing real estate to buy as well as other
30 investments they made; and
- 31 (ix) She increased the value of their property portfolio by several millions of dollars
32 by managing their redesigns.



1 The intention of the parties

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

6
7 103. This marriage had periods of disharmony. The husband accuses the wife of pressuring him into
8 restructuring their many companies to “feather her nest”.

9
10
11 104. In his *viva voce* evidence, the husband went so far as to insinuate that the transfer of company
12 N’s shares into their joint names in October 2007 was also as a result of pressure by the wife at a
13 time of matrimonial turmoil, although he did not provide any details. As this was the first time
14 this was ever suggested, the wife did not have an opportunity to address this allegation.

15
16 105. The husband also made such allegations about the restructuring of their remaining companies in
17 2014. Critically the parties separated in May that year before reconciling in September, which
18 coincided with the company U shares being transferred to be held by the parties jointly. The
19 husband was questioned at length by Mr Todd QC about a series of emails in July and August
20 2014 between the husband and the wife leading up to the restructuring of the companies. In
21 these emails, the husband speaks of “balancing” ownership, the even division of shares, equality
22 and that these were “our business”. The husband denied that he intended to create a binding
23 final agreement for their separation. Instead, he alleged that the wife was luring him to make
24 such statements so that she could improve her status *vis-à-vis* company ownerships. He
25 described the wife’s actions as “ghost writing” and applying “duress”. The husband argued that
26 he should not be bound by anything he stated in the emails as these emails were merely interim
27 arrangements for their separation or words to simply placate the wife at a time of severe
28 discourse and written without legal advice.

29
30 106. The wife acknowledged that she took legal advice from matrimonial attorneys in 2011, 2014 and
31 2017 when the marriage was in crisis. She also accepted that she did not disclose this to the
32 husband. The wife did accept that she wrote the emails following and on legal advice. The wife



1 asserted that throughout their marriage she considered herself to have a half-share of all the
2 businesses, albeit she only found out in 2014 that she did not.

3
4 107. I accept the husband's contention that the emails in 2014 were the wife's attempt to cement
5 her claim for half of all of the companies under their control by urging the husband to make the
6 necessary structural changes to those companies to reflect the parties having an equal share in
7 them and that it was a condition of their reconciliation. Without a doubt, the husband's emails
8 left the wife with the impression that they were *ad idem* and that the husband was going to
9 make the necessary arrangements for equal ownership.

10
11 108. On 2 September 2014, the husband wrote to their corporate administrator instructing her
12 amongst other things to –

13
14 *"... transfer half of my stock in [company U] to [the wife]..."*

15
16 The wife was copied into this email. During the husband's evidence, he disclosed that he had
17 met with family attorneys on 8 September 2014. The following day, the husband wrote a
18 further email to the administrator speaking to the parties holding the stock "*jointly*". Once again
19 the wife was copied in. No mention was made to suggest that this would make them anything
20 other than equal beneficial owners. The very next day, the husband asks the administrator –

21
22 *"Is there another form of co-ownership 'other' than jointly...?"*

23
24 The wife was not copied into this email. The administrator replied that same day that there was
25 the alternative option to issue an equal number of shares to each of them. The husband
26 replied-

27
28 *"It is not my intention to divide the tranches equally at this time.... It is my intention*
29 *to have [the wife]'s name attached to my collective pot to show that she is a*
30 *shareholder and that she has a minority interest in the collective tranche..."*

31
32 The husband then proceeded to set out in detail why he wishes to deal with the shares in that
33 way, including advising the administrator that -



1 “...[if] we were to file for divorce I would instruct my QC to seek some majority based
2 on my exceptional contribution to our economic situation.”
3

4 The husband rounded off his instructions to say –

5 “*I’d like you to keep this note personal between you and I and my attorney above*
6 *and to have it serve as a dateline as to my intention.*”
7
8

9 The wife was not copied into this email either. The attorney referenced was the husband’s
10 family attorney who is instructed in these proceedings.
11

