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Case No: 1663-6645-4570-5013

IN THE FAMILY COURT
SITTING AT THE ROYAL COURTS OF JUSTICE

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 4 July 2024

Before :

MR JUSTICE CUSWORTH

- -

Between :

BI — **Applicant**

- and –

EN — **Respondent**

- -
- -

Rebecca Carew Pole KC and **Kyra Cornwall** (instructed by **Miles Preston**) for the **Applicant**
Lewis Marks KC and **Marina Faggionato** (instructed by **Katz Partners**) for the **Respondent**

Hearing dates: 17 June - 5 July 2024

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JUDGMENT

This judgment was handed down remotely at 10.30am on 26 July 2024 by circulation to the parties or their representatives by e-mail and by release to The National Archives.

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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.

Mr Justice Cusworth :

1. This judgment is intended to conclude financial remedy proceedings between BI (aged 51), and EN (aged 50). As is conventional I will refer to them as the wife and the husband in this judgment.

2. **Background.** The couple were married in May 2001, and separated in September 2022, so on any view theirs has been a substantial marriage. They have 3 children: B, born in July 2002, so nearly 22; C, born in August 2004, and so aged 19, studying; and D born in June 2007, so aged 17, and still at school, in London studying for his A levels.

3. The parties are both French, and met in France in 1997 whilst studying at a prestigious business school. Having graduated that summer, with an MsC Masters in Business Finance, the husband took a job in Hong Kong, where the wife soon joined him, transferring her place at a business school in Hong Kong from late 1997 or early 1998. The parties were cohabiting from this point. The wife graduated with an MBA in 1998, and began working in Hong Kong. The couple agreed to marry in early 2000. In March 2000 the husband gave notice in relation to his job with the bank, leaving in June that year to start – his first venture as an entrepreneur.

4. By November 2000, following a brief return to professional sport which she herself had first taken up before meeting the husband, the wife obtained what she has described as a 'dream job', working as a telecoms strategy consultant. Meanwhile, the husband's new venture did not flourish, and by March 2001 it was clear that the company was in trouble. The husband says, and I accept, that it had become clear by then that he would need to close it down. It was eventually closed in the following July, and the husband went back to work at the investment branch of a different bank.

5. So it was that the parties were both living and working in Hong Kong at the point of their marriage in May 2001, although the husband's financial position was evidently somewhat precarious.

6. It should be said at the outset that, although much has been in dispute between the parties, both as to the value of the assets which have now been built up during their marriage, and as to the circumstances which should affect their distribution, the principal issues for determination before me have finally been relatively limited. The one issue which will have most impact is

the extent to which the outcome of the wife's application for financial remedies should be impacted by the '*Contrat de Mariage*' ('the contract') which the couple signed in Hong Kong before returning to France for their wedding. I will deal with their respective evidence about that a little later.

7. Less than a year after their marriage, in April 2002, the husband was transferred to London by his then employer, and the wife, who was by then pregnant with their first child, resigned from her job in Hong Kong to relocate with him. B was born in July 2002. In January 2004, the wife returned to work, with a new company as an international strategy consultant, although she reduced her working week from 5 days to 4 in July 2004, ahead of C's birth in August of that year. The company relocated their team abroad in 2005, and the wife was unable to follow them. Instead, the family bought their first home in London and the wife took a job in a different field which she was to continue until 2013.

8. In 2007, the husband lost his job with the bank, but in 2008, with a financial crisis unfolding, he co-founded E Capital, an investment vehicle through which he was soon able to make significant returns as the markets recovered. Whilst the levels of profit appear to have plateaued or fallen recently, the company had enjoyed substantial success during the intervening years, which has led to the amassing of a substantial fortune, the detail of which I will consider later. The parties are however in agreement that, aside from the impact of the contract, all of the assets now held by them, including the husband's business assets and a significant holding in trust, would all otherwise be accounted as matrimonial and so subject to the sharing principle.

9. **The *contrat de mariage.*** The evidence which I have heard about the circumstances surrounding the signing of the contract is therefore of the utmost importance, but there are some significant differences between the parties. I will deal with that evidence under a number of separate headings.

10. Motivation. In her first statement about the contract, the wife says that she has 'struggled to recall anything much at all' about the parties' discussions prior to its signing. She says that she does not believe that they talked about it 'other than in the most brief and insignificant way', because she does not remember any discussion. She says that she thinks if it had been important, she would have been able to remember. She goes on that she is 'almost certain' that it was the husband who first suggested that they sign it. The only context she gives is that the

impetus was linked to the husband's desire to be an entrepreneur. By electing *separation de biens*, as the couple did, she says that it was 'a way of protecting assets in the name of your spouse'. She also thought that the husband did not wish to consult her or get her signature ahead of investments as might otherwise have been necessary. She says that she cannot remember having a discussion with anyone about what it might mean on divorce.

11. The wife in her first statement described her parents as being comfortably off, but not wealthy. She drew no distinction between the social status of her parents and the husband's, whom she described as 'not wealthy either'.

12. She went into more detail in her second statement, after the husband had indicated that he had felt a gap in social class between their respective families at the outset of their relationship. She accepted that when she met the husband, in addition to a home in the Paris suburbs, her parents had also owned a summer holiday home bought in 1995, as well as 2 studios in the mountains. She described how her paternal grandparents were not wealthy after her paternal grandfather, also an entrepreneur, had become bankrupt in the late 1960s. She accepted that her mother's parents had more than those of her father, such that although one of six children, her mother had still received an inheritance of some £1,000,000 in 2013. The overall impression which she gave, and which was confirmed by her parents who both also gave oral evidence to me, was not one of great wealth, but of a comparatively comfortable and well-heeled middle-class family, who were certainly able to enjoy the good things in life without financial concern. However, it is clear that the wife's parents were not so wealthy that their lifestyle could withstand unscathed their divorce in 2003.

13. In his brief statement, the wife's father confirmed that he and her mother had a similar '*separation de biens*' contract because that is what his father-in-law had wanted. However, he denied ever having a discussion, either specifically or generally, about marriage contracts with the husband.

14. The wife's mother in her statement confirmed that she relied on her father to 'sort the legalities' of their contract. She said that she did not really think about what *separation de biens* meant at the time. She denied having any discussions with the parties ahead of their marriage about the terms of any contract. She says that whilst it is probable that she booked the parties' civil wedding, she cannot recall this, and that whilst she was at the civil ceremony where the fact of

the parties' chosen regime was confirmed, she never discussed this with her daughter at the time.

15. By 2003, however, the wife's parents' own marriage was in difficulties. Her mother recounted 3 lengthy telephone conversations with her daughter expressing concerns about the wife's father placing joint funds into accounts in his sole name, to deprive her of her share under the terms of their contract. She also recalls the wife telling her of a conversation she had had with the husband triggered by her concerns about her father's behaviour. She says that she was told that the husband had reassured her that he would not behave in the way that her father had. She recalls a further conversation at their holiday home in the summer of 2004, when the parties were staying with her, when the wife reassured her that she felt that the husband would be respectful and make sure that assets were put into her name. She has not spoken directly to the husband about these things.

16. The husband's evidence is that his parents are of modest means, and did not have a marriage contract. This was not challenged. He drew a contrast with the relative affluence of the wife's family, and said that he found this initially intimidating. I do accept from what I have read and heard that there would have been an appreciable social gulf between the families, which may be as important for these purposes as any financial detail. Whilst it may be that the wife's paternal grandfather's bankruptcy had an effect on the value of his estate, which might have led to her maternal grandfather insisting that her father sign a *separation de biens* contract as he said, the overall impression which the evidence gives is that the wife's family are far more used not only to having money, but also to protecting it and to the risks of losing it over the course of generations.

