Neutral Citation Number: [2020] EWHC 857 (Fam)

Case No: ZC18D00231

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 08/04/2020

Before :

THE HON. MR JUSTICE COHEN

Between :

AD	**Applicant**
- and -	
BD	**Respondent**

- -

Michael Glaser QC & Matt Warmoth (instructed by Mishcon de Reya) for the **Applicant wife**
Timothy Scott QC & Jonathan Tod (instructed by Keystone Law) for the **Respondent husband**

Hearing dates: 9 – 20 March 2020

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JUDGMENT

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.

.....

THE HON. MR JUSTICE COHEN

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

The Honourable Mr Justice Cohen :

Introduction

1. I have been hearing the wife's ("W's") application for financial remedy orders following the breakdown of the marriage to the husband ("H").

2. W is 35 years old and was born in [Country A]. She has [Country A] and French nationality. H is 36 and was born in France. He has French, Canadian and [Country A] nationality.

3. The parties began their relationship when still teenagers. They come from the elite of wealthy [Country A] families. The impression that I have been given is that the wealth of H's family is of a greater order than that of W's family and, particularly important in the current climate, is less centred in [Country A].

4. Both parties are highly intelligent and cosmopolitan. They each have distinguished academic records. By 2010 W was carving out her own career in business development whilst H was working within his family's business empire.

5. On 13 February 2010 the parties became engaged to marry. About a fortnight later a dinner took place in [the capital of Country A] between the two sets of parents and H and W. The arrangements for the celebration of the marriage were discussed and I shall return to them later in this judgment. What is not in dispute is that it was agreed that the after-wedding party was to take place in a large waterfront venue in [the capital of Country A] which can hold about a thousand guests.

6. Tragically, in late March 2010, W's father was diagnosed with an extremely aggressive form of cancer. W's family is smaller than that of H and W's mother and his two children (W and her brother), threw themselves into the support of W's father and trying to find the best course of and venue for treatment. Baltimore, London and Paris were the options. It was decided that rather than getting married in September as envisaged, the wedding would be accelerated to take place before W's father embarked on what were plainly going to be some very gruelling procedures. The options for treatment narrowed to London and Paris. By pulling strings, the parties' families were able to arrange for a wedding celebration in the Consular Section of the Embassy of [Country A] in Paris. H's family took control of the arrangements whilst W's family concentrated on her father's health.

7. On 8 April 2010, the parties attended Maître B at his office and signed a document, which contained on the front page, in bold type, these words:

Regime Adopte

Separation de Biens.

H says that this document constitutes a binding matrimonial regime that I have to apply. W says she entered into it in complete ignorance of its contents. Again, I shall go into this in much more detail later in this judgment.

8. The religious ceremony took place the following day on 9 April 2010, in the Embassy. Religion is important to the parties and a priest was in attendance. The

next day there was a church blessing followed by a party for some 200 guests. To all outward purposes the parties had celebrated a religious wedding and they lived together as a couple thereafter but under French law a civil wedding was required. The parties would have liked it to have taken place much sooner than it did but it could not be arranged until 12 July 2010. It took place in Paris in the presence of three witnesses.

9. Following the marriage ceremony W moved from London, where she had been working, to live with H in [the capital of Country A]. In February 2012 her father died and in July 2012 the parties' son was born (now 7½ years old). In November 2014 their second child, a daughter, was born (now 5 years old).

10. In August 2015 the parties moved from [Country A] to London and they have lived here ever since.

11. The marriage had been running into difficulties since at least 2015 when H says that he had told W of his affection for another woman. Not surprisingly the marital relationship suffered. In late September 2018, W downloaded the contents of H's smartphone, asserting that she was looking for evidence of H's infidelity, but in doing so obtained a very large number of business documents. On 2 October 2018 the parties separated and H left the matrimonial home.

12. On 3 October 2018 W issued her divorce petition, followed quickly by her Form A. Only on 20 March 2019 did W's solicitors inform H's solicitors that she had copied and removed his documents some 6 months prior. There were further documents that she accessed in December 2018. A decree nisi was pronounced on 6 September 2019 and after a multiplicity of interlocutory hearings the case came to trial before me with a 15 day time estimate, commencing on 9 March 2020. During the trial I have heard from both parties, W's mother and brother and the two property valuers [from Country A].

The marriage plans and contract

13. There is a dispute between the parties as to the contents of the discussions at the celebratory dinner in [the capital of Country A] following the engagement. H says that it was clearly agreed between the parties that the marriage would take place in [the capital of Country A] and the discussion was about which of two churches would be used. An important factor, says H, was the proximity to the waterfront venue for the reception. W denies there was any such conversation. I find it highly likely that there was some conversation about the wedding plans and in particular where the church ceremony was to take place and that there was no suggestion that the marriage would take place anywhere other than [Country A].

14. It appears that H's family is one to whom the marital regime is important. Those members of his family that have been married outside [Country A] have had marriage contracts prepared for them by M. B. Such a contract would have been unnecessary for a marriage [in Country A] as the default position in [Country A] is separation of property. W's family, on the other hand, has no history of marriage contracts. W's parent's marriage had been celebrated in Paris with no contract and her brother's marriage has not yet been celebrated. Although I accept H's evidence that the

marriage plans were discussed, the parties agree that the marital regime was not part of the discussion.

15. Thereafter matters were overtaken by the crisis surrounding the health of W's father. W was fully consumed in looking after her father, to whom she was exceptionally close, as well as having to deal with such things as her wedding dress. There were just two weeks between diagnosis and wedding and I have no difficulty in accepting that choice of marital regime was the last thing on W's mind. I accept that it was only on the day before the wedding that H told W that they needed to go to the office of M. B to sign some documents, without specifying what they were, and it was only when they got to the office that W and H saw for the very first time the document.

16. W accepts that during the meeting that they had with M. B he went through the agreement with them. Apart from the heading that I have quoted, it contained this passage:

CERTIFICATE OF NATIONAL CUSTOM

.....

"The [Country A] Ambassador at the Consulate in France certifies that, according to the laws in force in [Country A],

- Marriages contracted between [Country A] nationals and foreigners are governed by the law of the country in which the marriage takes place

…..

- The matrimonial system in [Country A] is the separation of property"

17. She accepts that the agreement states clearly that the regime adopted was separation of property. But, she says, that she was given no explanation of what it meant and what the consequences would be of signing it. In any event, she says that she was hardly in a condition to give it thought.

