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Neutral Citation Number: **[2021] EWHC 3086 (Fam)**

Case No: PT2019000131
and FD19F000104

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand
London
WC2A 2LL

Date: 18 November 2021

Before :

Mr Justice Moor

- -

Between :

Dr Azari Ebrahim Hilal Aldoukhi

Applicant

-and-

Dr Maytham Mahmoud Haji Haidar Abdullah

Respondent

- -
- -

Mr Michael Glaser QC and Mr Gillon Cameron (instructed by Helen Pidgeon Solicitors Limited) for the **Applicant**
Mr James Ewins QC and Mr Barry McAlinden (instructed by Karam, Missick & Traube LLP) for the **Respondent**

Hearing dates: 11th to 20th October 2021 and 18th November 2021

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JUDGMENT

MR JUSTICE MOOR:-

1. I have been hearing two applications made by the Applicant, Dr Azari Ebrahim Hilal Aldoukhi. The first is pursuant to the Trusts of Land and Appointment of Trustees Act 1996 (hereafter "TOLATA"). The second is brought under Part III of the Matrimonial and Family Proceedings Act 1984. In relation to each application, the Respondent is her former husband, Dr Maytham Mahmoud Haji Haidar Abdullah. I propose to refer to them as Dr Aldoukhi and Dr Abdullah respectively.

2. Dr Abdullah was born in Kuwait on 7 January 1973, so he is now aged 48. He is a businessman. Dr Aldoukhi was also born in Kuwait on 4 August 1975. She is therefore aged 46. She is a consultant dermatologist. She studied medicine in this country at Newcastle University from 1993 before finally qualifying in Prague at Charles University. They married in Kuwait on 14 March 2002.

3. They have three children. The eldest, M, is aged 16. He has been diagnosed with a medical condition and has had very expensive medical treatment, led from the USA. I am told his condition has improved as a result of the treatment but there is a dispute between the parties as to the exact state of his health. I have not investigated this as it is not central to what I have to decide. He attends a fee paying school in Kuwait. He has two younger sisters. D is 15 and S is aged 10. They also both attend the same fee paying school. For reasons that I will explain, their mother pays the school fees.

4. On 27 May 2007, a Power of Attorney was executed officially in Kuwait by which Dr Aldoukhi gave Dr Abdullah authority to act on her behalf. There is no dispute as to what the document says but there is significant dispute as to what it entitles him to do in relation to properties which are in the joint names of the parties. The Power begins by saying that that he can act on her behalf "*to administer her properties, present and future, wherever located"*. It goes on to set out a large number of specific powers which include "*to purchase, sell, mortgage and barter whatever properties, real estates and movable and immoveable properties he elects at appropriate prices and conditions…"*. It then says that he can "*sign necessary papers and documents; to apply for the division and partition of property held in community, and effect such division by agreement or through the courts of law, and to sign the pertinent contract…".* To put it simply, the dispute is whether this Power gives him control over the beneficial interests in any such property or whether he has to act at all times in her best interests.

5. The parties began coming to this country for a number of different reasons. I am satisfied these included holidays; treatment for M; and for the children to attend summer schools here. In 2011, Rayyan Limited, a company owned by the Rayyan Trust, which belonged to Dr Abdullah's family, took a lease of a

property in London called Haselbury House. The parties and the children stayed there from 7 June 2012 to 11 June 2012, for eleven days over Christmas 2012, and for five days commencing on 2 January 2013. There is no doubt, however, that significant difficulties began to emerge between Dr Abdullah and his family. Eventually, the dispute led to a complete breakdown in their relationship and extensive litigation taking place in Kuwait. Dr Abdullah alleges the utmost bad faith by his father in particular but I have not investigated this in any detail and I have not heard from his father. Perhaps not surprisingly, he was excluded as a beneficiary of the Rayyan Trust on 4 June 2013 and Dr Abdullah received the sum of £5.25 million from the Trust.

6. On 7 December 2012, the parties exchanged contracts to acquire a flat at 24 Albion Gate, London W2 in their joint names for £2,350,000. Completion took place on 21 January 2013. An email from Charles Russell LLP (hereafter "CR"), who acted for the parties, to the Land Registry said that they were to hold the property as joint tenants. It appears that it was initially purchased outright but, on 20 October 2013, Dr Abdullah took out a mortgage with UBS in the sum of £1,527,500. Dr Aldoukhi asserts that this property is a matrimonial home. Dr Abdullah's case is that it was an investment property but there is no doubt that the parties stayed in the property when they visited London. Indeed, between 15 June 2013 and 27 August 2013, they stayed there for 73 days.

7. On 18 May 2014, Dr Aldoukhi donated a second Power of Attorney to Dr Abdullah in Kuwait. It was in very similar terms to the first Power and again starts with the words that he is "*to manage her properties in any jurisdiction…"*. The parties do not agree why this second Power was necessary. Dr Aldoukhi says that Dr Abdullah told her that he had lost the original of the first one but he says that it would have been easy to obtain a replacement from the Kuwaiti Registrar. He contends it was due to the purchase of Albion Gate and their intention to purchase a second property, Apartment 4, The Piazza, Covent Garden, London, WC2 on which they exchanged contracts on 22 May 2014. Completion took place on 19 June 2014. Again, the property was purchased in joint names. The purchase price was £2,800,000. A mortgage was taken from UBS in the sum of £1,820,000 and the balance of the purchase price came from Dr Abdullah's resources. An email dated 13 August 2014 from CR to the Land Registry notes that they should be registered as joint tenants. It is accepted that this property was never a matrimonial home as Dr Aldoukhi never stayed there. Indeed, in the summer of 2014, they spent 60 days in Albion Gate although they did go to Spain for two weeks on holiday. Dr Aldoukhi's sister, Maryam also stayed in the property.

8. It is Dr Abdullah's case that the marriage broke down in 2014. Dr Aldoukhi denies this. There is no doubt that they stopped sharing a marital bed but Dr Aldoukhi says that in every other particular they continued as a married couple. There is no doubt that they presented themselves to the world as being married. On 10 September 2014, Dr Abdullah says he entered into a contract with Dr Aldoukhi but there is no doubt that he signed the contract on Dr Aldoukhi's behalf. She says she knew nothing of it but Dr Abdullah says she was fully aware. The contract says at Clause X that "*each party having a copy hereof to*

act accordingly" but Dr Abdullah accepted that he had not given her a copy although he said it was in the safe and she could have looked at it. The contract said that it gave Dr Abdullah "*the right to exit her from the account stated in the preamble, at any time, at his own discretion and to take all actions to complete her exit from the ownership of the account, including all effect arising thereon".* It is clear from the following clause that Dr Aldoukhi had no right to reject her exit, including the shares in the real estate properties. There is specific reference to both Albion Gate and the Piazza.

9. On 18 February 2016, the parties exchanged contracts to purchase 15 Craven Street, London, WC2 for £5,203,350, of which £3,380,000 was borrowed by way of mortgage from UBS. Completion took place on 29 February 2016. The declaration of trust on the Form TR1 says the parties are "*joint tenants*". The family had been continuing to stay in Albion Street on various dates and times that I will summarise later in this judgment. They stayed in Craven Street, albeit that the parties were in separate bedrooms, for a total of 50 days in the summer of 2016, albeit divided into two separate visits.

10. On 10 October 2016, Dr Abdullah signed a loan agreement on behalf of himself and Dr Aldoukhi, saying that loans of £2,439,083, which had been made by Shamu International Corporation, a company incorporated in the BVI, to the parties, were to be consolidated. Dr Aldoukhi again asserts that she knew nothing of this document at the time. It is accepted that Dr Abdullah owns 60% of Shamu. He asserts that a third party owns 40% but has refused to disclose the identity of that third party. He accepted to me in evidence that this meant that I was likely to treat him as the owner of Shamu in its entirety.

11. On 15 August 2017, Dr Aldoukhi donated a third Power of Attorney to Dr Abdullah. This one was executed in England in the presence of an English solicitor, Steven Daultrey. It says it is "*irrevocable"*. It starts by saying that Dr Abdullah is appointed to act as Dr Aldoukhi's attorney/trusted person "*to act in my name and place and for my use and benefit*" in connection with all three London properties. The Power gives him the right "*Generally, to exercise full control over any and all of the above Properties including but not limited to the rights to manage, control, operate, improve, transfer, sell, mortgage, lien, destroy and dispose of the said property absolutely in any manner that the Appointee may in their absolute discretion see fit and without any obligation to give reasons or justification as if the said assets were the Properties of the Appointee absolutely"*.

12. As I have already indicated, Dr Abdullah says I should treat the marriage as having broken down in 2014. Dr Aldoukhi says it broke down in November/December 2017. On 15 December 2017, she left the former matrimonial home in Kuwait, known as Mishref, with the children and litigation commenced. She says she was forced to leave but nothing turns on that. She went to stay with her parents in their home in Kuwait. On 13 November 2017, she informed Dr Abdullah that she had cancelled the two Kuwaiti Powers of Attorney. There followed an enormous amount of litigation in Kuwait. Dr Abdullah refers to some 63 hearings. There were certainly appeals and cross-appeals and, indeed, some of the litigation continues until this day, although it

is accepted it will not lead to any significant capital payment to Dr Aldoukhi. I do not intend to set out all the details but will cover the most important features. The first one of these is that Dr Aldoukhi says that Dr Abdullah defended her divorce petition and sought a resumption of married life. He responds that he only did so, even though the marriage had broken down, to protect the children from the stigma of divorce in Kuwait.

13. Despite this, a final Kuwaiti divorce was granted on 25 June 2018. On 27 July 2018, Dr Aldoukhi purported to revoke the English Power of Attorney dated 15 August 2017. There is a dispute as to whether she was entitled to do so, given that it said it was irrevocable. There is no doubt, however, that this purported revocation was brought to Dr Abdullah's attention. She also severed the joint tenancies on the three London properties on 26 July 2018. Despite the purported revocation, Dr Abdullah exercised the Power again on 10 September 2018 by entering a loan agreement with Shamu on behalf of himself and Dr Aldoukhi. The preamble says that Shamu had loaned Dr Abdullah and Dr Aldoukhi the sum of £2,439,083, which after adding interest at 6%, now gave a debt of £3,096,416. The document then says, in confirmation and as a guarantee for repayment, Dr Abdullah and Dr Aldoukhi consent and agree to transfer to Shamu all their rights arising from the sale proceeds of the three London properties, after discharge of the UBS mortgages. There was to be no interest but full repayment was to be made by 20 September 2020. The sum repayable was capped at the net proceeds of the three properties. Dr Abdullah told me in evidence that this document was, therefore, designed to protect Dr Aldoukhi's position should there be a shortfall. Again, the document says that each party has a copy.

14. A further loan agreement was executed by Dr Abdullah on behalf of himself and Dr Aldoukhi, with Shamu on 6 December 2018. UBS required repayment of its mortgage of £1,534,085 on Albion Gate. The document says that Shamu loaned the money to the parties to enable the mortgage to be repaid. The loan duration was to expire on 10 September 2020, with interest at 6% pa. The parties were, as before, to acknowledge assignment to Shamu of their rights to the proceeds of sale of the three properties. Dr Abdullah signed, purporting to use the 2017 Power of Attorney.

