Neutral Citation Number: [2020] EWFC 22

Case No: BV17D04457

IN THE FAMILY COURT
SITTING IN THE HIGH COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/04/20

Before :

THE HONOURABLE MRS JUSTICE ROBERTS

- -

Between :

AW **Applicant**

- and -

AH (1)

BB (2)

C Limited (3)

Respondents

- -
- -

Deborah Bangay QC and Georgina Howitt (instructed by **Hughmans**) for the Applicant
The Respondent appeared in person with the assistance of a McKenzie Friend. There was no appearance by or on behalf of the second and third respondents

Hearing dates: 17th to 28th February 2020

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

This judgment is being handed down in private on 21 April 2020. It consists of 151 paragraphs and has been signed and dated by the judge

The Judge hereby gives leave for it to be reported.

The judgment is being distributed on the strict understanding that in any report no person other than the advocates, the solicitors instructing them, or persons (other than the parties, members of their extended families and their children) identified by name in the judgment itself, may be identified by name or location. In particular the anonymity of the children and the adult members of their family must be strictly preserved. If reported, it shall be the duty of the Law Reporters to anonymise this judgment.

Mrs Justice Roberts:

Introduction: the central issues in the case

1. This is AW's application for orders in respect of financial remedies pursuant to the Matrimonial Causes Act 1973 together with consequential declaratory relief. The first respondent is her former husband, AH. The second respondent, BB, is a business associate of AH's who is based outside the jurisdiction in Hong Kong. He held shares in the third respondent, C Limited ("C Ltd"), a company registered in Hong Kong, in 2008. It is AW's case in these proceedings that BB is her former husband's nominee and that the beneficial interest in C Ltd and its corporate subsidiary holdings belong in reality to AH. That case is disputed by each of the respondents and has informed one of the significant areas of forensic enquiry which this court has been asked to undertake.

2. As is conventional in these cases, I am going to refer to the principal parties in this case as "the husband" and "the wife". I hope in doing so, I cause no offence to either. It is intended as no more than a convenient shorthand. The reality is that decree nisi in respect of AW's petition for divorce was pronounced in May 2017, and the parties have been living apart since the early part of 2011. Thus, for more than eight years they have been living an independent existence from one another, albeit that the financial arrangements which were put in place at the time of the separation continued to preserve an infrastructure which underpinned to an extent the manner in which they have arranged their lives over the years since their separation. The husband was declared bankrupt in July 2011, a few months after the demise of the marriage. At that time, he owed some £33 million to unsecured creditors. He was subsequently discharged a year later although his trustee in bankruptcy, a well-known firm of accountants with international experience, spent the next five

years investigating his financial affairs. That lengthy enquiry cost over £500,000 and led to the recovery of no more than a negligible sum of less than £20,000.

3. At the heart of this case lies an allegation on the part of the wife and her legal team that the husband has failed to make full, frank and complete disclosure of his past and present financial circumstances. Whilst he presents the court with a narrative which, on its face, appears to show a spectacular financial fall from grace and an ongoing position of near personal insolvency, the wife claims that he has, or should be treated as having, financial resources at his disposal. Her open proposal at the start of this case included a claim for a sum of £2 million or, in the alternative, an adjournment of her lump sum claims. In her closing submissions, Miss Bangay QC accepted that she is unlikely to be able to demonstrate on the evidence which is presently available that such undisclosed resources as may exist will be sufficient to meet her client's ongoing needs for a secure home and an income. By the conclusion of the case it is now her case that the wife's lump sum claims should be adjourned to await what it is hoped will be the husband's financial renaissance.

4. Thus, at the heart of this case lie the two central issues of computation and needs. If the husband is presenting to this court a broadly true and accurate position of the current financial landscape, neither parties' needs can be met at the present time. If the wife is right and there is substantial value retained for his benefit in offshore assets, as yet undisclosed to the court, there may nevertheless be significant hurdles to surmount in future before the court can be satisfied that her needs will have been met through the full enforcement of an English award in these proceedings.

The background

5. This was a third marriage for the husband and the first for the wife. They are now respectively 63 and 55 years old. He has four daughters who are now in their mid-twenties and thirties. His first marriage ended in 1980, some forty years ago. He married his second wife in 1991. That marriage was a short one which ended some four years later during the course of which his youngest child was born.

6. By this stage he had enjoyed some considerable success in business and was living in central London in a home in St John's Wood which was subsequently sold for in excess of £14 million. His relationship with the applicant began shortly after the demise of his second marriage. By the early part of 1997, their relationship appears to have been sufficiently committed for the wife to state that they were more or less living together. After a brief hiatus at the end of 1997, and by the summer of 1998 on his own case, they were living together at his home in St John's Wood. They married in October 2001. No children were

born during their marriage despite what I accept were the wife's wishes to start a family.

7. Throughout the next decade, their marital standard of living was extremely high, if not exorbitant. In March 1998, at or shortly after the time when they began to live together, the husband sold the majority of his shares in an international business which he had spent many years building up. That sale realised a sum of just over £86 million. At the time he was 41 years old and had doubtless worked hard through many years to reach that position of significant financial security. Their wedding in 2001 was celebrated with an expensive party costing several million pounds at which guests were entertained several famous musical performers. It was followed by ten years of more or less unbridled expenditure on property, yachts and discretionary lifestyle choices. This statement is not intended as any form of criticism or judgment: it is simply to state the facts. The husband himself describes it as "a hugely lavish lifestyle". In 1999, the husband bought what has been described as a 'super yacht' for US$20 million. Some three years later, he took possession of a second yacht which had been built to his specification. The annual cost of the upkeep of the two yachts was in the region of US$3 million. In 2005, he purchased a substantial property in the Luberon region of Provence in the South of France ("the French Property"). Three full-time staff were employed to look after it. This property was subsequently extended through the purchase of some adjoining land.

8. I extract the following from the husband's written evidence by way of a vignette of the marital standard of living throughout its entire course:

> "AW and I enjoyed a hugely lavish lifestyle. We spent several years just having a wonderful time, travelling and partying. We divided our time between our home [in St John's Wood], my yachts, our house in France and on ultra-luxury holidays. I had a number of high-performance cars and a serious wine collection. We always travelled first class or by private jet. In short, we were very fortunate to enjoy the very best of everything."

9. These good years were a period during which the husband used a formidable network of similarly wealthy friends and international businessmen to invest in a number of business ventures. I shall come to these in due course. However, at this juncture it is right to record, as the husband accepted, that a significant part of their lifestyle was funded from capital.

10. He has admitted that he was wholly unprepared to deal with the wealth which he received when he sold his company in 1998 for £86 million. One of his first investments of £20 million in a joint property venture was quickly lost (according to the husband) as a result of an unscrupulous business partner

whom he sued successfully but from whom he failed to recover any money. Through a holding company which he set up he was thereafter to make many and various equity investments. The shares in that holding company were held in his name and he owned the entire company.

11. He acquired an equity stake in a soft drinks business for which he paid £1 million. Through his holding company, he borrowed a further £900,000 from Kaupthing Bank but, despite the brand having been taken up by two of the major high street supermarket chains, he never saw any return on this investment which owed him a sum of c.£640,000 when he was made bankrupt. The entity in which he held shares was wound up in October 2012.

12. Some five years into the marriage, he invested in a company ('PB Ltd') which acquired 545 public houses for a sum of £162.5 million. The husband's shares in PB Ltd (some two-thirds of the issued share capital) were acquired for c.£12 million, half of which he had borrowed from his friend and fellow investor, CR, who himself invested a further £6 million. The shares were channelled through AH's holding company which operated as the holding company for the business. The following year he borrowed £10 million from Kaupthing Bank to finance further investment in four new corporate entities, including PB Ltd.

13. By 2010, the value of the husband's shares had fallen in value, on his own account, by some 78%. The company's corporate bankers foreclosed and PB Ltd went into liquidation later that year with the loss of his equity stake in the sum of c.£12 million.

14. The year after he acquired his stake in PB Ltd, he invested in a company which was operating an equity release scheme for homeowners in the North of England. This was a highly geared business which exposed the husband to a personal guarantee of some £10 million. Much of the equity investment capital was once again provided by Kaupthing Bank which went into liquidation in 2008. The business collapsed when the shareholders were unable to secure alternative funding to replace the lost investment. In addition to exposure on his personal corporate guarantee, the husband lost c.£2.5 million of his own money in this venture.

15. Throughout the marriage the husband has played the international stock markets through a form of spread-betting. He maintains, and I accept, that he brought to this activity not only his appetite for 'high risk; high reward' dealings but also the commercial and business acumen he had developed over a lifetime's career in business. As is not surprising, he moved in social and business circles inhabited by similar like-minded individuals and they would often pool or share their collective skills and abilities in the context of these spread-betting activities. Some of these 'investors' were persuaded to entrust

the husband with (often substantial) funds where they themselves had no parallel experience of the equity markets. They relied on his investment track record and left investment decisions in his hands, content with his agreement (in some instances) to indemnify them for any losses and to share the benefit of any subsequent uplift which the investment realised. The husband told me that his typical position in the markets was anything between £500,000 and £2 million in any single investment.

16. There is no doubt in my mind that, whilst his reputation as a shrewd investor was riding high over most of the decade of the marriage, the husband was extremely generous to his inner circle of friends. He made a number of different introductions through his networking activities as a result of which members of that inner circle and others saw significant financial returns on some of their investments. I heard, for example, from WG, the husband's accountant, that he or his firm had benefitted to the tune of several millions of pounds over the years as a result of business contacts introduced by the husband. That he was a significant "mover and player" in that international world I have little doubt. I am also persuaded that he made significant donations to various philanthropic causes and he has during the course of this litigation produced testimonials from several individuals commending his work in this field. I want him to know that I have read this evidence carefully, as I have all of the evidence in this case. I accept that, when he has been in a position to do so, this husband has supported a number of worthy causes which have brought benefit to those whose personal circumstances were very far removed from his own at that time. He has been a passionate supporter of education and is rightly proud of the current success of a school in London which he supported and financed. This aspect of his former generosity to friends and causes is attested to by both WG and GN, from each of whom I heard oral evidence. In my judgment it is reflective of the complex character and dynamic of the husband's personality.

17. I have no doubt that the husband can be a charming and attractively persuasive individual. I am in no doubt that through the years of the marriage he was a generous host and a loyal friend to his inner circle. In turn, he appears to have attracted both a loyalty and a confidence in his financial abilities from those individuals. Nevertheless, I am satisfied that through his core runs (or ran) a determination of steel to drive through the enterprise on which he was engaged. I am persuaded that he brooked no dissent. He is clearly a risk-taker in many senses of that word. The wife has described him in the context of their personal relationship as "a bully". WG told me *"you do not say no to AH"*. I am in no doubt that, both in a personal and in a business context, the husband had a ruthless streak when pursuing his objectives. That much is demonstrated by the steps and arrangements which he put in place both at the time of the parties' separation and during the currency of their voluntary

financial arrangements over the next four or five years. Yet that impression of the man has to be tempered by the steps which I find he took in the aftermath of his bankruptcy to recover his financial position for their mutual benefit. Those steps may have involved the reckless dissipation of significant sums invested on the equity futures markets. Objectively, these cannot possibly be seen as a prudent use of funds which were so obviously required to restore a measure of financial security and equilibrium into their respective financial positions. They speak to me of an element of arrogance in this man's personality and a refusal to accept that life could no longer continue as it had done before. Nevertheless, I accept that, just as the wife told me she trusted him and wanted to give him the space and means to rebuild financially, he had initially made a commitment to her financial support and future security. I accept that he hoped and expected to deliver on the terms of their agreement at the point of separation that he would ensure she had the French Property on a mortgage free basis at the end of the five years of respite which she offered him.

18. The significant storm clouds which appeared on the horizon during the latter years of the marriage effectively punctured the bubble of what had, up to that point, appeared to be a life free of financial constraints. He became over-extended. It is apparent from the agreed chronology that in the summer of 2007 he lost some £40 million on his spread-betting account. By 2008 he began to experience serious financial difficulties. Through C Ltd, he maintains that he had invested over £1 million in a Chinese investment which failed. He maintains that those funds had come from FD, one of his close circle of friends and business colleagues, who had purchased some of his assets. Whilst his personal friends and business acquaintances were showing some restraint in enforcing loans they had made to keep him afloat, the banks to whom he was significantly indebted were taking a more aggressive stance. The company which owned the public house portfolio had been liquidated owing its banks in excess of £50 million. Assets were sold (including the yachts and the substantial property in St John's Wood) although it is apparent that even at this stage the husband had sufficient self-belief in his own abilities to retrench and recover to justify incurring a liability for rent at an apartment in Mayfair which was then costing £136,000 per annum.

