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This judgment was delivered in public. It can be reported in full but the two children of the parties must not be identified other than as they are referred to in the judgment. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Neutral Citation Number: [2022] EWHC 845 (Fam)

Case No: FA-2021-000176

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

MS Teams hearing in Open Court
The Royal Courts of Justice
Strand
London
WC2A 2LL

Date: 13 April 2022

Before :

Mr Justice Moor

- -

Between :

Barbara Kay Lockwood

Appellant

-and-

Adam Raphael Greenbaum

Respondent

- -
- -

Mr James Finch (acting under the Public Access Scheme) for the **Applicant**
Miss Lucy Stone QC (instructed by Kingsley Napley) for the **Respondent**

Hearing date: 6 April 2022

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JUDGMENT

MR JUSTICE MOOR:-

1. I have been hearing an appeal from an order made on 27 May 2021 by Recorder Sirikanda sitting at the Central Family Court. Sir Jonathan Cohen gave the Appellant permission to appeal on 10 August 2021. The appeal was heard by me on 6 April 2022.

2. Sir Jonathan's order does not specifically refer to the fact that the Notice of Appeal was several weeks out of time although, by granting permission to appeal, he was effectively extending the Appellant's time to appeal. In so far as I need to do so, I am satisfied that the Appellant should have been given permission to bring this appeal even though she was out of time. There have been numerous authorities, over the years, starting with Johnson v Johnson [1980] 1 FLR 331 that permission should be given in circumstances where the delay was several weeks not months; where the delay was accounted for; and where there was no significant prejudice to the Respondent. All three of these conditions are satisfied in this case.

3. The history of the litigation between these parties makes very sad and troubling reading. It has undoubtedly done untold damage to them and to their children. I recognise that, in one sense, they only have themselves to blame but I heard the case on the day on which the new "no fault" divorce provisions came into force in this jurisdiction following the Divorce, Dissolution and Separation Act 2020. Whilst extremely welcome, this new law will not end the sort of attritional litigation in relation to ancillary matters, such as financial remedies, seen so vividly in this case, unless the parties recognise that such an approach is entirely destructive, extremely expensive and thoroughly damaging to everyone involved. To date, these parties have not so recognised.

The relevant history

4. The Appellant, Barbara Kay Lockwood ("Ms Lockwood") is aged approximately 48. She lives in Cambridge, New Zealand. She was born and brought up in that country and previously worked as a nurse. The Respondent, Adam Raphael Greenbaum ("Mr Greenbaum") is aged 60. He lives in Hamilton, New Zealand but, as I understand it, was born and brought up in this country. He is a surgeon. Both parties have New Zealand and British citizenship. They met in England in 2000 when they were both working in a NHS hospital in Manchester.

5. In around the year 2004, Ms Lockwood stopped working as a nurse and began to study for a dentistry qualification in London. She says that she moved into Mr Greenbaum's property at 41 Ringmore Rise, Forest Hill, London in September 2004. Mr Greenbaum says that cohabitation there commenced in January 2005 when he also returned to London. The property is a substantial detached property that was gifted to Mr Greenbaum by his father in 1994, six years before the parties met. Ms Lockwood contends that it is worth approximately £1.25 million and that it is mortgage free. I do not know if that

is accepted but it is clearly a valuable property even in the context of London property prices.

6. The parties married in New Zealand on 9 December 2006 but returned to this country where they continued to live at 41 Ringmore Rise. In August 2007, they moved into rented accommodation whilst works to renovate the property were undertaken. It is said that the cost of these works, and various living expenses of the parties, were funded by a combination of loans from Mr Greenbaum's mother and payments from his father's estate.

7. The parties have two children who are now aged 14 and 13. It appears there have been significant disputes between the parties as to the care of the children. They are, however, currently subject to a shared care regime.

8. In August 2009, the parties moved back into the Ringmore Rise property due to the end of their rental tenancy, even though the works were still not entirely completed. In December 2009, they relocated permanently to New Zealand. The exact reasons for this relocation appear to be in dispute but are, in any event, irrelevant to what I have to decide. They have remained in New Zealand ever since.

