

Neutral Citation No: [2023] NIFam 20

Ref: ROO12329

*Judgment: approved by the court for handing down
(subject to editorial corrections)**

ICOS No: 07/75906/03

Delivered: 28/11/2023

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

Between:

DOMINIC GERARD BRANNIGAN

Petitioner

and

QI BRANNIGAN

Respondent

**Mrs J Pauley (instructed by Stewarts Russell Solicitors) for the Petitioner
Ms Melanie Rice (instructed by the Official Solicitor as amicus curiae)**

ROONEY J

Introduction

[1] The petitioner husband and the respondent wife married on 19 May 2005. They separated on 17 July 2006. The respondent wife is a Chinese National. The duration of the marriage was 14 months, although during that period the parties lived separately for the periods in which the respondent wife returned to China, namely from July to November 2005 and from April to May 2006. There were no children of the marriage.

[2] On 7 October 2008, the petitioner husband obtained a decree of judicial separation. A decree nisi was issued on 27 March 2009. The decree absolute was issued on 16 May 2012.

[3] The petitioner husband instigated ancillary relief proceedings on 31 October 2008. A cross application was issued on behalf of the respondent wife on 8 May 2009. The proceedings were the subject of repeated delays, several due to the respondent wife's mental health. She was a detained patient for a period of months during 2010.

[4] The ancillary relief proceedings were listed before Master Bell for Financial Dispute Resolution (“FDR”) in May 2011. No settlement was reached. The court was advised that the respondent wife had refused to undergo a psychiatric assessment and, as a result, the Official Solicitor was unable to make an application for interim controllership.

[5] The proceedings were listed before Master Redpath for hearing on 14 June 2011. The respondent wife sought to dismiss her legal team and to proceed as a litigant in person. Upon application by the petitioner husband, the Master made an order for interim controllership. The respondent wife indicated that she intended to contest the order made and the matter was further adjourned.

[6] The proceedings were relisted for hearing before Master Redpath on 8 December 2011. Revised and updated core issues were filed on behalf of the petitioner husband by Mrs Pauley BL and on behalf of the respondent wife by Ms McGreenera KC and Ms McCullagh BL.

[7] Contained within the respondent wife’s core issues dated 2 December 2011, the following is stated:

“(c) WIFE’S MENTAL HEALTH DIFFICULTIES

There have been difficulties with the wife’s engagement with her legal representatives and the Official Solicitor. Efforts have been made to arrange a further psychiatric assessment of the wife and these are ongoing at date of writing. The wife has consistently made it clear to her legal representatives and to the court that she considers that she does not have a mental illness. The Official Solicitor has not been optimistic about the wife’s cooperation regarding a further and updated psychiatric assessment at this time. Such lack of optimism has been shown to have been well-founded. ... This aspect of the case has presented and continues to present considerable difficulties for the wife’s legal representatives and the Official Solicitor’s carriage of the case on behalf of the wife. The Official Solicitor has instructed that she wishes this point to appear on the record and in the core issues.”

[8] At the date of the hearing, it was understood that the respondent wife had gone to China for a period of convalescence and was due to return in February 2012. A draft order was made by Master Redpath dated 8 December 2011 and he invited further submissions by the parties prior to making the final order.

[9] The proceedings were relisted before Master Redpath on 15 February 2012. On behalf of the petitioner husband, as set out in the core issues documents, it was

argued that all of the assets had been primarily acquired prior to the marriage, that the marriage was of very short duration and that the respondent wife had made no contribution to the assets during the marriage, except to assist in choosing furnishings for the former matrimonial home.

[10] On behalf of the respondent wife, the following arguments were advanced in the core issues document, namely:

- (a) She had given up a good career in China.
- (b) She had forsaken her family in China to marry the petitioner and to move to Northern Ireland.
- (c) She could not return to China, such was the disgrace that attached to divorcees.
- (d) She continued to state clearly her intention to reside permanently in Northern Ireland.
- (e) Due to her serious mental health difficulties, she was unable to take up gainful employment in the foreseeable future.
- (f) She is extremely vulnerable and without support.
- (g) She had a housing need that must be met appropriately, particularly in view of her mental health issues.

