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Case No: BV19D16672

IN THE FAMILY DIVISION SITTING AT
THE HIGH COURTS OF JUSTICE

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 01/07/2022

Before :

SIR JONATHAN COHEN

Between :

DE **Applicant**

- and –

FE **Respondent**

Elizabeth Clarke and Charanjit Batt (instructed by **Payne Hicks Beach LLP**) for the **Applicant**
Tim Bishop QC, Emma Sumner (instructed by **Stewarts Law LLP**) for the **Respondent**

Hearing dates: 20 June – 1 July

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Approved Judgment

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SIR JONATHAN COHEN

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

SIR JONATHAN COHEN:

1. I have been dealing with the application of the wife ("W") for financial remedy orders following the termination of her marriage to the husband ("H").

2. H is aged 47. W is aged 43. They have 3 young children aged between 9 and 5 years.

3. A decree nisi of divorce was pronounced in December 2019 which was made absolute on 16 October 2020.

The History of the Marriage

4. The parties met in the US. Both were working in banking (W in New York; H in London). By the time their relationship started in 2006 H was separated from his first wife and living in London and in December 2007 W relocated to England. Since that time the parties have lived and worked in London.

5. For a period of some 18 – 24 months the parties cohabited in H's former matrimonial home, he having bought out the interest of his first wife. In autumn 2009 they moved to West London and the property remained rented out, managed by professional agents.

6. W claims that because the property was their first home together and because she dealt with the paperwork of the rental the property became matrimonialised and that I should treat it as if the parties were jointly entitled to it.

7. I do not regard this as an all or nothing argument. It seems to me that the matrimonial element is genuine but small. In the scheme of the parties' finances this is a relatively trivial issue which I resolve by finding that 30% of the value should be treated as matrimonial and 70% to be the sole property of H.

8. The parties remained in rented accommodation until October 2013 when they purchased a large property in Kensington in joint names. It was bought with a substantial mortgage which was paid off during the course of the marriage and has an agreed value, net of sale costs, of just under £6m.

9. Both parties worked extremely hard throughout the marriage. W has remained with the same well-known bank for many years in a variety of roles. I shall look at her career and prospects later in this judgment.

10. H likewise had spent many years working at a different bank. By 2015 he was earning approx. £2.9m gross, £1.6m net. However, in early 2016 H left his employment and with 2 colleagues set up his own business, which I shall call ABC. It was almost immediately successful and I shall return to its progress in due course.

11. There can be no doubt that between 2016 - 2017 the parties were under intense stress. W was combining her work as a trader with being the primary carer (assisted by staff) of two small children and with a baby being born in February 2017. She was working long hours before she went on maternity leave.

12. H too had worked very long hours but from May 2016 he had all the added pressures that went with the commencement of a new business. Not only was he having to work to get it off the ground but he was engaged in a lot of overseas travel, particularly to

Asia, as ABC's principal client was and is based in the Far East. In turn that led W to feel that she was having to bear all the domestic responsibilities.

13. H's previous employers took a dim view of his new activities. They commenced an investigation and withheld compensation. Litigation continued until settlement was reached in August 2018. This added to the pressure on the couple.

14. In January 2017 one of the 3 founders of ABC ceased to be involved. From that time on H and his surviving partner have each held 50% of ABC, albeit with payments due to the departed partner.

15. In November 2017 H admitted the existence of an adulterous affair and at W's insistence he immediately left the matrimonial home and moved into a nearby hotel.

16. I have been asked to examine closely the state of the parties' relationship between November 2017, when H moved out, and October 2018 by when it became clear that both parties had concluded that the marriage was at an end and H moved from the hotel into his own rented accommodation.

17. The relevance of the argument is that H seeks to argue that the very large sum of money that the business made in its first years of operation came about as a result of his efforts post separation. This is hotly contested by W.

18. I have been referred to a significant number of email messages between the parties where each has expressed both hopes and frustrations. Having read those communications and heard the parties give evidence, a clear picture emerges. Over the course of the year between November 2017 – October 2018 the parties remained living apart and did not engage in any matrimonial relations. H was in another relationship. On the other hand, insofar as their busy schedules permitted, they spent time together, both with and without the children. They went out on occasions and shared holidays with the children. It is clear to me that they were trying to see whether they could or could not work through their differences. H wanted W to move on beyond her anger at his infidelity and show forgiveness and W wanted H to take responsibility for his behaviour and apologise.

