OUTER HOUSE, COURT OF SESSION

[2021] CSOH 67

F8/20

OPINION OF LADY WISE

In the cause

HAJ

Pursuer

against

NJ

First Defender

and

SI

Second Defender

and

JI

Third Defender

Pursuer: Brabender QC, Shewan; SKO Family Law
First Defender: Cheyne; Kennedys Scotland
Second and Third Defenders: Malcolm, Advocate; DAC Beachcroft Scotland LLP

22 June 2021

Introduction

[1] This is an action of divorce at the instance of the wife, HAJ, who married the first defender, NJ, on 3 April 2015. The dispute relates both to the issue of contact between the first defender and the couple's two children and financial provision on divorce. The second

and third defenders, SI and JI, are the first defender's parents. They entered the process to assert that a large proportion of the matrimonial property held by the first defender at the relevant date was something in which they had an interest. The two children of the marriage, A and B, were born in June 2016 and October 2017 respectively. Mr and Mrs J separated on 4 October 2018 and have not lived together as husband and wife since then. It is agreed that 4 October 2018 is the "relevant date" for the purpose of identifying and quantifying their matrimonial property. I heard a proof using the Webex events platform over a period of some 9 days in relation to these disputed issues.

[2] So far as the merits of the divorce are concerned, these were effectively undisputed. On the basis of the affidavit and oral evidence led, I am satisfied that the marriage has broken down irretrievably and that there is no prospect of a reconciliation between the parties. Decree of divorce will be pronounced when the orders for financial provision detailed below are made. The parties were agreed that an order should be made providing that the two children of the marriage will continue to live with the pursuer after divorce. This opinion is divided into two parts, the first dealing with the contact dispute relating to the children and the second summarising and discussing the evidence relating to the financial provision aspects of the case.

Care arrangements for the parties' children including the issue of contact

[3] During the course of the parties' marriage, they lived in family with the first defender's parents. When they separated in October 2018 the pursuer and the children left that home and went to live with the pursuer's parents a few miles away. Since then, the first defender has exercised only supervised contact with the parties' two children. Initially, there was a period of contact at a contact centre but this ceased towards the end of 2019.

Since May 2020, the first defender has exercised supervised contact with the children at the pursuer's parents' home. The pursuer's mother supervises that contact, although the first defender is now permitted to take the children out of the house after the first hour of each four hour contact period, albeit accompanied by his mother in law. The pursuer and her mother have expressed some concerns about contact and the court has had the benefit of independent expert input from Dr Lorraine Lockhart on this issue. The dispute following the evidence was ultimately limited to when and in what circumstances contact should become unsupervised and increase in duration. The pursuer also became concerned about evidence that arose after her case was closed about where the first defender currently lives.

[4] The pursuer gave evidence and spoke to a number of affidavits that she adopted as part of her evidence. In particular in relation to contact, she had sworn an affidavit shortly prior to proof, number 122 of process. Her position in affidavit and oral evidence was that she continued to have some safety concerns if the first defender was to have unsupervised contact with the children who are still very young. There had been an incident when the first defender had failed to secure their daughter B into her car seat properly and it had taken many months of contact before the first defender understood that the children should be provided with a wholesome lunch and not with junk food. He had continued to show the children videos and pictures of his family despite this not being permitted. In essence, the pursuer considered that the first defender did not understand fully the needs of the children and was not ready to have them by himself. She expressed doubts about whether her husband was genuine in wanting to develop a relationship with them. Various passages of Dr Lockhart's recent report (number 6/172 of process) were put to the pursuer. That report had recommended that contact now take place at the first defender's home on an unsupervised basis but initially on the same pattern as the current contact periods. The

pursuer indicated that she had been reassured to some extent by the report and in particular Dr Lockhart's recommendation that any change in contact should be gradual. She felt, however, that it would be necessary for her husband's parents also to be present to help him as he would be unlikely to be able to look after the children alone. She considered that it would be better for the children if her own mother with whom they live and who is used to supervising contact could be present on a couple of occasions if the children were to start going to the first defender's home. The pursuer proposed that the current arrangements whereby the first defender has contact every second Saturday from 9.00am until 1.00pm should continue even if the supervision aspect was removed. The children were early risers and were at their best in the mornings.

[5] Under cross-examination for the first defender the pursuer disputed that she was exaggerating the safety concerns she had if her husband had the children on his own. On one occasion of contact their daughter B had walked away when she was supposed to be in the care of her father. The first defender did not seem to appreciate that she had gone. The pursuer indicated that she was terrified the two children would go for contact and she would only get one back. She disputed that her husband had been involved in child care while they were married and living together. She had returned to work after both periods of maternity leave having the children. She took them to her mother's house for child care when she returned to work because although her husband was not working he had not been able to care for the children. He had not complained about them being away at the pursuer's mother's home while she worked. The first defender and his parents had objected to her making social visits to her parents during the marriage but they always seemed content for her to take the children there for childcare. The pursuer and her parents currently live in a four bedroom property. In addition to the parties' children, the pursuer's

two younger sisters live there. When the first defender attends for contact, however, only the pursuer's mother tends to be present. The first defender and the pursuer's mother sometimes go to the park after spending the first hour in the house.

[6] Certain passages of Dr Lockhart's report were put to the pursuer who agreed that the first defender could sometimes be warm and affectionate to the children but only when he could be bothered with them. She accepted that their son A would seek and receive verbal praise from his father. Ultimately while the pursuer would wish any increase in contact to be very gradual and not take place immediately she understood that contact could not remain supervised in the longer term. Ideally she would prefer to wait until after A started school at the end of August 2021 before the children went to the first defender's home and were reintroduced to their paternal grandparents. She indicated that she would prefer both children to have contact gradually increased at the same time. In re-examination, however, the pursuer indicated that she would be content for unsupervised visits to commence before A started school. In essence she wanted to separate the increase of contact from starting school so that he did not undergo too many changes at the same time. She remains a little apprehensive about the children's reintroduction to her husband's family because she understood his sister had a strong antipathy to her.

[7] Dr Lorraine Lockhart gave evidence and spoke to her report number 6/172 of process. She is a qualified psychologist who has spent the majority of her professional life working with children and young people. She has prepared reports for the court and has given evidence previously in the Court of Session. There was no dispute about her professional expertise and ability to provide a psychological opinion about the impact on children of proposed care arrangements. She had prepared a very detailed report which listed the interviews she has undertaken and observations made. She considered it

important to take a detailed history from each parent to help explain why they approach parenting in a particular way. A's nursery teacher had no concerns about him and felt he was ready for the transition to primary school. There were no real issues about the behaviour or emotional presentation of either child. Dr Lockhart had met the children on one occasion and then observed contact in the family home of the pursuer on a second occasion. Dr Lockhart had no concerns at all about the children's safety when with their mother. There was nothing of concern in the mother-child relationship and the children have a secure attachment with the pursuer. So far as the paternal family was concerned, her report recorded (at paragraph 262) that A had asked for a memory box in relation to his paternal grandmother. Dr Lockhart thought it unlikely that the child would have conscious memories of his paternal grandmother as he had been only 2 years and 4 months when the couple separated and he left that home. However, sometimes children could have a distant memory that is embellished by information given to them afterwards.

[8] Having given a detailed account in her report of her various interviews and observations, Dr Lockhart had recommended (at paragraph 325) that the children should continue to live with their mother but have unsupervised contact once per fortnight with their father at his (and his parents') home. The witness explained in oral evidence that over the last 9 to 10 months the children have become used to seeing their father in the safe base of the home in which they live and with supervision by their maternal grandmother. A continued to have some anxiety about going to his father's home. It was important not to change location and circumstances all at once and so it would be helpful if the maternal grandmother could go to the first defender's home initially. As A's anxiety was not extreme, it would be sufficient for her to attend on two or three occasions with perhaps only once being for the full 4 hour period and then gradually dropping off so that by the fourth visit

the children could be dropped off and remain with the first defender and his family for the whole period. The purpose of the pursuer's mother being present would be to offer support and reassurance, particularly to A, so that he would enjoy the experience and to highlight when he would be coming home. Although the period of contact could be increased later, it would be best to remove supervision of contact gradually first and then extend the period of contact later.

[9] Under cross-examination for the first defender, Dr Lockhart confirmed that the reason why unsupervised contact should be built up gradually was that, particularly for A, consistency was important. There had been a lot of inconsistency in the relationship between father and son in the earlier period. Now that the child can rely on when his father will arrive and leave it was important to maintain that. Stability was an important feature of all children's lives and it had been helpful that over the last few months matters had settled down but it had taken many months to achieve that. Because A is the older child the separation and loss that inevitably followed the parties' separation will have had a bigger impact on him and so will the reintroduction to the first defender's family. The parties' daughter B was effectively starting from scratch in her relationship with her father because she had been only a year old at the time of separation. This resulted in there being less turbulence for her in the changes. Dr Lockhart had some residual concerns that the first defender was often not in tune with the children's emotional needs and she suggested that he look more carefully at what the children think and feel and not just what they do. By the time a child is 5 years old, their attachments will be completely secure and they can separate from their caregivers for 6 to 7 hours per day. That will happen to A when he starts school in August 2021. B has a more settled relationship with her father. Dr Lockhart agreed that it was important for the children to have a relationship with their paternal grandparents as

well as the pursuer's side. There was no doubt that A associates his paternal grandparents as family. It would be confusing for the children if they did not see their grandparents.

[10] Under cross-examination for the second and third defenders, Dr Lockhart reiterated that although A had raised the issue of his "other gran" with her, this was likely to be because the first defender had shown the children videos and messages and told them stories about his family. This will have given A an understanding of his father's family even if he does not have a conscious memory of them. There was nothing in Dr Lockhart's discussions with the child that would indicate he had a negative memory of the first defender's family. If on reintroduction the paternal grandparents have positive interactions with the children they will redevelop a relationship with them. In re-examination Dr Lockhart explained that it would be confusing for the children if they were not dealt with together and it would be in their best interests for the first defender to work on the fact that he is not wholly attuned to their emotional cues. His lack of empathy or compassion for the pursuer had led Dr Lockhart to think that he might have a general difficulty with insight into others' needs.

[11] The pursuer's mother, MA, gave evidence and spoke to the three affidavits she had sworn which she adopted as part of her evidence. Her most recent affidavit, number 118 of process, detailed the contact which she had supervised over the last year. MA's concerns were similar to those of the pursuer. She was not confident of the first defender's ability to look after the children by himself. She confirmed that if the court decided that there should be contact at the first defender's house she would be prepared to go there and settle the children. She had previously enjoyed a good relationship with the first defender's family although she had not seen them since before the parties' separation. However she expressed a desire to do anything she could to assist her grandchildren and accordingly would have no

difficulty attending at her son-in-law's home to facilitate a gradual move to unsupervised contact. She was not cross-examined.

[12] The pursuer's father AA also gave evidence. He is not a native English speaker and gave his evidence in a slower manner than other witnesses. He had sworn an affidavit (number 117 of process) which he adopted as his evidence. He had also provided an affidavit previously, in August 2020. It was clear that his direct involvement on the issue of contact was far less than that of his wife. He was aware of doubts about the first defender's ability to care for the children. Under cross-examination Mr AA was challenged about how he could have provided affidavits in English. He explained that although his spoken English was not particularly strong he was able to read it. He has run a convenience store in this country for many years. He confirmed that the words in the affidavit were his words which he had used on the telephone to the solicitor concerned. He was asked what drama he was referring to in paragraph 14 of his affidavit. He explained that the first defender had made a comment about his wife raising the issue of safety concerns in relation to the children. The first defender had made a comment about their family not "being nice people".

[13] ZA, one of the pursuer's sisters, also gave evidence. She had sworn an affidavit number 123 of process which she adopted as her evidence in chief. She explained that she is the third in age of the four girls, the pursuer being the eldest. She is a nursery teacher with a qualification in early education. She had observed that the children A and B became needier in their relationship with the pursuer after contact had taken place. She had advised her sister to let the children cling to her a little in such a situation to provide them with necessary emotional security. She described her sister as a very good mother. The witness

was not cross-examined. One of the pursuer's other sisters, SA, gave affidavit evidence along similar lines but was not cross-examined.

[14] The first defender gave evidence in relation to his relationship with his children and his proposals for on-going contact. His position was set out in his affidavit number 124 of process which he adopted in evidence. He said he was "fully hands on from day one" with both children and that he had changed nappies and kept first A and then B entertained. He enjoyed being a father to the two children and would read to them every day, take them to soft play and go out together as a family. He had not seen them for some months after the separation. After he conveyed to the pursuer through her sister that he was serious about a permanent separation contact ceased. After some months there was contact at the contact centre. The first defender said that he had been emotional but that the children were really happy to see him. The contact centre had not been a good environment which saddened him; the rules were strict and it was very controlled. The first defender clearly objected to the type of supervised contact that had taken place at the contact centre. Complaints had been made to him about giving the children sweets and taking photographs. His position was that the contact centre had withdrawn the service in November 2019. Since the court ordered contact to take place it has proceeded under supervision by the pursuer's mother, but supervision rendered contact a little awkward according to the first defender. He felt there had been limited places he could take the children during the recent lockdown and all of the soft play areas remained closed. His wanted contact to move on and to be able to spend time with his children unsupervised and in his own home. He said that the children were telling him excitedly that they want to go to his house. The first defender said he had spoken to Dr Lockhart and explained that he would like the children to develop a relationship with his parents again who they had not seen for 2 years. He would wish as

much contact with his children as possible but felt this could start at once a week unsupervised for half a day at a time.

[15] Under cross-examination by Miss Brabender the first defender was challenged on his failure to pay maintenance of any kind for his children between October 2018 and November 2019. He stated that he had been confused, he had not heard from the pursuer and he did not know what the procedures were for aliment. He had cooperated as soon as the Child Maintenance Service ("CMS") had contacted him. He disputed that he had not really been involved in A's care referring to such a contention as "nonsense". He described himself as "hands-on and an amazing father". He disputed that his priorities had been going out, taking cannabis and lying in bed. NJ's position was that he had been late in arriving at the contact centre only a few times and by a few minutes. A report from the contact centre number 6/19 of process was put to him, which narrated that he was 26 minutes late on one occasion, 15 minutes late on another occasion and had failed to attend on a third occasion. He stated that he had been trying sort out a puncture on the wheel of his car on that occasion and that it was ridiculous that he had to go to a contact centre to get contact with his children which he attributed solely to the fault of the pursuer. He disputed acting aggressively at the contact centre on 23 November 2019 when again he had been late, this time by 17 minutes. He had been setting the member of staff straight on what he thought she was getting wrong. The first defender did not seem to approve of the staff at the contact centre all being female and stated that he needed male staff to feed into.

[16] NJ denied that he had disobeyed the current contact order by taking his children to his house. When the 3 hour contact period had increased to 4 hours with only the first hour to be at the pursuer's home he understood that he could take the children away. He had not been aware he could not take them to his house but this confusion had then been resolved.

He disputed that he taken the children to see his parents; they had been upstairs in their bedroom and did not speak to the children. He denied that his mother had been hiding in the kitchen when the children arrived. NJ denied also that he had denigrated the pursuer and her family to the children. He said that he had listened to Dr Lockhart's evidence and understood the importance of being on time and behaving responsibly at contact. He agreed that he had not brought a change of clothes for B to contact such that when she had a toileting accident he had not been able to change her. He said that he would expect her grandmother and mother to provide these as the child lived with them. He felt that the grandmother should have been prepared for such an event.

