IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
GRENADA

HIGH COURT OF JUSTICE (DIVORCE)

CLAIM NO. GDAHMT 2010/0006

BETWEEN:

PHILOMENA LA QUA

Petitioner

and

JUSTIN LA QUA

Respondent

Appearances:

Mr. Gregory Delzin and Mrs. Michelle Emmanuel Steele for the Petitioner

Mr. Leslie Haynes Q.C and Mrs. Denise Haynes instructed by Messrs Henry, Henry and Bristol for the Respondent

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2013: February 18, 19, 20, 21
October 17

JUDGMENT

[1] **MOHAMMED, J.:** *"Divorce creates many problems. One question always arises. It concerns how the property of the husband and wife should be divided and whether one of them should continue to support the other. Stated in the most general terms, the answer is obvious. Everyone would accept that the outcome on these matters, whether by agreement or court order should be fair. More realistically, the outcome ought to be as fair as is possible in all the circumstances. But everyone's life is different. Features which are important when assessing fairness differs in each case, and, sometimes, different minds can reach different*

conclusions on what fairness requires. Then fairness, like beauty, lies in the eyes of the beholder"[1].

[2] La Qua is a household name in Grenada because of the La Qua Bros Crematorium (Grenada) Limited ("the Crematorium") and the La Qua Burial Society ("the Burial Society"). Generally, there are two features which are common in funerals, the lauding of the deceased's noteworthy accomplishments and the preparation of the deceased's spirit for the afterlife. In some ways the instant application before the Court bears some striking resemblances to the events at a funeral. Each party has lauded his/her own contributions during the marriage and it is left to the Court to divide the matrimonial assets as each prepare for life after the marriage.

[3] The Wife is seeking one-half share and interest of all the real property which she listed in the instant application, a lump sum payment, an interest in the Crematorium, the transfer of three of the Husband's nine motor vehicles, her costs and any other relief.

[4] The Husband is of the view that the Wife is not entitled to one-half interest of the matrimonial assets since she was never a partner in the marriage. In his view, she was an absentee wife. He does not share the view that the assets of the Crematorium form part of the matrimonial assets and he vehemently denies that he has failed to disclosed all his assets and instead insists that the accounts which he did not voluntarily disclose were joint accounts with third parties who did not give him permission to disclose.

[5] Before the instant application was ventilated, the parties had arrived at a mediation agreement whereby the Husband agreed to and did pay to the Wife the sum of $260,000.00 and transferred certain properties valued at $1,212,300.00. The total value was $1,472,300.00. Although the mediation agreement was set aside for

[1] White v White [2000] UKHL 54 paragraph 1 by Nicholls LJ

reasons irrelevant to the instant application, both parties acknowledged that the aforesaid sum must be taken into account in any award which the Court makes.

[6] At the trial, apart from the Wife and the Husband the only other person who gave evidence was Trish Bethany, who was called by the Wife. An affidavit for the Wife's mother Rosanna Neckles was filed on behalf of the Wife. She appeared but was not called to be cross-examined. In the case of the Husband, although he filed affidavits for Rochelle Simone Theresa Johnson, a daughter of the Husband, Sarah Mandley-Charles, an employee of the Crematorium and the Husband's brother, Thomas La Qua, none of them were called to be cross-examined, with the Husband not relying on their affidavits.

[7] At the end of the trial both parties called upon the Court, for various reasons, to draw negative conclusions by each other's actions for failing to rely on the said affidavits and by extension not to call the deponents to be subjected to cross-examination. The tragedy of matrimonial proceedings is invariably the persons who are best placed to be witnesses are either close family members or friends of the parties. By giving evidence in matrimonial proceedings they are placed in a very unpleasant situation since they are forced to choose sides. In this matter it was no different. I am therefore not minded to draw any negative conclusion by the failure of Rosanna Neckles, Rochelle Simone Theresa Johnson, Sarah Mandley-Charles and Thomas La Qua to be called for cross-examination since these persons were either family members or a close family friend and I do not wish to impose the burden of my findings on the issues before me between the Husband and Wife on any on them. The affidavits filed on their behalf were not considered as part of the evidence in the instant application.

[8] The issues arising from the instant application for determination are:

(a) What are the matrimonial assets arising from the marriage?

(b) Does the Husband's share in the Crematorium form part of the matrimonial assets?

(c) What factors must the court consider in assessing the evidence?

(d) Has the Wife proven that she is entitled to one-half share of the matrimonial assets?

(e) Should the Husband be ordered to pay the balance of the Wife's credit card debt?

(f) Should the Husband be ordered to pay the Wife's costs of the instant application?

What are the matrimonial assets arising from the marriage?

[9] In **White v White**[2] Lord Nicholls described the approach the Court should adopt when dealing with different types of assets acquired before or during the marriage as:

> *"....property owned by one spouse before the marriage, and inherited property whenever acquired, stand on a different footing from what may be loosely called matrimonial property. According to this view, on a breakdown of the marriage these two classes of property should not necessarily be treated the same way. Property acquired before marriage and inherited property acquired during the marriage come from a source wholly external to the marriage. In fairness, where this property still exist, the spouse to whom it was given should be allowed to keep it. Conversely, the other spouse has a weaker claim to such property than he or she may have regarding the matrimonial property.*
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> *43. Plainly, when present, this factor is one of the circumstances of the case. It represents a contribution made to the welfare of the family by one of the parties to the marriage. The judge should take it into account. He should decide how important it is in the particular case. The nature and value of the property, and the time when and circumstances in which the property was*

[2] [2000]UKHL 54 at paragraph 42

acquired, are among the relevant matters to be considered. However, in the ordinary course, this factor can be expected to carry little weight, if any, in a case where the claimant's financial needs cannot be met without recourse to this property."

[10] The approach adopted by the Court to assets acquired pre-marriage will depend upon such factors as the length of the marriage, and all the circumstances of the case. In **J v J (Financial orders; wife's long-term needs)**[3] where there was a medium length marriage and the assets were worth approximately £8 million, the fact that they were acquired by the husband before the marriage counted for little where the Court determined the distribution of the assets by reference to the wife's needs. In **Mc Cartney v Mills-Mc Cartney** [4] where there was a short marriage, the wife's needs were a factor of 'magnetic importance' where all of the assets were acquired before the marriage.

[11] The authorities have demonstrated that there is no clear rule that only property acquired during the marriage or property which is the financial product of the parties' endeavour are considered by the Courts to be the matrimonial assets. The relevance of whether property is matrimonial or non-matrimonial has to be looked at in the context of the needs of the applicant, in this case, the Wife. The fact that assets are inherited or pre-acquired may account for little where the needs of the applicant cannot be met without recourse to such assets[5].

The matrimonial home

[12] The matrimonial home is situate on 54,925 square feet of land at Morne Rouge, St George, Grenada ("the matrimonial home") which both parties agreed the Husband acquired on 5th February 1991[6], before the marriage, and on which the

[3] [2011] EWHC 1010 (Fam)
[4] [2008] EWHC 401 (Fam)
[5] White v White [2000] 2 FLR 981
[6] Paragraph 6 of the affidavit of Justin La Qua filed 14th October 2010

house was constructed. Under cross-examination, the Wife admitted that there is no claim for an interest in the matrimonial home in the instant application.

[13] There was no dispute that the Husband bore the entire financial responsibility of the construction and maintenance of the matrimonial home during the marriage. The Husband built the first and second stages of the matrimonial home in 1992, three years before the marriage[7] and while he was married to another person. The matrimonial home was built in four stages and by the time the parties got married, the first and second phases were completed by the Husband who financed the first two stages with loans in the sum of $250,000.00 and which were paid off by the Husband within two years. The other stages were constructed during the marriage. At the time of the hearing of the instant application there was an outstanding mortgage in the sum of $569,000.00[8].

[14] The Wife's financial and non-financial contribution to the matrimonial home were minimal. Indeed, she admitted under cross-examination that she made no financial contribution to any phase of the matrimonial home. Her non-financial contribution was limited to contributing to the design of the guest house and the design and refurbishment works after the damage done to it by hurricane Ivan.

