In The Supreme Court of Bermuda

DIVORCE JURISDICTION
2016 No: 100

BETWEEN:

A.R.M.F

Petitioner (Wife)

v

A.J.F

Respondent (Husband)

JUDGMENT

Date of Hearings: 18 April 2018; 19 April 2018; and 18 May 2018
Date of Judgment: 23 July 2018

Petitioner Adam Richards, Marshall Diel & Meyers Limited
Respondent Jai Pachai, Wakefield Quin Limited

Consolidated Cross-Applications for Ancillary Relief -Financial Provision Orders for Children Legal Principles on Property Adjustment Orders and Avoidance of Disposition Orders (Matrimonial Causes Act 1974 Part IV / Matrimonial Causes Rules 1974 Rules 68-84)

JUDGMENT of Shade Subair Williams J

Introduction

1. The Petitioner ("the Wife") and the Respondent ("the Husband") were married in 1998. They separated in June 2016 and a Decree Absolute was pronounced after more than 18 years of marriage in June 2017. There are two children of the marriage, one born in 1999 now being 18 years of age, ("the Daughter") and the other born in 2003, now being 15

years of age ("the Son") (collectively "the children"). Both the Wife and the Husband are professionally qualified and are engaged in full time employment.

2. The litigation in this case has a long history, having first begun over eight years ago in 2010 with divorce proceedings. The Court file is made up of nine separate volumes and there are multiple trial and submission bundles filed with the Court. Numerous applications in respect of the children have been heard previously.

3. This matter is currently before the Court on the consolidated action of the parties' respective ancillary relief applications made pursuant to Rule 68(1) of the Matrimonial Causes Rules 1974.

Background Proceedings

4. By Court Order made on 30 March 2017, the learned Justice Nicole Stoneham ordered the parties to file affidavit evidence with respect to ancillary relief applications which had not yet been filed. The Court's direction for affidavit evidence was perhaps premature in that it pre-dated the parties' Notices of Ancillary Relief Applications by nearly 6 months. It is worth noting that the procedural steps relating to the filing of evidence for ancillary relief applications has been outlined in my earlier ruling in *C.I.C v K.L.C [2017] SC (Bda) 104 Div (1 December 2017)*).

5. On 22 June 2017 Stoneham J fixed the substantive hearing of the ancillary relief applications for a three day hearing on 14-16 August 2017. At this point, the parties still had not filed any notices of their applications for ancillary relief, nor were they directed to do so by the learned Judge. Notwithstanding, Stoneham J ordered the parties to make their respective disclosure requests pursuant to Rule 77(4) within a 28 day period as the parties had at that point each filed affidavit evidence in April 2017.

6. On 10 August 2017 Stoneham J affirmed the 22 June Order but vacated the fixed August trial by consent between the parties. The Court directed the filing of Notices of Applications for Ancillary Relief and further gave liberty to each party for the filing of one further affidavit addressing section 29(1) of the Matrimonial Causes Act 1974. The Court's minimal management and lenient approach to the issuance of directions for the filing of further evidence is seemingly unfortunate. The Court's order permitting the additional evidence was made in the following broad terms: "…*which have not already been dealt with in the parties' prior affidavits*."

7. The Wife filed a Notice of Application for Ancillary Relief dated 19 September 2017. Therein, she provided notice of her application for periodical and or lump sum payments in

respect of her and the children in addition to a property adjustment order in relation to the matrimonial property located in Hamilton Parish ("the former matrimonial home").

8. The next day, the Husband filed a Notice of Application for Ancillary Relief on 20 September 2017 for secured and regular periodical payments and a lump sum provision order. The Husband's notice further stated that '*issues of maintenance, educational expenses for the children, property adjustment, lump sum payment and costs in this case to be determined*'.

9. On 3 October 2017 the then Acting Registrar, Rachael Barritt, issued directions for the Respondent to file an affidavit of means by way of reply and furtherance of Stoneham J's 10 August Order. The Petitioner was given leave by the learned Acting Registrar to file further affidavit evidence. On this occasion, no directions whatsoever were given to restrict or manage the scope of the additional evidence to be filed. Leave to be heard in resolve of Rule 77(4) disclosure requests was given under the same directions order.

10. On 14 November 2017 the parties appeared before me in my former judicial capacity as Registrar. I heard the parties on their respective disclosure issues and adjourned the matter for mention to Tuesday 19 December 2017.

11. The 19 December 2017 fixture was delisted and a Consent Order dated 22 December 2017 listing this matter for trial before Stoneham J on 5-6 February 2018 was signed by me upon the express written confirmation by the parties that all disclosure requests had been complied with. Directions for the attendance of the parties for cross-examination were provided and further directions were given for the filing of an agreed bundle and skeleton arguments.

12. On 2 February 2018 the Wife filed a summons for an avoidance of disposition order pursuant to section 41 of the Matrimonial Causes Act 1974 so to set aside "*the Respondent's actions in dissipating the matrimonial funds held in the HSBC account number ...-51, being a reviewable disposition…*" Stoneham J adjourned the trial on 5 February 2018 and directions for the filing of affidavit evidence and a two-day hearing on this summons were made.

13. Correspondence between the Court and the parties followed on 8 and 9 February 2018 in search of an agreed hearing date and in respect of the urgent need for an available Judge to determine this matter which led to the matter being listed before me for trial.

The Evidence

14. Multiple affidavits and exhibits were filed in relation to these proceedings and both parties gave evidence on the stand, tested by several hours of cross-examination.

The Evidence on the Children (Post-Separation Expenses)

15. Much of the evidence was about the expenses each party incurred on the children post-separation. The Wife claimed to have spent an approximate total of $100,000 on the children collectively while the Husband stated in evidence that he spent $23,058 on the Daughter and $27,485 on the Son, totaling $50,543.

The Evidence on the Son

The evidence on the Son's Living Arrangements

16. Under the 30 March 2017 Order made by Stoneham J, the Husband and Wife were assigned joint custody of the Son with shared biweekly access. The Husband's two-week custody periods are spent in the former matrimonial home. For the Wife's custody periods, the Son returns to her care in her 2-bedroom apartment which she rents from her mother.

The evidence on the Son's High School Education in US

17. The Husband's evidence is that he spent $21,000 on the Son's high school education in a US high school ("the US school"). The Wife queried this sum on the strength of a letter she received wherein the fees were stated to be $20,000.

18. The Wife told the Court that the Son attended this school overseas from September 2016 to April 2017. She said he missed the first month of the school year which started in or around August 2016. He further missed the last month of the school year in May, following the Easter holiday. The evidence on how the Son came to leave this high school before the formal close of the school year need not be recited; save to say, the Husband seeks a reimbursement from Wife for these school fees because he holds her responsible for the Son's absence in the final month. This absence, says the Husband, amounts to a breach of Stoneham J's previous direction. The Husband said in his evidence in chief that the non-completion of the final term and surrounding factors '*really set our son back to the point where he had to get therapy and go to special educational endeavors'*.

19. The Wife opposed the Husband's claim for reimbursement. On her case, the Son was not made to repeat the school year and he only missed the non-academic "Spring Phase" tail end of the school year, having already completed the final exams before he departed for

Bermuda. The Wife also reiterated that she encouraged the Son to complete the school year and that she played no part in any attempt to waste school fees expended by the Husband.

The evidence on the Son's High School Education in Bermuda

20. The Son attended two separate high schools in Bermuda. I shall simply refer to the first school as the Academy and the second school as the Institute. The Son attended the Institute having returned to Bermuda from the US high school.

21. The annual tuition fees for the Institute approximated $13,500 and the Wife has expensed this tuition from her Bank of Butterfield account which I address further below.

The Evidence on the Daughter

The evidence on the Daughter's Living Arrangements

22. The parties were at conflict on their respective descriptions of the living arrangements of the Daughter. The Husband stated that the Daughter resides with him in the former matrimonial home where she also grew up. However, the Wife told the Court that the Daughter only overnights at the matrimonial home during the Husband's two week access periods with the Son.

The evidence on the Daughter's High School Tuition

23. The Husband's evidence was that he spent $3661 on high school tuition fees in August 2016.

The evidence on the Daughter's SAT Course

24. Prior to her summer employment, the Daughter engaged in an SAT preparatory course in the US. The Husband asserted that this was a 2 month program and curiously stated in his fourth affidavit sworn on 26 February 2018 that he paid for half of these rental costs. The Husband later told the Court in his evidence in chief that it was the Wife who paid for the rent. More persuasively, the Wife explained that the course in fact was for 3 months and that it was she who funded these costs out of her Bank of Butterfield account.

25. On the Wife's evidence, the Daughter occupied a one bedroom rental from the beginning of October 2017 through to the Christmas holiday when she returned to Bermuda. The Wife explained that she funded these expenses in the total sum of $18,000. She said that a portion of the $18,000 was used for expenditures made and receipted. The identifiable expenses included the costs of the round-ticket airfare for them both (in addition to the return airfare for the Daughter to spend Christmas in Bermuda), car rental, and other purchases made to furnish the Daughter's apartment. Part of the same $18,000 sum was also used to cover the full costs of the Daughter's rent. The rental security deposit came to $1,772 and the

monthly rental payments were $1,772 totaling $7,488. This was for an initial 3 month period which was later extended by one month to enable the Wife to travel back to the US to properly vacate the apartment and to store the furnishings. The Wife's oral evidence on this point is corroborated by a copy of the Daughter's lease. She told the Court that the security deposit was returned and that she redeposited it into the Wife's Bank of Butterfield account by check in exchange for a $20 fee.

26. Other payments covered by the Wife included the estimated costs of the Daughter's electricity usage for the duration of the lease in the monthly sum of $150.00. Additionally, the Wife referred to her funding of the Daughter's $980 total in transcript fees for fourteen US colleges and the initial hotel accommodation needed prior to the furnishing of the apartment. The Daughter maintained in her US Bank of America account the unspent balance left over from the original $18,000 funding, which the Wife estimated to be in the region of $3000.

27. The Husband, in his evidence in chief, stated that it was him who paid for the Daughter's expenses during her pre-university trips to the US. Specifically, he said he met the costs of her tutoring at $55 per hour on a 20 hour per week basis totaling approximately $8,000. The Wife added that she also funded the Daughter's account for the SAT exam fees for $150 even though the Husband said that he did the same. In search of an explanation, the Wife contemplated that the Daughter may have asked both parents for the money.

The Evidence on the Daughter's European Language Course

28. In January 2018, the Daughter traveled to Europe where she spent four months enrolled in a language studies program for a period of 8 weeks ending in March 2018. The Husband said the course was a 7 week program which incurred an overall expense of somewhere between $7,500 and $8000.

29. During the Husband's evidence in chief, he suggested that the total costs of the Daughter's Europe trip exceeded an entire year of her high school education. He intensely criticized the Wife for having been responsible for this payment decision and uttered; '*either she's really financially irresponsible or she's malicious*'.

30. Specifically, the Husband referred to the Wife's claim to having funded the round trip airfare to Europe in the amount of $3000. In attempt to disprove this assertion from the Wife, the Husband said that the Daughter asked him to collect her from Europe because she hadn't had a return ticket. The Wife in her evidence maintained that she spent $3000 to cover the costs of the Daughter's airfare to and from Europe. The Wife said that the Daughter traveled to Europe on a one-way ticket at the cost of $1,500. On this basis, she funded the Daughter's account with another $1,500 for her return airfare to Bermuda. The Wife accepted that it was entirely possible that the Husband did spend additional money to

purchase the Daughter's airfare as there was no telling what the Daughter may have represented to the Husband during the parties' extended period of non-communication.

31. Somewhat inconsistent with his earlier position, the Husband agreed under re-examination that the $7000 expenditure was fine and described it as an appropriate expense to which he would have agreed if the parties had been in communication.

The Evidence on the Purchase of a Computer for the Daughter

32. The Husband's evidence that he made a receipted purchase of a computer for the Daughter in the sum of $4,277.00 was unchallenged by the Wife.

The Evidence on the Children's Future Educational Expenses

The Evidence on the Son's High School and likely University Expenses

33. On the Husband's evidence, the Son has three years left before he will be set to graduate from the Institute. The evidence before the Court is that these fees tally to $13,500 per annum.

34. No evidence was led on what his educational costs would likely be beyond that point.

The Evidence on the Daughter's likely University Expenses

35. The Daughter currently has summer employment in the hotel industry and is expected to enroll in a 4-year US university in the fall. The Daughter has been deliberating over her choice of US College. She was described by the Husband as a good student with good grades. The Husband also said that her dual status would render her eligible for financial aid in the US and scholarship money in Bermuda.

36. The full costs of the Daughter's university fees could range in costs anywhere from $33,000 to $63,000 per annum according to the Wife's evidence under cross examination. The Husband, during his evidence in chief, opined that her university fees would likely come $65,000 and $70,000 per annum. He said that the Daughter had been accepted into 5 different US universities and that each of them fell into that costs range. The Husband explained that the tuition fees would fall somewhere between $40,000 and $45,000 and the room and board would costs approximately $10,000 - $15,000. The Husband said that he also factored into his estimate the costs for supplies at $2000 and administrative costs at $1500.

The Evidence on the Matrimonial Assets and Liabilities

The Evidence on the Former Matrimonial Home

37. In November 2004 the Husband and Wife jointly purchased the former matrimonial home under a mortgage for the purchase price of $1,400,000.00. At one stage during the marriage the mortgage monthly sums payable were approximately $8000. However, the monthly payments are currently $6,890.

38. At the point of separation, the Wife vacated the property and took up residence in a two-bedroom apartment which she continues to rent from her mother. The Husband, who spends two weeks out of each month in the house, has continued to occupy and exercise control over the property. When he is in Bermuda this is where he resides.

39. After the parties separated, from July 2016 to December 2017, the Husband paid the full monthly mortgage sum of $6900 minus the full rental contributions which reduced the monthly figure paid by the Husband to $5,200. From January 2017 to March 2018, the Husband reduced these payments to half portion sums of $2,875 and in April 2018 he started to pay the sum of $2900 for the convenience of a rounded figure. Efforts were made by him to secure an agreement by the Wife to pay equal contributions on the mortgage. By letter from the Wife's former attorney, dated 13 July 2016, the Wife conveyed her agreement to do so. However, from July 2016 to date no such payments were ever made. The Husband retorted under cross examination; "*had the Petitioner merely paid half of her mortgage- we would not be in this situation. I had to pay $100,000…*" This remark was puzzling because the Husband later told the Court that he had paid up to $51,000 in mortgage since separation.

40. The rental income from the former matrimonial home consisted of a studio apartment and a one-bedroom, $600 and $1100 respectively. The Husband told the Court that the one-bedroom apartment was rented to the Wife's cousin who suffered a disability and whose rent was accordingly paid at a discounted rate by Social Services. He said the normal rent would have been $400 more at a total of $1500. The Husband further explained that the Wife's cousin had a son who also needed a residence. This led to a house-share rental. This cousin was given his own room and bathroom space together with an exclusive entrance-way. The Husband said that this $600 monthly rental charge was also at a discounted rate as the previous tenant paid a monthly sum of $800. These rents were paid directly to the Wife during the marriage.

41. The $1700 rental income contributions on the mortgage ran from October 2016 through to August 2017. For the months of August and September 2016 the Wife withheld the full rents totaling $3400 leaving the Husband to pay the full $6900 monthly mortgage payments for those two months. The Wife explained that she withheld the rents for this period because she needed the additional funds as she had the children in her care on a full time basis during that time. To prevent further non-payments of the $1100 one-bedroom rent, the Husband attended the Department of Financial Services and arranged for those $1100 payments to be redirected into the mortgage servicing account.

42. According to a chart provided to the Court by the Husband, no rental payments were received in the mortgage servicing account for another few months in January, February, and March 2017. However, the cross-examination of the Husband unfolded in the following way:

XX Adam Richards: You were given a chart this morning setting out your expenses- do you have that out in front of you?

Husband: Yes…

XX Adam Richards: In January and February you have no payments going in for rent- why is that?

Husband You know why Mr. Richards?

