

Neutral Citation No: [2024] NIMaster 21

Ref: [2024]NIMaster 21

*Judgment: approved by the court for handing down
(subject to editorial corrections)**

ICOS No: 19/109965/01

Delivered: 25/09/2024

IN THE HIGH COURT OF JUSTICE OF NORTHERN IRELAND

FAMILY DIVISION

BETWEEN:

SC

Petitioner;

and

SC

Respondent

MASTER SWEENEY

[1] In this application, pursuant to a summons dated 8 January 2020, the petitioner (to whom I shall refer, for ease of reference, as “the wife”) seeks Ancillary Relief following the breakdown of her marriage to the respondent (to whom I shall refer, for ease of reference, as “the husband”).

[2] The parties are requested to consider the terms of this judgment and to inform the Matrimonial Office in writing within one week as to whether there is any reason why the judgment should not be published on the Judiciary NI website or as to whether it requires any further anonymisation prior to publication. If the Office is not so informed within that timescale, then it will be published in its present form.

[3] The husband in this case was always well mannered and respectful during court appearances, and in that respect, he differed from the husband in *Veluppillai & Others v Veluppillai* [2005] EWHC 3095 (Fam). However, the case otherwise encountered similar problems and frustrations resulting from delayed resolution by reason of the husband’s relentless disregard for his disclosure obligations. It was unhappily unsurprising that on the final day of the hearing in July 2024, the court was told that the wife’s costs were around £82,000.00.

[4] Generally, the assessment and valuation of an ancillary relief application ought to be reasonably straightforward on account of the transparency required of parties for the mutual benefit of both. The earlier both parties in any case own that reality, the quicker the resolution, the greater the cost saving and the sooner the parties can move on with their lives. Failure to provide full and frank discovery usually adds to costs

and such costs will ordinarily be visited upon the party in default. Proportionate disclosure is the fulcrum of fairness in ancillary relief. It may be sought by the legal representative of a party but is especially required by the court in order to do justice to the parties. The absence of proper disclosure causes delay, prevents one or both parties from enjoying the benefit of the Financial Dispute Resolution (FDR) process and is a senseless waste of time. The burden of providing discovery falls on the party who has access to it. The failure to discharge this responsibility is rarely excused.

[5] In this case, time and again, the husband was provided with the opportunity to provide full and frank disclosure. The court was variously advised over many months that the husband had changed solicitors, disengaged from, re-engaged with solicitors, and that solicitors acting for him found it necessary to come off record. During one promising period the husband accepted his shortcomings and undertook to instruct a new solicitor and have a new accountant liaise with the wife's expert to complete the discovery and valuation process.

[6] Instead, the husband's inconstant engagement, broken promises and persistent failures prevented progress, added to cost and even, after a full hearing, the court was left with gaps which the husband cannot justifiably expect to be filled in his favour. Lord Justice Thorpe said in *Lykiardopulp v Lykiardopulo* [2010] EWCA Civ 1315:

“However ancillary relief proceedings are marked by features absent in other civil proceedings:

- (i) The proceedings are quasi-inquisitorial. The judge must be satisfied that he has, or at least that he has sought, all the information he needs to discharge the duty imposed on him to find the fairest solution.
- (ii) The parties owe the court a duty, a duty of full, frank and clear disclosure. The duty is absolute...”

Mindful of those words, I have taken some time to set out the evidence in this judgement which led to the court's final decision.

[7] Although discovery was never completed by the husband, it is fortunate that the parties were at least able to agree a valuer to value various properties and licensed premises which were among the assets in dispute. They were not able to agree a single joint expert to value the business. By reason thereof, the wife found it necessary to solely instruct an expert, Mr Black of Goldblatt McGuigan, to value the business interests of the husband. The husband chose not to join in with the joint instruction of an expert, nor did he engage his own independent expert to challenge the expert evidence of Mr Black. Therefore, Mr Black provided the only expert evidence in this case.

[8] The husband sought to challenge the evidence by relying on his own estimated valuations. As these were neither substantiated nor independent they added little to the case save perhaps to afford some insight into the husband's approach to the ancillary relief case and his concerning lack of appreciation or regard for evidential requirements. The husband represented himself at the hearing. Despite the concerns expressed by the court, he deprived himself of the benefit of independent legal advice which proved ill- advised in the circumstances of this case.

Background to the hearing

[9] At the outset of the case, a maintenance pending suit application was brought by the wife, listed for hearing and a date set for Financial Dispute Resolution (FDR) hearing. An interim agreement was reached between the parties in relation to maintenance on the understanding the parties would progress discovery and valuations for a FDR hearing. Despite that fact, as a direct result of the husband's failure to deliver on the interim agreement, on 30 May 2022, the court was required to order that the husband pay maintenance pending suit in the monthly amount of £1000.00 less any child maintenance paid.

[10] In addition, all efforts to enable an FDR hearing were unsuccessful because the husband's failure to address his discovery obligations prevented the relevant interests, means and assets of the parties to be identified for computation and distribution.

[11] It has been disappointingly obvious to the court that outstanding discovery sought could have easily been provided in a timely manner. One example of this occurred on the day of a review when a simple telephone call to solicitors who had previously acted for the husband, almost immediately produced discovery which had been outstanding for some time.

The Hearing

[12] The case was listed and finally commenced as a hearing on Tuesday 14 November 2023, continued in March 2024 and again on 8 July 2024 when the court sat during the long vacation, to conclude the evidence.

[13] At the hearing, the wife was represented by experienced solicitor and counsel while, as already stated, the husband acted as a litigant in person.

[14] The parties had been directed to file their position papers fourteen days in advance of 14 November 2023. Regrettably, the wife's position paper was only filed on Friday 10 November 2023. This was because the report from the wife's expert, Mr Black, was delayed as he had to undertake additional work as a consequence of the husband's discovery failures. The unhappy result was that the position paper was not received by the court until shortly prior to the hearing. The husband's position paper was not provided until the morning of the hearing. While the court welcomed

receipt of both position papers, it must be obvious that such unacceptably late filing was wholly unhelpful.

[15] However, both parties wished the hearing to proceed on 14th November 202. Moreover, the court was acutely aware that valuable court time had been allocated for the hearing and if the court had to relist the case that would have negative consequence for other cases requiring court time. The court was also conscious of the considerable delay which had already occurred in the case along with the fact that at obvious cost, Mr Black, the forensic accountant instructed by the wife was, in attendance at court to give evidence. For those reasons, the court acceded to both parties' request that the hearing commence.

[16] The court agreed to both parties' request that the court hear first from Mr Black from Goldblatt McGuigan, then allow cross examination by the husband and after that, afford both sides a further opportunity to ascertain if resolution could be reached. It was further agreed that if no resolution was achieved, the wife's counsel would make her opening submission. After Mr Black's evidence, the requested time for negotiation did not achieve resolution and so the case was opened and continued in the normal way save that ultimately it became necessary to recall Mr Black as is referred to later.

[17] Both parties gave oral evidence, and both relied on affidavits sworn by them namely, an affidavit sworn by the wife on 8 January 2020 and an affidavit was sworn by the husband on 8 October 2020. The court also had the benefit of the oral and written submissions by counsel on behalf of the wife and by the husband, on his own behalf. It should be noted that the husband made it clear to the court he had no questions in cross examination to challenge the evidence given by the wife during her examination in chief.