12 109. The husband’s narrative of the events surrounding these many emails between him and the wife
13 and his instructions as to the transfer of shares was unconvincing. I am left sure that the email
14 on 11 September 2014 documenting the husband’s intention to pursue a special contribution
15 case only arose after legal advice. I am sure that prior to obtaining legal advice, he, like the wife,
16 had always proceeded on the basis of them being equal beneficiaries, which is why he freely
17 agreed in the emails with the wife to share assets equally on separation. Furthermore, he took
18 measures to ensure that the wife remained unaware of his duplicity.
19

20 110. Without a doubt, the business was the husband’s brainchild and he was the primary operative,
21 but that does not change my conclusion that the businesses started as a joint endeavour from
22 which they both intended to benefit equally.
23

24 *The husband’s special contribution*

25 111. The husband’s case for a larger share of the assets is not only based on the huge wealth he has
26 created. He argues that he has “*exceptional natural capabilities, creative thinking, restless*
27 *energy, innovation, drive and intellectual power*” which is reflected in the exercise of his skill in
28 his chosen field and that he is now a “*revered legend of the industry*”. In addition to the domain
29 names acquisition and sales which I have detailed above, the husband asserts that he has made
30 a special contribution by virtue of his other unique qualities also. The husband considers
31 himself to be a “*renaissance man*”. The husband gave numerous examples of his professed
32 genius, including -
33

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

10

11 112. During cross-examination, the husband agreed with Mr H’s evidence that the husband’s

12 methodology for purchasing domain names was not unique because other investors had –

- 13
- 14 (i) Used automation technology;
- 15 (ii) Used similar bidding tactics to purchase domain names;
- 16 (iii) Used lander pages to generate revenue; and
- 17 (iv) Devised popularity testing processes for temporarily acquired names.
- 18

19 113. The husband also accepted that some of the other investors reviewed in the proceedings had

20 also accumulated portfolios worth millions. The husband nevertheless maintained that he was

21 the most successful ‘domainer’ because his ability to identify profitable names is a unique

22 talent-

23

24 *“... it is critical to understand the value of each domain name. It has become an art*

25 *to consistently and correctly value domain names at auction. This is essentially in*

26 *order to acquire names at good value, avoid overpaying and to turn a profit.*

27 *Similarly, if a domain name is to be sold it is important to understand its correct*

28 *value to maximize money earned.”*

29

30 *“You have to understand human nature, search science and desirability.”*

31

32 *“You need to understand human behaviour and [internet] traffic”*

33

34

35

36



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

- 2 (i) Assess the value of any given name; what he called “market know-how”;
- 3 (ii) Be able to acquire it (i.e. have the tools and funds to purchase); and
- 4 (iii) Know when, for what price and by what means to sell the name.

5 He also spoke to the unusual nature of the industry -

6

7 *“The domain name industry is an unusual one in that it is extremely open for anyone*

8 *to become involved. In the early days of the industry there was not much*

9 *information available about how things worked, but anyone who wanted to could*

10 *start acquiring domain names. Although the industry has changed a great deal, that*

11 *remains true today.”*

12

13 115. Mr J had a somewhat different view on the dynamics of the market and why the husband has

14 been so successful –

15

16 *“Often we were bidding against guys who were in the domain name business part*

17 *time, and who would have to go back to their “real jobs”. It was a war of attrition,*

18 *putting in more screen time than our competitors. We would outlast the*

19 *competition, one domain name after another.”*

20

21 *“I think [the husband] struck it big because he has an amazing belief in himself and*

22 *that things will work out well. He has no fear of failure, with a huge tolerance for*

23 *risk. He is also extremely driven. A lot of people got to the level [company N]*

24 *reached and sold out – but he sees the bigger picture. Others are more conservative;*

25 *but [the husband] was always willing to try to get to the next level.”*

26

27 *“He found his niche in life and that coupled with determination, vision, and*

28 *willingness to take a risk is what has bought him the extraordinary success he has*

29 *enjoyed. For my money, there is nobody better in the world at picking domain*

30 *names. He definitely is an expert in his field and an industry leader.”*

31

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

33

34 *“I think the main reason for his success is that he is able to see opportunity where*

35 *others do not. Once he identified such an opportunity, he takes it and will continue*