19. I know not the extent to which the wife had been exposed to these events and their consequences. I suspect that she was more or less content during the marriage to leave her husband to manage their financial affairs without much enquiry. This is not in any sense to minimise her own contribution to the marriage. However, these and other difficulties took their toll on the marriage and, upon her discovery that the husband had become involved in an extra-marital affair (which he told her was in fact a serious relationship), the wife made the decision to leave England and the marriage. I am satisfied that by

this stage she had developed an aversion to living in England and believed that she would be much happier living in France where she could be close to the French Property which she loved. I am satisfied that this was not an unreasonable aspiration on her part given that she had never truly felt that the property in St John's Wood (as beautiful a property as it may have been) was her own home. It was a place which was, I find, special to the husband in a number of respects. It no doubt represented the material success of all he had achieved in many years of a career in business. He had designed its internal specifications to reflect his own taste and aspirations. It represented not only a significant financial investment but an emotional investment in terms of his sense of place and belonging. I accept that its sale in July 2011, as part and parcel of his personal insolvency, represented a significant loss to him, just as the eventual sale of the French Property was a devastating blow to the wife. However, her move to Monaco in April 2011 was to prove to be, as I find, an important piece of the financial infrastructure which the husband set up in anticipation of his financial insolvency. Whilst I accept that he fought that inevitability for several months, formal bankruptcy followed in July 2011 some three months after the parties had separated. He was declared bankrupt from the foot of his own petition which recorded his personal insolvency as having been triggered by the loss of one of the companies he owned in the sum of £20 million plus over three years. That corporate failure had resulted in the banks calling in the loans and personal guarantees which they held. The directors' loan accounts which he then held in various companies were said to be worthless and/or unenforceable, there was no equity in the French property[1] and he owed his unsecured creditors over £33 million. The most significant creditor in the bankruptcy was Kaupthing Bank (the major Icelandic bank based in Reykjavik which subsequently collapsed in the financial crisis which occurred between 2008 and 2011). That bank was owed over £24 million with an English Bank, Lloyds, calling in just over £7.7 million of the husband's loans.

Steps taken by the husband in the months leading up to his bankruptcy

20. As the months of 2010 came to an end, the husband put in place a number of transactions which reflected a reorganisation of the corporate structures through which he operated.

21. On the wife's case, which I accept in this context, and notwithstanding her wish to leave London, he encouraged her to move to Monaco because of the tax advantages which such a move would bring. The husband was, as I find, determined to preserve as much commercial freedom of movement as possible in the wake of his bankruptcy. He accepts that it was an important element of

[1] At this point in time the French property was said to be worth £2 million. HSBC held a mortgage / secured loans totalling £2.73 million.

his strategy to ensure that both he and the wife were in a position to maximise any income he earned in a tax-free environment. It was also important to him, as I find, that the wife was offshore and in a position to act as a potential financial conduit for many of the business dealings which he undertook in that post-separation period. At the end of 2010, through the husband, she had secured a loan from HSBC in the sum of €350,000 which was paid into her S bank account to secure a non-working resident's permit in Monaco. With everything collapsing around him in terms of his ongoing corporate and spread-betting losses, the husband had in August 2010 invested in a new company called F Ltd. It is clear to me that he and his fellow investors in that new company hoped and expected that its future success would be significant in terms of a financial return. For the husband it no doubt represented something of a potential lifeline out of his current predicament.

F Ltd

22. He has described in his written evidence how, in 2010, he was approached by two individuals who had developed a patent with a view to finding investment for their company. At that stage he did not have the funds to invest himself but he approached two of his personal friends, JJ and BB, with a view to securing some financial backing for the new company. That approach resulted in others across his network of friends and business associates agreeing to make similar investments/loans to fund the start-up company. Initially there appear to have been seven front end-investors, including C Ltd and his daughter (SH), who – as I shall explain – received a gift of £500,000 from her sister, who had been put in funds by JJ through a loan in a similar sum. I accept that the rationale for adopting this arrangement was to enable his daughter's investment to flow into F Ltd together with the tax reliefs available under the EIS scheme. The husband was both a director and CEO of F Ltd. [Description of company.] Two subsidiary companies were set up as separate corporate entities. For the next few months the husband was commuting to the United States on a regular basis in an attempt to inject commercial value into this enterprise. He had secured considerable external investment from a number of friends and previous co-investors who were still prepared to back his decision to invest in F Ltd notwithstanding the significant losses he had sustained and his deteriorating track record in terms of investment returns over a number of years.

S Ltd

23. The previous year, in February 2009, he had with assistance from his accountant, WG, set up a UK company called S Ltd. It is accepted for the purposes of these proceedings that this entity was a 'lifestyle' vehicle which defrayed his personal living and other expenses in a tax effective way by utilising corporate losses to offset tax on earned income from other sources

including F Ltd. It appears that it did not trade, it had no assets and its principal function lay in the tax efficiency which it delivered. Through this structure the husband was able to draw a tax-free income. This arrangement was beneficial to both parties since it was out of those untaxed earnings that he was providing voluntary financial support to the wife in the sum of some £84,000 per annum. That was not the full extent of her personal income, to which I shall come shortly.

The 2010 agreement between the parties

24. As part of the ongoing discussions between the parties surrounding their decision to separate, the husband sent to the wife a written record of the arrangements he was proposing to cover her domestic economy following her departure from England. These are set out in a letter which was faxed to her on 12 December 2010.

25. In terms of property, and having already gifted the French Property to her at the time of its purchase some five years earlier, the husband undertook to ensure it was legally transferred to her "debt free within five years". He expressed the hope that this might be achieved much sooner if HSBC could be persuaded to release its charge as part of a repayment plan from the proceeds of sale of shares of Z Ltd. This needs some explanation and formed a significant part of the forensic trawl which was undertaken over several days during the course of this hearing. The returns generated by the realisation of this investment were, as I find, central to the arrangements which were put in place at the time to provide two things. The first was the means by which the husband was intending, in part, to ensure the financial support which the wife was to receive during her period of residency in Monaco. The second was the provision of a platform of financial liquidity which would give him access to the capital he needed to begin the process of re-establishing his financial fortunes free from the restrictions which his English bankruptcy might otherwise bring. Whilst the husband has been anxious to stress during this period that everything was properly disclosed at the time to his trustee in bankruptcy, which I accept in terms of his legal entitlement to assets, this court is engaged on a different exercise which involves a consideration of the underlying reality of beneficial entitlement. Whilst subject to the rigours of established legal principles, this is a more nuanced approach to the black letter of insolvency law. For the purposes of determining what are described as "financial resources" within the meaning of section 25 of the MCA 1973, it involves an element of fact-finding in order to determine how assets, or their

proceeds, have been applied and who, in reality, is entitled to, or has had the benefit of, funds or income so realised.

Z Ltd

26. In 2001 the husband had made a significant investment in Z Ltd, a company which was then being run by a close friend. [Description of company]. He had made a personal investment of some £500,000 and secured a further £2.5 million as a line of credit from Lloyds Bank. He was both chairman and a shareholder when, in 2010, he transferred all his shares (then just less than a 30% stake) to the wife for a nominal consideration. The company had been very successful in its trading activities. However, at the time of the transfer the company's borrowings of some £6 million exceeded the then share valuation by some 100%. By this means he was able to make the inter-spousal transfer on the basis of a nominal cost to the wife. At the same time, the husband and wife entered into a formal agreement with HSBC whereby the value of the future income stream from Z Ltd would be assigned to the Bank and charged as security for its willingness to advance to the wife a sum of £6 million plus. For obvious reasons given his impending bankruptcy, the loan was taken in the wife's sole name.

27. As to the need to effect that injection of cashflow at such a critical juncture, the husband explained in his oral evidence that he needed these funds in order to repay a long-standing debt to his close friend, CR, who had lent him a similar sum to invest in the failed business, PB Ltd, to which I have already referred. Whilst the husband had committed personal funds of £6 million, he had been anxious at the time to increase his equity stake in the business. That opportunity was provided by CR's willingness to lend the husband £6 million in addition to his own investment in the business in a similar sum. HSBC agreed to provide funds to repay that overdue loan to CR in return for an assignment of, and charge over, the sale proceeds of the Z Ltd shares. In the context of the bankruptcy, HMRC accepted that the sale of the shares was to the wife at a nominal consideration despite the value of the charge secured on the sale proceeds.

28. Thus, that sale produced a third benefit for the husband in addition to those I have set out in paragraph 25 above. It enabled the husband to discharge his historic indebtedness to his close friend and business partner who was thereby secured in the context of the husband's insolvency. I am satisfied that this step was taken not only out of a sense of personal obligation to repay to his close friend an outstanding debt but also to preserve their business relationship in the aftermath of his bankruptcy. It left the wife with a very substantial debt to HSBC although the husband has always maintained that she had no personal financial exposure for repaying the debt notwithstanding that she took the "upside" of the income generated by the sale in the sum of c.£1 million over a

five year period. In this respect he relies upon a "limited recourse" clause in the agreement with the Bank which provided that the Bank would have no recourse against the wife for the discharge of the secured obligations "except to the extent of the net proceeds of realisation of the Assigned Property" (defined as any contract into which she entered for the sale of the shares and the proceeds of any such sale). Specifically, the "secured obligations" related only to all and any monies due or becoming due in the future from *the husband*. He lays great store on the significance of that clause which he maintains he secured for the wife's benefit after a difficult negotiation with the Bank. He relies upon it as a demonstration of the extent to which he was trying to erect firewalls between his wife and his creditors. Certainly, it is difficult to reconcile the wife's statement in her written evidence that her personal guarantee covered his liabilities to HSBC including other and various facilities which the Bank had made available to him. If the copy documents in the bundle do indeed reflect the terms of the documents which were executed at the time, it does indeed appear that she had no liability in respect of the *specific* charge secured against the Z Ltd shares.

29. From the capital receipts generated by the sale of the Z Ltd shares, on 2 June 2011 the wife transferred funds totalling £6,626,570 (in two tranches of £1,725,043 and £4,901,527) to repay the HSBC loans. I have an email from an associate director of HSBC Private Banking, confirming those receipts and their provenance.

30. It appears that the wife negotiated directly with her close friend, SD, in relation to the 'repurchase' of some works of art which had 'notionally' been sold to that lady, formerly a close friend of both these parties, at a time of cashflow difficulties. Whilst I am told that the artwork remained on the walls at the French Property throughout, the payment of £600,000 to SD in July 2011 from the Z Ltd sale proceeds restored to the wife the legal and beneficial ownership of those paintings.

31. The sale of the shares in Z Ltd resulted in the payment of £9.5 million together with a deferred income stream of about £1 million. I assume that this was part and parcel of the due diligence exercise at the time of sale. What I do know is that over the course of the next five years, the wife received an income stream from this source of £16,655 per month. Because of her status as a Monegasque resident, these sums were received on a tax-free basis.

32. The husband severed his final connections with the company by resigning as a director at the beginning of 2011.

Nominee operation of bank accounts / corporate interests

33. It is part of the wife's case that the husband had during the years following their formal separation and at points during their marriage frequently conducted business transactions in her name. For these purposes he had acquired from her a number of blank signed share transfer forms which he was able to use to move assets from her legal ownership when it suited him commercially or for purposes of tax efficiency. It is her case that she had trusted her husband during the currency of their marriage and beyond to look after their financial affairs and, whilst she had some basic knowledge of their business interests, she had by and large left matters to him. In conjunction with two of his 'people' who held various directorships from time to time, PS[2] and – from his departure in 2012 – his PA, SA, she had frequently acted on the husband's direction in relation to effecting various bank and share transfers. She accepted during the course of her oral evidence that she would invariably have to authorise transactions when contacted by her Monegasque bank in the post-separation years but she denies that she was then exercising any independent control in respect of the manner in which various companies and accounts were operated.

34. By May 2009, the husband's evidence is that he had run out of money. He was relying on the good will of close friends to stay afloat. He sold a valuable boat berth, some fine art and jewellery, his Aston Martin and Bentley. The company offices moved from Mayfair to smaller offices and, after a year, to much smaller premises at the end of the M1 motorway. From here, the husband was running what he refers to as "her company", P Limited ('P Ltd').