18. W was only 25 years old; her siblings and friends and cousins had not yet married; she had no knowledge of pre-nuptial agreements and this was the very first that she had heard of it. Furthermore, she says that she was a mess at the time of the ceremony. On the one hand she had the delight of marrying a man that she loved, and on the other hand the fear of the imminent loss of her father who was dear to her. So much had happened in the past two weeks that she was not in a position to focus at all on any document put before her. She trusted her fiancé and would have signed whatever she was given. I accept her evidence on this in its entirety.

19. W tries to present what happened as some form of underhand attempt by H and/or his family to entrap W into a regime that was favourable to H's wealthy family. I dismiss this suggestion. H on the other hand suggests that it was done for the benefit of W's family to ensure that H did not benefit from whatever W inherited upon the demise of her father. I do not accept that scenario either as there is no evidence of any discussion on the matter between the families or within W's family. I am also

sceptical of the alleged benefit that it would bring W compared to what she would lose as a result.

20. W puts great stress on the fact that I have been provided with no evidence from H's family members nor from M. B about the circumstances surrounding the document. I do not draw any adverse conclusion from the absence of H's father as the evidence of his deep disappointment at the divorce and his refusal to become involved is manifest. The absence of M. B is much more mysterious. He provided a letter which I admitted in evidence setting out how the meeting took some two hours and in the course of which he explained everything to W but it is now clear that the letter written by him when the marriage broke down, recalling what happened some 8 years previously, does no more than parrot what H told him had happened. M. B has failed to provide any documentary evidence or his file despite the request of the court, and nor has he filed a statement. I am therefore not prepared to put any weight on the letter that he wrote to H.

21. The law is best set out in Radmacher (formerly Granatino) v Granatino) [2010] UKSC 42 at paragraph 69-70 where the majority of the court said as follows:

69. … Sound legal advice is obviously desirable, for this will ensure that a party understands the implications of the agreement, and full disclosure of any assets owned by the other party may be necessary to ensure this. But if it is clear that a party is fully aware of the implications of an ante-nuptial agreement and indifferent to detailed particulars of the other party's assets, there is no need to accord the agreement reduced weight because he or she is unaware of those particulars. What is important is that each party should have all the information that is material to his or her decision, and that each party should intend that the agreement should govern the financial consequences of the marriage coming to an end.

70. It is, of course, important that each party should intend that the agreement should be effective.

22. Versteegh v Versteegh [2018] EWCA Civ 1050 gave further guidance at paragraph 64-66 and in particular paragraph 65 where King LJ said:

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

23. At the core of the dispute seems to me to be the different cultural approaches of the two families. Three of H's four sisters have identical marriage agreements, all drafted by M. B. W's family has no history of such agreements. H and his family may have assumed a greater familiarity on the part of W with the agreement than was justified. Unlike Versteegh where the evidence established that the wife clearly understood the agreement, I am satisfied that in this case W did not fully understand it and had no proper opportunity to consider it.

24. It is not the absence of legal advice or disclosure, although that was indeed the case, that compels me to the view that I should not accord weight to the agreement. It is not necessary for me to go into whether or not H had no assets at the time of the marriage worth disclosing. What, in my view, is decisive are the following:

    i) This agreement had not been the subject of previous discussion between the parties;

    ii) It was presented to W on the day before the wedding when she was in a state of great turmoil, as H well knew;

    iii) She had no chance to consider its contents. In particular, she had no chance to discuss it with her family and to ask their views on it. One of the options that she was unable to consider was the formal marriage ceremony taking place in a country that did not have a default regime of separation of property;

    iv) I am satisfied that W had given no thought before the meeting to the choice of marital regime and that she was unfamiliar with the concept;

    v) In consequence she had no understanding and gave no thought to the implications of the agreement and its effect.

25. In reaching my conclusion I have taken into account the cultural context of the relevant jurisdiction, namely [Country A]. I accept that separation of property is the norm in that country. I accept that the document that W was asked to consider was a clear document in the sense that it plainly referred to a separation of property, but the fact that W was the first of her generation and close friendship pool to get married and had no knowledge of the implications of the agreement are fatal when put in the context of the frenzied circumstances of 8 April 2010.

26. In those circumstances and without casting any aspersions upon the motives of H, I am satisfied that this is not an agreement to which I should give weight.

27. There is an interesting point as to whether or not the service at the Embassy of [Country A] constituted a marriage. Neither party has sought to establish the law on this issue or persuade me that a service in the Embassy constituted a valid marriage under the law of [Country A]. Because W was keen to obtain French citizenship it was necessary for there to be a civil marriage in addition. It was in that context that H accepted that there was no great urgency for the separation of property agreement as it could have been signed at leisure at any time up to 12 July 2010.

W's work history

28. After doing a first degree at University in [the capital of Country A], W moved to London in 2006 to study for a master's degree. At the time of the marriage, after her degree and an internship, she had become employed as a consultant by J on the business development side of the company, and was part of a team tasked with selling J's research tools to corporate clients. She says that she flourished in her role of client business development. The jointly instructed employment consultant advises that key qualities for the role include being a strong communicator, well-organised, having an

excellent grasp of figures and being creative. Having seen W at length in the witness box I have no doubt that she has all of those qualities.

29. Having worked for two years full-time until just before her marriage, she then returned with H to live in [the capital of Country A], but was retained by J as a consultant on a part-time basis, working the equivalent of a 3 day week. Her final P60 for the year to 2012 shows a pro-rated salary which on a full-time basis would have produced an income of just under £55,000 p.a. gross. This was a substantial income for someone still in her late 20s. With the birth of her first child imminent, she resigned her employment and has since then not engaged in any formal paid employment. I accept her evidence that it was a joint decision between her and H that she should cease to be employed.

30. Following the parties' return to London in August 2015, W set to work again. She applied for three posts in 2016 but did not obtain an interview. Instead she decided to set up her own business which was designed to be an app to allow for group gifting. She set about this venture with her typical thoroughness and hard work. She produced a skilfully prepared business development plan and invested some £165,000 into the business, the bulk of which came by way of gift from her mother. W was confronted with all the normal pressures and tensions between being a committed mother and a determined businesswoman. Sadly for her, when the marriage broke down and W found herself faced with acrimonious divorce proceedings, combined with the absence of familial support in England, she felt unable to devote the necessary time to the business. It is quite impossible to know whether or not the business would have been successful absent these events.

31. W has not had gainful employment thereafter. She envisages seeking to go back into the employment market in a couple of years' time.

H's business history

32. After his degree H was employed as a management consultant for two years in [the capital of Country A] before starting to work full-time for the family business in 2008. The family empire was started by H's late grandfather and has many different interests.

33. H's father ("F") is now aged 71 and is fully engaged with the business. It is common ground that F is a strong willed and dominant figure within the empire which he runs with his brother (H's uncle) taking a side role.