XX Adam Richards: No I don't (chuckles)

Husband I'll tell you why- I'm sorry- the reason why is because I was paying the 28 which was all that I put in and all that I felt I should try to have credit for- that's it. The income, that $1100 goes into the account, so you add that to the $28,7- which I assumed that the Petitioner would pay the balance to where the mortgage is- that's it- that's just simply the design of it. And ah- Mr. (C.A)- hadn't come to me with this favour just to reside while he transition until during this time. So that's why there's nothing there reflected.

XX Adam Richards: So, that chart should be amended to show $1100 going in- for January, February, March and April

Husband Yeah

43. The occupant of the one-bedroom, however, continues to reside there producing ongoing monthly rental income at $1100.

44. In relation to the $600 rental payments which were being paid directly to the Wife, the Husband in his evidence in chief said; "…*So then you'll see that the Petitioner did put into the servicing account $600 rent- but in Jan, Feb, March (2017) she just stopped doing it*

and in August she didn't deposit that money as well- and then he moved out in August (2017)- he moved out of the apartment- so the Petitioner should not have received any rents- nor should I, from the back studio apartment." The Wife in her evidence admitted that she stopped these $600 payments in January 2017. In August 2017 the $600 tenant vacated the premises of the former matrimonial home.

45. During cross-examination of the Husband, the Court learned that a man, to whom I will refer as 'Mr. C', has been occupying the $600 accommodation unit. The Husband said that he permitted Mr. C to take up residence because he needed somewhere to stay while he was 'in transition'. The Husband said; "*Ah, I wouldn't call him a tenant, he's in transition and he needed somewhere to stay for a few months- so he's there- so, what happens is, in exchange for him using the backroom, you know, he'll give my mom a ride or my dad a ride or the children a ride- like he'll pick us up from the airport and stuff like that- but I wouldn't call him a tenant and he's only going to be there for a period of time- this is the back studio- but, you know, I did make out a financial arrangement with him- that was sort of minimal."*

46. The Husband guessed the outstanding balance on the mortgage to be in the region of $850,000. However, under cross-examination, the Wife told the Court that she contacted the bank to find out the balance and learned that the current balance is $901,000 inclusive of the arrears. The expert valuation report exhibited in the Wife's affidavit evidence provided a preliminary opinion that the value of the former matrimonial home is between $895,000 and $995,000. This was consistent with the Husband's valuation expert who opined a similar approximation.

47. The Husband said that his valuation expert advised him to undergo various house repairs at a reasonable expense before selling the house. He specified a need to repair a window which broke during the course of the marriage. He added that there was a storage room door which had become unhinged during a hurricane several years prior in addition to a shed door which was also damaged during the last hurricane and which remains boarded up with ply-wood.

48. Additionally, the Husband stated that a previously repaired crack which resulted in two separate leakages to the roof had reopened. He told the Court that he spent around $2000 to repair the crack. In his fourth affidavit, the Husband also stated that he spent $2,800 on landscaping costs post-separation.

49. Principally, according to the Husband, the roof and the house, generally, needs to be repainted and several of the main doors need to be replaced. On the strength of the appraisal report, the Husband opined that the costs of repairs would range between $40,000-$50,000 and that such repairs would need to be done in order to secure an optimal sale price for the

house. The Wife agreed that these repairs were needed but specified that she was not aware of any specific quotes or estimates and thought the range to be excessive based on the description of repairs needed. She also remarked that the Husband was responsible for the upkeep of the house during and after the marriage and that the need for such repairs was attributable to the accumulated non-action of the Husband. She further stated that she was in no position to afford the kind of repairs to which the Husband referred.

The Evidence on the Employment Capital Fund

50. The Husband informed the Court that he paid $25,000 into a three year share class investment scheme as part of a mandatory employment scheme to keep employees invested in the employer company. The Husband referred to this as '*skin in the game*'.

51. In 2014, the Husband received a $25,000 bonus which was also paid into this employment capital fund. He said that the investment balance is now approximately $55,000 - $56,000 and ear marked for the Son's education.

The Evidence on the Joint Bank Accounts

The Evidence on the Butterfield Bank US Dollar Account and the Carlisle Investment Fund

52. During the marriage, the parties were the joint holders of a Bank of Butterfield account which accumulated a balance of $300,000. They invested a $100,000 portion of that sum into the Carlisle Equity Fund leaving a remaining $200,000 balance in the Butterfield account minus the $25,000 he invested in his employer's company 3 year investment fund. The Husband stated that the Carlisle equity allocation would have lowered the Butterfield account balance to a range of $172,000-$175,000.

53. The money in the Butterfield account is the same money that the Husband strongly contended was to be put aside only for expensing the Daughter's university education. Under cross-examination, the Husband accepted, however, that this money was used by both parties during periods of unemployment to pay for the children's private tuition fees and the monthly mortgage payments. The Husband emphasized in his evidence that all deposits from this account were made as a joint decision between him and the Wife and that neither of them were able to unilaterally decide on a withdrawal.

54. There came a point during the marriage when the Husband removed himself as a co-owner of the Butterfield account as part of his US tax avoidance initiatives so to prevent the money ear-marked for the Daughter's education from being targeted.

55. The agreed post-separation withdrawals from this account included the Son's high school education in the sum of $13,500 and the costs of the Daughter's European language course which was estimated at $7,500.

56. The cross-applications made pursuant to section 41 of the Matrimonial Causes Act 1974 are addressed further below. It warrants some mention at this point, however, that the Wife's broader expenses on the Daughter (as outlined above) and on the purchase of a new car are the subject of the Husband's complaint as they were sourced from this Butterfield account. The Husband's claim for a $50,000 reimbursement is made on the calculated basis that he is entitled to the return of all monies in that account minus the total of the agreed withdrawals $21,000 ($13,500 + $7,500).

57. The Wife's position is that from the date of separation on 30 June 2016, she spent an approximate total of $100,000 on the children. Out of that total, a sum of $44,534.50 was taken from her HSBC earnings account and a part of the remainder portion of $39, 596.42 was sourced from this Butterfield account. The balance of $11,000 is also reported. These figures were reported in an updated chart from the original chart exhibited to her 10 November 2017.

58. The Wife said that all of these expenditures including all monies from the US Butterfield account were exclusively spent on the children and that none of her personal expenses are included in these sums. She reported that the current balance of this Butterfield account is still at a rounded $100,000 sum.

The Evidence on the US Chase Credit Card Account

59. During the marriage, as far back as 1997, the parties acquired a joint credit card and a checking and savings account with Chase Bank in the US. The outstanding balance on the credit card was initially reported to be approximately $4,600 during the Husband's evidence in chief. The Husband stated that he has been making the minimal payments of the credit card for the last two years despite the Wife's refusal to contribute to the outstanding balance.

60. The Wife said in her evidence that the Chase credit card primarily belonged to the Husband and that she was the second cardholder. The Wife said that she does not have possession of the credit card and that on her understanding the cards were being mailed to the Husband's late step cousin's former address. In referring to the nature of the purchases and usage of the credit card, the Wife said that the approximate $4000 balance may have been used to purchase items for the children during the marriage. No issue or real opposition was put up by the Wife to contest the Husband's assertions that the credit card purchases were for the children's benefit and that of the former matrimonial home. Indeed, the Husband specified that during the 2014 Christmas season a dishwasher, a microwave and some rugs for the

house were purchased. When cross-examined by Mr. Pachai on whether the Wife had any reason to dispute the asserted nature of these purchases, she agreed that it was 'probably true' and she recalled having made some purchases from the notorious US furniture store, Ikea, in addition to household purchases for a dishwasher and a weed-locker.

61. The Husband in his evidence in chief said that the Wife should be made to pay 60% of the outstanding balance on the Chase Credit Card since he paid the card balance down from $6,300 to $4000 since the parties separated. He suggested that the Wife could then remove her name from the account which would subsequently be cancelled.

The Evidence on the Family Car

62. The family car was purchased during the marriage in January 2016. The $10,000 down-payment was sourced out of the Husband's HSBC account. The Husband complains that he has never once used the family car during the past two years despite his numerous requests to the Wife for use of the car to transport the children when he is in Bermuda. He said that the Wife's refusal of these requests were unreasonable since her new 2-bedroom apartment residence is located in a Hamilton City location which would permit her to easily walk to her place of employment which is also in the same city location.

63. The Husband proposed, as an interim measure, that whoever has care of the Son in particular should be entitled to possess this family car. The Son's weekly sporting activities are on an evening schedule and his school is several parishes away from the former matrimonial home. The Husband told the Court that the Son has consequently been forced to walk a long distance to the bus stop and then to take the bus on a daily basis for these commitments. The proposed interim measure was not picked up by the Husband's Counsel by way of an interim application.

64. As a long-term solution, the Husband suggested that the Court should either order a reimbursement to him of the $10,000 sum he paid for the deposit or order the sale of the car with an order for an equal split of the net proceeds.

The Evidence on the Husband's Income and Living Expenses

The Evidence on the Husband's Net Salary

65. The Husband gave evidence that his net monthly pay is $12,522.83 from a gross monthly figure of $16,000 and $192,000 per annum. He said that his income, on the face of his pay stubs, was inflated because he routinely received employee expense reimbursements.

66. Under cross-examination, the Husband agreed that his previous monthly net salary was $13,088 and stated that the reduction came after a company loss and was related to a change in payroll tax from 5% to 7.5%.

The Evidence on the Husband's Non-Receipt of a Bonus and Stock-Options

67. In previous years during his term of employment with his current employer, the Husband received an annual bonus without exception. Such bonuses were usually paid in sync with the end of the financial year in or around February or March.

68. The Husband said that his 2017 gross bonus payment was approximately $35,000. He described the net amount to be roughly $5000 less give or take once deductions for pension and payroll tax had been made.

69. The Husband said that his salary did not increase over the previous year because of certain worldwide catastrophes which had an impact on the profitability of his employer's business. In his evidence in chief, the Husband said that such natural disasters could potentially affect his employer's, and by extension his own, earnings going forward. Effectively, he also said that in order to maintain employment, the executive suite of his employer company kept all employees' salary 'flat' and refrained from awarding any bonuses. Inconsistently, the Husband later denied during his cross examination any knowledge as to whether other employees were also denied receipt of a bonus. When asked if his employers had circulated a company-wide letter to inform employees that there would be no payment of any bonuses, he said that no such letter had been issued.

70. When asked if he had received any indication that he would receive a bonus payment later this year, the Husband replied that it is possible but improbable. However, he denied that his bonus payment had been deferred.

71. To prove his non-receipt of a bonus for 2017, the Husband provided the Court with a copy of his email correspondence with the Managing Director and Chief Financial Officer ("the CFO") of his employer's company which was kick-started by his email to the CFO stating; "*...I will be in court all day. My lawyer wants a short letter (to) confirm (that) I have not been paid a bonus this year 2018. Please can you confirm*." The CFO replied; "*Confirmed, you have not been paid any bonus or other additional compensation for 2018*". The Husband further explained that had he received a bonus, it would have been reported in his pay stubs. He provided a pay stub for the period of 1-31 March 2018 and no reference to a bonus payment.

72. In relation to his contractual right to stock-options, the Husband stated that the company had not issued any options to him as the company's value had diminished after taking a $40,000,000 loss and that the company was also in the midst of a 4-7 year plan to attain profitability.

The Evidence on the Husband's Employment Expense Reimbursements

73. The Court heard evidence from the Husband that he is frequently required to travel to the US and sometimes to the UK. These travel expenses include costs for airline travel, hotel, food, client entertainment and an IPhone with other office-type supplies.

74. The Husband said that his employer company decided against issuing corporate credit cards and that a corporate decision was made for employees to use American Express credit cards in their personal names with a view to subsequent reimbursement.

75. The Court was also told by the Husband that his employer kept a record of the expenses in '*succinct detail*' for safeguarding in circumstance where the company is made subject to State audits or the like. He explained under examination in chief that the American Express monthly statements served as a record on how the expense money was spent. During cross examination, the Husband initially agreed that the employer's company policy was that all company expenses were to be put on the employee's American Express credit card. This was consistent with his affidavit evidence where he stated that all work expenses were put on the American Express credit card. However, the Husband subsequently qualified his position stating that this policy was subject to cash withdrawals capped at 5%-10% to facilitate airport cab fare.

76. To illustrate the reimbursement set-up, the Husband provided the Court with a recent pay-stub showing that he had been reimbursed for the sum of $2973.04 which he used to pay back on the credit card. He said that this explained the deduction on his pay-slip from the larger total of $15, 495.87 leaving the net sum of $12,522.83. He said that this was the position on a month to month basis.

77. The Husband was extensively cross-examined by Mr. Richards on the subject of these reimbursements. The Wife's case is that these reimbursements are not limited to covering the Husband's travel and client entertainment expenses. Mr. Richards put it to the Husband that his reimbursements suggest that his employer has been continuously covering all of his living expenses in the US including his rental accommodation. The Husband rejected this notion and offered to produce a letter from his employer to substantiate his denial. However, Mr Richards scuffed at the offer and reminded the Husband that he had a

previous opportunity to provide this supporting documentation during the disclosure stage of the proceedings when he sent the following unanswered correspondence to the Husband:

"…we note that your client receives significant sums on a monthly basis by way of reimbursements of expenses, please confirm by way of production of any other relevant document, those expenses which your client can claim back- it would appear that your client is reimbursed all expenses incurred while your client is in the US- as such your Client does not appear to have any expenses for the time during which he is traveling and working in the US. The two weeks in the month in this regard- please confirm whether the expenses include flight, ground transportation, lodgings, food and entertainment and any other expenses…"

78. Unconvincingly, the Husband claimed that he did not understand the above narrative to be a request for proof on the scope of his expenses in the US and that he felt the reference to lodgings meant hotel accommodation as opposed to rental accommodation.

79. Mr. Richards insisted during the cross-examination that the Husband knew that his US expense coverage was in issue. He referred to affidavit evidence filed by the Wife which in part stated:

"The Respondent states that all work related expenses are stated on his personal American Express Card. He further confirms that he prepares a comprehensive expenses report and that those expenses are reimbursed in arrears. Again this appears to be irrelevant to how the Respondent spent 200K in 3 months. Nonetheless, I request that the Respondent provide his expenses report since separation- I do not accept that the Respondents expenses tend to artificially inflate the Respondent's monthly wages as he alleges. Instead, the correct position appears to be that the bulk of the Respondent's expenses are met by his employers leaving with him with very little costs to meet from his income save for the mortgage on the property."

80. During cross-examination, Mr. Richards further hammered away at the Husband for the discrepancies between his end-of-month credit card balances and the correlating monthly reimbursement sums he received from his employer.

81. The Husband initially accepted that the reimbursement sums would always correlate with the preceding credit card balance. The evidence on these discrepancies was illustrated by comparing the credit card balance to the following month's reimbursement sum:

CREDIT CARD BALANCE	REIMBURSEMENT	MONTHLY DIFFERENCES
DEC 2016 $4,818.03	JAN 2017 $4,584.68	-$233.35

JAN 2017 $3,012.21	FEB 2017 $6,884.73	$3,872.52
FEB 2017 $6,940.65	MAR 2017 $10,898.86	$3,958.21
MAR 2017 $5,665.43	APRIL 2017 $8,007.48	$2,342.05
APR 2017 $5,933.58	MAY 2017 $8,461.12	$2,527.54
MAY 2017 $4,900.64	JUNE 2017 $5,592.17	$691.53
JUNE 2017 $4,096.79	JULY 2017 $6,396.52	$2,299.73
TOTAL CREDIT CARD EXPENDITURES	TOTAL REIMBURSMENTS	AVERAGE MONTHLY DIFFERENCE
$35,367.33	**$50,825.56**	**$2,208.32**

82. The Husband was dismissive of these discrepancies and argued that his credit card statement could not possibly line up neatly to match his pay stubs because the statements would not capture charges for the latter part of each month. He said that his expense report had to be submitted by the 5th day of each month and that his credit card had to be paid by 22nd day of each month. On this basis, the Husband argued that his expenses would never correspond with the reimbursements and that a precise overlap would never occur.

