



In The Supreme Court of Bermuda

DIVORCE JURISDICTION

2020: No. 32

BETWEEN:

F

Petitioner

and

F

Respondent

RULING

Dates of Hearing: 22, 23 and 24 April 2024

Date of Ruling: 12 July 2024

Petitioner: Georgia Marshall of Marshall Diel & Myers Limited

Respondent: In person

*Final Application for Ancillary Relief; Principle of Fairness;
Full and Frank Financial Disclosure; Adverse Inferences*

RULING of Cratonia Thompson, Acting Registrar

Introductory

1. The parties were married in May 1995, and Decree Absolute was granted in November 2020. Ancillary Relief was adjourned to Chambers. By Notice of Application for Ancillary Relief dated 23 June 2023 (the **Application**), the Petitioner applied for the following relief:
 - a) A lump sum provision;
 - b) A property adjustment order in relation to the former matrimonial home (the **FMH**) and two vacant lots located in St Georges Parish (**Lots A and B**); and
 - c) Such other relief as the Court deems just, including a provision for costs.
2. There is one child of the marriage, who will be referred to in this Ruling as **A**. A is over the age of 18 and in full-time employment. A is also engaged to be married and has one child (the parties' grandchild). Both the Respondent and the Petitioner came into the marriage each having had a son from previous relationships. The Respondent's son will be referred to in this Ruling as **B**. It is the Petitioner's case that **B** is in full-time employment and is in business with the Respondent. The Petitioner's son is also over the age of 18. His employment status was not mentioned, nor is it material to this Application.

Procedural History

3. The Petitioner filed two affidavits in support of the Application, the first on 13 September 2023 (the **Petitioner's First Affidavit**) and the second on 22 April 2024 (the **Petitioner's Second Affidavit**).
4. The matter came before the Registrar on a number of occasions. Five separate orders were made by the Court prescribing directions for the hearing of the Application:
 - (i) The matter first came before the Registrar on 1 August 2023. The Respondent did not appear and an order was made in her absence. The Order dated 1 August 2023 directed the Petitioner to file his affidavit of means on or before 29 August 2023,

and the Respondent to file her response to that affidavit within 21 days. The matter was listed to return before the Registrar for mention.

- (ii) The matter returned before the Registrar for mention on 31 October 2023. The Respondent did not appear and another order was made in her absence. By Order dated 31 October 2023, the Court appointed Coldwell Banker Bermuda Realty to conduct valuations of the FMH and Lots A and B. By letter of even date the Petitioner served on the Respondent his Rule 57(4) Requests.
- (iii) The parties appeared before the Registrar for mention on 14 November 2023. The Respondent had not complied with the Order of 1 August 2023, wherein she had been directed to file a response to the Petitioner's First Affidavit. As such, the Respondent (who appeared at the hearing in person), was directed to file and serve an affidavit setting out her financial position on 5 December 2023. The Respondent was also given leave to file her own Notice of Application for Ancillary Relief, and to make her own Rule 57(4) requests. The matter was set down for a further mention on 19 December 2023.
- (iv) When the parties appeared on 19 December 2023, the Respondent had not complied with the Court's directions. The Respondent appeared in person and was given an extension of time to respond to the Petitioner's Rule 57(4) Requests. Additionally, the Respondent was directed to file and serve a schedule setting out all bank accounts held jointly or in her sole name, as well as any bank account(s) she has held over the course of the marriage in relation to any business she has operated. The Respondent was also given a second opportunity to make her own Rule 57(4) requests.
- (v) The fifth and final order was made on 23 January 2024. The Respondent appeared. She was given a further extension of time in which to respond to the Petitioner's Rule 57(4) requests, an extension of time in which to provide the schedule setting out her bank accounts, and a further extension of time in which to make her own Rule 57(4) requests. The Application was set down for hearing commencing on 22 April 2024.