15. The final order made by the Kuwait Court in the financial proceedings is dated 10 January 2019. Dr Abdullah was ordered to pay KD 300 by way of marital alimony to Dr Aldoukhi for the period from 19 December 2017 to the date of the divorce. The current exchange rate is 2.4 Dinar to the Pound, so this amounted to £720. Her total capital award was KD 6,000 (£14,400) being the value of a car, payable monthly, and a slightly smaller sum for furniture. In terms of maintenance for the children, she received KD 360 for general maintenance; 1,000 KD for rent; 80 KD for a maid; a further 60 KD for Shazanan; and 80 KD for a driver, making a total of KD 1580 (£3,792 pm). Both parties appealed. On 23 April 2019, the Court of Appeal refused Dr Aldoukhi's application that Dr Abdullah should pay the children's school fees but the court did increase the overall level of child support to KD 1,780 per month (£4,272 pm). It is asserted that payments have been sporadic but, at the time of the trial before me, there were no arrears of significance.

16. On 12 October 2018, Dr Abdullah instructed his solicitors to send a letter before action to Dr Aldoukhi saying that he intended to sue her for £3,007,165. He asserts loans from Shamu of £2.4 million plus interest and says that the balance of the money to fund the properties came from his personal resources in the sum of £2.2 million. The letter is undoubtedly inaccurate on his case today, as it says that Dr Abdullah repaid the debt to Shamu in the sum of £3,096,416 in full on 5 September 2018. He claimed £259,509 as mortgage interest; 50% of the mortgage fees and service charges; £1.136 m as half of the deposit monies; and £1.5 m as half of the asserted loan due to Shamu. Dr Aldoukhi responded on 5 November 2018 relying on the decision in the case of Goodman v Gallant and pointing out that the loans were taken out after the purchases. She queried how Dr Abdullah could execute the loan agreements given that they were not in Dr Aldoukhi's best interests. She contended that the properties should be sold and divided equally.

17. In fact, it was Dr Aldoukhi who issued Particulars of Claim pursuant to TOLATA in the Chancery Division on 15 February 2019, seeking a declaration that the beneficial interests in the three London properties are held as tenants in common in equal shares and orders for sale. Dr Abdullah filed a Defence and Counterclaim dated 22 March 2019, pleading that any interest of Dr Aldoukhi is held for Dr Abdullah absolutely. He denied severance of the joint tenancies was effective. In the alternative, he asked for equitable accounting. The document says that he paid all the financial costs of the properties on the common understanding that any interest Dr Aldoukhi held was held for Dr Abdullah and she would transfer it to him if requested. He says he relied on this understanding in making payments. The September 2014 contract entitled him to require Dr Aldoukhi to transfer her interest to him, so the effect is that it is held for him. He then pleads proprietary estoppel and fundamental mistake. He says he is entitled to rectification on the basis of a common continuing intention. If not, there should be equitable accounting. He makes a counterclaim for a declaration that the properties are held absolutely for him as well as pleading breach of contract and unjust enrichment.

18. Dr Aldoukhi's Reply and Defence to Counterclaim is dated 25 April 2019. She denies that there was a common understanding that the properties were held for Dr Abdullah, arguing that this is not consistent with the documents. She denies that any payments were made by Dr Abdullah in reliance on such a common understanding, saying that the parties agreed to hold the properties as joint tenants. She reposed trust in Dr Abdullah in relation to the Powers of Attorney. Such an Attorney is obliged and has a duty to act in good faith to the donee. He cannot take advantage of the Power to obtain a benefit for himself. Signing contracts on Dr Aldoukhi's behalf was not a proper exercise of the Power of Attorney. The contracts are therefore void and should be set aside. The parties agreed that Dr Abdullah would be responsible for financing the properties. Finally, she relies on the presumption of advancement.

19. On 29 June 2019, Dr Aldoukhi applied for leave to bring an application for financial provision following an overseas divorce, pursuant to Part III of the 1984 Act. She limited her claim to Albion Gate and Craven Street, which she

says are both matrimonial homes as the parties occupied both during the marriage as a family. She sets out how furniture, paintings and ornaments were shipped from Kuwait to London to furnish Albion Gate. She says they needed a bigger property, so they acquired Craven Street. They came here for holidays. HHJ O'Dwyer granted her permission to bring the claim on 28 August 2019 at a without notice hearing, limited to the matrimonial home jurisdiction. Dr Abdullah applied to set the grant aside on 6 September 2019. He asserted that there had been a breach of Dr Aldoukhi's duty of candour. He claimed the properties are not matrimonial homes, saying they had been purchased solely as investments and that she had materially misstated the amount of time the parties had been in London in the properties and she had not disclosed her income as a dermatologist. He said he had tried to sell Albion Gate but there had been a problem with the air conditioning. He had to sell shares to pay off the UBS mortgage which incurred a loss for him of $738,763. Dr Aldoukhi's name was only included on the title to ensure that no Inheritance Tax ("IHT") was payable on his death. He asserts that it was always understood that the properties were owned by him. He opted against long rentals to make the properties attractive to buyers.

20. Dr Aldoukhi responded in a statement dated 13 February 2020. Albion Gate was not an investment. They furnished it themselves. There were family photographs there. She asserts that Dr Abdullah said in the Kuwait proceedings that he bought the properties to fulfil her desire to reside in Britain. Albion Gate was given as their address on their Visa applications. Moreover, Dr Abdullah said on the mortgage application form to UBS that they would reside in Albion Gate, as well as telling the same thing to the conveyancing solicitors. She accepted that there were errors in the figures she gave in her earlier statement for the amount of time the parties spent in London. It is now agreed that the total number of days was 297, including 21 days in 2012; 73 days in 2013; 70 days in 2014; 33 days in 2015; 50 days in 2016; and 48 days in 2017. Some of the early days were, of course, spent in Haselbury House. She adds that the two older children attended a school in London (that Dr Abdullah attended as a child) for 8 weeks in 2013 and for 9 weeks in 2014 (7 weeks for S); 2 weeks in 2017 (one week for S). Many of her belongings are still in Craven Street, such as shoes, clothes, make-up, books, sunglasses and toys. She asks, rhetorically, why Dr Abdullah would have purchased a property in their joint names in February 2016 if they had separated in 2014.

21. I heard the set-aside application on 26 February 2020 and refused it. My determination was not appealed. I refer to my judgment, given extempore on that day, for the background to the application, the respective contentions and my reasons for refusing to set the grant of leave aside. I do not therefore intend to deal with that aspect of the case any further in this judgment.

22. Relying on the grant of permission from HHJ O'Dwyer, Dr Aldoukhi applied on 10 September 2019 for an order that she be granted a financial award of Dr Abdullah's half share of the two properties in addition to the half she says she already holds. She filed a further statement dated 10 September 2019 in which she confirmed that she is a consultant dermatologist in Kuwait, earning, at the

time, approximately £11,924 pm net. I made directions on that application on 26 February 2020 after I refused the set-aside application.

23. Chief Master Marsh transferred the TOLATA claim from the Chancery Division to the Family Division on 8 April 2020 and I have heard them together. There was a time thereafter that Dr Abdullah was acting in person. His Form E is dated 10 August 2020. He deposes to being the Managing Partner of Maytham Haidar General Company. He says he paid the cost of medical treatment for M in the sum of almost £2 million. He asserts that Dr Aldoukhi refused to occupy the Mishref house in Kuwait during the Kuwait proceedings. I am satisfied that he was only offering to share occupation with her and that it was entirely reasonable for her to decline. He says the home is being offered for sale at a price of £1,750,000. He claims The Piazza is worth £2,250,000, but is subject to mortgages and loans totalling (£3,456,398). He refers to the mortgage to UBS of (£1.8m) and the Shamu loan for the balance. Turning to 24 Albion Gate, he says it is worth £1,850,000 but with loans due to Shamu of (£2,990,265). Finally, he puts the value of 15 Craven Street at £4,150,000 but says it is subject to mortgages and loans of (£5,203,350) of which UBS is (£3.3 million) and the balance is due to Shamu. He then claims extensive liabilities of (£5,087,933). He says he is owed £8.5 million but claims those who owe him money are insolvent, other than Dr Aldoukhi's father who is alleged to owe him £337,000 relating to the purchase of her father's house from his father. Most of the money owed to him is owed by his father. He then asserts liabilities of (£7,062,595) pursuant to court orders. He claims a 60% interest in Shamu, which he says is worth a total of £5.2 million. He has 99% of his own company, Maytham Haidar General Trading, valued at £770,000 and 1% of Mahmoud Haidar and Sons General Trading, the family company, although it is clear he claims an interest of 33%. He puts the 1% interest at £352,116. His Kuwait pension entitlement is £3,896 per month. Putting all this together, he claims to be insolvent to the tune of (£866,251). He says Maytham Haidar General Trading lost (£532,285) in the year to 31 December 2019 but he accepts he drew £7,792 per month. Overall, he estimates his net income as being (£21,000). His income needs are said to be £190,452 pa for himself and £10,000 pa for the children. He claims capital needs of £833,366 to pay his legal fees and interest payments on the UK mortgages. He says his financial position was far better before he got married. He claims all financial contributions have come from him. He raises conduct issues but they have, rightly, not been pursued. He asserts that Dr Aldoukhi confirmed in Kuwait that Dr Abdullah was the owner of the three properties in London. He seeks for them to be transferred to him.

24. Dr Aldoukhi's Form E is dated 17 August 2020. She values the Mishref property at £2,210,000, which was the purchase price with no mortgage but confirms it is in Dr Abdullah's name. She values the three London properties at a combined figure of £10.5 million, but subject to UBS mortgages of (£5.2 million). Albion Gate is mortgage free. She had £258,002 in bank accounts. Her other assets were modest although she does disclose a legal fees loan of (£178,531). She also discloses a Kuwait pension, currently 65% of her salary but with the potential to rise to 95%. Overall, she assesses her net assets as being £2,754,842. She gives her income as being £151,632 per annum net. Her income needs are said to be £160,473 pa for herself and £80,896 pa for the

children, of which school fees is £36,745 and tutors for M is £24,960. She discloses some support from Dr Abdullah's father, such as school fees that he paid in 2019/2020.

25. Dr Aldoukhi's Statement of Case, dated August 2020, accepts that jurisdiction under Part III is limited to the two properties that she asserts were matrimonial homes. She said her award in Kuwait was meagre and it did not deal with her sharing claim or her needs. She claims she needs £2.5 million for a property in Kuwait and £2.5 million for a property in London, plus ongoing school and college fees and provision for M's medical care for Asperger's Syndrome. She says she should share the wealth amassed during the marriage and that it is therefore appropriate her capital provision should exceed the half shares in the three London properties that she says she already holds.

26. Dr Abdullah's Summary of Case is dated 30 September 2020. He was then acting in person and I accept that his case has not been put before me in the same way it was in this document. He asserts that I should deny jurisdiction as the parties are subject to Sharia law not Civil law. This is clearly incorrect. He repeats his case that the properties were not matrimonial homes and claims that Dr Aldoukhi said she did not own them in Kuwait. He says she was awarded fair compensation in Kuwait and is just forum shopping. She misled the court about her income. He has lost most of his wealth and there is no remaining equity in the three London properties due to the mortgages. He relies on the various Powers of Attorney, saying that Dr Aldoukhi was trustee for him. He asks that I dismiss the case and transfer all three properties to him.

27. It is right to say that Dr Aldoukhi embarked on a very extensive exercise of challenging Dr Abdullah's disclosure by Questionnaire; Supplemental Questionnaire; Schedule of Deficiencies and the like. On a number of occasions, I approved orders directing Dr Abdullah to answer these questions but I never considered either the detail or the principle. On reflection, I doubt whether I would have permitted nearly such extensive questioning had I considered the matter properly. Having said all that, the Replies do not provide anything like a clear picture of Dr Abdullah's financial affairs. A Statement of Issues, prepared on Dr Aldoukhi's behalf, rightly raises issues such as the values of the properties, the extent of the loans and Dr Aldoukhi's knowledge thereof, as well as Dr Abdullah's relationship with Shamu, but the document goes far wider by talking of calculating the marital acquest and her asserted sharing claim that I am absolutely clear are not appropriate to this particular case, given the limited connection of these parties to this jurisdiction.