36 *to work at it until he succeeds.”*

37



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

3
4 *"...it was my identification of the business opportunity in domain names and my*
5 *subsequent execution of this plan that created the success we now enjoy. It was*
6 *through my continued foresight and ability to adapt that I caused [company N] to*
7 *grow into a sustainable business. It was my ongoing push into [company U] which*
8 *has created additional wealth in the collective hundreds of millions. Over that time,*
9 *in addition to increasing in value, [company N] has provided us with a substantial*
10 *income which I have successfully invested and unilaterally invested in various ways."*

11
12 *"...I have always, and continue to be, intimately involved in maintaining the*
13 *profitability of [company N]. I curate the domain names it possesses. I manage the*
14 *sales and buying teams, I spearhead the improvements to sales infrastructure and I*
15 *am closely involved in assessing the value of the names on both the inbound*
16 *purchases and outbound retail sales. On the buying side I must assess what is the*
17 *best investment (identifying inventory and deciding how much to pay before transfer*
18 *consolidating the winning purchases to our master catalogue); on the selling side I*
19 *consider not only what the best deal we can achieve is, at any given moment, but*
20 *what the long term strategic value of a domain name might be, and I decide*
21 *whether to sell or not."*

22
23
24 *"Much of [company N]'s ability to generate outsized sales revenues compared to its*
25 *peers stems from the fact that I have continued to labor tirelessly on improving the*
26 *sales process, and sales infrastructure at [company U]. The "storefront" which*
27 *allows buyers access to the warehouse of domain names that [company N] holds*
28 *was designed, improved and curated by me...[company U] makes [company N]'s*
29 *outsized profitability possible because I am constantly pushing and trying to improve*
30 *our sales infrastructure. "*

31
32 118. The husband also spoke to his involvement in the other companies affiliated with company U
33 which provide similar services around the world –

34
35 *"Each of these companies is valuable in its own right and produces income for*
36 *company U. They are an integral part of our collective platform and contribute to*
37 *growth. I conceived, planned and executed the structuring, purchase and operation*
38 *of these entities...some are in partnership with third parties and I negotiated and*
39 *consummated these partnerships and hired a team of members to assist me."*
40



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

3
4 *"[The husband] has not followed any established business model or copied what*
5 *others were doing but he has built his own business model and processes from the*
6 *bottom up based on his ingenuity. [The husband]'s way of doing business is unique."*
7

8
9 *"Most people who refer to themselves as "domain name investors" acquire names*
10 *and then sit on them. If they are lucky, they manage to acquire a name that*
11 *becomes valuable and are eventually able to sell it in effect winning a sort of lottery.*
12 *If they are good, they may manage to do this in some volume. [The husband] isn't in*
13 *the lottery business. He is constantly winning. He understands the market better*
14 *then practically everybody else in it. But, importantly, he adapts and changes with*
15 *the market, repeatedly finding a way to come out on top."*
16

17 120. The husband also highlighted his decision to diversify into gTLDs after parking revenue started to
18 decline and how he acquired very valuable gTLDs at no cost to the company as yet further
19 examples of his genius. The husband has not disputed and I accept that, as at 29 September
20 2019, company U owned the 35th and 65th most popular gTLDs out of a total of 1,202 gTLDs. The
21 husband also points to his negotiations with Yahoo and Google as evidence of his business
22 acumen.
23

24 121. The husband accepted that there are a handful of people who have been as successful as he has
25 in the domain names industry and opined that he may well be the most successful domainer
26 referring to himself as *"the largest of the top 50 domain millionaires by a magnitude"* although
27 he could not provide specific sources from which he drew this conclusion. Mr B describes the
28 husband as *"one of the most dominant players in the domain name industry"*. He spoke of
29 having a number of clients in the industry and the husband being one of 4 or 5 major players,
30 each of whom had their own approach. Only 2 or 3 of that group excelled to the husband's level
31 of success. Mr B distinguishes the husband from the competitors on the basis that the husband
32 built up the businesses *"pretty much single-handedly"*.
33
34
35
36