19. I am satisfied that it was only in or around October 2018 that they both came to the conclusion that the marriage did not have a future. It is not necessary in this judgment to set out the details of their discussions. It is clear that for much of the time they were in what W accurately described as a "limbo situation". Neither of them knew whether their marriage had a future but neither had given up on it.

20. I am not impressed by H's argument that W's answer to the question in her divorce petition of when they separated as being November 2017 is conclusive of the point. Whilst that date marks the physical separation it was not the date of their emotional separation nor the date when, as I find, either had concluded that the marriage was at an end. I suspect that as 2018 went on H became less optimistic for the future of the marriage whilst W remained more hopeful.

21. On the facts of this case, as I will explain, I do not think that this is a dispute on which anything will turn. H's argument that the wealth his new business acquired at the end of 2017 and early 2018 was referable to a period after the end of the marital partnership

does not get off the ground. In my judgment, not only was the wealth received at a time whilst the marriage was still thought to be viable, but it was the reflection of work that had been done before the parties' physical separation in November 2017.

22. In March 2018 H's mother died and H and his sister each inherited half her estate. This included property in the Middle East. It is rightly conceded by W that this should be treated as non-matrimonial. However, in February 2019 H used $2.4m that he had received from a business transaction to purchase his sister's share in the property and in doing so used what I find to be matrimonial money, with the consequence that half the property can properly be described as a matrimonial asset. That the property is now worth significantly less than its valuation at the time of the transaction is not a relevant factor.

23. I am told by H that his mother's accounts have been credited with excessive sums of money as a result of the payers being unaware of her death. If there is a sum to be repaid, and W disputes it, then that is not something that I am prepared to treat as a debt which I should take into account because, along with the legacy that H received following his mother's death, it must be treated as non-matrimonial.

24. Some years prior to her death H's mother had transferred to H and his sister in equal shares a property in Menorca which had been his family holiday home. Although at one stage it appeared that W seemed to be advancing a sharing claim in respect of work that she says she carried out at that property, she has now rightly also abandoned any claim against it.

25. This is not a case where the proper meeting of W's needs cannot be met from the matrimonial assets. H will remain the sole owner of that which he has received from his mother, whether in life or death, along with his pre-marital London home, notwithstanding their matrimonial elements.

26. W remains living in the former matrimonial home. The children are with her for 9 nights per fortnight and with H for 5 nights per fortnight. H seeks a more equal division. It is common ground between the parties that the home should be transferred to W.

27. H has moved to a substantial rented property near the matrimonial home. He lives there with his fiancée. He would in the long run want to buy a property but at the current time he feels the need to focus his financial resources on the business.

ABC and its value

28. The battleground in this case has largely been the value to be ascribed to H's interest in the business. I shall use the words "the business" or "ABC" notwithstanding that it has been through a number of changes over time, including its name, and has various subsidiaries which need not be considered separately. By far the biggest of the issues is whether or not an uplift to the trading value of the business should be made to allow for the possibility/probability of what might be described as a "super-receipt" as happened in early 2018. This requires an analysis of the very early days of the business.

29. H left the bank in May 2016. I am satisfied insofar as it matters that W was and remained supportive of H leaving the bank and setting up his own business.

30. ABC provides advisory services principally matching investors with investment opportunities. It also has begun to invest on its own behalf, albeit to date with much less success than its core activity.

31. Between August 2016 – April 2017 H invested a total of £1.175m as start up capital. Some of this came from a joint account.

32. Within 2 months of the establishment of what became ABC, it announced the acquisition of a US asset manager for $320m and the deal was completed in November 2016. ABC receives an annual management fee and what can be described as a profit share.

33. In October 2016 a memorandum of understanding was signed with a large overseas bank which I shall call TC to set up what turned out to be a massive venture under which a sovereign wealth fund introduced very significant funds for investment. An agreement was formalised in May 2017 whereby ABC entered into a 10 year services agreement with TC under which it would receive an annual fee of $30m.

34. The third major transaction was announced in February 2017 when the same overseas bank TC signed an initial contract to acquire another entity in respect of which ABC received a $20m advisory fee which was paid in December 2017. I am told by the Chief Operating Officer of ABC that this was one of only two deals where the company received a sum of this size as a one-off fee. I will return to this issue.

