

HONG KONG / JUDGMENT

HYF v. CSL

[2024] HKFC 162

COURT

Family Court

DECIDED

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[2024] HKFC 162 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION MATRIMONIAL CAUSES NO. 14931 OF 2014

BETWEEN HYF Petitioner and CSL Respondent

Coram: His Honour Judge S Lo in Chambers (Not Open to Public) Dates of trial: 17 20 October
2023 Date of Respondent s closing submissions: 17 November 2023 Date of Petitioner s closing
submissions: 8 December 2023 Date of Respondent s reply submissions: 22 December 2023 Date
of Judgment: 30 August 2024

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

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Introduction

The petitioner () commenced the petition for divorce with the respondent () on the basis of 2-year separation on 10 November 2014. Decree nisi was granted on 7 May 2015. This is the trial of H's application for ancillary relief. Although W seeks ancillary relief in the petition, she confirms that she has no claim for ancillary relief against H. Brief Background W and H are presently 74 and 78 respectively. They have a son, X>r, 5_"Y#k, 5_"YsO, t marriage. It is not clear from the evidence when she got divorced with her first husband. It is pleaded in the petition by W that the parties had lived apart since about 2004. H stated in the Form 4 that the correct separation date was 2007 but subsequently confirmed via his counsel at the PTR that the parties separated in 2004. The marriage therefore lasted for about 17 years. From 1995 to 2004, W acquired the following 6 landed properties in Shanghai and registered under her sole name and/or co-owner 2018 and still holds Ming Yuan 205 and Palace Court currently: Ming Yue Road in April 2010 at RMB 12 million; Shuicheng Nan Road in September 2013 at RMB 3.3 million; and Vizcaya Villa in September 2017 at RMB 29 million; Ming Yuan 504 in August 2018 at RMB 40.38 million. On 26 December 2014, after being served with the petition, H broke into the former matrimonial home at +Pfe ^4X +Pfe ^4X +Pfe ^4X e that this was conducted undervalue and the true value (as determined by the single joint expert appointed under these proceedings) as at 11 April 2015 was RMB 8.92 million. In June and July 2015, H commenced multiple proceedings in the Shanghai courts (Shanghai Proceedings) claiming a 50% beneficial interest in the following 4 properties then owned by W and/or Christine, namely: Palace Court, Ming Yuan 205, Ming Yuan 504, and Vizcaya Villa. Each of H's claims was dismissed by the Mainland Court(s) and/or withdrawn by him eventually. It is not in dispute that H was an exceedingly wealthy individual during the parties marriage, holding about HK\$200 million in assets in 1987. In a media interview in June 2021, he recounted how he first came to Hong Kong with HK\$10 in his pocket and from that built a property empire worth HK\$1 billion. However, he now claims to have effectively failed in all his business ventures and investments since the parties separation. According to Part C of the Assets and Liabilities Schedules jointly prepared by the parties solicitors (Assets and Liabilities Schedules), H's assets only amount to HK\$36,375 but W contends that H is guilty of serious non-disclosure and that the value of H's assets is over HK\$167 million in total, including at least the following: W@S4 0WJX ?b"u ies Schedules, W claims that her present assets amount to HK\$106,375,075. H contends that as W fails to account for the sales proceeds of Vizcaya Villa, Ming Yuan 504, Shuicheng Nan Road and Ming Yue Road, at least HK\$91 million shall be added back to W's ledger of the family pot. Issues in dispute The main disputes in these proceedings are:- Identification of the assets and the size of the matrimonial pot: Whether the assets disposed of by H [ie (1) +Pfe ^4X W@S4 0WJX ?b"u +Pfe ^4X(and (4) Ming Yue Road] should be added back under W's ledger of the family pot. Whether the parties have dissipated any assets, and if so, what those assets and values are and should the value of assets be reattributed or added back into the family pot for distribution between the parties. Whether the funds used by W in purchasing the Shanghai Properties came from funds provided by H during the parties marriage, or rather

came from W's own independent resources, as she alleges. Whether H has lost and/or failed in all his businesses and investments as he contends and, even if so, whether W should bear any part of his alleged losses. Whether it is a needs basis case or a sharing case. Whether there should be a departure of sharing of the parties' assets due to any conduct on the part of H:

- i. alleged disposition and/or dissipation of valuable assets; ii. alleged material non-disclosure in these proceedings; iii. commencement and continuation of the Shanghai Proceedings.
- What are the legal implications of the Mainland Courts' judgments in the Shanghai proceedings on these ancillary relief proceedings. Whether there has been undue delay on the part of H in pursuing his claim for ancillary relief and, if so, what the implications are.
- D. H's case**
- D.1 H's evidence and his financial position**
- It is H's evidence that he received education and graduated from university in Shanghai. Later, he joined his brother-in-law's tailor shop as a salesperson. In 1978, he used his accumulated wealth to establish his own business selling electric appliances. As H recognized the potential in the property market, he founded a property agency company which gradually expanded to over 10 sub-stores. Within a short span of time, this enterprise led to H to accumulate a significant fortune. From 1982 onwards, H ventured into business in Mainland China and began in property investments there. In 1983, H was introduced to W through a mutual friend said that he shouldered all financial responsibilities and ensued that W and the children enjoyed a high and occasionally extravagant standard of living. H gave W a sum of HK\$300,000 to HK\$400,000 a month for taking care of the family. W had never held any employment outside the marriage. Starting in 1994, H encountered significant difficulties in his business in Shanghai. Eventually, he was compelled to close all his business. H contends that W benefited from his financial support to acquire the Shanghai Nwm?eTS +Pfe ^4X retired in 2011, he now relies mainly on a meagre monthly Old Age Allowance of HK\$3,915 from the Hong Kong Government. H's son of the first marriage, Johnson, has offered to care for H by inviting H to reside with him in his rented property on Lamma Island.
- D.2 H's Open Proposal**
- H claims to have the assets, value of which is HK\$36,375 only. His Open Proposal is to seek payment from W of a lump sum of HK\$98,932,925 in his opening and he changes to a lump sum of HK\$89,385,926 in his closing, being equal division of the total matrimonial pot.
- E. W's case**
- E.1 W's evidence and her financial position**
- It is W's evidence that the parties became partners in the real estate and property services industry after meeting each other in 1983. W provided the start-up capital for one shop, and also contributed with her own work. From 1987 up to 1994, as the business prospered and the family wealth grew, the parties jointly acquired various properties in Hong Kong (including their successive former matrimonial homes in Hong Kong) through corporate vehicles and sold them at substantial profits. However, save for one payment of HK\$2 million paid by a company called Johning Limited after the sale of their former matrimonial home in Black's Link in 1994 (1994 Payment), H never shared any of the profits from these investments with W. After the parties sold their Black's Link property in Hong Kong, H moved to Shanghai with his children from his first marriage. W continued to reside in a rented accommodation in Hong Kong with the two children from the parties' marriage. H paid for rent but not any other