1 The family unit

2 122. The parties' youngest child, L, was identified at a young age as having multiple special needs. In
3 addition to having significant developmental delays (speech and language delay), dyspraxia and
4 Pervasive Developmental Disorder (mild autism spectrum disorder), he had digestive problems,
5 immune imbalances, food sensitivity, nutritional needs and mercury poisoning.
6

7 123. It is accepted that from the time L was diagnosed, the wife's full-time attention was on ensuring
8 he received the necessary treatments to address his many special needs. She spent many hours
9 researching possible treatments, sourcing specialists and overseeing and maintaining his
10 treatment programmes. With the benefit of the wealth the family had already accumulated by
11 that time, they were able to provide L with a very comprehensive treatment plan which included
12 attending overseas specialists and bringing specialist therapists and nurses to the Islands to
13 administer treatments. It is agreed that the husband was largely responsible for the logistical
14 aspect of implementing the treatment plan, such as sourcing and importing equipment and
15 staff.
16

17 124. After many years of treatment L is now much improved. He no longer meets the DSM-V
18 diagnostic criteria for autism spectrum disorder. While L still has some difficulties, he is
19 considered fully recovered. The wife opined that her role of managing L's care was more
20 onerous than the husband running the businesses because her tasks required a "huge amount
21 of time, energy and dedication". She gave an outline of how she met L's needs -
22

23 *"[L] was born in 2005. [L] was born with many special needs and challenges of a*
24 *developmental nature. Managing these needs became my top priority and I spent a*
25 *tremendous amount of time researching treatments online, meeting with a team of*
26 *doctors, nurses, therapists and other professionals overseas. [L]'s treatment and*
27 *therapies have included years of assessments, dietary and nutritional regimes,*
28 *behavioural therapy, chelation therapy, hyperbaric treatment, educational,*
29 *occupational and speech therapies. His care involved flying in a nurse from*
30 *California on a bi-weekly basis for his IV treatment, daily dealings with practitioners,*
31 *specialists and therapists, here and overseas, and dealing with his education,*
32 *personal care and therapy daily. This was a focus of my time for the first 7+ years of*
33 *[L]'s life which required a huge amount of time, energy and dedication. It was a gut-*
34 *wrenching full-time job that did not end at six o'clock. It was an extremely stressful*
35 *time for the family and it resulted in me becoming physically ill. I am proud to say*
36 *that L is now fully recovered from these issues... although he still suffers from ADHD,*
37 *anxiety and hearing sensitivity...."*



1 *“When [L] was born, I knew nothing about parenting a child with special needs.*
2 *Without hesitation, I rose to the challenge and embraced the situation with which*
3 *we had been presented with. I always remained [L’s] main caregiver. I have never*
4 *hired a nanny. I have never even taken a vacation without my children until after*
5 *[the husband] and I separated.”*
6

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

13
14 126. The wife produced letters from some of the medical staff and therapists who were involved in
15 L’s care. They all confirm that the wife took the lead on L’s treatment and that this was a
16 significant undertaking requiring more than 40 hours of treatment every week. The
17 professionals confirm that the wife learned new skills to assist the therapists and implement the
18 programme in their absence. The wife is described as instrumental in L’s rehabilitation –

19
20 *“Overseeing a 40-hour a week ABA/VB program along with maintaining all other*
21 *family duties is extremely difficult. I was always amazed by Mrs. [Mrs S]’s*
22 *perseverance and determination to provide the best medical intervention and*
23 *therapies and witnessed firsthand how she was able to coordinate so many of these*
24 *different services simultaneously.*

25
26 *As the point of contact, Mrs. [S] was instrumental in coordinating multiple providers*
27 *to work together continuously providing updates on [L]... I have zero doubt that his*
28 *achievements and success were due to [the wife’s] relentless dedication and integral*
29 *involvement in providing [L] with a multitude of therapies and interventions for so*
30 *many years. Mrs. [S] was not only a mother, but a fulltime behaviourist, a speech*
31 *therapist, an occupational therapist, a nurse, a doctor – all to ensure [L]’s amazing*
32 *recovery.”¹²*

33
34 *“Mrs. S took the road less taken. As a result [L] is a creative and intelligent young*
35 *man today.”¹³*
36
37

