FAMILY COURT SITTING AT
THE ROYAL COURTS OF JUSTICE

No. 1662-7269-3760-1653

[2024] EWHC 740 (Fam)

Royal Courts of Justice
Strand
London, WC2A 2LL

Friday, 16 February 2024

Before:

MR JUSTICE FRANCIS

(In Private)

B E T W E E N :

JENNY ALZENA HELLIWELL — Applicant

- and -

SIMON GRAHAM ENTWISTLE — Respondent

MR R HARRISON KC and MS J PALMER (instructed by Payne Hicks Beach) appeared on behalf of the Applicant Wife.

MISS D BANGAY KC and MS L NEWMAN-SAVILLE (instructed by JMW Solicitors LLP) appeared on behalf of the Respondent Husband.

J U D G M E N T

MR JUSTICE FRANCIS:

1 The parties were married for three years. There were no children. The wife deposes to assets of approximately £61.5 million. The husband asserts that the wife is worth nearer £74 million, but the difference is immaterial on the facts of this case. The husband deposes to net assets of approximately £850,000, although about £500,000 of that is tied up in a property in Spain, of which he is a one-third owner and he is unable to liquidate his share in at least the short to medium term.

2 The wife works through a network of her father's companies in Dubai and has income from all sources, including rental income, approximately £600,000 a year. The husband asserts that she earns about £1 million a year. Again, the difference is immaterial on the facts of this case and, in any event, the wife clearly receives a mixture of income from employment and income from dividends. As I understand it, there is no income tax on that income in Dubai.

3 The husband does not presently work and says that he is unable to work for at least the next year or two for medical reasons to which I will return in detail shortly.

4 The day that the parties married, they both signed a prenuptial agreement which provided that each party shall retain their own separate property, that any jointly owned property would be split between them and that neither party would bring a claim against the other in any jurisdiction. The agreement contained a jurisdiction clause, the jurisdiction being England and Wales.

5 The wife asserts that the whole point of the prenuptial agreement was to avoid the very contest that these parties have had at such personal and financial cost to themselves. The claim originally articulated on behalf of the husband was for £10 million. The claim which he now puts forward is for just over £2.4 million. The parties' respective open positions at court was that the wife should pay the husband nothing and the husband adjusted his claim, as I have said, to about £2.4 million.

6 The costs incurred by the parties in this case are that the wife has incurred costs of about £600,000. No VAT is payable on that because, of course, she is outside the jurisdiction of England and Wales, so, notionally, Ms Bangay tells me, and I accept, that I should add 20 per cent to that if one is to view the costs figures on a like for like basis. The husband's costs are approximately £450,000. It may be that I need to add £20,000-odd or so to that in the light of the costs recently incurred.

7 Between them, the parties have therefore spent a little over £1 million in costs and, as I have said, if one adds the notional VAT to the wife's costs number, to achieve a like for like position, that takes the combined costs figure to about £1.2 million.

8 One often hears counsel and solicitors and judges talking about something being a "paradigm case". In my judgement this case is a paradigm case of how not to conduct litigation on the breakdown of a short childless marriage. If, at the commencement of a dispute, a party adopts an extreme position, an equal and opposite extreme position is likely to be adopted on the other side. Importantly, in my judgement, on 25 September 2023 the wife offered the husband £800,000. In the post-*Calderbank* era, litigating spouses need to know the consequences of making open offers and the consequences of rejecting them.

9 From 24 November 2022 until 23 August 2023, the husband persisted with the offer made in his Form E of £9.6 million, plus periodical payments to support an asserted income need of £208,000 a year for two years, hence a global sum of £10 million.

10 The absurdity of that offer made by the husband is best demonstrated by his own position adopted in this hearing which, as I have said, is £2.4 million. This represents a collapse of 75 per cent in the claim that he has pursued. Parties litigating after their divorce need to appreciate that litigation is not a negotiation which rewards untenable positions. Starting high to try and make the midpoint higher than it should be is an unwise tactic. The same, of course, applies the other way around, if one starts low. Offers need to be focused, wise, based on likely outcome and not on greedy expectation. The penalty of the failure of such tactics will resound in costs and can be devastating in their consequences.

11 Unless there is a fundamental issue regarding computation, the correct bracket of settlement will be known to the lawyers advising, lawyers who are, as here, experienced in this area of the law. It is obvious that such lawyers will explain to their clients the risk of aiming too high or too low. Litigation, as this case shows, is fearsomely expensive. The costs of the litigation are underwritten by no one and there should be no expectation that one's costs will be paid by the other party. There can never be an assumption that the economically stronger party will just pay the other party's costs without more. People embark upon litigation at risk. That risk must be calculated, measured; and wise decisions taken. Risks need to be balanced and judged. This applies all the more where, as here, there is no meaningful dispute about computation or, perhaps better put another way, where, as here, computation issues are irrelevant.

12 What difference, I ask rhetorically, does it make after a short childless marriage whether the economically stronger party is worth £50 million, £60 million or £70 million, when none of the capital forms any part of the marital acquest, but was gifted to that person by a parent? I ask that question absent of prenuptial agreement, although there is one present here which just adds to the overall risk assessment. For the avoidance of doubt, this is not to condone dishonest or careless disclosure by the wealthy party.

13 The prenuptial agreement here is litigated about as if it is difficult. I am told by Miss Bangay for the husband that it should be cast aside and ignored. I return to that in detail below, but even without the prenuptial agreement, in my judgement, the husband's claims were overblown. A good starting point, in my judgement, is to assess the value of the husband's claims absent the prenuptial agreement. No reasoned assessment of the husband's claims could possibly have justified an offer anywhere close to £10 million.

14 For her part, the wife allowed, if not caused, a remarkably unhelpful and poorly thought through letter to be sent to the husband shortly after the separation. The wife's Dubai solicitors informed the husband by letter dated 24 August 2022 that the husband had to leave the former matrimonial home within three days or face forcible removal by the Dubai authorities. His right of residence, which had been provided by a visa from W's father's company as a result of his historical employment there, had been revoked earlier that month with his knowledge and consent, albeit he said he felt he had no option but to give his consent as he was presented with a form to sign by W. The letter threatened him with proceedings for divorce and even maintenance in Dubai. Quite apart from the fact that this was a completely absurd threat when the wife had £60 million or £70 million to her name and the husband had very little, this also flew in the face of the very prenuptial agreement on which the wife sought to rely, which provided for an English jurisdiction clause and no claims being made by any party in any jurisdiction. And so it was that the husband felt

obliged to leave Dubai, which had been his home for nine years, his belongings were placed in storage and, as I understand it, remain there to this day.

15 Adopting a phrase from Mostyn J, but in very different circumstances, when parties litigate in this fashion, a nuclear winter descends and negotiation becomes all but impossible. Positions become entrenched. Costs are incurred.

16 Miss Bangay, in her submissions, forcefully blames the wife for the fact that this inappropriate letter was sent. Whilst I acknowledge that the letter must have been approved by the wife, having heard her evidence over the course of most of a day, I have formed the very clear view that the wife was inexperienced in litigation and in confrontation. She placed, as she was entitled to, trust in her Dubai solicitors and she said that she approved the letter, which she was encouraged to approve, and to have sent. I do not believe that either of the solicitors now instructed by the parties in this jurisdiction would have sent such a letter. Even if a litigious client insists upon a difficult, bad-tempered and stroppy letter, solicitors who are members of Resolution and who abide by the Resolution Code of Conduct rarely send such letters and, in my judgement, should not do so. There is a duty upon solicitors not only to their client but to the court, and that duty requires them to temper the tone and not to worsen it. Of course there can be some exceptions, but in my judgement this letter was sent on behalf of the wife because it was what was recommended to her and not what was chosen by her. I do not find that the wife intended to send a letter which I regard as deeply inappropriate and which I dare say to her, with hindsight, now seems deeply inappropriate. However, the letter was sent and the husband cannot be blamed for being aggrieved by it.

17 Having said all of that, the fact is that the letter was sent and goes some way to explaining, albeit not justifying, the remarkable stance that was taken for a long time on behalf of the husband. As I have said above, extreme positions taken by one side tend to force an extreme position by the other side.

18 And so it was that after this short marriage, where the exit should have been easy, cheap and obvious, the parties were at loggerheads, opposite positions having been taken, trenches dug and a long cold winter anticipated. In this case the wife had and has the luxury of infinite resources. The husband had the benefit of having enjoyed the trappings of being married into a family of exceptional wealth. I am as certain as I can be that had different positions been adopted from the start, the wife would have given a bit, the husband would have given a bit and the case would have been resolved. Instead, these decent people have litigated in a deeply acrimonious way.

