

Neutral citation: [2024] EWFC 188 (B)

ND

Applicant

v

KD

Respondent

ZC21D40199

JUDGMENT

HHJ Laura Harris

Central Family Court

Hearing: 29 January 2024 – 1 February 2024

1. This is my judgment in financial relief proceedings brought by ND (“the husband”) against KD (“the wife”) by Form A dated 7 June 2022. I heard this case over 4 days from 29 January to 1 February 2024 and reserved judgment. The husband was represented by Mr Richard Buswell as direct access counsel and the wife by Ms Tara Lyons of counsel. I had before me 2 bundles, a core bundle comprising 654 pages and a supplemental bundle comprising 722 pages. I described the case as bristling with issues and that a four-day time estimate was unlikely to be sufficient. Even with very limited reading time allowed, I was proved right and there was inadequate time to consider and give judgment, closing submissions ending in the afternoon of the 4th day.
2. I heard oral evidence by way of a “hot tubbing” exercise from 3 property valuers on 29 January and gave judgment in relation to valuations on 31 January, as agreed, in order to facilitate the presentation of final figures and calculations to me. In addition to the valuation evidence, there was also expert evidence from a planning expert and from an accountant in relation to CGT. I was not required to hear oral evidence from those experts. I also heard lengthy oral evidence from the husband and less lengthy evidence from the wife.
3. This was bitterly contested litigation, following hard on the heels of contested litigation concerning the parties only child, A, which culminated in an order being made in

Children Act proceedings by District Judge Cassidy on 8 September 2022, which provided for a shared care arrangement, A spending 8 nights with his mother each fortnight and 6 with the father.

4. The parties' costs of this litigation alone reflect this acrimony. The husband's costs amount to £141,185.20 of which £11,000 remains outstanding and the wife's costs £167,435.90 of which £53,875.30 remains outstanding. This does not take into account the similarly large costs of the Children Act proceedings. It is plain from these figures that the husband has had the benefit of lawyers advising him throughout the proceedings.
5. The husband is aged 43. The wife is age 50. The parties started living together on 26 November 2011 and married on 30 November 2013. They had signed a prenuptial agreement ("PNA") on 27 November 2013, some 3 days before the wedding. One of the issues I have to decide relates to the validity of that agreement, which the husband seeks to uphold and which the wife claims is unfair and should not be relied upon. A was born on "a month in" 2015 and therefore is 8 years of age. He attends F prep school and previously attended the pre-prep school there.
6. The husband is a property developer and landlord and the wife's work is in the charity sector where she has been working over recent years as a freelance consultant.
7. The parties separated on 28 June 2021. This was therefore a marriage of approximately 10 years. The husband brought a petition very quickly on 26 August 2021, decree nisi was pronounced on 18 August 2022 and made absolute on 4 June 2023.
8. The husband is 100% shareholder of a company called EP (UK) Ltd which in turn holds 100% of the shares in a company called EL Ltd. He is also 100% shareholder in a company called SE (London) Ltd which holds one investment property. The husband has transferred his beneficial interest in the other investment properties he holds to EP and EL, and in return holds a large director's loan. The companies' only assets are the investment properties. It was agreed, sensibly, that there should be no valuation of the companies in those circumstances and that the properties should be treated as if they were the husband's both legally and beneficially.

The parties' open positions

9. The parties open positions at the commencement of the hearing illustrate graphically the gulf between them. The wife puts her case firmly on the basis of need and the husband's open offer was based on his calculation of the wife's entitlement under the PNA.
10. The husband proposed a lump sum payment to the wife of £325,305 to be paid by 1 February 2026. This was to be repaid in full on receipt by the wife or A, whilst under the

age of 18, of an inheritance or gift of £450,000 or more. In return, the wife was to transfer her interest in any properties held in joint names to the husband. This was to be on the basis of a clean break order.

11. The wife proposed a lump sum of £2,033,702 to cover housing costs and associated expenses, furniture and white goods for a new property and a new car. She proposed a further payment of £54,001 amounting to arrears of sums agreed to be paid to the wife for maintenance, a capitalised sum to cover the next 12 months maintenance of £84,400 and ongoing global periodical payments of £3500 a month until A attained 18. In addition, the husband should pay A's school fees and tertiary education fees and A's medical insurance. In return the wife would transfer her interest in any jointly owned properties, the husband to be responsible for any CGT payable. The husband should pay the wife's costs in accordance with an N260 served in the sum of £137,830.16. This would amount to a total lump sum of £2,172,103 excluding CGT and costs.
12. When I indicated to the husband that his proposals were wholly inadequate and the property particulars produced to support them unacceptable, he revised his position. His final position was a lump sum payment to the wife of £900,000 on a clean break basis.
13. The wife also put forward a secondary position in final submissions, although she adhered to her original proposals as a first position. The global lump sum sought was £1,892,201. In addition she sought capitalised maintenance and school fees in the sum of £580,516.98 or alternatively periodical payments of £3500 per month until A attained age 18 and a school fees order.

The issues:

14. The key issues I have to decide in relation to computation of assets are as follows:
 - i. the validity of the PNA;
 - ii. whether loans made to each of the parties from their parents (in the husband's case to assist with his acquisition and development of properties) were in reality gifts or, if not, whether they were soft loans;
 - iii. whether the husband has additional resources by way of ongoing support from his father;
 - iv. the treatment of profits from the husband's future property development at LM.
15. The key issues I need to decide in relation to distribution are:
 - i. the extent of the parties' housing needs;

- ii. the quantum of any lump sum, timing for payment and whether there should be more than one successive lump sum to take into account the completion of further property developments;
- iii. the apportionment of CGT liability;
- iv. the quantum of any periodical payments, whether they should be capitalised in whole or in part or whether there should be a clean break order;
- v. payment of school fees.

