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Neutral Citation Number: [2024] EWHC 905 (Fam)

Case No: BV1602446

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

-

The Royal Courts of Justice
Strand
London
WC2A 2LL

Date: 19 April 2024

Before :

Mr Justice Moor

Between :

Frank Eric Hersman

Applicant

-and-

Alexandra Caroline De Verchere

Respondent

Mr Tim Amos KC (instructed by JMW Solicitors) for the **Applicant**
The Respondent did not appear and was not represented

Hearing dates: 18th and 19th April 2024

JUDGMENT

MR JUSTICE MOOR:-

1. I have been hearing cross-applications by the parties in this case for enforcement of an order made by Mostyn J as long ago as 12 June 2019. The first is an application for enforcement and an account of monies due to him, made by Mr Frank Eric Hersman (hereafter “the Husband”) against his former wife, Mrs Alexandra Caroline De Verchere (hereafter “the Wife”) dated 22 December 2022. He also applies for an injunction against her by way of application dated 15 April 2024. I have decided to give permission for that application to be made on short notice, given the circumstances of this case, as set out below. The Wife applied on 20 January 2023 for enforcement of an unpaid lump sum and appointment of an expert in relation to Capital Gains Tax. I propose to call them “the Husband” and “the Wife” for the sake of convenience, even though they have been long divorced. I mean no disrespect to either by so doing.
2. The case has a very long history. Indeed, I have previously given judgment in committal proceedings which is reported under neutral citation number [2023] EWHC 3481 (Fam).
3. The dispute concerns two very substantial properties, Chalet Pearl in Courchevel, France and Villa Pearl in St Tropez, France. Villa Pearl was held in joint names. Chalet Pearl was held in the name of the Wife during the marriage, albeit subject to a very large mortgage with Barclays Bank, Monaco. The Wife suggests in her statement that the title was in her name for tax reasons. I have no idea whether that was the case or not but, if it was, the case provides yet another very salutary lesson of the foolishness of doing so.
4. A final financial remedy order was made by Mostyn J as long ago as 12 June 2019. Both parties had excellent representation, with leading counsel on both sides. There was a three day hearing. A recital to the order declared that the Husband “*is the sole beneficial owner of Chalet Pearl and Villa Pearl as from the date of this order*”. He was to discharge the mortgage instalments on the properties, but I am clear that this was on the basis that he would be receiving the rental income from both residences. He was then to pay to the Wife a lump sum of £709,707 by 1 December 2019, less any sums removed by the Wife from a Banque de Savoie Oyster account and not used solely for the benefit of SARL Oyster Properties. The Wife was to transfer both Chalet Pearl and Villa Pearl to the Husband forthwith, which meant immediately. The Husband was to release her from any liability she had under the two mortgages with Barclays Bank as soon as possible and by no later than 1 December 2019. If he was not able to secure her release, the properties were to be sold but he would receive the entire net proceeds of sale.
5. Chalet Pearl is a very high end skiing chalet that is rented out for vast sums to very high net worth individuals. The rentals were contracted via a company known as SARL Oyster Properties. The Wife had undertaken to Mostyn J to transfer her shares in that company, amounting to 99% of the shares, to the Husband. She did so on 30 July 2019, but she then entirely negated the

transfer by cancelling her contract with SARL, such that, thereafter, rentals would be conducted directly with her, entirely in breach of the order of Mostyn J.