¹² Denise Eckman PsyD

¹³ Dr Nancy Lin



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

5
6 *[The wife] was relentless in her pursuit of helping [L]. She devoted a significant*
7 *amount of time and energy to improve his health. In my experience, the effort put*
8 *forth by parents of special needs children to improve the health of their child is*
9 *incredibly demanding physically, mentally and emotionally"*¹⁴
10

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

13
14 128. The husband spoke of the wife's contribution to the family in the same Christmas card exhibited
15 in these proceedings. I accept his statements therein to be his genuinely held belief and a true
16 reflection of the home situation at that time -

17
18 *"As we came to realize the challenges [L] faces, our blessings sometimes looked like*
19 *a curse, but you rose to the challenge of caring for our son like very few mothers*
20 *could. I am constantly (and will always be) so very proud of you for the way you*
21 *stepped up and creatively, but without weakness worked to help [L] and in turn deal*
22 *with [L's] problems. It's been nothing short of angelic, and I will always love you in a*
23 *special way because of that."*

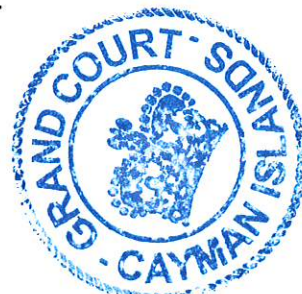
24
25 The wife submits that her efforts were exceptional in the legal sense also.

26
27 129. The wife has also spoken of her personal anguish at suffering multiple miscarriages during the
28 marriage. Additionally, in recent times, the wife has had to provide increased care and support
29 for E *[redacted to protect privacy]*

30
31 130. In her various affidavits, the wife described the husband's involvement with E and L as
32 "*minimal*". She described how she would regularly remain home to care for the children so that
33 the husband could travel to business meetings overseas.

34

¹⁴ Kurt Woeller, bundle page 828



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

5
6 132. The husband’s evidence was that he was fully involved in both children’s lives, recounting his
7 attendance at every one of L’s overseas specialist appointments and L’s treatments, as well as
8 the time he spent with E. He explained his role thus –

9
10 *“While [the wife] identified the course of treatment, it was a collaborative effort and*
11 *execution of the treatment plan fell on my shoulders. I took care of all of the*
12 *logistics, including payment, transportation, management, co-ordination and*
13 *labour.”*
14

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

19
20 *“These businesses have been and remain my passion and obsession. I have focused*
21 *much of my time and energy on them.”*
22

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





1 Conclusion

2 135. Without a doubt, both parties have made a great contribution to the welfare of the family. For
3 most of their marriage the parties were a team. The husband has generated great wealth
4 through his business acumen and the wife dedicated herself completely to the children and in
5 particular L's rehabilitation which has been a great success. Without a doubt both will continue
6 to contribute in their roles for the foreseeable future and the entire family will benefit from
7 their respective endeavours.

8
9 136. The husband, quite rightly, does not seek to argue that the level of wealth he has generated is
10 itself exceptional. His case rests on how he generated it. Unquestionably, the husband is an
11 extremely successful businessman in his field. He has great vision and has made many shrewd
12 business decisions. He has worked hard to achieve what he has. The husband secured skilled
13 employees who helped him realise his vision. While I am left in no doubt that the husband is one
14 of the top ten domain name investors, I am not persuaded that his success is exceptional. The
15 husband's own account was that he was a latecomer to the business, initially learning from
16 others already active in the industry. Mr N is a prime example of the fact that in the early years
17 of the internet anyone, even a 12-year old, had the potential to be a very successful domain
18 investor. Considering all of the evidence before me about the niche industry in which the
19 husband operates, Mr N's assessment of the skills required to be a successful domainer are the
20 most accurate, but by no means do such skills reach the level of exceptional as suggested by the
21 husband. The skills Mr N described are qualities I would expect most successful business people
22 and investors to have had at some stage of their career. The husband did not invent the process
23 of buying and selling domain names. His binger, purchasing strategies and processes were not
24 unique. The husband took a great risk purchasing names in bulk and it has reaped great
25 rewards. I find that the husband's pre- and post-separation endeavours, his vision, skills and
26 many positive attributes do not individually nor collectively meet the high threshold to make
27 him a *special contributor*.