The background

16. The wife grew up in H. The husband's father is Indian and his mother French. He was brought up in Hong Kong and then Paris. Both of these parties are highly educated people. The husband graduated from the University of Pennsylvania and undertook a Masters in Environmental Assessment and Evaluation at the LSE. In September 2003 he started EC (UK) Ltd with a partner, a sustainability consultancy in construction. In 2013 he left the company to his business partner and started the company, EP, a sustainable property development company.
17. The wife has 3 degrees, an undergraduate degree from RH University, a degree in French literature and culture from the S University and an MPhil in European literature from O University. She started but did not complete a PhD in C19th French poetry. Between 2001 and 2012 she worked for the Duke of Edinburgh award scheme, which is a global charity run on a social franchise basis in different countries and which involved considerable international travel. She was then employed as executive director – academic membership organisation at SOAS. After the birth of A, she took extended maternity leave and in 2017 started work as a freelance part-time, initially for one day per week with the PF and then with another organisation until January 2020 when the contract came to an end due to Brexit. Over the pandemic period, she was unable to work for 18 months owing to childcare responsibilities and remote schooling. From 1 March 2021 she obtained work on a freelance consultancy basis for ZG Ltd but this came to an end on 31 August 2022 when the company was taken over. She has been actively seeking employment since and wishes to return to work on a 0.8 basis.

The PNA

18. In an attempt to narrow the issues, I gave a clear indication on the morning of the second day before the parties' evidence commenced that I was unlikely to regard the PNA as being fair. This reflected also the husband's own concession in his statement relating to the PNA that it would not lead to a fair outcome if it were imposed, as not meeting the

wife's and A's housing needs. The husband stated this was included because of the advice his lawyers gave him. Mr Buswell's instructions from his client were that he would need to know my decision on valuations before he could make a decision on this issue. It was not practicable at that stage to give such a decision and the husband was inappropriately seeking to link two separate issues. In the event, the issue remained alive for me to resolve.

19. The issue of a PNA arose at the time of the parties' engagement in September 2013. The husband's case was that both he and the wife came from wealthy backgrounds. The wife was the only child and had an expectation of a significant inheritance from her parents. He too would receive an inheritance in due course. He claimed that the initiative for the PNA came from both of them, with the objective of each protecting their own inheritances. In his section 25 statement he stated, "*After proposing marriage, both KD and I were adamant that we wanted a prenuptial agreement to protect assets that we had and future inheritance*". The wife disputed this and stated that initiative came entirely from the husband who made it very clear that this was non-negotiable and was a prerequisite to them getting married. She says that the whole process was extremely rushed and that she was subject to undue pressure amounting to an Edgar viting factor.
20. The husband sent instructions to solicitors acting for both of the parties with information concerning their assets on 10 October 2013. This said,

"We have agreed on the following terms: All of our individual assets and liabilities accrued prior to the wedding and any interest or capital gain or loss after the wedding will be retained in our sole name and possession. All assets and liabilities inherited any point in the future and any interest or capital gain or loss on those inherited assets and liabilities will be in our sole name and possession. All assets and liabilities accrued after our wedding will be considered shared with a 50/50 ownership right."
21. I note that the agreement as executed did not reflect the last sentence of the instruction above.
22. There was financial disclosure by production of a schedule of assets on both sides. It is clear the husband had a lot more to protect as he disclosed assets of £1,652,006 and the wife £115,282. The husband declared a salary of £35,000 pm and the wife £48,700 pa.
23. A draft PNA was sent by the husband's solicitors to the wife's solicitors on 25 October 2013. The wife's solicitors questioned with her the wisdom of entering into such an agreement at all but she felt that she had no choice in the circumstances. On 14 November

2013 the wife's solicitors responded with suggested amendments. Meanwhile on 20 November 2013 the wife's solicitors recommended, given the shortness of time, that the parties enter into a post-nuptial agreement and proposed this to the other side. The initial draft as amended contained such a clause although this was subsequently removed. On 26 November 2013 the husband solicitors responded declining to adopt any of the suggested amendments, including appropriate trigger clauses and a record of an intention to enter into a postnuptial agreement.

24. In her oral evidence the wife described the PNA as *“a very rushed affair. It was not as if he held a gun to my head but I was under no illusion it had to be signed and it was a very busy time with a very short period to get the wedding arranged. I had a senior role as executive director, was selling my house and there was a lot going on. I now understand the PNA is not working as equitable provision. My solicitor mentioned post-nuptial agreement. I did not appreciate the magnitude of unfairness. I expected we would be married and finance would be fairly and equitably handled. I clearly did not achieve that.”*
25. She also explained that there were 3 days of events and guests were coming from all over the world. It would not be cheap for them to spend 3 nights in London.
26. In the event the PNA was signed on 27 November 2013, some 3 days before the wedding.
27. The PNA is in the bundle. It provided that each party would retain his or her separate property and any subsequent property acquired by funds realised by that property and each waived any claims over such property.
28. If in the course of the marriage either party intended to make a gift of property to the other or acquire any property together such that they owned the property in equal beneficial shares or in such other shares, then they shall register such property in their joint names and declare in writing the extent of their respective beneficial interests.
29. I note that this clause differs from the initial instruction given by the husband that, *“All assets and liabilities accrued after our wedding will be considered shared with a 50/50 ownership right.”*
30. In the event of a divorce all separate property would remain their own and any joint property would be distributed between them in equal shares unless they have expressly declared that the beneficial interest in any property shall be held other than in equal shares in which case that declaration shall be binding upon them.
31. Inheritances acquired by either of them during the course of the marriage would remain in the sole beneficial ownership of the party who received it.

32. In relation to children, clause 12 recited:

“If the parties cannot agree a fair level of capital and income provision for any child of the parties upon divorce they will attend mediation with a family law mediator who will be jointly appointed by the parties in order to reach agreement about the appropriate level of capital and income provision any child of the parties.”

33. The agreement provided for a review upon i. the birth of any child, ii. the 10th anniversary of the marriage and iii. the inability of either party to work the medical reasons for a period in excess of 6 months and iv. either party remaining unemployed for a period in excess of 6 months.

34. There was no such review after the birth of A.

35. In oral evidence, the wife told me she had the experience of her parents who had been happily married over 50 years and that everything was shared 50/50. She said she asked whether the agreement was meant to be reviewed after A’s birth but nothing happened. The husband said that she should look after A and he would look after the finances. She trusted him to do the right thing by all of them. The document gathered dust in a drawer.