P Ltd

35. Following the sale of the wife's shares in Z Ltd for the sum of £9.5 million in May 2011, HSBC was repaid its debt of £6.63 million. From the remaining balance of £2.8 million, a sum of £1 million was paid into a company called P Ltd whilst a further £1 million was transferred to a Spreadex account in the wife's name, albeit one which I find was effectively operated by the husband. This entire sum was subsequently lost through his spread-betting activities. Regardless of whether this particular loss was incurred in respect of a Spreadex account held in the wife's name or that of the husband, I am satisfied that this was his loss and that he had made the investment decisions which resulted in this loss. Without any disrespect to her, I accept her evidence that she did not have the financial sophistication which would have enabled her to invest such a significant sum on the international futures markets. The husband accepts that he did indeed operate this account but maintains that she was kept fully informed about his trading activities. He has produced an email

[2] It is the husband's case that during the marriage SP was employed by both parties and was responsible for "our entire financial function" for c. 6 years. This included the paperwork for the businesses as well as their personal finances. **[C:179]**

exchange between them dating back to late April 2011 in which he guarantees to meet any margin calls made in her name over and above the £1 million which had been earmarked, or allocated, for trading. That she was at least aware of these arrangements is clear from her response to the husband's email:

> "Thank you, we must have some form of system in place to discuss trades. Don't [want] to be responsible if you can't get hold of me. Early morning would be best I guess. Let me know what you think. Is PS filling in any form for me to sign.
>
> Xxx"

36. There are several emails emanating from this period written between the parties in this tone and form. It is clear to me, as the wife confirmed in her oral evidence, that they were during this period operating from the foot of an amicable relationship albeit that their marriage had ended. She told me that she trusted the husband and wanted to do what she could to assist him in the financial circumstances in which he found himself. It was, of course, to their mutual benefit that he should make his financial rehabilitation a success.

37. However, until a very late stage of the proceedings, he continued to maintain that the Z Ltd monies belonged exclusively to his wife and that he had not received any direct benefit from them. For reasons I have explained, I am entirely satisfied that, in accordance with their separation agreement (with which I deal below) he derived a very significant benefit from those funds. In essence, a sum of £1 million was made available to him as effective 'working capital' for his investments on the futures market. He lost that sum and I am satisfied that the wife derived no benefit from that lost investment although she continued to receive the element of deferred consideration from the sale of the shares which supported, in part, her income needs in Monaco. However, even that is not the end of the story since the husband was receiving 90% of all sums received under the terms of their separation agreement.

The Separation Agreement: December 2010

38. Thus, to return to the terms of the agreement which the husband set out in his letter to the wife dated 12 December 2010, it was clear that he was hoping that HSBC might be prepared to accelerate the release of its security over the French property in less than five years as the proceeds of the deferred income stream from Z Ltd were released over time to the wife. It was a clear condition precedent of the proposed agreement that if she did not receive the property unencumbered by debt within five years, the agreement was to have no further effect or consequence and she would be released from its terms. Given that the property has since been sold because of the husband's inability to transfer the property 'debt free', it follows, and is accepted by both parties, that the

remaining provisions have no traction on the outcome of these proceedings and the formal application which the wife now makes for financial remedy orders.

39. Nonetheless, it is instructive to look at the terms though the prism of the subsequent dealings with various companies over the course of the years from 2010 to 2015.

40. First of note is that the husband accepts that, save in the event of a remarriage or permanent cohabitation (defined as one which lasts in excess of eighteen months), this is not a case where a clean break could realistically be achieved. She was to retain the income stream of £200,000 per annum over five years from the Z Ltd deferred consideration. That entitlement was to continue regardless of whether or not she had any other forms of financial support which was external to the agreement between them. She was to receive a sum of €120,000 for furnishing out her new rented flat in Monaco. The husband offered to maintain the interest payments to the Bank in respect of the loan they had taken out to purchase the additional land next to the main property the French Property. That undertaking was to subsist for a maximum of five years. In the event that this land was sold, the wife would retain the net proceeds of sale.

41. In terms of her income, it is clear that the intention reflected in the proposal dated 12 December 2010 was that they would both be beneficiaries of the dividends inflowing from the Z Ltd deferred consideration together with the benefit of any other "dividends, capital or income tax free" which the wife might receive into her accounts over time. Whilst the terms of this particular aspect of the proposal are not entirely clear, it seems that the wife was to pass on to the husband 90% of any such receipts until from her 10% entitlement she had been paid a total of €350,000. Thereafter, her entitlement to any remaining receipts was to reduce by a margin of 3% to 7% (leaving 93% of the benefit of any such receipts in the husband's hands) up to a further €350,000 (i.e. a total of €700,000 in the wife's hands). From any further receipts, she would be entitled to a reduced share of 5% with 95% reverting to the husband as his entitlement.

42. In addition to any such receipts, and from the diverted funds he was to receive as 'his share', he was offering to pay the "reasonable running costs" (otherwise undefined) of the French Property and Monaco together with her personal costs. These would be notionally fixed at €350,000 per annum to mirror the share which she was to retain from receipts flowing in from dividends, capital of tax free income. He proposed to manage cashflow by paying to her monthly sums equal to one-twelfth of this sum (less the BI consultancy monies) with effect from April 2011. In the event of remarriage or permanent cohabitation during the currency of the next five years, his

obligation to provide financial support would cease, although her entitlement to a share of the Z Ltd deferred consideration (i.e. the income stream) would continue to be paid to her.

43. If she remained unmarried at the end of the five year period, he would pay maintenance at the rate of £400,000 per annum, inflation linked, until a future remarriage. There was a recognition that, should he subsequently find himself in a financial position to capitalise her ongoing income claims, they would attempt to negotiate an appropriate sum so as to achieve a final clean break between them.

44. In terms of liabilities, the husband proposed that the initial HSBC loan of €350,000 which had been taken out to secure the wife's residence in Monaco would remain her responsibility although he would continue to service the interest element of the debt over a five-year period. He expressed an intention to assist her with reducing the capital element of the debt (for example, by selling the additional plot at the French Property or one of the paintings which she had retained).

45. As to what the husband would retain on the basis of this proposal, his assets were set out in paragraph 15 of his letter:

> "I will have the benefit of the house contents, wines, channels (chattels?), UK cars (French cars will be yours), all companies, other investments etc. This excludes items from London that you will require for your Monaco residence."

46. Thus, with effect from April 2011, the husband's intention was that after five years she would receive the French Property unencumbered together with €350,000 per annum (in part from him and in part from the B Ltd monies) which she would have available to cover all the property costs in France and Monaco (including – presumably – her rent in Monaco) and her personal lifestyle costs. These costs were to exclude the bank interest on her €350,000 loan which was to fall for his account.

47. Before turning to consider what this proposed settlement tells me about the parties' intentions at the time and the extent to which they were shared, I must first consider the husband's evidence in relation to the corporate assets which he contends belonged beneficially to his wife.

48. As I have said, whilst the agreement and its internal terms were intended to cover both the arrangements for separation and any subsequent claims on divorce, it is accepted that the husband's non-performance in relation to the French Property renders that agreement of no practical utility or effect in the

context of these proceedings. It does, however, tell me a great deal about the husband's approach and his intentions at this particular point in time.

49. Whilst he told me during the course of his oral evidence that he hoped to avoid formal insolvency through a bankruptcy order, it is nevertheless clear to me that the writing was very much on the wall by this stage in early 2011. I have no doubt at all that the wife's move offshore to Monaco earlier in that year together with the financial infrastructure he was proposing in that agreement were designed to ensure that, in the event of bankruptcy, the family's assets (which he saw primarily as "his" in terms of the value in the companies and other financial structures) would be preserved from his unsecured creditors in that bankruptcy. The wife would benefit because she would continue to be supported throughout the five-year period which had been proposed. It was no doubt the husband's hope (and probably his intention) that he would be able to reverse his financial fortunes during that period, pay off the mortgage on the French Property and deliver on his promise to sign it over to the wife unencumbered. In the meantime, they would both be living on the income generated by the Z Ltd deferred consideration and he would be free to deal with all the companies (the ownership of which he was to retain) confident in the knowledge that corporate assets would not be attacked by his creditors and/or the trustee in bankruptcy. He would be free to rearrange internal structures as and when needed through the blank share transfer forms which the wife was to sign. The day to day operation of the company books and accounts would be left to either PS or SA who would continue to be guided by him as to how funds were to be applied albeit through the churn of funds coming into and going out of the wife's personal accounts with Bank S in Monaco.

50. The husband's section 25 statement provides the following narrative in terms of his bankruptcy:

> "44. In the decade leading up to my bankruptcy, I lost everything and eventually was left with nothing apart from my Zurich pension. Any remaining assets at that time were AW's….".

51. He identifies in paragraph 49 (b) of that same statement the companies in respect of which she would retain the beneficial interest as being P Ltd, T Ltd and J Ltd.

P Ltd

52. Despite the husband having borrowed a sum of £3.5 million from Kaupthing Bank for investment into the (former) group of companies, it appears that the group ultimately failed and went into liquidation in September 2009.

53. A new entity was incorporated in July 2009 (P Ltd). That was a company in which the wife held all the shares. She was appointed a director. A sum of c.£1.4 million was channelled into the company as working capital at the time of the Z Ltd sale. In 2012 a further €250,000 was borrowed in the wife's name from HSBC (UK) for investment purposes. That much is clear from a letter from the bank dated 3 August 2017. That letter sets out the wife's (then) outstanding liability to the Bank as being:

    2010: loan of €275,000 (purchase of separate plot of adjoining land at the French Property);

    2011: loan of 350,000 (unsecured) to support her Monaco residency;

    2012: €250,000 for further investment in P Ltd.

    As that same letter makes clear, the husband had been covering both interest and capital repayments on those loans. He refutes the suggestion that he had agreed at the time of separation to cover the capital repayment in respect of the original Monaco residency loan.

54. The husband's case has always been that P Ltd was his wife's company both legally and beneficially. She had no direct day to day involvement in running the company and, following his bankruptcy, he undertook that role for her and was paid an annual salary of £100,000 per annum for doing so. I am satisfied on the basis of everything I have heard and read (including the many exchanges of emails between these parties during the period when they were communicating quite amicably in the aftermath of their separation), that she was aware of the existence of this company. The husband's case is that she trusted him to run the business for her. That is what happened.

55. This company, too, joined the list of corporate casualties in 2013 when it went into administration. The administrators report shows the wife to be a floating shareholder with an unsecured debt of £430,000. It collapsed with a shareholder loan due to one of the husband's business associates, HH, and a further £950,000 due to the husband's personal investment vehicle, S Ltd. Whilst the husband has queried whether the wife was a beneficiary of the administration, I am satisfied that she did not receive a sum of c. £450,000 or any sum at all. The liquidator's report refers to this payment out via another entity. The husband has produced an email which she sent to the administrators waiving her entitlement to a dividend from the liquidation. The evidence does not allow me to take this particular issue any further forward and it does not appear to be part of the husband's case that she has a sum of £500,000 which she has failed to disclose.

56. By the conclusion of the husband's oral evidence, he appears to have accepted that P Ltd was for all intents and purposes his company and that, apart from authorising bank transfers, the wife had very little operational control. Thus, it is not without relevance that the monies which came out of the Z Ltd sale to P Ltd have also supported his trading activities post-bankruptcy in this context.

The husband's email to the wife: 24 May 2012

57. Within the material before the court is an email which was sent by the husband to the wife. It was sent during the currency of his bankruptcy. It said this:

> "Further to our meeting today, (Lovely to see you, by the way, you look great), I have revised the Agreement as we discussed. Please do not reply to this email, except by phone to me. Provided that you are in agreement, please print two hard copies and sign, sending them back with SH [his daughter]. Thanks."