[15] The Courts have generally treated the matrimonial home differently compared to other matrimonial assets. Lord Nicholls in **Miller v Miller** and **McFarlane v McFarlane**[9] summed it up as:

> *"The parties' matrimonial home, even if this was brought into the marriage at the outset by one of the parties, usually has a central place in any marriage. So it should normally be treated as matrimonial property for this purpose. As already noted, in principle the entitlement of each party to a share of the matrimonial property is the same however long or short the marriage may have been."*

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[7] Paragraph 6 of the affidavit of Justin La Qua filed 14th October 2010
[8] Trial Bundle 3, Tab 17 page 2
[9] [2006]UKHL 24 at paragraph 22

[16] While I agree with the Husband's position that the matrimonial home forms part of the matrimonial assets[10], I do not share his view that the Court ought to divide the value of the matrimonial home in stages or choose part of the value of the matrimonial home as a contribution to the marriage since he purchased the land and built the first two stages before the marriage.

[17] I accept the Wife's evidence that when the Husband purchased the land and commenced construction it was his intention that this would have been the parties' matrimonial home in Grenada. They were married there, and although the Wife travelled frequently from Grenada, this is the place she called home during the marriage. I therefore find that the matrimonial home took an important position in the marriage of the parties and I will treat it as part of the matrimonial assets and I will consider its full value.

The other assets

[18] The properties listed by the Wife in the instant application as forming the matrimonial assets are:

(a) That property described in Deed dated 13th day of August, 2009 and made between Denis Joseph and Agnes Joseph of the one part and Justin La Qua of the other part and recorded in the Deeds and Land Registry of Grenada in Liber 27-2009 at page 894 comprising of 2 lots or pieces or parcels of lands at Calivigny in the parish of St. David's containing by admeasurements One Acre Two Roods (1 Ac. 2 Rds.) or Sixty-five Thousand Three Hundred and Forty (65,340) Square Feet ("the Calivigny property").

(b) That property described in Deed dated 4th March, 1999 and made between Egmont Development Inc of the First Part and the Bank of Nova Scotia of the Second Part and Justin La Qua of the Third Part and

[10] Paragraph 12 of the Husband's closing submissions filed 14th June, 2013.

recorded in the Deeds and Land Registry in Liber 6-99 at page 759 comprising of that lot piece or parcel of land known as Lot. 65 Egmont situate in the parish of St. George containing by admeasurement Eighteen Thousand Eight Hundred and Seventy-eight (18,878) Square Feet ("the Egmont property").

(c) Property described in Deed dated 27th February, 2004 and made between Arlette Hoeppner nee Charles of the One Part and Justin La Qua and Philomena La Qua of the Other Part recorded in the Deeds and Land Registry in Liber 7-2004 at page 864 comprising of all that lot piece or parcel of land formerly a portion of Grand Anse Estate and marked Lot 25 and containing by admeasurement Sixteen Thousand (16,000) Square Feet ("the Grand Anse property"). It is noted that the Wife already owns an one-half share in the Grand Anse property.

(d) Property described in Deed dated 7th April, 2005 and made between Anthony Jones on one part and Justin La Qua of the other part and recorded in the Deeds and Land Registry in Liber 14-2005 at page 728 comprising of all that lot piece or parcel of land situate at Morne Rouge being of Lot 27 in the St. George and containing by admeasurement Eleven Thousand One Hundred and Twenty-nine (11,129) Square Feet ("the 2005 Morne Rouge property").

(e) Property described in Deed dated 7th April, 2003 and made between Franklin Elliot Masanto and Ann Rose Masanto on one part and Shonelli La Qua and Justin La Qua of the other part and recorded in the Deeds and Land Registry in Liber 21-2003 at page 945 comprising of all that lot piece or parcel of land together with the building and appurtenances situate at Woburn in the parish of St. George and containing by admeasurement One acre I Roods Eight Poles (1Ac. 1Rd. 8Pls) ("the Woburn property").

(f) Property situate at Carriacou ("the Carriacou property").

(g) Properties situate at Grenville in the parish of St. Andrew ("the Grenville properties").

(h) Property at Mabouya Island ("the Mabouya Island property").

(i) Property at Westerhall in the parish of St. David ("the Westerhall property").

(j) Property situate at Grand Mal ("the Grand Mal property").

(k) Condominium in New York ("the New York apartment").

[19] The other real property acquired during the marriage as disclosed by the Husband were property situate at Lance Aux Epines ("the Lance Aux Epines property") which the Husband acknowledge is jointly owned by he and the Wife and 10,655 square feet of land situate at Grenville("the Grenville land") which is registered in the Husband's name. He did not indicate when both properties were acquired.

[20] Apart from the real property, the Husband disclosed that he held the following accounts:

(a) CitiBank, New York the sum of US$301,000.00 in the joint names of the Husband ($80,000.00), his daughters Evita La Qua ($80,000.00) and Justine K. La Qua ($ 80,000.00) and the Wife ($61,000.00)[11];

(b) Sun Trust Florida, US$30,00.00 in the name of the Husband[12];

(c) Chase Bank, New York, US$3,000,00 in the joint names of the Husband and Rosanna Neckles, the mother of the Wife;

(d) First Citizens Bank, Trinidad, US$25,000.00;

(e) First Caribbean Bank, St. Vincent, business account in the joint names of the Husband and Thomas La Qua, $19,000.00.

(f) Republic Bank Grenada Ltd, joint trust account with the Husband and his daughter Evita La Qua in the sum of $300,000.00[13];

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[11] According to the Husband this account was established in or about 1993 and was only broken up and placed in the respective names above following the New York Banking crisis in or about 2007.

[12] According to the Husband this account was established in or about 1993 and used for the purposes of the Crematorium.

[13] According to the Husband this was for the education and benefit of his daughter Evita

(g) Communal Co-operative Credit Union, St. George's, $10,000.00;

(h) Public Service Co-operative Credit Union, St. George's,$7,000.00;

(i) Grenville Co-operative Credit Union, $10,000.00;

(j) River Salle Co-operative Credit Union, $6,000.00[14].

[21] The Husband admitted owning the following vehicles: Jaguar Sedan - 2000 model, Reg. No. P36 purchased in 2000; Audi sports - 2002 model, Reg. No. P52 purchased in 2002; Peugeot convertible - 2008 model, Reg. No. P726 purchased in 2008 and Mitsubishi Jeep - 1978 model, Reg. No.HC208[15].

[22] He also stated that he was in possession of: Nissan sports car, purchased in 1986, Reg. No. P82[16]; Camaro sports car, Reg. No. P92, 2009 model[17]purchased in 2010; FIAT Sport car, Reg. PB10, purchased in August 2010; Volkswagen station wagon, Reg. No. P270, purchased on February 2010[18]; and Honda car, Reg. No. PF47 purchased on June, 2012[19].

[23] In addition to the foregoing, the Husband acknowledged that he owns a 50% shareholding in the Crematorium worth approximately $1.5 million[20] as at 30th June 2010. He stated under cross-examination that the Burial Society owes the Crematorium the sum of $1,405,564.00 of which he is entitled to one-half (approximately $700,000.00) and that he owns 3150 shares in the Grenada Co-operative Bank[21] (there was no value for these shares). According to the Crematorium accounts disclosed by the Husband for the year 2011[22] loans issued by Republic Bank (Grenada) Limited to the Crematorium are secured by a debenture over the assets of the Crematorium along with the personal guarantees

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[14] Paragraph 30 of the affidavit of Justin La Qua filed 14th October, 2010
[15] Paragraph 30 of the affidavit of Justin La Qua filed 14th October, 2010
[16] Registered in the name of his daughter, Evita La Qua;
[17] After selling the Honda CRV that previously carried that Registration Number
[18] Registered in the name of his daughter, Evita La Qua;
[19] Paragraph 5 of the affidavit of Justin La Qua filed 27th June, 2013.
[20] Trial Bundle 2 page 282
[21] Trial Bundle 2 page 237
[22] Trial Bundle 2 at page 279

by the directors. The guarantees of the Directors are in the sum of $3.5 million[23]. I agree with counsel for the Wife that this suggested that the Bank was satisfied that the directors, and in this case the Husband, had personal assets to cover the guarantee.

[24] He also disclosed the sums that stand to his credit and sums he received from redeemed insurance policies. As at 14th June 2012 the sum of $13, 3351.09 stood to his credit in Flexible Premium Annuity plan at Demerara Mutual[24]. He cashed in three policies at Sagicor during the period 3rd June 2009 to 3rd August 2009 in the total sum of $294,528.63[25].