35. However, in March 2018 ABC entered into an agreement with TC which is described on the document as being "The Confirmation and Termination Agreement". In return for payment of $150m to ABC by TC, all the continuing obligations of ABC under the services agreement came to an end.

36. W argues that this payment of $150m, along with the first payment of $30m received in June 2017, was a success fee paid to ABC for setting up the facility with the sovereign wealth fund. H says on the contrary, that it was simply an amortisation of the remaining 9 years of the contract.

37. W says that I should do no more than look at the terms of the agreement. H accepts that having received $150m neither he nor his business partner were legally obliged to do any more work under the services agreement. H could have simply walked away with his half of $150m.

38. H says that I should look at what actually happened on the ground rather than the strict words of the agreement. Whatever the agreement may have said, the work of ABC for TC was core for the survival of ABC. Doing the work opened the door to future agreements between ABC and TC. TC was by far its single most important client. There could be no question of simply downing tools and not completing the work that was originally required under the services agreement. The payment made good commercial sense from both points of view: ABC was in need of capital as it had not yet built up any significant sum from trading and from TC's point of view it was able to buy its way out of the agreement which over its years of operation would cost it far more. And, says H, the fact is that H and his founding partner continued to carry out exactly the same work after the payment for TC as it had done before.

39. I was told that the wording "termination" was the one chosen by TC. I have not been provided with any explanation as to why TC should choose such an inaccurate (on H's evidence) description of the arrangement and I have heard no evidence from TC. On the face of it the agreement seems more favourable to ABC than TC, particularly in circumstances where TC could have terminated the services agreement mid-way through its term in any event.

40. W says that the payment was not simply a success fee but also a reward for the fact that for about a year between May 2016 – June 2017 H and his partner had worked for TC unremunerated. But, that would not easily explain the size of the payment.

41. I have no reason to doubt that H and his partner did indeed carry on doing all the work that they were originally obliged to do under the services agreement. I accept H's evidence that this continued work was outside the scope of subsequent agreements entered into between ABC and TC. That is supported by the fact that the original services agreement required the work to be carried out specifically by H and his founding co-partner and the subsequent agreements were between different parties to the services agreement and required far greater input than provided under the old agreement.

42. On balance, I accept H's explanation and that I should not regard the payment as a one-off fee. However, I do not think that much actually turns on this dispute.

43. W says that it is central to the question of whether or not there should be an uplift in the valuation of the business. She says that it would lead to a major under-valuation if the potential of earning a huge occasional fee such as this was ignored, as it would be if the valuation simply reflected recent trading.

44. Mr Bezant, single joint accountancy expert (SJE), in valuing the business in his first report in 2020 brought in the sum of $200m at a probability of 75%. In his second report in 2022 he regarded the probability of such receipt in the future as reduced to 50%.

45. There has been no other occasion where the business has received any cash receipt above $30m at any one time. The average annual turnover of the business is running at some $30m. Of that, about half comes from the provision of services on an ongoing basis and half from one-off deals. In the 5/6 years of trading on only two other occasions has $20m+ been received as a one-off deal, one of them being in 2017 and the other recently.

46. Since its early days when, to use H's expression, everything it touched turned to gold, ABC has had a difficult time. Of the $75m H received following the termination agreement, $58m has been reinvested by him in the business. That was always the intention and it deserves no criticism. It was required to give ABC a capital base. Of the balance, about half was used to pay off the mortgage on the FMH and for the purchase of his sister's interest in the Middle Eastern property.

47. Unfortunately, since 2020 when the pandemic struck, the business has experienced significant challenges. The major difficulty related to an investment in a leisure industry business which suffered a disastrous loss of value. H had no access to ready funds to prop up the investment when the business hit difficulties. He sought to

persuade W to charge the matrimonial home to provide additional funds. She declined for reasons which strike me as reasonable. In particular, the poor relations between the parties meant that there was no proper communication or discussion between them. The absence of sufficient funding meant that ABC had to sell its shares in the company at a very significant loss of $60m, which with other associated debts meant a loss of closer to $70m.

48. The combination of the loss on this investment, which left a substantial loss on the company balance sheet, when combined with the sums due to the two founders in respect of their loans to the company meant that the company was carrying excessive debt.

