

The draft judgment was circulated to the parties by email on 24 June 2024. The approved judgment was handed down in the parties' absence by email at 10.00 a.m. on 10 July 2024 and by release to the National Archives

HJB v WPB (financial remedies)(separation agreement - application to show cause)

Neutral citation number: [2024] EWFC 187

IN THE FAMILY COURT AT OXFORD

Date: 10 July 2024

Before :

HHJ Vincent sitting as a s9 Deputy High Court Judge

Between :

HJB

**Applicant
husband**

- and -

WPB

Respondent wife

Katie Cowton KC and Douglas Allen, instructed by NE Family Law, solicitors for the applicant husband

Edward Boydell KC and Samara Brackley, instructed by Parfitt Cresswell Limited, solicitors for the respondent wife

Hearing dates: 12 and 13 June 2024

Approved Judgment

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 and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

HHJ Vincent :

1. The applicant husband is 46, the respondent wife is 43. They are parents to two boys; [A] 14, and [B], 11.
2. They married on 16 August 2008, having lived together for two years before that.
3. They separated in September 2016.
4. On 25 September 2019 they entered into a separation agreement, following negotiations which had taken a year to conclude. The agreement provided for the wife to retain the family home, and for the husband to retain his business and non-matrimonial properties. The husband was to pay the wife a sum of £15,000 and child maintenance.
5. The agreement stated in terms that the parties had been advised by their solicitors to give full disclosure of their financial circumstances to one another, but that they were satisfied that they had sufficient information to make the agreement without conducting a disclosure exercise.
6. On 10 September 2022 the husband's divorce petition was issued.
7. The parties instructed solicitors to prepare a consent order to reflect the separation agreement.
8. The negotiations again took some months, which eventually stalled around discussion of what information was required to be put into the D81 form to accompany the draft consent order to be submitted to the Court for approval.
9. In January 2023 a dispute arose between the parties in respect of the arrangements for the boys to spend time with their father. He had entered into a new relationship and issues had arisen about how the father's new partner had been introduced to the boys. Around that time, the wife says she discovered that the husband's business was worth substantially more than she had previously understood.
10. In May 2023 the wife's solicitors asked for the husband to provide valuations of his business, properties and income. The husband disputed the need for this, given the terms of the separation agreement. By the end of June 2023 negotiations had completely broken down. The wife indicated that she no longer agreed that the terms of the separation agreement should be incorporated into a consent order as *'the terms were clearly unfair and based on inaccurate information'*. She signalled her intention to make an application for financial remedies.

11. The conditional order of divorce was made on 17 July 2023, made final on 29 August 2023.
12. On 4 September 2023 (issued 6 October 2023) the husband applied for financial remedies and at the same time issued a notice to show cause as to why the parties should not be held to the terms of the separation agreement.
13. The parties exchanged Forms E in January 2024. The wife's Form E disclosed that since 2013 she had been the owner of [House 1A]. This is a property next door to her parents' home at [House 1B], from which she has run a child-minding business. [House 1A] was gifted to her by her parents in 2013. The wife says the husband was well aware that it had been transferred into her name by her parents, as part of their planning around inheritance tax. She says she did not take on any financial or other responsibility for the property and never regarded it as anything other than belonging to her parents. The husband says that the first time he became aware that she owned this property was when he read the Form E in January 2024, and it was then that he understood why the wife had not wished for there to be exchange of financial information back in 2019.
14. The husband's Form E disclosed that in April 2022 his business, [ABC], had been valued at around £25 million. The wife says that this is the first time she had evidence of the company's worth, but it was in around January 2023 that she first had an inkling that [ABC] was making substantial money. She says, at the time of their separation and during negotiations for the separation agreement, the husband misled her about the value of and prospects of the business, and had she known the truth, she never would have entered into the agreement. She argues that she should not be held to the terms of the separation agreement, and intends to seek independent valuation evidence of [ABC] (now and as at the time of the agreement), and full disclosure of the husband's business and property assets, in order to achieve what she says would be a fair division of the assets of the marriage upon divorce.
15. At a first appointment before me on 29 January 2024, I made directions for there to be a hearing as a preliminary issue of the question of *'whether the parties should be held to the terms of the separation agreement executed on 25 September 2019, and those terms incorporated into a final order of the court'*.

The law

16. There is no obligation on parties to apply to the Court for an order in respect of the financial arrangements on divorce. But if they do, it is for the Court to determine the appropriate order for financial remedies, by reference to all the circumstances of the case, first consideration being given to the welfare of the children of the family, and with particular regard to each of the factors set out at section 25 of the

Matrimonial Causes Act 1973. Even where the parties are in agreement as to what the outcome should be and submit a consent order for the Court's consideration, the Court has a duty to consider whether or not to give approval to that order, again with reference to the section 25 factors.

17. Where the parties have entered into a previous agreement, whether before, during or after the marriage, the court must decide how much weight to accord to it. The court must consider whether the parties should be held to their agreement, or whether, in all the circumstances, it is right to depart from the provisions the parties have agreed.

18. The Supreme Court case of *Radmacher v Granatino* [2010] UKSC 42 sets out clearly the circumstances which the Court would be advised to take into account in deciding what weight to give to a previous agreement. From the headnote:

'The Court should give effect to an ante or post-nuptial agreement that was freely entered into by each party with a full appreciation of its implications unless in the circumstances prevailing it would not be fair to hold the parties to their agreement.'

If an ante or post-nuptial agreement was to carry full weight, both parties must enter into it of their own free will, without undue influence or pressure, informed of its implications. It was not necessary to think in formal terms; it was sufficient to ask whether there was any material lack of disclosure, information or advice. What was important was that each party should have all the information material to his or her decision, and that each party should intend that the agreement should govern the financial consequences of the marriage coming to an end.

Although it might not, previously, have been right to infer from the fact of the conclusion of the agreement that the parties intended it to have effect, in future it would be natural to infer that parties who entered into an ante-nuptial agreement to which English law was likely to be applied intended that effect should be given to it.

In relation to the circumstances attending the making of the agreement the first question would be whether the standard vitiating factors, duress, fraud or misrepresentation were present: those factors would negate any effect the agreement might otherwise have. Unconscionable conduct, such as undue pressure falling short of duress, would also be likely to eliminate the weight to be attached to the agreement, while other unworthy conduct, such as exploitation of a dominant position to secure an unfair advantage, would reduce or eliminate it.

The court might take into account a party's emotional state, and what pressures he or she was under to agree, but not in isolation from what would have happened without such pressures.

The circumstances of the parties at the time of the agreement would be relevant. An important factor might be whether the marriage would have gone ahead without an agreement, or without the terms agreed. If the terms of the agreement were unfair from the start, that would reduce its weight, although that question would be subsumed in practice in the question of whether the agreement operated unfairly having regard to the circumstances prevailing at the time of the breakdown of the marriage.