9. Unfortunately, the marriage broke down in 2011. The parties separated on 25 May 2011 and commenced their destructive litigation that has, essentially, lasted ever since. The marriage was dissolved in New Zealand on 26 August 2013. An interim maintenance order was made there on 11 June 2014 but was set aside following an appeal by Mr Greenbaum on 3 September 2014 due to a calculation error. In February 2015, Judge Riddell made a final order on Ms Lockwood's application for maintenance. The judge ordered Mr Greenbaum to pay Ms Lockwood capitalised maintenance of NZ$433,000. I am going to work on a rate of exchange of NZ$2 to the pound, although I accept it might not have been the same at the time. At that rate of exchange, the figure would have been approximately £216,500. I have been told that it was calculated on the basis of four years' maintenance at approximately NZ$8,500 per month. The list of outgoings on which the maintenance was calculated included rental costs. I believe both parties appealed. On 15 April 2016, Justice Woodhouse basically dismissed both appeals but he did reduce the sum slightly to NZ$383,000. On 1 December 2016, the New Zealand Court of Appeal refused permission for a second appeal. Moreover, on 11 November 2016, an application by Mr Greenbaum to "recall" the decision was also dismissed. The papers that I have seen do give different dates for some of these decisions. If I have got the dates wrong, it is immaterial to my decision. The Wife contends that much of the lump sum was expended on paying debts and her legal aid costs. In any event, there was soon nothing left.

10. There were also "relationship property proceedings", which appear to involve calculating what we would term the matrimonial property and dividing it equally, subject to some discretionary adjustments, whilst ignoring separate property. Unusually, however, it is clear that relationship property can include liabilities and Mr Greenbaum's argument was that the debt to his mother was such a liability which should be shared with Ms Lockwood. At the same time,

it is clear that the New Zealand court cannot deal with assets that are outside its jurisdiction, which obviously included the property at Ringmore Rise. It does therefore appear to me that Mr Greenbaum was arguing that Ms Lockwood should share in the liabilities but not the assets. I can only assume that he hoped, in some way, to offset any such award in his favour against the maintenance payment that he was ordered to pay to Ms Lockwood. I do not find his approach attractive, particularly as I am sure he would, if he had needed to do so, have argued that Ringmore Rise was not relationship property because it had been gifted to him before the marriage.

11. On 17 May 2018, Judge Otene ruled on the relationship property proceedings. The law was summarised as above. Mr Greenbaum pleaded a total debt to his mother of £498,000 plus interest. The judge accepted that she had no jurisdiction over the property at Ringmore Rise. She rejected Ms Lockwood's argument that her mother-in-law had forgiven the debt and her argument that it was not a relationship debt. There was a finding that approximately £170,000 had been used towards the renovations of Ringmore Rise with the balance being used for general family expenses, including £152,000 on the emigration to New Zealand. There was a finding of a relationship debt of NZ$1.2 million. Ms Lockwood was entitled to share in 37% of Mr Greenbaum's NHS pension but she also had to discharge 50% of the relationship debt. The net result was an order that Ms Lockwood had to pay Mr Greenbaum the sum of NZ$433,040, although quite how she was supposed to discharge such a liability is quite unclear. Mr Finch, who appears on behalf of Ms Lockwood, tells me that Judge Otene observed that "*Ms Lockwood's perception of unfairness is acknowledged. The remedy may lie elsewhere*".

12. Perhaps inevitably, Ms Lockwood appealed. Her appeal was heard by Justice Katz on 5 March 2019. The appeal was dismissed on the basis that the first instance judge did not err in finding it was a relationship debt. It was specifically said that any claim by Ms Lockwood that she has an interest in Ringmore Rise can only be determined by an English court. Again, the "*perception of unfairness*" was acknowledged, it being said that "*whether the ultimate outcome is substantively unfair can only be finally assessed once the outcome of any proceedings in the UK (if brought) are known*". It was further accepted in the judgment that it was far from ideal for Ms Lockwood to have to bring proceedings in two separate jurisdictions to achieve a final resolution of relationship property issues and that the New Zealand court had to deal with the debt, whilst having no jurisdiction over the property. The court said that "*that, however, is what the Act requires*". There was a slight revision of the lump sum owing in that it was reduced to NZ$397,000. I believe Ms Lockwood attempted to appeal further but she could not get legal aid.