THE FACTS

5. As the procedural history suggests, the greatest challenge in this case was the Respondent's failure to provide the Court and the Petitioner full and frank disclosure as it related to her financial position. It is the Petitioner's case that throughout the parties' marriage the Respondent managed all of their assets and finances. The Petitioner has provided to the Court and to the Respondent in his First and Second Affidavits his evidence as it relates to his knowledge of the parties' finances, as well as his personal income and expenses. The Respondent did not file or serve any Affidavits. Consequently, the facts set out below are derived from the Petitioner's evidence set out in his First and Second Affidavits, and the parties' viva voce evidence at the hearing of the Application.

Assets

FMH

6. The FMH, located in Hamilton parish, is owned jointly by the parties having been purchased in 2003 for \$1,100,000. The parties paid a deposit towards the purchase price, and the balance was raised by way of a mortgage. Until recently, both the Petitioner and the Respondent continued to reside at the FMH with A, A's fiancée, and the parties' grandchild. The FMH was valued in January 2024 at a market value of \$1,100,000. There is an outstanding mortgage on the FMH, which is discussed more particularly below.

Business Property

7. In 1999, the parties purchased a property in Devonshire parish for \$275,000 for the purpose of operating the parties' business, which was also started in 1999. \$25,000 of the purchase price for the property (the **Business Property**) was secured through a gift from the Respondent's father. The remaining balance was raised by way of a mortgage.
8. In 2009, the parties took up a mortgage of \$850,000 to assist with construction to the Business Property. Then in March 2010, a Further Charge in the sum of \$103,446 was

added to the borrowing to meet cost over runs on the Business Property, bringing the total debt owed in relation to the Business Property to \$942,000.

9. It is the Petitioner's evidence that during the marriage the Family Business generated sufficient income to meet the monthly mortgage payments for the FMH and the Business Property, and that the Respondent managed these payments. The payment history of the debt owed with respect to the Business Property shows that since its inception the monthly interest and principal were paid from the business account of the Family Business. This continued until December 2017 when the principal outstanding had been reduced to \$748,025. It is the Petitioner's case that from December 2017 onwards, the Respondent refused to meet the mortgage payment for the Business Property, which eventually resulted in the bank (**HSBC**) taking legal action against the parties for recovery of mortgage arrears.
10. By Order dated 25 March 2021, the parties were given four months to pay the outstanding mortgage on the Business Property in full, failing which HSBC would obtain a possession order. The funds were not paid and HSBC made a further application to the Court to appoint Receivers. At the hearing of the Receivership Application, the Respondent confirmed that the Petitioner had no knowledge of the claim.
11. The Petitioner has no information of what transpired thereafter in relation to the mortgage secured against the Business Property, the possession order sought by HSBC, or any purported sale. On cross-examination, the Respondent indicated that she no longer owns the Business Property, and denied having any knowledge as to who owns it. It was put to the Respondent that she continues to operate the Family Business from the Business Property along with her son, B. The Respondent would not confirm this to be true, however the Respondent did confirm that all of the tools and equipment, as well as all of the stock in trade of the Family Business, is presently stored at the Business Property and that she has access to the Business Property at will.

Other Properties

12. In 1999, the parties, along with the Respondent's brother, purchased Lots A and B for \$195,000. The Petitioner's evidence is that the parties covered the bulk of the purchase

price, with the Respondent's brother contributing only \$20,000. Both Lots A and B remain vacant and were valued in January 2024 for a market value of \$100,000 each.

13. It is the Petitioner's case that the Respondent also owns a vacant lot of land jointly with her Father and siblings in Smith's parish (**Lot C**). On cross-examination, the Respondent was invited to confirm her ownership interest in Lot C. The Respondent would not accept that she had any ownership interest in Lot C, and instead stated that Lot C was owned solely by her Father and siblings. While the Respondent did accept that she operates another business from Lot C, the Respondent insisted that she pays rent in the sum of \$1,500 per month in order to do so.