58. There then followed the draft of a letter which the wife was to send to him to be actioned by HR, one of his close confidantes and the executor of their Wills. The draft which the wife was asked to send to HR purported to clarify the terms of their separation agreement which, according to the terms of the letter, was intended to take effect both during their joint lives and in the event of one of them predeceasing the other. In short form, it provided for the following: -

(i) the French Property was to be transferred to the wife free of debt as soon as practicable but no later than 1 April 2016 together with its contents save for two items which were to be returned to the husband;

(ii) the husband would utilise the Z Ltd monies in part to provide the wife with an income of €370,000 per annum from which she would pay all her personal expenses and the upkeep of the rented property in Monaco and the French property;

(iii) the wife was to receive 10% of all profit made on transactions channelled through her Monaco No 2 account. Once she had received €350,000 by this means, entitlement would reduce to 7% of the next tranche of €350,000 and 5% thereafter. These were described as "commissions" for the use of her bank account. With effect from April 2016, the sum would increase to €400,000.

(iv) Once the husband was in a position to realise £40 million from his investments (and she was to acknowledge that all investments held in her name were held for his benefit), she would receive a sum of £5 million together with an uplift for any gain over £40 million to a

maximum of £20 million capped after ten years. There was a caveat which excluded any gains from his spread betting activities or ad hoc deals.

(v) In the event of the husband's death before the transfer of the French Property, the loan secured on the property (£2.5 million) was to be a first charge on the husband's estate.

(vi) In the event of the husband's death at a time before she had received £5 million, she was to be entitled to 40% of the investment value of his estate up to a cap of £5 million.

(vii) Provided these obligations were met, the wife was to provide confirmation that all assets outside the French property and Monaco, belonged to the husband including company shares.

59. In addition to other terms, that letter included a list of all the assets which the wife was then holding on behalf of the husband.

60. On 9 June 2012, the wife reproduced the terms of the husband's draft which she signed. I heard evidence from the husband's daughter, SH, who could not recall being asked in June 2012 to bring documents back to England following a visit to the wife in Monaco, with whom she remained close. She did however recall an occasion when she flew to Monaco to collect a document which the wife had signed although she thought that related to a transaction with one of her partner's property groups.

61. The husband maintains that this document is a forgery and says he has no recollection of sending such an email to his wife or instructing her to sign a copy of it. He also maintains that a subsequent typed letter written on his headed notepaper and signed by him sending the signed 'agreement' to HR for safekeeping is also a forgery.

62. I reject his case that the wife has manufactured these documents. I do so for the following reasons.

(i) The original email which was sent to her by the husband (the 'please do not reply' email) bears the hallmarks of many of his communications with the wife, including a long run of What'sApp exchanges which he himself has produced. He has made it clear both on this and on subsequent occasions that she should avoid committing to written or electronic form any matters such as these which might be regarded as sensitive. When in 2016 the wife subsequently made her own proposals to the husband following ongoing discussions between them, the husband insisted that nothing was reduced to writing. I accept her evidence that he made

that request because when, during the course of this hearing, I sought to encourage the parties to engage in further dialogue given the enormous costs already generated and the absence of any visible liquid resources, the husband refused to meet the request of the wife's legal team to reduce any proposals he might have to writing.

(ii) The husband himself told me in evidence that he did not believe that the wife had the sophistication to forge an email in this manner.

(iii) During his oral evidence he told me that he did not know if he had sent this email to her but he could not find it on his Gmail account.

(iv) The wife checked her diary for the relevant period and found an entry referring to a lunch which she had with the husband on the same day as he wrote the email which clearly refers to "our meeting today". The lunch took place in a well-known Mayfair restaurant. The husband said he could recall such a lunch at that particular venue but thought it was at a different Knightsbridge restaurant. The wife's diary from that period records a meeting later that same afternoon with HR in his offices.

(v) When the wife heard the husband's evidence that his subsequent letter to HR was alleged to be a forgery, she was able to produce a copy of the original from her safe. In that letter the husband described one the attachments to it as *"AW's email to me dated 9th June 2012 which the three of us have met to discuss setting out the entire basis of our financial agreement"*.

(vi) The wife identified the husband's signature on the foot of that letter as his handwriting. Whilst there is no expert evidence on this point, I can see for myself that it is very similar, if not identical, to his signature on many of the other documents in the court bundles.

(vii) Attached to the original, and shown on the copy, is a post-it note from SA, the husband's PA, who wrote on the note *"Hi AW, Copies of the letters to Jonathan and HR so you know who has what"*. The reference to HR is clearly to the executor for both their wills. The reference to Jonathan is to the husband's solicitor. I have in the bundle a further letter to the husband's solicitor on the husband's headed notepaper written on the same date as the letter to HR. That letter does not specifically refer to the email signed by the wife in which, at his dictation, she recorded the terms of their financial arrangements. It merely sends to his solicitor copies of their Wills and Letters of Wishes. The husband has subsequently produced an email from his solicitor who, on 24 hours' notice, has not been able

to find in hard copy or digitally a copy of the letter dated 27 July but they were continuing to look.

63. I have no doubt at all that the husband wrote and sent the original email to his wife on 24 May 2012. The evidence that he did so is overwhelming. It reflects more or less what was going on on the ground in terms of how the companies were being operated and the means by which funds were being channelled through the wife's designated Monegasque account. Given the currency of his bankruptcy at that point in time, there may well have been a very good reason why he did not wish to disclose the precise contents of that document to his solicitor but I cannot and do not speculate further on that. In contrast, it was obviously important that his executor was aware of the arrangements which were then being proposed in the event either one of the parties should predecease the other and which the wife, by signing, had apparently accepted. I am satisfied that there was indeed a meeting with HR in the afternoon after their lunch together and I am equally satisfied that he was made fully aware what those arrangements were.

64. In terms of the husband's credibility and his willingness to deploy dishonest or unreliable means of securing the ends he seeks to achieve, I look to a much more recent set of events. I am reinforced in my conclusions about the May 2012 email by a much more recent admission which the husband made during the first two days of this hearing. He had been cross-examining the wife on her general credibility. For the purposes of trying to establish that she had not taken a particular flight with a well known international carrier, he produced in court copies of her online airline account showing her flight itinerary. Unbeknowst to him, she had but a few days before reported to the airline that her online account had been hacked and her email address for that account had been changed without her permission. He further produced in court copies of redacted emails written by an unknown party to the London branch of her Bank in Monaco seeking to ascertain that some missing credit card statements should be readily available to her as a customer of the bank notwithstanding her previous explanation that the Bank was unable to produce them. (The wife was not specifically named in that email.)

65. I directed the husband to provide a sworn statement as to how both categories of documents had come into his possession. The account which emerged from that statement was extraordinary. He explained that he had been drinking in a public house close to his home. He had consumed a considerable amount of alcohol and began talking to a complete stranger whom he met at the bar. In the course of telling this individual about his current matrimonial proceedings and the problems he was having in that context, he accepted from this stranger information about the name of another individual who had contacts through Heathrow with the airline. He was given this individual's name and was told

to contact him through an App called Wickr which appears to be a means of secure communication which automatically deletes all records of such communications once made. He established contact with an individual whose name, or alias, was given as Martin Moodie. Whilst no money changed hands, Mr Moodie said to the husband that he trusted he would be looked after for his services. During their exchanges the husband also asked if this individual could assist with the matter of the missing credit card statements and the Monaco Bank's ability to produce them. The husband maintains that he gave to him individual details of the wife's bank but not her name. The emails which were produced as a result of these exchanges show that this individual subsequently posed as a customer and made contact with the London manager of the wife's Bank in Monaco.

66. This was a disgraceful episode for which the husband has quite properly apologised. On the one hand, it might be said that he has been open and honest about what he had done and that his admission should lend a veneer of credibility to his account that the May 2012 email and the chain of correspondence which it produced were forgeries. I do not accept that proposition. In my judgment it reveals the lengths to which this husband is prepared to go in order to achieve the ends he seeks to put in place. I am left in no doubt that all of the arrangements which were put in place in the months leading up to his bankruptcy and thereafter were intended to enable him to carry on with his business and commercial activities with minimal disruption. That he did so with the intention of trying to restore some financial traction in respect of their future going forward I do not doubt but his covert tactics over this period and the years which followed have placed very significant obstacles in the path of the wife's legal team in their efforts to establish what, if anything, remains available in the context of the current proceedings.

67. In particular, the husband's modus operandi in terms of corporate nominee holdings has, I accept, contributed to a significant extent to the difficulties encountered by the wife's team in establishing a clear picture of the husband's financial circumstances. At a hearing before Theis J as long ago as 29 October 2018, he refused to agree that he was the beneficial owner of the shares in S Ltd despite having written to the wife's solicitor earlier that month admitting that he had "operational control" of the company notwithstanding the transfer of the shares into the name of BB in December 2016. As long ago as 2017, the wife's advisers were obliged to issue a raft of third party disclosure orders against several of the husband's business associates whose names had appeared in the context of the ongoing disclosure process. Central to these issues was the status of C Ltd and its apparent owner, BB**.**

C Ltd and BB

68. BB and the husband have had a longstanding and close personal connection which goes back a number of years. The wife told me that she had met him socially with the husband on at least ten occasions throughout their marriage. BB and his wife were invited to spend a holiday as the parties' guests on one of the yachts which the husband then owned in the days prior to his bankruptcy.

69. Having been joined as a party to these proceedings, BB made a statement in November 2018. He has lived and worked in Hong Kong for many years and is non-resident in the UK for tax purposes. With his wife he operates a number of businesses which deal in import, export and manufacturing. He has significant dealings in China and the Far East. At one stage of these proceedings prior to his refusal to engage any further he had instructed leading counsel, Mr Frank Feehan QC, to represent him.

70. It is BB's case that he has been the sole shareholder and director in C Ltd since its incorporation in 2008 (in fact it was incorporated at the end of 2007). He describes the company as an investment vehicle which he has utilised from time to time for various projects which are unconnected with this litigation. Because of the absence of detailed accounts for the early years of its operation, it is not possible to test this proposition. He accepts that the husband is a longstanding friend and business colleague. It is clear from all the evidence, including that which I heard from SH, that BB has been involved with the AH's family for many years as one of the husband's inner circle of friends.

71. BB describes in his statement how he was approached by the husband in 2011 with a request for assistance as a potential investor in the F Ltd project. He agreed to invest on the basis of an oral guarantee from the husband that his investment would be repaid in the event of any losses. Not only would he be indemnified in respect of any losses but he was also to receive a 50% share of any "upside" or profit which F Ltd might make on a pro rata basis.

72. These appear to have been the terms on which the husband persuaded all of the C Ltd investors to put money into F Ltd. I accept that little by way of formal written agreements was ever produced in this respect. That was part of the husband's modus operandi and appears to have been accepted as a satisfactory way of conducting business by not only BB, but also by HH, NM and WG, the latter two individuals having attended court to give evidence at this hearing. I accept that the husband appears to have attracted a significant amount of loyalty from those who were invited into the reach of his close circle of friends and business colleagues. He made them all a great deal of money in the past and he places great importance in performing on his repayment of loans made by these individuals.

73. I do have within the bundles a single handwritten memo which BB appears to have sent to the husband at some point prior to December 2015 confirming both the guarantee in respect of any potential losses accruing to C Ltd as a result of its investment in F Ltd and the husband's entitlement to receive a 50% share of any profit after the return of the original investment. The initial start-up loans or investments made by the husband and these individuals in the business of some £1,247,300 were subsequently overtaken by some very significant external commercial investments of tens of millions of US dollars. The corporate edifice of F Ltd is underpinned by a complex share structure with different classes of shares offered to the front-end investors and the large commercial funds which now own the majority of the shares. According to BB's evidence in 2018, C Ltd's holding in F Ltd was a minority holding of 5% of the total shares with NM, HH and WG holding some 2% and an agreement that he and the husband would share any balance were value in F Ltd to be realised.

74. Within the material placed before the court is a certificate of incorporation issued by the Registrar of Companies in Hong Kong which shows C Ltd as a registered entity in 2007. An annual return filed some nine years later in November 2016 shows BB as having made that return as the sole director and shareholder. His wife is shown as the company secretary.

75. I have accounts for C Ltd for the years ending 31 March 2013 to 2016. Prior to the financial year 2012/2013 I have nothing more than a composite set of figures for November 2007 (being the date of its incorporation) to 31 December 2012. That balance sheet records a significant loss from a figure of just under HK$4 million to minus HK$25,181. The most recent set of accounts for the year ended 31 March 2016 show that the company was not generating any revenue and was carrying a loss of some HK$11,760 despite long term investments of just under HK$9.5 million.