28. I directed, on 6 October 2020, that both sets of proceedings were to be heard together and in public by me over ten days commencing on 11 October 2021. Indeed, this has occurred at a fully attended hearing, albeit that three witnesses have given their evidence remotely. I also made provision for an FDR.

29. Thereafter, Dr Aldoukhi filed her Replies to Dr Abdullah's Questionnaire. She said that Dr Abdullah had moved to a separate bedroom four years before the separation but they remained living as a family in all other respects. Dr Abdullah filed Replies to a Request for Further Information on 21 December

2020. He says that his father had obtained a judgment in Kuwait against him on 7 April 2015 for KD 586,462, which led to an order for the sale of the Mishref matrimonial home by auction. He said he avoided this auction by selling shares and, later, by his share of litigation that he and various others commenced against Credit Suisse. He acknowledged that he has had the use, during the marriage, of properties owned by subsidiaries of Mahmoud Haidar and Sons, including properties in Paris, Brussels, Switzerland (or in France close to the Swiss border) and Marbella but he claims the company holding these properties is insolvent. He says that there are no tenancies of the London properties due to the intention to sell them, but he then says he is finalising one tenancy in relation to Albion Gate. He says that his 40% partner in Shamu would not accept the losses incurred on the sale of securities to repay UBS. Maytham Haidar General Trading is a general trading company. The parties' son, M owns the one share that Dr Abdullah does not own. Mahmoud Haidar is also a general trading and investment company, in which he claims at 33% interest from his family. He obtained judgment with three others against Credit Suisse for $23.6 million. He received $5,524,362 following a further arbitration.

30. In further Replies dated 24 February 2021 he said that he had granted some short term licences of the London properties but no tenancies. He used the Credit Suisse money to pay $2 million to his father; to make investments in Shamu which later lost $738,763 when he liquidated them to repay the UBS mortgage of (£1,534,085) on Albion Gate; and on other commitments in Kuwait.

31. In his Reply to the Defence to Counterclaim dated 2 March 2021, he denied that the properties were purchased as joint tenants on the basis that they were bought subject to the Powers of Attorney. He pleads that it was clear they were beneficially owned by him and that Dr Aldoukhi was a nominee/bare trustee. He said he resisted the divorce to prevent stigma to his daughters. He claims there were discussions about separating on 20 May 2017 but that the discussions were postponed until after the summer Mediterranean cruise. Dr Aldoukhi gave him the Powers of Attorney voluntarily. He denied that they created a duty on him of trust and confidence. There should be no presumption of advancement as they were de facto living separately since 2014.

32. The FDR took place before Mostyn J on 21 and 22 April 2021 but, sadly, it did not result in an agreement. I made further directions, by consent, on 28 July 2021. In the Part III proceedings, there was a recital that there were ongoing dowry and alimony proceedings in Kuwait, but the parties agreed the provision for Dr Aldoukhi was unlikely to exceed £15,000. I then made agreed directions. In the TOLATA claim, I also made directions, including for the provision of expert evidence as to the authenticity of the signatures by two Kuwaiti lawyers, Mr Khuraibet and Mrs Al-Baghdadi, who had witnessed Dr Abdullah's signature on two of the disputed documents when he used the Power of Attorneys on Dr Aldoukhi's behalf. In fact, the two lawyers said they could not provide contemporaneous copies of their signatures due to legal professional privilege to other clients. Although it might be said that this was surprising, it has meant that I have not had the expert evidence that was ordered as the experts, Radley Forensics, said they could not provide a report without contemporaneous examples of genuine signatures. I further directed that all

three properties were to be placed on the market for sale forthwith. I have to say that I am still not completely clear if this has happened or not.

33. Dr Abdullah filed yet further Replies to Schedule of Deficiencies on 20 August 2021. He said he could not obtain audited accounts of SCI Noor, the company that holds the various European properties, as it is a private company and the accounts are not readily available. He said that Dr Aldoukhi should get them from his father, on the basis that she is on better terms with him than he is. He gave further details of his difficulties in the litigation with his father and, in particular, the dispute as to his 33% share in Mahmoud Haidar and Sons. He confirmed that the owner of the other 40% of Shamu does not want his name known. He added that, if this leads the court to proceed on the basis that his ownership is therefore 100%, this is acceptable to Dr Abdullah.

34. Both parties filed final statements in both sets of proceedings. I will try not to be unduly repetitive in summarising them. Dr Abdullah's Part III statement is dated 8 September 2021. He said he had a number of outstanding judgments against him in Kuwait in the sum of £7,062,595. He repeated his contention that, any beneficial interest Dr Aldoukhi had in the three London properties was assigned to him by the series of Powers of Attorney. He said that these Powers reflected the mutual understanding that he was the provider for the family and controlled the family's financial affairs. Dr Aldoukhi accepted he took responsibility. She was his mere nominee. He added that they stayed at Albion Gate six times as a "*travel hub*" between June 2013 and December 2015. They stayed at Craven Street only twice between June 2016 and August 2017, again as a hub/stopover and due to the treatment for M. He ended by saying that he requested equitable accounting if Dr Aldoukhi had any interest in the properties. In his TOLATA statement, also dated 8 September 2021, he said that Dr Aldoukhi accepted in the Kuwait proceedings that the London properties were owned by him. He said that the third Power of Attorney was signed in England in the knowledge that the marriage had broken down. He concluded by saying that any proceeds of sale must be used to pay off the debt to Shamu as a "*preferential creditor*" as Shamu could only demand any shortfall from him.

35. Dr Aldoukhi's final statement in the Part III proceedings is also dated 8 September 2021. By now, she had obtained copies of the various mortgage applications to UBS. She points out that, in the mortgage application made in 2014/2015, he said he had dividends from quoted companies of $500,000 pa and rental income of $2.5 m pa and that his total assets were $57 m. She sets out her main allegations of non-disclosure against him and adds that Andrew Baker J said in his judgment in the Credit Suisse litigation that he could not trust Dr Abdullah's evidence. She asserts that the properties have been neither rented out nor sold, despite the mortgage interest amounting to some £13,000 per month. In answer to Dr Abdullah's contention that the marriage was over by 2014, she refers to generous presents given to her by him after that date, including a Cartier watch, Chopard earrings and a Rolex watch, as well as the 2017 cruise. She accepts that there is nothing now outstanding under the Kuwaiti maintenance order. She has returned to live with her parents as, she says, renting in Kuwait proved unaffordable. She pays rent now to her father. Her statement in the TOLATA claim is dated 15 September 2021. She says that

Dr Abdullah told CR that Craven Street was being bought as "*shared ownership 50% for each of us"*. They ticked the joint tenancy box when asked by CR to do so in relation to Craven Street. She says she never understood she held the properties for Dr Abdullah or that she would have to transfer them to him if asked. Equally, the beneficial ownership was not affected by the payments he made. She claims that he offered to place the Mishref home in Kuwait in their joint names, but she did not want be involved in legal battles between Dr Abdullah and his father. She adds that Dr Abdullah explained that the Powers of Attorney were so that he would not have to trouble her to sign necessary paperwork. He never suggested that she sign over the properties to him. He said the 2017 Power of Attorney was to assist with the sale of Albion Gate. She reminds the court that Dr Abdullah purported to use this Power of Attorney twice in 2018 after she had revoked it. She adds that Dr Abdullah's solicitors previously said that it was not his case that the Powers of Attorney transferred the beneficial interests. He did not ask her to sign any loan documents to Shamu in either 2014 or 2016 and questions why the loans purported to be made to both of them if the properties were genuinely held by Dr Abdullah alone. She strenuously denies ever confirming in Kuwait that she did not own the properties in London.

36. Dr Abdullah obtained statements from two Kuwaiti lawyers, who are, in fact, husband and wife, confirming their signatures on documents. On 4 August 2021, Reem Al Baghdadi confirmed that it was her signature on the contract dated 10 October 2016 and on 9 August 2021, Mohammad Baqer Ali Kuraibet said it was his signature on the contract dated 10 September 2014. Dr Abdullah filed a final schedule of Replies to Deficiencies on 29 September 2021 when he said that the Mishref property was ordered to be sold at auction by the Kuwait Court and the sale would be on 18 October 2021, although he indicated to me in his oral evidence that he had managed to deal with this. He said he had lost a claim against his brother, Mahdi in the Kuwait Cassation Court for £7.5 million. It is abundantly clear to me that it is impossible for me to get close to discerning exactly what is the state of the litigation in Kuwait between Dr Abdullah and his family. Fortunately, I am clear that it is not necessary for me to do so to resolve the claims between these parties.

37. Knight Frank has provided valuations of all three London properties, although it is fair to say that they are, in fact, marketing appraisals. 24 Albion Gate should be marketed at a guide price of £2.25 million. It is a three bedroom flat facing Hyde Park. It is mortgage free. If I take the costs of sale at 2.5%, which is £56,250, the net equity is £2,193,750. The Piazza should be marketed at £2.25 million to £2.5 million. It is a two bedroom flat overlooking Covent Garden. There is a mortgage to UBS of (£1,820,000) and the costs of sale would be approximately £62,500. If I use the higher figure for its value of £2.5 million, the equity is around £617,500. Finally, Craven Street should be marketed at £4,495,000. It is subject to a mortgage of (£3,380,000). Taking costs of sale at £112,500, the net equity is £1,007,500. In total, this would give net equity of £3,818,750 although it may vary upwards or downwards depending on the eventual sale prices. I accept entirely that these figures take no account of any loans to Shamu, but Shamu does not have any charges against the properties.

38. The expert report on Kuwaiti law is from Ian Edge, a barrister practising from 3 Paper Buildings and a former law lecturer at the School of Oriental and African Studies at the University of London. He is a specialist in most legal matters concerning Islamic/Shari'a law and the laws of the Middle East. His report is dated 21 April 2021. He says that Powers of Attorney are very common in Kuwait. They are used for many commercial transactions, but they may be rescinded at any time. There must be specific provision for anything that is not an act of management. The powers will be strictly interpreted by the Kuwait Court. If they are gratuitous, the donor must exercise the care he would with his own affairs. He must not use the Power for his own benefit and he must pay compensation if he does, unless he has express permission. There must be express authority to make a contract with himself. A donor must not put himself in a position to take an unjust benefit himself. The panoply of powers in the 2014 Power of Attorney would seem to suggest that the parties assumed it was meant to apply to properties of which Dr Aldoukhi had full ownership. The power to contract with himself is limited to the powers set out. There is nothing in the Power which permits Dr Abdullah to make statements, as in the September 2014 contract, on behalf of Dr Aldoukhi. His preliminary view was that the Kuwait Court would not consider the contract binding unless there was evidence that she agreed to it.

39. The dispute between the parties is clear. Dr Aldoukhi says that I should declare that the three properties are held legally and beneficially equally but that I should transfer Dr Abdullah's share of the two matrimonial homes to her under her Part III claim. Dr Abdullah says that the three properties are held by the parties on trust for him absolutely. I should so declare, transfer the properties to him and dismiss Dr Aldoukhi's Part III claim on the basis that this is a Kuwaiti family, the Kuwait Court has been fully seized and this jurisdiction has no business interfering, given that the parties were just "*birds of passage*" in London.

