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Neutral Citation Number: [2022] EWHC 2701 (Fam)

Case No: FD21F00038

IN THE FAMILY COURT

Attended hearing with two witnesses taken remotely
The Royal Courts of Justice
Strand
London
WC2A 2LL

Date: 9 September 2022

Before :

Mr Justice Moor

- -

Between :

Clarissa Gisela Pierburg

Applicant

-and-

Jurgen Pierburg

Respondent

- -
- -

Mr Patrick Chamberlayne QC (instructed by Harbottle and Lewis) for the **Applicant**
Mr Lewis Marks QC and Miss Elizabeth Clarke (instructed by Farrer & Co) for the **Respondent**

Hearing dates: 25 to 28 July 2022

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JUDGMENT

MR JUSTICE MOOR:-

1. I have been hearing an application made by Clarissa Gisela Pierburg, hereafter "the Wife", for financial provision after an overseas divorce pursuant to Part III of the Matrimonial and Family Proceedings Act 1984. The Respondent is Jurgen Pierburg, hereafter "the Husband". I mean no disrespect to either of them by referring to them as the Wife and the Husband respectively. I do so for reasons of convenience only. Indeed, I recognise that they are, in fact, already divorced.

2. I heard a contested divorce suit between these parties in April 2019. I dismissed the Wife's divorce petition on the basis that she had not established jurisdiction. My judgment is reported at [2019] EWFC 24. I said at the conclusion of the judgment that the dispute was not remotely about the divorce itself. It was about financial remedies following the divorce. I added that:-

> *"I very much hope that it will be possible to reach a sensible and fair compromise of (the Wife's) financial claim. If not, there may come a time when this Wife wishes to apply in this court pursuant to Part III of the Matrimonial and Family Proceedings Act 1984 for financial relief following an overseas divorce. Any such application is reserved to me."*

3. The Wife did indeed apply for permission to make this application on 18 February 2021. I determined the application at an on-notice hearing on 4 May 2021. I granted the Wife permission to make the application.

<u>The relevant background</u>

4. I do not propose to set out the entire history of this case as much of it is to be found in my previous judgment. I will concentrate on the aspects that are relevant to this application.

5. The Husband was born in Khodau, Germany, on 18 September 1945, so he is aged 76. He lives in Switzerland. The Wife was born in Potsdam, Germany on 26 August 1949, so she is aged 72. She lives in this country at 35a Kinnerton Street, London, SW1.

6. The Husband was married before. His first marriage broke down in the early 1980s. He has two children by that marriage, Cecile and Alice, both of whom are in their mid 40s and live in Switzerland.

7. In 1973, the Husband's brother, Manfred, died. The Husband inherited Manfred's share of the family business, Pierburg Company, which I believe had been heavily involved in the reconstruction of Germany after the Second World War. The Husband's father, Alfred, died in 1975. The Husband inherited his share of the business as well. By then, the Husband owned 56%; his mother owned 20%; and Bosch held 20%.

8. The parties met in Dusseldorf in 1981. They began cohabiting in Dusseldorf in 1983. They decided to marry. The Husband had agreed with his mother that a

pre-marital agreement was essential prior to any marriage. A first draft of such an agreement was prepared dated 6 May 1985. It provided the Wife with DM 1.26 million in the event of a divorce. At the time, the exchange rate was DM 3.9 to the pound, meaning that this would have given the Wife a lump sum of approximately £320,000, albeit in 1985. It is noteworthy that this was a capital payment, not periodical payments. The Wife, however, said that she was marrying the Husband for love, not money. At her request, the marriage contract was redrafted to exclude her from receiving any financial provision at all. It was signed on 9 September 1985 before Notary Kolkmann in Neuss, Germany. I will refer to it hereafter as "the Pre-Marital Agreement". The Wife does make the point that she had no legal advice and there was no financial disclosure.

9. The parties married on 20 September 1985 in Neuss. There is one child of the marriage. Valentin (known as Vali) was born on 24 July 1987. He is therefore now aged 35. His secondary education was at Millfield School in England. He obtained a BSc in Business Management in 2009 from the European Business School in London. He has had heart problems. He was at one time treated by doctors in London. He is now based in Zurich, running Lake Street Capital Partners.

10. The Husband sold the family business for DM180 million in 1986. His share was DM117 million. In the year 2000, his mother died. He inherited around €63 million as her sole heir. In September 2005, he received a further €70 million following the maturity of an insurance bond.

11. His mother had bought the Chateau Cuarnens, near Lausanne, Switzerland in 1999 for CHF4,000,000. Substantial improvement/refurbishment works have since been done to the property at a very considerable additional cost. I assume the Husband inherited the property on his mother's death. In 2000, the family moved to Switzerland, primarily for tax reasons.

12. In 2002, the Husband purchased the property in Kinnerton Street, London that the Wife now occupies. It is a very small property, occupying approximately 1,700 square feet, although it does have four bedrooms. It is a mid-terrace house. It was purchased on a short lease, that was subsequently extended in 2016, for a 20 year term until 2036.

13. The parties separated during 2017. Initially, the Wife sought a divorce settlement of CHF43.9 million. The Husband, in July 2017, proposed a settlement amounting to around CHF20 million, although it was payable over approximately 20 years. Given his very considerable wealth, I do not entirely understand why that was the case. I do, however, note that, at today's rate of exchange, this would amount to approximately £17.4 million.

14. The Wife petitioned for divorce in this jurisdiction on 12 January 2018. The Husband filed a German divorce petition on 12 February 2018 in the Schoneburg District Court. The Husband defended the English divorce petition on the basis that the English Court did not have jurisdiction at the time the petition was presented. As a result of Brussels IIa, the Schoneburg Court stayed

its proceedings on 12 April 2018, until jurisdiction had been clarified in England.

15. I heard the Wife's English divorce petition in April 2019. I dismissed the petition on 11 April 2019, as I found that the court did not have jurisdiction at the time the Wife filed it. In consequence, the proceedings re-commenced in Germany.

16. On 15 April 2019, the Wife herself filed a divorce petition at the Schoneburg Family Court. On 10 May 2019, the Husband's German lawyers lodged an application at the same court to lift the stay. The Husband also requested a declaration that, due to the Pre-Marital Agreement, the Wife had no entitlement to maintenance after the termination of the marriage. On 17 May 2019, his lawyers lodged a further petition at the Court for a declaration that, due to the Pre-Marital Agreement, there was no entitlement to equalisation of accrued gains as well.

17. The Wife sought a capital payment of €35 million on 24 June 2019. Her lawyers lodged an application at the Schoneburg Court on 30 August 2019 for a declaration that the Pre-Marital Agreement was invalid; for equalisation of accrued marital gains; and for monthly maintenance of €170,000. The request was supported by a document asserting that the marital gains were estimated at between €180 million and €230 million, which would trigger an equalisation claim of between €90 million and €115 million. The Schoneburg Family Court listed the matter for a hearing on 5 November 2019. The Court "urgently recommended that the parties seek a settlement of the ancillary matters. The court advises that according to its current and preliminary assessment, there are considerable concerns regarding the validity of the overall waiver as agreed in the Notarial Marriage Contract dated 9 September (1985)".

18. The Wife says that a settlement meeting took place on 20 September 2019 at which the Husband indicated that his offer of CHF20 million was no longer available for acceptance. The Wife's German lawyers then applied on 29 October 2019 to withdraw all her claims in Germany. In relation to her capital claims, it was said that the Husband had, for the first time, provided information that the "predominant part of the assets which he today owns stem from his original assets that he owned before the marriage". Her case, in these proceedings, is that, even if she had managed to set aside the Pre-Marital Agreement, she would not have received a capital award based on sharing as there was no marital accrual. In relation to maintenance, her lawyers said that it had become clear that the Husband was not prepared to pay any more than the sum of £15,000 that he currently pays voluntarily each month. The document added that he had repeatedly shown that he was ready to conduct the divorce proceedings for many years. The Wife did not have any financial reserves and did not feel up to divorce proceedings that would take years in court, with the outcome being uncertain. It is clear that what she was saying was that the German Court was not going to award her more than the sum of £15,000 per month that she was already receiving, let alone capitalise that award. In consequence, there really was no point in continuing. I will have to decide if she was justified in taking that position.

