Neutral Citation Number: [2018] EWHC 3558 (Fam)

Case Nos: FD12D03916 and ZC18D00301

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/12/2018

Before:

MR JUSTICE MOSTYN

- -

Between:

LI QUAN	**Applicant**
- and –	
(1) WILLIAM STUART BRAY **(2) MAITLAND (MAURITIUS) LTD** **(3) THE CHINESE TIGERS SOUTH AFRICAN TRUST** **(4) SAVE CHINA'S TIGERS UK** **(5) RALPH EDMOND BRAY** **(6) CONSERVATION FINANCE LTD** **(7) THE ATTORNEY GENERAL** **(8) ZHAO ZHIQIN** **(9) QUAN QI**	**Respondents**

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Richard Todd QC and Lily Mottahedan (instructed by **Vardags**) for the **applicant**
The first respondent appeared in person
The second to ninth respondents did not appear and were not represented (although the eighth respondent gave evidence by telephone). The second to sixth respondents were disjoined as parties by an order made 10 December 2018

Hearing dates: 10-14 December 2018

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE MOSTYN

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published.

Mr Justice Mostyn:

1. In this judgment I shall refer to the applicant as the wife and to the first respondent as the husband.

2. This is my judgment on the final hearing of the wife's claim for the full range of financial remedies. In the light of recent events she seeks an order for periodical payments, but that her capital claims should be adjourned, to abide what she says is a foreseeable eventuation of capital in the hands of the husband.

3. This litigation began in 2012 and has been extremely hard-fought ever since. The overall costs are in the region of £7 million. The case has attracted considerable publicity, and has been the subject of two reported judgments, namely that of Sir Paul Coleridge sitting in the High Court on 27 October 2014 (*Quan v Bray & Ors* [2014] EWHC 3340 (Fam)) and that of Lady Justice King in the Court of Appeal on 16 June 2017 (*Quan v Bray & Ors* [2017] EWCA Civ 405). The background is fully set out in those two judgments and need not be repeated here.

4. However, caution needs to be applied when considering the annex to the judgment of Sir Paul ("the annex"). Its contents are not judicial findings. In her judgment at [95] Lady Justice King stated:

> "His judgment must in my view stand or fall on the findings in the judgment proper. That which is set out in the annex cannot properly be regarded as 'findings' informing this or any other court, being merely 'context' against which to consider the judgment itself."

5. At [172] of her judgment Lady Justice King concluded:

> "In my judgment the wife's appeal against the Judge's finding that the sole and continuing purpose of the trust was, and is, for the benefit of the Chinese Tiger Project must fail. It follows from that conclusion that:
>
> i) In the light of the Judge's findings which have not, as a consequence of this appeal, been successfully challenged or undermined, CTSAT has never constituted and does not constitute a disposition which makes any form of continuing provision for either of the parties and the Judge was therefore right in concluding that CTSAT is not a post nuptial settlement;
>
> ii) Given the Judge's findings the Judge made no error of law when concluding that CTSAT's assets are not a *Thomas v Thomas* resource of the husband's; they are, as the Judge found, available for the Chinese Tiger Project and only for the Chinese Tiger Project."

6. Those conclusions define the scope of the proceedings before me. The first conclusion means that no direct provision can be made for the wife from the assets of CTSAT. It

is important, however, to understand what the second conclusion in fact means. In *Whaley v Whaley* [2011] EWCA Civ 617 Lady Justice Black at [40] stated:

> "At times, it seemed that Mr Howard was submitting that what the law required was something close to a certainty that the trustees would come up with funds so that unless a judge finds that the trustees *will* provide, the trust is irrelevant. However, I think he did concede in argument that this was putting it too high. Such an approach would not be consistent with s 25(2)(a) Matrimonial Causes Act 1973 which refers to the property and other financial resources which each of the parties to the marriage "is likely to have in the foreseeable future" and it is not in line with the authorities which contemplate a finding (which will obviously be made on the balance of probability) that the trustees are *likely* to comply with what is requested of them. That can be seen, for example, in what Wilson LJ said in *Charman v Charman* [2005] EWCA Civ 1606 at §12 and §13 which culminated in the following:
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> 'In principle, however, in the light of s. 25(2)(a) of the 1973 Act, the question is surely whether the trustee would be likely to advance the capital immediately or in the foreseeable future.'"

This approach was followed in Hong Kong by Chief Justice Ma in *KEWS v. NCHC* [2013] 2 HKLRD 314 (2013) 16 HKCFAR 1. At [53] the Chief Justice said that "it would be better if the term 'judicious encouragement' were no longer to be used". I agree with that. The term is liable to give rise to irrelevance and confusion.