40. In her Case Summaries, Dr Aldoukhi says that Dr Abdullah sought an order in Kuwait that she resume marital relations with him. He does not particularise the alleged common intention that the properties were to be held on trust by the parties for him absolutely, other than "*cultural understanding*". There is no detail given; no expert evidence; and all the documents on which he relies purport to act against Dr Aldoukhi's interests. The loans he took are not secured and cannot be liabilities of Dr Aldoukhi. They were signed by him in breach of his obligations and, in any event, are owed to himself. By now, Dr Aldoukhi had obtained copies of the latest application to UBS for a mortgage, made by Dr Abdullah in February/March 2021. In complete contrast to his Form E, he told UBS that his income was $565,000 pa and his capital was $13.5 million. This is supposed to exclude the two properties on which UBS has security. It would therefore only include Albion Gate, at around $3 million, meaning his other assets were approximately $10.5 million. Dr Aldoukhi ends by saying that she has submitted property particulars for suitable accommodation for her and the children in Kuwait, at between £1.4 million and £2.4 million but she also wishes to buy a flat in London, similar to the values of the two London flats.

41. Dr Abdullah's Case Summary in the Part III applications places great emphasis on the fact that this is an entirely Kuwaiti family and that it is quite wrong of Dr Aldoukhi to suggest that the Kuwait Court was intrinsically unfair and unjust. The claim under Part III flies in the face of common sense and comity. Comity requires interference under Part III with the financial affairs of foreign nationals to be limited by the extent of their connection to England. Dr Aldoukhi's needs were met in Kuwait. She has an excellent tax free income and she is receiving notable support from the paternal grandfather. From 2012 – 2017, the family were in the UK for 295 days. Of these, Albion Gate accounted for no more than 176 and Craven Street 98. The properties have also been used by friends and family for 273 days. Dr Aldoukhi contended in Kuwait that Dr Abdullah had had an affair for many years and that he had deserted her four years before. There was a marriage in name only from 2014. They were living separate lives whilst keeping up appearances. Mr Ewins QC and Mr McAlinden, who appear on behalf of Dr Abdullah, question whether the properties in London were matrimonial homes where the parties had set up home together. They contend that the family were merely "*birds of passage*" and that these were primarily investment properties. Dr Aldoukhi has litigated in Kuwait, in the court of her choice. There will be no hardship and no injustice if her Part III claim is dismissed as it is a blatant attempt to have a "*second bite of the cherry*".

42. Turning to TOLATA, the Case Summary asserts that the TR1s are silent as to the shares in which the beneficial interests are to vest. Whilst that is true of two of them, the emails from CR make the position clear and there is a declaration in the third TR1. The Case Summary goes on to say that there was a clear common intention that Dr Abdullah would own these properties 100% beneficially. If that is incorrect, there should be equitable accounting. The Powers of Attorney clearly anticipated the purchase of assets in joint names and enabled Dr Abdullah to deal with them as though they were in his sole name. There is an assertion that Dr Aldoukhi contacted Dr Abdullah direct to say she would transfer the properties back to him in December 2017 but she denies that emphatically, saying she was just referring to any assets in Kuwait such as shares that she did not know about. It is then said in the Case Summary that it would be bizarre for Dr Abdullah to repay the mortgage on Albion Gate from his own funds after the breakdown of the marriage if Dr Aldoukhi had a beneficial interest. If there is no express trust, I should deal with the case either by saying there is a resulting trust as Dr Aldoukhi made no contribution or by a constructive trust, namely that there was a common intention that the properties were held for him, which can be deduced objectively from their conduct. If they are wrong about all of that, there should be equitable accounting. There is then reference to proprietary estoppel, namely an assurance the properties would be owned by Dr Abdullah, as evidenced by the 2007 Power of Attorney; reliance on that assurance by Dr Abdullah, given his sole funding of the properties; and detriment to him, as a result of Dr Aldoukhi's assertion that she now owns 50%.

<u>The law I must apply</u>

43. Both parties have relied on a large number of authorities on a wide range of matters. Indeed, the authorities bundle runs to some 676 pages. I do not propose to refer to every authority to which I have been referred. I propose to deal only

with the salient matters that are relevant to the decisions I have to take. I have, however, considered all the legal points made to me with great care.

44. I accept that the law relating to properties purchased in joint names is clear and settled. Lord Upjohn says in Pettit v Pettit [1970] AC 777:-

> "*In the first place, the beneficial ownership of the property in question must depend upon the agreement of the parties determined at the time of its acquisition. If the property in question is land, there must be some lease or conveyance which shows how it was acquired. If that document declares not merely in whom the legal title is to vest but in whom the beneficial title is to vest that necessarily concludes the quest of title as between the spouses for all time and in the absence of fraud or mistake at the time of the transaction, the parties cannot go behind it at any time thereafter even on death or the break-up of the marriage".*

45. The matter was put completely to rest in the case of Goodman v Gallant [1986] Fam 106 where the Court of Appeal was clear that, absent any claim for rectification or recission, the provision in a conveyance of an express declaration of trust conclusively defined the parties' respective beneficial interests. Accordingly, the provision that the plaintiff and defendant were to hold the property upon trust for themselves as joint tenants entitled them on severance to the proceeds of sale in equal shares. Mr Glaser QC, who appears on behalf of Dr Aldoukhi with Mr Cameron, submits to me, and I accept, that equitable accounting can only take place after severance of the joint tenancy (see Re Gorman [1990] 1 WLR 616). Mr Ewins submits that this does not apply if the court rectifies the TR1. I accept that this is the case but I can only rectify the TR1 and the other declarations if there was fraud, undue influence, mistake, proprietary estoppel or some other vitiating factor (see Pankhania v Chandegra [2012] EWCA Civ 1438 and Ralph v Ralph [2020] EWHC 3348). If such a vitiating factor is established, the TR1 can be set aside or rescinded so as to record the intended transaction. Mr Ewins submits that I must rectify the TR1 as the common intention was for the properties to be owned by Dr Abdullah and, as a result of a mistake, the documents did not accurately record that intention. He says that the necessary outward expression of intention can be tacit and, in this case, is clearly proved by the Power of Attorney and the manner in which Dr Abdullah understood them to apply. I will deal with these submissions in due course but my conclusion will undoubtedly depend on my findings of fact as to what was intended in the actual circumstances of this particular case.

46. Finally, Mr Ewins submits that Dr Aldoukhi did not validly revoke the English Power of Attorney as it was an irrevocable Power of Attorney and section 4 of the Powers of Attorney Act 1971 say that such Powers cannot be revoked by the donor without the consent of the donee or the death, incapacity or bankruptcy of the donor. Mr Glaser responds that this section is only dealing with Powers of Attorney given as security. He argues that this Power was a general one pursuant to section 10 and it can therefore be revoked. I am not an expert on Powers of Attorney. I have been unable to decide which of these submissions is correct although I do consider that it was very ill advised of Dr

Abdullah to execute such documents on behalf of Dr Aldoukhi after she had purported to revoke the Power of Attorney. Fortunately, I take the clear view that I do not need to decide the legal position as I can dispose of the issues in the case without doing so.

47. I now turn to the law pursuant to Part III of the Matrimonial and Family Proceedings Act 1984. I have already given permission to Dr Aldoukhi to make an application pursuant to Part III, although that does not, of course, mean that she will be successful. There is no dispute that my jurisdiction is based on section 15(1)(c), namely that, at the date of the application for leave, either or both of the parties had a beneficial interest in possession in a dwelling-house situated in England and Wales that was, at some time during the marriage, a matrimonial home of the parties to the marriage. Section 20 then applies. In essence, the award shall not exceed the equity in the property that is found to have been a matrimonial home or homes. Equally, section 16 applies. I must not make an order for financial relief unless I consider it would be appropriate to do so in all the circumstances of the case. I must have regard to the factors set out in section 16(2) which include the connection which the parties have to England and Wales; the connection they have to Kuwait; and the financial relief granted to Dr Aldoukhi in Kuwait. I must also consider, under s18(2), all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who has not attained the age of 18 and I should have regard to all the matters listed in section 25(2)(a) to (h) of the Matrimonial Causes Act 1973, namely:-

    (a) The income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity, any increase in that capacity which it would, in the opinion of the court, be reasonable to expect a party to the marriage to take steps to acquire;

    (b) The financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;

    (c) The standard of living enjoyed by the family before the breakdown of the marriage;

    (d) The age of each party to the marriage and the duration of the marriage;

    (e) Any physical or mental disability of either of the parties to the marriage;

    (f) The contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family;

    (g) The conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it; and

(h) The value to each of the parties to the marriage of any benefit which, by reason of the dissolution …of the marriage, that party will lose the chance of acquiring.

48. Counsel both say that this is the first case of which they are aware that proceeds on the basis solely of section 15(1)(c). There is certainly no authority that they have been able to find that deals with such a case. Mr Ewins submits to me that, if I make an award, it will open the floodgates to such applications in the future but I do not agree with him. The fact that there has not been any such case before points emphatically in the other direction, although I accept that the fact that the section may not have been exercised before means that I do have to take care in the way that I approach the claim. I have been referred to the Law Commission's Reports that paved the way to the passing of the Act. It is right that, initially, the Law Commission was against allowing claims in such circumstances but it changed its mind following receipt of comments on the proposals. It is abundantly clear that the Law Commission did have in mind such a case as the one with which I am dealing but felt it right to restrict the court's adjustive powers to making orders dealing with the property or with the proceeds of its sale. In this regard, the paper says at [2.10] that it would be wrong to put "*the whole of a former spouse's substantial assets at risk merely because they had a flat in Mayfair in which they had been accustomed to spend two or three weeks each year*". This strongly suggests that there is jurisdiction, in cases where the parties only spent two or three weeks a year in England, to deal with the proceeds of sale of such a property but not the other assets of the parties.

49. The way in which the court should approach such claims is covered comprehensively in the case of Agbaje [2010] UKSC 13 where Lord Collins said under the heading "The proper approach":-

> "*71 … the proper approach to Part III simply depends on a careful application of sections 16, 17 and 18 in the light of the legislative purpose, which was the alleviation of the adverse consequences of no, or no adequate, financial provision being made by a foreign court in a situation where there were substantial connections with England. …*
>
> *72. It is not the purpose of Part III to allow a spouse (usually, in current conditions, the wife) with some English connections to make an application in England to take advantage of what may well be the more generous approach in England to financial provision, particularly in so-called big-money cases. There is no condition of exceptionality for the purposes of section 16, but it will not usually be a case for an order under Part III where the wife had a right to apply for financial relief under the foreign law, and an award was made in the foreign country. In such cases mere disparity between that award and what would be awarded on an English divorce will certainly be insufficient to trigger the application of Part III. Nor is hardship or injustice (much less serious injustice) a condition of the exercise of the jurisdiction, but if either factor is present, it may make it*

appropriate, in the light of all the circumstances, for an order to be made, and may affect the nature of the provision ordered. Of course, the court will not lightly characterise foreign law, or the order of a foreign court, as unjust.

73. The amount of financial provision will depend on all the circumstances of the case and there is no rule that it should be the minimum amount required to overcome injustice. The following general principles should be applied. First, primary consideration must be given to the welfare of any children of the marriage. This can cut both ways as the children may be being supported by the foreign spouse. Second, it will never be appropriate to make an order which gives the claimant more than she or he would have been awarded had all proceedings taken place within this jurisdiction. Third, where possible the order should have the result that provision is made for the reasonable needs of each spouse. Subject to these principles, the court has a broad discretion. The reasons why it was appropriate for an order to be made in England are among the circumstances to be taken into account in deciding what order should be made. Where the English connections of the case are very strong there may be no reason why the application should not be treated as if it were made in purely English proceedings."