[25] Although the instant application only contained some of the matrimonial assets, to make a fair property adjustment order, it is mandatory that the Court considers all the assets which the Court considers to be the matrimonial assets in order to meet the needs of the Wife.

[26] I have categorized the aforesaid assets into the following groups: (a) assets acquired during the marriage; (b) assets acquired during the marriage but excluded from the instant application; (c) assets which do not form part of the matrimonial assets; and (d) assets acquired before the marriage. I have already dealt with the matrimonial home, which I consider to be part of the matrimonial assets.

[27] In compliance with the mediation agreement the Calivigny property, the Grand Anse property and the New York apartment have already been transferred to the Wife by the Husband. Although the mediation agreement was set aside, there was no evidence that the said properties have been returned to the Husband despite the Wife's assertion that the conveyances have not been registered. Both

[23] Trial Bundle 2, item 4 (b) at page 277
[24] Trial Bundle 2 pages 29
[25] Trial Bundle 2 pages 293-295

parties agreed that their value in the sum of $1,212,300.00 is to be deducted from the final award to be made by this Court.

[28] In terms of real property, in addition to the Calivigny property, the Grand Anse property and the New York apartment, for the purpose of determining the instant application, the assets which were acquired during the marriage and which I find form part of the matrimonial assets are: the Egmont property[26], the 2005 Morne Rouge property, Lance Aux Epines property, Grenville lands, the Woburn property and one-half net interest in the Grand Mal property. According to the Husband, he acquired the Grand Mal property with his brother Thomas La Qua in 2010 at the price of $704,060.00[27] and there is an outstanding mortgage on this property in the sum of $600,000.00.

[29] However, the Woburn property and the Lance Aux Epines property are excluded for the following reasons. According to the Deed dated 8th April 2003 the Husband purchased the Woburn property but by Deed of Gift dated 29th December 2005 he transferred a one-half interest to his niece Shoneilli. Although the one-half interest was transferred to Shonelli during the marriage, the Wife clearly stated under cross-examination that Shonelli is also her niece and she did not wish to have anything taken away from her. Although the Woburn property forms part of the matrimonial assets, I will not consider it as part of the matrimonial assets in light of the Wife's expressed position. The Wife already has a one-half interest in the Lance Aux Epines property.

[30] The real property which in my judgment do not form part of the matrimonial assets are the Mabouya Island property, since I accept that it is not owned or leased by the Husband[28] and the Wife was not able to adduce any evidence to challenge the Husband's assertion. In the closing submissions the Wife withdrew her claim

[26] The Husband stated under cross-examination that he sold the Egmont property for $200,000.00. This property was acquired during the marriage but since it was sold in my view, the cash he received will still form part of the matrimonial assets.
[27] Trial Bundle 3 page 110.
[28] Paragraph 40 of the affidavit of Justin La Qua filed 14th October 2010

for any share in the Westerhall property[29] since it was clear that it was owned by the Husband's first wife.

[31] In my judgment, save and except for the Nissan sport car purchased in 1986, more than 10 years before the marriage, I find that all the vehicles which the Husband owns and are in his possession but registered in other persons names also form part of the matrimonial assets since they were acquired during the marriage; he did not deny purchasing them; he was knowledgeable on details of their acquisition and the names of the persons the vehicles are registered in were his children. I have noted that at the hearing of the instant application there was no valuation of the said vehicles.

[32] Apart from the Suntrust Florida account and the Citibank account which the Husband disclosed were opened in 1993, before the marriage, he failed to indicate when the other accounts were opened, including the insurance policies. In my judgment, it was in his interest to do so in order to assist the Court. I will therefore give the benefit to the Wife and find that the cash in the bank accounts, credit unions, insurance policies, shares in the Grenada Co-operative Bank as disclosed by the Husband, all form part of the matrimonial assets. I have included the Citibank and Sun Trust Florida accounts since although they were pre-acquired assets recourse may be required for them to meet the needs of the Wife.

[33] The Husband's shares in the Crematorium, the money due to him from the Burial Society as a shareholder of the Crematorium, the Carriacou property and the Grenville properties in my view are part of the assets of the Crematorium, a separate legal entity. I will consider them under the Wife's claim for shares in the Crematorium.

[29] Page 1 of closing submissions filed 28th June 2013

Is the Wife entitled to a share of the Husband's shares in the Crematorium?

[34] The Wife requested that the Court award her a share of the Husband's shares in the Crematorium for several reasons, namely: she held 11.9% shares in James La Qua and Sons Anglo American Funeral Agency Limited (" Anglo American") which existed many years prior to the marriage; she worked for the Crematorium, the Burial Society and Anglo American without remuneration; the Crematorium was the main source of income for the parties during the marriage and it was the income derived from the Crematorium which facilitated the Husband's acquisition of real and personal property, financed their other expenses during the marriage, and the Husband's shares in the Crematorium were not kept separate and apart from the parties' pool of matrimonial assets and had in fact merged with this pool due to the intermingling of the Crematorium's funds with the Husband's during the marriage.

[35] The Husband was firm in his position that the Crematorium was incorporated by he and his brother Thomas La Qua in 1985, some 10 years before the marriage; the Wife's contribution during the marriage was insignificant and added no value and that the Wife was paid for her 11.9% shares in Anglo American, which is in liquidation.

[36] It is exceedingly rare for the family courts to pierce the corporate veil. A company is a legal person with its own assets and liabilities and is distinct from the shareholders and directors. Whilst the Court may make orders in respect of assets owned by the parties to the marriage, such powers do not extend to assets owned by the companies controlled by either party **(Mc Gladdery v Mc Gladdery)**[30]**.** In order for the Court to pierce the corporate veil there must be impropriety in conjunction with the company structure by a shareholder **(Ben Hashem v Shayif and anor** and **Radfan Limited v Ben Hashem and Ali Shayif**)[31]. It should be noted that in practice, a party to the proceedings will usually acknowledge that the

[30] [2001] 1 FLR 315
[31] [2008] EWHC 2380

assets held by a company or a trust are within the control of that party and may be treated as an asset or resource of the marriage.

[37] The Husband provided the history of the Crematorium which, essentially, was his family's business. Both the Husband and his brother Thomas each owns 50% of the shares. According to the Husband, he grew up working in the initial business of Anglo American which was started by his father James La Qua. Anglo American was later liquidated and the Crematorium was established in 1985[32].

[38] He admitted that the Crematorium owns/leased the Carriacou property and the Grenville properties which are used as a funeral home[33]; that the matrimonial home was cleaned by workmen from the Crematorium under his supervision[34]; the Crematorium paid the household expenses and maintenance of the grounds of the matrimonial home except telephone, gas and maintenance and upkeep of the dogs[35]; the medical insurance provided to the Wife was a UK policy (which covered claims in the US) under the Crematorium and that this insurance policy extended to his daughter, his brother Thomas and his family[36]. Under cross-examination he admitted that he gave the Wife 11.9% shares in Anglo American and he accepted a 2007 document which showed a distribution of $77,239.00 in 2007 and $14,256.00 in February 2008 to the Wife, which she denied receiving.

[39] The Wife's contribution was limited to recording three radio advertisements for the Crematorium, which have been running for the past 11 years in Grenada[37]; to re-organizing the filing system and assisting when the Crematorium was understaffed. She admitted that as the boss' Wife she had her own schedule. She stated that when she was first married she only knew that she was working for the funeral home but she was unaware of the liquidation of Anglo American. She drew no distinction between the Crematorium, Anglo American and the Burial

[32] Paragraph 31 of affidavit of Justin La Qua 14th October 2010
[33] Paragraph 33 of affidavit of Justin La Qua 14th October 2010
[34] Paragraph 12 of affidavit of Justin La Qua 27th June 2012
[35] Paragraph 24 of affidavit of Justin La Qua 27th June 2012
[36] Paragraph 13 of affidavit of Justin La Qua 27th June 2012
[37] Paragraph 21 of affidavit of Philomena La Qua 15th July 2010

Society. She recalled going to two meetings where she was told how to vote by the Husband. She said she accompanied the Husband on a business trip to Hong Kong and to Mexico to purchase caskets. Early in the marriage she entertained staff at the matrimonial home and she accompanied the Husband to funerals in Grenada.