34. For many years H and F had disagreements about the management style and direction of the businesses. In particular, H wanted the business to invest in shares (equity) to help businesses grow and share in their growth, whilst F preferred to make short-term loans on onerous terms. They had different views as to what should be the subject of investment with H being more willing to take risk than F.

35. Having proved his abilities to F's satisfaction in assisting with the recovery of a large sum of money due from a project in Tanzania, H became involved in a new venture, which for the purposes of this hearing has been called [ABCA]. It has assumed major importance in this litigation because W claims that the beneficial ownership of the company belongs to H and that he will in the future receive a very large sum of

money from what was a matrimonial venture. It is H's case that the beneficial ownership has always belonged to F.

36. [ABCA's] predecessor company [ABCL] held 100% of the shares in [ABE]. [ABE] held a 20% interest in mining leases for oil and gas off the coast of Romania. A company named [G] agreed to invest in the project in exchange for a royalty fee.

37. In September 2012 [XYZ] Energy (the initials of H's grandfather) loaned [ABE] a significant sum of money to provide funding intended to give [ABCL] time to negotiate a sale of its business. The loan came with a high rate of interest and a punitive increase in the event of default. An offer was made from a major multinational but fell through. [ABCL] blamed [G's] refusal to consent to the terms required by the multinational as being the cause of the failure of the offer.

38. [XYZ] made a demand for repayment of the money it had loaned and [ABE] and [ABCL] were unable to repay it. As a result, [XYZ] sought to enforce its security over the shares of [ABE] which had been pledged as part of the loan agreement.

39. [XYZ] appointed [XYZ] CS as the sole director of [ABE] and H became the sole director of [XYZ] CS. [XYZ] then attempted to transfer the shares in [ABE] to a purpose-built company known as [ABCA] for a small sum of money. Litigation ensued, a key issue being the relationship between [ABCA] on the one hand and [XYZ]/[XYZ] CS on the other. One of the effects of the scheme proposed by [XYZ] was that [G] would lose the value of its investment.

40. There was protracted litigation in both the Netherlands and Western Australia within the context of the administration of [ABCL]. The litigation was eventually compromised, and [XYZ]/[XYZ] CS/[ABCA] came out victorious as the owners of [ABE].

41. I have been referred to a large number of emails and other documents from which, when put together with various conversations, W has sought to prove that H is the beneficial owner of [ABCA]. The emails had passed both within H's family and its employees on the one hand and between them and other parties on the other hand. The distinction between the two is important. I conclude that a very different picture was given by H to the outside world to that within the family circle.

42. It was H's case that the bearer shares of [XYZ] CS were held by F. W is not in a position to challenge that. On 30 July 2013 H wrote to F saying as follows:

[XYZ] Energy is now held by you [i.e. F] – brother [i.e. H's uncle]

When we used our share pledge, [XYZ] Energy appointed [XYZ] CS Director. I own [XYZ] CS 100%

Our tax advisors confirm it is best we use [XYZ] CS as held by me (so not related to [XYZ] Energy) to buy shares in [ABE] and [ABN]

I asked before we went for such structure to have a "trust certificate" that shows I hold for you and your brother in trust the shares.

43. The very next day [XYZ] CS established [ABCA] in Luxembourg to take over the ownership of [ABE] and[ABN]. [XYZ] CS was the sole shareholder and H was the sole director of [XYZ] CS and General manager of [ABCA].

44. In December 2013 all the [XYZ] CS shareholding in [ABCA] was transferred to H by [XYZ] CS and he resigned as General Manager of [ABCA].

45. The pace picked up as the litigation continued. It is clear from a very large number of emails that H was the person who was giving instructions to advisors. H copied F into every relevant communication that I have seen.

46. On 9 January 2014 the family tax advisor Mr Z wrote to F setting out the commercial and legal context of the dispute and concluded:

As I say while you may curse this deal was ever done, now is not the time to stop. If anything, the position is quite a lot better now than it was 6 months ago.

47. On 13 January 2014 F wrote H an email containing the following:

You're always in a hurry – yesterday night we said to discuss at a without prejudice meeting after Thursday …

I told you send a clever letter to [G] holding them responsible for all costs

I suggest you don't revert and not even have [Mr A] call the officer an employee of [G] you need to show …

Sleep on it 24 hours… prepare a good letter so I can review before we put on notice [G]

I will give ideas tomorrow or later

48. Later the same day H wrote to F making a proposal and concluded with these words:

Thoughts? You want to fight, or else? [It is possible the timing of these emails is erroneous and that this email preceded the one in the immediately preceding paragraph].

49. On 14 January 2014 H transferred all his shares in [ABCA] to [Mr E], a senior employee, "pursuant to the fiduciary agreement". The fiduciary agreement confirmed that H remained the ultimate beneficial owner ("UBO"). H's explanation of this transaction was wholly inadequate and his suggestion that he did so in order to reduce his own liability as holder of the shares is demonstrably false as the terms of the fiduciary agreement, produced only after a series of orders from me, shows that the liabilities remained with him.

50. On 15 January 2014 [XYZ] Energy filed a defence in the action brought by the administrators of [ABCL] which contained this paragraph:

99. Unlike the administrators have suggested several times, [XYZ] Energy – and the same applies to its directors and ultimate beneficial owners – have no financial or other interest in [ABCA] or [XYZ] CS.

51. This document, which I am satisfied was the subject of instructions from H who held a power of attorney, was a demonstrably misleading document in that no disclosure of the terms of the fiduciary agreement or the UBO was made. Whether or not it had an impact on the litigation is impossible for me to tell, but on 30 January 2014 the Dutch Court of Appeal, Amsterdam, permitted the enforcement of the pledge.

52. In late June 2015 H wrote an email to [Y, a PR company], about wanting to create an exploration and production business in which he stated as follows:

Our E&P projects are cash covered, in Romania until after the RBL/Gas sale is announced in December 2016 (and I am in negotiation to get a loan that would carry my equity till first gas) … if I pull the trigger to launch my project, it is because the timing is now right to do so

53. He went on to discuss his business plans which in fact came to nothing. But W relied on the words "my equity" to show that [ABCA] was his. I am not convinced that the email should be read in that light although it could be.

54. On 24 June 2015 the fiduciary agreement between H and [Mr E] was terminated and the [ABCA] shares were transferred back to H.

55. On 10 July 2015 [Mr E] wrote to F about the restructuring of the [ABCA] Group and replacing the loan between [XYZ] and [ABE] with a loan to [ABCA] directly. Tellingly he writes:

Can you please indicate which company <u>you</u> (emphasis added) *would like to use?*

F duly identified a company which was under his control.