7. Given that the husband and the wife are not beneficiaries of CTSAT, and given the primary finding that the sole and continuing purpose of the trust was, and is, for the benefit of the Chinese Tiger Project, it was inevitable that there would be a consequential finding that it was impossible for either the husband or the wife to become beneficiaries and for benefit to be given to one or other of them gratuitously. That is the extent of the second conclusion. It does not mean, however, that it is not possible for CTSAT to reward the husband for services rendered on a full commercial arms-length basis, as has happened in the past, in effect, as I will demonstrate.

8. The husband does not dispute that it would be open for CTSAT to employ him for a commercial reward but argues that the scale of such reward would be modest in circumstances where the type of financial trading which he orchestrated in the past is now obsolete, and where his skill-set is now redundant. I do not accept this argument for the reasons which I will explain.

9. There are strong similarities between this case and *Joy v Joy-Morancho and Others (No 3)* [2015] EWHC 2507 (Fam), [2016] 1 FLR 815. I set out the report's headnote:

> The husband and wife met in 2001 and married in 2006. They were married for 5 years and had three children, aged between 4 and 9. Following the separation, the husband remained in the matrimonial home in France and the wife rented a property nearby while the children divided their time between both

parents. The family's wealth was derived from the husband's lucrative business activities after the parties met which continued throughout the marriage. One of the main issues left for determination in the long-running financial remedy proceedings related to a trust, NHT, settled by the husband in 2002 in the British Virgin Islands. The husband and children were discretionary beneficiaries under the trust. NHT owned a number of corporate entities which held assets including properties and a vintage or collectable car collection. When the family moved to France, the husband and children were excluded as beneficiaries under the trust for tax purposes for a fixed but revocable period but he continued to have the use of a CHF25m drawing facility secured by trust assets. The husband now claimed that he had in the course of these proceedings been permanently and irrevocably excluded as a potential beneficiary of the trust to protect trust assets and that his financial resources had been wiped out by the trust pursuing a claim for $7.06m against assets held in the husband's name. The wife submitted that NHT or its component companies were susceptible as ante-nuptial settlements to variation pursuant to s 42(1)(c) of the Matrimonial Causes Act 1973. The wife sought a lump sum of £27m on the basis that the matrimonial acquest was at least £54m. The husband submitted that he was only able to make nominal maintenance payments and nothing by way of a capital award. The parties had spent approximately £2m on legal costs so far in this jurisdiction alone.

Held – adjourning the wife's claims for a lump sum order and for a property adjustment order; ordering periodical payments of £120,000 pa; dismissing the claim to vary the NHT; dismissing the claim for a transfer of cars; making a costs order against the husband on an indemnity basis –

(1) The evidence fell short of establishing that the trust had been set up with the parties' marriage in contemplation. The nuptial element was lacking here. Nor may a non-nuptial settlement subsequently become a nuptial one: *Burnett v Burnett*; *K v K (Ancillary Relief: Deed of Appointment)* [2007] EWHC 3485 (Fam), [2009] 2 FLR 936; obiter dicta in *Quan v Bray* [2014] EWHC 3340 (Fam), [2015] 2 FLR 546 not followed (see paras [101]–[108]).

(2) There was a clear distinction between the question whether a trust could be characterised as sham (which was not asserted at the hearing), and the conclusion reached here that the case collusively advanced by the husband was a rotten edifice founded on concealment and misrepresentation and therefore a sham, a charade, bogus, spurious and contrived. It could further be described as fraud, a deliberate design to deceive, inflicted on the wife and on the court, and found by the court so to be. Careful

> scrutiny of the totality of the evidence led to a conclusion that the wife's suspicions and her case against the husband and the trust were made out. The position was an elaborate charade, the stage management of which had been conducted ruthlessly and without regard to cost (see paras [170], [172], [215]).
>
> (3) The wife's claims for capital provision and property adjustment orders would be adjourned. While generally capital claims should not be left indeterminately unresolved, there were hard cases such as this where fairness and justice must prevail over the normal desirability of finality in litigation. It was certainly foreseeable that an accommodation would be made to give the husband access to part of the millions held within NHT (see paras [174], [175], [187]).
>
> (4) The husband would far more likely than not via car-related employment with a NHT entity once again within the foreseeable future be in a position to support a very affluent lifestyle. The evaluation of the wife's entitlement to continuing provision by way of periodical payments had to be approximate and broadbrush given that her case was not presented on a needs basis and that where she will live was uncertain. The best that could be done was to fix on a figure which it would be very reasonable for her to have available to meet her living costs and those of the children while in her care. A reasonable figure was £120,000 pa on a joint-lives basis until she remarried or further order (see para [179]).