[40] There are a few documents which were submitted to the Court concerning the liquidation of Anglo American. A notice dated 10th October 2007 headed *"James La Qua & Sons Anglo American Funeral Agency Limited (In Voluntary Liquidation) Special Resolution"*[38] ("the Resolution"). In the Resolution the shareholders, Thomas La Qua, Dorothy Brown for Eric La Qua, the Husband for Margaret La Qua, for the Wife and himself and Beverly La Qua all ratified a resolution of 19th August 2005 when Anglo American was put into voluntary liquidation, all acts validly taken and the appointment of Brian Robinson, liquidator at PricewaterhouseCoopers, Barbados. In support of this, the Husband tendered into evidence the Minutes of a meeting held on 10th October 2007 whereby a decision was made to liquidate Anglo American, but he failed to provide evidence that it was struck off the Companies Registry. The Husband also produced a statement of account from Brian Robinson, the liquidator of Anglo American, dated 31st March 2008 which he said indicated that cheques for the sums of $77,239.00 in 2007 and $14,256.00 in February 2008 were cashed by the Wife as a shareholder of Anglo American. The Wife denied receiving them and she also denied that the signature on the copy of a cheque dated 18th December 2008 for $12,000.00 was her signature. The same statement disclosed an opening balance of $619,651.83 and a closing balance of $246,118.62 for Anglo American.

[41] The Husband also produced a letter dated 21st April 2008 from the said Brian Robinson to Lloyd Noel, Attorney-at-Law[39] which indicated the distributions to all shareholders and it stated that the Wife was paid for 11.9% of her shares in the sums of $77,239.00 in December 2007 and $14,256.00 in February 2008.

[38] Tendered as JL(v)
[39] Trial Bundle 2 page 40

[42] However, the Accountants stated in the 2011 of the financial records of the Crematorium that Anglo American is a registered company *"beneficially owned and controlled by the majority of the shareholders and directors of this company"*[40]. The notes in the Crematorium 2011 financial records are clearly inconsistent with the statement of account. However, based on the Wife's evidence that she recalls that she attended two meetings of Anglo American where the Husband told her how to vote, the Husband's evidence and the statement of account by *"Brian Robinson as Liquidator of James La Qua and Sons Anglo American Funeral Agency Ltd"* I have been convinced that Anglo American was liquidated. However, I accept the Wife's evidence that she did not receive the distribution for her 11.9% shares in Anglo American and that the Husband intercepted it. In my view the Husband must pay these sums to the Wife.

[43] Despite my finding that the Husband must reimburse the sums of $77,239.00 and $14,256.00 to the Wife, I found the Wife's evidence of her non-financial contribution to the Crematorium and the Burial Society to be exaggerated. If she had indeed made the significant contribution which she represented, then she ought to have been more knowledgeable on the distinction between the Crematorium, the Burial Society and Anglo American especially since she credited herself with rearranging the entire filing system of the business. In my judgment, her contribution to the Crematorium was miniscule and she failed to persuade me that her contribution added any value to its growth and development.

[44] On the other hand, I accept the Husband's evidence that the intermingling of the funds of the business was limited to the maintenance and upkeep of the matrimonial home and I am not of the view that it was sufficient or significant to translate the Husband's share in the Crematorium as part of the matrimonial assets. The Husband demonstrated that he was hands on with the business since

[40] Trial Bundle 2, item 2 (j) at page 277

he was very knowledgeable with the history of and the day to day workings of the Crematorium.

[45] It was clear that the Crematorium was long in existence before the marriage of the parties. It was not a case where the Husband and Wife started this business from the ground up and the Wife worked in the business for several years making a significant contribution to its success. The instant matter can be easily distinguished from the facts in **White v White** [41] where the parties were married for thirty-three years and had three children. They ran private farms together during the marriage and their financial contribution at the beginning of the marriage was equal.

[46] I was not convinced that the Wife is entitled to any part of the Husband's shares in the Crematorium. In my view, the Crematorium was in existence long before the marriage, the Husband's shares do not form part of the matrimonial assets, but are more appropriately considered as a resource in providing future income to the Husband.

What are the factors the Court must consider in determining the instant application?

[47] It was common ground that the applicable law is sections 23, 24, 24A, 25 and 25A of the UK Matrimonial Causes Act 1973 ("the Act") as amended from time to time. The relevant factors which the Court must consider in determining the instant application are:

(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, including in the case of earning capacity, any increase in that capacity which it would, in the opinion of the court, be reasonable to expect a party to the marriage to take steps to acquire.

[41] [2001] 1 AC 596

(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 which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family including any contribution made by looking after their home or caring for the family.

(g) The conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it.

(h) In the case of proceedings for divorce or nullity of marriage, the value to each 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.

[48] I agree with Counsel for the Husband that the factors stated at (e) and (h) aforesaid are irrelevant in the determining the instant application. I will now examine the evidence with respect to the other factors:

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, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire.

[49] The Husband's income, earning capacity, property and financial resources are substantially more significant than that of the Wife. The Husband presently owns 50% shares in the Crematorium with an equity worth approximately $1.5 million, he owns several properties valued at least $9 million, a boat, disclosed cash in his accounts worth approximately US $350,000.00 and EC $350,000.00. Although the Husband stated that his usual drawings per month from the business is $5,000.00

per month[42] the evidence indicated that this did not impede his lifestyle. There was no evidence presented by the Husband to suggest that his income earning capacity would decline in the future due to his age or ill health. Indeed, I find that the Husband, who will continue as a shareholder of the Crematorium, stand to continue to benefit from his shareholding.

[50] I therefore find that the Husband has a substantial income, property and financial resources and he stands to benefit substantially in the future from his shares in the Crematorium.

[51] It was the Wife's contention that the Husband did not permit her to work during the marriage and as such her income earning capacity and financial resources have been severely limited. According to the Wife, she attended business school but she failed to identify the courses she studied. At the time of the marriage the Wife worked as a freelance computer operator at an average income of US $1,500.00[43] per week. Under cross-examination it was established that the Wife's annual salary was US $646.15 per week[44] and that she earned the remainder of US $853.00 by freelancing. During the marriage, apart from a brief period of working at the Crematorium, although she spent long periods of time in the USA, she did not work.

[52] Apart from the Wife's skills as a computer operator, she stated that she was a classically trained actress in New York[45]. She studied at Robert Patterson's studio and prior to this she studied voice, singing and dance. She had a minor role in one soap opera, "As the World Turns" and in an independent off Broadway production. She did not have any contracts for any soap operas and when she left New York to marry the Husband she was in the process of preparing her portfolio.

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[42] Paragraph 5 of affidavit of Justin La Qua filed 27th June 2012
[43] Paragraph 6 of the affidavit of Philomena La Qua filed 15th July 2010
[44] Letter dated 26th September 1995 from CWP at page 247 of the Trial Bundle 3
[45] Paragraph 7 of affidavit of Philomena La Qua filed 15th July 2010

[53] With this background in the Arts, the Wife launched a Foundation for the Arts on 3rd March 1999, with the financial assistance of the Husband[46]. She performed in a play in Trinidad. By November 2002 the Foundation hosted the play "Mary Could Dance". The production cost $90,000.00 and the Husband provided $50,000.00[47]. Under the Foundation she hosted a voice workshop, she was a guest lecturer at the TA Marryshow Community College in Grenada where she coached theatre and produced a play. She also sang at charity concerts and in the St Georges University Chorale. The success of the Foundation appeared to have been limited since she was unable due to budget constraints and without her Husband's financial support to stage a Valentine's Day concert.

[54] The Wife attempted to portray herself as a victim who gave up her career as a classically trained actress in New York to be the Husband's wife. She claimed that it was because of the Husband she was not allowed to work or utilize her skills in the development of the Arts in Grenada. However, I was not so convinced. In my view the Wife was not a victim. She admitted that she took control of the refurbishment of the New York apartment; travelled to Trinidad to perform in a play and set up her own Foundation for the Arts with assistance from her Husband. To me, this evidence all pointed to a person who was confident, knew what she wanted and vigorously pursued her goals.

[55] I do not find that the Wife gave up any career as an actress for her role as Wife in the marriage since there was no reason which prevented her from pursuing her aspirations and goals. It was clear to me that she had the support of the Husband who generously financed her efforts.