expenses, such as utilities or the children's education, which W shouldered using her own funds. W said that she cultivated her own wealth by purchasing various properties in Hong Kong and subsequently in Shanghai using her own funds. These were hard earned by W independently through her sole efforts at a time when H was indulging his extramarital affairs and not having a normal marital life with W. H never made any financial or other contributions to those investments, and did not even know about them. In 2000, W moved to Shanghai with her two children. The parties ceased all marital life together by 2004 and W would only see H once every 2 or 3 months. In or around 2005, W changed the locks to the residence altogether. After separation, W raised her children singlehandedly and paid for their living expenses out of her own pocket, without any financial support from H. As mentioned earlier, H commenced the Shanghai Proceedings claiming a 50% beneficial interest in the 4 PRC properties against W in 2015. In August 2015, the Xuhui People's Court and the Pudong People's Court delivered decisions in respect of Palace Court and Vizcaya Villa respectively dismissing H's claims, holding that the issue was governed by Hong Kong law and was properly the subject of ancillary relief proceedings in Hong Kong. H filed Notices of Appeal in respect of both decisions. Before these appeals were determined, the Shanghai No. 1 Intermediate People's Court handed down its decisions in respect of Ming Yuan 205 and Ming Yuan 504 in favour of W (Ming Yuan Decisions) in December 2016. The Ming Yuan Decisions are summarised as follows: H argued that while Ming Yuan 205 and Ming Yuan 504 were registered in W's name, H was entitled to a trust interest as they were derived from the fruits of his investments. W had no independent income and all family expenses were met by H. H submitted evidence that he paid HK\$2 million to W for family expenses (ie the 1994 Payment), which was rejected by the Shanghai Court. The Shanghai Court rejected H's evidence that he had contributed financially to the properties in question, and held that the monies used to pay the purchase prices of the properties were unrelated to H but rather belonged to W. Accordingly, W did not hold any part of these properties on trust for H. Following the Ming Yuan Decisions, H applied for and was granted leave to withdraw his claims in respect of Palace Court and Vizcaya Villa in January 2017. In 2022, H filed new claims in respect of Palace Court and Vizcaya Villa once again asserting proprietary claims to the same. In February 2023, H withdrew the claim in respect of Vizcaya Villa. In July 2023, the Xuhui People's Court handed down its decision dismissing H's claims regarding Palace Court and made findings that: The purchase price, loan repayments and tax payments were all made by W; The parties were bound by the findings by the Shanghai Court in the Ming Yuan Decisions; and Palace Court was solely owned by W. W contends that H is precluded from raising a substantial portion of his factual case by the doctrines of issue estoppel and/or abuse of process, on the basis that all his allegations raised in these proceedings had been decided against him in the Shanghai Proceedings. W also argues that H is guilty of serious non-disclosure and invites this court to draw the adverse inference that H has considerably more wealth than W. H's assets would already total HK\$167,674,144, vastly exceeding W's assets of HK\$106,375,075. Even if H has failed in his business ventures and investments, it was reckless for H to have squandered wealth in excess of HK\$1 billion. Moreover, such losses occurred after the parties' separation in 2004. It would be wholly unjust to require W

to share in those losses, with which she had no involvement whatsoever and for which she should not be held responsible. Further, there should also be added back into the matrimonial pot H's expenses on his extramarital affairs next to his delay. H only revived his ancillary relief claims in 2023, some 19 years after the parties' separation and some 9 years after W first petitioned for divorce. W currently owns two properties in Shanghai, namely Ming Yuan 205 and Palace Court. They have been assessed by the single joint expert as having a combined value of RMB 101,223,200 as at 15 July 2023. W also held bank accounts and cash of approximately HK\$3.15 million as at June 2022. E.2 W's Open Proposal As W contends that H owns (or alternatively, has squandered) assets substantially in excess of W's current assets and that H's claims are tainted by serious delay and other misconducts, her open proposal is for the dismissal of all H's claims for ancillary relief against her with costs. F. The relevant legal principles and approach The Court's jurisdiction in making an order for periodical payments, lump sum and sale of property is founded on sections 4, 6 and 6A of the Matrimonial Property and Procedure Ordinance (MPPO). The factors to be taken into account by the Court in the exercise of its powers under the above sections are set out in section 7 of the MPPO: "(a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;

- (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
- (c) the standard of living enjoyed by the family before the breakdown of the marriage;
- (d) the age of each party to the marriage and the duration of the marriage;
- (e) any physical or mental disability of either of the parties to the marriage;
- (f) the contributions 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;
- (g) in the case of proceedings for divorce or nullity of marriage, the value of 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. In *LKW v DD*, the Court of Final Appeal () has given a detailed discussion on how a Hong Kong court should approach the issue of ancillary relief. A brief summary is as follows: Financial provision applications are highly fact-sensitive and judges dealing with them must ultimately be guided by section 7 of the MPPO and the implicit aim of arriving at a fair financial outcome as between the parties; On how section 7 of the MPPO should be approached, the CFA identified four principles underpinning the *White v White* line of cases:
 - (a) The first principle - objective of fairness. The implicit objective of a section 7 exercise is to arrive at a fair distribution of the assets as between the parties;

- (b) The second principle - Rejection of discrimination. The concept of fairness requires the refutation of any gender or role discrimination;
- (c) The third principle - yardstick of equal division: 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;
- (d) The fourth principle - rejection of minute retrospective investigation: The court should not countenance any attempt to engage in costly and often futile retrospective investigations of the failed marriage which tends to deplete the parties' (and the court's) resources and to increase antagonism and discourage settlement; The actual steps to be taken by a court in undertaking the section 7 exercise are as follows:
 - (a) Step 1: identifying Assets: The ascertainment of the financial resources of each of the parties calculated as at the date of the hearing. "The object will of course compute the net financial resources, taking into account of all material liabilities. At this stage, the court need not attempt to distinguish between matrimonial and non-matrimonial property, that being an exercise best undertaken (if necessary) when considering distribution of the assets ."
 - (b) Step 2: Assessing the parties' financial needs: The parties needs should be generously interpreted . If the total resources are not enough to meet the parties' needs, the section 7 exercise should stop here and there is no room to apply any sharing principle;
 - (c) Step 3: deciding to apply the sharing principle: If surplus assets would remain after the parties' needs have been catered for, the next step should normally be for the court to apply the sharing principle to the parties' total assets, with a yardstick of equal division as part of that principle. This means that the total assets should be divided equally between the parties unless there is good reason for departing from an equal division;
 - (d) Step 4: Considering whether there are good reasons for departing from equal division: In considering whether good reasons exist for departing from equal division, the answer is to be found in the terms of section 7 and the implicit objective of a fair distribution of the assets. Factors like source of the assets, conduct, financial needs, duration of the marriage, contribution to the family and compensation are all material considerations; and
 - (e) Step 5: Deciding the Outcome: The question as to whether factors exist justifying a departure from equality is fact-sensitive and the weight to be given to such factors remains a discretion for the court. But where the court decides upon a departure, articulation of reasons for doing so is necessary as a check to ensure fairness of the outcome. Regarding the approach of the Court in the face of material non-disclosure of assets by a spouse, Ms Cheng and Mr Fung for W relied on the judgment of Mostyn J in NG v SG (Appeal: Non-Disclosure) , and submitted that: The parties are under an absolute bounden duty to give full, frank and clear disclosure of their future financial resources. Non-disclosure strikes at the integrity of the adjudicative process. Where the Court is satisfied that the disclosure

given by one party has been materially deficient, the Court is duty bound to consider whether funds have been hidden by drawing adverse inferences. Such inferences must be properly drawn and reasonable. On the other hand, the Court must be astute to ensure that a non-discloser should not be able to procure a result from his non-disclosure better than that which would be ordered if the truth were told. If the court concludes that funds have been hidden, then it should attempt a realistic and reasonable quantification of those funds, even in the broadest terms. In making its judgment as to quantification, the court will first look to direct evidence, such as documentation and observations made by the other party. The court will then look to the scale of business activities and at lifestyle. These principles were considered and refined by Moylan LJ in *Moher v Moher*, who explained in 86-91 of the judgment that the Court is not required in every case to make a specific determination as to the amount of non-disclosed asset: There will be cases where this exercise will not be possible because the manner in which a party has failed to comply with their disclosure obligations means that the court is unable to quantify the extent of his undisclosed resources, to repeat what Wilson LJ said in *Behzadi v Behzadi* [2009] 2 FLR 649. How does this fit within the application of the principles of need and sharing? The answer, in my view, is that, when faced with uncertainty consequent on one party's non-disclosure and when considering what Baroness Hale and Lord Sumption JJSC called the inherent probabilities the court is entitled, in appropriate cases, to infer that the resources are sufficient or are such that the proposed award does represent a fair outcome. This is, effectively, what Munby J did in both *Al-Khatib v Masry* [2002] 1 FLR 1053 and *Ben Hashem v Al Shayif* [2009] 1 FLR 115 and, in my view, it is a legitimate approach. In that respect I would not endorse what Mostyn J said in *NG v SG* [2012] 1 FLR 1211, para 16(vii). This approach is both necessary and justified to limit the scope for, what Butler-Sloss LJ accepted could otherwise be, a cheat's charter. As Thorpe J said in *F v F* [1994] 1 FLR 359, although not the court's intention, better an order which may be unfair to the non-disclosing party than an order which is unfair to the other party. This does not mean, as Mostyn J said in *NG v SG*, at para 7, that the court should jump to conclusions as to the extent of the undisclosed wealth simply because of some non-disclosure. It reflects, as he said at para 16(viii), that the court must be astute to ensure that the non-discloser does not obtain a better outcome than that which would have been ordered if they had complied with their disclosure obligations. (emphasis added) As to the impacts of the financial misconducts on the appropriate division of assets, Ms Cheng and Mr Fung for W cited the judgment of Cairns LJ in *Martin v Martin* A spouse cannot be allowed to fritter away the assets by extravagant living or reckless speculation and then to claim as great a share of what was left as he would have been entitled to if he had behaved reasonably. Such misconduct may be reflected in the ultimate order in by adding back such wasted funds to the matrimonial pot or by departing from equal division: *ARAV v VP*. Concerning the issue of delay, Ms Cheng and Mr Fung for W quoted the judgment of Kan Lai Kwan v Poon Lok To Otto and submitted that it may exist for departing from equality where (i) there has been substantial period of separation prior to the hearing and (ii) during that period there has been a steep increase in the value of the matrimonial assets attributable to the independent business or professional efforts of one spouse, unmatched by any