6. I accept entirely that Covid-19 followed some nine months after this order was made but, for reasons that are completely unclear, no attempt was made by either party to enforce the order until 22 December 2022 when the Husband applied for enforcement and for an account of all rental monies received by the Wife since the 2019 order had been made. He filed a statement also dated 22 December 2022 making it clear that he sought possession of Chalet Pearl and an account of the rental money the Wife had received from the property since 2020. He said that, because the Wife had taken all the rental money, he could not pay the mortgage. Chalet Pearl had cost €21 million in 2007 and was subject to a mortgage on purchase of (€17,150,000). He added that, for the year ending 30 June 2018, the rental income from both Chalet Pearl and Villa Pearl was €1,994,776 of which Chalet Pearl contributed €1,276,818. He made the point that high-net worth individuals were prepared to pay €117,000 for a week in January 2023; €420,000 for the period 19 December 2022 to 2 January 2023; and €300,000 for a further two weeks in January 2023.
7. On 20 January 2023, the Wife made a cross-application for enforcement of the allegedly unpaid lump sum, as well as for an expert to assess Capital Gains Tax payable on the transfer of the property.
8. The case was listed before me on 23 January 2023. Both parties were represented. I refused the Husband's application that I should make an immediate order giving him vacant possession of Chalet Pearl or that I should order a transfer of the property and surrender of the keys/access codes that day. I considered that the Wife should have a chance to state her case. The Wife was, however, to notify the Husband once per month of the rental income she had received. Any net rental income, after deducting the running costs of the property and the mortgage payments, was to be paid into an escrow account. I directed that she provide a full account of the rental income she had received.
9. The Wife, who had solicitors on the record as acting for her at the time, filed a detailed statement, dated 15 February 2023, setting out her case. She said that the Husband had consistently failed to re-finance the mortgages to enable her to be released from them. She said that the combined mortgages on the two properties were approximately €24 million. She said she obtained possession of the property in September 2021 but did not receive any rental income prior to December 2021. She added that she believed Chalet Pearl could be rented out for €1.3 million per annum, if it was fully occupied during the entire skiing season, but she made the point that the costs of running it were substantial, saying that staff social security alone is €35,000 a season. She had received rent of €1,970,999, since December 2021 but had expenses of (€1,047,393), making a profit of €923,606. She accepted that she had not paid anything towards the mortgage. She then set out significant amounts of expenditure that she said she had incurred in other areas as a result of the divorce. She paid £20,313 towards the winding up of a company called Churchill Capital

International Limited and £82,576, most of which was legal costs, relating to a property in London that was also transferred to the Husband. She said she had incurred significant legal costs in France to the tune of around €198,000. She was out of pocket from the liquidation of SARL Oyster to the tune of at least €450,000. She said it suited the Husband for the Chalet to remain in her name until now. She accused the Husband of keeping €950,000 of deposits for Spring 2020 rentals that were cancelled due to Covid. The company was now in liquidation and owed €1.2 million, of which she had agreed to pay the sum of €450,000. She then details various payments she had made relating to the parties' children. She said she had sought to implement the English court order.

10. The matter was heard by me on 24 February 2023. The Wife was both present and represented. Her counsel told me, on instructions from the Wife, that she had received more than €500,000 in rent for Chalet Pearl since 23 January 2023 but she had paid no money into the escrow account as there had been no net income after deducting the running costs. She had paid no money towards the mortgage. She said there were no rentals booked for March 2023. After I had given judgment, her lawyers said that this was incorrect and she had let Chalet Pearl from 27 February to 6 March 2023. She agreed that she would transfer both Chalet Pearl which was in her sole name and Villa Pearl, which was in the joint names of the parties, to the Husband promptly upon him procuring her release from the mortgages secured on the properties. The Husband was to keep her informed of all developments promptly. I then ordered a transfer of the properties to the Husband forthwith on the Wife being released from the mortgages. I directed that the Wife give vacant possession of the property from 7 March 2023. She was to surrender all keys and access codes to the properties; provide all documentation as to rentals to enable him to take over the management of the property; and transfer any deposits to his nominated bank account. On that basis, he was to pay the mortgage and outgoings. I gave her some security for her claims against him by prohibiting him from selling or charging the London property, now in his name. I directed that she was to provide a statement of the expenses she had incurred in relation to the running of the property since October 2021 by 10 March 2023.
11. In my judgment, I said that it was absolutely clear that Chalet Pearl was to be transferred from the Wife to the Husband pursuant to the order of Mostyn J and, in consequence, she should give him vacant possession immediately. I was doubtful as to the Wife's contention that there had been no net income since the January 2023 order but I had not heard oral evidence so I was unable to make a finding to that effect.
12. The Wife did not comply with my order. She did not give vacant possession. She did not surrender the keys or the access codes. She did not deliver up the documentation. She did not transfer the deposits. She did seek permission to appeal to the Court of Appeal but, on 7 July 2023, Moylan LJ refused permission to appeal on the grounds that there was no real prospect of success in the appeal. It was clear, however, from the fact that she tried to appeal, that the Wife was fully aware of the order that I had made and the obligations

which it had imposed upon her. Moylan LJ confirmed that I had power to make an order for vacant possession as the Wife had no beneficial interest in the property pursuant to the order of Mostyn J.

