Neutral Citation Number: [2024] EWFC 411

IN THE CENTRAL FAMILY COURT

B E T W E E N :

GO — Applicant

- and -

YA — Respondent

IMPORTANT NOTICE

This judgment was delivered in private. The judge has given leave for this version of the judgment (but no other) to be published.

All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Mr Phillip Blatchly and Ms Sophia Paraskeva (Counsel instructed by Jones Nickolds) appeared on behalf of the Applicant wife.

Mr Richard Sear KC and Ms Henrietta Boyle (Counsel instructed by Gentle Mathias LLP) appeared on behalf of the Respondent husband.

Written Judgment of His Honour Judge Edward Hess
sitting as a Deputy High Court Judge dated 13th December 2024

INTRODUCTION

1. This case concerns the financial remedies proceedings arising out of the divorce between Ms GO (to whom I shall refer as "the wife") and Mr YA (to whom I shall refer as "the husband").

2. The case proceeded to a final hearing over four days on 9th, 10th, 11th and 12th December 2024.

3. Both parties appeared before me by Counsel:-

    (i) Mr Phillip Blatchly and Ms Sophia Paraskeva (Counsel instructed by Jones Nickolds) appeared on behalf of the wife; and

    (ii) Mr Richard Sear KC and Ms Henrietta Boyle (Counsel instructed by Gentle Mathias LLP) appeared on behalf of the husband.

4. I am grateful to both Counsel for the impressive way they have respectively conducted their cases. Both parties have undoubtedly been represented before me at a first-class level; but it has, of course, come at a cost. The wife has incurred a total of £359,627 in legal costs and the husband a total of £272,501.

5. The court was presented with an electronic bundle running to 640 pages and a number of other documents have been exchanged during the final hearing. I have considered all the documents presented to me, in particular:-

    (i) A collection of applications and court orders.

    (ii) Material from the wife including her Form E dated 4th November 2021, her answers to questionnaire dated 27th January 2022 and her narrative section 25 statement dated 28th October 2024.

    (iii) Material from the husband including his Form E dated 3rd November 2021, his answers to questionnaire dated 1st February 2022, his replies to a schedule of deficiencies dated 3rd May 2022 and his narrative section 25 statement dated 14th October 2024.

    (iv) A statement from an employee of the husband's business, Mr HH, dated 18th November 2024.

    (v) Material from various SJEs on valuation and taxation and accountancy issues – I shall examine some of these in detail below.

    (vi) Properly completed ES1 and ES2 documents, also some very detailed and substantial Excel spreadsheet schedules.

    (vii) Selected correspondence and disclosure material.

6. I have also heard oral evidence from the wife and the husband, subjected to appropriate cross-examination.

7. I have also had the benefit of full submissions from Counsel in their respective opening notes and their closing oral and written submissions.

THE MARRIAGE

8. The history of the marriage is as follows:-

    (i) Both parties are of state retirement age.

    (ii) They married in the 1970s.

    (iii) The marriage produced two (now adult) children.

    (iv) The marriage broke down in unhappy circumstances in 2019 and the parties separated. The husband on a significant number of occasions during the hearing expressed his wish to be reconciled with the wife and made many positive comments about her. The wife made it very clear that she had no wish to be reconciled, and this is absolutely a matter for her choice. It is no part of my task (in conducting a financial remedies hearing) to attribute blame to either party for what has happened.

    (v) Divorce proceedings were commenced by the wife on 8th July 2021. Decree Nisi was ordered on 23rd September 2021. Decree Absolute awaits the outcome of the financial order proceedings and is not, in itself, controversial.

    (vi) Both parties remain single and live on their own, both in Central London. The wife was a tremendous support to the husband over many decades but was largely a homemaker in the marriage and does not work now and is, of course, beyond state pension age. The husband has a number of potentially serious health issues, including a cancer diagnosis, but did not wish to discuss them or attach significance to them in his evidence before me, and he continues to work and cannot see himself ever retiring, despite his age.

    (vii) It is a dominating feature of this case that the husband has been, and to some extent continues to be, a world leading figure and expert in a particular area of art. He has sold works by many of the well-known figures in this area. The husband's business has been at the centre of his work for 50 years and its value has assumed a central importance to the financial remedies case (the husband owns a 95% stake in it and the wife owns the remaining 5%) and has rather bedevilled the proceedings throughout.

9. On any view this is a very long marriage and, certainly as a starting point, this suggests that fairness requires an equal division of the family's assets. This principle

has not been in dispute in the hearing before me, and neither party has sought to argue before me that any of the family's assets fall into a non-matrimonial category, but identifying what represents a fair half share of the assets, and executing it with any appropriate discounts, has been a major issue which has prevented an implementation of the principle.

10. One unusual and rather striking feature of this case is that the husband told me (I am satisfied genuinely, sincerely and truthfully) that, if he is permitted to retain his ownership of his business, he will without hesitation leave the entirety of this interest to the wife on his death. He has no plans to dispose of it in his lifetime and no plans to leave it, or any part of it, to anybody else on his death. I pondered aloud with Counsel whether this fact might provide a way forward to resolve the case (if, for example, the husband was prepared to make an irrevocable undertaking to this effect and pay the wife some money now and during his lifetime or that this might form the basis of a *Wells*-sharing agreement) but neither party and neither legal team showed any interest in pursuing this and it is not something I could impose.

