

HONG KONG / JUDGMENT

HSKN v. STTJO

[2025] HKFC 46

COURT

Family Court

DECIDED

7 March 2025

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FCMC 11462 / 2017

[2025] HKFC 46 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION MATRIMONIAL CAUSES NO. 11462 OF 2017

BETWEEN HSKN Petitioner and STTJO Respondent

Coram: His Honour Judge G. Own in Chambers (Not Open to Public) Dates of Hearing: 7, 13 and
14 September 2023 and 24 April 2024 Date of Final Submissions : 22 May 2024 Date of Reply
Submissions : 7 June 2024 Date of Judgment : 7 March 2025

J U D G M E N T (Ancillary Reliefs)

Introduction

1. This is the trial of the Petitioner wife's ("W's") claim against the Respondent husband ("H") for ancillary reliefs for herself and the 3 children of the family. 2. Parties were legally represented by Counsel for the 4-day full blown trial. Parties are the only factual witnesses who testified at trial. The parties' legal teams were able to agree and signed a Joint List of Disputed Issues where there are 12 in total on 25 August 2023, shortly before commencement of the trial.

Background

3. The parties were married in June 2001 in Hong Kong. There are three children born out of the marriage in 2002, 2005 and 2007 whom I will refer to them individually as C1, C2 and C3 according to their year of birth. 4. At the time of trial, H was aged 51 working as an English lesson teacher at an international school (“XX”) in Hong Kong. W was aged 53 and working as an assistant teacher at a different international school (“YY”) in Hong Kong. 5. H was living at a rented apartment in Tai Po, New Territories. W was living with the 3 children at a residential property in Eastern District in Hong Kong Island. This property was owned by W’s father who rented to W with official Tenancy Agreement signed and stamped. 6. In June 2023, C1 moved away from W and initially said to live with H in Tai Po, New Territories. C1 returned to stay with W over the weekend. However, in July 2023, W was told by C1 that since he moved away from W, he was actually living by himself at the paternal grandfather’s property in Hung Hom District, Kowloon. 7. C1 was aged 22 and studying Year 2 at the Hong Kong Design Institute in Hong Kong. C1 has been suffering from Depression, Asperger Syndrome and Attention Deficit Hyperactive Disorder (ADHD). He had attended counselling sessions at the University of Hong Kong since November 2022 whenever need arises. Given his mental issues, C1 was allowed by the Hong Kong Design Institute to complete his 3-year programme in 4 years. C1 was expected to graduate in June 2025. 8. C2 was aged 19 and had started a 4-year Degree in English Language and Literature at a university in the United Kingdom. At the time of trial, C2 was attending his studies at the university campus in Ningbo, Mainland China. The last 2 years of the study will be physically attended at the University in United Kingdom. 9. C3 was aged 17 and attending Grade 11 at the international school “YY” where W was employed as assistant teacher. These Proceedings 10. In September 2017, W filed a petition for divorce relying on the fact of “Unreasonable Behaviour” which was not contested by H. 11. In November 2017, parties entered into a Consent Summons whereby interim financial arrangement was provided for by way of H’s undertaking (my emphasis), inter alia, to:- “(a) procure for his current and future income (but not less than HK\$72,000 per month) to be paid into the parties’ joint HSBC account No.430-xxxxxx-888 (the “joint HSBC Account”) including but not limited to bonus and gratuities; (b) (c) reimburse the Petitioner a sum of HK\$43,000 for the rent of the Former Matrimonial Home for the period between 22 September 2017 and 21 October 2017 within 3 months from the date of this Consent Summons.”. 12. There are other cross undertakings provided by the parties. The Consent Summons went to Her Honour Judge Melloy who granted an order in terms on 13 November 2017 (“2017 Consent Order”). 13. Decree Nisi was granted in January 2018. 14. Once there were cross applications taken out by the parties in respect of the Consent Order but, for reasons unknown, neither party proceeded further with their own applications after they were filed. The applications were then left in abeyance. At the 2nd Pre-Trial hearing on 14 August 2023, those cross applications left in abeyance were dismissed by this Court with no order as to costs. It was also directed that W’s application for ancillary reliefs, but not H’s intended application for variation of the Consent Order where no proper application had been filed, be set down for

trial the dates of which had already been scheduled. The Joint List of Disputed Issues 15. The joint list of disputed issues are repeated as follows :- Whether the Respondent has made full, frank and clear disclosure of his finances; and if not, whether the following and other inferences should be drawn against the Respondent :- The Respondent has funds which are hidden; The Respondent has income exceeding HK\$71,177.00 per month . What are the financial resources of the parties; in particular :- What are the income and earning capacity of the Respondent; What is the outstanding interim maintenance the Respondent shall pay to the Petitioner ? Are the alleged loans from the Respondent's parents and brother gifts or soft loans ? What are the financial needs of the parties and the children; Whether the Petitioner has paid any rent to her father HMC; Whether the total resources are sufficient to satisfy the financial needs of the parties and the children; Whether the Petitioner is entitled to any maintenance in view of the fact that she has earning capacity; Whether there are good reasons for departure from the equal sharing principle, including :- Whether there should be compensation for relationship-generated disadvantage to the Petitioner; and Whether the Petitioner has engaged in obvious and gross conduct ? Whether (and to what extent) the Court should draw adverse inferences against the Petitioner in light of her conduct in these divorce proceedings, in particular, her ability to find another job with higher income in view of the fact that she was an investment banker before the parties were married on 16 June 2001; Whether the Respondent is entitled to any compensation from the Petitioner for her gross conduct in these proceedings; The level of maintenance that should be provided to the three children of the family, namely C1 (aged 21), C2 (aged 18) and C3 (aged 16); How long should periodical payments be made for the benefit of each of the children; in particular, whether the Respondent should continue with the financial support for C1 after his current course ends in July 2024; and What is the appropriate costs order.”

16. The answers to Issues (1) to (5) largely depend on findings of fact made by this Court over the parties' evidence and credentials. The remaining disputed issues are to be determined in line with established legal principles and case law without much ado. Parties' respective positions

17. W's primary position was to seek a 60:40 ratio of division in her favour of the matrimonial pot which W's Counsel worked out in the region of HK\$8,773,648 which included (a) the net proceeds of sale of the former matrimonial home back in 2008 in the sum of HK\$4,672,938; and (b) there was hidden assets by H from carrying on side business from October 2017 to September 2023 which W's Counsel worked out in the sum of HK\$3,623,890.

18. W's secondary or fall-back position was that, without the said net proceeds of sale of HK\$4,672,938 and also without the said hidden assets of HK\$3,623,890, the matrimonial pot of assets in place would be in the region of HK\$476,820 which apparently was insufficient to cover the needs of the parties and the children. It would then be a paradigm case of periodical payment order for the joint lives of the parties.

19. H's Counsel submitted that (a) there are no significant assets; (b) three elder children in education which H had always offered to pay for; and (c) two working adults who were able to enjoy financial independence subject to settling their mutual debts after the family having lived significantly beyond their means for many years, hence the case was simple and straightforward. However, it was W who had dragged upon for years with evidentially

baseless claims that H had hidden assets and side business income in excess of what H had already disclosed in these proceedings. 20. Further, it was unclear whether W was running a “sharing” case or a mixture of “sharing” and “needs” case. H’s position was that this was a “needs” case. The Parties’ Open Proposals 21. W’s latest Open Proposals dated 7 September 2023 are as follows :- “Undertaking The Respondent do undertake to the Court and to the Petitioner that he shall forthwith take steps to enrol C3 in XX International School; and upon enrolment, pay the school fees of C3 at XX International School until C3 completes secondary education; The Respondent do undertake to the Court and to the Petitioner that he shall pay promptly: All tertiary education expenses (up to completion of first bachelor’s degree or equivalent) of each of the three children, whether or not the child in question is studying in or outside Hong Kong, including but not limited to tuition fees, accommodation fees, reasonable daily expenses outside Hong Kong, and round-trip (economy class) tickets at least once a year for each child studying outside Hong Kong; All reasonable medical and dental expenses of each of the three children until the child in question completes tertiary education. Without prejudice to Paragraph B above, the Respondent do undertake to the Court and to the Petitioner that he shall be responsible for the daily expenses of C1 (including the provision of lodging and food) until he completes tertiary education (up to completion of first bachelor’s degree or equivalent). Should the Respondent fail or neglect to pay any of the above, the Respondent do undertake to the Court and to the Petitioner that he shall reimburse the Petitioner within 14 days from the date of the Petitioner’s payment and provision of receipt. The Petitioner do undertake to the Court and to the Respondent that she would inform the Respondent the academic results of the children of the family namely C2 and C3 promptly within 14 days from the date of receiving the same. Order Subject to Legal Aid First Charge, Lump sum to Petitioner: HK\$500,000. Monthly periodical maintenance to Petitioner: HK\$9,000 during the joint lives of the parties, or until the Petitioner’s remarriage, whichever is the shorter; Monthly periodical payment to C2: HK\$6,000 until 30th June 2027; Monthly periodical payment to C3: HK\$16,000 until 30th June 2030; The Respondent do pay the Petitioner a sum equal to half of the value of 1,480 shares in MTR Corporation Limited, valued at close of business on 7 September 2023; All other shares held by the parties be sold promptly and the net proceeds be shared equally; Respondent shall forthwith take steps to wind up [NJ] and be responsible for the costs for such winding up; Subject to the Director of Legal Aid’s approval, there be no order as to costs of this action including all costs reserved; and The Petitioner’s own costs shall be taxed in accordance with Legal Aid Regulations, Cap.91.” (hereinafter called “W’s Open Proposals”). 22. H’s latest Open Proposals dated 7 September 2023, on a “clean break” basis, are as follows :- “Undertaking Upon the undertaking of the Respondent to the Court and to the Petitioner that he shall forthwith take steps to enrol C3 (defined below) in XX International School; and upon enrolment, pay the school fees of C3 at XX International School until C3 completes secondary education; The Respondent do undertake to the Court and to the Petitioner that he shall pay promptly: All tertiary education expenses (up to completion of first bachelor’s degree or equivalent, completed full time continuously) of each of the three children, C1, C2 and C3 (collectively “the three children”), including but not limited to

tuition fees, accommodation fees, reasonable daily expenses, and round-trip (economy class) tickets at least once a year for each child studying outside Hong Kong; and All reasonable medical and dental expenses of each of the three children until the child in question completes tertiary education (up to completion of first bachelor's degree or equivalent, completed full time continuously). And upon the undertaking of the Respondent to the Court and to the Petitioner, Without prejudice to Paragraphs A and B above, that he shall be responsible for the reasonable daily expenses of C1 (including the provision of lodging and food) until he completes tertiary education (up to completion of first bachelor's degree or equivalent, completed full time continuously). And upon the undertaking of the Respondent to the Court and to the Petitioner, that should he not pay any of the above, he shall reimburse the Petitioner within 14 days from the date of the Petitioner's payment and provision of receipt, whichever is later. And upon the undertaking of the Petitioner to the Court and to the Respondent that she will inform the Respondent of the academic results of C2 and C3 promptly and within 14 days from the date of receiving the same. Order Subject to Legal Aid First Charge, the Respondent do pay lump sum to the Petitioner HK\$500,000; The Respondent do pay periodical maintenance to the Petitioner in the sum of HK\$9,000 per month commencing on the 1st day of October 2023, and thereafter on the 1st day of each and every month, until 30th June 2028; The Respondent do pay the Petitioner for the periodical maintenance of C2 the sum of HK\$1,500 per month commencing on the 1st day of October 2023, and thereafter on the 1st day of each and every month, until 30th June 2027; The Respondent do pay the Petitioner for the periodical maintenance of C3 the sum of HK\$16,000 per month commencing on the 1st day of October 2023, and thereafter on the 1st day of each and every month, until 30th June 2026; The Respondent do pay the Petitioner a sum equal to half of the value of 1,480 shares in MTR Corporation Limited, valued at close of business on 7 September 2023; All other shares held by the parties be sold promptly and the net proceeds be shared equally; The Respondent shall take steps to wind up [NJ] and be responsible for the costs for such winding up There be no order as to costs of this action including ll costs reserved; The Petitioner's own costs shall be taxed in accordance with Legal Aid Regulations, Cap.91." (hereinafter called "H's Open Proposals"). The Law on Ancillary Relief 23. There is not much dispute as to the law on ancillary reliefs in family cases. Rather the dispute lies mainly with factual issues. For the sake of completeness, I set out below the statutory provisions on ancillary reliefs in family cases. 24. The jurisdiction of the Court in granting financial reliefs for a party and children of the family is governed by sections 4 and 5 of the Matrimonial Proceedings and Property Ordinance, Cap 192 ("MPPO") which provides: "4. Financial provision for party to a marriage in cases of divorce, etc. (1) 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, subject to the provisions of section 25(1), make any one or more of the following orders, that is to say- an order that either party to the marriage shall make to the other such periodical payments and for such term as may be specified in the order;

- (b) an order that either party to the marriage shall secure to the other to the satisfaction of the court, such periodical payments and for such term as may be so specified;
- (c) an order that either party to the marriage shall pay to the other such lump sum or sums as may be so specified. (2) Without prejudice to the generality of subsection (1)(c), an order under this section that a party to a marriage shall pay a lump sum to the other party- may be made for the purpose of enabling that other party to meet any liabilities or expenses reasonably incurred by him or her in maintaining himself or herself or any child of the family before making an application for an order under this section; may provide for the payment of that sum by instalments of such amount as may be specified in the order and may require the payment of the instalments to be secured to the satisfaction of the court.“ 5. Financial provision for child of the family in cases of divorce, etc. Subject to the provisions of section 10, in proceedings for divorce, nullity of marriage or judicial separation, the court may make any one or more of the orders mentioned in subsection (2)— before or on granting the decree of divorce, of nullity of marriage or of judicial separation, as the case may be, or at any time thereafter; where any such proceedings are dismissed after the beginning of the trial, either forthwith or within a reasonable period after the dismissal. The orders referred to in subsection (1) are— an order that a party to the marriage shall make to such person as may be specified in the order for the benefit of a child of the family, or to such a child, such periodical payments and for such term as may be so specified; an order that a party to the marriage shall secure to such person as may be so specified for the benefit of such a child, or to such a child, to the satisfaction of the court, such periodical payments and for such term as may be so specified; an order that a party to the marriage shall pay to such person as may be so specified for the benefit of such a child, or to such a child, such lump sum as may be so specified. Without prejudice to the generality of subsection (2)(c), an order under this section for the payment of a lump sum to any person for the benefit of a child of the family, or to such a child, may be made for the purpose of enabling any liabilities or expenses reasonably incurred by or for the benefit of that child before the making of an application for an order under this section to be met. An order under this section for the payment of a lump sum may provide for the payment of that sum by instalments of such amount as may be specified in the order and may require the payment of the instalments to be secured to the satisfaction of the court. While the court has power to make an order in any proceedings by virtue of subsection (1)(a), it may exercise that power from time to time; and where the court makes an order by virtue of subsection (1)(b) in relation to a child it may from time to time make a further order under this section in relation to him”. 25. For children who has reached the age of majority may continue to be maintained by the parents. This was provided by Section 10 of the MPPO which said :- “10. Provisions as to powers of court to make orders in favour of children and duration of such orders Subject to subsection (3)— no order under section 5, 6(a) or 8 shall be made in favour of a child who has attained the age of 18; and the term for which by virtue of an order under section 5 or 8 any payments are to be made or secured to or for the benefit of a child may begin with the date of the making of an application for the order in question or any later

date but shall not extend beyond the date when the child will attain the age of 18. (Repealed 69 of 1997 s.26) The court may make such an order as is mentioned in subsection (1)(a) in favour of a child who has attained the age of 18 and may include in an order made under section 5 or 8 in relation to a child who has not attained that age a provision extending beyond the date when the child will attain that age the term for which by virtue of the order any payments are to be made or secured to or for the benefit of that child, if it appears to the court that— that child is, or will be, or if such an order or provision were made would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also, or will also be, in gainful employment; or there are special circumstances which justify the making of the order or provisions. Any order made by virtue of section 5(2)(a) or section 8(6)(d) shall, notwithstanding anything in the order, cease to have effect on the death of the person liable to make payments under the order, except in relation to any arrears due under the order on the date of such death” 26. Finally, Section 7(1) of the MPPO sets out the factors which the Court has to consider in determining ancillary reliefs. It provides :- “(1) It shall be the duty of the court in deciding whether to exercise its powers under section 4, 6 or 6A in relation to a party to the marriage and, if so, in what manner, to have regard to the conduct of the parties and all the circumstances of the case including the following matters, that is to say- 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; the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future; the standard of living enjoyed by the family before the breakdown of the marriage; the age of each party to the marriage and the duration of the marriage; any physical or mental disability of either of the parties to the marriage; 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; 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. 27. In the leading case of LKW v DD the Court of Final Appeal sets out 4 principles which the Court should bear in mind when determining ancillary reliefs. The first is that the implicit objective of a section 7 exercise is to arrive at a distribution of assets which is fair as between the parties; The second is that the concept of fairness requires the refutation of any gender or role discrimination; The third principle is that, with a view to eliminating insidious discrimination and promoting fairness, judges should check their tentative views on distribution against a “yardstick of equal division” which should be departed from only for good, articulated reasons; The fourth principle is that the court should not countenance any attempt to engage in costly and often futile retrospective investigations of the failed marriage which tend to deplete the parties’ (and the courts’) resources and to increase antagonism and discourage settlement. 28. The Court of Final Appeal went further to lay down 5 steps as to how the Court should do when considering the Section 7 factors. The first step in the exercise is to ascertain the financial resources of each of the parties calculated as at the date of the hearing; The next step is for

the court to assess the parties' financial needs; If surplus assets would remain after the parties' needs have been catered for, the next step in the exercise should generally be for the court to apply the sharing principle to the parties' total assets, leaving the "needs" question previously considered to be dealt with under that principle; The fourth step therefore involves considering whether good reasons exist for departing from the principle of equal division; When deciding the outcome, the court is not bound to depart from equality in the division of the parties' assets even if one or more of the factors considered are engaged on the facts. The weight to be given to such considerations is a matter of discretion for the court

Analysis of Evidence on the Disputed Issues 29. W submitted that H had failed to make full and frank disclosure in his Form Es for (i) understating the monthly income received from his full time employment with the international school "XX" by omitting payments of "overtime general expenses", "allowances", "credit for teaching", "transportation costs" which could be seen in the Yearly Payroll Details sheet given to him which was also marked as taxation items; (ii) failing to disclose the income that he had received from running his "side business" via the company by the name [NJ]; (iii) failing to disclose his personal valuable items such as his "Brietling" brand watch, his "Cartier" brand watch, three redeemable debentures issued by the international school "XX", and his valuable bicycles used for triathlon training/competition. 30. For the monthly income he received from the international school "XX", H said he just added up his basic salary of HK\$53,177 and the cash allowance of HK\$18,000 and come up with the figure of HK\$71,177 which he put down in his Updated Form E dated 19 May 2023. However, W referred to H's Employer's Return of Remuneration for the fiscal year from 1 April 2022 to 31 March 2023, the total sum of his taxable income was HK\$1,026,396 which W worked out the average sum received should be HK\$85,533 a month (that is, HK\$1,026,396 x 1/12). This was different from the monthly income of HK\$71,177 which H disclosed in his Updated Form E. 31. Under re-examination, H admitted that he was careless when he filled in his average monthly income in the Form E and he had no intention to mislead the Court. He thought bonus was not guaranteed and he did not realise that he had to include them as well. He also said he was looking at his pay slips when he filled up the Form E. In any event, H admitted that it was his mistake and accepted the amount in his Employer's Return to be correct and should be his income received from the international school "XX". 32. W's Counsel in her Closing submissions refuted H's explanation. Even if one looks at H's pay slips, there are other items of income in addition to the basic salary and cash allowance which could have reminded H that there was additional income from his employment. W's Counsel referred me to a number of pay slips of H in the years 2018 (June), 2018 (August to October), 2018 (December), 2019 (January), 2023 (January to April). W further submitted that H has no difficulty in reading, writing and was conversant in English and yet did not put down bonus and allowance in his Form Es. 33. Reading those pay slips in their context, apart from items of basic salary and cash allowance which are recurring month to month, there are transportation costs which also seems to be recurring. Besides, other items such as "statutory holidays adjustments" but such item could be for payment or for deduction (my emphasis); the item of "overtime general expenses" of HK\$7,344 appeared month to month from January to April 2023; the item of "secondary

teacher meeting” of HK\$1,000 appeared once in the month of March 2023. To be fair to H, I must say those pay slips which was referred to me did not cover the complete 12 months in a year. 34. Nonetheless, there was the “Yearly Payroll Details Report by Taxation Items” printed in March 2023 which was relevant and important as it contained a complete picture of all the payments that had been made to H within the fiscal year from April 2022 to March 2023. 35. With H’s sound academic background and his profession as an English lesson teacher at the international school “XX” for some 15 years, I find it implausible for him to have “missed out” those payments other than the recurring basic salary and cash allowance. To the very least, he was given a fixed amount of “transportation costs” at HK\$1,860 on a recurring month to month basis since September 2022 which should not be carved out from his basic salary and cash allowance which was also recurring month to month. 36. On such analysis, I tended to agree with W that H’s disclosure of his monthly income from the international school “XX” was less than full and complete. However, before drawing adverse inference (which I was invited by W’s Counsel repeatedly to do so) against H, I believe the Court should take into account all the circumstances of the case; such as whether the non-disclosure was accidental or intentional or even contumacious, and also the reasons (if any) provided by the defaulting party. 37. Drawing adverse inference is not an autonomy exercise or a matter of course whenever there was disclosure less than full and complete, but rather it is the exercise of a dispositive power by the Court over a recalcitrant party’s litigation conduct. The ultimate aim was to achieve fairness in the case. 38. W’s Counsel in her Opening Submissions referred me to cases such as *V v V (Financial Relief)* [2010] 2 FLR 516 and the relevant passages therein adopting the approach in *Al Khatib v Masry* [2002] EWHC 108 where, in light of the unreliability of the husband in that case, his poor disclosure, his antagonism towards the wife and his refusal to co-operate in the matter of an independent valuation, it was held that the court was entitled to draw adverse inference against the husband. I was also referred to the case of *Moher v Moher* [2020] 2 WLR 89 where the judge noted the husband’s conduct and decided to draw adverse inference against him. 39. On appeal by the husband in *Moher v Moher* [2020] 2 WLR 89, Moylan LJ at page 108 said :- “88 (ii) When undertaking his task the court will, obviously, be entitled to draw such inferences as are justified having regard to the nature and extent of the party’s failure to engage properly with the proceedings (my emphasis). However, this does not require the court to engage in a disproportionate enquiry. Nor, as Lord Sumption JSC said, should the court “engage in pure speculation”. As Otton LJ said in *Baker v Baker*

[1995] 2 FLR 829, inferences must be “properly drawn and reasonable” (my emphasis). This was reiterated by Baroness Hale of Richmond JSC in *Prest v Prest* [2013] 2 AC 415, para 85 : “the court is entitled to draw such inferences as can properly be drawn from all the available material, including what has been disclosed, judicial experience of what is likely to be being concealed and the inherent probabilities, in deciding what the facts are. (my emphasis)” 40. Hence where there was a broad failure to comply with disclosure obligation on one’s financial resources, the court was entitled in appropriate cases (my emphasis) to draw adverse inference. 41. Suffice for me to say was that on the cases cited,

there was an element of conduct of the defaulting party being found to be intentional, even if not contumacious, over his act of non-disclosure. 42. I would now deal with the other items of non-disclosure contended by W before delivering my concluding views on Issue (1) (a) and (1) (b) of the disputed issues. 43. It was common ground that there was the company by the name [NJ] incorporated by H and W back in April 2002. The company traded sports equipment and provided technical and management consultancy services. H also engaged in tutoring on a part time basis. [NJ] maintained a business account at HSBC with the Account No. 083-xxxxxx-001 (hereinafter called “[NJ]’s HSBC Account”) to receive moneys from its clients. It was H’s case that there was no other bank accounts of [NJ] used for such purpose. 44. During cross examination, H was referred to [NJ]’s HSBC Account bank statements for the period from 31/8/2016 to 30/9/2017 where a total sum of HK\$431,500 (from clients at different amounts) was deposited into the account. However, around the same period of time (my emphasis), it appeared from the bank statements of the parties’ joint name HSBC Premier Account No.430-xxxxxx-888 that there were, apart from H’s monthly income received from the international school “XX”, the following deposits were found :- Date Name of Payer Amount (HK\$) Trial Bundle pages 29/8/2016 (client xxxx) HK\$24,900 C1/395 7/11/2016 (unknown) HK\$11,169 C1/387 18/8/2017 (client xxxx) HK\$24,500 C1/357 45. H in his answer under cross examination said he was only able to recall that on one occasion he had asked client xxxx to deposit the sum of HK\$24,500 into the parties’ joint name HSBC Premier Account because he could not access the [NJ] HSBC Account at that time. For the 2 other deposits, H said he could not recall why that was so. 46. W’s Counsel worked upon the bank statements of [NJ] disclosed by H to try and explore the amount of side income that was earned under [NJ] and come up with the figure of HK\$456,000 (that is HK\$431,500 (in [NJ] account) + HK\$24,500 (in parties’ joint account) for the period of 13 months starting from 31/8/2016 to 30/9/2017. On average, the side income was around HK\$35,076 a month (that is HK\$456,000 x 1/13). 47. It was submitted by W that H had not stated in any of his Form Es the amount of income that he received from the side business. There are altogether 4 rounds of exchange of Form Es in November 2017 (1st), April 2019 (2nd), January 2022 (3rd) and May 2023 (4th/Updated). This was not contested by H given that H’s case was that [NJ] was no longer running any business after September 2017. 48. At all times [NJ] was a trading company incorporated in 2002 with H holding 1% shareholding and W holding 99% shareholding. According to H, from 2002 until 2010, [NJ] did not do any business. In 2010, H obtained distribution rights of the “Sportxx” software which analysed team sports. H was the middleman between the software producer in Australia and [NJ]’s customers in Hong Kong. In around 2016, the Australian software owner was acquired by the US sports company “Hxxx” which centralised customer support and moved to a subscription model such that H’s role as a middleman was no longer viable and the business of [NJ] ultimately ceased. According to H, [NJ]’s last business sales were in 2017. 49. H produced the Reports and Audited Financial Statements of [NJ] for 2 fiscal years ending September 2017 which recorded a loss of HK\$187,127.75. W’s Counsel reminded me that there was a “Disclaimer” clause by the auditor that they were unable to obtain sufficient and appropriate evidence for doing

the audit. Given that there was no solid evidence from W that [NJ] was still trading after September 2017 whereby H continued to receive side business income, the accuracy or inaccuracy of the Audited Financial Statements 7 years ago in 2017 was neither here nor there in this ancillary relief trial. Hence, W's complaint about H not disclosing [NJ] business income in his Updated Form E in 2023 could not be substantiated bearing in mind that on the available evidence, [NJ] was no longer running any business since 2017.

50. For the "Breitling" brand watch where the declared value dropped from HK\$32,000 in H's 1st Form E, 2nd Form E, 3rd Form E down to HK\$1,000 in his 4th (Updated) Form E, H gave the answer under cross examination that he was only acting upon the legal advice of his lawyers who assisted him in preparing the 4th (Updated) Form E but not the 1st, 2nd and 3rd Form E whilst he was unrepresented. 51. I accept H's answer to be conclusive. Legal advice received from one's lawyers are privileged and not to be disclosed unless such privilege was waived (of which H did not). The absence of reasons for the drop in the declared value could not be taken or treated as non-disclosure. There was no non-disclosure of the existence of the "Brietling" watch in all his Form Es. The drop in the declared value of the same "Brietling" brand watch could not be viewed upon as non-disclosure of the watch. On the item of the "Brietling" brand watch, I find there was no non-disclosure. 52. For the "Cartier" brand watch which had not been disclosed in his 4th (Updated) Form E, H gave the answer that it was a gift and not a valuable item that he bought for himself. Actually I noticed that H had disclosed the "Cartier" brand watch only once in his 2nd Form E dated 25/2/2019 with an "unknown" value. This was the time when he was still acting in person. Given that there was no evidence in rebuttal to H's case that it was not a gift, I tended to accept H's answer and that the non-disclosure was not intentional to mislead the Court or to deceive W especially when he did disclose once in his 2nd Form E. Although H was legally represented at the time of his 4th (Updated) Form E in 2023, there was no evidence before me that he chose not to disclose it as he must have been properly advised that he need to do so. 53. For non-disclosure of the 3 debentures in any of his Form Es, H said one of the debentures had been redeemed and the money received had been put into the parties' joint HSBC Premier Account. He had completely forgotten about the other 2 debentures at the time of filling up the Form Es. H's answers of "completely forgotten" was challenged given that he had once raised questionnaire on W's 1st Form E at paragraph 2.9 therein where W had claimed 50% of her interest in the debentures which worth HK\$30,000. W's claim of 50% was HK\$15,000. 54. On the evidence, details of the 3 debentures are as follows :-

Date of Debenture	Debenture No.	Debenture Value
16 June 2009	6922	HK\$ 15,000
7 July 2010	7497	HK\$ 60,000
4 May 2012	8433	HK\$ 15,000

55. I noticed the 3 debentures were dated back to as early as 2009 (some 15 years ago counting backwards from date of trial). Even the last debenture dated back to 2012 some 12 years ago counting backwards from date of trial. W was claiming 50% of the total sum of HK\$30,000 at HK\$15,000. Clearly the 50% of her claim of HK\$15,000 must have arisen from debenture nos.6922 (HK\$15,000) and 8433 (HK\$15,000) added together without debenture no.7497 (HK\$60,000). 56. That said, it could either be the case that W herself had forgotten debenture no.7497 for otherwise she would also have claimed her

50% interest of it with a stand-alone amount of HK\$30,000 (HK\$60,000 x ½). It could also be the case that she did recall and was well aware that debenture no.7497 had been redeemed and therefore not included in her 50% claim. The latter scenario actually matched with H's answers that one of the debentures had been redeemed. Having said, it must be debenture no.7497 that had been redeemed as it was only then could W's claim of her 50% interest of HK\$15,000 (HK\$30,000 x 1/2) come up with in her Form E. 57. I tended to accept H's answers that one of the debentures had been redeemed and that he had "completely forgotten" the other 2 debentures to be more likely than not to be the truth given the lapse of time. I find there was no deliberate or intentional non-disclosure by H to mislead the Court or to deceive W in respect of the debentures issue. 58. H was also said to have failed to disclose his valuable bicycles despite W's repeated questionnaires on the topic. It was said that H finally admitted that he owned 2 bicycles only when W shown to him photos extracted from his Strava page. Under cross-examination, H gave the answers that he did not consider the 2 bicycles to be valuable. One of them worth HK\$10,000 and the other one worth less than HK\$10,000. W submitted that H was unable to justify why he saw fit to disclose that he owned a watch worth HK\$8,000 but not the 2 expensive triathlon bicycles. 59. H in his 8th Affirmation gave a detailed account as to the purchase of the 2 bicycles, by the name "Ceepo" and "Giant" with respect to where the purchase money come from. In a gist, H purchased the bicycles by selling his previous bicycles and the balance was paid by instalments out of his remaining savings after maintenance payments as well as his annual bonus which had not affected his monthly payments to W. 60. Whilst H's answers are not forthcoming for not disclosing his possession of the 2 bicycles in his Form E, I do not consider the non-disclosure was of such gravity or intentional so much so that adverse inference could be fairly drawn upon H or such non-disclosure posed prejudice to W's claim for ancillary reliefs. H being a triathlete for years. I tended to accept H's answer that triathlon bicycles costs, say, HK\$10,000 or about was not something of valuable in the eyes of a triathlete although it may look completely different by non-athlete. I find H's non-disclosure, more likely than not, was unintentional and not to mislead the Court or deceive W. 61. For all the reasons above and my analysis on the evidence before me, my concluding views on Issue (1) as to H's lack of full, frank and clear disclosure of his finances was not substantiated by W to the extent to draw adverse inference upon H. No adverse inference would be drawn. 62. For Issue (1) (a) as to "hidden assets", W was referring to the side income for the period from October 2017 to September 2023. There may also be some "left-over" of the net proceeds of sale of the former matrimonial home back in 2008. It was H's case that over the years since 2008, the net proceeds of sale had been spent to defray family expenses which at all times was over and in excess of the parties' joint income. W, on the other hand, disagreed and said there might have been proceeds of sale left over, in addition to side income, "hidden" by H. 63. Curiously though, at paragraph 5.2 of each of W's 1st Form E, 2nd Form E and 3rd Form E, W repeatedly made the statement that the net proceeds of sale of the former matrimonial home was in the sum of HK\$4,000,000 and was loaned to H's mother and that such loan had not been repaid. Such statement of loan of HK\$4,000,000 was, however, completely

removed in W's 4th (Updated) Form E. There was "left over" of the net proceeds of sale then arose in this trial as part of the "hidden assets" which W invited me to draw adverse inference upon her case of non-disclosure against H; rather than W pursuing it as a "loan" made to H's mother previously as set out in her earlier Form Es. For the latter case, W has to bear the burden of proving such "loan" with evidence. In any event, H strongly denied the net proceeds of sale was "loaned" to his mother. 64. Given my finding of no adverse inference would be drawn against H, it turned out that W has to bear the burden of proving her case of "loan" made to H's mother. W could no longer hinge upon adverse inference to be drawn upon H which thus obviates her burden of proving her case by cogent evidence. In the absence of evidence from W, who bears the burden of proof of her case of the "loan" to H's mother, I find W fails on Issue (1)(a) on "hidden assets". 65. For Issue (1) (b) that H had income exceeding HK\$71,177 per month, this was borne out of uncontroverted evidence and H's own admission rather than upon any adverse inference being or having to be drawn. I also find W fails on Issue (1) (b). 66. Before moving on to the remaining joint issues in dispute, it is pertinent for me to determine whether, in respect of W's ancillary relief claims, that she was running a "sharing" case or a "needs" case. As submitted by H's Counsel, one of the feature in this case was that there was no significant assets in question. This was also W's Counsel's secondary or fall-back position that, without the alleged "hidden" left over of the net proceeds of sale and the alleged side income from 2017 to 2023 included in the pot, the liquidity would only be in the region of HK\$476,820 which clearly would be insufficient to meet the parties' and the children's needs. 67. Given my decision rejecting W's case of drawing adverse inference that H had "hidden assets", I am minded to say this is a "needs" case from any perspective and hence those disputed issues as to sharing or departure from equal division falls apart. Hence, I do not have to deal with Issues (5), 7(a) and (b) in the following determination. 68. As also submitted by H's Counsel in his Closing Submissions, it was unclear whether W was still pursuing her case that a "loan" in the sum of HK\$4,000,000 was made to H's mother, being the net sale proceeds of the former matrimonial home. W also made no reference to such "loan" in her 4th Affirmation (which was the narrative affirmation). Further, W's case of the "loan" to H's mother was not listed in the joint list of disputed issue for determination. Taking all these into account, I decided not to include the alleged "loan" to H's mother as an issue or account receivable in the pot in my determination. 69. What remained for me to consider would then be H's case that the net proceeds of sale were spent to defray family expenses for the period between 2008 and 2016 was true or untrue. W's Counsel in her Closing Submissions tried to argue that the net sale proceeds of HK\$4,672,938 if divided by 103 months (that is, between March 2008 when net proceeds was said to be paid into parties' joint account up until September 2016 when H said it was depleted), would come up with the figure of around HK\$45,000 a month. 70. W's Counsel went on to submit that it was unbelievable for the family to have wantonly spent HK\$45,000 a month over and above their joint income and means for a period of some 8.5 years (or 103 months). On such submission, W's case was that it was more likely than not that there were left over of the sales proceeds "hidden" by H. 71. In my view, it was evidentially unsound and wrong

in procedure for a party to prove a positive case in litigation by merely working upon figures in vacuum followed by submissions on the arithmetic equation arrived at without any solid evidence in support. On the issue of “hidden assets” in this case, there was not even viva voce evidence from W in the witness box on the breakdown of the equation so arrived at by W’s Counsel; and then came up as an arbitral guess by way of Counsel’s submissions. 72. I find W unable to prove her case that H had “hidden assets” which need to be taken into account of when determining the size of the matrimonial pot. Parties’ cross allegations on assets and liabilities (a) H’s loans from parents and brother 73. According to H, he owed loans to his brother and parents and produced the following documentary evidence on such issue :- Loan Agreement dated 26 August 2015 signed by him and his brother for the loan amount of HK\$1,000,000 (“1st Loan”); Promissory Note dated 20 October 2017 signed by H to his parents for loan of various sums of money as per the Schedule attached to the Note in the total sum of HK\$275,000; and Loan Agreement dated 20 February 2018 signed by him alone for various sums totalling HK\$400,634.27 (being as to HK\$267,509.14 + HK\$47,955.63 + HK\$78,017 + HK\$7,152.50) which was said in the Loan Agreement for settling H’s credit card liabilities, 2 club membership fees and tax liabilities owed to the Government of the HKSAR (“2nd Loan”); 74. There was a further Loan Agreement dated 17 September 2021 signed by H and his brother for a loan of HK\$164,970, the purpose of which was said for settling H’s tax liability owed to the Government of the HKSAR. Given that this Loan Agreement was signed in 2021, W took no issue on the genuineness of such loan and no determination would be made in this Judgment. 75. W contended the 1st Loan, and also the others, was not genuine loan and was a sham; or alternatively, it was a gift or soft loan. Despite the 1st Loan was said to have been advanced on or before August 2015 and to be repaid by equal monthly instalments of HK\$8,333 for 10 years, H frankly admitted that he had only made one repayment to his brother over the years. H also confirmed that no legal proceedings were taken by his brother against him for his default in making repayment. 76. In the absence of further evidence from H’s brother, I tended to agree with W. On balance of probabilities, I find the 1st Loan was a gift or soft loan and not a genuine loan. It strikes one’s common sense for “topping up” further loans in 2018 (i.e. 3 years later) when there was only one single payment made for the 1st Loan advanced back in 2015 or might even be earlier. My finding on the 2nd Loan was, more probable than not, also a gift or soft loan same as the 1st Loan. Such finding deals with Issue (2) (c) of the disputed issues. 77. For the amount allegedly owed to his parents under the Promissory Note, H adduced no further or other evidence to substantiate the existence of the various “loans” made to him by his parents as set out in the Schedule attached thereunder. Given that H agreed at this trial that the “loans” dated back from 2015 to 2017 as per the Schedule attached to the Promissory Note was still outstanding and unpaid, I find it more probable than not that those “loans”, if they had ever existed, was either gift or soft loans. Such finding deals with Issue (2) (c) of the disputed issues. (b) Debentures of “XX” international school 78. I repeated what I said at paragraphs 53 to 57 of this Judgment that there are only 2, rather than 3, debentures that were left behind totalling HK\$30,000 which need to be included in the matrimonial pot. I

accept H's evidence that one of the 3 debentures, probably the one no.7497 of HK\$60,000 had been redeemed and the monies paid into the parties joint HSBC Premier Account. (c) The engagement ring 79. This was the ring purchased by H for W, the value of which was in serious dispute. It is common ground that the ring was set with a 1.8 carat diamond. W said she was told by a friend that the ring did not worth much but H said it was purchased for HK\$250,000 as it was "VVSI" quality. "VVSI" stands for "very very slight inclusion" in the diamond industry. 80. At paragraph 2.9 of W's 1st Form E dated 20 November 2017, W stated the value of it "to be assessed". In her 2nd Form E dated 2 April 2019, W put down a value of HK\$3,000 and during trial, W said she was being told by a friend that the ring did not worth much. There was no evidence of proper assessment as per what she said in the 1st Form E of "to be assessed", In her Answers to H's Questionnaires dated 23 March 2022, W said the costs of assessment was disproportionate to the value of the ring given the value of the ring was only HK\$3,000. 81. W was in possession and the owner of the ring. Given the value of HK\$290,000 quoted by H, which she disagreed with, was substantially different from what her friend told her, it is for her to obtain professional assessment of the ring despite this was her initial intention as per her 1st Form E. Further, W said in her evidence in Court that she would rather keep it to herself and not sell it and split the proceeds. 82. In the absence of professional assessment on the value and having to choose between the huge difference between the values of HK\$290,000 and HK\$3,000, I tended to give a higher value for it. 83. I decided to assign a value of, say, HK\$180,000 to this engagement ring. (d) The "Brietling" brand watch 84. According to H, this was a graduation present from his parents and would ask that it should not be sold. As to the value, H in his 1st, 2nd and 3rd Form Es gave the value of it at HK\$32,000. This value was accepted by W in her 4th Affirmation. Despite H put down the reduced value of HK\$1,000 in his 4th (Updated) Form E, I decided to use the value of HK\$32,000 for this watch. (e) The "Cartier" brand watch 85. Neither party in their written evidence set out the value of this watch. W in her evidence in court said it worth around HK\$78,000 and would cost around HK\$90,000 to buy a new one. H was prepared to accept HK\$75,000 as the estimated value. 86. In the absence of professional assessment or expert evidence, I would set the value at HK\$75,000. (f) Parties' joint investment account shares 87. Parties agreed the shares are worth around HK\$6,000. (g) Value of the business [NJ] 88. W in her Updated Form E dated 19 May 2023 said H had not provided her with any audited or unaudited financial statements of [NJ] for the last 2 years. Nevertheless, W said she believed "it may not be worth anything" (my emphasis). 89. H in his Updated Form E dated 19 May 2023 where he put down "0.00" as the value of the business of [NJ]. H was not cross examined on this figure at trial. 90. Hence, there would be no monetary value attributed to the business of [NJ] in the computation of the family pot. Financial Needs of the parties and the Children 91. This deals with Issue (3) of the disputed issues. For W 92. At the time of trial, W was aged 53. She was working as an assistant teacher with an international school "YY" with an average income of around HK\$28,087.50 per month. 93. According to W's Updated Form E, her monthly expenses are as follows :- "4.1 General Item Amount Rent HK\$ 25,000.00 Mortgage Instalments / Utilities (electricity, gas, rates, telephone & water) HK\$ 5,000.00

Management fees / Food HK\$ 8,000.00 Household expenses HK\$ 2,000.00 Car expenses / Insurance premia / Domestic helper (s) / Other (specify) (Credit card and revolving loan repayment) HK\$12,000.00 Total monthly household expenses HK\$52,000.00 4.2 Personal Item Amount Meals out of home HK\$ 500.00 Transport HK\$ 400.00 Clothing/shoes HK\$ 300.00 Personal grooming (including haircut and cosmetics) HK\$ 300.00 Entertainment/presents HK\$ 1,000.00 Holiday / Medical/Dental HK\$ 200.00 Tax / Insurance premia / Interim maintenance / Contribution to parents / Dependent family members / Others (specify) / Total monthly personal expenses HK\$ 2,700.00 4.3 Children Item Amount School fees (C1: HK\$39,080 per year; C2: HK\$72,000 per year) HK\$ 9,256.67 Extra tuition fees (Tutoring fees for C2) HK\$ 2,400.00 School books and stationery HK\$ 1,200.00 Transport to school (including school bus) / Medical/Dental HK\$ 600.00 Extra Curricular Activities (Gym fee for C2) HK\$ 998.00 Entertainment /presents HK\$ 5,000.00 Holidays HK\$ 1,500.00 Clothing/Shoes HK\$ 1,000.00 Insurance premia (Medical Insurance of HK\$10,719.00 per year) HK\$ 893.25 Lunches and pocket money (Pocket Money includes Lunch and Transport Expenses C1: HK\$4,000; C2: HK\$2,500.00; C3: HK\$1,000.00 HK\$ 7,500.00 Other Transport / Child-minding fees / Uniform (For C2 and C3) HK\$ 300.00 Others (specify) (Counselling fees for C1) HK\$ 1,000.00 Total monthly personal expenses HK\$31,647.92 Total Monthly Expenses HK\$ 86,347.92 (4.1 + 4.2 + 4.3)” For H 94. At the time of trial, H was aged 51. He was working as a full time teacher with an international school “XX”. H’s average monthly income was around HK\$85,533.00 a month. 95. According to H’s Updated Form E, his monthly expenses are as follows :- “4.1 General Item Amount Rent HK\$ 10,000.00 Mortgage Instalments N/A Utilities (electricity, gas, rates, telephone & water) HK\$ 700.00 Management fees N/A Food HK\$ 2,000.00 Household expenses N/A Car expenses 0.00 Insurance premia 0.00 Domestic helper (s) 0.00 Other (specify) 0.00 Total monthly household expenses HK\$ 12,000.00 4.2 Personal Item Amount Meals out of home HK\$,1,500.00 Transport HK\$ 2,000.00 Clothing/shoes HK\$ 200.00 Personal grooming (including haircut and cosmetics) HK\$ 300.00 Entertainment/presents HK\$ 2,000.00 Holiday 0.00 Medical/Dental HK\$ 700.00 Tax HK\$ 6,000.00 Insurance premia HK\$ 1,868.00 Interim maintenance 0.00 Contribution to parents 0.00 Dependent family members 0.00 Others (specify) School Fees Respondent (HK Polytechnic University) HK\$ 5,500.00 / Total monthly personal expenses HK\$20,068.00 4.3 Children Item Amount School fees (C2: (XX)) School fees (C1: xxx Institute) HK\$ 5,000.00 HK\$ 5,000.00 Extra tuition fees School books and stationery Transport to school (including school bus) Medical/Dental Extra Curricular Activities Entertainment /presents HK\$ 1,000.00 Holidays HK\$ 1,000.00 Clothing/Shoes Insurance premia Lunches and pocket money HK\$ 500.00 Other Transport Child-minding fees Uniform Others (specify) C1 (psychologist fees @ 2500 x 2) Dog’s Veterinary Fee HK\$ 5,000.00 HK\$ 1,025.00 Total monthly personal expenses HK\$18,525.00 Total Monthly Expenses HK\$ 50,593.00” (4.1 + 4.2 + 4.3)” For Children 96. Suffice for me to say that at the time of trial, all 3 children have yet to complete their full time education and are being supported by their parents. The Matrimonial Pot 97. There was no landed properties or any assets of substantial value in this case. The former matrimonial home was sold in 2008 with net proceeds of sale of HK\$4,672,938 which I have found to have been defrayed for

family expenses over the years rather than “hidden” by H. 98. Parties have not come up with any joint schedule of assets and liabilities. On the evidence available and disclosures in their respective Updated Form Es, including my findings aforesaid, the following assets and liabilities had been identified :-

Assets Description	H's Assets	W's Assets	All sole name
Bank Account	HK\$ 49,663.03	HK\$ 1,560.20	All joint name Bank Account HK\$0.3 (50%)
Investments	HK\$ 6,370.10	HK\$ 6,105.00	MPF HK\$ 520,740.74/ (or HK\$468,666.66)
Valuables	HK\$ 92,524.29/ (or HK\$83,271.86)		HK\$ 75,000 (“Cartier” watch); HK\$ 32,000 (“Breitling” brand watch); HK\$ 1,000 (Tag-Heuer brand watch) HK\$180,000.00 (engagement ring) HK\$ 4,500 (Wedding rings and gold bangles)
Debentures	HK\$ 15,000.00		HK\$ 15,000.00
Total	HK\$699,774.17	HK\$299,689.79 (HK\$647,700.09)	(HK\$290,437.36)

Liabilities Description

H's Portfolio	W's Portfolio
Credit card	HK\$ 9,441.56
Revolving credit facility	HK\$ 205,336.26
Total	HK\$9,441.56

99. Given parties respective MPF could only be realised upon reaching normal retirement age of 65; and H being 51 and W being 53 at this trial, and further considering the illiquidity nature of MPF, I decided that there will be a discount of 10% given (see LWF v WST [2021] HKFC 164) to the disclosed values. 100. Hence, the amount of the adjusted MPF for H would become HK\$468,666.66 (HK\$520,740.74 x 0.9). For W, it would become HK\$83,271.86 (HK\$92,524.29 x 0.9). Net Position H's net position (without discount on MPF): HK\$699,774.17 – HK\$9,441.56 = HK\$690,332.61 H's net position (with discount on MPF): HK\$647,700.09 – HK\$9,441.56 = HK\$638,258.53 W's net position (without discount on MPF): HK\$299,689.79 – HK\$315,635.43 = HK-\$15,945.64 (DR) W's net position (with discount on MPF): HK\$290,437.36 – HK\$315,635.43 = HK-\$25,198.07 (DR) 101. The above equation shows the total value of the matrimonial pot was only around HK\$674,386.97 (HK\$690,332.61 + HK-\$15,945.64 (DR)); or HK\$613,060.46 (HK\$638,258.53 + HK-\$25,198.07 (DR)), neither amount of which was sufficient to cover the financial needs of W and the children of the family. Hence, the sharing principle does not apply. 102. Now I would deal with the Section 7 factors. Income, earning capacity, property and financial resources 103. At the time of trial, both parties had earning capacities and are working for different international schools. However, H was working as a full time teacher since 2005. W started to work as an assistant teacher only in 2018. In her Updated Form E, W disclosed that she was receiving training to be a teacher on a full time basis. 104. H submitted W has a high earning capacity as she possessed a law degree and she was an investment banker. W had worked for the Lehman Brothers from 1 January 2003 to 30 June 2003. H submitted there are issues of obvious and gross conduct for W not to utilise her high earning capacity to seek work with higher income. 105. I disagree with H. It was common ground that W left the work force around 2003 at the request of H to take care of C1. She had been a full time homemaker for such a long period of time would, in my view, drastically affect her options and chances of seeking work with income commensurate with what she had earned in the banking industry years ago. 106. That said, those factors such as global financial climate and economic downturn, even if not recession, after the Covid 19 pandemic also affect one's level of income. 107. I find H's earning capacity higher than W to be the truth. As a matter of fact, H was earning HK\$85,533 a month which was almost 3 times of W's

monthly income at the time of trial remained the truth. This deals with Issue (2) (a) of the disputed issues. 108. Given the fact that H has been working continuously in the past 15 years or more, he has accumulated a higher sum of MPF which was around 6 times more than W. On financial resources, I find H is better than W. This deals with Issue (2) (a) of the disputed issues. Financial needs, obligations and responsibilities 109. Given my finding against H on his alleged loan to his parents and brother, there was not much personal debts of H except his obligation and responsibilities to maintain the 3 children until they or each of them finishes full time education. 110. On the parties' monthly expenses, I find W's position less favourable than H since the rental payment of W was HK\$25,000 which takes away almost her entire monthly income as per the Updated Form E. 111. Given the fact that there was a Tenancy Agreement signed and stamped between W and her father for the rented property, I tended to accept the contents of which rather than to disregard it simply because the landlord is W's father. This deals with Issue (4) of the disputed issues. 112. From an overview of the parties' monthly expenses, I am satisfied that W's financial needs are greater than H bearing in mind W's modest income. Standard of living enjoyed by the family before breakdown of marriage 113. On the available evidence, I find the standard of living enjoyed by the family before break down of marriage was above average. Age of each party and duration of marriage 114. H was aged 51. W was aged 53. The marriage lasted for about 16 years up until separation or 17 years up until Decree Nisi. 115. I am of the view that this is a long marriage. Any physical or mental disability of either of the parties to the marriage 116. There was no physical or mental disability on either party. Contributions made by each of the parties to the welfare of the family 117. This is a long marriage with 3 children born and taken care of by W soon after C1 was born. The fact that W left the workforce at the request of H was a significant contribution to the family that must be taken into account of. This is especially so with W's work as an investment banker with a reputable bank and her ability to pursue her career in the legal field with her law degree if she so wished. Moreover, W started as a full time homemaker at the age of only 32 (she was born in 1971). 118. I accept that H was the sole breadwinner over the years. On the evidence, H did provide maintenance after breakdown of the marriage though not the same as what he did during the marriage. 119. Striking a balance over parties' contribution towards the welfare of the family, I tended to say W's contribution was higher than H. Compensation 120. This factor of compensation did arise within the joint list of disputed issues though it came from a different perspective of "conduct" and in respect of the alleged gross conduct of W in these proceedings (Issue (9) of the joint list of disputed issues). 121. I do not agree with H that he should be entitled to compensation from W's "conduct" in these proceedings, nor was there any "conduct" issue on W's part in bringing her ancillary relief claims. The fact that W has earning capacity but unable to utilise or maximise it through no fault of her own could not be taken as "conduct" so that H should be given compensation. Thus both Issues (8) and (9) fall apart. Other Important matters 122. There are 2 rather important matters which must not be dealt with before arriving at my final decision on W's ancillary reliefs. They are :- Order of this Court dated 14 September 2023 when the trial was adjourned part heard to 24 April

2024 (“14/9/2023 Order”); and H resigned from international school “XX” by way of letter dated 11 January 2024 to take effect on 31 August 2024. (“H’s resignation”). 14/9/2023 Order 123. I was invited by H’s Counsel to consider the 2017 Consent Order lapsed with no further action to be given since it had not been enforced by W and the arrears accumulated thereunder was more than 12 months before this trial. No application under Section 12 of the MPPO was taken out by W for leave on enforcement. 124. Moreover, W under cross examination and also in her 2nd Affirmation agreed that she could not claim the arrears unless she could establish that H had “hidden assets”. 125. I have reservation on such submission. It is trite law that unless and until a court order was set aside or overturned on appeal, it remained a valid order binding upon the parties to it. It is also trite law that granting leave for enforcement of arrears over 12 months is a discretion of the court though it would be exercised sparingly and not a norm. 126. With respect, I find it difficult to accept the 2017 Consent Order “lapsed” in the absence of any setting aside or dismissal. There was even no such application on the file. Rather important was that at the conclusion of the hearing on 14 September 2023 adjourning the trial part-heard to 14 April 2024, I expressly re-visited the 2017 Consent Order with the parties and granted the following specific directions :- “2. Without prejudice to the parties’ rights to make submissions on the Order of H.H. Judge Melloy dated 13th November 2017 (if any) and in the course of trial which has to be adjourned part-heard, subject to the Director of Legal Aid’s first charge (if any), there be a further interim order maintenance pending adjournment of the ancillary relief trial in the sum of HK\$33,000.00 per month be paid by the Respondent to the Petitioner. Payment be made into the Petitioner’s HSBC bank account no. 430-xxxxxx-888 each calendar month until further order. 3. All undertakings of the Order dated 13th November 2017 do stand. 4. Penal notice be endorsed on this Order and the Order dated 13th November 2017” 127. It is abundantly clear from my directions that the 2017 Consent Order was and still is valid and in place; even though leave could not be granted (which I made no such comment or observation) had there been an application for enforcement. A court order would not and could not be taken as “lapsed” even if could not be enforced on technical grounds. 128. Further, going back to the consensual arrangement of payment by H contained in 2017 Consent Order, it took the form of “H’s undertaking to procure”. In my view, compliance with undertakings in the absence of express period of time or clear words as to any contrary intention, are perpetual compliance obligations (my emphasis) until discharged or dismissed. Hence it may at least be debatable whether enforcement of the undertakings would be “barred” by or subject to Section 12 of the MPPO. 129. Further still, breach or non-compliance of undertakings are punishable only by issuing committal proceedings under Order 52 of the Rules of the High Court/District Court citing the defaulting party for contempt of court. Enforcement for breach of orders for payment is by way of judgment summons under Rule 87 of the Matrimonial Causes Rules, Cap.179A. 130. I do not accept H’s Counsel’s submission that I should consider the 2017 Consent Order “lapsed”. Such view deals with Issue (2) (b) of the disputed issues. The outstanding interim maintenance on money terms should be worked out by reference to the terms of the 2017 Consent Order which I found

still valid and subsisting. However, the process and enforcement of which would be a separate topic for debate.

- (b) H's resignation 131. As to H's resignation before conclusion of this trial, this is an important matter, and indeed a material change in circumstances especially in light of H's means and finances, that this Court, W and her legal team should know in the soonest. This is W's ancillary reliefs claim and the means and finances of both parties is one of the factors which must be considered under Section 7 of the MPPO. 132. I noticed from H's Counsel's Closing Submissions that the resignation took place in the middle of H's testimonies as he was not allowed to communicate with his lawyers, this is the correct approach taken. However, H's resignation must come to his lawyers' knowledge before his Counsel's Closing Submissions dated 22 May 2024; for otherwise, it could not be stated in paragraph 47 of the Closing Submissions. 133. I also noticed that there was no application or even a letter or memo from H's lawyers to this Court soon after they were aware that H had resigned and to seek leave to file further or supplemental submission(s) on H's latest financial position. This is particular important given that it was H himself who chose to terminate his 15-year employment with the international school "XX". 134. In the letter of acknowledgment of resignation from the school "XX" dated 15 January 2024, it was said the HR department would get in touch with H on his tax settlement/MPF and final payment in due course. 135. It was further said that H would be released from the service of the school on 1 September 2024 which have had taken place 6 months ago by now. Also H must have received whatever final payments he entitled to receive from the school in respect of which this Court, W and her legal teams, know nothing whatsoever even at the time of this ancillary relief judgment. 136. I must remind practitioners, as officers of the Court, their duty to assist the Court as and when circumstances arise. I take this opportunity to also express my disappointment on H's lawyers for not disclosing, if not withholding, such material information knowing well their relevance and importance to this Court's decision on ancillary reliefs. 137. H's resignation letter only came to light as attachment to his lawyers' letter dated 23 May 2024 in reply to W's lawyers' letter the day before. Why this Court was not informed of such sudden and material change of H's employment and his reasons for ending the 15-year employment? The reason for resignation was said due to H's personal reasons without further details. However, it could well be that a better job offer with better income and career prospect was awaiting H; or it could be a sheer attempt to "downplay" his ability to maintain the children; or even an attempt to avoid paying any maintenance to the children that could have been ordered in this judgment; or for any other reasons. 138. Although it is trite law that the time for assessment of evidence, finances or otherwise, should be as at the date of trial, I do believe H's sudden and self-engineered (my emphasis) unemployment and thus leading to "0" employment income falls under paragraph 1(a) of the section 7 factors of: "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 (my emphasis)." My views on other remaining disputed issues 139. For Issue (10) of the disputed issues, the level of maintenance should be sufficient to cover the education expenses up until completion of

their full time tertiary education (1st degree) or equivalent professional or vocational training and their costs of living (generously interpreted). 140. For Issue (11) of the disputed issues, it is the legal position for maintenance for children to end at the age of 18 or ceases full time education, whichever is the later. There is no exception in the present case.

Deciding the Outcome 141. Given full and careful consideration to the law, existing facts and my finding of facts, including those disputed issues, I decided that a “clean break” would be best to achieve overall fairness had there been sufficient assets for such determination.

Ancillary reliefs taking the form of continuous monthly maintenance order would not, in my view, be suitable in this case as both parties have earning capacities and are in their early fifties. The belated information of H’s sudden and self-engineered resignation, poses a substantial risk that any monthly maintenance order may not be complied with.

Furthermore, I noted that H had also failed to comply with his undertakings under the 2017 Consent Order in the past. 142. Given careful consideration, I decided that a lump sum maintenance order be awarded for W’s ancillary reliefs. To this end, I noticed that parties did once even propose lump sum payment in their Open Proposals. H further proposed monthly maintenance for W to follow afterwards until June 2028. 143. To achieve fairness and finality, I decided that the lump sum to be calculated at 35% of the parties joint income (i.e. HK\$85,500 + HK\$28,000) $\times$ 35% = HK\$39,725 and multiplied by the number of years between date of marriage in 2001 and date of Decree Nisi in 2018 (that is 17 years). Subject to the Director of Legal Aid’s First Charge (if any), the lump sum would be HK\$675,325 and be paid within 30 days of the Decree Absolute as follows :- HK\$39,725 $\times$ 17 years = HK\$675,325. 144. There will be no periodical maintenance order for W. 145. For children’s educational and related expenses, I decided that H shall pay to W of 2/3 of such expenses for each child within 7 days upon production of the relevant note for payment/invoices; or reimburse W within 7 days upon production of receipts by W. 146. For children’s medical and related professional expenses, I decided that H shall reimburse W with 2/3 of such expenses for each child by way of reimbursement upon production of medical receipts by W. 147. For children’s maintenance including food, accommodation, transportation and related living costs (“periodical maintenance”), I decided that H shall pay to W a monthly sum of HK\$15,000 as periodical maintenance for each child until they or any one of them finishes full time education (1st Degree) or professional or vocation training. 148. The periodical maintenance for the children to take effect from the date of this Judgment. 149. The interim maintenance order for the children dated 14 September 2023 ceases upon the periodical maintenance order coming into effect. 150. All payments to W to be paid into W’s account to be provided to H within 14 days of this Judgment. 151. For the company [NJ], parties to arrange winding up of the same within 30 days from the date of Decree Absolute. The bank account of [NJ] be closed forthwith and any balance(s) therein be applied towards costs of the winding up process. Any deficit on costs of winding up be borne by H solely. 152. For the parties’ joint HSBC Premier Account, parties to arrange closing the same within 30 days from the date of Decree Absolute. Any balance(s) therein be equally shared by H and W. 153. For the parties’ joint HSBC Investment Account, parties to arrange closing the same within 30 days from the date of Decree Absolute. All the shares therein be sold on the date of

closure and the net proceeds of sale be equally shared by H and W. 154. Parties be at liberty to retain his/her personal belongings under their sole name and possession. 155. There be liberty to apply for directions on implementation of this Judgment. 156. Upon compliance of paragraphs 143, 151 to 153 above, all claims for ancillary reliefs between H and W be forthwith dismissed. 157. I also grant Section 18 declaration. Costs 158. On the issue of costs, I am minded to say neither party could be said to be the “winner” of the ancillary reliefs. 159. However, I noted that W was unsuccessful in her case against H on the issue of non-disclosure and hence her case of adverse inference also failed. On the other hand, I noted that H’s Open Proposals were no better than my decision in this Judgment. 160. On balance and overall consideration, I decided that it would be fair and reasonable to order H to bear 75% of W’s costs of this ancillary relief trial, including all costs reserved, to be taxed if not agreed. 161. W’s own costs to be taxed in accordance with Legal Aid Regulations. 162. I also grant Certificate for Counsel. 163. This is a costs order nisi which would become absolute if no application is made to vary the same within 14 days from the date of this Judgment. 164. Last but not least, I wish to express my gratitude to Counsel and the parties’ legal teams for their valuable assistance to this Court. (George Own) District Judge Miss Christine Yu instructed by Messrs. Liu, Chan & Lam, Solicitors for the Petitioner on instructions of the Director of Legal Aid Mr Josh Baker instructed by Messrs. Raymond Siu & Lawyers, Solicitors for the Respondent

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