13. The Wife then dis-instructed her solicitors in August 2023. On 12 September 2023, her then solicitors sent a notice of change to the court and gave her email address as (redacted).
14. On 8 September 2023, the Husband filed a further statement in support of his application. He made the valid point that the Wife had not filed a statement explaining how she had incurred expenses of €777,208 on Chalet Pearl between since October 2021 and February 2023, notwithstanding my order that she do so. She had still not delivered up possession. She had continued to let the property and keep the rent. She had said she was paying the mortgage but had not done so. There were mortgage arrears. Including penalties and interest, these were, at that point, in the sum of €2,502,334. He complained that there were periods when the Wife had chosen not to rent the Chalet but she had, instead, used it herself, such as at Christmas 2022 when she could have earned €500,000. He did not accept that she had only received €1,989,999. He made the point that she had been using a false name, Chalet Makalu, to rent out the property. He informed the court that the skiing season is from 8 December to 30 April. As the property can usually rent for between €85,000 to €100,000 per week, it should rent for a total of €2,320,000 per season. Instead, he calculated that there had been 175 days without tenants. He said he had achieved 100% occupancy when he was in charge, whereas, he said, she achieved 39%. He then said that he had a rental agreement in place to let the Chalet for €775,000 from 16 December 2023 to 6 January 2024. He said that, since the order of Mostyn J, the total income should have been €5,130,000. The expenses disclosed were muddled and, in part, redacted. He added that he would have expected total running costs over a two year period to be €352,000. He had paid the mortgage until 30 June 2021. He rejected all the Wife's claims for reimbursement to her.
15. On 3 October 2023, the Husband obtained an indicative offer from the First Abu Dhabi Bank of €23.1 million to refinance the property on the Husband obtaining vacant possession, ownership and the rental stream. On 11 October 2023, Theis J made an order that the Wife could be served with applications, statements, notices of hearing and all subsequent divorce or financial pleadings on the Wife to three email addresses, including (redacted).
16. The Husband applied to commit the Wife to prison for breach of my February 2023 order. I made directions on 19 October 2023. I was satisfied that the Wife had notice of the hearing. The Husband had, earlier, applied for an order that, because the Wife was in breach of my earlier orders, she should not be entitled to participate further in the proceedings. Very sensibly, he did not request that I make such an order. I would not have done so if he had asked. It follows that the Wife has had a full opportunity to place statements and evidence before me as to her case, but she has not done so. I directed that the committal application should be heard on 30 November 2023. I warned her that, if she did not attend, the court was likely to proceed in her absence. I

made it clear to her that she was not obliged to file any evidence in relation to the committal application, although she could do so if she so wished.

17. The Husband filed a further statement on 27 November 2023, confirming that all the alleged breaches of my February 2023 order remained ongoing. He said he had lost a rental booking at Christmas 2023 in the sum of €775,000. He did not know if the Wife had contracted to rent out the property. He did not believe she would attend the hearing even though she had notice.
18. It was, indeed, clear that the Wife did have notice of the hearing as she sent me a statement in response on the morning of 30 November 2023. She said that she gave her sincerest apologies that she would not be in court that day, referring to alleged limited English language skills. First, her document proved that her English language skills were excellent. Second, the notice of proceedings sent to her made it clear that she could have both a free lawyer and a free interpreter if she so wished. She referred to a hearing in France the following day as a reason for not attending before me, but she had not requested to attend by video-link, which I would, of course, have granted. She also responded to a Position Statement that had been filed by the Husband's leading counsel, Mr Tim Amos KC. She said that she could not transfer title to a property that is mortgaged and that the Husband had to repay the loan first. The difficulty, of course, is that he can only repay the loan simultaneously with the property being transferred to him and remortgaged at that point. She said she "repossessed" the Chalet to sell it, not to run it. The difficulty with that is that she has not sold it; she has rented it out. She then said that she would make herself available to sign the deeds of transfer of the properties with a Notary before 31 December 2023 as soon as the Husband had proved that he had the necessary funds.
19. I heard the committal application in the Wife's absence on the afternoon of 30 November 2023. I found that the Wife was in contempt of my order of 24 February 2023 in a number of respects, including failure to give up vacant possession; failure to deliver up the keys and access codes; failure to deliver up the documentation; and failure to transfer the deposits to the Husband. I decided that only an immediate prison sentence would suffice as punishment and to secure compliance with my earlier order. I sentenced the Wife to three months in prison, of which she would serve half. I directed that she pay the Husband's costs, with a payment of £30,000 on account by 14 December 2023. The Wife has not come to this country since my order. She has not therefore served the prison sentence. She has not paid the costs ordered to be paid by 14 December 2023 or at all.
20. I listed the cross-applications relating to the order of Mostyn J dated 12 June 2019 before me to commence on 18 April 2024 with a time estimate of two days. In the run up to the hearing, the Husband applied, on 15 April 2024, for a permanent injunction to prohibit the Wife from denigrating him or any of his properties, including Chalet Pearl. I accept that the Wife has not had much notice of this application but it is a straightforward matter. The Wife could easily have replied to it orally if she had attended this hearing before me.