19 It is obvious to me from all that I have seen, hearing the parties give evidence, witnessing their demeanour in court and reading what I have about them, that they have suffered immensely as a consequence. The wife suffered from mental health issues prior to the marriage and the husband has suffered from mental health issues after the breakdown of the marriage. They are both in a difficult place. The fact that their marriage was difficult and was ended after such a short period of time is not something which this court can alter or in any way comment upon but the fact that they have gone through years of litigation hell, given evidence in the most difficult of circumstances, had their personal, medical and mental health history deeply analysed is something that should have been avoided. It was unnecessary.

20 I am sure that, had things been different, the wife would have made an offer that the husband would have accepted and they could have parted with dignity. Instead, I have witnessed two decent people at their wit's end because of the litigation into which they have been plunged. It is an abject lesson to anyone working in the complicated field of family law. It has often

occurred to me as a family lawyer that if this was a straightforward commercial dispute between two insurance companies arguing over a lost cargo at sea, the matter would have been resolved. What makes family law both so interesting yet also so challenging is that we are dealing with raw human emotion. It is, in my judgement, the duty of the lawyers to do their best to protect parties in such a situation from themselves. I make it clear that I have no criticism at all of the current legal teams instructed. I am complaining not about the solicitors and counsel in front of me this week in court, I make that very clear. I am talking about the solicitors who started this case in the way that I have described above.

2 1 I also accept that lawyers, at the end of the day, are only as good as the instructions that their clients give them, but I do strongly take the view that the way that this case was kickstarted overlays everything that has happened since. Eventually, the hole that people dig themselves into becomes an impossible one to get out of because of the incident of costs. If the supposed man on the Clapham omnibus, to coin a phrase from a previous era, was told that a couple spent as much arguing about the case as the case was worth, they would wonder what on earth was going on. They would comment that the only winners were the lawyers. Maybe that is true but, I repeat, I make no criticism at all of the lawyers currently instructed.

2 2 Miss Bangay correctly also draws my attention to this: the court must, in this case, as in all cases, avoid any form of sexual or gender discrimination. Much has been written about the decision of the Supreme Court in *Granatino v Radmacher*. Would the result have been different, people ask, if Mr Granatino had been the wife and not the husband? The Supreme Court, by a majority of eight to one, gave a very clear Judgment and I must of course assume that there was no gender discrimination or sexual discrimination present in that decision.

2 3 The first application made in this case was the wife's application pursuant to her Form A, issued on 16 September 2022 and her subsequently issued notice to show cause of 9 November 2022. The wife asserts that the prenuptial agreement signed by the parties on the day of their marriage, 12 July 2019, should be given:

> "… decisive weight and upheld in so far as the husband's financial claims arising from the marriage are concerned."

2 4 This is the first application which is before the court and, accordingly, Mr Harrison KC opened the case on behalf of the wife. The burden of proof is on the wife to establish the prenuptial agreement is of decisive weight and that no provision should be made for the husband because of that agreement. It was obviously appropriate that the wife's application in respect of the prenuptial agreement should be heard together with the wife's application for financial remedy.

2 5 The wife's case as articulated by Mr Harrison can be summarised thus. This was a short childless marriage. The husband entered into the prenuptial agreement freely and willingly, with legal advice, aware that the wife was very wealthy, and he understood the consequences. The prenuptial agreement was clear and it was intended to be determinative on divorce. The husband's needs, continues Mr Harrison, are met by his own resources and, accordingly, Mr Harrison contends, the prenuptial agreement should be upheld and the husband awarded nothing. Mr Harrison contends forcibly that the decision of the Supreme Court in *Granatino v Radmacher* is not a green light for a disappointed spouse to come to court with a shopping list of asserted aspirational needs. Mr Harrison contends that the failure to abide by the prenuptial agreement would be a fundamental betrayal of what the

parties intended and agreed and would ignore the important respect of autonomy which these courts always encourage.

2 6 The husband's case, articulated by Miss Bangay KC, may be summarised thus. The husband should not be held to the terms of the prenuptial agreement. He was persuaded to enter into it by the wife as a sop to her father, the wife assuring the husband that, in reality, he would always be provided for as "he had married a Helliwell". Miss Bangay contends that whilst the husband did receive some preliminary limited advice on the prenuptial agreement, but it was without benefit of any financial disclosure from the wife. The husband has waived privilege in relation to the advice that he received from experienced family lawyers, Hall Brown. That firm expressed concern to the husband about the lack of financial disclosure. Miss Bangay contends that the wife admits to a profound reluctance to provide any financial disclosure as she was determined to keep the family assets private. Miss Bangay contends that when the wife eventually provided her financial disclosure, she admits that she deliberately grossly understated her wealth by excluding her business assets and some property interests. Miss Bangay continues that the wife asserted that her wealth was £18 million to £23 million when, in reality, she was worth in excess of £70 million. Miss Bangay also contends that, in any event, the terms of the prenuptial agreement are grossly unfair in that they do not begin to provide for the husband's needs.

2 7 One of the many side issues with which the court has been concerned during the course of this hearing has been the date of cohabitation. The husband contends that the parties began to live together in the wife's home in Dubai in October 2016. The wife asserts that the date was April 2017. The parties have also thought it relevant to argue in court about the date of separation. The wife asserts the separation was in April 2022. The husband asserts that the relevant date is the date when written notice was given by the wife's Dubai solicitors, James Berry, on 24 August 2022. Other than the fact that it may go to the issue of credit, in other words which of the parties I believe is giving more truthful and more reliable and honest evidence, I do not think that the difference between the parties regarding the date of cohabitation or the date of separation is of particular assistance to the court.

2 8 I have said often I other cases, and I repeat here, a relationship is not something that is on one day and off the next. A relationship is something that is usually fairly slow to develop, it is nurtured and comes to a point at which the parties may regard themselves as committed or in an exclusive relationship or engaged or married. Similarly, marriages do not usually break down as a consequence of a single event. Breakdown is usually difficult, gradual, unpleasant. Of course, there comes a time when one or other or both of the parties regard the relationship as over, but I think it is wrong in most cases, and wrong in this case, to look for a specific start date or a specific finish date. Moreover, the irony is not lost on me that the husband asserts that the notice of determination of the relationship must be given in accordance with the prenuptial agreement, but in all other respects of course the husband rejects and disowns the prenuptial agreement. In a similar vein, the wife who seeks to rely on the prenuptial agreement initially threatened the husband with a divorce in Dubai, and even with a maintenance claim in Dubai, by her against him. That, of course, was in flagrant breach of the prenuptial agreement on which she now relies. Moreover, it is farcical in my judgment to suggest that a spouse with the resources available to the wife, whether they be £20 million or £70 million, or anywhere in between, can or should make a maintenance claim against a spouse with resources of less than £1 million and where, as here, the wife's income was at least five times the husband's income, and possibly a very great deal larger than that.

29 It is interesting to see that, in the early stages of their litigation, each of the parties, through their first set of Dubai lawyers, about whom I have said quite a lot already, picked and chose those parts of the agreement that suited them, while disowning the other parts.

30 My view on the length of the relationship is straightforward. There was a period of cohabitation which moved gradually, if not seamlessly, into marriage. Miss Bangay has quite properly referred me to some of the well-known cases on this issue, for example, *RW v GW* and *VV v VV*. I am bound to say that I think it is generally recognised by judges working in this field of the law now that, when considering, as they are obliged to do under section 25, the length of the marriage, it is generally the custom now to add to the length of the marriage a period of premarital cohabitation which has, to use the well-worn phrase, moved seamlessly into marriage.

31 The husband, as I have said, asserts that cohabitation commenced in October 2016. Mr Harrison, on behalf of the wife, says this is a tactical ploy to try and extend the length of the relationship. The wife says that cohabitation commenced in May 2017. The marriage and the relationship were short. In my judgment, with or without the prenuptial agreement, the difference between the parties of months is an irrelevant tangent which we should not have spent very long listening to or dealing with. It would, in my judgment, be wrong to regard the length of the marriage as some kind of time-related scheme whereby extra entitlement is earned with points granted to each spouse as each month passes. It simply is not like that and, in my judgment, the difference of a few months about which the parties are arguing is of marginal relevance to the decisions which I have to make. Of course, if I come to the view that the prenuptial agreement should be treated as binding, I must look at that agreement itself for the relevant start and finish dates.