50. Earlier in the judgment he dealt with how to approach cases where the connection with England was either strong or not so strong, saying:-

> "70…..*There will be some cases, with a strong English connection, where it will be appropriate to ask what provision would have been made had the divorce been granted in England. There will be other cases where the connection is not strong and a spouse has received adequate provision from the foreign court. Then it will not be appropriate for Part III to be used simply as a tool to "top-up" that provision to that which she would have received in an English divorce".*

51. The final issue relating to this concerns the question of what is a matrimonial home. I was referred to the case of Mackintosh [1986] Lexis Citation 1298. There is no question that it is possible to have more than one matrimonial home. The issue is whether or not the parties set up home there together. Moreover, I have already noted that it is clear from the Law Commission report that the Law Commission considered that a flat in Mayfair in which the parties spent no more than two to three weeks per annum can amount to a matrimonial home.

52. I now turn to more general matters of law. There are many of issues of fact in this case. The burden of proof for establishing a disputed fact is on the party that seeks to prove it. The standard of proof is the normal balance of probabilities.

53. There are issues in the case as to whether either of the parties has told lies to the court. First, I must decide the extent of any lies in this case. If I find that

somebody has lied, I have to ask myself why the person concerned lied. The mere fact that a witness tells a lie is not in itself evidence that allegations made against that person are true. A witness may lie for many reasons. They may possibly be "*innocent*" ones. For example, they may be lies to bolster a true case; or to protect someone else; or to conceal some other disreputable conduct; or out of panic, distress or confusion. It follows that, if I find that a witness has lied, I must assess whether there is an "*innocent*" explanation for those lies. However, if I am satisfied that there is no such explanation, I can take the lies into account in my overall assessment of the facts of the case and the truth of the various allegations made by each parent.

54. Dr Aldoukhi's case is that Dr Abdullah is hiding assets. I have already dealt with the burden and standard of proof, although it is for the respondent to an application for financial provision to provide to the applicant and the court all the relevant information. This has been described as the duty to provide full and frank disclosure. There have been a number of authorities over the years as to how the court should deal with cases involving alleged non-disclosure. In J v J [1955] P 215, Sachs J said at p227:-

> *"In cases of this kind, where the duty of disclosure comes to lie upon the husband; where a husband has – and his wife has not – detailed knowledge of his complex affairs; where a husband is fully capable of explaining, and has the opportunity to explain, those affairs, and where he seeks to minimise the wife's claim, that husband can hardly complain if when he leaves gaps in the court's knowledge, the court does not draw inferences in his favour. On the contrary, when he leaves a gap in such a state that two alternative inferences may be drawn, the court will normally draw the less favourable inference – especially where it seems likely that his able legal advisers would have hastened to put forward affirmatively any facts, had they existed, establishing the more favourable alternative."*
>
> And at p229, he said:-
>
> *"…the obligation of the husband is to be full, frank and clear in that disclosure. Any shortcomings of the husband from the requisite standard can and normally should be visited at least by the court drawing inferences against the husband on matters the subject of the shortcomings – insofar as such inferences can be properly drawn."*

55. Of course, this does not mean that the court can simply draw any inference it likes. The inferences must be properly drawn. As Moylan LJ said in Moher v Moher [2019] EWCA Civ 1482:-

> *"88. When undertaking this task the court will, obviously, be entitled to draw such adverse inferences as are justified having regard to the nature and extent of the party's failure to engage properly with the proceedings. However, this does not require the court to engage in a disproportionate enquiry. Nor, as Lord Sumption said, should the court "engage in pure speculation". As Otton LJ said in* Baker v Baker*, inferences must be "properly drawn and reasonable". This was*

reiterated by Lady Hale in Prest v Petrodel*, at [85]: "… the court is entitled to draw such inferences as can properly be drawn from all the available material, including what has been disclosed, judicial experience of what is likely to be being concealed and the inherent probabilities, in deciding what the facts are."*

89. This does not mean, contrary to Mr Molyneux's submission, that the court is required to make a specific determination either as to a figure or a bracket. There will be cases where this exercise will not be possible because, the manner in which a party has failed to comply with their disclosure obligations, means that the court is "unable to quantify the extent of his undisclosed resources", to repeat what Wilson LJ said in Behzadi v Behzadi"

56. I have to remember the potential language barrier in this case. The first language of both these parties is Arabic not English, although I make it clear that both speak English extremely well and both gave evidence in English. Nevertheless, I must take great care in assessing both parties' evidence given that processing information provided in a foreign language may put the participant at a disadvantage. I must guard against the very real possibility that questions or answers or both are misunderstood or, at the least, nuances and shades of different meaning are lost in the process. I have taken all this into account in assessing the evidence in this case.

The evidence I heard

57. I heard oral evidence from both parties and from the two Kuwaiti lawyers, Mr Khuraibet and Mrs Al-Baghdadi. I also heard expert evidence from Mr Edge. I will deal with Mr Edge's evidence first. As he was instructed as a Single Joint Expert, I called him as a witness but, at first, Mr Glaser did not seek to cross-examine him. Mr Ewins therefore cross-examined immediately. Mr Edge said that the Kuwait Court will not imply something that is not expressly laid out in the Power of Attorney. It needs to be there expressly. The exercise will need to fall very clearly within one of the areas listed and the powers will be strictly interpreted. In general, this will be in favour of the principal or donor. Although he has seen other Powers very similar to this one, it is not possible to have an irrevocable Power of Attorney in Kuwait as there is a maximum placed on them of ten years. The donee is under certain important duties, such as to make sure that his actions do not conflict with the personal interest of the donor. He must act in good faith. It is unusual to contract with yourself although it is permitted, but you must ensure the contract is for the benefit of the principal in some way or another, rather than just for the benefit of the donee. The whole notion of holding a property on trust beneficially for someone is alien to the Middle Eastern mind and falls foul of it. If you transfer property to someone, it is assumed to be an absolute gift unless the object is fraud. If it could be shown that Dr Aldoukhi specifically agreed to these transactions, it might be possible to get the Kuwait Court to accept it, but they would want something express and clear as to why this mechanism was being used. He was then asked some questions by Mr Glaser arising out of his evidence to Mr Ewins. He answered that the best form of evidence is written evidence to prove intention. The

Kuwait Court would not accept the oral evidence of one party alone. It would need corroborative evidence.

58. Dr Abdullah challenged the part of Mr Edge's evidence that it was impossible to have an irrevocable Power of Attorney in Kuwait by producing a number of documents evidencing the existence of such Powers of Attorney involving his family. Mr Edge responded, on 19 October 2021, that it was still his expert view that general Powers of Attorney cannot be irrevocable, which he said is supported by Articles 717 and 718 of the Kuwaiti Civil Code. On the other hand, it is possible to have irrevocability in relation to the provision of certain specific transactions, where irrevocability is not only desirable but essential. This would cover such matter as gifts or donation of real property or a specific sale of property. I suppose an example would be to authorise somebody to complete the purchase of a property where exchange had already taken place. Mr Ewins says that Mr Edge has, in his reply, contradicted the evidence he gave me orally but I do not agree. I accept Mr Edge's evidence. When using the Power of Attorney, Dr Abdullah had to act in the best interests of Dr Aldoukhi and to the extent that he did not do so, there would have to be the clearest possible evidence that Dr Aldoukhi consented to what he was doing.

59. I now turn to the evidence of the parties. I accept that, in some respects, the evidence of Dr Aldoukhi was unsatisfactory. For example, she did not give full and frank disclosure in her application for permission to bring a Part III application when she said that she had sacrificed her career for the marriage and did not disclose her very significant income as a consultant. She repeatedly told me that she was not a consultant in Kuwait until 2019/2020 when Mr Ewins was able to show a number of documents describing her as a consultant from 2010. In her application for permission, she exaggerated her time in London during the marriage. Her Form E did not give an entirely frank account of the income she has been receiving from her father-in-law. She did tell me that she went on a romantic holiday with Dr Abdullah in the summer of 2017 when they had separate cabins on the cruise and separate bedrooms in the hotel in Barcelona. Having said all that, I am absolutely clear that I can have far more trust in the evidence that she gave me than I can in the evidence of Dr Abdullah. She told me in her evidence in chief that she did not intentionally mean to mislead the court about the number of days the parties stayed here. She accepted that, although they came for the summer, they did have trips and holidays away. She had not initially deducted these as there were no stamps in her passport for European travel. I have to say that I was not impressed that she made these mistakes but, in the end, nothing really turns on it.

60. She was then cross-examined extensively by Mr Ewins. She said she understood she owned half of the property when they bought Albion Gate. It was their matrimonial home in London. She also understood she owned a half of the Piazza when she looked through the contracts at the time of its purchase. The same applied to Craven Street. I accept this evidence. The documents were all clear and she believed they were accurate. She accepted that, after they moved to Craven Street, they never stayed in Albion Gate but the properties co-existed as, although the intention was to sell Albion Gate, it was not sold. She said she signed the Powers of Attorney as she trusted Dr Abdullah. Again, I

accept this evidence. She added that she understood that it was to fulfil a particular purpose, namely, in 2007, the purchase of shares in IPOs in Kuwait. She said that the family needed to use as many names as they could. This evidence has the ring of truth. She said that she had no reason to mistrust her Husband at the time. He ran the family business and she had no assets or wealth in her own name prior to the purchase of the London properties. She was aware of the Power of Attorney that Dr Abdullah had granted to his father and that his father could transfer properties in Kuwait but she did not believe that the Powers she signed enabled Dr Abdullah to do that to the London properties. She accepted that she had entered into two Powers of Attorney in Kuwait with her uncle and her lawyer. She was taken to the document after the separation, when she said that, "*if there is something you own, I will transfer it to you*". She said she most certainly did not mean the London properties. Indeed, if this had been her intention, surely she would have mentioned the London properties as she knew they were in her name. She said it referred to any cars that he had placed in her name. Mr Ewins is critical of her in this regard, asserting that she knew very well that the one such car had already been sold but I find that this is unfair criticism. I find that she had no real idea of Dr Abdullah's business dealings. He may well have put cars in her name, given this was the reason she said the Power was granted in the first place. If so, it would have been right to return those cars to him. She added that it was not true that she realised she had to put right the ownership of the London properties. Indeed, her actions in commencing this litigation suggest entirely the opposite. She reasserted her case that Albion Gate was a matrimonial home, even though it had been purchased before Dr Abdullah was excluded from the Rayyon Trust. They did stay in Haselbury House after the purchase of Albion Gate, as Albion Gate was not ready to move into. She was taken to a statement she made that Dr Abdullah had cut all his ties with his family but she answered that the relationship had not broken down completely until later and there was still communication. I accept this. She said she understood that Albion Gate would be their family home in London but it was Dr Abdullah who was responsible for the finance. She said she was well aware it was going into joint names and that Dr Abdullah had already made his mind up that they would be joint tenants. She said he told her they would both be owners as it was usual for married couples to do so in England. Again, I accept her evidence. It is a very important finding of fact.