THE FINANCIAL REMEDIES PROCEEDINGS

11. The financial remedies proceedings chronology is as follows:-

    (i) The wife issued Form A on 7th September 2021.

    (ii) Forms E were exchanged in November 2021.

    (iii) The husband's Form E asserted that his personal art collection was worth £153,000 and that his 95% stake in his business was worth (on a net assets basis, taking into account some substantial borrowing, and before tax on disposal) the sum of £6,019,457 (but, he suggested, this figure was of doubtful realisability). This figure was really based on the company accounts, in particular the net asset figure within the balance sheet within the company accounts and it has, before me, been the husband's case that the net asset figure in the balance sheet in the accounts represents the best assessment of true value of the business. The husband was a little vague before me about how precisely the stock figures in the balance sheet were produced, but in broad terms it involved some sort of discussion between him and the other employees which was then adopted by the company accountant. There were moments in his oral evidence when the husband suggested he had little involvement in this process and other moments when he claimed his views were dominant. The disclosure in the bundle produced a picture from the company accounts, some of it post-dating Form E, which would suggest a rise in value since Form E calculated on that basis. No explanation was forthcoming as to why the 2023 figures were not available. I further note that the husband was adamant that the post-July 2024 picture had shown a downturn.

(iv) The wife has always strongly challenged these figures as representing a proper valuation, believing that the real values of the stock items were much higher than the value attributed to them in the accounts. Accordingly, she made an early Part 25 application for a valuation of the underlying stock within the business.

(v) A First Appointment was heard by DDJ Mehta on 9th December 2021. She made a conventional directions order and the matter was timetabled (in a perfectly normal way) to a private FDR (pFDR) in May 2022 and a post pFDR directions hearing on 7th June 2022.

(vi) Amongst the directions made at the First Appointment required the husband (by 17th December 2021, i.e. within 8 days) to produce a 'detailed inventory' of all the art held by him personally or in the business on the basis that, acceding to the Part 25 application, this would all be valued by a well-known firm of Art Valuation Experts acting as SJEs by 24th February 2022. Once the artwork values had been established, and absent agreement on the tax consequences of disposal of the assets, an SJE Tax Expert would report on the tax consequences by 25th April 2022.

(vii) The timetable turned out to be hugely over-optimistic and it took the husband until March 2022 to take the first step, the production of his detailed inventory. Because there were far more items on the inventory – c. 3,000 items consisting of individual artworks, collections of prints and collections of books - than had perhaps been anticipated, the valuation costs which the SJE sought to charge had risen to £150,000 plus VAT and the parties baulked at the costs of this exercise. By the time of the scheduled directions hearing on 7th June 2022 (which should have been the post pFDR directions hearing) the SJE had not even been instructed and, for obvious reasons, no pFDR had taken place.

(viii) The pragmatic solution directed by DJ Cronshaw on 7th June 2022 was that the wife could, by 8th July 2022, select up to 375 pieces of artwork from the husband's inventory and that the SJE would value the selected items at a cost capped at £70,000 plus VAT and report back by 7th November 2022. The directions order (perhaps wisely) did not purport to rule on how the valuation of approximately 10% of its total number of items would be extrapolated to an overall valuation of the business – this was left over as an issue to be considered later. The pFDR was now scheduled for February 2023 with a post pFDR directions hearing listed on 3rd March 2023.

(ix) The wife duly selected 337 items and the SJE duly produced a valuation report for these items dated 25th November 2022.

(x) The November 2022 SJE's report placed a value of £1,180,850 on the husband's personal art collection (i.e. substantially higher than his own

figure of £153,000) and (understandably in legal forensic terms) Mr Blatchly has sought to use this fact to suggest that the husband is guilty of deliberately undervaluing his assets, an allegation to which he has taken great exception. On the other hand, a good portion of the difference was that the SJE valued one painting at £550,000 whereas the husband had valued it at only £50,000 (in his oral evidence before me he suggested £20,000). To back up his bona fides his open case before me was to offer this specific painting to the wife (on the basis that if she really thought it was worth £550,000 she could then sell it at that price). Rather than take this (on her case) high value item and then sell it to her advantage, however, the wife refused the offer on the basis that she disliked the painting. I surmise that the wife did not really have much confidence that she would be able to sell this painting at the SJE's price, otherwise she might have been rather keener to have it and sell it. This seems to me to be a good illustration of the rather soft, and sometimes unreal, attempt at a valuation exercise in this case.