32 The husband's evidence was that, in October 2016, he was given a key to the property where the wife lived, the property that was owned by her father. The husband said that, from October 2016 to April 2017, he spent 99 per cent of the nights at the property with the wife. What is not in dispute is that there was a public affirmation of cohabitation in April 2017. I was also taken through a number of WhatsApp messages which do assist me in deciding where the truth lies.

33 In WhatsApp messages dated 3 April 2017, so some six months after the date when the husband asserts cohabitation commenced, the messages go as follows:

> Wife: "When we/if we live together one day I will always make sure [that we have good] meals."
>
> Husband: "I know you will babs.
>
> "You're a masterchef."

34 On the same day:

> Husband: "I'm looking forward to seeing you tonight."
>
> Wife: "… I really feel like we should initially move into mine.
>
> "I can [definitely] make room [as] I've so much rubbish that I can clear out."

35 And then:

> Husband: "Yeh I think it's a good idea.
>
> "We shouldn't rush into moving anywhere."
>
> Wife: "We can make better use of the space anyway we can discuss tonight.
>
> "Agreed."
>
> Husband: "But only if you're sure you don't [mind] me invading your space."
>
> Wife: "I'm SUPER excited about living together now though.
>
> "I got butterflies this morning.
>
> "I'm a geek!"

36 4 May, WhatsApp exchange between Husband and Wife:

> Husband: "I can't wait to move in either, but the good thing is there is no rush or we are not doing it out of necessity, we are doing it because we want to.
>
> "We are very lucky in that respect.
>
> "The main thing to me is that you're happy and healthy.
>
> "So no pressure re this stupid pill or anything."
>
> Wife: "Ok [thanks] Bub [am] going to physique at 12 I think I need to just zone out for an hour and I massively need the workout!! … Hope you have a good afternoon."

37 It is, in my judgement, impossible for the parties to have written that exchange at a time when they could ever have imagined in their worst nightmares that we would be sitting here now in February 2024 analysing these messages, but those messages are only consistent with them not yet fully cohabiting.

38 The husband asserted, as I have said, that they spent 99 per cent of the nights between October 2016 and May 2017 living in the wife's property. 99 per cent is cohabitation. I find as a fact that they were not cohabiting as the husband has asserted, at that time. The husband may very well have stayed over at hers and she may very well have stayed over at his, as couples do when they are moving from the early parts of a relationship to one of settled cohabitation.

39 I am afraid that I have to say that I think that the husband was being dishonest in his evidence about this. I cannot explain it in any other way. Does it matter? Well, it does not matter very much at all, as I have said, in terms of the length of the marriage, but it does matter in terms of my assessment of the credibility of the parties, which becomes of central importance in the issues to which I am shortly to return to determine.

4 0 I heard oral evidence from each of the wife and the husband. The wife had asked through her counsel on a previous occasion in front of me to arrange for participation measures in court, in other words, I was asked to arrange for the husband to sit behind a screen while the wife gave her evidence and the wife to sit behind a screen when the husband gave his evidence. I made it clear that in agreeing to these special measures I was making no finding that there had been any inappropriate behaviour by either party at any time.

4 1 It seems to me that, when being invited to agree to participation measures, for the judge to spend long enquiring into the reason for this or to spend time deciding whether the reasons are valid would simply make what could be a difficult situation even worse. It is obvious to me from everything I have read and heard that this couple were engaged in a very difficult time, arguing, possibly coercion and pressure by one party on the other. These are things that I have not been asked to make findings about, and of course I do not. This court will rarely engage in this sort of investigation into conduct because it tends to make things worse rather than better, but it was obvious to me that this was a very difficult situation for both parties.

4 2 There have been cases where, after the event, I have found that the request for participation measures was a stunt or was a put-on to try and curry favour with the judge or to do down the other side. I find no suggestion of this in this case at all and I am glad that I was able to provide for these measures because I am quite satisfied that, for each party, they found it easier to give their evidence without having to look at the other party, and I do not think it would be appropriate for me to say anything more than that about this aspect of the case.

4 3 The wife was nervous, tearful and emotional in giving her evidence. There is no need for me, in the course of this Judgment, to spend long reciting the mental health issues which have blighted a significant part of her life, suffice to say that she has suffered from bouts of depression and has had inpatient stays for significant periods of time in connection with anorexia. In spite of her nervousness and occasional tearfulness, I am satisfied that the wife was able to give her evidence in as reasonable an environment as could be secured for her.

4 4 I observed in court and repeat here that the misery affecting both the husband and the wife is palpable. I am in no doubt that they have both suffered emotional difficulties, possibly emotional harm, as a result of their unsuccessful and, I dare say, traumatic marriage. It is not appropriate for me, or necessary for me here, to make any comments further than this. I have expressly not been asked to make findings in relation to conduct, and I do not do so. But it is obvious to me and it is right that I observe that both the husband and the wife are in a difficult place emotionally at the moment.

4 5 On the morning after the husband had commenced his evidence, Miss Bangay asked for some time because she was very concerned about her client's emotional wellbeing. Miss Bangay's instructing solicitor, who has obviously spent far more time with the husband than counsel has, as is usual in these cases, expressed real concern about the husband's ability to resume his evidence cogently. Mr Harrison started to try and persuade me that this was something of a stunt on behalf of the husband. He did not persist in that. I cannot rule it out, but my judgment is that I accept the husband's evidence that he had little or no sleep the night before (sic) he was due to resume his evidence.

4 6 I was told that the husband had not slept at all. I was told that his mother had expressed real concern about her son's condition. I asked Miss Bangay whether she thought that her client had lost capacity. Plainly, if he had lost capacity within the meaning of the Mental Capacity Act, my duty as the judge would be to stop the process unless and until the husband either

regained capacity or had secured the representation of a litigation friend. We adjourned for a time so that Miss Bangay and her team could consider their position.

4 7 After an adjournment, Miss Bangay informed the court that, in her view, and in the view of her instructing solicitor, her client had not lost capacity. Having heard submissions, I took the view that I would allow the husband into the witness box to try with giving his evidence and see how matters transpired. It is a difficult balance as the judge, because the one thing that is most likely to enable the parties to recover from their emotional difficulties, possibly emotional extremes, is the ending of the litigation. If I had adjourned the case at that point it would have caused immense heartache and trauma to both, not to mention expense, because the adjournment would have been for many months.

4 8 With the agreement of his legal team and indeed the husband himself, the husband gave his evidence. We agreed to take frequent breaks and I did not permit the husband to give evidence for more than about forty-five minutes at a time without a break. Although this did derail the timetable somewhat, the fact is that the husband, in my judgment, gave his evidence clearly and cogently. It seems to me that he clearly understood the questions and if there was any suggestion that he did not or that a question had too many parts to it, either he asked that it be put again or I did. Obviously, if an application had been made to halt the proceedings at any time on his behalf I would have listened very carefully to that application. The husband resumed his evidence the following day, he assured the court that he had had some sleep that night and was feeling a bit better.

4 9 In my judgement, Mr Harrison put his questions cogently, but never too forcefully, and the husband dealt properly with everything that was put to him. If he will forgive me for saying so, Mr Harrison is not one of those counsel who is known for his aggressive and hectoring tone. His manner is altogether more measured and, in my judgement, he cross-examined the husband skilfully without being too forceful, and he was able to put all of the relevant questions to the husband.

5 0 Importantly, Miss Bangay agreed with me that the husband was coping reasonably well with giving his evidence. As I have said, if anybody had made an application on his behalf for me to stop or pause, I would have done so, and I made sure that there were proper breaks taken.

5 1 It was difficult for everybody and it was traumatic, but the process will be at an end as soon as I have finished delivering this Judgment. In my view it was much better to conclude matters as we have than to adjourn the case, because adjournment would have simply continued the anxiety and the sleeplessness. What these parties need is to put this case behind them.

5 2 For reasons that I shall set out in more detail below, I found the wife to be honest and reliable in her evidence. At no time did it seem to me that she was obfuscating or trying to mould her answers to a given case. I took the view that she did the best at all times to tell the truth to the court. I am afraid I am less satisfied that this is the case in relation to the husband. I am afraid I have to say that there were occasions when I found the husband to be less than honest, and I have already given an example of that in relation to the WhatsApp messages. Whether this was persuading himself of the truth of something that he originally did not think to be the truth or because he was deliberately lying is probably unnecessary for me to decide.