17. The husband himself says that he does not recall who first raised the subject of a marriage contract after the parties' engagement, but says that he does recall a conversation with the wife's father from which he got the impression that there was an expectation that they would choose *separation de biens*. Despite her father's denial, it is on balance likely that some such conversation would have taken place. In circumstances where the wife's own parents had such a contract, where her own paternal grandfather had suffered bankruptcy as an entrepreneur, and where her maternal grandfather had required her father to sign their contract, it is clear that the risks and benefits of the arrangement were well known to the family. Whilst the opportunity to transfer assets to the wife or into joint names for their protection in the event that the husband's

future businesses proved unsuccessful may have been the primary motivation for the family, I cannot accept that they did not also understand in 2001 that any such contract would also have consequences in the event of a subsequent divorce, at least under French law.

18. Thus whilst I cannot know from the evidence that I have exactly who first broached the subject, I am satisfied that the wife would have understood what a marriage contract is, and its various purposes, and that her family's instincts in the spring of 2001 would have been to have provided for her the sort of protection that her mother had had when she married her father, in light perhaps of the bankruptcy that had befallen her paternal grandfather in the past. This is therefore not a case where the contract has been foisted onto an unwilling and ill-informed ingenue, who signed and then married without any understanding of the consequences.

19. I cannot therefore accept the wife's account that she 'never considered that the contract would be important on divorce'. I do accept that at that stage in her life she would not have considered that a divorce was in any way a likely prospect. When she says that she recalls feeling like she 'had no choice', she was not suggesting that that was in any way due to any inappropriate pressure from the husband. I accept that the main motivation may have been to protect assets (or the wife's share in them) from the vicissitudes of the husband's business career, which did not then look promising. That would at that time have appeared to the wife and her parents to be significant consideration for entering into the agreement.

20. Whether the suggestion came first from the husband, or from the wife, or from the wife's parents, everyone on the wife's side of the family would have understood what the arrangement would connote and how it would operate. In May 2001, the husband's finances were precarious. He had a business venture in the process of failing, whilst the wife was in reliable employment. Neither then had any inherited wealth to protect, but the wife's prospects would have been rather stronger than the husband's. Thus, the contract would offer her a measure of protection and security going forward, in the hope perhaps that the husband would do the decent thing and put property into joint names. Indeed, if anything, the wife's initial lack of recollection about what happened would suggest that she really had few concerns at the time about what was being arranged, rather than she did not have any understanding of what the contract meant.

21. <u>The signing process.</u> The contract was signed in Hong Kong in May 2001, just 7 days before the wedding. Whilst this is a short time, this is not of especial significance in light of my

findings above about the background. The wife professes to remember very little about making the arrangements, and has only a 'faint memory' of going to the consulate. She remembers only a short meeting without specifics. She describes it as a 'tick in the box for the contract to be signed (as part of the many items on the wedding to do list)'. It is notable that she appears to have been unconcerned, notwithstanding that she is a woman of education and intelligence. She does not recall reading the document either before or at the meeting, nor who provided the information for its contents, which included such things as her parents' full names. She says that she does not believe that she can have received any advice, as if she had had it explained she would never have signed it.

22. The husband says that it would have been the wife who contacted the consulate, given his travails at the time with the struggling start-up. He recalls at least 2 meetings, at the first of which they brought identification, explained the regime that they had chosen, and had explained to them the consequences and effect of signing. He says that they could have asked questions if they had any doubts, although he does not recall any. At the second signing meeting, he is clear that the consular notary read out the entire contract, and again there was a facility to ask questions. He describes the feel of the two different rooms in which he says that the two meetings took place. On the basis of his clearer recollection of these events, and the wife's 'faint memory' of these important events, I prefer the husband's account and do find on the balance of probabilities that there were two meetings as the husband says, at the first of which the information which has been typed into the contract ahead of the second meeting would have been provided.

23. The contract itself is in fairly conventional terms, setting out the full names of the parties and their parents. Article 1 records that the parties will adopt the regime of separation of property as the basis of their union, the consequences of which, deriving from the civil code, are then spelt out as relevant in the document (omitting references to the death of either party).

a. *Art.1*. They will respectively retain the ownership, management, enjoyment and freedom to dispose of the movable and immovable property belonging to them personally and such property which may accrue to them subsequently on any basis whatsoever. They shall not be liable for the debts of the other either before or after marriage…

b. *Art.2.* The spouses shall contribute to the charges of the marriage in proportion to their respective abilities…The expenses of joint life which are due and committed to at the time of the dissolution of their marriage shall be the responsibility of each spouse as to one half

c. *Art.3.* Each of the spouses shall be deemed to be the owner of the [*chattels*] for their own personal use, and also of equipment for work…the said items shall be taken over by the person concerned…upon dissolution of the marriage, whatever the magnitude thereof…

All consumable objects…which exist at the time of dissolution of the marriage shall belong…to each of the spouses as to one-half each.

The furniture…and other movable objects adorning the joint accommodation during the marriage and also on the date of dissolution thereof shall be deemed to belong…as to one half to each of the spouses…

Registered securities, claims, businesses and immovable property shall belong to the spouse who is the owner thereof; property of the same nature which is in the name of both shall be deemed to belong to each of them as to one half in the absence of any indication to the contrary in the document of title. [*There are then equivalent provisions for cash, bearer securities and bank accounts*].

d. *Art.4.* Each of the spouses… shall be guaranteed and indemnified by the other spouse…against all debts and commitments contracted by the other spouse during the marriage…

24. At this juncture, I note that another contract carrying similar clauses to those in Art.3, dealing with the consequences of dissolution of the marriage, was considered in *Z v Z* (No 2) (Financial Remedy: Marriage Contract) [2011] EWHC 2878 (Fam). There, Moor J determined as follows from [48], with reference to the contract in that case:

48. 'Article 4 provides, among other things, that:-

"*At dissolution of the marriage, the spouses …will recover all articles of which they substantiate ownership by title, use, make or invoice; articles and assets over which no ownership right is substantiated will be deemed automatically to belong undividedly to each of the spouses half each, irrespective of their value and composition.*

Real estate, receivables and registered securities will belong to whichever of the spouses is the titular holder. Any assets of such a kind that are in the name of both of the spouses will be deemed to belong to each of them to the extent of half unless the relating documentation indicates otherwise."

49. Apparently, it was not necessary to include Article 4 in the Agreement, although the parties may not have known this at the time. The Notaries, however, would have known. Its inclusion therefore provides some support for the proposition that this Agreement was not simply being entered to provide protection to the Wife from any creditors of the Husband.'

25. I consider that the same argument applies here, and that whilst protection from future creditors probably was a primary motivating factor for both parties in entering into the contract, and neither may have had divorce at the forefront of their mind at the outset of their relationship, it was nevertheless very clear from the document that they each signed that under French Law,

the law that they were electing, the contract would have the consequences on divorce which it explained.

26. Mrs Carew Pole KC for the wife has sought to criticise the clarity of the contract as not anywhere specifying that it would be effective in the event of a divorce, nor in using the word 'divorce'. I do not accept that this is a valid criticism. The clear references to the distribution of the parties' assets between them on the dissolution of the marriage can only have one meaning, especially when the alternative outcome when the marriage ends on the death of one of them is also provided for. I am satisfied that the wording set out above was both intended to, and was understood at the time by the parties to, refer to a situation where the parties' marriage came to an end on their divorce.