[17] The first defender's sister NOJ gave evidence in relation to contact. She had not been present at contact at all but had been informed by her brother and her mother at the time contact was being initiated at the contact centre. The first defender had asked her whether she might be willing to act as supervisor but ultimately she was not permitted by the pursuer to be involved. Her brother had told her that the child A had used a Punjabi word for "dirty" about him and their family. The child had known a few words of Punjabi from a young age as his maternal grandmother spoke that language to him. The witness accepted that most of what she knew in relation to the issue of contact were things that her brother had told her. She had seen clothes that the first defender had bought for the children and thought that those clothes would still be at her mother and father's house if he had bought them but not taken them for the children. She considered that the children look normal and happy when with her brother. She considered that her brother would have no reason to lie about how he was getting on with the children or about any other matter such as buying clothes for them.

[18] The defender's mother SI gave evidence on this issue. She had sworn an affidavit number 116 of process which she adopted as her evidence. Her position was that her son had been a hands-on father who would change nappies and look after the children. She had been delighted to have her grandchildren living with her and her husband and she too had a close and loving relationship with them. She would help her daughter-in-law with the children in the morning and would sometimes look after them when the pursuer went out to work although she acknowledged that generally Mrs HJ would take the children to her parents' house whilst she was working. SI expressed that she missed the children very much and had seen them only once since the parties separated. It had been very difficult for her son having a restricted amount of time with his children. She felt there was absolutely no reason why he should not be able to see the children in their home which would be of considerable benefit to them. The children should be able to see their father in a normal family environment. SI expressed the view that the pursuer was punishing her and her husband by refusing to let them see the children.

[19] Under cross-examination by Miss Brabender SI disputed that her son stayed out late or liked to lie in bed saying that if he had to get up he was capable of doing so. She said that she had seen him buy clothes for his children shortly after he started going to the pursuer's house for supervised contact and that he had purchased lovely items from Matalan for them. He had not bought any since July 2020 as he said the children were never wearing the clothes he bought. She knew of the incident when B had had an accident and the first defender had not taken a change of clothes but her view also was that the pursuer's family should have known what the children needed. She agreed that she had a conversation with her son about that matter the night before she gave evidence when he had been round at her house. She disagreed also that her son had not wanted to pay child maintenance for the

children and stated that if the pursuer had communicated with them they would not be in court giving evidence.

[20] Mr JI the third defender also gave evidence in relation to the issue of the children. He had sworn an affidavit number 111 of process which he adopted as his evidence. He confirmed that when the children and the pursuer were living in his home and the parties were still together he had never heard his son shout or scream at A. He disputed also that he had ever stopped the pursuer going to see her parents. He said he had tried to work with both parties and asked them to stay calm and stay together. This was before they split up. In October or November 2018 he had held a meeting with the pursuer's father for the sake of the children but no agreement had ensued.

[21] Under cross-examination the third defender disputed that he had seen the parties' children in September 2020 at his home. He said that he was in his bed and that the first defender had brought the children to the house but had remained downstairs. He had not seen the children since shortly after the separation.

[22] The law in relation to orders for contact between parent and child is well settled. Before making any order regulating contact in terms of section 11 of the Children (Scotland) Act 1995 I would have to be satisfied first that the order is in the best interests of the children concerned having regard to the duty to regard their welfare as the paramount consideration - section 11(7)(a). Secondly, in so far as children are able to express a view regard has to be had to any views they express - section 11(7)(b). It is also necessary in a case like this to take into account whether it would be appropriate to make the order where the parties would have to cooperate with one another in relation to matters affecting the children - section 11(7D). Finally, in terms of section 11(7)(a), the court can only make an order if it would be better for the children to make an order regulating contact than not to make an

order at all. I record that there have been considerable anxieties on the part of the pursuer about whether the defender would return the children after contact and whether he might seek to have them removed from the jurisdiction. While nothing in the evidence supported that there was any immediate threat in this regard, I do not consider that the pursuer's views are irrational and I accept that she is anxious. The enforceable order I will make confirming the children's primary residence with her should give her some assurance in that matter.

[23] Contact between the first defender and the children has been a contentious issue throughout these proceedings. The pursuer has been unhappy about any increase in contact and applications to the court for such contact have been required. That said, she was clearly able to take on board the recommendations of Dr Lockhart in relation to this matter. While she expressed a desire for contact to be increased only incrementally and not immediately, her main concern ultimately was that contact should not be increased at the same time as A starts primary school in mid-August 2021. However, in submissions certain concerns were raised about the first defender's evidence in so far as it related to contact. His view that it was not his responsibility to provide food or spare clothing for the children during contact was founded upon. His early lack of cooperation at the contact centre was also raised. Finally, his mother's throw away remark that the first defender had come round to see her indicated that the first defender had not been living with his parents as stated but in a property in P Drive, Motherwell apparently owned by his sister. It was said that the location of a parent's home was significant in relation to the issue of contact. Dr Lockhart's views had been predicated upon the first defender's assertion that he continued to live with the second and third defenders. If the court did consider it was in the best interests of the children for there to be direct contact it was proposed on behalf of the pursuer that this take

place once per fortnight on a Saturday at the home of the first defender's parents on a gradually increasing basis with the pursuer's mother being present throughout the first period of such contact and for the first hour of the second and third visits. For the first defender it was suggested that while the first defender was content to accept the conclusions of Dr Lockhart's report (number 6/172 of process at paragraphs 325 and 326), he would wish all supervision to be removed and for the contact during 4 hours each fortnight to commence immediately and without restriction.

[24] Accordingly, by the conclusion of the evidence there was relatively little in dispute between the parties on the issue of contact. No doubt with the advice and guidance of those representing him, the first defender modified his instinct to seek as much contact as possible and was prepared to accept the recommendations of Dr Lockhart. Dr Lockhart's report was extremely thorough and her evidence impressive. I accept that the children are too young to express any meaningful view on the matter. It was, however noteworthy that A at least has some sense of family connection with the defender's parents, whether from direct memory or otherwise. The issues of credibility and reliability in relation to the financial aspects of this case that are central to the decision making about that are quite separate from the general ability of the first defender and his parents to have a relationship with the children. In accordance with their cultural tradition, the parties lived with the first defender's parents during their marriage, including during the whole period that the pursuer was pregnant and then caring for A and B until October 2018. While the pursuer had some complaints that the first defender was not actively involved with the children, which I accept, her mother-in-law the second defender cared for the children as part of the household. Dr Lockhart observed affection between the first defender and the children albeit that she

considered that he lacks some insight into what they needed emotionally and a certain lack of empathy.

[25] I conclude that the first defender remains a relatively inexperienced father who will require some assistance in caring for the children for short periods. It is to be hoped that in future he will be able to spend additional time with his children and be able to care for them on his own during contact. At present there are unresolved questions about his living circumstances and he has shown himself to be dependent on others when situations arise with the children, such as B's accident when he did not have a change of clothes for her. That said, I am satisfied that it is in the children's best interest to continue to maintain a relationship with their father and to have the type of non-residential unsupervised contact with them that Dr Lockhart recommends. The pursuer's proposal for a gradual diminution of the amount of time that the pursuer's mother requires to be in attendance seems sensible. I intend to specify that when contact moves, as it should, from commencing in the pursuer's home, it should take place initially at the home of the first defender's parents. The pursuer's mother should be present for the first hour of contact (which will be for a four hour period) on each of the first three occasions. Thereafter, I will make an order for contact to both children once per fortnight for 4 hours on a Saturday morning from 9.00am to 1.00pm without specification as to location. However, if the first defender intends to take them to a residential property that is not his parents' home, he will require to specify the address and to give the pursuer information about who will be present there. I trust that in time a sufficient working relationship will develop between the parties such that they will be able to liaise directly to share relevant information about the children and their activities.

Financial provision on divorce

[26] The crux of the financial dispute between the parties related to the categorisation and division of (i) the sum of £7,681,575 held by the first defender in a Bank of Scotland account and (ii) the investment of £1.5 million he had made through Lloyds, both held by him on the relevant date of 4 October 2018. The first defender and his parents contend that most of these sums, representing the balance of a lottery win, were not to be treated as matrimonial property *et separatim* even if they were to be so classified, the value should be divided unequally between the parties. The circumstances in which the first defender came to hold these sums were not in dispute and are as follows. He held a prize winning ticket in the National Lottery EuroMillions draw of 2 October 2015, some 6 months or so after the parties married. A letter from Camelot (number 6/18 of process) confirms that the total prize fund due to him was £11,065,500. Between 2 October 2015 and 4 October 2018 ("the relevant date") various transactions were made that reduced that sum and transmuted some of the winnings into items of property. While there were arguments about the classification and source of funds of some of that property, at least the following items were agreed as being held by the parties or either of them at the relevant date:

- Heritable property at "R Road" Motherwell title to which was held by the first defender alone who purchased same for the sum of £224,000 with a date of entry of 1 July 2016. It had a value of about £240,000 at the relevant date and was unburdened by any secured loan.
- Heritable property at 108 Main Street Lennoxtown Glasgow, purchased in January 2018, title to which was held in the sole name of the first defender. The value of the said property at the relevant date was about £40,000 and it was unburdened by any secured loan.

- The sum of £6,815.00 held within the first defender's Bank of Scotland account number **20.
- The balance at credit in the first defender's Bank of Scotland account number **09 in the sum of £495.00.
- The balance of £829.00 at credit of the parties' joint Bank of Scotland account number **66.
- The first defender's Audi RS5 vehicle purchased in March 2016 and with a value of £25,000.
- The pursuer's motor vehicle a BMW X5 purchased for her by the first defender in February 2016. The said vehicle had a value of £33,350 at the relevant date.
- The pursuer had two Royal Bank of Scotland accounts numbers **23 and **53 in which she held the sums of £7,888.00 and £5,768.00 respectively at the relevant date.

The remainder of the matrimonial property was in dispute either in terms of whether it should be classified as such or in relation to valuation or division of value. I will summarise the pertinent parts of the evidence in relation to the most contentious issues and how it evolved before discussing the application of the law to the facts of this case.

[27] The pursuer's position was that she remembered the day her husband won the lottery very clearly. He had been working in his parents' shop, a small convenience store. He telephoned her from work and told her that something had happened and he had to speak to her when he arrived home. When he shared the news of the lottery win his mother SI was present. The three of them sat at a table and the first defender took out the ticket and showed them the numbers that he had used to win. HAJ had been aware that her husband played the lottery and that he would take some money out of the till of the shop and put it

on a lottery ticket each week. She was concerned when he told her about the lottery win and she said to him that such an amount of money "just causes problems". There was no discussion at that time about how the ticket was bought or to whom the money belonged. The first defender's father was in Pakistan at the time of the win and the pursuer said that her husband and his mother agreed that they would keep the win a secret from him. The concern was that he would try to demand money from the first defender to send to Pakistan. The pursuer kept the win a secret from her family until as late as January 2020. A few weeks after the win representatives from Camelot came to the parties' home. They said they were there to speak with the first defender about the lottery and the money he had won. The pursuer was in no doubt that the first defender had won the lottery and that the money belonged to him and not his parents. The representatives of Camelot spoke directly to the first defender and asked only for his details and his bank account details for the funds transfer.

[28] The first defender met with a financial adviser, a Mr Morrison from the Bank of Scotland, with a view to discussing investment of the lottery win. In late 2015 Mr Morrison attended at the parties' home a few times to speak with the first defender. The pursuer was present and the first defender's mother was "hovering around". The pursuer and the first defender signed some bank paperwork to open their joint account. The first defender was at that time still apprehensive about telling anyone of the lottery win but was fairly open about it with Mr Morrison. For the first couple of years after the lottery win the first defender told the pursuer about meetings he was going to and what he was doing with the money. She told him that he should not waste the money because it would be used for the rest of his life. She sought little for herself but was content with some money being spent on enjoyable items. The first defender loved cars and she encouraged him to buy the Nissan Skyline

vehicle. The pursuer was very clear that there were no conversations during the marriage in which it was suggested that the second and third defender had some claim on the lottery winnings and that they did not belong to the first defender. All of the money was held by the first defender in his accounts after the lottery win and he spent the money freely. His parents would ask him for money from time to time but not the other way around. The pursuer recalled that she and her husband went on extravagant holidays to the Maldives and to Dubai after he won the lottery. In Dubai he had to contact Mr Morrison from Bank of Scotland to transfer money from one of his accounts to the other in order to purchase a handbag costing £1,000 for her. Throughout the period October 2015 to October 2018 the first defender would refer to the money that he won on the lottery as "my money".

[29] The parties are both Muslim and after the first defender won the lottery he had to start making reasonably large donations to charity in accordance with their faith. The pursuer recalled the founder of the charity in question, Al-Khair, visiting the first defender at home and thanking him for his donations. Thereafter the parties attended an event for the charity in London, in May 2018. The pursuer identified number 6/102(1) of process as a schedule of the donations made by the first defender to the said charity between 13 November 2013 and 30 November 2019. The total amount donated over those years was £677,676. Of that sum only about £160 had been donated before the lottery funds were received at the end of 2015. The pursuer recalled also that after the first defender won the lottery he had given his mother £500,000. The second defender had asked for this sum to buy a house for the first defender's sister NOJ. The pursuer recalled there had been a disagreement because after the first defender had paid the sum of money to his mother she asked for more. Ultimately the money was not used to purchase a house for his sister and

the first defender ended up buying that house. His mother kept the £500,000 he had given her.

[30] Under cross-examination by Mr Cheyne the pursuer agreed that her husband had taken money from the till in his parents' shop to buy the winning lottery ticket. She was sure that he had not told his father until his father returned from Pakistan a month or so after the win and was not surprised that the first defender had not told his sister about the lottery win because they were not close. The pursuer had respected her husband's desire to keep the lottery win a secret and so had not told her own family. She agreed that gambling was against the tenets of the Islamic religion and that she had been concerned that the win might bring her and her husband bad fortune. In relation to monies spent from the winnings, the pursuer confirmed that her husband would put £1,000 at a time into their joint account. The only lump sum he had given her was £5,000 which she had put into her own Royal Bank of Scotland account. It was when they had been in London for the charity event. Other money spent on her included the handbag in Dubai, her BMW jeep and a holiday in Tenerife as well as those in Dubai and the Maldives. The pursuer had asked her husband following the lottery win whether they could move out of his parents' home but the first defender refused. He had spoken to his mother who had been concerned about him leaving her home and what kind of son that would make him. HAJ had known at the time about the purchase of the property in Lennoxtown, the one in Motherwell and the investments with the Bank of Scotland. She had not been troubled about not receiving more of the winnings herself. She was still working and her husband would top up the joint account if she or the children needed anything. The first defender's parents had ceased operating their convenience store from about February or March 2016. The pursuer had no complaints about that or about the fact that the first defender had given money to his family and the Al-

Khair charity. It was in keeping with one of the five pillars of Islam that money would be given to the poor. When asked what her own plans were, the pursuer confirmed that her aim was to buy her own house and live with the children independently of her parents. She enjoys her work as a staff nurse and intends to continue working part-time after divorce.