5 3 In his closing submissions, Mr Harrison reminded me of the well-known passages of the well-known Judgment of Leggatt J, as he then was, in *Gestmin v Credit Suisse*, where he said:

> "Memory is especially unreliable when it comes to recalling past beliefs. Our memories of past beliefs are revised to make them more consistent with our present beliefs. Studies have also shown that memory is particularly vulnerable to interference and alteration when a person is presented with new information or suggestions about an event in circumstances where his or her memory of it is already weak due to the passage of time."

5 4 And then further in that same case:

> "In the light of these considerations, the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. This does not mean that oral testimony serves no useful purpose – though its utility is often disproportionate to its length. But its value lies largely, as I see it, in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth."

5 5 I bear in mind very much what is said in that Judgment. I have been taken to a number of authorities in this case and my failure to refer to each and every one of them does not mean that I do not have them in mind, but it would be impossibly long if I was to go through, in this judgment, all of the authorities to which I have been referred.

5 6 I have also, of course, in this case, reminded myself of the well-known rule in *R v Lucas*, although not expressly invited to by either counsel. In that seminal criminal case, Lord Lane, then the Lord Chief Justice, held that the mere fact that a defendant has lied is not in itself evidence of guilt. In the instant case it is important for me to remind myself that people may lie for various reasons, such as shame, panic and the desire to cover for someone else, and I bear what is called that "*Lucas* warning" in mind very much when commenting on the parties' evidence. I also bear in mind, of course, that the burden of proof is always on the person who asserts a fact.

5 7 The background to this case can be summarised succinctly. The husband has an honours degree from the University of Leeds in Law and Accountancy. He told the court he had a 2:1. He is obviously a bright man. He had been previously married in 2013. Initially, he and his first wife lived in Salford, and then moved to Dubai, where the husband secured employment with one of the big four firms of accountants, PwC. He is obviously a clever and talented person. When they moved to Dubai, the husband and his first wife did not sell the Salford property, but arranged for it to be let and they rented accommodation in Dubai.

5 8 Unfortunately, the husband's first marriage broke down only three years later, in 2016. The husband informed the court, and I accept, that there were no financial remedy proceedings between him and his first wife, and they simply agreed to part and to retain their own assets.

5 9 A considerable amount of time was spent considering whether the husband had a prenuptial agreement with his first wife. I have to say that I do not find this particularly helpful. I am not concerned with the husband's first marriage but with his second. I did not find this line of cross-examination illuminating. I dare say that Mr Harrison had hoped that if he persuaded me that the husband had a prenuptial agreement with his first wife, it made it more likely he would understand the consequences of the prenuptial agreement in his second marriage. I am concerned with whether the husband knew what he was doing in relation to this case. As I have said, he is a clever man, familiar with reading important documents, not the sort of person who would fail to understand the significance of what he was being told or what he was signing. I do not need evidence on whether he knew about prenuptial agreements in his first marriage to decide whether he understood what it meant in his second marriage.

6 0 It was in 2016 when he met the wife in Dubai, so not long after he had separated from his first wife. The husband agreed in oral evidence that he knew that his wife to be had suffered from considerable mental health issues and from anorexia and had long periods of time as an in-patient in connection with those conditions. He agreed when it was put to him that he knew that the wife was vulnerable. She was taking anti-anxiety medication and having regular sessions with a psychotherapist.

6 1 The husband also knew from discussions with the wife that she was from an exceptionally wealthy family. The wife works as an interior designer, possibly in other roles as well, for one or more of her father's companies, and she receives what, by any standards, must be regarded as a huge income(sic). There is a dispute between the parties as to whether her income is(sic) £500,000 a year or £1 million a year, or something in between. I dare say it varies, but given that there is no income tax in Dubai and that, according to the tables in At a Glance, the cost of living in Dubai is actually a little bit less than that in London, that is plainly a huge income and, without in any sense doing down the wife's hard work and achievements, it seems to me to be obvious that the amount that she receives overall is more than the income that someone doing her job would usually be likely to receive. That is not a criticism, it is simply an observation.

6 2 The wife describes her father as a self-made man. It is obvious that he is an enormously successful and wealthy man who has spent a huge amount of his time working extremely hard, mostly in the Middle East. Sadly, he is separated from the wife's mother. There is, of course, no income tax in Dubai and although not relevant to consider in this case, my understanding is that there is little or no capital gains tax there either.

6 3 It became very clear to me that the wife has a complicated and often uneasy relationship with her father. Her father did not, of course, give evidence, but I get the clear impression that he was a generous man, but that his generosity was very much on his own terms. For example, if the wife or any of her siblings wanted to use one of his many fine properties, such as that in the South of France, they needed to seek his permission and make the relevant arrangements.

6 4 It is obvious from everything that I have heard that the wife's father put a very substantial number of assets into her name, and probably the names of her siblings as well, although I do not know. The wife said, and I accept, that she really did not know what assets he had put in her name, and I gained the very clear impression that she was anxious, if not actually

afraid, of asking him for details. I gained the impression that the love that this father gives to his children is, in many respects, conditional love. I sense that one of the essential conditions is their obedience to him and respect for him. I can well understand that the wife did not want to ask her father for details of her financial resources if it meant enquiring into something that he regarded as deeply private. It may seem odd to some of us, maybe most of us, that she was scared of asking him what she had in her name, one might think that that is something that she is automatically entitled to, but I sense that her father is somebody who would put things into his children's name without them necessarily knowing and he may very well have reasons why he did not even want them to know. I have no doubt at all that the relationship that the wife had with her father was complicated and, in many respects, one where there was a great imbalance of power.

6 5 Also, it seems to me very clear from what I have read and heard that the wife is something of a people-pleaser, a phrase that I have heard others use to describe her, and I am sure that she applied this in particular with respect to her father. I am not for a moment suggesting that the wife tried to please her father for her own financial gain, I do not mean that at all; I think it is far more likely, and I so find, that the wife wanted to please her father because she wanted his love, and conducting the relationship on his terms was the only pragmatic way for her to achieve it.

6 6 It is clear from everything that I have heard that the husband knew that he was marrying into an exceedingly wealthy family. Again, I am not suggesting for a moment that this is why he married the wife, but he knew that she was wealthy and that he would, whilst in the family, be able to enjoy the trappings of significant wealth. This included exceptionally lavish holidays. I have even been given a holiday schedule as some sort of prop to a claim to support his asserted income needs, and I return to it later. They had the use of various properties that belonged to the wife's father or one of his nominees or companies. One of them was a fabulously expensive and I dare say wonderful property in the South of France.

6 7 The husband, in his evidence, described how, prior to his engagement to the wife, he had drinks with the wife's father and asked him for permission to marry her. The husband said that he was handed a paper napkin on which the wife's father had sketched out information relating to his business and company interests. It is not completely clear what was said, and the husband's recollection will doubtless be somewhat clouded by the fact, on his own admission, he and the wife's father had had a considerable amount to drink on that occasion. I do not say that with an ounce of criticism, it is merely relevant to the quality of the husband's evidence on the issue.

6 8 What is clear is that the wife was more than annoyed, she was plainly upset about this because she regarded this as an inappropriate invasion of her family's and in particular her father's privacy. She did not like what she saw written on this napkin. In cross-examination, the husband said that the napkin simply contained an organisational chart about the companies, rather than details of value. The wife gave evidence that the annotation on the napkin set out details of who owns what, rather than just an organisational chart.

6 9 I am not really sure that it makes much difference to the outcome of this case or the decisions that I have to make, however, having heard the parties both give their evidence, the husband was, if not drunk, certainly under the influence of a significant amount of alcohol, and I prefer the evidence of the wife. I accept that the napkin contained evidence of who owned what within the family, or at least some evidence of it. It seemed to be common ground that the wife was annoyed and tore up the piece of paper, or what I have referred to as the napkin.

70 I have referred already to the wife's concern not to irritate her father or in any way be seen to be invading his privacy, particularly in relation to his financial affairs, and I see this as a good example of that. I find that the wife's evidence on this issue is more reliable and that she was very upset indeed about what had happened. To be fair, I am not, here, blaming the husband because he had the information, I have no idea whether he asked for the information or it was volunteered to him, and I make no criticism of him about what was contained on that piece of paper or napkin.

71 As I have said above, when the husband moved to Dubai he was working with one of the big four firms, PwC. In January 2018, he stopped working for PwC and he started to work for one of the wife's father's companies. Apparently, the husband chose, with the wife's support, to work with one of the travel companies in the organisation. I dare say it had various perks but suffice to say that it did not go well. By the end of 2018, the husband stopped working for the wife's father.