28
29 137. Equally the wife has shown great dedication to the welfare of the family, in particular to L's
30 rehabilitation. This contribution is more difficult to measure than money. She has worked
31 tirelessly and achieved great things. The wife was the main breadwinner in the early years of
32 the business which allowed the husband to pursue his business venture and she even worked

1 alongside the husband when she could. The wife made material contributions to the business
2 which added to its success. The fact that the wife took on the role of homemaker and childcarer
3 after 2004 while the husband grew the businesses does not mean that her later contribution is
4 any less valuable than the husband's, particularly when one considers L's remarkable recovery.
5 Without a doubt, the family has had an exceptional benefit from her contribution, but it cannot
6 be said that the benefit was as a result of any special and individual or unique skill held by the
7 wife.

8
9 138. For most of their married life the wife and husband considered each other to be equals in the
10 marriage and both gave their all in their respective spheres. I am satisfied that at all stages of
11 their marriage and to this day, the parties have been equal contributors to the family in their
12 various roles and fairness demands an equal division of the matrimonial assets.

13
14
15
16 **K. MONETISATION OF COMPANY N AND COMPANY U**



17
18 139. Mr Cusworth QC spent a considerable time cross-examining the wife as to her knowledge of the
19 financial interdependency between company N and company U. It was apparent that the wife
20 had only limited understanding of the financial arrangements for these entities, which is not
21 surprising given that, from the time of the birth of the children until their separation in 2017,
22 she has not been intimately involved in the operating companies. I also accept that it is the lack
23 of information as to the financial health of the operating and holding companies and her desire
24 to protect her share of the matrimonial assets that caused the wife to take steps to try to curtail
25 the husband's perceived extravagant spending and even commence proceedings against the
26 companies. I am left in no doubt that the wife has lost all trust she had previously placed in the
27 husband. While the wife did appear to be acting heavy-handedly by issuing proceedings against
28 the companies and bringing the matter back before the family court, given the lack of trust and
29 inability of the parties to communicate effectively about almost anything and the husband's
30 dismissive attitude towards the wife's concerns, I appreciate why the wife felt compelled to take
31 action. While this part of the evidence did not take the matters in issue much further as
32 company N's business and a large part of company U's assets have now been sold, it does give

1 rise to serious concerns as to how the parties will be able to continue to act effectively in their
2 capacities as directors, shareholders and joint owners until the residual business and other
3 assets are monetised.
4

5 140. While the husband's post-separation endeavours do not reach the threshold of special
6 contribution, equity does require that the husband be remunerated for running the family
7 businesses after the parties separated. Given the size of the businesses and the work
8 undertaken, including recently securing the sale of the assets of the operating companies, I find
9 that the husband's suggestion of US\$1,000,000 per annum is reasonable. I, therefore, order
10 that the husband shall be awarded a lump sum of equivalent to US\$83,333.33 per month from
11 the proceeds of the sale of either company N's business or company U's assets calculated from
12 the date of separation to the date that the G Inc sale concludes. The remaining proceeds of the
13 sales due to the parties shall be applied to discharge any professional fees and tax liabilities due
14 by the parties in connection with the sale. Thereafter, the proceeds of the sales shall be
15 distributed equally to the parties. In the event of any disagreement concerning the distribution
16 of the proceeds the parties are at liberty to apply.
17

18 141. The parties retain ownership of the residual business, those being the Registry of 21 gTLDs and
19 joint ventures. Steps shall be taken forthwith to ensure that the parties are equal shareholders
20 in and directors of the residual business and joint ventures with equal voting rights.
21

22 *[Remaining part of paragraph redacted to protect commercially sensitive material]*
23

24 142. The wife argues that the husband should use his proceeds of the sale of company N's business
25 and U's assets to either buy her out of the remaining business or be required to sell the
26 remaining business to a third party as soon as possible to achieve a clean break.
27

28 143. Chadwick P in **McTaggart** (ibid) at paragraph 43 cited with approval Lord Scarman's dicta in
29 **Minton v Minton [1979] AC 593** (at 608) concerning the desirability of 'clean breaks' –
30

31 *"There are two principles which inform the modern legislation. One is the public*
32 *interest that spouses, to the extent that their means permit, should provide for*
33 *themselves and their children. But the other – of equal importance – is the principle*



- The Range Rover registered in her sole name; and
- All other chattels and personal effects as agreed.