contribution from the other spouse . Based on the judgment of Nicholas Mostyn QC (as he then was) in *Rossi v Rossi* , Ms Cheng and Mr Fung for W further submitted that: There are certain detrimental effects of delay. It engenders bitterness and hostility between the parties and inevitably increases costs by leading to a multiplicity of affidavits and exchange of correspondence over a protracted period. Moreover, the longer the time that passes the more likely it is that documents will disappear and memories cloud with the result that there is a greatly enhanced risk of the court rendering imperfect justice. Further, with the change in property values and with inflation as it is in our present economic situation, as well as with the changes in the parties own situation and the commitments they take upon themselves, the whole case can be materially altered, and the ability of the parties to cope with any orders that the court might otherwise properly have made upon the merits of a case may be put in jeopardy. Indeed, delay can put the court in the simple position of not being able to do justice between the parties according to the merits of each case. Whatever the length of the marriage, a claim may fail if it is left dormant for too long. It has been said that after a long lapse of time a party to a marriage should be entitled to take the view that there would be no revival or initiation of financial claims against him; the longer the lapse of time the more secure he should feel in the rearrangement of his financial affairs and the less should any claim be encouraged or entertained. Where a marriage is irretrievably broken down, the parties are to be encouraged to deal with all outstanding issues as expeditiously and succinctly as possible. Generally speaking, that it would be very difficult for a party to be allowed successfully to prosecute an ancillary relief claim initiated more than 6 years after the date of the petition for divorce, unless there was a very good reason for the delay. As Mr Chow and Ms Leung for H did not challenge the authorities cited by Ms Cheng and Mr Fung, I accept that these authorities are applicable in the present case. On the other hand, Mr Chow and Ms Leung correctly remind this court in H s reply *Chan Pak Hung v Keung Lai Nor Winnie* [2022] HKCFI 1264, 45-46, a case cited by Ms Cheng and Mr Fung:

45. Memory may be fallible. If the relevant events have happened a long time ago the Court will place more weight on contemporaneous documents . 46. the parties have made endeavours to obtain bank records evidencing each party s financial contribution to the acquisition of the properties but due to the long lapse of time, bank documents are not fully available. Such evidential gap, together with her stating position of being unemployed at the tie of acquisition of the Penony Heigh Properties, do pose difficulties to Madam Keung who carries the burden of proof Needless to say, I would also follow the guidelines laid down in LKW s case and discuss the relevant matters as mentioned in section 7 of the MPPO below. Identification of the assets and the size of the matrimonial pot The parties have great and serious disputes over their assets. Before starting the exercise of Step 1, it is necessary for me to reiterate 72 of LKW s case: *White v White*, reflecting the fourth principle discussed above, Lord Nicholls cautioned against turning the clock back to the pre-1970 position when the courts often had to attempt to unravel years of matrimonial finances and reach firm conclusions on who owned precisely what and in what shares No such attempt is called for and generally, a broad brush approach will be all that is required. (emphasis added) G.1 H s

assets G.1.a +Pfe ^4X y the debts and he received nothing. He produced some documents concerning the loans due to his friends and the agreement for sale and purchase signed by him in respect of this property as evidence. In my view, as W commenced the petition for divorce in 2014, H affirmed his first Form E in March 2015. H should have been advised by his lawyers about his duty to make full and frank disclosure of his finance and to keep all relevant financial documents, such as the records for repayment of loans. The sum of RMB 8.6 million is a very huge amount. The documents produced by H simply cannot prove his allegation that he received nothing after the sale. There must be some more documents, such as bank statements showing that the sale proceeds were all used to repay the debts. He failed to produce these documents without good reason. Ms Cheng and Mr Fung for W rightly cited *Re Mumtaz Properties*, in which Arden LJ explained in 14: In my judgment, contemporaneous written documentation is of the very greatest importance in assessing credibility. Moreover, it can be significant not only where it is present and the oral evidence can then be checked against it. It can also be significant if written documentation is absent. For instance, if the judge is satisfied that certain contemporaneous documentation is likely to have existed were the oral evidence correct, and that the party adducing oral evidence is responsible for its non-production, then the documentation may be conspicuous by its absence and the judge may be able to draw inferences from its absence. (emphasis added) No doubt, H has been in breach of the duty to make full and frank disclosure of the relevant documents relating to the whereabouts of this RMB 8.6 million. Due to his breach, this court is entitled to draw adverse inference against him. For the issue of undervalue raised by W, I consider that even if there is a valuation report giving expert opinion that the market value of the subject property is RMB 8,920,000 at the material time, it is not enough to prove that the property was deliberately sold undervalue by H. Indeed, the difference is just RMB 320,000, ie about 3.5% of the alleged market value, which is not significant. Besides, I cannot see any good reason or advantage for H to sell the property undervalue as his evidence is that he received nothing after the sale. I thus disagree with the contention of W in this regard. In order to ensure that the non-discloser does not obtain a better outcome than that which would have been ordered if t W@S4 0WJX t a company called Shanghai Colom originally owned by H. In the hope that Johnson could help H continue his fight against the Shanghai Government regarding a piece of land, Huangpu Lot 49 in Shanghai, H transferred his shares in this company as well as a on (RMB 30 million Compensation). H did not explain as to why it should not be Johnson, who is the owner, to sign the settlement agreement on behalf of Shanghai Colom. H s evidence is that all the RMB 30 million Compensation was utilized for the purpose of repaying debts and supporting the day-to-day operat Am4l om the RMB 30 million Compensation to H s mistress, Ms Yao, as part of a child support agreement. However, H never disclosed in his 2 Form Es made in 2015 and 2022 that he had a child with Ms Yao and had to pay the child s expenses, say in Part 4 thereof. In my view, H deliberately tried not to disclose the existence of the child. Further, it is not entirely clear as to the exact amount paid to Ms Yao out of the RMB 30 million Compensation. I also consider that Mr Fong s evidence contradicts his own and H s evidence that all (rather than part of) the RMB 30 million Compensation was utilized for the purpose of repaying debts