(xi) In similar vein the November 2022 SJE's report placed values on the selected items at overall approximately 50% higher than the figures which the husband had placed on those items. The husband's figures had suggested c.£9,000,000 for those items. The SJE suggested c. £14,000,000. I am deliberately rounding these figures for two reasons. First, (for me) the mathematically sophisticated extrapolation formulae urged on me by the wife's legal team, though impressive as an exercise in diligent mathematical formulation, substantially overestimate the mathematical precision of the valuation exercise here. Secondly, there are a large number of errors in the figurework (in some cases very large) which seem to have caused numerous arguments between the legal teams which were ongoing up to and throughout the hearing before me, causing the regular supply of updated and changing schedules.

(xii) By the time of the next scheduled post pFDR hearing in March 2023 (and the husband also seems to have been unwell in this period) the parties were really little further forward and an order was made by consent on 6th March 2023 to put back the pFDR now to July 2023 and the post pFDR hearing to August 2023. When July 2023 arrived the parties were still at odds on the valuation exercise but now agreed that the SJE should be asked to address a number of additional issues. The court approved a list of further questions by its order of 25th July 2023, to be answered by 18th August 2023. The SJE was now asked to opine on what discount should be given to the valuation figures on the basis that there was an 'immediate sale' of the items, alternatively that the sale was 'staggered over 7.5 years'. They were also asked to report on the likely sale costs attributable to the sale of the items. The pFDR was now put back to 11th January 2024 and the post pFDR hearing to a date thereafter.

(xiii) The SJE produced their further report on 25th October 2023. In this report

they suggested that the discount figure on an 'immediate sale' basis was 80% and a discount on a 'staggered over 7.5 years' basis was 30 to 35%. By a letter of 8th January 2024, they amended these figures to 70 to 75% and 20 to 25% respectively. They also gave some figures on the likely costs of sale.

(xiv) A pFDR took place before Simon Webster KC on 11th January 2024. Unfortunately, it did not produce a compromise, although everybody agrees that it was a fully engaged session. Plainly, I have not been told, and cannot be told, what indications were given by the tribunal nor what the parties' reactions were to it. After the failure of the pFDR exercise, a final hearing seemed inevitable.

(xv) The case eventually came to be in my list on 17th April 2024 for the post pFDR directions hearing. In the meantime, Peel J had approved the case as a High Court Judge level case and allocated it to me as a Deputy High Court Judge. I listed the case for a PTR on 14th November 2024 and a 4-day final hearing commencing on 9th December 2024 and both these hearings have now taken place.

(xvi) On 17th April 2024 I was <u>not</u> asked by either of the parties to direct an updated valuation report from the SJE. Nor was there any *Daniels v Walker* application from the husband, which was an option for him if he wished to oppose the SJE's reports. The husband's general position (then and later) is rather encapsulated in his Solicitor's letter dated 26th March 2024 in which he says, with a degree of internal inconsistency:-

"Fundamental to YA's approach to these proceedings is his unshakeable conviction that he is the person best qualified both (i) to opine as to the value of the lifetime's accumulated stock of art carried by the business and also (ii) to realise that value effectively. He considers that the challenges currently posed to the UK art market are profound and potentially catastrophic. GO's proposal simply glides over this… Notwithstanding his age and health, YA wishes to stay in business; without selling his professional soul. GO's proposal glides over this, too. He realises, however, that he – the one true expert – cannot give expert evidence in his own case. Many tens of thousands of pounds have been spent on obtaining opinion evidence from the SJE: that evidence is certainly stale already, and it is also – YA maintains – fundamentally unreliable. The apparent 'precision' set out in GO's proposal is, YA maintains, entirely illusory. He has no wish for he and GO to spend tens of thousands of pounds more in obtaining further chimeric evidence. And yet, GO's proposal seeks to 'cash out' her undoubted sharing claim: the risk this would put on YA would be, to him, unconscionable."

(xvii) I did direct the husband to produce by 1st July 2024 an updated inventory of the stock held by the business. This was to serve as the '*final inventory*

for the final hearing' and was to include (for each item) the SJE's value (where there was one) or otherwise the husband's assessment of the fair market value. The husband did produce (on 3rd July 2024) a further schedule, but it did not (clearly anyway) comply with the direction and, overall, it has unfortunately caused more confusion than clarity.

(xviii) Another feature of the husband's evidence before me has been that it has become a significant part of the his case that the art market has entered into a state of deep depression. In his words (in his section 25 statement):-

"The art market is currently in the middle of a recession. The market is extremely volatile and swings from boom to bust depending on the state of the world and its economy. In addition to being at the mercy of global macroeconomics, the art market is also heavily influenced by fashion trends, and the art that collectors or investors want to buy often depends completely on what they have read or seen is in fashion at that particular point in time. The current recession has been widely reported on in the media and no doubt the court will be aware of it. All of the major auction houses have experienced huge slumps in sales this year, which is deeply worrying and a sign of much broader troubles in the art world. On 18 August 2024, The New York Times published an article entitled 'A sharp downturn in the Art Market' recording that Christie's had only taken in $2.1 billion from auctions in the first six months of 2024, down from $4.1 billion during the same period in 2022. Then on 30 August 2024, the Financial Times published an article entitled 'Sotheby's earnings plunge as art market catches a chill' recording that Sotheby's had reported an 88% plunge in its core earnings and a 25% decline in auction sales. If the two major auction houses are experiencing problems on this scale, then (a) there is little hope for my business to win sales on a private basis, and (b) it means that it is going to be difficult for the main auction houses to sell my business' stock on a public basis".

