

HONG KONG / JUDGMENT

SM also known as HMS v. HDG

[2023] HKFC 36**COURT**

Family Court

DECIDED

24 February 2023

CASE / FILE NUMBER

FCMC3929/2016

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bjbj FCMC 3929/2016

**[2023] HKFC 36 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION MATRIMONIAL CAUSES NO. 3929 OF 2016**

BETWEEN SM also known as HMS Petitioner and HDG Respondent

Coram: District Judge S. Lo in Chambers (Not Open to Public) Dates of trial: 27 29 September 2022
Date of Petitioner s closing submission: 13 October 2022 Date of Respondent s closing
submission: 13 October 2022 Date of Judgment: 24 February 2023

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

This is the trial of the parties claims for ancillary relief. The petitioner will be referred to as Wife
whilst the respondent as Husband below.

Background

The parties started living together in 2004 and got married in May 2006. The Husband is now 50 years old and the Wife is 49 years old. They have only one child of the family who was born in February 2012, now 11 years old. The parties together with the child were residing in a unit in Happy Valley (Wing On Lodge unit), which is owned by a limited company set up by the parties (Great Prospect). The parties through Great Prospect also own another property together with a carpark in Happy Valley (Winfield property), the apartment of which is currently rented out for the sum of \$63,000 per month whilst the carpark is separately rented out for \$3,500 per month. After the birth of the child, the Wife left her position as a recruiter in a company and are not

working since then. She focused on looking after the child who was diagnosed with a chronic medical condition and special dietary needs. The Husband is the primary financial provider and breadwinner of the family in addition to the rental income of the Winfield property. The Husband moved out from the Wing On Lodge unit in March 2015. The Wife and the child continue to live in the said unit up to now. The Wife commenced the divorce on the ground of unreasonable behaviour in April 2016 and decree nisi was pronounced on 10 August 2016. It is a marriage of about 11 years including the parties co-habitation. By the consent order dated 23 May 2018, joint custody of the child was granted to the parties and care and control to the Wife with defined access to the Husband. Pursuant to the Order made by me on 10 July 2020, the Husband do pay by way of maintenance pending suit to the Wife the sum of \$39,800 per month for herself and the child of the family commencing on 15 July 2020, and thereafter payable on the 15th day of each succeeding month until further order (MPS Order). Pursuant to the Order made by me on 15 December 2021, the valuation reports of the Winfield property, the Wing On Lodge and various companies owned by the Husband were to be prepared by the single joint expert () and the case was set down for trial with 3 days reserved. 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), in particular section 6(l)(e) provides: "(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 sections 10 and 25(1), make any one or more of the following orders, that is to say- ..

- (e) an order for the sale of such property, as may be specified in the order, being property in which or in the proceeds of sale of which either party or both of the parties to the marriage has or have a beneficial interest, either in possession or reversion, and for the use of the proceeds of such sale. .." 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

(2010) 13 HKCFAR 537, after considering the line of English authorities of White v White

[2001] 1 AC 596; *Miller v Miller* *McFarlene v McFarlene*

[2006] 2 AC 618, 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:

(1) The previous Hong Kong Court of Appeal decision in *C v C*

[1990] 2 HKLR 183 should be overruled. In other words, the principle of "reasonable requirements" should no longer be followed;

(2) When the court exercises its discretionary powers under section 7 of the MPPO, guidance may properly be sought from the *White v White* line of cases;

(3) 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;

(4) In most cases, the available assets are usually not sufficient to cater for the needs of both parties so that the exercise does not progress beyond consideration of their needs;

(5) 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;

