IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Family Division

2022/FAM/div/00319

B E T W E E N

W.K.F. (nee L)

Petitioner

AND

J.F.

Respondent

Before: **The Honourable Justice C.V. Hope Strachan**

Appearances: **Marylee Braynen-Symonette for the Petitioner**

Alexander Maillis for the Respondent

Hearing date: **21st July; 2025 22nd July, 2025; 2nd March, 2026; 16th March 2026;17th March, 2026; 22nd April 2026**

Matrimonial causes, ancillaries, property adjustment, equal sharing principle, fixed assets, cash money.

RULING

C.V.H. STRACHAN, J

Background Facts:

[1.] The marriage of the Petitioner, W.K.F. ("the wife") and the Respondent, J.F. ("the Husband) was dissolved on 22nd June, 2023. Ancillary matters were left to be determined. Those matters included the issue of custody, access and financial provision for the One (1) child of the marriage namely JJF (M) born 10th March, 2014. Notwithstanding that the issues of custody and financial provision for JJf began in highly contested proceedings, eventually the parties arrived at an accord regarding those issues and an Order by Consent of both parties was arrived at on 22nd July, 2025 which was then filed on 8th August, 2025. A Decree Absolute of Divorce was filed 8th September, 2025.

THE ISSUES

[2.] The extant issues in the divorce proceedings relate to property adjustment. These proceedings are contested. The matrimonial assets include;

i. Venetian West Condo situated 2208 Windsor Road, New Providence the Bahamas ("the Venetian Condo").
ii. Artesia Apartment situated in Unit 323, 2900 NW 125th Avenue, Sunrise Florida, USA ("the Artesian Apartment").
iii. Parties respective interests in LFF Store, situated in Nassau, Bahamas.
iv. Funds held or that were held in Bank Accounts in Fidelity Bank here in the Bahamas.
v. Funds held or that were held in Bank Accounts in Chase Bank the United States.
vi. The sum of **Forty-seven Thousand Three Hundred Eighty-two Dollars ($47,382.75.00)** of the wife's mother's money removed by the husband from a joint bank account held by the wife and her mother.
vii. The engagement and wedding rings of the wife.

Issues Where the Parties Are On One Accord

[3.] The parties agree that the assets should be equally divided between them.

THE EVIDENCE

[4.] The evidence of the parties was presented in their respective Affidavits. The wife relied on five Affidavits filed on 25 July 2024; 14th May 2025; another 14th May 2025; 22nd July 2025, and 03 March 2026. They were Exhibited as SF 1-5.

[5.] The husband relied on four Affidavits filed on 14th March, 2025; 14th March 2025; 14th May 2025, and 3rd February 2026, both parties were subjected to cross-examination.

[6.] Submissions have been provided by both counsel to support their respective party's proposal of what a 50/50 split would yield. A chart of their respective positions is provided immediately hereunder.

The husband lists the assets he deems are distributable and has created a chart with the values being relied on by the husband;

1. Equity in MATRIMONIAL HOME Venetian West		- $193,404.90
2. Equity in Artesia (Florida) Unit		- $ 459,500.00
3. Net Proceeds of Sorrento and Sonoma		- $330,202.91
4. Audi Vehicle		- $42,725.60
5. Wedding and Engagement ring		- $24,175.00
6. Rents from LF from September 2022-2026		- $201,916.00
7. Fidelity Joint Account (wife)		- $ 56,591.90
8. Fidelity Joint Account (Husband)		- $58,747.89
9. Chase Bank Accounts		- $14,150.00
	Total:	**$1,406,031.61**

He asserts that a 50/50 split would mean that each party should receive **Seven Hundred Three Thousand Fifteen Dollars Eighty-one Cents ($703,015.81).** However, since the wife and the husband would like to keep the properties that they are presently occupying or the property they desire and there being no objection by the party opposite the distribution would look like what is offered in the succeeding chart:

The Husband's View of Distribution

		HUSBAND	**WIFE**
Equity Venetian West		193,404.90	
Equity Artesia (Florida) Unit			459,500.00
Net Proceeds of Sorrento & Sonoma			330,202.91

Audi Vehicle			42,725.60
Wedding & Engagement Ring		24,175.00	
Fidelity Joint A/funds (Husband)		58,747.89	0.00
Fidelity Joint A/funds (Wife)			56,519.90
Chase Bank Funds (Husband)		24,617.25	
Sonoma & Sorrento Rents Less Mtge (6 mths)			14,150.16
LFF Store, (Rent)		201,916.00	
LFF Store ,(Assessed Value)		0.00	
GRAND TOTALS		**502,861.04**	**903,170.57**
Difference Husband VS Wife Asset Distribution		**200,154.57**	

Given that the sum of **Seven Hundred Three Thousand Fifteen Dollars Eighty-one Cents ($703, 015.81)** is the balancing amount the husband's share has to be made up by the wife paying him the sum of **($703,015.81 - $502,861.14) = <u>$200,154.77</u>**. This is not the wife's view of the distribution.

[7.] The wife's view of the Distribution differs in the values she ascribes to certain assets and in a material particular as it relates to the assessed value of the LFF and the Audi. Her view is that the valuation of the business as assessed by forensic accountant, Mr. John Bain, should be included as an asset for distribution between the parties in direct contradiction to the husband who has excluded it. The wife is also of the view that the Audi vehicle should not be subject to distribution as it does not form a part of the matrimonial assets. The natural result would definitely alter the husband's view of the equal division being accomplished only if the wife pays him **Two Hundred Thousand One Hundred Fifty-four Dollars Seventy-seven Cents ($200,154.77).**

The Wife's View Of The Distribution

ASSET	WIFE	HUSBAND	DIFFERENCE
Sales proceeds from two apartments in the US (Sorrento Lakes and Sonoma)	**$325,905.26**		
Artesia Apartment in Florida	**$459,500.00**		

Venetian West Condo, New Providence		**$219,000.00**	
Wedding and Engagement Rings		**$24,175.00**	
LFF Store		**$435,375.00**	
Past Income from LFF Store (Jan 2022 to present)		**$205,200.00**	
US and Fidelity Joint Account	**$21,180.77** **$56,519.90**	$24,617.25 58,747.89	
Sonoma and Sorrento Rents less mortgage (6 months)	$14,150.00		
The Audi Vehicle	**$42,725.60**		
Totals	**$920,381.53**	**$967,115.14**	

[8.] The difference between the wife's valuation and the husband's is significant. Based on the wife's ideal distribution the difference between her and the husband is **Eighty-seven Thousand Sixteen Dollars Thirty-eight Cents ($87,016.38).** To achieve parity between the parties based on the wife's account **One Million Seven Hundred Eight Thousand Seven Hundred Eighty-four Dollars Twenty-four Cents ($1,708,784.24) /2 = $854,392.12.** The husband would have to pay her the sum of **Forty-three Thousand Seven Hundred Thirty-three Sixty-one Cents ($43,733.61).**

[9.] It is self-evident that there is a gaping chasm between the submitted distribution of the husband as opposed to the wife. **($200,154.77 - $43,733.61) = $153,421.16.** While there were obvious differences in values placed on the various assets the valuation of the LFF business and the Audi vehicle were the most significant. The treatment of this difference is discussed later in this ruling.

[10.] It is also notable that in her prayer, the wife is claiming the sum of **Forty-nine Thousand One Hundred Seventy-two Dollars Thirty-seven Cents ($49,172.37)** as the asset value difference.

Evidence On The Division Of The Assets

[11.] There is agreement between the parties as to the value of some assets, while others remain disputed. Where the evidence did not satisfactorily resolve the dispute, including under cross-examination, the Court has adopted the mean average as the fair value.

[12.] **Venetian West Unit 2208 — Matrimonial Home.**

The husband presently resides in this property and wishes to retain it. The wife does not object. The parties obtained two appraisals and, before the Court, agreed to a mean value of **Four Hundred Eleven Thousand Five Hundred Dollars ($411,500.00)**. However, there is a dispute about the amount due and owing on the mortgage to be subtracted to get a net equity. The husband says that the amount due and owing on the mortgage is **Two Hundred Eighteen Thousand Ninety-five Dollars Ten Cents ($218,095.10)**. The wife says the sum is **Two Hundred Nineteen Thousand ($219,000.00)**. To resolve this issue, the court will take the mean average of the two (2), which is **Two Hundred Eighteen Thousand Five Hundred Forty-seven Dollars Fifty Cents ($218,547.50).** The court accepts in the absence of any cogent evidence from the wife that the balance due and owing on the mortgage is **Two Hundred Eighteen Thousand Five Hundred Forty-seven Dollars Fifty Cents ($218,547.50)** as per the husband. Therefore, the court finds that the equity **($411,500.00 - $218,547.50) = $192,952.50.**

[13.] **Artesia Unit 323, Sunrise, Florida**

This property was acquired during the marriage in the joint names of the parties and is presently occupied by the wife. Each party obtained an appraisal. The parties agreed to adopt the mean of the two appraisals, fixing the value of Artesia at **Four Hundred Fifty-nine Thousand Five Hundred Dollars ($459,500.00)**.

[14.] **Sonoma and Sorrento, Florida.**

These two properties, namely Sonoma 11 at 5461 NW 95th Avenue, Sunrise, and Sorrento Lakes at 4032 NW 90th Avenue, Unit 4032, Sunrise, were sold by the wife. She received and retained the net proceeds to the exclusion of the husband. The parties dispute the net proceeds realized after capital gains tax. The wife asserted a net sum of **Three Hundred Twenty-five Thousand Nine Hundred Five Dollars Twenty-six Cents ($325,905.26)**. The husband challenged the capital gains tax figure relied upon. Under cross-examination, the wife accepted that the document exhibited did not adequately explain a difference of **Four Thousand Eight Hundred Sixty-four Dollars ($4,864.00)** between tax attributed to the sales and tax personal to her. In those circumstances, the Court is satisfied that the net profit received by the wife was **Three Hundred Thirty Thousand Two Hundred Two Dollars Ninety-one Cents ($330,202.91)**.

[15.] **Wedding and Engagement Rings and Gold Jewelry.**

The wedding ring is valued at **Seven Thousand Eight Hundred Seventy-five Dollars ($7,875.00)** and the engagement ring at **Sixteen Thousand Three Hundred Dollars ($16,300.00)**, giving a total value of **Twenty-four Thousand One Hundred Seventy-five Dollars ($24,175.00)**. These values are not disputed.

The business valuation of the LFF Store.

[16.] To ascribe the proper context for the dispute between the husband and wife, it is useful to set out the background of the acquisition and treatment of this asset by the husband and wife as they have rationalized their respective claims.

The Wife's Claim re LFF;

[17.] She and the husband are on common ground as it relates to ownership of LFF store, situated on Market Street on the Island of New Providence, The Bahamas. Both parties agree that the business entity, was a gift from the Husband's family upon marriage in 2017 and constitutes a matrimonial asset to be divided equally. She does not claim beneficial ownership of the physical real estate (the land and building). She agrees with the husband that the property belongs to the Husband's father.

[18.] In support of the wife's position, her counsel sought to rationalize her position by chronicling how it was that John Bain, A Forensic Accountant of JSB, etc., came to prepare a report on the value of LFF and to give evidence at the trial of the matter. She submitted that by the Court's Mandate and pursuant to a Directions Order dated July 22, 2025, Mr. Bain was appointed to evaluate "the parties' interest in the business" rather than an appraisal of the real estate.

[19.] She further submitted that the methodology used by Mr. Bain included Two (2) scenarios. Because the husband provided limited records (no bank statements or property deeds), Mr. Bain relied on objective regulatory filings (VAT and business licenses) and lease agreements. This documentation yielded two distinct economic characterizations.

- **Scenario A: Operating Enterprise Interest ($514,000.00)**
  - *Basis:* Formulated because the Husband personally signed and filed the business's VAT returns and business licenses, implying direct management and control (Paras 65–66).

- **Scenario B: Passive Rental Interest ($435,375.00)**
    - *Basis:* Formulated because the Husband provided executed lease agreements showing the business has been leased to a third-party tenant (Mr. See Chow) since 2017 at a fixed rate (Paras 65, 70).

She said that the expert explicitly left it to the Court to make the factual determination as to which scenario aligns with reality, stating: "The Court's factual determination will dictate which valuation scenario applies"

[20.] Counsel Braynen-Symonette pointed out that despite extensive cross-examination by the Husband's counsel, Mr. Bain's findings remained unshaken on two critical points:

1. He excluded from his assessment any reference to the parties owning the Real Property upon which LFF is located. Mr. Bain verified multiple times that the value of the physical land, bricks, and mortar was never factored into his calculations.

2. He emphasized that the fact that, the parties not having ownership over the land does not alter or invalidate his business valuation metrics. He clarified that valuing a business operationally is distinct from a balance-sheet real estate appraisal.

[21.] Counsel reiterated that the business has been passively leased to a third party under an unchanged rent structure from 2017 through 2026. Further to that, of the Two (2) scenarios offered by Mr. Bain the wife conceded that in order to resolve the dispute between she and the husband efficiently, she is prepared to accept the lower valuation scenario despite the husband's capacity to operate the store for a higher return.

[22.] The wife through Counsel Braynen-Symonette formally invited the Court to accept Mr. Bain's expert assessment under Scenario B and find, as a matter of fact, that the value of the parties' interest in LFF store is Four Hundred Thirty-five Thousand Three Hundred Seventy-five Dollars (**$435,375.00**) based on the capitalized rental income approach.

The Husband's claim re LFF;

[23.] Counsel Maillis, on behalf of his client, laid out his case saying that by Court Order on 22nd July, 2025, the Court ordered a valuation/appraisal restricted specifically to "the parties interest" in the business. His client reiterates that neither party holds an ownership stake in the underlying real estate or the business inventory/goodwill. He said that the parties true legal interest is strictly limited to that of a landlord collecting rent under a fixed commercial lease model established in 2017.

[24.] Counsel Maillis set out in his submissions that the principal Grounds for Contesting the Appraiser's Valuation is that the Appraiser's valuations **Five Hundred Fourteen Thousand ($514,000.00)** under an "owner/operator" scenario and **Four Hundred Thirty-five Thousand Three Hundred Seventy-five Dollars ($435,375.00)** under a rental income scenario are fundamentally flawed, fictitious, and unreliable due to a systemic failure of due diligence:

i. Real Estate Ownership: The underlying property and building are owned exclusively by the husband's father, FLF (as verified by recorded title deeds and 2020/2026 Real Property Tax bills).

ii. Improper Financial Assumptions: The Appraiser erroneously utilized a "Capitalization Rate" equation over a projected ten-year period. The husband asserts capitalization is legally and financially impossible because neither party owns the real estate assets.

iii. Lack of Operational Control: The business is entirely leased, operated, and run by a third-party tenant, Mr. SC. The tenant covers all operational expenses, VAT, and business license fees.

iv. Absence of Shared Profits: There is no profit-sharing mechanism, inventory ownership, or operational benefit accruing to the husband outside of standard monthly lease payments.

v. Methodological Failure: The appraisal was performed under what the Appraiser termed "limited-disclosure conditions" without interviewing the tenant or his accountant, rendering the final report inherently unreliable.

[25.] Counsel Maillis went on to demonstrate that in certain respects there is Evidentiary Alignment Between the Parties which supports the husband's position:

i. Both parties concede the business floundered under the husband's management and was subsequently leased out.

ii. The wife's own affidavit (SF#1) explicitly claims a share of "rental income" ($3,800.00/month from Jan 2022 to July 2024) rather than asserting a claim over business ownership or real property.

[26.] Counsel Proposed a Valuation Formula and settlement offer. He submits that the sole quantifiable matrimonial asset is the fixed rental income calculated from the date the wife vacated the matrimonial home (August 12, 2022) to the expiration of the current non-automatically renewing 5-year lease term. He calculated this at 4 years and 4 months of unexpired residue at a rate of **Three Thousand Eight Hundred Eighty-three Dollars ($3,883.00) per month**, totaling **Two Hundred One Dollars Nine Hundred Sixteen Dollars ($201,916.00)**.

[27.] He offered as an alternative that, if the Court determines the business possesses any value beyond this residual rent, the husband offers to assign the business interest to the wife in its entirety, subject only to the husband receiving one-half of the verified rental income derived from the unexpired lease term.

[28.] **LFF Lease Rents**

It is common ground that the wife is entitled to past rents due under the LFF lease. The husband collected and retained the rents from January 2022 to June 2026 at **Three Thousand Eight Hundred Dollars ($3,800.00) per month**. The wife claims **Two Hundred Five Thousand Two Hundred Dollars ($205,200.00)**, while the husband contends that **Two Hundred One Thousand Nine Hundred Sixteen Dollars ($201,916.00)** is due. The Court adopts the mean of those figures and finds the sum payable to be **Two Hundred Three Thousand Five Hundred Fifty-eight Dollars ($203,558.00).**

[29.] **Further Issues to Be Discussed Are: -**

I. The exact amount due to the wife for past rents payable to her from LFF tore.
II. The difference in the net proceeds of sale of The Sonoma and Sorrento apartments.
III. The sums due each party from the Bank accounts here in the Bahamas and in the United States.
IV. Whether the Audi vehicle is matrimonial property subject to distribution between the parties.

Each disputed amount shall be addressed in turn hereunder.

The Application of Past Rents

[30.] As indicated hereinbefore, the fact that the wife is owed past rents from LFF is not in dispute. The parties differ on the amount owed. The wife is claiming Fifty-four (54) months, Jan 2022 on June 2026. This amounts to **Two Hundred Five Thousand Two Hundred Dollars ($205,200.00)**. The husband puts the amount due and owing at **Two Hundred One Thousand Nine Hundred Sixteen Dollars ($201,916.00)**. The mean of the two amounts is **Two Hundred Three Thousand Five Hundred Fifty-eight Dollars ($203,558.00).** The full amount of past rents due and owing to the wife is therefore **Two Hundred Three Thousand Five Hundred Fifty-eight Dollars ($203,558.00).**

The Difference In Sorrento And Sonoma

The Wife's View: -

[31.] The wife says the Sorrento Lakes property was acquired solely by her prior to the marriage, utilizing a mortgage loan and financial support from her father. She says also that the Sonoma Apartment was acquired in or about 2008 during the marriage, in her sole name. The down payment was funded jointly by both parties, with the remaining balance secured via a mortgage loan. The wife's rationale for selling both properties is that the husband's unilateral depletion of the parties' joint bank accounts in the United States stripped her of the liquid capital required to maintain and service the properties. She also asserts that when the husband cut off her access to their minor child, "JJ", forcing her to engage in costly, extensive custody litigation, that further strained her financial position and necessitated the property sales.

[32.] Notwithstanding the pre-marital origin of the Sorrento Lakes property, both parties have mutually agreed that the net sale proceeds from both Sorrento and Sonoma constitute matrimonial property subject to equal division on a 50/50 split.

[33.] Based on the wife's assertions about the sale of Sorrento and Sonoma, the table following demonstrates a financial reconciliation of net sales proceeds. The underlying mortgage debts were fully satisfied at the time of closing. Both parties agree on the final financial figures derived from the closing statements, except, there is a dispute about tax receipts (*Exhibits SF 1, SF 2, WKF-1, WKF-2*), structured as follows.

Property / Account Line	Gross Sales Price	Less: Closing Costs / Mortgages	Net Proceeds per Unit
1. Sorrento Lakes	$290,000.00	($159,790.23)	$130,209.77
2. Sonoma Apartment	$426,216.21	($163,694.72)	$262,521.49
Combined Net Proceeds	—	—	**$392,731.26**
Less: US Sales Taxes	—	—	($67,393.00)
Total Net Sales Proceeds	—	—	**$325,338.26**

It is noted that there is a minor typographical error in the wife's calculations which I ascribe to textually citing the final sum as **Three Hundred Twenty-five Thousand Nine Hundred Five Dollars Twenty-six Dollars ($325,905.26)**, whereas the mathematical itemization in Paragraph 32 explicitly concludes at **Three Hundred Twenty-five Thousand Three Hundred Thirty-eight Dollars Twenty-six Cents ($325,338.26)**.

[34.] The wife invited the Court to accept the financial calculations and find that the total distributable capital pool derived from the US real estate portfolio is **Three Hundred Twenty-five Thousand Three Hundred Thirty-eight Dollars Twenty-six Cents ($325,338.26)** (or as noted by counsel, **$325,905.26**) to be split equally between the parties (Para 33).

[35.] The husband submitted that the distributable capital is **Three Hundred Thirty Thousand Two Hundred Two Dollars Ninety-one Cents ($330,202.91)**. That matter was not resolved during the proceedings. The court will use the mean of the numbers which is calculated at Three Hundred Twenty-eight Thousand Fifty-four Dollars Eight Cents **($328,054.08).**

The Husband's View : -

[36.] Again it is important to provide context for the respective parties' stance on this issue. On behalf of the husband, counsel Maillis submits that recognition of the date of the breakdown of the marriage is oftentimes momentous to the determination of the matter. He submits that the date of separation of the parties occurred when the wife vacated the matrimonial home on August 12, 2022. He stated further that following the separation, both properties were liquidated when both rental units were sold by the wife. She did so without the consent of the husband.

- **Sorrento Lakes:** Sale settled on **February 27, 2023**.
- **Sonoma Property:** Sale settled on **March 1, 2023**.

At the time of filing, his affidavit a total period of Six (6) months had elapsed between the date of separation and the finalization of the property sales.

[37.] To assist the Court, the husband gave an overview of **Operational Revenue vs. Liability Accounts** supported by the executed lease agreements (*Exhibits JF#17 and JF#18*), and established that the monthly cash flow metrics for the properties during this Six (6) month interim period were as follows:

Gross Rental Revenues:

- Sonoma Rent: $2,200.00 / month
- Sorrento Lakes Rent: $2,000.00 / month
- **Total Gross Income: $4,200.00 / month**

Mortgage Liabilities:

- Sonoma Mortgage: $989.26 / month
- Sorrento Lakes Mortgage: $852.38 / month
- **Total Mortgage Debt Service: $1,841.64 / month**

[38.] Based on the husband's report, a net surplus and final accounting result by deducting the combined mortgage liabilities from the gross rental income **($420.00 - $1841.64)** to reach a net profit of **Two Thousand Three Hundred Fifty-eight Dollars Thirty-six Cents ($2,358.36)** per month. The husband submits that the wife retained sole possession, use, and control over these net profits throughout the 6-month period without accounting to the him or the marital estate.

[39.] The husband submitted that a Financial Adjustment for the wife's actions are the total accumulated unaccounted surplus over the 6-month interim which is calculated as **Fourteen Thousand One Hundred Fifty Dollars Sixteen Cents ($14,150.16)** ($2,358.36 × 6). The Husband formally requests that the Court include this **$14,150.16** figure against the wife in the global balancing and distribution equation.

Funds in The Bahamian Bank Accounts

[40.] The parties maintained bank accounts in Two (2) jurisdictions; Fidelity Bank in The Bahamas and Chase Bank in the United States of America. Cash was removed from the accounts by the husband in contemplation of the breakdown of the marriage.

Fidelity Bank Accounts (Joint Savings and Checking)

The Husband

[41.] The husband admits to removing **Seventy-two Thousand Three Hundred Sixty-four Dollars Forty-two Cents ($72,364.42)** from the joint Fidelity accounts. He provided documentary evidence to demonstrate that the remaining balance of **Fifty-six Thousand Five Hundred Ninety-one Dollars Ninety Cents ($56,591.90)** was left in the account. He asserts that the wife subsequently withdrew that sum in full for her own benefit on July 4, 2022.

[42.] The husband argued further that **Eight Thousand Six Hundred Sixteen Dollars Fifty-three Cents ($8,616.53)** of the amount he withdrew was his personal RF Pension layout, and **Five Thousand Dollars ($5,000.00)** was used for a legal retainer. The husband's justification for this position is because the wife kept her own pension funds **Fifteen Thousand Nine Hundred Seventy-one Dollars Forty-two Cents ($15,971.42)** separate and also used joint funds for her legal retainer, the husband submits that only **Fifty-eight Thousand Seven Hundred Forty-seven Dollars Eighty-nine Cents ($58,747.89)** of his withdrawal should be classified as "joint" for adjustment.

Chase Bank Accounts (U.S. Dollar Accounts)

[43.] The husband alludes to the fact that he was forced to make a protective withdrawal from the Chase Account. He says that on 20th July 2022, following suspicious financial activity by the wife (including an attempt to drain over **$100,000.00** from Cloud Carib earnings, their place of employment), the husband withdrew **Seventy-two Thousand Dollars ($72,000.00)** via cashier's check to protect his financial position. It was subsequently discovered that **Forty-seven Thousand Three Hundred Eighty-two Dollars Seventy-five Cents ($47,382.75)** (half of the underlying **$95,165.49** balance) actually belonged to the wife's mother, PLL, earmarked for the parties' son's education.

[44.] The husband states that the wife's mother initially sent a translated voice note (*Exhibit JF#14*) and signed a formal Affidavit (*Exhibit JF#15*) instructing the husband *not* to return the money to her, but rather to retain it for the child.

[45.] Despite the mother's initial instructions to retain the money, the husband has since fully repaid the **Forty-seven Thousand Three Hundred Eighty-two Dollars Seventy-five Cents ($47,382.75)** directly to the wife's mother via manager's check, as confirmed by an Affidavit of Confirmation filed on May 26, 2026. The husband submits that because these funds have been returned to their beneficial owner, there is no live issue or legal basis for the Court to adjudicate upon the **Forty-seven Thousand Three Hundred Eighty-two Dollars Seventy-five Cents ($47,382.75)** sum.

[46.] The husband submits that the net mathematical difference between the total Chase Bank withdrawal **$72,000.00** and the returned maternal funds **$47,382.75** leaves a remaining balance of **Twenty-four Thousand Six Hundred Seventeen Dollars Twenty-five Cents ($24,617.25).** The wife acknowledges he possesses this balance and agrees it should be factored into the final matrimonial asset adjustment equation.

The Wife

[47.] The wife is requesting an equalization payment for marital funds unilaterally removed by the husband from joint Bahamian and United States banking institutions. She relies on the binding appellate precedent to establish the precise date at which matrimonial assets must be valued for equitable distribution. Citing **Burrows v Burrows** (SSCivApp No. 58 of 2021), **GB v VB**, and **H v H**, her submissions outline that the value of matrimonial assets must be determined at the exact point in time when the marriage broke down and mutual support ended.

[48.] According to the wife on the date of the breakdown of the marriage, the cumulative balance remaining across all joint marital accounts was **One Hundred Fifty-nine Thousand Five Hundred Ninety-three Dollars Thirteen Cents ($159,593.13)**. Under the principle of equal division, each party holds an immediate entitlement to a **Fifty Percent (50%)** share, totaling **Seventy-nine Thousand Seven Hundred Ninety-six Dollars Fifty-six Cents ($79,796.56)** each.

[49.] To further clarify her position, the wife provided an Itemization of Joint Accounts and Unilateral Depletion schedule. This included the joint assets across four (4) separate accounts at the time of the marital breakdown, which were unequally depleted by the Husband:

Account Registry	**Total Balance**	**Amount Removed by Husband**	**Amount Left for / Removed by Wife**
1. Bahamian Joint Account	$130,980.22	$72,364.42	$58,615.80
2. US Account No. 1351(Rental)	$12,214.55	$12,214.55	$0.00
3. US Account No. 7838(Artesia)	$5,931.96	$5,931.96	$0.00
4. US Savings Account No. 7639	$10,466.40	$10,466.40	$0.00
Total Global Liquid Assets	**$159,593.13**	**$100,977.33**	**$58,615.80**

[50.] The wife's position is that based on an equal distribution of these funds each of the parties was entitled to receive **Seventy-nine Thousand Seven Hundred Ninety-six Dollars Fifty-six Cents ($79,796.56)**. However, she received only **Fifty-eight Thousand Six Hundred Fifteen Dollars Eighty Cents ($58,615.80)**. She contends that she has therefore been reduced by **Twenty-one Thousand One Hundred Eighty Dollars Seventy-six Cents ($21,180.76)** because the husband unilaterally secured **Twenty-one Thousand One Hundred Eighty Dollars Seventy-seven Cents ($21,180.77)** in excess of his **Fifty Percent (50%)** legal entitlement, leaving the wife with a corresponding deficit.

The husband counters the wife's account of what is owed. He is of the view that some **Thirteen Thousand Six Hundred Sixteen Dollars Twenty-three Cents ($13,616.23)** should not be factored in as **Eight Thousand Six Hundred Sixteen Dollars Twenty-three Cents ($8,616. 23)** was his pension in the account. The husband contends the wife withheld a personal pension sum of **Ten Thousand Dollars ($10,000.00)**. The wife denies this in oral evidence. She submits that on the balance of probabilities, it is highly improbable that she would conceal an insignificant **Ten Thousand Dollars ($10,000.00)** sum when she transparently deposited **One Hundred Thousand Dollars ($100,000.00)** of her father's money into the joint pool and willingly split **One Hundred Thirty Thousand Dollars Three Hundred Eighty-three Dollars Seventy-seven Cents ($130,383.77)** from her pre-marital Sorrento Lakes property sales.

[51.] The wife systematically refutes the husband's attempts to exclude his pension or justify his over-withdrawal based on the argument about her pension. She denies that she ever received the pension. Moreover, the wife underscores that the Husband was unemployed for a significant period leading up to the breakdown, during which her sole salary fully funded the joint accounts.

[52.] The wife invites the Court to accept the mathematical reconciliation and order the Husband to pay her a compensatory lump sum of **Twenty-one Thousand One Hundred Seventy-seven Cents ($21,180.77)** to restore both parties to an equal 50/50 division of their joint liquid bank assets.

The Audi Vehicle

[53.] **The dispute between the parties about the Audi**

The wife is of the view that it should not be included in the matrimonial assets because she alone has arranged for and paid the loan for the car. She is and has always been the sole owner. This issue is addressed further on in the ruling.

The Governing Law

[54.] Both parties are seeking transfer of property from joint ownership to their sole ownership. The court is clothed with legislative authority to decide the disputed matters between the parties under the provisions of s. 25, s. 27 and s. 28 of the Matrimonial Causes Act (MCA), which is set out hereunder for ease of reference;

s.25 (2) - (2) The property adjustment orders for the purposes of this Act are the orders dealing with property rights available (subject to the provisions of this Act) under section 28 for the purpose of adjusting the financial position of the parties to a marriage and any children of the family on or after the grant of a decree of divorce, nullity of marriage or judicial separation, that is to say — (a) any order under subsection (1)(a) of that section for a transfer of property;

s. 27 (1) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute), the court may make any one or more of the following orders, that is to say —

(a) an order that either party to the marriage shall make to the other such periodical payments, for such term, as may be specified in the order;
(b) an order that either party to the marriage shall secure to the other to the satisfaction of the court such periodical payments, for such term, as may be so specified;
(c) an order that either party to the marriage shall pay to the other such lump sum or sums as may be so 28. (specified;

s. 28 (1) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute), the court may make any one or more of the following orders, that is to say —

(a) an order that a party to the marriage shall transfer to the other party, to any child of the family or to such person as may be specified in the order for the benefit of such a child such property as may be so specified, being property to which the first-mentioned party is entitled, either in possession or reversion;

[55.] When deciding matters as matters of property adjustment under the powers given on the mentioned provisions, regard must always be had to the considerations outlined in s. 29 MCA;

[56.] s. 29 of the Matrimonial Causes Act (MCA)

S 29. (1) It shall be the duty of the court in deciding whether to exercise its powers under section 25(3) or 27(1)(a), (b) or (c) or 28 in relation to a party to a marriage and, if so, in what manner, to have regard to all the circumstances of the case including the following matters that is to say —

(a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;
(b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
(c) the standard of living enjoyed by the family before the breakdown of the marriage;
(d) the age of each party to the marriage and the duration of the marriage;
(e) any physical or mental disability of either of the parties to the marriage;
(f) the contribution made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family;
(g) in the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring; and so to exercise those powers as to place the parties, so far as it is practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other. [Emphasis Mine]

[57.] The tailpiece to this s.29 legislation prescribes an objective that should be achieved when deciding an issue of property adjustment. The mandate was spoken to by *Allen J.* in **Jupp v Jupp** SCCrApp No. 37 of 2011 where *Allen J* said:

> "It must be remembered that authorities from the United Kingdom cannot trump what the statue law of The Bahamas says. It is only if these cases are consistent with the statue law can they apply. Section 29 is very clear as to what a judge must take into consideration when considering whether to exercise her powers under section 27 or 28 or even section 25 of the Act. Any sharing principle enunciated by case law must be construed in this light. The statute requires that you look at all the circumstances and you make the order which puts the parties in the financial position so far as it is practicable that they would have been in if the marriage had not broken down. The division of the assets must be fair in its entirety. It is not the role of the trial judge to list the assets of the family and to divide them one by one. The trial judge must look at the circumstances. [Emphasis mine]

The court's mandate then is twofold; (1) to put the parties in the financial position so far as practicable that they would have been in if the marriage had not broken down and (2) to divide the assets fairly.

Discussion And Analysis

[58.] Buttressing the statutory provisions in s. 29 is the theme dominating much of the current jurisprudence in this sphere is that the overriding objective of the court is to achieve fairness between the parties when their assets are being distributed. In **A v B** 2008/FAM/div/132 – *Sir Michael Barnett, the learned Chief Justice* (as he then was) followed the principle enunciated in **Charman v Charman** [2007] thereby cementing the approach of the Bahamian Courts to the distribution of matrimonial property in marital disputes. He said;

> "The objective of the court is to be fair. In my judgment, the modern day approach to a division of property in a marriage is that fairness is an equal sharing of property unless there is a compelling reason to depart from that equality."

[59.] There is no doubt now that the overriding objective is fairness, but this must work in tandem with the tailpiece to s. 29 (1) which mandate that the outcome must place the parties "so far as it is practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other."

[60.] **How/where can fairness be determined?**

It must be measured against the yardstick of equality. The parties interest should be measured against the yardstick of equality.

Per Lord Nicholls of Birkenhead in the case of **Miller v Miller; Macfarlane v Macfarlane** [2006] UKHL 24 - … This "equal sharing principle" derives from the basic concept of equality permeating a marriage as understood today. Marriage, it is often said, is a partnership of equals. In 1992 *Lord Keith of Kinkel* approved *Lord Emslies* observation that "husband and wife are now for all practical purposes equal partners in marriage…………..When their partnership ends each is entitled to an equal share of the assets of the partnership, unless there is a good reason to the contrary." Fairness requires no less. But I emphasize the qualifying phrase, "unless there is good reason to the contrary." <u>The yardstick of equality is to be applied as an aid, not a rule.</u> [Emphasis Mine]

[61.] *Barnett* was also reaffirming the seminal ruling in **White v White** [2001] 1 All ER where *Lord Nicholls of Birkenhead* stated:

> "Divorce creates many problems. One Question always arises. It concerns how property of the husband and wife should be divided and whether one of them should continue to support the other. States in the most general terms, the answer is obvious. Everyone would accept that the outcome of these matters, whether by agreement or by 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 differ 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."

[62.] It is also important to ensure that neither party is discriminated against;

Per *Lord Nicholls of Birkenhead* in **White:**

> "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 would 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 on the need to ensure the absence of discrimination."

This is often interpreted to mean that there must necessarily be a split of the joint assets on a 50/50 basis. However, equality sometimes lies within the principle, Per *Baroness Hale* in **Miller v Miller; Macfarlane v Macfarlane [2006] UKHL 24. V.**

[63.] Notwithstanding that the parties have agreed on an equal division of their assets it is not a process where the court can take the assets as listed and just divide between them seeking to achieve equality. See **Jupp** supra.

[64.] Given that the parties have agreed to sharing their assets on a 50/50 basis this can only be achieved by considering the value of each respective asset to ensure there are corresponding values between the parties. Initially the first approach would be to engage in a mathematical exercise as was done heretofore. The rationale being that to define the net values of the subject asset could lead to a distribution mathematically so precise it could be regarded as a fair split.

In **White v White** [2001] 1 AC, 596 per *Lord Nicholls of Birkenhead*, spoke to the significance of the net values in particular circumstances when he expounded:

> "Finally, Mrs White criticized the use of net values, arrived at after deducting estimates of the costs and capital gains tax likely to be incurred if the farms were sold. Mr. White still owns and uses the farms. The farms have not been sold. Counsel submitted that the use of net values in this situation should be discontinued. I do not agree. As with so much else in this field, there can be no hard and fast rule, either way. When making a comparison it is important to compare like with like, so far as this may be possible in the particular case. <u>In the present case a comparison based on net values is fairer than would</u> be a comparison of Mrs. White' cash award and the gross value of the farms. Under her award Mrs. White will have money. She can invest or use it as she pleases. Mr. White's equivalent, as a cash sum is the net value of the farms. The farms have to be sold before he can have money to invest or use in other ways…." [Emphasis Mine]

[65.] What is notable in *Lord Birkenhead's* Expose is that he confirms that there can be no hard and fast rule, either way and that it is important to compare like with like. Clearly the fact that the assets involve property or fixed assets as opposed to cash is critical to determining the distribution. In this case, there is a business as well as real estate and a motor vehicle and cash which are up for division.

[66.] All of the properties listed by the husband and wife as available for distribution are marital assets. The list consists of those referenced hereinbefore by the husband including the Equity in Venetian West comprising the matrimonial home, the equity in Artesia (Florida); the net proceeds of the Sorrento and Sonoma Apartment Units; the wedding and engagement rings; rents from LFF from September 2022-2026; Fidelity Joint Accounts and the Chase bank accounts. The wife sought to exclude the Audi and the husband the Valuation of LFF; however based on *Lord Denning MR's* description of marital assets in **Wachtel v Wachtel** [1973] 1 All ER 829, I am of the view that they both can be characterized as marital assets and included in the pot for distribution. *Lord Denning* said marital assets …….:

> " .. It refers to those things which are acquired by one or other or both of the parties, with the intention that there should be continuing provision for them and their children during their joint lives and used for the benefit of the family as a whole."

[67.] As it relates to the Audi Vehicle. The wife's argument might have credence based on her evidence regarding its acquisition and the method of payment of the loan obtained to acquire it; In **Dean v Dean** (1991) *BHS J.* No. 164 the court held:

> "It is clear that it is not every capital asset acquired by the party to the marriage either before or during the subsistence of the marriage that will automatically become a family asset. <u>The intention of the party acquiring the asset is vital</u> if one of the spouses acquire a house and meets the purchase and furnishing expenses exclusively but nonetheless uses the house as the matrimonial home, the house acquires the attribute of family assets because of the intention of the spouse in whom the legal ownership reside and because the house is being used for the benefit of the family as a whole." [Emphasis Mine]

[68.] Counsel Maillis also commended to the Court **Miller v Miller; McFarlane v Macfarlane** [2006] UKHL 24, where *Lord Nicholls* defined matrimonial property as:

> "Matrimonial <u>property means the matrimonial home plus property acquired</u> during the marriage otherwise than by gift or inheritance." [Emphasis Mine]

[69.] The wife admitted in re-examination by Counsel Braynen-Symonette that the vehicle was purchased in 2019 prior to the breakdown of the marriage. Her exact words were;

"....Well I traded in my car, and then I financed the rest, that's how we purchased the vehicle. I was making payments up until last year." [Emphasis Mine]

She placed a value of **Fifty Thousand Dollars ($50,000.00)** on the car. The husband placed it at a lower Value **of Forty-two Thousand Seven Hundred Twenty-five Dollars Sixty Cents ($42,725.60)** supported by documentation. The documents were conclusive of the purchase price.

[70.] What the wife said about the circumstances of the purchase of the Audi and the consequent factual circumstances surrounding the purchase is revelatory of the determination of this issue. Her intention is revealed when she said that's how "we" acquired the vehicle. Clearly, when the Audi was purchased she still regarded the purchase as a joint effort undertaken by the parties. See **Wachtel** and **Miller** supra. It is also momentous that in 2019 the parties were still in a subsisting marital relationship. The marriage had not yet broken down. The date which is to be used to base the calculation of the assets is the date of the breakdown of the marriage see **Burrows v Burrows SSCivApp. No. 58 of 2021** per the *Honourable Madam Justice Crane-Scott JA*. This marriage came to an end in January 2022. The Audi was still being used no doubt to transport the wife and child about for the most part.

[71.] Beyond the party's intention when the asset was acquired where evidence exists that over time the manner in which the asset was dealt with/treated between the couple, as shared between them indicates a contrary intention then that may affect the way the asset is viewed.

In **Standish v Standish** [2025] UKSC 26, [2026] 1 All ER 1, [2025] 3 WLR 155, [2026] 1 LRC 43, [2025] 2 FLR 489 it was reported that;

> "The Supreme Court dismissed the appellant wife's appeal against the decision of the Court of Appeal (Civil Division) that the respondent husband was entitled to 75% of assets, which before their divorce, the husband had transferred to her with a total value of £77.8 million as part of a tax planning scheme (the 2017 assets) and only 25% of the 2017 assets was subject to the sharing principle. The wife argued that the Court of Appeal had placed too much weight on the husband being the primary source of the 2017 assets. She contended that, properly analyzed, the transfer was effective as a gift to her of the 2017 assets. The key issue was whether the 2017 assets should be categorized as matrimonial property. The court ruled, in particular, that the sharing principle did not apply to non-matrimonial property. However, non-matrimonial property may become matrimonial property (known as 'matrimonialisation'). It was important to consider how the parties had been dealing with the asset and whether that showed that, over time, they had been treating the asset as shared between them. In the present case, the court held that there had been no matrimonialisation of the 2017 assets because there was nothing to show that, over time, the parties were treating the 2017 assets as shared between them; the transfer was to save tax and it was for the benefit of the children, not the wife. Accordingly, the court held that the Court of Appeal was correct that none of the non-matrimonial proportion (which was assessed to be 75%) of the 2017 assets had been matrimonialised. That percentage remained non-matrimonial property and was not subject to the sharing principle." [Emphasis mine].

[72.] Notwithstanding a finding that the Audi was purchased as a family asset having regard to the fact that the car was obtained by the wife procuring a loan, that it has been in her possession since it was bought, and since the wife has custody and day to day control of the child of the marriage and must have the ability to provide transportation for herself and the child and the husband, having not adduced any evidence that the car was ever treated as a shared asset. The **Re Standish** principle is applicable since it is not possible to split the vehicle between the parties to achieve fairness between the parties, I am of the view that the vehicle shall be factored into the distribution assets but shall remain with the wife. The distribution is also in keeping with *Baroness Hale's* formula of need, compensation and sharing. The wife needs the vehicle. The value of the husband's interest is factored into the overall assessment of the parties respective interest.

The LFF business

[73.] The parties respective interest in LFF is the most challenging issue that needs to be addressed. It was determined during trial that a Business Valuation Report was necessary to assist the court in determining the true value of the LFF. The parties selected John S. Bain of JSB Global Solutions, a Chartered Accountant and Advisors firm, to conduct said valuation. Such report was prepared pursuant to directions from the court dated 22nd July, 2025.

[74.] Both parties agreed that they would accept Mr. Bain's Valuation. The consent position was made a court order which specifically gave directions to Mr. Bain. Pursuant to the Court order, Mr. Bain was contracted. In his Report, he offered two (2) valuation approaches. The first is under an operating enterprise scenario. Based on this approach, Mr. Bain used records from Inland Revenue (VAT and Business license) and determined that the income from the business is approximately **One Million Eight Hundred Thirty-five Thousand Seven Hundred Sixteen Dollars ($1,835,716.00)**. Mr. Bain applied a multiple between 0.20 and 0.35 to estimate the value. Under this approach with a low case multiple of 0.2 the valuation was determined to be **Three Hundred Sixty-seven Thousand One Hundred Forty-three Dollars ($367,143.00)** while the high case multiple of 0.35 yielded a valuation of **Six Hundred Forty-two Thousand Five Hundred One Dollars ($642,501.00)**. In his conclusion, Mr. Bain determined that the midpoint of the Two (2) multiples is the most reasonable valuation at **Five Hundred Fourteen Thousand Dollars ($514,000.00)** even.

[75.] The second scenario employed by Mr. Bain was the capitalized rental interest. Mr. Bain used the monthly lease income of **Three Thousand Eight Hundred Eighty-three Dollars ($3,883.00)**, confirmed by the husband. The annualized amount of this lease is **Forty-six Thousand Five Hundred Ninety-six Dollars ($46,596.00)**. To determine the valuation using the capitalized interest approach Mr. Bain used a slightly conservative capitalization rate range of **8% - 12%.** Within **8%** capitalization rate the value would be **Five Hundred Eighty-two Thousand Four Hundred Fifty Dollars ($582,450.00)** at **Ten Percent (10%)**, it would be valued at **Four Hundred Sixty-five Dollars Nine Hundred Sixty Dollars ($465,960.00)** and at **Twelve Percent (12%)** it would be valued at **Three Hundred Eighty-eight Thousand Three Hundred Dollars ($388,300.00)**. Mr. Bain determined to use the mid-point indication at **Four Hundred Thirty-five Thousand Three Hundred Seventy-five Dollars ($435,375.00)** as the valuation under the capitalized rental interest. It is therefore clear that in neither of the methodologies used by Mr. Bain was the ownership of the building a factor. It is also clear based on sworn affidavits of the wife and the husband that they were not operating the business and they had leased out the operations of the business and were receiving rental income.

[76.] As mentioned previously the major difference in the suggested distribution by the husband is contained in his failure or refusal to include in his suggested valuation, the valuation of LFF conducted by Mr. John Bain. The treatment by the Court of Valuations of this nature is pivotal to the determination of this matter. In **Rosemin-Culligan v Culligan** [2025] EWFC 1 - Family Court - *Mr. Justice MacDonald* referencing *Moylan J* in **H v H** [2008] 2 FLR 2092*; Lord Nicholls of Birkenhead* said in **Miller v Miller*; *McFarlane v McFarlane** [2006] UKHL 24, [2006] 2 AC 618, [2006] *1 FLR 1186* and **Versteegh v Versteegh** [2018] EWCA Civ 1050, [2019] 2 WLR 399 per *Lewison LJ* shed light on the approach to be taken*;*

> "In so far as the husband disputes the valuation of the Colendi shares, *King LJ* made clear in **Versteegh v Versteegh** [2018] EWCA Civ 1050, [2019] 2 WLR 399(a case in which multiple experts had struggled to arrive at a valuation) at [134] that:
>
> [134] It is undoubtedly far more satisfactory for all concerned if a court can, with sufficient confidence, settle on a valuation of a business to the necessary standard of proof, that is to say the balance of probabilities. Not to do so is unsatisfactory for the applicant (still often the wife) and is often equally frustrating for the respondent (husband), particularly if the result is, as in this case, the making of a Wells order."
>
> 47. Against this, and as also recognized in Versteegh, it is equally important that the court retain a clear-eyed appreciation of the limitations inherent in valuations. In **H v H** [2008] 2 FLR 2092 Moylan J (as he then was) observed as follows:
>
> [5] The experts agree that the exercise they are engaged in is an art and not a science. As *Lord Nicholls of Birkenhead* said in **Miller v Miller; McFarlane v McFarlane** [2006] UKHL 24, [2006] 2 AC 618, [2006] 1 FLR 1186, at para [26]: <u>"valuations are often a matter of opinion on which experts differ. A thorough investigation into these differences can be extremely expensive and </u>of doubtful utility". I understand, of course, that the application of the sharing principle can be said to raise powerful forces in support of detailed accounting. Why, a party might ask, should my "share" be fixed by reference other than to the real values of the assets? However, this is to misinterpret the exercise in which the court is engaged. <u>The court is engaged in a broad analysis in the application of its jurisdiction under the Matrimonial Causes Act 1973, not a detailed accounting exercise.</u> As *Lord Nicholls of Birkenhead* said, detailed accounting is expensive, often of doubtful utility and, certainly in respect of business valuations, will often result in divergent opinions each of which may be based on sound reasoning. <u>The purpose of valuations, when required, is to assist the court in testing the fairness of the proposed outcome. It is not to ensure mathematical/accounting accuracy, which is invariably no more than a chimera</u>. Further, to seek to construct the whole edifice of an award on a business valuation which is no more than a broad,

or even very broad, guide is to risk creating an edifice which is unsound and hence likely to be unfair. In my experience, valuations of shares in private companies are among the most fragile valuations which can be obtained.

48. Reflecting these observations, in **Versteegh** *Lewison LJ* further articulated the challenges of valuing private companies:

[185] The valuation of private companies is a matter of no little difficulty. In **H v H** [2008] EWHC 935 (Fam), [2008] 2 FLR 2092, *Moylan J* said at para [5] that 'valuations of shares in private companies are among the most fragile valuations which can be obtained'. The reasons for this are many. In the first place there is likely to be no obvious market for a private company. Secondly, even where valuers use the same method of valuation, they are likely to produce widely differing results. Thirdly, the profitability of private companies may be volatile, such that a snap-shot valuation at a particular date may give an unfair picture. Fourthly, the difference in quality between a value attributed to a private company on the basis of opinion evidence and a sum in hard cash is obvious. Fifthly, the acid test of any valuation is exposure to the real market, which is simply not possible in the case of a private company where no one suggests that it should be sold. Moylan J is not a lone voice in this respect: see **A v A** (Ancillary Relief: Property Division) [2004] EWHC 2818 (Fam), [2006] 2 FLR 115, at paras [61]–[62]; and **D v D and B Ltd."** [Emphasis Mine]

[77.] Particular regard must be had to the distribution of the assets where the allocation involves cash for one party while the other will retain an illiquid asset. This was enunciated by *Sir Jonathan Cohen* in **BS v CL** [2025] EWFC 215.