Mr Blatchly's response to this was to produce a variety of articles and documented events which suggested the opposite, but his headline point is that none of this was put to the SJE and that I should take little or no notice of it in my assessment of the value of the business.

(xix) It had been a feature of the First Appointment order (and indeed all the orders up to and including that of 25th July 2023) that, absent agreement between the parties, once the artwork valuation evidence was obtained then there would be some SJE accountancy evidence obtained to place the figures in the context of a business valuation, taking into account existing indebtedness and potential tax liabilities on disposal. In this context, the expectation of SJE evidence was largely ignored by the parties and each produced evidence from an expert employed by them on a partisan basis. These reports, as well as discussing taxation matters, trespassed into other areas such as the discounts for immediate versus staggered sales over

different periods and the mathematical consequences of the decision to value only 10% of the items held by the business. Given where the case stood when it came before me on 17th April 2024, I permitted the use of these reports and directed a meeting of the experts and the production of a joint report. This joint report was produced on 28th November 2024. In so far as I hoped that a joint report might bring some clarity to the case, I was to be disappointed. The rival experts have agreed on very little and, for the most part, simply re-stated their own position, producing a vast range of possible valuations for the business from c.£6,000,000 to c.£21,000,000 (in each case pre-taxation on disposal), but the differences (to a significant extent) turn on whether you start with the SJE's valuation with an uplift or the balance sheet valuation.

(xx) Narrative statements were exchanged in October 2024.

(xxi) A final hearing has taken place before me, commencing on 9th December 2024. I heard evidence and submissions on the first three days and have had the fourth day to produce this written judgment, which I have completed today.

12. The only live witnesses from whom I have heard are the wife and the husband.

13. I have not heard from Mr HH. He was offered up for cross-examination and Mr Blatchly chose not to challenge him. In reality, his witness statement adds little or nothing to the case.

14. None of the expert witnesses, in particular the authors of the SJE's report, have been called for cross-examination before me and this does present an issue for the court to decide. I have been extensively addressed by Counsel on this subject and, in particular, I have been referred to the Supreme Court judgment in *TUI v Griffiths* [2023] UKSC 48. In that judgment the Supreme Court made it clear that the so-called *Rule in Browne v Dunn* is applicable in civil cases (and this must also include family cases) to the effect that as a general rule a party is required to challenge by cross-examination the evidence of any witness of the opposing party on a material point which he wishes to submit to the court should not be accepted. This rule applies whether or not the challenge is one of inaccuracy, inadequacy or dishonesty. Mr Sear has suggested that since the SJE opinion is a mere *ipse dixit*, then there is no such requirement – but I have not found myself persuaded that the very extensive report by the SJE could properly be described as a mere *ipse dixit*. In assessing the case I take the view that the *Rule in Browne v Dunn* does apply in the case. I shall have to consider below how this affects the outcome of the case.

BASIC LAW

15. In dealing with the claim I must, of course, consider the factors set out in **Section 25 and Section 25A Matrimonial Causes Act 1973** together with any relevant case law.

16. Section 25 Matrimonial Causes Act 1973 reads as follows:-

(1) It shall be the duty of the court in deciding whether to exercise its powers under section 23, 24, 24A or 24B above and, if so, in what manner, to have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who has not attained the age of eighteen.

(2) As regards the exercise of the powers of the court under section 23(1)(*a*), (*b*) or (*c*), 24, 24A or 24B above in relation to a party to the marriage, the court shall in particular have regard to the following matters:-

(a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;
(b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
(c) the standard of living enjoyed by the family before the breakdown of the marriage;
(d) the age of each party to the marriage and the duration of the marriage;
(e) any physical or mental disability of either of the parties to the marriage;
(f) the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family;
(g) the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it;
(h) in the case of proceedings for divorce or nullity of marriage, the value to each of the parties to the marriage of any benefit which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

17. Section 25A Matrimonial Causes Act 1973 reads as follows:-

(1) Where on or after the grant of a decree of divorce or nullity of marriage the court decides to exercise its powers under section 23(1)

(*a*), (*b*) or (*c*), 24 or 24A or 24B above in favour of a party to the marriage, it shall be the duty of the court to consider whether it would be appropriate so to exercise those powers that the financial obligations of each party towards the other will be terminated as soon after the grant of the decree as the court considers just and reasonable.

(2) Where the court decides in such a case to make a periodical payments or secured periodical payments order in favour of a party to the marriage, the court shall in particular consider whether it would be appropriate to require those payments to be made or secured only for such term as would in the opinion of the court be sufficient to enable the party in whose favour the order is made to adjust without undue hardship to the termination of his or her financial dependence on the other party.

SECTION 25 ANALYSIS

18. There are no **minor children** in this case whose needs fall to be considered.

19. In relation to the "**property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future**" I propose to make the following findings and comments.