(6) 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 assessment of the parties' financial needs. 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. I would follow the guidelines laid down in LKW's case and discuss the relevant matters as mentioned in section 7 of the MPPO below. Standard of living Prior to the separation, the parties were living in the Wing On Lodge unit of about 1150 sq ft, enjoying club membership, having a car, domestic helper and holidays 3 to 4 times a year within the region and abroad. The child is now studying in an international school. I consider that the standard of living of the parties before separation is comfortable and can be regarded as middle class level. Husband's income and earning capacity According to his Form E dated 30 June 2022, his current salary as a regional program manager is \$105,000 per month whilst his previous salary with Jones Lang Lasalle was only \$70,000 per month. I consider that he has a very high earning capacity. The Husband also receives the rental income of the carpark of the Winfield property for the sum of \$3,500 per month. Wife's income and earning capacity According to her Form E dated 30 June 2022, she is unemployed as she needs time to look after the child of the family who suffers from serious allergies and eczema. As already said in para. 23 of my MPS Judgment dated 10 July 2020, I maintain that she still has some earning capacity and can do some part-time job, especially when the child is in the school (from 7am to 3pm Monday to Friday) and the domestic helper is able to look after the child after return from the school. She had indeed started to re-educate herself by enrolling a Master's of Counselling program. I am aware of her medical condition that she claims to have a high risk of breast cancer. Nonetheless, there is no or insufficient medical evidence saying that how it will affect her earning capacity. In view of her age, her tertiary education level and some previous working experience, I consider that on a broad brush approach, she is able to find a part-time job, such as private tutor earning about \$15,000 per month. Meanwhile, the Wife also receives the rental income of the Winfield property for the sum of \$63,000 per

month to defray the mortgage instalments and other living expenses. After this Judgment, the parties would receive not less than \$25 million upon distribution of the family assets. I am sure that they should make use of it for some investment and that the usual and reasonable return should be around 2 to 3% per annum, ie \$500,000 to \$750,000 per annum. In any event, I have no doubt to find that the Husband has much higher earning capacity than the Wife.

Step 1: Identifying Assets Main Assets of the Family

The main assets of the family are the Winfield property, the Wing On Lodge and the various companies owned by the Husband and/or jointly by the parties, values of which are assessed by the SJE in the 2 valuation reports respectively dated 1 December 2021 and 29 June 2022 pursuant to my Order dated 15 December 2021 as follows:

Item	Value (HK\$)
Winfield property	39,600,000
Wing On Lodge unit	29,000,000
cor Holdings	416,000
Zen International	1,190,000
Turn Key Property Ltd.	21,000
World Wide Asset Ltd.	133,000
Secure 64	477,000

The parties also owned another company called Conscious Living Ltd but agreed that it has no significant value. The Wife accepted the above valuation reports and submitted that the size of the family pot consists of the following:

Item	Value (HK\$)
Winfield property	32,394,626 (ie 39,600,000 - 7,205,374)
Wing On Lodge unit	23,315,141 (ie 29,000,000 - 5,684,859)
cor Holdings	416,000
Zen International	1,190,000
Turn Key Property Ltd.	21,000
World Wide Asset Ltd	133,000
Secure 64	477,000
Husband's bank account	80,369
Husband's car	40,000
Husband's MPS	164,572
Wife's MPS	73,297
Wife's bank account	207,967
total	58,512,972

However, the Husband challenged the valuations of the Winfield property, Zen International and World Wide Asset Ltd and agreed the values of the remaining assets. He considered that the market value of the Winfield property should be \$35.5 million as it was the last offer the parties received from a prospective buyer on 3 June 2021. Regarding the value of Zen International, the company has been closed and struck off. The Husband also considered that the residual value of World Wide Asset Ltd was only \$17,000. Mr Frank Wong of SJE attended the trial for examination by the Husband and gave oral evidence. In my view, since SJE is an expert jointly appointed by the parties as the Husband is not qualified as an expert, I disagree that the Husband is entitled to challenge the expert opinion of the SJE. If the Husband indeed disagreed with the SJE's opinion, what he should do is to seek leave from the court to adduce another expert report to challenge the SJE's opinion. But he fails to do so. Besides, I am satisfied with the oral evidence of Mr Frank Wong of SJE giving at the trial for clarification and explanation of his methodology used for the 2 valuation reports. In particular, Mr Frank Wong answered to the Husband's questions concerning the valuation of the Winfield property as follows:

Husband: Respectfully, I don't believe so, because I'm aware that bank valuations can vary, especially online ones, which is the reason why you were actually appointed, Mr Wong, isn't it? To provide a more in-depth analysis of the property to arrive at valuations, is that correct?

Mr Wong: Yes, and also I need to point out you keep saying the -- you got the latest offer. Because we are not consider those kind offer as the market evidence, yes, because those are not transactions.

Husband: But isn't the basis of valuation by the International Valuation Standards market amount defined as an estimated amount for an asset or a liability should exchange on the valuation date between a willing buyer and a willing seller at an arm's length transaction?

Mr Wong: Yes, willing buyer and willing seller.