61. She added that she did not know about corporate structures. She was not aware that he had told the solicitors at CR that he would change the structure after completion but he had told her about their advice as to the ownership. I do not see the relevance of him saying he intended to change the structure given that he did not do so and bought two further properties using the same structure. She said that Dr Abdullah did give her half the property even though she was not aware of any other assets in her name or formerly in her name. Whilst I must guard against applying British values to a Kuwaiti couple, I cannot help but note that it is extremely common for properties to be placed in the joint names of married couples in this country, even if one party is not making a financial contribution. Mr Ewins then moved on to ask her about the Piazza. She accepted that it was never a matrimonial home. Dr Abdullah had told her it was an investment. Her name was on the title. She believed it was half hers and "*being his wife, he gave it to me".* She said she was not aware of the rental value

of the property as she was not involved in that side. She was involved in choosing the property. She viewed it and she furnished it. She did not make a financial contribution. He did not ask. She did not know how he was funding it but they were financially secure. She was a director of Shamu but she did not really have any knowledge of its working. He brought documents for her to sign. She did not read them. She does not know if money came from Shamu to fund the purchases. She was then asked about the loan document dated 10 September 2018. She said she refused to accept it. She had no idea about it. He signed it on her behalf. She had told him she had revoked the Power of Attorney and had sent the revocation document to him before he did this, so she considered he had no right to sign it on her behalf. She had signed the English Power of Attorney in August 2017. She was asked about the clause that said he could exercise the powers "*as if the said assets were the Properties of the Appointee Absolutely*". She responded by pointing to the clause that said "*for my use and benefit*". She said that she understood that this Power meant that he could manage the properties for them both, but bearing in mind that he had to act in her best interests. She added that she did not think she was signing over her 50% share. She added that it was not what they had agreed and it would not have been in her best interests. The point was that they were selling Albion Gate and they were open to selling the Piazza if they received a good offer. This would help him to manage the process. She said that it was signed because he told her that the Kuwaiti Power would not be accepted in England, so it was much better to do a new one to enable him to manage the properties in the UK. I accept her evidence in this regard. She said the believed she had a 50% share from the very beginning. They never discussed selling Craven Street but all the properties were included. She said it was done in a rush, although Mr Ewins was able to point out that the solicitor read it to her and they discussed medicine as the solicitor's children were doctors. In fairness, she may have been referring to the whole process being done in a rush at the end of their holiday rather than the signing itself. She added that this was about property management. Mr Ewins said she was making it all up. She said she did not accept that and neither do I. She did accept that Dr Abdullah had always taken full responsibility for the properties and she was never asked to contribute until after she severed the tenancies.

62. She was then asked about the breakdown of the marriage. She said that she does not accept that you are religiously and culturally separated if you are not sharing a bedroom. They were husband and wife in every other aspect. They ate together. They travelled together. It was just that they had different bedrooms. She said it was at his request, due to a mixture of him having depression, chronic insomnia, working all night and libido problems. She added that he wanted his space. Having just dealt with the 2017 Power of Attorney in the last paragraph of this judgment, it would have been very surprising if she had signed that Power if she genuinely thought they were separated at the time. She was asked about a mysterious email exchange in May 2017 when she had said she wanted to discuss something with him. Mr Ewins said this was a discussion about the breakdown of the marriage. She said it was that he had come home drunk and she wanted to prevent such an occurrence in the future. I am not sure what this was about, other than it cannot have signalled the very end of the marriage as they went on the cruise thereafter and he bought her an expensive Rolex watch.

I do accept that there clearly were difficulties between them by this point but that does not mean it was the end of the marriage.

63. She was then asked about a document taken by her and her lawyers to a hotel in Kuwait shortly after the separation. Mr Glaser objected to this document being admitted into evidence on the basis that it was covered by legal privilege. I decided to admit it provisionally and decide on its status in this judgment. I am of the view that it may very well be privileged but, having allowed cross-examination on it, I propose to deal with it. Article 9 says that "*both parties agree that the second party shall bear all travel expenses of the first party and the children to London, and to use the currently existing housing, where they are used to stay in, or provide housing with the same specifications*". Dr Aldoukhi's response was that the Kuwaiti lawyers were not familiar with English law. Whilst I accept that, I do not see anything in Article 9 that is inconsistent with her case here. If she used the existing housing, it would remain in joint names without some other adjustment. If he provided alternative housing, it might be in her sole name or their joint names. The clause does not say. It deals with her ability to have a property in London, not the ownership of that property. She was also referred to Clause 10 which covers health insurance, medical and dental expenses for the children before going on to say "*as well as paying any financial transactions made in the name of the first party, which was transacted by the second party under the effect of general power of attorney, within Kuwait and abroad*". I have to say that I view this as a classic indemnity for liabilities clause that we would see regularly in financial provision orders in this country. I am clear that this Clause does not address the issue of the ownership of the London properties and therefore does not assist Dr Abdullah.

64. She was, however, asked why she did not seek capital in Kuwait. I have not heard expert evidence about the law of financial provision following divorce in Kuwait. What I can say is that, given how hard fought the litigation has been both in Kuwait and here, if Dr Aldoukhi thought that she had a good claim for capital, I am sure she would have made the claim. She then said that she did tell the Kuwait Court that she owned half the London properties. I have been shown a number of documents on both sides as to this. There is no doubt that one document produced by Dr Aldoukhi does include a reference to the parties "*jointly owning many properties in the UK, proving solvency and great wealth of Dr Abdullah*". Another one says it is a photocopy of a certified translation of apartment registration in London in the name of the Defendant and the Plaintiff. It is right that one entry refers to "*properties owned by the Defendant in the UK*", but Dr Aldoukhi said this was designed to show he was lying when he said he was insolvent and owned no properties. Overall, I am clear that Dr Aldoukhi did not deny her joint ownership of the London properties in Kuwait and, when she said she had no property to live in, she meant in Kuwait, following her departure from the Mishref family home. Finally, Mr Ewins asked her about the rent she receives from Dr Abdullah in Kuwait. It was put to her that it would be unfair to continue to receive it if she received half the value of the London properties. There was some attempt by Mr Glaser to suggest that the money for rent could be used to pay school fees but, in fairness, Dr Aldoukhi did tell me that she would not force him to pay the rent if she has

enough money to buy a property. I do not, of course, know what attitude the Kuwait Court would take to this. In re-examination, she told Mr Glaser that Dr Abdullah did discuss the purchase of Mishref in joint names but she did not take up the offer. Dr Abdullah denies this and I am unable to make a finding on that, but it does not matter.

65. I then heard from Dr Abdullah. I have assessed his evidence entirely separately from the findings made by Andrew Baker J but I have come to exactly the same conclusion. In many respects, I simply could not trust his evidence to be accurate, full and frank, and truthful. One small example can be seen at the very beginning of his evidence in chief. Mr Ewins took him to Paragraph [27] of his Defence and Counterclaim, which said "*On 10 September 2018, the Defendant repaid in full the debt owed by the parties to [Shamu] amounting to £3,096,416.06".* This is a clear pleading that he repaid the loan himself and it was no longer due. This is completely wrong. It remains due to Shamu on his own case. Instead, he purported to sign a document on behalf of Dr Aldoukhi and himself, after she had revoked the Power of Attorney, saying that they both consented and agreed to transfer to Shamu all their rights arising from the sale proceeds of the three London properties, after discharge of the UBS mortgages. He did not repay the debt in full. It remains outstanding and all he did was purport to extend Shamu's security. It was an entirely self-serving document given that I am entirely satisfied that the debt to Shamu is a debt to him alone.

66. He was then cross-examined by Mr Glaser. He said that the reason for executing Powers of Attorney in Kuwait was so that he would become the owner of property but did not have to pay the stamp duty, even though it was less than in this country at 0.5% or possibly 1%. This does have all the hallmarks of tax fraud. I believe he realised this immediately, as he then told me that he had never done it. He was asked about the ownership of Shamu. He said that he owns 60% and someone else owns 40%, but he had already said that he cannot disclose the identity of the other individual as it was confidential. Given his concession in the Replies to Questionnaire that he accepted that I would therefore treat him as the 100% owner, I refused Mr Glaser's request to make an order that he answer. It does, however, mean that I proceed on the basis that all loans to Shamu are loans to Dr Abdullah alone and, in effect, he was contracting with himself on behalf of Dr Aldoukhi. He was then asked again about the pleading that he had repaid the debt to Shamu. He claimed it was another loan repayment he was referring to, but this was simply not correct.

67. He was then asked about the email from Angela Paul of CR dated 21 December 2012 that explains exactly the consequences of purchasing as joint tenants. It says that "*if you buy as joint tenants, you will automatically have equal shares in the property"* whereas "*if you buy as tenants in common, you can have either equal or unequal shares in the property".* He accepted he was given advice as to the ownership of the property and that there were conversations about the issue. He accepted he was told that his Wife would get an equal share but he justified it on the basis that they would save Inheritance Tax. He said he did not know he would not pay Inheritance Tax if he was not domiciled here. He said that the property would have been in his sole name if he had been told this. He then said that the Power of Attorney made it clear that Dr Aldoukhi was a

nominee and that she would hold it for the children. I reject this. The Power of Attorney says no such thing. I am clear it is about administering properties but, even if I was wrong about that, Mr Edge was clear that he had to act in her best interests. He was then referred to the email from CR to the Land Registry dated 28 January 2013 saying that "*the buyers are to hold the property as joint tenants*" and then to the TR1 for Craven Street, where the box has been ticked saying that "*they are to hold the property on trust for themselves as joint tenants*". In effect, he had no answer. He said he had intended to put Albion Gate in to a company but he did not do so. Moreover, he then bought two further properties the same way. He said this was because he was told it would cost £60,000 to £70,000 to put Albion Gate into a company and they had an existing relationship with UBS on the basis of ownership in joint names, so it was better to keep the new properties the same. There may, of course, be force in that but it does not alter the fact that this is what he did.

68. He was then asked about his claim that they had separated in 2014, yet he put Craven Street into joint names thereafter. His rather tame response was that, although they were separated, they were still presenting as a married couple to other people. When Mr Glaser put to him that this was madness if his case was true, he said his options were very limited, given that the children were not old enough to own property. He fell back on the existence of the Power of Attorney and the loan contracts to justify his position. He ended by saying he never thought that she would ask for something she did not pay for and she didn't really own but this answer is hard to accept given the advice he had from CR as to the effect of joint ownership. When asked about purchasing the Piazza as joint tenants, he denied that this was the case but Mr Ewins accepted that he had admitted in his Defence that it was so purchased. He then told Mr Glaser that he had purchased a property at Flat 6, 20 Hampton Gurney Street in the name of Shamu after the purchase of Albion Gate. He explained that this was because he had a business partner in Shamu, who had an interest in that property but had no interest in the other three. It did show that he was well aware that there were other ways of purchasing property. He said the Piazza was purely an investment, so he was asked about the UBS mortgage application in which he ticked the box saying that the property was to be used as residential not for buy to let. He said you can tick the residential box but then rent it. I reject that absolutely. He accepted that he did so to save on the interest rate, which would be higher for buy to let. He said he was telling UBS the truth but he definitely was not. He tried to justify it on the basis that he might go there for a few days or allow friends to stay and then said that they might have stayed in the Piazza if there had been a flood at Albion Gate.

69. He was asked why Albion Gate was not rented out if it was not a matrimonial home. He said it was rented out several times but he accepted it was not rented out for long periods or even very much at all. He said it was mostly rented in the summer but that was when the family was likely to be there. I am satisfied that any such rentals were almost inconsequential to its main purpose, which was to house the family when in London. Mr Glaser then turned his attention to the UBS mortgage application form submitted on 29 April 2014. He was taken to the page dealing with his income. It showed income from dividends in quoted companies of $500,000 pa and other income of $500,000 pa. He said

that the first was from investments held by Shamu. The only difficulty with this is that he valued these shares at $2 million and I have never come across public companies paying dividends at the rate of 25% pa. He then tried to finesse the income figures, claiming it was actually not that much. He said it might actually have been between $700,000 and $800,000 or possibly even, at worst, negative. He said he was an optimist, hence including the higher figure. I reject this evidence as being entirely self-serving. Either he was lying to UBS or that was indeed his income but he cannot have it both ways. He was asked about his capital disclosure in which he disclosed capital assets of $19,656,000. He tried to disassociate himself from it by saying it was not his handwriting but he had to accept that he had signed it as being accurate and complete. He just said he had other investments.

70. Mr Glaser then asked him about the application for the Craven Street mortgage dated September 2015. He was asked why he said his marital status was "married" if he was separated by then. He said it was because you are either married or divorced. He had put his rental income in that document at $2.5 million. He said this was because he was selling a property. This cannot be right as that would be a capital gain not rental income. He was then asked why, only fifteen months after the first application, he declared that his capital had increased to $57 million. He said it was down to the Kuwait Court case against his father as he had succeeded in proving that he owned 33% not 1% of Mahmoud Haidar and Sons, which had net equity of KD 30 million, such that his 33% share was worth around $33 million. He added that this figure had proved illusory as he was then told that he had sold his shares to his father in 2010, even though his father had not paid for them, so rather than claiming against the company, he had to sue his father. He said it then emerged that the company was insolvent although he could not explain how that was the case if it was worth around $100 million so recently. He said he could not get the company accounts to show the true position. He was asked about a further sum of $15 million that he should have had from his father. He said that this was for shares in a jewellery business, a healthcare business and a media business. Again, he said his father had not paid. He also accused his father of abusing a Power of Attorney he had given to his father in that his father had used it to transfer shares in Gulf Bank and another business from Dr Abdullah. As I understood it, he was also saying that he could not get what he was owed back from his father as his father is now claiming to be insolvent. This would be quite remarkable if he had indeed got all these assets from his son without significant payment. He was asked again about the 2017 accounts of Mahmoud Haidar and Sons. He said he had never had them. He was therefore asked how he had been able to say, in his Form E, that his 1% share was worth the very precise sum of £352,116 "*based on the 2017 financials"*. He said it was based on an expert's report, not him having the accounts. I regret that I cannot accept a word of this. I am completely unclear what is the true position in relation to this dispute with his father other than that I cannot accept his account and I am entitled to draw inferences against him.

71. He was then asked about the latest UBS re-mortgage application, completed earlier this year and only a few months after his Form E. I am prepared to accept that the figures included in this document were supposed to be dollars, even

though it says it should be in pounds sterling. Nevertheless, it gives his income as being $585,000 pa. He said it was income from Maytham Haidar, although I remind myself that he said in his Form E that his income from this company for the next twelve months was estimated to be negative (£50,000) and that it had made losses in 2019 of (£537,662). He tried to explain this by saying there is income on one side and liabilities on the others and all it was doing was reducing his investment as it was drawings from his partnership account. I reject this explanation. He simply gave one account to this court and a completely different one to UBS. He was then asked about the figure for rental income of $300,000. I remind myself that, when he completed the box in his Form E that is supposed to cover rental income as well as investment income, he said (£50,000), an entirely different figure. He replied that this was rental income from the apartments in London, although there has been no such income to speak of. Indeed, he was taken to one of his Replies when he said "*the only rental income is from David Hoggett who has vacated"*. He did say he was intending to rent out his house in Kuwait. Again, however, the inescapable conclusion is that either one or other or both of these disclosures is simply untrue but he persisted in saying that both were truthful. He was then asked about the fact that he disclosed capital of $13.5 million, excluding the value of the properties being mortgaged, namely Craven Street and the Piazza, in comparison to the negative figure of (£866,251) in his Form E. His response was that you don't complete every piece of information in the UBS applications, even though the document requires it to be "*true, accurate and complete*". He said it is "*just a quick look at the numbers and you just sign*". He thought that was the information UBS wanted. It was completed by his financial adviser in Switzerland, Patrick Huser, who has been a banker for 30 to 40 years. Even though all his accounts are under garnishment, he had to give UBS what they wanted. This appears to be an admission that he misled UBS but I am concerned that it is in fact this court that he has misled.

72. He then said that properties that you live in can be investments, which is obviously correct. He added that it depends on your intention when you purchase them. He argued that, as Dr Aldoukhi said that Craven Street was "the" matrimonial home, Albion Gate cannot be thereafter but I consider this is completely wrong as a matter of law. First, you can definitely have more than one matrimonial home and, second, the statute is clear that the property merely has to have been a matrimonial home "*at some time during the marriage".* He confirmed his view that a matrimonial home is one you live in with your spouse but he said it depends on how you look at it. He was asked why he had ticked "*residential mortgage*" for Albion Gate. He said that this was so he could sell the property but that is clearly nonsense. He was then asked about a number of photographs of him in Craven Street with the children. He accepted that these showed how attached the children were to him. He also accepted that the parties bought items such as mattresses and sound systems for the property. He complained that Dr Aldoukhi said that she was responsible for furnishing the property but that it was bought with furnishings. He was "*creating value for the house*". He was asked why he said in an email dated 6 January 2017 that he had "*moved to his new house*" a few months' previously. He stressed that he said "*my new house*" rather than "*our new house*". I take the point but it does undermine the suggestion Craven Street was not a matrimonial home. He was

then asked why, on 19 March 2013, in another email he had told a woman called Gabrielle that "*we live in Kuwait but we are planning to spend this summer in our London home"*. His response was that you do not give details of your private life to an outsider and that it did not mean that Albion Gate was a matrimonial home but I disagree. He accepted that M went to a summer school here but justified it on the basis that he is not very social and needed the interaction it would provide, given that he speaks very good English. He accepted he went to the same school when he was young. He was asked about an email he sent to UBS on 4 February 2016 in which he said, in relation to Craven Street, that "*myself and my wife with our three kids who are under 17 years' will be living in the property"*. Again, there was really no answer to that.

73. He was asked next about why he told the Kuwait Court that his properties in London are subject to loans that exceed the present value thereof. He said this was true if you include the loans from Shamu, although that completely ignores the fact that the loans were due to himself. The document also said that he had to buy the properties "*to fulfil the plaintiff's desire to reside in Britain*". He was asked about his "*insistence on the continuation of their matrimonial life together"* in the Kuwait divorce proceedings. He said that he never denied that they had not shared a bed for four years but he wanted the marriage to continue as it would be for the benefit of the children, which is important in the eyes of Kuwaiti society. He was referred to a document that said his total income was 1500 KD; that he was insolvent; and there were no properties in his personal name. He said it was a mistake on the part of his lawyer. He denied telling Dr Aldoukhi that she had to sign another Power of Attorney in 2014 as he had lost the first Power. He said that it was to make sure that they knew that, although they had two properties, they were his. If so, the document should have said that they were his. He accepted that the document does not refer to the London properties, although he pointed out that it does mention properties abroad. He also accepted that it was a revocable Power of Attorney. He therefore did not use them after they had been revoked. He accepted that he signed the contract dated 10 September 2014 on his Wife's behalf. He did not ask her to sign as he had the Power of Attorney, although I consider it would have been very easy for him to get her signature. It does suggest that he did not want her to know about it. He denied that he was in breach of Clause X but accepted he had not given her a copy of the contract, although Clause X required him to do so. He said it was a standard clause and the contract was kept in the safe, to which she had the key, and she definitely saw it. I am clear that he was in breach of Clause X and this is another indication that he did not want her to know.

74. He accepted that she signed the English Power of Attorney the day she was flying back in 2017. It did follow the cruise and stay in Barcelona, but he stressed that these were not romantic holidays, as they had different rooms. I accept that, but they were definitely family holidays. He said that he told her that, according to their agreement, the London properties were all his but I do not believe him as to this. He said the purpose was that, if he sold them, she would not be liable but this is really a nonsense, given that the loans were owed to him. He said that he considered the Power still valid after she revoked it. He accepted that she did not want him to do anything, but said he considered it was his right to do so anyway. He did it because it was legal. He was asked about

the loan agreement dated 10 October 2016. He accepted Shamu had already loaned some of the money two years earlier. He said that it could be a liability in one place but an asset elsewhere. He added that there was no need to disclose this loan to UBS as he owned 60% of Shamu. He was asked why the interest rate was 6% when UBS was charging far less. He replied that the first interest rates granted by UBS in relation to the Piazza and Albion Gate were very competitive. He said a higher interest rate was justified because it was mezzanine finance and not very well secured, which is also nonsense given the loan was, in effect, to himself. I cannot understand the thinking behind this transaction. He did say that his Wife had full signing rights on the Shamu account and was a director but I am clear that she was not told what was going on. He said he paid everything because he owned everything but I take the view he did so because he was in charge of the finances. He relied on the fact that she did not ask for capital in Kuwait other than for a car and furniture. He said she did this to maximise her maintenance claim but I reject this as the explanation. He said he offered that she could stay in one of the houses in Kuwait but she refused. I am clear this offer was not for her and the children to have exclusive occupation so it was reasonable for her to refuse. He was asked about SCI Noor. He accepted that the company owned an apartment in Paris and he has used it a lot. He has also used the property in Marbella several times but so have his brothers and sister. He has not used the apartment in Brussels. When asked if that property was in the names of himself and his brother, he remembered signing something but he thought it was in the name of the company and, in reality, it was owned by the company. There is a penthouse registered in the name of himself and his brother in Divonne, France, but it is also the property of Mohammed Haidar and Sons, which owns SCI Noor. He went there once. I am quite unable to say what interest or benefit Dr Abdullah truly receives from all of this, given the litigation with his family, but there is no doubt that such properties are not available to Dr Aldoukhi.

75. He was then re-examined by Mr Ewins. He told me that the Powers of Attorney enabled him to sign on his Wife's behalf to conclude a transaction. I consider this to be right but I do not accept that it gives him the right to deprive her of her interest. He said they agreed he could use the Powers whenever he wanted and I accept Dr Aldoukhi would have done so, but always on the basis that he was to act in her best interests. He then said that he believed he was acting in her best interests but I cannot see how that can be the case if he was using it to make her liable as a matter of law for loans owed exclusively to himself. He restated that the total debt did exceed the equity but this is completely misleading when the non-UBS debt is to himself. All in all, he was not an impressive witness.

76. I must mention briefly the evidence of the two witnesses, Mohammad Baqer Ali Kuraibet and Reem Al Baghdadi. They both gave evidence by video link from Kuwait. For part of their evidence, they used the services of an Arabic interpreter who was in the Court in London but at other times they gave evidence in English and only asked the interpreter for partial translations. Mr Kuraibet told me that he did sign the document as witness but he did not read it. He was present when the person signed it. He was sure it was signed in 2014. He remembered doing so even though it was over seven years ago. He told me

he didn't have to clarify why he remembered. He has witnessed Dr Abdullah's signature on two or three other documents. He categorically denied fraud when it was put to him. Mrs Al-Baghdadi said she only witnessed Dr Abdullah's signature once. She could clearly remember doing so as it was in the first days after she moved into her old office. She was very excited by this move. She said Dr Abdullah is a client not a friend. She did at times become quite aggressive and defensive but she was adamant it was her signature and her stamp. She denied emphatically forging anything or doing anything wrong. She witnessed it on the date on the document.