83. When pressed further, the Husband then insisted that the expenses would indeed match if regard was had to each and every American Express statement. He said that the total sum of reimbursements would approximate $50,000 and that this would match his statements. Mr. Richards put it to the Husband that the Wife had previously requested disclosure of the Husband's employee expense sheet but was refused. The Husband explained that his refusal to provide this was on the basis that he felt it was too much of an imposition on his employer.

84. Mr. Richards, looking down on the total figures over a seven month timespan, put it to the Husband that in the end, this could not explain an approximate $20,000 discrepancy between the balances and the reimbursements. This averaged out to be a $2,910.00 monthly reimbursement surplus which the Husband attempted to minimize as a 'normal dynamic'. I should insert that the figures, as I see them, show a total difference of $15,458.23 over the seven month period. On my assessment this averaged out, as per the above table, to a monthly average difference of $2,208.32.

85. Mr. Richards argued that this discrepancy was particularly puzzling when considering that some of the credit card expenses related to personal charges ineligible for employment reimbursement. Such personal expenses included costs for the Daughter's air travel and clothing purchases.

86. The Husband attempted to counter this analysis with an explanation that his cash withdrawals for work related expenses would not appear on his American Express statements. He said that he had not calculated the total costs for all of his 2017 travel from JFK airport to his place of employment in Greenwich which on each leg came to $130. He also referred to the costs of travel from Denver airport to a down-town hotel which he estimated at $100. The Husband suggested that his airport frequency could be anywhere between 4-6 times a month.

The Evidence on the Husband's Loans from his Employers

87. The Husband told the Court that during the post-separation period he received two loans from his employer in the amounts of $70,000 each accumulating in a total of $140,000. The subject of these loans provoked much cross-examination from Mr. Richards who queried the financial need for the Husband to borrow money compounded with interest in the first instance given that he already had over $100,000 in his bank account.

Repayment of the Loans and Wife's Application for Admission of Expert Rebuttal Evidence

88. Both loans were repaid in full before the close of 2017 but without interest. The first $70,000 loan was made in August 2016 and was repaid in full lump sum on 7 December 2017. The second loan was made in August 2017 and that loan was also repaid in full lump sum on 22 December 2017. There is no dispute that these loans were re-paid directly to the Husband's employers' HSBC account.

89. The Husband said that the interest flexibility on the first loan and the speed of repayment on the second loan explained why his employers did not pursue any payments on interest. The Husband's explanation for making the speedy repayment was that the loans would have been treated by the IRS (Inland Revenue Service) as taxable income and that the taxable sum on the $140,000 total would have come to $92,715 on the advice of tax accountants Jones & Gold.

90. The Wife rejected this assertion and attempted to adduce an expert report from an American chartered accountant dated 24 April 2018. This application for leave came mid-way through the Husband's cross-examination. Mr. Richards submitted that the Husband had given a lot of evidence which had not previously been before the Court. He argued that he had been taken by surprise to hear the Husband's evidence that his tax returns had increased from $14,000 to $25,000 and that neither he nor his Client understood the Husband's explanation for this. Mr. Richards further argued that the evidence that the loans had to be repaid for tax avoidance purposes was new. Additionally, he submitted that it was also new evidence that the Husband's tax deductions on his pay slip were in relation to his social security and

not his income tax. As an alternative position, Mr. Richards argued that the evidence from Mr. Foy on what he was told by his tax accountant was inadmissible hearsay evidence.

91. Mr. Pachai vigorously objected to the admission of the proposed report and by way of rebuttal to Mr. Richard's suggestion that the Wife was ambushed on the Husband's evidence that his tax returns had increased, he directed my attention to the Husband's fourth affidavit sworn on 26 February 2018 at paragraph 3e) which provided:

"*As a US citizen I am obliged to file all earned wages with the IRS and taxed annually on my income and capital gains. In 2016 I paid $10,000.00 in taxes on my 2015 earnings; in 2017 I paid $14,000.00 in taxes on my 2016 earnings and in 2018 I will pay $25,119.00 in my taxes on my 2017 earnings. Both the 2016 and 2017 tax amounts were paid out of the HSBC…account*"

92. In addressing Mr. Richards' submission that the alleged need for the loans to be repaid for tax avoidance purposes was raised for the first time by the Husband in his oral evidence, Mr. Pachai pointed to the Husband's same fourth affidavit at paragraph 3e) where it states:

"I prepared my 2017 tax returns earlier this year for three reasons, the sweeping changes to the new IRS tax code under the Trump administration (the Daughter) US Financial aid applications (parent(s) tax filings have to be available in order to qualify for any financial aid or scholarships in the US) and my divorce. All income must be reported regardless of jurisdiction. My tax accountant asked if received any loans or made any loans. Upon reporting the two loans, my tax accountant ran the numbers for what I would owe in US taxes and advised me that it would be prudent to pay-off the loans before the end of 2017 or at a minimum to pay down the loans significantly. With the loans considered income I would have had to pay $92,715.00 in taxes in 2018. This would have all severely impaired my ability to save for either (the Daughter's) or (the Son's) tuition costs.

2017 income	*227,000*
Loan amounts	*140,000*
Foreign Tax Exclusion	*(102,100)*
Net Taxable Income	*264,900*
IRS Tax Rate 35%	*92,715"*

93. Turning to Mr. Richard's complaint that the Wife was taken aback to learn that the 6.2% deduction was in respect of the Husband's social security payments, Mr. Pachai correctly submitted that previous pay slips had been disclosed showing the same deductions and that

the most recent pay slip handed up to the Court was no different in format than the previous ones which had been served.

94. Having heard and considered submissions from both Counsel, I excluded the belated expert report as I did not accept that the Wife had been unfairly taken by surprise on any of the argued points. It was open to the Wife and her Counsel months prior to apply for the Court's leave to file expert tax accounting evidence. The admission of a new expert accounting report mid-trial would have been unfair in all of the circumstances and would have inevitably provoked a prolonged and unnecessary adjournment of the proceedings.

The evidence on the First Loan

95. The Husband told the Court that in August 2016 the Wife telephoned the CEO of his employer company to advise that they were to be divorced. Appreciating the increase in financial responsibility preying the Husband in respect of the house mortgage, travel between Bermuda and the US and legal fees, his employer offered him a $70,000 loan. The Husband said that this loan was primarily to assist with the costs of an apartment in the US and to cover the expense of air-travel to Bermuda every fortnight. The Husband said that his employers did not want for him to be in a position of financial worry given the significant responsibilities he had with other people's money.

96. Much time was spent during cross-examination on the fact that this first loan was never documented or recorded in writing. The absence of a formal loan agreement was, according to the Husband, reflective of the casual way in which his employers advanced this sum of money to him. In referring to the Husband's expense sheet exhibited to his affidavit evidence, Mr. Richards queried how it was that he came to calculate the entry where he reported his responsibility for monthly loan repayments to his Employer in the sum of $2,150. After visible pause and reflection, the Husband replied that it was him who calculated this figure and that he did this on a 2% interest base as if it were an annuity, having made an assumption on the term. He explained that this was a projective sum since no loan agreement had been made. When asked about the employers' expressed intention for the repayment of the loan, the Husband said that the employers expected full repayment but were flexible about the terms of repayment. He also said that it was mutually understood that unpaid sums on the loan would be offset against any bonuses he might hope to receive.

97. The Husband shared that the loan was calculated on the basis that the rental expenses would total $61,250 and that his JFK-Bermuda air-travel would cost $800 per month over a 9 month timespan which totaled $7,200. The air-travel financing was done on a reimbursement basis from purchases on his American Express credit card.

The evidence on the Second Loan

98. The Husband said that the second $70,000 loan was advanced to him in or around August 2017 to cover his outstanding legal fees. The Husband said that approximately $65,000 of the second loan was paid directly to Wakefield Quin. The remaining $5000 was paid to a US law firm for the drafting of the loan agreement and to Bermuda law firm ASW Law.

99. This loan is evidenced by a written agreement which contains terms for repayment by 1 March 2021 at a 2% annual interest rate. Of note, Mr. Richards highlighted that the loan agreement did not specifically provide for monthly repayment sums. The Husband said that he had a discussion with one of his bosses who explained that the company was obliged to put an end repayment date on the loan agreement in addition to an interest rate for IRS tax purposes. By way of explanation for the differences in approach to the administering of the second loan, the Husband said that his employers felt it necessary to formalize the second loan since they had not contemplated loaning the Husband any more money after the first loan.

The Evidence on the Husband's US Rental Accommodation

100. The Husband produced an unsigned copy of his New Jersey sub-lease agreement with one Jacques McGuire who the Husband said acted as an agent for the sub-lease landlord who resides in Maryland. It came out during cross-examination that the Husband had been personally acquainted with Mr. McGuire prior to the making of the lease document. The Husband told the Court that he and Mr. McGuire were previous school mates. On the Wife's case, this is reason for suspicion as to whether this lease document represented a genuine legal agreement or whether the Husband colluded with an old school mate to produce a fraudulent document.

101. A further reason to distrust this lease document, on the Wife's argument, is attributed to the unknown real estate company purporting to be the landlord, namely one LLC Rental Source. The Wife during her evidence stated that she searched for information about this company but was unable to find anything to suggest it was a legitimate entity. The inference the Court is invited to make is that LLC Rental Source does not exist and that the suggestion to the contrary is designed merely to induce the Court into finding that the lease document is authentic and verifies the asserted sub-lease arrangement.

102. Mr. Richards queried the Husband on the nature of his relationship with the female dentist ("the Dentist"), who is the actual leaseholder for his apartment in New Jersey. Counsel put it to him that he was in an intimate relationship with the Dentist rather than a sub-leasehold relationship.

103. My note of this part of the evidence is as follows:

XX Adam Richards: Do you know who LLC Rental Source are? The people that you rented from? I can't find any reference to them anywhere.

Husband: Okay

XX Adam Richards: Do you know where they are based?

Husband: I gave you the card- if I go on- I think I am going to get chastised by the Court if I tell you the story of what happened- but I'll attempt and your Worship can cut me off. When I was there for my son, I was going to the school and I just happened to run into Jacques who is a Real Estate Agent there and I told him my circumstances- and we were trying to- and he worked hard to get me an apartment

XX Adam Richards: And you lived there with your girlfriend, did you …?

Husband: My girlfriend?

XX Adam Richards: Yes, your girlfriend
I don't have a girlfriend

XX Adam Richards: Ms. (name)?

Husband: That's the owner of the apartment who sub-lets it through LLC. She's the owner- or she's the one I'm subletting from- and I told you it was a sublet

XX Adam Richards: I don't think you did-

Husband: It was a sublet- because it was furnished- that's why I said I didn't have to buy furniture

XX Adam Richards: You have no relation with her at all?

Husband: I mean I know who she is- I talk to her all the time

XX Adam Richards: Right, she lent you her car

Husband: She has a car in the facility that I can use sometime- but you know, I've used it- ahhh to pick up my son from school- you know when he was in school and everything like that- there is a parking bay underneath and you know- just with anybody- she has from time extended me the courtesy to use the car. Then she let me use the car once to let me take my son to see his school at … in Connecticut so I used the car to go up there- and I used the car

because she understood the situation because she is actually a doctor- and she understood the situation with my father- so I actually used the car once or twice to go to Philadelphia. That relationship has since which turned sour because she didn't let me out of the whatchamacallit- the lease.

XX Adam Richards: Where does she live? Do you know?

Husband: Ah, I believe she lives in Maryland

XX Adam Richards: So your children would never have met her?

Husband: One time my son, when I had the car did- and I explained- I introduced her, yes. Not my children- my son, one time.

XX Adam Richards: Just so I'm clear- you sublet from this lady, and she lends you her car

Husband: The car was there- the car was in the property- it's a building- it's a large building and underneath are cars- cause you have to understand circumstances in New York- it's hard for somebody to take their thing- or she's in Washington or whatever to have the car there. So the car stays parked there most of the time. So unless- there's a lot of people that do that- professors at Columbia have their cars parked in certain buildings and leave it there for extended periods of time- because you don't really take your car out and park it on the street- you leave it in the parking lot in the parking space- which is a premium

104. When the Wife gave her evidence, she said that she learned about the Dentist from the Son who reported to her that he had spent some of his weekends with his father in a New Jersey apartment and met her on one of those occasions. The Wife said that the Son told her that he had been picked up in a BMW car and that he queried his father about this.

105. What the Husband said to the Son is inadmissible hearsay evidence since the narrative came from the Wife who was not present. For truth of content, I will only consider her evidence of what was said to her directly. So, the Court may properly take into consideration the evidence that the apartment appeared to be occupied by a female since it was the Son who made this observation and reported it directly to his mother, the Wife. At the same time, I will treat this evidence with caution as the Son's observation borders inadmissible opinion evidence which arguably should be substantiated by statements of fact to support an inference that the apartment is occupied by a female person. Notably, none of these points were argued by Counsel as no objections were made on this evidence.

106. The Wife would, of course, argue that the Husband made deliberate attempts to conceal the connection between the Dentist on the one hand and the New Jersey apartment together with the LLC Rental Source lease document on the other. Up to him, the Wife would say, the Court would know nothing about the Dentist nor would he have had the need for

conjecture on a story about a sub-lease in answer to the queries about how the lease was drafted. On the Wife's case, the LLC lease document is a farce and the Husband is secretly co-habiting with the Dentist, his girlfriend, while pretending to have full rental responsibility.

107. Mr. Richards also drew it out of the Husband's evidence that the lease document was unsigned in any event and that this would have been a significant observation by any attorney retained to advise the Husband on his ability to lawfully withdraw from this lease. Of equal significance, Counsel pointed out that the lease itself is not described as a sub-lease and it makes no mention of the Dentist in the document whatsoever.

108. The stated term of the lease is two years, commencing on 1 August 2016 and expiring on 31 July 2018. When asked about his earlier accommodation arrangements in the US prior to the start of the current lease, the Husband stated that he had a friend who offered him a sofa-bed type arrangement when he was in the US. He said that when he had to work beyond 8:00pm he was permitted to stay in a particular hotel in Greenwich at an approximate cost of $200 per night at the expense of his employers. He explained that his employers were agreeable to sponsor these costs on a once-twice a month basis but that they would not have done so at a more prolonged rate.

109. The Husband claimed that the lease was paid up front out of the funds from the first loan. However, the lease document provides that $2,450 would be payable on a monthly basis. The case put by Mr. Richards is that the Husband's rental costs were being covertly expensed by his employer's apparent surplus on the expense reimbursements which coincidentally average about $2000 per month. The Husband says that this hypothesis is flawed as it is does not account for the fact that the rent on the lease agreement was fully paid up at the outset and that it was paid out of funds from the Husband's personal bank account.

<u>The Evidence on the Husband's Legal Fees</u>

110. As outlined above, the evidence was that $65,000 from the second loan was paid directly to his attorney's office as a payment on his previously owing legal fees. In the Husband's fourth affidavit before the Court he stated that to date he has paid $108,000,000 in legal fees associated with these divorce proceedings.

111. Mr. Pachai advised the Court during final submissions that the current sum owing on the Husband's legal fees is in the neighborhood of $80,000.

The Evidence on the Wife's Income and Living Expenses

The Evidence on the Wife's Net Salary

112. The Wife is a holder of public office and has a professional designation. Her current net monthly pay is $10,877.00.

The Evidence on the Wife's Rental Responsibility

113. The Wife's evidence was that her monthly rental responsibility to her mother is $2,500 and that she first moved in to one of her mother's apartments in August 2016. Mr. Pachai, however, correctly put it to the Wife that there was no evidence before the Court of rental payments having been made by her in 2016. The Wife explained that she when she first visited the apartment in August she discovered that the former tenants had not yet vacated the space. She said she was forced to stay in the upper part of the property complex with her mother. She said that once the apartment in question became available, her brother spent time assisting her in ripping up the carpet, drywall and other preparatory steps for her living comfort. As Mr. Pachai pushed for a more direct response to his question, the Wife accepted that her mother had given her rental reprieve through to the end of 2016 and that her first rental payment was not made until January 2017.