13. To my eyes surprisingly, in October 2019, Mr Greenbaum decided that the best way to proceed was to instigate bankruptcy proceedings against Ms Lockwood on the basis of the debt. He says he did so to try to bring to an end Ms Lockwood's "*unremitting propensity to litigate*", which rather ignores the fact that he was the one bringing the application. At first sight, such an application does look simply vindictive. In the light of this, I consider Ms Lockwood had virtually no alternative other than to apply for permission in this jurisdiction to

bring an application pursuant to Part III of the Matrimonial and Family Proceedings Act 1984 for financial provision following an overseas divorce.

14. Before I conclude my history of the New Zealand proceedings, I need to make it clear that, on a provisional basis, I am of the view that neither party behaved reasonably in that jurisdiction. There were numerous applications that I have not referred to. The number of appeals was clearly excessive on both sides. Nothing was agreed through negotiation. In short, they brought much of their current difficulties on themselves.

15. Ms Lockwood made her application for permission to make a Part III claim in this jurisdiction on 17 September 2020. Regrettably, she filed a thirty five page statement in support, which is ten pages more than the maximum permitted by Practice Direction 27A (paragraph 5.2A.1). She also exhibited 425 pages of documents, which was completely excessive and counterproductive.

16. The application was listed, as the rules require, without notice before Deputy District Judge Smith on 6 October 2020. The court determined that the application should be dealt with at an 'on notice' hearing, in part because of the excessive evidence filed in support of the application. It was therefore listed for a two hour hearing in December 2020 but Mr Greenbaum's lawyers considered that time estimate to be insufficient. An application was therefore made to Deputy District Judge Hodson on 23 November 2020. He determined that the December 2020 listing should be vacated and the application listed for a hearing with a time estimate of one day. It was subsequently listed for hearing on 7 May 2021.

17. In the run up to the hearing, Mr Greenbaum's solicitors wrote an open letter in which he offered to withdraw the proceedings in New Zealand for the bankruptcy of Ms Lockwood on the basis that she would withdraw her application for permission to bring an application pursuant to Part III. There would be no order as to costs but Mr Greenbaum would pay £15,000 to the Legal Aid Agency to cover Ms Lockwood's costs in this jurisdiction. There would be no further claims but Mr Greenbaum would continue to pay various expenses for the children. Ms Lockwood's solicitors replied on 9 April 2021 that they had been advised that Mr Greenbaum could not withdraw his bankruptcy proceedings without leave of the court. This seems to have been correct, although I do not believe any court would refuse to grant leave in such circumstances. The letter also made what I consider to be a much better point, namely that Mr Greenbaum could simply start again. The letter also said that Ms Lockwood remains in severe financial hardship.

18. The hearing of the application for permission took place on 7 May 2021 before Recorder Sirikanda. He reserved judgment but indicated that his decision was that permission to make the application would be refused. Before he could give judgment, the Court of Appeal handed down judgment in the case of Potanina v Potanin [2021] EWCA Civ 702. This gave rise to both parties making further submissions in writing, although the decision in Potanin is not directly on point given that it deals with an application to set aside leave, rather than to grant it in the first place.

19. Recorder Sirikanda gave judgment orally in court on 27 May 2021. It is a detailed and careful judgment as would be expected from this tribunal. He noted that there had been long running attritional legal proceedings in the Family Court in New Zealand for many years. There was no jurisdiction pursuant to section 15(1)(a) or (b) of the 1984 Act (domicile or habitual residence) and that the application was brought pursuant to section 15(1)(c), namely that:-

> *" either or both of the parties to the marriage had, at the date of the application for leave, a beneficial interest in possession in a dwelling-house situated in England or Wales which was at some time during the marriage a matrimonial home of the parties to the marriage."*

20. The Recorder went on to say that the respondent did not need to show a "knock-out blow" as this was not an application to set aside a grant of leave. He noted that, pursuant to section 13(1), "*the court shall not grant leave unless it considers that there is substantial ground for the making of an application for such an order".* He referred to the judgment of the Supreme Court in Agbaje v Agbaje [2010] UKSC 13; [2010] 1 FLR 1813. He set out the duty of the court, pursuant to section 16, to consider whether England and Wales is an appropriate venue, by having regard to all the circumstances of the case and the nine matters to which the court is required to have particular regard. He then said at [45]:-

> *"In my judgment, for there to be solid ground for a Part III application, the applicant must show a situation where there are substantial connections with England. My core conclusion on the evidential material I have read and the submissions I have heard is that the connections with England are not, in this case, substantial".*