76. A significant deficiency in these accounts is the lack of any reference in them to any trades or investments with the husband or any of the other third parties who are said to have made loans or investments. There is no reflection of the loan which was paid by the husband to C Ltd in 2008 for what he maintains was a failed investment in China. Nothing has been produced by BB in the context of these proceedings to support the existence of that loss which the husband explains in part as some form of computer crash. Further, there is no record in the accounts of some £882,000 flowing from C Ltd to F Ltd between May 2011 March 2012 which included the HH and NM investments of £200,000 each.

77. One of the fundamental problems in conducting a comprehensive forensic trace through the finances of C Ltd since its inception has been the complete lack of any company bank statements. These have been withheld by BB on the

grounds of third party confidentiality. Whilst this may well be a legitimate basis for asserting such confidentiality where it exists, BB's absence from these proceedings as a witness has left the wife's and the court's hands tied. In stark contrast to that position is the apparent ability of the husband to engage BB by telephone or email whenever he requires from his friend some written confirmation of a position or information about a point in issue. The husband relayed to me at a late stage of the hearing BB's continuing unwillingness to assist the court even when I offered to have video conferencing facilities made available between the court and Hong Kong so as to enable him to give his evidence without the inconvenience of travelling to this jurisdiction. The husband acknowledges the long-standing and close nature of their personal relationship. He invited BB to attend the wedding of his daughter in London but a few months ago. He accepts and maintains that there has been a fracture in that relationship as a result of BB having had to become involved in his divorce proceedings over the last two years but also speaks of a rapprochement since he reached out to his friend at the end of last year.

Dealings with the shares in S Ltd, C Ltd and its underlying entities

78. A significant event in the litigation chronology occurred at the end of 2016. To understand the context, I need to turn to a proposal which the wife made to the husband in October 2016 in terms of a final resolution of their financial affairs. The wife has accepted that she was co-operating with the husband to the extent that she wanted to give him some time to restore his financial position in the years which post-dated his discharge from bankruptcy in 2012. He had been maintaining her financially throughout that period as I have described earlier in this judgment. After four years of treading water in this manner, it appears that she instigated a meeting between them in London in an attempt to resolve matters. They met initially at the home of her close friend, SD. There followed a series of telephone conversations during which the husband promised to speak to his accountant, WG, in order to come up with a proposal which would provide her with a measure of financial security. He once again refused to reduce any such proposal to written form and accordingly they arranged to meet once again in London at the home of another mutual friend Ms T. That meeting took place on 26 September 2016. The wife says that he came to that meeting with nothing in terms of any clear proposals as to the way forward.

79. The husband, for other purposes, produced for me a run of WhatsApp communications between the parties which covers the period from 10 January 2016 to mid-September 2019. On 1 July 2016, in the period immediately prior to the first meeting in London during the summer of that year, he had written to the wife in these terms:

> "Hi AW. Using What's App cause safer. I think it's time for me to stop paying the interest to HSBC, as part of the negotiation to force a settlement [i.e. between the London branch of HSBC which held the wife's loan and the wife]. Do you agree? The risk is that they may send you some nasty letters and threats in the meantime. However I am as confident as I can be that they will not litigate, especially with a 250k offer on the table. Your decision, AH xxx (remember, you don't have the 350 any more [i.e. the monies originally lent to support her Monaco residency], otherwise you wouldn't be asking SD for a loan)".
>
> And on the following day when she asked for time to consider:
>
> "Ok, no pressure. And the lounger *[sic]* it goes on, the longer I keep my HSBC account!!! ….."

80. On 13 July 2016, there was the following exchange between them:

> "Hi AH, please keep paying the interest. Let's see what they come back with first. Also haven't heard anything back from you re our last meeting. Hope your *[sic]* well. AW Xxx"
>
> "Hi AW, I am sorry. I am due to come back to you with a proposal. It's straightforward, as discussed, but please remember it doesn't assist your lack of current cash or for the next couple of years. That is something you need to deal with, unless we get lucky. Xxx"

When the wife chased for a proposal on the basis that she had no immediate plans to travel to London, the husband told her that "it needs to be face to face" and "Plse no emails".

81. On 28 October 2016, some weeks later, the wife took the initiative and formulated a written proposal of her own which she sent to the husband by email. I am satisfied, as the wife confirmed to me in her oral evidence, that the preamble to her offer accurately reflects what had happened since their separation. She recorded those events in these terms:

> "We had an agreement made by you in 2011 which I stuck to albeit it was very difficult for me to do so, especially in the first couple of years. At least at that time I still had my home to run to!! You sadly for various reasons did not stick to your part in many areas.
>
> Back in November '15 I asked you what I should do as I had to renew my lease [in Monaco]. You told me to renew for three years, which I did. In February 2016 you asked me if there was a break clause in my contract. I told you there was not.
>
> When we spoke again in April you talked about giving me a percentage of each asset, so that I could have something long term. That I would have to take my chances with the shares as some wouldn't come to anything & others may do very nicely in a few years.

> You spoke about this again when we saw each other in May, at SD's. You were very apologetic & upset about not having being able to keep your word to me.
>
> I accept things are very difficult for you as indeed they are for me. I have decided to use what little money I have, from the sale of paintings etc. to stay here until March[.] I will then have to come back to the UK as I have nowhere else to go. I will hand in my notice in December, In the hope that they find someone to take on my lease. If not, I am stuck with the payments until they do."

82. There then followed the terms of her proposal which was predicated on the basis that "I am holding shares for you in a number of companies". She acknowledged that he was then holding signed stock transfer forms for most but sought 50% of each of F Ltd, N Ltd and related companies, S Ltd, the companies through which he conducted his spread-betting activities, and a number of others. In return, she offered to transfer to him her shares in the R Investment. She concluded,

> "This seems a fair gamble to me, as I have had no capital from you or any long term "Comfort" as you call it. This way there may be dividends paid or hopefully a sale of one of the companies."

83. That proposal was also sent to the husband's accountant, WG.

84. On 10 November 2016 the husband sent her an email confirming that he and WG were meeting shortly. In that email he confirmed that he had been asked to close his HSBC account and was in the process of opening a new account with Metro Bank through which he would ensure she received the proceeds (some £14,000) of a watch he had recently sold to assist her financially. He continued,

> "I will continue to do what I can for you, just please don't make me feel you're going against me or don't trust me. I am under the most unbelievable pressure to find more liquidity. I am working so hard and away so much, that I really don't have much of any other life any more."

85. The husband's actions following receipt of the wife's written proposal are instructive. He gave instructions to WG, his accountant, to transfer to C Ltd all his shares (100%) in S Ltd. That action resulted in C Ltd becoming the owner of all the companies in which the wife was seeking a 50% share.

86. WG accepted during the course of his oral evidence that he had a meeting with the husband on 17 November 2016. He also confirms that he was aware of the substance of the wife's recent proposal to the husband and that she had reached out to him as a friend to do what he could to help her resolve the situation. He confirmed his instructions from the husband, given on 25 November 2016, to instigate the share transfers of S Ltd to C Ltd. He denied

being aware of any correlation between those instructions and the wife's proposal and he denied advising the husband to transfer the shares out of the jurisdiction to the Hong Kong based entity. He told me, "I am there to accept AH's instructions".

87. WG's firm had started to act for S Ltd on a formal basis in 2014 after the husband's bankruptcy had been discharged. Throughout the course of his evidence, WG was very keen to impress upon me that the value and utility of S Ltd lay in its efficiency as an entity through which corporate losses could be offset against any tax due on the husband's earned income from F Ltd. Its underlying corporate holdings held no value at that time despite the fact that (i) the husband was the beneficial owner of those entities, and (ii) he was aware that significant sums had been invested, he himself having been one of those investors on the husband's advice.

88. I cannot accept WG's evidence that he remained completely unaware of any correlation between the instructions he received from the husband and the wife's recent request for a 50% share in S Ltd's corporate assets. I know not whether he gave the husband any specific advice about the transaction or whether this was a scheme devised by the husband. It is simply not credible in my judgment that there was no discussion at all between them during their meeting on 17 November when these arrangements were put in place and that nothing was said about the reasons for the patriation of English assets to an offshore entity. WG himself had made a direct 'investment' of just under £53,000 in C Ltd via a Mauritian entity in May 2013, some eighteen months earlier. The husband had personally guaranteed that loan/investment (whatever it was in reality) and I have no doubt that he did so on the husband's recommendations about the substantial potential to be realised in F Ltd which was then under his personal stewardship as a director and CEO of the company. I make it clear that I am not making any specific findings of collusion between WG; I accept that the instructions came from the husband. However I do not believe that WG was ignorant of the husband's intentions as appeared to be the thrust of his evidence when he was being cross-examined by Miss Bangay. WG believed throughout this transaction that C Ltd was BB's company. He told me that he had no instructions, or any other reason to believe, that this was a transfer into a corporate entity in which, to his knowledge, the husband had any legal or beneficial interest. He told me that following the transfer, he thereafter took his instructions from BB in relation to S Ltd. He expressed it in this way:

> "I soaked up what I was being asked to do. Frankly if they wanted to do this …. Its only utility was to utilise those losses and without money flowing into the company it had no use whatsoever. As far as I was concerned it was entirely irrelevant who owned the shares. I was simply stuck in the middle of two people whom I respected and admired."

89. Within the material before the court is a transcript of the oral examination of WG pursuant to the court's third party disclosure orders, which took place before Theis J on 29 October 2018. He was represented by counsel on that occasion. During the course of his evidence, he said that in 2014 he had met BB only once before on the occasion of the husband's 60th birthday party in London. In a subsequent exchange of emails with BB in January the following year (2017), WG had recorded his assumption that BB was the owner of C Ltd and he had requested what he needed for the "Know your Client" enquiries.

90. Having put in hand the registration of the various share transfers, WG was subsequently instrumental, on the husband's direct instructions, in finding an offshore director for S Ltd. He identified an individual, RK whom he knew as a result of his previous professional involvement as a director of a Mauritian trust company. RK was based in Mauritius and was apparently chosen for this role because of her agreement to undertake it for a sum of 1,000 dollars per annum. She was appointed over the telephone and it appears that she subsequently resigned as a director shortly after receiving the English court's request for information via the third party disclosure orders which were served on her.

91. Matters did not end there because, on 20 November 2017, the shareholding in S Ltd was transferred from C Ltd to a Hong Kong resident who was BB's brother-in-law. (It will be recalled that BB's wife was the company secretary of C Ltd). BB has explained this transaction as being underpinned by his wish to avoid becoming drawn into the English divorce proceedings ongoing between the husband and the wife. He accepts that his brother-in-law held the shares in C Ltd following that transfer as his nominee.

92. All of this has to be seen in the light of the husband's subsequent 'mea culpa' in October 2018, over a year later, that he had retained operational control of S Ltd since BB took over legal ownership of the company in December 2016.

93. That the husband retained an interest in the potential success of F Ltd throughout, I am in no doubt notwithstanding his disposal of the S Ltd shares. He told me that he lost all confidence in the wife's motives when she began to involve lawyers at the end of 2016/beginning of 2017. He was clearly very concerned about the implications of the unravelling of the "elegant" tax scheme which had been recommended by WG and which had enabled him to earn on a tax-free basis notwithstanding his continued residence in London. As he pointed out, the wife was able to benefit from this scheme indirectly in that he had a greater disposable income which to pay her throughout the period of their formal separation.

94. It is also clear to me that the husband regarded all bets as off once she engaged lawyers who set about what to him seemed an aggressive enquiry into his financial affairs on behalf of the wife. I have no doubt at all that the transfer of the S Ltd shares to BB/C Ltd in Hong Kong in the immediate aftermath of her request for a share in the companies was a move which was designed to put them beyond her reach. There may have been other practical benefits for the husband which flowed from this arrangement (such as his ability to reduce his own liability to BB). However, that does not detract from his wish, as I find it to be, to place as many difficulties as possible in her way once she began to dictate terms (as he will have seen it) and engage the services of lawyers.