114. The Husband opined that the Wife is not obliged to pay her mother rent and does not in fact do so. He said that having been married to her for 18 years in addition to having known her for another 5 years prior, he has come to learn the history of her family behavior. He said that her brothers and her mother's grandsons live in the same apartments rent-free and that one of the brothers even partook in some of the rental proceeds in aid of paying on his mortgage. The Wife under cross examination stated that her brother no longer lives on her mother's property but she accepted that one of her mother's grandsons does in fact continue to live there rent-free.

115. Be that as it may, the Wife emphatically maintained that she does in fact make regular monthly rental payments to her mother and has done so throughout 2017 and 2018 thus far. Mr. Pachai, however, directed the Court's attention to the months of May and June to illustrate her non-payments. The Wife told the Court that she paid her mother a $1000 cash payment, as evidenced by a withdrawal on her bank statement, and in June she paid the balance of what was owed. She said that her payment on household appliances to Sears in

the sum of $2003.47 was considered rent in addition to her payment for new carpet in July 2017 at a cost of $2,500.

116. Mr. Pachai persisted during cross-examination that the Wife's mother's requirements for receipt of rental payments were and continue to be very flexible. Mr, Pachai relied in part on the specific rental payments which were made after the stated monthly payment date. Counsel further remarked that the Wife had not provided him with bank statements beyond July 2017 to evidence her more recent rental payments. However, the Wife, while accepting that her mother would show her some flexibility to assist her with her legal debt and the costs of taking care of the kids, insisted that any of her subsequent bank statements would prove her continued regular rental payments. She said that she pays the $2,500 faithfully every month.

The Wife's Legal Fees

117. The Wife told the Court during her examination in chief that her last invoice for legal fees sub-totaled $100,000 as the billed sum did not include the current trial proceedings which would likely come to an additional $15,000-$25,000. She further shared that she makes monthly payments on her legal fees in the amount of $4000 primarily but in the lower sum of $2000 on occasions where that's all she can afford.

118. The Wife told the Court that the legal fees for $25,000 charged by her previous Counsel at Trott & Duncan Ltd have been fully paid. Prior to retaining her first Counsel, the Wife engaged in the divorce proceedings without the representation of an attorney. She explained that when she came to realize the volume of paperwork and the contested detail involved in the financial relief proceedings, she sought professional assistance.

The Parties Competing Applications

The Wife's Applications

119. The Wife seeks for all of the matrimonial assets which were created during the marriage to be shared equally.

120. Her position in relation to the former matrimonial home is stated at paragraph 9 of her attorney's written submissions:

"*The wife seeks an order that the matrimonial home be placed on the market for sale forthwith. If the husband does not consent, noting that the court does not have the power to order a sale, then the property should be transferred to the husband in an exchange for an appropriate lump sum payment to the wife*."

121. When questioned whether he was prepared to list the former matrimonial house for sale, the Husband said that he would do so only after repairs to the house were completed which he estimates to be at a cost of $40,000. The Wife's position is that she cannot afford to pay a half share of the repair costs described by the Husband and that the matrimonial home can be sold after less costly repairs or it can be sold as is.

122. The Wife's alternative application for a property transfer order is also advanced on the basis that the Husband occupied the matrimonial house rent free and to her exclusion. The Husband admitted during his evidence under cross examination that he changed the locks to the house without providing the Wife with a copy of the new house keys. He accused her of having vandalized the property and justified his denial of her access to the house key on that basis. Unsurprisingly, the Wife categorically denied all allegations of vandalism.

123. The Husband's evidence under cross examination on this point occurred as follows:

XX Adam Richards: Have you changed the locks on the property?

Husband: I changed the locks after there was uh- we agreed that the Petitioner would remove certain things from the home- and she subsequently came back and kept coming back and taking more and more stuff out- and subsequently she also gave the key to her cousin who was a tenant who was coming in an washing clothes, there was a flood, there were certain things so I changed the locks for that ahhh- you know to safeguard the home there- and I even reported that to my attorney- that somebody keeps coming in and taking things out- there was no forced entry- so I changed the locks-and I gave the key to my daughter who the Petitioner was able to get the key from the daughter and make duplicates so it really was a mute-point of changing the locks. At any time the Petitioner could have asked me for the key or whatever, I didn't deny her access. As a matter of fact in the agreement, I said that if she wanted to stay there with the kids and I move out- that was something that I suggested. It was more of a safeguard Mr. Richards.

XX Adam Richards: You didn't provide her with a key- you assumed that your daughter would give her one, right?

I didn't say I assumed my daughter would give her one, but since my daughter was there, my daughter had a key and I gave a key to my daughter. And I will make it clear, I never gave the Petitioner a key. My daughter had a key and my son had a key.

XX Adam Richards: Do you know when you changed the locks?

I have the receipt but it was after stuff was taken out of the house and I reported to Mr. Pachai that she keeps coming taking stuff off of the- um- that wasn't on the list- to basically

make the house as uncomfortable as possible for me to live in there- it was absolutely- she even took the mattress (chuckles) the mattress was taken.

XX Adam Richards: Roughly a date when my Client can no longer access the property?

She's always been able to access the property because my daughter has had the key to the house and the daughter has never denied her mother access. What I explicitly said, I have never provided her specifically with a key but both our children who were spending time at the time who had both had keys…and they never prevented their mom from having the key. That's just the truth, you know, I don't know how you can turn it around or whatever- both kids had a key, it wasn't like I said, 'Don't give it to your mom' so ah you can

XX Adam Richards: Right- but your evidence as I understood it was that the purpose of it was because you believed she was going in and taking certain items

But I couldn't put my children in a situation to not say- you know what I mean? I didn't explicitly tell them to or not to give the key to their mom- both children had a set of keys. (The Daughter) told me that her mother took the key off the ring and made copies of it and was able to get into the house that way- I couldn't keep changing the locks every time this happened- so I sort of had to live with it.

In particular, I told my lawyer every time I go away for two week period of time - when I came back – stuff was gone, rearranged, and I- you know- some of the stuff was- you know, I'll let Mr. Pachai handle it but I reported it to him every time- and to the police.

124. As for the Wife's position on the expenses of the children, she submits that the parties' liability should not be apportioned in equal measure on account of the Husband's superior salary and earning potential. The Husband's net monthly salary $12,522.83 and the Wife's net monthly salary is $10,877.00. The Wife would, of course, argue that the Husband's monthly reimbursements leave him with an additional average net surplus of over $2000 per month and that his average annual bonus which he describes to be around $30,000 net should also be factored into consideration. On this point the Wife has highlighted that the Husband was granted a $35,000 bonus in 2017. On the Wife's case, the Husband's true monthly salary would work out to an excess of $17,000.

125. The Wife's bottom-line position is that the Husband receives 61% of the net family income and that on this basis the Court should order that Husband pay two thirds of all of the children's schooling and tuition fees inclusive of all supplies and miscellaneous expenses. She submits that the two-third apportionment should also cover the children's school board and lodge expenses and their return flight airfare costs so to permit them to return to Bermuda three times annually including Christmas and summer breaks.

Summary of the Wife's section 41 Application

126. By Summons dated 2 February 2018 the Wife also seeks, *inter alia*, the following Order:

"*An Order pursuant to Section 41 of the Matrimonial Causes Act 1974, that the Respondent's actions in dissipating the matrimonial funds held in the HSBC account… being a reviewable disposition, shall be set aside so that the Petitioner's financial relief claims can be satisfied*"

127. On the wife's case, the Court was invited to attach great significance to the fact that the Husband's spending habits and disposition of funds increased three-fold at certain points within eight days of being made aware of her application for financial relief.

128. The Wife's case is that husband's various cash withdrawals had the deliberate impact of dwindling the Husband's account down from $200,000 to $9,000 within only a suspicious 2-3 months.

Summary of the Wife's s. 41 Application (The Husband's Repayment of the Loans)

129. The major depletion of the Husband's funds resulted from his repayment of the first and second loans from his employer in December 2017.

130. Mr. Richards extensively cross-examined the Husband on the repayment of the loans. The case he put to the Husband was that either the loans were never going to be repaid because they were essentially gifts from the Husband's employers or there were arrangements in place to allow for the loans to be forgiven in the future. Relying on these alternative theories, Mr. Richards invited the Court to find that the Husband's claim to have repaid $140,000 total was nothing more than a cover-up to conceal the unlawful divertissement of those monies.

Summary of the Wife's s. 41 Application (The Husband's HSBC Cash Withdrawals)

131. In addition to the speedy repayment of the loans, the Wife points to the Husband's large cash withdrawals from his HSBC account one month prior to the repayment of the loans. The largest withdrawals occurred on two consecutive days when the Husband took out $9,300 on 16 November 2017 and $12,500 on the next day when he also withdrew a further $360 in cash. The Husband traveled with this cash accumulating in approximately $22,000. When queried by Mr. Richards on this, the Husband said that he probably secured this cash in an envelope as a less expensive option to a wire transfer. He said that because he traveled bi-weekly, he simply took the cash and deposited it instead.

132. The Husband's explanation for his withdrawal of the $9,300 was that he intended to use that money to secure a different lease agreement in the US. According to his oral evidence, he made attempts to withdraw from his current New Jersey lease agreement, having discovered a less expensive and more beneficial 2 year accommodation elsewhere for a total of $24,500. He said that he was motivated to leave the New Jersey area once the Son prematurely returned to Bermuda from his US high school and take up this accommodation in Connecticut.

133. In order to secure this alternative accommodation, the Husband said that he withdrew $9,300 in cash for payment to USA Real Estate Rent Security and for the broker's fee. However, as he initially stated, he ended up depositing this money into his Chase Account and later using this sum to pay his US taxes as he was unable to withdraw from the rental agreement which he described as a sub-lease. The Husband's explanation for doing this transaction by cash withdrawal and deposit was for the avoidance of the $60.00 wire transfer fees. When asked if there would be a record of the Chase deposit for $9,300, the Husband back-tracked and said there would not be such a record because he purchased a cashier's check instead of making a deposit.

134. Counsel for the Wife invites the Court to disbelieve the Husband's account for the $9,300 withdrawal and drew to the Court's attention that this version of events was never before told on the affidavit evidence filed. The Husband retorted during cross-examination that he was never asked about this but Mr. Richards pointed out that the previous trial fixture was adjourned to enable the Husband to file affidavit evidence in reply to the Wife's s.41 application so to explain the apparent dishonest dissipation of funds. Counsel put it to the Husband that he provided a 4-page explanation without any reference whatsoever to the removal of this cash for a down-payment.

135. The Husband developed his response about the use of the $9,300 on the stand as follows:

'…because Mr. Richards, I told you –it never- they didn't let me out of the original lease, so I used that money to pay other priorities, which were my taxes and I laid it out- the inconsistent- what I put when I spoke to a teller that was my true intention on November 16th – because remember, the new lease would have started in one one 2018 would have been the new one- and they didn't let me out and they wanted to finish. They said, 'since you're so close- just finish it out and you've paid for it'. That was my intention on the 16th then after that other things came up and I said, 'oh, I could use this money to pay my whatchamacallit- and I think even some of that, but then I'd have to look at it was to give to my Dad because my Dad was in the hospital- and I remember his stay in the States was extended- so those things, no, no, I laid it out at the time when I was fresh- and you're telling me this now- I distinctly remember this.'

136. Counsel referred to the Husband's fourth affidavit sworn on 28 February 2018 where the $9,300 expenditure is reported in an HSBC drawdown chart as follows:

November 16th 2017 – 9300 – US Legal Fee Balance $1,500, IRS Tax $3,500 Father $4,000

137. When this was put to the Husband, he agreed in absolute terms that the report was correct.

138. As for the $12,500 withdrawal, the Husband directed the Court's attention to an $11,000 bill payment he made on his American Express credit card account in October 2017. Initially, Mr. Richards invited suspicion on the Husband for failing to have produced his October 2017 American Express statement when serving the set of 2017 statements. However, the Husband retorted that the omission was an insignificant oversight and he in fact produced the missing statement before the conclusion of his cross-examination showing that the $11,000 credit card payment had in fact been made on 18 October 2017.

139. On the Husband's evidence, this $11,000 payment was made up of employment travel costs to Atlanta and Florida. Also included in the $11,000 sum was a $13075 personal payment for the Daughter's tutoring costs and an undisclosed deposit into the Daughter's bank account for Christmas shopping. Additionally, the Husband said that he accompanied the Son to the US to see the Daughter and he referred to air-travel from Bermuda to New York. It is unclear whether all of these personal travel expenses were said to be part of the $11,000. In any event, the Husband also spoke about his cash withdrawals to pay for tickets to a sporting event with his father and his son which came to $404. Further costs for a rental car came to $326 on his evidence.

140. The Husband explained that the $360 cash withdrawal was for part of his Connecticut travel expenses. He explained that one-way taxi travel came to a cost of $120.00. Mr. Richards put it to the Husband that it would not have made sense for him to have withdrawn an additional $360 having already laced himself with approximately $21,000 in a preceding 48 hour period. The Husband disagreed and said that the larger cash sums were already ear-marked for their other purposes.

141. Mr. Richards challenged the Husband on subsequent cash withdrawals in November 2017. He also referred to a $5,500 cash withdrawal which was made by the Husband as a gift to his mother to enable her to expense a Christmas holiday cruise.

142. Another cash withdrawal of $5000 made on 1 December 2017 was queried. The Husband explained that this withdrawal was in aid of payment of his US credit card and legal fees. The 4 December withdrawal for $380 was attributed to taxi travel and a further sum of

$1200 was used to expense his food take-out needs because, according to the Husband, he is not a good cook. Notably, the Husband later told the Court that he has a food per diem which he tries to keep at a low. He said that he tries to eat 'pretty inexpensive" and to remain within a $20 daily limit save for circumstances where he is expected to entertain company clients or attend work events.

143. The Husband defended his withdrawal of $4,500 on 8 December. He explained that this was paid into his Chase Account. From the $4,500 he paid $3000 to pay his American Express credit card and the remaining $1500 was left in the Chase account. Withdrawals for $1100 and $900 made on 15 December were said by the Husband to be expenses which arose out of the Husband's broken down bike. Mr. Richards, during cross examination, pointed out that there were a number of other cash withdrawals in the sums of $360, $200, $80, and $182 over the next couple of days in addition to further withdrawals for $300 and $300. On 21 December the Husband withdrew a further $7000 which he said was for IRS tax payments.

The Husband's Applications

144. On multiple occasions throughout the hearings before me, Counsel for the Husband specified that his Client was not seeking a special contributions order. He distinguished such form of financial relief from the Husband's requested order for the equal division of matrimonial wealth subject to reimbursement orders to remedy unequal contributions dating back from the point of separation.

145. However, when re-examined by his Counsel, the Husband said that the Wife should be made to pay 60% of the children's educational costs for a two year period after which he would agree to these expenses being shared on a 50-50 basis. In Mr. Pachai's written submissions, it is said that the reason for this reimbursement claim is in light of the expenses which the Husband paid for the children to date. Notwithstanding, this proposal, as put by the Husband during his oral evidence, was made more as a punitive measure than a clean reimbursement one. The Husband expressly justified his position on the stand on the grounds that the Petitioner had driven up the legal costs in this case and further made false and unsubstantiated allegations against him. Further, the Husband's clear position is that he is entitled to be reimbursed in the sum of $20,920 under the guise of wasted school fees spent on the Son's US high school education.

146. The Husband's pursuit of reimbursement more so arises out of the Wife's non-payment on the monthly mortgage payments for the former matrimonial house. There is no dispute on the evidence that the Husband alone has made contributions on the outstanding mortgage since the parties separated. His stated total payment is $51,090. The Husband wants for the

wife to pay 50% of the sum he has paid since separation and to make equal contributions on the mortgage going forward until the house is sold.

147. The Husband clarified his position to the Court as follows: "*I am willing to put the house on the market as soon as it is in condition- a reasonable amount of condition where we won't be deep down in price- from the roof not being done- with the necessary repairs….I would expect going forward that the Petitioner pay half of the mortgage."*

148. In respect of the land tax, the Husband is seeking reimbursement from the Wife for a 50% contribution on the payments dating from the point of separation.