Overseas Properties

14. During the marriage the parties purchased a total of four properties overseas – three in Florida and one in Huntsville, Alabama. The Respondent was asked to provide to the Petitioner and to the Court discovery related to the purchase and eventual sale or transfer of these properties but failed to do so. In some instances, the Petitioner was able to obtain through his own investigations information related to the transfer of these properties (either by sale or foreclosure), which was detailed in his First and Second Affidavits.
15. The Petitioner's evidence is that the parties jointly purchased the first Florida property in 1997 for a total of \$52,000 with cash. The Petitioner ascertained through his own investigations that this property was foreclosed upon for failure to make tax payments and sold by the County for \$220,000. The Respondent stated in cross-examination that she had allowed a friend to reside in the property rent-free in exchange for payment of the property's taxes, and that she had only been made aware that the taxes were not being paid after the property had been repossessed and sold. She denied having any further information regarding the sale.
16. The second Florida property was purchased in 2009 for \$552,000. A deposit of \$220,000 was paid by the parties, with the remaining balance raised by way of a mortgage. It is the Petitioner's case that the Respondent sold this property in 2022, without informing the Petitioner and without his consent. The Petitioner ascertained through his own investigations that the property was sold in March 2022 for \$850,000. The Respondent

was asked to provide to the Petitioner and to the Court full details of the sale, but failed to do so. Given the date of the purported sale, it was put to the Respondent in cross-examination that she used the funds from the sale of the property to rehabilitate the debt secured against the Business Property. The Respondent would not confirm or deny this allegation and denied having any further information regarding the sale.

17. The third Florida property was purchased in 2011 or 2012 by the Respondent. The Petitioner ascertained through his own investigations that this property was sold in 2019 for a net profit of \$297,299.20. Despite his signature appearing on the sale documents, it is the Petitioner's case that he did not receive any share of these funds, nor did he authorize the sale of the property. It is the Petitioner's belief that the Respondent forged his signature. The Respondent was invited in cross-examination to admit this, and to account for the proceeds of sale of this property. The Respondent denied forging the Respondent's signature, would not provide an account for the sale proceeds, and also denied having any information regarding the sale.
18. The Alabama property, was purchased in 2005 by way of a mortgage for \$650,000. The Respondent stated in cross-examination that this property was lost due to foreclosure, but no evidence was produced to support this. It is the Petitioner's case that the Respondent sold this property and used the funds to rehabilitate the mortgage on the Business Property.

Business Assets

19. It is the Petitioner's case that the parties' business assets (outside of the Business Property) consist of the business the parties started in 2009 (a partnership asset created during the marriage) (the **Family Business**), the tools, equipment and stock in trade of the Family Business, and a subsequent business (the **Second Business**), which was also created during the marriage. The Respondent refused to accept that the Family Business is still in operation, and also refused to accept that she maintained any ownership interest in the Business Property.
20. As it relates to her ownership and operation of the Second Business, the Respondent accepted that she operates this business from Lot C. It is the Petitioner's case that the Second Business is a thriving and lucrative enterprise that the Respondent operates along

with her son, B, however neither the Petitioner nor the Court has the benefit of any documentary evidence proving this to be the case.

Other Assets

21. In cross-examination, the Respondent accepted the Petitioner's evidence that she had purchased a 30ft Trojan boat for approximately \$90,000 (the **Trojan**), and that the Trojan was lost due to non-payment of marina storage fees.
22. The Respondent also accepted in cross-examination that she owns a BMW. It was stated that the car is not on the road, but is valued at approximately 65,000. The Petitioner deposed that he too owns a car, namely a mini cooper that is 36 years old and in need of repair. The Petitioner stated in his evidence that the car is currently off the road, with an estimated the value of \$15,000. The Respondent did not challenge this evidence.

Savings and Investments

23. It is the Petitioner's evidence that he has roughly \$5,000 in savings.
24. Although the Respondent did not file or serve any formal affidavit evidence, in December 2023, the Respondent provided to the Petitioner's Counsel a bundle of documents, which were later argued by the Respondent during cross-examination to have been provided in response to the Petitioner's Rule 57(4) requests and the Court's orders for discovery. This bundle of documents included a note from the Respondent that she has no overseas bank accounts and no accounts under any names. An account statement for the Second Business was included, showing a balance of \$12.63, as well as three ATM receipts showing, what appears to be, balances for accounts at the Bank of Butterfield and Clarien Bank totaling roughly \$8,000.

Pensions

25. At the writing of his First Affidavit, the Petitioner was 56 years old and did not have a pension. Although the Respondent was requested to provide documentary proof of the

current value of any pension that she may have, the Respondent did not provide any such evidence but confirmed in cross-examination that she too did not have a pension.