36. On a review of the property transactions conducted by the husband over the course of the marriage, it is plain that he sought to operate the agreement in a way which was grossly financially disadvantageous to the wife by seeking to give her the most limited beneficial interest in any assets acquired during the marriage.

The legal principles

37. The leading authority remains the case of **Radmacher v Granatino [2010] UKSC** where Lord Phillips said:

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

He continued at [81]:

“Of the three strands identified in White v White and Miller v Miller, it is the first two, needs and compensation, which can most readily render it unfair to hold the parties to an ante-nuptial agreement. The parties are unlikely to have intended that their ante-nuptial agreement should result, in the event of the marriage breaking up, in one partner being left in a predicament of real need, while the other enjoys a sufficiency or more, and such a result is likely to render it unfair to hold the parties to their agreement.”

The court went on to deal with the vitiating factors:

‘The first question will be whether any of the standard vitiating factors: duress, fraud or misrepresentation, is present. Even if the agreement does have contractual force, those factors negate any effect the agreement might otherwise have. But unconscionable conduct such as undue pressure (falling short of duress) will also be likely to eliminate the weight to be attached to the agreement and other unworthy conduct, such as exploitation of a dominant position to secure an unfair advantage, would reduce or eliminate it. The court may take into account a party’s emotional state, and what pressures he or she was under to agree. But that again cannot be considered in isolation from what would have happened had he or she not been under those pressures. The circumstances of the parties at the time of the agreement will be relevant. Those will include such matters as their age and maturity, whether either or both had been married or been in long-term relationships before. For such couples their experience of previous relationships may explain the terms of the agreement and may also show what they foresaw when they entered into the agreement. What may not be easily foreseeable for less mature couples may well be in contemplation of more mature couples. Another important factor may be whether the marriage would have gone ahead without an agreement or without the terms which had been agreed. This may cut either way.’

38. Ms Lyons also drew my attention to the Law Commission recommendation that for financial agreements to be upheld they should be signed no later than 28 days before the wedding. On the issue of needs, she referred me to the case of **Ipecki v McConnell [2019] EWFC 19**, where Mostyn J. stated there was no distinction between “*predicament of real need*” and a party being unable to meet reasonable needs from their own resources.

The history of property transactions

39. If the PNA is not upheld, then the complex history of the property transactions is of little relevance as is the precise ownership of the beneficial interests by the parties, given the court’s distributive powers. However, I consider it necessary to summarise them because they throw considerable light upon the husband’s approach to financial matters, the balance of power in the relationship and therefore also shed considerable light upon the dynamics at play when the PNA was executed. The history of property transactions is also relevant to the issue of monies advanced by the husband’s father.
40. Prior to the marriage the wife had owned her own house at 2, AD, F. The husband owned a flat at Flat 5, 75, EC, EC, where the parties were living at the time of the marriage. He also owned a property at 1, LM. Shortly after the marriage, the wife sold her property and

provided capital of £75,000 to the husband to invest in the redevelopment of 17 SR which was purchased in the name of his company SE (London)Ltd in February 2014 for £961,000. There was a loan agreement dated 13 December 2013 to reflect this advance. The husband then proposed that instead of repayment of the loan, he would transfer Flat 5 into joint names and the wife would obtain an interest. By this time the parties had occupied Flat 5 as their home for a number of years. The husband drew up a property ownership agreement dated 9 April 2014 which gave the wife a 13% beneficial interest in the gross value of the property. There is a calculation which purports to explain how this percentage was reached which is not clear to me but which was not explored in evidence. Ms Lyons says the percentage was unfair even on resulting trust principles but I do not need to determine this. This was simply another example of the husband treating financial dealings between the parties as if they were parties to a commercial transaction. His approach could not be more removed from a sharing approach as parties to a marriage. Another document was entered into terminating the loan of £75,000.

41. Throughout 2014 the husband was developing SR and converting it into flats. Once the works were complete and the flats were ready to rent, the parties entered into a Declaration of Trust on 1 June 2015 whereby he was to hold the property beneficially for the benefit of the parties in equal shares. In his section 25 statement he said *“this was only done to take advantage of KD’s lower tax rate. She was on maternity leave at the time, A having been born in May 2015, and while she was not working, it was tax efficient for some of the rental income from the flats to be taxed in her name. This was not intended to be a long-term arrangement or to give KD any beneficial interest in the SR flats...”*
42. This Deed was not mentioned in the husband’s Form E or his disclosure. On 1 April 2020 the husband entered into a Nominee Agreement with his company, EP, declaring that the husband held all of his beneficial interest in SR on behalf of the company. The husband was required to account for all rentals and other income from the property to the company. No doubt this was entered into for tax reasons. The husband said in his section 25 statement, *“The deed of trust executed in April 2020 confirmed the correct legal and beneficial position, namely that I am the legal and beneficial owner of the SR flats and that I hold hundred percent of the beneficial interest in them on behalf of EP UK Ltd.”* This was never made known to the wife who believes it was executed after the separation. I do not need to make any determination on that issue because of the way matters proceeded. Ms Lyons in her skeleton argument submitted that the husband was not

entitled to enter into a unilateral variation of the previous Declaration of Trust entered into with the wife. I pointed out to the husband that he was not entitled to present a picture to the revenue authorities which was untrue and incorrect, in other words, he could not run two horses, on the one hand claiming that the wife had no beneficial interest but on the other hand claiming to the Revenue that she had a 50% interest. Further he could not unilaterally override the Declaration of Trust. The husband conceded this point in the witness box and accepted that the property in SR continues to be held jointly beneficially.