21. The Husband filed a final statement in support of his applications, which is dated 5 April 2024. He says that the Wife has changed the name of the chalet again and is now renting it out at Courchevel Chalet. He confirmed that First Abu Dhabi Bank is willing to lend him €23.1 million to refinance the mortgages. He exhibited the offer letter, which is valid until 31 October 2024. He seeks compensation for loss of €1 million of rentals for the next ski season, 2024/2025, presumably on the assumption that he will still not have obtained possession by then. He complains about losing a rental at Christmas 2023/24 in the sum of €775,000. He increases the figures he says he lost for 2022/2023 from €2.4 million to €3.07 million and to €3.3 million for 2023/24. He relies on the fact that Courchevel is situated 1850 metres above sea level, and therefore, virtually guaranteed snow, unlike lower lying areas. He adds that the Chalet can be rented out for 18 weeks per annum. He therefore calculates the total rent lost at €8.78 million. He accepts that the running costs would have increased from €352,000 per annum to €528,000. He refers to mortgage arrears and penalties now amounting to €3,943,303, although this appears to include “enforcement costs” of €1,017,705, as, elsewhere, the figure is given as being €2,893,361. He argues that the Wife is responsible for the penalties and interest on penalties. He makes the same point in relation to Villa Pearl, saying the arrears on the mortgage are €1,026,338 with additional fees on the redemption statement of €311,288. He then talks about contents removed from Chalet Pearl, including a painting that cost \$56,000 and missing chattels of £50,000. He then claimed the costs of a web-designer of £18,277. He claims costs he has incurred in France of €831,360, which he says are largely irrecoverable, even if he wins the litigation.
22. I have to say that I did not find all this at all impressive. It certainly appeared to me that he was just adding in any possible expense he could think of to increase the overall total to an enormous level, namely £14,942,426. Indeed, he has to accept that he is on the title for Villa Pearl so he has not had the same difficulties there, but he claims that the Wife had been denigrating him in such a way that potential renters have been put off, such that he was only able to rent the property for €150,000 in the summer 2023 and that he has no bookings for summer 2024, when he would usually have bookings of €1 million. His costs of the English proceedings are £256,609.

The relevant law

23. In relation to disputed issues of fact, the burden of proof is on the party who seeks to prove the fact. The standard of proof is the balance of probabilities. In other words, is it more likely than not to have happened. The seriousness of an allegation makes no difference to the standard of proof to be applied in determining the truth of the allegation. The inherent probabilities are simply something to be taken into account, where relevant, in deciding where the truth lies.
24. The Wife has not attended before me and she is not represented. I am quite satisfied that this is entirely deliberate. Two points arise. First, I make it absolutely clear that I must, and will, treat her entirely fairly in accordance with the law. I must assess all the points made by the Husband and deal with

them exactly as I would have done if the Wife had been present and represented. I must not, and will not, award him a penny more than he is entitled to.

25. The second point, however, is that I do not have the benefit of any up to date evidence from the Wife. Mr Amos KC, who again appears on behalf of the Husband, has not had the chance to cross-examine her as to her earlier statement or what has happened since then. I have already made it clear that this is deliberate on her part. She could easily have attended by video link and I am clear that she has the resources to be represented if she wished to instruct a lawyer. In these circumstances, I am entitled to draw adverse inferences against her, but this does not mean I can draw any inference I like. An inference must be properly drawn. As Moylan LJ said in Moher v Moher [2019] EWCA Civ 1482:-

"88. When undertaking this task the court will, obviously, be entitled to draw such adverse inferences as are justified having regard to the nature and extent of the party's failure to engage properly with the proceedings. However, this does not require the court to engage in a disproportionate enquiry. Nor, as Lord Sumption said, should the court "engage in pure speculation". As Otton LJ said in Baker v Baker, inferences must be "properly drawn and reasonable". This was reiterated by Lady Hale in Prest v Petrodel, at [85]: "... the court is entitled to draw such inferences as can properly be drawn from all the available material, including what has been disclosed, judicial experience of what is likely to be being concealed and the inherent probabilities, in deciding what the facts are."