and supporting the day-to-day operations of Shanghai Colom. Johnson also agreed during cross examination by W's counsel that he had received RMB 3,970,000 from the RMB 30 million Compensation. He explained that he has to take care of H who is in old age and has to repay debts of H's friends. He also said that some money from the RMB 30 million Compensation was transferred to the attorney, and it is obvious that H has remained its ultimate controller over its affairs and assets. For instance, Johnson testified at the trial that he was not fully aware of the transfer at the time. The settlement agreement with the Shanghai Government for compensation of RMB 30 million was signed by H on behalf of Shanghai Colom but not Johnson in January 2017. Johnson remained ignorant of Grand Access and Shanghai Colom's affairs, such as his transfer of Grand Access to Fumisato Migawa in December 2021 and also Grand Access's shareholding in Shanghai Colom. Further, both Johnson and Mr Fong confirmed in their evidence that it was H who directed how the RMB 30 million Compensation should be used. Besides, Shanghai Colom's ledgers show that H essentially used the RMB 30 million Compensation as his private bank account, to fund expenses such as his own apartment rent and renovation, train tickets, plane tickets, legal fees in the Shanghai Proceedings, and payments to his mistress and his mistress's mother and child etc. Contrary to H's and Johnson's assertions that Shanghai Colom had essentially ceased all business by 2010, Shanghai Colom's ledgers show that it in fact remained operational until at least 2019, having continued to incur expenses for staff salaries, staff meals and subsidies, and ordinary office amenities such as printing, telephone calls, internet, vehicle upkeep, and delivery etc. Ms Cheng and Mr Fung for W rightly pointed out that the ledgers expose the falsity in H's assertion that the Theme Park's bank account was used for loan repayments. During cross-examination, H accepted that the payments totalling RMB 900,000 made to him in March and May 2017 were not in fact made as loan repayments but for his living expenses. Johnson admitted that the payments of RMB 12.91 million paid to himself and his wife, together with other individuals named in the table had in fact lent money to Shanghai Colom. In the circumstances, I cannot accept H's evidence that the RMB 30 million Compensation were all spent on loan repayments. I do accept that part of the compensation was used for his living and business purpose. Nonetheless, H provided no good reason as to why he had to pay a very huge sum of RMB 12.91 million to Johnson and his wife in about 1 year time. As H fails to make full and frank disclosure, I have to ensure that the non-discloser does not obtain a better outcome than that which would have been ordered if they had complied with their disclosure obligations. Thus, I assess that Johnson and his wife are still holding at least RMB 10 million on behalf of H. This sum (equivalent to HK\$10,800,000 at the exchange of 1.08) will be added back under H's ledger of the family pot. Generally, H did extend his support to his brother and that individual by providing them with some financial assistance. Subsequently, the business was not performing well, leading to its eventual sale. As a result, in 2010, H received a refund of about RMB 10 million from the hotel. H then reinvested these funds into another project and repaid debts. W contends that H was undeniably the true owner of Dong Fang Ju Hotel, not merely a lender to the project as he claimed on the following reasons: H has not adduced any documents in support of his assertions (such as loan documents or loan repayment records). H held out Dong Fang Ju Hotel as part of the

Shanghai Colom Group on his business cards. The directors of Dong Fang Ju Hotel were respectively, H's elder brother, 5_c[o anghai Colom did so other than that it was the owner of the property. By a declaration dated 12 January 2005, the directors of Dong Fang Ju Hotel affirmed that 100% of the share capital of the company was injected by H, and that because H was a Hong Kong resident, the enterprise instructed them as executive directors to manage on its behalf (original wordings of the declaration in Chinese: 1u5_ EegQ 5_c[o 5_c[o 5_c[o ng Fang Ju Hotel. At most, it only shows that he has some relationship with the hotel. The fact that Shanghai Colom commissioned a valuation report of Dong Fang Ju Hotel is neither here nor there. The valuation report itself has not mentioned that Shanghai Colom or H is the owner of Dong Fang Ju Hotel. In general, if someone claims not to be the owner of a property, I consider that it is extremely difficult for him or her to prove the non-ownership on documentary basis. On the other hand, if someone alleges that another is the owner of a property, he or she no doubt bears the burden of proof. In the present case, W must have done some ownership search in China and still fails to find any official record showing that H was a shareholder or owner of Dong Fang Ju Hotel. Therefore, I conclude that as the Wife fails to discharge such burden of proof, H does not have any interest in Dong Fang Ju Hotel. Besides, bearing in mind that W only commence the Petition in late 2014 and unlike the sale of +Pfe ^4X erate funds for H's company's operations. On the other hand, W contended that these properties were purchased and resold in 2006. H has once again not disclosed any documents regarding those properties. According to the single joint expert, the average sale price of the property in operations of H's other companies. Similarly, I understand the difficulty on the part of H to produce the documents regarding as to how he spent this RMB 9 million in 2006 due to long lapse of time. Thus, on the balance of probabilities, I accept their evidence in this regard. G.1.e |vU\ gP |vU\ gP e ceased operation, and therefore, H cannot provide any annual returns. I reject H's evidence in this regard. H simply chose not to adduce any official documents as to when these 2 companies have actually ceased operation. Even if that may be the case, he still has to produce their last audited reports or give reasonable explanation as to why they cannot be produced. He even chose not to prepare unaudited management accounts of these 2 Hong Kong companies for the purpose of these proceedings. On the other hand, if W genuinely believes that these 2 companies hold valuable assets though no income or profit, I do not know why W did not seek specific discovery as to the last audited reports of these 2 companies or an order for their valuation reports. W did obtain court orders for valuation reports of many other assets of H, such as the properties in |vU\ fact that they are of no income and no longer active entities engaging in any revenue-generating activities. It is not in dispute that Best Field owns certain part of 188 Wanchai Road, value of which is only HK\$1,000 according to the valuation report. This asset is stated in its unaudited management accounts. The unaudited management accounts signed by H are simply self-serving documents, bearing very little weight. H has to produce their last audited reports or give reasonable explanation as to why they cannot be produced. It is not sufficient for H to simply make a bare assertion without solid documentary evidence. Similarly, if W genuinely believes that these 2 companies hold valuable assets, I am of the view that she has to seek either specific discovery as to the last

audited reports of these 2 companies or an order for the valuation reports of these 2 companies. Even if this court is entitled to draw adverse inference against H, it is extremely difficulty for the court to assess the true value of these 2 companies without the assistance from a professional valuer. In the circumstances, I decide to draw adverse inference against H but can only robustly assess their values to be HK\$50,000 in total. Again, this is not a significant sum, which is not proportional to the costs incurred by the parties in these proceedings. G.1.g Nwm'Y Nwm'Y Nwm'Y ?bK\ rcumstances, I find that H s evidence in this regard is not credible and the Theme Park was operating at least up to May 2017. Therefore, I have to reject H s evidence of closure of the Theme Park in around 2012. W commenced the petition for divorce in 2014. H should have been advised by his lawyers about his duty to make full and frank disclosure of his finance. In his first Form E affirmed in March 2015, H fails to disclose any financial documents of the Theme Park, in particular its estimated value and the income, at least up to its alleged closure which must be after 2017. Similarly, W did not seek an order for the valuation report of the Theme Park. Even if this court is entitled to draw adverse inference against H, it is extremely difficulty for the court to assess its true value without the assistance from a professional valuer. However, I have to ensure that the non-discloser does not obtain a better outcome than that which would have been ordered if they had complied with their disclosure obligations . Since it is not challenged by W that H used the refund of RMB 10 million from Dong Fang Ju Hotel to invest on the Theme Park in 2010, I am of the view that this court entitled to robustly assess the value of the Theme Park to be RMB 10 million. This sum (equivalent to HK\$10,800,000 at the exchange of 1.08) will be added back under H s ledger of the family pot. G.1.h ?b"u y ownership or interest in this apartment. The funds he contributed were solely intended to assist his mistress in acquiring the property. H did not deny that he paid maintenance towards Ms Yao including the support of their illegitimate child from 2000 to 2019 amounting to some RMB 15,000 per month (equivalent to some RMB 3,420,000). In my view, it is highly probable that Ms Yao would use part of this RMB 15,000 to pay the monthly mortgage instalments. It is trite that misconduct where it is obvious and gross, or, if it is such that it would in the opinion of the Court be inequitable to disregard it, may be a factor justifying a departure from equal division: see LKW s case, 105. In the present case, I consider that H s providing financial support and paying the maintenance towards Ms Yao alone amounting to such gross and obvious misconduct. For the avoidance of doubt, I shall make myself clear that H has legal duty to provide their illegitimate child with the reasonable maintenance, such as suitable accommodation, which is not gross and obvious misconduct. I also find that H s providing financial support and paying the maintenance towards Ms Yao is a gift and H does not have any interest in this apartment. However, the court is entitled to consider that it is a good reason to depart from the equality principle in Step 4 according to the guideline in LKW s case, which will be discussed in the latter part. G.1.i Valuables alleged to be taken away by H from +Pfe ^4X +Pfe ^4X +Pfe ^4X ins. W prepared a list of valuables which amount in excess of HK\$2.4 million . W also produced some photos showing a completely emptied-out the apartment . Based on the photos produced and the parties evidence, I accept that in December 2014, H did empty-out the apartment and take away many valuables. Since H had

been moved out since 2007 for about 7 years, most of the valuables should belong to W. It is understandable that W had great difficulty in adducing evidence concerning the values in the list. Nevertheless, the figure of HK\$2,435,800 is a pure estimation by W, rather than valuation by a professional valuer. More importantly, even though some of these items may belong to H as he was the owner of the property, none of these items was declared in H's first Form E affirmed in March 2015. I find that he is in breach of the duty to make full and frank disclosure and I have to draw adverse inference against him again. On a board-brush approach and based on the parties' living standard at the material time, I assess that the value is roughly HK\$1 million. This sum will be added back under H's ledger of the family pot.