43. In 2018 the husband was seeking to buy 2 and 2b LM for redevelopment. It is the wife's case that both purchases were meant to be in joint names and she relies on a TR1 prepared by Child and Child, the conveyancing solicitors evidencing this. The TR1 refers to 1 and 2 LM but this is incorrect as the husband already owned 1 and the purchase price is shown as £1m which was the price I was told at which 2 was acquired. Attempts to obtain the conveyancing file from Child and Child have proved unsuccessful. In the event, 2 was bought in the husband's sole name and 2b in joint names. Completion of the latter was on 8 January 2019 at a price of £1,575,000 as joint tenants with no restriction.
44. In his section 25 statement, the husband says that he was unable to obtain development finance for 2b because he had not obtained planning permission. The only other option was a homeowner mortgage and he needed to use both parties' income in order to secure a mortgage. At that time the wife was still declaring half of the rental income from SR to take advantage of her lower tax rate. Because the mortgage had to be joint, the property also had to be purchased in joint names. He says, *"It was not intended that KD would have a 50% beneficial interest in 2b LM; it was only purchased in joint names so that I could obtain the mortgage I needed. We intended that KD's interest in EC would transfer over to 2b LM once EC was sold in August 2019. This is evidenced by the Excel calculation which I prepared on 25 January 2020 which sets out KD's share of 2b LM on the basis that her equity had transferred over from EC. This translated to KD having a 6% share in 2b LM."* The wife told me she had no recollection of signing this document.
45. This short extract exemplifies the husband's approach in my view and amply warrants the description of controlling and manipulative behaviour.
46. The parties moved into to 2b LM and rented out 75 EC which was in due course sold in 2019. The husband produced a further Declaration of Trust for the first time with his witness statement dated 1 July 2021, by which he purported to assign 100% of the beneficial interest in 2b to EP. Ms Lyons makes the same point that he cannot unilaterally

alter the beneficial interest. On this occasion, the husband did not concede that the wife had an equal share and relied upon calculations showing her to be entitled to a 6% beneficial interest only which had been carried through from her interest in EC.

47. In 2019 the husband bought 7 KM to develop as a small block of 6 one bedroomed flats in the name of EP at a price of £755,000. He alleges his father loaned him monies towards the purchase. The wife says she was never told by the husband about any loans, other than a much earlier loan in 2013. The husband has produced 4 identical loan agreements each headed “Unsecured Loan Agreement”, whereby his father is alleged to have loaned him monies to purchase or develop investment properties. The only difference is the trigger event for repayment, depending on which property was involved. At this stage the only previous loan made by the husband’s father was in October 2013 whereby he loaned him £350,000 to purchase a property in CR. It is not disputed that this loan was repaid. The earlier loan document looks very different from the 4 subsequent loan agreements. The earlier loan was made by the father’s company M of Hong Kong and is on the company’s headed paper. It was for a period of 12 months at 4.55% interest per annum. The 4 later loans carry the same interest rate as the original 2013 loan.
48. The wife alleges that these are not genuine loans and represent gifts by the husband’s father. If I were to find they were loans, she submits that they are soft loans.
49. The first such loan agreement is dated 10 May 2019 for £300,000, to allow the borrower to purchase 7 KM. It was to be repaid on the sale or refinancing of 7 KM upon completion of its redevelopment. The husband explained that the agreement was drawn up by him from a template which he downloaded from the internet.
50. There is a subsequent loan dated 8 July 2019 in the sum of £200,000 to be used for obtaining all pre-commencement development permissions and enabling works associated with 7 KM, to be repaid on the same terms as the earlier loan.
51. In March 2020 the parties purchased what was to be their final family home at 1 FG in joint names for £1,300,000. The husband received a sum of £1.15 million from his father as a gift towards the purchase of 1 FG and the balance was made up from the proceeds of EC. The Deed of gift was for £1.4m but the husband said he received only the smaller sum and this was attributable to his father’s somewhat mercurial disposition. An offset mortgage loan from Barclays for £880,000 was taken out to cover the costs of redevelopment and the husband’s father provided the third unsecured loan of £200,000 on 2 November 2020 to finish the works at 1 FG. It was to be repaid on the sale of 1, 2 or to 2b LM or the sale of 1 FG.

52. The husband presented the wife with another Declaration of Trust providing that she had a 7% beneficial interest in 1 FG, he claimed by transferring her 6% interest in 2b LM.
53. The wife's account of how she came to sign it in her oral evidence was extremely revealing. She said she was at home with her best friend T and a school mum friend she did not know very well called D. T was there to give a yoga class. The husband asked T to witness the document and the wife did not feel that she could say anything. "*D was there and she did not know stuff.*" I asked her if she could not have asked the husband to put this off till later and she responded "*I did not feel I could make a scene. When he wants something done it has to be done there and then. We were married. I trusted him. I had no choice.*"
54. On 17 May 2021 the 4th loan agreement for £720,000 was made to re-develop 7 KM, to be repaid upon the sale of KM or the refinancing upon completion of the development. This was received on 4 June 2021 and transferred to the Barclays mortgage offset account a few days later.
55. The wife only lived in FG for 3 days as she left the marriage on 25 June 2021. On the same day the husband was arrested following allegations of domestic abuse made to the police by the wife. The husband has described at some length in his section 25 statement how traumatic this event was "*like being hit by a stranger with a sledgehammer*" and how he has subsequently had to seek mental health support. He says this also delayed his programme of works for FG, LM and KM.
56. On 2 July 2021 the husband transferred the sum of £880,000 from the joint offset account into his own account. This was within days of the marriage breaking down. On 22 September 2021 he transferred the sum of £729,783.12 from his sole account to his father, allegedly to repay the £720,000 previously advanced because he claims he was in no state physically or emotionally to begin the development project on KM and did not want interest payments to build up with the money sitting fallow. He explained the 3 months' delay from July to September as a result of all that was going on in his life at that point.
57. The wife says that the removal of the monies from the joint offset account within days of the separation was done in order to put the monies beyond her reach as was the alleged repayment of the loan to his father with the monies 3 months later.
58. There was no witness evidence from the husband's father to support his case for any of these loans. Whilst it was not possible in any meaningful way to investigate the father's means, I gained a clear impression from the evidence that he is extremely wealthy. He has

3 other children for whom he has provided advanced inheritances, one would assume in similar sums. He has paid school fees for his daughter's children, although further details were not given. He has or has had a number of different homes in different continents and a yacht and has owned paintings by the likes of Miro and Picasso, albeit the latter was said by the husband to be in the 80s. He is now retired and wishes to provide for an orphanage he has set up in India by way of endowment.

59. The husband also owns 2 parking spaces in LM which have a joint value of £109,000. However, the husband has borrowed £120,000 against these assets to cover his legal fees so that they are in negative equity.