[11] The respondent wife's legal representatives and the Official Solicitor expressed their view that the respondent wife was an extremely vulnerable person and that the concept of need for her must be interpreted generously in arriving at a fair outcome. It was also submitted that, due to the presentation of the respondent wife to both her legal representatives and to the Official Solicitor, an order of the court was required. The court was urged to take into account the above-mentioned circumstances and to approach the respondent wife's housing need in a generous manner. Notwithstanding the representations made on behalf of the respondent wife, it was accepted that it was not practical for the respondent wife to remain in the matrimonial home, particularly given her vulnerability.

[12] On 15 February 2012, after a consideration of the submissions made by the parties, Master Redpath made the following amended order:

“UPON HEARING Counsel for the Petitioner and Senior Counsel and the Official Solicitor for the Respondent, pursuant to a Summons dated 31 October 2008,

IT IS ORDERED THAT the Order of Master Redpath dated 8 December 2011 be amended as follows:

Whereas by Order dated 13 October 2010 the Official Solicitor to the Supreme Court of Judicature was appointed the Controller ad Interim for the Respondent:-

It is ordered on consent and subject to the approval of the Master (Care and Protection):-

1. The Petitioner shall pay to the Respondent within 28 days the sum of £65,000 which is to be lodged in Court pending further direction of the Court. Any sums outstanding in respect of legal costs due by the Respondent to her previous Solicitors and utilities which are the responsibility of the Respondent, shall be deducted therefrom once approved by the Master (Care and Protection)
2. Any joint policies of assurance shall be assigned to the Petitioner. In the event that the Respondent fails to execute the necessary assignment they shall be executed on her behalf by the Master (Matrimonial)
3. Any personal effects of the Respondent shall be boxed by the Official Solicitor, or such person appointed on her behalf and stored for 3 calendar months to be delivered to an address within Northern Ireland nominated by the Respondent and if the Respondent fails to nominate an address within 3 calendar months, the Official Solicitor shall dispose of the said personal effects as she deems appropriate. Her car shall be held for the same period and if not collected within 3 calendar months, the Official Solicitor shall dispose of the car as she deems appropriate.
4. Any items of furniture purchased post separation by the Respondent shall be made available to her through the Official Solicitor. All such items are to be claimed by the Respondent within 3 months of today's date.
5. The parties shall otherwise retain all assets in their own names and the Petitioner shall have sole possession of the Matrimonial Home and lands upon payment of the above sum.

6. On implementation of the above terms the respective claims of each party in respect of periodical payments, secured provision, lump sum, property adjustment, pension provision and other forms of Ancillary Relief shall stand dismissed.
7. Liberty to Apply

IT IS FURTHER ORDERED that the costs of this application shall be reserved.

AND IT IS FURTHER ORDERED that the costs of the ~~Petitioner~~ Respondent shall be taxed in accordance with the provisions of the Schedule 2 to the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981:

AND THE MASTER Certifies for Counsel for the Petitioner and Senior Counsel for the Respondent."

[13] Mrs Pauley BL, on behalf of the petitioner husband, argues that the settlement which was reached and reflected in the consent order had the specific purpose of providing suitable housing for the respondent wife due to her stated intention to remain in Northern Ireland. Mrs Pauley submits that when, as anticipated, the respondent wife would return to Northern Ireland in February 2012, the Official Solicitor, as Interim Controller, would assist her in purchasing suitable property.