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

- The property at the WC Development (including parking lots and storage space);
- MT Building;
- The property in West Bay;
- Deposits in respect of three units at the WM development (which are separate and apart from the wife's deposit);
- All personal accounts;
- His watches; and
- All vehicles (save for the Range Rover registered in the wife's sole name); and
- All other chattels and personal effects as agreed.

149. The parties' joint ventures are

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



150. In accordance with the parties' agreement, the wife shall forthwith transfer all her shareholding in St George's Sticky Toffee Pudding to the husband as well as her legal and beneficial interest in the Lady Wild book/script. The parties shall take all reasonable steps to liquidate CM Corp and the net proceeds divided in accordance with the liquidation plans. The company I interest shall be purchased by company U at market value (assessed by SJE if necessary and costs shared equally). On the sale concluding, the wife shall be paid her equal share of the proceeds forthwith. The parties shall also endeavour to allocate the remaining joint ventures or

1 alternatively liquidate them as agreed by them. If agreement is not possible, either party is at
2 liberty to return to the Court for determination. The net proceeds shall be shared equally.

3
4 151. The parties shall endeavour to agree the allocation of real property listed below between them
5 at net values to be agreed within three months of this Judgment and, in default, any property
6 for which allocation cannot be agreed shall be sold forthwith on the open market for the best
7 price reasonably attainable but expressly on the basis that either party may bid for the purchase
8 of the same:

- 9
10 (i) Stone Island, Grand Cayman;
11 (ii) Broad Beach Ranch and Lechuza, Malibu, California;
12 (iii) 4102 Encinal Canyon Road, Malibu;
13 (iv) 31959 Pacific Coast Highway, Malibu;
14 (v) 2161 San Joaquin Hills Road, Newport Beach;
15 (vi) 331 Lower Bench Road, Penticton;
16 (vii) 1243 Evans Road, Penticton, Canada;
17 (viii) 15 Bloom Street, Manchester; and
18 (ix) 274 Deansgate, Manchester.



19
20 152. Any taxes due with respect to any matrimonial real estate before transfer (whether to one of
21 the parties or to a third party) shall be borne by the matrimonial estate.

22
23 153. The following conditions shall apply to the sale of said properties:

- 24
25 (a) The properties shall be sold for such price as may be agreed between the parties
26 or in default of agreement determined by the Court;
27 (b) The parties shall have joint conduct of the sale;
28 (c) The parties shall jointly appoint such solicitor or attorney, or, in default of
29 agreement shall be determined by the Court, to have conduct of the
30 conveyancing work relating to the sale; and
31 (d) The parties shall appoint joint estate agents or realtors, or in default determined
32 by the Court, who shall offer the properties for sale.

1 154. The proceeds of the sale shall be applied to the discharge of any borrowing or mortgage secured
2 against the properties, in payments of all professional fees and disbursements associated with
3 the sale and meeting any tax liabilities or liquidation expenses arising from the sale. The
4 balance of the proceeds shall be divided equally between the parties.
5

6 155. The costs arising from the sale of the Malibu properties are to be borne by the matrimonial
7 estate.
8

9 156. In respect of any property which is assigned to either party by agreement, they owe the other a
10 lump-sum equivalent to 50% of the agreed net value; and these lump-sums shall be comprised
11 within a balancing payment.
12

13 157. As per the agreement reached by the parties, the parties shall execute such documents as are
14 necessary to transfer the Geneva Yacht mooring and membership to the husband and the
15 Pebble Beach membership to the wife.
16

17 158. Any assets not included in the above shall be assigned by agreement or liquidated and the
18 proceeds shared equally.
19

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23 

24 Hon Kirsty-Ann Gunn
25 Acting Judge of the Grand Court
26
27



28 **First Published 28 April 2020. Finally published as amended herein on 23 September 2020**
29