10. It is noteworthy that in that case Sir Peter Singer found that the trust (into which vast sums, being the fruits of endeavour during that marriage, were poured) was not nuptial and thus not within the dispositive powers of the court; neither was it formally a sham capable of being set aside. Further, he could not find that there was a likelihood of reinstatement of the husband as beneficiary and advancement of funds to him in the immediate future. However, he was satisfied that the trust could employ the husband at a rate of remuneration sufficient to afford periodical payments of £120,000 per annum. At [178] he held:

> "It is a matter ultimately of choice for H, but clearly he has the faculty to make substantial earnings. He spoke of earning £120,000 a year at the point, until the beginning of 2010, when he embarked upon his sabbatical. TB clearly values him highly as a potential employee of Anthology. The Car Portfolio appears to have fared prodigiously well under his tutelage. The commercial worth to that business of his knowledge, his contacts, his experience and his enthusiasm must in my judgment be at least £200,000 a year at this stage, plus the prospect of whatever bonus arrangement is arrived at. I take his earning capacity at that figure as its minimum. [In the light of the application made by Mr Pointer at the June hearing for permission to appeal against the order for periodical payments, referred to below, it occurs to me that this last sentence lacks

> precision. H's earning capacity in Anthology's employ, the faculty upon which I have based that order, includes what I anticipate will be substantial bonuses: as to which, historically, see [99] above.]"

11. Mr Joy-Morancho sought permission to appeal against the periodical payments order; this was refused by Lady Justice King: see *Joy-Morancho v Joy (Dismissal of Variation Application)* [2017] EWHC 2086 (Fam) at [17].

12. I revert to the facts of the case before me.

13. On the eve of the trial before me the wife reached an agreement with the fourth and sixth respondents namely Save China's Tigers UK ("SCT-UK") and Conservation Finance Ltd ("CFL"). SCT-UK is the beneficiary of CTSAT. CTSAT is the beneficial owner of CFL.The agreement concerned the former matrimonial home at 66D Royal Mint Street, London E1 8LG ("RMS"), said in the annex to be worth £2m. CFL is the titleholder, but the wife had claimed that the husband was the true beneficial owner. In the agreement she abandoned that claim and conceded that RMS was beneficially owned by CFL. She agreed to vacate RMS by 5 March 2019 or on the payment of a lump sum to her of £10,000 provided for in the agreement, if later. The agreement provides that there would be no order for costs and that no existing orders for costs would be enforced. Importantly, the agreement provides that it is in full and final settlement of any claims the wife may have against SCT-UK, CFL or CTSAT, in this jurisdiction or anywhere else in the world and further that she is making no other claims over any assets/entities legally or beneficially owned (directly or indirectly) by CTSAT; that she will make no such claims of whatever nature against such assets in the future; and that neither she, nor the husband, has any beneficial interest in any assets legally owned (directly or indirectly) by CTSAT.

14. It is in the light of this agreement that the wife does not pursue before me any claim for capital provision, but, rather, seeks that those claims should stand adjourned, just as the claims of Mrs Joy were adjourned. The fact of this agreement has meant that the scope of the dispute before me has very substantially narrowed so that this judgment can be much shorter than might otherwise have been the case.

15. For his part the husband has prefigured an inchoate claim against the eighth and ninth respondents, who are respectively the wife's sister-in-law and brother. His claim concerns two apartments in Beijing, which were purchased in the name of the wife's brother in 1999 with funds provided by the husband. The wife's evidence was that initially her brother held the properties as trustee or nominee for her but that in 2004 she gifted the beneficial interest to her brother following her marriage to the husband. Since then her brother has become mentally incapacitated and the properties have been transferred into the name of his wife, the eighth respondent.

16. In his witness statement dated 24 May 2018 the husband said that:

    i) In 1998, before the marriage, he paid his prospective brother-in-law, the ninth respondent, $1 million.

ii) There was an agreement that any assets ('the Chinese assets') purchased with this sum would be held in trust by the ninth respondent for the benefit of the husband and the wife for as long as they remained together before marriage.

iii) Further, in the event that they parted before marriage the Chinese assets would be held for the sole benefit of the wife and she would have no further claim against the husband.

iv) The arrangement would continue after marriage save that in the event of divorce the assets would no longer be held for the joint benefit of the husband and wife but would be held for the sole benefit of the wife and she would have no further claim against the husband.

v) In circumstances where the agreement has been breached the ninth respondent should repay the husband $1 million plus interest. That interest would be approximately a further $1 million. Thus, the eighth and ninth respondents should be ordered to pay the husband $2 million.

17. Although this is set out in a witness statement of the husband dated 24 May 2018 it is noteworthy that he has made no claim against the eighth and ninth respondents, notwithstanding that on 31 October 2016 I joined the eighth and ninth respondents to the proceedings on the footing that a claim would be formulated, issued and pleaded formally. At that time the husband was seeking a declaration that the apartments were beneficially owned by the wife.