77. I take the view that Mr Glaser was wrong to put a fraud allegation to these two witnesses. In the absence of an expert's report supporting fraud, there was no evidence of fraud. The fact that the dates on which the various loans expired was the same is not suspicious at all. His client was not able to give any evidence on this topic as she was unaware of the signing of the documents. It follows that I accept the evidence of these two witnesses and regret that these allegations were put to them.

My findings

78. I now turn to my findings. I propose to deal with the TOLATA proceedings first and then turn to the Part III application. I am absolutely clear that there was an express declaration of trust in relation to all three properties. In each case, it was that the parties held those properties on trust for themselves as joint tenants. This is clear from the CR emails to the Land Registry in relation to Albion Gate and the Piazza. The TR1 was completed in those terms in relation to Craven Street. On severance, they were entitled to equal shares in each property. In short, the decision in Goodman v Gallant applies to this case.

79. Dr Abdullah's claim to rescind the TR1 and the declarations in the emails cannot succeed. There was no common intention that the properties should be held for him. The opposite was the case. There was a common intention that they were to be held jointly, whether Dr Abdullah is right that this had something to do with Inheritance Tax or Dr Aldoukhi is correct that they were a married couple and intended to own these properties jointly. In fact, I find that Dr Aldoukhi is correct. The emails and the TR1 accurately recorded their intentions. Dr Abdullah's claim pursuant to proprietary estoppel must therefore fail. There was absolutely no assurance by Dr Aldoukhi that these properties were actually owned by Abdullah.

80. It follows that there cannot be equitable accounting until after the severance of the joint tenancy. I must, however, deal with the Powers of Attorney. I start by reminding myself that it is not contended that these Powers themselves actually transferred beneficial interests in the properties from Dr Aldoukhi to Dr Abdullah, nor did he ever purport to use them to do so. Moreover, I have accepted the evidence of Ian Edge in relation to the Kuwaiti Powers of Attorney. They were administrative Powers. Dr Abdullah was not permitted to act in conflict with the personal interests of the donor. In other words, if he sold a property on her behalf, he had to account to her for her share of the proceeds of sale. Dr Aldoukhi most certainly did not agree to the transactions that he

undertook. Indeed, they were kept hidden from her and this can only be because Dr Abdullah did not want her to know. Moreover, he was in breach of the 2014 contract by not giving her a copy. The fact that he was, in effect, contracting with himself to purport to encumber Dr Aldoukhi with debt makes the position even more clear.

81. The English Power of Attorney is similar in that it too was an administrative Power of Attorney as it was to be exercised "*for her use and benefit"*. In other words, the donee had to act in good faith. Whilst he could administer the properties as though they were his, he had to account to her for what he was doing. He could not simply remove her interest by charging the properties gratuitously, let alone doing so to an entity of which he is to be treated as the 100% beneficial owner. In other words, he could mortgage the property but only if he accounted to Dr Aldoukhi for the proceeds of the mortgage. So far as the 10 September 2018 loan agreement is concerned, I am quite clear that he could not retrospectively make her liable for the loans from Shamu, let alone purport to charge the properties in Shamu's favour to cover all these loans. In short, this transaction was not "*for her use and benefit"*. It was for his "*use and benefit*". This leaves to one side the fact that he did so after she had purported to revoke the Power of Attorney. It follows that I am clear that Dr Aldoukhi has no liability to Shamu, whether it be for the sum of £3,096,416 or any other sum. As I have found Dr Abdullah to be Shamu for these purposes, I consider this to be res judicata but I accept I may be wrong about that. As I am determined that there should not be any further litigation between these former spouses under any circumstances, I will deal with this in the Part III claim.

82. I do, however, accept that there can be equitable accounting after the date of the severance of the joint tenancies. I am clear that this does not, however, cover sums paid by Dr Abdullah for mortgage instalments, service charges and the like. He had control over these properties. He could have occupied them or rented them out. If he occupied them, he would owe Dr Aldoukhi occupational rent. If he rented them out, he would have to account to her for half the rent, which would have met her half share of the mortgage instalments and service charges. He could have sold them, as Dr Aldoukhi wished, whereupon the payments would have ended. The one aspect, however, that is different is that he paid off the UBS mortgage in the sum of (£1,534,085) on 6 December 2018. Again, I take the view that the Shamu document should be ignored for the same reasons as before but there is no doubt that Dr Abdullah used his money to discharge this UBS liability. It follows that this gave Dr Aldoukhi a gratuitous benefit of one-half of this sum, namely £767,042. The most obvious way of demonstrating the unfairness of this would be to assume the Albion Gate had been sold before 6 December 2018 but after the date of severance. The mortgage would have had to have been deducted from the proceeds of sale and Dr Abdullah would have been £767,042 better off.

83. Mr Glaser submits to me that there should not be equitable accounting for this sum as Dr Abdullah was merely restoring the position to that which applied immediately following the purchase of Albion Gate, namely that it was mortgage free. Whilst that is true, I am clear that the original UBS mortgage of Albion Gate involved a legitimate charging of that property at a time when the

marriage was, on any view, still continuing. Dr Aldoukhi was fully involved in this mortgage. She signed the application form and she executed the mortgage documents. The money was used legitimately during their marriage. After all, two further properties were acquired thereafter with significant capital payments from the resources of the family. It follows that Dr Abdullah is entitled to equitable accounting for this mortgage repayment. It means that, pursuant to the TOLATA litigation, I order a sale of all three properties with the net proceeds of sale, after costs of sale and discharge of the UBS mortgages, to be divided equally but with Dr Aldoukhi to account to Dr Abdullah for the sum of £767,042. Based on the figures used during the trial, this will lead to Dr Aldoukhi receiving £1,096,750 from Albion Gate; £308,750 from the Piazza; and £503,750 from Craven Street, making a total of £1,909,375 but she must account to Dr Abdullah for (£767,042), reducing her payment to £1,142,333. Dr Abdullah will therefore receive his half share of £1,909,375 plus the equitable accounting figure of £767,042, making £2,676,417. Pending sale, Dr Abdullah must continue to pay the mortgages and service charges for the reasons given above. Dr Aldoukhi is also entitled to a declaration that she owes no further money to Shamu. I make it clear, however, that this is not necessarily the end of the matter as I intend now to turn to the Part III claim to see if I should override any of the above in favour of Dr Aldoukhi.

Part III

84. I therefore turn to Dr Aldoukhi's Part III application. The first issue I must decide is whether Albion Gate and Craven Street were matrimonial homes. I am absolutely clear that both were indeed matrimonial homes. The parties bought them primarily for their personal use. They may have had an investment motive as well but that is neither here nor there. They furnished Albion Gate to their tastes. They even shipped items over from Kuwait which is not something you do with a buy to rent property. They told UBS they were for residential use. They were hardly rented out. There were paintings and family photographs in the properties. The family stayed for relatively long periods at both properties. The reasons included spending summer holidays here when it would have been too hot in Kuwait; treatment for M; enabling the children to attend summer school here; and just enjoying being in London. They had personal possessions there. The photographs show them enjoying their time in Craven Street. They set up home together in both.

85. I consider the fact that they had separate bedrooms from 2014 to be irrelevant to the status of Craven Street. Such an arrangement is not uncommon, even in very happy marriages although I accept there were difficulties in this marriage. Such a difficulty does not, of itself, bring a marriage to an end. They presented to the world as a married couple. I am sure they would have presented to their children as a married couple as well. Indeed, a text sent by Dr Abdullah to Dr Aldoukhi on 14 February 2016, wishing her a Happy Valentines Day shows some continuing affection between them. They went to restaurants together, as well as on a cruise and to Barcelona, even if they did have separate cabins/bedrooms. In Kuwait, Dr Abdullah resisted a divorce on the basis he wished to remain married so far as the outside world was concerned, even if this

was due to the effect of divorce on his children. It follows that I am quite satisfied that there is jurisdiction pursuant to Part III

86. Nevertheless, I must now decide how to exercise the jurisdiction I have. I am absolutely clear that I am not dealing with a full application for financial provision. This is obvious from the fact that my only jurisdiction is to adjust the shares in two properties. I must apply the observations of Lord Collins in Agbaje. I accept that there is not a strong English connection in this case. These parties were not quite "*birds of passage*" as they were here for longer periods than that but they were both born in Kuwait. They were brought up there. They are based there. They work there. Their children were born there and attend school there. They are thoroughly Kuwaiti.

87. I accept that there has been financial provision in Kuwait in accordance with the laws of that country. I must accord comity to this but, as Mr Glaser points out, this cannot prevent the application as, otherwise, there would be no justification for Part III at all. There is no doubt that Dr Aldoukhi has a very good income added to the maintenance she receives from Dr Abdullah. She can look after herself and the children's day to day needs entirely appropriately from that income. On the other hand, I do accept that she has received virtually no capital and she owns no property, other than the shares in the London properties that I have found in this judgment. Equally, I have no clear picture of Dr Abdullah's true financial position at all. He has attempted to mislead this court by claiming a net capital deficit of (£866,251) and a net income deficit of (£21,000) whilst telling UBS very shortly thereafter that he had capital of $13.5 million, excluding the interest in two of the London properties and that he had an income of $565,000. I am undoubtedly entitled to draw inferences against him, although they must be inferences that can be properly drawn. It would seem unlikely that Dr Abdullah would have understated his financial position to UBS. Whilst he might have overstated it, I take the view that it is appropriate for me to draw the inference that he did not. If I am wrong about that, he has only himself to blame. It follows that his total assets are in excess of £10 million and his net income is over $500,000 pa.

88. Mr Glaser asks me to transfer all Dr Abdullah's interest in Albion Gate and Craven Street to his client. He justifies that on the basis of her needs, which he asserts are for a Kuwaiti property and for a London home. I do not consider that would be an appropriate exercise of my discretion given that the Kuwaiti connections of this couple are so great. I do, however, take the view that I should make one adjustment. I have had to reduce her half share of the equity in Albion Gate due to equitable accounting. I am of the view that I should restore that figure to her in the Part III proceedings so that both these parties receive exactly the same from the equity in these properties, namely £1,909, 375 each. That is entirely fair and proportionate. It will then be up to Dr Aldoukhi how she deals with her resources. She can buy one property in Kuwait or two smaller ones in London and Kuwait. It will be up to her.

89. I recognise that Dr Abdullah might submit that this is unfair on him due to the way in which he paid off the UBS mortgage after the breakdown of the marriage. I do not consider that to be valid. Albion Gate was mortgage free on

purchase and, in effect, I will have used my readjustment powers to make it mortgage free on sale. He will still have far more capital assets than her given my findings and he will have a greater income than her. It is thoroughly appropriate that each should exit with one half of the actual equity in all three of these properties. I therefore direct that Dr Abdullah pay Dr Aldoukhi a lump sum of £767,042 from his share of the proceeds of sale of Albion Gate.

90. Finally, although I have declared that Dr Aldoukhi has no liability to Shamu, I am concerned that Shamu is not a party to this litigation and might attempt to sue her. I very much doubt that Shamu would succeed given that she did not even know about the documents that are said to establish this liability. However, to discourage any such litigation and to protect Dr Aldoukhi's position, I make a contingent lump sum in her favour in the amount of any sum she may be ordered to pay to Shamu, up to the balance of Dr Abdullah's remaining share of the equity in Albion Gate and Craven Street. This is entirely fair given my unequivocal finding that the debt to Shamu is a debt to Dr Abdullah.

91. I am very grateful to all the advocates and lawyers in the case for the great assistance they have given me. I make it absolutely clear that nothing more could possibly have been said or done on behalf of either.

Mr Justice Moor
22 October 2021.