.....

The question of fairness would depend upon the facts of the particular case, but some general guidance could be given: a nuptial agreement could not be allowed to prejudice the reasonable requirements of any children of the family; the court should accord respect to the decision of a married couple as to the manner in which their financial affairs should be regulated, particularly where the parties' agreement addressed existing circumstances, not merely the contingencies of an uncertain future; the distinction between matrimonial and non-matrimonial property was particularly significant where the parties made express agreement as to the disposal of such property in the event of the termination of the marriage, and there was nothing inherently unfair in such an agreement; the longer the marriage had lasted, the more likely it was that the couple's circumstances would have changed over time in ways or to an extent that either could not be or simply was not envisaged, giving more scope for what had happened over the years to make it unfair to hold them to the agreement.

Of the three strands identified in Miller v Miller; McFarlane v McFarlane [2006] UKHL, 24, needs and compensation were the strands that could most readily render it unfair to hold the parties to an ante-nuptial agreement, but where these considerations did not apply, and each party was in a position to meet his or her needs, fairness might well not require a departure from their agreement as to the regulation of their financial affairs in the circumstances that had come to pass. Thus it was in relation to the third strand, sharing, that the court would be most likely to make an order in the terms of the nuptial settlement in place of the order that it would otherwise have made.'

19. This application comes before the Court as a preliminary issue in financial remedy proceedings. In an attempt to deal with the issues between the parties proportionately and saving expense in accordance with the overriding objective at rule 1 of the Family Procedure Rules 2010, we are taking matters in stages.

20. At the first appointment, we framed the preliminary issue to be determined as a question that could potentially be determinative of the proceedings, *'whether the parties should be held to the terms of the separation agreement executed on 25 September 2019, and those terms incorporated into a final order of the court'*.
21. In fact, it is now clear that the proceedings could not fully be resolved at this preliminary stage, for two reasons.
22. Firstly, the settlement agreement did not establish a clean break. It provides for the husband to pay global periodical payments, and expressly states that if the provision made by the agreement were to be insufficient to meet the wife's needs, then additional provision could be sought in the future. The wife does now assert that the agreement is insufficient to meet hers and the children's needs, and seeks a review. The husband says that the agreement was predicated on the wife's needs, set out by her during extensive negotiations. He says the parties have lived with the terms of the agreement for the past five years without any idea of the wife's or the children's needs not being met. Even if the parties are to be held to their agreement, if this remains in issue, there will need to be further consideration of the wife's needs in the proceedings.
23. Secondly, the ultimate question for the Court in this case is what the financial arrangements should be for the parties upon divorce. If the settlement agreement is held to be binding on the parties, that will give rise to a presumption that the ultimate outcome should be in line with the terms of the agreement, but the Court must still consider all the circumstances, having regard to all the section 25 factors.
24. It will likely mean that the main focus of the proceedings will be an assessment and review of the wife's needs, as provided for in the agreement, rather than identifying and valuing the assets of the business with a view to sharing.
25. The wife asserts that the agreement should be disregarded, overturned, or given minimal weight. She says the husband's material misrepresentations and non-disclosure about the true value of his business are factors which vitiate her consent to the agreement.
26. If I find that the agreement should be given little or no weight, then the next stage of the litigation would be directions, including further financial disclosure, that would enable the court to value the husband's business and other assets as they are now, and as they were at time of separation. The parties would be preparing for a contest on the basis that there had been no previous agreement, and everything is on the table.
27. On the question of whether or not to hold the parties to their agreement, I have been referred to a number of authorities.

28. On behalf of the husband, Miss Cowton KC and Mr Allen have referred me to the Court of Appeal case of *Edgar v Edgar* [1980] EWCA Civ 2, cited with approval in *Radmacher*:

'[The] circumstances surrounding the making of the agreement are relevant. Undue pressure by one side, exploitation of a dominant position to secure an unreasonable advantage, inadequate knowledge, possibly bad legal advice, an important change of circumstances, unforeseen or overlooked at the time of making the agreement, are all relevant to the question of justice between the parties. Important too is the general proposition that, formal agreements, properly and fairly arrived at with competent legal advice, should not be displaced unless there are good and substantial grounds for concluding that an injustice will be done by holding the parties to the terms of their agreement. There may well be other considerations which affect the justice of this case; the above list is not intending to be an exclusive catalogue.
(per Ormrod LJ at paragraph 25)

29. And at paragraph 28, per Lord Justice Oliver:

'Men and women of full age, education and understanding, acting with competent advice available to them, must be assumed to know and appreciate what they are doing The existence of a freely negotiated bargain entered at the instance of one of the parties and affording to him or her everything for which he or she has stipulated must be a most important element of conduct which cannot lightly be ignored'

'the court must, I think, start from the position that a solemn and freely negotiated bargain by which a party defines her own requirements ought to be adhered to unless some clear and compelling reason, such, for instance, as a drastic change of circumstances, is shown to the contrary.'

30. Miss Cowton KC and Mr Allen have also taken me to a number of further cases.
31. In *HD v WB* [2023] EWFC 2, Peel J found that notwithstanding the husband had not taken legal advice before entering into a pre-nuptial agreement, he had been advised to, and had every opportunity to obtain advice so if he had felt the need to. The agreement was freely entered into by each party, with a full appreciation of its meaning and consequences. However, the court had an obligation to look at all the circumstances and in this case, the financial landscape had changed significantly, and the provision in the agreement did not meet the husband's needs fairly. The Court made an order that departed from the terms of the agreement.
32. In *NA v MA* [2006] EWHC 2900 (Fam) Baron J overturned a post-nuptial agreement, finding that the wife had been placed under undue influence by the husband, who had used his dominant position, both emotional and financial, to ensure that the wife felt

she had no alternative to but sign the agreement. Further, the agreement had not been premised on fairness, having been calculated on the basis of what the husband was prepared to provide, rather than upon a fair assessment of what might be appropriate or needed, and had been non-negotiable. Baron J held that it would be wholly unfair to implement the terms of the agreement, or to use them as even a starting point with which to judge the fairness of any award.

33. In *WC v HC (Financial remedies agreements)(Rev 1)* [2022] EWFC 22, Peel J considered both a pre-marital and post-nuptial agreement. Both the husband and wife had been under pressure from the husband's father to sign the *pre-marital* agreement, but the pressure could not be characterised as 'undue pressure', and none of the vitiating factors set out in *Radmacher* applied; there was no reason to discard or ignore the agreement. The wife had declined to sign the *post-nuptial* agreement, so it was not a formally arrived at agreement. This took it outside *Radmacher*; the wife did not have to demonstrate that it would be unfair to hold her to an agreement to which she had not in the end committed. Nonetheless, although it was not '*presumptively dispositive*', as it would have been if it fallen into the *Radmacher* category, it was an agreement reached by the parties with the benefit of legal advice and full-disclosure and fell to be considered as one of the factors in the case.

