IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Neutral Citation Number: [2022] EWHC 3652 (Fam)

BV16D15290

Royal Courts of Justice
Strand
London, WC2A 2LL

Monday, 23 May 2022

Before:

MR JUSTICE FRANCIS

(In Private)

B E T W E E N :

SBX — Applicant

- and -

ABX — Respondent

MR M. GLASER QC appeared on behalf of the Applicant.

MR T. SCOTT QC and MR T.HARVEY appeared on behalf of the Respondent.

J U D G M E N T

MR JUSTICE FRANCIS:

1 I am faced with a number of applications in proceedings which I disposed of as long ago as May 2018. At that time, I heard a disputed claim for financial provision by SBX against ABX. I shall, for the purposes of clarity and simplicity in this Judgment, refer to them respectively as the wife and the husband. I know that they have been divorced for some time and I hope they do not think that I am being discourteous in so referring to them.

2 These were hotly contested proceedings in 2018. I was, in the Judgment which I then gave, deeply critical of the way that the husband and / or his solicitors had behaved in the way that they commenced these divorce proceedings. I will not say any more now than I said then, because I said all I needed to say, but it underscores the feeling of distrust and animosity that then existed between this decent couple, and probably that distrust and animosity continues. I am very sad that it does, because between them they have three children and they are, of course, the focus of their lives as they were the most important thing that I was dealing with when I dealt with these proceedings in 2018. It, therefore, comes as more than disappointing to me, as the judge, to hear that in these enforcement proceedings, for that is what I am engaged in, the husband's costs are now some £56,000, and the wife's costs over £25,000. That just relates to a hearing in January and today. That is a tiny drop in the ocean compared with the costs that were previously expended.

3 The husband is in arrears under my previous order, possibly to the tune of around £150,000 to £160,000. I do not put that figure forward as a finding, but it is a figure which I think he broadly accepts, subject to whether the maintenance which he has to pay to the wife and for the children pursuant to my earlier orders are varied. Even when I had handed down my Judgment, it took a whole day in court to argue over ancillary matters before we could lead

our way into having a final order, which was to reflect the decision that I had made. It is, in my judgement, an absolute tragedy that this couple has spent so much on these proceedings, taking every technical point in the book that they can rather than on trying to navigate a way forward for the benefit of themselves, their future and the children. I note that the husband continues to live in central London and to have the benefit of a substantial property from his new wife in the countryside, and yet the children's school fees and maintenance apparently go unfunded. Again, I am not making any findings in relation to those, but I can well understand the frustration that the wife feels in these proceedings.

4 On 17 January 2022, this case came to me as a half day case. In fact, we had the benefit of a full day, for reasons which I need not go into. There was a bundle with hundreds of pages, there was an authorities bundle with hundreds of pages, and I had to deal with a number of very technical points and interpretation of the European Maintenance Regulation and the United Kingdom Withdrawal Agreement from the European Union. With hindsight, I should have refused to hear the matter at all in January, and today again the matter has been listed in front of me for one day, and here I am finding myself commencing giving judgment only in relation to a stay application and therefore not having considered at all yet the merits of various of the applications that are being made, and which may withstand the stay application, according to what I now have to say. This case needed now at least another two days, probably three, and I should say that in future when I get cases in front of me where the time estimate is obviously inadequate, I am going to simply have to refuse to start it. I entirely accept that the wife's applications here and the husband's application are incredibly important to them. The fact is that almost every case that comes before a High Court Judge of the Family Division is incredibly important to the people it affects, and it is only fair that we try in some way to regulate the way that we deal with it.

5 I am now giving an *extempore* judgment in a case where I would very much have preferred to write a more considered and detailed judgment, and that would have taken me, I suspect, at least a full day and the luxury of that time is not available to me, but I think it is far too important. These parties, and particularly the wife because she is the one who is seeking to enforce payments in respect of both her and the children, must have a decision from me, and not have me kick this case into the long grass again. It has taken, as I say, from the 17 January until today, 23 May, to get this second day, and if we waited for another day we would be waiting until the autumn, if not the winter, and that is completely unacceptable to all.