27. Mrs Carew Pole KC has also referred me to the recent decision of the Court of Appeal in *Standish v Standish* [2024] EWCA Civ 567, where Moylan LJ said from [154]:

> '154. *Radmacher* dealt with nuptial agreements which expressly sought to regulate the parties' financial affairs on the breakdown of their marriage. The agreements being addressed clearly needed a sufficient degree of formality to constitute an agreement to which the court would potentially give effect. This required, for example, that each party: had "all the information that is material to his or her decision"; was "fully aware of the implications of" the agreement; and intended "that the agreement should govern the financial consequences of the marriage coming to an end"…
>
> 156. The sharing principle is applied as a matter of fairness; it is not elective save when the parties have entered into a formal nuptial agreement of the type described in *Radmacher*.'

28. The document in this case was said to be signed before the Vice-Consul and Head of Chancery in the Consulate, and was then 'read over' or '*Lecture faite*' in the French, to the parties before signing. This accords with the husband's recollection that the entire document was read to the parties at the second meeting, contrary to the wife's suggestion that she did not read it. Orally, she suggested that it was not read to her either, but I find that this was something which if not remembered she has forgotten.

29. That French consular officials no longer carry out the duties of notaries for these purposes does not, in my judgement, in any way undermine or impugn the process which the parties went through in 2001, which is one that the SJE on French Law, Laurence Mayer, has opined would be recognised and accepted by a French Court. I accept the husband's evidence that one of the motivations for the parties in entering into the contract was to ensure that, even though they

were then living, and intended to continue to live, abroad, they nevertheless as French citizens wished to submit their marriage to the principles of French Law. That a consular official may not have been competent to give property advice, as Ms Mayer suggests, does not in my view undermine the weight which this agreement should carry.

30. In those circumstances, I am clear that this agreement is of sufficient formality that the court can potentially give it effect, if it is fair to do so, although it can never be more than one of the circumstances of the case that the court must consider in undertaking the statutory exercise mandated by the MCA 1973. I will set out my conclusions as to the parties' intentions, understanding and awareness below.

31. Subsequent reactions. By the time of her own parents' marriage problems from 2003, the wife could not have been, and evidently was not, under any illusion about the potential ramifications of the contract that she the wife had signed. Her mother's evidence that she was 'relaxed' about the workings of the *separation de biens* regime in her own marriage, despite her mother's upset at how her father was perceived as behaving, chimes with her own lack of concern at the time of the signing. That the wife was having conversations with the husband then, during which she was reassured that he would place properties into joint names, and would not take funds from joint accounts and place them into his own name as her father had, makes it clear that she was under no illusion at that time that the contract which she had signed would be effective in the event of a divorce. It is equally striking that there is no suggestion by her mother that she the wife was taken by surprise to learn that this was its effect.

32. Her own evidence is that the fact that the contract might be effective on divorce was something which the wife understood *only* when her parent's marriage ran into difficulties, and that this triggered her to have the conversations referred to above. But on her own account the conversations were around reassurance that the husband would not behave as her father was doing, not that he would not enforce the terms of the contract at all. At this point, in 2003/4, the husband had not yet set up his investment vehicle, and thus placing the homes that they owned into joint names once acquired would have been the extent of any discussion.

33. Further, whilst the parties were then living in London, the yardstick of equality was still a comparatively new concept in the English Court, not yet developed into the sharing principle, and *Radmacher v Granatino* had yet to be decided. It is therefore believable for the wife to

state as she does that it had not occurred to her that the French contract would be important in England, but noticeable that she distinguishes this from her realisation that in France, the contract would be important on divorce. And it is in that context that her conversations seeking reassurance from the husband that properties would be placed into joint names, and that he would not behave like her father, must be seen. She knew that the couple had elected for French law to govern the terms of their marriage.

34. Later, just before D's birth in 2007, the wife says that she asked that the parties have a yearly meeting to discuss such things as the division of the husband's bonuses, as this appeared to become a sore point in the marriage. Within months, however, in September 2007, the husband had lost his regular banking job, and in the next year was to embark on his new investment venture. Thereafter, he did continue to acquire homes for the couple in joint names – a flat in Paris in 2008, the holiday home in 2013, and the family home in London in 2015, but the various business ventures were kept separate. The wife does not suggest that she ever required him to go further as the marriage continued.

35. Disclosure. I am invited by Mrs Carew Pole KC for the wife to consider the husband's evidence in all these matters through the prism of what she says has been persistent inaccurate and late disclosure by him through these proceedings.

36. Her primary point has been that he made no reference at all in his Form E, which was dated 16 December 2022, to the impending sale to a third-party investor of a significant element of his interest (through a company, held in a trust) in a professional sports franchise/club. It is certainly the case that there is no hint in that document of what by then were already non-binding but very well-advanced negotiations for a third party to buy into the club. The husband only said, in a rider to the document, that: *'The respondent is exploring external investment options to strengthen the capital base of the club*'. He then however went on to conclude that it was reasonable to use the net equity of the club to estimate its value, which put at €6.9m, to which he then applied a 20% discount to reflect volatility in the club's earnings, apart from the separate value of some training facilities.

37. In fact, on 21 December 2022, the husband's solicitors did write confirming that discussions with one investor were advanced, which could lead to a capital injection and a partial sale of the club. They then wrote again on 12 January to confirm a 'subject to contract' agreement,

with conditions precedent to be met, for a sale of a 33% stake in the club for €30m, and with a further €10m injection into the club to follow, leading to the passing of a further 10% of the shares.

38. The deal had actually been signed on the previous day – 11 January 2023 – albeit still subject to some conditions precedent. On 1 February 2023, €27m was received by the company (the last €3m remains subject to a retention), but its actual receipt was not then disclosed. At the first appointment in the financial remedy proceedings on 16 March 2023 before Francis J, there was agreement that questions about the valuation of the club should be referred to the SJE, Mr Bezant of FTI. The documents confirming the above were made available in a data room in June 2023, to which the wife's advisors were then given access, and Mr Bezant's report came out on 11 August 2023.

39. The wife's solicitors then wrote on 15 August 2023, requiring the husband to preserve any funds received from the sale of shares in the club to be available to meet the wife's claims in these proceedings. On 1 September, the husband's solicitors replied to the effect that the sale proceeds had been invested or committed, principally in fixed income investments. In fact, whilst some had by then been so invested, a fair amount was still awaiting allocation in liquid accounts.

40. It has been the case that the husband has sometimes been a little late with the meeting of court timetables for responses and disclosure. This has not been an extensive problem, but in circumstances where the wife and her advisers have perceived that they are only told about the existence of liquid funds after they have already been committed, this has only gone to increase tension. Further issues about the existence or not within the trust of segregated income accounts also took up significant time and energy during the hearing, without advancing sensibly the outcome of proceedings.

41. All of these events have led to there being a significant degree of suspicion and mistrust between the parties, which have inevitably led to an increase in the costs of these proceedings. However, whilst there is no doubt that the husband has not been as forthcoming as he might have been about the ongoing process of the transaction at a number of stages, there is little doubt now as to what has been received, where it has been invested and its current value.

42. The palpable frustration and anger between the parties over this issue has, I find in large part, been caused by their different perspectives as to how these proceedings should be concluded. As the wife and her advisors have been proceeding on the basis that she has a sharing entitlement, they have sought oversight in relation to the husband's dealings, and a measure of control over the use and management of the proceeds of the deal. The husband, by contrast, relying on the *separation de biens* agreement enshrined in the parties' contract, has treated the shareholding in the club as his separate property, and has evidently resented the notion that he should make advance disclosure of the various stages of the transaction, certainly before they had been confirmed, or whilst money was still obviously available which the wife might seek to have set aside on account of the settlement to which she felt that she was entitled, but which was still in issue between them.