21. The Recorder went on to describe the family as being "*New Zealand through and through*". The home in Ringmore Rise would need to have been part of the fabric of the marriage for many years and to be "matrimonial property". The New Zealand court had dealt with Ms Lockwood's housing and awarded a very substantial sum by way of capitalised maintenance based on her outgoings that included rent, although he accepted it was only done on a four year term in accordance with New Zealand law. It followed that her needs based claim had been dealt with in New Zealand. He concluded that, if New Zealand had jurisdiction over the London property, Ms Lockwood would not have got more as it was separate property. He ended by saying that he would have been concerned if Mr Greenbaum had not offered to cancel the debt but, in the light of this concession, he would refuse the application, even if Ms Lockwood was not prepared to give an undertaking not to bring any further proceedings anywhere in the world, as sought by Mr Greenbaum.

22. His order is also dated 27 May 2021. It refers to Mr Greenbaum's offer to discontinue the bankruptcy proceedings; to waive the debt, to include interest and costs; to take no further steps to enforce the debt due either in New Zealand or elsewhere; and to contribute £15,000 towards the Applicant's Legal Aid costs. This offer went further than in the March 2021 letter as it offered to waive the debt. Ms Lockwood was not, however, prepared to give an undertaking not

to bring any further proceedings anywhere in the world, so the offer remained just an offer. The order then refuses permission to Ms Lockwood to apply for financial relief following an overseas divorce.

23. Ms Lockwood's Notice of Appeal is dated 13 July 2021. It includes an application for permission to file the notice out of time. It gives reasons for the delay, which primarily relate to difficulties in funding the appeal. Amended Grounds of Appeal were filed on 27 July 2021, after receipt of the transcript of the judgment. The main ground is that the judge erred in finding that there needed to be substantial connections with England before permission could be granted. It is argued that the true requirement is that there is a substantial or solid ground for making an application. Connection to this jurisdiction is but one factor. It was further wrong for the Recorder to say that it is important for the marital home to have been a part of the fabric of the marriage for many years. This was an impermissible gloss. The document goes on to say that, in any event, the property had been occupied, even on Mr Greenbaum's case, as a family home from January 2005 to September 2007, some 32 months and again in the final months before the family emigrated. It is then argued that it is demonstrably unfair for the New Zealand court to have taken into account the debt relevant to the property but not the property as an asset. No weight was given by the Recorder to the welfare of the children whilst a minor. Finally, it is said that it was wrong to require Ms Lockwood to agree to forego any further claims and dismiss her application when she was not prepared to do so.

24. The Skeleton Argument in support was drafted by Mr Peter Mitchell QC and is also dated 27 July 2021. It argues that, given the limit on the court's powers to be found in section 20 of the 1984 Act that restricts any claim based on the existence of a matrimonial home in this jurisdiction to the value of that matrimonial home, Ms Lockwood's application was never going to fall foul of the restriction on a "*second bite of the cherry*". Mr Mitchell says that it was demonstrably wrong to read into the legislation a requirement of substantial connections with England or Wales before permission could be granted. The connections need not be so strong where the court's powers are limited to the matrimonial home. The fact that the foreign court could not deal with the property was of crucial significance.

25. Sir Jonathan Cohen dealt with the application for permission to appeal on the papers on 10 August 2021. He gave permission, ruling that the amended notice of appeal sets out an arguable case. He gave various directions and urged the parties to mediate. There has been no mediation with, unsurprisingly, each party blaming the other for this failure.

26. In late July 2021/early August 2021, Mr Greenbaum sought to discontinue his bankruptcy petition in New Zealand. He was, in due course, given permission to do so. A costs order was made in Ms Lockwood's favour. I note, however, that the judgment remains in place and there is nothing to stop further litigation in New Zealand in relation to it.