18. Had the husband made a direct claim against the eighth and ninth respondents as to the beneficial ownership of those apartments, then such a claim would fail for two elementary reasons. The first is that it is plainly time-barred under the Limitation Act 1980. The second is that an English court will not entertain an action involving the title to foreign realty based on contract, trust or fraud unless the defendant is within the jurisdiction, or has submitted to the jurisdiction of the court, and thus may be subjected to personal process. This principle can be traced back to the seminal decision of Lord Chancellor Hardwicke in *Penn v Lord Baltimore* (1750) 1 Ves Sen 443. The eighth and ninth respondents are not within the jurisdiction and have expressly not submitted to the jurisdiction of this court.

19. Quite apart from these formal objections I reject the claim as asserted by the husband. I am perfectly satisfied that there was no such agreement. I accept the wife's evidence.

20. As the husband has not made a formal claim against the eighth and ninth respondents there is nothing for me to dismiss. However, it is my view that were such a claim to be made in the future it should be struck out as an abuse of process under the rule in *Henderson v Henderson* (1843) 3 Hare 100 as the claim should have been made in these proceedings and there was no good reason why it was not.

21. However, the husband can validly argue that the value of these flats represents a resource which can be taken into account if I am satisfied that the eighth and ninth respondents would, if asked, make them or their profits available to the wife. Curiously, the husband did not cross-examine the wife's sister-in-law on this subject, and her witness statement is silent on the subject. However, the wife in her evidence accepted if she returned to China, and was in need, she would expect her brother and sister-in-

law, to look after her, in discharge of the moral duty that the donation of the flats gave rise to in the first place.

22. I refer to the annex where the husband sets out the genesis of the Chinese Tigers project, the provenance of its assets, and its commercial activity. In 2002 the husband purchased 33,000 hectares of land in South Africa for the project for approximately £2.5 million. From that point until 2009 (when £20 million was provided from the settlement of the G bank litigation) the husband told me the project generated very substantial sums from its commercial activities to the tune of £3 million a year, and which, among other investments, enabled it to buy for £3 million a forestry plantation in China. In the annex the husband describes the commercial activity in these terms:

> "Above all, however, it has sought to generate profits from a levered endowment of sustainable development investments including sustainable forest, clean energy, etc with partners like Weyerhaeuser, Beijing Capital Group, Shell, Econcern, Eneco, Veolia and many others with financing from financial institutions like Credit Suisse, Citibank, Barclays, HSBC, Goldman Sachs, ABN AMRO, Rabo Bank, Standard Chartered, Standard Bank, ABSA, among others."

23. The nature of the trading which enabled these huge profits to be generated was structured finance, a field in which the husband is an acknowledged expert. The husband in his oral evidence explained that he was the "rainmaker" for this greatly successful financial speculation and that he would negotiate the borrowing of vast sums, billions of dollars, which would be traded for a short time making a modest (relative to the principal) profit, and then returned to the lender. The husband says that since the global financial crisis of 2008 this kind of trading has basically become impossible, and that as a result his skill set has become obsolete. It is true that collateralised debt obligations, syndicated loans, and mortgage-backed securities are all examples of structured finance and that these products were the prime cause of the global financial crisis of 2008.

24. In order to undertake this financial trading a vast network of subsidiary bodies were created. I have seen an organogram of the group structure which shows no fewer than 50 subsidiary bodies incorporated or resident in places as far-flung as Mauritius, Hong Kong, the Cayman Islands, South Africa, the Dutch Antilles, Holland, China, Luxembourg, Ireland and the UK. I asked the husband why so many bodies were needed, and his reply was that structured finance needed many.

25. In the annex the husband stated: "I am a partner in JAS Financial Products LLP, the operational, financial and marketing advisor to CTSAT". The husband was not merely a partner in JAS; he was, as he admitted under cross-examination, its ultimate beneficial owner. Very large fees were paid to JAS by CTSAT; indeed, it had no other source of income. It was essentially a service company for the receipt of fee income paid to the husband as remuneration for his role as financial and investment adviser to the project. In 2005 fees of £533,000 were paid; in 2006, £636,000; in 2007, £600,000; and in 2008, the year of the financial crisis, £80,000.

26. As explained above, the burden of the husband's evidence was that the kind of financial speculation opportunities in which he was a specialist basically came to an end in 2008.