19. She is criticised for asking the German Court to make the order she sought immediately without notice to the Husband. Judge Block, sitting at the Schoneburg Family Court did exactly that the same day, 29 October 2019. She held that no claim for post-marital maintenance was due to the Wife and that no claim for the equalisation of surplus gained by the parties during their marriage was due to her either. The Wife's lawyers had asked for the hearing on 5 November 2019 to remain listed on the basis that it could be used to pronounce the final divorce. The Husband's lawyers prevented that by applying, on 3 November 2019, to "implement the equalisation of pension rights". It appears that he was asking for an order in his favour because the Wife actually had slightly more by way of pension than he had. It was clear that he was saying that the Pre-Marital Agreement should be waived in this regard alone, even if he did, at times, make comments to the Court as to his willingness to continue to pay maintenance. On 5 November 2019, Judge Block said that she did not understand the Wife's waiver of the relevant claims, especially in the light of Judge Block's indication of concerns as to the validity of the Pre-Marital Agreement.

20. The Husband's German lawyers then made a proposal dated 23 December 2019. It suggested a lifelong payment of €300,000 per annum and a capital payment, via a trust, of €12 million. Of this, €10 million would be used for housing and the remaining €2 million would be used to maintain the property or properties. The Wife's lawyers responded on 17 August 2020 proposing maintenance for life of £50,000 per month; an outright capital payment of £5.7 million and a further sum of £7 million for the purpose of buying a house. The possibility of the use of a trust for the housing acquisition was accepted. The case was heard again at the Schoneburg Family Court on 6 October 2020. The order is dated 7 October 2020. A final divorce decree was pronounced. There was to be no equalisation of pension rights.

21. On 18 February 2021, the Wife applied in this jurisdiction for permission to bring an application pursuant to Part III of the 1984 Act for financial provision following an overseas divorce. She served a statement in support dated 8 February 2021. She said that it had been impossible to reach an agreement in Germany as to the finances. She complained that the Husband had insisted any settlement be held on trust. She said that she elected to waive her entitlement there as the case could take over 10 years to resolve. She was particularly concerned that, other than the voluntary maintenance she was receiving, she would have no provision in the event of the Husband's death. She said, and I accept, that she has been fully resident in this jurisdiction since 2017. She complained that the Husband had even said that she should sell her jewellery to pay her costs. She noted that it was his case in Germany that his assets had reduced significantly in real terms during the marriage. She added that it was clear that she was unable to bring anything other than a very minor claim in Switzerland.

22. I permitted the Husband to file written submissions and attend on the permission hearing. On 10 March 2021, he filed those submissions. He said that the only connection to this jurisdiction is a short lease of what he described as a pied-a-

terre in London, namely Kinnerton Street. The jurisdiction of this court was accepted. He alleged that the Wife did not negotiate in good faith, nor prosecute her claim in Germany. It was, he said, her untenable position in Germany that risked a protracted delay. He merely issued the application for the pension sharing equalisation to obtain a ruling on the enforceability of the Pre-Marital Agreement. It is not an English case. This is a German family. The Pre-Marital Agreement contained no financial provision for the Wife at her own insistence. The Wife abandoned her case in Germany, where she had a perfectly good remedy. There are no assets in this jurisdiction other than Kinnerton Street, which the Husband said he was happy to transfer to her. There is no possibility of any enforcement of an order that I may make in Germany. In this regard, two opinions from German lawyers were attached to the submissions document as well as a similar one from a Swiss lawyer in relation to that jurisdiction. The Husband does not dispute that he should make financial provision for the Wife, but it should be at the rate that he is currently paying, namely £15,000 per month with him additionally paying around £2,500 per month for the upkeep of her home. His disclosure had shown that the marital assets had significantly decreased during the marriage. There had been a judicial indication in writing that the door was not closed to her in Germany. It would be wrong to bring Part III of the 1984 act into play in a dispute between Europeans.

23. The Wife filed a letter, dated 22 April 2021, from her German lawyer, Dr Cornelia Maetschke-Biersack, that said that the Husband had sought to uphold the Pre-Marital Agreement save in relation to pension equalisation. The German court had no ability to make a capital award, as there was no increase in wealth during the marriage. A claim would be limited to a small amount of maintenance, which she estimated to be less than €15,000 per month. Given the Pre-Marital Agreement, the Wife had no entitlement at all.

24. I heard the application on 4 May 2021. I granted the wife permission to apply for financial remedy orders pursuant to Part III. I made various directions and reserved the case to myself, if available. In my judgment, I said that I was not making a final determination as to any of the issues in the case. The parties were both free to reargue any points at the final hearing. I considered the cases of Agbaje v Agbaje [2010] UKSC 13 and Traversa v Freddi [2011] 2 FLR 272 as to the law I had to apply. For the purposes of the permission hearing, I rejected the three main points made on behalf of the Husband. First, I rejected the Husband's case that there was insufficient connection with this jurisdiction even to grant leave. Second, I decided, for leave purposes, that it was not so unreasonable for the Wife to abandon her application in Germany as to be fatal to the application for permission. Third, I did not consider that any difficulty that the Wife might have in enforcing any order that she might obtain, in either Germany or Switzerland, was a sufficient reason to refuse to grant leave. I do, of course, accept that I must address these matters again in this judgment. I will do so.

25. Subsequent to the hearing, I made various directions, including that both parties should file Forms E prior to the main directions hearing that I had listed on 5 October 2021. The Husband's Form E is dated 19 July 2021. In it, he estimates his total wealth to be €180 million. He says that he is not going to provide full

disclosure in accordance with the requirements of Form E, due to the impact of German and Swiss law. He does, however, say that he would be able to meet any justified claim that the Wife may have against him, although he reminds me of the entirely non-matrimonial nature of his wealth. He repeats his claim that the Wife torpedoed the German proceedings and rejected his proposed settlement which he says went far beyond her entitlement. He gives an indicative value for Chateau Cuarnens at between CHF15 to 20 million and for Kinnerton Street at £1.5 million. He accepts the standard of living was high during the marriage. He describes the way in which his wealth was inherited and the Wife's insistence that the Pre-marital Agreement should not include any financial provision for her, even in the event of hardship. He says that he has had no meaningful employment during the marriage and the real value of the assets is somewhat less than when he received them. He makes the point that the Wife's brother, Horst, was employed by him and, he says, that Horst is well aware that his broad disclosure is accurate.

26. The Wife's Form E is dated 20 July 2021. She values the Cuarnens property at CHF25 million together with the contents at CHF2 million. Based on a valuation from JSRE Partners, she says that Kinnerton Street is worth £1,168,000 due to the short lease but that it would be worth £4.1 million if it was owned freehold. She had sold her jewellery for £530,000 to cover her costs and other expenses. By the time of the Form E, she had cash at bank of only £40,245. She valued the contents of Kinnerton Street at £300,000; her haute couture collection at £100,000, and her remaining jewellery and handbags at £10,000. She had liabilities of (£164,720) which consisted almost entirely of money she owed in costs, both to the German Court and to her previous English solicitors. She calculated her net assets at £1,079,175. Turning to income, she has a German pension of £7,063 per annum and a Swiss pension of £5,885 per annum. The Husband was paying her voluntary maintenance of £180,000 per annum and also paying outgoings on the Kinnerton Street property, which he said amounted to £2,500 per month but she thought was more than that. She put her income needs at £790,447 per annum and her capital needs at £15,050,000, almost all of which was for a London property and a home in the country. She said that the standard of living during the marriage was phenomenal. It has subsequently been said by her that the expenditure rate was between €10 million to €15 million per annum. She says that she was very involved in purchasing art during the marriage. For example, the parties bought a Picasso for £1 million and sold it for €46 million. They sold a Matisse for €30 million that they had purchased for £3 million.