27. Miss Lucy Stone QC, who appears on behalf of Mr Greenbaum, filed a comprehensive Position Statement in opposition to the appeal. It stresses the

connections with New Zealand; the passage of eleven years since separation; and the fact that the marriage subsisted for only five years. I do consider that this latter point ignores the birth of the two children of the family, responsibility for whom will subsist for many years after the breakdown of the marriage. Miss Stone says that the test on the appeal is whether the decision at first instance was wrong or unjust because of a serious procedural or other irregularity. If not, the appeal will be dismissed (WD v HD [2017] 1 FLR 160). She argues that the only real argument is the relationship debt, which Mr Greenbaum was prepared to forego. Mr Finch does not, of course, accept that, arguing that Ms Lockwood has a needs claim. Miss Stone responds to that by saying that a capital award for housing needs would be a second bite of the cherry. She says that the Judge accepted that there are cases where having a marital home here is itself sufficient but this is not one of them, given the limited occupation; that it was a gift from Mr Greenbaum's father; and that the renovations were funded by his family. The latter point really cannot stand given her client's claim for repayment of half of those funds from Ms Lockwood. Miss Stone then says that Ms Lockwood cannot appeal against findings of fact. I have to say that I am not convinced by that submission, given that Recorder Sirikanda did not hear oral evidence. Miss Stone adds that, even if New Zealand had jurisdiction over Ringmore Rise, it would have been treated as separate property and not been capable of division. She submits that Agbaje makes it clear that there need to be substantial connections with England. If Recorder Sirikanda could have legitimately reached the decision he came to, the appeal must be dismissed even if I might have exercised my discretion differently. I will deal with this submission later in this judgment but I do not consider it correct if the Recorder erred in law. Miss Stone ends by arguing that Ms Lockwood's real motivation is to review the whole financial landscape consequent upon the New Zealand proceedings. She may well be right about that.

28. Mr Finch, on behalf of Ms Lockwood, filed a Supplementary Skeleton. I have to say that I am not convinced that this should occur in appeals given that a detailed Skeleton had already been filed but, given the change of counsel, it is only fair that I make reference to it. He argues that the outcome in New Zealand was plainly unjust. He says that the reference in [71] of Agbaje to the need for a substantial connection with England is merely a reference to the need to fulfil one of the jurisdictional grounds. If it was otherwise, it would be an unacceptable gloss on the statute and it has never been argued that this paragraph has done so in any of the cases decided since Agbaje. He adds that there is bound to be weaker connection with this country if the application is made solely pursuant to s5(1)(c). He says that it is hard to imagine a more unfair situation than one that requires a wife to repay her share of a substantial debt referable to a property but the value of that property is then ignored. Finally, he says that it is not for a judge to pronounce at the permission stage on the merits of an open offer made by the respondent. If anything, the fact that an offer has been made shows that there is substance in the application itself. He appended to his document a schedule setting out Ms Lockwood's financial position. She has assets of NZ$7,236 but liabilities of over NZ$575,000. This is the court order (NZ$397,357 plus interest) and other debts of NZ$177,320. The majority of these other debts relate to the costs of these proceedings, namely loans from her mother of NZ$60,596 and legal aid of NZ$48,090.

The law in relation to appeals

29. I will deal first with the law as to appeals. Sir Jonathan Cohen has already given permission to appeal. This means that he was satisfied, pursuant to FPR Rule 30.3(7)(a) that the appeal has a real prospect of success. Following the Court of Appeal decision in Re: R (A Child) [2019] EWCA Civ 895, this simply means that there must be a realistic, as opposed to a fanciful, prospect of success. There is no requirement that success should be probable, or more likely than not.

30. Once permission has been granted, Rule 30.12(3) applies. The appeal court will allow an appeal where the decision of the lower court was wrong or unjust because of a serious procedural or other irregularity in the proceedings in the lower court. Nobody suggests that there was any serious procedural or other irregularity so it is just a question of whether the decision was wrong. Miss Stone QC reminds me of my decision in WD v HD at paragraph [35] where I said that the question is not whether the appeal court might have exercised its discretion in a different way but whether the exercise of the discretion by the first instance judge was :-

> *"..outside the band of reasonable decisions that different judges could have come to. In other words, was the exercise of discretion unreasonable? If it cannot be said that it was unreasonable, the appeal will be dismissed."*

31. It goes without saying that, when a judge exercises a discretion in accordance with the law, that is a correct assertion of the position on appeal. The situation is, however, very different if the judge at first instance has incorrectly set out the legal test on which he then exercises his discretion. In such circumstances, the exercise of discretion would be based on a misapprehension of the law. This requires the appeal judge to look again at the exercise of discretion and, if appropriate, set the order aside. The appeal judge can then either remit the case for further consideration or, if satisfied as to what the correct outcome should be, make a fresh order.