The wife's liabilities

60. The wife has borrowed £129,768 from her parents in order to pay her legal fees. There is a formal loan agreement dated 25 January 2024 containing terms for repayment. A letter to the wife from her parents dated 4 January 2024 confirms that the monies must be fully repaid with interest. The wife says that her parents have both been quite seriously ill in recent times and they have no health insurance. They are anxious about their present and future health and care needs. The wife's parents ran a civil engineering business but are now retired. They live in what is apparently a very nice house in Hampshire. Whilst I got the impression that they were comfortably off, they do not appear to be in the same league as the father's family.
61. Ms Lyons submitted that the wife has had no ability to have recourse to loans from commercial entities to fund her fees, in contrast to the husband. She says in those circumstances the wife should not be prejudiced because she has had to borrow from family sources.

Maintenance issues

62. The husband initially agreed to pay ongoing rent and a cost of living allowance to the wife during the Children Act proceedings. He stated this was for 6 months but the recital to the order does not place a limit on this. The husband paid the rent on the wife's rented accommodation from July 2021 2 January 2022 when he reduced it by £200 or so and then ceased paying at the end of the tenancy in July 2022. He refused to make any further contributions thereafter. The wife moved to a new tenancy in July 2022. The husband paid voluntary maintenance from July 2021 to April 2022 when he reduced it slightly but ceased completely in August 2023. The wife has had to draw down on her own savings and rely on support from her parents. The husband has been assessed by the CMS to pay child periodical payments in the sum of £11 per week. This is based upon the small salary

he takes from his company. It takes no account of the rental payments which he has been receiving in respect of the various properties. It is likely he did not declare this to the CMS because legally they are due to the companies.

My impression of the parties

63. I did not find the husband to be a credible or reliable witness. I have described in detail his behaviour in relation to the financial transactions during the marriage which really speaks for itself. I wholly reject his account that the PNA was equally desired by both parties. I am entirely satisfied that he was the driving force behind this arrangement and that this was part of an ongoing pattern of behaviour whereby he has sought to secure the maximum financial entitlement for himself and to limit the financial entitlement of the wife. I find there has been a continuum of behaviour from the time of the PNA right up until the conclusion of these proceedings. Further his written and oral evidence was all tailored towards achieving that objective. He is completely preoccupied by money at the expense even of his close relationships. All his actions are based on what he perceives as best enhancing his financial position. Inevitably such behaviour would often come at the expense of others.
64. All the transactions between the parties were evidenced by highly detailed commercial agreements drawn up by the husband and which had the appearance of two parties to a commercial transaction rather than a husband and wife. The husband has sought to suggest that the wife was anxious to create a paperwork trail and that they were both intending to live in the spirit of the PNA. I wholly reject that account. I find the husband was totally in charge of financial arrangements during the marriage. Although the wife is a highly intelligent person, she did not have a detailed understanding of these transactions and simply entered into them at the husband's request. As she described, she left financial arrangements to the husband. She described the husband as very forceful "*a bull in a china shop*" "*far more of a high conflict person. I don't like conflict*" in contrast to her own personality which is to avoid conflict and not to rock the boat.
65. The husband on the other hand is deeply versed in commercial transactions, commercially savvy, particularly in relation to property, as evidenced by the highly detailed calculations and presentations provided for the purpose of these proceedings as well as the commercial documents he created during the marriage. The wife spoke of the PNA "*gathering dust in a drawer*" and I find she gave it little or no thought after the marriage. I find that these transactions were all entered into at the initiative of and on the instruction of the husband. I regret to say that I find the husband's behaviour throughout has been

controlling and manipulative. He exploited the wife's emollient personality. It does him no credit at all.

66. Ms Lyons has also been able to point to a number of aspects of the evidence which undermine the husband's credibility. He grossly underestimated the value of FG in his Form E at £1.3 million, although as a property developer, he would be keenly aware of the value of properties in his portfolio. He has been dishonest in his dealings with the revenue, on his case, putting properties into joint names when he claims the wife to have no beneficial interest, in order to reduce his tax liabilities. He has been thoroughly cavalier in relation to the planning authorities resulting in enforcement notices and wasted expenditure. This is surprising given his academic background and specialism in sustainability. There have been significant breaches of planning control in relation to most, if not all, of the investment properties and he seems to have an attitude of trying to get away with what he can. I do not accept his attempted justification that this is commonplace in the construction industry.

67. In contrast I find the wife to be an entirely truthful and genuine witness. I found I could accept the entirety of her evidence. It goes without saying that where it conflicts with the husband's, I unerringly prefer hers. I found her to present exactly as she describes herself as an emollient person, a people pleaser and someone who seeks to avoid conflict. I find that she reposed her trust in the husband who had assured her he would be charge of financial arrangements and that she had little understanding of the documents that he presented to her and required her to sign.

My findings on computation issues

The PNA

68. I am satisfied that the wife entered into the PNA as a result of undue pressure. The timing of the negotiations, the timing of the signing itself as well as the husband's clear position that he would not marry her without it all point to that conclusion. I accept that the wife was a mature intelligent person at the time of the signing of the PNA but find that there was an imbalance of power in the relationship and that the husband, even then, was a controlling force within it. I find that the wife felt that she had no alternative, even in the face of the misgivings of her solicitor. I further find that the terms of the agreement itself were unfair and did not provide for the wife's needs. There was no obligation in the agreement as drafted that any marital assets acquired by either party should be shared equally or at all and the husband exploited this clause to the hilt in his dealings with the wife. Further, as Ms Lyons argued, a property developer often builds up a portfolio from a

core property or properties which might be pre-marital properties. The only clause related to income and capital provision for a child referred to mediation. There was a trigger event provided to review after the birth of the child but this was not acted upon. The agreement gave the husband full licence to conduct himself financially as he did and the upshot was that there would be wholly inadequate provision for the wife and child if the agreement were upheld. This is well evidenced by the husband's offer based upon the PNA. Finally, there is the husband's own concession in his narrative statement that the agreement did not provide for the wife's and child's reasonable needs.