Income and Expenses

26. The Petitioner works as a carpenter and submitted in his evidence that he earns roughly \$500 per week. His expenses were set out in his First Affidavit and included electricity at \$600 or \$800 per month (depending on the time of year), and internet at \$105 per month.
27. The Respondent's income is unclear, as are her expenses. Save for an indication during her cross-examination that she pays a total of \$1,500 per month in rent to her Father and siblings in relation to her use of Lot C, the Respondent did not provide any evidence regarding income she receives, nor what she does with that income.

Outstanding Debt

28. In 2010, the mortgage secured against the FMH (which at the time stood at \$600,000) was refinanced and brought over to HSBC from Clarien Bank. It is the Petitioner's case that in 2011, the Respondent unilaterally, and without the Petitioner's knowledge, took up additional debt by way of a home equity loan (**HEL**) against the FMH in the sum of \$400,000. The HEL increased the total outstanding debt secured against the FMH to \$986,896.51.
29. It was put to the Respondent that she submitted the loan application to secure the additional financing to HSBC without the Petitioner's knowledge. It was also put to the Respondent that the information provided on the loan application submitted to HSBC gave grossly exaggerated figures regarding the parties' assets, and that the Respondent had forged the Petitioner's signature on that application form. The Respondent would not accept this evidence.
30. It is the Petitioner's case that the Respondent approached him in January 2011 requesting that he sign a document, which she stated would have the effect of reducing the monthly mortgage payments in respect of the FMH. The Respondent did not advise the Petitioner that she had increased the mortgage debt. Although the Petitioner's signature appears on the loan facility, it is the Petitioner's case that he did not receive any of the additional

\$400,000 borrowing. It is also the Petitioner's case that he was never given an accounting of how the additional borrowing was spent. No evidence was produced by the Respondent indicating who received the funds, the account into which the funds were paid or how they were applied.

31. Similarly, the Petitioner was not made aware that the Respondent had ceased making payments on the debt, and was only apprised of the extent of the debt when he was served with notice regarding non-payment in June 2023. As to the current status of the debt, HSBC has now issued proceedings against the parties for recovery of mortgage arrears. In the interim, A and her fiancée have been approved to take over the current mortgage debt in relation to the FMH. They have also been approved to raise additional funds to pay the outstanding land tax and the costs of the conveyance.

THE LAW

Division of Assets

32. The Petitioner's Counsel helpfully provided a general outline of the law as it relates to the Application, which I have adopted and set out below.
33. When considering an application under section 27 (a) or (c) for periodical payments and lump sum provision or section 28 (a) for a property adjustment order, the Court is required to have regard to the check list of matters specifically listed in sections 29 (1) of the Matrimonial Causes Act 1974 (the **MCA**), which provides as follows:

- “29 (1) It shall be the duty of the court in deciding whether to exercise its powers under section 27(1)(a), (b) or (c) or 28 in relation to a party to the marriage and, if so, in what manner, to have regard to all the circumstances of the case including the following matters -
- (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;
 - (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
 - (c) the standard of living enjoyed by the family before the breakdown of the marriage;

- (d) *the age of each party to the marriage and the duration of the marriage;*
- (e) *any physical or mental disability of either of the parties to the marriage;*
- (f) *the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contributions by looking after the home or caring for the family;*

.....

and so to exercise those powers as to place the parties, so far as it is practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other.”

[Emphasis added]