But the fees did not dry up. In 2009 fees of £545,000 were paid; and in 2010 fees of £1.53 million were paid. The husband explained that the latter of these was referable to the extensive work that needed to be done to secure the £20 million settlement from G Bank. That may account for the abnormal excess, but it does not explain the 2009 fee, nor the fees that were paid in 2011 of £900,000 and in 2012 (the year of the breakdown of the marriage) of £950,000. The husband was not able to give me any kind of coherent explanation for what financial advice or services these fees in 2011 and 2012 were paid. Moreover, it is clear from the BDO report of 13 June 2014, that none of these fees made their way to the husband. Rather, the profit element of these fees was virtually entirely paid to his partner Rumit Shah. In 2010 Mr Shah was paid £850,000 out of the fee of £1.53m. The husband was paid nothing. I was not given any kind of convincing explanation for this surprising state of affairs.

27. Although the report does not deal with the economic activity of the project directly it would appear that few profits were made in 2013, the first year of estrangement between the husband and wife, as the aggregated bank balances of the group fell in that period from £8 million to £6 million.

28. Obviously, for the purposes of the claim that is mounted before me (that is, for periodical payments to be paid by the husband to the wife which might be derived from fees which he would be capable of charging directly to CTSAT or through a successor to JAS), it would be very interesting to know, broadly, what economic activity the project has engaged in over the last four years, during which time the husband has described his role as having evolved from rainmaker to elder statesman. But the husband has flatly refused to give that information, notwithstanding orders requiring him to do so, as I shall explain.

29. On 31 October 2016, at a time when the wife's appeal to the Court of Appeal was pending, I heard an application by the wife for the renewal of a freezing order made by Sir Paul Coleridge on 3 October 2013. I granted the application and made a consequential disclosure order that the husband, CTSAT, and CFL were to demonstrate with documents the cash position of CTSAT on 3 October 2013, 24 March 2016 and 31 October 2016. The reasons for those dates were given in my judgment delivered on that day. The order was expressed to endure until the date 21 days after the appeal was dismissed, in that event (which later occurred).

30. The husband did not comply. He applied to me to discharge the order, on five grounds, none of which included the impossibility of obtaining the documents. I heard his application on 20 January 2017 and dismissed it for the reasons given in my judgment of that day. I concluded by saying: "I am now going to make a final order that the respondents comply with my order by 4 PM on 23 January, and a penal notice will be attached to that order."

31. Still the husband did not comply, and neither did CTSAT or CFL. The appeal was heard between 31 January and 2 February 2017, but judgment did not emerge until 16 June 2017. The appeal was dismissed. Under the terms of my order of 31 October 2016, the disclosure obligation therefore lapsed 21 days after 16 June 2017, i.e. on 7 July 2017. It can therefore be seen that for a period of eight months the husband was in defiant breach of the disclosure obligation.

32. On 12 April 2018 I heard an application by the husband for variation of the order for maintenance pending suit in the monthly sum of £1500, awarded by Sir Paul Coleridge on 22 April 2015. I varied it down to £1000 a month by reference to the sole factor of the extraordinary length of time that interim order had been in force. I referred in my judgment delivered on that day to the husband's defiant breach of the disclosure obligation in these terms:

> "Now, it is true to say that that order for disclosure was ancillary to, or parasitical upon, the freezing order which fell away 21 days after the dismissal of the wife's appeal by the Court of Appeal. But while it was extant Mr Bray had an obligation to comply with it and he did not. When somebody fails to comply with a court order for disclosure of documents the court can reach into its armoury and take enforcement proceedings, including proceedings for committal to prison, or it can approach the matter in a more nuanced way, which is to say that it will, at the appropriate time, draw the necessary inferences from the failure to give disclosure. One has to ask oneself, 'what did Mr Bray fear that the documents that he refused to disclose show?' I do not have any hesitation in drawing a conclusion that there was probably a financial skeleton in his cupboard, that he was wary of disclosing."

33. Before me, the husband's new argument is that he has tried to obtain disclosure of the relevant documents but that the trust has refused to supply them. Inevitably he was cross-examined about this and was asked to point to the letter or email incorporating the refusal. He referred to his email to Ameer Seetohul, an employee of the second respondent in Mauritius, dated 11 November 2016 where he asked for "an update on the information I requested pursuant to the order of the family court in the UK in the matter of my divorce". The reply from Ameer Seetohul on the same day was: "Please note that we are seeking guidance from our legal representatives and shall revert in due course". And there the trail runs cold. The husband was not able to point to any message incorporating a refusal to provide the documents, and I am satisfied that one does not exist.

34. In his final submissions to me the husband was unrepentant. He explained that he felt justified in defying the order. He stated that he considered that he could just wait until the order expired. He explained that he felt confident after the appeal hearing that he would win. He stated to me:

> "I felt, one day, we had won the appeal and from that point I did not feel the need to provide the documents"

This epitomises his contemptuous and arrogant approach to these proceedings. The view I have formed of the husband is that buoyed by his success before Sir Paul Coleridge and the Court of Appeal he believes that he is in effect immune from any substantive financial provision being made in the wife's favour.