34. On behalf of the wife, Mr Boydell KC and Miss Brackley have taken me to a number of cases in which the Court found on the facts that circumstances existed to justify giving little or no weight to a prior agreement.

35. In *EK v DK* [2023] EWHC 1829 (Fam) the parties entered into negotiations on day seven of a final hearing, and in due course submitted a consent order for approval to the judge. As in this case, the husband retained his companies, and the wife received a house and a lump sum. The wife subsequently applied to set aside the consent order on the basis that the husband had not been truthful, and that if the court and the wife had known the true financial position, the consent order would not have been approved. Referring to the cases of *Sharland v Sharland* [2015] UKSC 60 and *Gohil v Gohil* [2015] UKSC 61, Francis J held that the court must first establish that there has been significant non-disclosure, and to then ask the following questions, which Mr Boydell invites me to apply to this case:

'(i) was the husband's disclosure full and frank?

(ii) if not:

a) Was the misrepresentation intentional? If so, the burden is on him to prove, on the balance of probabilities, that proper disclosure would not have led to a different order; or

b) *Was the misrepresentation innocent? If so, the burden is on the wife to prove that proper disclosure would have led to a different order.*'

36. Francis J found that the husband had deliberately and dishonestly withheld information from the wife and the court about his access to liquid funds, because he knew it would be likely to influence the outcome. He held that the disclosure was intentional or fraudulent, and was therefore *'deemed to be material'*; a presumption arose. The court set aside the consent order, finding that the husband's deliberate misrepresentation prevented the wife from being properly informed about his financial situation before she entered into the settlement agreement.
37. On the facts of *EK v DK*, the court found that the manner of the husband's disclosure was such that the order was not safe and had to be overturned. If there has been non-disclosure as part of the circumstances leading up to parties entering into a settlement agreement, then it would plainly be relevant for the court to consider whether or not that non-disclosure was intentional or inadvertent, or, as in this case, the result of a decision not to embark on that process. The court will have to explore the circumstances and the potential impact on the eventual agreement. However, I do not consider this should be a separate exercise to the overall assessment of the circumstances that *Radmacher* advises. It is highly likely that fraudulent non-disclosure will be a vitiating factor, and that inadvertent non-disclosure may be less likely to lead to an agreement being overturned, but I am not persuaded that either one is a separate category to which a fixed presumption must be applied. As ever, each case will depend on its own particular facts.
38. In *TRNS v TRNK* [2023] EWFC 133 the husband filed a notice to show cause as to why a post-nuptial agreement should not be made an order of the court. The wife resisted, on the basis of material non-disclosure. Sir Jonathan Cohen reviewed a number of cases on non-disclosure and concluded that he must consider whether or not the non-disclosure was *'material'*.
39. Citing *Radmacher*, he noted that full disclosure may be necessary to ensure that a party understands the implications of the agreement they are entering, *'but if it is clear that a party is fully aware of the implications of an ante-nuptial agreement and indifferent to detailed particulars of the other party's assets, there is no need to accord the agreement reduced weight because he or she is unaware of those particulars. What is important is that each party should have all the information that is material to his or her decision, and that each party should intend that the agreement should govern the financial consequences of the marriage coming to an end.'*
40. The reason for this is the need for the court to respect the parties' individual autonomy, and to respect, *'the decision of a married couple as to the manner in which their financial affairs should be regulated. It would be paternalistic and patronising*

to override their agreement simply on the basis that the court knows best. This is particularly true where the parties' agreement addresses existing circumstances and not merely the contingencies of an uncertain future.' (Radmacher, at paragraphs 68, 69 and 78).

41. Parties must be free to reach their own agreements if they so wish, without the need to enter into formal disclosure of Form Es or other detailed provision of information about each other's financial circumstances, in every case. However, *'notwithstanding the ability of a party to opt out from a detailed investigation of a spouse's finances if she/he wishes, the disclosure given by the other must be sufficiently accurate that it gave the receiving spouse sufficient information to make an informed judgment of the value of the family assets.'*
42. All these cases provide helpful examples of the circumstances which, on their particular facts, were found to affect the operation of a prior agreement, but they do not provide me with any guiding principle further to what is said in Radmacher.
43. As the court did in each of those cases, I must consider the circumstances before, during, and after the making of the settlement agreement. Following Radmacher, those considerations are likely to include whether there was any material lack of disclosure, information or advice, and the parties' intentions at the time they signed the agreement. I must consider whether any of the standard vitiating factors (duress, fraud or misrepresentation) or other unconscionable or unworthy conduct applies, so as to eliminate the weight to be attached to the agreement. I should consider the circumstances of the parties at the time of the agreement, and look at the inherent fairness or otherwise of the agreement itself.

Evidence

44. I have read the documents in the bundles which include lengthy chronologies filed by each of the parties, comprehensive witness statements, extracts from the parties' email and WhatsApp correspondence with one another, and the correspondence file between their solicitors.
45. I heard evidence from both the husband and the wife. Each was cross-examined for around three hours.
46. The husband was a man of few words, and presented to me as a straightforward and uncomplicated individual. The language he used in his WhatsApp messages was the same as his every day speech; direct, to the point and without any side to it. He is the kind of person that someone might describe as an open book, and perhaps a man who wears his heart on his sleeve. He trained as a plumber, set up in business with a friend just over twenty years ago fabricating industrial plumbing equipment. During the marriage he worked extremely hard on his business, rising at around 5.00 a.m. and

working long days, and often at the weekends (he says after the children were born he would be home for bath times). His long working hours did become a source of difficulty in the marriage. He said that he did not in any way seek to hide anything from his wife about his business dealings, but that if he did talk to her about a particular project or plan or contract he had won, she took no interest, and tended to shut the conversation down immediately.