[31] Under cross-examination by Miss Malcolm the pursuer agreed that if the first defender took money out of the till his parents would have to account for that in the books of their business. Prior to the very significant lottery win in 2015 the pursuer had known that the first defender played the lottery but he had not won anything significant and any money he won had not been shared within the family. The pursuer agreed that the second and third defenders had been in a position to stop working in the shop because the lottery money was available. She explained that in their culture the son would always look after the parents and the second and third defenders would have an expectation that their son would give them sufficient money for their needs. The pursuer agreed that the property at R Road was a new property purchased in July 2016 for NOJ, her husband and children to live in. She was aware that the second defender had been actively involved and had started the process. As SI already owned other properties and would have to pay land and buildings transaction tax ("LBTT") the first defender took title to the property instead. The pursuer agreed that she had not been involved in the discussions about the purchase of a fish and chip shop in Lennoxtown. She could not disagree with the proposition that it might have been the second defender who viewed the property, negotiated the price and agreed to buy it. The pursuer agreed under reference to a bank account statement number 6/68 of process that shortly after the sum of £11,065,500 money was paid to him the first defender had transferred out £500,000 to his mother. There were further transfers such as £12,000 in January 2016 to the third defender and £25,000 in 2017 to purchase a car for the first

defender's sister. Smaller amounts of £3,500 and £4,000 respectively had been paid to the second defender in November 2017. Then in January 2018 there were additional transfers to the second defender including a payment of £85,000 to her. The pursuer agreed that it accorded with her recollection that as and when the second and third defender asked for money from the lottery winnings it was made available to them. The £5,000 that the first defender had given to the pursuer was noted in his bank account as a loan in May 2018 but the pursuer was clear that the first defender did not describe it to her as a loan at the time.

[32] The pursuer agreed that she had not been involved in the purchase of the property in Girvan in September 2018. The parties' marriage was coming to an end at that point. She could not disagree with the suggestion that it was the second defender who negotiated and agreed the price for that property. It was put to the pursuer that the second and third defenders were the ones keen to make the charitable donation through Al-Khair but she said that the first defender had been clear to her that he had to contribute to charity for religious reasons. She had been present when he met the Imam from the charity to discuss matters. In relation to the purchase of the Nissan Skyline, an extravagant vehicle, the pursuer agreed that the second defender had been concerned about this because the first defender had already bought one car and "she did not want him to be silly with his money". She agreed that the first defender had paid various costs of a family wedding in 2017 on the basis that he was the one with money.

[33] Mr S Yusaf, a retired actuary and the CEO of the Al-Khair charity, was called to give evidence in the pursuer's case. He spoke to his affidavit number 120 of process which he adopted as his evidence. He confirmed that there were two main donations required of Muslims who have means. First there is the zakat which is the third of the five pillars of Islam and requires a contribution of 2.5% of a party's liquid assets and income. Then there

is the sadaqah which represents contributions beyond the mandatory zakat. Mr Yusaf's role so far as the first defender's charitable donations were concerned was that he had to check whether any funds being transferred to the charity were legitimate. He had been satisfied in this respect in relation to the first defender and all funds donated were recorded as coming from the first defender from his account with a major bank. The first defender had donated large amounts to the charity. Al-Khair has strict money laundering procedures and had no suspicion of the first defender or the source of his funds.

[34] Under cross-examination for the second and third defenders the witness agreed that the charity would not necessarily know on whose behalf a donation was being made or whether there was any private arrangement within the family. It was possible to record who the donation was from and what it's purpose was, for example "from Mrs A B for the benefit of all mankind" but the charity works on the basis that the pact is between the individual and the almighty and it is not their business whether anyone is making a donation on behalf of someone else. The charity simply records the individual who transfers the money.

[35] Mr S Brock, a senior motor engineer assessor gave evidence about the value of certain motor vehicles. All values other than the Nissan Skyline vehicle were ultimately the subject of formal agreement. Mr Brock had sworn an affidavit number 121 of process and had produced reports, including Numbers 6/82 and 6/175 of process, all of which he adopted in evidence. In summary he described the Nissan Skyline as a "mind blowing car", quite unique and very special. He had a particular interest in Japanese cars. On the basis of such comparative sales of such vehicles as existed and using his knowledge and expertise Mr Brock placed a value on the first defender's Nissan Skyline at about £110,000 at the relevant date. In 2019 a similar vehicle had sold in Japan for £87,965 and during the summer of 2020

two such vehicles had sold for £142,000 and £153,000 each. The first defender's vehicle, which had an extremely low mileage, would now be worth between £140,000 and £150,000. There was some discussion in cross examination by Mr Cheyne of whether the comparators used by Mr Brock were inclusive or exclusive of import tax and Mr Brock agreed that the 2020 sales price would have been about £114,000 exclusive of tax.

[36] Mrs CK, a 35 year old relationship manager with HSBC gave what turned out to be illuminating evidence. She confirmed she had been in post since January 2020 but before that had been a premier relationship officer, having been employed with HSBC for a total of 10 years. In that context she had dealings with the second defender, Mrs SI. She had not sworn an affidavit or given any formal statement but through her legal department certain information had been provided by email about her customer dealings. That email was number 6/176 of process. The email had been drafted by the legal department but Mrs CK had read it. She confirmed there were one or two errors such as the designation of the second defender but in broad terms it provided some relevant information. The bank had been very concerned about their duty of confidentiality to the second defender as a customer of the bank. Mrs CK gave evidence that on 30 January 2020 she came into contact with Mrs SI after a very large amount of money had been deposited into her bank account. She had met Mrs SI once previously to offer her a view of her accounts towards the end of 2019. The purpose of 30 January 2020 contact was that the bank's system alerts staff to large sums of money being credited from an account accessible with a debit card. This can expose clients to fraud and so the standard advice is to move such sums to a secure account. The bank's first priority is to understand where the funds are from and where they are going in an open conversation with the customer to decide what products might be more suitable

than holding large sums in a current account. The account in question of Mrs SI was numbered ***47.

[37] When asked how she became aware that the sum of money in question was subject to court proceedings Mrs CK said that the second defender told her that the money in the account was her son's money but that he was going through a messy divorce and they wanted to hide the money. SI said also that she had received a "freeze order" through the courts. She had not been specific about what account she wanted the money transferred out to, just that the intention was to transfer it again. The witness had been surprised at the information and said that if the funds were to be frozen by court order she would have to look into it and revert back to Mrs SI. The bank had not received any court order at that time. The bank itself has a power to "inhibit" accounts, an internal term used to describe the action of the bank prohibiting access to the account if funds within it are in dispute. The bank regards itself as having an obligation to protect funds in their accounts to ensure compliance with anything of which they have been made aware. On 30 January 2020 Mrs CK told Mrs SI in a phone call that she would be placing an "inhibit" on the relevant account. Some months later, on 22 October 2020, Mrs CK did see a court order which was sent to her by a branch in Glasgow in to which Mrs SI had visited and tried to withdraw money. When shown the court's interlocutor dated 23 January 2020 Mrs CK indicated that she thought that was the order she eventually saw in October.

[38] The context in which the bank was shown the court's interlocutor was that Mrs SI said that she had to pay legal fees and had been told to bring a copy of the order indicating that payment of legal fees was exempt from any prohibition on using the funds. Mrs SI told the bank that her lawyers were getting frustrated at the bank's refusal to release funds. Mrs CK indicated that she had emails of communication between her and Mrs SI in which

the details would be set out. During the course of the witness's evidence Miss Brabender sought to recover these documents on the basis that they appeared to fall within the paragraphs of a specification of documents (number 113 of process) in respect of which commission and diligence had already been granted. There was some limited opposition to that by counsel for the first defender and for the second and third defenders, largely in relation to whether the documents fell within the specific terms of the relevant calls. Ultimately I decided that the best course was to ordain the witness to produce the documents in question as being documents directly relevant to the issues for determination in the case.

[39] The witness then gave evidence to a series of emails which were lodged as number 136 of process. The communications started with emails in December 2019 between Mrs CK and the second defender in relation to the purchase of a new property from Springfield Properties. SI wanted advice on the best way to transfer the money. She indicated that the lawyer instructed in the transaction was asking for proof of funds but she did not want to tell them what she had. Accordingly Mrs CK offered to provide a letter indicating that the second defender had funds for the transaction. Then on 30 January 2020 at 0117 hours the second defender emailed asking whether anyone at HSBC could help her open up an off-shore bank account. Mrs CK responded at 08:41 that morning and indicated that the International Banking Centre could help and sought details of the desired account. The witness confirmed that this email was sent before the telephone conversation on 30 January that she had already given evidence about. In a follow-up email at 09:16 that morning the witness indicated that it could take approximately 4 weeks to open the off-shore account. The second defender's immediate response posed the question "Is it possible to transfer money from one off-shore account to another". Mrs CK had responded

to that at 09:41 and indicated that monies could be transferred anywhere but not quickly and asking whether what the client wanted was just a current account in which to hold funds. Then at 09:46 the second defender wrote that she wanted to transfer her savings to an account she had already had in Pakistan for "quickness" and then open another off-shore investment account and transfer all the funds in there. Mrs CK's response to that at 10.03 was to give some information about how to transfer funds to Pakistan from a UK account and indicated that the off-shore team in the bank would review her needs.

[40] The telephone call about which the witness had already given evidence took place sometime in the early afternoon of 30 January 2020. In light of the email communications, Mrs CK picked up the phone to discuss further what Mrs SI wanted to do. Reading back the email trail she could see now that there were obvious signs of attempted money laundering and some form of evasion behind the customer's request. What she recalled from the time was that she had wanted to discuss with the client the reason for the proposed transfers. It was in that telephone call that Mrs SI had said to Mrs CK that this was her son's money, that he was involved in a very messy divorce and he wanted potentially to hide the funds. This was consistent with the information Mrs CK had. Mrs SI had initiated a payment on 29 January 2020 for £8.7 million but it had not been allowed by the bank, whose records showed that the payment had been made but declined. The payment request had not disclosed where the money was to be transferred. There was an obligation to report for internal review any unusual activity and that was what Mrs CK had carried out on 30 January.

[41] The next chapter commenced on 27 October 2020 when the witness had been provided with a copy of the court order and Mrs SI had asked for the release of funds for court fees, legal fees and child maintenance. She had prepared a holding response on

28 October 2020 and subsequently told the client that as the court order produced appeared to relate to her son they would need details of whether there was any other court order received by the client and also information about whether the order was still in place. Then on 8 November 2020 Mrs SI had asked the witness by email what the news was with release of funds and Mrs CK again forwarded the matter to her legal department. There was then a telephone call between 9 and 13 November and Mrs CK recalled that Mrs SI said she had handed the Court of Session order into the bank. The witness told Mrs SI that she would have to deliver an invoice from the solicitor and the bank would pay him or her direct. She recalled also that Mrs SI said that the order was being lifted and Mrs CK had tried to explain what could and could not be done. On 12 November 2020 the second defender had visited the bank with her son the first defender to try to withdraw £250,000 to pay legal fees. Mrs CK had already told Mrs SI what she needed to do but followed it up with an email to ensure clarity. The legal team at HSBC said that written consent would be required from the first defender because the bank understood that the funds belonged to him albeit that ownership was being disputed. In fact Mrs CK had already been aware that the first defender had won the lottery from her dealings with Mrs SI in late 2019. She specifically recalled that on 30 January when they had a discussion about the large sum of money she had joked with Mrs SI asking whether she had also now won the lottery. It was in that context that Mrs SI told her that it was her son's money but he was going through a divorce and did not want his wife having access to it.

[42] The witness was taken through some bank account statements for the second defender's bank account ending **47. These included entries showing the sum of £500,000 being paid in from the first defender on 14 December 2015 and then the transfer in

of £8,355,488 on 29 January 2020 from a bank account **501. It was that large deposit that had left the sum of £8.746 million in Mrs SI's bank account on that date.

[43] Under cross-examination by Mr Cheyne Mrs CK confirmed that she had decided to freeze the account in question on the basis of information that Mrs SI intended to try to transfer £8.7 million out of the account against a background of that being prohibited by court order. She had referred the matter to management in the branch for assistance about what steps to take before placing the "inhibit". Having done so she called Mrs SI back and told her that she had concerns about the account being used in the way disclosed. HSBC could not allow a customer to use monies when they had been told there was a court order prohibiting transfer. Had Mrs SI produced a document indicating that there was no such prohibition, Mrs CK would have looked at that and if appropriate acted upon it. She did not hear from Mrs SI between 30 January and October 2020 and so there had been no trigger to review or alter the "inhibit" placed on the account. The witness confirmed that she still believed she took the right step at the time in January 2020 because the customer had said in terms that she wanted to transfer money in the face of a court order prohibiting that. Mrs CK recalled saying to Mrs SI that funds were always traceable and that there were concerns because there was a court order but that if it turned out there was no order prohibiting the transfer things could be cleared up quickly. When she saw the court order in October 2020, Mrs CK assumed it was the one that Mrs SI had referred to in January because the order was dated January 2020. When asked whether she had made any note of these conversations, Mrs CK indicated that she had done so at the time of the conversation in January 2020.

[44] The witness confirmed that she had not prepared a money laundering report at the time of the January 2020 events. The bank's practice was to complete an unusual activity

report and not inform the customer that was being done. She had not known that it was Mrs SI's son's money until the phone call of 30 January but it mattered not because she would not allow the transfer out of the money until the issue of the court order had been clarified. Her concern was not who had a claim to the money but whether there was a court order prohibiting its use. The witness was challenged about whether in fact there was a contemporaneous note in existence about the events of 30 January and responded that she had made a note or memo on Mrs SI's account and that she was sure it could have been produced had she been asked for it.

[45] Under cross-examination by Miss Malcolm, the witness disputed that Mrs SI had not used the word "hiding" on 30 January 2020. She specifically recalled the second defender saying that she was trying to hide the money from her son's wife. Mrs CK agreed that the transfer of £8.7 million into the account on 11 December 2019 seemed to be an internal transfer from another account in the second defender's name. She was clear that the telephone conversation on 30 January was triggered by the transfer of £8.7 million to account ending **42 and the requests made in Mrs SI's emails of 30 January. During an overnight adjournment in the witness's cross-examination by Miss Malcolm she produced another document lodged as number 137 of process in response to the challenge that she had not made a note on the account. She confirmed that the document was a note she had made at the time of her discussion with Mrs SI on 30 January 2020. It was a brief overview of why the decision was taken to "inhibit" the bank account. It was there to ensure that anyone in the bank was aware of the situation.

[46] In re-examination the witness confirmed that she had completed the note on the account at 15: 11 on 30 January 2020 indicating why the account had been frozen. Under a heading "additional comments" the witness had written in that note ;-

> "Customer has advised she is holding funds for her son, who is going through a messy divorce. She has received in the post a summons to freeze to arrest the money in the accounts. Customer has tried to withdraw these funds. Inhibit stands until confirmation received confirming funds free to be used".

The witness had also completed, under a heading "purpose of the account" that the account was "to hold cash for son". This is what Mrs SI had advised her at the time. When asked why the words "hiding the funds from her daughter-in-law" were not inserted in the contemporaneous note, Mrs CK said that there was only so much she could put in such a note she was already one line over the maximum. However she clearly remembered Mrs SI talking of hiding the money because the conversation on 30 January was not one that she would easily forget, as conversations of that nature do not happen daily.