35. The husband's contemptuous and arrogant attitude is further illuminated by the following passages in his principal witness statement dated 21 September 2018. At paragraph 13, when speaking of his earning capacity, he stated:

> "I might be able to earn some money as a drug dealer. Before I changed my major to mathematics in my final year of college, I was a chemistry major. My senior organic chemistry project was the synthesis of cocaine, a synthesis that was, at that time, on the frontiers of organic chemistry due to problems related to controlling the chirality of the cocaine molecule. As I recall, only 1 of the 16 possible stereoisomers is psychoactive. The cocaine plant naturally produces only this stereoisomer but in the lab this is quite difficult. This is why cocaine is extracted from the plant for commercial use rather than synthesised as methamphetamine is. (Walter White's particular expertise in Breaking Bad was controlling which enantiomer he produced but he only had to worry about 2 possibilities and both left and right-handed meth are psychoactive – dextromethamphetamine being the stronger drug.)"

A witness statement is made primarily for the court and to write this is not only childish and facetious but is directly and grossly disrespectful to the authority of the court.

36. But it did not stop there. In the next paragraph he wrote:

> "A further possibility is that I might be able to pursue a career as a legal executive at Vardags [the wife's solicitors]. I gather from Stephen Levitt's economic research on crime, that I might well earn more extorting money for Vardags then I would earn in drug dealing (apparently, most drug dealers live with their mother because they cannot afford a place of their own). Despite the financial disadvantage, I think I would prefer drug dealing because it is considerably more ethical."

This goes beyond childishness and facetiousness. It is grossly insulting and reflects the husband's detestation of the wife's advisers. It is completely unacceptable that he should use a witness statement written for the court as a platform to vent his spleen in this manner. On top of this he has stooped to making ugly threats, as well as using illegitimate tactics. For example, in para 71 of his written final submissions he wrote:

> "In a similar vein, my skeleton argument for this hearing complained that Mr Todd QC had been found to "island hop" through the evidence**. I took you to the paragraphs in the final judgment where Lady Justice King made this finding and multiple examples throughout her judgment illustrating this complaint. Whether or not it made it into the final judgment**, Mr Todd QC did have an absolute duty not to mislead the court. That includes the duty not to mislead by omitting evidence that is unhelpful to his case. The unavoidable conclusion is the Mr Todd QC did lose sight of his absolute duty. Mr Harrison complained of this behaviour as well. I stand by my assessment that this kind of behaviour which has been repeated endlessly has been the primary reason these proceedings have taken so long and cost so much. Accordingly, I will be asking to join Mr Todd

> QC, Lily Mottehedan, Mr Noel and Vardags to these proceedings for costs." (emphasis added)

It is certainly the case that in his original skeleton argument before me the husband quoted passages from the draft judgment provided by Lady Justice King which were removed from the final version as handed down and promulgated. The husband pretended that he did not know that he was not allowed to do this, but this is patently false as I have seen correspondence written to him at the time of the hand-down in the Court of Appeal reminding him that he was not allowed to use for any purposes the expurgated passages.

37. The object of this paragraph was solely to menace the wife and her advisers because, of course, I have no power to deal with alleged wasted costs incurred in the appeal. It is another example of the husband's gross litigation misconduct.

38. As stated above, in April 2018 the husband applied to vary the maintenance pending suit order made by Sir Paul Coleridge on 22 April 2015. In his witness statement in support of his application suggested that the wife should pay him maintenance pending suit. He claimed that he had no means of paying the £1500 per month that had been awarded. As stated above, I varied the order downwards to £1000 per month, with effect from 1 March 2018. The husband has flatly refused to pay this amount, and £10,000 of arrears have now arisen. I am wholly satisfied that at all times the husband has had the means to pay this reduced award and I conclude that his refusal to do so is a further example of him seeking improperly to pressurise the wife. Further, it is another example of his arrogant and contemptuous disregard of the court's authority.

39. In considering the evidence as a whole I am now even more satisfied than I was on 12 April 2018 that the husband, in collusion with CTSAT, is seeking to hide something highly material in the finances of the trust which, if revealed, would be significantly to his disadvantage. I draw the inference from the brazen nondisclosure, coupled with his arrogant and contemptuous attitude as detailed above, that the trust has been successfully active economically, with the husband as rainmaker, but that he has arranged for his commercial reward to be deferred until these proceedings are safely concluded.

40. I am satisfied, having regard to the history of fees paid to JAS, and having regard to the inference which I have drawn as set out above, that the husband has the capacity to receive very significant fee reward, on a fully commercial arms-length basis, for financial advisory work for this well-endowed trust. Alternatively, given his skills, I am satisfied that he could earn comparable fee remuneration working for other clients. I have reached the same conclusion as to this husband's earning capacity as Sir Peter Singer reached about Mr Joy-Morancho's.