47. The wife described the husband in effect as an arch manipulator, with a plan, conceived long before there were any difficulties in the marriage, to mislead and disadvantage her, by lying about the true nature of his financial dealings. This description was wholly out of line with all the evidence that I heard and read. Throughout the evidence, the impression I formed was of a man who largely deferred to the wife, sought her agreement on all significant decisions, and if such agreement was not forthcoming, did not challenge her. There are just two messages among many hundreds spanning over many years, in which he expresses some impatience, and suggests that if financial matters between them cannot be resolved, then the family house may need to be sold, or he would have to move back in. If to be taken as threats, these two comments do not appear to have been taken as such by the wife, who didn't even respond to them, and are not followed up by him.
48. Following the parties' separation, which was at the wife's request, and not what the husband wanted, he moved out of the family home and into rented accommodation. She did not wish for them to embark on divorce proceedings. Her hope was to send the boys to a catholic secondary school, and she was concerned that the school would have a negative view of children of divorced parents. Another factor was the parties' agreement to wait for two years until a petition could be made based on two years' separation with consent. The parties had separated before the provisions for no-fault divorce came into effect.
49. Upon separation, the husband moved into a rental property. His understanding at the time was that he would not be able to purchase his own home until he had been released from the mortgage on the family home. The wife did not agree to the children staying with their father in his rental. Every week she sent him a note on a Monday morning setting out the times the children's and her schedules allowed for him to spend time with the children; collecting them from school or taking them to various sports activities at the weekend or spending short periods of time with them, or 'baby-sitting' for them. The WhatsApp messages show the husband was fully accepting of what he was offered, while also suggesting ideas to enable him to spend more time with the boys which might meet with the wife's approval, but not to the extent that he might aggravate her, and lose the times he was being offered each week. The clear impression is that he did not want to rock the boat. The tone of the messages between the two of them is overwhelmingly respectful, efficient and straightforward.

50. In September 2018, as soon as an application for divorce on the basis of two years' separation by consent could be made, the husband (through his solicitors) invited the wife to consider the divorce proceedings and financial arrangements. The wife did not meet with her solicitors until January 2019. The parties did discuss matters directly thereafter, but her solicitors did not respond substantively with their version of the agreement until 9 May 2019. The completed agreement was not executed until 25 September 2019.
51. The wife's witness statement sets out at some length a number of allegations against the husband; that he was secretive, aggressive and abusive in his language towards her. She alleges that she was intimidated by him and scared of him. In her statement she repeatedly suggests that during the time they were negotiating the settlement agreement the husband was aggressive and abusive towards her, that he told her to, *'shut the fuck up, it's not up to you how much I pay'*, that he made, *'various threats towards me about what he would do if I didn't sign the agreement in the terms that he was dictating to me'*, including that if she didn't sign, he would move back into the property or force a sale. She asserts that the husband *'fraudulently deceived'* her in 2019, and tried to again in 2023 when he asked her to sign the *'misleading'* D81. In her oral evidence she said that the husband said that if she did not sign the agreement he was threatening to sell the house and he didn't care where she and the children would live.
52. These allegations are not corroborated by the documentary evidence, and were inconsistent with the husband's presentation in the witness box. It was put to him that the two text messages about moving back into the family home or selling it were threats, but not one of the other allegations in respect of verbal abuse or aggression were put to him in cross-examination.
53. The wife gave her evidence assertively, and did describe a few conversations with conviction, setting out her own thinking with clarity (for example about the discussions around the potential upsizing to a new house but not wanting to take the risk of it being unaffordable, or about school fees). However, on some significant issues, she was not able to describe any detail of time or place to substantiate what she was saying, or to recall the conversations she said would have happened.
54. I was unconvinced by the answers she gave about the information that she had not shared with the husband at the time the agreement was entered into.
55. She said that the husband *'knew all along'* that her parents had transferred [House 1A] to her in 2013. However, she was not able to describe any particular conversation between her, him, or her parents at which it was acknowledged that he knew about it. There is not a single mention of it in any of the lengthy correspondence between her solicitors and the husband's solicitors in 2018 and 2019, or in the negotiations for preparation of the draft consent order in 2022 and 2023. By contrast, the husband's

non-marital properties were listed in the settlement agreement, as was the business and its assets.

56. I find as a fact, applying the standard of a balance of probabilities, that the wife did not tell her solicitors, nor the husband, about her ownership of [House 1A], until the time came to file her Form E at the end of 2023.
57. I find that the wife's parents' intention in transferring this property to her was that she should inherit it after their deaths without having to pay inheritance tax. I accept her evidence that her parents continued to have responsibility for the property and to that extent she regarded it as still 'their house' but earmarked for her.
58. I draw an inference from the weight of the evidence I have heard and read, that the wife had an ongoing concern that the demands of the husband's business might undermine or put at risk the stability of her family life. In her statement she gives evidence about some of the lingering sore points arising from the marriage. One of them is that the husband asked her in 2008 if he could use most of their wedding gift money of £8,000 to pay a tax bill for his company. When they had contemplated moving to a bigger house, she told me the husband said they could afford it, but if things didn't work out, they could sell up. She had decided she did not want to risk uprooting the children to a new home if it turned out that they could not afford it, and had to move.
59. I find that the wife did make a decision not to tell the husband about her ownership of [House 1A]. It was a property that she regarded as still really in her parents' possession. It was the property from which she carried out her childminding business. It was earmarked to be hers in the future. I find that she did not want the husband to think of it as an asset that might be available to his business during the marriage, and certainly not post-separation.
60. As to the wife's savings and premium bonds. The settlement agreement does not record that the wife had about £45,000 in savings and premium bonds. The husband says that he was not aware of what she had.
61. The settlement agreement was reached on the basis that the house would be transferred to the wife, and she would take on responsibility for the mortgage. She asked the husband for £15,000, which could well have been seen as repayment of his 'share' of the £30,000 that her parents paid for their wedding in 2008, but also seems to have been the sum she calculated she needed, after taking into account what she could raise from her savings and contributions from her parents, to pay off the mortgage. Her evidence is that she paid £61,178 towards the mortgage in November 2019 (savings, premium bonds and the husband's £15,000). She says she then paid a further £40,782 in April 2020, (a contribution from her parents), and two further

instalments (£10,300 in October and £20,000 in March 2021), these being a mixture of contributions from her parents and her own savings.

62. There is no evidence to point to a finding that the wife knew in 2018-19 she would be acquiring further cash sums from her parents in due course to enable her to pay down the mortgage. It is not known what savings she was left with after November 2019, or whether she was able to amass more.
63. So the wife would appear to have been somewhat opaque about her own resources, but I doubt it takes matters further. The agreement was that the wife would take on responsibility for the mortgage. Her parents have been a source of significant financial support throughout the marriage. Had the husband known that the wife had access to further savings or premium bonds with which she intended to reduce the mortgage, it is inconceivable that he would not have supported them being used in that way.
64. In the course of proceedings, the wife disclosed a number of WhatsApp messages that she relied upon in support of her case that the husband was abusive and intimidating. The husband was party to the same messages. Having received the wife's disclosure, he responded by producing a large file containing the same messages, but revealing that a very substantial number of the messages from the wife omitted whole threads of conversations before and after. This removed the context for a large number of messages and also at times created a false impression that messages from the husband were one-way, pressing for an answer, when in fact there had been an even-handed dialogue going between them. The wife suggested in her evidence that the selection of the messages had come about because of the way her phone had downloaded them. I did not accept her explanation. I find that the messages she has disclosed have been curated by her with the purpose of painting the husband in a negative light. The wife did not suggest that the message selection was the result of some honest but mistaken belief that she only had to disclose messages she wanted to rely upon. For the avoidance of doubt, it is not suggested that the wife has sought to edit or tamper with the content of the messages themselves, but nonetheless, I do find that the selective way she presented the messages did negatively affect her credibility.