6 The background to this case appears from my earlier Judgment, which has been reported, and I am not going to repeat what everybody knows. What I do need to do is to update matters just a little bit. I made an order which was in relation to the former matrimonial home, which meant that the wife and children could continue to occupy it. It seemed to me that central to the welfare of the children, the first consideration of the court, was their ability to occupy that home, and I made an order which I understood and believed, and still believe, made that possible. In fact, 14 months after the conclusion of the financial remedy proceedings, the wife applied to relocate permanently with the children to a Continental European country, Country A. I make no criticism of her at all in making that decision. It was a personal decision. She is, after all, a national of that country, and she may have had very sound - I am sure she did have very sound personal, and maybe financial reasons to want to relocate to Country A. So in saying, as I do, that it came 14 months after, and was certainly a surprise to me, I am not going to criticise her for it. It has not been necessary for me to go into her motives in doing that. Her Honour Judge Hughes granted her application on 24 June 2020, and so she and the children moved to Country A in July 2020.

7 There have been an enormous number of applications made in this case since I gave judgment back in 2018, which may be summarised as follows:

H's applications Date	**Jurisdiction**	**Topic**	**Date W notified**
14.8.20	Country A	Variation of all maintenance obligations	*
8.12.20	Country A	Extension of response deadline	*
6.4.21	Country A	Objection to W's request to extend response filing deadline	*
7.9.21	Country A	Request for determination of the Court's jurisdiction	*
6.1.22	England	Stay of W's variation and enforcement applications	6.1.21

W's applications Date	**Jurisdiction**	**Topic**	**Date H notified**
23.9.20	Country A	Court formally notified of W contesting H's application	30.9.20
5.10.20	Country A	Extension of response deadline	13.10.20
2.11.20	Country A	Dismissal of H's variation application and costs (together with a substantive filing)	14.12.20
30.12.20	England	Enforcement - ¶36 (Business R payments)	27.4.21
31.12.20	England	Variation of periodical payments (unspecified)	27.4.21
17.2.21	Country A	Extension of response deadline, request for translations	22.2.21
26.3.21	Country A	Further extension of response deadline	29.3.21
11.6.21	England	Enforcement - ¶41 (maintenance – school fees)	7.7.21
25.6.21	England	Enforcement - ¶37 (maintenance – spousal)	7.7.21
25.6.21	England	Enforcement - ¶38 (maintenance – mortgage payments)	7.7.21
20.7.21	Country A	Extension of response deadline	22.7.21
13.9.21	England	Enforcement -¶40 (maintenance – children)	10.1.22
30.9.21	England	FMH – discharge of trust and undertakings	30.11.21

*Note: Applications in Country A are made to the Court, which serves the responding parties. Notification dates are hence unknown and would need to be confirmed with the Court of Country A.

8 The important applications, however, are as follows: on 30 December 2020 the wife made an application to enforce what I am going to refer to as the Business R payments - the reference to those is understood by all in this court, and clear from my 2018 Judgment. On 31 December, the following day, the wife made an application for variation of periodical payments. On 11 June 2021, she made an application to enforce payment of school fees. On 25 June 2021, the wife made an application to enforce spousal maintenance payments. On 25 June 2021, the wife made an application to enforce the payment of the mortgage due in respect of the former matrimonial home. On 13 September 2021, a further application was made in relation to maintenance for the children. On 30 September 2021, the wife made an application for discharge of an undertaking which she had given in relation to the former matrimonial home.

9 I have not adjudicated on the merits of any of those applications, but what is clear, because the husband admits it, is that he owes money, and I will not go into the details of the amounts now because he knows them and I have not made findings about them, but money in respect of the school fees, some money in respect of interest on the Business R payments, although that is a fairly nominal amount in the context of this case, £90,000 odd in respect of maintenance for the wife, significant sums in respect of the mortgage and in respect of child maintenance. The husband says, and again I have not adjudicated on the merits of this, that his financial circumstances have dramatically altered for the worse, that his business is engaged in the provision of services to hotels, that the hotel industry has been devastated by the pandemic. Of course I can take judicial notice of the fact that that must be correct, although I can also, I think, take judicial notice of the fact that the hotel trade seems, from everything I read in the papers, to have bounced back significantly recently. I make it clear

for them both to hear that I cannot, on the information I have had so far, and have not made any decision or finding at all in relation to the merits of their respective applications. I have commented on the fact that I think it is a tragedy that they have spent so much money on costs which they could have spent instead on trying to resolve their financial differences.