[14] Enquiries made by this court reveal that, in the months and years after the order of Master Redpath dated 15 February 2012, the Official Solicitor and Meyler McGuigan, Solicitors for the respondent wife, made considerable efforts to contact not only the respondent wife but also various family members. It is significant that in a letter dated 4 December 2007 to Myler McGuigan Solicitors, the respondent wife purported to include details of her Will which was witnessed and signed. The purported Will specifically provides that any settlement from her divorce is to be given to her only niece, namely Junhan Wang, and any other belongings were to be given to her mother, Jingshu Cheng. It was stated in the letter that her niece and her mother share the same address as her brother, Cheng Wang. The address, telephone numbers and email address for Cheng Wang are detailed in the said letter.

[15] I will return to this matter later in the judgment. Suffice to say at this stage that all attempts to make contact with the said persons, namely Cheng Wang, Junhan Wang and Jingshu Cheng have been fruitless.

[16] At the request of the court, the following chronology has been provided by the Official Solicitor regarding relevant events prior to and since the date of Master Redpath's order dated 15 February 2012:

- 1 December 2011 – Official Solicitor’s Office sent a letter to Community Health Team asking about any contact with Mrs Brannigan.
- 8 December 2011 - response from Community Health Team confirming that all attempts to contact Ms Brannigan through home, outpatients, phone, GP, have been unsuccessful.
- 8 December 2011 – Meyler McGuigan solicitors (acting for Mrs Brannigan in the ancillary relief proceedings) send an email to Mrs Brannigan’s brother. A copy of this email was attached.
- 13 December 2011 – Meyler McGuigan send an mail to Mrs Brannigan.
- 13 December 2011 – the Office of the Official Solicitor send a letter to Stewarts solicitors (acting on behalf of the Husband) requesting contact details of Mrs Brannigan’s parents.
- 14 December 2011 – Stewarts’ solicitors reply that they have no details.
- 16 February 2012 – Mrs Penman from the Office of the Official Solicitor sends an email to Mrs Brannigan with a copy of Master Redpath’s order attached.
- 20 February 2012 – removal of possessions from the former matrimonial home is arranged through Mr Brannigan
- 21 March 2012 – email from the Office of the Official Solicitor to the Office of Care and Protection stating that the extent of the interim controllership expires on the 15 May 2012 and the controllership allows the Official Solicitor to dispose of the furniture. The email explains that there is a presumption of capacity in relation to the funds, so the Official Solicitor is unable to act as Full Controller (and she has no authority to do so). The email further states that there has been no contact with Mrs Brannigan since November 2011 and that email contact with Mrs Brannigan and her brother has been unsuccessful.
- 4 April 2012 – letter is sent to Mr Cheng Wang (Mrs Brannigan’s brother) from the Official Solicitor’s Office requesting that he contacts the Office of the Official Solicitor or that Mrs Brannigan contacts the Office of the Official Solicitor. Letter was returned in September 2012.
- 15 May 2012 – email exchanges between the Office of the Official Solicitor and Office of the Care of Protection confirming that if the Office of the Official Solicitor has not heard from Mrs Brannigan by 30 May 2012, the items in possession are to be sold and money to be lodged in Court funds. The Office of the Official Solicitor’s role in terms of the interim controllership expired on completion of these actions.

- 4 July 2012 - email from the Office of the Official Solicitor to Court Funds Office stating that there has been no contact from Mrs Brannigan since before the final Ancillary Relief hearing in November 2011 and requesting that Court Funds Office give consideration to investing the money rather than the money remaining in court to ensure better interest.
- 4 July 2012 - email to Master Wells (Office of Care and Protection) from Mrs Penman in the Office of the Official Solicitor informing Master Wells that the Office of the Official Solicitor still cannot trace the whereabouts of Mrs Brannigan.
- 21 August 2012 - the Office of the Official Solicitor emailed the Office of Care and Protection requesting that they provide any contact information or any address/information in respect of Mrs Brannigan. Office of Care and Protection reply they may have an address but think it is historic.
- 12 November 2012 - email to the Office of Care and Protection that Mrs Penman from the Office of the Official Solicitor has tried and been unable to locate Mrs Brannigan.
- Official Solicitor is formally discharged by Order in July 2014.
- 1 December 2014 - email from Mrs Penman to Ms Brenda Donnelly (Official Solicitor) and Dani Houston (Office manager) requesting a tracer or private investigator to trace Mrs Brannigan and to request funds invested as better interest. Request made by Ms Brenda Donnelly for Court Funds Office to follow this request up.
- 29 January 2015 - email from the Court Funds Office apologising for the delay in replying, stating that they were following leads but with no success. The Court Funds Office found that Mrs Brannigan had a driving penalty through an ICOS search. A warrant had been prepared when she failed to pay but it was unexecuted as it is recorded on the system as 'person in China.' The Court Funds Office did not know how PSNI got that information. The Court Funds Office contacted the relevant court office and the PSNI regarding the warrant but were unable to get any more information. Further searches were conducted by the Court Funds Office under similar names (Maya Brannigan, Qi Brannigan, Maya Wang, Qi Wang) but without success. There was a note on the file stating that the funds cannot be invested without a full controllership order and no controllership order can be made without incapacity being established. There is a further note in the file that the Office of Care and Protection was closing its file.

[17] Prior to February 2012, the petitioner husband had formed a new relationship with his current wife, and they had a baby in April 2011. In summer 2012, the

petitioner husband and his new family went to reside in Crimea and remained there until August 2018 when they returned to live in Northern Ireland. During this period, the petitioner husband and his partner married.

[18] On 11 November 2020, the petitioner husband contacted the Court Funds Office and discovered that the funds paid by him pursuant to the consent order dated 15 February 2012, remained on deposit and had never been claimed by the respondent wife. The reason why the petitioner husband contacted the Court Funds Office in the first place was never fully explained to this court.

[19] The petitioner husband now seeks to revisit the terms of the consent order made by Master Redpath on 8 December 2011 as amended on 15 February 2012. In essence, it is submitted that the order of Master Redpath has not been fully implemented and is therefore executory with the effect that both the original ancillary relief applications remain before the court.

Consent orders in ancillary relief

[20] Article 35A of the Matrimonial Causes (Northern Ireland) Order 1978 deals with consent orders for financial provision or property adjustment. Article 35A provides as follows:

“35A. – (1) Notwithstanding anything in the preceding provisions of this Part, on an application for a consent order for financial relief the court may, unless it has reason to think that there are other circumstances into which it ought to inquire, make an order in the terms agreed on the basis only of the prescribed information furnished with the application.

(2) Paragraph (1) applies to an application for a consent order varying or discharging an order for financial relief as it applies to an application for an order for financial relief.

(3) In this Article –

“consent order”, in relation to an application for an order, means an order in the terms applied for to which the respondent agrees;

“order for financial relief” means an order under any of Articles 25, 26, 26A or 29; and

“prescribed” means prescribed by rules of court.”

[21] It is not disputed by the petitioner husband that the order made by Master Redpath on 15 February 2012 was a consent order pursuant to Article 35A(3) of the Matrimonial Clauses (NI) Order 1978.

[22] Mrs Pauley BL, on behalf of the petitioner husband, states that there is a fundamental difference between consent orders in family cases and orders made in other types of litigation. This submission is plainly correct. In *Thwaite v Thwaite* [1982] Fam 1, Ormrod LJ stated at page 7:

“We now turn to the law. The leading case on the effect of consent orders in the matrimonial jurisdiction is the recent case of *de Lasala v de Lasala* [1980] AC 546, an appeal to the Privy Council from the Court of Appeal in Hong Kong. In giving the advice of the Judicial Committee, Lord Diplock said, at p. 560:

‘Financial arrangements that are agreed upon between the parties for the purpose of receiving the approval and being made the subject of a consent order by the court, once they have been made the subject of the court order no longer depend upon the agreement of the parties as a source from which their legal effect is derived. Their legal effect is derived from the court order; ...’