The agreement

65. The agreement was prepared following months of negotiations, both between solicitors and in discussions between the parties, evidenced by the WhatsApp chats. In general, the tone adopted by the husband and wife in their direct communications is practical, cordial, and direct. At times they show some compassion to one another, commenting on how difficult it is to be having such discussions. Each at times expresses a wish to sort out as much as they can between them so as not to incur unnecessary expense. They comment about the increasing length of the settlement agreement once lawyers have become involved. None of the messages, either individually or viewed as part of a pattern, suggest that the husband is seeking to

convey an impression to the wife that he cannot afford lawyers or the process itself is causing financial pressure on him. Neither do any of the messages suggest that the husband had any kind of agenda to circumvent the lawyers, or to put pressure on the wife by insisting that she negotiate directly with him rather than through solicitors.

66. The initial draft came about as a result of direct negotiations between the parties. On 26 January 2019 the husband sent a one-page document to the wife which recorded that the house would be signed over to her, and he would pay £1,500 a month together with any additional monies required for the children, as agreed, together with a loan of £15,000. On 1 February 2019, she responded with amendments to the one-page document, raising the maintenance to £1,750 a month and seeking for the £15,000 to be a lump sum, not a loan. The husband sent two further documents on 4 and 8 February 2019 with minor revisions, each still a page long, accepting the wife's proposals.

67. On 13 March 2019 the husband's solicitors wrote to the wife enclosing a draft deed of separation reflecting the terms sought by the wife. It was five pages long. The wife's solicitors responded with an acknowledgment on 25 March 2019, and then on 9 May 2019 with an amended draft which was over twenty pages long. This version was tinkered with over the next few months, five amended versions passing back and forth, but contains the essential terms of the final settlement agreement, consistent with the one-page documents exchanged by the parties in advance. The additions from the wife's solicitors are largely definitions, and a very large number of notices and statements throughout the agreement, confirming the following matters:

- The agreement is intended to create a binding legal contract and the parties have signed it, intending to be bound by its terms;
- The parties have received independent legal advice which they understand and with which they are satisfied;
- The parties have had adequate time to reflect on the terms of the agreement and had the benefit of separate and independent legal advice to advise them on the nature, terms and effect of the agreement;
- They have had all the provisions, questions and implications satisfactorily explained to them;
- Each of their legal advisers has signed a certificate confirming this;
- The parties agree that their separation is permanent and that they do not wish to engage in litigation to resolve any financial claims they have against each other;

- Each acknowledges that they regard the agreement as fair, and that they have entered into it voluntarily, freely and without pressure from the other party, from any third party or from their circumstances or otherwise;
- The parties fully understand the terms and effect of the agreement, the rights surrendered, the advantages and disadvantages to each of them of entering the agreement, and *‘that this agreement satisfies the criteria set out in Law Commission Consultation Paper No 343, Matrimonial Property, Needs and Agreements, for a qualifying nuptial agreement that will prevent the court from making financial orders inconsistent with this Agreement, except to meet the financial needs of the Parties or in the interests of a child of the parties’*;
- That each party has been advised by their solicitors to exchange material disclosure in order to comply with the Law Commission recommendation and following the decision of the Supreme Court in Radmacher v Granatino, but notwithstanding this the parties confirm they do not wish to engage in disclosure, *‘as they are satisfied they each have sufficient information and documentation about the financial circumstances of the other party in order to have a full knowledge of the implications of the agreement’*;
- The parties intend that their respective financial rights and obligations to each other will, to the extent permitted by law, be governed solely by this agreement and they agree that they shall not make any capital claims or income claims other than to give effect to the terms of the agreement;
- They acknowledge that it may not be possible to oust the court’s powers to override the terms of the agreement, they both intend it to be treated as binding on them in all jurisdictions wherever they reside;
- The parties agree to implement its terms and provisions and to make the terms and provisions into an order of the court binding on them;
- In the event that the law is changed to make separation agreements legally enforceable the parties intend the agreement to remain enforceable;
- The parties have been specifically advised about Radmacher, and they are aware of paragraph 75 of the judgment which states that the court should give effect to an agreement that is freely entered into by each party with a full appreciation of the implications, unless in the circumstances prevailing it would not be fair to hold the parties to the agreement;
- The parties have been made aware of the cases of Edgar v Edgar, Smith v McInerney [1994] 2 FLR 1077 and X v Y (Y & Z intervening) [2002] 1 FLR 508, and therefore understand that only in exceptional circumstances would the

court impose a different solution on the parties to that to which they have agreed. Accordingly, the parties expect the agreement to be binding on them;

- The parties have received written advice from their lawyers regarding the recommendations of the Law Commission Consultation Paper no 343, Matrimonial Property, Needs and Agreements, and confirm they intend the agreement to create legal contractual relations between them and, if the jurisdiction permits, for the agreement to be a qualifying nuptial agreement that will remove the courts' discretion to make financial provision orders except to meet the financial needs of the parties or in the interests of a child of the parties;
- The parties agree that they will not apply to court in any jurisdiction making a capital claim or income claim or for any order for financial provision of any kind except for the purpose of giving effect to the terms of the agreement or to obtain a consent order dismissing such claims and to give effect to the terms of the agreement;
- The provisions in the agreement are intended to govern all rights and claims which each party may have in law against the property of the other including all capital claims including pensions and all income claims;
- Each party fully understands the subject matter and legal effect of each provision of the agreement and each party is fully aware of the respective legal rights he or she may be surrendering under the terms of the agreement.

68. The main provisions of the agreement set out simply and clearly what is to happen to each item of property, and what the parties' respective obligations are to one another in order to implement the agreement.

69. The final version of the agreement was eventually signed by the husband on 29 August 2019. On 20 September 2019 the wife's solicitor added a handwritten note to clause 2.4. After a statement acknowledging that the wife has no legal or beneficial interest in the husband's business or other properties, the addition reads, '*Equally, [the husband] acknowledges that he shall have no legal or beneficial interest in any property acquired by [the wife] post the date of separation.*' In her oral evidence the wife said that this was inserted because she feared that if the husband's business failed, he would come after the family house. But the agreement makes clear beyond any doubt that the family house, already in her possession, was to be protected. She may have had [House 1A] in mind, although, unbeknownst to anyone else, she had in fact already acquired that some six years earlier. I have not been able to find a satisfactory explanation, but in general terms, this clause is consistent with the rest of the agreement in its intent to sew up all issues between the parties then and there, with a binding agreement, and to prevent there being any future litigation. This amended draft was returned to the

husband. After he confirmed his agreement to the wife's further amendments through his solicitor, the agreement was executed and dated 25 September 2019.