The law on an application for permission to apply for financial relief pursuant to Part III

32. The law in relation to a court dealing with an application pursuant to section 13 for permission to apply for financial relief pursuant to Part III is, in fact, extremely straightforward. There is a real risk of over-complication. The court must consider section 13(1) of the Act which is the requirement for leave to be given for the application to proceed. The "*court shall not grant leave unless it considers that there is a substantial ground for the making of an application for such an order*". The court must be satisfied that there is jurisdiction under one of the three gateways in section 15(1) but there was no dispute in this case that the test in section 15(1)(c) was established in this case, namely that Mr Greenbaum has a beneficial interest in Ringmore Rise which is a dwelling-house that was, at some time during the marriage, used as a matrimonial home.

33. I do, of course, accept that in deciding whether to grant permission, the court should look at the test in section 16 for making an order for financial relief, as it would be quite inappropriate to grant permission if there was no chance of a court ever making such an order. The court is, of course, required to consider all the circumstances of the case and to have regard specifically to the nine factors set out in section 16(2), namely:-

> *(a) the connection which the parties have with England and Wales;*
> *(b) the connection which they have with the country in which the marriage was dissolved;*
> *(c) the connection which they have with any other country outside England and Wales;*
> *(d) any financial benefit which the applicant or a child of the family has received or is likely to have received in consequence of the divorce in New Zealand;*
> *(e) where an order has been made by another country outside England and Wales, the extent to which it has been complied with or is likely to be complied with;*
> *(f) any right which the applicant has or has had to apply for financial relief from the other party under the law of any country outside England and Wales and if she has not done so the reason for that omission;*
> *(g) the availability in England and Wales of any property in respect of which an order under this part of this act could be made;*
> *(h) the extent to which any order made under this act is likely to be enforceable; and*
> *(i) the length of time which has elapsed since the date of the divorce, annulment or legal separation.*

34. The test to apply in deciding an application for permission is, however, set out very clearly and comprehensively by the Supreme Court at paragraph [33] of Agbaje, where Lord Collins said:-

> *"In the present context, the principal object of the filter mechanism is to prevent wholly unmeritorious claims being pursued to oppress or blackmail a former spouse. The threshold is not high, but is higher than 'serious issue to be tried' or 'good arguable case' found in other contexts. It is perhaps best expressed by saying that in this context 'substantial' means 'solid'."*

35. It follows that there is absolutely no precondition that the court must be satisfied that there are substantial connections with England and Wales. I am entirely clear that paragraph [71] of Agbaje does not change the test set out in paragraph [33] of the same case. I accept Mr Finch's submission that the reference in paragraph [71] to "*substantial connections with England*" is to the need to pass through one of the section 15 gateways. The connection to this jurisdiction is merely one of the factors to be taken into account in section 16(2) and, although listed first, is not given any primacy over the other factors. If I needed any confirmation as to this, I note that neither section 13 nor any of the authorities

refer to the need for "*a substantial connection"* as part of the test at the permission stage.

36. Last year, I decided the case of Aldouki v Abdullah [2021] EWHC 3086 (Fam), another case where jurisdiction was founded simply on the existence of what I found to be two matrimonial homes in this jurisdiction. I was referred to the Law Commission Report that led to the enactment of Part III which, in such cases, recommended restricting the court's adjustive powers to the value of the property itself. The Law Commission paper said at [2.10] that it would be wrong to put "*the whole of a former spouse's substantial assets at risk merely because they had a flat in Mayfair in which they had been accustomed to spend two or three weeks each year*". I commented that this strongly suggested that there is jurisdiction, in cases where the parties only spent two or three weeks a year in England, to deal with the proceeds of sale of such a property, but not the other assets of the parties. I do accept that the properties in Aldoukhi were held in the joint names of the parties but the connection of the parties in that case with this jurisdiction was, in my view, less than the connection that the parties in this case have with England.

The approach of the Recorder

37. I have already indicated that the Recorder gave a very careful and considered judgment. It is with regret that I have concluded that, in one very important and material aspect, he fell into error. I cannot accept his statement in paragraph [45] of his judgment that "…*for there to be solid ground for a Part III application, the application must show a situation where there are substantial connections with England"*. The correct test is, rather, that set out by Lord Collins in paragraph [33] of Agbaje, namely are there solid grounds for the application. It follows that, because the Recorder applied the wrong test to his exercise of discretion, I am entitled to look at it again. I will now do so.