34. Once the evidence relevant to the matters set out in section 29 (1) of the MCA are fully before the court, as well as any other circumstances which are relevant to the fair disposition of the case, the court is directed in the tailpiece to section 29 (1) of the MCA to place the parties insofar as it is possible and practicable to do so in the position that they would have been in if the marriage had not broken down and each party had discharged their respective financial obligations to the other. This tailpiece no longer exists in the UK legislation, but in determining what the aim of the court should be when exercising its discretion under sections 27 and 28 of the MCA, the House of Lords in *White v White* [2001] AC 596 determined that the aim of the court is to come to a fair outcome as between the parties. A key feature of fairness is that there shall be no discrimination between husband and wife and their respective contributions during the marriage.
35. Further, in considering what is fair, the court distinguishes between two types of assets, matrimonial assets on the one hand and non-matrimonial assets on the other. Matrimonial assets are those assets which have been created by the efforts of the parties or either one of them during the marriage. They arise out of the efforts of the parties during the marriage. Non-matrimonial assets are different in character as they originate from sources exterior to the marriage. They include the preowned assets of the parties, gifted assets and inherited assets.
36. There is one notable exception to the general rule set out above regarding the distinction between matrimonial and non-matrimonial assets, and that pertains to the matrimonial home of the parties. In support of this position, the Petitioner’s Counsel referred to the

2006 House of Lords decision in Miller v Miller; McFarlane v McFarlane [2006] 3 AllER 1, wherein Lord Nicholls of Birkenhead said the following:

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

[Emphasis added]

Financial disclosure and adverse inferences

61. Having set out the law on the division of assets, it is necessary given the facts of this case, to also set out the principles related to financial disclosure and the Court's ability to draw adverse inferences in absence of such disclosure.
62. Before the Court can properly apply its mind to the criteria set out in section 29 (1) of the MCA, the Court must first consider the evidence before it and make such assessment as to the credibility of the witnesses and the discharge of their duty to provide to the Court full and frank disclosure of their finances. In instances where the obligation to provide full and frank disclosure has not been satisfied, if it is appropriate to do so, the Court must draw inferences.
63. In support of this position, the Petitioner referred to the following passages of Moher v Moher 2019 EWC Civ 1482:

86. *My broad conclusions as to the approach the court should take when dealing with non-disclosure are as follows. They are broad because, as I have sought to emphasise, non-disclosure can take a variety of forms and arise in a variety of circumstances from the very general to the very specific. My remarks are focused on the former, namely a broad failure to comply with the disclosure obligations in respect of a party's financial resources, rather than the latter.*

87. (i) *It is clearly appropriate that generally [as required by section 25] the court should seek to determine the extent of the financial resources of the non-disclosing party;*
88. (ii) *When undertaking this task the court will, obviously, be entitled to draw such adverse inferences as are justified having regard to the nature and extent of the party’s failure to engage properly with the proceedings. However this does not require the court to engage in a disproportionate enquiry. Nor, as Lord Sumption said, should the court “engage in pure speculation”. As Otton LC said in Baker v Baker, inferences must be “properly drawn and reasonable”. This was reiterated*
89. (iii) *This does not mean, contrary to Mr Molyneaux’s submission, that the court is required to make a specific determination either as to a figure or a bracket. There will be cases where this exercise will not be possible because, the manner in which a party has failed to comply with their disclosure obligations, means that the court is “unable to quantify the extent of his undisclosed resources,” to repeat what Wilson LJ said in Behzadi v Behzadi.*
90. (iv) *How does this fit within the application of the principles of need and sharing? The answer, in my view, is that, when faced with uncertainty consequent on one party’s non-disclosure and when considering what Lady Hale and Lord Sumption called “the inherent probabilities” the court is entitled, in appropriate cases, to infer that the resources are sufficient, or are such that the proposed award does represent a fair outcome. This is effectively, what Munby J did in both *Al-Khatib v Masry* and *Ben Hashem v Al Shayif* and, in my view, it is a legitimate approach.” [Emphasis added]*

64. Petitioner’s Counsel also referred the Court to passages in the legal text entitled ‘Detection and Preservation of Assets in Financial Remedy Claims’. Chapter 9 Drawing adverse inferences about wealth at trial, provides as follows:

[9.2]

“Where a party in financial remedy proceedings has deliberately failed or refused to provide material information and full disclosure, thereby concealing from the other party and the court his true financial position, the court is entitled to draw adverse inferences against him in respect of his financial resources. It is open to the court to find that there are undisclosed assets behind the mask of false representations and to make an order on that basis.