"100. It is very well-established law and practice that a departure from equality of outcome may be appropriate where one party is to receive cash while the other party retains an illiquid business asset. This is not an invariable rule but it is a proper reflection to the weight to be given to the risk which is inherent in a business which is subject to fluctuations beyond the control of the party. As Moylan LJ said in the case of Martin v Martin [2008] EWCA Civ 2866:
<u>The court has to assess the weight which can be placed on the value even when using a fixed value for the purposes of determining what award to make. This applies both to the amount and to the structure of the award, issues which are interconnected, so that the overall allocation of the parties' assets by application of the sharing principle also effects a fair balance of risk and illiquidity between the parties.</u> Again, I emphasize, this is not to mandate a particular structure but to draw attention to the need to address this issue when the court is deciding how to exercise its discretionary powers so as to achieve an outcome that is fair to both parties. I would also add that the assessment of the weight which can be placed on a valuation is not a mathematical exercise but a broad evaluative exercise to be undertaken by the judge." [Emphasis Mine]

[78.] *Lord Nicholls of Birkenhead* was astute in his observation that a "<u>thorough investigation into these differences can be extremely expensive and of doubtful utility."</u> Here the parties expended a considerable sum of money to have the report from the forensic accountant on the value of LFF conducted only to have it questioned and ultimately abandoned as of any use by the husband. [Emphasis Mine]

[79.] Indeed, the detailed mathematical calculations and submissions by the respective parties have led the court away from its mandate as per the **Versteegh** approach which specifies that

> "The purpose of valuations, when required, is to assist the court in testing the fairness of the proposed outcome. It is not to ensure mathematical/accounting accuracy, which is invariably no more than a chimera." [Emphasis Mine]

[80.] In keeping with the approach to the issue as provided in **Rosemin-Culligan** and **BS v CL** supra, this court recognizes the difference in the mathematical calculations between the wife and the husband but consider that it is subject to the objective of fairness and that the valuation is only part of a broader analysis.

[81.] Harkening back to the fact that the husband and wife were given the business LFF by the husband's father shortly after they got married, together with a gift of cash they used to improve the business, there is the prospect for the husband, of preserving his family's legacy. Considering also that the husband nor wife spoke to the possibility of liquidating LFF but only to the income received from a lease of the business it further confirms that any form of liquidation of LFF is off the table or may not even have been considered by either or both of them at all.

[82.] I am of the view that notwithstanding previous challenges financially with LFF the parties discovered a way to ensure the existence of LFF. Leasing the business to Mr. C yielded them income they were satisfied with right up to the time the marriage broke down. The existence of considerable value in LFF leads me to the conclusion that the wife's approach in her model distribution which includes the value of LFF is to be preferred. Despite the risk associated with LFF futuristically it cannot be ignored that the business existed prior to the marriage of the parties in 2007 some 19 years ago. When it was handed over to the parties it was a going concern and remains so today. There is every indication that it will continue to be a going concern in the future and that there will be ample opportunity to continue to lease the business if not to the current lease holder but to any alternative entity or person.

[83.] All the circumstances considered this court accepts the capitalized rental interest approach as appropriate for these purposes. I accept the valuation of LFF of Mr. Bain that that the business LFF is valued at **Four Hundred Thirty-five Thousand Three Hundred Seventy-five Dollars ($435,375.00).** The court will not challenge the conclusion of the valuation because it accepts the qualifications of the valuator and the rationale for his opinion set out in his report. Additionally, the parties agreed that a valuation had to be done and they also agreed on the valuer. I do not accept the husband's position that the valuation should be excluded from the assessment of the parties' respective interests. I am of the view that his opinion was formed only after he was dissatisfied with the valuer's conclusion. Both parties agree that the wife is owed income earned from **LFF** commencing from the date of the Lease.

[84.] I am satisfied that the valuation of the business should be factored into determining a fair distribution of assets between the parties. The valuation of **Four Hundred Thirty-five Thousand Three Hundred Seventy-five Dollars ($435,375.00)** is accepted.

The Bank Accounts

[85.] The wife contends that at the breakdown of the marriage the sum of **One Hundred Thirty Dollars Nine Hundred Eighty Dollars Twenty-two Dollars ($130,980.22)** was in their Bahamian bank accounts. There was **Twenty-eight Thousand Six Hundred Twelve Dollars Thirteen Cents ($28,612.91)** in the US accounts at Chase Bank. These together totaled **One Hundred Fifty-nine Thousand Five Hundred Ninety-three Dollars Thirteen Cents ($159, 593.13)**. She says the husband withdrew the sum of **Seventy-two Thousand Three Hundred Sixty-four Dollars Forty-two Cents ($72,364.42)** from the Fidelity accounts and **Twenty-eight Six Hundred Twelve Dollars Ninety-one Cents ($28,612.91)** from the US accounts for a total of **One Hundred Thousand Nine Hundred Seventy-seven Dollars Thirty-three Cents ($100,977.33)** from the accounts. The wife contends that on an even split of the **One Hundred Fifty-nine Thousand Five Hundred Ninety-three Dollars Thirteen Cents ($159,593.13)** of both of the accounts, each parties' overall entitlement would be **Seventy-nine Thousand Seven Hundred Ninety-six Dollars Fifty-six Cents ($79,796.56)**. However, the husband withdrew a total of **One Hundred Thousand Nine Hundred Seventy-seven Dollars Thirty-three Cents ($100,977.33).** Since she only recovered **Fifty-eight Thousand Six Hundred Fifteen Dollars ($58,615.00)** from the joint accounts, the husband now has to make up her entitlement by paying to her the sum of **Twenty-one Thousand Two Hundred Eighty Dollars Seventy-seven Cents ($21,280.77).**

[86.] Counsel Braynen-Symonette has correctly submitted that the sums in those accounts are deemed to be the joint property of the parties. The funds were deposited to the joint account of the parties during the marriage. This was acknowledged by the parties and was in fact an obvious fact, as the husband admitted to removing funds he considered to be his portion of the proceeds of the accounts leaving what he determined to be the wife's portion. These funds are available for distribution having resided in the joint accounts at the date and time of the breakdown of the marriage. They are available for distribution based on the principle espoused in **Burrows v Burrows** SSCCivApp. No. 58 of 2021 per *Crane-Scott JA*, citing **GB v VB** and *Winder J*:

> "22 According to the authorities, <u>the time for the valuation of the Husband's interest is the date when the marriage broke down and the mutual support ended"</u> [Emphasis mine].

The marriage came to an end in January 2022.

[87.] There are disputes between the parties as to how much money was in the US Bank Accounts at the breakdown of the marriage. The husband asserts that there was **Twenty-four Thousand Six Hundred Seventeen Dollars Twenty-five Cents ($24,617.25)** in the Fidelity accounts. The difference between the husband and wife's account is **Three Thousand Nine Hundred Ninety-five Dollars Sixty-six Cents ($3,995.66)**.

[88.] The husband admits only to **Ninety-five Thousand One Hundred Sixty-five Dollars Forty-nine Cents ($95,165.49)** being on the US accounts. There is a difference between his and the wife's of **Thirty-five Thousand Eight Hundred Fourteen Dollars Seventy-three Cents ($35,814.73).** Of the **Ninety-five Thousand One Hundred Sixty-five Dollars Forty-nine Cents ($95,165.49)** the husband admits to removing **Seventy-two Thousand Dollars ($72,000.00)** from the account. It was settled between the parties that **Forty-seven Thousand Three Hundred Eighty-Two Dollars Seventy-five Cents ($47, 382.75)** of that sum belonged to the wife's mother. This resulted in the sum of **Twenty-four Thousand Six Hundred Seventeen Dollars Twenty-five Cents ($24,617.25)** retained by the husband. The balance left on the account according to the husband was therefore **Twenty-three Thousand One Hundred Sixty-five Dollars Forty-nine Dollars ($23,165.49)** on the account. The husband made no further reference to what became of this sum. The wife has claimed **Twenty-eight Thousand Six Hundred Twelve Dollars Ninety Cents ($28,612.90)** other than the return of the mother's funds. A difference of **Five Thousand Four Hundred Forty-seven Dollars Forty-one Cents ($5,447.41).** What accounts for this difference is not explained except to say that the husband made reference to portions of the money he removed belonging to him alone personally and should not be considered as part of the assets for distribution; his pension funds deposited to the joint account and **Five Thousand Dollars ($5,000.00)** he felt entitled to towards his legal fees consistent with funds removed by the wife for her legal fees.

The Dispute about the Husband's withdrawal of his pension from the Joint bank accounts.

[89.] Pursuant to Section 29(1)(g) MCA, there is a statutory inclusion of pensions explicitly classified as a matrimonial benefit, subject to the court's division powers. The husband withdrew the amount of **Thirteen Thousand Six Hundred Sixteen Dollars Fifty-three Cents ($13,616.53)** from the joint bank accounts but feels it should be excluded from matrimonial assets. He avers that the wife failed to deposit her **Fifteen Thousand Dollars ($15,000.00)** pension which justifies his position. It is true that in certain circumstances that monies held on a joint account but deposited there by only one of the joint account holders might nevertheless be considered the sole property of the one depositing the money. See **Heseltine v Heseltine** [1971]1 All E R 953 per *Lord Denning* and *Megaw J.*

[90.] However, aside from the husband's bald assertion there was no evidence to support the notion that the wife's pension was actually deposited to the joint account. Moreover, the absence of the any pension funds on the account from the wife does not obviate the fact that the husbands pension funds is a marital asset to be considered in the distribution. I also recognize that the wife did not dispute the **Five Thousand Dollars ($5,000.00)** the husband said she removed for legal fees and this could well account for a portion of the greater portion of the **Five Thousand Four Hundred Forty-seven Thousand Forty-one Cents ($5,447.41)** difference between their respective accounts.