The positions of the parties

[18] On the final day of the hearing, the court was made aware of the updated positions and offers made by the parties respectively to resolve the application:

[19] The wife's position was in accordance with a letter to the husband, shown to the court and dated 20 June 2024 which sought inter alia:

- By way of clean break settlement of the financial matters between the parties and, taking into account the exacerbated costs arising from the husband's alleged litigation misconduct, the multitude of appearances occasioned as a result and compensation for the wife's loss of remunerative employment and skill set which the wife says she lost at the husband's behest,
- That the wife would retain the former matrimonial home occupied by her at Aldergrove, Crumlin;

- That the parties second property at Portstewart be transferred into the wife's sole name free of charges;
- That a lump sum of £150,000.00 be paid to the wife, of which the first £50,000.00 be paid within three months and the balance six months thereafter;
- That a further lump sum, be paid to the wife in relation to the wife's "enhanced costs." These were said to have been increased by £50,000.00 as a result of the husband's conduct;
- That a sum of £1,000.00 monthly continued to be paid in respect of the children until varied by agreement, Court Order or CMED and;
- That the husband meanwhile retains all of the assets detailed in Paul Black's Report and Addendum Report "together with cash, vehicles and premises which are not contained therein."

[20] On the morning of the July final hearing day, the husband proposed as a resolution of the parties' ancillary relief claims that the wife receive her choice of either the former matrimonial home or the Portstewart property and that the husband additionally would pay:

- (i) £25,000.00 by the end of May 2024
- (ii) £25,000.00 by the end of October 2024;
- (iii) £25,000.00 by the end of December 2024;
- (iv) £100,000.00 by 20 June 2025 being a total lump sum of £175,000.00 that the wife would retain a charge over the Portstewart house until the lump sum of £175,000.00 was discharged;
- (vi) that the husband would pay £250.00 monthly per child until the child finished their education or achieved the age of 21 years; and that the husband would pay £60.00 per month to the wife until she achieved her 60th birthday.

[21] The husband contended that if the wife chose the former matrimonial home and the husband's proposed capital lump sums, she would have £525,000.00 of the assets which the husband calculated as having a total value of £983,000.00. However, the husband's suggested figure is notably greater than the figure of £803,610.00 calculated by Mr Black as the total of the asset values claimed by the husband and which did not take account of the licence jointly valued at £100,000.00. Moreover, the husband's figure of £983,000.00 is less than the total value of those assets which the wife says should be included and which Mr Black, calculated to have a value of £1,242,985.00 in his June 2024 updated report.

[22] The husband further said his updated offer which represented an increased lump sum took account of increased costs said to have been incurred by the wife.

[23] I have noted that in making his offer the husband said he would like all of the children to have a place they called home.

The assets

[24] There remains however a dispute about the extent of the assets in the case. I have highlighted in bold the assets referred to by Mr Black in his valuation of £1,242,985.00. The known assets comprise of a mixture of residential property and company assets. However, it was clear from the evidence that there are other assets and income of the husband which are not known. In general, the assets in dispute include:

- The former matrimonial home at Aldergrove has an agreed value of **£350,000.00** as confirmed in Mr Black's updated report. It is free from mortgage, or any other encumbrance.
- The property at Portstewart held in the name of the husband has an agreed value of £325,000.00. It is free from mortgage but does have an outstanding rates debt which the husband said was around £12,760.97 in March 2024 providing an equity of £312,239.03. Mr Black reduced that to take account of tax consequences for transfer giving an adjusted equitable value of **£278,079.00**.
- The balance proceeds of sale of a property at Magheralin which was held in the name of the wife who used a divorce settlement to pay a deposit of £65,000.00. The property was occupied by the parties from 2009 until 2014 and sold after the parties' separated. After discharge of the Santander mortgage proceeds of £55,127.15 were applied to specific debt and the balance was largely depleted when the wife sought to use some of the monies to address specific needs and the husband agreed to such lump sum withdrawals only if he was paid the same amount for debt which the wife says was never vouched. The remaining balance proceeds are understood to be £225.30.
- B Limited said by Mr Black of GMCG to have an equitable value of **£136,405.00** and holding;
 - (i) B Bar valued by the agreed agent on 1 November 2023 at £235,000.00 to include a licence valued at £100,000.00 and with the premises later advertised for sale on behalf of the Receiver on 18 June 2024 at £75,000.00 but excluding the licence. The premises were understood to be "sale agreed" but the final sale price was not available to the court.
 - (ii) B C H Bar valued by the agreed agent on 1 November 2023 at £280,000.00 and with the premises advertised for sale on behalf of the Receiver on 18

June 2024 at £250,000.00 and understood to be “sale agreed” but the final sale price was not available to the court.

- (iii) B Bar, Belfast valued by the agreed agent on 1 November 2023 at £225,000.00 and with the premises advertised for sale on behalf of the Receiver on 18 June 2024 at £150,000.00

The combined total of the original property valuations by the agreed valuer Lambert Smith Hampton (LSH) including the licence valued at £100,000.00 was £740,000.00. However, before the final hearing day, the properties were marketed on behalf of the Receiver and the agreed for or advertised sale prices on behalf of the Receiver, adding in the value of the licence, which was excluded from the sale, produce an updated value of £575,000.00.

Mr Black had estimated the updated equitable value of B Limited to be £147,905.00 prior to tax and selling fees. However, as the advertised sale prices of the properties were significantly less than the agreed LSH expert valuations, Mr Black considered it possible that no capital gains or related taxes might arise on disposal and allowing notional sale costs of 2% or £11,500.00, he provided an adjusted equitable value of £136,405.00.

- A M I Limited valued by Mr Black as having an equitable value of **£310,390.00** and holding:
 - (i) R Tavern at £167,500.00
 - (ii) F Inn at £145,000.00
 - (iii) Inn at £75,000.00

The combined agreed property value is £387,500.00 and Mr Black valued the company at £318,140.00 less tax and selling costs. No outstanding tax liability was provided to Mr Black who allowed 2% for notional selling costs thus suggesting an equitable value of £310,390.00.

Mr Black referred to the husband’s typed estimated value at £287,264.00 but Mr Black observed that the estimate had not taken account of other assets and liabilities. In addition, the husband had not produced proof of debts referred to in his calculations.

- McG Furniture Ltd valued at **£8312.00**;
- B Trading Ltd valued by Mr Black at **£142,405.00** being the last known net assets value;

- The husband's sister's shareholding in BCW A Ltd valued by Mr Black at **£17,394.00** which the wife maintains is held on behalf of the husband;
- The husband's car dealership business and vehicles with indeterminate value;
- Personalised number plate which the husband said was worth around £3,000.00;
- The husband's unidentified other business interests with indeterminate value;
- The husband's unidentified savings with indeterminate value.

The parties and history of the marriage

[25] The parties were married in December 2012 having cohabited for five years from in or about 2007, all four children being born during that period. This was the second marriage for both parties and the husband has children of his first marriage although neither party provided any detail even in relation to the number, names, ages or involvement with those children. The wife issued her petition for divorce on 18 November 2019 and thereafter, the husband and the parties' eldest son, left the former matrimonial home on 21 December 2019 after the parties had been together for 12 years and married for almost seven years. A Decree Nisi of divorce was granted on 20 July 2020 on the ground that the husband had behaved in such a way that the wife could not reasonably be expected to live with the husband.

[26] The wife was born in 1975 and is aged 49 years. She does not suffer from any known disability, is unemployed and most recently was employed part time in a café. She was a housewife at the time of the separation, and now receives tax credits of £611.45 monthly, child benefit of £286.80 monthly and child maintenance of £1000.00 monthly, on foot of a maintenance pending suit order of 30 May 2022. Her total income is approximately £1898.25 monthly.

[27] The husband was born in 1971 and is aged 52 years. He does not suffer from any known disability, is a business owner and Director of Group Operations for a local hotel arising from which he has accommodation in the hotel complex. His last stated gross earnings from that employment were £48,000.00 per annum. However, before the separation, the husband had additional cash income from his business operations and contacts, and this is not likely to have changed.