10 On 6 January 2022 - that is just shortly before the hearing before me in that same month - the husband applied for a stay of the wife's variation and enforcement applications. It is that application that occupied most of our time in the January hearing, and all of our time today. In January the husband was represented by Mr Harvey, and today Mr Harvey is being led by Mr Scott QC, whose expertise in European law is well known and respected in this court, but of course that advice comes at a high price. I do not make any criticism of Mr Scott for a second about that, but I can understand that the wife might be slightly irritated to find that, as it were, Rolls-Royce Queen's Counsel are wheeled in at a time when she is owed money in the way that I have just identified. The wife has, if I may say so, been expertly represented by Mr Glaser QC.

11 So the decision that I have to make, first of all, is whether I stay all or any of the wife's applications. A great deal of time today has, been focused on Article 12 of the European Maintenance Regulation. It is, of course, ironic that whatever I do or do not say in the course of this Judgment will, in reality, be of little interest to anyone else because, since the UK's withdrawal from the European Union, that Regulation has or shortly will fall into irrelevance in this country.

12 It is important, therefore, that I start with the provisions of Article 12. Article 12 provides as follows:

> "1. Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established."

The husband has applied to stay some, but not all, of the wife's applications. The reason he has not applied to stay the two most recent ones is because they were made only just before the January 2022 hearing. Mr Scott submits, and I do not think Mr Glaser takes issue with this, that the court can, of its own motion, stay any of the proceedings, and in fact if I look again at the provisions of Article 12, it is mandatory that "the court first seised shall of its own motion stay its proceedings", etc, and so I draw no distinction here between the stay application made and the ones which Mr Scott says are deemed to have been made or which I can deal with. It seems to me that it would be wrong to distinguish between them on that basis.

13 Mr Scott relies, first and foremost, on the decision of MacDonald J in *B v B (Maintenance Regulation – Stay)* [2017] EWHC 1029 (Fam); [2018] 1 FLR 658. All of the advocates in this case accept, rightly, in my judgement, that the facts of that case are on all fours with the facts of the case which is before me. In that case MacDonald J held as follows, and I read from the headnote:

> "Notwithstanding that there were arguments put forward by the applicant that might lead the Italian court to conclude that the respondent had failed to establish its jurisdiction. The facts of this case fell squarely within the terms of Article 12 of the Maintenance Regulation. The terms of Article 12 made it clear that it was not for the court applying Article 12 to investigate the question of whether the Italian court had

jurisdiction or not. It was plain that there were proceedings ongoing in both England and in Italy in relation to the maintenance provisions of the 2011 order and that those proceedings were between the same parties.

Furthermore, in the circumstances of this case, the proceedings in Italy and the proceedings in England involved the same cause of action for the purposes of Article 12(1) of the Maintenance Regulation. They concerned the same provisions of the same order. Both sets of proceedings concerned at the heart the wife's right to maintenance payments under the terms of the order and the husband's obligation to pay maintenance under the terms of the order. Both cases will involve consideration of the extent to which those rights and obligations should subsist having regard to an alleged change of circumstances."

Then the judge went on to find out which court was first seized.

14 Were that the only authority to which I have to have regard, it seems to me that I would simply follow what MacDonald J had done in that case unless I could find substantial reason to disagree with him. Of course, the doctrine of precedent requires me to have regard to his decision, and that if I disagree with it I must give cogent reasons, but I am bound to say that had I had that decision in front of me as the only one, I would have followed it, for the reasons that he has given. He set out the history of the development of the various provisions of the Maintenance Agreement, its interpretation and detailed reasons as to why he would follow it. Following *B v B* would have the effect that I would apply the mandatory stay to the school fees issue, the mortgage issue, the spousal periodical payments issue and the child maintenance issue, because those would be the items that would be affected by the mandatory stay.