149. The Husband also seeks a $10,000 reimbursement for the down-payment he made pre-separation in January 2016 for the family car. He argues that he should be given back this money since the Wife refused him access and use of the car. Alternatively, he seeks an order for the sale of the car with the net proceeds to be split equally.

150. As for the Chase credit card, the Husband said that he would like for the Wife to pay 60% of the outstanding balance since he, solely, has been paying the down the amount for the last two years and that he lowered the outstanding balance from $6,300 to $4000. He also said suggested that the Wife be removed as an account holder and the account be cancelled once such payments are made.

The Husband's section 41 Application

151. The Husband made a s. 41 summons application dated 4 April 2018 in the following terms, *inter alia*:
"*An Order pursuant to Section 41 of the Matrimonial Causes Act 1974, that the Petitioner's actions in dissipating the matrimonial funds held in the Bank of Butterfield and Carlisle Investment account holding approximately $172,096.80 as at July 2016 intended for the purposes of the children(')s education and, as such, being a reviewable disposition, shall be set aside so that the Respondent's financial relief claims can be satisfied*"

152. On the Husband's application, the Wife's report on her post-separation expenditures on the children and the car from her Butterfield account consisted of exaggerated 'plugs'. He characterized these withdrawals as malicious attempt to deplete matrimonial funds and to sabotage the Daughter's education. He submitted that the Wife had enough disposable income to fund the children's expenses and a new car from her operating account instead of dissipating the savings from the Butterfield account which was earmarked during the marriage for the children's educational needs.

153. In citing an example of the alleged over-spending, the Husband referred to the Wife's $3000 withdrawal for the Daughter's return airfare to Europe. He gave evidence that the Daughter later informed him that she only had a one-way ticket leaving him to fund the costs of a return ticket to Bermuda. He further complained about the costs of the Daughter's 7 week trip to Europe as another example of the Wife's dissipation of funds. Notably, he later remarked in his evidence that the expense of the Europe trip was legitimate and one to which he would have agreed had he been in communication with the Wife. The other area of complaint on the Wife's spending was in relation to the costs of the Daughter's SAT preparation course in the US. I addressed the evidence on all of these expenses further above where I outlined the post-separation expenses on the children.

154. During re-examination, the Husband clarified that the relief sought by his s. 41 application is for reimbursement by the Wife for all monies withdrawn from the Butterfield account post-separation save for the $13,500 high school fees on the son for his education in Bermuda and the European language course taken by the Daughter. His complaint, however, that the Wife's Butterfield account balance plunged from $170,000 down to $100,000 remained. He says that she should repay $50,000 into that account and leave it to be ear-marked for the future educational expenses of the Daughter.

The Relevant Law

Ancillary Relief

155. The general principles of law relevant to ancillary relief are long-established and uncontentious in this case. The learned editors of the second edition of Butterworth's Law and Practice in Matrimonial Causes at p.133 simplified the historical objectives of ancillary relief applications in the following way:

"*In Watchel v Watchel [1973] Fam. 72, 90 Lord Denning, M.R., in reading the judgment of the Court of Appeal, used the convenient expression "family assets" to refer to those things which are acquired by one or other or both of the parties with the intention that they should be continuing provision for them and their children during their joint lives, and used for the benefit of the family as a whole. They could be divided into two parts (i) those which are of a capital nature, such as the matrimonial home and the furniture in it and (ii) those which are of a revenue producing nature, such as the earning power of the husband and wife. When the marriage comes to an end, the capital assets have to be divided; the earning power of each has to be allocated.*

In assessing the earning capacity of each party, the court must have regard not only to their present income, but to their potential capacity to work and to earn…"

156. Ancillary Relief is defined in the Matrimonial Causes Rules 1974 (the 1974 Rules) in the Interpretation section as follows:

"ancillary relief" means-
(a) an avoidance of disposition order,
(b) a financial provision order,
(c) an order for maintenance pending suit,
(d) a property adjustment order, or
(e) a variation order

157. The Court's power to make financial provision orders is derived from section 27 of the Matrimonial Causes Act 1974 (the 1974 Act). It also has powers to make property adjustment orders pursuant to section 28.

158. In determining applications for the financial provision orders included within the meaning of Ancillary Relief, the Court must have regard to various factors outlined in section 29(1) of the 1974 Act 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 circumstances of the case including the following matters-

(i) 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;

(ii) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;

(iii)the standard of living enjoyed by the family before the breakdown of the marriage;

(iv) the age of each party to the marriage and the duration of the marriage;

(v) any physical or mental disability of either of the parties to the marriage;

(vi) the contributions made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family;

(vii) in the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

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 in had the marriage not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other.

159. In my previous ruling in *B v B [2017] SC (Bda) 23 Div (21 March 2017)*, I observed the English law background to our section 29 of the 1974 Act which is broadly similar to s. 25 of the Matrimonial Causes Act 1973 ("the 1973 Act"). Under the 1973 Act the English Courts are expressly empowered and duty-bound to have regard to increases in any parties earning capacity. In considering the contributions made by each party to the welfare of the family, the English Courts under section 25 will look further to likely contributions in the foreseeable future. The other more notable distinction is that section 25 requires the Court to look to the conduct of each of the parties if it is such that it would be inequitable to disregard it.

160. The Bermuda Courts have long found persuasive guidance from the leading House of Lords decisions in both *White v White [2001] 1 AC 596* and *Miller v Miller and McFarlane v McFarlane [2006] 2 AC 618*. In the latter, the House of Lords recognized three strands of consideration in determining how to fairly divide the assets: (1) the needs of the parties; (2) compensation aimed at redressing any significant prospective economic disparity between the parties arising from the way they had conducted their marriage; and (3) equal sharing. Additionally, the relevance of the duration of marriage was examined and the distinction between a long marriage and a short one was held to be an important one in evaluating the rights of a claimant or petitioner to a share of the other spouse's non-matrimonial property.

161. Mr. James Turner QC for the Husband in *Miller v Miller* made the following submission reported on p. 625 at paras F-H:

"*White v White did not lay down a rule that equal distribution is the starting point although it has been interpreted as saying that… The case is all about non-discrimination. In White v White all of the money was accrued during the marriage… Just as there may sometimes be a case of exceptional conduct, so there might also sometimes be a case that is exceptional in contribution, whether in relation to paucity of contribution or in relation to super abundance of contribution. The statute does not prevent such an approach and positively requires some evaluation of contributions. It has not imposed any limitation such as is to be found in section 25(2)(g) of the 1973 Act. Such an approach chimes with Cowan v Cowan [2002] Fam 97.*"

162. I pause here to note that a special contribution order is not sought in this case. The Husband's Counsel clarified that his claim is for reimbursements of payments he made

during the period of separation. Notably, this position was somewhat unclear on the assessment of remarks made by the Husband during his evidence. The Husband appeared to lay claim to the savings in his HSBC account on the basis that he was better in managing and saving money than the Wife was.

163. Lord Nichols disposed of the equal division of assets submission in the following way at pages 632-633 of the House of Lord's judgment in *Miller v Miller*:

"*A third strand is sharing. This "equal sharing" principle derives from the basic concept of equality permeating a marriage as understood today. Marriage, it is often said, is a partnership of equals. In 1992 Lord Keith of Kinkel approved Lord Emslie's observation that "husband and wife are now for all practical purposes equal partners in marriage": R v R [1992] 1 AC 599, 617. This is now recognized widely, if not universally. The parties commit themselves to sharing their lives. They live and work together. When their partnership ends each is entitled to an equal share of the assets of the partnership, unless there is a good reason to the contrary. Fairness requires no less. But I emphasise the qualifying phrase: "unless there is good reason to the contrary". The yardstick of equality is to be applied as an aid, not a rule*."

164. This Court associates with this view of equal sharing. Where one party to the marriage has acquired significant assets and savings during a marriage and was assisted and enabled in doing so by the efforts and contributions of the other spouse who paid towards household bills and expenses and tended to the needs of the children (born and unborn) and even other relatives of the spouse with the savings, there is a basis for equality in dividing the assets when the marriage has irretrievably broken down.

165. The House of Lords in assessing the concept of fairness as a requirement for the division of assets observed at page 631 paras 4-6:

"*Fairness is an elusive concept. It is an instinctive response to a given set of facts. Ultimately it is grounded in social and moral values. These values, or attitudes, can be stated. But they cannot be justified, or refuted, by any objective process of logical reasoning. Moreover, they change from one generation to the next. It is not surprising therefore that in the present context there can be different views on the requirements of fairness in any particular case.*

At once there is a difficulty for the courts. The Matrimonial Causes Act 1973 gives only limited guidance on how the courts should exercise their statutory powers. Primary consideration must be given to the welfare of any children of the family. The court must consider the feasibility of a "clean break". Beyond this the courts are largely left to get on

with it for themselves. The courts are told simply that they must have regard to all the circumstances of the case.

Of itself this direction leads nowhere. Implicitly the courts must exercise their powers so as to achieve an outcome which is fair between the parties. But an important aspect of fairness is that like cases should be treated alike. So, perforce, if there is to be an acceptable degree of consistency of decision from one case to the next, the courts must themselves articulate, if only in the broadest fashion, what are the applicable if unspoken principles guiding the court's approach."

166. At page 632 paras 10-12 of the judgement Lord Nicholls of Birkenhead states:

"*What then, in principle, are these requirements? The statute provides that first consideration shall be given to the welfare of the children of the marriage. In the present context nothing further need be said about this primary consideration. Beyond this several elements, or strands, are readily discernible. The first is financial needs…*

This element of fairness reflects the fact that to a greater or lesser extent every relationship of marriage gives rise to a relationship of interdependence. The parties share the roles of money-earner, home-maker and child-carer. Mutual dependence begets mutual obligations of support. When the marriage ends fairness requires that the assets of the parties should be divided primarily so as to make provision for the parties' housing and financial needs, taking into account a wide range of matters such as the parties' ages, their future earning capacity, the family's standard of living, and disability of either party. Most of these needs will have been generated by the marriage, but not all of them. Needs arising from age or disability are instances of the latter.

In most cases the search for fairness largely begins and ends at this stage. In most cases the available assets are insufficient to provide adequately for the needs of two homes. The court seeks to stretch modest finite resources so far as possible to meet the parties' needs. Especially where children are involved it may be necessary to augment the available assets by having recourse to the future earnings of the money-earner, by way of an order for periodical payments."

167. I would add here that even where the financial needs of the children of the marriage compete with either party's entitlement to lump sum reimbursement, priority must be given to a financial provision order in favour of the children. It should never be the case that matrimonial savings which are wholly needed for the children's living and educational expenses are used instead to make good a financial claim that one spouse has over the other or to correct a financial wrong inflicted on either party. The children's needs must always come first.

The Law on Financial Provision Orders for Children

168. Section 25 of the 1974 Act outlines the sources of the Court's statutory powers in making financial provision orders. The Court is empowered to make orders for periodical payments in favour of a child of the family under sections 27(1)(d), (2) or (4) or 31(6)(d) of the 1974 Act. Secured periodical payments in favour of a child of the family may be made under sections 27(1)(e), (2) or (4) or 31(6)(e) and lump sum provision orders may be made pursuant to sections 27(1)(f), (2) or (4) or 31(6)(d).

169. Subsections (2) and (3) of section 29 of the 1974 Act sets outs the factors for consideration where a child of the family is involved:

29 (2) Without prejudice to subsection (3), it shall be the duty of the court in deciding whether to exercise its powers under section 27(1)(d),(e) or (f), (2) or (4) or 28 in relation to a child of the family and, if so, in what manner, to have regard to all circumstances of the case including the following matters, that is to say-

(a) the financial needs of the child;
(b) the income, earning capacity (if any), property and other financial resources of the child;
(c) any physical or mental disability of the child;
(d) the standard of living enjoyed by the family before the breakdown of the marriage;
(e) the manner in which he was being and in which the parties to the marriage expected him to be education or trained;

and so to exercise those powers as to place the child, so far as it is practicable and, having regard to the considerations mentioned in relation to the parties to the marriage in subsection (1)(a) and (b), just to do so, in the financial position in which the child would have been if the marriage had not broken down and each of those parties had properly discharged his or her financial obligations and responsibilities towards him.

(3) It shall be the duty of the court in deciding whether to exercise its powers under section 27(1)(d),(e) or (f), (2) or (4) or 28 against a party to a marriage in favour of a child of the family who is not the child of that party and, if so, in what manner, to have regard (among the circumstances of the case)-

(a) to whether that party had assumed an responsibility for the child's maintenance and, if so, to the extent to which, and the basis upon which, that party assumed such responsibility and to the length of time for which that party discharged such responsibility;

(b) to whether in assuming and discharging such responsibility that party did so knowing that the child was not his or her own;

(c) to the liability of any other person to maintain the child.

170. Section 33 of the 1974 Act gives scope to the timeframe and age limits of a child's entitlement to financial provision. In this case, both parties are demonstrably agreed that provision for the children's living costs and education must be included as a focal point in the Court's orders. It is therefore not necessary to further explore section 33 of the correlating provisions of the Children Act 1998 (the 1998 Act) which apply in the Family Court.

The Law on Property Adjustment Orders

171. An order for the transfer of property will not normally be made except as an alternative to one for payment of a lump sum. However, in matrimonial cases such orders are more commonly made in respect of the division of value in the matrimonial home which cannot be cut in half.

172. So, where there is not a clear agreed position between the parties on the selling of the matrimonial home or the timeframe and requisite steps for doing so or even the maintenance of the matrimonial home, the Courts will necessarily look to its statutory powers to make a property adjustment order. This will also be the case where the fair divide of the assets so requires.

173. Section 25(2) of the 1974 Act provides:

(2) *The property adjustment orders for the purposes of this Act are the orders dealing with property rights available (subject to this Act) under section 28 for the purpose of adjusting the financial position of the parties to a marriage and any children of the family on or after the grant of a decree of divorce, nullity of marriage or judicial separation, that is to say-*

(a) any order under section 28(1)(a) for a transfer of property;

(b) any order under section 28(1)(b) for a settlement of property; and

(c) any order under section 28(1)(c) or (d) for a variation of settlement.

174. Section 28(1)(a) provides:

On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute), the court may make any one or more of the following orders—

(a) an order that a party to the marriage shall transfer to the other party, to any child of the family or to such person as may be specified in the order for the benefit of such a

child such property as may be so specified, being property to which the first-mentioned party is entitled, either in possession or reversion

The Law on Avoidance of Disposition Orders

175. In considering applications for an avoidance of disposition order, the Court must primarily be satisfied that the transaction in question was made or is about to be made with the intention of the defeating the applicant spouse's claim.

176. Guidance on the meaning of 'defeating the claim' is offered in chapter 28.1 of the sixteenth edition of Rayden and Jackson on Divorce and Family Matters:

"*Defeating the claim means preventing the claim being granted, reducing the amount which might otherwise be granted or frustrating or impeding the enforcement of an order*."

177. It must be noted that the intention to defeat the claim need only have played a substantial part in the disponor's intention as a whole. In *Kemmis v Kemmis (Welland Intervening) [1988] 1 WLR 1307, 1326*, per Lloyd LJ, CA stated:

"*As in other branches of the law, the more one seeks to analyse the meaning of the word 'intention' the harder it becomes, In the present context, three things are, I think, plain. First we are dealing with the husband's intention in a subjective sense. It is his state of mind that we have to investigate, not the consequence of his acts. This much at least is clear from section 37(5) of the Act…Secondly, as in every case, where we are called on to investigate a person's intentions, the court is necessarily thrown back on inference. It will be a rare case where the spouse declares his state of mind in advance, and even then his declaration would not be conclusive, or even very persuasive, unless it is against interest. Thirdly, in determining whether a spouse has the requisite state of mind, a court may have regard to the natural consequences of his act. It is true that there is no presumption, unless section 37 (5) applies. Nor, generally, would the natural consequence of the disposition be enough by itself to support an inference of intention. But the natural consequence of the disposition would certainly be a factor to be taken into account in deciding whether or not to draw the inference of intention in any given case.*"

178. Section 41 of the 1974 Act is a direct lift from section 37 of the UK Matrimonial Causes Act 1973. Section 41 provides as follows:

Avoidance of transactions intended to prevent or reduce financial relief
41 (1) For the purposes of this section "financial relief" means relief under any of the provisions of sections 26, 27, 28, 31, 35 (except subsection (6)) and 39, and any reference

in this section to defeating a person's claim for financial relief is a reference to preventing financial relief from being granted to that person, or to that person for the benefit of a child of the family, or reducing the amount of any financial relief which might be so granted, or frustrating or impeding the enforcement of any order which might be or has been made at his instance under any of those provisions.