The husband's loans

69. The position concerning the loans is less clear-cut. Ms Lyons, despite hints in her Skeleton Argument, does not put her case on the basis that the loan agreements are forgeries created after the event. Rather, she submits they are not genuine in the sense that they do not reflect the reality of the arrangement. I have been referred to the well-known judgment of HHJ Hess **in P v Q**, particularly paragraph 19x, which sets out some of the important factors which may influence the court as to whether a loan is a hard or soft loan.
70. It is the case that the husband's father has made a loan in the past. Further, it is not in dispute that the 2013 loan was in fact repaid with interest. The husband also described his father as a tough, self-made businessman, the inference being that he would apply strict standards to his children to make their own way and not expect to be able to rely on parental largesse. The oddities about the appearance and some of the contents of the loan agreements, such as the identical interest rates throughout from 2013, do not take the wife much further if her case is not that they are fabrications. A significant omission is the absence of any evidence from the husband's father, which I would have expected. The court is entitled, in my view to draw inferences from that lack of evidence. There is also what is, in my view, a significant factor that during closing submissions Mr Buswell was very insistent that his client was given time to raise money to pay the wife's lump sum before there was a sale of any of the assets. As he claims to have no reserves whatsoever, the clear inference must be that there is money coming from elsewhere. The fact that the wife states she was never told of any loans except the 2013 one is a relevant consideration. None of these factors, even taken cumulatively, however, necessarily prove the case that the loans were a gift. As HHJ Hess states, for an advance of money to be a gift there must be evidence of an intention to give – the *animus donandi*.

71. I am wholly satisfied that the husband's actions in the moving the mortgage offset funds into his sole account within days of the marital separation was to put them outside of the wife's reach as soon as possible. This would be entirely in keeping with his actions throughout. Once the funds were in his sole account, the pressure was off to transfer them back to his father and it may be that other events did supervene to delay that transfer. But this does not prove that the money was a gift. I have come to the conclusion that the wife has not made out her case that the loan monies were a gift and the fact that the tough businessman father might distinguish between gifts and loans is not inherently implausible. However, the money was available for the redevelopment of 7, KM in 2021 and I find on the balance of probabilities there is no reason to think it will not be made available again once these proceedings are over.
72. I also find the husband has deliberately delayed developing LM and KM. I accept that, firstly, the arrest may have knocked him for six, secondly, he has since been heavily involved in two acrimonious sets of proceedings and thirdly, he has been quite heavily involved in the management of the rental properties at SG, as well as a number of planning issues. Nevertheless 2.5 years have elapsed since these events and I would have expected him to have made a greater start on developing one or both of the property schemes.
73. I then have to determine whether the loans are soft or hard loans. I find that all the loans are soft loans. There is little doubt that the father did not need these monies paid back as the timescale for repayment on all of them is tied in to completion or sale of the developments and could extend to years. I understand it was many years before the 2013 loan was finally paid back. I also am influenced by the insistence on giving the husband time to raise any lump sum as this strongly suggests that there are resources behind the scene. The husband he did speak of potentially being able to find an equity partner (which could of course be his father). I do not find that the husband's father, even if he is tough, would insist on repayment of these loans if it were to cause his son real hardship and undermine his property development business. Even if a loan is a soft loan I have a discretion whether to leave it out of the computation table. I consider, given the extent of the father's wealth and all the other circumstances I have described, that these soft loans are of the softest variety and should be omitted from the computation table. The £729,000 returned in July 2021 should be added in as I find on the balance of probabilities it would still be available for the proposed development of KM.

The wife's loans

74. There is a formal contractual document here but, given the likely circulation of the P and Q judgment in the legal community, most lawyers will be advising their clients to enter into such an agreement to evidence a loan from family members. I accept the wife's evidence that her parents have concerns about their present and future health needs and that they do expect the loan to be repaid with interest. However, I consider that there is likely to be some flexibility about timing for repayment and that they would not want to cause their daughter hardship. I entirely take on board Ms Lyons' point that the wife should not be treated any less favourably because she has had to obtain a loan from family when the husband has had the means to obtain a commercial loan, which would be included in the computation table. I consider that this loan should be included in the computation table, albeit that it is a soft loan in terms of time for repayment. It is, in my view, a far less soft loan than the loans from the husband's father.

The profit on the development of LM

75. The husband's open offer was predicated on LM being sold in 24 months. In oral evidence he estimated it would take 12 months to sell. He provided a schedule estimating a gross profit of £821,217. Ms Lyons submitted this represented a resource which would be available in the foreseeable future. She raised a further argument that the monies already spent on the development of some £423,528.48 representing stamp duty, planning costs and litigation etc should be added back in as the court should be evaluating what the husband would actually receive in his hands in 2 years' time. I calculate the total sum as £1,244,745.48 although she puts it as £1,294,745.48 which may be a mathematical error.

76. I do not agree with Ms Lyons' characterisation of these future sums. The husband is a property developer and these sums represent the profits arising from the development. I consider they should properly be regarded as deferred income arising from the fruits of his endeavours and indeed they will undoubtedly be taxed as such by payment of corporation tax. There is no right to share in income derived from post-separation endeavour: **Waggott v Waggott [2018] EWCA Civ 727**. The current capital value of the assets has been brought fully into the calculations so the wife is not being deprived of her share of marital assets.

School fees

77. Because I could potentially foresee difficulties in paying school fees from income currently, I requested both counsel to obtain instructions from their clients as to whether their respective parents would each fund half of the school fees for a period of 2 years until the development of LM/KM was complete on the husband's account. Ms Lyons

seemed somewhat reluctant to do so but the response which came back that the wife's parents were not prepared to assist. The husband's father has offered to pay one half but has declined to pay more following the wife's parents' refusal. Ms Lyons has referred me to the case of **TL v ML [2005] EWHC 2860 (Fam)**, where Mostyn J. reviewed the authorities starting from **Thomas v Thomas** and concluded at para.101:

“The correct view must be this. If the court is satisfied on the balance of probabilities that an outsider will provide money to meet an award that a party cannot meet from his absolute property then the court can, if it is fair to do so, make an award on that footing. But if it is clear that the outsider, being a person who has only historically supplied bounty, will not, reasonably or unreasonably, come to the aid of the payer then there is precious little the court can do about it.”