15 Mr Glaser has forcefully and with absolute conviction today and indeed in January 2022 argued that that case can no longer be regarded as good law, because of the Supreme Court decision in the case of *Villiers*, and it is that then to which I now turn my attention. The crucial paragraph in the Supreme Court decision of *Villiers* comes in the Judgment of Lord Sales. I should say that that Supreme Court was split three / two, never ideal in a sense when one is proceeding to a decision of the Supreme Court, but that is the way that it was; with Lord Wilson and Lady Hale both dissenting, interestingly them being two of the Family judges on the Panel, although Lady Black, another Family judge on the Panel, was with the majority.

16 In para.43 of *Villiers*, Lord Sales said as follows:

> "Article 12 [of the Maintenance Regulation] is directed to dealing with the position which could arise if a maintenance creditor brought maintenance proceedings in more than one court. The phrase 'the same cause of action' in article 12(1) has to be read in the light of the objects of the Maintenance Regulation referred to in the case law cited above. Since article 3 allows a choice of jurisdiction and the substantive law to be applied in relation to a maintenance claim which differs as between member states, I consider that the phrase refers to the nature of the claims being brought, i.e. as claims for maintenance of a specific person, rather than to the precise cause of action in law."

In para.42 of that judgment, Lord Sales had said:

> "Article 3 of the Maintenance Regulation is concerned with defining the set of jurisdictions in which the maintenance creditor has the right to bring her claim."

17 Mr Glaser has sought to put on the passages which I have just identified a very restrictive interpretation. He says that what Lord Sales had said is that this deals with the maintenance creditor only. Now, the position in this case is that the husband's application - there is no doubt about this - is first in time. He has made an application to the court of Country A to vary my order for spousal periodical payments. At first sight I questioned why that might be appropriate. After all, it was an English order made in the High Court and why, therefore, should any other court be looking at that? Well, the answer is, first of all, because the law allows it. But there is a rather more important reason than that. This is a family from Country A, where the wife and children are living in Country A, and I can well see, as a point of ordinary common sense, why there may be considerable reason for this application to be heard in Country A, but I am not applying discretion here, I am looking at whether there should be a mandatory stay for the reasons that I have set out.

18 The wife has brought her claims in this country for enforcement, as I have indicated, and Mr Glaser says that neither the husband nor the wife has a cause of action in the sense that was intended by Article 12. So Mr Glaser's interpretation of Article 12 is that the husband does not have a cause of action in Country A. It is rather important, therefore, to look at what the definition is of "cause of action" within the Maintenance Regulation. It is "*le même objet et la même cause*", which means "object and cause", and it is slightly different from cause of action.

19 It seems to me, as a matter of ordinary interpretation and common sense that, when the husband applies for a reduction in spousal maintenance in the court of Country A and the

wife applies for enforcement of a maintenance obligation in the English court, we are dealing with the same object, we are dealing with the same thing, we are dealing with the same cause, and I am not using that in a technical legal sense of cause of action, but in terms of an ordinary common sense interpretation of those words. They are even more connected when I identify the fact that the husband has paid - or agrees that he should pay perhaps is a better way of putting it - the maintenance up until the date of his variation application. His application, therefore, relates only to, he says, whether a judge should enforce the payment of maintenance after the date of his application. At some point a judge will have to decide whether the husband's maintenance obligations pursuant to my order should be reduced or extinguished. That is a decision which a judge has to make, and enforcing the wife's application for payment of the maintenance if the judge is going to have to effectively be dealing with the same facts, because only when a decision has been made as to whether the order that I made should be altered can the judge decide what amount of maintenance should be enforced, and so they are uniquely intertwined with each other.