[47] Mr I Morrison, a private banking manager with the Bank of Scotland was also called in the pursuer's case without any affidavit having been provided. He has 33 years' employment with the bank. In November 2015 he was appointed as private banking manager for the first defender. He had also been introduced to the pursuer as the parties had a joint account at one time. Mr Morrison was referred to number 6/159 of process and the customer notes he made for the first defender. On 25 November 2015 those notes opened with the following entry:

> "Customer has indicated he has won £11 million approximately on lottery. Monies expected from Camelot (Lottery UK) to be received into reward current account on or around 30 November 2015. Monies then to be split into the two access saver accounts and held there until customer makes further arrangements".

Mr Morrison confirmed that he had discussed the options regarding accounts and the first defender had made an informed choice about how to proceed. The process at the time was that a "wealth referral" was made between the client and Mr Morrison and a telephone conversation had taken place to find out more. Only the first defender and Mr Morrison had been on that call. The bank had been alerted to the large credit that was to come into

the account and identity checks had been carried out on both the first defender and the pursuer. Mr Morrison confirmed the various account transactions that were carried out to reflect the destination of the lottery win.

[48] The witness had several meetings with the first defender including on 25 November, 2 December and 7 December all 2015. He had completed a summary document with information at those meetings (number 6/157 of process). He recalled meeting with the pursuer and that she was present on 2 and 7 December 2015. The couple lived at the same property as the first defender's parents. The second defender made a point of introducing herself to him; the third defender might not have been present at the first meeting.

Mr Morrison was clear that he was referring to the first defender when he had noted that the client had won the EuroMillions lottery in the sum of £11,065,500. No one had suggested that it was not the first defender who had won the money. He had seen evidence of the winning ticket and had noted that on his document together with the necessary money laundering documentation. He recalled the first defender personally showing him the winning ticket. It was important from the bank's perspective that the first defender was identified as the correct person. He had been an existing customer but the pursuer was a new customer of the bank. The couple had opened a joint premier current account after the 7 December 2015 meeting. Mr Morrison had then filled in a premier investment account application (6/156 of process) in which he had noted information given by the first defender to him including that he earned income of £300 per week from his employment as a shop manager. Mr Morrison recalled that the first defender wanted flexibility because the monies had just been received and he wanted to hold the winnings as savings meantime with the best interest rate. He had given his email address for communication with Mr Morrison. In the application for the parties' joint account (6/157 of process) some further details of the

parties' work and remuneration had been included. The pursuer had some savings from her income as a nurse and the witness had noted that their earned income would continue to go through their individual accounts. The form had been signed on 7 December 2015 at their home address.

[49] There had been other meetings with the first defender. On at least three or four occasions Mr Morrison had visited the customer at his home address. To the witness's knowledge the first defender had not opened any other joint accounts with anyone other than his wife. At all meetings it was the first defender who was making the decisions and there was no indication that anyone else present was making decisions about his money. He never gained the impression that the second defender was controlling decisions about the money. Mr Morrison was aware that financial advice had been given by Lloyds and an investment arranged through a financial advisor there although he had not been subsequently involved in that. His recollection was that the first defender had made such an investment in about January 2018. He was shown a document number 6/65 of process which illustrated a transfer of £1.5 million out of the first defender's account to Mayfair Financial Planning through Lloyds. This was the Lloyds investment he had referred to. He was also shown number 6/68 of process which illustrated that investment being encashed on 23 September 2019 and the monies being paid into the first defender's account.

[50] In relation to the significant withdrawals being made from the first defender's bank accounts in 2019, Mr Morrison did recall one conversation he had had with the first defender who said he was not comfortable with his money sitting with Lloyds and that he was going to move his money to HSBC. The impression given was that the money was being moved because of the financial strength of that organisation and its global footprint. That said, the first defender remained a key client of the Bank of Scotland, notwithstanding the transfer

out of £5.995 million to HSBC on 29 August 2019. Mr Morrison had not dealt with that request but the narrative on the account gave the beneficiaries as "Mr and Mrs J". Similarly on 12 September 2019 the sum of £1,218,778 was removed from the first defender's Bank of Scotland account to HSBC to the same recipients. On 26 September 2019 the sum of £1.547 million was transferred to HSBC with the beneficiary being Mrs SI. Mr Morrison knew from a conversation with the first defender that the money was going to his mother but he did not know why that was to happen.

[51] Mr Morrison was not cross-examined by Mr Cheyne. Under cross-examination by Miss Malcolm the witness agreed that the current account set up in the names of the pursuer and the first defender was anticipated as being for limited transactions and not for general use. There were insurance benefits accompanying the setting up on that account including worldwide travel insurance, mobile phone protection and breakdown cover. The couple each had their own bank accounts for their salaries and for payment of bills. The joint account was to be funded as and when required from whatever source. The bulk of the money from the lottery win was put into the savings account in the name of the first defender and was a transactional account. Mr Morrison agreed that the pursuer may have been "in and out" of the meetings on 2 and & December 2015. The second defender had been in the home although again not present throughout meetings. She would come in and say hello and pass pleasantries to Mr Morrison. He had not been asked for any investment advice at the meetings with the first defender and it was not his role to provide that.

[52] The first defender gave evidence and had sworn an affidavit number 124 of process which he adopted as part of his evidence-in-chief. His position was that he had played the lottery almost every week and would purchase a ticket if there was a quiet time in the shop. His number selection ticket was kept under one of the tills to keep it safe. His father would

also play the lottery now and again too. The first defender had a practice of analysing the last numbers which came out and had his own methods and theories to pick the numbers. He would analyse patterns of small or high numbers and purchase five to ten lines on a ticket each week. He would take coins from the general till and pay them into the separate National Lottery till for the ticket. His parents knew that he was playing the lottery by using money from the cash till. Prior to winning the sum of £11,065,500 in October 2015 the first defender had won small amounts before, perhaps up to £200 or so. His evidence was that he and his parents and his sister had split any money higher than £10 between them.

[53] NJ's evidence in his affidavit was that in October 2015 "I won the sum of £11,065,500 … from the National Lottery". However he stated that because the money for the ticket came from the family business he considered the winnings to be family money. He explained that he and his parents had always operated as a tight family unit and money would be shared. It was their tradition and culture that they would do so. He told his mother and his wife at the same time that he had won the lottery. He described them as both in shock. He recalled that his wife was very apprehensive about it all because as a Muslim he should not have been gambling, which is forbidden and regarded as a sin in Islam. The pursuer had told him that she was not sure whether the win was going to be a positive thing. Initially she did not want anything to do with the lottery money. His mother had asked him if he was going to claim the money or not and he said he was. His father was away on holiday in Pakistan at the time and he decided not to tell him until he returned home. Sometime after the visit by a representative of Camelot that organisation was satisfied that the ticket was legitimate and that they would pay out to him. The money was paid into his bank account. There were family discussions following the win and it was decided that the first defender's parents would retire. The second defender wanted to invest

some money in properties and the third defender wanted to make sure that money was given to charity and that he could enjoy his retirement. It was agreed that the money would be kept in the first defender's name to ensure that there was no inheritance tax burden. NJ's evidence was that he and his parents agreed that he would transfer money to them whenever they needed it or wanted it. He emphasised the trust, loyalty and respect between him and his parents. He never told his wife that she was entitled to any money and he did not think that she wanted any.

[54] A number of transactions were carried out in the 3 years or so following the lottery win. The sum of £1.5 million was invested with the Bank of Scotland through Lloyds. The second defender asked her son to transfer £500,000 to her so that she could pay off certain debts and mortgages and the first defender acceded to that request. About £160,000 was used by the second defender to finance the purchase of properties with her sister, the first defender's aunt. A property for the first defender's own sister in Motherwell was purchased. This was to have been effected solely by the second defender but to avoid LBTT title was taken in the name of the first defender. Properties at Lennoxtown and in Girvan were subsequently purchased, the second of these being shortly after the relevant date.

[55] The first defender stated that after he separated from the pursuer he was in a difficult place mentally and that he had taken the marriage breakdown badly. His was confused and upset and suffering from depression. He was prescribed antidepressants by his GP. Then he stated "ultimately my mum and dad asked me to pay the money to them. I was always of the view that the money belonged to the whole family. My mum and dad were also concerned about what I was spending. " In oral evidence he said that his parents felt that he had not been in an appropriate place mentally to be fully responsible for the monies. He had been spending to help his depression and had purchased three cars. He accepted that in

August and September 2019 he had made several very large transfers of money totalling an excess of £8 million to his parents' bank accounts. When asked why he did that he said that he was requested to make those transfers and also felt it was the best thing for him to do as he felt he was not stable or healthy enough to be looking after the family's money. He thought that his parents did have some sort of claim over the money because the "stake money" was taken from the business they owned. He reiterated that he always understood the money to belong to the family unit. The first defender has always lived with his parents and worked in the family business, certainly for the last 15 years.

[56] Under cross-examination by Miss Malcolm the first defender confirmed that when he had stated in his affidavit evidence that he had never thought through properly what would happen if "we" won the lottery, he was referring to his family, namely his mother and father. He said they had always operated as a tight unit. It had been his mother's idea to invest in properties such as the one in Motherwell and although the Lennoxtown property was owned by him she had the idea to acquire that through a property auctions website. She had made the inquiries about the business and thought it was a good investment. The property had a tenant, a Ms L Smith and her husband and the rent had been paid into the first defender's bank account. However, the first defender had not submitted any tax returns for the period 2018/19 or 2019/20. He thought that his mother dealt with all income tax declarations in respect of the Lennoxtown property. Initially he had looked after the Lennoxtown business but that had changed because of his mental and emotional difficulties. He decided to transfer the administration of the business to his mother so that she could look after it. He thought that was a few months after it was purchased. He been content to continue paying bills for the property. So far as the property in Girvan was concerned this was another property his mother had found online, it was a commercial property and the

title was held by him, his mother and father. On the donations to the Al-Khair charity the first defender's position was that he was making those donations on his own behalf and also on behalf of his parents. He said he was perfectly happy paying money to his parents from the lottery win and had no problem with that.

[57] Various entries from the statements of his bank account number **20 were put to the first defender who confirmed various payments being made to his parents and also for the purchase of his motor vehicles. His position was that from the outset he had the mentality that it was not just his money but family money and so when money was requested he transferred it. He agreed that he had also paid for holidays taken by him and his wife with the lottery money, to Dubai, to the Maldives and to Tenerife and also for weekends away. He spent money on clothes for himself and for his wife and cars for each of them before buying the more extravagant vehicle, the Nissan Skyline. He felt free to spend the money as he liked and there were no limits put on his spending. When the family went on a trip to a wedding he paid all of the costs and had never grudged the money being spent by other family members as well as himself. All decisions about major items such as properties were taken by the family and finalised in a meeting.

[58] Under cross-examination by Miss Brabender the first defender accepted that he had applied for and secured universal credit although he received only one payment and then thought he was not in the right mind set to look for work and so decided to drop his claim. He agreed that he had paid no aliment for his children until February 2020 when he started paying at the rate of £30.50 per month for his children albeit that he missed some payments in the months that followed. When asked whether he regarded his children as his family given his position that the lottery win was family money the first defender agreed that they were, stating "that is why they are in my will". He agreed that in late 2019 he had been on a

trip with friends to Amsterdam and that in 2020 he had gone to visit his father's parents in Pakistan.

[59] The first defender said that he could not remember exactly how many wins he had prior to October 2015 but there had been nothing significant or he would have remembered. He accepted that he had told Mr Morrison of the Bank of Scotland that he earned £300 per week. That had been incorrect but he had been embarrassed to say that he did not receive wages at all from his parents and so he told Mr Morrison that he had those earnings. He was living with his parents and they took care of the bills and living costs. If he needed cash for anything he would take it from the till and make sure that he told his parents. If he needed money outside working hours he would ask his parents and they would give him cash. He had never filled in a self-assessment form for tax either before or since the lottery win. His mother took care of all paperwork with his consent. Under reference to a document from HMRC number 6/77 of process the first defender agreed that it would be correct that there were no self-assessment tax returns held for him for the years 2018/19 and 2019/20. He understood that the family accountants Khokhar McAdam were taking care of matters. When a bank statement on his mother's account, number 6/107 of process and dated 26 October 2015, was put to him that appeared to have an entry "N …'s wages" in the sum of £400 paid in by SI, he said that it made no sense to him. When the same entry and reference for each of the following four months were put to him, first he remarked that his mother might want him to receive monies in relation to one of the properties. Then he said more confidently that this must represent money coming in from one of the properties and that the error might be the word "wages" after it. Or perhaps his mother wanted to put money aside for him but that the reference was wrong. For later entries the first defender stated that although he had stopped working in the shop in January 2016 the new owners of

the business had not started working until the February and so he was still working then but thought this entry did not relate to the shop. He agreed that he received money from his mother as required.

[60] NJ agreed that prior to the lottery win his parents had given him money for a number of items including the purchase of an Audi in July 2015. When asked what he had meant in his affidavit evidence by "stake money" the first defender said that the money might be regarded as money of the business that can be used to invest more in the business although then indicated that he was confused and had used that expression to mean money that belonged to the owners of the business. He agreed that on the day he won the lottery he had also taken money from the till to buy his lunch. He disputed that he had told anyone over the phone about the win. He denied that the reason that his father had not been told about the lottery win was because he would ask for money to be sent to Pakistan. His position was that his father was home before the money was paid out. When the Camelot representative had arrived for a visit his mother was not fully involved only because she had to "mind the shop". NJ disputed that he had subsequently come up with the idea that his parents had gifted the money from the EuroMillions to him. He said that from the outset it was not just his money it had belonged to his parents too and so any request they had for money were fine with him. The agreement had been that the money would be held by him in an account in his name. His defences as adjusted down to 26 October 2020 were put to the witness (number 6/161) where an averment had been made that following discussion the first defender's parents had gifted the funds to him, an averment that was subsequently withdrawn. NJ said that it had not really been a question of gift but just a mutual family decision that he would have the funds in his name. He disputed that he had changed his story in relation to the status of the monies or that his initial story was inconsistent with his

parents' position that the second defender considered that the lottery money belonged to her and her husband. Then he said he could see that it might be regarded as a gift to him from his parents at the outset having regard to issues such as LBTT and inheritance tax. If his parents said they were gifting him the money it would not be that they did not want anything more to do with it. On the £500,000 that he had given to his mother shortly after the winnings were received, the first defender said that she requested it and he was not in a position to say no. Although the Motherwell property was subsequently purchased in his name to avoid LBTT (because his mother already owned properties) he did not ask for return of the £500,000. He disputed that he had not been happy with his mother not having used the money he had given her to buy the property. There had been difficulties with his sister in the past and his mother had wanted to make sure everything would work out and so had not considered that his sister could hold title to the property. Three years later the first defender transferred that property into the name of his parents at their request. He said it did not matter in whose name the property was held. Then he said that if he wanted to build his own property empire it was not a great idea to have property already in his name. There was no issue with the transfer and everyone was happy. The first defender disputed that he frequently refused to give money to his father when he wanted to send it to Pakistan, stating that the £12,000 he had given was not after any disagreement. He denied that he had refused to buy a car for his mum, who had never asked for one and who liked to keep a car until it was run into the ground.