56. On 2 October 2015, there was a further exchange of emails which suffers from being incomplete and with what appears to be a confused time clock, it commences with an email from [Mr E] which is not in the bundle (but its existence is seen from the last line of S544) to which F replied saying:

We then need all shares of [ABCA] transferred to our holding Family. Correct?

[Mr E] replied: *[ABCA] shares are currently held by (H). It is <u>your</u>* (emphasis added) *decision to move the shares or keep them as is.*

[Mr E] then went on to deal with the value of the debt, to which I will return.

On 4 October F replied:

Assets of [ABCA], [ABN], [ABE] and [SO] are paid for by the Family.

Need to be held by the Family.

57. Meanwhile on 2 October 2015 H had written to his Uncle as follows:

Dad suggested multiple times to me to keep [AB] and to leave the family business, or to keep the profits, or other. You know the stress between Dad and me with respect to business, these were suggestions to which I never answered favourably and by the

way he only said them when he was angry, so not really rationally or seriously. Personally, if the question is about compensation, I only wish whatever is most common and reasonable. But this is (really) not the current topic.

58. He then goes on to deal with matters relating to the value of the business and returns to the question of the ownership of the shares as follows:

Then (4th stage) there is the question of the transfer of the shares … which were held to start with in [ABCA] by a satellite company ([XYZ] CS Liberia) which is not accepted in onshore jurisdictions … then by [Mr E], then by myself as a moral trustee of the family … Dad prefers that you take care of this, because he doesn't want you to think that - me holding the shares (as trustee) in a company with negative equity … is done with any bad intention.

59. W relies on this email, I suspect not perfectly translated by W, as showing that it was intended that H should keep the profits of the [ABCA] venture, but I do not read it that way at all. H says clearly that this was only something said by his father in anger and that his holding of the shares was always as trustee.

60. The following day H wrote to his uncle again saying:

Just to keep you posted (F) has decided (I think) to take over the [AB] file (again)

61. On 6 January 2016 F wrote to a lawyer he was using:

I need to work with you on re-structuring of a Luxembourg company [ABCA] – Debts and shares that was held in trust by (H) so far.

62. In March 2016 there was a further series of relevant emails. On 15 March the lawyer wrote to [Mr E] saying as follows:

I have reviewed the two identification documents that you sent me for Luxembourg: UBO …

This document can be filled in by you (with all the information that you have) as soon as the following fundamental issue is solved: Is (H) the UBO and/or could he declare that he is so?

63. H replied:

I am holding shares in trust for [F and uncle]. I have always been. At some point [Mr E] did.

64. The lawyer replies:

If [H] is holding the shares in trust who should be noted as the UBO.

65. H replies:

[Mr E] I am the UBO for all practical purposes save from [H/uncle's] perspective, as always, as per before.

66. It is clear that this exchange related to the declaration of ultimate beneficial ownership required by a bank in Luxembourg and that H was declared as the UBO of [ABCA].

On 22 March 2016, [Mr E] wrote to H saying:

(F) said ok that you remain UBO.

67. On 7 July 2016 there was an exchange of emails about the bearer shares of [XYZ] CS being issued in proportion 60:40 between F and uncle, concluding with H saying:

Then [F] can decide whether he wants to keep [XYZ] CS as owner of [ABCA] or change, or simply change the directorships from [XYZ] CS to another company.

68. On 6 April 2017 H (finally) transferred his shares in [ABCA] to F.

69. I have set out the exchange of emails at length. From it I derive a number of conclusions:

i) H's presentation to the outside world has been untrue. He gave a false presentation to the Court in Amsterdam and the bank in Luxembourg;

ii) The use of bearer shares and fiduciary agreements were all part of a scheme to ensure that the relevant parties were seen not to be legally connected;

iii) The transfer of shares to [Mr E] was a plain attempt to present a misleading case as to the ownership of the shares;

iv) There may also have been an attempt to deliberately give the impression of [ABE]/[ABCL] as being valueless. With the punitive rates of interest the [XYZ] loan amounted to something in the region of $80-100m and it was so reflected in the accounts, but within the family, the loan inclusive of interest at 5% (a small fraction of that charged under the loan agreement) was $36m. This is apparent from the exchange of emails on 2 October 2015 and elsewhere;

v) The email chain that I have been given is at times incomplete and at times jumbled. I have a suspicion that there may be emails that I have not seen.

70. It has taken a raft of orders and some very determined digging by W to obtain the disclosure that has been achieved. H's attempt to explain these seemingly dishonest manoeuvres, carried out to obtain the ownership of [ABE]/[ABCL] at what may have been an undervalue, was unpersuasive.

71. I need also to feed into the equation the fact that W says that F and H both told her that [ABCA] was his and W's brother said that H had said so to him. I do not say that they are telling untruths, but much the best indication of the reality comes from the communication to be found in the email exchanges between H and his father/uncle. I am satisfied that this shows clearly that F, as the patriarch, was in charge of what was going on and the ultimate decision maker, however much H was the ideas man and person with day to day management responsibility.

72. In arriving at my conclusion, I also bear in mind that it is common ground that F is dictatorial and it does not seem to me from all that I have heard to be in character for

him to have relinquished control. Although F was often persuaded by H on business matters, he also often refused to accept H's advice and this was the cause of the difference between them referred to in the email of H to his uncle on 2 October 2015. There are many other examples given in the evidence to this effect. I can see no reason why the emails between H and his father and uncle and their professional advisors would have been written in the way that they were if the control had not remained with F.

73. I am satisfied since 2017 H has left the family fold to the extent that he has been conducting his own business activity free of any control from F. He has been funded by F to do this. F has taken control of [ABCA] and invested heavily in it. I think it highly probable that in due course H will return to run the family business empire. He is his father's only son. That is a different matter to saying that he currently has ownership or right to it.

H's income during the marriage

74. Each year during the marriage H received an annual sum of $250,000 which became £250,000 when the parties moved to England. H says that F always described it as a gift. I am satisfied that the reason for this description was because H's family wished to avoid income tax, as W has suggested. I am sure that it was in fact remuneration, the exact amount of which may have been in F's discretion.

75. In September 2014 before the parties left for England, F provided H with £4.75m for the purchase of the matrimonial home at GHG. This is a flat in a prestigious mansion block in [central London]. F subsequently provided another £500,000 for renovations.

76. W asks me to find that this payment was also disguised remuneration to strengthen her case that the flat was part of the matrimonial acquest. I decline to make such a finding. F has provided each of his five children with substantial homes. H received his gift (as I find it to be) later than his four sisters. Whilst it is more than any of them received it is not significantly more than one of his sisters who received her payment to purchase in Switzerland well before H. In buying the property for H, F was doing no more than he had done for H's siblings.

77. In summer 2017 H received payment of $8m from F. H's account was that his father described it as a gift whilst H thought of it as remuneration (albeit never declared as such). H claims that he and F argued about his description and H alleges that F said that if he did not like it being called a gift, H was free to treat as a loan and/or return it. Whilst I accept that F said this, I do not consider that he ever expected it to be returned. H accepts that the word "avance" was used in describing this receipt and W says that this shows that it was an advance on future profits. The word is capable of more than one interpretation and looked at in the round the evidence does not support her proposition.

78. In 2018 F offered each of his four daughters $1.5m and H $3m on the basis that H, as a son, should get double what a daughter received. H refused the money and indeed W only heard of it because F told her of it. I can make no finding as to whether the money will be re-offered once this litigation is over.

79. In 2019 each of the daughters received $2m. H's evidence is that no such offer was made to him.

80. I have no reason to think that F is seeking to influence the outcome of the litigation by controlling H's funds. The evidence is that F is distressed at the break-up of the marriage and has himself offered to write a cheque to W which she has refused because she wants to receive what she is due rather than benefit from her father-in-law's charity. I am satisfied that if H were ever in financial need F would come to his aid and that is clearly shown by the events of August 2018 when H had a short-term cash flow issue and F provided £200,000 which was repaid within a fortnight.

81. I regard the $8m as being part of the matrimonial acquest being a reward or thank you to H by F for the work done by him within the family businesses. I do not accept that it was an advance in the sense of being a part-payment of H's share of the profits of [ABCA] as W asserts.

H's use of funds

82. $8m approximates to £6.25m according to counsel's calculations. H appears to have invested approximately £5.725m into other endeavours, this breaks down as follows (converted in to £ sterling):

[PQ] Corporation	£2.730m
[T] Holdings	£272,000
[T] Partners Corp	£1.127 – 1.327m
[T] (France)	£1.113m

Total:	£5.242- 5.442m

83. In addition, he has invested £250,000 in [L] Energy and at least £234,000 has been loaned to a business associate in connection with [PQ] Corporation.

84. H's disclosure of his new business interests has in some respects been lamentable. In particular, he has not produced a single document in respect of the money put into [PQ] Corporation whose proposed business consists of farming ventures in Guinea to show its receipt or how it has been used nor any form of business plan in respect of what on H's evidence is a very substantial enterprise.

85. There is a dispute about the value of H's interest in [T] Partners and [T] France. The Partners dispute is small, amounting to a difference of £200,000 revolving around whether the sum that H invested is inclusive or exclusive of what he paid to purchase the shares. This should have been easily solvable if H produced the appropriate documents. The sum is relatively modest and it would be reasonable to take a mid-point.

86. More worrying is the dispute about [T] France. H put in €1m by way of loan which would yield €1.2m if the loan goes to maturity, which H says it will not. The more

significant issue is as to the value of H's interest in the company which he variously describes as being worth what he put in (€1m), €2.1m if his 30% holding of the company had "a pre-money value of €7m" or €2.7m if the company is worth "notionally on paper €9m", both of which he mentioned in his replies to questionnaire.

87. Mr Scott QC who appears with Mr Tod on behalf of H asks me to take the pragmatic approach of simply accepting that H has invested £5.242m which would be uprated to £5.342m in the light of my finding about his interest in [T] Partners. Mr Glaser QC who appears with Mr Warmoth for W asks me to accept the figure of £6.674m on the basis not only of the higher investment in [T] Partners but also because he invites me to take H's interest in [T] France as worth €2.7m.

88. I have come to the conclusion that the appropriate figure for me to take for the extent of H's marital acquest represented by the receipt of €8m is the full-sterling equivalent of £6.25m. I reach that conclusion for the following reasons:

    i) H's bank account and investments total £465,000 and his business interests £5.342m on the basis of the enhanced [T] Partners value, but taking the value of [T] France as being what he put into the company rather than speculating on its current value;

    ii) To those figures I add the sum of £234,000 lent by H to his [PQ] business associate and £250,000 which H invested in [L] Energy which went into administration with the loss of H's investment;

    iii) As H on his evidence has received no income since summer 2017 it would follow that the total of all these sums would be the product of marital acquest;

    iv) As it happens, they almost exactly equate to what he received in summer 2017 and it avoids unnecessary speculation about the value of his interest in [T] France.

H's other resources and liabilities

89. The matrimonial home has an agreed value of £4.122m net of costs of sale. H has in addition a flat in Paris with an equity of £669,000. The parties agree that I should treat this flat as not being currently available for H, as it is used by his parents, if I take the same approach to W's flat in central London. Alternatively, they say that I should describe both as being an available resource for the parties. I take the view that I should regard each of these properties as being both non-matrimonial and currently unavailable to the parties.

90. Apart from bank accounts and investments of £465,000, H has no significant assets other than a property in [Country A] worth £25,000.

91. F has recently advanced £500,000 to clear H's outstanding costs. It is a loan carrying interest at 5% repayable in February 2023. I am confident that H will have the resources to repay that from the loans that he has made to the businesses in which he has recently invested and which he says will be repaid in the near future, or from further gifts from his father.

W's resources

92. Prior to his death, W's father left a letter of wishes. Its general principle was described by him as being that his estate should be left in three equal parts to his widow, his son and his daughter, after the making of certain specific pecuniary bequests. It is common ground between the parties that I should regard the letter of wishes as binding and taking priority over whatever the position in law might be as a result of the grant of certain powers of attorney.

93. His estate consists very largely of plots of land in [Country A] which are undeveloped and some residential property and an office building in [the capital of Country A]. The agreed value of W's one-third interest is £11.942m which H asserts will rise to £18.574m upon the death of W's mother when the value of her home becomes available for distribution between her children.

94. However, underlying this level of agreement is a substantial dispute between the parties about the availability of property in [Country A] bearing in mind the dire economic climate facing that country. I had the benefit of hearing from each side's valuer, both as to the likelihood of the sale of property and of letting it.

95. I accept, because it accords with common sense, that the demand for property in [Country A] has increased as investors and savers would rather have their money in property than in a bank from where it can only be withdrawn in small tranches and with the risk of suffering "a haircut". It is likewise common sense to accept that buyers are more likely to come from within [Country A] than from outside because purchasers with funds overseas are unlikely to want to invest into such a fragile economy.

96. I accept also that (i) it is a difficult market with not many buyers around; and (ii) those who do buy would rather pay for developed property with the prospect of immediate occupation than undeveloped; and (iii) they would prefer to pay with cash already in [Country A].