26. There is then the question of my jurisdiction to make the orders sought by the Husband. I am quite satisfied that I have jurisdiction to do so. The first point relates to the Husband's application that the Wife indemnify him against the mortgage liability incurred during the period that she has wrongly occupied Chalet Pearl. The case of CH v WH [2017] EWHC 2379 is clear authority for the proposition that a judge has power to order an indemnity. At paragraph [9], Mostyn J says:-

"The Family Court has all the powers of the High Court. The High Court unquestionably has the power, as part of its equitable jurisdiction, to order an indemnity. If awarded, that represents a legal right in favour of the person so indemnified. The court can award an injunction in support of a legal right. To order someone who has been ordered to indemnify the other party in respect of a mortgage to use his or her best endeavours to keep up the payments on that mortgage is of the nature of an injunction in support of a legal right. In my opinion, this provision is squarely within the power of the High Court to order, and is therefore within the power of the Family Court."

27. He adds at paragraph [11] that the President of the Family Division has seen and approved the judgment. The fact that I have the power to order an

indemnity does not, of course, mean that I must exercise it. I will decide later whether to do so or not.

28. The second point in relation to jurisdiction is the power of the court to make orders “working out and enforcing” earlier financial remedy orders. Again, I have no doubt whatsoever that the court has such jurisdiction. It would be a very surprising and unjust omission if such a power did not exist. It would be a cheats charter and encourage non-compliance or obstruction with legitimate court orders. Fortunately, the Court of Appeal has confirmed that the jurisdiction exists to enable a judge to do so, where the order remains “executory”; in other words, it has not, as yet, been complied with. In the case of Bezeliasky v Bezeliaskya [2016] EWCA 76, the Court of Appeal dismissed an appeal from me, when I had done just that. McFarlane LJ said, at paragraph [37]:-

“It is plain to me that Moor J was entirely correct in holding that the authority of Thwaite v Thwaite [1982] Fam 1 to the effect that ‘an executory order can be varied in the way that (counsel) invites me to do’ was entirely sound and the appellant’s submission that the judge was wrong in his interpretation of this authority is completely unsustainable.”

The evidence of the Husband

29. Mr Amos KC rightly called the Husband to give oral evidence on oath to me. I accept entirely that, because the Wife was absent, I did not hear him cross-examined. I did ask a few questions myself, but I recognise that this is no substitute for proper forensic testing by an experienced advocate. The point, however, is that the Wife deliberately decided not to attend and, thus, she deprived me of the ability to hear the Husband’s responses to legitimate questions. I will just have to do the best I can.
30. The Husband told me that he is in a cleft stick in France, as he has not been able to apply for possession until he owns the property, but he cannot own the property until he has vacant possession. This is a very unfortunate situation, which I hope the French Court will be able to resolve, now that the order of Mostyn J has been registered in France. He then told me that the problem is that people do not want to rent from him unless they are sure he can comply. This is a very fair point. When asked by me, he accepted that the total rent for the year ending June 2018 for Chalet Pearl was €1.2 million. He said that the expenses were approximately €250,000 for that year, excluding the mortgage.. He made the fair points that there had been significant inflation since then and that his property has the advantage of being so high in the Alps that there is a guarantee of snow, which increased the price yet further. He said that, if it is raining at the bottom of the mountain, it will still be snowing in Courchevel. He confirmed that the original mortgages on the properties with Barclays were €17,150,000 for Chalet Pearl and €5,076,000 for Villa Pearl. The amounts outstanding today are €21,371,817 for Chalet Pearl and €6,337,141 for Villa Pearl. He made the point that the only payment off the mortgage on Chalet Pearl since 2019 was a sum of €1,349,329 taken from a deposit he had made

with Barclays when the mortgage was originally taken out. He did say that Barclays had failed to obtain possession of the property in France at first instance, as the judge found that Barclays had, in some way, failed in their legal duty to explain some of the terms of the mortgage to the parties. He added that Barclays are appealing this order. He was quite unable to tell me what would happen if Barclays failed in the appeal, but I find it impossible to believe that they will not be able to enforce their borrowing in some way in the future. In normal circumstances, a deal would almost certainly be done, but that is not a possibility here at present, due to the complete intransigence of the Wife.