Net Proceeds from Sale of Sorrento and Sonoma

[91.] It is not disputed that the wife retained the net proceeds from the sale of these Two (2) properties. However, the husband disputes the amount that was paid for Capital Gains tax. The most significant reason for the difference is the sum of **Four Thousand Eight Hundred Sixty-four Dollars Sixty-five Cents ($4,864.65)** attributed to capital gains tax. Upon review of the wife's Individual Tax Return and her testimony, she was unable to convince the court that this sum was attributable to taxes paid on the sale of Sonoma and Sorrento. The Court therefore accepts that the taxes paid on Sorrento and Sonoma was **Sixty-two Thousand Seven Hundred Two Dollars ($62,702.00)**. The net amount of the proceeds of sale is therefore **Three Hundred Thirty Thousand Two Hundred Two Dollars Ninety-one Cents ($330,202.91)** as suggested by the husband.

[92.] The husband has claimed rents from Sorrento and Sonoma owed to him prior to them being sold by the wife. The Court is satisfied that the wife received rents from these Apartments for the period indicated by the husband. He has calculated these amounts supported by copies of the Rental Agreements. The sum of **Fourteen Thousand One Hundred Fifty Dollars Sixteen Cents ($14,150.16)** is to be added to the Calculation of the assets.

CONCLUSION

[93.] Having regard to the **Rosemin-Culligan** referencing *Lord Nicholls of Birkenhead* and *Moylan J.*, and with the understanding that the valuation by Mr. John Bain is a matter of opinion only and that the husband disagreed with his opinion, nonetheless I consider LFF to be a well-established business which heretofore has played a significant role in the financial life of his family. I am of the view that it will continue to be an ongoing concern which will be of great benefit to the husband in the future. I am also mindful of the fact that it is his family's legacy, which it is fitting he should retain.

[94.] Having regard to the fact that the assets involve property, a vehicle, jewelry, cash and a business entity, a departure from equality seems inevitable in the circumstances. However, since the parties have settles on equal or 50/50 sharing, the court has endeavored to achieve that goal. Notwithstanding based on the calculations above, the differences in most of the valuations are negligible and in some instances are unavoidable.

[95.] The Court has given weight to the valuation of Forensic Accountant, John Bain, because it helped to form the basis for the asset valuation and the court's objective to achieve fairness between the parties rather than total reliance on the mathematical accuracy of the assets as per the **Versteegh** principle.

[96.] This final chart is helpful but not dispositive of the determination of the issues between the parties:

WIFE

ASSET	VALUE
1. Artesia apartment, USA	$459,500.00
2. Proceeds of sale Sonoma & Sorrento	$ 328,054.08
3. Audi Vehicle	$ 42,725.00
4. Cash form Fidelity & Chase Banks	$ 21,180.77
5. Cash from Fidelity & Chase	$58,615.80
6. Past rents Sorrento & Sonoma	$ 14,150.16
Total:	**$924,225.71**

[97.] This is an overview of the husband's distribution:

HUSBAND

ASSET	VALUE
1. Venetian Condominium, Bahamas	$192,952.50
2. LFF	$ 435,375.00
3. Engagement and wedding rings	$ 24,175.00
4. Funds from Fidelity	$ 58,747.89
5. Past Rents LFF	$ 203,558.00
6. Funds Chase	$ 24,617.25
Total :	**$ 939,425.64**

[98.] The difference between the values of the assets that the respective parties are taking from the marriage is a mere **Fifteen Thousand One Hundred Ninety-nine Dollars Ninety-three Cents ($15,199.93)**. The husband's share works out to be the larger amount.

[99.] It is to the principles enunciated by *Moylan J* and *Lord Nicholls of Birkenhead* in **Martin** supra and those principles enunciated in **Rosemin-Culligan** referencing **H v H, Miller/ Macfarlane** and **Versteegh** supra, that I now turn to, to resolve the issue of this slight difference in the asset values. It is extremely difficult to achieve parity where the division has to occur between fixed assets and cash but the court can aim to ensure that the needs of the parties are met, that where compensation is warranted that is achieved and that sharing of the assets happen once it is determined that the property is a marital asset. See *Baroness Hale* in **Miller/Macfarlane** supra. The objective is to ensure that their standard of living can be maintained S. 29 (1) (c) MCA and that they are put in the position that they would have been in had the marriage not broken down. S.29 (1)(g) MCA. The formula set forth in the chart above will achieve that. The distribution given to each of the parties is fair in all the circumstances.

DISPOSITION:

[100.] The Court hereby orders:

For the Wife

1. The proceeds of sale of Sorrento Lakes and Sonoma Apartment Units is declared to be **Three Hundred Twenty-eight Thousand Fifty-four Dollars Eight Cents ($328,054.08).** The wife shall retain these proceeds of sale.

2. The wife shall retain the sum of **Fourteen Thousand One Hundred Fifty Dollars Sixteen Cents ($14,150.16)** being the past rents due to the husband from the Sorrento and Sonoma Apartment Units situate Florida USA, owned and sold by the wife.

3. The value of the Artesia Apartment situated in Florida, USA is declared to be **Four Hundred Fifty-Nine Thousand Five Hundred Dollars ($459,500.00)**. The Apartment shall be retained by the wife. The husband shall transfer all his right, title and interest in the said property to the wife and shall execute any documents required to transfer his interest to the wife within **Ninety (90)** days of the date hereof.

4. The wife shall retain the sum of **Fifty-eight Thousand Six Hundred Fifteen Dollars Eight Cents ($58,615.80)** from the Fidelity, Bahamas joint bank account of the parties.

5. The husband shall pay to the wife the sum of **Twenty-one Thousand One Hundred Eighty Dollars Seventy-seven Cents ($21,180.77)** being the sum due to the wife from the joint Fidelity, Bahamian Dollar bank account and the Chase, US Dollar bank account within **Ninety (90)** days of the date hereof.

6. The Audi Vehicle is declared to be valued at **Forty-two Thousand Seven Hundred Twenty-five Dollars ($42,725.00).** The wife shall retain the Audi vehicle to her sole order. The husband shall execute any documents required for the transfer of the vehicle to the wife within **Thirty (30)** days of the date hereof.

For the Husband

7. The net value of the matrimonial home situated on Venetian West, New Providence is declared to be valued at **One Hundred Ninety-two Thousand Nine Hundred Fifty-two Dollars Fifty Cents ($192,952.50)**. The wife shall transfer all her right, title and interest in the said property to the husband within **Ninety (90)** days from the date hereof.

8. The Value of the engagement and wedding rings of the parties is declared to be **Twenty-four Thousand One Hundred Seventy-five Dollars ($24,175.00)**. The husband shall retain the said rings.

9. The husband shall retain the sum of **Fifty-Eight Thousand Seven Hundred Forty-seven Dollars Eighty-nine Cents ($58,747.89)** being the sums he withdrew from the parties joint Fidelity Account in the Bahamas.

10. The husband shall retain the sum of **Twenty-four Thousand Six Hundred Seventeen Dollars Twenty-five Cents ($24,617.25)** being the sums he withdrew from the parties joint Chase Account in the United States.

11. The value of LFF is declared to be **Four Hundred Thirty-five Thousand Three Hundred Seventy-Five Dollars ($435,375.00)**. The wife shall transfer all her right title and interest in LFF to the husband within **Ninety (90)** days of the date hereof.

12. The past rents due from the LFF lease for the period January 2022 to 2026 owed to the wife, is declared to be **Two Hundred Three Thousand Five Hundred Fifty-eight Dollars ($203,558.00)**. The Husband shall retain this sum to his sole order.

13. The sum of **Forty-seven Thousand Five Hundred Eighty-two Dollars Seventy-five Cents ($47,582.75)** removed by the husband from the joint Chase US bank account is declared to belong to the wife's mother PLL. The husband shall return this sum to the wife or her mother within **Thirty (30)** days of the date hereof, if he has not already done so.

14. That the claim by the wife for the sum of **Forty-nine Thousand One Hundred Seventy-two Dollars Thirty-seven Cents ($49,172.37)** as the difference in the asset value is refused.

15. Each party shall bear their own costs of the proceedings and the transfers.

Dated the 6th **day of August, A.D. 2026**

The Honorable Justice Hope Strachan