(2) Where proceedings for financial relief are brought by one person against another, the court may, on the application of the first-mentioned person—

(a) if it is satisfied that the other party to the proceedings is, with the intention of defeating the claim for financial relief, about to make any disposition or to transfer out of the jurisdiction or otherwise deal with any property, make such order as it thinks fit for restraining the other party from so doing or otherwise for protecting the claim;

(b) if it is satisfied that the other party has, with that intention, made a reviewable disposition and that if the disposition were set aside financial relief or different financial relief would be granted to the applicant, make an order setting aside the disposition;

(c) if it is satisfied, in a case where an order has been obtained under any of the provisions mentioned in subsection (1) by the applicant against the other party, that the other party has, with that intention, made a reviewable disposition, make an order setting aside the disposition;

and an application for the purposes of paragraph (b) shall be made in the proceedings for the financial relief in question.

(3) Where the court makes an order under subsection (2)(b) or (c) setting aside a disposition it shall give such consequential directions as it thinks fit for giving effect to the order (including directions requiring the making of any payments or the disposal of any property).

(4) Any disposition made by the other party to the proceedings for financial relief in question (whether before or after the commencement of those proceedings) is a reviewable disposition for the purposes of subsection (2)(b) and (c) unless it was made for valuable consideration (other than marriage) to a person who, at the time of the disposition, acted in relation to it in good faith and without notice of any intention on the part of the other party to defeat the applicant's claim for financial relief.

(5) Where an application is made under this section with respect to a disposition which took place less than three years before the date of the application or with respect to a disposition or other dealing with property which is about to take place and the court is satisfied—

(a) in a case falling within subsection (2)(a) or (b), that the disposition or other dealing would (apart from this section) have the consequence; or

(b) in a case falling within subsection (2)(c), that the disposition has had the consequence,

of defeating the applicant's claim for financial relief, it shall be presumed, unless the contrary is shown, that the person who disposed of or is about to dispose of or deal with the property did so or, as the case may be, is about to do so, with the intention of defeating the applicant's claim for financial relief.

(6) In this section "disposition" does not include any provision contained in a will or codicil but, with that exception, includes any conveyance, assurance or gift of property of any description, whether made by an instrument or otherwise.

This section does not apply to a disposition made before 1 January 1975.

179. Mr. Pachai, belatedly and with a last-swing effort, took a preliminary-type point that the Court could not properly consider the Wife's s.41 application without having first given the recipients of the controversial transactions the opportunity to be examined under oath. He relied on sub-section (4) arguing that the Court would have to be satisfied that such third parties were not acting in good faith and had no notice of any intention of the party disposing of the matrimonial assets to defeat the applicant's claim. Mr. Richards, however, submitted that the burden shifts to the respondent to the application once the transaction(s) disposing of matrimonial assets have been proved.

180. The answer is stated in clear terms under subsection (5). Where the disposition occurred within three years prior to the application (or is about to take place) and the Court is satisfied that the disposition or transfer has had the consequence (or would have the consequence) of defeating the applicant's claim for financial relief, "*it shall be presumed, unless the contrary is shown, that the person who disposed of or is about to dispose of or deal with the property did so…..with the intention of defeating the applicant's claim for financial relief*."

181. The burden of proof in avoidance of disposition applications was addressed by the Court of Appeal in *K v K (Avoidance of Reviewable Disposition) (1983) 4 FLR 31, 36G, CA* by Omrod LJ who indeed held that the burden of proof was with the person applying for the disposition to be set aside but, by virtue of s. 37(5) of the UK 1973 Act, the burden shifted to the other party where the disposition had been made within 3 years of the application.

182. At page 36 of the Court of Appeal's judgment, Omrod LJ said:

"*I now turn to the judge's judgment. He very properly set out at length the provisions of s. 37 and correctly stated the onus of proof in relation to each part of the section. He then referred to decision of Baker J (as he then was) in Jordan v Jordan (1965) 109 SJ 353 to*

which we have not been referred. The judge thought that it was of no particular help in this problem. We then come to what is Mr. Horowitz's primary point on behalf of the wife. Mr. Boggis, who was appearing for the intervener, was seeking to argue that the registrar's conclusion, that the husband had the requisite intention in 1974 when he executed the first deed of trust, was wrong and that he had applied a wrong 'test' or standard of proof. In his endeavor to find some parallel to the provisions of s.37 in hope that it would assist the judge, he referred to s. 172 of the Law of Property Act 1925 and to the relevant passages in Halsbury's Laws of England, 4th edn, vol. 18. Unfortunately s. 172 deals with what are essentially 'fraudulent' conveyances and the passage in Halsbury contains one of these felicitous phrases which cause so much trouble, namely 'badges of fraud', and sets out in the text various samples of what are called 'badges of fraud'. In his judgment the judge said:

'I find those references of use in the sense of giving guide-lines as to how to approach the evidence relating to the proof of the necessary intent.'

Mr. Horowitz says (in my judgment quite rightly) that, in saying that, the judge misdirected himself as to the law to be applied when dealing with cases under s. 37. Mr. Horowitz submits that it resulted in the judge applying a standard of proof which was much too high and was outside the provisions of the section itself. Certainly so far as the first part of that submission is concerned, namely that it was a wrong way of approaching the question, I agree. However, I am not bound by any means so sure that it resulted in the judge arriving at a wrong conclusion.

The section, of course, says nothing whatever about fraud, and it is always a pity when the word 'fraud' is uttered in the course of argument in cases where it is not directly relevant. IT seems to act like an electric shock in some divisions of the High Court, and makes people think that the burden of proof becomes enormously heavy. It is unfortunate: it should not be used unless it is directly relevant.

The section is perfectly explicit. It says in terms 'if it' (that is the court) 'is satisfied that the other party has, with that intention, made a reviewable disposition…' it may set aside the disposition. The question the judge has to ask himself, having heard the evidence, analysed it, listened to the submissions of counsel, is: 'Am I satisfied that the declaration of trust in this case was made in 1974 with the intention of defeating the wife's future claim?'

I venture to think that all of us know when we are 'satisfied' of something by evidence in court, or not. Our difficulties begin when we try to say what we mean by being 'satisfied'. It forces people to turn to synonyms, which altar the sense, or to the addition of various adverbial phrases such as 'beyond reasonable doubt' or 'on the balance of probability',

which can lead to rather unreal distinctions being drawn. But the question remains, in simple language, 'Am I satisfied?' I think that, if the judge had asked himself that question, he would have arrived at the same answer as that which he actually did.

The question of what is the meaning of the phrase 'is satisfied' has been litigated over and over again in relation to other sections of various Matrimonial Causes Acts and it has been pronounced upon on a number of occasions by the House of Lords, not in this context but in the context of other sections.

I would briefly refer, because I think it is a helpful case, to Blyth v Blyth [1966] Ac 643, a decision which split the House of Lords three to two, but in the three majority speeches the position is made quite clear. The first is Lord Denning's and he took the view that 'satisfied' was primarily directed to the question of which side the onus of proof lay, but as to what the word 'satisfied' meant, he said at p. 668:

'I hold, therefore, that in this statute' [that is the predecessor to the Matrimonial Causes Act 1973] 'the word "satisfied" does not mean "satisfied beyond reasonable doubt". The legislature is quite capable of putting in the words "beyond reasonable doubt" if it meant it. It did not do so. It simply said on whom the burden of proof rested, leaving it to the court itself to decide what standard of proof was required in order to be "satisfied".'

...

I do not think one can take it much further than that, save to refer to a dictum which Lord Denning cited in Bater v Bater [1951] P 35, when he referred to a dictum of Lord Stowell which, although the language is not very familiar, I find helpful. It was in a case called Loveden v Loveden (1810) 2 Hagg Con 1:

'The only general rule that can be laid down upon the subject is that the circumstances must be such as would lead the guarded discretion of a reasonable and just man to the conclusion.'

I do not think I can do better than that."

183. In the later judgment of Nourse LJ in *Kemmis v Kemmis* he considered Counsel's alternative case on behalf of the disponor husband that the evidence was not strong enough for the judge to be satisfied of the husband's intention. He held:

"*The submission here was that the standard of proof was higher than proof on the balance of probabilities. I do not accept the submission in that form, although I would agree that,*

since what had to be proved was not merely a dishonourable intention but a dishonest and fraudulent one, the evidence which was required to tip the balance had to be correspondingly more convincing. Having reformulated the submission in that way, I reject it. I decline to say that the judge was not entitled to be convinced of the husband's intention by his evidence and by his demeanour in giving it."

184. In a nutshell, the real test behind s. 41 is simply this: Can the Court be satisfied that there was a dishonest intention to defeat the applicant's claim at the time when the respondent transacted or was about to transact the disposal of the property? I say that the Court, in assessing this question, will look at all of the facts before it which are relevant for resolve of the issue. This will include the direct evidence from the disponor about the transaction(s) or alleged transaction(s). Part of assessing that evidence will in fact also include the judge's assessment of demeanor and delivery of the oral evidence.

185. So, it may often be the case that the timing is a factor not to be left ignored. There will invariably be a higher potential for adverse inferences to be drawn against the disponor where a transaction occurred within a remarkably short period after the filing of the applicant's claim for financial provision. The Court will likely be alert to cogent evidence which suggests that the transaction in question was a real departure from spending norms. Further, a disposal which has the consequence of defeating the applicant's claim for financial relief will result in a rebuttable presumption that it was done with the dishonest intention of defeating the applicant's claim.

Analyses and Decisions

Analysis and Decision on the Equal Division of Matrimonial Assets

186. The parties' marriage spanned over an 18 year period. The evidence clearly shows that there were times during the marriage when the family's financial welfare was more dependent on the Husband's income and other times when it was more tied to the Wife's income. Both parties faced bouts of unemployment during the marriage at various points and during the lengthier chapters of employment, the parties financial affairs were conducted in a teamwork manner. So, for example, where the Wife paid the household and living expenses, the Husband saved the family disposable income.

187. Having considered the law as outlined and the evidence of how the income was earned and how the matrimonial savings were treated during the marriage, I see no reason to depart from the principle that the assets should be shared on an equal basis.

188. The equal division of matrimonial assets is not inconsistent in principle with the Husband's request to be reimbursed for monies paid by him post-separation in coverage of expenses which ought to have been equally assumed.

Analysis and Decision on the Matrimonial Home

189. The evidence was that the matrimonial home was valued between $895,000 and $995,000. It is a realistic supposition that the house would sell for a price which will cover the outstanding mortgage which is at a current balance of approximately $901,000 inclusive of the arrears on the Wife's evidence. The monthly sum payable for the mortgage is $6,890.

190. The Wife's cousin continues to be a tenant of the one bedroom apartment on the matrimonial property and is assisted by the Department of Financial Services in the payment of the $1100 monthly rent. Mr. C occupies the other house-share unit which previously yielded $600 monthly payments at the pleasure of the Husband. Without providing any details, the Husband referred to a financial arrangement with Mr. C which he described as minimal and added that Mr. C assists the Husband in transportation favours to the Husband and the children.

191. The evidence clearly demonstrates that the Husband enjoyed possession of the house post-separation and took active steps to exclude the Wife from accessing the matrimonial home. Unsurprisingly, there were no reasonable prospects of the Husband and Wife co-habiting post-separation. The Husband's position is that he will not agree to list the matrimonial property for sale until $40,000 worth of repairs have been carried out. He expects for the Wife to pay $20,000 towards these repairs. The Wife is opposed to such a contribution which she described as unsubstantiated and exaggerated in any event. This brings the parties to an obvious standstill on the realisation of the matrimonial property. Without an order for the adjustment of the property rights, no resolve is foreseeable.

192. As the Wife has long withdrawn from both the benefits and the burden of the matrimonial home, it would not be in the best interests of either party or the children for the Husband's interest to be transferred to her. For these reasons, the Wife's title and interest in the matrimonial home and all of the furniture therein shall be transferred to the Husband for an appropriate lump sum payment which I assess to be $25,000 on the premise that the property will likely be eligible for resale at $950,000 or thereabouts and having regard to the current mortgage balance and minimal equity.

193. The Husband's evidence was that he has paid approximately $51,000 on the accrued mortgage post-separation. After the parties separated, from July 2016 to December 2017, the Husband paid the full monthly mortgage sum of $6900 minus the full rental

contributions which reduced the monthly figure paid by the Husband to $5,200. From January 2017 to March 2018, the Husband reduced these payments to half portion sums of $2,875 and in April 2018 he started to pay the sum of $2900 for the convenience of a rounded figure. He says that his mortgage contributions total $51,000.

194. In my judgment, he is entitled to be reimbursed for a portion of this sum so to strike a fair balance between his payments and the benefit he has gained from his rent-free occupation of the house. It would be inequitable to assess the rental value of the former matrimonial home from a real-estate market perspective. Instead, I look to the total rental sum paid by the Wife thus far in consideration for her occupation of the two-bedroom apartment as a means of calculating the sum to be deducted from the Husband's $51,000 credit. I am mindful that the Wife's rental payments of $2,500 commenced in January 2017 and so I assign a $45,000 fixed value to her full rental payments and I deduct that figure from the sum of $51,000 which comes to $6000. The Wife should pay half of that. Therefore, the Wife is required to pay $3000 to the Husband which represents half of what he has paid on the mortgage but accounts for his rent free accommodation in the matrimonial home.

195. I accept the Husband's evidence that the sale value of the house would likely increase upon the completion of the needed repairs he listed. While, no house repair estimates or invoices were put before the Court, I see no reason to reject the Husband's broad-brush estimation that the costs will be in the region of $40,000. The Wife should therefore be made to pay the Husband $20,000 to enable the needed repairs needed to be made.

196. The accrued mortgage arrears must also be settled. I, therefore, direct that each party be made to pay a half portion of the mortgage arrears up to the date of this judgment.

197. I considered whether or not the Wife should be made to repay the Husband $1700 which is half of the $3400 sum she withheld in rental profits. However, I am also reminded of the unshared benefit that the Husband derives from Mr. C's occupation of the $600 unit on the former matrimonial property. The details of Mr. C's financial arrangement with the Husband were not shared with the Court but the Husband described the financial benefit to be minimal. Be that as it may, the Husband unilaterally decided to accommodate Mr. C instead of seeking a replacement tenant who might have otherwise paid up to $800 in month rent in accordance the Husband's opinion on the potential rental income. For this reason, I will not hold the Wife accountable to the Husband for the reimbursement of any part of the $3400 rental profits she withheld when she had he children in her care and custody.

198. Going forward, the Husband shall be solely responsible for payment of the monthly $6,900 mortgage. The Wife shall therefore have a right to be indemnified by the Husband for any

action taken by the bank against her for non-payment of mortgage sums payable on a date subsequent to the date of this judgment.

199. The Husband also claims for half of the land tax owing on the House from the point of separation to present. That, in my judgment, is only fair. The same half portion principle is to be paid by the Wife for the landscaping bill paid by the Husband during separation.

Analysis and Decision on the Butterfield Bank Account

200. While this account is now in the Wife's sole name, both parties agree that the account was previously held in their joint names and was earmarked primarily for the costs of the children's education funds. Of course, where the needs of the family so demanded, the Husband and the Wife during the marriage agreed to source funds from this account for other purposes. The current balance in the account is approximately $100,000.

201. I agree that these funds should continue to be reserved to finance the children's educational needs and associated costs.