[61] NJ did not accept that his wife had encouraged him to meet his charity obligations after the lottery win, saying that it was compulsory to donate the zakat annually at the time of Ramadan. He has also made additional payments of sadaqah voluntarily. He and his parents had always been charitable and he had been giving money to charity for some time

before he had even met the pursuer. When it was put to him that he had not made any charity contribution in 2016, he said that you had to have owned the money for a full year before the compulsory zakat became due. It was for that reason that he had started contributing in early 2018. He had not lied to Al-Khair about where the money came from. The family business and property business had been discussed but he had not told Mr Yusaf that he had sold a successful business. On the purchase of a BMW XS for his wife NJ described himself as "generous and kind enough to let (HAJ) have the car in her own name". He said that he had paid £56,000 for the Nissan Skyline vehicle in September 2017. It was a very special car which he had ordered some time in advance to be brought from Japan. He had to pay import costs and he had later purchased a personalised number plate for £999. When asked where the vehicle was now being kept he said it was in a safe place at his home address. He had changed the registered keeper of his vehicle so that his mother was now the registered keeper. That was about a year after the relevant date. His mother had not been pleased initially that he had bought such an expensive car but she had realised that it might be a good investment and he thought he would let his mother hold on to that investment for the time being. At first he said he had not driven the Nissan Skyline since November 2019 and then agreed that he had taken it out a few times for long drives but not often.

[62] When asked why he had encashed the £1.5 million investment with Lloyds in September 2019 and transferred the proceeds to his mother the first defender said that he had just decided to pull the money out and invest it elsewhere. He agreed that he had received £1,725 per calendar month as rental income from the Lennoxtown property between March 2018 and October 2019 and that it was paid into his bank account. In relation to the company XYZ Real Estate Limited he said this was a company that his

parents wanted to create and that he had held shares in it when it was set up in October 2018. Title to the property in Girvan was held by the company with the three defenders owning shares. NJ accepted that as at the relevant date he had over £7 million in the bank, a £1.5 million investment with Lloyds, two motor vehicles, a commercial property and had paid a deposit for another property but that in August 2019 he transferred everything out of his name and into the ownership and or control of his parents particularly his mother. He said he was not feeling capable of taking care of all of the money and after a family discussion they had come to the conclusion it was best to transfer it. He disputed that he had done so to hide the money from his wife stating that, had that been his motivation, he would have done it when she left and not waited. On the timing of the alienation of his money and property to his parents shortly after his wife's solicitors had been asking for information about his financial circumstances, he said that regardless of whether or not it was coincidental, he had made the transfers because he was not in a good place mentally. Initially he had thought his wife was happy to come to an out of court settlement but then the next thing he knew she was looking at wanting recovery of financial details and it seemed like she had changed her mind and wanted a full-blown court action. The relevant correspondence was put to the first defender (numbers 6/14, 6/12 and 6/177 of process), in which his solicitors had stated on his behalf that there was no matrimonial property. The first defender's position was that he was not sure what was going to be counted as matrimonial property and he regarded the money and property as belonging to the whole family and not just him. He said that he had told his solicitors about the transfers to his parents.

[63] NJ did not dispute that he had used a visa debit card on his mother's account after he had transferred the funds into her HSBC bank account. He agreed that there were transfers

out of his mother's account into the name of a friend of his, Mr K Majid, one example being the sum of £13,500 paid to Mr Majid on 25 October 2019. The first defender said this was a loan and that his friend said it would take time to pay back. The first defender had used the visa debit card on his mother's account also to take the trip to Amsterdam with his friends saying that his mother had given him a card so that if he was going away he would have money.

[64] When these proceedings were served on him on 24 January 2020, the first defender had asked his mother if she would pay his legal fees, all of the large sums of money being held by her by that stage. He accepted that an order had been served on him preventing him transacting with his money. In relation to the evidence of Mrs CK of HSBC, the first defender's position was that he did not know if his mother had requested to transfer the full amount of the funds to Pakistan although he recalled that his parents had talked about investing there. He did not know whether his mother had been served with a court order. He agreed that he had gone with his mother to the bank later in 2020 when she was trying to withdraw £250,000 to pay legal fees. He said he had not known of the court prohibiting his parents removing monies as he had not been in court on 16 September 2020 when that order was made.

[65] The first defender's sister, NOJ, gave evidence and had sworn an affidavit number 125 of process which she adopted. She explained that she had also worked in her parents' business at one time and that neither she nor her brother the first defender had received any wages for that. She had left the business but her brother stayed on. The family had fallen out because of NOJ's choice of husband and she was out of contact with them for a while. Then in 2016 the second defender wanted her to move back closer to them and said that she would buy a property for her. NOJ was not told about her brother's lottery win and

only found that out when she swore her affidavit in March 2021. She agreed that her mother was the person who took charge of the financial arrangements in the family. The witness had been told that title to the property she was going to live in was to be held by her brother for LBTT purposes because he did not already have property in his name. She thought that the house was some form of gift to her although she thought the title to it was still held by her brother.

[66] Under cross-examination by Miss Malcolm NOJ agreed that she had been involved in the purchase of another property during 2020. It was a four bedroomed house in Hamilton and the second defender had said to Mrs NOJ that she wanted to give her property as part of her inheritance. Mrs NOJ thought that she would start an Airbnb business there but because of the COVID-19 pandemic that became unrealistic and so the property is now to be sold. It had been purchased with cash, the second defender having transferred the sum of £320,000 from her bank account to her daughter's bank account for the purchase. NOJ had assumed that the money had come from her parents' savings. She knew that they had been buying property and renting it out for a long time. She had no reason to think there was any other source.

[67] Under cross-examination by Miss Brabender NOJ said that when she had worked in the family shop she and her brother would just take money out of the till when they needed it and mention it to their father. The expression "we worked as a family unit" in her affidavit was intended just to mean that they worked together in the business. The witness agreed that after she left the business in 2010 her father and brother had not spoken to her for 5 years. She had little contact with her mother until her maternal grandmother died after which NOJ had given birth to her first child and her mother visited. She knew not to ask her mother to much about business affairs and described her as the boss of the family. NOJ

found out about the lottery win when she was swearing her affidavit in March 2021.The solicitor had asked her a question about it and she had been unable to answer. Her mother and brother visited her separately and told her that the family had purchased a lottery ticket and had won the lottery. Mrs NOJ agreed that although she had described the Motherwell property as a gift to her, she was not sure whether the title to the house would eventually be transferred into her name.

[68] The second defender gave evidence and had sworn an affidavit number 116 of process which she adopted. In her affidavit and oral evidence her position was that although the first defender had held a ticket which won a lottery prize of £11,065,000, the ticket had been purchased using money that belonged to her and her husband. Accordingly she regarded the money as belonging to her and her husband and she said that her son knew that at all times. She and her husband had no difficulty with their son having the money credited to his bank account and there were then a number of discussions about what should happen to the money. She had been present at two or three meetings with Mr Morrison of the Bank of Scotland. Her affidavit evidence described in detail the various property purchases that had taken place between the end of 2015 and the end of 2018.

[69] When asked about the evidence that Mrs CK of HSBC had given about being told that the large sums that were the subject of "inhibit" were being held for the first defender, Mrs SI said that she thought she had told Mrs CK that the money came from her son's account but not that it belonged to him. She recollected the discussion on 30 January 2020 and agreed that the previous day she had arranged to move all of the money from HSBC but it had not been implemented and so she went to the bank and asked Mrs CK to investigate the matter. When she and Mrs CK were walking to the door there had been a conversation about how Mrs SI was not allowed to see her grandchildren. Then an hour later there was

the telephone conversation that Mrs CK had given evidence about. Mrs SI denied having said to Mrs CK that she wanted to hide the money saying that she would not need to do so as it was her money. The witness also spoke about a subsequent visit she had made to the HSBC Bank with the first defender on 12 November 2020. At that time they were trying to withdraw £250,000 to pay the legal fees for those representing the first defender and her and the third defender. She could not recall why such a large sum of money was being sought for that but it may have been to avoid going back to HSBC for any future payments required for legal fees.

[70] On being shown the court's interlocutor of 16 September 2020 prohibiting her from intromitting, disposing or otherwise transacting with money and property, Mrs SI said she did not remember seeing it. Then she said that she did understand that she could transfer money and property back to the first defender but not to anyone or anywhere else. She stated that she was not aware of the court order when she visited the bank on 12 November 2020. On being shown the court's interlocutor of 23 January 2020 containing the original interim interdict against alienation of funds by the defender or anyone on his behalf, Mrs SI said that she had not seen that document before. She said that she knew that there was an "inhibit" on her HSBC account and that it came from the court but her lawyer had told her she was allowed access to the account for payment of legal fees. She accepted that one of the emails from Mrs CK to her in the bundle number 136 of process referred to a document that she had handed in to the branch in October 2020.

[71] Mrs SI agreed that the rental income from the Lennoxtown property had been paid into her son's bank account between January 2018 and August 2019. Under reference to number 7/7 and 7/8 of process she confirmed that she and her husband were to be responsible for the tax on the rental income and that a Mr Rahman, an accountant within the

firm of Khokhar McAdam had prepared these schedules illustrating the calculations. She accepted that the schedules for the tax year ended April 2018 made no reference to the Lennoxtown property but that the schedules for the years to April 2019 and 2020 included its rental income, albeit that in the first of those years it might have been slightly understated. The witness's position was that the rent being paid into her son's bank account did not make it his money and that she considered the rental income for Lennoxtown to belong to her and her husband, so she was now declaring it in her tax returns. When asked how her son could have spent money on holidays and cars after the lottery win if it was not his money, Mrs SI said that he had a passion for cars and as the money was there she saw no reason not to let him do that. The Nissan Skyline vehicle had been a surprise and she thought that he was wasting more money in buying that but subsequently realised that it was a good investment.

[72] Under cross-examination by Mr Cheyne Mrs SI said that in January 2020 her understanding was that she could do whatever she wanted with the money in the HSBC account because it was hers. She did not recall being served with court documents later in 2020. The witness reiterated that she had been physically in the bank meeting Mrs CK on 30 January 2020 and that the telephone conversation took place after that. She did remember sending an email about transferring money to Pakistan but she was not going to do anything like that because she regarded Pakistan as a corrupt country. Some items from the email chain of January 2020 between her and Mrs CK were put to the witness who appeared to have little recollection of them, other than that Mrs CK had said she would investigate and telephone her. She recalled being told that she would not be able to access the account at all because of the "inhibit". In relation to moving the money off-shore, the witness said that it had just been an idea she had but decided that it was too risky. Again

she disputed saying anything about holding money for her son. She claimed to have told Mrs CK on a previous occasion that "we have had a bit of a windfall" when referring to the lottery money.

[73] Initially the witness had said that anything delivered to the house in January 2020 had been for her son and she had not read it and that nothing had been received addressed to her. Later in her evidence she said "oh god yes there was, it was similar to what N... had". It was after she received that document that she went to the bank. She speculated that the note Mrs CK had put on her account after the 30 January call was based on an assumption on Mrs CK's part that this was what Mrs SI meant when talking about her grandchildren and the difficulties. When asked again whether she had made the statements to Mrs CK in the note number 6/176 of process she stated "I didn't say anything to her – I don't think so".

[74] The witness confirmed that she and her husband had never made any formal payments of wages to their son when he worked in the shop. He had not paid tax and national insurance. They just gave him money when he needed it for clothes or shoes and the like. She regarded the money in the till as belonging to her and her husband. Anything taken from the till whether for a sandwich or a lottery ticket was money belonging to her and her husband. She had been shocked about the lottery win and had not told her husband until he returned from Pakistan as she did not want the people in the village there knowing about it and spreading the information. She did make all the major financial decisions but that others had their own opinions on what to do. Her son had volunteered to give her the money for the property in which NOJ lives. Relations had been strained with her daughter because of NOJ's choice of marriage. No-one other than the four parties to this action were supposed to know about the lottery win. Mrs SI disputed that the various transfers of

money and property from the first defender to her represented placing assets and funds out of the reach of the pursuer. She said "it was our money and our business whoever's name it was in". So far as Lennoxtown was concerned, her son did not want the property in his name anymore and was depressed and so had transferred it. She felt her son had not coped well with the separation from his wife and was quite depressed. When asked about her son spending money on motor cars Mrs SI said "I thought he was wasting his money …. well our money rather".

[75] Under cross-examination by Miss Brabender Mrs SI said that her affidavit evidence (at paragraph 7) that the money taken from the till for the lottery ticket had not been part of the first defender's earnings had to be understood in the context that her son had no earnings and no salary. She accepted that she had paid herself some money that she narrated as being "N's wages" in the bank transfers. Under reference to the statements number 6/107 of process which illustrated payments of £400 at regular monthly intervals being credited from one of her accounts to another the witness stated "we were trying to reduce our taxes at that time – I thought it would be a good idea to do this. We weren't paying him a wage – it was just to reduce tax". Mrs SI disputed that she had held off telling her husband about the lottery win because he would ask for money to take to Pakistan saying that he always supports his family there. When the defences initially lodged on behalf of her and her husband (number 6/167 of process) were put to her stating that was the reason for keeping the information from the third defender, Mrs SI said that she had not told her lawyer that and it must be a misunderstanding. She said she had no idea where the lawyers would have got that story from. She was emphatic in stating that the position she was now giving in evidence was true. She thought her husband had returned from Pakistan some time in November 2015 and that Mr Morrison had been confused in recollecting that

he was absent on 2 December 2015. She said she would not lie about this matter asking what she would have to gain from doing so. She said that her son had always run an idea past her if he wanted to buy anything substantial. On the purchase of the Motherwell property for NOJ, Mrs SI said that at that time they were not ready to forgive her for what she had done to the family but they wanted to acquire a house so that she could live in it and they could see their grandchildren. She agreed that she had asked her son to pay for it and put it in his name and there had been no difficulty with that. She denied that her son had not been happy about that or about her husband transferring money to Pakistan. In relation to the BMW and Audi motor vehicles she said that her son "ran it by me and told me what he was doing". He had also told her about the holidays he and his wife took. Mrs SI claimed also that Mr Morrison was confused when he had said that she had only exchanged pleasantries with him and had not been part of the discussions about the money. She had been present when the representative of Lloyds came to the house in connection with that investment and that her son was wrong although not lying if he had said otherwise.

[76] Mrs SI said that the property at Girvan had been purchased online and that her son had paid the deposit of £28,700 for it on 10 September 2018 shortly before he and his wife separated. When the transaction subsequently settled title was taken in the names of all three defenders. It was then discovered that the property had been registered for VAT which she said obviously she did not wish to pay as the sum would have been £55,000. For that reason the three defenders set up the company XYZ Real Estate Limited. Each of the three initially held 10 shares in the company. Under reference to a Confirmation Statement relating to the company (number 6/171) Mrs SI agreed that the first defender had transferred his shares to her. She claimed that the transfer had been in October 2018 with the assistance

of the accountant. She could not recall how long the first defender had held the shares but she thought not for very long. The title to the Girven property was held in the personal names of all three defenders in trust for the company, but she could not explain why the first defender would hold a property in trust for a company in which he had no interest. She said it was just something that they did.