43. Overall, the husband could certainly have been clearer in his disclosure, both in his Form E, where he failed to disclose a letter of intent, albeit at that stage non-binding, dated 27 October 2022, based on a valuation of €90m; and in the aftermath of his receipt of the €27m, which funds he had already banked before he allowed joint instructions to go to Mr Bezant on 18 April 2023 still referring only to a 'proposed transaction'. By his later seeking to claim discounts for illiquidity in relation to investments made with the received funds – regardless of whether the funds had in fact been invested by the time of the wife's solicitors' letter of 15 August 2023 – he has inevitably fermented further argument, although it remains -the case that even with the discounts sought applied, the investments across the board have gained value beyond any simple interest that might have been applied if the funds had been held as cash.

44. The arguments over this issue have generated much heat between the parties, but ultimately, now that clarity has been achieved as to what has been received and where it has been invested, little is added to any understanding of the key issues in the case. I do not find that the husband's tardiness in revealing the deal, or his receipt of the funds that have flowed from it, have infected his reliability as a witness in other areas. The parties have however each spent a very significant amount on costs as a result.

45. Conclusion on the Contract. Consequently, after carefully considering all of the evidence that I have heard and read in relation to the contract during the course of the hearing, I am entirely satisfied that at the outset of their marriage, and thereafter throughout its length, both of these parties have both understood and acknowledged by their actions and attitudes that they had

elected the *separation de biens* regime to apply to their marriage, and that its consequences in the event of their divorce would be that, subject to the question of what in French law is termed *prestation compensatoire*, and in this jurisdiction is referred to as the meeting of needs, their capital entitlement would be defined by how they held their various properties and other assets. They had all of the information that was material to their respective decisions; were fully aware of the implications of the agreement; and understood and so intended that the agreement should govern the financial consequences of the marriage coming to an end.

46. **The Assets.** Before considering the remaining differences between the parties on applicable tax and discounts to be applied to the valuations of the various assets, the assets now available to the parties (on the basis of the husband's concession that the assets in the trust can properly be classed as a resource of his) may be summarised in the following table:

	agreed/determined	discount/further tax per H	H best case
London Home	£3,720,500		
Paris	-£358,974		
Holiday home	£3,312,068		
Cave	£1,154		
French property A	£8,547		
French property B	£189,037		
French property C	£173,077		
H Banks	£3,038,326	-£22,250	
Company	£23,378,754	-£1,343,851	
H liabilities	-£14,948,914		
W banks	£1,978,184		
W liabilities	-£1,581,315		
joint banks	£42,902		
E Capital	£7,905,983	-£1,581,197	
Property company	£1,166,537	-£1,271,435	
Trust	£108,182,325	-£9,331,482	
tax on trust	-£22,443,554	-£14,351,611	
H pension	£1,401,919		
	£115,166,556	-£27,901,826	£87,264,730

47. The above table incorporates certain findings, which I will explain below, in relation to the value of the club, and in relation to costs of sale and agents' fees. Before determining the outstanding issues in the central column, it produces a range between £115.15m and £87.25m.

As the husband accepts, all of that money has been generated during the parties' marriage and would thus, absent the existence of the contract be accounted 'matrimonial'. The wife's prima facie entitlement on a sharing basis in circumstances where the contract is held to have no weight at all would thus appear to be in the bracket between £43.5m and £57.5m, subject to decisions about tax and discounting.

48. The valuation of the club has taken much time and energy during the course of the hearing, in some part because of criticisms of the husband's disclosure in relation to his part sale of the club at around the time of the service of his Form E in December 2022, and in part because of the uncertainty now, in the summer of 2024, as to the future of the club given its performance. It is clear to me that the impact of the club's circumstances upon their future prospects and real net value is to a significant extent unknowable.

49. Each side propose that I adopt as a value one or other of the bases for valuation put forward in the last few months by the husband. I am entirely satisfied that neither represents the true fair position, which is in any event completely impossible to determine conclusively with any hope of reliable accuracy, other than as a fairly arbitrary snapshot.

50. I take the view that the safest outcome for the sake of achieving any degree of sufficient certainty on the asset schedule is to take a mid-point value for the club between the figures calculated by Mr Bezant derived from the two different bases, and have therefore deducted £8m from the figure relied on by the wife, which broadly achieves that end.

51. A simpler equation presented itself in relation to costs of sale and agents fees, where I prefer the husband's figure of 10% overall, on the basis that the transfer costs figure of 6.9% adopted by the SJE valuer does appear to exclude agents' fees. I am satisfied that with the range of valuation provided in the above table, I can fairly assess whether any other outcome not calculated directly proportionately may be considered fair.

52. **The Trust**. I must next address with the argument raised by Mrs Carew Pole KC that by placing the majority of his assets during the marriage into a discretionary trust, the Trust, an irrevocable Guernsey law trust with trustees based in Geneva, the husband has changed the nature of those assets and rendered them no longer sole property, but rather property to which

the sharing principle should apply, even if I find that the contract should otherwise be determinative of capital entitlement.

53. In her report of 9 May 2023 the SJE on French law, Laurence Mayer is very clear that:

'…the liquidation of interests placed in this trust does not seem to pose any particular difficulty, given that the spouses are married under the regime of separation of property and that only the husband's personal property has been placed in said trust. The wife is only entitled to Trust profits but not to the actual entrusted rights.'

'A French court has already had the opportunity to indicate, in a tax dispute, that the beneficiary of income cannot be considered as the owner of movable assets as long as he is not the holder of a real right presenting a patrimonial value.'

'In our case, the trust deed grants the beneficiary, Mrs I, no ownership.'

'According to our reading, the trust deed also does not grant Mrs. I any right of claim (which could potentially have a patrimonial value) as there is a power to remove the right to profits from the spouse.'

'In the distribution of assets under the separation of property contract, Mrs. I would therefore not have any right, strictly speaking, over the assets of the trust.'

54. Thus, in French law it is clear that the establishing of the trust would not have affected the way in which a court might have approached the *separation de bien* arrangement. Whilst that may not be determinative for the purposes of the English law that I must apply, I am clear that I should not treat the assets in trust any differently from the other assets still held by the husband in his sole name in these proceedings.

55. I accept that the husband did not intend by setting up the trust to affect the way in which the assets would be treated on divorce, nor was it a process in which the wife was engaged at all. His assets have not been mingled with hers in the trust. He has correctly acknowledged that the assets in the trust must be treated as a resource of his for the purpose of these proceedings, and the settlement itself would be classed as a nuptial one in English law. However, as the assets would still fall within the protection offered in French law by the contract, I am satisfied that I should not treat them in any different class from the rest of his solely held assets, notwithstanding the wife's status as a discretionary beneficiary of the trust.

56. I am not persuaded either that the absence of reference to the contract in the trust documents indicates in some way that the husband did not consider, at the point of the trust's settlement in 2017, that the contract had any relevance to the financial consequences of divorce. As Ms

Mayer has made clear, the fact of the trust would not have affected the way in which the assets which were settled into it would be treated in the event of a divorce in France, and there was thus from the husband's perspective no need for any express reference to the contract within the trust deed.

57. If anything, that the husband does indicate in his 2022 letter of wishes in relation to the trust that there should be an annual distribution to the wife from the profits of the trust in the event of his death or incapacity at a time when they are no longer married, suggests that he was not then anticipating that the wife would be entitled to receive an equal share of the assets held within the trust following any divorce. In those circumstances, such a bequest would have been completely beyond comprehension.

58. Equally, I am not persuaded by Mr Marks KC for the husband that in some way the proportionality of any award which I determine for the wife should be judged only against those assets held by the husband outside of the assets in the trust. These assets are to be treated as matrimonial, and have been accepted by the husband in these proceedings as his resources, and so should be properly included in any cross-check.