[28] The four children of the family are:

- JR now aged 18 years. He continues to live with his father.
- G now aged 15 years. He lives with his mother and has contact with his father.

- G now aged 12 years. She lives with her mother and has no contact with her father.
- S now aged 11 years. She lives with her mother and has no contact with her father.

[29] The children were aged 13 years, 11 years, 8 years and 7 years at the time of the separation.

[30] The wife maintains that the parties' daughters' unwillingness to attend for contact with their father is borne out of the husband's conduct which they witnessed, and which included shouting and locking their mother in rooms. She gave evidence that this traumatised the youngest daughter in particular and made her reluctant to leave her mother's side. The wife said a social worker has tried to encourage contact but with no success albeit that on occasion when the wife is bringing their second son for contact, their elder daughter will sometimes go and give her father a hug.

[31] The wife's petition proceeded undefended, and the husband asked no questions by way of cross examination of the wife in the ancillary relief. Notwithstanding that fact, when giving his own evidence, the husband denied the behaviour alleged against him by the wife in her petition and before this court. However, given the circumstances, where the husband did not test the wife's account in cross examination, I accept the wife's account in which she testified that the husband was jealous, possessive, and controlling in a way which negatively impacted the wife's ability to effectively perform a career which she enjoyed.

[32] The wife in fact gave a convincing and at times emotional account. She relied on her affidavit and maintained that for a year and a half the husband repeatedly said she was not earning enough to justify her employment and was even counting what she paid for hosiery for work. The wife further recalled how the husband continually and repeatedly phoned her at work asking who she was with and even did this while she was at meetings where her employer was present. On one occasion when she was attending an overnight work trip to Wales with both Howard Hastings, the General Director and the Sales Director, she answered a phone-call in which the husband could be heard shouting at her down the line demanding to know where she was, who she was with and insisting that she should come home.

[33] On another occasion, despite it not being permitted, the husband required to be secreted in the Merrion hotel where the wife was attending an overnight work event. The wife spoke of being conscious that the various behaviours meant she could have been sacked. She felt she was prevented from giving 100% to her employment. The inappropriateness of such behaviour on the husband's part is obvious and must have been hugely embarrassing for the wife. More particularly, it wholly undermined her ability to perform her job and the husband from his own experience of working environments must have known this.

[34] The husband effectively made it impossible for the wife to continue in her employment and so she left in 2010. In her affidavit, the wife says the parties agreed in 2010 that she would cease working to become a full-time mother, help the husband with various aspects of his business and return to work when their children started school. This was before the parties' marriage in 2012 and before the birth of the younger two children. Notwithstanding the behaviour, the possessiveness, jealousy, and interference with her work which the wife complains of, the parties still married. The wife was asked about this, and I believed the wife's account that she felt marriage was important when considering the interests of the children.

[35] The husband meanwhile referred to the wife expressing her gratitude to him for enabling her to leave her employment. While this may have happened, it was clear the wife felt that in leaving her employment she was promoting peace on the home front. I do not accept the husband's version that the wife gave up her employment because she did not want to work. The husband said in evidence, "She did not want or need to go back to work." In saying she did not need to go back to work, he expressed a view which resonated with the wife's account. She said her relief at leaving work was nothing to do with work stress but instead relief from the stress of his intolerance of her work which included intercepting her emails. The wife said she loved her job and after she left it, she appears to have applied her gained experience by assisting to some extent with the public house part of the family business. At the same time in accepting the primary responsibility for the care of the children and parties' household, the wife made it easier for the husband to be free to expand his business interests. She said the husband promised she could return to work when the children started school, but that he reneged on that.

[36] The husband's account that he worked hard and due to his hard work, the wife was able to leave her job, stay at home and attend gym and classes and in the evening go to church, was put to the wife. She said her life when she left her employment was not a coffee shop life. She did join a gym, but it had to be a female gym. Moreover, she was not able to go to prayer meetings at church because other men were present.

[37] After the separation on 23 November 2019 the wife said she returned to education and that she loved interacting with others, enjoyed her part time employment and saw the value of earning. She felt it was good for the children seeing her go to work. However, she reported that when the parties' younger daughter was changing school and elder daughter was sick, she needed to prioritise the children and step back. The wife has not returned to employment outside the home since that time.

[38] Having concluded that the husband wanted the wife to be a "stay at home" mum, the husband must accept the consequence of creating a situation where the wife was wholly dependent upon him for her means. Lord Nicholls said in *Miller & McFarlane* [2006] UKHL 24;

"In assessing the parties' contributions to the family there should be no bias in favour of the money-earner and against the homemaker and the childcarer. This is a

principle of universal application. It is applicable to all marriages.”

[39] Apart from part time employment in the cafe, the wife has been absent from the employment market for some time, and it cannot be assumed that she will find it easy to return to her original employment or the like. In considering the feasibility of a clean break and when having regard to the division of the assets, the court must therefore also have due regard to the wife’s needs.

[40] In terms of housing during their relationship and marriage, the parties initially lived together as a couple in the wife’s house In Jordanstown and when sold, the parties moved to Ballymena and lived in rental properties which were held in the wife’s name. According to the wife, the parties were dependant at that stage, on the wife’s income. The parties then moved to the property at Magheralin which was purchased in the name of the wife, she having used £65,000.00 from her divorce settlement to pay the deposit and securing a mortgage for the balance. However, the financial burden was placing a strain on their relationship as the wife found the bills and debt in her name were increasing despite the fact that the wife’s means were less. This was resolved and the husband started to contribute more.

[41] The wife seeks to retain the former matrimonial home which she occupies with the three youngest children of the family and also the house in Portstewart which she says, would afford her a rental income allowing her to have flexibility with employment while being available when the children needed her.

[42] The wife initially sought to sell the former matrimonial home but said the husband’s then newly instructed solicitors registered a caution on the property. There were also building control issues to be resolved. In his affidavit the husband referred to the wife wanting him to buy her a house in Antrim and then resiling from that proposal. It is now clear the wife now wishes to remain in the property and the husband’s most recent proposal allows for this.

[43] The wife described her concern that the husband might try to sell the Portstewart property without consulting her. She said the husband tried to do this with the Magheralin property but did not succeed only because the property was in the wife’s name. The husband used a different solicitor to the solicitor he had engaged for the matrimonial proceedings and when the wife agreed to the sale provided the sale monies were held pending the resolution of the ancillary relief proceedings, the property was withdrawn from the market.

[44] The husband denied the allegation made against him in relation to the Magheralin property. He described the maintenance works and negotiations he had undertaken and referred to the gratitude expressed by the wife for his efforts with regard to the presentation of the property for sale. He said he removed himself from the process when the wife was critical of his efforts in relation to the sale. He described texts sent by the wife which he said supported his account.

[45] It was put to the husband that in relation to the sale proceeds he only agreed to the wife getting a share if each received £15,000.00. It was put that the wife bought a car for £12,000.00 and the husband otherwise said the money was to be used as maintenance and part payment for uniforms. The share the husband got was supposed to have been required for credit card debt, but he never provided proof of how the money was spent. Whatever the truth of the matter the fact remains that the proceeds have been largely divided and a nominal amount remains.

[46] The wife said that in relation to the Portstewart property she was also happy for it to be rented to provide an income rather than have the property left vacant. She complained of arriving at the property with the children one day when she could not access the property as the husband had changed the locks. The husband meanwhile was living in an apartment in the hotel complex which accommodation was provided by his employer. The husband maintains that he saw the Portstewart property as a home for himself and the parties' eldest son, and despite their residence in hotel accommodation. He complained that the wife removed furniture and items from the Portstewart property in an unnecessary and hurtful way. Regardless of the veracity of that complaint, which was not put to the wife, the fact remains that it seems wasteful to have a property lying idle which could have been used for the children's benefit or to produce an income.

The business

[47] In relation to the business, the wife said when she met the husband his only business outside his regular job was buying and selling of cars and this was something he always did and continues to do. Regarding the husband's account that he sold every car he had in the year before the separation to pay for the family's Florida trip, the wife says the husband always had cash in his possession. She talked of the husband having £21,000.00 in cash at one time and though saying he had no money he would then purchase apartments and expensive clothes.

[48] The wife referred to cars and other debt related items being in her name on the understanding that every month the husband would pay the amounts owed, sometimes by transferring money to the bank account and otherwise by paying cash.

[49] The wife also described helping to manage B Bar. She interviewed chefs and organised rotas and bands. She expressed the view that the bar was doing well, and she enjoyed the work. She said she was not there at night and the husband was never at home at night. She had concerns about the husband's methods. She said that staff were not paid in time, suppliers not paid, and the husband was purchasing alcohol in Tesco and getting cakes from everywhere. The wife said it was a mess which was the reason she ultimately left. Despite that narrative, perhaps surprisingly the wife also testified that the bar was doing well.

[50] The wife gave evidence of the cash business operated by the husband and referred to removing some of the cash that she found in the attic. The husband did not deny there was cash in the attic but disputed the amount removed by the wife.

The expert; Mr Paul Black of Goldblatt McGuigan (GMcG)

[51] Mr Paul Black is a Fellow of the Institute of Chartered Accountants in Ireland and a Director in the firm of GMcG, Chartered Accountants, with more than 18 years' experience in forensic accountancy. He was instructed by the wife's solicitors to investigate and provide comment on all companies in which the husband is thought to have a beneficial interest either as a director or on account of an association which he has or has had. In his task Mr Black assessed the value of the husband's interest and was also instructed to comment on any potential Capital Gains Tax liability.

[52] As already stated, the husband did not call evidence from any expert to challenge the valuation of Mr Black in relation to any aspect of the business.

[53] Mr Black gave clear evidence that he found it difficult to secure the documentation which he needed for his report. The information sought was provided in a piecemeal way by the husband and was incomplete. Mr Black said he often received no response for a long time after the information had been sought and he was adamant that the difficulties in securing the information which he needed, had a direct impact on the speed with which he was able to provide his report.

[54] Mr Black said that his first request for information occurred approximately two years previously and although initially proposed that he liaise with the husband's accountant, regrettably this did not ensure the provision of the information required in a timely manner. The failings in the provision of discovery by or on behalf of the husband meant that Mr Black had to carry out his own research and investigations. This added time and cost but also required Mr Black to make assumptions or give comment subject to clarification or the provision of information which the husband was well placed to provide. When the husband failed to provide any documentary proof of challenge the assumptions made, Mr Black's assumptions went unchallenged.

B Limited

[55] B Limited was incorporated on 5 April 2012 and the husband is the sole director and shareholder of the company which owned three premises, B Bar, B Dromore and B C H.

[56] Mr Black gave evidence in support of his report dated 9 November 2023 which had been shared in advance of the hearing with the husband and the court. After giving his evidence on the first day of hearing, Mr Black was required to be recalled in July 2024 to give evidence in related to his addendum report dated 19 June 2024. The addendum report became necessary primarily because since giving his original

evidence three properties owned by B Limited, in respect of which the husband is the sole director, had been marketed for sale by the Receiver with O'Connor Kennedy Turtle (OKT) for prices less than the agreed Lambert Smith Hampton (LSH) valuations relied on by Mr Black in his original report. Mr Black therefore felt it appropriate to reduce his valuations accordingly.

[57] However Mr Black highlighted the fact that the OKT sales brochure included no reference to a licence in relation to the B Dromore premises which said licence had been afforded a value of £100,000.00 in the agreed LSH valuation. Therefore, when updating his figures to take account of the new OKT asking prices, Mr Black added to the bricks and mortgage valuations in the OKT sales brochure, the value of the licence.

[58] The total LSH valuations of the three licensed premises owned by B Limited amounted to £740,000.00 Lambert Smith Hampton on 1 November 2023 valued B Bar Belfast at £225,000.00, B Dromore at £235,000.00 and B C H, at £280,000.00

[59] The OKT total valuations for the three properties amounted to £475,000.00 to which Mr Black added the value of £100,000.00 for the licence. This exercise still produced updated lower valuations than the agreed LSH relied on by Mr Black in his original report.

[60] In his cross examination of Mr Black, the husband suggested that a licence only had value if the licenced premises were trading. In responding, Mr Black remained steadfast in the appropriateness of including the value of the licence in the overall valuation.

[61] There was no agreement between the parties as to whether B Dromore continued to trade or traded for part of the past year. Following questions raised by the court, the wife's solicitor sought clarification over the lunch break from OKT who confirmed that they were only instructed to sell the bricks and mortar of each of the three B Limited properties. The Dromore premises were cleared before OKT were given the keys. The last accounts filed were for April/May 2023.

[62] Having heard and considered the evidence, I believe Mr Black was correct to add back the value of the licence. Based on the balance sheet of the company on 30 April 2023 and the LSH valuation, Mr Black had initially valued B Limited at £312,905.00. Taking account of the updated position, Mr Black now estimated the value of B Limited at £147,905.00 prior to tax and selling fees. As the advertised sale prices were significantly less than the LSH valuations, Mr Black considered it possible that no capital gains or related taxes might arise on disposal and said, allowing notional sale costs of 2% or £11,500, this gave an equity of £136,405.00

[63] In his original report and initial evidence, Mr Black provided further detail which requires to be considered in the context of the wife's concern that the husband has not been forthcoming about the full extent of his business interest. Mr Black reported his understanding that B Bar Belfast was leased to B I Limited for £12,000.00

per annum and in respect of which a lease agreement of 8 October 2018 was provided. B Dromore was operated by C I (NI) Limited, but it was suggested that no rent was paid. B C H, was operated by H Limited on a ten-year lease for £18,000.00 per annum with the first year said to be rent free.

[64] Lease agreements were sought, but not provided for B Dromore or B C H. No satisfactory explanation was provided for this failure on the husband's part and the asserted non-payment of rent must be regarded in that context.

[65] Also in breach of the discovery obligations required by court, only accounts to year ending 30 April 2021 were provided to Mr Black by/on behalf of the husband. However, Mr Black was able to consider the accounts for years ending 30 April 2022 and 30 April 2023 which had been filed with Companies House. This enabled Mr Black to provide an analysis of the years from 30 April 2019 to 30 April 2023

[66] It appears that arising from the restrictions issued in March 2020 to address the Covid Pandemic outbreak, both the Belfast Bar and B C H, closed for business while the Dromore Bar was open and trading.

[67] In his early evidence and first report, Mr Black observed that as a result of Bank of Ireland debt, receivers had been appointed in relation to B Limited's three bars. In the absence of loan balances being provided, Mr Black had looked to the information which was available to him to estimate the equity with the company. The husband was well placed to secure and/or provide the information relating to the receivership but chose not to do so.

[68] From the detailed financial statements provided for year ending 30 April 2021, Mr Black recorded that the liability to creditors totalled £379,156.00 of which bank debt amounted to £125,808.00 and the other major creditor was the husband's director's current account which amounted to £220,833.00 owed to the husband and as such was an asset of his. By 30 April 2023, the amount owed to creditors had risen to £427,111.00 and Mr Black surmised that this was not likely to have been caused by additional bank borrowing.

[69] Mr Black considered that on the basis of the available information which included the property valuations, it was most appropriate to value the company on a net assets' basis. The Lambert Smith Hampton valuation included freehold property, plant, machinery, fixtures, fittings and equipment and the court notes Mr Black's assumption that subject to any contrary clarifications, these were owned by the company. Mr Black's original valuation had not made allowance for potential additional costs arising from the appointment of receivers, but his recent report and company valuation allowed for estimated selling costs and a considered view of whether tax arises from disposal of the assets.

[70] The court heard that in chancery proceedings, the husband's brother claimed an interest and though this claimed interest was not accepted by the husband in

chancery, at the same time it was raised by the husband in the ancillary relief proceedings. In relation to any claim by the husband's brother, that he owns a 50% shareholding in the company, Mr Black stated that all available evidence confirmed the husband is a 100% shareholder and in the absence of any contrary evidence, the court accepts that to be the case. The court notes too that the original agreed Lambert Smith Hampton valuation valued B Bar Dromore assuming that "any occupational rights to the property are surrendered by Mr D C and the property is sold with vacant possession as a fully equipped operational entity."

[71] Under cross examination the husband confirmed he had made no enquiries in relation to the updated position in relation to the sales of the premises which had been owned by B Limited. He also said he did not know if his brother bought one of the premises.

[72] Taking account of what was known in relation to the sales/potential sales of the premises by the Receiver, Mr Black provided an updated estimated valuation net of sale costs as being £136,405.00 In all the circumstances, that is the valuation accepted by this court.

AMI Limited

[73] Mr Black referred to AMI Limited which was incorporated on 22 May 2015 and in respect of which the husband is the sole director and shareholder. That company owns public licensed premises namely (1) The R T Ballymena which the husband says is leased to H I Limited and that no rent is paid, (2) The F Inn, which the husband says is leased to H I Limited for £12,000.00 per annum on foot of a ten-year lease with the first year being rent free and (3) The O Inn, which Mr Black understands not to have traded since 2017 and the property requiring extensive renovation. Mr Black requested but was not provide with lease agreements in relation to any of those business premises.

[74] A valuation was undertaken by Lambert Smith Hampton who on 1 November 2023 provided valuations for the Bars valuing:

- R T, Ballymena at £167,500.00
- The F Inn at £145,000.00 and
- The O Inn, at £75,000.00.
- a combined total of £387,500.00

[75] Again, Mr Black was only provided with financial statements up to year ending 31 May 2021 from/on behalf of the husband but was able to consider accounts for years ending 31 May 2022 and 2023 which had been filed with Companies House and undertake an analysis of the profit and loss accounts and balance sheets for years ending 31 May 2019 to 2023.

[76] It appears that The F Inn has remained closed since March 2020 coinciding with the Covid Pandemic, The O Inn, Killough has been vacant and derelict for many years, but the R T Ballymena was open and trading.

[77] The detailed financial statements provided for year ending 31 May 2021 showed a creditors liability of £78,208.00 which included a bank debt total of £20,000.00. By May 2023 the creditors total had risen to £83,208.00.

[78] Again, Mr Black felt in all the circumstances the net assets' method of valuation was most appropriate and accordingly Mr Black valued the company on 31 May 2023 at £318,140.00. Again, the Lambert Smith Hampton valuation included freehold property, plant, machinery, fixtures, fittings, and equipment and subject to any contrary clarifications, working on the assumption that these were owned by the company and now allowing for associated selling costs Mr Black valued the company at £310,390.00. The court accepts this valuation.

B I Limited

[79] Mr Black referred to B I Limited which was incorporated on 30 August 2017 and in respect of which the husband is the sole director and shareholder.

[80] The picture was presented of a company which never traded and in respect of which, dormant accounts were filed in Companies House in relation to years ending 31 August 2018 to 2022. Accounts for year ended 31 August 2023 were overdue.

[81] However, despite the fact that this company apparently never traded, Mr Black was provided with a copy of a lease agreement of 8 October 2018 with B Limited in respect of B Bar, F Road, limited which Mr Black was led to understand has been closed since March 2020. Mr Black understood that prior to that, B I Limited carried on the trade of the bar, receiving the income, and incurring the expense. Mr Black therefore would have expected trading accounts to be provided and failed to understand why dormant accounts were provided. This question remains unanswered and as such, the income and profits of that bar during that period remain unaccounted for. The court observes that the parties separated in 2019 and therefore the period of dormant accounts and unaccounted income relate to the year prior to the separation and the years thereafter.

[82] When cross examined in relation to the B I Bar, the husband was asked how the income and expenses were accounted for and he replied, "they weren't." He also accepted that it was his business and no one else was responsible.

HI Limited

[83] Mr Black refers to H I Limited... which was incorporated on 15 May 2017 and in respect of which the husband is the sole director and shareholder. Mr Black did not receive his requested copy of a lease agreement between H I Limited and A M I

Limited, owned by the husband, in relation to the operation of the R T Ballymena which is open and trading and in respect of which no rent is paid.

[84] Mr Black says the husband responded to the request to see the lease by saying that the lease was irrelevant as H I Limited does not trade and is only an entity to hold the liquor licence as A M I does not trade. It is the husband's position that the pub was operated by a Mr G on a rent-free basis as when purchased, the license was dormant, and Mr G traded the licence to help add value to the property. The agreed Lambert Smith Hampton valuation report notes the licence as live and subsisting.

[85] Mr Black said only dormant accounts were filed with Companies House in relation to year end 2022 and accounts in respect of year ended 31 May 2023 are overdue. The company therefore has the appearance of not having traded. However it was clear much of this did not make sense to Mr Black who said he would not have expected dormant accounts to have been filed by H I Limited given the lease agreement in place with A M I Limited in respect of the operation of The R T, Ballymena where no rent was said to be paid and regarding which the husband claimed that all income and profits were retained by a local independent publican. In the absence of independent proof of and credible reason for the asserted income and profit arrangement in respect of the R T, I share Mr Black's concerns about the reporting of profits and declaration of tax liabilities. I weigh those concerns in the balance when reaching my final decision in this case.

RMG Furniture Limited

[86] Mr Black referred to R Limited which was incorporated on 22 May 2017 and in respect of which the husband is the sole director and shareholder. Mr Black was not provided with any documentation in relation to this company but instead the husband responded that:

"This company was set up with my wife's knowledge during our marriage to assist my friend Ronan . I have no knowledge of any of his business affairs."

[87] Mr Black highlighted the husband's legal obligation as director and sole shareholder to provide the company accounts, records and in relation to performance to Companies House and in respect of benefits relating to third parties. However, as with much of this case, that is not the end of the matter.

[88] The accounts for periods ending 30 May 2018 and 31 May 2019 are dormant accounts so it appears the company is non-trading. However, Mr Black was advised that at some point R Limited had an arrangement to build and provide furniture for hotels which were being refurbished.

[89] At appendix 8 of his report of 31 May 2019 Mr Black refers to an analysis of Aspen MInvestments Limited income and payments and there is reference in August

2018 to £12,500.00 in relation to R Limited. Therefore, Mr Black believed dormant accounts are not appropriate.

[90] In addition, the court's attention was drawn to eight separate lodgements made to one of the husband's bank accounts between the period May 2018 and April 2019 which totalled £145,000.00 the said lodgements having the reference R Limited. I accept Mr Black's observation that this does not suggest a dormant company. I agree that full independent discovery of the position prior to and since 31 May 2019 and in relation to the husband's alleged arrangement with Mr McGuckin ought to have been provided. In the absence of that, I do not find the husband's account credible that the payments related to his friend repaying the husband because the husband paid the friend's trade bills.

McGuckin Furniture Limited

[91] Mr Black referred to the fact that MG Limited was incorporated on 2 September 2020 and the husband is the sole director and shareholder. Mr Black says he was only provided with a balance sheet for the period ended 30 September 2021 which refers to total net assets of £5655.00 Accounts were filed in Companies House for year ended 30 September 2022 showing net assets of £8,312.00.

[92] As with the enquiry about R Limited, the husband responded to Mr Black's request for information by saying,

"This company was set up to assist my friend Ronan. I have no knowledge of any of this business affairs."

[93] Again, Mr Black questioned such alleged arrangement taking account of the husband's legal responsibilities as Company Director. It is indeed difficult to understand the husband's claimed lack of knowledge which do not accord with the husband's legal responsibilities as Director. Without any information it is difficult to understand the point of the arrangement which the husband seems to suggest is of no financial benefit to him. Mr Black valued the business on a net assets' basis which on the most recent balance sheet on 30 September 2022 provided a value of £8,312.00. The husband did not dispute Mr Black's stated understanding that the husband accepts that estimated valuation of that company.

B Trading Limited

[94] Mr Black referred to B Trading Limited which was incorporated on 5 April 2012 and in respect of which the husband is the sole director and shareholder. The last accounts filed in Companies House for year ending 30 April 2014 show a net assets position of £142,405.00. Thereafter, a compulsory liquidator was appointed on foot of a court order of 6 February 2018. Mr Black requested but received no further information in relation to the status of the liquidation. Mr Black in the circumstances

considered it appropriate to rely on the last net assets value of £142,405.00 in his valuation. However clearly that net assets valuation is somewhat dated.

BCW Advisory Limited

[95] Mr Black referred to BCW Advisory Limited which was incorporated on 10 September 2020 and in respect of which the husband is one of three directors, the others being Mr A B and K W while the three equal shareholders in the company are A B, CW and N M C, sister of the husband herein.

[96] The husband provided no discovery but instead advised Mr Black that he is "... a director of this company in name only as I helped my friends set up this business because of my contacts in the hospitality industry."

[97] In addition to repeating previously made observations concerning the husband's responsibilities as a company Director, Mr Black noted that the husband had an entertainment licence application which he said he would provide but in fact never provided. Mr Black refers at Appendix 9 of his report to a Notice for such application by G W in relation to the B Hotel, but no clarification or relevant discoverable documentation were provided to Mr Black. The most recent financial statements filed in Companies House for year ending 30 September 2022 show a net asset value of £52,182.00 on the balance sheet. Moreover, it is noted that the husband's signature was applied to the year ending 30 September 2021 financial statements filed on 3 February 2022 which casts further doubt on the husband's suggestion that he does not have access to the financial statements, director's current account breakdowns and other relevant discovery which had been sought by Mr Black. The B Inn was on a hereafter mentioned statement of net worth drawn up by the husband on which he stated he wanted to buy that Inn.

[98] In the absence of fulsome discovery, Mr Black estimated the value of the BWC Advisory Limited as the balance sheet net asset value on 30 September 2022 that being £52,182.00. The husband's sister's stated third interest would be £17,394.00. Mr Black confirmed to the husband under cross examination that if a person was not a shareholder, a value would not ordinarily be attributed to him. However, the question for the court is whether notwithstanding the shareholding noted on paper and given the other facts set out herein, the husband in reality does have an interest. Mr Black has included the interest of £17,394.00 in his overall valuation of the assets.

[99] Mr Black was also asked to consider and comment on other entities in respect of which it was suggested the husband has or has had an association. In relation to G I Limited which was dissolved on 28 March 2023, the husband was never a shareholder and although he was a director, Mr Black does not value the company or attribute an interest to the husband.

[100] Similarly, Mr Black did not believe the husband was ever a director or shareholder in S C S Limited incorporated on 9 February 2021 and in respect of which the husband's nephew was the only director and shareholder.

[101] Mr Black also did not believe the husband was ever a director or shareholder of Culmore Property Investments Limited incorporated on 29 January 2021 and in respect of which the same nephew is the only known director and shareholder. The court accepts Mr Black's evidence in relation to G I Limited, S C S Limited, C P I Limited and attributes no interest to the husband in relation to those companies.

H Limited

[102] Mr Black said he understood that H Limited operates B C H Limited. He requested but was not provided with a copy of the relevant lease agreements but understood that the husband is neither a director nor a shareholder of H Limited and accordingly did not find the husband to have any interest.

[103] C Inns (NI) Limited was incorporated on 26 September 2014 and the sole director and shareholder is D C, the brother of the husband herein. Mr Black requested but did not receive a copy of the lease agreement between C Inns (NI) Limited and B Limited in respect of the operation of B Dromore. He understood that no rent is paid in respect of that Bar. He did not find the husband as having any interest in C Inns (NI) Limited. The court accepts Mr Black's evidence in relation to those companies.

[104] Mr Black did not believe the husband is a shareholder in any of the K Group Limited Companies in respect of which Mr Black concludes Mr P K is the ultimate owner. However, Mr Black noted that the husband is a named director in L L G Limited, L T Limited, L T H Limited, and L P Limited.

[105] The court considers as being relevant, the husband's evidence to the court that the hotel owner who he says employed him, provided his car and provided the hotel accommodation where the husband lives with his partner and eldest son. When separately asked about a holiday which he had taken, the husband said this also was paid for by the hotel owner. The court finds of particular interest the husband's evidence that his employer discharged payments owed by the husband in relation to his operation of a license premises which the husband said he himself had been unable to discharge following the removal of cash by the wife from the parties' attic.

[106] Mr Black was provided with the husband's P60's for year ending 5 April 2018 to 2022 in relation to his employment with L Hotel and his gross earnings for 2022-2023 for his employment were stated to be around £48,000.00. Mr Black was unable to say which company paid this salary or if the husband received earnings from other K G Limited Companies. Such information was not provided.

S C Net Worth Statement dated 13 February 2019

[107] The wife wished the court to have particular regard to a document appearing at Appendix 10 of Mr Black's original report. This was a document provided by the wife, which the husband accepts was written by him, and which is entitled "SXXXXX CXXXX Net Worth Statement dated 13 February 2019."

[108] The husband downplayed this document as being no more than an aspirational document. However, having regard to all the evidence in this case, the court is cautious about accepting that narrative at face value.

[109] The document refers to "F M" and lists a number of motor vehicles and their suggested value. The husband advised Mr Black that he was unable to provide information on a specific vehicle and that "Any vehicles I owned or in connection with F M were sold and the proceeds used towards a three-week family holiday in Florida in June/July 2019." No discoverable documents of value, sale proceeds or the manner in which the proceeds were spent were provided by the husband. The wife does not accept that vehicles which the husband on his said document has valued in excess of £200,000.00 were used to fund a three-week family holiday in Florida. In the absence of a scintilla of supporting documentation or even detailed narrative for such an extraordinary account, the court is driven to consider such narrative as fanciful and self-serving. The court notes too that under cross examination the husband said, "My friend owns Fastlane Motors."

[110] The wife's counsel quizzed the husband about the assets listed in the schedule dated 13 February 2019 and therefore prepared by the husband in the year of but before the parties' separation. That list appeared to show assets on one sheet prepared by the husband as having a total net worth of £2,995,445.00 in 2019. Cars were accounted for as having a value of £34,400.00.

[111] On a different sheet drawn up by the husband, there are assets listed with a combined value of £2,620,000.00 but after deducting borrowings, an equity of £1,489,000.00. The husband said he now thought the document was prepared in 2018. He insisted however that the figures were aspirational.

[112] When questioned, the husband agreed that the documents were quite detailed, and it was pointed out that some of the figures which he used were known to be accurate. When it was put to him that the documents were not prepared for no reason, the husband replied that he was trying to buy the B Inn. He also confirmed that the documents were prepared for the bank. These were therefore important calculations, and, given the timing of the documents and the values recorded by the husband on those documents for the bank, the court is not inclined to ignore their importance.

[113] The aforementioned "net worth statement" referred to other licenced premises namely T Bar, Ballymoney, L B, Larne and W T Doagh and for this part, the husband said that he does not own these pubs, when saying the document was aspirational. He

also said that potential opportunities to purchase those pubs were never pursued by him.

[114] Mr Black referred to another document provided by the wife in relation to a hire vehicle which the wife said by arrangement she collected from Bavarian Garage in May 2020 and which document refers to F L NI, which the wife understood to be the husband's company name under which she was to receive the rental vehicle. It is noteworthy that May 2020 is after the date when the husband says he sold the cars to fund the family holiday.

[115] The husband accepted that there had been money in the roof space of the parties' home. However, he did not accept the wife's account of the amount. He said whereas the wife asserted that £17,000.00 was there and £13,000.00 removed, it was the other way around, that £13,000.00 was there and £17,000.00 was gone. The money was stated by him to have been gathered up over a period of time from the husband's pubs and car sales.

[116] When asked about his trade in cars, the husband said he didn't really deal in cars but instead, helped friends out. It is the wife's case that the husband has always dealt in cars. The husband denied that he was now trading in cars but said that he and the parties' eldest son had a shared interest in cars. He was asked what he meant when he said it was easy to sell cars to which the husband responded that when they were married, he did what he could to please the wife but now did not need the same level of income.

[117] The husband did not deny when put to him that the trade of second-hand cars was actually one business which had not suffered negative impact from the covid pandemic. Instead that business had soared. This would make a cessation of the husband's involvement with the car trade surprising, to say the least. Moreover, the husband confirmed under cross examination that he continued to pay car trade insurance, despite it being more expensive. He stated that this so that he was able to drive any car, and he said cars were his hobby. The court does not find the husband's account credible.

[118] The husband said he did not dispute that when married the parties were doing things with cash. He rhetorically asked, how else did the parties manage to own two unencumbered houses. This was a most telling observation.

[119] The husband maintained that he ceased dealing in cash following the Covid Pandemic. This might be plausible were it not for the myriad of other admitted and ascertained business dealings in this case. He initially said he didn't remember getting the takings of the F R Bar but then acknowledged he did lift the takings. The husband accepted that the income and expenses of the B I Bar were not accounted for.

[120] The husband denied asking the wife to pay for things by credit card and then refusing to give her the money. He went on to say that they were a family, and he gave his wife money.

[121] The husband failed to produce proof of the source of a lodgement of £4000.00 into his account in October 2019. He said it must have been from pubs and cars.

[122] The husband accepted that he did not pay the rates with the result that arrears have accrued in relation to the Portstewart property.

[123] As referred to earlier, the husband was asked about the significant lodgements recorded as R Limited, being a number of lump sums in the varied amounts of £10,000.00, £15,000.00 and £20,000.00, totalling £145,000.00 and paid into his account over a period of less than one year. The husband stated that this was just a friend helping him out in the same way as he helped the friend out. He said he may have lent the friend cash. He said the wife knew about this.

[124] It was put to the husband that the bank statements showed money being paid to the husband but not money being paid to the friend to which the husband said he paid the friend's business accounts and the friend paid him. Such narrative raises more questions than answers, the most obvious being to wonder why each person would not use their own income to pay their own liability. There does not appear to be any good reason for such practice if it existed.

[125] It is difficult to ignore the husband's admitted practice of dealing in cash and also his observation about the fact that it was not without reason that the parties owned two unencumbered houses. When challenged about his business dealings, the husband in one rare moment of candour, said he was aware he "did not do things properly."

[126] In relation to the schedule of assets dated 13 February 2019 the husband said in his evidence said he was always trying to improve the property portfolio. The court also noted it was submitted, and not challenged, that the B Inn is rented by BWC A Limited in respect of which the husband's sister is a one third shareholder. The husband, one of three directors, downplayed his interest saying that he was a director in name only and became involved to help out a friend because of his contacts in the entertainment industry. However, in the context of the husband's account of his wish to buy the B Inn, his wholly questionable business dealings, his connections and his lack of disclosure, the court cannot be sure that his interests do not extend beyond and have greater value than as described by the husband.

[127] It was only on the last day of hearing that the husband confirmed he had a Revolut account which he had not disclosed, and he said it was used for the parties' children. He denied only disclosing those bank accounts which were known about and yet some discovery was only produced on the last day of hearing in July 2024. Moreover, some of the statements provided only revealed balances.

Summary

[128] Having considered all of the evidence, the court notes the combined value of the former matrimonial home and Portrush property as being £628,079.00 and concludes that the combined value of B Limited and AMI Limited in the sum of £446,895.00 reflect only part of the husband's business interests. Mr Black calculated the identified personal and property assets to have a value of £1,242,985.00 in his June 2024 updated report. However, that is not the full picture.

[129] The court has regard to the fact that the husband was receiving in less than one year a total of £145,000.00 in lodgements with the reference RMG furniture, the court considers his interest in and connections to other businesses, the value of the car business recorded by the husband in his statement of net worth along with the cash the husband says he received from the bars and cars.

[130] The court is generally aware that the husband has incurred debt. There is the debt which resulted in a receiver being appointed, debt in relation to the non-payment of rates for the Portrush property, debt in relation to the non-payment of legal fees and the wife's costs. However, the husband has not provided documentary proof of the debt. The court is also mindful of the fact that the husband has the benefit of rent-free hotel accommodation.

[131] The wife seeks to retain the former matrimonial home along with the Portstewart property which she says would enable her to have a rental income. In addition, the wife seeks a lump sum for clean break resolution and to take account of the husband's litigation misconduct in regard to his major shortcomings in relation to the provision of full discovery which had serious financial consequences for the wife. The husband's proposal for resolution represents property and lump sum of greater value than the value of the former matrimonial home and the Portrush property but includes an amount to represent the wife's increased costs as a result of the husband's discovery failures.

The Law

[132] In *H & H* [2015] NICA 77, the Court of Appeal in Northern Ireland approved Maguire J's summary of the law in ancillary relief in Northern Ireland:

"The following from the case law appear to be of general application:

1. There is in operation what might be described as a non-discrimination principle as between the roles performed by husband and wife. The object rather is to achieve a fair outcome as between the parties.

2. Equality of division is a useful yardstick it should only be departed from if there is good reason for doing so. This however does not mean that there is a presumption in favour of equal division.
3. In seeking to achieve fairness between the parties the court will keep in mind the needs of the parties; the fact that compensation may be required to address any significant prospective economic disparity due to the manner in which the marriage was conducted; and the idea of marriage is a partnership of equals.

To a greater or lesser extent, all of the above, together with all other relevant factors, will need to be considered in the particular case the court is dealing with.”

[133] In the case of *S v S and ES* [2016] NI Fam 2, Keegan J adopted that analysis but also paid specific regard to the Article 27(2) of the Matrimonial Causes (NI) Order 1978.

[134] The court’s task is to identify, compute and distribute the assets in accordance with the law. The Matrimonial Causes Order (Northern Ireland) 1978 is our primary legislation and therefore the starting point. Article 27 of the Matrimonial Causes (Northern Ireland) Order 1978 provides that first consideration must be given to the welfare while a minor of any child of the family who has not obtained the age of 18. In addition, the court is required to consider the various matters set out and to which this court throughout this judgement has paid due regard in reaching its decision noting:

- The three youngest, dependant, children are in the care of the wife.
- The wife has financial needs not only because of primary financial responsibility for the three dependent children but also because of her financial dependence on the husband during the marriage for which the husband bears much responsibility. The ending of the wife’s chosen career caused a lacuna in her potential for future employment.
- The case tells of a marriage where the parties had a comfortable standard of living, owned two properties free of mortgage, had access to cash, possessed luxury cars and enjoying at least one family holiday in Florida. The wife will lose the benefit of the ongoing potential benefit to the husband from his business operations and contacts.
- Both parties contributed to the welfare of the family.

- Neither party has physical or mental disability.
- In relation to conduct, the husband's controlling behaviour has been raised and is relevant in that he created a situation where the wife was financially dependent upon him. The husband's controlling behaviour was evident in the husband's dealings in relation to interim agreement for maintenance which eventually necessitated the wife having to progress her adjourned maintenance pending suit application. The impact of the husband's conduct created need in relation to the wife and is regarded in that way and further the court considers the extent of the assets not disclosed to the court which will be reflected in the treatment of the available assets. The behaviour falls short of behaviour which is gross and obvious as discussed in the clear considered judgement given by Peel J in *N v J* [2006] UKHL 24.
- The husband controlled the parties' financial affairs, and he has displayed litigation misconduct both in his failure to provide proportionate discovery in a timely manner, his contravention of court orders and his non-disclosure which at the very least has added significantly to the wife's costs. The delayed resolution and uncertainty were an added hardship for the wife which could have been easily avoided. Litigation misconduct will be reflected in costs. There is little disagreement about the fact that the husband added £50,000.00 to the wife's costs.
- The husband has suggested that he pay £60.00 monthly to the wife for her maintenance. However, this is a case where a clean break is desirable, particularly because the facts allege a controlling relationship and if history is to inform the future, there is a clear benefit to the parties being enabled to enjoy their next chapter freed from the negativity and blame which has impacted on the whole family following the breakdown of the parties' marriage.
- In achieving a clean break resolution and taking due account of the history of failure to provide proper accounts and failure to provide proper discovery, in meeting needs the court looks to the known resources.

[135] *Miller v Miller; McFarlane v McFarlane* [2006] UKHL 24 described three strands of fairness; "needs, compensation and sharing." In this case, the court considers whether by reason of the marriage and the husband's expectation that the wife did not work outside the home, the wife suffered a relationship-based disadvantage for which she ought to be compensated.

[136] When discussing the principle of sharing, Sir Nicholas Wall said in *Jones v Jones* [2010] Fam 1:

"Application of the sharing principle is inherently arbitrary; such is, I suggest, a fact which we should accept and by which we should cease to be disconcerted."

[137] In relation to non-disclosure I find the words of Thorpe J in *F v F* [1994] 3 FLR 359 to be pertinent when he said:

“So if he has conducted his affairs throughout the marriage in such a covert fashion as to relieve him of the ordinary obligations of citizenship to support the State through tax contribution, if he has conducted these proceedings in a vain endeavour to maintain that camouflage, if in consequence the obscurity of my final vision results in an order that is unfair to him it is better that than that I should be drawn into making an order that is unfair to the wife.”

[138] Mostyn J in *NG v SG* 2011 said:

“Pulling the threads together it seems to me that where the court is satisfied that the disclosure given by one party has been materially deficient then:

- (i) The court is duty bound to consider by the process of drawing adverse inferences whether funds have been hidden.
- (ii) But such inferences must be properly drawn and reasonable. It would be wrong to draw inferences that a party has assets which, on an assessment of the evidence, the court is satisfied he has not got.
- (iii) 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.
- (iv) 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.
- (v) The court will then look to the scale of business activities and at lifestyle.
- (vi) Vague evidence of reputation or the opinions or beliefs of third parties is inadmissible in the exercise.

- (vii) The *Al-Khatib v Masry* technique of concluding that the non-discloser must have assets of at least twice what the Claimant is seeking should not be used as the sole metric of quantification.
- (viii) 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 result is an order that is unfair to the non-discloser it is better that than that the court should be drawn into making an order that is unfair to the Claimant."

[139] In *Al-Khatib v Masry*[2002] EWHC 108 (Fam), [2002] 1 FLR 1053 Munby J said

"I do not accept Mr Mostyn's submission that the materials I have seen justify the inference that the husband's wealth amounts to the \$200 million which the wife believes it to be. I am not saying that it does not. All I am saying is that the materials I have seen do not properly justify an inferential finding that it does. But Mr Mostyn does not have to go that far. The inference which in my judgment I can properly draw, and which I do draw, is that the full extent of the husband's present wealth is such as will very comfortably justify ... the kind of award which the wife is seeking."

Conclusion

[140] In this case taking account of the known assets, the evidence and the proposals for resolution, though not being aware of the full extent of the husband's income and assets I draw the inference that it is such as justifies the award I make.

[141] The husband's disclosure was wholly unsatisfactory, his evidence lacked credibility and was mostly unproven. It is not possible to confirm with any certainty the extent of the assets in which the husband holds an interest.

[142] In his handwritten "statement of net worth" document, the husband suggested he had a total net worth of £2,995,445.00. The problem for the husband is that while the document may not be the entire truth, it was prepared for the bank, and I am satisfied that the husband in his dealings has concealed the true picture not only from the wife but also from the court.

[143] For all of the aforementioned reasons discussed herein, in clean break settlement of all of the parties' ancillary relief claims against each other in life and in

death, of an income, capital, property or pension provision nature arising from the breakdown of their marriage:

- The wife shall retain the former matrimonial home at Aldergrove, Crumlin and the parties' second property at Portstewart shall within six weeks hereof be transferred into the wife's sole name free of charges to include the rates. In the event that the husband does not sign the necessary documentation to give effect to the transfer immediately when called upon to do so after the six-week period has elapsed, the Master (Matrimonial) shall sign on behalf of the husband and the husband shall be responsible for paying the costs of any such application to the Master; and
- The husband shall pay to the wife the lump sum amount of £50,000.00 within 12 months hereof and thereafter interest at 3% on any unpaid part of the said lump sum.
- In consideration of the aforementioned transfer and lump sum payment, the husband shall retain all other assets held by him in his own name or by others on his behalf as his own absolutely.
- The parties agreeing that the husband shall continue to pay child maintenance, the husband shall pay to the wife ongoing maintenance of £1,000.00 divided for the benefit of the children who remain in her care equally until they achieve the age of eighteen years or complete their second level education, whichever is the later and until varied by agreement, Court Order or CMED.

Costs

[144] Orders for costs previously made against the husband have not been discharged as the court was told that the husband sought taxation when the bills were sent.

[145] I completely accept Ms Houston BL's submission that it is not usual for counsel to be addressing the court in an ancillary relief case after twenty-five court appearances. This in itself would have caused considerable escalation in court costs. I accept too that because of his egregious failures to provide disclosure the husband bears responsibility for the increased costs. The court was told that the wife's costs were increased by £50,000.00 and given the web of dealings woven by the husband which needed to be unpicked, I can understand how these costs, which ought to have been unnecessary, were instead incurred. I believe it would simply not have been possible for the wife to have made her case so effectively without the assistance and hard work of her experienced legal team and Forensic Accountant. I therefore order that the husband is condemned in the amount of £50,000.00 of the wife's costs to be paid within six weeks hereof, after which, interest shall be charged at court rate.

[146] I extend the time for appeal to twenty-one days.

[147] I so Order.