[77] On the charitable donations to Al-Khair the witness agreed that a schedule in number 6/103 of process represented contributions that she had made to charity. These were separately recorded from those made by her son. Mrs SI accepted that from about August 2019 her son had transferred all of his money and property to her including the Nissan Skyline vehicle. She disputed that this had all been done to hide assets from the pursuer. She stated that she did not know that her son had applied for and received a payment of universal credit in December 2019 but she stated that he probably thought that as the money and assets all belonged to his mum and dad and he had given it back to them he had nothing left and he could apply for benefits. Mrs SI said that the bank account into which her son had transferred the bulk of the funds in August 2019 had been opened much earlier than that but had a nil balance on it until the transfer. After the transfer in of £5.9 million he had then transferred the sum of £1.2 million to her and her husband. Various transactions including by the first defender then seemed to have taken place on the account and ultimately the sum of £8.7 million was transferred to a separate account in Mrs SI's sole name. The witness disputed that the £8.7 million had been transferred out of an account being used also by the first defender to cover her tracks in relation to the money saying that it was impossible to cover one's tracks in that respect. The witness accepted that in December 2019 in connection with the purchase of a property in Hamilton she had written an email saying that she did not want to disclose details of her savings. She

disputed that was because the money belonged to the first defender. She had asked Mrs CK at that time to write a letter explaining that she was in funds for the purchase. The property was a new build property and was for their daughter Mrs NOJ. During cross-examination by Miss Brabender Mrs SI said that she had seen papers that came to the house for her son in January 2020 and that she too had been served with papers at that time. The Certificate of Execution by the Messengers at Arms was read out to her and she agreed that she will have seen it. Her son had consulted a solicitor thereafter and she might have attended with him at the second meeting. She knew at the time that the court documents prohibited her son from using his money for anything other than legal fees and aliment although she said it was not his money anyway.

[78] It was put to Mrs SI that she had notification of a hearing being fixed in relation to the protective orders granted by the court and that it would take place on 30 January 2020. She said she had no idea about that. The attempt to transfer a sum in excess of £8.3 million out of her account on 29 January, together with two smaller transactions was, she said nothing to do with any court hearings. She was just sitting at home looking at her accounts and wanted to transfer all the money out into another account. She said she wanted to transfer it to another bank because she did not want to be with HSBC anymore. This was for personal reasons that she did not wish to share. When directed by me to elaborate, the witness said that "we had just decided we wanted to move the money to another bank – we prefer the other bank". The witness was questioned at length about the email chain between her and Mrs CK about which Mrs CK had given evidence. In essence Mrs SI's position was that she did want to take her money out of HSBC but not to take it off-shore. She said she was just being nosey about how soon she could have a new account opened and that there was no real urgency. She disputed there was any connection with this case calling in court

at 10.00am on 30 January 2020. She disputed that she would ever have wanted to send her money to Pakistan. She said she was just being stupid when she had indicated to Mrs CK that what she wanted to do was transfer the money to a savings account she had in Pakistan. On 29 January she had tried to transfer the money out to Habib Bank and the events of 30 January were her trying to discover why the transfer had not been effected. When it was put to her that there had been no physical meeting between her and Mrs CK on 30 January and that she had concocted that part of the evidence after Mrs CK had given evidence, Mrs SI said that she had definitely gone to the bank that day. She stated that Mrs CK was lying when she told the court that she had been told the transfer was to hide the money from her daughter-in-law because of her son's divorce. Mrs CK must have been making up the comments in her note number 137 of process where she recorded the reason for the restraint on the bank account. Mrs SI said that she would not have told Mrs CK this at the same time as trying to move the money out.

[79] On the events of September to November 2020 after another court order had been served on her and her husband Mrs SI agreed that she had attempted to remove money from the bank for her son's legal fees. She had erroneously referred to it as being for her own legal fees and bills when she should have referred to money to pay her son's lawyers. The email number 136 of process (27 October 2020 at 21.41) to Mrs CK was erroneous in that respect. She could not explain how Mrs CK had come into possession of a copy of the court order of 23 January 2020 and said that she had not given that document to the bank. Mrs SI accepted that the reference in her affidavit evidence (paragraph 18) to her son and daughter-in-law spending money in 2019 was erroneous given that the parties separated in 2018. She agreed however that in 2019 she and her husband had thought it would better to have complete control of the money and told their son that he had to transfer the money back to

them. She agreed that her affidavit evidence on this matter had made no mention of her son's mental health but said that he had been going through a really bad time after the separation. The witness agreed that she and her husband owned a number of properties and had done prior to the parties' separation. One of these was the convenience store that they had previously operated that they now let out. Her accountants prepared all the paperwork for her annual tax return. Her practice was to provide the paperwork in the October of any given year so that the tax returns could be prepared in time to be lodged in the January. She agreed that the paperwork for the tax year 2018/19 would have been delivered to her accountants in October 2019 for lodging in January 2020.

[80] The third defender Mr JI gave evidence. He is 62 years old and had sworn an affidavit number 111 of process. He explained that he suffers from Glaucoma and cannot read properly but that his wife Mrs SI had read it over to him and he had confirmed it was accurate. He adopted his affidavit as his evidence. In relation to the lottery win, he agreed that he had been in Pakistan at the time but had returned in early November and was told then. His son had transferred the sum of £12,000 to him after the lottery win. Mr JI said he had also subsequently received money from the lottery win to help build a graveyard for his village in Pakistan. He seemed confused about the dates and said the payments might have started in 2016 and then the subsequent one was 2017 or 18.

[81] Under cross-examination by Mr Cheyne Mr JI confirmed that his son had never been paid wages and that he had taken money from the till to buy lottery tickets. His evidence coincided with his wife's evidence that the first defender was just given money when he needed it. Mr JI was cross-examined by Miss Brabender for the pursuer. It was clear from his evidence that all important financial decisions were made by his wife, although he knew some of her reasons for certain transactions. For example he was aware that the payment of

a "wage" to the first defender over a period had been devised to reduce tax. When challenged on when he had returned from Pakistan in 2015 he said that he had checked his passport the night before he gave evidence and he had returned in early November. On the issue of the money won on the lottery, his position was consistently that the money belonged to the family. He agreed that he had not known about the purchase of certain motor vehicles or for holidays at the time and that spending money on those items was the decision of his son and the pursuer as husband and wife. He described XYZ Real Estate Limited as a family company belonging to him, his wife and his son. He said he knew nothing about the first defender transferring his shares in the company to the second defender.

[82] Mr JI was asked why the first defender had transferred over £9 million in cash and assets to his parents. He responded that the first defender had been spending too much money on "rubbish things" and so he and his wife had asked the first defender to transfer the monies to them. The "rubbish things" he referred to he explained were holidays, cars and so on. He thought that the transfer of the money and assets had been a long time before 2019. Mr JI confirmed that his wife had undertaken all dealings with HSBC. He only had a bank card for Habib Bank and not for HSBC. He recalled some papers coming through the door of the house in relation to these proceedings but as he is unable to read properly he gave any documents to his wife. He recalled that in January 2020 he and his wife were thinking of investing in a property in Islamabad and so they were looking at off-shore accounts. Mr JI has always held a bank account in Pakistan. Mr JI disputed that he and his wife were likely to transfer assets and money back to their son after these proceedings were over. He said that it was not his son's money it was family money.

[83] Miss Theresa McWilliams a 63 year old solicitor from Coatbridge gave evidence for the second and third defenders. She has been in general practice for 40 years and has acted for Mr and Mrs SI in a number of transactions. She had sworn an affidavit number 114 of process which she adopted as her evidence. One of the transactions she had been involved with was the re-mortgage and purchase of additional ground at the back of the convenience store that they operated prior to 2016. She had acted for Mrs SI and subsequently the first defender in the acquisition of the Lennoxtown property, the property in Motherwell and subsequently the property in Girvan.

[84] Under cross-examination by Mr Cheyne for the first defender Miss McWilliams confirmed that it was the second defender who introduced her son to the firm for a piece of business. She had acted for Mr NJ in connection with both the Lennoxtown property and the Girvan property. Neither he nor his parents had attended the office in connection with those transactions, everything had been conducted by email and by telephone. She did recall the first defender coming to her office on a subsequent occasion in relation to rental issues in connection with one of the properties.

[85] Under cross-examination by Miss Brabender Miss McWilliams confirmed that when the Lennoxtown property was purchased she had received articles of roup from the auction house and had contacted Mrs SI. However the articles were in the name of the first defender so she opened a file for him but as she did not know him she contacted his mother the second defender. She carried out money laundering checks for the first defender as a new client. The witness was taken through number 6/91 of process, the documentation which illustrated a payment into the firm from the first defender of £200,000 in January 2018. Miss McWilliams had completed a money laundering risk assessment file note. This recorded that he was the son of existing clients and so was a low risk. She had to ask what

the source of funds in his bank account was to ensure that they were not the product of criminal activity. On the form under the heading financial profile of client for the first defender she had written "client lottery winner". The witness's recollection was that the first defender's mother told her that the first defender was a lottery winner.

[86] In relation to the purchase of the Motherwell property the first defender had purchased this in 2016 and then subsequently transferred title of it to his parents. The instruction to do that was from the second defender. Miss McWilliams was acting for the first defender in the transaction and another firm of solicitors dealt with Mr and Mrs SI as purchasers. The witness could not recall the reason for the transfer although she had experienced of other ethnic minority families transferring properties between each other on a regular basis. In relation to the second property in Motherwell (at L Road) this had been sold at auction on 2 October 2020. The witness did not know it was being exposed for sale by auction and found out only when she received the documentation from the auctioneers. She sent the documents to Mrs SI who contacted her to advise of these proceedings. She knew that there was an order that might prohibit the sale but was not sure whether it was an interim interdict or an inhibition. Accordingly Miss McWilliams wrote to the pursuer's agents to see if agreement could be reached. She had not received any interlocutor from the client. A difficulty then arose because in the absence of agreement the sale could not proceed and the purchaser's solicitors were contending that there was a material breach of the missives (number 7/15 of process). Eventually Miss McWilliams was advised that there was agreement sanctioned by the court and that the transaction could proceed, but was never provided with any relevant interlocutor.

[87] Mr Eric Abercrombie a 63 year old solicitor in practice since 1981 also gave evidence. He had sworn an affidavit number 112 of process and adopted it as his evidence. It detailed

the property work he had carried out for the first defender in 2016. Under cross-examination by Miss Brabender the witness agreed that he was initially acting for Mrs SI in the purchase of the Motherwell property in 2016. The property was built by Taylor Wimpey who have a panel of recommended solicitors on which the witness was included. When it was clear that the first defender was to take title to the property Mr Abercrombie had completed a client risk assessment matrix in relation to him. On that form he had described the first defender as an existing client. He had done so because the first defender's mother was an existing client. The purchase price of the property had been £240,000 and the witness had inserted the word "lottery" under the source of funds part of the form. He thought that information had come from the second defender and the bank had also confirmed the position. He was shown a letter from the Bank of Scotland dated 2 June 2016 from Mr Morrison confirming that the first defender's source of wealth was as a result of a lottery win and confirmed that was the letter on which he had relied. In fact Mrs SI had also told him of a lottery win when he was completing a client risk assessment for her but she had not provided him with any evidence that she had won the lottery.

[88] The final witness was Mr Zeeshan Khokhar a qualified chartered accountant and principal in the firm of Khokhar McAdam. Mr Khokhar had sworn an affidavit number 115 of process which he adopted as his evidence. He explained that his firm acted as accountants for the second and third defenders and deal with their tax affairs. They had acted for the couple for over 12 years. Primary instructions always came from the second defender who was very much in charge of the family's business interests. The couple have run a property rental business for some years. So far as relevant to these proceedings, the firm had prepared rental schedules for the tax years April 2016 to April 2020 inclusive. These were produced as numbers 7/4-7/8 of process inclusive. All of the information from

the schedules came from Mrs SI. The accountants collated that into the schedules and split all of the income 50/50 between husband and wife and schedules had been used in the preparation of the couple's tax returns. Mr Khokhar had not been the direct contact for Mrs SI and it was his staff that dealt with them, in particular a Mr Rahman. Mr Khokhar himself tended to deal with higher net worth clients and the second and third defender were not in that category. Under reference to the rental schedules he was able to identify rental income from the shop that the couple had previously run but now rented out. The schedules indicated that there had been no change in the number and identity of properties until the year to 5 April 2019 when the Lennoxtown property was introduced as having rental income. This information had come from the client.

[89] In relation to XYZ Real Estate Limited, Mr Khokhar was aware of the VAT issue that had arisen with that property and the incorporation of the company for tax planning purposes. His staff had told him at the time about the issue of there being an option to tax and therefore VAT on the purchase that had led to a company vehicle being used. This would allow them to claim the tax back. One of his staff will have completed the paperwork for the company electronically as his firm has software integrated with Companies House. For the scheme to work the property had to be included as a fixed asset of the company and so title should be in the name of the company. If it was held by the three defenders as individuals that would have to be altered. He commented that it was always difficult to get a true picture of what was going on with this particular client (Mrs SI). The accounts relating to the company (number 7/9 of process) illustrated a director's loan balance due to Mrs SI as sole director of £307,152. That would represent the entry of the property to the company the value of which was then due back to the director.

[90] Under cross-examination by Mr Cheyne the witness agreed that he had not really dealt with the first defender at all. He does not prepare any personal tax returns for him, he is just the son of a client. While his affidavit had referred to a suggestion by his firm that it would make sense to allocate a wage from their business to NJ who was working in the business that will have been done by his staff and not Mr Khokhar personally. In relation to XYZ Real Estate Limited Mr Khokhar remembered that the client had wanted to change the shareholding but his staff had implemented that.

[91] Under cross-examination by Miss Brabender Mr Khokhar gave some information about the way in which his firm prepared VAT returns for business clients. His firm did not analyse the till receipts as the client would just give them the sales figures which were reconciled to bank deposits. Any tax payable by the partners was paid on profit not drawings. The witness understood that the partnership business that ran the shop had stopped trading and was now letting the property although he could not recall whether a non-trading return had been lodged to HMRC. He agreed that if a wage was allocated to NJ for working in the business the assumption would be that both tax and national insurance would be paid if the wages were above the relevant thresholds. Mr Khokhar could not recall whether PAYE records were submitted for the second and third defenders' business. As far as he knew it was the first defender who had won the lottery after which the second and third defenders decided to stop working. In relation to the rental schedules numbers 7/4-7/8 of process Mr Khokhar confirmed that the second defender provided only the information but not bank statements for the rent. The firm was reliant on the second defender for accuracy in relation to that. Tax returns for the second and third defenders were typically prepared in January of each year perhaps slightly earlier in relation to the previous tax year. The client would provide the information sometime between October

and January. Mr Khokhar was not familiar with the intricate detail of the rental schedules and there could be errors in them. His firm did not check the title of each property against the schedule as the fees they were paid would not cover that. Mr Khokhar carries out annual reviews of all clients' tax returns. However every client has to approve the details in the return, preferably by email before digital signatures are appended and the returns lodged.

[92] The witness confirmed that it was Mr Rahman one of his staff that had been involved in securing the certificate of incorporation of XYZ Real Estate Limited on 18 October 2018. He was aware that the initial shareholdings were held ten each as between each of the three defenders. Mrs SI was named as the individual person with significant control of the company. Confirmation statements lodged with Companies House numbers 6/170 and 6/171 were put to the witness who agreed that these illustrated that during the year ending 11 December 2019 (the date of the second form) the shareholdings in the company had changed such that the first defender now had no shares and the second defender has 20 instead of 10 shares. The transfer must have been effected sometime between October 2019 and 11 December 2019to be consistent with the forms put to the witness although he had no personal recollection of the dates and the work had been carried out by his staff. The accounts recorded that the company had one employee. The witness assumed that might be the first defender but he did not know and only his staff would be able to confirm that detail.