20 Mr Glaser's restrictive interpretation of Article 12 (placing reliance on what Lord Sales said) means that the stay would not operate because the husband, he says, does not have a cause of action in Country A, he is not a creditor and he is not somebody who comes under the definition that Lord Sales was dealing with. He goes further because he says that after a trial, which is under the heading of the Regulation "*Lis pendens*", and he says that there is no longer a pending suit and therefore he does not come under the provisions of Article 12.

21 Mr Scott, who appeared in the case of *Villiers* in the Supreme Court, very frankly confesses that he did not draw the court's attention to the MacDonald J decision in *B v B*, and that he wishes that he had. It is not my place to criticise what he did or did not do in that court, but certainly I think it would have been instructive for all of us if the court had been considering

that Judgment, because on Mr Glaser's interpretation you cannot reconcile what Lord Sales said with the Judgment in *B v B*. I am, of course, bound by the decision of the Supreme Court in *Villiers*, but in my judgement it is impossible to put on it the restrictive interpretation that Mr Glaser does. It would defy all common sense. The point of the Maintenance Regulation is to prevent the possibility or the likelihood of two different courts in two different countries coming up with different decisions in relation to the same factual matrix. It would be remarkable, would it not, if in Country A the court said, for example, that they should reduce the maintenance obligation of husband to wife, and yet in England the court was enforcing that same maintenance obligation at the unreduced rate? That is, in my judgement the mischief which Article 12 was designed to deal with, and there is nothing, in the Judgment of Lord Sales or indeed the Judgment of the majority in the Supreme Court which is inconsistent with what I am saying. It is simply that the court was not considering the issue that I am considering today.

22 Having found that MacDonald J's decision is not overturned by *Villiers*, I go back to consider whether there is anything that he says in it with which I would disagree. Far from disagreeing with what MacDonald J said, in tracing the history and in applying the facts of his case, I am satisfied that if I had been dealing with that case I would have reached the same decision, and, therefore, that compels me to reach in this case the decision which he reached in that case. I am, in many respects, disappointed to have to reach this decision because it means that I am saying that I am now going to be without jurisdiction because I am bound to grant a mandatory stay pursuant to Article 12 in respect of the school fees, mortgage, periodical payments and child maintenance issues.

23 Mr Scott tells me, and I accept, and Mr Harvey reminded me, that the case for the husband has always been articulated also on the basis that I should apply the discretionary stay

pursuant to Article 13. I have not heard argument in relation to that today, or in January, and I said to Mr Scott in discussion earlier this afternoon that in a judgment which is necessarily done quickly, I am not prepared, as it were, to do what judges often do and make a sort of belt and braces finding saying, "In any event I would have dealt with it this way under Article 13." I am not prepared to say what the exercise of my discretion under Article 13 might have been because I have not heard argument on it. There simply has not been time for that today.

24 That, of course, only becomes relevant if the wife decides to appeal this decision and were to set aside my findings in relation to Article 12. Only on that basis would my decision in relation to Article 13 become relevant. I am not at the moment dealing with an application, of course, for permission to appeal and nor do I encourage one. I simply make that observation.

25 It seems to me that the most important thing for these parties now is to engage in discussion to see whether they cannot resolve this case. The husband should, in my judgement, give the wife the facts and the details which she needs to be able to make an informed decision as to whether she should accede to any reduction in the periodical payments obligation. She is expertly advised, but she cannot make the decision or take advice until she has the information. If time and effort and money could be put into dialogue, and engaging through expert mediators or adjudicators or private FDR judges, whichever they may be, they would make progress in a way that they have failed to do so far.

26 I am told, and I accept, that the view was taken that the husband and the wife might be able to resolve this on their own. I have no doubt, having heard them both give evidence, of their very significant capacity to understand the issues. They are obviously extremely bright,

intelligent, well informed people, but having that debate with your estranged spouse, particularly in the circumstances of the conflict of this case, it seems to me that it is always going to be incredibly difficult, if not impossible, and that is why, after all, both parties go through mediators there to do.