[56] Notwithstanding my findings, I accept that given the Wife's age, the long period of time she has been out of the job market and more particularly in light of the size of the overall assets of the Husband, I find that it would not be reasonable for the

[46] Paragraph 25 of affidavit of Philomena La Qua filed 15th July 2010
[47] Paragraph 38 of affidavit of Philomena La Qua filed 15th July 2010.

Wife to have to go out to work. I do not afford her an earning capacity. In my view, any income which she may earn would be a bonus for her.

The financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future.

[57] The Husband lives in the Grand Mal property which he owns with his brother Thomas La Qua. He has vehicles, property and income. While the Husband has four children, save an except for one, all are grown adults whom he has already assisted financially. The Wife needs a place which she can call home in Grenada since she already has the apartment in New York. Although she has a motor vehicle, I accept her evidence that she needs a more practical vehicle since the present vehicle needs constant maintenance. She also needs funds to look after any future medical expenses and her day-to-day expenses.

The standard of living enjoyed by the family before the breakdown of the marriage.

[58] In **Ben Hashem**[48] Mr. Justice Munby described the trappings of an opulent or extravagant lifestyle as *"a lifestyle characterized by yachts and private jets .... expensive hobbies and pastimes one often associates with the mega- or even the very-rich."*

[59] In the instant case, there are several features of the marriage from which the Court can assess the lifestyle of the parties. They are the overseas travel, credit cards spending/overseas account, the real properties and the number, types of and frequency of acquisition of vehicles during the marriage.

[60] According to the Wife, during the marriage they travelled twice a year to New York and other parts of the United States of America. They also travelled to the United

[48] [2008] EWHC 2380 at para. 68

Kingdom, Europe, Mexico and even Hong Kong. On these trips the Husband would purchase clothes and jewelry for her[49]. She admitted under cross-examination that she travelled two to three times a year and each trip was approximately 2-3 weeks except for the period of 2007-2008 where she stayed away longer since she was having dental work done in New York. She disagreed with the Husband that she was only in Grenada between 3-4 months per year and insisted that most trips were on the initiative of the Husband to visit her mother who lived in New York for her birthday and Christmas[50]. She produced the information of all the passports in her possession which confirmed that she often travelled from Grenada during the marriage[51].

[61] The Husband stated that during the marriage the Wife lived in Grenada for four months and the rest of the time she spent in New York. Although he denied travelling twice a year during the marriage, he admitted meeting the Wife in New York and taking her with him to business trips, one such occasion was in Hong Kong[52]. Under cross-examination, he insisted that when the Wife said she had to go to New York he did not think it important to request the reasons for her departure and denied facilitating the Wife being away from Grenada by purchasing and maintaining the New York apartment and paying for her travel and all her expenses when she travelled.

[62] In my view, the Wife's passport information only confirms that she was away from Grenada for substantial periods each year but it does not state the reasons for her being away. The Wife had no financial means since she did not work during the marriage; her sole source of income was from the Husband who admitted under cross-examination that he took care of all her financial needs during the marriage. She could not leave Grenada or remain out of Grenada without the financial support of the Husband. I do not accept the Husband's contention that the fact that the Wife was away from Grenada for substantial periods of time during the

[49] Paragraph 8 of affidavit of Philomena La Qua filed 22nd June 2012
[50] Paragraph 10 of affidavit of Philomena La Qua filed 17th October 2010
[51] Exhibit to affidavit of Ermin Francois filed 30th April 2013
[52] Paragraph 9 of affidavit of Justin La Qua filed 27th June 2012

marriage meant that she was not a partner in the marriage or an absentee wife since she could not have been away without his approval. Even if he did not see it fit to enquire from his Wife during the marriage the reasons for being away for so long, he acquiesced to her being away by financing her and therefore cannot now make an about turn and assert that she was an absentee Wife.

[63] Prior to the marriage the Wife stated she had a credit card with Citibank and Macys. After she got married the Husband paid off her credit card debt in New York and she acquired two credit cards for Saks Elite HSBC, a credit card for Saks Fifth Avenue, PC Richards and Sons and Chase Manhattan Bank. She agreed that the Husband's resources allowed her to have the additional credit cards and she stated that she incurred all the expenses in the credit cards. She also admitted under cross-examination that she included a Citibank Platinum credit card since she was the secondary holder of this card with her mother and she incurred the expenses on this card.

[64] When she was away from Grenada the Wife indicated that she did not have a budget for using her credit cards[53]. Whenever she was in New York she used her credit cards, which the Husband paid. On the return from the Hong Kong trip she spent approximately US $6,000.00 in a store in San Francisco which the Husband paid.

[65] The Husband admitted that in Grenada they had a joint credit card with Scotiabank which he cancelled since the Wife spent $40,000.00 which he had to pay[54]. He acknowledged paying off at least US $20,000.00 in credit card debt incurred by the Wife.

[66] Both parties confirmed the extravagant credit card spending. While I was not convinced that the credit cards were used by the Wife for purchases for the Crematorium, it was clear that the Husband willingly financed her use of the credit

[53] Paragraph 13 of affidavit of Philomena La Qua filed 22nd June 2012
[54] Paragraph 27 of affidavit of Justin La Qua filed 14th October 2010

cards since he consistently paid off the credit card debts whenever they accrued. In my view, the Husband did so out of his responsibility for meeting the Wife's financial needs during the marriage. I find that the credit card spending by the Wife was facilitated by the Husband during the marriage and it was indulgent and extravagant, to say the least.

[67] In addition to the credit card spending the Husband also wired significant sums of moneys to the joint account which he and the Wife held in New York. Between March 2000 to September 2009 he transferred approximately US $3,000.00 per month for the upkeep of the Wife and the New York apartment[55]. Between June 1997 and December 2001 he also transferred a further sum of US $75,580.00[56]. Under cross-examination he admitted that he transferred as much as US $420,580.00. He stated that he opened at least three US accounts in New York in the joint names of the Husband and the Wife, all of which were closed since the Wife used up the funds[57]. This was not denied by the Wife.

[68] During the period 2000 to 2012 the Husband acquired and/or possessed the following vehicles: Jaguar Sedan (2000 model); Audi sports (2002); Peugeot convertible (2008 model); Mitsubishi Jeep (1978 model) [58]; Camaro sports car (2009) model, purchased in 2010; FIAT Sport car purchased in August 2010; Volkswagen station wagon purchased in February 2010 and Honda car purchased on June, 2012[59].

[69] In a period of 12 years the Husband's ability to comfortably purchase at least eight vehicles with at least four being high end vehicles is another indicator to me that the Husband and Wife enjoyed a high standard of living.

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[55] Paragraph 11 of affidavit of Justin La Qua filed 14th October 2010
[56] Paragraph 11 of affidavit of Justin La Qua filed 14th October 2010
[57] Paragraph 27 of affidavit of Justin La Qua filed 14th October 2010
[58] Paragraph 30 of the affidavit of Justin La Qua filed 14th October, 2010
[59] Paragraph 5 of the affidavit of Justin La Qua filed 27th June, 2013.

[70] The real properties which the Husband acquired during the marriage were the matrimonial home, which he was able to pay off a loan of $250,000.00 within two years for the construction of stages one and two; property at Petit Calivigny which he later sold for $200,000.00; the Calivigny property which he purchased in 2009 for $500,000.00 without having to secure a loan, the Egmont property purchased in 1999 which he later sold for $200,000.00, the Grand Anse property which he purchased with cash in the sum of $128,000.00; the 2005 Morne Rouge property which he also purchased with cash in the sum of $89,032.00 in 2005; the Grand Mal property valued at $2,849,810.00 which still has an outstanding mortgage of $600,000.00 which he owns jointly with his brother Thomas, and the New York apartment which he purchased in December 1995 and which was valued in October 2010 for approximately US $125,000.00 and with monthly maintenance fees of US $671.01.

[71] These properties were not of an average value or small acreage. The ability of the Husband to afford most with cash and when he took a mortgage he was able to pay off in a short period of time confirmed to me that the parties had a high standard of living.

[72] While the parties have indicated that the Husband owned a boat at various times during the marriage, I accept that the last boat has not been working for a while. However, the fact that the Husband was able to purchase a boat on two occasions during the marriage and to travel overseas to source engines and parts for it all point to an above average lifestyle.