31. He then told me that he thought the Wife had taken possession of Chalet Pearl in February or March 2021, rather than 30 September 2021, which is when she says she obtained possession. It does not matter, as I am clear that the property could not have been rented out prior to either date, due to the Covid-19 pandemic. He then dealt with the injunction he seeks. He said that the Wife and her boyfriend had been denigrating his ownership of the two properties by saying she was in charge and that it was all hers. He made the point that, if I make an injunction and give him permission to disclose the order, he will finally be able to show that she is incorrect. He then gave some evidence about how he intended to enforce any order that I may make in France. I do not consider it is necessary or helpful for me to set that out in this open judgment.

My findings

32. I will deal first with the financial claim made by the Husband against the Wife, essentially for compensation for the losses caused to him by her breaches of English Court orders. I have already found, to the criminal standard of proof, that the Wife is in breach of my order dated 24 February 2023. It follows that I accept that the Husband is entitled to compensation for any losses incurred as a result. One question I must answer is whether he is entitled to compensation for any losses incurred before that date.
33. The Husband seeks an order that the Wife pays him £14,942,426 made up of the following sums in euros:-

(a)	Achievable Rent for the last three seasons	€8,782,540
(b)	Less expenses (€528,000), tax etc	(€903,997)
(c)	Lost rent for 2024/2025	€1,000,000
(d)	Villa Pearl lost rent	€3,000,000
(e)	Chalet Pearl mortgage interest/penalties	€3,943,303
(f)	Villa Pearl mortgage interest/penalties	<u>€1,337,627</u>
	Total	€17,159,473

34. He converts this to sterling at €1.17 to the pound, namely £14,666,216. He then adds legal fees, incurred in both England and France, of £967,640 and website fees of £18,277, but deducts the lump sum he owes the Wife of £709,707, making the total £14,942,426. I said to Mr Amos KC during the

course of submissions that I did consider that his client was “climbing Mount Everest” if he genuinely expected such an amount.

35. I will deal first with the achievable rent over the last three seasons. I am satisfied that the Husband is entitled to seek sums for each of the three seasons, 2021/2022, 2022/2023, and 2023/2024, even though he had not launched his enforcement litigation until December 2022. The order of Mostyn J was clear that Chalet Pearl was his. The Wife deliberately cancelled the contract with Oyster Properties, having transferred the shares to him, so that she did not have to pay the rent to Oyster Properties. The fact that he had become the owner of Oyster Properties makes it absolutely clear that he was entitled to the rent. I am reinforced in this conclusion by the fact that the Wife did not pay the mortgage. If she genuinely thought she was entitled to the property, there would be no possible reason for her not paying the mortgage. She was just taking advantage of the fact that the property remained in her sole name, to enable her to take the rental income, whilst not accounting to the Husband for it and not paying the mortgage instalments.
36. I do not accept, however, that I should perform some complicated retrospective calculation as to how much rent she should have received during this period. I am going to take the figures that she herself provided in her statement dated 15 February 2023. It is fair to do this as she was not facing enforcement action from the Husband until December 2022. In other words, if this is unfair to the Husband, he has only himself to blame because he did not institute proceedings earlier. She says she received rent of €1,970,999 during this period. I have no reason to doubt that figure. She has produced invoices. The figures seem cogent and reliable. She says the expenses were (€1,047,393), giving a net profit of €923,606. These expenses are considerably higher than those given to me by the Husband in oral evidence for the 2018 year, namely €250,000 per annum. Again, however, I propose to accept her figures. I do so for the same reasons as before, particularly that the Husband launched his litigation so late. I also accept that there may have been extra expenses of getting the property ready for renting after Covid-19.
37. The income figure, however, only goes up until 27 February 2023. She had at least one rental thereafter, namely the rental in early March 2023 that she did not tell the court about in February 2023. The Husband tells me that the season continues until 30 April. I am going to do the best I can and assume she received further rentals of €750,000 from 27 February 2023 to the end of the season. In this regard, I propose to increase slightly the Husband’s figure for expenses from 25% to 33%. I therefore consider a profit element of €500,000 to be fair. The Wife did not make any payments into the escrow account, when there must have been profit, particularly as she was not paying the mortgage. If I have overstated the income, or understated the expenses, she has only herself to blame.
38. I now turn to the season 2023/2024. In relation to this season, the Wife is on very weak ground indeed, as she was fundamentally in breach of my order throughout that season. I accept the Husband’s evidence that the Chalet has become far more desirable given the lack of snow elsewhere. I further accept