27 I recognise that in dealing with this in the way that I have this afternoon I have not been able to do justice to all of the arguments which each of the advocates has so expertly put forward, but it seems to me that having found the decision of MacDonald J is one that I would follow in this case, Article 12 compels me to apply a mandatory stay to the four headings that I have. That really is an end to the matter.

28 I just say this: the two issues which are left, and which I am very reluctant to let go of in any practical sense - one is the Business R monies and the other is the trust point in relation to the former matrimonial home. As far as the Business R monies are concerned, there is an argument about interest, whether it should be the mortgage rate on the house or judgment debt rate, or somewhere in between, I am told that the top end of that figure is six thousand and something pounds, and obviously the bottom end of it rather lower. Frankly, I cannot imagine that it would be sensible for the parties to leave today without some resolution of that amount and an agreement on a number, which is somewhere - and I am not going to say split the difference, that is never necessarily the right answer - between the two numbers. They ought to resolve this, because every time they get their solicitors to write letters about it they are paying probably, certainly in the husband's case, something not far short of £1,000 an hour by the time you add VAT, and the wife's solicitors hourly cost to her is probably not an awful lot short of that. So it is absolutely pointless to pay lawyers to argue over something between £1,000 and £6,000.

29 So far as the trust point is concerned, the husband has said that he really has no interest in these issues at all. Trustees have obligations and you cannot just ride roughshod over that, and I respect that. Similarly, it may be that the parties will accept that I have the power to vary that trust if I am persuaded that it would be right to do so. I will not make any comment on the merits of the argument, because although I do have a view, I do not think it would be right to express one when I have not heard argument from each side about it. If the husband is correct in saying that he does not really mind what happens because he has no longer got any interest in it, then I cannot really see any great reason for that particular issue to be left anyway other than with me in this court, but I will, after I have finished this *extempore* judgment hear argument in relation to that if anybody wants to persuade me that I should say anything further about it.

L A T E R

30 In relation to the Business R payments, I was very careful in considering this in the wife's sharing claim, she was, in my view, entitled to half of the outstanding amount under Business R. In fairness, I do not think anybody on the husband's side sought to persuade me otherwise. In fact, I gave her more than half, I gave her 60 per cent, and I did so because the husband had given up, he had foregone a considerable amount of money that he would have been entitled to when he left Business R, and was then to set up his own business. In fact, for all reasons which we know, things went badly wrong, for pandemic reasons, and so forth, but the way that I dealt with Business R on behalf of the wife was part of the sharing claim, and I did not regard it as maintenance.

31 If I am wrong about that, and I was to exercise my discretion under Article 13, I have no doubt at all that I would have said that I should retain jurisdiction in relation to that issue. It

is technical and complicated, and I heard a great deal of evidence about it. I have reminded myself of a lot of that evidence in preparing for this case yesterday and this morning, and I would be, in my judgment, better able to deal with this than anybody who has not heard the case because I heard it, and therefore I am going to decline a stay under the exercise of my discretion on Article 13 in the event that I was wrong about saying that this is not maintenance but is a sharing issue.

32 So far as the house is concerned, I was anxious to preserve this home for this family, and I dealt with it in the way that I did to provide that home for them. It does not seem to me that that is maintenance, but again if I am wrong about that it seems to me to be right that issues relating to trusts over a home are much better dealt with by the High Court in England than the court in Country A. Country A does not have trusts in the sense that we have them, and the judge who may or may not deal with that will not be engaged in the same decision as I am in relation to the house. I am particularly emboldened in the feeling that that is right decision by the husband saying very frankly to me through Mr Scott that in a sense the house has nothing to do with him now. He is only anxious to make sure that I take all steps that I can to preserve the children's interests. Well, I totally respect what he says to me in that regard.

33 I do not doubt for a moment that their mother will want to preserve that interest for them as well, because she is their mother and would not for a second want to do them down or to do them out of that interest, but ultimately, as the arbiter of any decisions about this or the approval of any order that they might agree, I, as the judge, would not allow the children to be done down in relation to their interests. So, for all of those reasons, I would decline a stay in relation to the house.