97. W says that her family have been seeking to sell land and buildings for some years. One property has got close to being sold on a number of occasions but there is little interest in the rest.

98. I can have no knowledge of when any property will be sold. I accept that it may be some years and the value achieved may be very different from that agreed at the current time. Thus it is that I accept that W's current interest in land is just under £12m, but it must be regarded as unrealisable in the short-term.

99. H asserts that there are three properties that could command a very high rental. One of them is undeveloped land and H accepts that this may take years to produce an income; the second is the apartment currently occupied by W's mother and therefore unavailable; and the third is the office building referred to at paragraph 96 above. H's valuer says that he knows that an offer of $4.5m was made for this property and that a number of NGOs have been interested in either renting or purchasing it. W says that she has no knowledge of an offer to purchase the building but accepts that some half a dozen entities have been interested in the property. The value of W's one third share of its current rental value is thought to be between $80-90,000 p.a.

100. Amongst the assets that W received from her father was an apartment in Paris which W subsequently sold with her mother's blessing and invested in an apartment in New York. It is worth some £1.8m after costs of sale and is subject to a charge for a sum advanced by her mother towards her costs of £175,000 and would be subjected to a further charge if, as anticipated, W's mother is willing to advance her daughter a further £380,000 which she needs to pay the balance of her costs. W accepts that the property could be sold to provide her with liquid funds and on the assumption of the further advance from her mother by way of loan, W would end up with some £1.3m after repaying her mother. It is currently rented out producing an income of about $35,000 p.a. after the payment of property costs. If the income is remitted to the UK it will be subject to income tax if W has an income over the personal allowance.

101. As a result of a trust distribution made by her mother, W owns a flat in central London valued at £2.182m but reducing to £1.309m if deemed to be discounted for a notional life interest to W's mother. H accepts that I should regard this property as one to be retained for the use of W's mother for as long as she wishes. In those circumstances it would be right to take the higher value but to regard the property as both non-matrimonial and unavailable as a resource to W for what may be the remainder of her mother's lifetime.

102. W's other assets total just over £320,000, the bulk of it being a loan made by her to her brother and which is unlikely to be able to be repaid until he finishes a property development.

Income

103. Neither party has an earned income. H is an entrepreneur and is currently at the stage of living off capital although he expects soon to be able to receive director's fees. I have no doubt that his abilities will enable him to be a substantial earner in the future and in the meantime he can rely on F for support if he needs or wants it. His proposal for the support of W and the children plainly anticipates the availability of income or capital in a way that his current assets would not otherwise permit.

104. W has no income beyond the sum of £7,500 per month that she receives from H. She says that she survives on this but at a very reduced standard of living. In addition, H pays the following items:

i) Service charge including building insurance;

ii) Household insurance;

iii) Council Tax;

iv) Water Rates;

v) Electricity;

vi) Gas;

vii) TV licence;

viii) Cable TV and broadband;

ix) Medical expenses.

105. Disregarding the medical expenses, for which I do not have a figure, H says that they cost him just under £24,000 p.a., the biggest item by far being the service charge at nearly £17,000 p.a.

106. Aside from the expenses set out above, H calculates that over a twelve month period, some part of which being when he was also living in the matrimonial home, W's household spending came to £125,000. The difference between what he estimates W's expenditure to have been and what he has provided is made up by her New York rental income and financial support from her mother.

107. These calculations were for the year to November 2018. During that period W also had the benefit of being able to access the cash that H kept in the home and topped up from time to time, his payment of all their expenses when they were out together in restaurants or shopping and the like, and the payments made by him of their holiday expenses. His analysis needs to be seen subject to that significant reservation.

108. Thus it is he says that W's expenditure needs including housing costs are some £150,000 p.a. exclusive of education expenses.

Standard of living

109. The standard of living has been very comfortable without being luxurious. Apart from one extravagant skiing holiday each year costing about £30,000, holidays were spent either in [Country A], normally staying with W's family, or in the summer in the South of France staying with H's family. In both instances the family picked up the tab. They ate out often and entertained to a high standard.

110. Included within H's schedule of expenditure is an approximate sum of £20,000 paid towards a live-in housekeeper who is an important part of the family and who assists in the care of the children. W's schedule quotes a sum of nearly double this figure. The difference was not explored in evidence.

W's earning capacity

111. By agreement, an employment report was obtained on joint instructions. Neither party has required the SJE to give evidence although H claims that the report underestimates W's ability and fails to take into account the likelihood of her starting up her own business. W says that the report is over optimistic on the time frames.

112. W has much to offer an employer. She did well in her career and has a core of business development and administrative skills and experience to offer. She speaks three languages fluently. At the time of writing the report the SJE pointed out that there was almost full employment locally.

113. Against these positive elements he rightly points out that the most significant disadvantage is the 8 year gap since her last employment. But, he says the market is buoyant and there will be real job opportunities. He anticipates that she would be back in paid employment by 1 October 2020. If working part-time for the first 2-3 years he anticipates that W's annual salary would be just over £20,000 gross, £16,000

p.a. net. If starting immediately on a full-time basis he estimates a starting salary of £30,000 p.a. gross or £23,000 p.a. net. After 5 years employment she should have climbed to achieve median rather than lower centile earnings of around £55,000 p.a. gross, nearly £40,000 p.a. net.

114. W says that she would like to start off as an employee rather than becoming self-employed. As someone starting out on her own again, I regard that as entirely reasonable. As the wife of a wealthy man she could afford to fail. That is not a risk that she would want to take now.

115. Since the report was prepared there has been the catastrophe of coronavirus and the probability of many more people chasing what jobs are available. Even without recent events, I would regard it as over-optimistic to expect W with children aged 7 and 5 to be in employment by about October 2020. She is at the moment a full-time mother and has the benefit of a housekeeper rather than a nanny.

116. W is able and ambitious and I regard it as reasonable to assume that she will be able to be in part-time employment by October 2022 when the children will be that much older. I think it reasonable that she should start on a part-time basis.

117. By no later than October 2026, when the children will both be at the same secondary school, I would expect her to be in full-time employment. In each instance I adopt the anticipated salary figures of the SJE.

118. H sought to argue that W could command an income within a short period of returning to work of over £200,000. There is not the slightest evidence to support the proposition and I reject it.