that he had a customer willing to pay €775,000 over the Christmas period. I cannot accept, however, that he would have generated total rentals of €3.3 million. The figure is completely out of kilter with the 2017/2018 figure. I take the view that inflation and the position of the chalet would have doubled the income figure from 2018 to approximately €2.5 million. The Husband told me that the expenses would have been in the order of €528,000 but I am again going to take 33%. The expenses would, therefore, have been €833,000 and the net profit to €1,666,670. Again, if this is unfair to the Wife, she has only herself to blame.

39. The next claim is for lost rent of €1,000,000 for 2024/2025. I cannot allow this claim. I have absolutely no idea when the Husband will finally obtain possession of the property. I hope he will be able to do so before the next ski season. If so, he will be able to rent it out himself. It follows that I consider it would be quite wrong to ascribe any loss at this point as I would be plucking a figure out of the air with no evidence to support it and no knowledge of what will actually occur.
40. The Husband then seeks losses in relation to Villa Pearl. He has never done so explicitly before. He only did so in his statement dated 5 April 2024, some two weeks before this hearing. Even if the Wife had been participating, it would have been unreasonable to expect her to deal with such a significant claim so close to the final hearing. There would have been very little opportunity to obtain evidence. The claim is refused.
41. I then turn to the question of the mortgages. The first point to make is that, if the Husband receives the net profits as a result of my order, it is up to him to pay the mortgage instalments. There cannot be double counting. I accept, however, that any penalties and late payment surcharges have been caused by the Wife not paying the mortgage or accounting to him for the rental income. A second difficulty is that I do not know if Barclays will be able to enforce these amounts in any event. I have decided that the “late payment surcharges” in relation to Chalet Pearl are the responsibility of the Wife from the date of my order dated 24 February 2023, but allowing her just over one further month to comply with my order, namely until 31 March 2023. As she did not comply, the surcharges thereafter are her responsibility. Again, the delay in launching proceedings means that it would be unfair to lay any earlier surcharges on the Wife. I calculate that the surcharges after 1 April 2023 are as follows:-

(a)	31 March to 30 June 2023	€128,272
(b)	30 June to 30 September 2023	€129,682
(c)	30 September to 31 December 2023	€129,682
(d)	31 December 2023 to 14 March 2024	<u>€104,309</u>
	Total	€491,945

42. I cannot place blame on the Wife for the unpaid mortgage renewal fees or the unpaid property valuation fees, as I consider it is likely they would have been incurred in any event. There is then a 5% enforcement costs, referred to, on

the schedule, as “order fees from 14 March 2024”. I have no idea if this will be payable, particularly given that Barclays have lost the first round of the litigation in France. I am of the view that, if the Husband now obtains possession of the property, he will be able to negotiate the removal of this charge. He suggested as much to me in his oral evidence. I do not, therefore, allow it against the Wife.

43. Moreover, in relation to the sum I have allowed of €491,945, this sum is awarded solely on the basis that the Husband undertakes to me that he will only use this sum to pay Barclays and that, if the surcharges are not payable, he will return the money to the Wife.
44. The claim in relation to the Villa Pearl mortgage fails for exactly the same reason as the claim for lost rent failed in relation to that property. This case has been about Chalet Pearl, not Villa Pearl and I am not prepared to broaden the scope of the enquiry at this late stage.
45. The claim for legal fees has no merit. Costs in this jurisdiction will be covered by my costs orders. Indeed, I have already made a costs order in relation to the committal proceedings. It is highly likely that I will do so again in relation to this application, following the handing down of this judgment. In the same way, I must extend comity to the French legal system. It is a matter of French law and practice. It is not a matter for me. Equally, I do not allow the claim for the web-site fees.
46. Overall, I conclude that the Wife owes the Husband the following sums:-

(a)	Profit until end February 2023	€923,606
(b)	Profit March/April 2023	€500,000
(c)	Profit 2023/2024 ski season	€1,666,670
(d)	Mortgage surcharges	<u>€491,945</u>
	Total	€3,582,221