41. Such reward would be on top of the provision of free accommodation, I have no doubt. Ever since the sale of RMS by the husband to the sixth respondent in 2008 the husband and wife were allowed to live there without paying any rent. In a statement made on 26 November 2018 James Synge, a director of the sixth respondent stated: "It is misleading to say that [the wife] and [the husband] never pay any rent. [They] pay rent in kind for their work for the tiger project." In my opinion it is more misleading to describe this as the payment of rent. However, it does give some insight into the scale of reward available to the husband given that the rental value of RMS is about £6,500 per month.

Another example of financial assistance kindly given by CTSAT to the husband was the loan given by a subsidiary of the trust to the husband of £200,000 in February 2015. This was secured on the property in Chamonix but was not conventional in that interest was not periodically payable but rather rolled up and paid when the property was ultimately sold.

42. It will be clear from what I have written above that I have, in contrast to the finding made by Sir Paul Coleridge, found the husband to be a thoroughly unsatisfactory witness. I conclude that he has been dishonest, manipulative, arrogant, menacing and contemptuous of the court's authority. I do not accept any of his evidence unless it is either agreed or is corroborated by clear contemporaneous documents. By contrast I found the wife to be a credible witness.

43. I turn now to deal with the wife's claim.

44. The wife also has an earning capacity but of a much more modest scale compared to that of the husband. She is fluent in four languages, Mandarin, English, French and Italian. However, she has been out of work for many years. She has applied for jobs, as a PA, thus far without success. Mr Todd QC realistically accepted that she should be attributed with an earning capacity and suggested that on the evidence no more than £25,000 gross, £20,000 net would be a reasonable estimation of such capacity. I agree.

45. I turn to the question of needs. For the reasons set out above I have no doubt at all that the husband's needs for accommodation (whether that is in Thailand or elsewhere) and to meet his periodic requirements will be amply met by his reward for work done for the trust. Further, for the reasons I have set out, I am wholly satisfied that he has the "faculties", to use the old language, properly to provide for the wife. From March 2019 the wife will be homeless, and it is for this reason that her revised budget incorporates £30,000 per annum for rent. I am satisfied that this is reasonable. On top of that she has claimed £54,184 for periodical living expenses; again, I am satisfied that this is reasonable having regard to her objective need and to the standard of living enjoyed during the marriage. Indeed, she was not challenged in cross-examination as to the reasonableness of her budget.

46. Having regard to her earning capacity I am satisfied that an award of periodical payments of £64,000 per annum is reasonable. This should be CPI index-linked.

47. The next question is for how long the award should endure.

48. In every case where an award of periodical payments is made the court must consider, pursuant to sections 25A and 28(1A) of the Matrimonial Causes Act 1973, whether the award should be term limited, and, if so, whether that term should be extendable or not. These provisions have been strangely neglected since they were enacted, but recent decisions have emphasised their key importance. A limited term should be imposed unless the court is satisfied that the claimant would not be able to adjust to a cut-off without undue hardship. Normally that decision is easily reached because the claimant will have a capital base to fall back on in her later years. Generally speaking, there would have to be shown good reasons why a term maintenance order should not be made. And, generally speaking, where a term maintenance order is to be made there would have to be shown good reasons why it should not be non-extendable. Ultimately

the court's goal should be wherever possible, to achieve, if not immediately, then at a defined date in the future, a complete economic separation between the parties.

49. In this unusual case I am not satisfied that were a term maintenance order to be imposed, even if extendable, the wife would be able to adjust without undue hardship to the prospective cut-off. This is because she has no capital base at all; indeed, she is indebted to her solicitors in a vast amount. The Chinese assets held by her sister-in-law do not, in my judgment provide a sufficient safety-net to mitigate the prospective hardship. Therefore, exceptionally, I make, just as did Sir Peter Singer in *Joy v Joy-Morancho and Others (No 3)*, a joint lives award. In my judgment, only this meets the justice of the case.

50. The periodical payments order should take effect when the wife leaves RMS. I therefore order that with effect from 1 March 2019 the husband shall pay to the wife periodical payments of £5,333 monthly in advance during joint lives or until the wife's remarriage or further order. The existing maintenance pending suit order will continue until that date and all arrears under it must immediately be discharged. The figure of £5,333 will be adjusted on each successive 1 March by reference to the most recently ascertainable annual movement in the CPI.