I am satisfied that in this case the husband's father will pay the total amount of the school fees for two years if the husband is ordered to pay them.

Conclusions: computation

78. Counsel have helpfully updated their Schedules of assets to reflect my judgment on valuations.

79. These are my determinations on the respective Schedules:

- i. I take the value of 1 FG at the higher figure of £2,275,000 and allow the cost of the works to comply with the enforcement notice in the agreed figure of £110,000 as a liability on the husband's side. There is a significant nuisance factor reducing the market value below just the cost of the works and in order to maximise assets the work should be done.
- ii. I adopt the husband's figure for the ERP on 17, SR as the wife's Schedule omits the ERP on flat 5.
- iii. I have calculated the net equity in FG and SR after deducting CGT.
- iv. The wife's figures for the mortgages on 1 and 2 LM are lower than the figures in the ES2 and I adopt those latter figures which are the ones used in the husband's Schedule. I do not consider the outcome would be changed even if the wife's figures were used in any event.
- v. I have not deducted the father's loan plus interest in respect of 7, KM in the sum of £616,734 and the loan of £213,581 in respect of 1, FG as I have found them to be soft loans which should not appear in the Schedule.

- vi. I have deducted the loan charged on the parking spaces from their net value rather than including it in the husband's liabilities.
- vii. I have included the Tesla car and the Mini at the wife's valuation and disregarded the contents on the husband's side as well as the wife's wedding ring. The contents of FG should be divided on its sale.
- viii. Liabilities
I have adopted the wife's figures for the husband's liabilities, taking out the HNW loan which I have already taken into account. As stated, I have not allowed for the loan plus interest of £231,581 which was the loan to assist in the purchase of 1, FG as I have found it to be a soft loan. I have not allowed for the tenants' deposits as they may fall in at different times and may be offset by repairs etc in any event.
I have accepted the wife's liabilities in their entirety.
- ix. I have not included any figure for the profit on the development of LM for the reasons already explained.

80. The figures are therefore as follows:

Properties

FG	£1,180,204
SR	£607,620
LM	£284,884
1, LM	£338,069
2, LM	£178,031
2b, LM	£412,562
Parking spaces	-£18,470
Sub-total	£2,747,453

Savings/investments

Husband	£43,869
Wife	£5597
Sub-total	£49,466

Cars

Tesla	£39,515
Mini	£7,500

Sub-total	£47,015
Monies coming back to husband as soft loans	£729,783
TOTAL ASSETS	£3,573,717
LIABILITES	
Husband	£169,500
Wife	£186,503
Sub-total	£356,003
NET ASSETS	£3,217,714

Distribution: Section 25 factors

81. My overarching objective is to reach a fair outcome. I must give first consideration to A's welfare and apply the section 25 criteria together with all the circumstances of the case. I must assess any provisional award I come to against the yardstick of equality. The wife says this is a needs case but the husband has similar needs to her in terms of housing given the shared care arrangement. Because this is a needs case needs trump sharing so any award may be against non-marital assets as well as marital.

**Income, earning capacity, property and other financial resources
The husband**

82. I found the husband to be a highly intelligent, highly numerate, talented and energetic man. He is a "details" man as evidenced by his documentation in these proceedings. He clearly loves his chosen career. Currently he claims to be in very straitened circumstances as there is no development currently in play and he is living on the rental income less the mortgages and other expenses. He has been squeezed by the increase in interest rates. I have already referred to the delay in developing LM/KM as a device to minimise the husband's assets before the court. Nevertheless we are where we are.

83. The husband has produced a schedule of rents and outgoings. It shows rental income as £33,249 pm and mortgage payments of £26,818.66pm, taking into account the new mortgages on 1 and 2 LM. Business expenses amount to £3,726.10 pm, excluding cashflow to pay suppliers of £2000 pm, as there are no active development projects on

foot at the moment and the husband will be looking for development finance. This produces a balance of £2,704.24 pm. The figures for repairs taken at £1,500 pm and various office expenses at £500 will be variable so this figure is the bare minimum. The wife makes two main points about these figures. Firstly, she says it is no coincidence that the husband has gone onto expensive variable rate mortgages after fixed terms have expired on the jointly owned properties. He responds that his and the companies' financial health was far better when he took out the mortgage on FG. In addition there was the wife's income to assist. He cannot get another buy to let mortgage or a second mortgage on FG. Secondly, the wife says the husband's lifestyle is inconsistent with someone in dire financial straits. He bought a Tesla car when they separated, goes on frequent holidays and spends on quality clothing and other non-necessities. The husband claims to live frugally and it is correct he has let out his office space at SR, has increased the rents there and has taken a lodger in 1 FG. He says he "piggy-backs" on family holidays albeit that he is still paying for flights himself. Whilst I understand the wife's scepticism, I am not able to find the husband has deliberately gone onto more expensive mortgages. This would be cutting off his nose to spite his face, particularly where he has made other economies, and it may be the case that his financial health is poorer than when he took out the mortgages. Having said that some of his spending patterns particularly on holidays do not fit with someone who is in such straitened circumstances and it is likely that family help is permitting some non-essential expenditure. I find that the husband's income will increase significantly once the developments at LM and KM are completed in the next 1-2 years. Although he produced no mortgage capacity evidence and simply declared he did not have one, that is probably the position in his current circumstances. I find that his net income from rentals, before tax, currently is far nearer his case than that of the wife who makes insufficient allowance for expenditure. It is probably in the region of £3000-£3,500 pm. I find his financial situation will be transformed when the developments are completed and mortgages discharged and he will have a mortgage capacity of greater than the wife's mortgage capacity, although it is impossible to determine at this point.