119. W's open offer:

i) W seeks a half share of the FMH and half of the $8m received in 2018 so as to provide her with the whole of the family home plus a lump sum of £1.210m;

ii) She seeks the sum of £5m by way of further lump sum reflecting what she says is a discounted figure for half the future profits of [ABCA] and [L];

iii) Until payments of the lump sums, at which point, there would be a clean break, H should pay spousal maintenance at the rate of £150,000 p.a. and £35,000 p.a. per child until the end of full-time tertiary education;

iv) Payment of school and university fees and all extras;

v) £300,000 towards her costs;

vi) In addition, she sought half the value of H's shareholding in [V]. This claim was abandoned on 19 February 2020.

120. H's open offer:

i) H offered that W should continue to live at GHG until the end of the younger child's first degree or certain other terminating events which it is unnecessary to set out. W was to have no beneficial interest in the property;

ii) H should have the ability to mortgage the property for up to 50% of its open market value on the basis that he would be solely responsible for paying the premiums;

iii) H will pay the building insurance and ground rent and any structural repairs, but W would be responsible for the service charges and any internal repairs;

iv) H offered spousal maintenance at the rate of £60,000 p.a. terminating on 31 December 2022 with a bar on any extension. This proposal was not entirely clear because although the maintenance was offered for a period of 3 years, the section 28 (1)(A) bar on any application refers to a 2 year term order;

v) H offered child periodical payments at the rate of £45,000 p.a. per child, being, as he pointed out, the equivalent of the £7,500 p.m. that he was currently paying voluntarily;

vi) H agreed to pay the children's school fees and university fees and certain specified additional sums;

vii) H offered no lump sum or transfer of property. His proposals were by way of clean break after the expiry of the 2 year term.

The Law

121. The law in this area is for the most part clearly understood. The starting point is that the marital acquest will normally be divided equally between the parties. I have determined that the $8m is marital acquest.

122. A much more difficult issue is the approach to be taken to the matrimonial home, in circumstances where I have found that the entire purchase and renovation costs were provided to H as a gift just 3 years before the marriage came to an end.

123. Notwithstanding the provenance of the funds there is no doubt that all property is available to be shared between the parties on divorce. However, normally non-matrimonial property will not be shared unless need requires. Is the matrimonial home in these circumstances to be treated as matrimonial property? In Miller, McFarlane [2006] UKHL 24, Lord Nicholls said this:

22. This does not mean that, in exercising his discretion, a judge in this country must treat all property in the same way. The statute requires the court to have regard to all the circumstances of the case. One of the circumstances is that there is a real difference a difference of source between:

i) *Property acquired during the marriage otherwise than by inheritance or gift, sometimes called the marital acquest but more usually the matrimonial property, and*

ii) *Other property.*

The former is the financial product of the parties' common endeavour the latter is not. The parties' matrimonial home, even if it is brought into the marriage at the outset by one of the parties usually has a central place in any marriage. So it should normally

be treated as matrimonial property for this purpose. As already noted, in principal entitlement of each party to a share of the matrimonial property is the same however long or short the marriage may be.

124. In paragraph 23 Lord Nicholls went on to say:

The matter stands differently regarding property ("non-matrimonial property") the parties bring with them into the marriage or acquire by inheritance or gift during the marriage, then the duration of the marriage will be highly relevant.

24. In the course of a short marriage fairness may well require the claimant should not be entitled to a share of the other's non-matrimonial property. The source of the asset may be a good reason for departing from equality. This reflects the instinctive feeling that the parties will generally have less call upon each other on the breakdown of a short marriage

25. With longer marriages the position is not so straightforward for non-matrimonial property represents a contribution made to the marriage by one of the parties, sometimes as the years pass, the weight fairly to be attributed to this contribution will diminish sometimes it will not.

125. In K v L [2011] EWCA Civ 550, Wilson LJ (as he then was) pointed out that the true proposition was that the "*importance of the source may diminish over time" rather than "will*". He went on to give three examples (at paragraph 18):

126. "Three situations come to mind:

(a) Over time matrimonial property of such value has been acquired as to diminish the significance of the initial contribution by one spouse of non-matrimonial property.

(b) Over time the non-matrimonial property initially contributed has been mixed with matrimonial property in circumstances in which the contributor may be said to have accepted that it should be treated as matrimonial property or in which, at any rate, the task of identifying its current value is too difficult.

(c) The contributor of non-matrimonial property has chosen to invest it in the purchase of a matrimonial home which, although vested in his or her sole name, has – as in most cases one would expect – come over time to be treated by the parties as a central item of matrimonial property".

127. There are a range of cases in which homes, often homes on family estates, which became matrimonial homes upon marriage have been excluded from division between the parties or subject to a sharing whereby the division was far from an equal one. It is unnecessary for me to lengthen this judgment by going through them.

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128. In my judgment it would not be right for me to treat the whole of the matrimonial home as subject to equal sharing between the parties. I bear in mind in particular the following:

i) This is the first property owned by the parties and was bought only 3 years before separation;

ii) The whole of the purchase price came not from H but from F;

iii) The property was, no doubt at the direction of H's father, registered in the sole name of H.

129. On the other hand, it would not be right for me to exclude it entirely. I bear in mind that:

i) This was not a short marriage. It was a marriage of 8 years that produced 2 children;

ii) On H's own proposal it will remain the home of W and the children for some 17 years until the younger child finishes a first degree.

130. I therefore conclude that I should deem 40% of the home to be a matrimonial asset and add to the acquest £1.648m. On that basis when aggregated with the $8m received by H the acquest totals almost exactly £7.9m and a half share would thus provide W with just under £4m.

131. The court's ultimate aim is to do fairness between the parties in all the circumstances of the case. Fairness is inevitably in the eye of the beholder and something upon which the parties are unlikely to agree. In particular, H repeatedly points out that W is richer by far than him and that it is unfair that he should make further provision for her.

132. The short answer to that is that W is richer only by the happenchance that her parents were of different religions and under the law of [Country A] if W's father had left his assets to his wife, she would not in turn be able to leave them to the children, so that he made provision for them to go to the children but subject to the letter of wishes. All that W has in her name has thus emanated from a non-matrimonial source. Furthermore, none of it is realisable in the short-term with the exception of the New York apartment.

133. I have come to the view that the matrimonial home should be transferred absolutely to W. In so determining I am not overlooking its provenance, but, in exchange, W will have no claim over H's business assets including those which were purchased with the $8m representing accrued remuneration. It follows that there is no question of H taking out a charge on the property. It means that W will own the property in which she and the children will be living for many years to come. It will be her decision as to when, if ever, she sells it.

134. On my calculations this gives her marginally over 50% of the matrimonial assets but to give H a very small charge on the property which on his own offer would not be realisable for 17 years would simply be an irritant and of little benefit to H. Furthermore, he does not need it. I am satisfied that he will be well able to rehouse himself without the need of resorting either to the proceeds of the home in many years' time or requiring it for security for borrowing when he is likely to have sufficient other assets to provide by way of deposit or security.