59. **The Law**: In those circumstances, I come to consider the law that I must apply in deciding the weight that I should give to the *Contrat de Mariage* which the parties signed. I must consider inevitably the landmark decision in the Supreme Court which now governs courts' approaches to agreements such as this - *Granatino v Radmacher (formerly Granatino)* [2010] UKSC 42, but will start with the useful and accurate precis provided of that decision by Lewison LJ in *Versteegh v Versteegh* [2018] EWCA Civ 1050 at [178]:

'[178] The key points in *Granatino v Radmacher (Formerly Granatino)…* seem to me to be these:

(i) Whether a PMA is contractually binding or not is irrelevant. The court should apply the same principles whether or not a binding contract has been made (para [63]).

(ii) There is no need for black and white rules about the process leading up to the making of a PMA. What matters is whether each party has all the information material to his or her decision, and that each should intend that the agreement should govern the financial consequences of the marriage coming to an end (para [69]).

(iii) Factors which would vitiate a contract will negate any effect that the PMA might otherwise have had (para [71]). But factors falling short of those which would vitiate a contract may reduce, rather than eliminate, the weight to be given to the PMA (para [72]).

(iv) If the terms of the PMA are unfair from the start, this will reduce (not eliminate) the weight to be given to it (para [73]).

(v) If the parties to the PMA are nationals of a state in which PMAs are common and binding, that will increase the weight to be given to the PMA (para [74]).
(vi) In principle, if parties have made a PMA there is no reason why they should not be entitled to enforce it (para [52]).
(vii) Thus, the court should give effect to a PMA that is 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 (para [75]).
(viii) Typically, it would not be fair to hold the parties to their agreement if it would prejudice the reasonable requirements of any children of the family (para [77]); or if holding them to the agreement would leave one spouse in a 'predicament of real need' (para [81]).
(ix) But, in relation to the sharing principle, the court is likely to make an order reflecting the terms of the PMA (paras [82], [177]–[178])…

60. Looking then at the separate factors, as relevant here, I will first consider the questions of the necessary levels of advice if any agreement is to be given full weight, and how the court may be satisfied that the parties intended their agreement to be effective. In *Radmacher* (above), in the majority judgment ascribed to Lord Phillips, he said this under the heading '*Factors detracting from the weight to be accorded to the agreement*':

'69. …Sound legal advice is obviously desirable, for this will ensure that a party understands the implications of the agreement, and full disclosure of any assets owned by the other party may be necessary to ensure this. 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.
70. It is, of course, important that each party should intend that the agreement should be effective... As we have shown the courts have recently been according weight, sometimes even decisive weight, to ante-nuptial agreements and this judgment will confirm that they are right to do so…
74. The issue raised under this heading is whether the foreign elements of a case can enhance the weight to be given to an ante-nuptial agreement. In this case the husband was French and the wife German and the agreement had a German law clause… When dealing with agreements concluded in the past, …foreign elements such as those in this case may bear on the important question of whether or not the parties intended their agreement to be effective.

61. In this case, disclosure at the time of the Contract was not important to the couple, as neither party had already built up any significant asset base. But I must consider the extent to which the evidence allows me to determine the extent to which the wife in this case can be said to have been fully aware of the implications of the contract. In *Versteegh* (above), King LJ said this about the approach to be taken:

> '[59] The desirability of legal advice forms part of the miscellany of factors which a judge considers before concluding that a party did (or did not) have a full appreciation of the implications of the PMA. Doubtless in some cases its presence or absence will be critical. In the present case, the judge was fully aware that the wife had not received legal advice but, having seen her give evidence, made the clear finding that the wife knew 'full well' the effect of the agreement. The judge said that he was able to 'reach a firm and clear conclusion' and to 'find as a fact that throughout the marriage the wife has known and understood the impact of the PMA' (J1, at para [183]). On the judge's findings there can be no doubt but that the wife clearly felt herself to be bound by the PMA in England and acted to ameliorate its effect.
>
> [60] The parties are Swedish and the wife lived her entire life in Sweden prior to the marriage. PMAs are both commonplace and binding in Sweden. The brief document signed by the wife was in absolutely standard form, written in Swedish and which the wife agreed she understood. The agreement was to be subject to Swedish law. Under this standard agreement the parties elected a regime of separate assets with no delineation as between inherited and other kinds of wealth, all of this in contemplation of their married life being in England not Sweden.
>
> [61] The judge had the benefit of the opinions of three Swedish commentators on family law who confirmed that such formal requirements for a PMA as existed in Sweden at the time were complied with. Further, neither the absence of, nor lack of opportunity to take, independent legal advice (nor the proximity of the signing to the ceremony) would of themselves offend a Swedish court (para [184])…

62. She then continued at [65]:

> [65] In my judgment, when an English court is presented with a PMA such as the present one, signed in a country where they are commonplace, simply drafted and generally signed without legal advice or indeed disclosure, it cannot be right to add a gloss to *Radmacher* to the effect that such a spouse will be regarded as having lacked the necessary appreciation of the consequence absent legal advice to the effect that some of the countries, in which they may choose to live during their married life, may operate a discretionary system…

63. Lewison LJ said this in the same case at [182]:

> [182] …In the case of a globe-trotting couple, it would require the giving of advice about multiple possible matrimonial regimes all over the world. That seems to me to be both impractical and prohibitively expensive. Moreover, if the move from one country to another is not anticipated at the inception of the marriage, why should a couple seek such advice on the off-chance that one day they might move? It is also, in my judgment, inconsistent with the Supreme Court's discussion of 'the foreign element' in *Granatino v Radmacher (Formerly Granatino)* …

64. In this case, there can be no dispute but that the wife understood the force and effect of the contract in French law by the latest in 2003, when her own parents' marriage got into difficulties. Given the evidence that I have considered above, I am clear that on the balance of probabilities the wife did understand at the point of signing in 2001 that the contract which she signed was intended to govern the financial affairs of this couple on divorce, and that she and

the husband were intending by that election for the regime of *separation de biens* to apply to their finances throughout the marriage.

65. The reality may well have been that the wife did not think that the prospect of divorce was other than remote, and that she was far more concerned about protecting assets from creditors in the event that the husband had another business failure. However, I am satisfied by her responses as I have found them to be to her own parents' troubles, that she well knew that in the event of divorce the property arrangements created by the contract were to have effect not just during the marriage but also thereafter.

66. I acknowledge that although we are dealing with a French contract, the agreement was signed in Hong Kong, and for over 20 years the couple have lived in London. However, it is significant that after the signing the couple did return to France for their marriage, and I am satisfied that the fact of the signing in Hong Kong was simply an expedient because they were both living and working there in the lead up to their French wedding. I am also clear that they chose to apply French law to their marriage at the time, having then in 2001 both lived the vast majority of their lives in France and being both entirely French in origin. That they have since then chosen to live and spend their lives elsewhere does not undermine the significance of that choice, in circumstances where neither of them has sought to alter or cancel the agreement in the intervening years. I am satisfied from the contents of the May 2003 *Donation Entre Epoux* that the wife, who is an intelligent and perceptive person, was aware that the contract was not immutable. She has never asked that it be rescinded.