72 At an earlier directions hearing, an application was made on behalf of the husband for the instruction of a single joint expert to report on the husband's mental health and his ability to work. Having read submissions, I decided that it was necessary to obtain a report. The husband's claim, asserted by Miss Bangay at that earlier hearing, was to be a needs-based one and, accordingly, his earning capacity would take centre stage, or certainly would be of very considerable relevance to the determination that I was being asked to make. The court therefore had the report of Dr Tom McClintock dated 18 December 2023.

73 Dr McClintock expressed his opinion that the husband was suffering from low mood, anxiety and depression. He gave his view that the husband is currently unable to work and should not do so for at least six months, and that he required in-patient treatment.

74 The husband's future ability to work depended on, among other things, his ability to access treatment services and make progress. I am told that the cost of that is £22,110. Although other figures have been put forward suggesting that this treatment could be secured at a lower amount, given the wealth available in this case, it seems to me that one of the most important things of all is to repair, if it can be done, the mental health of each of these parties, and I accept that that claim for £22,000-odd to be spent on medical treatment is a reasonable and fair claim for the husband to be making.

75 The husband has said that his plan after his medical treatment is to obtain full-time employment back in Dubai. In some respects, it has surprised me that the husband wants to go back to Dubai, which has been a city of so much unhappiness for him, but there it is. I accept that that is his intention. As I have said, in fact, if anything, Dubai is a lot cheaper because although the cost of living there is pretty similar if not a little bit less than London, of course there is no income tax, and that makes a vast difference for somebody earning good money as he expects again to do.

76 Mr Harrison complained, and I understand why counsel in his situation might do so, that Dr McClintock report would only be as good as the information that he was given by the husband. I accept that, but the fact is that Dr McClintock could have been called to give evidence and be cross-examined and various items of expenditure incurred by the husband which were aired before me in court could have been put to him. To my mind, proving that somebody went to a particular event or place or establishment for a drink does not prove that that person is lying when he says that he is depressed or unable to work. It is, I suspect, to most people, easier to go to the pub and have a drink than it is to hold down an important job.

7 7 Mr Harrison could have put matters to Dr McClintock in an attempt to suggest that the husband was actually much fitter and more capable than he had reported and that he was, to coin a phrase, putting it on. However, in my judgment, the wife and her legal team made the correct decision in not calling Dr McClintock. His report is there to see and I am not sure that cross-examination of him would have made a lot of difference. It seems to me that I have to err on the side of caution in relation to the husband's earning capacity and, in the absence of any cogent evidence to the contrary, I accept the report of Dr McClintock. I accept that the husband is suffering from low mood and low self-esteem.

7 8 I accept that the husband will be unable to work in demanding, well-paid employment until after he has completed his medical treatment and had some recovery time. I accept that it may be a year or two after this hearing concludes before the husband is able to secure the sort of position that he had before, which, of course, we all hope will lead him to promotion and increased earnings in due course.

7 9 The parties agree, of course, that they both signed a prenuptial agreement on 12 July 2019, which is the date of their civil wedding ceremony. They were married in The Seychelles, with only two witnesses, as I understand it both employees of the wife's father's company. They had what must, by any standards, have been a very flamboyant celebration of their marriage in August of the same year in Paris, an event which I am told cost more than £500,000 and for which the wife paid.

8 0 The prenuptial agreement provides what might be described as a drop hands arrangements. In other words, the parties each retain their own separate property but share any joint property. I can fully understand why a person such as the wife's father would encourage, perhaps require, his daughter to enter into a prenuptial agreement. In circumstances where one party has immense wealth and the other does not, particularly if that immense wealth is pre-acquired, in other words before the relationship started, as here, or given to one of the spouses by somebody else, it may be a paradigm situation for there to be a prenuptial agreement, particularly anticipating, as happened here, the possibility that the parties' marriage might end after a short number of years and particularly if there were, as here, no children. Of course, the situation is very different if a couple separate after decades of rearing children together and pulling their weight together in a partnership.

8 1 The husband waived privilege in relation to the advice that he received from Hall Brown Solicitors in relation to the prenuptial agreement. The wife has not waived privilege in relation to her consideration of and advice about the prenuptial agreement. It is well known that I cannot and do not draw any adverse inference arising out of the wife's refusal to waive privilege but, in my judgment, in any event, the focus in this case is not about the advice that the wife received but the advice that the husband received. It is, of course, generally regarded as necessary that a party to a prenuptial agreement is given advice about it.

8 2 The husband says that he should not be bound by the terms of the prenuptial agreement for a number of reasons. The first is that he says that he was persuaded to enter into it as a sop to the wife's father. He says that the wife assured him that he would always be provided for as he had married as Helliwell. I have already recognised above that the prenuptial agreement was, as much as anything, something that the wife's father was insisting upon.

8 3 The husband says that the wife told him that her father had had a number of relationships and that, in the case of each of them, he always financially looked after the person concerned when he had moved on from that person to another. That may very well be true, but what I am concerned with in this case is not what the wife's father might have done with

a lover or mistress or friend; what I am concerned with in this case is what this husband and this wife agreed and expected, not what the wife's father did. It is, in my judgement, essential to see what the husband read, was advised about, did and signed, rather than attach much evidential weight to an unrecorded conversation and a conversation which the wife denies ever happened. I hark back here to the passage quoted above in the judgment of Leggatt J as he then was. I am going to do what was suggested in that case and what is obviously right, which is to look at the documentary evidence rather than pay much attention to after the event claims, particularly as they come from somebody who I have already found to be less than honest in relation to at least part of his evidence.

8 4 The second reason given by Miss Bangay as to why the husband should not be bound by the prenuptial agreement is her contention that:

> "Whilst [the husband] received some preliminary, limited advice on the [prenuptial agreement], it was without the benefit of any financial disclosure from [the wife]."

Miss Bangay says that the wife admits to a profound reluctance to provide any financial disclosure and that she was determined to keep the assets very private.

8 5 As I have said, the husband sought advice from Hall Brown a firm specialising in Family Law. The husband has waived privilege regarding the Hall Brown file. As the husband will doubtless have been advised, he was under no obligation to waive privilege and no adverse inference can be drawn from his failure to do so. However, as he has done so I have been able to find that he was properly advised by specialist solicitors.

8 6 However, by the time the husband signed the prenuptial agreement he had either been living with or at the very least in a committed relationship with the wife, he knew that she was from a very wealthy family and he had enjoyed, as I have said, the trappings of that wealth already whilst with her. He knew that the property where he lived with the wife was owned by her father. He said that he did not want a long and drawn out process but a high-level/red flag review. There was a considerable amount of secrecy about the disclosure. Nothing was committed to email, it was sent by courier and it was obviously very covert and I am sure, as I have said, that the wife did not herself know quite what assets she owned and did not own.

8 7 Hall Brown plainly took the husband through the terms of the agreement and it was made clear to him that he would not be able to make a claim for any form of financial remedy in the event of the marriage failing.

8 8 I turn now to some of the key clauses of the prenuptial agreement which the parties executed. After the expected definitions we find at clause (D) of the recitals, "Jenny" – that is the wife – "and Simon----" – that is the husband:

> "-- hope and intend their marriage will endure for their joint lives. However, they recognise there exists a possibility that the marriage may break down, that they may wish to separate and they may then wish to be divorced. Following discussions between themselves about the financial consequences of their marriage, including the financial consequence of their marriage breaking down, they wish this Agreement to limit the ambit for dispute between them."

8 9 Reading that and then realising where we now are is, I have to say, sad and remarkable. The whole point of an agreement like this is for the parties to avoid the cost and heartache of what these two people are going through right at the moment.

9 0 Clause (E):

> "Jenny and Simon acknowledge that there is a disparity between the Separate Property/Assets of Jenny and Simon in Jenny's favour."

9 1 Clause (F):

> "During the subsistence of this Agreement set out below, it is not their intention that either of them shall, by virtue of their marriage or otherwise, acquire any rights over or interests in the assets of the other; nor do they intend, in the event of a divorce, judicial separation or annulment to make any claims for financial provision against the other in any cause in any jurisdiction, and it is their intention that no other or additional provision for income, maintenance, capital, property transfer, settlement and distribution or other provision of entitlement consequent upon the breakdown of the marriage shall be made for either of them by a court in any jurisdiction in the world."

9 2 The provisions of that paragraph are very clear. As I have already said, the husband is an intelligent man, with a degree in Law and Accountancy or Economics, who worked for one of the big four accountancy firms in the world. It is completely obvious what that recital means, and he knew exactly what it meant in my judgment.