27. The Wife then made an application for a Legal Services Provision Order. I do not need to deal with this in any detail as, immediately before the hearing of the application, the parties' son, Valentin, transferred £250,000 to his mother to cover her costs. I heard the case on 5 October 2021. I expressed the hope that the parties would voluntarily pursue a negotiated settlement. At that hearing, the Wife was still in credit with her solicitors to the tune of £130,414 in relation to costs, following the receipt of the money from Valentin. I noted that Valentin had indicated that he would fund any reasonable additional legal fees going forward, although it is the Wife's case that she currently owes her solicitors around £70,000, as well as £98,565 to her previous solicitors and £60,793 to the

German Court, making total debts of around £230,000. I did say that, if it had not been for Valentin's offer, I would have considered that the Wife fulfilled the criteria for a legal fees order. I set the case down for this hearing with a four-day time estimate and directed section 25 statements, limited to ten pages each.

28. Since that hearing, the Husband has indicated that he does not intend to play a full role in this trial. He declined to answer the focused questionnaire that I had directed him to complete. This is important. For example, one of the questions was whether he would abide by any order that I might make. Despite an order that he attend this final hearing to give oral evidence and be cross examined, he indicated that he would not do so. Indeed he has not attended. Nevertheless, he has been fully represented. Moreover, he did file a section 25 statement. His statement is dated 13 May 2022. It repeats much of what I have noted above. He describes the Wife's position in Germany as obstructive and self-destructive. He repeats his case as to the Pre-Marital Agreement and the Wife's waiver of any provision. He says that he has never been opposed to providing a fair settlement, but it should be based on principles of German law. He argues that the reason that he is now worth less, in real terms, than at the time of the marriage, is because the parties have spent at such a high level during the marriage. He notes that the Wife accepted in Germany that all the assets were pre-marital. In terms of the purchase and sale of art, he says that he engaged in this long before the marriage. He was assisted by renowned experts. He does not accept that the Wife was instrumental or, indeed, even influential in relation to the various named transactions.

29. The Wife's section 25 statement is also dated 13 May 2022. She says that Valentin's lifestyle is funded by the Husband. She adds that she believes he is about to purchase a property in Zurich for CHF8 million. She says that the parties could not resolve the dispute in Germany due to the Husband's insistence on a trust and a lengthy time for payment. She repeats her case that the Husband told her that it would take over ten years to conclude the proceedings in Germany if every appeal avenue was exhausted. She says that he repeatedly threatened to do that. She does say that, because he has not engaged in England, she fears he will not comply with any order that I may make. Kinnerton Street is much too small for her at only 1,776 square feet. She claims to need a property in London for between £8 to £10 million and a property in the country worth between £3.4 million and £5 million. She reassures the Husband that Valentin will be her sole heir. She says that she considers it to be critical that she has financial independence.

30. Her Open Offer is dated 30 May 2022. She seeks a lump sum of £15,785,000 referable to her housing needs. She seeks capitalised maintenance in the sum of £8,000,000, which is to cover a Duxbury annual maintenance provision of £600,000, as well as £280,000 to cover her liabilities, since reduced to £238,000.

31. In many respects, this would have been a straightforward application that I would have determined in accordance with the criteria set out in the 1984 Act. However, in the last two months, there has been a significant development.

There is no doubt that, on 7 May 2022, the Wife, the Husband and Valentin met in Zurich to discuss the terms of a financial settlement. The parties disagree as to who suggested or drove forward this meeting. I will have to make findings of fact. They also agreed that neither of them would contact their respective lawyers about this meeting. They dispute who was the driving force behind that and the reasons for such an agreement. It is clear that various proposals were made during the meeting, although I have not been given the specific details. The parties agreed that they would adjourn and meet again later in May 2022. Despite having agreed that she would not tell her lawyers, it is clear that she did tell her solicitor, Mr Nicholas Westley of Harbottle and Lewis, about the Zurich meeting on 11 May 2022, although that was after she had a consultation with her leading counsel, Mr Patrick Chamberlayne on 9 May 2022. The meeting in Zurich had not been mentioned at that consultation at all. I do not, of course, know what she said to Mr Westley, let alone what he advised her.

32. The parties and Valentin met again in Dusseldorf on 20 May 2022. Although the Wife initially suggested that only "proposals" had been made on this occasion, it is clear that the parties reached an agreement as to financial matters. This Agreement was reduced to writing and signed by both of them. There are factual disputes as to exactly what happened and, in particular, the extent, if any, of pressure that was placed on the Wife. The meeting took place in a hotel. The husband's lawyer, Dr Rainer Maschmeier has an office on the top floor of the hotel. Once the agreement had been reached, the Husband contacted Dr Maschmeier and he came to the hotel from his home nearby. It appears that German law would prevent him from being involved if either party had a German lawyer acting for them. He satisfied himself that this was not the case. Valentin had been taking notes. Dr Maschmeier, with the assistance of his secretary, converted this into a typed document in German. Both parties signed this document in his presence and the presence of his secretary.

33. I have an English translation of the document. It is headed "Resume of Key Points of Settlement between Spouses Pierburg". There are then five paragraphs. The first paragraph is headed "monthly lifetime maintenance" and is in the sum of €40,000. The second paragraph is headed "cash payments after the proceedings in England have ended". The first is a payment of €1.5 million which, it says, is expected to be paid on 1 July, otherwise on the first day of the month after the proceedings in England have ended. The Wife's currently outstanding legal costs (approximately €150,000) will be made available as an advance once the agreement has been finalised. There was then to be a second cash payment of €1.5 million one year later. The third paragraph deals with Kinnerton Street. It says that the property will be made available to the Wife on a lifetime basis insofar as possible. Either Valentin will hold the freehold and the Wife will have a lifetime right of residence, or the leasehold will be extended in the name of Valentin and, again, the Wife will have a corresponding right of residence as long as possible. If neither of these is possible, an equivalent property will be purchased by Valentin and the Wife will have a right of residence. The Husband will pay for the property. Clarification relating to the purchase of the freehold or extension of the leasehold will be initiated immediately. Paragraph 4 says that the cost of refurbishing Kinnerton Street, insofar as necessary, functionally and technically, will be borne by the owner.

The fifth paragraph relates to what is still to be done. The first is "the respective mandating of solicitors to draw up an internationally valid agreement". The second is clarification of the wife's tax situation and the drawing up of the most tax efficient solution. The document is dated Dusseldorf 20 May 2022.

34. The Wife spoke to Harbottle and Lewis the following Monday, 23 May 2022 and immediately sought to repudiate the agreement. In an email to Valentin that day she said that "the key points paper I signed is not an agreement which I am prepared to conclude". In a further email dated 26 May 2022 to the Husband and Valentin, she said that the Husband and Valentin put her under "extremely massive and disrespectful pressure" and that her signature was not "my free will". Indeed, her solicitors, Harbottle and Lewis, argued that the details of the agreement should not be before the court. Farrer and Co, on behalf of the Husband replied on 16 June 2022 that the agreement was "clearly admissible in evidence". The Husband therefore applied, on 15 July 2022, to admit statements from Dr Maschmeier and Valentin, as to the circumstances of the agreement. On the first afternoon of the trial, I decided that the statements should be admitted, even though the Husband himself has not come to court. I was clear that the details of the alleged agreement were relevant to my determination under Part III, along with the circumstances pursuant to which the agreement had been reached. If I decided that an agreement had been reached, I would have to apply the decision in the case of Edgar v Edgar [1980] 1 WLR 1410 to decide the correct outcome of the case.

35. The first statement is dated 7 July 2022 and is from Dr Rainer Maschmeier. His statement says that he had understood that the parties had met two weeks earlier in Zurich and had reached a provisional agreement as to the overall scale of provision that the Husband was to make for the Wife. It included regular payments by way of pension as well as cash lump sum(s) and the use of a property. Such an agreement would be entirely consistent with the type of provision the Husband would have agreed to in the German proceedings. Dr Maschmeier had demonstrated a pension calculator that would indicate the capital value of the pension provision. He had received a call on 20 May 2022 asking him to attend at the Hotel Breidenbacher Hof to assist in drawing up a document to reflect an agreement he was told the parties had reached. He did so. When he arrived, he was greeted cordially by both parties. He informed the Wife that he could not assist if she had any German lawyers. The Wife said she did not. The parties both confirmed they had reached an agreement. The group relocated to his office, where the terms were put into writing. He recognised that their respective lawyers would have to draw up a formal agreement. He added the paragraph about what remained to be done. The parties then signed in the presence of himself and his secretary. There was a very relaxed atmosphere. Champagne was ordered at the Wife's request to toast the result. It appeared to him that both parties were extremely relieved. The Wife kissed both him and the Husband goodbye. Valentin's statement is dated 8 July 2022. He says that he is upset and frustrated by his mother's behaviour. His mother requested the meeting in Zurich to find an agreement. He denies putting his mother under any pressure to agree to anything although he says he did encourage his parents to agree something out of court to put an end to the awful dispute. He accepted that he did mention the risk that his mother would face of

not being able to enforce any order that I might make in Germany or Switzerland. He adds that his mother kept on pushing to secure the second meeting that was eventually arranged in Dusseldorf. The document signed accurately reflected what his parents had agreed. He said that, for the first time in a long while, his parents seemed finally to have a great weight lifted from them.

The law I have to apply

36. I now turn to the law pursuant to Part III of the Matrimonial and Family Proceedings Act 1984. I have already given permission to the Wife 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 I have jurisdiction as the Wife was undoubtedly habitually resident in this jurisdiction throughout the period of one year ending with the date of the application for leave [s15(1)(b)]. Even though there is clear jurisdiction, I must consider s16. 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). These are the connection which the parties have to England and Wales; the connection they have to Germany where they were divorced; the connection they have to any other country, in this case, Switzerland; any financial benefit the Wife has received or is likely to receive by virtue of an agreement or the operation of the law outside England and Wales; the financial relief, or in this case, the absence of financial relief, given by the German Court; any right she had to apply for financial relief under the law of any country outside England and Wales and, if she has omitted to exercise that right, the reason for the omission; the availability of property in England and Wales in respect of which an order in favour of the applicant could be made; the extent to which any order made by me is likely to be enforceable; and the length of time that has elapsed since the divorce took place.

37. I must also consider, under s18(2), all the circumstances of the case. Section 18(3) requires me to have regard to all the matters listed in section 25(2)(a) to (h) of the Matrimonial Causes Act 1973 and section 25A(1) and (2). Section 25(2) provides that I should consider, in particular, the following matters:-

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

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

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

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

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

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

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

38. Section 25A(1) provides that, when a court decides to exercise its powers, it shall be the duty of the court to consider whether it would be appropriate so to exercise those powers that the financial obligations of each party towards the other will be terminated as soon as the court considers just and reasonable. I will refer to this as the clean break objective.

39. The way in which the court should approach claims pursuant to Part III 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."

40. 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".*

41. I have been referred to my own decision in MA v SK [2015] EWHC 887 (Fam) by Mr Lewis Marks QC, who appears with Miss Elizabeth Clarke on behalf of the Husband and to the Court of Appeal decision in Golubovich v Golubovich [2011] EWCA Civ 479 by Mr Patrick Chamberlayne QC, who appears on behalf of the Wife. Mr Marks argues that the facts of MA v SK were remarkably similar to the facts here. In MA v SK, I decided that, because the connection of the parties with Saudi Arabi was of considerable importance but the connection with this country was limited, I should make an award on a "needs light" basis in the sum of £10 million out of assets I found to be worth £287.5 million. Mr Chamberlayne relies on Golubovich for the proposition that, even though the statute requires the court to take into account the enforceability of an order, that was not by itself a reason not to make an order.

The agreement

42. The law as to the approach to agreements is to be found in two cases, Edgar v Edgar (above) and Xydhias v Xydhias [1998] EWCA Civ 1966. In Edgar, the Court of Appeal held that the existence of a prior agreement was an important aspect which should be looked at having regard to the conduct of the two parties, both leading up to the agreement and subsequent thereto. The court should bear in mind that, formal agreements, properly

and fairly arrived at with competent legal advice, should be given effect to unless good and substantial grounds were shown for concluding that injustice would be done by holding the parties to the terms of the agreement. In Edgar, although the husband had a superior bargaining power, he had not been shown to have exploited it unfairly so as to induce the wife to act to her disadvantage. Accordingly, since there was no evidence reflecting adversely on the husband's conduct in the negotiations and no adequate explanation of the wife's conduct, either in entering into the agreement or in asking the court to disregard it, the wife had failed to show sufficient grounds to justify the court in going behind the agreement. Ormrod LJ said:-

> "*So, the circumstances surrounding the making of the agreement are relevant. Undue pressure by one side, exploitation of a dominant position to secure an unreasonable advantage; inadequate knowledge; possibly bad legal advice; an important change of circumstances, unforeseen or overlooked at the time of making the agreement, are all relevant to the question of justice between the parties".*

43. Xydhias is authority for the proposition that, in relation to agreements reached in the family law context, ordinary contractual principles do not apply. As the final award was always fixed by the court, the purpose of negotiations was to reduce the length and expense of the legal process. The court has a discretion in determining whether an accord has been reached. Moreover, even where an overall settlement had been agreed, there might well be issues remaining, for example as to the drafting or exact terms of the order, that the court would be able to determine without undermining the overall agreement.

More general issues of law

44. I now turn to more general matters of law. There are a number of issues of fact that I will have to determine. 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.

45. The Husband has not attended court, notwithstanding an order that he should do so, although he has appeared by his lawyers. He has not given evidence. He has not submitted himself to cross-examination. He has not answered the focussed questionnaire that I directed he answer. He has merely given an overall outline of his wealth. The only evidence I have had is from the Wife, as well as Dr Maschmeier and Valentin in relation to the agreement. Of course, the absence of the Husband does not mean that I simply accept everything the Wife says. I must consider the evidence critically and make appropriate findings of fact. I can, of course, if I consider it appropriate, draw inferences from the failure of the Husband to attend and give evidence, but they must be appropriate inferences that I can properly draw. 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."*

46. There are issues in the case as to the extent to which the court may have been told lies. First, I must decide the extent of any lies in this case. If I find that there have been lies, 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 against each party.

47. I have to remember the potential language barrier in this case. The first language of all three witnesses is German, although I make it clear that they all spoke English to a very high standard indeed. Nevertheless, I accept that I must take great care in assessing all the 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.

My findings as to the oral evidence

48. I heard oral evidence from the Wife, Valentin and Dr Maschmeier. I accept that the fact that I have not heard oral evidence from the Husband is an important matter that I must factor into my determination. There were undoubtedly important questions to put to him that would have assisted me considerably. Not least of these would have been his approach to the Agreement reached in Dusseldorf now that the Wife has repudiated it. I note, for example, that he has not commenced paying her maintenance at €40,000 per month. Having said that, he was prepared to abide by the terms of the Dusseldorf Agreement in May 2022 and it would be disappointing to say the least if he was not now prepared to honour it. A litigant cannot, of course, improve his position by behaving unreasonably but the 1984 Act specifically requires me to consider the extent to which any order I may make can be enforced. It certainly does seem to me highly likely that, if I make an order that the Husband does not agree with, he

will simply ignore it, unless forced to pay by a court in Germany or Switzerland. I find it is unlikely that he would travel to this country to enable our courts to enforce the judgment.

49. The first witness to give oral evidence was the Wife. She told Mr Chamberlayne in her evidence-in-chief that Vali had told her not to tell anybody about the negotiations. She said that he did not say why. She added that the Husband said the same, namely do not tell your English lawyers. She said that she did agree. She was asked whether she felt under pressure. She answered "yes". Vali had told her very clearly that, if she did not sign, she would not get anything. The Husband also told her that she should know that he did not have to pay her even the sum of £15,000 per month. He was doing so of his own free will. She added that she had heard this many times before. She told me that, when she signed the document, she looked at Dr Maschmeier and asked if she was signing her death warrant. She said he did not reply. In relation to the London property, she said she wanted to remain at Kinnerton Street for the moment, but not in the long term.

50. She was then asked questions by Mr Marks on behalf of the Husband. She accepted that she knew she could not get an award from the German court for a lump sum, although she thought it was possible in Swiss law. She was asked why she abandoned her litigation in Germany. She accepted that the judge had been very encouraging about her ability to overturn at least parts of the Pre-Marital Agreement. Nevertheless, she had made her application to dismiss her own claims less than two months later. She also accepted that she did not want the German judge to make an order in her favour. She indicated that the judge could not, in fact, bring the proceedings to an end due to the Husband's claim about the pension. She repeated that she had understood that, if she litigated in Germany, the case would be taken to all levels of appeal and would take up to 10 years. She said she would have had to go to the Federal Court to be able to capitalise her periodical payments, even if the Pre-Marital Agreement was not enforced in that regard. I categorised this as her saying that she would have to perform the same role in Germany as Mrs White has performed in this country, namely to change the law fundamentally. She said she did not want to change German law, although I consider she would have had to do so to achieve her objective. She added that, overall, what she wanted was her independence. She did not want to be "bossed around any longer". She did want her needs met, but could not see why the Husband's offer of CHF20 million was stretched over 20 years. In relation to the Pre-Marital Agreement, she was asked why she wanted any financial provision for her removed from the draft. She told me that she had been informed by the Husband that she would not get anything as there would not be a wedding unless she signed. She said that she was marrying for love. It was to prove that she was marrying for love that she asked for the provision to be taken out.

51. She was then asked about her housing particulars in England. It is fair to say she got herself into a bit of a mess. In relation to one property particular provided by the Husband, she said that the property was too big for her. In relation to another, she said the garden was too big. Mr Marks, however, was able to show that all her particulars that had details of the size of either the house or the garden

were considerably bigger than the ones she had just said were too large. She made the fair point that she liked the way that the houses in her particulars had been built, particularly the architecture, although she accepted she had not been to see any of the properties other than one of those proposed by the Husband. She acknowledged that Kinnerton St has four bedrooms and that her sisters have stayed a few times. She told me that the Dusseldorf Agreement provided that the Husband would cover the costs of refurbishing the property. It has not been refurbished since 2012. She said it would cost between £800,000 and £1 million to do so. Although there is no evidence about that, the Husband has chosen to absent himself from this hearing. He has not therefore been able to challenge these figures or say that she did not put them forward during the negotiations. I therefore accept her evidence. She was asked about her budget. I find that, despite half-hearted attempts to justify an entry for computer supplies, support and replacement at £7,000 per annum, the figure was far more than she would require. However, I do not consider that the overall point that Mr Marks makes about her budget is fair. I am minded to accept that the standard of living during this marriage was exceptionally high. In the context of spending millions of Euros per annum, a budget such as hers is not unreasonable. For example, she included £175,000 for holidays. I can easily see that the sort of holidays she enjoyed with the Husband would have cost far more than that amount of money each year. They had a yacht. At times, they had a private jet. I recognise that she is likely to spend less on her own than was spent during the marriage. I further accept that, even though more than £175,000 per annum was spent during the marriage on holidays, it does not necessarily mean that she is entitled to that sort of level on divorce, particularly when the claim is made pursuant to Part III.

52. Finally, she was asked about the Dusseldorf Agreement. She accepted that she signed it. She was asked why it had been described by her lawyers as merely a proposal until the beginning of the trial. She said that her understanding was that the parties could carry on further discussions. I reject that evidence. It cannot be right. She reached an agreement with the Husband. She rightly said that she wanted to find a fair solution. She added that neither of them wanted these proceedings to continue. She told me that is why she was there, to try to reach an agreement. She repeated that she said she was placed under unfair pressure. She then said that it was Vali and she who had agreed together to the first meeting in Zurich, when Vali was staying with her in early May 2022. She accepted, however, that she said to Vali that they should have a meeting with his father. Vali said he would talk to his father. It was put to her that she had said something different yesterday. She accepted that she had proposed the meetings. She repeated that it was the Husband who had said “let's not involve the lawyers”. It was put to her that this was not correct. She then said that it was Vali who had said to her that he knew she would contact her English lawyers. She said “no; I will not”. Vali had told her that “papa” was not going to be contacting his lawyers either. She said she promised them that she would not contact her English lawyers but she denied that she had volunteered that. She said that she had never had the idea of contacting the lawyers. She told me that she felt Vali had mentioned that he believed she would contact her lawyers, so that she would give him the answer that she would not. It was then put to her that the Husband had never said “do not contact your lawyers”. She confirmed

her evidence that he did say that in Zurich. Initially, she told me that she did not contact her lawyers after she returned from Zurich, as opposed to after she returned from Dusseldorf. She then confirmed, however, that she did tell her solicitor, Mr Westley, about the meeting in Zurich on 11 May 2022.

53. She was then asked about her suggestion that they had pressurised her by referring to her not being able to convert any paper award I may make into money. She said that she was told many times that she might not be able to turn her award into money. It was the reason she felt under immense pressure. She accepted that she had always known that enforcement might be a problem. She knew it was a risk. She then said that the meeting in Dusseldorf was merely to have more talks. I do not accept that. She said that, although they were trying to come to a quick agreement to find a solution, it was not the end of the talks. I do not accept that either. She then said that there were many other things to discuss, such as her haute couture and how she would live in Kinnerton Street. She said that the Agreement left out important things for her but she acknowledged that she had not raised them at the time. When Dr Maschmeier arrived, she said that he came over to her and asked her if he could call her Clarissa. She said he opened his arms and greeted her. She had no intention to hug him. The mood was not relief for her. It was not an obvious joke when she asked if she was signing her death warrant. I will have to make findings as to these matters. She said that, when she signed the Dusseldorf Agreement, it reminded her of signing the Pre-Marital Agreement and that had not turned out nicely. She said she felt the same on this occasion. They went downstairs for a toast. She did not ask for rosé champagne, although I find that she did. She suggested that it was maybe Dr Maschmeier who wanted to toast the Agreement. She had one glass of champagne. Vali had left by then. When she left, she did kiss the Husband and Dr Maschmeier goodbye. She wanted to find a civilised way to resolve her claims.