Grounds for review of a Consent Order

[23] The factors that may trigger a review of a final consent order are varied. As stated by Mumby J in *L v L* [2008] 1 FLR 26 at para [34]:

“The circumstances in which a final ancillary relief order that has been made by consent can be reviewed by the court have been surveyed by Bracewell J in *Benson v Benson (Deceased)* [1996] 1 FLR 692 and, more recently, in *S v S (Ancillary Relief: Consent Order)* [2002] EWHC 223 Fam, [2003] Fam 1, [2002] 1 FLR 992. I need not repeat the exercise. It is enough for present purposes to identify those circumstances. In the list that follows the labels are descriptive rather than definitive and should be treated as such. The situations which may trigger such review are:

- (i) if there has been fraud or mistake: *de Lasala v de Lasala*;

- (ii) if there has been material non-disclosure: *Livesey (formerly Jenkins) v Jenkins*;
- (iii) if there has been a new event since the making of the order which invalidates the basis, or fundamental assumption, upon which the order was made: *Barder v Caluori* [1988] AC 20, [1987] 2 FLR 480;
- (iv) if, and insofar as, the order contains undertakings: *Mid Suffolk District Council v Clarke* [2006] EWCA Civ 71, [2006] All ER (D) 190 (Feb);
- (v) if the terms of the order remain executory: *Thwaite v Thwaite* [1982] Fam 1, (1981) 2 FLR 280 and *Potter v Potter* [1990] 2 FLR 27."

Challenges to the Consent Order

[24] The petitioner husband's challenges to the consent order are firstly, that the consent order remains executory and secondly, based on allegations of material non-disclosure, misrepresentation or mistake. Essentially it is claimed that the respondent wife did not have a settled intention to remain in Northern Ireland. I will deal with each challenge seriatim.

Executory Order

[25] The main thrust of the petitioner husband's submission is that the order of Master Redpath remains executory on the basis that the terms of the order have not been fully implemented. In this regard, the petitioner husband relies on para 6 of the consent order which provides that the ancillary relief claim shall stand dismissed on implementation of the terms contained within paras 1-5. It is argued that the ancillary relief terms have not been implemented and the ancillary relief had not been dismissed, since the lump sum of £65,000 has never been paid to the respondent wife.

[26] In support of this argument, the petitioner husband relies upon the decision of the Court of Appeal in *Thwaite v Thwaite* [1982] Fam 1. In this case, the husband and wife had jointly purchased a house in England. In 1976, while living in Bombay, the couple separated. The wife went to live in Australia with another man, who maintained her, and she was joined by the three children of the family. The husband filed a petition for divorce in England, where a decree nisi was pronounced. On the basis of an agreement between the parties that the wife would use the house as a permanent home for the children, an order by consent was made which provided that the husband should convey his interest in the house to the wife and that the wife's applications for ancillary relief should be dismissed from the date of the

conveyance. It was also provided that the husband should make periodical payments of £51.00 per month for each child with liberty to apply to both parties. The children came to live in England briefly and were then taken back to Australia by the wife. The husband claimed that the wife had no settled intention of remaining in England and therefore he was no longer bound by the agreement. The husband applied to the court for a variation of the order. The wife responded by making an application, inter alia, for an order to enforce the transfer of the house. On appeal from the registrar, the judge set aside the consent order and substituted an order for sale and equal division. This decision was affirmed on appeal. The Court of Appeal held that the judge had jurisdiction to hear the husband's appeal against the consent order and to set it aside on the basis of the fresh evidence that the wife had no intention to make a home for herself and the children in England. As stated by Ormrod LJ at page 9:

“[The judge's] jurisdiction arose, not from the liberty to apply as he held, but from the fact that the wife's original application for ancillary relief was still before the court and awaiting adjudication. It had not been dismissed since the conveyance had never been executed, so that that part of the order of April 30, 1979, by which her application was dismissed, had never come into effect. We think that the judge correctly exercised his discretion in this respect.”