Because the seller is not willing, so it s not conclude. Unless it s conclude, we may take a look into the details. Because I cannot accept, for example, someone bring say a \$10 million cheque and say, Okay, we have to rely on this 10 million amount, right. So we have to -- we need to looking into much broader picture, bigger picture, yes, rather than just a one single offer and the single offer is not being conclude, right. As to the value of Zen International, the Husband provided a certificate dated 18 February 2021 proving of this company being struck off . Even if that may be the case, I consider that he fails to disclose or account for the sum of \$1,190,000 being the value of this company. Although he said that half of such sum belongs to his sister, he did not produce any documentary proof of transferring any sum to his sister who had not given any evidence to the court. I will not accept his mere-say-so. Furthermore, he produced his own HSBC statement dated 5 September 2020 which showed that a sum of \$1,172,549.71 with transaction details GOLD/EXCHANGE CREDIT was credited into his account on 11 August 2020 and that a sum of \$972,870 with transaction details DEBIT AS ADVISED was withdrawn into his account on 12 August 2020 . According to the HSBC statement of a joint name account of the Husband and his sister dated 10 September 2020, it showed that a sum of \$972,870 was credited into this account on 12 August 2020 and that a sum of \$970,000 with transaction details GOLD/EXCHANGE CREDIT was withdrawn into his account on 13 August 2020 . The Husband fails to provide further financial documents in respect of this GOLD/EXCHANGE transaction. Nor his sister filed any affirmation or statement for clarification or explanation. In the circumstances, the court is entitled to draw adverse inference against him and considers that he fails to make full and frank disclosure of all his assets. Besides, he said in part 5.1 of his Form E that My parent s investment in Zen holdings, a company that owned part of a commercial building in Hanoi, Vietnam, was sold/ settled in August 2020 . He fails to clarify the relationship between Zen International and Zen holdings or that they were the same company. No valuation is done on Zen holdings . The Husband fails to provide further financial documents in respect of this company. In the circumstances, the court is entitled to draw adverse inference against him as he fails to make full and frank disclosure of all his assets. For the purpose of Step 1, the said sum of \$1,190,000 being the value of Zen International shall form part of the family assets. For the value of World Wide Asset Ltd, I accept SJE s opinion instead of the Husband s view that the residual value of this company was only \$17,000. To sum up, I find and conclude, as accepted by the Wife that the total value of the family assets is \$58,512,972. Monies allegedly owed by the Husband to the Wife The Wife contended that the Husband owed her about \$2 million, breakdown of which is set out in part 2.9 of her Form E dated 30 June 2022 . However, she did not provide sufficient documentary evidence to prove each and every items of such claims. According to the fourth 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. Such attempts have been encountered in various contexts, including disputes over the extent of a party s assets; over the contribution made to the welfare of the family; over the parties conduct; over claims to be compensated for having suffered some disadvantage, and so forth. I would only adopt a board-brush

approach to deal with this issue. Upon perusal of the breakdown of the alleged \$2 million, some items are acceptable, such as child's maintenance from 2016 to 2017 and its shortfall from December 2018 to May 2021, Great Prospect account fee, fire and home insurance of the properties, rental of the car park of the Winfield Property. The remaining items are doubtful as the Wife provided very limited documentary proof for them, such as alleged 50% of the funds the Husband received from D cor Holdings, Zen International etc. The Husband did not make any reply to the Wife's claims item by item. I consider that for some items, it may be possible for the double counting of the values of these companies. I assess on board-brush basis that the Husband owes her a sum in the region of \$800,000. I would make adjustment in the final order to reflect this sum below.

Step 2: Assessing the parties' financial needs

In view of the substantial sum of the family assets, I consider that it is sufficient to meet all the financial needs of the parties including the child. According to the Husband's Form E, his total monthly expenses were \$78,042 including the child's monthly expenses for \$26,722. I consider that the Husband has very high income and is able to satisfy his own financial needs. He is able to pay part of the child's expenses. He suggested in his Open Proposals filed on 5 September 2022 that upon distribution of the family assets, each of the parties do contribute \$2 million towards an investment account for the child which shall be managed by an independent third party mutually appointed. The Wife seems disagreed. In my view, the court simply has no jurisdiction under MPPO to make such an order and this proposal must be rejected. As said above, the Wife has some earning capacity but her and the child's financial needs are much greater than that of the Husband.