49. Both H and his co-founder have made substantial operating loans to ABC and H's loan now stands at $20.2m. The treatment of these loans in assessing the value to be attached to H's interest in ABC is an issue I have to resolve.

50. I am told and have no reason to disbelieve that the founders are likely to have to write off a significant part of the debt owed to them, both to remove debt from the balance sheet but also to ensure that the new partners are not adversely affected.

51. There is a long established intention on behalf of the founders to give the partners who they have recruited stakes in the business and W wisely has accepted that the interest of the two founders should be treated as if they held 32.5% rather than 50% each equity. The existence of the operating loans is unattractive to the new partners if it were to mean that their rights were subrogated to the redemption of the operating loans. On the other hand, they are of considerable value to the founders, including as a means of them extracting value in a fiscally attractive way.

52. The extent of the reduction in the operating loans of H and his co-partner is not yet determined. On the evidence given to me it will be significant and I have determined that I should assume a 66.6% write-off.

53. The effect of this has been calculated for me by counsel and provided to me in a schedule. I have adjusted the figures by reference to the other findings I have made. The net effect can be seen to add $6.73m to the value of H's interest.

54. That left four issues in relation to the valuation of the business for me to resolve:

    i) Should the upside addition of $20.914m be removed from the valuation?

    ii) ABC received a significant shareholding in a quoted company "Q" by way of payment. Should the value attributed to those shares in the valuation be discounted for the reduction of value in the shares since the SJE valuation took place?

    iii) When the leisure industry crisis was at its worst and an injection of funds was required into the business, H's business partner paid in a little over $20m in two tranches to the business which was unmatched by H. I have to determine whether this should be treated as a priority debt, as claimed, before H's interest is valued?

iv) Should transaction costs in relation to the sale of various interests of the business in realisation be allowed for? Exactly the same issue relates to various investments made by H in his name.

The Evidence of the SJE

55. Mr Bezant carried out two reports on the valuation of the business and related issues. The first was dated September 2020 and the second April 2022. The second valuation was markedly lower than the first. There has been no challenge to the calculations that he has done save as to the four issues identified above.

56. The valuation of a private company is a highly speculative business. The courts have commented on this on a number of occasions. It is so well known as not to need authority. It is illustrated graphically in this company where there has been a marked reduction in value between the two reports of Mr Bezant.

57. Mr Bezant's sum of the parts (SOTP) valuation produced a figure for the whole of the company inclusive of its underlying entities in the sum of $108m and H's personal holdings of $22.9m.

The Upside Valuation

58. This is by far the biggest of the contentious issues. I accept the evidence of Mr Bezant that there has to be some reflection of upside. The receipt of $150m so soon after the receipt of $30m from TC is so out of line with anything else that has happened in the business's life that it is hard to ignore. Mr Bezant's report explained how he arrived at the figure of $20.9m uplift and his calculations, as opposed to his assumptions, have not been challenged.

59. H says that this payment was so out of the ordinary and unrepeated that it skews the value of the business to reflect any assumption that it will ever happen again. The fact is that there has been no receipt of anything approaching this size since 2017.

60. W's fundamental point was that this payment should be treated as a success fee, but even if she is wrong about that and it was a fee for the provision of services, it still needs to be reflected in the valuation by some form of uplift because otherwise the right to $300m over 10 years is entirely omitted from the valuation. Mr Bezant agreed with this point but whilst he felt able to provide a calculation based on his assessment of the probabilities of another success fee, he was understandably unable to do the reverse process of adjustment of his valuation on the basis that the money received was an upfront payment for services because by the time that he did his valuation the payment had so affected the accounts in many different ways that it would be impossible to extract the receipt and translate it into an income stream.

61. Mr Bezant cites in support of the argument for an uplift the receipt of shares in Q. Instead of receiving a fee for the flotation of Q, ABC received a shareholding. At one time I am told that holding was worth some $126m but by the time they came to be valued by Mr Bezant it was down to $9.4m and now is even less. Plainly if the share price had remained anywhere remotely near the high point, and had then been realised, the business would have received a sum that would support an uplift in valuation.