Discussion

[93] The areas of contention between the parties in relation to financial provision on divorce relate to the identification of the matrimonial property and the division of its value.

There is a related issue about whether one of the significant transfers by the first defender to his parents on 29 August 2019 when the sum of just under £6 million was transferred from his Bank of Scotland account to their HSBC account should be set aside. The statutory provisions governing these issues are contained in sections 10 and 18 respectively of the Family Law (Scotland) Act 1985. Insofar as relevant these provide:

> "10(4) …'the matrimonial property' means all the property belonging to the parties or either of them at the relevant date which was acquired by them or him (otherwise than by way of gift or succession from a third party)—
>
> (a) before the marriage for use by them as a family home or as furniture or plenishings for such home; or
>
> (b) during the marriage but before the relevant date."

Section 8(2) of the 1985 Act provides that the court shall make such order, if any, as is justified by the principles in section 9 of the Act and reasonable having a regard to the parties' resources. The principle primarily in play in this case is that contained in section 9(1)(a) which provides that the net value of the matrimonial property should be shared fairly between the parties to the marriage. Section 10(1) provides that in applying the section 9(1)(a) principle the net value of the matrimonial property is to be taken as shared fairly between the parties when it is shared equally or in such other proportions as are justified by special circumstances. Section 10(6) provides a non-exhaustive list of examples of what might be considered special circumstances but the term is not narrowly defined. There is a presumption in favour of equal sharing and the matter of the division of the net value of the matrimonial property is essentially one of discretion aimed at achieving a fair and practicable result in accordance with common sense - *Jacques* v *Jacques* 1997 SC (HL) 20 at 22. In submissions an unreported decision of Lord Jones in *McRae* v *McRae* (16 January 2015) was referred to as being of interest as an example of a case where there had also been a lottery win. The second and third defenders referred also to a decision of Mostyn J in *S* v

AG [2011] EWHC 2637 regarding the treatment of a lottery win, albeit under the rather different English ancillary relief regime. While these examples are of interest, the court's primary role in a case of this sort is to analyse the particular facts of the case and apply the statutory principles. Each case is highly fact sensitive. So far as the order to set aside the transfer by the first defender of the sum of £5,995,000 to his parents in 2019 is concerned section 18 of the 1985 Act provides that the court can make an order setting aside or varying any transfer of, or transaction involving, property effected by the other person not more than 5 years before the date of the making of the claim. The test is that the court requires to be satisfied that the transfer or transaction had the effect of, or is likely to have the effect of, defeating in whole or in part any claim for a financial provision. The court has power to make the order applied for or such other order as it thinks fit. The case of *M* v *M* 2011 Fam LR 24 was referred to as an example of the court making such an order.

[94] Turning then to the first stage of identifying the matrimonial property, I have already indicated (at paragraph 26 above) the agreement in relation to various items. There were two main items of property held by the first defender at the relevant date that it was disputed constituted matrimonial property. These were (i) the sum of £7,681,575 at credit of the first defender's Bank of Scotland account ending **67 and (ii) the sum of about £1,547,196 held by the first defender with Mayfair, a financial adviser vehicle of Lloyds Bank. There were two minor issues in relation to the first defender's personalised number plate for which he had paid £999 in January 2018 and a deposit of £28,700 he paid for the property in Girvan, the purchase transaction for which did not complete until after the relevant date. Separately, there was a disagreement as to the value of the Nissan Skyline vehicle. Only the pursuer led evidence of value. Counsel for the first defender did not

suggest in submissions that the first defender's evidence of what he paid for the car should be taken as its value. In any event, I accept Mr Brock's evidence of valuation.

[95] The sum referred to at (i) above represented what was left of the funds transferred to the account by the first defender from another Bank of Scotland account following receipt by him of the lottery winnings on 1 December 2015. Monthly interest had accrued between 1 December 2015 and the relevant date and of course various transaction had been entered into and investments made in the period of just under 3 years between the lottery win and the parties' separation. The pursuer's position was that the balance at credit in the first defender's said bank account formed matrimonial property being sums held by him at the relevant date and acquired during the marriage other than by way of gift or succession. The first defender's position was that the lottery winnings were not matrimonial property but the property of the second and third defenders. His position was that the first defender had an obligation to account to his parents as agent for them in respect of the monies held by him. The second and third defenders claim that the funds used to play the lottery belonged to them and so the winnings, albeit held by the first defender, belonged to them. Their position was that it was always understood that any funds won through a lottery win would belong to them. Alternatively, they claimed that NJ was obliged to utilise the money for the benefit of "the family". Similar arguments apply to the investment of £1.5 million with Lloyds, item (ii) above, which was held by the first defender at the relevant date and encashed on 23 September 2019. While it was not entirely clear at the conclusion of the evidence whether or not the first defender still contended that the Lloyds investment was disputed as it was included in his final schedule of the parties' property, the second and third defenders made no concession in relation to it. In essence, the source of all of the first defender's wealth at the relevant date was the lottery win three years earlier. The main issue

is whether or not what remained of the winnings at the relevant date belonged to him outright.

[96] I have summarised in reasonable detail above the evidence of the various parties to this action to record not just what each witness said in evidence but also to look chronologically at how the evidence emerged as the full extent and implications of what occurred after the parties' separation became clearer as the case progressed. On credibility and reliability I have no hesitation in accepting the pursuer's evidence as wholly credible and reliable. She did not shirk from the notion that she had been concerned about the first defender's lottery win and had not, during the marriage, sought to benefit greatly from it. She was straightforward in her evidence and illustrated an admirable determination to continue to pursue the work that she enjoys regardless of the financial outcome of this case. She answered all questions put to her in a calm and measured manner. Her ambition is clearly to provide for her children through the acquisition of suitable property in which she can live with them and otherwise to give them the material advantages that the first defender has seemed unwilling to provide. In stark contrast, the first defender was a most unsatisfactory witness. Many of his answers appeared rehearsed or prepared. He had clearly come to the court with a determination to stick with a position that the lottery win had been regarded as family money rather than his individual money. He insisted that he had been in a poor state mentally and incapable of looking after the money and that was why he had effected a transfer of everything he owned to his parents from August 2019. His position in relation to his mental health was not vouched by any medical report or even raised in his pleadings as an issue. If he was prescribed antidepressants, it was not established when that was or for what condition. In any event, his dogmatic attitude and his repetition of the mantra of family love, respect, trust and loyalty as an explanation for every

dubious transaction were wholly unconvincing. He was inconsistent on the issue of whether the relevant funds had ever been a gift from his parents or whether it had always belonged to them jointly. His conduct of the proceedings was unhelpful at best; he had failed to co-operate with the production of documentation in relation to a significant investment with Lloyds and also in relation to the Nissan Skyline vehicle and its number plate. I conclude that NJ was prepared to say whatever he thought might best achieve his aim of reducing or negating the pursuer's claims. I have decided that I cannot rely on his evidence and where his position differed from that of the pursuer and/ or independent witnesses I have rejected his evidence.

[97] The second defender was an extraordinarily poor witness. She prevaricated and was inconsistent on issues such as if and when she was served with court papers prohibiting the transfer of funds. Sometimes she laughed inappropriately when difficult questions were posed. When faced with the email exchanges with Mrs CK of HSBC bank that contradicted her evidence she was prepared to allege that a bank official was lying, despite no such assertion having been put to Mrs CK. At no time did Mrs SI indicate that she would not have transferred money or assets out of the country because it was morally wrong and in breach of a court order, stating that she would not do so only because it was too risky. When faced with documentation clearly recording that she had possession of the relevant interlocutor of this court prohibiting the transactions she was seeking to effect at the material time she resorted to bare, implausible denials. One of the most telling parts of her evidence was when she accidentally referred to the lottery proceeds as her son's money and then tried to correct herself, as narrated at paragraph [74] above. She was momentarily unable to maintain her prepared line and the truth emerged. The difficulties with Mrs SI's evidence pervaded her whole testimony and go to the heart of the main disputed issues as

detailed below. However, in short I have no hesitation in rejecting her evidence where it was inconsistent with that of the pursuer or independent witnesses as I found her to be a wholly incredible and unreliable witness.

[98] So far as the third defender was concerned, his evidence on the financial issues was limited. It was apparent that he had little if any involvement in the financial affairs of the family and that his wife took the lead on most matters. JI's affidavit evidence (at para 5) summarised his position succinctly when he stated that he had seen his wife's affidavit and agreed with everything she said in it. In essence he did not give his own account to the court and so his evidence was of no assistance. Insofar as he attempted to maintain the line that the money won on the lottery did not belong to the first defender I reject his account. I accept the evidence of all of the independent witnesses and found them to be both credible and reliable, with the exception of Mr Khokar, whose credibility I do not doubt but who was not the professional responsible for the second and third defenders' accountancy work. Ultimately he could not support the defenders' position or provide insight into their financial affairs. It is noteworthy that the professional who undertook certain work on their instructions, Mr Rahman, was not called to give evidence. Mrs CK was a particularly impressive witness who was able to produce documentation as her evidence progressed that supported the account she had given.

[99] Turning to the disputed issue in relation to the extent of the matrimonial property at the relevant date, the starting point is that the first defender held all of the disputed funds and assets at that date and had not acquired them by way of direct gift or succession, an initial stance that the monies had been gifted to him by his parents having been departed from. The undisputed evidence was that the first defender won the lottery in 2015 and that the sums were paid to him by Camelot in terms of its applicable rules (No 6/85 of process).

In particular rule 4 thereof provides that the owner of a ticket is deemed to be the person who holds that ticket and in terms of rule 6, only the owner of the winning ticket may claim a prize. A claim form requires to be completed with the claimant being required to state that they are lawfully entitled to claim the prize (rule 7). His lottery win was the source of all of the funds and assets NJ held in October 2018. Accordingly, all of those funds and assets were, at the relevant date, *prima facie* matrimonial property and it would be for the defenders to assert and prove otherwise. The burden of proof in establishing that property held by a spouse at the relevant date falls within one of the exceptions to the definition of matrimonial property falls squarely upon the party who asserts that – *Wilson v Wilson 1999 SLT 249 (at 252).* In the present case, there was a tendency on the part of the defenders to refer to the lottery win when contending that "it" was not matrimonial property, as if it was an item of property in existence at the relevant date. The only date at which matrimonial property is identified is at the date of the parties' separation on 4 October 2018. There was no lottery win at or around that date. There were assets acquired over the period since the end of 2015 with the winnings and there was a significant amount of cash still held, but indisputably all of the relevant money and assets at that material date were held by the first defender alone.

[100] In evidence, the first defender's position on ownership of the funds derived from the lottery win was internally inconsistent. The line in which he insisted was that all of the money was "family money" and that he and his parents operated as a team, a tight unit. He did not indicate whether he regarded the money and assets as belonging to him and his parents in equal or unequal proportions, but indicated that it all belonged to the three of them. The exclusion of his wife, his sister and even his children from this small group of those who he considered had a claim on the money was revealing. In contrast, in his

pleadings and in submissions on his behalf, it was contended that he had been holding the money for his parents, effectively as agent, and that it belonged to them. While this accorded broadly with his parents' position and with his final written case, it did not coincide with much of the evidence he had given. The second and third defenders stated in their pleadings and in their evidence that the money belonged to them. There was no acceptable evidence to support these assertions. The evidence that the first defender took money from the till in his parents' shop to buy the winning ticket was repeatedly mentioned, but the context was that the first defender was paid no formal wage and so took money from the till for daily expenses such as lunch and lottery tickets. In the absence of any satisfactory accounting evidence in relation to the shop, I am not satisfied that the money used for the ticket was the second and third defenders' money. It seemed to me to be akin to a benefit given in lieu of wages, in a similar category to the second defender's purchase of clothes or handing out spending money to the first defender prior to October 2015 which was spoken to in evidence. The first defender had used money from the till to play the lottery frequently in the past. There was no evidence that it had to be repaid or refunded and the second and third defenders were aware that money was taken for that purpose. The evidence illustrated that the second defender was prepared to fictionalise payments of wages to her son in order to reduce her own tax liability. I find that the second and third defenders approach to accounting could be described as casual at best and it was for them to establish that the money used to buy the lottery ticket belonged to them. Even if I had accepted that they had established that the money to buy the ticket was theirs, as opposed to a benefit to NJ for working in the shop, it would make no difference to the classification of NJ's savings and investments at the relevant date, some three years after the win.

[101] There was no acceptable evidence that the first defender was acting as agent for his parents when playing the lottery or in holding the winning money thereafter. I accept Miss Brabender's submission that the defenders would have had to lead clear evidence of the circumstances of when and where any contract of agency was entered into and its specific terms (*Rodewald* v *Taylor [2010] CSOH 5; Batt Cables v Spencer Business Parks Ltd 2010 SLT 860).* In addition to the failure to lead clear evidence of agency, I consider that there was ample evidence that until well after the parties' separation, the money deriving from the lottery win was treated as belonging to the first defender alone. On his own account he won the lottery and told his wife and mother of his win immediately. Mr Morrison of the Bank of Scotland was satisfied that the £11 million was the first defender's money and that the source was the lottery win. Miss McWilliams and Mr Abercrombie, the solicitors, both recorded the source of the first defender's funds as the lottery win in documentation they required to complete in terms of the Proceeds of Crime legislation. The second and third defenders' accountant, Mr Khokhar, understood that it was NJ who had won the lottery. The first defender spent some of the winnings on himself and to a limited extent his wife, on holidays and cars and some property. He gave funds to his parents over a period of time amounting to just under £700,000 in total. He invested £1.5 million through Lloyds. The defenders' protestations that the second defender controlled the money because it belonged to her and her husband (or on the first defender's account to all three of them) were wholly unconvincing. The level of gifts the first defender made to his parents is consistent with him being willing to assist them (and to a more limited extent his sister) appropriately given his greater wealth but not to divest himself of ownership. That position did not change until the events of August 2019 which I will address in determining the pursuer's claim to set aside one of the transactions effected at that time. For these reasons, I reject the contention made

on his behalf that the first defender's possession of the relevant funds was not indicative of ownership.

[102] I accept that as a matter of law agency can be implied from relevant facts and circumstances. However, there was no consistent or coherent evidence that would permit a reasonable inference to be drawn that there was an agency arrangement between the first defender and his parents. As indicated above, there was no clarity about who the first defender regarded himself as holding the funds for as he seemed to regard the monies as at least partly his. Any moral obligation he may have considered himself to be under so far as sharing the winnings with his family falls far short of implied agency. His sister's evidence that she knew nothing of the lottery win as the source of funds for the property she lived in and one being purchased for her was interesting. On any view she falls within the ordinary meaning of "family" in relation to all three defenders. The concerns about her choice of husband did not result in her being denied any benefit at all from the first defender's wealth. The benefits conferred on her were not part of any agreement in relation to the monies and who they were being held for; the first defender held and controlled the money but was content to assist family members in a relatively limited way when requested.