51. Finally, I turn to the question of the wife's capital claims. Should they be dismissed, or should they be adjourned? In *Joy v Joy-Morancho and Others (No 3)* Sir Peter Singer adjourned the wife's claims. He held:

> 176. I am mindful of cases where it has been said that capital claims should not be left indeterminately unresolved, but there are hard cases (a category within which this case certainly falls) where fairness and justice must prevail over the normal desirability of finality in litigation. I refer as examples to *Hardy v Hardy* [1981] 2 FLR 321 and *MT v MT (Financial Provision: Lump Sum)* [1992] 1 FLR 362. In my judgment it is certainly foreseeable that an accommodation will be made to give H access to part of the millions held within NHT.
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> 177. I am not deterred by the consideration that for the moment H maintains that he has neither an income nor access to funds for living other than by borrowing from friends and relatives who in due course he must repay. Although he has been reticent in the extreme in divulging what considerations prevent him from commencing employment while residing primarily in France, I conclude that they are fiscal. Paying some tax and having an income would appear to most people to be preferable to having no income upon which to pay tax.
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> …
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> 183. It follows that W will be in a position to restore her surviving applications for capital provision. Either party could also apply (when and if sufficient capital resources become available to H) to capitalise W's future maintenance pursuant to section 31(7A) of the 1973 Act. Such an application should

> however, if made, not be constrained by the approach to such applications advocated in the case of *Pearce v Pearce* [2003] EWCA Civ 1054, [2003] 2 FLR 1144 where the Court Appeal (at [37] and [38], in the words of the FLR headnote) stated that on applications for variation and capitalisation there three questions had to be decided: (i) what variation, if any, to make in the order for periodical payments; (ii) the date from which any variation should take effect; and (iii) when to substitute a capital payment, calculated in accordance with the *Duxbury* tables, for the income stream being terminated, albeit with a narrow discretion to depart from those tables to reflect special factors generated by the individual case. In this case, however, such an application should leave it open for the tribunal hearing it to make whatever lump sum award it might appear appropriate to impose in exchange for a clean break, without limiting the exercise by reference to the periodical payments order which might be in force, either then or after appropriate variation. In short, in the particular circumstances of this case the quantum of a lump sum should upon any 31(7A) application be at large.

52. I have reached the same conclusion in this case. It is equally exceptional, and it is foreseeable that at some stage in the future the husband will have accumulated sufficient sums to make a proper clean-break capital settlement on the wife.

53. The wife's capital claims will therefore be adjourned.

54. In preparing this judgment I have had at the forefront of my mind the terms of sections 25, 25A and 28(1A) of the Matrimonial Causes Act 1973. I have also sought to give effect to the oft-cited words of Lord Devlin that the judicial function is not just to render a decision but is also to explain it in words which will carry the conviction of its rightness to the reasonable man. However, I have also borne in mind the wise words of Lord Justice Lewison in *Fage UK Ltd & Anor v Chobani UK Ltd* [2014] EWCA Civ 5 at [115], echoed by the President in *Re F (Children)* [2016] EWCA Civ 546 at [22] – [23], that there is no duty on a judge, in giving his reasons, to deal with every argument presented by counsel in support of his or her case, nor to deal at any length with matters that are not disputed. In trying to keep this judgment to manageable proportions I have written it *in medias res*. I have had in mind para 89 of Lady Justice King's judgment in this very case:

> "Mr Todd specifically challenges the Judge's adequacy of reasoning and failure to deal with certain specific topics. Longmore LJ was faced with similar submissions in *Aerospace Publishing Ltd v Thames Water Utilities Ltd* [2007] Bus LR 726; [2007] EWCA Civ 3. At [70] he stated:
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> > 'In a complex factual case such as the present it will often be comparatively easy for an appellant to allege that a judgment is imperfectly or inadequately reasoned on one aspect or another and even to persuade this court, on an unopposed permission application, that that is arguably so. Appellants must, however be aware that there is no obligation on a Judge

> to give a particular response to every submission made (judgments in this country are quite long enough already) and that, unless it becomes apparent in the course of the appeal that a serious injustice has been done, appeals on the ground of inadequacy of reasons in complex factual disputes are likely to fail.'"

55. Following distribution of this judgment in draft I have received from the wife's advisers some modest typographical and allied corrections which I have adopted. I have received a swathe of purported corrections from the husband which were a poorly disguised attempt to cause me to revise my core findings of fact. These were accompanied by a lengthy request, which I take to be made pursuant to FPR PD30A para 4.6, for me to consider whether my judgment contains material omissions by virtue of inadequate reasons. I have considered those representations and reject them. I am satisfied that I have made the essential findings needed to dispose justly of the wife's claim (see para 54 above) and that no correction or amplification of the judgment is needed.

56. I have later received an application by the husband for permission to appeal my judgment. These are expressed discursively over 13 paragraphs. I have considered them carefully, but I am not satisfied that either individually or collectively they demonstrate a real prospect of success of an appeal or that there is some other good reason for an appeal to be heard. The application for permission to appeal is therefore refused.

57. That concludes this judgment.