62. Putting all this together, it seems to me that there needs to be some adjustment to the value to reflect the fact that there is a not insignificant prospect of a receipt of a sum which would affect the valuation and needs to be fed into the figures. I conclude that Mr Bezant's figure is too high. His calculations at para 2.22 at page 1614 of the bundle assume potential fees from a large deal of $200m, I reduce that to $150m because that was the sum actually received under the agreement. Applying ABC's share of 30% to that figure (because 70% will go to the deal team) produces a business share of $45m.

63. I then reduce the probability of such a deal to 33% which I think is more realistic than the 50% used by Mr Bezant bearing in mind that there has only been one such deal at the illustrated value. This produces a weighted fee of such an event to $14.85m which I discount in the same way as Mr Bezant did for 2.5 years so as to produce an uplift of $10.65m, as opposed to Mr Bezant's figure of $20.9m.

64. I accept that the issue of uplift is a matter of judgment. I am satisfied that the addition of $10.5m is likely not to be markedly different to what an adjustment of the profit would be before applying the multiplier of 2.4 used by the SJE if the alternative approach was used of treating the anticipated payments of $30m pa as additional income.

65. I unhesitatingly reject H's argument that I should park the issue of the uplift by making an award for a contingent lump sum in the event that there is a repeat of what Mr Bishop QC called a "megadeal". It would be very difficult to frame; it would leave the parties financially enmeshed; there is a need for as much finality as possible.

66. I do not find that there is much relevance in this context in the grant of Q shares. At the time they were granted their value was under $10m and such a cash sum is within the normal range of success fee that ABC receives from time to time. The skyrocketing of the value before its plunge is immaterial in this context.

67. I agree with H that I can do no better than to take the current share price of Q Ltd which is at $6 per share. At the time Mr Bezant completed his report the share price was $10.45. It has since reduced to under $5 but is now trading at approximately $6. I understand the force of W's point that it may seem illogical to update just one figure only but I agree with what Mostyn J said in E v L [2021] EWFC 60 (Fam) at paragraph 63:

> "Blinding oneself to the knowledge of subsequent events, while conforming to the purity of valuation theory, obviously risks serious injustice".
>
> When I have a current open market price, I should use it.

68. I accordingly use the figure of $6 per share rather than $10.45 and applying the 10% discount used by Mr Bezant to reflect the constraints as a sponsor in realising the shareholding produces a value for the business's share of holding after payment to the deal team of some $5.4m as opposed to the $9.4m allowed for in the valuation.

69. I can see no basis for removing from the valuation the priority loan made by H's co-founder. H's partner plainly expects it to be repaid. I have been provided with no reason why he should forego repayment of this sum which is unmatched by any contribution of H. Mr Bezant allowed for it in his valuation.

Transaction costs at 2% fall well within the normal bracket of 1-3% seen by Mr Bezant in realisation costs. I deduct them from all business values except what is the big one, namely H's interest in ABC. I do not allow those costs because H's share value has been discounted by 15% to reflect his minority interest. The discount ceases to be relevant when there is a sale. To then discount further by removing notional sale costs is to double-count.

70. The effect of all these findings is to produce a valuation of H's interest in ABC at $24m (as I find it to be) which translates into a value of £19.16m.

The Asset Schedule

71. Attached to this judgment is a simplified asset schedule with the values as I have found them to be when in dispute. I make the following additional comments:

(i) On my findings, before redistribution the property assets should properly be seen as being held as to £4.75m (H) and £3.43m (W). This provides for W's modest interest in H's pre-marital home and H's use of matrimonial funds to buy out his sister's interest in the Middle Eastern property in addition to the jointly owned FMH.

(ii) H's costs far exceed those of W. He has spent some £2.15m and she some £1.3m. Each owes money as set out in the schedule. I have taken the figure for H that is outstanding in the FR proceedings. I am not prepared to include the sum of £170,000 (astonishingly high when there has not yet been a FHDRA) in respect of Children Act costs, and when W's schedule does not include such figures.

(iii) On that basis H's other non-business assets inclusive of his pension fund of just over £1m net of substantial liabilities amount to £312,414. W's other assets inclusive of her slightly smaller pension fund total £1,328,230.

(iv) I find that H's business interests amount to £37.365m, his interest in ABC being slightly more valuable than the value of his personal shares.

(v) I have reduced the amount of the co-founder's priority loan by the $3.3m recently paid to him by ABC. I accept that this might be matched by a corresponding reduction in another asset of the company. I can see no benefit, however, in leaving the loan in the schedule at a figure which is incorrect. Whilst H may feel this is the wrong approach, it will make only a relatively modest difference to the value of his interest and is more than matched by the reduction I have allowed for in the value of his Q shares. It illustrates the fragility of a valuation.

Post Separation Endeavour

72. H's case is that there should be a significant discount from an equal division of the value of the business to reflect his efforts post-separation. W says that there should be no or minimal discount in respect of his endeavour to date as he has been trading with what was her share of the liquid money available following the termination payment, and that there should only be a small discount to reflect his work over the next 5 years until payment is made.

73. H has invested $58m in ABC. He has of course received significant benefits over the years but his interest is now valued at much less than he put in. Three of the four investments that he has made in his own name have not been as successful as he would have liked. In short, W accuses H of reducing the matrimonial pot by his use of money. She says that this should reduce the discount.

74. The figures set out above are bald but they do show that as a result of events, many of which will have been beyond H's control, the value of his stake in the business has fallen over the course of the last few years.

75. I do not accept his primary argument that the value that was created in the first year or two of the business was the result of post separation accrual. For the reasons that I have already set out I find that the funds which were invested in the business in the hugely successful first two years were created during the marriage and reflect his investment of assets created during that time.

76. I will deal later with his work yet to be done.

W's Earnings

77. At the peak of her earning power W received inclusive of incentives $925,000 gross in 2015. An analysis of her figures shows that she received an average net pay of a little over £300,000 for the period 2018 - 2021 which included a year of unpaid leave. However, the unpaid leave requirement was created by what she has described as unbearable pressures caused by the combination of the demands of her job, three young children and a broken marriage. She has now not been market trading for a number of years.

78. W explained and I accept that she is now doing what she described as "a tech job". It is not a job that involves taking risks. Further she says her old job no longer exists following reorganisations after Brexit. She is receiving by way of income the top salary that could be available for her job description.

79. Her current earnings are a salary of £156,000 pa net and she receives discretionary/incentive payments of almost the same again. I accept that I should treat her as having an ongoing income of ca £300,000 net inclusive of reward payments and I see no reason not to accept her evidence that there is unlikely to be any significant increase.

H's income

80. H guesstimates that he is currently receiving some $1.1m by way of income over the last few years. By use of the operating loan he pays minimal tax. An examination of his bank statements showed expenditure of a higher level but not one of huge significance. It is not necessary for me to make any finding on it save to say that I am satisfied that both his income and income potential significantly exceeds that of W.

Standard of Living

81. The standard of living was very comfortable but not ostentatious or generally extravagant.

The Children's Costs

82. H is currently paying for their school fees and the maximum CSM allowance bearing in mind the nights the children spend with him, namely £14,322pa. W seeks a significant payment towards the expenses of the children.

The Parties' Proposals

83. On the basis that the FMH is transferred to W, H offers a payment of £4.1m spread over 4 years with interest on the unpaid elements paid at a rate of 2.5% pa. He makes no further offer in respect of the children. He calculates his offer as representing a 70/30 split.

84. W proposes that she should receive, in addition to the FMH, a lump sum of a little over £15m payable over 5 years with interest at the rate of 1% above base rate and earlier payment in the event of certain circumstances set out in her offer. She calculates this as being a 40/60 share of the assets (with H receiving the larger sum to reflect his continuing endeavour, pre-marital assets, and the fact that he is taking the risk-laden assets). She seeks maintenance for the benefit of the children at the rate of £50,000pa per child with CPI increases.

Liquidity

85. There is next to no liquidity in the business or in H's personal shareholding. This is a point of significance. If value is to be extracted from the company it can only be done by H remaining in the business for what is likely to be a significant period of time. No purchaser would accept his precipitate departure. The business is heavily dependent on the relationships between H and his co-founder on the one hand and the business customers, in particular the principal shareholder of TC, on the other hand.

86. ABC operates, like so many, in a world of very volatile markets over which it has little control. World threats do not lead to a comfortable business existence. Without H's continued work the business does not have value and neither party will benefit.

87. I have to balance and weigh up powerful points made on each side. On behalf of W it is argued by Ms Clarke and Ms Batt that the value in the business was created during the marriage, and that there is no reason in principle why W should not share in it equally save for the necessity for H to continue to work to achieve its value and the fact that he is taking the risk-laden assets.