[27] It is submitted on behalf of the petitioner husband that the facts in *Thwaite* bear close resemblance to the facts in this case. Firstly, it is claimed that in this case the respondent wife had no settled intention to live in Northern Ireland. Secondly, since as alleged, the terms of the consent order had not been implemented, the application for ancillary relief was “still before the court and awaiting adjudication.”

[28] Having carefully considered the above arguments, I am not persuaded that the consent order is executory. As stated in *Duckworth, Matrimonial Property and Finance* (January 2023) E4[14], circumstances for holding consent orders to be executory are likely to be extremely rare. One recent example is the decision of the Court of Appeal in *Bezeliansky v Bezelianskaya* [2017] EWCA Civ 76. In that case, a Russian couple who had settled in England in 2004, separated in 2009. A consent order was made in 2013, whereby two properties in Monaco and Moscow were to be transferred to the wife and a Paris property was to be transferred to the husband. In the period that followed, none of the properties was transferred. The wife then became aware that in 2010, three years before the divorce, the husband had entered into a contract to sell the Moscow property to a business associate. In 2015, the wife applied to set aside parts of the consent order. Moor J acceded to an application that the order remained “executory” and made a fresh order that the Moscow property should be transferred to the husband while the Paris property should go to the wife. The husband's appeal was dismissed by the Court of Appeal.

[29] The facts of this case are unique and easily distinguishable from the factual matrices in *Thwaite* and *Bezeliansky*. In this case, I am not persuaded that the circumstances justify a finding that the consent order is executory and must be set aside. No evidence was produced to this court which persuaded me that the terms contained in paras 1-5 of the consent order had not been implemented. The primary focus of the petitioner's challenge was in relation to para 1 of the consent order. It was plain to this court that the motivating factor behind the petitioner husband's application to set aside the consent order was not that the £65,000 had been lodged in court for the benefit of the respondent wife, as per the terms of the order, but rather that she had to date failed to collect the money. The fact that some years have elapsed without the respondent wife requesting payment of the monies lodged in the Court Funds Office does not, in my judgement, make the consent order executory.

[30] Having carefully considered the background circumstances and the core issues presented to Master Redpath, in my judgement, the terms contained within para 1 of the consent order had been implemented. On 13 October 2010, the Official Solicitor to the Court of Judicature was appointed as Controller ad Interim for the respondent wife. At the hearing before Master Redpath, the respondent wife was represented by senior and junior counsel and her own solicitors. The Official Solicitor remained in her capacity as Controller. The respondent wife's mental health issues were plainly identified to the Master in the said core issues. The respondent wife's legal team in submissions requested the Master to consider a lump sum payment of £90,000 to reflect the needs of the wife. It was stated that this figure would enable the wife to acquire a property, furnish the property to an adequate standard and to meet such other incidental expenditure as would be required to enable the wife to settle into such property. Despite these representations, the Master gave an indication that the petitioner husband should pay the respondent wife a sum of £65,000. This was agreed by the parties and the petitioner husband lodged this sum pending further direction of the court. At no stage was a medical report obtained to reflect any suggestion that the respondent wife did not have capacity to manage her financial affairs. Accordingly, the Office and Care and Protection did not have any authority in this matter. On 20 February 2012, the Office of Care and Protection made an order reflecting the terms contained within the consent order dated 15 February 2012 and the sum of £65,000 was placed in court funds. On 1 July 2014, an order was made by the Master of the Office of Care and Protection that it was no longer necessary to have the Official Solicitor appointed as Controller ad Interim.

[31] Subject to the petitioner's further arguments considered below, the fact that the sum of £65,000 paid by the petitioner husband on foot of the consent order remains in court funds plus interest and has not been collected by the respondent wife cannot justify setting aside the consent order on the basis that it remains executory. I am not satisfied that the circumstances have so radically changed from the original consent order which would justify the court starting from scratch and making a fresh order.