54. When re-examined by Mr Chamberlayne, she told me that, when Vali had said "I know you will tell your lawyers", she thought he expected her to promise him that she would not do so. She said he was suspicious that she would contact them. I am minded to accept this evidence. She accepted that her Husband did not think the English lawyers were helping. She speculated that he thought they might send her in a direction he did not want. Further, she believed that he thought the lawyers would tell her not to meet in either Zurich or Dusseldorf. The Husband did not say it was important that she got English legal advice. She did, however, say that they wanted to sort it out by themselves. She wanted to show that they could deal with this matter between themselves. She had no idea that Dr Maschmeier would be involved on 20 May 2022. She did not tell the Husband and Vali that she had spoken to Mr Westley on 11 May 2022. She understood that they were saying to her that, if she did not sign, she knew she would not get anything. She was not happy at all. She simply wanted to leave the hotel on 20 May 2022. I will have to make findings of fact as to this.

55. I then heard evidence from Valentin Pierburg by MS Teams. He told me that it was his mother who pushed for a meeting several times to find common ground. In the meeting in Zurich, they all agreed that they would not "pass it past their lawyers". His mother said that she did not want to increase her costs further, as

she was on a low budget. Whilst Mr Chamberlayne criticises this evidence, I find it credible that she would say that. Valentin then said that the issue was only raised by his mother. I do not find that was the case. In Zurich, she said she would return to London and reflect on what they had discussed. He denied saying that he knew she would discuss it with her lawyers but I find that he did. He accepted that it was clear that, if his mother did not receive a positive outcome, it would be difficult for her to enforce any order. He said that she might leave empty handed, which was the last thing he wanted. I accept that evidence. He confirmed that his mother asked, when she signed the document, "am I signing my life away", but he told me that this was not said seriously. It was done with a smile and a laugh. I accept that evidence. He left as soon as the document had been signed.

56. In answer to questions put to him by Mr Chamberlayne, he said he has no interest in what the settlement provides for his mother as long as it is fair and a good solution. He cares more about his relationship with his mother. He has been concerned about her behaviour towards him. He was taken through various difficulties in their relationship of late. I accept that there have been difficulties. It may be that his mother has exaggerated some of them. I do, however, accept that the Wife considers that Vali has taken his father's side by, for example, attending at the divorce hearing in 2019 to support him. Valentin had been staying with his mother in Kinnerton Street prior to 7 May 2022. He told me it was his mother who had been pushing for the meeting in Zurich. I accept that evidence. He did say that he did not believe the English lawyers were an obstacle to any settlement, but then rather contradicted this evidence by indicating that they have a financial interest in continuing the case. He did add that he believed her lawyers were behind the opposition to the Dusseldorf Agreement. He told me that he was not the instigator of there being no lawyer "involvement" in the negotiations. He said it was his parents who agreed that would be the case. His mother had clearly stated "please do not involve the lawyers in Zurich" and his father agreed. It was not true that his father and he stopped the lawyers being involved. He said that he had no idea that Dr Maschmeier would be involved on 20 May 2022. He accepted that Dr Maschmeier asked whether his mother had German legal advisers. He told me that there was a rule there that a lawyer cannot act in such circumstances due to a conflict of interest, although he stressed that he is not a lawyer. He did not say that his mother ran the risk of getting nothing in Switzerland or Germany. He had been made aware that any English order was likely not to be enforceable in Germany or Switzerland. That would only arise if his father refused to comply. His father had said he wants to find a solution. Both his parents are aware of the dangers. His father had told him that he will not comply with any order I may make unless he agrees with the order. He confirmed, however, that his father did say that, if his mother did not agree the deal, she would get nothing. In general, I took the view that he was trying to assist both his parents in these negotiations, but he was clearly viewed by his mother as being in his father's camp. I consider she was right that he had aligned himself with his father, whilst wishing to do his best for his mother.

57. The final witness was Dr Rainer Maschmeier. His evidence was also taken by MS Teams. In answer to questions from Mr Marks, he told me he is not the

Husband's divorce lawyer. He is his general legal adviser. His only involvement in 2019 was to ensure that the Husband understood what he was being told by his divorce lawyers. His secretary had arranged the meeting in Dusseldorf but he did not expect to be involved. He would not interfere with the negotiations. He was telephoned on the day and asked if he could help them once they had reached the Agreement. He agreed to attend. He was surprised to be heartily welcomed by all of them. He had not expected it from the Wife. This was a sign that they were all in a good mood because they had found a solution. He made a remark that, on an earlier occasion, the Wife had kissed him. She said she would repeat that and he got a kiss. The Agreement was converted into a document and both the Husband and the Wife signed. He had asked the Wife if she had German lawyers because he could not act if she did. She told him she had dis-instructed her German lawyers and that he could telephone them to confirm this if he wished. He said that was not necessary. The Wife did not mention her English lawyers, although he did know about them. Everybody was very relieved, including the Wife, by the Agreement. One of them said "let's go to the hotel lobby for a celebration". They did. It was the Wife who said "let's have champagne". She was a bit annoyed that he ordered ordinary champagne when she had asked for rosé Champagne. There was a nice exchange of views. They talked about her getting a little Cotswold cottage. She did not seem upset, disappointed, or distressed at all. In fact it was the opposite. She was very relieved.

58. He was then asked questions by Mr Chamberlayne. He said that, on 20 May 2022, he was just the recorder. He was not even the facilitator. He had not given the Husband advice. The Husband had asked him about the capital value of the sum agreed by way of pension in Zurich. He pointed the Husband towards a way of calculating the capital value, which I assume was akin to our Duxbury tables. The Husband had asked him if he would be available on 20 May 2022. He said he had doubts due to his professional rules. He confirmed that he knew the Wife had English lawyers. He said he did not know that discussions had taken place to prevent the English lawyers being involved. He said it did not occur to him to give her the opportunity to have a lawyer look at the Agreement. It was not his role to advise. Two adult persons had made an agreement. His only function was to record it. The Wife did make a remark about whether she was signing her death warrant but she did this with a big smile. It was a clear joke. She was very proud of the joke. Overall, I found Dr Maschmeier to be an impressive witness. I accept his evidence in full. I do, however, take the view that he would have been better advised to suggest that the Wife take legal advice from her English solicitors before signing. Nevertheless, he was instructed to attend and convert an agreement to writing and that is what he did. His evidence about the demeanour of the Wife is, in my view, important.

My overall conclusions

59. I now turn to my conclusions. I am going to start by considering the various factors that I am directed by section 16(2) of the 1984 Act to have particular regard to. First, I will consider the connection which the parties to the marriage have to this jurisdiction. I am clear that there is sufficient connection in this

case for me to make a financial award in principle. The parties had a home here. Even though it was on a short-lease, the Husband demonstrated that he could extend that lease by doing so in 2016. Valentin was educated here at Millfield and then at the European Business School in London. At least initially, the medical procedures relating to his heart difficulties took place here. The parties visited here regularly. The Wife was very attached to this country and decided to make her life here when the marriage broke down. Whether this was, originally, a tactical decision or not, I am satisfied that she does now intend to live here indefinitely.

60. Turning to their connection with Germany, it is, of course, the case that they are both German. They were born there. They lived there pretty constantly until the year 2000. They married there. They had a Pre-Marital Agreement there. Even after they left for Switzerland, they retained connections with Germany. I gave examples in my previous judgment but, for these purposes, I will merely note the Wife's continuing attachment to her German hairdresser, Marianne and the long-standing role performed by Dr Maschmeier on behalf of the Husband. Nevertheless, I cannot ignore the fact that they left Germany in 2000, primarily for tax reasons. Such moves occur in so many of the financial remedy cases that I hear. The super-rich do appear to consider that such moves have no adverse consequences whatsoever. I do not agree. When it comes to Part III applications, it is relevant to my consideration that Germany was abandoned as a place of residence twenty-two years ago. It follows that I do not consider the German links to be so strong as to prevent me from making an order in this case.