Periodical Payments

135. There are three distinct periods:

i) W will need a full award of periodical payments until the end of 2022;

ii) She will need a reduced level from the end of 2022 to October 2026;

iii) The period from 2026 onwards.

136. Before looking at each period, I must deal with the expenses which H pays and which are set out at paragraph 104. I do not think it right that for the future H should be paying W's domestic bills if they are small, dependant on usage or frequent. I therefore expect W to pay the bills of GHG, excepting only the service charge and the children's medical insurance. When I use the term "service charge" I include in it the building insurance and ground rent.

137. I assess W's needs for herself and the children, exclusive of the service charge and expenses H will paying going forward at £150,000 p.a. I calculate that by adding to H's schedule of £125,000 which is now 18 months old, £7,000 for the household expenditure she will be taking over, and £18,000 (being £1,500 per month) for the other expenditure which I have estimated H met before and which is not reflected in the schedule. I regard W's rental income as something available to her to meet extraordinary expenditure.

138. First period: I take the period to December 2022 rather than October 2022 to allow for any slippage in W obtaining a job and receipt of her salary. For that period, I order H to pay periodical payments to W of £70,000 p.a. on top of paying the service charge.

139. Second period: for the period between 1 January 2023 – 31 October 2026 the quantum of W's periodical payments will reduce, unless otherwise ordered, by £16,000 p.a. to reflect her assumed part-time employed income. H must continue to pay the service charge as before.

140. Third period: much more difficult is the period from October 2026 onwards. By then, adopting the expert evidence, W's income will have risen to around £40,000 p.a. net. If receiving £80,000 for the children (see below), there will be a shortfall of some £50,000 p.a. if her spousal payments cease and she has to take over the service charge.

141. However, I must bear in mind the statutory requirement to bring to an end the payment of periodical payments if the same can be achieved without undue hardship. Implicit in the words of the statute is that there might be a degree of hardship.

142. I have concluded that in 6.5 years' time H should be discharged from his obligation to pay spousal maintenance and the service charge. By then it is reasonable to expect W to meet the shortfall:

i) By selling her New York apartment;

ii) By selling the central London flat if her mother, who will then be aged 82/83 no longer has need of it when she visits London;

iii) From proceeds of the sale of land or buildings in [Country A];

iv) Or from the rental received from the above.

143. I have given considerable thought as to whether or not I should make an extendable term order and have concluded that on the facts of this case I should not do so save that, as it is a fundamental term of the provision that H complies with his undertaking to pay child support in the sum I have directed and he has agreed not to apply for an assessment, it would be proper that there should be a nominal order in place for W for the duration of the children's minority or until W's remarriage which would be activated only in the event of H not complying with his undertaking.

Child periodical payments

144. H has undertaken to pay periodical payments for the children in such sum as the court thinks appropriate. In her open offer W sought £35,000 p.a. per child whilst H offered £45,000 p.a. per child, no doubt to bolster his argument for a quicker clean break. I shall take the mid-point and make an order for £40,000 p.a. per child. When that child goes to university the amount then payable shall be paid, as W suggests, as to one third to W and two-thirds to the relevant child.

145. In addition, H will pay for medical insurance for each child and the costs of tuition at school (including the school bus) and university. Insofar as extras cost over £500 per term, W must obtain H's approval and also for school trips overseas. H plays a significant part in the lives of these children and he is entitled to be consulted in respect of such items.

Costs and Imerman

146. It is deeply regrettable that these parties have spent over £2m by way of costs. It is a disastrously high proportion of the matrimonial wealth. In their different ways both parties are to blame.

147. W has served a series of very lengthy and detailed questionnaires. I have no doubt that the source of the information that she obtained which underlay these questionnaires were the documents she wrongfully obtained from H in September 2018 and December 2018. It has led her to probe every nook and cranny of H's business life.

148. W relies on paragraph 42 of Imerman v Tchenguiz [2010] 2 FLR 814 which reads:

42. We respectfully agree. Hildebrand v Hildebrand, in our judgment, is authority only as to the time when copies obtained unlawfully or clandestinely should be disclosed to a spouse. On that narrow point – what we have referred to as the 'rule in Hildebrand' – it was and remains good law. In other words, and we wish to emphasise this, subject to only one qualification it is and remains the obligation of a wife who has obtained access to her husband's documents unlawfully or clandestinely to disclose that fact promptly, either if asked by her husband's solicitors or at the latest and in any event when she serves her Questionnaire. Disclosure in this way of the fact of what she has done is not in any way inconsistent with the Rules. And it is

no answer to this obligation that it may prompt the husband immediately to commence proceedings for recovery of the original documents and any copies.

146. She argues that she was under no duty to disclose what she had done because the obligation of a wife who has obtained access to her husband's documents unlawfully or clandestinely is only to disclose the same if asked by the husband's solicitors or at the latest when she serves her questionnaire.

149. I can see no basis for a spouse to retain documents until the service of a questionnaire. Logically, as Mr Glaser freely accepted, every spouse in financial remedy proceedings would write at the very outset of proceedings to ask if the other had obtained any documents. If that is done, then the obligation would be to disclose at once. How, I ask, can it be appropriate for a spouse who has obtained such documents wrongfully to be allowed to retain them simply because the other spouse has not asked a question? After all, they should be of no use to W, as she is not entitled to look at them.

150. I respectfully agree with Mostyn J in UL v BK [2013] EWHC 1735 (Fam) who says at paragraph 56 (iii) of his judgment:

"If a wife supplies such documents to her solicitor then the solicitor must not read them but must immediately seek to obtain all of them from the wife and must return them, and all copies, both hard and soft, to the husband's solicitor (if he has one), the husband's solicitor, who owes a high duty to the court, will read them and disclose those of them that are both admissible and relevant to the wife's claim, pursuant to the husband's duty of full and frank disclosure…"

151. If that had happened in this case it may be that H's disclosure would have been substantially more straightforward, but, H has compounded the situation by woefully failing to answer questions in a full and complete way, thus bringing further suspicion upon him.

152. As a result, this case has become increasingly out of control. One highly detailed questionnaire after another has been served. There have been repeated breaches of the Statement on the Efficient Conduct of Financial Remedy Hearings in the High Court, principally by W. These include the absence of a single schedule of assets, provision of an excessive number of bundles and authorities, and position statements and closing documents longer than allowed by the Statement or by me. This has unnecessarily increased both the costs of the parties and the burden upon the court. The sanctions available to the court at paragraph 18 of the Statement should not be overlooked.