[73] In light of the aforesaid, I was not convinced that the Husband and Wife enjoyed an affluent lifestyle of the mega rich or very rich. In my view, they enjoyed a very high standard of living consistent with an upper middle class lifestyle financed solely by the hard work and efforts of the Husband. It was characterized by a matrimonial home worth a few million dollars which while extravagant was not palatial, several other properties in Grenada which cumulatively were also worth a few million dollars, a New York apartment to meet the needs of a middle class

family, frequent overseas trips which were not on private jets, indulgent credit card spending, access to several motor vehicles and access to several local and overseas accounts.

The age of each party to the marriage and the duration of the marriage.

[74] The parties to the marriage are not young. The Wife is 57 years and the Husband is 60 years old. The marriage was 15 years which, in my view, is a medium term marriage.

The contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family including any contribution made by looking after their home or caring for the family.

[75] The Wife admitted under cross-examination that she did not work during the marriage and therefore she made no financial contribution to the family and the matrimonial assets, which included the matrimonial home. This position included the properties which were held jointly by both parties such as the New York apartment, the Grand Anse property and the Lance Aux Epines property. Her non-financial contribution was also minimal since she stated that the Husband paid for the two gardeners and housekeeper who attended to the matrimonial home twice each week[60]. She contributed to the design of the guest house on the matrimonial home and on the design of the refurbishment of the matrimonial home after Hurricane Ivan. She confirmed the Husband's position that she did not prepare lunch during working days since he purchased lunch. She also admitted that she did not make breakfast for the Husband since he left home early for work and that they share the cooking with the Husband on Sundays but the Husband loved to cook.

[60] Paragraph 11 of affidavit of Philomena La Qua filed 22nd June 2012

[76] All the indicators point to the fact that the Wife was not a homemaker in any way. There were no children of the marriage for her to care for. She did no household tasks. While the Wife stated that she entertained the workers from the business at her home, this was very infrequent.

[77] On the other hand, the Husband was the sole financial contributor financially to the family. It was not disputed by the Wife that the Husband purchased all the real property, the boat and the vehicles during the marriage. He also paid the mortgages, bought the groceries, paid for the gas, utilities and persons to care for the dogs at the matrimonial home.

The conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it.

[78] There are three aspects of the parties conduct which I will address under this heading, namely the Wife's allegations of the abuse she suffered by the Husband, allegations of the Husband's extra-marital affairs and the Husband's non-disclosure. The Wife alleged that she was subjected to physical beatings, sexual assaults, emotional abuse and being spied on by the Husband during the marriage[61]. In support she presented her former English teacher Trish Bethany who at best witnessed the Husband's anger with the Wife but she did not witness any physical violence. The Husband denied all the allegations of abuse.

[79] I was not convinced that the Husband physically, emotionally and sexually abused the Wife since there was no medical evidence nor police reports to substantiate her claims. If indeed she was subjected to this type of behavior she had ample opportunities to escape from the Husband since it has already been established that she spent a significant time in New York where she worked as a computer processor and where she was trained as an actress. I therefore find that the Wife

[61] Paragraphs 43-55 of the affidavit of Philomena La Qua filed 15th July 2010.

has not established that the Husband physically, emotionally or sexually abused her and therefore I will not consider this conduct in my final determination.

[80] The Wife also alleged that the Husband conducted extra-marital affairs but I have attached no weight to such allegations since there was no evidence presented to support her contention. In any event the Husband's youngest child, Justine La Qua, also known as Kachelle, was born prior to the marriage in June 1994, which the Husband admitted.

[81] The other aspect of conduct which warrants the Court's attention is that of non-disclosure by the Husband. While not surprising, it was rather unfortunate that throughout the history of this matter and culminating during the hearing there were allegations of non-disclosure by both parties. The Wife contends that the extent of the non-disclosed assets by the Husband is so significant that the Court cannot disregard his conduct. The Husband in response referred to the Wife's failure to disclose a third passport, property which she owned with her mother in Grenada and the statement for the credit card that was in her mother's name, all of which were disclosed during the trial. To place these allegations in its proper context I will allude to the history of disclosure in this matter.

[82] During the course of these proceedings both parties filed their respective Request for Information. The Wife made a request on 14th December 2010 to the Husband for bank printouts for three specific accounts held at Republic Bank for the period 1st January 2007 to 30th November, 2010. To this, the Husband responded on 30th December, 2010. He provided the information with respect to two of the accounts but refused to provide the information for the third account on the basis *"The Respondent is unable to provide information on Account No 800033 that account being the account of Thomas La Qua with the Respondent being merely a signatory. Thomas La Qua does not agree to provide any information on that account"*.

[83] Not being satisfied with the Husband's response the Wife applied to the Court for an order for discovery and disclosure on the 22nd June, 2012. The Husband responded on the 27th June 2012 providing missing credit card statements from First Caribbean International Bank in the name of the Crematorium for the periods June 2010 to May 2012[62] and the unaudited financial accounts for the Crematorium for the periods ending 30th June 2009, 30th June 2010 and 30th June 2011[63]. He disclosed credit card statements for Scotiabank in his name for the period 2009-2012 and in the name of the Crematorium with First Caribbean International Bank for the period 2010- May 2012[64]. However, he insisted that he had no other assets to disclose to the Court.

[84] On the 21st June 2012 the Husband also requested information from the Wife, namely information pertaining to her assets, real and personal property, credit card accounts, bank accounts in Grenada, the United States and elsewhere, certificates of her training as an actress, transcripts of courses taken which led to her qualifications and her work experience from 1989 to the date of the decree absolute 28th June 2010.

[85] The Wife provided a full response to this request by notice filed 29th June 2012. At the hearing of the Wife's application for discovery and disclosure on 20th July, 2012 the Court granted her permission to withdraw her application on the basis that the Husband undertook that he had *"provided full disclosure by virtue of the documents filed to date in this action and that he has no further assets to disclose"*[65].

[86] But this was not the end of the road between these parties in their haggling over the disclosure of information. During the cross-examination of the Wife, Counsel for the Husband put a document to the Wife concerning an account of the Husband which was not previously disclosed during the proceedings. Upon an

[62] Trial Bundle 2 pages 147-170 and 229-236
[63] Trial Bundle 2 pages 239-281
[64] Trial Bundle 2 pages 146-236
[65] Order dated 20th July, 2012 before the Honourable Madame Justice Ellis

oral application by Counsel for the Wife, I granted an order on 18th February, 2013 and varied on 19th February 2013 ("the Court order") compelling Republic Bank (Grenada) Limited to disclose details concerning a specific account, any accounts and/or monies held either in the name of the Husband or for his benefit or jointly, in the name of the Crematorium including the names of the signatories on the accounts, and in the name of Anglo American. The information which was provided pursuant to the Court order during the trial contained at least ten accounts, the bulk of which were joint accounts of the Husband and a third party. The total sum in those accounts was approximately $1.6 million.

[87] The information which the Husband failed to disclose and revealed during his cross-examination were: proceeds of sale in 2006 of the Egmont property in the sum of $200,000.00 which he said went into an account in the name of the Wife at Citibank, but the bank statement did not corroborate this (he failed to show the Court where this sum went); an account with First Caribbean International Bank which he claimed to be held jointly with his brother Thomas La Qua from which he used to send money to the Wife in New York (he agreed that if his brother died he would benefit from the entire undisclosed sum and that he used more than one source to transfer money to the Wife's New York account including joint account with brother); thirteen joint accounts which he held with his brother and other persons in the total sum of $1,645,413.62; shares held in La Qua Resorts and Investment company; one third interest which the Husband owns in the 7 acres of land at Mt Gay which was not valued; loan owed to the Crematorium from the Burial Society in the sum of $1,405,564 of which the Husband is entitled to one half (approximately $700,000.00) and which were repaid directly into his personal account; shareholders loan to the business in the total sum of $3,435,697.00 of which one half in the sum of $1,717,849.50 is due to the Husband.

[88] From the information disclosed pursuant to the Court order it was clear that the Husband's 600504 account decreased around the same time of his divorce from $500,000.00 to $6,000.00 within 1 year, which he admitted under cross-examination went into a joint account which he had with his daughter Kachelle

which he had failed to disclose. This account (No 91186726) which was only disclosed by the Court order **showed** that between 2008 and at the time of the divorce there was a cash flow of a few million EC dollars.