95. At the end of 2016 when the shares were transferred, it was considered that F Ltd's value following an anticipated further injection of capital would be in the region of US$35 million. C Ltd owned 5% of the shares of which NM, HH and WG held approximately 2%. It appears that at the time when the S Ltd shares were transferred to BB/C Ltd, S Ltd held $250,000 worth of options in F Ltd. The husband's justification for transferring the shares into BB's name through C Ltd was that he would no longer be exposed to the potential liability of repaying this sum since he became the legal owner of both companies. The husband, on the other hand, still owed BB a sum of £650,000 having personally guaranteed the C Ltd investment in F Ltd. They reached an agreement (for which no written evidence exists) that BB through C Ltd would retain any excess of the husband's annual salary from S Ltd (a sum of £240,000 per annum) which was then being paid into S Ltd by one of the F Ltd companies. Any such surpluses would be offset against his principal debt of £650,000. It became apparent during the course of cross-examination that the husband was also in receipt of bonuses from time to time from F Ltd and these fell into the debt repayment programme he had agreed with BB. It hardly needs me to say that without the attendance of BB at this trial and in the absence of any written evidence of these arrangements, there is little, if any, reliable evidence to feed into a forensic analysis apart from the husband's say-so. It is the husband's case that when he lost his job and found himself without an income from F Ltd, BB simply transferred the shares in S Ltd back to him because it was serving no further useful purpose. He accepts that a sum of just under £300,000 was paid to BB during the period when he owned the S Ltd shares by way of a reduction in his debt.

96. I am left in no doubt that there was a clear agreement between the husband and BB that, once the original investors in F Ltd had been repaid and/or extracted their entitlement on any future sale, the husband would share with BB on a 50/50 basis any value accruing to C Ltd. I am able to make that finding on the basis of the evidence which is before the court:

(i) BB himself accepts the existence of this agreement (see his statement dated 12 November 2018);

(ii) the husband confirmed in his November 2019 statement that this was their arrangement (see paragraph 8 at (a) and (b));

(iii) the husband accepted in his oral evidence that when the shares were transferred to BB in December 2016 he remained responsible for trying to ensure the success of the F Ltd investment and, for these purposes, C Ltd was used as a vehicle on BB's behalf;

(iv) the husband further admitted during cross-examination that he was still working for the individual companies notwithstanding the transfer of S Ltd to BB's company. He said he had wanted to show some goodwill but confirms that there was no intention that BB would have retained 100% of the value in those companies had they been successful;

(v) the handwritten Memo from BB to the husband confirms that he recognised the husband's entitlement to 50% of any clear profit to flow from the F Ltd investment. I suspect that the lack of reference in that Memo to any returns from the other companies may be a reflection of the absence of any value in those companies as at the date of transfer. That much was confirmed by WG who told me that there was no value in any of them as at the date of transfer and, in his opinion as S Ltd's accountant, some had been kept going for far too long.

100. In October and November 2018 and at a time when the court was making a series of third party disclosure orders against various individuals and entities, the husband sent the wife a series of WhatsApp messages including the following:

> (5 October 2018): "Please stop this S Ltd witch-hunt. There's no upside to you and if tax scheme becomes scrutinised and then overturned, we're both fucked."
>
> (6 October 2018): "They would reclaim taxes back to 2014 and I have no means to pay. What good will that do for your maintenance? So go after C Ltd and SH [AH's daughter] – I get that, but risking S Ltd is potentially suicidal."
>
> (9 November 2018): "So here's another try to help save you money. Let's settle the R Investment without court or legal fees. You've lost enough, let's just do it and then we each get what we get. I get no joy from this situation, I don't know what your lawyers are saying to you, but hopefully by now, you'll be realising that there's nothing else for you to

> gain. The wine is already going on fees, why waste more money? Can we just do this?"
>
> (14 November 2018): "Are you so blind that you really can't see what your lawyers are doing? As long as you keep feeding them fees, they will keep bashing away. So S Ltd attack has got you nowhere, that must have cost you over £100k. SH is gone, arguably the biggest value of all, I've already acknowledged half of C Ltd's F Ltd interest, so there's only the R Investment left. WTF are we doing in court with you paying huge costs to lawyers. If you and I agree the R Investment, we don't need lawyers, don't need costs. ….. This is utter madness, there's no point trying to display what a dreadful person I am if it doesn't get you £value Christ's sake, wake up. THERE'S NO VALUE TO YOU IN WHAT YOU ARE DOING. You will just end up paying your share of the value in the R Investment in fees."

101. After almost another year of litigation, on 6 September 2019 the husband sent a further WhatsApp message in similar terms:

> "AW, one last attempt to stop. You need to decide whether this 'smells' right. Ok, F Ltd is failing, there's no money for SH or C Ltd and SH will still owe JJ £800k. S Ltd is a ghost, as I always said, it was only transferred to protect the tax position, I am genuinely broke, in a very bad place. I also had another mental breakdown in recent months and can't even think about getting a job at present. All the transferred companies are fucked, the W Ltd £3k to C Ltd stopped around 4 months ago. If you want to know about the 2008 investment, ask SD. FD knew all about it. She can call me if she wishes and I'll clarify. As angry as you are, there is nothing to go for. We only have to agree the R Investment and my pension. That's it. So look at the facts please instead of listening to [your solicitor]. Irrespective of my feelings on the matter, there is genuinely nothing to go for. I've had ten years of failures, blagging it, fronting it, and now it's all over. I am about to move in with [the husband's current girlfriend]. She pays £2.5k per month rent. I gave her £7.5k to meet half the rent for 6 months. That's why I couldn't pay you. This is a real lost cause and I want to disappear for a few months and get my head straight and my health right. I can't do that until March unless you reconsider the two week trial. Please think about it, does this What's App smell genuine or not. I can't even pay for my daughter's wedding."

102. In this context, I need to say something about the husband's demeanour during the course of this trial. He has conducted the two week hearing without the assistance of lawyers since he says he does not have the means to pay for his own representation. I have been told that the estimate given by forensic accountants to the wife in respect of the costs of a full report tracing the various movements of funds and shares was in the region of £30 - £35,000. I am not surprised given the complexity of the analysis which had to be undertaken both before and after the evidence was heard. I have no doubt that the husband was exhausted by the process of assimilating the presentation of the case advanced

on behalf of the wife by Miss Bangay QC and Miss Howitt and the demands of reacting to it by producing documents and counter-schedules of his own. The absence of a forensic report in advance of the hearing has inevitably made the task of the lawyers, the court and the husband much more demanding than it would otherwise have been but I was told that the wife had to borrow the costs of this trial and was only put in funds very recently. At the pre-trial review in December last year, I cautioned the parties to think carefully about the spiralling costs of this litigation in circumstances where the husband was continuing to maintain that there was nothing to salvage from the collapse of his fortunes.

103. He has clearly been affected by these pressures, as has the wife. At times, he appeared reasonably bullish. At others, and particularly when he was speaking of his fall from grace, I had the impression that much of his distress and the many long pauses from which he struggled to recover were played for my benefit. What I do accept is that for some considerable time, this husband has been living a fairly precarious 'hand to mouth' existence. That much was confirmed by WG and I detected a genuine sense of embarrassment in the husband whilst he was asking questions of WG and NN, two of the individual friends and business associates to whom he owes money. His partner, with whom he shares a rented apartment, declined to appear as a witness at this hearing. I was told that she had family obligations and was spending time in Italy with her sister's family. Apart from her absence from these proceedings in circumstances where I accept she was validly served with a witness summons, there is nothing in the evidence to suggest that she is concealing funds on behalf of the husband and Miss Bangay does not suggest that she is. Is this all a contrived 'front' erected by him for the purposes of this litigation as a defence to his wife's financial claims? Are others, on his behalf or for his benefit, holding significant funds or assets which he will recover from their safe-keeping after this litigation comes to an end?

Resources available to these parties

104. In terms of my findings in relation to computation, Miss Bangay and Miss Howitt have produced with their final submissions an amended asset schedule which shows the only three visible assets of any substance to be the cash currently held in the wife's bank accounts in Monaco (just under £524,000), the R Investment funds with a combined value of £125,000 and her personal chattels worth some £35,000 (a value which the husband does not accept). The liquid cash funds which she holds are offset by the requirement that she will need to demonstrate financial liquidity of some EUR500,000 in order to maintain her ongoing residence in Monaco. Whilst the funds emanating from the original loan from HSBC in that sum are no longer ring-fenced for these purposes, the evidence suggests that even if she were to seek citizenship in the Principality (which she does not wish to do), she would still have to show a

position of financial solvency to remain there. The R Investment may well produce further funds but I am told that it is not yet closed as a paid up investment and thus the timing of any future receipts is far from clear.

105. Whilst she has some small credit card debts, the wife's major liability is to HSBC (London) in respect of loans made to her to support her residence in Monaco and the top up loan of £250,00 which was provided to support P Ltd. In total they are owed just over €504,000 (some £446,000) although they have previously agreed to accept a significantly discounted sum to clear the debt. She is further indebted to her close friends, SD and GL in the total sum of just under £477,000. €250,000 of the debt to SD relates to a loan made at the beginning of this year to replace the HSBC monies and thereby enable the wife to remain in Monaco. The balance relates to provision for her ongoing legal costs as does loan from GL. Although I did not hear from the latter, SD told me that she was aware that the wife had no resources from which to repay her other than from any funds recovered in the context of this litigation. She acknowledges the loan to be 'high risk'.

106. As to the husband's position, he has a negligible balance in his bank accounts and a balance of some £22,204 in one of his spread-betting accounts is offset by a greater liability in the other. I am satisfied that he has not undertaken any significant transactions on these accounts for some two or three years and that he has lost many tens of millions in this respect over the years of the marriage and into the parties' separation. The husband does not dispute the figures advanced by Miss Bangay on behalf of the wife.

107. He, too, has some value in personal possessions which do not amount to much and there is a cash balance of approximately £8,000 left from the sale of wine which he owned and which the court directed should be sold to meet the wife's ongoing legal costs. Whilst he is owed some £489,353 by S Ltd, I accept that cannot be treated as a realisable asset or as a resource for these purposes since he has no income flowing through that company and S Ltd's assets amount to just over £14,000 held in a bank account.

108. Of potential value in the companies, it appears to be accepted that C Ltd no longer exists having been closed down by BB and removed as an active company from the Hong Kong Companies Register. All the other companies are either now in administration or being wound up. The husband appears still to have some role to play in a rescue bid which is ongoing to save F Ltd from insolvency. His evidence was to the effect that three remaining key investors do not want to be associated with a failed, insolvent investment and they are therefore allowing him to try to renegotiate a new licence for the product which just might entice a purchaser into the field. All the original small investors (including NM, HH and WG) have lost their investments and the proceeds of sale from F Ltd if they were to find a buyer will go to Barclays Bank. He hopes

he might secure 5% of any sale value but any commission he might receive will, on his case, be subordinated to the Bank and another lender. He is unlikely to see any value if the company sells for £5 million or less but if a sale can be achieved for £10 million or over, he has the prospect of recovering c.£250,000 which is less than the annual salary he was earning whilst CEO.

109. It follows that any residual value in the F Ltd shares which were purchased by SH (which the wife contends should be treated as being held for her father's benefit) will be very unlikely to have a value at the present time. Should they become an asset in her hands, there remains the potential exposure to JJ who lent her sister the money to acquire them in the first place.

110. On behalf of the wife it is contended that the court should treat any residual value in F Ltd shares held by BB through C Ltd as assets of the husband. The same submission is made in relation to any residual value in any of the shares in companies previously owned by C Ltd. Since the only companies to which she can point are W Ltd, X Ltd and Y Ltd (now in liquidation), it seems very unlikely on the basis of the present evidence that any of these assets will produce liquid cash in the foreseeable future such as will make any material difference to the wife's financial claims and her need for a home and an ongoing income stream.

Pensions

111. Thus, the only two assets with any residual, or hard, value to these parties are the husband's two pension funds. The smaller fund with James Hay has a residual value of £135,452. This pension was retained by the husband following his discharge from bankruptcy. It had been worth some £743,000 during the currency of this litigation but was reduced by £543,474 as a result of two withdrawals which he made in order to pay back debt. He maintains that he was justified in reducing his liabilities in this way as the wife did not seek to preserve this asset through a freezing order. His other pension with Zurich Assurance was declared in his bankruptcy with a value of just over £250,000. It now has a value of just over £306,000. The husband maintains that it is entirely non-matrimonial having been built up prior to his marriage to the wife. This appears to be borne out by the disclosure accepted by his trustee in bankruptcy. The five policies which make up the pension fund were taken out and funded between 1979 and 1991 almost a decade before the marriage. Whilst the husband sought to suggest during the course of his oral evidence that this fund might produce a retirement income of £70,000 gross from the age of 70 in 2027, he accepts that this figure is completely inaccurate in terms of a likely return on fund value.