61. I must next consider their connection to Switzerland. There is no doubt that the Husband lives there. Valentin lives and works there as well. The Husband's children by his first marriage also reside there. I have not investigated just how deep the Husband's roots are in Switzerland. I did, however, investigate those of the Wife in my previous judgment and I found that she did not integrate in that country; was deeply unhappy there; and could not wait to leave following the breakdown of the marriage. Again, I am clear that the Swiss connection does not prevent me making an order in this case.

62. I now turn to the financial benefit that the Wife has received or is likely to receive outside this jurisdiction. The answer is that, at least in the German divorce proceedings, she has received no benefit at all. This is, of course, because she instructed her German lawyers to ensure her claims were dismissed. The Husband says that this is equivalent to omitting to apply at all, which has to be considered under section 16(2)(f). I must, therefore, consider whether she was justified in the stance that she took. In this regard, I can come to reasonably clear conclusions. I am satisfied that, pursuant to German law, the Wife would not have been awarded any capital provision at all. This was because of a mixture of the Pre-Marital Agreement and the fact that there was no marital acquest. I am satisfied that, even if she had succeeded in setting aside the Pre-Marital Agreement, it would have only been to enable her to receive maintenance. Given the indication of Judge Block, on the balance of probabilities, I find that she would have done so, but not to obtain a capital award. I am equally clear that the level of maintenance that she would then have received would have been modest. At a maximum, she would have

obtained an order equivalent to the sum the Husband was paying voluntarily but certainly not €300,000 per annum or €400,000 per annum. To achieve a capital award, she would have had to change the law, as Mrs White did here. I am clear that she was told by the Husband that he would contest this all the way and that it would take ten years, as she would have to go to the Federal Court in Germany, without any guarantee of a successful outcome. I have no doubt he made this abundantly clear to her. As it was said via his lawyers, it cannot be asserted that this was undue pressure but it was pressure and she succumbed. I am clear that it was not unreasonable for her to do so. Whether she was unreasonable not to conclude a deal with him in Germany, given that he was making offers far in excess of what she could have obtained in court, is an entirely different matter. Fortunately, I do not need to answer it, given the existence of the May 2022 Dusseldorf Agreement. It follows that I do not consider the fact that she asked the German Court to dismiss her claims to be fatal to her application here.

63. Whilst I have dealt with the provision she received in the German divorce proceedings, that does not cover any financial benefit which she has received or is likely to receive in Germany by virtue of an agreement. In dealing with this, I do, of course, accept that she has repudiated the Dusseldorf Agreement. I have not heard expert evidence as to the law in Germany, but I consider it reasonable to assume that it will be the same as our contract law. In other words, following the repudiation, she cannot change her mind and enforce the Agreement. That does not mean that the Husband could not do so, but I consider it highly unlikely that he would attempt to do so now. Nevertheless, there is no doubt that the provision agreed in Dusseldorf was something that she could have enforced on 23 May 2022, if she had gone down that route rather than repudiating the Agreement.

64. I therefore turn to consider the circumstances of the signing of the Agreement, applying the dicta in Edgar v Edgar. I find that the Wife was extremely keen to conclude an agreement with the Husband. I cannot see that he had nearly the same incentive as her. I accept that Valentin was also keen to see if he could broker a settlement. I am satisfied that the initial idea for the meeting came from the Wife. She pressed for it. She was willing to go both to Zurich and Dusseldorf to obtain an agreement. She did so entirely willingly and without any pressure. I find that she wanted to encourage the Husband to engage. She knew that he did not want her lawyers involved, so she was happy to say that she would keep it secret from them. I do not find she was pressurised to do so. I do accept that Valentin's question about her wanting to tell her lawyers was designed to obtain a confirmation that she would not do so, but she agreed without being forced to do so. In other words, it was not a condition of the meetings. In fact, she eventually broke this promise by telling Mr Westley on 11 May 2022, although she did not do so at the consultation with Mr Chamberlayne on 9 May 2022. I simply cannot speculate as to what happened when she told Mr Westley, other than to note that it did not prevent her going to Dusseldorf. It follows that I find that it was her choice to negotiate without Mr Westley or Mr Chamberlayne. Whilst Edgar specifically refers to the lack of legal advice as being a potential reason for not enforcing such an agreement, I accept that the law has moved on since then and, in particular, following the

decision of the Supreme Court in Radmacher v Granatino [2010] UKSC 42. The absence of legal advice is not fatal, if the unrepresented party has a proper appreciation of the Agreement reached. I find that this Wife undoubtedly did have such a proper appreciation.

65. I next turn to the second aspect, namely the asserted threats that she would get nothing if she did not sign the Dusseldorf Agreement. The first point to make is that the Wife has, throughout, been aware of potential significant enforcement difficulties. She had seen the three opinions which had been served further to the Husband's submissions opposing her application for permission to make this application. She knew that it was one of the three reasons why it was said by him that I should not give leave. I do not, of course, know what advice she received but it will not have been a surprise to her that this was relied on by both the Husband and Valentin. I am satisfied that they did rely on it, but I am not satisfied that they took unfair advantage of this fact. After all, the Husband was offering significant provision to the Wife. If he had really intended to play hard-ball, I consider his offer would have been much lower than it was. I am satisfied that the Wife was under pressure. All litigants are under pressure as litigation is costly with no certainty of success. I accept that she was under more pressure than the Husband who had very little to lose. Nevertheless, on the balance of probabilities, I have come to the conclusion that the Wife was not under "undue pressure" as described in Edgar. In reaching this conclusion, I have been particularly influenced by her demeanour as described by both Valentin and Dr Maschmeier. She was not some "supplicant cowed into submission" by a bullying husband and son. She was the driving force behind the meetings taking place at all. She went not once but twice. On the second occasion, she went notwithstanding having spoken to her lawyer about the first meeting. I have accepted Dr Maschmeier's evidence as to what happened when he arrived. She did not seem upset, disappointed or distressed at all. The opposite was the case. She was very relieved. At the time, she considered the Agreement to be a good result. She engaged entirely voluntarily with the champagne toast. She was not desperate to leave. Her comment about signing her death warrant was humorous and light-hearted. It may have reflected some nagging doubts, but no more than that. She had reached an agreement with her Husband voluntarily and with her eyes open. I am fortified in this conclusion when I remind myself that I am also specifically directed to consider the extent to which any imposed order here would be likely to be enforceable. Given that enforceability is an issue that I am required to consider, I find it difficult to see how I could say that raising the issue would be fatal to any subsequent agreement reached.

66. I do, however, take the view that I should consider the terms of the Agreement reached in the light of this Part III application. I am clear that the provision set out in the Dusseldorf Agreement is very much within the bracket of possible awards that I might have made had there been no meetings in Zurich or Dusseldorf. It follows that it certainly cannot be said that unfair or undue pressure caused the Wife to sign an Agreement that was unfair or outside the range of possible orders she could have got from the court. I have already referred to my decision in MA v SK in which I decided that the facts of that case meant that I should make an award that was "needs light". I am clear that exactly the same sort of considerations apply here.

67. If I had simply started with a blank sheet of paper, I am clear that I would have taken the view that a suitable London property for the Wife would have been Kinnerton Street. If this had been an entirely English case, she would have received a considerably more valuable property, but it is not. I cannot ignore the provision she would have got in Germany. I would have taken the view that the freehold should be acquired or that the lease should be extended by thirty-five years as suggested by Mr Chamberlayne in his closing submissions. I am equally clear that I would have considered it reasonable to refurbish/renovate the property and that the sum of £800,000 to £1 million would be appropriate. The one likely departure from the Agreement is that I would have found that the property should be owned by the Wife, not by Valentin, but that is certainly not fatal. There is always give and take in reaching an Agreement. Provided the Wife has absolute security of occupation throughout her lifetime, there is no significant prejudice to her in the property being in the name of her son.