9 3 Clause (G):

> "Jenny and Simon agree that the terms of the Agreement reached between them contained herein shall be binding upon them and are intended to be binding upon their heirs, receivers, trustees and personal representatives, and in the event of a divorce, judicial separation or annulment will request that the Court give full effect to this Agreement."

Far from abiding by paragraph (G), the husband invites me to rip it up and start again.

9 4 Clause (I):

> "Jenny and Simon have entered into this Agreement freely and voluntarily without undue influence, duress or coercion or without any promise or representation other than set out in this Agreement, and all the terms herein represent the entirety of the Agreement between them. They are each entering into this Agreement free from pressure of any kind and have given full consideration with the help of their independent legal advisors to the ramifications of entering into this Agreement."

9 5 I am afraid that I have to say that the idea that the husband in some way signed this with his fingers crossed behind his back, relying on the representation, "You will be all right because you have married a Helliwell", is risible, and I reject that piece of evidence of his

completely. Even if it was said, it was plainly overridden by this agreement which is absolutely clear in its terms.

9 6 Recital (J):

> "Jenny and Simon are both satisfied that they have had sufficient time for independent legal advice and sufficient time for reflection before entering into the terms of his Agreement."

And then it sets out the people from whom the wife had advice.

9 7 It then says that the applicable law is the law of England and Wales. It says then, at clause (P):

> "Notwithstanding that they may in the future both be habitually resident outside the United Kingdom, Jenny and Simon intend that the provisions of this Agreement shall be binding upon them in any jurisdiction and that they acknowledge and agree that in the event that they divorce they will invite a court in any foreign jurisdiction to take the terms of this Agreement into account to the maximum possible extent."

The husband in this court, this week, is doing exactly the opposite of that.

9 8 Clause (Q):

> "Jenny and Simon agree that this Agreement shall be governed by and construed in accordance with the laws of England & Wales."

9 9 There is then a section which is headed "Full Disclosure" and it says, at clause (R):

> "Jenny and Simon have fully and frankly disclosed to each other their financial resources and liabilities which are set out in summary form in the Appendices A, B, C, D and E to this Agreement."

1 0 0 Clause (S):

> "Both Jenny and Simon recognise that the disclosure provided to date each to the other is not completely detailed, but each acknowledges that such disclosure has been substantially complete in all material respects, and on this assumption each voluntarily and expressly accepts the disclosure provided by the other as being sufficient to enter into this Agreement, and they both waive any rights to further disclosure or enquiry. In particular, Jenny and Simon have not sought to have and do not wish to have any further valuations of the various assets contained in Appendices A and B."

1 0 1 This, it seems to me, gives the strongest part of the objection launched against this prenuptial agreement and its validity by the husband. Miss Bangay asserts that when the wife eventually provided financial disclosure with an amended agreement which was sent to him in June of 2019, the wife openly admits that she deliberately grossly understated her wealth by excluding a business interest and some property assets.

1 0 2 My recharacterization of that statement would be that the wife did not know the full value of her assets and did not know the assets even that she owned or what their value was. She did not want to ask her father and risk incurring his wrath for the reasons that I set out above. But I agree that the wife did not give full disclosure. I have found that she was very reluctant to ask her father about the detail of her assets and I have found that she was doing her best to tell the truth about her worth.

1 0 3 It is important to record that the prenuptial agreement incorporates disclosure in summary form in Appendices A and B. It records that disclosure was substantially complete. It was obvious to the husband that the wife was extremely wealthy and whilst understanding that full and frank disclosure is always the gold standard to aim for in a prenuptial agreement, if, as here, there is an understanding that one party is exceptionally wealthy, you cannot, as the economically weaker party, simply get out of the consequences of the prenuptial agreement because the number that was provided in terms of the wealth was a number that was lower than the truth or lower than it should have been. The judge will look at the effect in each individual case.

1 0 4 It is clear that the husband was expressly advised by Hall Brown to seek further disclosure and he declined to do so. The husband says that he was put under unreasonable pressure by the wife. I reject this submission. In one sense, in circumstances where one party is substantially wealthier than the other, and that is probably more often the case than not in prenuptial agreement cases because why have one if neither of the parties have anything or indeed have about the same amount each, there is always pressure. Generally, the person with less money would probably rather not have the prenuptial agreement.

1 0 5 I have thought very carefully about whether it is unreasonable pressure for a spouse to say, "If you do not agree to sign this, I will not marry you." Baroness Hale gave a forceful dissenting judgment in *Granatino v Radmacher* and a lot of people probably agree with what she said, that marriage is different, this is not the way marriage should be, but it is very clear that I have to follow not the one dissenter, but the eight Judges giving the majority judgment.

1 0 6 I do not need to spend long looking at other first instance decisions by judges such as myself trying to hone or mould or measure what was said by the Supreme Court, I look to the decision of the Supreme Court itself, and I bear in mind that Mr Granatino did not even have sight of a prenuptial agreement in his own language. Ms Radmacher was German and he was French and the prenuptial agreement that he signed was in German.

1 0 7 The prenuptial agreement, in terms of the actual operative parts, rather than the recitals, provided, at paragraph 1, that it will become operative immediately upon executing the agreement, and then it says this:

> "All separate Property/Assets held by Jenny shall remain in her beneficial ownership during the marriage and thereafter notwithstanding any contribution which Simon has made or may make in the future, directly or indirectly towards the acquisition, maintenance, improvement or growth (including 'the fruits') of Jenny's Separate Property/Assets."

And there is an identical clause the other way around in respect of assets that may be held by Simon. They are then the usual separate property clauses.

1 0 8 Paragraph 7:

> "In the event of the divorce of Jenny and Simon, all Separate Property/Assets shall remain in their respective absolute beneficial ownership free from any other claim by the other."

1 0 9 Paragraph 13:

> "In the event of the divorce of Jenny and Simon any jointly owned property occupied as a family home prior to their separation shall be divided between Jenny and Simon in the shares that the parties contributed at the time of purchase."

1 1 0 There is then a section dealing with their duties in respect of children which do not apply, and then it says, crucially, at paragraph 22:

> "Jenny and Simon have agreed that, in the event that their marriage is terminated by divorce or annulled, their financial claims will be defined and limited as follows:
>
> **(a)** Their respective Separate Property/Assets shall remain free of claim by the other …
>
> (b) The family home ... will be dealt with in accordance with paragraph 13 above."

Which says it will go to the person who owns it.

1 1 1 It is to be remembered that the wife's father owned the home for the first two years of their marriage, and the idea from the husband that the family home would be half his in the event of divorce is absurd in a situation where the property was owned by her father and then, when her father transferred it, it was not to the parties he transferred it, but to his daughter, Jenny.

1 1 2 Paragraph 24:

> "In the event of the divorce of Jenny and Simon neither of them will make any financial claim of any kind arising out of their marriage, or otherwise, against the other, including but not limited to, claims for a lump sum, property adjustment orders, periodical payments, maintenance pending suit and pension sharing orders save that this provision shall not apply to financial claims for the benefit of any child born to them both."

1 1 3 It is hard to think of a more comprehensive dismissal of financial claims clause, nor one written in more straightforward plain English. The husband read that clause and knew exactly what he was doing when he signed this agreement, I find.

1 1 4 Mr Harrison has set out in his document a whole list of inconsistencies between what the husband has said in his evidence compared with what the records later show when the husband waived privilege and the Hall Brown file became available. Time prevents me from going through all of those now, but I am very clear that the husband had comprehensive advice from Judith Klyne of Hall Brown.

1 1 5 Just to give some short examples, Judith Klyne, according to one of the attendance notes in the file, said that the agreement ring-fences anything Jenny brings in. In the event of divorce, it will not cater to needs, and then later records JK saying:

> "… walk away with what [you] have at that time."

JK says:

> "… you need to be happy with the worst case scenario."

1 1 6 Later:

> "… seems family home will be dealt with differently, then sets out same that will be divided in accordance with contributions … agreement reflects as per contributions, as long as you are happy. Again, concern re improvements to family home, are contributions [to be] considered post purchase?"

And then, later, JK saying:

> "… just be careful of putting large sums into her sole property, maybe discuss putting into joint names."

1 1 7 What on earth would be the point in that advice if the husband was under some illusion that the moment he married this property was going to be half his?

1 1 8 Later, JK saying:

> "… walk away with what you have at that time."

JK saying:

> "… [it] ring fences anything Jenny brings in. In event of divorce, will not cater to needs."