112. The wife has some pension provision of her own in the form of two small funds, now worth a total of £60,594.

113. Neither of these parties has any income at the present time. The husband is about to travel to the Far East to spend some time in Vietnam where he hopes to regain his health and mental wellbeing. He told me that he is travelling on air miles and can live extremely cheaply in some form of retreat whilst he recovers. I accept that, at the age of nearly 64, he is unlikely to find remunerative employment in any field in the financial or business sector which would pay him the sort of income he was earning as the CEO of F Ltd. He does not appear to have the means at the present time to make any effective contribution to the ongoing income needs of his former wife. The wife has not been in paid employment for many years and has no qualifications which enable her to enter the employment market and secure the sort of income which would make her self-sufficient in terms of her income needs going forwards. She has for many years enjoyed a very high standard of living. Throughout the years of the marriage when the parties were living what they both accept to be a lavish lifestyle, they had very significant capital resources from the sale of the husband's former business together with whatever flowed in from his business deals and spread-betting. Following their separation, he was able to maintain her to a reasonable, but reduced, standard because of the tax-free arrangements which he put in place and which survived his bankruptcy in 2011. I am satisfied that the ongoing generosity of her friends (who have been in a position to lend funds and subsidise her Monaco life through their many invitations and kindnesses) has to an extent preserved around this wife the trappings of a lifestyle she herself is quite unable to afford. It is one of the husband's criticisms of her that she did not make economies through the years of separation when she should have done.

114. I do not accept that she has an earning capacity of anything approaching the £80,000 per annum for which the husband contends. She told me that, whilst she had her home in France, she had intended to make some income from creating a spa or retreat at that property. That opportunity is no longer open to her although the realisation that she is going to have to generate income from somewhere in the future has crystallised her thoughts around some sort of online business venture connected with the world of beauty or fitness. I have no means of knowing whether or not she may succeed in any such enterprise and it is difficult to see at this juncture how she will survive financially without the ongoing support of her close friends who have lent her money in the past.

115. By the time we reached the conclusion of the evidence and closing submissions, it was no part of Miss Bangay's case on behalf of the wife that I was in a position to draw adverse inferences from the evidence in favour of the wife as to the *present existence* of undisclosed liquid funds held by or on behalf of the husband such as would enable the court to make a lump sum or property adjustment order which would meet the ongoing needs of her client. Instead, she seeks for her client the adjournment of her lump sum and property

adjustment claims together with declaratory relief in relation to the husband's beneficial ownership of any remaining or residual value in F Ltd and the two remaining 'C Ltd' companies, N Ltd and W Ltd and X Ltd .

116. From paragraphs 24 to 26 of Miss Bangay's and Miss Howitt's closing written submissions, I have been provided with the evidential platform from which they submit I am entitled to draw adverse inferences against the husband. I do not repeat those submissions here since they are in the main reflected in my analysis of the evidence as set out in my judgment. I have read and remind myself of the legal principles in this sort of case as set out by Mostyn J in *NG v SG (Appeal: Non-Disclosure)* [2012] 1 FLR 1211. I do not repeat those principles here but I have them well in mind. In particular, I accept that the court must not be led into some form of 'knee-jerk reaction' which says that, simply because of evasiveness of the lack of a coherent narrative to a party's disclosure, there is some vast sum salted away. I also bear in mind the clear guidance provided by King LJ in the Court of Appeal in the more recent case of *Moher v Moher* [2020] 1 FLR 225. The object of the exercise, as her Ladyship confirmed, was to be astute to ensure that "the non-discloser does not obtain a better outcome than that which would have been ordered if [he] had complied with [his] disclosure obligations".

117. In the context of the beneficial ownership of C Ltd, I have ample evidence before me to find that, following the transfer of S Ltd and other corporate interests to C Ltd in December 2018, the husband remained in operational control of the S Ltd structure and its underlying entities including the company's interest in F Ltd. I accept that there is no satisfactory evidence to explain why the company's accounts do not reflect sums paid into it by the individuals who supported the F Ltd investment nor any reflection of the £1.25 million which the husband paid in 2008 when it was "taken off the shelf" into BB's ownership. BB himself has produced nothing to support the existence of 'confidential third party information' pertaining to other investors or individuals not involved in this litigation and we have no bank statements which would enable us to trace the financial history of the company. We know that the wife's account in Monaco with Bank S has received a number of credits from C Ltd for which no reliable explanation has been received (e.g. the monies apparently remitted to SH for the purchase of a flat which never materialised). I do not regard the email which the husband produced subsequently to deal adequately with a full trace of these funds. There are many more unanswered questions about the operation of C Ltd, some of which I have highlighted in my earlier analysis of the husband's evidence. Since these now go to the issue of adjournment of the wife's lump sum claims rather than to the basis of a specific lump sum payment in her favour now, I do not intend to add to the length of this judgment by rehearsing all of these issues here.

118. What I am prepared to accept is that this husband has operated aspects of his financial affairs over the course of the years to his former wife's significant detriment. In particular, his forays into spread-betting (or speculating in the equity futures market) has resulted in a net loss of some £3 million over and above the £40 million which he accepts he lost earlier in the marriage. He was then perhaps in a position to afford those losses without any discernible impact upon their living standard or lifestyle. Despite suffering ongoing losses over the years of their separation and after his bankruptcy, and until about 2016/2017, the husband continued to risk significant funds in this way at a time when he knew, or ought to have known, that his financial position was becoming increasingly precarious. It is not without significance that the pension drawdown which was not disclosed to the wife at the time was used to repay a debt to NN. That debt had been incurred in connection with his spread betting activities. I accept that the husband was not using these funds to spend on his lifestyle or to fund discretionary expenditure at an unrealistic rate. I bear in mind that he was supporting the wife financially throughout albeit at a reduced rate in the latter stages of their separation. Nonetheless, he used the offshore structure which he set up and the BI monies in a manner which gave rise to a significant loss and that loss cannot, in part, be laid at the feet of this wife.

119. I attach significant importance in terms of conduct to the husband's 'appropriation' of the surplus funds flowing from the sale of the French Property, the property which had been gifted to the wife from the outset and the property which the husband had always intended that she should have as her home under the terms of their 2011 agreement. Whilst the sum of €985,000 might not have seemed a fortune to this couple at the time the property was sold in 2014, its availability as a liquid resource in these proceedings would have met her future housing needs. The fact that she was not told of these funds and was obliged to find out through the French notaire who handled the sale is unforgiveable in my judgment and a serious dereliction of the husband's duty of full, frank and complete disclosure in these proceedings.

My decision and award

120. I have reached the conclusion that, despite the imperative to achieve a clean break between parties involved in this type of litigation insofar as it possible following divorce, this is not a case where I can achieve a fair outcome other than by adjourning this wife's claims for lump sum and property adjustment orders. Her needs (and those of the husband) are too obvious to need stating. Each needs a secure home and an appropriate income on which to run their respective domestic economies. As matters stand, there are no visible liquid resources with which to meet those claims. I am conscious that huge sums have been expended on this litigation and that the husband probably has less than a decade of productive business life before him if he can claw his way back from

his present predicament. I am entirely satisfied that this is what he will wish to do for himself and for his family. I am as confident as I can be from the basis of all the evidence I have heard and read that he will do whatever he can to re-establish his financial base although I have no expectation that he will secure in future a return to the scale of wealth he has previously enjoyed.

121. In this context, I remind myself about the observations made by Mostyn J in the vey recent case of *Haskell v Haskell* [2020] EWFC 9. That case concerned a husband whose financial infrastructure was underpinned by the existence of very substantial assets which were not available to him when the case was decided. He claimed to be "at the economic nadir" of his finances albeit it that he had not disposed of any of the "building blocks of his commercial empire". Everything remained in fact in terms of his pre-existing capital base and his evidence to the court was that he was confident his financial endeavours would come to fruition in the foreseeable future. In these circumstances, Mostyn J took the view that it was unrealistic to assess the wife's needs award on the basis of a snapshot of the finances as at the date of hearing. In that case, neither party was asking the court to adjourn the wife's claims and the judge proceeded to assess them on the basis that the husband was given time to pay (some two years) on the basis of his liberty to apply for an extension of time should his fortunes not revive as forecasted. The crucial finding which informed the judge's approach in *Haskell* is set out in paragraph 57 of his Lordship's award in these terms:

> "Although I cannot put even an imprecise figure on the husband's likely future wealth after the expiry of the two-year breathing period, I am satisfied that it is more likely than not that vey substantial resources will be available to him in the reasonably foreseeable future."

It is worth bearing in mind that the schedule of assets reflecting Mr Haskell's wealth was then minus £50 million whereas an earlier document had put his fortune, including his trust assets, at US$185 million. His (2017) Form E disclosed personal and business assets of £23 million, trust assets of £22 million and liabilities of £32 million. He was then deposing to a current annual income need for himself alone of £1 million.

122. In an earlier decision in 2018, Mostyn J took a different approach when he adjourned a wife's capital claims in a case where there were no visible liquid resources to meet needs but where the husband's "brazen non-disclosure" and his abilities as a 'rainmaker' made it unfair to send the wife away with her needs unmet. That case was *Quan v Bray & Others* [2018] EWHC 3558 (Fam). In support of his decision to adjourn her claims, the judge drew upon the earlier case decided by Sir Peter Singer in *Joy v Joy-Marancho and Others (No 3)* [2015] EWHC 2507 (Fam). Quoting from the headnote in that case, Mostyn J recorded that:

> "The wife's claims for capital provision and property adjustment orders would be adjourned. While generally capital claims should not be left indeterminately unresolved, there were hard cases such as this where fairness and justice must prevail over the normal desirability of the finality of litigation."

123. On the basis of everything I have heard and read in this case, I regard that definition to capture this case. In my judgment it would be wholly unfair to leave this wife with nothing, or next to nothing, save for some substantial liabilities and a nominal maintenance order in circumstances where, on the husband's own evidence, there is at least the possibility that he will restore a measure of financial equilibrium in the future. He may not see the return of the sort of wealth which will enable him to enjoy in retirement the lifestyle he once took for granted in earlier years but I am satisfied that there is a reasonable probability that he may entrench sufficiently to provide both himself and his former wife with a modest home and the means to sustain a reasonable standard of living.

124. I am not prepared to leave open her claims without some cut off point in the future. I received written submissions on this point from the wife and the husband following the handing down of my draft judgment. I have decided that the wife's claims should stand dismissed if, in seven years' time when the husband attains the age of 70, his circumstances are such that he has nothing with which to meet such an award. Until then, I propose to make a nominal periodical payments order which, at this stage, will be expressed as a joint lives order.

125. In terms of the pensions, I am not at this stage going to deprive the husband of his pension with Zurich Assurance although I will make an order which prohibits him from dealing with, or drawing down on, that fund without notifying the wife of his intention to do so and without securing the court's permission to do so. I am satisfied that it is a wholly non-matrimonial asset. If necessary it may be required in the future to meet in part her ongoing income needs and I am not satisfied that it is appropriate in this case to leave the husband with no assets at all notwithstanding the significant deficiencies in his financial disclosure. The James Hay pension will be the subject of a pension sharing order as to 100% in the wife's favour. The husband has already seen a significant benefit from his prior dealing with this fund in terms of a reduction in his overall indebtedness to third parties.

126. The wife will retain the R Investment which is already in her name.

127. I propose to make declarations by way of preamble to my order that the husband is, and has been, the beneficial owner of the shares S Ltd since its incorporation in 2009. I will also make a declaration to the effect that the

husband is the beneficial owner of 50% of the value of the shares held in F Ltd and the three other C Ltd companies which were transferred across to BB in 2019. I do not propose to make any further declarations in relation to C Ltd which I am satisfied no longer exists as a legal entity.

128. In relation to the HSBC loan in the wife's name which now stands at £446,000, I will record by way of preamble to my order that I regard this as the responsibility of the husband. I am satisfied that neither party currently has the means to discharge this debt but, on the basis of the evidence which is before the court, the primary responsibility for its future discharge should lie with the husband as part of any obligations he has towards the wife's ongoing needs. The original debt to the Bank was incurred in her name but it was undoubtedly a necessary and integral part of the structure which he put in place in anticipation of his likely bankruptcy. The subsequent increase in the debt represented funds which were released to P Ltd, a company which he continued to operate notwithstanding that the shares were held in her name. I have rejected his case that this was exclusively "her" company. He has accepted that she was very unhappy at the time about increasing this facility and was given very little notice of his intentions in this respect.