20. I shall deal with the valuation of the business separately below.

21. With this marked exception, the computation exercise here is relatively uncontroversial and I have only a few comments.

22. The only real property in the case is a flat in Central London, which is owned by the wife. It is accepted that she should retain this property. The husband, after a long and fairly successful business career, owns no real property. He is living in rented accommodation.

23. The husband owns 100% of the shares in a publishing company. It has an interesting history in that it was set up by the husband in conjunction with two public figures with a view to producing books about art which might not otherwise get published and were unlikely to be commercially successful but were (in the husband's eyes anyway) meritorious and deserving of publication. The husband later acquired all the shares, but (in so far as it exists at all in any meaningful sense) it retains the same purpose as before, though not very actively. It is therefore not very surprising to see from its accounts (as explained by the husband) that it has not really had a commercially successful history and is today essentially a dormant company with a

stock of books which are unlikely to sell (or not very much anyway) and is unlikely ever to be in a position to pay the husband the money it owes him (nearly £500,000). I accept the husband's evidence on this and I do not think it is appropriate to enter any value in my schedule for this asset. Indeed, the wife has not strongly argued anything different here and has not based any part of her claim on the strength of the money theoretically owed by the company to the husband.

24. The Form ES2 includes the SJE's valuation figure (after allowing for the sale of one of the paintings) for the husband's personal art collection at £1,180,850 (I have already made some comments above on the consequences of the husband's decision not to seek to cross-examine the SJE and also on the wife's decision to decline the offer of the painting the husband offered her) and I shall in this respect follow the ES2 with the caveats already expressed. Mr Sear suggests that, in assessing a value for the purposes of my schedule, I should make some deductions to reflect what the husband would have to pay if he sold these items. Mr Sear puts these at auction sale costs at 5%, insurance costs on sale at 1%, and CGT on sale of £238,059 to reach a net figure of £871,940. I have been persuaded by Mr Sear that these deductions are appropriate. Even if it is the husband's wish not to sell these items, he may be put in a position where he has to sell them and he currently owns no property and may in due course wish to acquire one. The wife has sought two items from this collection but the husband has said he does not wish to part with them and I shall not order him to do so.

25. Having made these determinations, the situation (apart from the business) can be summarised as follows:-

REALISABLE ASSETS/DEBTS

Wife

Flat[1]	970,091
Kia motor car	16,063
Bank accounts in sole name	34,365
Credit card debt	-15
Outstanding Legal Costs [2]	-91,825

[1] This figure is based on an agreed value of £1,255,833 less notional sale costs at 3% less the outstanding mortgage of £248,067 = £970,091

[2] This figure is based on a total of incurred fees of £359,627 less a total of fees paid of £267,802 = £91,825

TOTAL	**928679**

Husband

Bank accounts in sole name	453,288
100% shareholding in publishing company	0
Personal Artwork collection [3]	871,940
Outstanding Legal Costs [4]	-86,120
TOTAL	**1239108**

26. I therefore turn to the issue in the case which took up most of the time in the hearing – my assessment and valuation of the business**.**

27. The company owns a good amount of stock, such that the net asset figure has recently risen above £7,000,000 on the husband's case, but the income that can be generated from that stock varies from year to year. Whilst the company value is in one sense its stock, there are limitations on how much stock can be sold in any one year without so flooding the market that value is immediately lost and heavily so. I note that profits appear not to include the deduction of any director's remuneration for the husband – he funds his life by drawing on the director's loan account – apparently he has invested sufficient of his own money in the past that he has been able to do this without taking any income and has therefore not had to pay any income tax for some years (though presumably this is finite). Apparently, this is why there has been no disclosure in this case of the husband's tax returns, because there are none, he says lawfully, and there is nothing in the evidence to contradict this.

28. I have already indicated that I have been persuaded by Mr Blatchly that the *Rule in Browne v Dunn* obliges me, the husband having decided not to challenge the SJE's reports, to accept the SJE's artwork valuation figures and their observations on the discounts applicable for the immediate sale and 7.5 year staggered sale options. It is not good enough for the husband to say that he knows better than them, absent (at least) some convincing challenge by cross-examination of their evidence. Further, if he wanted to say that their 2022 figures are now out of date it was incumbent upon him to cross-examine the SJE to that effect and/or seek a report from them updating their figures. I understand why he was disinclined to do this (the cost of bringing

[3] This figure is based on a value of £1,180,850 less notional auction sale costs at 5% less insurance costs on sale at 1% less CGT of £238,059 = £871,940. This figure assumes the correctness of the SJE's valuation.

[4] This figure is based on a total of incurred fees of £272,501less a total of fees paid of £186,381 = £86,120

them to court for this purpose is an obvious inhibitor) but there are consequences of that decision.

29. I have been less persuaded by Mr Blatchly (and in this respect there is no expert evidence on it to bind me under *the Rule in Browne v Dunn*, merely argument from Counsel) that it follows from the fact that the SJE's valuations on the valued items were overall c.50% above the husband's valuations that I should apply the same uplift to the other c.90% of items. Mr Burns has observed in his report that just 10% of the selected valued items represent 57.5% of the uplift and all the items in question were selected by the wife, presumably being those items she thought were most out of kilter such that their selection would most help her case. In this context I note that Mr Blatchly's closing paper suggested that the valuation of the business (assuming all the SJE's valuations in full on the c.10% valued items, a 22.5% discount for a 7.5 year staggered sale, without any uplift on the c.90% unvalued items – he called it H's highest case, meaning the husband's best possible case) was £11,305,641. The valuation of the business (assuming all the SJE's valuations in full on the c.10% valued items, a 22.5% discount for a 7.5 year staggered sale, with a 49.55% (his detailed figure) uplift on the c.90% unvalued items – he called it W's offer re-worked, meaning the wife's best case) was £18,305,799. I do not consider that it is possible to justify in a safe way the mathematical extrapolation figure advanced by Mr Blatchly but equally I should not ignore the differentials between SJE's figures and the husband's figures and, doing the best I can on the limited information and assistance available, I would suggest a figure towards the lower end of this range, I shall say £13,000,000, for the value of the business (on a 7-year staggered sale assumption).

30. In giving this figure I have my reservations. I have already observed the softness of the SJE's valuations in the context of the painting offered by the husband to the wife and, if the husband is correct about the state of the art market, this softness may apply more widely. Further, whilst the 7.5 year staggered sale figure is the product of the SJE's report, it is a fairly arbitrary figure and much can happen in 7.5 years, not least to a business owned by a man of the husband's age. I have firmly in mind the words of Lewison LJ in *Versteegh v Versteegh* [2018] EWCA Civ 1050: "*The valuation of private companies is a matter of no little difficulty. In H v H [2008] EWHC 935 (Fam), [2008] 2 FLR 2092 Moylan J said at [5] that "valuations of shares in private companies are among the most fragile valuations which can be obtained." The reasons for this are many. In the first place there is likely to be no obvious market for a private company. Second, even where valuers use the same method of valuation they are likely to produce widely differing results. Third, the profitability of private companies may be volatile, such that a snap shot valuation at a particular date may give an unfair picture. Fourth, the difference in quality between a value attributed to a private company on the basis of opinion evidence and a sum in hard cash is obvious. Fifth, the acid test of any valuation is exposure to the real market, which is simply not possible in the case of a private company where no one suggests that it should be sold. Moylan J is not a lone voice in this respect*".

31. I have also been less persuaded by Mr Blatchly that, assuming I wish to provide half of this value to the wife, I should treat the taxation of the wife's share differently than that of the husband so as, in effect, to give her more than half of the gross value to end up (notionally) at the same net level. Although the taxation may well be different as between a liquidation of the business incurring Capital Gains Tax (which might be payable at up to 24%) and a payment out by income, whether PAYE or dividends, (which might be payable at 39% or higher) I am not inclined to build into the figures a differential of the sort argued for as between the parties as it is uncertain how either party will in the event receive their share. Although the husband says he would like to keep the business as a going concern (in which case the wife might have to be bought out by the payments of income) it may simply not be affordable for him to do so. For the current purposes I propose to use the indicatively neutral figure of 30% so to calculate that the wife's notional half share in the net value of the business is (very broadly) £13,000,000 x 70% x ½ = £4,550,000.

32. If this seems on the rough and ready side, I remind myself of the words of Moylan J (as he then was) in *H v H* [2008] EWHC 935:-

"I understand, of course, that the application of the sharing principle can be said to raise powerful forces in support of detailed accounting. Why, a party might ask, should my 'share' be fixed by reference other than to the real values of the assets? However, this is to misinterpret the exercise in which the court is engaged. The court is engaged in a broad analysis in the application of its jurisdiction under the Matrimonial Causes Act 1973, not a detailed accounting exercise…The purpose of valuations, when required, is to assist the court in testing the fairness of the proposed outcome. It is not to ensure mathematical/accounting accuracy, which is invariably no more than a chimera. Further, to seek to construct the whole edifice of an award on a business valuation which is no more than a broad, or even very broad, guide is to risk creating an edifice which is unsound and hence likely to be unfair. In my experience, valuations of shares in private companies are among the most fragile valuations which can be obtained."

33. In relation to "**the income, earning capacity…which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire**" and "**whether it would be appropriate to require periodical payments to be made or secured only for such term as would in the opinion of the court be sufficient to enable the party in whose favour the order is made to adjust without undue hardship to the termination of his or her financial dependence on the other party**" I have the following comments.

34. Both parties are of state pension age. Both (when the Decree Absolute is made) should be entitled to a full state pension, though neither has any private pension provision. Otherwise, it would in my view be wrong to assess either of them as

having an earning capacity which should be taken into account here. I shall set out below my conclusions on the division of capital. I am satisfied that, once the capital is divided, each party will be reasonably expected to supplement their state pension by utilising whatever share of the capital they end up with. Thus, once the capital has been divided, there should be a dismissal of all periodical payments claims in both directions; but these will remain in place until the capital is divided both to provide income in the meantime and a method of enforcement.

35. In relation to the parties' **needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future**" I take the view that these will be met by the division of capital decided below. In this case the wife's sharing claims will exceed her needs claims. In reaching this conclusion I have in my mind the **standard of living** that the parties jointly enjoyed during the marriage, the **ages of the parties**, the **duration of the marriage,** the respective **contributions** of the parties (which I treat as being full contributions by both parties) and their respective current **health and disabilities**. It has not been suggested that **conduct** plays a role in this case.

OUTCOME

36. The parties' **open positions** before me have both moved around not a little, even in the last few days; but their final positions are as follows.

37. I have already indicated that I have decided to leave the personal items of artwork where they currently stand and in each case it is common ground that the wife will retain the flat.

38. The **wife** invites me, in addition, to make an order as follows:-

    (i) There should be a series of non-variable lump sums consisting of £248,919 on 31st January 2025 and five payments of £1,220,000 on 1st December 2025, 2026, 2027, 2028 and 2029. This would make a total of £6,348,919, said to be half the value of the business on Mr Blatchly's calculations.

    (ii) In the event that the husband defaults on any of these payments, the balance of all the payments shall fall immediately due with interest accruing at the court judgment rate of 8%.

    (iii) Until payment there shall be a charge over the husband's shareholding in the business and the husband should take out a life insurance policy covering the entire outstanding amount. Once the lump sums are paid the wife will transfer her 5% shareholding in the business to the husband.

(iv) There will be a periodical payments order giving the wife a monthly sum representing 4% per annum of the outstanding balance of the lump sums. Mathematically this would commence at 4% x £6,348,919 x 1/12 = £21,163 per month. A clean break with a section 28(1A) bar will follow when all the lump sums have been paid.

39. The **husband** invites me, in addition, to make an order as follows:-

(i) There should be a series of non-variable lump sums consisting of five payments of £500,000 on 30th April 2025, 2026, 2027, 2028 and 2029. This would make a total of £2,500,000.

(ii) In the event that the husband defaults on any of these payments, the balance of all the payments shall not fall immediately due, but interest will be payable at the court judgment rate of 8% on the sums which are due.

(iii) There should not be any security for the payments. Once the lump sums are paid the wife will transfer her 5% shareholding in the business to the husband.

(iv) There will be a periodical payments order giving the wife a monthly sum representing 4% per annum of the outstanding balance of the lump sums. Mathematically this would commence at 4% x £2,500,000 x 1/12 = £8,333 per month. A clean break with a section 28(1A) bar will follow when all the lump sums have been paid.

(v) In addition, the husband seeks a fair division of the contents of the flat, which was the family home until the separation. He has not, as far as I am aware, drawn up a schedule of items he would like to have and this aspect of the case was not raised at any time during the hearing.

40. I have the following comments to make on the parties' open positions, both of which I find troubling.

41. I regard the wife's figures as being too high (this being a corollary of my conclusions as to value). Even if I were to reduce her figures commensurately with my conclusions as to value on the wife's proposed structure then I am concerned that this could work in an unfair way for the husband. If he has a bad year, or even a moderately bad year, and is unable to pay the first major tranche of payment then the whole amount would become payable and, in reality, he would be facing a forced sale of the company with the wife (enforcing her lump sum) able to receive (on a probably relatively low forced sale figure) all or most of the sale proceeds and the husband possibly little or nothing with little discount for early payment and little incentive to seek a high sale price once her claim is covered. Further, I cannot think it likely that the husband would have any likelihood of obtaining life insurance and no evidence

was produced to back up this position.

42. I regard the husband's figures as being too low (again, this being a corollary of my conclusions as to value). If I were to increase the figures commensurately on the husband's proposed structure, I might well be increasing the annual payments to an impossible annual amount and/or extending the period of payment beyond what was reasonable or fair from the wife's perspective. If the non-payment of one tranche does not trigger the remaining payments, then I can foresee an almost impossibly complicated enforcement situation developing whereby there was a forced sale of the shares but still a long tail-end of obligations.

43. In the course of the hearing, I pondered aloud with Counsel about the possibility of my ordering a sale of the company with an equal split of the net sale proceeds. Although a sale of all of the company stock would trigger the 70 to 75% 'flooding the market' discount discussed by the SJE, a sale of the company as a going concern might well not have that danger. A purchaser could look to a longer term sale of the stock and the outcome might more closely mirror the staggered sale option. Is this a case which falls into the category identified by Coleridge J in *N v N* [2001] 2 FLR 69 where "*the goose may have to go to market for sale*" in order to achieve fair outcome? Although the husband was keen to tell me that he could not contemplate not carrying on the business, it may be that his age and health are against him in this respect and it may make more sense to pursue his interest in art in a different way – perhaps by writing books as he mentioned several times in his evidence – to allow others to have the benefit of his years of experience rather than trying to run a business in potentially difficult times at an age and state of health which would make it challenging to anybody. It seems to me that if he wishes to continue running the business then this cannot fairly be at the cost of placing the wife in a potentially very difficult position. I further remind myself of the words of Peel J in *HO v TL* [2023] EWFC 215, where he suggested the court had a choice either "(i) *to 'fix' a value; (ii) order the asset to be sold; and (iii) divide the asset in specie…commonly referred to as Wells sharing*". If fixing a fair value with a realistic structure is difficult or impossible and Wells sharing is not thought to be desirable then selling the asset must be a real possibility, even if neither party has asked for it. Whilst neither party has contemplated a sale, this seems to be for very different reasons. The wife would prefer a fixed sum without any risk. The husband just cannot see himself not working, notwithstanding his age and health and perhaps diminishing acuity – having seen him giving evidence it struck me that his view on this, whilst understandable in a human sense, involved elements of a lack of sensible judgment. I should perhaps note and understand his wish not to cease running the business, but treat it with some caution.