Analysis and Decision on the Employment Capital Fund

202. The Husband said that the investment balance is now approximately $55,000 - $56,000 and is ear marked for the Son's education. This full balance of the sums held in the investment account is to be applied only the children's educational needs such as school fees, boarding costs, and airfare travel for return to Bermuda from overseas schooling for major holidays.

Analysis and Decision on the Chase Bank Account

203. The Husband argued that the Wife should pay 60% of the outstanding balance on the Chase Credit Card since he paid the card balance down from $6,300 to $4000 since the parties separated.

204. In my judgment the Wife should pay half of all monies paid by the Husband against the outstanding balance during the marital separation period. The responsibility for the remaining balance to clear the cards should also be shared equally between the parties.

Analysis and Decision on the Family Car

205. The Wife has exclusively enjoyed use of the family car since it was purchased over two years prior. The Husband spoke about the inconvenience he and the children experienced in being without the car and contrasted that discomfort and transportation needs to the Wife's minimal requirements for private car transportation from her Hamilton city residential base. In my judgment, the Husband is entitled to his own enjoyment of the family car which should be transferred to him for his sole ownership in exchange for an appropriate lump

sum payment of $5000 to the Wife. Upon the passing of title, the Husband shall be solely responsible for all payments in respect of the loan for the purchase of the car.

Analysis and Decision on the Division of Matrimonial Liabilities

Analysis and Decision on the Children's Educational and Living Expenses

206. Child maintenance in this case is mostly comprised of private tuition fees.

207. In this judgment, I have ruled that $155,000 of matrimonial savings ($100,000 from the Wife's Bank of Butterfield account and approximately $55,000 from the Husband employment capital fund) is to be applied solely towards the expenses affiliated with the children's educational needs.

208. The Daughter is expected to attend a 4-year university program in the coming months. At the time of the trial, she had not yet selected her preferred choice of university and the collective range of expense was stated to fall between $33,000 and $70,000 per annum inclusive of room and board and living expenses. Having considered the evidence in its fullness, I consider that these full costs will be in the region of $55,000 per annum. Over a four year period that will total approximately $220,000.

209. The evidence is that the Son's school fees for the next three years will be $13,500 per annum, totaling $40,500 for that timeframe. While no evidence was led about his likely educational expenses following his Bermuda education, both parents envisaged that he will thereafter enroll in a full-time overseas university. I will therefore assign an estimate of $55,000 per annum to the Son's educational costs to achieve parity with the annual costs of the Daughter's university education. So, over a four year period, the Son's educational fees will likely average a total of $95,500.

210. The total cost of tuition fees for the Daughter and the Son over the next four years is approximately $315,500. As there is a reserved sum of $155,000 in matrimonial savings (the Butterfield account and the employment capital fund combined) for the children's educational needs, I deduct this figure from the calculated tuition total of $315,500 which brings about a reduced total of $160,500. This averages out to monthly payments of $3,343.75 over a four year period.

211. On top of the monthly educational estimate of $3,343.75, I must consider the living costs of both children. In principle, the Son's living costs are expensed by the parties equally as they have shared custody and access. Therefore, I see no reason to increase the monthly $3,343.75 maintenance needs based on the Son's living costs. The Daughter's living costs however should also include the costs of air-travel to Bermuda at least twice a year for

Christmas and summer holidays. I think it is reasonable to assign an estimate of $1000 per annum to this cost. This will raise the monthly sum of $3,343.75 by $83 to $3,426.75. Additionally, food and miscellaneous needs should be added which brings me to a round figure of $4,000 per month.

212. I envisage that the time will come when the total monthly or annual costs of the children's education will have increased on account of both the Daughter and the Son being in university at the same time. It is foreseeable that more aggressive maintenance payments will be required as a resurge to the balance of the Butterfield education account. Thus I restrict the $4000 monthly maintenance figure to a period of two years and find that the monthly maintenance sums should increase to $6000 as at 1 August 2020.

213. The question then turns to the ability of the Husband and the Wife to make these payments. The Husband says that the Wife should pay a 60% portion of the children's educational needs for the next two years before equal contributions should be made. His proposal is advanced as a punitive one which he justified as a consequence for her false allegations against him and her protraction of the legal proceedings. The Wife, on the other hand says the Husband should pay the 60% portion on the basis of his superior financial ability.

214. I have had regard to section 29 of the Matrimonial Causes Act 1974 and in particular I have reflected on the contributions made by each of the parties during the separation period. While the Wife has spent a much larger sum on the children than the Husband has during this period, the money she spent was largely expensed from the Butterfield account. Neither party's level of previous contribution to the children's needs gives rise to a departure from the equal contribution principle in this case.

215. I will, therefore, move to consider the parties respective abilities to pay the financial provision order. However, before so doing, the section 41 applications must be determined so to factor in the full and true financial responsibility of the parties.

Analysis and Decision on the Husband's s. 41 Application

216. The Husband's s. 41 application is tied to the Wife's post-separation expenses from the Butterfield account. His position that these funds were earmarked during the marriage to be spent only on the children's education is not inconsistent with the Wife's use of the funds.

217. Having carefully considered the evidence, I find no fault or criticism against the Wife for having applied these funds to the children's educational endeavors as she did. This included the Son's high school education in Bermuda and the Daughter's European language trip and her living expenses in the US when she enrolled in the SAT preparatory course. This does

not in any way amount to a dissipation of funds and so the Husband's s. 41 application necessarily fails.

Analysis and Decision on the Wife's s. 41 Application

218. There are two principal targets under the Wife's s. 41 application. Firstly, the Wife's application arises out of the Husband's cash withdrawals from his HSBC account which previously held matrimonial savings. Secondly, she points to the Husband's borrowing and repayment of the two $70,000 loans from his employers as the other factual basis for her application.

219. As both the cash withdrawals and the loan repayments relate to monies spent out of the the Husband's HSBC account, I should first determine whether the monies previously held in that account are part and parcel of the matrimonial assets. Indeed, they are.

220. The marriage was a long one and the parties were financially inter-dependent throughout the marriage. For the same reasons upon which I grounded my determination that the assets are to be shared equally, I find that the HSBC savings are a matrimonial asset for equal division. These savings were acquired during the marriage and therefore belonged to the marriage.

Analysis and Decision on the Wife's s. 41 Application (The Cash Withdrawals)

221. The cash withdrawals were all sourced from the Husband's HSBC account which I have found was a matrimonial asset.

222. The Husband's $12,500 cash withdrawal on 17 November 2017 was mostly accounted for by the $11,000 repayment on his American Express Credit Card. These expenses included employment travel costs to Atlanta and to Florida and the costs of the Husband's air travel with the Son to visit the Daughter in the US. The Husband's lack of a detailed account on the expenditure of the remainder $1500 sum did not strengthen the merit of the Wife's application on this particular transaction.

223. I now turn to the $9,300 cash withdrawal transaction which was made on 16 November 2017. It was indeed odd that the Husband never before mentioned anywhere in his affidavit evidence the reason why he withdrew this sum in the first place. The Court learned for the first time from the Husband's oral evidence that he withdrew the sum to pay the security and the broker's fee for the new lease. However, the Husband placed more emphasis on his actual use of the money rather than his original intentions when he made the withdrawal.

224. The Husband's evidence was that he withdrew the $9,300 as a deposit to secure a different lease agreement in Connecticut, having unsuccessfully attempted to withdraw from his current New Jersey lease agreement. He said that the new lease would have been less expensive and more beneficial employment-wise. He also told the Court that it was a 2 year accommodation for a total rental charge of $24,500. This would have worked out to a monthly charge of $1,020.83.

225. The Husband initially suggested that he deposited the $9300 into his Chase Account. However, he subsequently said that he took out a cashier's check for the withdrawn sum. The relevant portions of his cross-examination were as follows:

XX Adam Richards: And now you say you withdrew- you see this is one of the things I have some difficulty with, you know, you're in finance and America is strong on anti-money laundering anti-financing as us. You can't pay people with $9,300 in cash anymore. So why are you taking out $9,300 in cash?

Husband: Mr. Richards, quite simply, I take that cash out and I deposit it- and then I take the cash and put it into the US Chase account- which I done all of the time- they have a reader to make sure that the money that was withdrawn in cash from HSBC is legitimate- and the reason why I do that Mr. Richards is that I will get charged a wire transfer fee from HSBC and Chase as well which will total $60. So I habitually taken cash out

…

XX Adam Richards: When you take out cash from the bank, how do you have it so that on your statements so it records what the intention of the cash payment was for?

Well, sometimes you can just tell the teller- they'll say what the comments were- so you can give them anything, I can say ah, it's to buy $100 red balloons and they'll put it in there- you tell them when it comes to a certain description- I cannot do it, unless I do it on-line. If I do it on-line, then I can write the explanation myself- and there'll be a note for the beneficiary and a note for my personal records.

XX Adam Richards: So, we'll see $9,300 in your Chase Account if I have a look?

Well, no, because I bought a cashier's check to pay for the taxes….

226. The Husband's evidence was that his relationship or rapport with the Dentist deteriorated because she, through her agent, refused to release him from the lease which disabled him from signing the new Connecticut lease. According to the Husband, he then decided to use the withdrawn money for other purposes. He said that he purchased the cashier's check for payment to the IRS in the sum $3,500. He said he used another portion of the $9300 for

payment of his US legal fees which came to $1,500 and that he gave a further $4000 to his father who was undergoing medical treatment in a US hospital.

227. These transactions were not factually disputed by the Wife. So, I need not be troubled in my finding that the Husband disposed of the various composite sums of the $9300 in the manner he described. However, I must determine his true intention when he originally withdrew the $9,300 cash sum and his true intention when he transacted the various expenditures.

228. In my judgment, the Husband was being untruthful when he told the Court that he withdrew the $9,300 to secure a new lease agreement. I found it strange that a man of his professional sophistication and experience in the financial industry would propose to pay a deposit and broker fee totaling nearly $10,000 by making a cash-withdrawal. The fact is that he intended to stow away this cash when he withdrew it. He intended from the outset to bury $4000 with his father and to dispose of the other composite sums as he did.

229. Further, it is not to be forgotten that the Husband never stated in his affidavit evidence that he had intended to withdraw from his current lease to take advantage of a new residential opportunity in Connecticut. These oddities were compounded by my separate finding that the New Jersey lease story is a sham in any event. For these reasons, I come to the inevitable conclusion that the Husband was being dishonest with the Court when he said that he withdrew the cash to pay for a new down-payment on the Connecticut lease so to end the supposed New Jersey lease. I find that that he used this story to conceal his true intention which was to dissipate the matrimonial funds in his HSBC account so to defeat the Wife's claims.

230. I find that the Husband searched for numerous ways to disburse these monies and to keep these funds out of the Wife's reach. He decidedly settled his personal expenses and bills from these matrimonial savings in his HSBC account before the Wife could access and share in these funds. This was intention when he paid the IRS the $3,500 and his US legal fees for $1,500.

231. The $4000 cash sum that the Husband purportedly gifted to his father was clearly part of his scheme to siphon off the money in his account. The Husband's father at that time was staying in the hospital for an extended period of time. The Husband never explained the particular need his hospitalized and gravely ill father had for the $4000.

232. Earlier in his evidence in chief, when asked about his financial support to his parents, the Husband said that he supports his father to the best of his ability but that he was unable to refer to a precise monetary figure as his provision of assistance arose on a need basis during

his father's travel for treatment. In estimating the total sum given, he made no specific mention of the $4000 gift but said that the total sum would probably tally up to $5,500 over the course of a one year period. I find that the Husband used his father as an opportunity to dishonestly stash matrimonial funds from the Wife. This Court must not allow sympathy evidence (ie the father's ill state) to distract it from assessing the evidence logically and with clarity. The Husband's grant to his father of $4000 of matrimonial funds during such a litigious period was obviously done to sabotage the Wife's entitlement to her share of matrimonial savings.

233. I now turn to the Husband's $5000 gift to his mother. This money was not transferred to the Husband's mother's account. It was another cash withdrawal from the HSBC matrimonial which was made in December 2017. During his evidence in chief, the Husband said, *"When I look at- when I tallied it up, it was like $5,500 that I gave to my Dad over the course of probably a year- and I gave the same amount- just for equity, for no other reason, I gave $5000 to my mom…"* Under cross examination, in further explaining the money he gave to his mother, he said; "*My mother was going on a Christmas Cruise- and I keep getting in trouble for being… I had by that time given my Dad in total of support, about $5,500 in support. And I was having a discussion with my mom- who has been tremendous support for a difficult time to me and the kids, said she was going on a cruise- and I hadn't been able to give her anything for her birthday or anything like that and she was going on a cruise- and I gave my mom US of $5 thous- I just gave it to my mom- you know I don't know how much more to go into detail on it- it was what I wanted to do.*"

234. The $9,300 cash withdrawal was made on 16 November and the withdrawal for $12,500 was made on the very next day on 17 November in addition to a further cash withdrawal sum of $360 on the same day. I am also mindful that the Husband travelled with this cash which totaled $21,800. He says he did this for the sake of avoiding wiring fees of $60. This is not believable. I find that the Husband took this cash out of his account as a desperate act to deplete the account mid-litigation.

235. It is not lost on this Court that these withdrawals came 2-3 days after the parties appeared before me on 14 November 2017 to be heard on their various disclosure complaints. It is a matter of Court record that Mr. Foy personally attended the hearing with his Counsel, Mr. Pachai, on that day.

236. At the 14 November 2017 hearing, Mr. Richards shared with the Court that the Son reported to the Wife that he had seen a bank statement withdrawal and that the summary page of that statement disclosed a balance of $180,000. Mr. Richards informed the Court, without giving details of the exchange, that the Husband denied this. The Court was also told that the Wife was seeking fuller disclosure in relation to the Husband's HSBC account

and a Chase Bank account in search of the full extent of the matrimonial funds under his control. Misguided as Mr. Richards and his client may have been in relation to the Chase account queries, it would have nevertheless been clear to the Husband during the 14 November hearing that the Wife was on a fact-finding mission in relation to funds held by the Husband which she believed to have been deliberately undisclosed.

237. The fact of the matter is that the Husband's HSBC bank account balance was in excess of $201,000 on 14 November 2017 when the parties appeared before me. On the very next day the Husband placed an unusually high bet to Gametime Ltd for $798.00. The following day, he withdrew the $9,300 and the day after that on 17 November 2017 he withdrew $12,500. A series of further cash withdrawals occurred throughout that month in November including the elaborate cash gift to his mother in the sum of $5,500 on 24 November 2017. On 1 December 2017 the Husband withdrew $5000 to pay his US credit card and legal fees.

238. These withdrawals and expenditures are inconsistent with the financially prudent and conservative man the Husband presented himself to the Court to be, generally. By 30 November (ie. within a two week period after the 14 November 2017 disclosure hearing before me) the Husband's HSBC account balance dropped from $201,050.80 to $186,271.61, a difference of $14,779.19. Furthermore, he gave no notice to the Wife of these grand expenses from matrimonial savings.

239. For all of these reasons, I am satisfied that the withdrawals and expenditures are not only a reviewable transactions but ones which were dishonestly carried out by the Husband to defeat the Wife's claim:

(i) $798.00	withdrawn on 15 November 2017
(ii) $9,300	withdrawn on 16 November 2017
(iii)$5,500	withdrawn on 24 November 2017
(iv)$5,000	withdrawn on 1 December 2017

240. Alternatively, if I am wrong in finding that the Husband was dishonest in his intentions when he transacted these withdrawals and made the various expenditures, I find that the Wife is still entitled to an equal share of those matrimonial savings and should be reimbursed accordingly.

241. The repayment of the two loans occurred the next month on 7 December 2017 and 22 December 2017.

Analysis and Decision on the Wife's s. 41 Application (The First Loan- the US Lease)

242. The evidence from the Husband is that the first loan was advanced in August 2016 on the calculated basis that $61,250 would be applied to the his rent for payment upfront and that $7,200 would be made by way of reimbursements to finance the Husband's JFK-Bermuda air-travel to see the Daughter.

243. Mr. Richards queried the authenticity of the loan. During cross-examination, Counsel asked the Husband why he would need to borrow money from his employers when he already had substantial funds in the neighborhood of $100,000 in his HSBC account. Mr. Richards, in considering the alternative, challenged the Husband's sincerity in repaying the loan and thereby depleting his HSBC account of funds which could be made available to the Wife.