1 1 9 Later, JK saying:

> "… if feel like would need more protection then need to think about it, but saying comfortable."

SE, that is the husband:

> "… saying yes comfortable."

JK saying:

> "… good to go in with eyes open."

1 2 0 In my judgment, the husband did go in with his eyes wide open. Unfortunately, he has closed them later. "JK saying it may be possible to vary the agreement on divorce:

> "… but enter this assuming how would be dealt with. Do not assume [you] can get out of it."

1 2 1 It is hard to think of anything that could be clearer in terms of the advice that the husband received. He had the opportunity, did he not, of refusing to sign the agreement. It might have ended the relationship, or they might have stayed living together and not married, but he made that choice. There is no point in having these agreements, and I would be riding roughshod over the decision of the Supreme Court in *Granatino v Radmacher* if I did not give regard to this prenuptial agreement.

1 2 2 Later in the same file, SE (that is the husband) saying:

> "… in appendix, just list of assets, no values, not verified."

JK saying:

> "… depends on level of disclosure you want. Accepting not crystal clear value of assets, just overall understanding as looking to the future. Has limited relevance as financial position will change … Just need to know that walk out of marriage with what came to marriage with. Need to be happy with that and comfortable financially."

SE asking:

> "… why will not sign."

Which means why will JK not sign and JK saying:

> "… need to see figures … Would need to communicate with lawyers and review appendices. It makes no difference if not signed."

1 2 3 So what Ms Klyne of Hall Brown was therefore saying was she was not prepared as the solicitor advising the husband to sign it off because she did not have the disclosure in the appendices, but she gave the husband the clearest evidence: it makes no difference if not signed. She gave him the clearest advice: do not sign it unless you want to be bound by it; if you do sign it, this is what you get. And I find that Judith Klyne, from what I have seen of the file in respect of which the husband has waived privilege, gave the husband good, sensible and correct advice, and I find that the husband went into this agreement and signed it with his eyes wide open, knowing what it meant.

1 2 4 Miss Bangay correctly identifies that the wife did not seek, in advance of these proceedings, to mediate, even though this was provided by the terms of the prenuptial agreement. In my judgement the wife should have at least attempted to trigger this mediation clause, but her failure to do so does not render the agreement worthless or unenforceable; indeed there is a clause in the agreement that says specifically that the failure of one paragraph does not create the failure of the entire agreement.

1 2 5 In any event, there is a huge amount of overlay in this case which I have not addressed but I have adverted to from time to time. I am not going to allow myself to descend into claims and counterclaims of what went on in the marriage for to do so would be to fly in the face of the accepted wisdom to which I have already referred. The court should do all that it can to avoid, in many cases, in most cases, descending into the arena of the day to day struggles of

a couple's relationship breakdown. It is, however, abundantly clear to me that the relationship between these parties was at a desperately low ebb. There was an atmosphere of mistrust, fear and despair. The wife said she left the home because she was in fear and had to get out. I am not making a finding that she was in fear, still less am I making a finding that the husband made her fearful, because the evidence did not address this issue, and properly so. However, the wife said it and it is difficult to see how mediation could work in the face of a marriage which ended with the level of acrimony, mistrust and anxiety that both parties agree was present. Even the most experienced mediators will say that there are some cases which are profoundly unsuited to mediation and it seems to me that this case may very well have been one of those.

1 2 6 Miss Bangay also complains, as I have said, and it is a valid complaint, that the wife's Dubai solicitors,, threatened divorce proceedings and a claim for maintenance in Dubai which flew in the face of the prenuptial agreement which the wife herself wanted to rely on. It was an extraordinary own goal by the wife's Dubai solicitors to do that. I cannot understand what possessed them to say that at the same time as they were trying to rely on the prenuptial agreement. It was an inappropriate threat and it was a stupid threat and in my judgement it was wrong for them to make it. But I have not heard from the wife's Dubai solicitors. They may have answers to what it is I am saying and, in any event, as I have said, although it was a desperately unhelpful way to start these proceedings, it does not destroy or damage the validity of the prenuptial agreement in my judgment.

1 2 7 Miss Bangay asserts that, in apparent recognition of the unfairness of the prenuptial agreement, the wife initially offered, on 29 April 2023, to pay the husband a lump sum of £465,000 and to transfer 50 per cent of a joint portfolio to the husband, then a further £34,755. Miss Bangay continues by asserting that the wife has since proposed an increase of the lump sum to £800,000. That offer is caveated by her intention to pursue the application of the prenuptial agreement at trial in the event that the husband refused to accept her proposal.

1 2 8 I agree with Miss Bangay that those offers were made, it is obvious that they were, but I do not agree with the phrase "in apparent recognition of the unfairness of the prenuptial agreement". I have often said in this court, particularly when trying to encourage people to settle when I am dealing with FDRs, to say to the party with money, "You have got the luxury here of being able to spend as much as you like on your lawyers, but you have also got the luxury here of being able to "pay off" your wife or husband, as the case may be, to "get rid of the problem by being generous", and it would be completely wrong, in my judgement, for me to criticise those offers made by the wife or to say that they support any sense of the prenuptial agreement being unfair. It was, in my judgement, a perfectly proper attempt by an anxious, emotional and vulnerable person to say, "I would rather pay you this money than go to court; please take my offer, it is generous", and I cannot align myself with Miss Bangay's criticism of it as being a recognition by the wife that the agreement was in some way unfair. In my judgement, the offer of £800,00 was a generous one and the husband should have accepted it.

1 2 9 Mr Harrison reminds me that the prenuptial agreement in this case was drafted and signed a decade after the seminal decision of the Supreme Court in *Granatino v Radmacher*. The husband is, as I have recorded, an extremely intelligent man, and a man who is experienced in preparing and understanding documents. In my judgement, had he been asked at the time that he signed this agreement, "What do you think will happen if your marriage ends after three or four years when there were no children?" he would have been bound to reply, having read the document and received the advice that he had from Hall Brown, "Under the terms of the prenuptial agreement I am not entitled to claim anything against Jenny." How

could anybody who understand plain English documents possibly have understood anything else? The husband's answer that he would always be a Helliwell and he would be looked after is, as I have already found, absurd and, even if it was said, it was absurd for him to rely on it.

130 It is ridiculous, I am afraid, to say on the one hand, "I am signing this and I am recording on the face of it that I know what I am doing, I know what the consequences of it are, I know I get nothing", and yet, on the other hand, like a child with his fingers crossed behind his back, say "It will be all right really." That is not the way that prenuptial agreements, documents of this kind, work. The husband is too smart, too clever and too experienced to have been able to think in that way; and I am afraid I have to say that I think that he was being less than honest when he gave his evidence about this. I have said the same thing in relation to his expressed understanding about the family home being in some way half his if they separated or divorced.

131 He may have found out, he may have been told, that there is a case which says that, in many circumstances, if not most, the family home, which is the centre of the family, is owned 50/50 by the husband and the wife. That was not the case here for all of the reasons that I have set out, but principally because he knew that the property was not even owned by the woman that he was marrying, but by her father. It was only later that it was transferred, and then it was transferred, at the wife's request, into her sole name, and I find that there was no expectation or understanding that the husband was entitled to half of the value of the property if they were to split.

132 In *Radmacher*, the famous words of the Supreme Court bear repetition:

> "The court should give effect to a nuptial agreement that is freely entered into by each party with a full appreciation of its implications unless in the circumstances prevailing it would not be fair to hold the parties to their agreement."

133 And then Mr Harrison, in his document, sets out a number of cases, including the decision of Peel J, in *HD v WB*, where he distilled the principles into a series of statements. However I am not going to delve into the reinterpretation of that case by other judges, but will stick with the headline point of the Supreme Court.

134 The next reason given by Miss Bangay why the husband should not be held to the terms of the prenuptial agreement was that it was not signed by the husband until the parties' wedding day. All commentators on this subject will correctly advise that agreements should be signed some weeks in advance of the wedding in an ideal situation and, indeed, had the Law Commission's proposals on prenuptial agreements come into force or been made into a statute that received Royal Assent, there would almost certainly have been a statutory period between the date of signing and the date of the wedding, possibly twenty-one or twenty-eight days, possibly longer.

135 Of course, judges in the situation that I am in are not applying a statute that has specific regard to prenuptial agreements. Section 25 of the Matrimonial Causes Act, which guides the decision that I am making, and the discretion that I am exercising, does not mention prenuptial agreements. They had not really been thought of in this country in 1973, which is the date of that Act, although it dates back actually to legislation from 1969, but section 25 does require me to look at "all the circumstances of the case". Much has been written and said and lectured about section 25 and it has found itself remarkably adept at adapting itself to the mores and principles and understandings of the time. Given that it has its origins in

the legislation from 1969, this is a remarkable tribute to its authors and to the people that have interpreted it ever since.