47. At the exchange rate of €1.17 to the pound, this amounts to very approximately £3,062,000.
48. The Wife is entitled to a lump sum of £709,707 to offset against this figure. She also claims various other offsets in her statement dated 15 February 2023. I reject her argument that the Husband should pay the costs she incurred associated with the winding up of Churchill Capital International Ltd. In the same way, I reject her claim in relation to the costs of the London property. There is nothing in the order of Mostyn J to justify any of these costs being the responsibility of the Husband. Her claim for French legal costs fails for two reasons. First, I have denied the Husband his French legal costs, so it is impossible to see why I should make him pay hers. Second, I am clear that she is in the wrong in France, so it would be quite wrong for me to expect the Husband to pay her costs. Her claim in relation to SARL Oyster also fails. She was wrong to terminate the contract with SARL Oyster. In relation to the English position, the company belonged to the Husband after the transfer of

shares. It was therefore his responsibility to deal with any creditors of the company, subject, of course, to issues of limited liability. If the position is different in France, it is for the French courts to determine liability, not me. Any costs incurred in relation to the children is a matter for child maintenance claims, not the application I have been hearing. Finally, there was some suggestion that the Wife wished to make a CGT claim in relation to tax due by her on the transfer of Chalet Pearl to the Husband. She has never advanced that claim. She has provided no evidence. She has not attended to argue the point. Indeed, she has not transferred the property. I make no order in her favour in that regard.

49. It follows that the amount owing by the Wife to the Husband is £3,062,000 less £709,707. As I have been rounding the figures up and down, I find that the Wife owes the Husband £2,353,000. His liability to pay the lump sum pursuant to the order of Mostyn J is declared satisfied in full. It follows that the Wife's application dated 20 January 2023 is dismissed.
50. Finally, I turn to the question of the injunction. I have found the Wife to be in flagrant breach of my earlier order. She continues to rent out Chalet Pearl when she has absolutely no right to do so. She can only do so by representing to the prospective renters that she is the owner and that the Husband is not. I accept his evidence in this regard. I make the injunction as sought to include the naming of her boyfriend, who I am satisfied has been involved in these matters. She can have liberty to apply to vary or discharge, which covers any point she may have in relation to short notice.
51. Mr Amos KC produced a draft order. He will have to make various amendments arising out of this judgment but I accept the basic thrust of the order as drafted. In particular, I give permission to the Husband to show the order to anyone in connection with questions as to the ownership of the properties. I am entirely satisfied that draft recital 15 is appropriate. The Wife has wrongfully retained profits from Chalet Pearl, but the reference to Villa Pearl should be removed. She has also failed properly to account for such profits to the Husband and pay them to him. I am satisfied that the applications were both duly served on the Wife. I agree that the Husband should be released from his undertaking not to disclose financial information, as given to Mostyn J. I agree that the wording of draft paragraph [20] is appropriate, namely that my order is to be by way of account, rather than setting aside the order of Mostyn J. I make it clear that the order of Mostyn continues to have full force and effect, other than the lump sum due by the Husband to the Wife, which I have declared satisfied in full.
52. The only substantive change to the draft order is that I am not prepared to agree draft paragraph [21]. I do not consider an indemnity from the Wife to the Husband appropriate in relation to the mortgage. I have dealt with the amount owing to him in this judgment. I give liberty to serve the order on Barclays and First Abu Dhabi Bank and to anyone reasonably needing to see evidence of ownership of Chalet Pearl/Villa Pearl as well as to the French Court. I will deal with costs in due course.

53. I made an injunction against the Husband in relation to his London property in my order dated 24 February 2023. I discharge that injunction today. It is now inappropriate, given that I have dismissed the Wife's application.
54. Finally, I am satisfied that this judgment is entirely fair to both parties. Nevertheless, I accept that both parties do have the right to seek permission to appeal my order, provided they do so within 21 days of today.
55. In relation to the costs, it is absolutely clear to me that the Wife must pay the Husband's costs. I am also satisfied that these costs should be assessed on the indemnity basis. The sole reason for this litigation has been the wilful contempt of court by the Wife and, in particular, her failure to comply with court orders and, in particular my order dated 24 February 2023. I direct a payment on account of £80,000 on or before 16 May 2024.
56. Given that my judgment in the committal is a public document, I am clear that this judgment should also be made public. It can be published without any anonymisation. There are no reporting restrictions in place.

Mr Justice Moor
19 April 2024