[Emphasis added]

[9.3]

*“The long established practice of drawing adverse inferences was explained in *J-PC v J-AF* by Sachs, J at p. 227: “In cases of this kind, where the duty of disclosure comes to lie upon the husband, where a husband has, and his wife has*

not, detailed knowledge of his complex affairs; where a husband is fully capable of explaining, and has the opportunity to explain, those affairs; and where he seeks to minimize the wife's claim; that husband can hardly complain if, when he leaves gaps in the court's knowledge, the court does not draw inferences in his favour. On the contrary, when he leaves a gap in such a state that two alternative inferences may be drawn, the court will normally draw the less favourable inference—especially where it seems likely that his able legal advisers would have hastened to put forward affirmatively any facts, had they existed, establishing the more favourable alternative.”

He continued at p 229: “...it is as well to state expressly something which underlies the procedure by which husbands are required in such proceedings to disclose their means to the court. Whether that disclosure is by affidavit of facts, by affidavit of documents or by evidence on oath (not least when that evidence is led by those representing the husband) the obligation of the husband is to be full, frank and clear in that disclosure. Any shortcomings of the husband from the requisite standard can and normally should be visited at least by the court drawing inferences against the husband on matters the subject of the shortcomings—in so far as such inference can be properly drawn.”
[Emphasis added]

65. For the avoidance of any doubt, I have accepted that the principles set out above provide the correct approach the Court is to take when dealing with non-disclosure and the drawing of inferences as a result of that non-disclosure.

THE PETITIONER'S POSITION

66. It is the Petitioner's case that all of the Petitioner's assets are matrimonial in nature, having been obtained by the parties during the marriage. There appears to be no dispute between the parties that the FMH is matrimonial property.
67. The Petitioner's financial position is modest, earning roughly \$500 per week. He has no pension, and has generated a sizeable debt in relation to legal fees as a result of these proceedings.
68. Based on the evidence put before the Court, the Petitioner invited the Court to look at the assets as follows:

| Description | Value |
|--------------------|--------------|
|--------------------|--------------|

| | | |
|--|---|-------------------|
| FMH | Gross Value \$1,100,00 Less (\$475,000) O/S Land Tax (\$35,000) Cost of Sale (\$40,000) | \$550,000 |
| Lots A and B | | \$133,333 |
| Lot C | | Unknown |
| Business Property | | Unknown |
| Family Business | | Unknown |
| Tools and Equipment and Stock of the Family Business | | Unknown |
| Second Business | | Unknown |
| Proceeds of sale of US properties | | Unknown |
| BMW | | 65,000 |
| Total | | 748,333.00 |

69. The Petitioner and indeed the Court are unaware of the true value of the assets shown in the above table as 'unknown'. Recognizing that the above (insofar as it concerns the Respondent's financial position) is completely unsatisfactory, the Petitioner's Counsel submitted that the Court is left to do the best that it can to achieve fairness between the parties after a very long marriage of 25 years.
70. Given his income and monthly expenses, it is the Petitioner's case that he is not able to shoulder the mortgage debt in relation to the FMH. The Petitioner indicated in his affidavit and viva voce evidence that it is his hope to be able to retain the FMH for the purpose of passing it on to A and her fiancée. A, her fiancée, and their child continue to reside at the FMH and, as set out in the evidence, have received approval to take over the mortgage. It is the Petitioner's case that A and her fiancée are distressed at the thought of losing the home, and have expressed their desire take over the mortgage. Therefore, in all of the

circumstances, the Petitioner is seeking a property adjustment order in his favor of the FMH for the purpose of conveying the property to A and her fiancée, and thus releasing the Respondent and himself from the debt secured against the FMH.

71. The Petitioner is also seeking a property adjustment order in relation to Lots A and B, along with his costs of these proceedings, which he argues have been greatly exacerbated by the Respondent's litigation conduct.
72. The Petitioner proposed that the Respondent retain all interest in the two businesses, and the Business Property. The Petitioner also proposed that the Respondent retain any proceeds of sale she has received in relation to the US properties, her personal savings, the BMW and any jewelry.