68. I would also have come to the conclusion that she should have a second home in the country. In my judgment in the divorce proceedings, I mentioned this second home being in Germany but it is, of course, entirely up to the Wife where she has such a second home. I am satisfied that, even allowing for the Part III considerations, a second home would be appropriate in a case where the parties had been married for 32 years and the Husband was worth €180 million. I made such a finding in MA v SK and I would have done so here. The quantum of the provision, however, is a very different matter. I would not have considered that the home should be the sort of home regularly occupied by multi-millionaires in the Home Counties. I would have considered that a more modest property would be appropriate. The capital award agreed was €3 million. At the current rate of exchange, this is just over £2.5 million. The Wife needs to discharge her liabilities in the sum of £230,000. She would therefore have just under £2 million for a property, taking into account the costs of purchase. I could not possibly say that this would be unreasonable given the Husband's property particular of Manor Farm House, Frilford, Oxon at a guide price of £1.25 million. I do accept that I do not know how much work would be required to that property but, in principle, the lump sum agreed would meet her "needs light", even if she wanted to retain part of the money, previously described in our courts as a Besterman cushion. I do, of course, accept that I would not have given the Husband a year to pay the second instalment but, as the price of obtaining enforceability, I consider this delay to be a small price to pay.

69. Finally, I turn to maintenance. I accept that the standard of living was immensely high in this case. Nevertheless, I could not have ignored the likely quantum of an order in Germany. It would definitely have served to reduce downwards my award. In Germany, the Husband had originally offered €300,000 per annum whilst the Wife sought £600,000 per annum. I consider the agreed figure of €480,000, which is currently equivalent to just over £400,000 per annum, undoubtedly to be within the appropriate bracket. I very much doubt my award would have been higher. I suspect it might have been somewhat lower, given that I ordered £225,000 per annum in MA v SK.

70. I do take the view that I would have been likely to capitalise the payment. This would be in accordance with the Act that requires me to have this as my objective. It would be in accordance with the authorities. After all, I capitalised the maintenance in MA v SK. Capitalisation is clearly possible in this case given that the Husband accepts he is worth €180 million. I do not, however, consider that this likelihood would mean that I would never have made a periodical payments order. I am required to consider the position in Germany and the extent of the enforceability of my award. Suppose the Husband had attended in my court and told me that he wanted to be generous and would agree to an order in the sum of €480,000 per annum, provided it was not capitalised. I consider it at least possible that I would have agreed. In any event, that is not the test. The Agreement was a compromise. The Wife traded the probability of obtaining a capitalised lump sum from me and the possibility that she might enforce that order, for the certainty of generous monthly maintenance provision. I would not even hesitate in finding that such a decision was a reasonable one for her to adopt.

71. By way of one final cross-check, I intend just to cover briefly the capital value of the Agreement if it had been ordered outright. Before doing so, I remind myself that my award in MA v SK was £10 million in late 2014, which would equate to around £12.75 million today. The Dusseldorf Agreement would be worth a very similar sum, namely:-

(a)	Kinnerton Street (freehold/long leasehold)	£4,100,000
(b)	Works to Kinnerton Street	£ 900,000
(c)	Lump sum of €3 million	£2,500,000
(d)	Capitalised value of maintenance (Duxbury)	£4,750,000
Total		£12,250,000

72. For me, the huge tragedy of this case is that the Wife repudiated the Dusseldorf Agreement. She clearly had "buyer's remorse" but the risks of repudiation were extremely high. I have already found it likely that the legal effect in Germany of repudiation would be to make the Agreement unenforceable. The Husband, however, has made much of his wish to do the right thing by this Wife, to whom he was married for over thirty years and with whom he had his only son. I decided in his favour in 2019. In one sense, I have done so again by coming to the conclusion that the Dusseldorf Agreement should be enforced. I do so on the assumption and belief that he will now abide by the terms of the Agreement and the order that I intend to make.

The order I intend to make

73. Contrary to the submissions of Mr Marks on the Husband's behalf, I am clear that I should make an order. I would have done so absent the Agreement. As a result of the repudiation, it is likely that the Agreement is no longer enforceable in Germany. Despite what I would characterise as the Wife's foolishness in

repudiating it, I do not consider she should be in any worse position than if she had never been to either Zurich or Dusseldorf. An agreement was reached and it should now be encapsulated in an order.

74. I have had to consider carefully how to do so to be entirely fair to both parties. The lump sum is easy. I order that the Husband pay the Wife €1.5 million on 1 August 2022 and €1.5 million on 1 August 2023. The maintenance is also relatively straightforward. I order that he pay her €40,000 per month by way of secured provision from 1 August 2022 payable monthly in advance during her life-time or until further order. I accept that there must be a remarriage clause. The Husband is not domiciled in this jurisdiction. Although the secured provision, in theory, means that the order survives his death, I entirely understand the Wife's concern as to this aspect. It is clear to me that the Dusseldorf Agreement envisaged her being secure in the knowledge that she would receive this money even if the Husband were to die. I require the Husband to make arrangements to ensure that the Wife will receive the money even after his death, if she survives him.

75. I very much hope that there will not be any difficulty in my order being complied with. I do take the view that Valentin is likely to assist in ensuring that this is the case. I do, however, have to guard against the possibility that it will not be. I take the view that I can capitalise my order at any future stage if that becomes appropriate. If the Husband were to fail to commence payment of the amount he agreed, I would be minded to capitalise the entire payment in the autumn of this year on application by the Wife. If he were not able to put in place satisfactory proposals to ensure the Wife received her entitlement after his death, I would again be minded to capitalise the provision but I consider he should have a year from now to make those arrangements.

76. Finally, I turn to the trickiest part, namely Kinnerton Street. Again, I intend to abide by the Dusseldorf Agreement. My order will be that the property is settled upon the Wife pursuant to section 24(b) of the 1973 Act to ensure that she has the exclusive right of occupation of the property for the remainder of her life. There will then be two deferred contingent lump sums. The first will be in the sum of £4,100,000 payable on 1 August 2024, index linked in accordance with the CPI, if the Husband, or Valentin, has not acquired the freehold or extended the lease on Kinnerton Street to one of at least fifty years by that date. This corresponds with the Agreement, which makes provision for an alternative property if it is not possible to purchase the freehold or extend the leasehold. I cannot see how it would not be possible to extend the lease as I believe that is a legal entitlement. Nevertheless, if it has not been done, the lump sum becomes payable. The Wife would then have to give up her right of occupation in Kinnerton Street on payment in full of the contingent lump sum. The second deferred lump sum will be for the refurbishment works. Again, the Husband will pay the Wife the sum of £900,000 on 1 August 2024 if he or Valentin has not, by that date, expended at least £800,000 on the provision of refurbishment works/improvement works to the property.

77. These parties have now been involved in bitter contested litigation for a number of years. It is time it ended. The parties wanted it to end when they met in

Dusseldorf on 20 May 2022. I now expect it to end on the terms of that Dusseldorf Agreement. After all, both parties were content with it as a proper solution as recently as 20 May 2022. They even toasted it with champagne. I do believe that Valentin will do everything in his power to ensure it is now fully acted upon. I am grateful to him for that. It is vital to his mother's future and I very much want his relationship with her to be restored after this immensely damaging process. I very much hope the Husband will see the sense in this as well.

78. I want to pay tribute to all the assistance I have had with this difficult case. Nothing more could have been said or done on behalf of either party.

Mr Justice Moor
28 July 2022 but handed down on 9 September 2022