67. As to other factors that may affect the weight to be given to an agreement, Lord Phillips in *Radmacher* said this from [71]:

> '71. In relation to the circumstances attending the making of the nuptial agreement, this comment of Ormrod LJ in *Edgar v Edgar* [1980] 1 WLR 1410, 1417, although made about a separation agreement, is pertinent:
> 'It is not necessary in this connection to think in formal legal terms, such as misrepresentation or estoppel; all the circumstances as they affect each of two human beings must be considered in the complex relationship of marriage.'..
> 72. The court may take into account a party's emotional state, and what pressures he or she was under to agree. But that again cannot be considered in isolation from what would have happened had he or she not been under those pressures. The circumstances of the parties at the time of the agreement will be relevant. Those will include such matters as their age and maturity, whether either or both had been married or been in long-term relationships before…'

68. From the circumstances as I have been able to discern them above, this was not a case where any undue pressure was applied to the wife, nor was her emotional state a matter of any relevance. Indeed, she appears to have been remarkably unmoved by the whole experience. Whilst she now ascribes this to her lack of understanding of the consequences of the document which she signed, as I have explained I find that she did understand what she was agreeing to, and at the time saw no reason not to go ahead. Whilst this was a first marriage for both parties, and all that they now have has been generated since, they were both then highly intelligent and educated people who were making plans for what they hoped and intended would be a successful professional life together.

69. Lord Phillips continued:

> 73. If the terms of the agreement are unfair from the start, this will reduce its weight, although this question will be subsumed in practice in the question of whether the agreement operates unfairly having regard to the circumstances prevailing at the time of the breakdown of the marriage…
> 75. …The problem arises where the agreement makes provisions that conflict with what the court would otherwise consider to be the requirements of fairness. The fact of the agreement is capable of altering what is fair. It is an important factor to be weighed in the balance. We would advance the following proposition, to be applied in the case of both ante- and post-nuptial agreements…:
> '*The court should give effect to a nuptial agreement that is 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*.'

70. Here, there is agreement that absent the contract all of the assets which the parties now have would be categorised as matrimonial, and so subject to the sharing principle. But that does not mean that their agreement can be classed as one that was unfair from the start. After all, there was plenty of consideration for this wife in her being offered protection from possible entrepreneurial failures that might have bedevilled the husband's future. And I am entirely satisfied that in 2001 this couple saw themselves completely as a French couple, regardless of where they were choosing then to work.

71. What neither of them could with any accuracy have foreseen is the very significant fortune which the husband has now amassed through his business activities. There can be no doubt that the wife has been fully contributing to a long marriage, so the question that I must ask myself, in fairness, is whether, in the events that have since happened, the contract which this couple signed in Hong Kong in May 2001 should now have the effect of significantly reducing the value of her claim. Of course, the fact of the contract of itself has a significant bearing on fairness, as does the fact that, throughout the length of this marriage, there is evidence that the

wife has understood the consequences of the regime that this couple adopted, and whilst she has sought to ameliorate its impact in the past, she has never apparently sought to alter it. I have to consider whether in those circumstances it is now fair to the husband to tear the agreement up, as the wife suggests.

72. There are other factors which are discussed by the Supreme Court in Radmacher that are also pertinent here. Lord Phillips continued:

> '76. That leaves outstanding the difficult question of the circumstances in which it will not be fair to hold the parties to their agreement. This will necessarily depend upon the facts of the particular case, and it would not be desirable to lay down rules that would fetter the flexibility that the court requires to reach a fair result…'

73. That flexibility was emphasised recently by Peel J in *AH v BH* [2024] EWFC 125, when he said at [50]:

> 'It seems to me that the Supreme Court in *Radmacher* and the Court of Appeal in *Brack* have emphasised the latitude and flexibility available to the judge to meet the demands of fairness in cases where a PMA has been entered into by the parties. That latitude and flexibility applies to the assessment of needs as much as it applies to the other s25 factors. Each case is a highly fact specific evaluation and discretionary exercise.'

74. It was put slightly differently by King LJ in *Versteegh* (above), where she quotes other passages from the Supreme Court judgments in *Radmacher*, at [68]:

> [68] At the end of the day, England and Wales is indeed a discretionary jurisdiction, and that in itself provides the wife with her protective safety net. As Lord Phillips of Worth Matravers said:
> '[7] There can be no question of this court altering the principle that it is the court … that will determine the appropriate ancillary relief when a marriage comes to an end, for that principle is embodied in the legislation.'
> And Baroness Hale of Richmond:
> '[163] … the court always has to exercise its own discretion, if there is to be a starting point for the exercise of that discretion it has to be the statutory duty under s 25 of the 1973 Act. This applies to all applications for orders for financial provision, property adjustment and pension provision ancillary to divorce, judicial separation and nullity decrees.'

75. I also have to have in mind the important consideration of autonomy, dealt with by Lord Phillips thus, at [78] in *Radmacher*:

> '78. The reason why the court should give weight to a nuptial agreement is that there should be respect for individual autonomy. The court should accord respect to 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'.

76. Here of course, the 'contingencies of an uncertain future' is exactly what this couple were addressing when they signed their contract, before any children were born, and at a time when the wife was in more reliable employment, and the husband's first business venture was in the process of failure. Lord Phillips considered the problem further at [80]:

> '80. Where the ante-nuptial agreement attempts to address the contingencies, unknown and often unforeseen, of the couple's future relationship there is more scope for what happens to them over the years to make it unfair to hold them to their agreement. The circumstances of the parties often change over time in ways or to an extent which either cannot be or simply was not envisaged. The longer the marriage has lasted, the more likely it is that this will be the case. Once again we quote from the judgment of Rix LJ, at para 73:
> '…the marriage of young persons, perhaps not yet adults, for whom the future is an entirely open book. If in such a case a pre-nuptial agreement should provide for no recovery by each spouse from the other in the event of divorce, and the marriage should see the formation of a fortune which each spouse had played an equal role in their different ways in creating, but the fortune was in the hands for the most part of one spouse rather than the other, would it be right to give the same weight to their early agreement as in another perhaps very different example?'
> The answer to this question is, in the individual case, likely to be "no".'

77. Crucially, the contract in this case does not purport to deal with any more than the couple's interest in their respective property. It does not deal with maintenance or needs more generally, which in France would be dealt with under the principle of p*restation compensatoire*. It is not an agreement that will therefore provide for no recovery from either spouse against the other. It leaves the court to determine how fairly to make appropriate provision for the wife, in circumstances where she has agreed that she should not acquire a share *per se* in the value of the assets which the husband has built up in the marriage.

78. As Lord Phillips in *Radmacher* made clear, this is an important element in the fairness of any agreement when considering how it operates at the point of breakdown of a marriage. He said, from [81]:

> '81. Of the three strands identified in *White v White* [2001] 1 AC 596 and *McFarlane v McFarlane* [2006] 2 AC 618, it is the first two, needs and compensation, which can most readily render it unfair to hold the parties to an ante-nuptial agreement. The parties are unlikely to have intended that their ante-nuptial agreement should result, in the event of the marriage breaking up, in one partner being left in a predicament of real need, while the other enjoys a sufficiency or more, and such a result is likely to render it unfair to hold the parties to their agreement. Equally if the devotion of one partner to looking after the family and the home has left the other free to

accumulate wealth, it is likely to be unfair to hold the parties to an agreement that entitles the latter to retain all that he or she has earned.

82. Where, however, these considerations do not apply and each party is in a position to meet his or her needs, fairness may well not require a departure from their agreement as to the regulation of their financial affairs in the circumstances that have come to pass. Thus it is in relation to the third strand, sharing, that the court will be most likely to make an order in the terms of the nuptial agreement in place of the order that it would otherwise have made.'

79. That this was an acceptable approach was also confirmed in her dissenting judgment in *Radmacher* by Baroness Hale, where she said at [177]:

'[177] … Some of the precedents I have seen are of comparatively wealthy couples making a prediction of comparatively generous sums which ought to provide for the "reasonable requirements" of the recipient spouse in a way which might well have attracted the "millionaire's defence" in the days before *White v White*. In effect, therefore, they are contracting out of sharing but not out of compensation and support.