G.1.j Total value of H's assets I find that total value of H's assets is HK\$21,224,375, breakdown of which is set out as follows: HK\$36,375 being the value of assets stated in H's Form E; HK\$9,288,000 being the sale proceeds of +Pfe ^4X |vU\ gP |vU\ +Pfe ^4X sold the property in April 2010, asserting that the proceeds were used to repay other loans and cover living expenses. H contends that W intentionally concealed the proceeds, and that the entire amount from the sale of RMB 12,000,000 (HK\$12,960,000) should be added back to W's ledger. W said that she did not immediately pay Jayden his half share because of cash flow issues at the time. Instead, after deducting taxes, mortgage repayments and agent's commissions, these funds were all used to (i) repay W's borrowing, (ii) pay for living expenses, and (iii) pay for Christine's tuition fees at the University of Southern California. No detail breakdown is given by her. Concerning W's allegation of repaying her borrowing and payment of living expenses, no documentation is disclosed by W to support the alleged expenses. The identities of the borrowers are not disclosed save as to some bank statements which cannot show the outstanding mortgage loan as at the date of sale in April 2010. She did produce some documents relating to Christine's tuition fees. However, the sale proceeds of RMB 12,000,000 is a very huge amount, which was received by her in 2010, just about 4 years before the petition. Based on *Re Mumtaz Properties* rightly cited by Ms Cheng and Mr Fung, W should be able to produce much more documents to prove her bare assertion. I am not bound to accept W's bare assertion without sufficient documentary proof. In the circumstances, I reject W's evidence in this regard. Having said that, I accept that W did use part of the sale proceeds to pay her and the 2 children's living expenses at that time. However, the actual sum is very difficult to be ascertained. In order to ensure that the non-discloser does not obtain a better outcome than that which would have been ordered if they had complied with their disclosure obligations, I robustly assess her and the 2 children's living expenses to RMB 2 million and find that W hid the balance of the sale proceeds in the sum of RMB 10,000,000 (HK\$10,800,000). Regarding H's allegation that without his knowledge, this property became jointly owned by W and Jayden, he never claims any trust against Jayden. If H really makes the claim of trust seriously, his lawyers must have advised him to join Jayden formally as a party for preliminary issue. Besides, it is not unreasonable for W to purchase this property in joint ownership with her child, Jayden, especially when it happened more than 10 years before she commenced the petition for divorce with H. Furthermore, there is no evidence or even suggestion by H that with a view to defeating his claim for ancillary relief, W made the decision of purchasing the property in joint ownership

with Jayden. Although it is not clear as the joint ownership under the PRC law, in fact no evidence, I consider that since Jayden was one of the joint owner, he should be entitled to half of the sales proceeds as a co-owner. In the circumstances, I find that W only hid half of the balance sale proceeds in the sum of HK\$5,400,000 (ie H owings in 2013, just about 3 years later. I am of the view that W was able to produce the relevant documents, such as mortgagee bank statements, official receipt from agent and lenders etc, to prove what she said. As discussed earlier, the court is entitled to know the details of transfer and is not bound to accept W's bare assertion without documentary proof. In the circumstances, I reject W's evidence in this regard and find that W hid the sale proceeds in the sum of RMB 3,300,000 which is equivalent to that W used the funds to pay the taxes incurred from the transaction, totalling RMB 1,104,776.60. Furthermore, W acknowledged legal expenses of approximately HK\$5,600,000, which had accumulated throughout the extensive legal proceedings involving H in both the PRC and Hong Kong. In the closing, Mr Chow and Ms Leung for H further submitted that the remaining proceeds by deducting the tax paid and legal fees plus a further sum of HK\$11,890,440, which comprises all the expenses (including but not limited to Jayden's well-being, personal expenses, and travel expenses) as declared by W in her latest Form E, for the entirety of six years since the property sale in 2017. Accordingly, Mr Chow and Ms Leung submitted that a sum of HK\$12,636,402 should represent the remaining proceeds. Nonetheless, Mr Chow and Ms Leung did not set out as to how the alleged sum of HK\$11,890,440 is calculated. I guess and consider that the calculation is HK\$165,145 X 6 X 12, being W and her children's living expenses for 6 years based on her monthly expenses for HK\$165,145 as stated in her 2nd Form E. On the other hand, Ms Cheng and Mr Fung for W submitted in the closing that taxes and agent's commissions amounted to RMB 1,995,254 (equivalent to HK\$2,154,874.32). I believe W's figure is more accurate and accept it based on the documents provided by her. I further accept W's legal expenses of HK\$5,600,000 for legal proceedings in both the PRC and Hong Kong. However, W still failed to set out as to how the balance, which is about HK\$23,565,125.68 (ie HK\$31,320,000 - HK\$11,890,440 - HK\$5,600,000 - HK\$2,154,874.32) was used to pay her and her children's living expenses for 6 years. I therefore accept the submission of Mr Chow and Ms Leung for H that W and her children's living expenses for 6 years is HK\$11,890,440. As a result, W has to account for the balance of HK\$11,674,685.68 (ie HK\$23,565,125.68 - HK\$11,890,440). W only produced some documents for taxes incurred, legal expenses etc, but in my view, she fails to produce sufficient documents and account for the said balance of HK\$11,674,685.68, which is a huge amount of money. Based on *Re Mumtaz Properties* rightly cited by Ms Cheng and Mr Fung, W should be able to produce much more documents to prove her bare assertion. I consider that due to her failure to do so, the court is entitled to draw adverse inference against her and this sum must be added back to her ledger. G.2.d 0). In the closing, Mr Chow and Ms Leung for H submitted that W acknowledged the taxes incurred during the sale, which amounted to RMB 1,800,000. On the other hand, Ms Cheng and Mr Fung for W submitted that taxes and agent's commissions amounted to RMB 2,239,158. I believe W's figure is more accurate and accept her submission. Nonetheless, W barely asserted that the remainder of the sale proceeds were

given to Jayden and Christine, each of them received RMB 20,000,000 (equivalent to around HK\$21,600,000). The children had not filed any affirmation to support what W said. When Mr Chow for H pressed W for details on how and when she had transferred these amounts during cross examination, W simply stated that she had given the funds directly to her children and that no document could be produced. In my view, W and the children have no difficulty to produce their bank statements in around 2018 to prove the transfer from W and her lawyers must have advised her to do so when preparing her 2nd Form E in June 2022. The court is entitled to know the details of transfer, and is not bound to accept W's bare assertion without documentary proof. In the circumstances, I reject W's evidence in this regard. As to the change of W's sole ownership to joint ownership with Christine which took place some 13 years ago, I repeat my similar view that H never alleges any trust against Christine and applies to join her formally as a party for preliminary issue purpose. Since Christine was one of the joint owner, she should be entitled to half of the sales proceeds as a co-owner. In the circumstances, I find that W only hid half of the balance in the sum of RMB 19,070,421 [ie (RMB 40,380,000 - RMB 2,239,158)/2] which is equivalent to HK\$20,596,054.68. This sum should be added back to W's ledger. G.2.e Total value of W's assets Total value of W's assets is HK\$153,705,796.36, breakdown of which is set out as follows: RMB 101,223,200 (HK\$109,321,056) being the combined value of Ming Yuan 205 and Palace Court; HK\$3.15 million of the parties' financial needs and earning capacities H.1 H's financial needs and earning capacity According to H's 1st Form E dated 16 March 2015, his financial needs were HK\$16,800 every month at that time. He claimed to be living in his business office without any domestic helpers and having taken no holidays for the last two years (iQ^t^OO(W?e lQ@b [gQ Nwm 14, and bought numerous flight tickets. Later he filed his 2nd Form E dated 16 June 2022, which shows that his financial needs further drop to HK\$4,132 every month, which is entirely unbelievable and is contradicting to the following facts: The sum of HK\$3,976 spent at Trio on 19 May 2022 was a meal he hosted for a lawyer friend from Shanghai, and the sum of HK\$930.50 spent at Levade on the same day was a gift he bought for his friend. The amount of HK\$1,153 spent at the Hong Kong Old Restaurant on 22 February 2023 was in respect of a meal he hosted for his friends. As a member of the Hong Kong Jockey Club, he has to pay a monthly subscription charge of HK\$2,550. He also kept lending his card to his friends for their use at Jockey Club facilities who would then reimburse him in cash for their spending, or his friends would invite him to dine with them at Jockey Club and reimburse H for those meals in order to help him retain his membership. According to the magazine interview in about 2021, he claimed to /nyr@S rrent legal representatives. H's Form H4 shows that as at 16 August 2023, he had incurred approximately HK\$800,000 in fees and expected to incur an additional HK\$2.8 million for a total of HK\$3.6 million. On top of this, H was ordered by this Court on 6 October 2023 to pay W's costs of HK\$116,000 forthwith in respect of his unsuccessful late evidence application. I have no doubt to find that H deliberately tries to portray himself as a destitute senior with no means. Indeed, I find that H is still able to maintain a quite high or moderate standard of living up to now. H is 77 years old and said that he has retired. I accept that due to his health condition, his earning capacity is not high. However, in his cross-examination, he claimed

that many of his friends would make deposits into his bank accounts with no fixed pattern and these deposits were said to be gifts in irregular amounts and at irregular frequencies from friends. I disbelieve his evidence in this regard and that all his business in the Mainland China have been closed. I take the view that he is still maintaining some business there, such as the Theme Park, and that these deposits are part of his income. To conclude, his income together with his assets as found by this court above shall be sufficient to maintain his living.

H.2 W's financial needs and earning capacity Turning to W's financial needs, according to her 1st Form E dated 23 June 2015, her needs including her support to the 2 children are RMB 66,334 (HK\$71,640) every month. According to W's 2nd Form E dated 9 June 2022 (about 7 years later), her financial needs including her support to Jayden increase to RMB141,150 (HK\$155,442) every month. W had said that Jayden has mental health issues and unable to work. Such allegation in fact contradicts to the petition dated 10 November 2014 that both of her children, Jayden and Christine were pleaded to be self-supported. Besides, I had found that they had or would have received the respective substantial sums of money from the sale proceeds of the properties co-owned by them respectively. In my view, they do not need the financial support from W anymore. W is 73 years old. She is now living at Palace Court free of mortgage. I accept that her earning capacity is very low. But she has not mentioned whether Ming Yuan 205 is rented out. I see no reason why it cannot. The value of Ming Yuan 205 is RMB 73,100,000. No valuation is agreed as to its market rental, which must be a very significant figure and shall form part of the income of W. In any event, the total resources of the family are more than sufficient to meet the parties' needs.

I. Deciding to apply the sharing principle 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. In the present case, I decide to apply the sharing principle and the total assets should be divided equally between the parties unless there is good reason for departing from an equal division.

J. Considering whether there are good reasons for departing from equal division J.1 Duration of the marriage as a material factor As said in 109 of LKW's case, the duration of the marriage is highly relevant and an equal division is more likely to be sustained after a long, rather than a short, marriage. The parties started to cohabit in 1983 and Jayden was born in 1984, shortly after their cohabitation. After they married in 1987, Christine was born in 1992. They separated in 2004. In my view, the duration of the parties' marriage is at least 17 years, a long one.

J.2 Contributions to the welfare of the family as a material factor H claims that during the marriage, he gave W a sum of HK\$300,000 to HK\$400,000 a month for taking care of the family and W had never held any employment outside the marriage. H produced no documentary evidence to support this allegation. However, W admitted during the cross-examination that at least, H had paid rental of the family +Pfe ^4X early 2015. On the other hand, W in gist claims that the parties became partners in the real estate and property services industry after meeting each other in 1983. W provided the start-up capital for one shop, and also contributed with her own work etc. Similarly, she produced no documentary evidence to support this allegation. It is understandable that both parties have great difficulties in adducing documentary evidence to prove what they said due to long

lapse of time. According to the 4th principle in LKW's case, 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. In my view, W's admission that in about 2005, she went to Nwm?eTS) +Pfe ^4X ion in 2004, H did pay rent for the family and make irregular maintenance to W for taking care of the family but not in the sum of HK\$300,000 to HK\$400,000 a month as alleged by H. After separation in 2004, H did not pay any maintenance to W but continued to provide the accommodation to the family at +Pfe ^4X gd} e gd}e gd{g {kSD2 h_p/ h_p/ gdJn hxG: eZeE vkv\k M=M= h Z. h Z. xmZmGm {h}h{J; h*k" h*k" h{9g gd{9g gd{9g |mbO h{9g h{9g h{9g h{9g h{9g h{9g o_O< h7<N h7<N h{9g h7<N gdDkB gdDkB gdDkB gdDkB gd&c gd&c gdDkB gd&c gdDkB gdDkB gdER gdDkB `vkvUkv h[or hB1? hB1? gdpX gd[or gd[or gdpX gdpX gd[or gd[or h5O7 h[or gd[or gd[or gd[or gd[or gd[or gdDkB gd[or gd[or gdDkB gd[or gd[or h5O7 gdpX gd[or gd\$ gd[or gd[or gd[or gd[or gd[or gd[or h5O7 gdDkB gd[or gdDkB gdDkB gdCF gdCF gdDkB gdpX gdpX gdCF gdpX gdDkB gdpX gdpX gdpX gdpX gd 0 gdpX gd 0 gdpX gd 0 gdpX gd 0 gd 0 gdDkB gdpX gdpX gdpX gd 0 gdpX heUc hRO4 gdpX gd 0 hRO4 heUc heUc heUc gdDkB gdpX gd 0 gdpX _nMn gd\$ gdDkB gdDkB gdDkB gd\$ gd\$ gd\$ gd\$ gd\$.oung ages, which must be regarded as a kind of important household contribution to the family. After separation in 2004, W had to singlehandedly raise the 2 children when Jayden was only about 20 years old having some mental illness and Christine was just about 12 at that time. As a whole, I consider that the contributions of W to the family is greater than that of H, in particular for the period after separation and before the self-support of the 2 children. J.3 Source of assets as a material factor W alleges to be her independent financial source(s) for the acquisition of the Shanghai Properties whereas H argues that W failed to identify her alleged independent financial source(s) for the acquisition of these properties. As said in LKW's case, there are assets which may be capable of being so differentiated, section 7(1)(a) implicitly requires the court to consider whether any part of such assets ought in fairness to be excluded from the sharing principle there is no hard and fast rule as to whether such property should be excluded. It is very much a matter within the judge's discretion to be exercised taking account of all the circumstances of the particular case an important factor which comes into play is the duration of the marriage, ..the importance of the source of the assets will diminish over time where it is a short marriage, the court may well be inclined to regard as excludable non-matrimonial property, assets acquired by one of the parties before the marriage or acquired in the course of the marriage from some wholly external source. But after a long marriage, those factors are likely to have much less weight. Finally Mr Justice Ribeiro PJ said in LKW's case That:

97. The difference of opinion is relatively narrow as it only relates to cases where the marriage is of short duration. The merits of the competing views are open to debate and it is not necessary to reach a firm conclusion in this judgment. I will content myself with saying that I am tentatively inclined to prefer Lord Nicholls's approach as being simpler to operate and as avoiding the possible re-introduction of a discriminatory element into the exercise.