THE RESPONDENT'S POSITION

88. The Respondent's income is unclear, as are her expenses. What is clear is that any income that she has received from the Family Business and/or the Second Business has not been applied to the joint mortgage debt in relation to the FMH. It is arguable that the Respondent has retained those funds, however that is not certain given the Respondent's refusal to provide the Petitioner and the Court financial disclosure.
89. Notwithstanding the incomplete picture before the Court as it relates to the Respondent's financial position, the Respondent submitted to the Court a fair distribution of the parties' assets would be as follows. The Respondent should retain as her property absolutely, all interest in the Family Business and Lots A and B. In retaining such interest, the Respondent would accept responsibility for any and all debts in relation to the Family Business, the Business Property and Lots A and B.
90. It is notable that the Respondent did not include in her suggested division of assets the FMH. It was clear at the hearing of the Application that the Respondent opposed the property adjustment order sought by the Petitioner in respect of the FMH. That said, there appeared to be some willingness on the Respondent's part for title in the FMH to be transferred to A. Evidence was shown to the Court that the parties had entered into

negotiations, wherein the Respondent appeared to agree to transfer title to A and her fiancée and only opposed vacating the FMH in the timeline that had been suggested by the Petitioner.

APPLYING THE FACTS TO THE LAW

Findings Regarding Assets, Income and Expenses

91. The evidence as to the standard of living during the marriage can be gleaned generally from the evidence of the parties. The parties were married for a total of 25 years. A considerable amount of wealth appears to have been generated during that time, which allowed the parties to purchase real property both locally and overseas. The parties were also able during that time to purchase a boat and a BMW.
92. As it relates to the FMH, it is clear that it can be defined as nothing other than matrimonial property. I am also satisfied that the remaining properties, namely Lots A and B, and the Business Property should be defined as matrimonial property, as should the Family Business, all tools, equipment and stock belonging to the Family Business, and the Second Business purportedly managed by the Respondent.
93. I have no reason to doubt the evidence produced by the Petitioner as it relates to his income and expenses. Notably, the Petitioner's evidence was not challenged by the Respondent as she declined to cross-examine the Petitioner when given the opportunity to do so. The Petitioner's viva voce evidence did not deviate from the evidence produced in his First and Second Affidavits, and his demeanor throughout the proceedings, whilst reserved, did not suggest that he was being at all untruthful.
94. By contrast, the Respondent's demeanor was often evasive and combative. The Respondent had to be encouraged to properly answer the questions put to her by the Petitioner's Counsel. The questions put to the Respondent were pointed and specific, and the Respondent's responses very rarely provided a direct answer. Ultimately, the Respondent's answers to the questions put to her by the Petitioner's Counsel did not provide the Petitioner or this Court with the information needed to conduct a proper

assessment of her financial position. In fact, the picture before the Court as to the Respondent's financial position is woefully incomplete.

Disclosure and adverse inferences

95. Given the Respondent's refusal to provide financial disclosure, the Petitioner's Counsel invited the Court to make robust inferences as to the Respondent's financial position, including but not limited to, the Business Property, the debt owed to HSBC in relation to the FMH, the Respondent's bank accounts, the Respondent's real property holdings, the proceeds of sale of the US properties, the value of the BMW car, and the ongoing operation of the Family Business and the Second Business.
96. As noted, the Respondent argued at the hearing of the Application that she had in fact responded to the requests made by the Petitioner for full and frank disclosure, and that she had complied with the Court's orders. It is unclear why the Respondent would be of the view that the limited information provided to the Petitioner's Counsel in December 2023 would be sufficient in responding to the numerous and detailed requests for disclosure made by the Petitioner and later ordered by this Court.
97. Specifically, the Respondent was ordered to provide a schedule of all bank accounts held jointly or in her sole name, as well as any bank account(s) she has held over the course of the marriage in relation to any business she has operated. The Respondent did not do this. The Petitioner and the Court are aware that the Respondent holds accounts with HSBC, Clarien Bank and the Bank of Butterfield. The only evidence before the Court appears to suggest that those accounts held roughly \$8,000 in December 2023.
98. Curiously, the Respondent argued that she had authorized the Petitioner's Counsel to contact the banks to obtain any additional information that may have been required as it related to her bank accounts. It is not clear to the Court why the Respondent would take the position that the Petitioner or his Counsel would be able to obtain access to the Respondent's bank accounts held in her sole name. It is well known that banking institutions will not provide information regarding an individual's bank account to persons other than the account holder(s). In the circumstances, this is not a reasonable justification

for not having provided to the Petitioner and to the Court full and frank disclosure as it relates to the Respondent's bank account(s), savings or investments.