244. I find that the evidence clearly supports that the loan was made and repaid to the Husband's employers. The real question to be determined is where the $61,250 in loan proceeds was transferred before repayment. The Husband said it was paid in full on his current New Jersey lease.

245. The Wife says that the Husband's US lease is a dishonest fabrication. The lease document, on its face, is unsigned and is not described as the sub-lease which the Husband belatedly claimed it to be. The Wife says that the Husband's story about the Dentist being his landlord under a sub-lease arrangement is a transparent attempt to conceal that she is really his girlfriend with whom he co-habits. This is why, according to the Wife, the Dentist is not named in the purported lease and why the Husband has free access to drive the Dentist's car at his pleasure. The Wife says that it is an extraordinary and unbelievable coincidence that the supposed agent to the Dentist is also personally known to the Husband as an old school friend. She would argue that there can be no surprise that the school friend agent is affiliated with a real estate agency that cannot be found or identified through any of her research.

246. I have considered with much care the evidence of both the Husband and the Wife on this particular subject. I found the Husband's evidence about his US lease to be incapable of belief. I find in favour of the Wife that the lease produced by the Husband is not authentic and I find that the Husband has concocted a long tale about having paid the full lease sum up front out of the funds from the first loan. It has not been lost on this Court that the purported lease made no requirement for a lump sum payment but instead calls for monthly rental contributions in the sum of $2,450. In my judgment the Husband not only exaggerated but attempted to mislead the Court about the true scope of his living expenses in the US.

247. Further, I have not ignored the Husband's initial concealment of the first loan from the Wife during the Rule 77(4) disclosure stage, contrary to Husband's obligation of full and frank disclosure to the Court. The Husband sought to justify his secrecy about the first loan on the basis that he didn't want the Wife to think he was trying to keep the Son in the US or that he was involved with another woman. He went so far as to say that he would have continued to keep the fact of the $70,000 loan to himself but for the fact that he was forced to report on his tax liability. I was not at all persuaded by the Husband's explanation that he was trying to conceal the lease. I have found that the story about the lease is a bogus one. So what happened to the $61,250 supposedly spent on the New Jersey lease upfront? The Court does not have this evidence. What is clear to this Court, however, is that the Husband has somehow hidden the $61,250 from the Wife. This is why he did not initially disclose the fact of the first loan to the Wife.

248. It was not until 30 January 2018 that the Husband, through his attorney, spoke up about the loans and the respective repayments. It is not to be forgotten that I signed a Consent Order dated 22 December 2017 listing this matter for trial before Stoneham J on 5-6 February 2018 upon the express written confirmation by the parties that all disclosure requests had been complied with. The Court was clearly misled by the Husband who had consciously decided at that point not to make full and frank disclosure about the first loan and the $61,250 he says he spent on the New Jersey lease.

249. For all of the above reasons this Court rejects the Husband's evidence about his intention and use of the $61,250 in proceeds of the first loan. I am satisfied that the Husband carried out these transactions with a dishonest intention of defeating the Wife's ancillary relief claims.

250. While I have found in favour of the Wife on the illegitimacy of the first loan transaction which was made to enable the Husband to dishonestly siphon the $61,250, I am still unable to properly void these transactions which would inevitably adversely affect third parties whose evidence has not been placed or tested before this Court.

251. In my judgment, the proper measure of relief is by way of an order for reimbursement by the Husband to the Wife for her half of the $61,250 of matrimonial savings.

Analysis and Decision on the Wife's s. 41 Application (The Second Loan- Legal Fees)

252. The Husband said that the purpose of the second $70,000 loan made in August 2017 was to cover his legal fees. He said that approximately $65,000 was paid directly to Wakefield Quin and that the remaining $5000 was shared between a US law firm for the drafting of the loan agreement and Bermuda law firm ASW Law.

253. The repayment of the second loan, like the first loan, was done out of matrimonial savings from the Husband's HSBC account. Effectively, the Husband took $70,000 of matrimonial savings and paid for his legal fees.

254. I cannot be sufficiently satisfied that the Husband's intentions in respect of the second loan transactions were dishonest. Notwithstanding, he unfairly used matrimonial savings to repay the loan when the loan proceeds were used for services which benefitted him personally as opposed to the family as a whole. It is therefore only fair and appropriate that half of the $70,000 which he exhausted on his personal legal fees to be paid to the Wife so that she can equally partake in this part of the matrimonial savings. The Husband is therefore ordered to pay the Wife a reimbursement sum of $35,000.

Analysis and Decision on the Parties' Ability to make Financial Provision for the Children

255. Having determined the s. 41 applications, I return to my consideration of the financial provision order for the children. I found that the financial provision for the children should be made on an equal basis when regard is had to the various contributions made by the parties during the marriage and post-separation. However, the law requires me to go further and to consider, *inter alia*, the parties' present and future income; earning capacity; the property and their financial resources and regular expenses.

256. The Husband's monthly net salary is $12,522.83. Based on my findings on the Wife's s. 41 application, I find that the Husband's US expenses are indeed minimal. It is clear on an analysis of his American Express Bank Statements together with his employment reimbursement payments that he collects an approximate $2000 surplus per month.

257. I have outlined in this judgment the evidence of the Husband's employment reimbursements. That evidence shows that the Husband continually gained a significant sum in excess of the employee expenses shown by his American Express statements.

258. The mystery of apparent surplus reimbursements would have likely been resolved by the Husband's production of copies of his correlating employee expense reports. In his fourth affidavit, the Husband stated at paragraph 3a):

"*My current net monthly salary is $12,522.83. All work related expenses are carried on my personal American Express card which is a company policy. Every month I have to prepare a comprehensive expense report and once submitted and approved the expenses are reimbursed in arrears by way of being combined with my net monthly salary. This has a tendency of artificially inflating my monthly wage to far exceed what I normally receive as a base pay.*"

259. Mr. Richards made it known to the Court that previous requests were made of the Husband for disclosure of these expense reports but that he refused to provide them. The Husband sought to justify his refusal during his oral evidence on the basis that he did not want to further intrude on his employers.

260. Another opportunity to clarify any such misunderstanding or misleading appearance of excess reimbursements would have been by production of the Husband's most recent employment contract. While the Husband disclosed his January 2017 employment contract, he said that he thought a subsequent employment contract had been issued and offered from the witness stand to produce it. However, the current contract was never produced.

261. It is not open to the Court to speculate about evidence unseen. The Husband would have the Court believe that reference to all of his American Express statements to date would result in a balanced reconciliation between his reimbursement payments and his employee expenses. However, the Court must look to the evidence before it which is the American Express statements for all of 2017. That evidence contrasted against the Husband's reimbursements points to only one reasonable conclusion: the Husband's employer is reimbursing him for more than what the Husband would have this Court believe. On the Wife's case, the Husband's employer is covering his rental expenses through reimbursements. While this is a reasonable inference to be drawn, I need not make a specific finding on the intended purpose of the surplus payments as the issue for determination here is the fact of the extra payments rather than its purpose.

262. For the above reasons, I assess the Husband's expenses as follows. I combine his stated monthly net income of $12,522.83 with a fixed sum of $2000 per month to total $14,522.83. While the Husband claims that the financial hit taken by his firm has minimalized the likelihood of a bonus payment, I consider a $30,000 bonus to be part and parcel of his future earning power given that he has been paid a bonus every year of his employment save this year which coincides with his divorce proceedings. I accept his evidence that he was not paid a bonus this year.

263. I find that the Husband's major expense would be the monthly mortgage at $6,900 and payment on his legal fees which is currently estimated to be $80,000. I am not aware of any payment plan set up for the settling of the Husband's legal fees. However, as a precautionary approach so not to exclude this liability from my contemplation, I will calculate the Husband's means on the basis of an installment plan of $2000 per month for payment on the outstanding balance on his own legal fees.

264. After payment of the $6,900 mortgage and the $2000 monthly installment calculation for his outstanding legal fees, the Husband will be left with a remainder monthly sum of $5,622.83 from which maintenance payment contributions will be required. These calculations are without regard to his future bonuses which I factor in only under the head of future earning power as opposed to current income.

265. On his likely future earning power, I calculate that the Husband's average annual bonus at $30,000 net. This breaks down to an additional $2,500 per month. I must also keep in mind that in 2-3 years from now the Husband, in all likelihood, will have sold the matrimonial home for a minimal profit and will have replaced his $6,900 monthly mortgage expenses with expenses commensurate a two-bedroom apartment or the like. In his evidence he confirmed that he intends to sell the house and that only his children keep him in Bermuda. While I find that the Husband is currently living rent-free in the US, I will not assume that to always be the case. Therefore, I deem it reasonable to estimate his future living costs at $2,500 per month.

266. Also, in 2-3 years from now the Husband will have likely finished paying on his outstanding legal fees, which I estimated on the basis of $2000 installments.

267. Thus, his future income will likely be $14,522.83 plus his annual bonus which divides down to $2,500 net per month, totaling $17,022.83. After payment of rent in the neighbourhood of $2,500, the Husband's monthly disposable income will likely be in the neighborhood of $14,522.83.

268. The Wife's monthly net salary is $10,877.00.

269. The Husband stated that he has the benefit of 18 years of background knowledge on the closeness of the relationship between the Wife and her mother and that he knows that the Wife would not be expected to pay her mother rent.

270. The Husband suggested that the Wife's $4000 monthly payments in legal fees represent 36% of her monthly income. Calculated on the basis of his disbelief of her rental responsibility, he invited the Court to find that she has a monthly disposable income of $7,000. However, I accept the Wife's corroborated evidence that she does in fact pay her mother rent in the sum of $2,500 and that she has been doing so since January 2017. Her 2017 HSBC bank statements substantiate that she makes these payments regularly. The fact that she has been delayed from time to time in so doing does not make it any less true.

271. For these reasons, the Wife's current disposable income is calculated on the basis that she earns a monthly net income of $10,877.00, and on the basis that she is required to make

monthly rental payments of $2,500 in addition to minimum legal fee payments of $2000 per month. Thus, her disposable net income is currently $6,377.00. This disposable income figure will likely increase in the future to $8,377.00 once the Wife's legal fees have been fully settled. Given the substantial reimbursement sums owed to the Wife by the Husband under this judgment, I am satisfied that she will be able to clear her legal fee debt within a 2-3 year period.

Financial Provision Order for the Children

272. Having had particular regard to the parties' contributions, income and future earning power, I find that the parties ought to be held equally liable for the financial welfare of the children. The Husband's new current disposable net monthly income is $5,622.83 and the Wife's current disposable income is $4,377.00 per month. The children's financial needs for the next two years have been assessed at $4000 per month. Accordingly, each party is liable to pay into the Butterfield account the sum of $2,000 on a monthly basis for the next two years.

273. From 1 August 2020 onwards, these maintenance payments will increase from $4000 to $6000 per month, having envisaged the likely depletion of lump sums from the Butterfield savings for the children's various educational costs. The Husband's future and higher disposable net monthly income of $14,522.83 must be considered. This is contrasted against the Wife's future and higher disposable income of $8,377.00. This means that the Husband will have over 42% more disposable income than the Wife. It is, therefore, reasonable for the $6000 maintenance payments to be divvied up in similar proportions. Accordingly, from 1 August 2020 until further order of the Court or until both children complete their full-time education or their full-time educational needs have been completely paid, the Husband shall pay $3,500 and the Wife shall pay $2,500.

274. Once both children have completed their full time education the residual proceeds in the account may be retained by the Husband in 60% measure and by the Wife in 40% measure.

Conclusion

275. The Husband's claim for an avoidance of disposition order against the Wife is dismissed.

276. Having found in favour of the Wife on her application to review the Husband's HSBC transaction, the Husband is ordered by this Court to pay the Wife the following reimbursement sums:

(i) $30,625 in reimbursement to the Wife for her half of the $61,250 of matrimonial savings dissipated by the Husband by the proceeds of the first loan under the guise of a New Jersey lease paid up front.

(ii) $35,000 which is half of the $70,000 of matrimonial savings he used to pay to his own attorneys for his personal legal services under the second loan.

(iii) $399 which is half of the $798 of matrimonial savings he used to place an out-of-the-ordinary high bet at Gaming Ltd.

(iv) $4,650 which is half of the $9,300 of matrimonial savings he withdrew in cash under the guise of securing a new lease in Connecticut.

(v) $2,500 which is half of the $5,000 of matrimonial savings he used to pay his US credit card and legal fees.

(vi) $2,750 which is half of the $5,500 of matrimonial savings he used to gift to his mother

277. The total sum to be repaid to the Wife for the reimbursements outlined above from (i)-(v) is $73,174.

278. The Wife's title and interest in the matrimonial home and all of the furniture therein shall be transferred to the Husband for a lump sum payment in the sum of $25,000.

279. Unless either party requests to be further heard within the next 21 days on the division of estate agent costs, legal fees and stamp duty in respect of the sale of the matrimonial property, I direct that such costs shall be shared equally between the Husband and the Wife.

280. The Wife is required to pay $3000 to the Husband which represents half of what he has paid on the mortgage minus a nominal sum equal to the total rent paid by the Wife to account for the Husband's rent free occupation of the former matrimonial home.

281. The Wife shall pay the Husband $20,000 in contribution to the repairs needed on the former matrimonial home before it is listed for sale.

282. Each party shall pay a half portion of the total outstanding sum owed in mortgage arrears on the former matrimonial home.

283. The Husband shall pay all future monthly mortgage sums of $6,900. The Wife shall have a right to be indemnified by the Husband for any action taken against her by the bank for payment of such future mortgage sums.

284. The Wife shall also reimburse the Husband for half of the land tax payable during the period of separation.

285. A half portion is to be paid by the Wife for landscaping services on the matrimonial home during the separation period.

286. All funds held in the Wife's Butterfield bank account shall be reserved and used only to finance the children's educational needs. This shall include all accommodation, travel to and from Bermuda plus living allowances in respect of overseas schooling.

287. All returns from the Husband's employment capital fund shall be deposited into the Wife's Butterfield bank account which shall be used for the sole purpose of financing the children's educational needs.

288. On a monthly basis, the Wife shall provide the Husband with electronic or hard copies of the bank statements for the Butterfield account. The Wife shall disclose to the Husband, in reasonable detail, a written explanation for each withdrawal or transfer made by her from the Butterfield account.

289. The Wife should pay half of all monies paid by the Husband during the marital separation period to settle the Chase Credit Card. The parties shall thereafter be equally responsible for clearing the remaining balance.

290. The Wife shall deliver the family car to the Husband within 3 months of this judgment and the legal title to the car shall be transferred to him for his sole ownership in exchange for a lump sum payment to the Wife of $5000. Upon the passing of title, the Husband shall be solely responsible for all payments in respect of the loan for the purchase of the car.

291. Both parties shall make financial provision for the children's educational and living needs in the collective sum of $4000 per month for a two year period until 1 August 2020.

292. The monthly sum of the financial provision order shall increase from $4000 to $6000 and be payable until further Court order or until both children have completed their full-time education or until their full-time educational needs have been completely paid.

293. The apportionment of liability between the parties of the financial provision order for the children shall be:

(i) From 1 August 2018 to 1 July 2020 the Wife shall pay $2000 per month and the Husband shall pay $2000 per month; and

(ii) From 1 August 2020 onwards until such time as stated herein the Wife shall pay $2500 per month and the Husband shall pay $3,500.

294. Once both children have completed their full time education the residual proceeds in the account may be retained by the Husband in 60% measure and by the Wife in 40% measure.

295. I leave it to the parties and their Counsel to resolve the total sums owed under my reimbursement orders and to work out how those sums will be repaid or offset against the financial provision orders made herein.

296. The reimbursement orders shall be subject to judgment interest at the statutory rate.

297. I will hear the parties as to costs and the terms of any order to be drawn up from this Judgment.

Dated this 23rd day July of 2018

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JUSTICE SHADE SUBAIR WILLIAMS
PUISNE JUDGE OF THE SUPREME COURT