129. The remaining proceeds from the sale of the wine will be divided on a 50/50 basis between them and the husband's share applied towards his liability for the wife's costs.

130. In relation to her costs generally, I have reached the conclusion that this is a case where the husband must make a significant contribution towards those costs. I bear well in mind that the loans she has secured from friends might be seen to be soft in the sense that they will only be recovered from assets she recovers in these proceedings. SD has accepted that in clear terms. I know not whether these friends will seek to enforce their loans in the event that any sums recovered will need to be applied in the first instance to meeting her immediate housing and income needs. However, what has been singularly lacking in this case is a clear and coherent narrative to support the many hundreds of pages of paper disclosure which have been provided by the husband and others to date. It is true that the wife has not succeeded at this juncture in identifying the existence of assets or the means to pay which would justify a defined lump sum award at this stage but I am satisfied that the husband's litigation misconduct which I have outlined above requires reflection in a costs award in her favour. I bear in mind that it has been his case for some time now that there is no current value in the companies and no individual has been "warehousing" funds on his behalf such as to enable him to draw on those funds to meet a capital award. Nevertheless, the court is fully entitled to reflect its disapproval of litigation misconduct in an award of costs and I am satisfied that it is appropriate to make such an award in this case. I

cannot see what the wife was supposed to do without the coherent narrative to which I have referred and/or in the absence of the forensic enquiry which has been conducted over ten days of this litigation. It is that enquiry which has persuaded me that it would unfair to dismiss her claims now and, to that extent, she has been successful in terms of the outcome she seeks. I am satisfied that she has taken all reasonable steps to try to settle this litigation but given the state of the husband's disclosure, it seems to me that this trial was unavoidable. In the circumstances, I will direct the husband to pay 60% of the wife's total costs incurred to date. I have not required him to provide her with a complete indemnity for the following reasons.

131. First, I am keen that he should have some incentive to restore his financial position in order that the wife's outstanding needs will indeed be met. In circumstances where she has been able to secure litigation funding from alternative non-commercial sources where at least one of those lenders accepts the possibility, if not the likelihood, of non-recovery, I regard a liability for just over half of the wife's costs as properly reflecting the court's disapproval of the husband's conduct. Secondly, I take into account the volume of disclosure which he has provided in the latter stages of this litigation and the consistent explanation he has given in relation to his 50% interest in F Ltd (were any value to materialise). For these reasons, and in the context of the generous discretion I am given in relation to costs, I am prepared to limit his exposure to 60% of the total costs incurred by the wife which I am told amount to just under £545,000. In order to avoid a lengthy and expensive assessment process in which the husband may well be a reluctant participant, and in the light of the allowance I have already made for his benefit, I propose to assess his contribution to those costs in the sum of £327,000. These costs will inevitably attract interest for so long as they remain unpaid and I can only encourage both these parties to reflect carefully on where they stand in the light of my award. The adjournment of the wife's capital claims in the unusual circumstances of this case does not preclude the parties from further negotiations at any stage in the future. I can only hope that the bruising and painful experience which this litigation has been for them both will lead to sensible discussions at the earliest opportunity whatever trajectory the recovery process takes in relation to the husband's future efforts.

Postscript

132. Following delivery of my draft judgment to the parties and the somewhat lengthy process of anonymisation which inevitably followed, the husband has raised an issue in relation to the extent of his liability to contribute to his former wife's costs bill. In terms of my global assessment in the sum of £327,000 (being 60% of the total costs of £545,000), he asks if this figure

takes into account the fact that he had earlier in the litigation been required to make a contribution towards her costs as a result of an application which she made for a legal services payment order (LSPO) under s. 22ZA of the Matrimonial Causes Act 1973. That order involved the sale of the wine collection. In the event that I decide that this sum of £327,000 is to be paid in addition to what has been paid under the LSPO, he seeks my permission to appeal the costs order.

133. On behalf of the wife, Ms Howitt has helpfully provided me with chapter and verse in relation to the previous orders made in respect of her client's costs.

134. The position can be summarised thus. On 25 July 2018, at an early stage of these proceedings, HHJ Robinson released the parties from their respective undertakings in relation to the preservation of the wine collection in order that funds could be released to each of them in respect of their ongoing legal costs. He made an order on that occasion which required the sale of the wine at a price of not less than £181,000. I can only surmise that this particular figure was settled on as being an assumed or proximate value of the wine at that time. He further directed that from those net proceeds of sale, a sum of £90,500 was to be released to the wife's solicitors to fund her ongoing costs. In other words, 50% of the assumed proceeds of sale would be paid to her solicitors in respect of her accumulating costs. The next £25,000 was to be released to the husband for his legal fees with the balance being held to the court's order by the wife's solicitors.

135. On 26 September 2018, following the transfer of the case to the High Court, Cobb J have the wife liberty to restore her LSPO application.

136. The matter came before Theis J on 29 October 2018 as part of a third party inspection / directions hearing. By that stage, it appears that a prospective purchaser for the wine had been identified. The judge gave further directions in relation to the mechanism for the wine sale but left undisturbed the sums which were to be paid out of the sale proceeds.

137. Cohen J dealt with a lengthy directions hearing a fortnight later on 14 November 2018. A number of detailed directions were made in relation to third party and other disclosure. In relation to the wife's LSPO application, he gave further directions providing for the inspection of the wine collection by the prospective purchaser. The order for sale of the wine was confirmed. In addition to confirming the July order for the payment of £90,500 to the wife, he increased the reach of the LSPO by awarding the wife a further £60,000 which he found she required in order to cover the costs of the forthcoming FDR hearing. Any balance over above the total sum of £150,500 was to be held by her solicitors pending further order.

138. The wine collection was subsequently sold and, in accordance with the two orders made by the court, a total of £150,500 was paid to the wife's solicitors on account of her ongoing costs liability. The FDR in March 2019 was unsuccessful in resolving the issues. As I have outlined above, the wife was subsequently obliged to borrow from friends to put her solicitors in funds to enable the final hearing before me to proceed to its conclusion. As I have found, there were no further liquid assets which could be realised to meet these costs.

139. The husband argues that he should be given credit for the payment of £150,500 in the computation of his outstanding liability for his former wife's costs and that my summary assessment of £327,000 should be reduced to reflect that payment on account.

140. On behalf of the wife, Miss Bangay QC and Ms Howitt make the following submissions:-

(i) the wine collection was a joint asset and was reflected as such in the court's decision to divide the proceeds equally between the parties in the first instance. The wife's 50% of those net proceeds was released to her solicitors to be applied towards her ongoing costs. The balance over and above the £25,000 which was released to the husband was to be held pending any further distribution of what might notionally be considered to be the husband's 50% share of those sale proceeds;

(ii) if and insofar as the husband now seeks to argue that he has made a contribution from his share towards the wife's costs, it might equally be argued that she has contributed £12,500 from her share towards the costs which were released to him;

(iii) she has in any event been left with a significant raft of personal debt, some of which is related to borrowings which were incurred to finance her ongoing costs to the end of the trial.

141. The husband seeks to maintain that the wine collection was his and that the wife had no interest in it. Since it was never a joint asset, he was therefore contributing towards her costs from his own funds and that contribution should be set off against my costs award of £327,000.

142. The ownership of the wine did not feature as a significant issue during the course of the oral evidence which I heard. By the time of the final hearing, there was a sum of just under £9,000 left from those net sale proceeds and that was being held to the court's order by the wife's solicitors. By paragraph 129 of my judgment, I have provided that 'the remaining proceeds from the sale of

the wine will be divided on a 50/50 basis between them and the husband's share applied towards his liability for the wife's costs'. That reflected my approach to this particular family asset and, in adopting this course, I followed the approach which appears to have been taken by both Theis and Cohen JJ.

143. Whilst I did not hear detailed evidence on the point because it was not specifically engaged in any detail at the final hearing, the evidence available to the court demonstrates that:

(i) In her email to the husband in June 2012 during the period of their separation, the wife confirmed to him that she was holding the wine for him. That reflected the state of affairs which had existed at around the time of his bankruptcy in 2011 and I have already made findings in relation to the various arrangements which he put in hand at that time and the reasons for ensuring that certain assets were, or appeared to be, in his wife's possession or control at that time.

(ii) On 17 July 2015, according to the trial chronology, and at the husband's direction, the wife transferred the wine collection then held in bond with OV into the parties' joint names.

(iii) Emails within the material before the court suggest that the wine was originally held or warehoused in bond by OV on the basis of instructions issued by the wife. However, those instructions changed when she added his name to the account in July 2017.

(iv) When the matter came before HHJ Robinson in the context of the LSPO in July the following year (2018), his order reflected the fact that *both* parties had been required to give undertakings in December 2017 in relation to its preservation following the issue of the wife's application for financial remedy orders.

144. It appears obvious to me that the foundation for the court's order in July 2018 (the 'Robinson' order) was an assumption by the court that the parties had a joint interest in one of the species of chattels represented in the family's financial balance sheet. There was plainly an equal split of the potential sale proceeds from the foot of an assumed value for the collection. There was no reservation in that order for any counter-argument advanced by the husband.

145. That assumption found further reflection in the court's order made at the end of the October 2018 (the 'Theis' order). Again, there was no reservation expressed on the face of that order to reflect any contrary case advanced by the husband.

146. The order made in mid-November 2018 (the 'Cohen' order) went on to release a further £60,000 from the retained balance in order to enable the FDR hearing to

proceed in March of the following year. I can only assume that further release of funds was made from the foot of an updated and forward-looking Form H presented to the judge.

147. The husband has sent to the court some further emails which he has recovered from his records. These appear to establish the following chronology in relation to correspondence with OV:-

15 July 2015	W sends email to OV from her personal email account confirming that the account should be transferred into joint names. That appears to have been actioned by OV two days later on 17 July 2015.
7 Sept 2017	OV confirms that account held in joint names as at that date.
18 Sept 2017	H sends email which suggests that at one stage his (married) daughter's name was also on the account with his wife and seeking confirmation that no one should be allowed access to the account except him and his daughter. This email appears to have been generated by H becoming aware that W and/or her solicitors were enquiring about the wine.
19 Sept 2017	A different department in OV (the Finance Department) sends an email referring to "his account".
18 Dec 2017	OV send a further email containing a reference to "his" account.

148. Clearly it would be wholly disproportionate and outside the overriding objective set out in FRP 2010 r.1.1(1) to allocate any further time or expense to a further enquiry into the ownership of the wine. I have already referred to the husband's practice of transferring the ownership of assets into the hands of whichever third party (including his wife) best suited his financial arrangements at any particular given time. In my judgment all the evidence points to *beneficial* joint ownership of this wine collection. That was why the court required an undertaking from each of the parties in relation to its preservation and it was why the court made an *order* for the sale of the wine in the context of the wife's LSPO application.

149. It follows that the correct analysis of the position in terms of any contribution already made by the husband towards the wife's costs is as follows:-

(i) The sum of £90,500 released to the wife pursuant to the order made by HHJ Robinson on 25 July 2018 was an advance on her deemed 50% share of the sale proceeds.

(ii) The release of £25,000 to the husband was a release of *part* of his deemed 50% share of those proceeds.

(iii) Thus, no part of the £90,500 paid towards her costs when the wine was eventually sold can be seen as a contribution towards her costs from assets held or owned by the husband. Correctly analysed, the wife by her application had done no more than secure access to her own funds and had used those funds to pay her solicitors.

(iv) The release of a further £60,000 pursuant to the order made by Cohen J on 14 November 2018 in respect of costs up to and including the FDR did not exhaust the residual balance of the sale proceeds. That much is clear from the fact that there was some c.£9,000 remaining when the matter came before me for the final hearing. No funds were released to the husband on that occasion and it follows on the basis of my above analysis that £30,000 (or 50% of that second release) can and should be treated as a contribution towards her costs.

(v) I have directed that of the remaining balance agreed to be just under £9,000, the husband's 50% share should be paid as an additional contribution towards his overall costs liability.

150. It follows that my assessment of £327,000 (his 60% contribution to her overall costs bill) should be reduced by (i) a sum of £30,000 and (ii) a further sum of c.£4,5000 (or whatever the precise figure may be) by way of a set off in respect of contributions already made or to be made.

151. Insofar as the husband still seeks permission to appeal my costs award, that permission is refused for the reasons set out above.

Order accordingly