99. Similarly, the Respondent was ordered to provide documentary evidence relating to her ownership interest in any real property, locally and overseas, as well as documentary evidence relating to the sale or transfer of any real property during the course of the marriage. The Respondent did not provide any such evidence, nor did she provide any reasonable justification for not providing this evidence. The only evidence before the Court in relation to the parties' properties both locally and overseas was pieced together by the Petitioner and his Counsel.
100. I am cognizant that the Respondent appeared in these proceedings unrepresented and therefore did not have the benefit of sound legal advice concerning her obligations to this Court to provide full and frank disclosure. This however does not excuse the Respondent's conduct throughout the proceedings. Given the Respondent's demeanor at the hearing of the Application, I am of the view that the Respondent's refusal to provide full and frank disclosure was a deliberate attempt to conceal her true financial position. If the Respondent did not have adequate financial means, as she sought to persuade this Court to be the case, she would have produced the evidence necessary to prove this.
101. I am satisfied, based on the legal principles set out in this Ruling regarding non-disclosure and the Court's ability to draw inferences, that I am able to make robust inferences as to the Respondent's financial circumstances. I am satisfied that I am able to draw the following inferences – the Respondent is in fact receiving income, either from the operation of the Family Business or the Second Business (or both), and that rather than utilizing that income to pay the mortgage secured against the FMH she is retaining that income; the Respondent still maintains an ownership interest in the Business Property; and the Respondent retained any proceeds that were generated from the sale or transfer of the parties' properties overseas.

CONCLUSION

102. I have taken into consideration all of the factors set out in section 29 of the MCA, as well as the principles set out in the case law, and applied those principles to my findings.
103. The assets for distribution are the FMH, Lots A and B, the Business Property, the Family Business (including all tools, equipment and stock belonging to the Family Business), the Second Business and any proceeds of sale of the US properties.
104. I grant the property adjustment sought by the Petitioner in relation to the FMH. The cost of the conveyance shall be borne equally between the parties. In the event the Respondent refuses to sign the conveyance transferring the Respondent's interest in the FMH to the Petitioner within seven (7) days of being asked to do so, the Registrar of the Supreme Court shall have the power to sign the said conveyance in the Respondent's stead.
105. The Respondent shall vacate the FMH and shall remove from the FMH all her personal effects on or before the expiration of sixty (60) days from the date of transfer, after which any items that remain in the FMH shall be deemed abandoned by the Respondent.
106. Additionally, I grant the property adjustment sought by the Petitioner in relation to Lots A and B. The costs of the conveyance shall be borne equally between the parties. I also grant the property adjustment sought in relation to the title deeds to Lots A and B. The title deeds shall be surrendered to the Petitioner's Counsel forthwith. In the event that the Respondent refuses to sign the conveyance transferring the Respondent's interest in Lots A and B to the Petitioner within seven (7) days of being asked to do so, the Registrar of the Supreme Court shall have the power to sign the said conveyance in the Respondent's stead.
107. The Respondent shall retain all interest in the Business Property, the Family Business and all tools, equipment and stock belonging to the Family Business. Additionally, the Respondent shall retain all interest in the Second Business. The Respondent shall hold the Petitioner harmless from any and all claims arising pursuant to the mortgage secured against the Business Property, whether such claims presently exist or present in the future.
108. Additionally, the Respondent shall retain any proceeds of sale of the US properties which she has received, her savings and any investments, the BMW car, and her jewelry.

109. For the avoidance of any doubt, the Petitioner shall retain any savings and/or investments that he may hold absolutely.

110. In relation to costs, these proceedings were protracted as a direct result of the Respondent failing to comply with the numerous Court orders to provide financial disclosure. In all of the circumstances, I will award costs to the Petitioner on an indemnity basis, to be taxed if not agreed.

Dated this 12th day of July 2024



**CRATONIA THOMPSON
ACTING REGISTRAR**