The wife

84. The wife currently has no income other than the limited maintenance paid by the husband and child benefit. She has been living on her now depleted savings together with support from her parents. She has been actively looking for work and has made numerous job applications without success. I found the wife to be highly intelligent, articulate and very personable. She would, in my view, make a very positive impression on any potential

employer. She is now 50, however, and there are gaps in her CV when she has not worked or worked only on a very part-time basis. It is also well-known that the charity sector has suffered as a result of first, Covid and now the cost of living crisis. She may have to spread her net wider and look for work allied to her skills, such as in marketing outside the charity sector. I accept that it is reasonable currently for her to work 80% of full-time hours. Although she has A with her for 8 days out of 14, she does 10 school runs per week. I accept her salary bracket will be about £48,000 pa gross. However, I consider it would be reasonable for her to be working full-time by the time A is 11 and starting secondary school. I consider the time scale of 12 months she puts on securing a job and, therefore 18 months before she can apply for a mortgage could be abbreviated to some extent. I consider she should be able to find a job within 6 months of March this year when the job market revives after the “dead” months of January and February, which means she should have secured a job by September 2024 and she should be able to secure a mortgage by March 2025. I accept her mortgage capacity evidence that her mortgage capacity will then be £216,000.

Needs and obligations

85. Both parties have a similar need for a suitable home for themselves and A. Both will also need to rent for the next 1 to 2 years, the wife to secure a mortgage capacity and the husband, if FG is sold, pending the property developments coming to fruition. The husband initially produced particulars for very small 2-bedroomed flats for £400,000 - £430,000 for the wife which were patently unsuitable. The wife provided property particulars for 3-bedroomed house in the area of 1 FG in the region of £1.8m for herself which I considered would probably exceed the housing figure the court would allow. I permitted both parties to produce further particulars. The husband produced 3 bedroomed properties in the region of £900,000 which the wife said had no outside space and were towards the Munster village part of Fulham where it was not particularly safe. She produced further particulars in the region of £1.6m. I find that the parties have similar housing needs in the order of £1,600,000 to purchase a 3 bedroomed property in the vicinity of 1 FG with some outside space.

Standard of living

86. I find the parties had a good but not spectacular standard of living.

Age and length of marriage

87. The wife is 7 years' older than the husband and this was a medium length marriage of 10 years.

Contributions

88. Both parties made an equal and full contribution in their different spheres. The husband acquired a significant asset as a result of the gift of £1.15m but as this is a needs case it will be brought into account.

Outcome

89. The wife will need some immediate funds to meet her living expenses from the husband's savings/investments. In my view the payments to the wife after that should be structured in such a way as to enable the developments to proceed and the wife receive her second lump sum from the proceeds of the 1 FG. I consider that 1, FG should be sold as soon as the works are done, which I estimate as 6 months' time. I consider that part of the soft loan which I have taken into account from the husband's father, namely, the £729,783 he returned could be deployed for this purpose. Because of the strong desirability of severing financial ties as soon as possible and reducing the risk of disputes about enforcement, I consider the wife should receive the bulk of the net proceeds. Six months will also be the time period for raising funds to buy the wife out. In default, the property should be sold. If there is no sale, the net equity should allow for deduction of the latent CGT and the husband should then indemnify the wife against all liability. The balance of the lump sum should be paid when the development of either LM or KM is completed or within 24 months whichever first occurs. If the balance is not paid there will be an order for sale of the LM development or such part of it as is sufficient to discharge the balance. The transfer of the wife's interest in SR and 2b LM should occur simultaneously with the payment of the second lump sum. The husband should indemnify her in relation to her CGT liability on SR as the net equity has been calculated net of CGT.

90. The wife should receive a total payment of one half of the net assets equalling £1,608,857. The wife will need £30,000 forthwith to tide her over until 1, FG is sold. On the sale of 1 FG both parties' liabilities should be discharged. The wife's liabilities are £186,503 and the husband's excluding the £110,000 for the works are £59,500. This would leave a net equity of £974,415. This should be paid as to £850,000 or 87% to the wife after liabilities are paid, if it is sold, leaving the husband with funds to supplement his rental income to enable himself to rent. The balance of the lump sum should come from the sale of LM or a buy out to be paid no later than 2 years from now.

91. I find the wife's needs will be met as follows:

Purchase of a property: £1,600,000

Stamp duty: £103,250

Costs of purchase and furniture I take as £30,000 as she will receive items from 1 FG

A new car: £20,000

Maintenance and rent for one year until March 2025: £28,800 for rent and £36,000 for living expenses: £64,800

Total £1,818,050 less mortgage capacity of £216,000 = £1,602,050

92. I have not allowed anything for arrears of maintenance as these have been accounted for in part by the wife's liabilities, i.e. borrowing from her family and in any event any further payment would result in an unfair division of the assets.

93. I do not find that this is a case for ongoing periodical payments. There is a strong steer towards a clean break. The wife has the care of A for only just over half the time and I have found she will be able to work full-time by the time he is 11. I also take fully into account that of the assets going to the husband, some £848,315 are comprised of soft debts rather than marital assets and I have also allowed for the repayment of the £729,783 the husband returned to his father, another soft debt. I do not find he has the ability to pay spousal maintenance for the next two years in any event. Although his earning capacity when the developments are completed is difficult to assess, the wife will be moving into full-time work at that stage. It would be my expectation that he will also be paying some or all of the school fees again. He should certainly be paying a more realistic sum for A but that is outside my jurisdiction. There is therefore no case for capitalised maintenance. I find the £100,000 or so the husband will receive from the sale of 1FG, together with his rental income will enable him to rent a property similar to that rented by the wife and to meet his outgoings for the next 2 years, after which he will be in a position to purchase a similar property from a combination of the balance of the equity in the investment properties, the development profit from the sale of LM/KM and the soft loans.

94. I make an order he pay the school fees for the next 2 years which I have found his father will pay and thereafter the parties will need to agree a way forward at least for the last year of A's primary education.

95. Therefore, the orders are:

1. Payment of first lump sum of £30,000 to the wife within 14 days.
 2. Payment of a second lump sum of £850,000 and wife's liabilities in 6 months and in default sale of FG with wife to receive 87% of the equity calculated after payments of joint debts as defined above.
 3. Payment of third lump sum of £728,857 in 24 months and simultaneous transfer of 2b and Seagrave to the husband and in default a sale of LM with wife to receive balance of total sum due.
 4. Husband to pay school fees for 2 years.
 5. Clean break life and death for wife on payment of all lump sums.
 6. Clean break life and death for husband now.
 7. Chattels in FG to be divided by agreement.
96. Finally, I would like finally to express my gratitude to both counsel in this difficult case.

Dated 12 February 2024