1 3 6 For all of the reasons articulated above, I propose to give effect to the prenuptial agreement into which the parties entered. However, I must now decide, as the Supreme Court had to decide in *Radmacher*, how to address the husband's reasonable needs. Miss Bangay has, quite properly, asserted that the husband has needs, and she says he has needs that are not fulfilled by the agreement. I am not going to tear up the prenuptial agreement, I am not going to pretend that it does not exist, but I am going to look at it in the way that the Supreme Court did in *Radmacher*, and decide what provision, if any, should be made by the wife for the husband's reasonable needs.

1 3 7 I go back here to look at the original Form ES2 that was provided on behalf of the husband and, as I have said, he has total assets, including pensions, according to this schedule, of £868,000. I am going to round that down to £850,000 because there has been a bit more costs since that was prepared. As I have said, on that £850,000, the husband's interest in the property in Andalucia, which is valued at about £500,000, is illiquid, and that means that the husband has, effectively, access at the moment to approximately £350,000 after his costs are paid.

1 3 8 I am going to run through the summary of needs that Miss Bangay has put forward. I have already agreed that the figure of £22,110 for medical treatment is one that I accept. I recognise that the wife has asserted that this treatment can be obtained at a lesser cost in other places However, in my judgement, one of the most important things of all for each of these two spouses is to get better, to do all they can to address their mental health issues, and if this is a case, as it is, where there is significant money, then it is only fair that the husband should be entitled to have that treatment.

1 3 9 The husband put forward what I have regarded as something of an aspirational budget. One of the astonishing claims that he put forward was £36,000 for flights. I know of no provision or clause or practice which says that if you enter a marriage as a regular person with a regular income you can suddenly exit it thinking that you can spend £36,000 a year on flights at your spouse's expense after only three years of marriage. It is a proposition from which I completely disassociate myself.

1 4 0 Similarly, the husband's initial claim for a meal plan, to spend £26,000 a year on a meal plan just for himself, I regard as remarkable. He said to me, "I can't even cook an omelette." Well, my answer to that is, "Learn." It is not difficult. You do not have to be a master chef to learn how to eat reasonably well. In fairness, the husband ameliorated his claim here and I am not going to descend into the details of how or why or what he should cook each day, but I do suggest to lawyers who prepare these budgets that if you put something in the schedule which is absurd, it can discolour the whole case. Of course I am not judging the whole case on the basis of this particular aspect of the schedule, but it is unhelpful I am afraid when people put their expenses forward in that kind of way. Being married to a rich person for three years does not suddenly catapult you into a right to live like that for very after the relationship has ended.

1 4 1 The husband now says he needs income in the UK of £23,300 pursuant to a varied budget, and I am not going to pick at that, it is too small an amount to make it worthwhile.

1 4 2 The husband says that he needs £28,000 for a visa in Dubai. There is some debate about that. The wife says, well, he could enter on a tourist visa and then he could get another visa later, when he gets a job. I want to eradicate any sense of debate about this. If, as he says is

his intention, he is going to go back to Dubai, as I expect that he will, then I am going to accept that that £28,000 is an acceptable expense, and I am not going to quibble over the moving costs of £10,000.

1 4 3 The husband says that he needs, while living in Dubai, a budget of £134,774 a year. He asks for that to be paid in full for six months, and then to be paid that less an income of £60,000 a year, which it is said he can earn for the next two years. I do not think that it is necessary or appropriate for a judge doing what I am doing to nitpick over the entire budget. I have given some hints as to why I think some of it is unreliable. I take into account that the cost of living in Dubai, according to everything that I have seen, is, if anything slightly less than London rather than more, but it seems to me, just looking at it globally, that the husband should be perfectly capable of managing, indeed living well, on £110,000 as his budget, and I am going to work with that figure rather than the £135,000 he has put forward.

1 4 4 So, using my figure of £110,000 means he needs £55,000 for the first six months on the same formula as put forward by Miss Bangay in the renewed figures. If I then take the same income, two years of employment where he is going to be earning £60,000, that means he is going to need his income augmenting by another £50,000 a year, which is an additional £100,000 if I allow for two years. Of course, I will hear submissions from counsel on the detail of the maths after this judgment if they take the view that there is anything that I have done wrong. I do not mean in terms of the principle, I mean in terms of the maths.

1 4 5 The huge issue here for me to determine is whether the husband should have to rent or a property purchased for him. In other words, should I require the wife, contrary to the terms of the prenuptial agreement, to purchase a properly for him? The husband puts forward a claim for a property of £1.75 million. I am not going to spend long on the argument as to whether that is a good, bad or indifferent type of property in Dubai. In my judgment, I should not require the wife to provide the funds to enable the husband to purchase a house. I am sure that it is wrong in the context of the prenuptial agreement. But even without the prenuptial agreement, I think it is extremely unlikely that, after this short childless marriage, I would have been saying that the husband could walk out, after three years or marriage or five years of cohabitation, even six if you stretch it to the widest point put forward by Miss Bangay, which I have already rejected for the reasons stated, with a property of that sort of value. I am going to delete altogether the cost of purchasing a house. I have found that that is the wrong thing to do having regard to the terms of the prenuptial agreement which I am applying, albeit varying marginally to meet short term needs. This is the same approach as was applied by the Supreme Court in *Radmacher*.

1 4 6 I now turn to look at what the husband should be spending by way of rent for, I am going to say, a period of two years in Dubai. That would cover him for the period of time before he can get a job. The formula that I have been given is 5 per cent of value as the cost of renting. If I take Miss Bangay's figure of £1.75 million and I take 5 per cent of that, it is £87,500 a year. If I double that to make it for two years, it becomes £175,000, and I am going to put that figure into my schedule. I should say here that it is not accepted by the wife that a property worth £1.75m is in any way necessary or appropriate for the husband. The figure of £1.75m comes from the husband and I recognise that I am being generous to the husband in selecting this figure.

1 4 7 I am told that the husband wants to spend £75,000 on a car which he asserts that the wife should provide for him. I am not going to get into any argument about what type of car. He says he needs an SUV for safety in Dubai. I am not going to quibble with that. I am going to put in here a figure of £40,000. It is something that, inevitably, is a bit of a compromise, but it seems to me to be entirely reasonable for me to say that he could buy a good used

good condition SUV for £40,000. I can well see there is an argument for saying that the wife should not be providing him with a car at all, but I am going to accede to the husband's view on that.

148 The husband then seeks £226,000 for unpaid legal fees. That is now about £246,000. I may or may not be asked to deal with the issue of costs later but, in regard to that claim, I am not going to allow it, at least at this stage. In my judgement, and as I have explained in detail above, the offer that the wife made of £800,000 is one that the husband should have accepted, and he would have been better off if he had than he will be now, and I have said time and again, and other judges of the division have said time and again, that costs must take centre stage in these cases. Just because you are married to someone rich does not mean that you get a blank cheque to underwrite your costs, and I am afraid that I am not going to be allowing that in my award. As I have said, this Judgment may in due course be followed by costs applications and I shall, if called upon to do so, consider them at that stage.

149 I shall just then recalculate this, and I am going to ask counsel to do the same, either now or after I have finished delivering this *ex tempore* Judgment, so that we can be sure that my mathematics is correct. I am not changing the principles, but I will hear any submissions the parties want to make on the numbers, on the maths. According to me, that comes to £453,110. I will just round that up to £455,000.

150 The husband of course already has some liquid resources in his own name, and whilst I accept that the Spanish property is inaccessible, he still has at least £300,000 in his own name, and it could be argued that he has actually got more than that when I deal with costs in the way that I have, because I have arrived at that figure because the husband has netted off his costs liability on his Form ES2. There is room here for me to be generous, and I know the husband will not accept that this is generous, but generous in the context of what I have determined is the right way of approaching this case, and generous in terms of looking at the offers that have been made by the wife already, but, doing the best that I can and erring on the side of generosity to the husband, I am going to award the husband a lump sum of £400,000, and that is the decision that I make, and that can be payable by the wife, I assume, within twenty-eight days.

151 I am grateful to all counsel and to their legal teams for the assistance and clear submissions that they have made to the court and I now invite them to draft an order giving effect to my decision, subject of course to any further applications that may follow.

CERTIFICATE

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