70. Following the signing of the agreement, the husband paid the lump sum of £15,000 and continued to pay monthly sums to the wife in line with the agreement. The husband has continued to supplement the payments he makes to the wife as per her requests. In due course the husband was released from the mortgage, and the former matrimonial home was transferred into the wife's sole name. Within a few years the wife was able to pay down the mortgage with a combination of savings, contributions from her parents and the lump sum.

Vitiating factors?

71. On behalf of the wife it is asserted that the agreement must be set aside for one or all of the following reasons:

- (i) Over many years, but particularly around the time of separation and at the time the agreement was entered into, the husband deliberately and dishonestly misled the wife as to the true value of his business, thus leading her wrongly to believe that there was no need for her to ask for financial disclosure relating to the business, and that she was getting a good deal in the settlement agreement;
- (ii) The husband did not give full and frank disclosure about the extent of his business assets until January 2024. Had the wife known the full extent, she would not have agreed to the terms of the separation agreement;
- (iii) The husband placed the wife under undue pressure or duress prior to agreeing to the terms of and signing the separation agreement such that her consent was vitiated and/or which affects the weight to be attributed to the agreement;
- (iv) The terms of the settlement are patently unfair and cannot stand. It would not have been approved by a court possessed of full knowledge of the parties' respective income and assets.

72. Having regard to all the evidence I have heard and read, I am not satisfied that any of these assertions are made out. I take each in turn.

(i) Allegation of being misled about the value of the business

73. I reject the wife's assertion that the husband misled the wife as to the true value of his business, whether deliberately, dishonestly or at all. The wife did not make specific allegations of any specific lie she said the husband had told her or other information provided that turned out not to be true. She asserted that in a general way and over

many years the husband was secretive about his business dealings and allowed her to build up an idea that it was a business that was not doing well financially.

74. I find that, contrary to the wife's generalised assertions, the husband was open and honest with her about the business, and did try to involve her in discussions about it. Cashflow has plainly been a consistent issue throughout, and the husband did not hide that from the wife. At the same time, as the years went by, and following the parties' separation, he did not hide from her the fact that the business was generating more money.
75. There is no evidence to support the wife's assertion that the husband knew or even reasonably believed at any time before 2019 that the business was either worth or had the potential to be worth the sums that it was valued at in 2022.
76. The husband had set up the business just a couple of years before the parties started their relationship. In the early years he was working long hours and the business was not particularly profitable. The couple initially lived with the wife's parents in order to save money to put towards purchasing their own home. The husband told the wife about cashflow problems, even asking for some of their wedding money to go towards a tax bill. As the business grew, he shared with the wife his aspiration to buy a larger house. She had concerns that this might not be sustainable, and understandably, did not want to risk committing to borrowing if the money was not up front. He was saying to her that he thought it was manageable, but respected her decision.
77. Instead of upsizing to a new property, the parties invested in a loft extension in the family home to build a fourth bedroom. This was paid for largely (the husband says entirely) by funds drawn out of the business.
78. The husband told the wife about decisions he made to expand the business by leasing new and larger premises in [site G]. He took the boys to visit the new premises in December 2017. The address of these premises is recorded in the separation agreement. The WhatsApp messages show that he continued to tell the wife if he had won a big contract or if he would be travelling abroad to do a job for a client.
79. During the marriage and after separation, to date, the husband has continued to pay the wife for any additional expenses relating to the children upon her request, without question. Such expenses include rugby tours for the boys, a laptop, cash sums, a garden shed. I have not been taken to any message in which he has suggested this was causing him financial pressure. It was the husband who raised the idea of the boys being privately educated, on the basis that he would be solely responsible for the fees.
80. The husband bought a new home in May 2019, for which he obtained a mortgage of £1.3 million. The purchase price was £1.6 million. He told the wife he was planning to buy the house and needed to put down a substantial deposit. He gave her the

address the day he moved in. The boys came round and when their mum came to pick them up, they gave her a tour. It would have been obvious to her, from the size of the house and garden, which has a pool, that this house cost a substantial sum. In her witness statement she said, once she received the address, *'I then googled it and that is when I was shocked.'* In oral evidence she confirmed she found the house details and sale price online in early June. At the time the parties were in negotiations for the settlement agreement. It was open to the wife to make enquiries of the husband about how he was funding the purchase of the new house.

(ii) Allegation of failure to give full and frank disclosure

81. Through solicitors, the husband invited the wife to enter into a process of full and frank disclosure. I have not seen any evidence to support the wife's contention that it was at his instigation that they later agreed not to do that, against the advice of their lawyers. On a balance of probabilities, I find it more likely that she was the one who declined the invitation to enter into the disclosure exercise, and he then agreed to her position. There is no good reason for the husband to have proposed it in the first place if his intention was then to put pressure on the wife not to proceed with it. There is no evidence of anything occurring, or of the business making an acquisition or information gained that might point towards such a change. There is no evidence of the husband concealing any information from the wife. By contrast, the wife was actively concealing information from the husband, about her ownership of [House 1A].
82. The authorities are clear that even where there is no formal disclosure exercise there remains a duty upon the parties to be open and honest in their dealings with one another, and for them to be sufficiently well informed about their respective positions when they enter into an agreement.
83. I am satisfied that the husband was open and honest in his dealings with the wife, and she had sufficient opportunity to obtain the information she would have needed in order to negotiate and eventually sign the settlement.
84. The wife's assertion that the husband did not give full and frank disclosure about the extent of his business assets until January 2024 is not well founded. During the period of time leading up to the signing of the agreement, he was open and honest about his financial situation. He did not know of the market valuation report until 2022. He was not obliged to disclose it until exchange of Form E.
85. The husband filed accounts every year at Companies House which were available for the wife and her solicitor to view at any time.
86. The wife has used the word 'fraudulent' in her evidence, but no particular instance of fraudulent conduct was identified by the wife or put to the husband in cross-

examination. It has not been suggested that the husband has provided false information to the accountant, or to Companies House, or that the accounts submitted do not give a true picture of the business at the time. The husband has been a 100% shareholder in his business since his friend left the partnership in the early years. It has not been suggested that he has structured the business in a way that might give rise to a misrepresentation or even the hint of opacity about its true ownership, or moved money or shares offshore or into vehicles that put them out of reach in some way.