[178] Provided that the provision made is adequate, why should they not be able to do so? On the one hand, the sharing principle reflects the egalitarian and non-discriminatory view of marriage, expressly adopted in Scottish law (in s 9(1)(a) of the Family Law (Scotland) Act 1985) and adopted in English law at least since *White v White*. On the other hand, respecting their individual autonomy reflects a different kind of equality. In the present state of the law, there can be no hard and fast rules, save to say that it may be fairer to accept the modification of the sharing principle than of the needs and compensation principles.'

80. That of course does not mean that the court will not consider in all the circumstances whether a sharing outcome might nevertheless be appropriate even where it finds that there has been a valid agreement. That was made clear by the judgment of King LJ in *Brack v Brack* [2018] EWCA Civ 2862, where she said at [103]:

'[103] In my judgment, in the ordinary course of events, where there is a valid prenuptial agreement, the terms of which amount to the wife having contracted out of a division of the assets based on sharing, a court is likely to regard fairness as demanding that she receives a settlement that is limited to that which provides for her needs. But whilst such an outcome may be considered to be more likely than not, that does not prescribe the outcome in every case. Even where there is an effective prenuptial agreement, the court remains under an obligation to take into account all the factors found in s 25(2) MCA 1973, together with a proper consideration of all the circumstances, the first consideration being the welfare of any children. Such an approach may, albeit unusually, lead the court in its search for a fair outcome, to make an order which, contrary to the terms of an agreement, provides a settlement for the wife in excess of her needs. It should also be recognised that even in a case where the court considers a needs-based approach to be fair, the court will as in *KA v MA*, retain a degree of latitude when it comes to deciding on the level of generosity or frugality which should appropriately be brought to the assessment of those needs.'

81. **An outcome without sharing**. So I must weigh the fairness to the husband of the court upholding the contract which I find that this couple have understood and accepted throughout their long marriage, against the contributions of the wife over that same period, and whether these can properly be met by an award which does not include any element of sharing – one which, in the language of the MCA 1973, is limited to her 'needs'.

82. Needs here of course is a misnomer, in that what the concept properly reflects where the parties are debating the division of an asset base valued at up to £100 million is not need at all, but rather the provision of an appropriate lifestyle and capital base to provide for the recipient appropriately for the rest of their life in all of the prevailing circumstances.

83. Moor J described the exercise to be undertaken fairly in *CMX v EJX* [2022] EWFC 136 when he said at [48]:

> [48] Finally, I would have to consider her needs. It is clear to me that this is a case where I do not need to consider issues such as whether she will be reduced to 'a predicament of real need' as referred to in *Radmacher*. There is nothing in this Marriage Contract that prevents an award based on needs. As Eleanor King LJ said in *Brack*, in deciding on her needs, I would have to consider all the s 25 factors. This was a long marriage where the wife made a full and complete contribution in every respect. There are very significant resources available. The standard of living enjoyed during the marriage was high. The husband's income was very high and large capital resources were generated. I am quite clear that any award based on need should be generous and complete.

84. I consider that I must in fairness determine what an award for the wife on this basis would amount to, before I can finally consider whether in all of the circumstances such an award will be fair for her, or whether further consideration should then be given to an element of sharing. Without assessing proportionately the element of the parties' overall asset base that the wife will be receiving to provide her with the appropriate lifestyle, such an evaluation could not conclusively determine whether an outcome without any element of sharing can produce fairness for her.

85. In considering what an award on such a 'lifestyle' basis might consist of, I do bear in mind that it may in some cases be appropriate to temper the basis of assessment of any claimed items by reference to the existence of the nuptial agreement. In *KA v MA* [2018] EWHC 499 (Fam), Roberts J expressed herself thus:

> '111. I am satisfied that a fair outcome in the assessment of both housing and income needs in this case must reflect the fact that this wife agreed to restrict the ambit of her financial claims should the marriage end in divorce'.

86. In this case however, I am not persuaded that any such curb would be appropriate. The funds available to the parties in *KA v MA* were somewhat less than those here[1], and an element of the husband's wealth was pre-acquired. The agreement had purported to provide for fixed lump sum for the wife on divorce, which would have severely limited the level at which her needs could have been met going forward. The judge was therefore dealing with a case where a constraint on needs had been agreed, but that constraint was found to be inappropriately limiting. There, the fact of agreed constraint was relevant to the outcome. In this case there was no such agreement, all of the assets have been generated during the marriage, and the value of the assets is perhaps 4 times greater. I therefore do not consider there is any good reason why the fact of the contract should impact on the assessment which I will now make.

87. The relevant factors to consider will be all of those in s.25 of the MCA 1973, and most particularly here in assessing the wife's financial needs and obligations:

a. First consideration will be given to the welfare of D;

b. The resources which have been available to the parties during the marriage, and will be available to the husband going forward;

c. The standard of living which has been available during the marriage; and

d. The contributions which each has made to the welfare of the family.

88. In those circumstances I am not persuaded that it would be appropriate to quantify any award on the basis that the wife should be required, either immediately, or eventually, to move to a smaller or cheaper property. Whilst I do not consider myself bound by its terms as a floor in any way, in this regard I do bear in mind the open offer which the husband made to resolve the wife's claims on 9 May 2024, which, as he was entitled to, he withdrew when it had not been accepted one week before trial, on 10 June 2024.

[1] A range of between £23m and £33m

89. By that proposal, he offered to transfer to her the family home in London, free of any borrowing - £7.65m less costs of sale; the property on the holiday home also free of any borrowing with 12 months - €8.95m less costs of sale; and a lump sum of a further £9m, also within 12 months of the order. In return he sought to retain the parties' small Paris flat; to receive the use of the holiday home property for 3 weeks over every summer; and for the wife to be removed as a beneficiary of the Trust. Aside from ongoing support for the children still in education, he also offered £20,000pa in child periodical payments for D.

90. The total value of this award at asset schedule values, including the wife retaining the net value of her own accounts, would have brought her to just over £22.5m as set out below:

London Home	£7,420,500
Less second mortgage(W to repay)	-£1,500,000
Holiday home	£7,264,957
Lump sum	£9,000,000
W's own funds	£396,869
	£22,582,326

91. In making their offer, the husband's solicitors were very clear that they did not intend to set a floor on the award for trial, as they are entitled to. They made the fair point that it was the husband's case that the wife should not receive both of the parties' principal homes, and also that her budget was significantly overstated. The husband's position at trial was that the wife's needs should appropriately be met at the level of £14.66m – a housing fund of some £7.5m to be split between a home in London and another home in the same place as their holiday home, and a *Duxbury* fund of £7.16m. This was calculated to provide for her £287,692pa – or her Form E budget after an exchange rate correction. The current product of a capitalise calculation for this amount, fully amortising but assuming a state pension for the wife, would be a lifetime net income without step-down of £298,743pa. On the same basis, the £9m offered by the husband's final withdrawn open offer would produce for her £370,743pa.

92. W's last produced budget, with her s.25 statement in March 2024, came to £364,417, but after the same currency adjustment could currently be corrected to £350,932pa. If the costs of maintaining the parties' third property in Paris – a relatively small flat that is used usually by the husband, and the transfer of which to herself the wife is no longer seeking - then a corrected

figure of £25,677pa for those costs can also be removed. The net resultant figure is £325,255pa. A whole life Duxbury figure for income to that level for the wife is currently £7,838,325.