According to the Wife's Form E, her total monthly expenses were \$112,187.84 after deducting the rental income from the Winfield property. Most of the expenses indeed relate to the Wing On Lodge unit and the Winfield property, such as the mortgage instalments, rates and managements fees etc. If these 2 properties are sold, the expenses will be greatly reduced. Great Prospect shall then be dissolved if the parties agree and all expenses in relation thereto such as auditor fees, business registration fees in relation thereto etc will be unnecessary. In order to save expenses, I therefore reject the Wife's open proposal that she shall keep the Wing On Lodge unit and only the Winfield property be sold. I also consider that the Wife and the child shall move to an apartment smaller than the Wing On Lodge unit of about 1150 sq. ft., after sale of these 2 properties. Usually, the rent payable covers rates and managements fees. The expenses can be lowered down. Although the parties agreed the total monthly expenses of the child for the sum of \$56,718 during the trial, I found that such sum was not entirely accurate as it included the mortgage instalments, rates and managements fees etc relating to the Wing On Lodge unit and the Winfield property but has not taken into account of the rent to be incurred by the Wife after the sale of the Wing On Lodge unit. I would say that after this Judgment, both parties shall try to lower down their standards of living. In the circumstances, I have to assess the future general expenses of the Wife and the child, which are set out as follows:

General expenses Item	Amount (HK\$)
Rent of an apartment of about 900 sq. ft.	40,000
Utilities (electricity, gas, internet, telephone, water etc)	2,500
Food, household, grocery and meals at home	9,000
Domestic helper	5,500
Total monthly general expenses	\$57,000

I consider that half of the said \$57,000 being \$28,500

represents the child's monthly general expenses. Besides, I assess \$38,900 as the monthly personal expenses of the child, breakdown of which is set out below:

Item	Amount (HK\$)
School and tuition fees	21,600
School books and stationery	2,000
Clothing / Shoes including school uniform	1,400
Personal grooming (including special detergents, supplements for allergy, haircut and toiletries)	5,000
Entertainment / presents	1,000
Holidays Medical / Dental	1,400
Meals out of home	1,200
Insurance premium	1,300
Extra-curricular activities	3,000
Total monthly personal expenses	\$38,900

Thus, the total monthly expenses of the child are \$67,400 (ie \$28,500 + \$38,900). Although the Husband offers to pay some of the child's expenses such as school fees, school bus transport etc direct, I refuse to accept it as he has the long history of failure to pay MPS to the Wife as ordered. Having considered the Husband's higher earning capacity than the Wife and their investment return as said in para. 20 of this Judgment, I exercise my discretion to order the Husband to pay of \$67,400 (ie \$50,550) to the Wife as the child's monthly maintenance.

Step 3: Deciding to apply the sharing principle At this stage, I decide to apply the sharing principle with the yardstick of equal division but shall see if there are any good reasons to depart from the equality principle.

Step 4: considering whether there are good reasons for departing from equal division The court has to consider all the matters listed in paragraphs (a) to (g) of section 7(1) MPPPO and other relevant factors as mentioned in LKW's case. It was said in para. 85 of the CFA's Judgment in LKW's case:

85. It is important to stress that while such factors, individually or cumulatively, are potentially capable of resulting in a departure from an equal division, a finding that one or more of those factors are engaged does not necessarily mean that a departure must occur. The weight to be given to such factors is in the court's discretion to be exercised in Step 5 as described in Section E.6 below. It cannot be over-emphasised that the matter is fact-specific and discretionary. The sharing principle must not be mechanistically applied.
- Source of assets as a factor The Husband contended that prior to the marriage, he received an inheritance of about US\$2.5 million by way of a trust from his late parents and he used it to purchase the Wing On Lodge unit and the Winfield property and to invest in various companies owned by him. He just said in his affirmation that his parents passed away when they were at the age of 53 (ie in 2003) and 62 (ie in 2006). He fails to provide any documentary proof for what he said, in particular for the actual amount received from the alleged inheritance or the trust. I refuse to accept his mere-say-so. It was said in para. 93 of the CFA's Judgment in LKW's case: So 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. Thus, in *White v White* itself, Mr White had benefited from an initial cash contribution made by his father but, as Lord Nicholls commented, that could not carry much weight 33 years later. (emphasis added) In my view, it is not a short marriage in the present case. Furthermore, the Wing On Lodge unit was obviously purchased as the matrimonial home which was a capital asset intended for and devoted to family use. The court would not put

too much weight on this factor. Besides, I accept the Wife's evidence that during the marriage, the parties had a long history of buying and selling a lot of landed properties such as Fun Tat Building in April 2007, Tak Sing Lane in May 2007, Garfield Mansion in 2009, Bellevue Place in November 2010, Nam Wing in February 2012 etc and that they used the sales proceeds to increase the family wealth and/or purchase another property such as the Wing On Lodge unit and the Winfield property. Parties Conduct The Husband argued that the Wife's unreasonable refusal to sell the Winfield property amounts to obvious and gross misconduct. The Wife said that the Husband kept pressing her to sell the 2 properties but disagreed to share the proceeds with her equally. Previously, the Imperial Terrace property was sold and the sale proceeds were equally divided by the parties as agreed. It was said in para. 104 of the CFA's Judgment in LKW's case:

104. Conduct, or more accurately, negative conduct, is therefore only to be regarded as a material factor if it is obvious and gross in the sense explained in *Wachtel v Wachtel* or, which comes to the same thing, if it is such that it would in the opinion of the court be inequitable to disregard it. In my MPS judgment, I had already said that the court has no jurisdiction to make an order for sale of the property on an interim basis. The court will only exercise such power after the trial of ancillary relief. Indeed, the Winfield property including the car park generates a decent rental income totaling about \$69,500 to \$66,500 in the past for the purpose of defraying the family expenses. It is also well known that the property market in Hong Kong fluctuates a lot. No one has the crystal ball to predict if the price of the property will go up or down in the future. In my view, the Wife's refusal to sell the Winfield property does not amount to obvious and gross misconduct which would be inequitable to disregard. On the other hand, the Wife complained that the Husband did not regularly pay the maintenance pursuant to the MPS Order and other outgoings such as school tuition, medical insurance etc to her amounting to the total sum of about \$2 million as set out in part 2.9 of her Form E, which has been discussed above. I also disagree any of the Husband's conduct amounting to obvious and gross misconduct which would be inequitable to disregard. Contributions to the welfare of the family I consider that the Husband has greater financial contribution to the family before his moving out in March 2015. However, the Wife certainly made tremendous household contribution to the family in terms of looking after the child. The court must reject gender or role discrimination when assessing the parties' respective contributions. It was said in para. 113 of the CFA's Judgment in LKW's case:
113. Assuming that during the marriage the parties occupied the traditional roles of breadwinner on the one hand and homemaker or child-carer on the other, there is, as Thorpe LJ said in *Cowan v Cowan*, the obvious difficulty of assessing contributions which are largely of a different character and are therefore inherently incommensurable. Any attempted assessment would necessarily be highly subjective and unsatisfactory. I am of the view that the contributions of the parties to the welfare of the family are more or less the same. Compensation Although the Wife had said that she gave up her job after the birth of the child and became a full-time housewife, I will not consider as a factor again as said in para. 126 of the CFA's Judgment in LKW's case:

126. In my view, the risk of double-counting in clean break cases arises not merely because of a potential overlap with financial needs but because compensation for relationship-generated disadvantage is, like contribution, already intrinsically factored in as part of the sharing principle. By recognizing that a spouse who has given up a potentially lucrative career to take up a traditional role within the family should enjoy equal status with the breadwinner and should receive an equal share of the assets unless there is good reason to the contrary, the sharing principle gives effect in principle to this form of compensation. Step 5: Deciding the outcome To sum up, I find that: It is a marriage of about 11 years including the parties cohabitation, not a short one; The parties had made more or less the same contributions to the family; The Husband has much higher earning capacity than the Wife; The Wife has much higher financial needs than the Husband in particular the needs of the young child who suffers from chronic medical condition; In term of the source of the family assets, the Husband fails to prove that they were acquired from the inheritance of his late parents; The Wing On Lodge unit is the matrimonial home and central place of the family; Putting aside the values of the Wing On Lodge unit and the Winfield property, the Husband's own assets value \$2,521,941 whilst the Wife's own assets value \$281,264. The difference is about \$2.24 million which represents only about 3.8% of the entire family assets (ie \$58,512,972). Adverse inference is drawn against the Husband due to his failure to make full and frank disclosure. The Husband owes the Wife a sum in the region of \$800,000, as found by me above, which represents only about 1.4% of the entire family assets (ie \$58,512,972). It was said in para. 131 of the CFA's Judgment in LKW's case:
131. It is worth reiterating that, having gone through the processes I have compendiously called Step 4, 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. But where there is a departure, the court should explain its basis since the articulation of reasons provides a useful check on the fairness of the outcome. I have to step back and look at the overall impact of all the relevant factors which carry certain weight for departure from equality. Upon careful consideration of all the circumstances and factors, I would exercise my discretion that the Wife shall share a little bit bigger portion of the family assets than the Husband. I am of the view that after the deduction of the respective mortgages, the Wife shall have 54% of the sale proceeds of the Wing On Lodge unit and the Winfield property, and the remaining proceeds to the Husband. Such a distribution of assets is fair as between the parties. For the avoidance of doubt, the Wife shall continue to receive the rental income of the apartment of the Winfield property whereas the Husband shall continue to receive the rental income of the carpark of the Winfield property pending the sale. Order In the circumstances, I now make an order as follows:

1. within 3 months after the grant of the decree absolute, the Wing On Lodge unit and the Winfield property be sold by private agreement in the open market for the respective minimum prices of \$39,600,000 and \$29,000,000 or prices mutually agreed by the parties;
2. if the Wing On Lodge unit and the Winfield property cannot be sold by private agreement within 3 months after the grant of the decree absolute, they shall be respectively sold by public auction within 2 months thereafter and the parties are at liberty to apply to the Court for determining the minimum sale price, if necessary;
3. all costs of and incidental to the sale of the Wing On Lodge unit and the Winfield property (including but not limited to outstanding mortgages, reasonable legal costs, estate agents fees and commission, auction fees, stamp duty and government charges, if any) shall be first deducted from the respective proceeds of sales; the petitioner shall then have 54% of the net sale proceeds of the Wing On Lodge unit and the Winfield property, and the remaining proceeds to the respondent.
4. the petitioner shall have the conduct of the sale of the Wing On Lodge unit and the Winfield property, including but not limited to appointing a firm of solicitors and auctioneer, if necessary, to represent Great Prospect Ltd. in respect of such sales;
5. within 1 month after the sales of the Wing On Lodge unit and the Winfield property, the petitioner do transfer all her shares, if any, in Turn Key Property Ltd. and any other companies mentioned in this Judgment, if she holds any shares thereof, to the respondent and all costs of such transfer be solely borne by the respondent;
6. within 1 month after the sales of the Wing On Lodge unit and the Winfield property, the respondent do transfer all his shares in Greater Prospect Ltd. and Conscious Living Ltd. to the respondent if so requested by the petitioner and all costs of such transfer be solely borne by the petitioner;
7. subject to the compliance with the above, the parties shall retain all the cash and other assets in his or her own name and the parties applications for ancillary relief claims against the other do stand dismissed;
8. the respondent do pay the petitioner the sum of \$50,550 per month for the maintenance of the child of the family commencing on 15 March 2023, and thereafter payable on the 15th day of each succeeding month until the child reaches the age of 18 years old or completes the full time tertiary education, whichever is later;
9. For the avoidance of doubt, the MPS Order dated 10 July 2020 be discharged;
10. There be liberty to apply for implementation of the above order; and

11. section 18 of MPPPO be granted. Costs Regarding the question of costs of the ancillary relief proceedings, I consider that since the parties are unrepresented at the trial of this application and their open proposals are not entirely accepted by me, I would exercise my discretion to make no order as to costs including all costs reserved, if any. (Simon Lo)
District Judge The Petitioner: unrepresented appearing in person The Respondent:
unrepresented appearing in person my MPS Judgment dated 10 July 2020 [2020] HKFC 139

[2020] HKFC 139 See Bundle 1, pg.9 - 47 See Bundle 1, pg.48 - 59 Outstanding mortgage loan
Outstanding mortgage loan See Bundle 8, pg. 73 See Bundle 9, pg. 42 See Bundle 9, pg. 14
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Bundle 1, pg. 144 See para, 16 of the Husband s statement of open proposal filed 5
September 2022 See Bundle 1, pg. 94 See Bundle 9, pg. 221-222 See para. 19 thereof See
para. 24 of this Judgment above See paras. 30 - 32 of this Judgment above See para. 24 of
this Judgment above PAGE PAGE - A B C D E F G H I J K L M N O P Q R S T U V A B C D E F
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