87. The accounts themselves are straightforward and reveal a pretty simple business model. The husband's company fabricates industrial plumbing materials and supplies them to businesses in the UK and in Europe.
88. The accounts for year to end December 2015 were received by the husband from his accountant in September 2016 and he signed them and filed them with Companies House the same day. They show that at year end the business had £93,614 in tangible assets (machinery), and £100,417 cash in the bank. The business was awaiting payment from clients in the sum of £615,395 and owed £465,433 to creditors.
89. With adjustments for debts written off and liabilities the shareholder's funds were £311,873. This was an increase of just under £40,000 from the previous year.
90. The accounts for year to end December 2016 were received by the husband around September 2017. The tangible assets had reduced to £84,214. Stocks (materials used to make the pipes) were valued at £59,000, and cash in the bank had increased to £371,056. Money due from debtors had risen to £1,647,245, but money owed to creditors had also risen to £1,512,390. The bottom line figure was £622,137.
91. The accounts for year end to December 2017 were received by the husband around September 2018. There is an increase in value. The tangible assets had risen to £402,619, there was £1.696 million in the bank, debtors stood at £1,249,409 and stocks at £79,591. The total amount due to creditors was £1,773,251. With adjustments the bottom line figure was £1,618,054.
92. This is a significant increase on the previous year, but it does not signal that the business was likely to expand in the way it has more recently. There is no reason to believe that if the wife had sought more particular disclosure about the husband's business interests, she would have found evidence to suggest that the business was either worth more, or was likely to be worth anything like the kinds of sums that the report made in April 2022 now suggests.
93. The husband shared details of the business, its premises, and of all properties that he owned at time of the agreement. The additional properties were as follows:

- a) [House 2]. This was the husband's childhood home and in 2007 was owned by his mother. In 2007, she transferred ownership to the husband, he raised a mortgage of £140,000 on the property (about 50% of its value) and gave her that sum as a retirement fund to enable her to stop work as a carer. He paid the mortgage payments throughout the marriage and continues to do so. His mother continues to live in the property. The husband has a brother who it is intended will receive 50% of the property upon their mother's death. This property is currently valued at £470,000 with an outstanding mortgage of £200,000, I am not sure of the figures in 2019;
- b) [House 3], Ireland. The husband inherited a third share of a farm at [*place name redacted*] on the death of his grandmother in 2004. In October 2016 he bought a house next to the farm. It was in need of significant renovations. I accept his evidence that he told the wife about it, because he wanted to take the boys on holiday there but she did not agree. He spent money on installing a kitchen and bathroom. The money that he used came from the business. This property is currently valued at £300,000 with mortgage of £81,078. I am not sure of its value in 2019 but it is likely to be substantially less. The husband's share in the farm is currently valued at £130,000. Any sale of the property or the farm would attract capital gains tax.

(iii) Allegation of duress, undue pressure prior to signing the settlement agreement

94. I reject the wife's case that the husband was guilty of subjecting the wife to any duress, undue pressure or other conduct that would vitiate the wife's consent to the agreement, or which should reduce the weight to be given to the agreement.

95. Her case was essentially a sweeping assertion, and two WhatsApp messages.

96. On 10 September 2018 the husband asked the wife to arrange a meeting with the bank to find out how she could remove his name from the mortgage, so that he could progress buying a house for himself:

'You need to see if you can get an hour with bank please rather than waiting another 2 weeks I have a consultation tomorrow mid morning and I should know what I need to do from that point. Like I said recently I cannot do this anymore. A moment longer than I have to, I wish you knew what living this crap life is like, I need you to help me out please, I need to be out of here October.'

97. On 16 September 2018 the husband wrote:

'Hey look a lot of this is me being a bit selfish, but sometimes put yourself in my position, this is something I never asked for or wanted, I love everyone in that house to death

and not part of it at all anymore. It's tough that's all, I really need to be get set up myself so get that cert please'

98. On 1 November 2018 the husband was babysitting for his children at the family home. The wife did not return until after 1am and did not message him. She told me this was a one-off, she was at a charity event which over-ran, and it was not possible for her to contact him. The husband sent a message at 12.45am saying, *'come on now it's 12.45 a.m. I've work in the morning I need to be up at 5.30 latest'*. He did not get a reply. The next message he sent was at 01.12 a.m.:

'While I'm sat here thinking, if this paperwork isn't done and I'm not in a position to buy somewhere when the rent runs out in [site F] in 5 months now, I'm going to have to move back in, I'm not wasting anymore money, so get it sorted.'

99. This message is relied upon by the wife as an example of undue pressure exerted upon her by the husband; a threat to move back into the home. I do not accept this. It is plainly a message sent out of frustration at being kept up late with no explanation. The wife responded the next morning with an apology, and the dialogue between them thereafter continued to be cordial and respectful. There is no sense from any of her messages that she thought for a single moment there was a possibility of the husband seeking to move back in. This message did not spur into action; she did not fix up her first meeting with a solicitor until January 2019, and did not respond to his solicitors until March 2019.

100. The husband has disclosed a full run of WhatsApp messages from 29 August 2018 to 21 October 2019 which run to 123 pages. He offered inspection of all WhatsApp messages between them since 2015, which (the court was told) fill two lever arch files. The only other message the wife relies upon to substantiate her allegation that the husband threatened her is a message sent on 1 February 2019:

'where are you at with this financial stuff made an offer yesterday if it's accepted it will be quick no chain if I miss out on this I'll be back in [the family home] on the 23rd of Feb'.

101. Again, there is no evidence that the wife took this at face value, or that it caused her any concern at the time.

102. The wife instructed solicitors in 2019 and again in 2022. The correspondence is professional, constructive and cordial. Consistent with the dialogue seen in the WhatsApp messages, the wife's solicitors stress her wish to deal with matters as amicably and cost effectively as possible. There is not a single mention in any letter of the wife feeling under pressure, rushed to make a decision, and no suggestion of threats or any concern at all on the wife's part that she might not be able to keep the family home. In the first chasing letter the husband's solicitors sent to the wife in

December 2018 it was made clear that the husband understood the wife wished to remain in the family home and wished to discuss ‘the mechanics’ of that. The letter notes that *‘it will be necessary for there to be full and frank disclosure provided by yourself and [the husband] in order to consider the options available to you both’*. The letter asked for her confirmation that she was, *‘willing to proceed with a process of full and frank disclosure to enable us to move matters forward and start having some constructive discussions’*.

103. The first time the suggestion of any threat or pressure arises was in a letter from the wife’s solicitors dated 28 June 2023.

104. When it came to her oral evidence, the wife repeated a number of times that she regarded the settlement agreement as unfair, because of what she now knows about the value of the husband’s business. Even when asked directly why she thought the agreement was unfair, she did not describe any instances of being pressurised to sign the agreement, or describe threats or aggression, but again repeated that had she known that the husband was a very wealthy man, and had she known what the business was worth, then she would not have signed the agreement.

105. The timetable for reaching the agreement was effectively set by the wife, who did not meet with her solicitors until January 2019, did not instruct them to respond to the husband’s first draft agreement until May 2019. It then took a further four months for the final agreement to be reached, even then, a last minute change was inserted by the wife. The wife remained in the family home throughout with the children, and it was clear from the parties’ discussions and conduct that there was never any question of her having to move. There is no evidence of her being under any other kind of emotional, financial or other pressure to complete the agreement.

(iv) Allegation that the settlement agreement was unfair

106. The settlement agreement is not patently unfair.

107. The value of the family home was around £600,000 or £700,000 (now valued at somewhere between £800,00 and £900,000).

108. The book value of the business at the end of December 2016 (i.e. around the time of separation) was £622,137 (gross of tax) of which £371,056 was cash.

109. Unbeknown to the husband, the wife in fact was the owner of another property of similar value to the former matrimonial home.

110. The family home was subject to a mortgage, but the wife had savings and premium bonds to enable her to reduce the mortgage substantially, and the husband paid an additional sum towards that.

111. The husband's initial offer of maintenance was for £750 for each child per month until they finished education, with additional expenditure to be shared between them (although in the event the husband paid additional expenses upon request). The wife's counter offer was for £1,750 a month, to which he agreed. She clearly now regrets not asking for more, but that is not an indication that the level set was unfair. The agreement provides for review in the event that the wife's or children's needs are not met.
112. The wife had the house. The husband's initial belief was that he would not be able to buy a property until he was released from the mortgage. In the event he was able to purchase another property before that happened.
113. The husband had the business, which now, five years later is worth a large sum of money. However, there is no evidence to suggest that was the case in 2019, or even that the business's prospects were set so fair that this level of success within a few short years could reasonably have been anticipated. In fact, the reverse is true. The husband sets out in his witness statement some of the difficulties that the business faced since the parties' separation in 2016. He says, the business has, *'weathered many storms, including all the Brexit uncertainty lasting over an extended period (which led me to set up a company in Ireland, and then other companies across Europe), Covid-19 (which wiped out most of the profit in the first year) and then the Russia/Ukraine war. I agreed to take the risk in our agreement, and with huge amounts of hard work and stress, the business has done really well.'*
114. In the year to end 2017 the business had a good year with the net assets recorded as £1,618,054 gross. £1,773,251 was due to creditors. In addition, the lease on [site G] was 'non-cancellable' and payable at £4.484 million over the next ten years. Of the net assets, around £500,000 was non-tangible assets (stocks and machinery – largely purchased to fit out the premises at [site G]). So there was not enough cash in the business to meet debts due and owing. The business was reliant on receiving £1,249,409 due from its own debtors. The picture is not desperate but neither is it entirely comfortable.
115. The husband received the accounts for year to end December 2018 in August 2019. He says he signed them on 10 September 2019 and sent to Companies House within a week. These accounts were not available to the parties as they were negotiating the main elements of the agreement, but the information used to prepare them would have been available on request. The figures show improvement since the previous year. There was £1,622,360 cash in the bank, but about £2.5 million owed to creditors, so again not enough funds to pay. Money awaited from debtors had risen to just under £3 million. The bottom line figure is £2,330,892, which is plainly an improvement on the previous year. However, that figure does not represent available cash to the husband, nor could it be taken as a signal of the rapid expansion that came a few years later.

116. The business did not own any property at that time, and any funds drawn out of the business would have been subject to tax.
117. In his witness statement the husband says that he did not obtain a market value of [ABC] until April 2022, when he was looking to restructure the business. His evidence that he had no idea of what that market valuation might be before then was not challenged. He said that his focus was on obtaining and fulfilling contracts and cash-flow. He says that the contracts got larger over the years but *'keeping a close eye on cash-flow was essential; there were large debtor and creditor figures, and at times it was like borrowing from Peter to pay Paul. The business did not own any buildings or valuable assets (the machinery depreciated in value).'* This evidence was not challenged, and the analysis is supported by the company accounts.
118. In all the circumstances, it cannot be said that this is an agreement that a court would not have approved had its terms been put into a consent order. The husband's business had the potential to do well, but only as a result of his own efforts. It also faced significant risks, which he took on fully. The wife bore none of the risk and at that time had all the security of retaining the family home, and the receipt of maintenance, to be supplemented by agreement, and to be reviewed in the event that it no longer met hers or the children's needs.

Conclusions

119. The agreement was detailed and properly negotiated, with the assistance of specialist family lawyers. The agreement could not be clearer that both parties had all information they needed in order to enter into it, they understood what was required of them, and the implications of the agreement. The agreement records a number of times in a number of different ways, their shared intention that the agreement would resolve all issues between them in respect of the sharing of the assets of the marriage, and it would not be open to them to litigate this in the future.
120. The wife has failed to establish that the husband was what she describes as 'a very wealthy man', at the time they entered into the separation agreement, or that he misled her or hid any information from her about his financial situation.
121. The agreement was made three years after the parties' separation and the parties have continued to abide by its terms some five years later. There has been no change of circumstances now of a kind that effectively renders the agreement unworkable or unfair. The fact that the husband's business has done very well since the agreement was made is not a reason to unpick or otherwise revisit the terms of the agreement. There is no evidence that the husband deceived the wife about the value of the business at the time the agreement was made.

122. The parties were grown adults of similar age who had been in a marriage of equals, both working and balancing family life together. Their communications show that they conversed as equals. If anything the wife had the upper hand, because she was the one who decided when and how often the children would spend time with their father.
123. In all the circumstances, there are no grounds for holding that the consent given by the wife was based on her having been misled, manipulated, subject to undue pressure or duress, or otherwise given false information, or had information withheld from her.
124. The agreement stands. The question of the extent to which any of the other section 25 factors may yet have an impact upon the final outcome in this case does remain live between the parties, as does the question of the ongoing assessment of needs. However, the agreement is, in the words of Mr Justice Peel, '*presumptively dispositive*'. In the circumstances, the extent of the Court's enquiry will be narrower than if the wife had succeeded in arguing that the agreement should be disregarded completely, or given little weight.
125. The parties will need some time to reflect on the decision and consider directions. In accordance with the changes to the Family Procedure Rules Part 3, Practice Direction 3A and Part 28 of the Family Procedure Rules, the Court will be seeking to focus the parties' minds on the potential for non-court dispute resolution of remaining issues between them as a next step and before further costs are expended in this litigation.

HHJ Joanna Vincent
Family Court, Oxford

10 July 2024