93. In circumstances where this couple have been married since 2001 and both have made a very full contribution, there is no reason why the assessment of an appropriate budget to underpin the wife's award should be anything other than 'generous and complete', to use Moor J's phrase. These parties have had 3 children and have amassed a significant fortune. The wife should not be subject to any too rigorous 'needs' assessment in these circumstances. I acknowledge that the husband has recognised this in the quantum of the offer that he has made. If I find that the contract should be effective to prevent the wife from seeking to make good a claim on the sharing basis, then I see no reason why in budgetary terms I should seek to make any further cuts or downward adjustments to that figure which the wife provided as her final budget in March, and an appropriate income fund would then be not less than £7,850,000 (rounding up).

94. I should add that I have not included into that figure the net funds currently held by the wife in her own name, as that is a fully amortising figure. Whilst the wife may choose not always to spend at her budgeted level and make further capital savings, she will not be required to do so, and should therefore not be obliged also to foreseeably spend what she has left aside.

95. As to capital, Mr Marks KC cross-examined the wife on the basis that there are in London, and in the same place as their holiday home, cheaper properties where she could live perfectly comfortably. I'm sure that that is the case, but in the context of this marriage, and the value of the matrimonial assets available, if not for sharing then to meet the claim for appropriate housing that the wife should have, I can see no reason in fairness why she should be put in a position where before too long she would be forced to downsize from one or both of the properties of which she has had the use during the marriage. There is no issue but that she should retain the London home, and I am satisfied that the husband's open offer to redeem the mortgage on that property for her was appropriately made. There is no question here of proportionality or affordability.

96. As to the holiday home, the question is not so much as to whether the wife should have a property in the same place of that value, and unencumbered – I am satisfied that she should, for the same reasons as given above in relation to the London home. Rather, the question is as to

which party should retain that particular property. I am sensitive to Mr Marks' arguments about the obvious fairness of the 'crown jewels' of a marriage usually being divided between the parties at its end. That argument has particular force where the assets of the marriage are being shared. Here, however, fairness has a broader horizon in circumstances where he also argues that the contract should disentitle the wife to her otherwise substantial sharing claim. In those circumstances, depriving her of the property as her holiday home, proximate as it is to the property that her parents have occupied for many years, would I consider detract from the overall fairness of any outcome calculated on this basis. To have her ex-husband owning the property next door might foreseeably also impact on her ability to spend time with her parents and siblings in the next-door property.

97. I have also carefully considered the husband's proposal that, whichever of the parties is to retain the holiday home, the other should be afforded a 3-week period there with the children during the summer months. He points out that such an arrangement has to date worked for the wife's parents, since their divorce which began 20 years ago. It was, however, clear from the evidence that they gave that whilst they have made the arrangement work, it has not been by any means ideal, much less so now that the property has become the wife's father's main home. I consider that this is the sort of arrangement which the parties can certainly put in place if, when these proceedings are concluded and behind them, they can agree to do so. This, however, would not be an arrangement that I think it appropriate to impose on them at the conclusion of these hard-fought and contentious proceedings. It is also of course the case that the husband can, in the absence of a sharing outcome, certainly afford if he wishes to buy an equivalent property nearby.

98. Insofar as she still maintains it, I do not accept that the wife can advance a sensible claim to the provision of a third property, without the reallocation of the resources otherwise provided to her.

99. So, in the event that I do find that there would be no element of sharing in the wife's claim by reason of the contract, the outcome for the wife would then appropriately be expressed as:

London home	£7,420,500
Holiday home	£7,264,957
lump sum	£7,850,000
W's own funds	£396,869

£22,932,326

100. Given that the husband's own open proposal sets out a basis on which he offered to discharge the mortgages on both properties and pay a similar lump sum within 12 months, I see no reason why he should not be held to those proposed terms. I would also accept as reasonable his proposal for child maintenance.

101. **Fairness.** Having formed that clear view, I turn to consider whether such an outcome would be fair in all the circumstances of the case, or whether, notwithstanding my findings above in relation to the contract, there should nevertheless be an additional element of sharing to this award. I anticipate that, if ever there were to be a case for such an outcome, it would be in a case with a background such as this where significant assets have been built up during a long marriage, but that by reason of an agreement at the outset the right to a sharing outcome at the dissolution of the marriage has apparently been waived. However, after careful thought, I am satisfied that this is not a case where an element of sharing is required to achieve a fair outcome.

102. To now import a sharing element into the award would not in my view be a fair outcome for the husband who has throughout the marriage understood that the *separation de biens* agreement was both understood and operative. I accept that this couple have kept their finances separate during the marriage, other than in the placing of family homes into joint names, which the wife has understandably been anxious to secure, as explained above.

103. Furthermore, an outcome for the wife which leaves her with liquid assets worth very nearly £23m is on any view a substantial award. As a proportion of the whole pot, which I accept by nature is entirely matrimonial, it is somewhere between 20% and 26% of the assets. Whilst this is certainly less than a sharing outcome would have produced, it nevertheless is an amount that does properly reward the wife's contribution. At that level, I am satisfied that no compensation arguments arise, for she could not have hoped for a more secure financial future by her own efforts if she had not made the significant career sacrifices which I acknowledge that she has, both in following the husband to Hong Kong at the outset of their relationship, and then in giving up her job in London when its continuation would have required a relocation to Germany.

104. I am satisfied that this award is fair to both parties, in all of the circumstances of the case, applying as I do the principles in the MCA 1973, and considering in particular the matters identified in s.25. I remind myself of the words of Baron J at first instance in *Radmacher*, later endorsed both by Wilson LJ as he then was in the Cout of Appeal, and by Lord Phillips in the Supreme Court at [83], where she said:

> '119. Upon divorce, when a party is seeking quantification of a claim for financial relief, it is the court that determines the result after applying the Act. The court grants the award and formulates the order with the parties' agreement being but one factor in the process and perhaps, in the right case, it being the most compelling factor . . .'

105. Further, having come to that determination, I will not go on and make any further findings about those areas mainly related to tax and discounting where the parties remain at odds. In the absence of a directly proportionate award, there is no need for such exactitude, and I am satisfied that the bracket within which the amount which I have determined the amount due to the wife (£22.9m) falls (20-26% of the available assets) remains appropriate and fair.

106. I will only add that it may be wise in cases such as this to consider the following course, where the parties have signed a contract such as the one here, or executed an English nuptial agreement, and there are very substantial available assets which are subject to significant valuation issues. Then, at an early stage of any proceedings, a court may consider whether a preliminary hearing as to the validity of the agreement might be appropriate. This would not usually be a *Crossley*[2] type hearing where there would be a strong possibility that at the end of the hearing a claim could be dismissed or significantly curtailed. Rather it might enable the court, on the basis of appropriate findings, to move forward proportionately to carry out the exercise mandated by the MCA 1973. In this case, such a hearing might have saved significant time and money for the parties.

107. Where there is found to be an unimpeached agreement, whether or not purportedly comprehensive, there may well still need to be consideration given to budgets, and to property valuation, to determine whether any receipt under the agreement would be sufficient to meet needs, or to understand the broad range of possible values for the available resources to enable necessary cross-checking to be undertaken. This is especially if those resources would otherwise have been classed as matrimonial. I do not suggest that this would be suitable in the

[2] *Crossley v Crossley* [2007] EWCA Civ 1491

majority of agreement cases. However, taking such a course may in an appropriate case prevent the need for involved accountancy and tax arguments such as have arisen here, in an attempt to achieve extensive and precise cash equivalent valuations of every asset, in circumstances where that level of precision ultimately has not proved to be a requirement of achieving a fair outcome in this case.

108. That is my judgment.