[103] The second and third defenders contended that, even if agency could not be established, playing the lottery and sharing the proceeds had been an informal joint venture, with a tacit agreement that the prize money would be shared. Again I find that the evidence does not support such a contention. The first defender appeared to have no real understanding of what the term "stake money" meant and I formed the impression that it had been coined *ex post facto* as a convenient label that might support the joint venture argument. I accept the pursuer's evidence that when her husband told her and his mother that he had won the lottery, the three of them agreed initially not to tell the third defender

because they were concerned that he would ask for money to send to Pakistan. There was no suggestion that he had to be told because he had a legitimate claim on the money. In any event, there was no evidence of any agreement at the time that the money would be shared at all and if so in specified proportions. The winnings were not in fact shared between the three defenders between late 2015 when it was paid to the first defender and August 2019 when he began transferring everything he had to his parents. The limited transfers of funds by the first defender to his mother during that period are not resonant of sharing the proceeds of a joint venture. They were either transfers for specific purposes, such as payment of debt or the purchase of a house for the sister (albeit not ultimately used for that purpose) or were fairly small sums that made little dent in the first defender's wealth. They were voluntary and sporadic payments by the member of the family who had far greater wealth than the others. Although the second and third defenders retired from running their shop, they continued to own it and earn rental income from that and other sources. There was no general pooling of resources with their son.

[104] The second defender held investment property prior to the first defender's lottery win. She knew something about the tax consequences of holding title to property. She did not declare any rental income for the Lennoxtown property as hers until well after her son and his wife separated and probably not until October 2019 when she supplied figures to her accountant for her tax return. In short, the first defender's income and assets were kept almost entirely separate from his parents for more than three years after he received his winnings. During his own evidence the first defender spoke of telling his parents about some of the holidays and cars he spent money on and did not suggest that he required their permission so to do. He accepted that he was free to spend the money as he wished. Only NJ received interest on his savings and neither he nor his parents declared that to HMRC.

While the second and third defenders have submitted tax returns each year the first defender appears never to have done so. This tends to support that the funds and unearned income relative thereto were held and regarded by the first defender as his alone. His parents were not regarded by Mr Khokhar as high net worth clients of the firm. Finally on this point, I regard the second defender's involvement in the property acquisitions of her son as consistent with what any interested parent with some experience of buying property would have done in similar circumstances. Nothing she did prior to October 2018 was suggestive of her having a proprietorial interest in the assets held by her son.

[105] The defenders also sought to rely also on the pursuer's lack of involvement in decision making about the funds derived from the lottery win. There was little dispute about that in the evidence. The pursuer was anxious about the win, at least initially, given the Islamic prohibition on gambling. She appears to have relaxed her view to some extent during the marriage and was content to enjoy the holidays, car and a handbag funded from the winnings. No criticism should be levelled at her for that. A spouse who disapproves of the method by which the other spouse has earned or otherwise come into funds does not in some sense disentitle themselves from sharing in the wealth created by the activity, where the method is legal and the marriage continues after the wealth is generated. On the particular facts of this case, the parties went on to live and grow as a family, with both children being born after the first defender's win. The first defender's attitude to his wife's entitlement was unattractive and disrespectful. He said he had been "very generous" in purchasing a car for her. She did not fall within his definition of family and he seemed to regard making provision for his children in his will as sufficient to include them in his good fortune. The pursuer's evidence that the couple talked about what "he" (her husband) was going to do with the money was no more than an acknowledgement that, as between the

two of them, he would be the decision maker on that. It could hardly have been otherwise, given the first defender's attitude to his wife's role. Curiously, the third defender spoke of decisions about what to spend the money on as being for his son and daughter in law to take, in contradiction to his wife's account. Nothing in relation to how the parties viewed the funds derived from the lottery win affects the issue of identification of the matrimonial property.

[106] Finally, although not necessary for my conclusion on this aspect of the dispute, the evidence of Mrs CK in relation to the second defender's attempts to alienate the vast majority of the relevant funds at the end of January 2020 supports the conclusion that these belonged and had always belonged to the first defender. Even leaving aside the disapprobation I express below in relation to this deliberate attempt to breach an order of court, I accept without hesitation that Mrs CK noted correctly and contemporaneously (in Number 6/137 of process) the second defender's own words that the millions of pounds she was seeking to remove from the bank was her son's money. I conclude that all three defenders understood that the sums derived from the lottery win belonged to the first defender and that their arguments that he was holding it on behalf of his parents or that it was the proceeds of a joint venture were developed long after the couple separated and with a view to depriving the pursuer of her legitimate claim to financial provision on divorce.

[107] There is one item included in the pursuer's schedule of matrimonial property that I do not accept should be included, and that is the deposit paid prior to the relevant date for the proposed purchase of the property in Girvan. It was agreed that an offer to purchase this property was made at auction on 14 September 2018 and that the first defender paid a deposit of £28,700 to secure it. Shortly after separation the transaction was progressed and although the first defender paid the purchase price, title was taken (at his request) in the

name of all three defenders. In the circumstances all that the first defender had at the relevant date was a contingent right to acquire the property on payment of the full purchase price, failing which the deposit would be forfeited. In those circumstances I conclude that the deposit paid did not represent an asset belonging to him at the relevant date.

[108] For all these reasons I accept that all of the funds and assets actually held by the first defender at the relevant date (excluding the deposit paid for Girvan) constituted matrimonial property. Accordingly, the following schedule of matrimonial property indicates the total net value to be shared between the parties to the marriage:

	NJ	**HAJ**
R Road, Motherwell	240,000	
Lennoxtown	40,000	
Bank of Scotland **20	6,815	
Bank of Scotland **67	7,681,575	
Bank of Scotland **09	495	
Lloyds Investment	1,547,196	
Bank of Scotland **66	829	
Audi RS5	25,000	
Nissan Skyline	110,000	
Number plate	999	
BMW X5		33,350
Aviva pension		4,550
RBS **23		7,888
RBS **53		5,768
Total for each party	**9,652,909**	**51,556**
Total matrimonial property		**9,704,465**

[109] The next issue is to determine in what proportions the net value of the matrimonial property should be shared. The pursuer sought an equal division of value. The defenders all suggested that, even if all of the first defender's money and property was classified as matrimonial property, the value should be divided unequally in favour of the first defender. Many of the arguments advanced in relation to the inclusion or otherwise of the large sums of money derived from the lottery win were also prayed in aid to justify division in unequal

proportions. I doubt whether the second and third defenders had any locus to advance arguments in relation to the division of the matrimonial property. In any event, the matter is one for the exercise of discretion, but the factors involved merit discussion. First is the issue of whether the first defender's wealth had a non-matrimonial source of funding, a recognised "special circumstance" in terms of section 10(6)(b) of the 1985 Act. If the money taken from the till belonged to the second and third defenders, then while the first defender owned the money and property derived from the win, his parents contributed to the wealth creation. I have explained my finding that the second and third defenders failed to establish that the money for the ticket was theirs, rather than part of an extremely informal remuneration method. However, even if the funds in the till belonged to them as the owners of the business, I do not consider that in the circumstances of this case, that fact alone would justify an unequal division of the matrimonial property at the relevant date. It is sometimes said that what requires to be shared is the fruits of the income and efforts of the married couple. In my view that expression simply encompasses the notion that a married couple has "thrown in their financial lot" with each other following marriage and so whatever activities they embark on, the assets and liabilities flowing from that should be shared fairly between them on divorce, with the norm being an equal sharing. It was the first defender who analysed the winning lottery numbers each week and who decided to enter on his own behalf. While the effort involved in that was far less than the pursuer's effort in her employment as a nurse, it was time he spent using a benefit he had through the work he undertook during the marriage.

[110] Even if I regarded the ticket money as a non-matrimonial source, it was *de minimis* as a contribution. By analogy, it contrasts starkly with the injection of substantial inherited wealth by one party to a marriage such as might justify an unequal division of the assets

acquired with the benefit of that non matrimonial source. In my view, the proceeds of a lottery win during the course of a marriage are in principle no less matrimonial in nature than income derived from employment or the gain in value of a family home purchased by a married couple. Had the first defender won the lottery at the end of the marriage rather than six months after it commenced, that might have been a circumstance militating in favour of unequal division of value, but even then it would have had to be balanced against other factors pointing the other way.

[111] Further and as indicated in the section identifying the matrimonial property, I place little weight on the pursuer's initial anxiety about the win. Since late 2018 she has been living in her parents' family home, unable to secure an independent financial future for herself and the children. Her motivation in seeking a fair share of the value of the matrimonial property is a reasonable one. Nothing that occurred prior to the relevant date would justify an unequal division of the matrimonial, property in the first defender's favour. I take into account that the first defender disposed of at least some of the lottery winnings in the three years prior to separation in a manner that has reduced the size of the pot that would otherwise have been available for distribution. He gave money to his parents and to charity that the pursuer does not seek to recover or have taken into account in her favour. Of course the pursuer benefitted from some of the money spent (albeit relatively low amounts) and other funds were used to acquire property and vehicles that are included in the matrimonial balance sheet. Indisputably, however well over £1 million was spent or transferred prior to separation and the second and third defenders received a significant proportion of that. That is a factor to be fed into the equation when considering whether to divide what was left equally or unequally. The first defender's desire to be generous to his parents amounted to transferring sums totalling about £700,000 to them prior to the relevant

date. That seems to me to be a reasonable level of distribution to them given that the funds were his sole property and his parents were not themselves without means. I conclude that an equal sharing as between the pursuer and the first defender of the established value of the matrimonial property at the relevant date would be fair. That would result in a capital sum payment to the pursuer of £4,800,676.

[112] At this stage a cross check would normally be made, to ensure that any sum awarded was reasonable having regard to the parties' respective resources, as required by section 8(2) of the 1985 Act. However, because the first defender transferred all of his wealth to his parents in August 2019 and the following two months he has on the face of it no funds from which to pay a large capital sum. The pursuer asks for an order in terms of section 18 of the 1985 Act setting aside one specific transaction, that of the transfer of the sum of £5,995,000 from the first defender's bank account to the second and third defenders on 29 August 2019. It is not strictly necessary to prove intention because it is effect of the transaction on the pursuer's claims that requires examination in terms of the statutory test. However, the undisputed chronology of events supports the pursuer's contention that the first defender made a concerted effort to rid himself of money and property that was his rather than that he was unable to manage his affairs as he suggested in evidence. After the relevant date NJ continued to hold all of the matrimonial property in his sole name, albeit that he was purchasing the Girvan property with his parents and set up a company for that. It was not until the pursuer's solicitors sought financial vouching of the first defender's assets in late July 2019 that what I am satisfied was a plan to deprive her of financial provision began. In early August 2019 the first defender transferred the Lennoxtown property to his parents, although he continued to receive rental income from it for a couple of months thereafter. On 23 August 2019 the pursuer's solicitor sent an email direct to the first defender indicating

that litigation would commence if full financial vouching was not produced. Within a week of that letter being sent, the first defender had transferred the £5,995,000 to his parents to an HSBC account that he accessed thereafter using a visa debit card. Over the following two months or so, the first defender had divested himself of the remainder of his other funds and assets, even registering his mother as keeper of his cherished Nissan Skyline vehicle. Having nominally disposed of his wealth, the first defender audaciously made an application for Universal Credit and received a benefit payment in early December 2019, although it seems he may have appreciated the difficulty with that and he withdrew his claim. His evidence that he was not in a position to look for work as an explanation for withdrawing his benefit claim would have been risible, but for the seriousness of his seeking state benefits having placed in his parents hands millions of pounds in funds and assets belonging to him.

[113] The evidence about what occurred when proceedings were raised and the pursuer secured *interim interdict* illustrated very clearly the extraordinary lengths to which the defenders were prepared to go to alienate funds so that they would be out of the reach of the pursuer's claim and the court's jurisdiction over it. The email trail produced by Mrs CK during her evidence evokes a picture of a rather desperate Mrs SI attempting to think of ways to access the funds and take them offshore in flagrant breach of the court order for interdict that had been served on all three defenders a few days previously. I have narrated that evidence at paragraph [39] above and will not repeat it. I reject Mrs SI's evidence that she visited the HSBC branch on 30 January and spoke to Mrs CK, something that was not put to that witness and which seemed to be concocted later as a possible explanation for there having been a conversation about the first defender and his divorce. There was only a telephone conversation that day and I accept that it was accurately recollected by Mrs CK in

her evidence, with parts of it being recorded in her contemporaneous note. Mrs SI's attempt to say that she would not have been so foolish as to disclose to a bank official that it was her son's money that she was trying to hide was unimpressive but revealing. Until Mrs CK's evidence she clearly thought that she could maintain a position that the money was hers and that she had no improper intention in seeking to transfer it all out of HSBC that day. The true position was exposed only through the persistence of the pursuer's legal team in seeking recovery of documents that had never been produced by the bank but to which Mrs CK had alluded in her efforts to assist the court. Mrs SI knew it was and had always been her son's money and was trying to dispose of it. She was well aware of the court order and took a copy to the bank. Later in 2020 she was determined to recover from the bank as much as might be permitted in terms of the legal fees exemption and sought to withdraw £250,000. She appeared to overlook the fact that the legal fees exception in the court order in question related only to funds held by the first defender or anyone on his behalf. Accordingly, her attempts to withdraw funds for such fees provides further confirmation that the monies at all times belonged to the first defender.

[114] It is rare in my experience for litigants to be exposed quite so devastatingly in an attempt to breach an order of court with a view to depriving another party of legitimate claims. Astonishingly, even after such exposure, the second and third defenders continued to argue that they did not possess the guile or deceit attributed to them by the pursuer's side. While I have accepted that the third defender played no active role in the attempt to defeat orders of court designed to protect the pursuer's claims, he instructed a defence to this aspect of the case jointly with his wife. They are both responsible for the unsuccessful attempt to put a very significant amount of money beyond the court's reach.

[115] In all the circumstances, I am entirely satisfied that the test for setting aside a transaction that has or would be likely to have the effect of defeating the pursuer's claim is met and I intend to grant the order second concluded for. The effect of that will be to return to the first defender a large proportion of the sums he alienated in August 2019. The amount will be more than sufficient to meet the pursuer's claim for a capital sum. No issue will then arise in relation to resources in the sense that the first defender will be able to meet his wife's claims from the monies nominally returned to him through the setting aside order. It will be a matter between the first defender and his parents what to do with the rest of the money and property he has transferred to them. They remain a close family group and I am satisfied that the first defender is not likely to be deprived unfairly of his share of the matrimonial property by his parents.

[116] There is a sum of £6 million consigned with the court pending the outcome of these proceedings and it will remain so consigned until the final interlocutor is pronounced. The pursuer seeks interest on the capital sum due to her at the judicial rate from the date of service of the Summons in January 2020. Against the backdrop of the defenders' attempts to dispose of funds to defeat her claims at that time I consider that it would be reasonable for interest to accrue from that date. No argument in relation to the rate of interest was advanced by the defenders and so I intend to grant the order as sought. It was suggested that I make decisions in principle on the main disputed issues and fix a hearing to discuss the specific orders to be made and to deal with expenses, including the certification of skilled witnesses and I am content to accede to that suggestion. I would add that, while I have anonymised the parties and the lay witnesses, I am conscious that I made an order restricting reporting of this case to protect the children and I would also wish to be

addressed on whether further steps should be taken before website publication. No substantive orders will be made until after the By Order hearing.

[117] Finally, I express my gratitude to all counsel and agents involved for the patience they showed when a number of connectivity and other technical issues arose during this lengthy proof conducted using a video conferencing medium. I was particularly grateful to the pursuer's agents for their assistance with screen sharing the documents produced during the evidence so that the proof could continue without further interruption.