Material non-disclosure, misrepresentation and mistake

[32] The core issues document dated 2 December 2011 compiled by senior and junior counsel on behalf of the respondent wife, clearly state that the wife's intention was to reside permanently in Northern Ireland. It was further stated that the respondent wife was alone in Northern Ireland and had very little in the way of support systems in this jurisdiction. Due to the wife's continuing mental health difficulties which were likely to prevent or limit her ability to work, and the fact that she was an extremely vulnerable person, the wife's housing need had to be met appropriately.

[33] The petitioner husband argues that the respondent wife's settled intention to remain in Northern Ireland, together with her apparent lack of earning capacity, vulnerability and lack of support is relevant to the court's consideration of the relevant criteria under Article 27 of the Matrimonial Causes (NI) Order 1978.

[34] The petitioner husband submits that by reference to the events which occurred after the consent order, it was obvious that the wife had no settled intention to remain in Northern Ireland. Accordingly, it is submitted that due to the alleged misrepresentation and/or non-disclosure by the wife or alternatively by a mistake in the presentation of the case, the consent order should be set aside.

[35] I reject the petitioner husband's claims based on non-disclosure, mistake and misrepresentation. There is simply no evidence to substantiate these grounds of challenge. This is not a case where after the consent order was made, the wife collected the £65,000 and returned immediately to China. This is not a case where the wife collected the sum of money and immediately dissipated same. There is no evidence of non-disclosure, whether intentional or unintentional. There is no evidence that the facts as presented at the time of the consent order were not the true facts. There is no evidence that the respondent wife intentionally deceived the court or her legal representatives or deliberately misled them regarding her true intentions. Rather, after the consent order was made, the sum of £65,000 was lodged in court and at present remains unclaimed in court funds collecting interest. Pursuant to the order, further direction of the court was carried out as detailed above. Despite extensive investigations ordered by the court and carried out by the Official Solicitor, the wife's solicitors and, indeed, the husband's solicitors, the respondent wife has not been traced.

[36] Significantly, with regard to the petitioner husband's application to set aside the consent order, the court must take into consideration the fact that the respondent wife is not represented in these proceedings to challenge any claim based on non-disclosure, mistake and misrepresentation. If the court was to make a decision on the alleged grounds in the absence of the respondent wife and/or her legal representatives, the potential for substantial prejudice and unfairness would be clear and obvious.

[37] The said funds plus interest remain in the court for the benefit of the respondent wife. This court cannot rule out the possibility that at some stage in the future the respondent wife will apply to the court to have the sum plus interest released. There also remains a possibility that the respondent wife's estate will claim the funds. As stated above, in a letter to the wife's solicitors dated 4 December 2007, in a "purported" Will, the respondent wife indicated that any settlement from her divorce was to be paid to her only niece, Junhan Wang. Despite the extensive enquiries which have failed to locate Junhan Wang, the possibility remains that a claim will be made by the wife's estate.

[38] The petitioner husband draws the court's attention to the fact that unclaimed money held in court funds for a period of 15 years reverts to the Crown. That may be the case, but in my judgement such an eventuality is not relevant as to whether the consent order should be set aside.

[39] The fact remains that the £65,000 settlement figure has remained in court funds since February 2012. It was only when the petitioner husband made an enquiry to the Court Funds Office almost nine years later, did he discover that the funds had never been claimed by his ex-wife and remained on deposit. As stated above, it was never satisfactorily explained to this court why the petitioner husband made such an enquiry after such a period of time. It is clear that a significant period of time had expired before the respondent husband became aware that the funds had not been claimed. In my judgement, although I have separately considered the merits of the petitioner husband's application on the basis of the stated grounds, if so required, it is likely that I would have been persuaded by the argument that significant prejudice to the respondent wife would necessarily result from the extensive delay in bringing the application. The application for leave to set aside a consent order, subject to exceptional circumstances, should be made promptly.

Decision

[40] For the reasons given above, the petitioner husband's application to set aside Master Redpath's consent order dated 15 February 2012 will be dismissed.