(emphasis added) In the present case, it is a long instead of short marriage with 2 children. I am of the view that the importance of the source of the assets will diminish over time . In all fairness, I shall exercise my discretion not to exclude the Shanghai Properties from the sharing principle. Mr Chow and Ms Leung for H also rightly quoted 133 from Kan Lai Kwan v Poon Lok To Otto , one of the authorities cited by W s counsel in her opening submissions, in which the Court of Final Appeal stated that:-

133. The summary of the principle provided in Rossi v Rossi it points to various factors relevance to deciding whether a post separation accrual justifies departure from equality, including the length of the marriage and separation, the nature of the property accruing and the means or efforts by which it was acquired, and so forth. Of particular present relevance is the following passage: Assets acquired or created by one party after (ordering a period of) separation may qualify as non-matrimonial property if it can be said that the property in question was acquired or created by a party by virtue of his personal industry and not by use (other than incidental use) of an asset which has been created during the marriage and in respect of which the other party can validly assert an unascertained share. Obviously, passive economic growth on matrimonial property that arises after separation will not qualify as non-matrimonial property. (Emphasis added) In my view, each case is unique and it is crucial to consider the specific circumstances. I accept H s case that the Shanghai Properties are matrimonial assets as they were all acquired during the course of the marriage. J.4 Legal implications of the Mainland Courts' judgments in the Shanghai proceedings on these proceedings It is also a right time to discuss the issue estoppel raised by W. Ms Cheng and Mr Fung for W submitted that this doctrine applies equally to findings made by foreign courts of competent jurisdiction which are final and conclusive and on the merits: (see First Laser Ltd v Fujian Enterprises (Holdings) Co Ltd , it was held that the parties were bound by a decision of the Supreme People s Court as to the governing law of a contract which they had executed). In my view, the Mainland judgments including the Ming Yuan Decisions only found as a matter of facts that the money for the purchases of the Shanghai Properties was not paid out of the pocket of H whereas the purchase money was from W s bank account(s) and the cashes were paid in the name of W. Therefore the Mainland courts concluded that it was W s own money. These findings of facts are no doubt binding on H. Mr Chow and Ms Leung for H tried to re-argue that W used the mortgage loan contracts for Shuicheng Nan Road and Vizcaya Villa, coupled with the presence of H s name thereon, clearly indicated H as one of the owners or a shared ownership. This argument must be rejected. Nonetheless, I accept H s submission that the Mainland courts had indeed made no finding as to the underlying source(s) of how and from where W acquired the money for financing the purchases of the Shanghai Properties. Having carefully observed the parties demeanour at the trial and considered their evidence, on the balance of probabilities, I find that the underlying sources of financing the W s purchases of the Shanghai Properties came partly from the regular maintenance paid by H to W before their separation in 2004 and partly from the earnings and properties trading profits by W independently during the marriage. In my view, this finding has no contradiction with the

facts findings by the Mainland courts. This will be still considered by me as a factor for departing from equal division of family assets. Having said that, after a long marriage, the factor of the underlying sources has much less weight. To conclude, although the issue estoppel is applicable in the present case, the Mainland judgments including the Ming Yuan Decisions do not bar or estop H from claiming ancillary relief in these proceedings, which are strictly speaking not concerned with the determination of the parties respective proprietary interests in the Shanghai Properties. J.5 Conduct as a material factor J.5.a H s providing financial support towards Ms Yao As discussed above, H s providing financial support and paying the maintenance towards Ms Yao amounting to a gross and obvious misconduct, such that it would be inequitable to disregard it and to justify departing from equal division in favour of W. J.5.b H s conduct of abusive litigation Shortly after the W s petition for divorce issued in November 2014, H commenced the Shanghai Proceedings in about June and July 2015. In August 2015, the Xuhui People s Court and the Pudong People s Court delivered decisions in respect of Palace Court and Vizcaya Villa respectively dismissing H s claims. H initially appealed against these decisions but applied for and was granted leave to withdraw his appeals in respect of Palace Court and Vizcaya Villa in January 2017. In December 2016, the Shanghai No 1 Intermediate People s Court handed down the Ming Yuan Decisions in respect of Ming Yuan 205 and Ming Yuan 504 in favour of W. Subsequently in 2022, about 5 years later, H filed new claims in respect of Palace Court and Vizcaya Villa but in February 2023, he withdrew the new claim in respect of Vizcaya Villa. In July 2023, the Xuhui People s Court handed down its decision dismissing H s new claims in respect of Palace Court. Ms Cheng and Mr Fung for W contended that the court s jurisdiction to prevent abuses of its processes is engaged if it is shown that permitting a party to re-litigate would either be manifestly unfair to the other party or would bring the administration of justice into disrepute. It is abusive for H to claim by way of these ancillary relief proceedings what H has failed to obtain in the Shanghai Proceedings, namely a share of the Shanghai Properties. H is trying to get a second bite of the cherry. W refers to R v B , as an example in which the conduct of abusive satellite litigation was taken into account in the proper division of the matrimonial pot. In my view, H ought to be advised by his legal teams that Hong Kong court in these ancillary relief proceedings shall have the jurisdiction to deal with all the parties assets including the Shanghai Properties. It is entirely unnecessary and just a costs wasting exercise for H to commence the Shanghai Proceedings although the nature of claims in the Shanghai Proceedings is not the same as that in the present proceedings. The legal costs incurred by the parties in the Shanghai Proceedings will only deplete the family assets and their interests will be damaged by incurring over million dollars costs . These conducts of H were obvious and gross , such that it would be inequitable to disregard them and to justify departing from equal division in favour of W. J.5.c H s delay Originally, W seeks ancillary relief in the petition. Ms Cheng and Mr Fung for W submitted that W indicated in her 1st Form E filed on 23 June 2015 that she was not making any claim against H. In the circumstances, the onus was on H to conduct these proceedings. Actually, W stated in part 6.1 of her 1st Form E that the respondent s ancillary relief be dismissed. In my view, as Form E is not a pleading, it is not entirely clear as to

whether W has abandoned all her claims against H which are pleaded in her petition. Even if W has clearly abandoned all her claims against H as early as in 2015, it does not mean that she cannot apply to set down H's claims for ancillary relief or apply appropriate unless order against H for striking out his claims. Pursuant to the order made by DDJ G Own (as he then was) dated 18 July 2016, the hearing for FDR on 18 July 2016 be adjourned to a date to be fixed by the Petitioner (ie W), not by H. Hence, W has the duty to restore the adjourned hearing. In fact, it was the then solicitors for H, ie Samuel LC Yang & Co., who wrote to the court for restoring the hearing on 8 March 2021 after filing the H's Notice of Intention to Proceed on 7 December 2020. Ms Cheng and Mr Fung for W rightly submitted that the longer the time that passes the more likely it is that documents will disappear and memories cloud with the result that there is a greatly enhanced risk of the court rendering imperfect justice. Unfortunately, the hearing was only restored and fixed before Judge G Own on 21 April 2022, more than 5 years later. I am of the view that both parties are to be blamed for the delay. Further, I consider that no evidence showing the depreciation in values of the parties assets including the Shanghai Properties for the past few years, and hence, no financial prejudice caused to W due to such delay. To conclude, it is entirely undesirable for the petition commenced in 2014 but the ancillary relief trial be heard in the end of 2023. In any event, the conduct of H's delay as alleged by W was not obvious and gross, such that it would be inequitable to disregard them and to justify departing from equal division. J.5.d H's reckless conduct to have squandered his wealth Ms Cheng and Mr Fung for W contended that if this court believes in H's evidence that he has failed in his business ventures and investments, it was indisputably reckless for H to have squandered wealth in excess of HK\$1 billion. Moreover, such losses occurred after the parties separation in 2004. It would be wholly unjust to require W to share in those losses, with which she had no involvement whatsoever and for which she should not be held responsible. As a matter of facts, I find that H is still maintaining some businesses in the Mainland China, including but not limited to the Theme Park. But I also accept that his businesses are declining rather than completely failed as claimed by H. I have accordingly added back some of his assets in Step 1 above. On one hand, I disagree with W's submission that it is wholly imprudent for H to lose his entire or most of his fortune through his investments since there is no evidence as to the buoyant property market and economic conditions in Mainland China in the 2000s and 2010s as alleged by W. On the other hand, I consider that after the parties separation in 2004, it would then be unjust to require W to share in H's losses, which is very difficult to quantify. In any event, it is a material factor to justify departing from equal division. In the present case, I also find that H is guilty of non-disclosure as to the extent of loss or declination of his businesses in the Mainland China after 2004. It is trite that I have to ensure that the non-discloser does not obtain a better outcome than that which would have been ordered if they had complied with their disclosure obligations. Deciding the outcome As said in LKW's case, 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. Stepping back and looking at the overall impact of the factors found to be relevant, the court may decide that certain factors