[89] Five of the accounts which were disclosed by virtue of the Court order were held jointly with the Husband and his daughter Kachelle, who by the Husband's own admission was added when she turned 18 years, which was recently. There was no evidence that Kachelle at that tender age was employed and therefore contributed to the account. The Husband failed to adduce any evidence to convince the Court that he was not the sole contributor to the joint accounts disclosed pursuant to the Court order. The only reasonable conclusion that this Court can draw is that the Husband added Kachelle to the accounts to avoid disclosing them. The Husband even admitted in cross-examination that one of the accounts, #91186726 was in his sole name.

[90] I agree with Counsel for the Husband that the Husband's conduct in the instant case cannot be equated with the husband 's conduct in **Ben Hashem** [66] in terms of the paucity of disclosure. In **Ben Hashem** the Husband failed to participate in the proceedings and the Court found that he was evasive and uncooperative. However in the instant matter, although the Husband made disclosures I formed the impression that he disclosed the information he wanted the Court to be aware of and just enough to persuade the Court not to draw any adverse finding of his non-disclosure.

[91] The Husband in the instant case is a clever, astute and knowledgeable businessman. In my judgment, the Husband did not want the Court to get the entire picture of the full extent of his financial resources. His non-disclosure was not of the scale of the husband in **Ben Hashen** but his strategies employed were far more clever. He applied many strategies to do so from indicating that he held accounts with third parties to giving vague and general responses during cross-

[66] [2009] 1 FLR 115

examination. He attempted to paint a picture that he was unaware of the daily operations and financial affairs of the Crematorium and that it was his brother Thomas La Qua who handled this. I was not so convinced. Indeed I formed the opposite view, that the Husband is very aware of the financial position of the Crematorium and his personal financial affairs since he actively moved funds around from his personal accounts to accounts he held jointly with third parties, who were mainly his family members. He also failed to disclose the existence of La Qua Resorts. In my view, the Husband's evidence that since the company was incorporated it failed to do any business and only had $19,000.00 in its bank account again are irrelevant to the principle of full and frank disclosure. He had a duty to disclose this information and he failed to do so.

[92] In the end I was persuaded that the Husband's failed to honour his duty to provide full and frank disclosure in the instant application. On the other hand, I was satisfied that the Wife honoured her duty for disclosure.

[93] The consequences of a party in matrimonial proceedings not providing full and frank disclosure was described in **NG v SG** [67]:

> *"Where the court was satisfied that the disclosure given by one party had been materially deficient, the court was duty bound to consider, by the process of drawing adverse inferences, whether funds had been hidden. However, such inferences had to be properly drawn and reasonable. It would be wrong to draw inferences that a party had assets which, on an assessment of the evidence, the court was satisfied he had not. If the court concluded that the funds had been hidden then it should attempt a realistic and reasonable quantification of those funds, even in the broadest terms. In making its judgment as to quantification the court would first look to direct evidence such as documentation and observations made by the other party. The court would look at the scale of business activities and at lifestyle. Vague evidence of reputation or the opinions or beliefs of third parties was inadmissible in the exercise. The technique of concluding that the non-discloser had to have assets of at least twice what the claimant was seeking should not be used as the sole metric quantification. The court must be astute to ensure that a non-disclosure should not be able to procure a result from his non-disclosure better than that which would be ordered if the truth was told".*

[67] [2011] EWHC 3270 at paragraph 16

[94] In **F v F(Divorce: Insolvency: Annulment of Bankruptcy order)**[68] Thorpe J was of the view that in making awards for property redistribution in ancillary proceedings where a party is guilty of non-disclosure, it is better the order is unfair to the Husband whose default has obscured the Court's vision than that it be unfair to the Wife.

[95] The Wife has stated that she is of the view that the Husband's assets are worth in excess of $20,000,000.00[69], but in her closing submissions she placed his worth at $17,060,977.89. In my judgment, the Wife has failed to establish that the Husband is worth *in excess* of $17 million. At best I place his assets to be worth *no more* than $17 million. I do not accept the Husband's claim of impecuniosity since the evidence is clearly the opposite. In light of the Husband's conduct the only adverse inference I can conclude is the Husband would be able to meet any award I eventually make.

What share of the matrimonial assets is the Wife entitled to?

[96] Having found that the Husband failed to disclose all his assets it is only fair that in determining the share of the matrimonial assets to be awarded to the Wife, that the Court considers the disclosed assets, the value of the assets disclosed pursuant to the Court order and the fact that there is compelling evidence that Husband did not disclosed all his assets.

[97] In the instant application, the Wife requested one-half of the listed properties therein, a lump sum payment, transfer of three vehicles and an interest in the Crematorium. In her closing submissions her position was altered and instead she has asked the Court to make an award which is consistent with the clean break principle. She requested the Court to award her a lump sum payment of $7,058,188.95, which is one-half of her assessment of the total value of the Husband's assets. She has also suggested to the Court that another option apart

[68] [1994] 1 FLR 359
[69] Paragraph 74 of affidavit filed 15th July 2010

from an entire lump sum payment is to vest the matrimonial home (valued at $5,056,700.00) in her and deduct the one half of its value ($2,528,850.00) from the proposed lump sum payment thereby leaving the lump sum payment in the sum of $4,529,338.95 to be paid to her.

[98] In the last decade there are three English authorities which have strongly influenced the approach the Courts have taken in the redistribution of matrimonial assets after the breakdown of a marriage. They are **White v White**[70]; **Miller v Miller**[71] and **Charman v Charman**[72]. In **White** the marriage was long, about 33 years and there were three children of the family. The parties also owned private farms which they operated together and which they started at the beginning of the marriage with equal sums of cash. Their needs exceeded the value of the assets. The Wife was awarded 39% of the assets (net of costs). In **White** Lord Nicholls suggested that the approach should be:

> *"Sometimes, having carried out the statutory exercise, the judge's conclusion involves a more or less equal division of the available assets. More often, this is not so. More often, having looked at all the circumstances, the judge's decision means that one party will receive a bigger share than the other. Before reaching a firm conclusion and making an order along these lines, a judge will always be well advised to check his tentative views against the yardstick of equality of division. As a general guide, equality should be departed from only if, and to the extent that, there is good reason for doing so, the need to consider and articulate reasons for departing from equality would help the parties and the court to focus upon the need to ensure the absence of discrimination".*[73]

[99] It is clear that Lord Nicholls did not intend that the *"yardstick of equality"* to be treated as a starting point but simply as a form of check as opposed to a presumption of equal division.

[100] In **Miller** the marriage was short, approximately 3 years where the wife had given up her job to focus on furnishing the family's two homes. Applying the principles in

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[70] [2000]UKHL 54
[71] [2006] UKHL 24
[72] [2007]EWCA Civ 503
[73] Paragraph 25

White, the House of Lords held that in the redistribution of property after a divorce the following three principles should be applied: the needs (generously interpreted) generated by the relationship between the parties; compensation for relationship-generated disadvantage and sharing of the fruits of the matrimonial property.

[101] In **Charman** the marriage was long, approximately 28 years, and there were two children. At the time of the marriage the parties had no capital assets but they brought their earning capacities. By the time of the divorce the parties were in their 50s and they had accumulated assets worth approximately £131 million. The Wife was awarded 36.5% of the assets which was about £48 million. The Court of Appeal agreed with the approach adopted by the first instance judge who applied the two stage process of computing the matrimonial assets and then determining the fair distribution based on needs, compensation and sharing which are all taken into account under the provisions of section 25(2) of the Act.

[102] In **Charman** the Court was of the view that the principle of *"need"* falls under the Court's consideration of the "financial needs, obligations and responsibilities of the parties"; "standard of living enjoyed by the family before the breakdown of the marriage"; "the age of each party"; and of "any physical or mental disability of either of them". The principle of *"compensation"* relates to prospective financial disadvantage which upon divorce some parties face as a result of decisions they took for the family during the marriage, such as sacrificing or not pursuing a career. The enquiry required by the principle of *"sharing"* is dictated by the contributions of each party to the welfare of the family during the marriage; the duration of the marriage; conduct of the party in exceptional circumstances that it would be inequitable to ignore it. In **Charman** the Court recognized that often there would be conflict in reconciling one principle with another. It was suggested that the approach to be taken is the *"criterion of fairness must supply the answer"*[74].