38. Before I do so, however, I would make one further point. I do, in fact, consider that the connections that these parties have with this jurisdiction are considerably greater than the Recorder felt they were. I recognise that the connection with New Zealand is substantially greater than the connection with this country. The court cannot ignore, however, that both parties are British citizens, as well as New Zealand citizens; that Mr Greenbaum was born and brought up here; that they met in this country when they were both working here; they began their relationship here; they cohabited here; they were living here when they married; both their children were born here; and they lived here for the majority of their marriage. They have a matrimonial home here, Ringmore Rise. Whilst inherited by Mr Greenbaum six years before the parties even met, it was occupied as a family home from at least January 2005 to August 2007 and again for a few months at the end of 2009. Moreover, it was substantially renovated over a two year period with the initial intention of it being their family home in the long term.

The application for permission

39. It is not appropriate for me to remit the application to be heard again below. I am able to reach a clear conclusion as to its merits and can therefore decide it now. I am of the view that the application made by Ms Lockwood for leave should have been granted, if Lord Collins' test is applied correctly. In one sense, the fact that Mr Greenbaum made an offer showed that there was merit in the application. As it is, the application has been dismissed but the offer, although referred to in the order, is not binding on Mr Greenbaum, although I accept that he has successfully withdrawn the bankruptcy proceedings.

40. I am not going to criticise New Zealand law. It is clear that this is not a case which requires comity with the New Zealand decision given that the two judges who dealt with the relationship property proceedings were, to a greater or lesser extent, not happy with the position. The simple fact is that the New Zealand court was constrained by New Zealand law to take into account the liability for the cost of the works done to Ringmore Rise, but not able to take into account the value of the asset itself. Both judges referred to the possibility of proceedings in this jurisdiction to deal with that lacuna.

41. I should briefly refer to the factors set out in section 16. I have already noted the connection the parties have with this jurisdiction. Whilst they undoubtedly have a greater connection with New Zealand, that is not the issue. The court hearing the eventual application will have to take into account the award made to Ms Lockwood in New Zealand as well as the award made to Mr Greenbaum. There is no doubt that there is a substantial property here in respect of which an order could be made. Any such order would easily be capable of enforcement. I do accept that the length of time that has elapsed since the date of the divorce is very significant. This may be relevant to the eventual outcome of the application, although the reasons for the delay are pretty clear. Given the responsibility for this rests with both parties, it may be less of an issue than it might otherwise have been. Whilst troubled by this delay, I am clear that it is not sufficient to prevent the grant of permission.

42. In one sense, it is a great shame that this extremely long running and bitter litigation now has to be dealt with yet again. Like Sir Jonathan Cohen, I urge these parties finally to see sense and come to a sensible agreement, whether by mediation or other similar dispute resolution.

43. Nothing I have said in this judgment should be taken as my having given any indication as to the likely outcome of the claim other than that Ms Lockwood is entitled to permission to make it.

Costs

44. These parties have, to date, been completely incapable of agreeing anything. I take the view that, given the liability Ms Lockwood had to Mr Greenbaum in relation to the debt to his mother, the fact that the corresponding asset could not be taken into consideration in New Zealand, and the observations of the New Zealand judges, Mr Greenbaum should have immediately agreed to Ms

Lockwood being given permission to make her application. He could then have argued, with force, that it should be dealt with on a streamlined basis. Instead, he decided to contest it, including on appeal, even after Sir Jonathan had given permission to appeal. It follows that he must pay the costs of the application both below and on appeal on the standard basis to be assessed if not agreed.

45. I am very grateful to counsel for the great help they have given me with this case. As I said during the hearing, nothing further could have been said or done by either on behalf of their respective clients.

Directions

46. I will, in due course, make directions for the future conduct of this litigation. I wish to achieve a final conclusion with the minimum of extra cost and dispute. There should certainly be a Financial Dispute Resolution type hearing as soon as possible after the parties have given financial disclosure and Mr Greenbaum has been able to respond, briefly, to Ms Lockwood's application. I do not envisage a very extensive disclosure process.

Mr Justice Moor
7 April 2022