44. In this context, and giving careful thought to all the above, I have reached the conclusion that the fair and best way forward here is for me to give the husband the opportunity to raise a lump sum (perhaps by borrowing from wealthy contacts or by selling some shares or taking in a younger business partner or whatever) by a fixed

time, but ordering a sale of the company shares and an equal division of the net proceeds in the event that he has not achieved this by the fixed date.

45. In fixing the lump sum I remind myself of some further words of Peel J in *HO v TL* [2023] EWFC 215 when he suggested the court could *"step back when conducting the s 25 exercise and, in the exercise of its discretion, to allocate the resources in such a way as to reflect illiquidity and risk. Conventionally, that would be to allocate to the party retaining the business a greater share of the overall assets to provide a fair balance. As Bodey J said in Chai v Peng and Others [2017] EWHC 792 (Fam) at para 140: 'It is a familiar approach to depart from equality of outcome where one party (usually the wife) is to receive cash, while the other party (usually the husband) is to retain the illiquid business assets with all the risks (and possible advantages) involved'. It will be for the court to determine whether, and to what extent, to reflect this aspect in what might be a termed a 'court discount'. Of particular relevance, it seems to me, is whether the illiquid (or less liquid) business represents the principal asset in the case, in which event the distinction between liquid/illiquid assets may be sharper and require particular attention, or whether it is a relatively modest part of the overall assets. The court might, in the right case, take both the valuation, which includes an accountancy discount, and apply a further court discount*".

46. Taking into account all the above facts and matters, I have decided that the following **outcome** (in addition to the matters I have already indicated above) is fair and appropriate and it is what I shall order:-

    (i) The husband should make two lump sums which should be expressed to be a non-variable series of lump sums (if such a thing exists – *pace* Mostyn J in *BT v CU* [2021] EWFC 87). The first (to help the wife meet her outstanding and pressing legal costs bill) will be for £100,000 and will be paid within 14 days. This should be affordable from the husband's bank account. The second will be for £3,000,000 and will be payable on or before 1st December 2025. This is somewhat less than half of my assessed value of the company, but the figure is discounted both because there is an earlier payment involved and on the basis of Peel J's comments on risk and liquidity above.

    (ii) In the event that the husband defaults on the first payment then that will be enforceable against him personally and interest will accrue at 8%, but it will not trigger any further liability. In the event that the husband defaults on the second lump sum payment then this will trigger an order for sale of all the shares in the business to the highest bidder at the best price reasonably achievable with the net proceeds of sale divided equally between the parties.

    (iii) There will not be any security for the payments, save that my order will direct that none of the shares shall be sold in the meantime (unless this is

part of a plan to raise the £3,000,000) and will record that the order is made on the basis that the court will expect the husband to continue running the business (until sale or transfer) broadly in the same way as he has done in recent years. I have not observed anything in the husband's behaviour to suggest that he cannot be trusted to comply with this or that stricter controls are necessary. If the second lump sum is paid the wife will transfer her 5% shareholding in the business to the husband.

(iv) There will be a periodical payments order giving the wife a monthly sum of £8,000 per month payable from 1st January 2025 until either the lump sums have been paid in full or the company shares have been sold. A clean break with a section 28(1A) bar will follow.

(v) Absent any consent by the wife to particular items, the contents of the flat shall remain with the wife. I am assuming in saying this that the husband has already removed any of the personal artwork valued by the SJE and referred to above.

47. This is my decision and I invite Counsel to produce a draft order which matches these conclusions for my approval. Could I ask for a draft order, or an explanation as where you have got to, within 7 days, i.e. by 12 noon on 20th December 2024.

48. I regard the handing down of this judgment as being my sending it by email to the parties on 13th December 2024 so this is when the appeal period begins.

49. As I indicated in discussions at the end of the hearing, it would be desirable for these proceedings to conclude without the need to convene another hearing and I hope this will be possible, although it can be done if necessary. In this context I indicated that I would give a provisional indication about costs around which I hope the parties may be able to unite. My view is that the appropriate order is for there to be no order as to costs. Neither open offer has been achieved and I do not think it could properly be said that there are any conduct issues to take this case away from the starting point of no order as to costs under FPR Part 28.

HHJ Edward Hess
(Sitting as a Deputy High Court Judge)
Central Family Court
13th December 2024