[74] At paragraph 73

[103] However, Mr. Justice Brody in **CR v CR**[75] summed up the approach, which I endorse, the Court should take to avoid double counting. He said:

> *" The dicta in Miller and Mc Farlane assist in focusing the mind of the decision-taker about to give the melting-pot of S25 factors a stir. Such guidance highlights the underlying components which inform the intuitive notion of 'fairness', the ultimate objective of the process (White v White 2001 AC 596). However, it is important in my judgement that these strands underlying 'fairness' do not become elevated into separate 'heads of claim' or 'of loss' independent of the words of the statute. If such an approach were to gain momentum, there would be a real danger of double-counting, against which the House of Lords expressly warned in Miller. It remains the statutory criteria which ultimately guide the court's overall discretion by the exercise of which fairness is sought to be achieved."*

[104] In big money cases, although it is not the practice of the Courts merely to replicate that standard of living, it is a factor when ascertaining the parties' needs. What constitutes a 'big money' case is arguably a question of degree, although they are now generally viewed as cases where the available assets exceed the parties' need for housing and income **(White)** [76]. In **J v J (Financial orders: wife's long-term needs)** [77] Moylan J was concerned with a case where the assets were worth in the region of £8 million. Despite the significant level of assets, the decision was based upon the wife's needs. This was due to the fact that the assets were largely derived from the husband's pre-acquired shares in a family business and therefore the wife's claims could not have been satisfied only by reference to the matrimonial assets.

[105] The authority of **CR v CR** which the Wife seeks to rely on to be awarded 50% of the matrimonial assets can be distinguished from the instant case by the facts. In **CR** the marriage was for 24 years and there were two children of the marriage, who were uniquely care for by the wife since the husband spent most of his time working, which involved travelling. Neither party had brought any significant resources into the marriage and no award was made for the husband's future

[75] [2007] EWHC 3334(Fam) at paragraph 83
[76] At paragraph 984 C
[77] [2011[EWHC 1010 (FAM)

income of his shares in a company. The Court found that the Wife did make a great sacrifice of her career for the family but was not of the view that she ought to have been compensated for what it considered to be an "ordinary" career. Each case therefore depends on its own facts and fairness, like beauty, lies in the eyes of the beholder.

[106] I have not been convinced by the Wife that she is entitled to 50% of the matrimonial assets. In the instant case, the marriage was medium term in length. The evidence failed to persuade me that the Wife suffered a lost career as a result of the marriage for compensation to be factored into the outcome of fairness. If she did not pursue her career as an actress or in the development of the Arts, it was not because of the Husband. She spent considerable time in New York where she was trained as an actress. This was an opportunity which she did not pursue. In any event, for me to make such a finding for such a career would be highly speculative. In my judgment the Wife did not forgo her career as an actress or in the development of the Arts for caring for the family and there were no children.

[107] The Wife is in her mid- 50s where her future earnings prospects are zero. Her financial contribution from the start of the marriage to the end was virtually zero and her non-financial contribution was insignificant. Her standard of living was not affluent but she still enjoyed a very high standard of living. She has not itemized the cost of her present and future needs but from the evidence it is clear that she needs a home in Grenada but it is unreasonable for her to expect that it would be of the same value as the matrimonial home. She did not present evidence of the type or standard of house she expected. In my judgment, a three bedroom house in a residential area in Grenada is reasonable.

[108] The Wife also needs money to take care of her day-to-day expenses. The Wife's monthly expenses were set out in her affidavit filed on 22nd June 2012 which was approximately $7,000.00 which would make her annual expenses $84,000.00. This sum included maintenance of the matrimonial home, which was larger than average. The Wife also requires funds to pay the maintenance fees for the New

York apartment and funds for medical insurance with coverage abroad since she also lives in the New York apartment. The monthly sum she spent on medical care which was covered by insurance before it was cancelled was US $1,700.00[78]. She requires funds to finance at least two trips to New York per year from Grenada, money to pay the monthly maintenance fee of approximately US $671.00. She also needs a vehicle since the present vehicle is owned by the Husband and, according to the Wife, the sums spent on maintenance makes it impractical. She needs funds for other miscellaneous day-to-day expenses. However, I am not of the view that this sum should be of the magnitude of a US $1,000.00- $3,000.00 per month since this was extravagant.

[109] I find that this is an appropriate case to order a lump sum payment since three of the properties listed in the instant application have already been transferred to the Wife; others have been disposed of by the Husband. In the case of the vehicles, the Wife has not stated which vehicles she is seeking and they have not been valued; she did not request that the matrimonial home be vested in her entirely in the instant application; she has not stated the nature of the lump sum payment requested and how this sum is arrived at based on her needs, and there were properties which were already held jointly between the Husband and the Wife where she already has a one-half share.

[110] In determining the lump sum to be paid to the Wife I considered the Husband's asset base at $17,000,000.00. Applying the principles needs, compensation and sharing I award the wife a lump sum of 25% of the Husband's asset base. I order the Husband to pay the Wife 25% of this sum which is $4,250,000.00. The Wife has acknowledged that she has already received cash and properties in the total value of $1,472,300.00. Therefore the net sum of $2,777,700.00 is the sum the Husband is to pay the Wife. For clarification, as stated previously, I was convinced that the Wife did not receive the money for her shares in Anglo American. The Husband is to pay the additional sums of $77,239.00 and $14,256.00 to the Wife.

[78] Exhibit "JL5" to the affidavit of Justin La Qua filed 27th June 2012.

Should the Husband be ordered to pay the balance of the Wife's credit card?

[111] In the Wife's closing submission[79] she requested that the Court order the Husband to pay the balance owed on her credit cards. The Husband has resisted this request. From the credit card statements produced by the Wife at the hearing of the instant application, the sums due on the following cards as at December 2010 are: Saks Fifth Avenue - US $5,869.85; Saks Elite HSBC – US $5,581.80; Chase - $4,095.16; PC Richards & Sons- US $4,892.92; Citi Platinum – US $17,554.34. The total sum on these credit cards is approximately US $37,000.00. In all the statements the only activity was the accrual of interest for non-payment.

[112] On 16th February 2010 the Husband was ordered to pay the sum of US $ 1,000.00 per month towards the Wife's credit card payments. To date (February 2010 – September 2013) the Husband has paid approximately US $44,000.00 pursuant to this interim order. I cannot accede to the Wife's request for the two reasons namely firstly, I agree with the Husband that the interim order is limited until the determination of the substantive ancillary proceedings, and secondly, the sums paid by the Husband pursuant to the interim order exceeds the sum due on the credit cards and ought to have been used by the Wife to liquidate the credit card debt.

[113] The Husband is not responsible to pay off the balance of the Wife's credit card debt and the interim order is to cease with immediate effect.

Should the Husband be ordered to pay the Wife's costs of the instant application?

[114] Before the hearing of the instant application the parties arrived at an agreement at mediation and the Husband had complied with the terms of the agreement. The

[79] Filed 3rd May 2013

Wife successfully set aside the Mediation agreement yet she did not return the assets which she received as a result of the agreement. The Wife has been successful on some of the issues which were ventilated at the hearing of the instant application and it is for this reason I order the Husband to pay to the Wife 50% of the costs of the instant application, to be assessed in default of agreement.

ORDER

[115] The Husband is to pay the Wife a lump sum payment of 25% of $17 million which is $4,250,000.00. The Wife has acknowledged that she has already received cash and properties in the total value of $1,472,300.00. Therefore the net sum of $2,777,700.00 is the sum the Husband is to pay the Wife.

[116] The Husband is to pay the additional sums of $ 77,239.00 and $14,256.00 to the Wife, which represents her shares in Anglo American.

[117] The interim payment order of 10th February 2010 is to cease with immediate effect.

[118] The Wife is the vacate the matrimonial home and return the Peugeot motor vehicle which is in her possession to the Husband within 28 days of receipt of the lump sum payment and the additional sums of $77,239.00 and $14,256.00.

[119] The Husband to pay to the Wife 50% of the costs of the instant application to be assessed in default of agreement.

Margaret Y. Mohammed

Margaret Y. Mohammed
High Court Judge