    On the other hand Mr Bishop and Ms Sumner argue that H is the one that is taking the risk. It is only his work that will achieve payment to W.

Resolution

88. Having resolved the valuation issues it is necessary to turn to the question of the extent to which W's share in the business should be discounted to reflect the fact that for 5 years at a minimum H will have to commit himself fully to his work in the business to build up liquidity and that without such work the value will not be achieved.

89. I have to strike a balance bearing in mind important points on both sides:

i) On behalf of W it is rightly said that H's interest in the business reflects what was built up during the marriage.

ii) Whilst H will be working hard in the business he will also be earning a very good income. Mr Bezant's notional calculation of an income of $5m pa far exceeds what H has actually received over the last few years, as Mr Bezant readily accepts; but, I find it hard to believe that in one way or another H is likely to be drawing much less than $2m pa from the business bearing in mind his track history of receipts over his business life.

iii) In 2018 H had very substantial liquid capital and would have been in the position to make payment to W of her award. Although W puts weight on this point, I do not regard it as of such significance as it was always the intention that the money, or most of it, would be put into ABC.

90. On the other hand H will point to:

i) His unmatched post separation endeavour to achieve liquidity in the company which it is currently without.

ii) It is only H's personal relationship with key clients that enables money to be extracted at all.

iii) To the extent that any future big deals actually happen, that will be a result of his endeavours post separation. He will also need to find new income streams for ABC.

iv) He might have an accident or illness which could remove his working ability with catastrophic consequences which would be much greater for him than for W.

91. I accept that W's sharing in the business assets must be discounted to reflect the illiquidity and risk attached to the assets.

Fairness

92. Fairness is the touchstone by which all financial remedy orders must be judged. I apply the criteria set out in s.25 MCA to assist in the search for such a solution.

93. It is instructive to look at the matter in different ways. I have calculated W's share of the property assets at £3.43m. If I were to take her entitlement to share in the business assets at 33.3% of £37.365m her award would be £3.43m + £12.45m = £15.88m of which the FMH would provide £5.91m, leaving a lump sum entitlement of £9.97m. When her own non-property assets of £1.32m are taken into account her award would represent 36.5% of the total assets.

94. If I were to take W as entitled to 30% of the business, her share would be £11.20m. Using the same basis of calculation, her lump sum would reduce to £8.72m and her share of the total assets would be 33.8%.

95. I do not think that it would be right to leave W with less than a one-third share of the assets and nor would it be fair for H to have to pay more than £10m by way of lump sum (36.5% of the total) for the reasons given.

96. After much thought I consider that the appropriate award is one that leaves W with 35% of the total assets. This will require a payment to her of a lump sum which I round to £9.3m. This unequal division properly reflects the benefit of the cash that she will receive while H continues his efforts to build up the business.

Time for Payment

97. The parties are agreed that in the next few years liquidity will be limited. I accept the proposal that £1m should be paid in each of the next 4 years and the balance at the end of year 5. If there is to be an earlier sale or realisation then payment is to be expedited. In the meantime interest is to be payable at base rate plus 1% .

Nominal Spousal Maintenance

98. W seeks a nominal order until the final payment of the lump sum is made. She postulates particularly the situation that she may be in if she becomes unable to work. H opposes this. In my judgement it is proper to make a nominal order but in the anticipation that it is to be activated only in the event of her becoming unable to work. It will be dismissed upon payment of the lump sum in full.

Child Maintenance

99. The cost of the children's nanny is some £60-70,000 pa with employer's contribution on top. It is an essential part of the household to enable W to work. W's income will have to fund the wages of the housekeeper and all her other expenses of living the comfortable, but not ostentatious, standard of living that the parties have enjoyed. Her budget is fully stretched.

100. I bear in mind that H is paying the educational expenses of the children and will wish to have the same childcare facilities as W. But, his income far exceeds that of W.

101. In my judgment H should pay child maintenance at the rate of £25,000 pa per child. Credit is to be given for any payments made via CMS. The payment approximates to the cost of the nanny. W will be responsible for the other expenses of the children when they are in her care.

102. Both parties have been excellently represented by both solicitors and counsel and I thank them for their considerable assistance.