carry such weight that a departure from equality is called for. The decision is fact-specific and discretionary. In my view, there are many good reasons to justify departing from equal division in favour of W, such as the greater contributions of W to the family than that of H, H's providing financial support towards Ms Yao, H's commencement of the Shanghai Proceedings, and H's non-disclosure as to the extent of loss or declination of his businesses in the Mainland China after 2004. Having carefully considered all factors as set out in section 7 of the MPPO and the guidelines as laid down in LKW's case, I am of the view that with the aim of arriving at a fair financial outcome as between the parties, H shall be entitled to share 1/4 of the family pot, and to receive from W the sum of HK\$22,508,167.84 (ie HK\$174,930,171.36 X 1/4 - HK\$21,244,375). Stepping back and looking at the whole circumstances, it is a long marriage of over 17 years with 2 children. W and H are presently at the old age of 74 and 78 respectively. After distribution of the assets, the parties shall have sufficient resources and incomes to maintain their respective livings and financial needs. I consider that this outcome is fair. For convenient purpose, the figure of HK\$22,508,167.84 be round down to HK\$22,508,000. I now make an order that: within 28 days from the issue of the Decree Absolute, W do pay H a lump sum of HK\$22,508,000; and save as to the above, all parties' claims for ancillary relief against each other be dismissed. Costs Mr Chow and Ms Leung for H suggested no order as to costs whilst Ms Cheng and Mr Fung for W asked for indemnity costs against H. I accept that breaches of the duty of full and frank disclosure may be properly visited with orders for indemnity costs: see *KCMA v ABC*. In the present case, both parties have breached this duty to some extent. Besides, some issues are resolved in favour of W but some in favour of H. Nonetheless, both parties' open offers are not accepted by this court eventually. I therefore exercise my discretion to make an order nisi that no order as to costs in these proceedings including all costs reserved, which shall be absolute unless any of the parties apply by summons to vary with supporting affirmation within 14 days. Last but not least, I must thank all Counsel for their assistance. (Simon Lo)

District Judge Ms Bonnie Y.K. Cheng and Mr Jonathan Fung instructed by Ho & Ip for the petitioner Mr Enzo Chow and Ms Esther Leung instructed by Chong & Partners LLP for the respondent

See Bundle A pg. 2 See Bundle A pg. 1 H contended that W transferred half ownership to Christine in May 2001 without his knowledge. H contended that W jointly purchased this property with Jayden in 2003 without his knowledge. See Bundle B(i) pg. 21 & 29 See Bundle for SJE valuation reports pg. 48-68 See Bundle E1/13/193, pg 199 As defined in items D1-D10 of the Assets and Liabilities Schedules As defined in item B1-B4 of the Assets and Liabilities Schedules He is a witness for H and gave testimony at trial. He is a witness for H and gave testimony at trial. No dispute that this company was controlled by H and W held only 1 share. see Bundles B2/3/249-270 and B2/3/271-293, Nwm N\$Rzl lB}2 lB}2 Nwm N\$Rzl lB}2 lB}2 P}ZZ l g6eeQ \dk -N_N | -r?bK\ v TBN/e & & 0 0 Nwm N\$Rzl lB}2 T,gb S/S>k2 /nc^f}W v/S>k v=|W[ff}W CQ/nc^ O(u; N&{ _ \I _N N \vQ [`` N c }; Nwm N\$Rzl lB}2 lB}2 l gI }8^``0W | -r? bK\ | -r?bK\ N>k1uW vMRI ?b>k N3^6b/e @b g l gI ?b>k vQ g

[2001] 1 AC 596 Para. 71 of LKW's judgment Para. 79 of LKW's judgment

[2012] 1 FLR 1211

[2020] Fam 160

[1976] Fam 335, 342H

[2011] 3 HKLRD 759, 7 (Cheung JA), 53 (Fok JA as he then was)

(2014) 17 HKCFAR 414, 128-133

[2007] 1 FLR 790, 25-32

[2012] 2 BCLC 109 See Bundle F/27/270-237 See Bundle D/5/57, 36 of H s 3rd of/f a}Y-N qggq\ f"umi NiQt^ dP}mi K\$1,000. See Bundle F/16/129 and F/18/165 See also A v B (Ancillary Relief) [2017] 1 HKLRD 187, 58 (HHJ Bruno Chan) See Bundle B(i) pg. 29 See Bundle B(i) pg. 220-223 See Bundle D/4/37-38 See Bundle B(ii) pg.241 See Bundle C/1/40 - 49 e.g. RMB 18,000 on 8 March 2014, RMB 16,000 on 28 April 2014, RMB 10,000 on 12 May 2014, RMB 17,500 on 20 May 2014, RMB 10,000 on 26 May 2014, and RMB 10,000 on 4 June 2014 [see Bundle C/1/40-43] See Bundle D/3/19, as per H 2nd affirmation 35 : gd\$ o zqbqbqbqbqT h}zg i`V`N`V gd 0 gd 0 gd 0 gd 0 xiWAW gd 0 gd\$ o gd\$ o gd\$ o gdDkB gdDkB gdDkB pcS; gdpX gdm< gdpX O(uaS S gBf P(u,g O(uaS=| f},g O(uaS v=|3^/f P(uT{ gM|=|3^ f}T{ s(W/f O(uaSgQ N=|3^/flu &`#\$ xrxr` VLB hNa` mH <sH <P mH <sH <@ mH <sH <V mH <nH sH <tH [Content_Types].xml _rels/.rels theme/theme/themeManager.xml K Y, sQ}# theme/theme/theme1.xml \$O} Xp90 +PHI| PP yu 9xu5 fs+W VF7H q=. 8}d- qyI@ j!Q_ jyV` |PZ+ T ""p < 4V O&x\$ A8>v ;EUC n 8r *~P(5 .}x E /,EE\} theme/theme/_rels/themeManager.xml.rels 5 6? \$Q K(M&\$R(.1 [Content_Types].xmlPK _rels/.relsPK theme/theme/themeManager.xmlPK theme/theme/theme1.xmlPK theme/theme/_rels/themeManager.xml.relsPK <?xml version="1.0" encoding="UTF-8" standalone="yes"?> <a:clrMap xmlns:a="http://schemas.openxmlformats.org/drawingml/2006/main" bg1="lt1" tx1="dk1" bg2="lt2" tx2="dk2" accent1="accent1" accent2="accent2" accent3="accent3" accent4="accent4" accent5="accent5" accent6="accent6" hlink="hlink" folHlink="folHlink"/> t T\$rm HM/\$ KY2E [Yev] 01Mh> KY2E 01Mh HM/\$ Ub 6Kd] \4-`" XR>~) Simon KM Lo Normal.dotm Windows User Microsoft Office Word Title <?xml version="1.0" encoding="UTF-8" standalone="no"?><b:Sources xmlns:b="http://schemas.openxmlformats.org/officeDocument/2006/bibliography" xmlns="http://schemas.openxmlformats.org/officeDocument/2006/bibliography" SelectedStyle="\APASixthEditionOfficeOnline.xsl" StyleName="APA" Version="6"></b:Sources> <?xml version="1.0" encoding="UTF-8" standalone="no"?> <ds:datastoreItem ds:itemID="{CE22966C-D290-45FE-A6E7-40DCEF5E0B0D}" xmlns:ds="http://schemas.openxmlformats.org/officeDocument/2006/customXml"><ds:schemaRefs><ds:schemaRef ds:uri="http://schemas.openxmlformats.org/officeDocument/2006/bibliography"/></ds:schemaRefs></ds:datastoreItem> Microsoft Word 97-2003 Document MSWordDoc Word.Document.8

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