34 That means, therefore, that the Business R issue and the former matrimonial home issue remain with me, or, if I am not here, with another judge of the Division, and the other issues are stayed.

35 I want to make it very clear, because they are stayed that does not mean to say that the husband has won on those for a moment, it is just that the court of Country A has now got jurisdiction in relation to those, and I plead with him to engage in dialogue and to try and resolve this.

L A T E R

36 There is an application for costs by the husband on the basis that he has, as Mr Scott puts it, won on four out of the six issues that I have had to determine. In fact, what Mr Scott says is that most of the costs were relating to the four issues, and that therefore he should have 80 per cent of his costs. The costs figure incurred by the husband is £56,069, the wife's figure is £25,500.

37 One of the arguments put forward by Mr Glaser as to why the husband should not have his costs is because of the conduct issues that I referred to in my 2018 judgment. In that Judgment I was very critical of the husband and his solicitors for the way that they dealt with the divorce petition and the extraordinary way that, on the one hand, there was a request to do nothing, and then they were doing something, and I thought that that was entirely inappropriate. But that was in 2018 and I am not going to revisit that now. The parties have had three plus years since that order was made in 2018 to, as it were, let the dust settle around that order. So that is not relevant to my decision today.

38 The problems in this case have started because the husband did not abide by my 2018 order. It is just a fact, because if he had paid everything that I had ordered him to pay, we would not be here. Having said that, no court has made a judgment on the merits of his application to vary the maintenance downwards, and I have to accept that it is possible that a court is going to accede to his application because he may persuade the court that he could not afford to make the payments.

39 The husband made his application for a stay on 6 January 2022. It may have been late in the day because the January hearing was on the 17th, so not even two weeks later. Having stood back now and considered the merits of the stay application, initially with Mr Harvey and now with the benefit of Mr Scott's input, I have been satisfied that plainly the stay application was right. It may have been a tactic, I cannot make that judgement, but I have already said also that it may entirely reasonable that a judge in Country A should decide about the amount paid by a man from Country A to a family from Country A living in Country A, albeit that the order originated from London.

40 So it seems to me that what should have happened is that after proper consideration the wife should have acceded to the stay application. The interpretation that I have put on it and Mr Scott put on it is the one that, in my judgement, should have been put on it by those advising her.

41 I do have, therefore, to reflect on what I have done today with a costs order, but I am not going to award the husband all of his costs, nor am I going to give him the costs that Mr Scott requests, and that is for a number of reasons: first of all, Mr Glaser makes a good point that although we have not have spent long in oral submissions on the Business R point or the house point, a considerable amount of written material has concentrated on that, and

after all a great deal of the husband's costs are, as Mr Glaser points out, solicitors' costs in dealing with, among other things, those issues. I am not going to engage in criticism of PHB. I did on a very specific issue in 2018, but if they tell me that they have incurred hours spent on a certain amount, then I accept that they have, just as I would accept the same if Mr Glaser on a direct access basis says that he has.

42 I am not going to look behind that, and therefore my starting point is that the £56,000 figure is the correct one. I go back to the point that, first of all, the husband's application for a stay was made late. At the time he made that application, I dare say that an awful lot of the wife's January costs had been incurred. Similarly, the husband's stay application - all of these proceedings emanate from the fact that the husband has not paid, and whilst I have not made any judgement about the merits of that, it certainly is not the wife's fault that the husband has not paid.

43 Everybody wants me to make an assessment today rather than put this off for some detailed assessment later, and I do, of course, have a broad discretion. I could say that if the husband has won on four out of six of his points, he should have two-thirds of his costs, but bearing in mind the point made about the late issuing of the January application for the stay and the fact that it is not the wife's fault that he has not paid, in the overall exercise of my discretion I am going to say that the wife should pay half of his costs, so I am going to say that is £28,000, and that is not to be paid without leave of this court. It will be an offset against monies that are ultimately found to be due from the husband to the wife. It seems to me that it would be manifestly unfair for her to pay him money now, even if she has it, only for him to have to pay her money later. So it is an offset and not to be paid until the sums due from the husband to the wife have been established.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge.