

THE HIGH COURT

[2020] IEHC 562
[2020 No. 10 M]

IN THE MATTER OF THE FAMILY LAW (DIVORCE) ACT 1996 (AS AMENDED)

BETWEEN

M

APPLICANT

- AND -

S

RESPONDENT

JUDGMENT of Mr Justice Max Barrett delivered on 6th November 2020.

I

Overview

1. This is an application for a decree of divorce and certain ancillary orders. Highlighted, underlined terms are defined on the last page of this judgment which, in order better to ensure the privacy of the parties, is being provided only to the parties.

II

Reliefs Sought

2. The within proceedings were commenced by special summons of 4 February 2020 but follow on judicial separation proceedings that have lingered in the courts for many years without much by way of meaningful progress. The following reliefs are now sought, presumably pursuant to point 3 of the reliefs sought in the summary summons (to the extent that the reliefs now sought are not expressly referenced in points 1 or 2 of the summary summons):
 - (1) a decree of divorce pursuant to s.5(1) of the Family Law (Divorce) Act 1996;
 - (2) an order for the immediate sale of the family home (the Address A property) pursuant to s.15(1)(a)(ii) of the Act of 1996 on condition that after the deduction of the Creditor 2 and costs of sale that the net proceeds of sale would be held by the applicant's solicitors on the undertaking to discharge the sums agreed to be paid to Creditor 1 and Creditor 3 under the agreements with same;
 - (3) an order that any remaining proceeds would be a matter for the court in its discretion to apply bearing in mind the applicant's liabilities and needs;
 - (4) an order for the sale of properties at Address F pursuant to s.19 of the Act of 1996 which, after the discharge of the costs of sale, would be distributed as the court sees fit bearing in mind that if the Address A property does not reach its expected sale price and there is a shortfall that the applicant's solicitors are bound by undertaking to discharge any remaining part of the said debt first;

[Court Note: Within ten working days of this judgment there will be a further hearing purely to settle the final orders in these proceedings. Because the settlement arrangements with Creditor 1 and Creditor 3 were only agreed late on the last day of hearing, the court notes that the reliefs sought include orders for the sale of all the Address F property whereas the court understands from the

settlement documents provided to it that – using the lettering from Book 11 of the Books of Pleadings ("*Booklet of Folios*") – it is only Folios A and B that are to be sold as part of the said settlement arrangements. Additionally, mention was made at one point of the hearing that the applicant may be amenable to the respondent retaining certain of the inherited Address F property, assuming the entirety of same is not to be sold as part of the settlement arrangements. It is not clear from the descriptions of the folios in the Booklet of Folios what exact property is intended to be captured by any (if any) such arrangement. The foregoing are matters that can usefully be clarified at the further hearing. The foregoing is referred to hereafter as the 'Address F Clarification Point'. All references to Address F in the within judgment should be construed as referring to 'Address F, subject to the Address F Clarification Point being clarified'.]

- (5) orders pursuant to s.14(5) of the Act of 1996 directing the relevant County Registrars to sign and execute all necessary documentation to complete and process the said sales of the Address A property and Address F property without further order;
- (6) a declaratory order pursuant to s.15(1)(b) of the Act of 1996 and s.36 of the Family Law Act 1995, that the applicant is the sole legal and beneficial owner of the property and premises at Address B;
- (7) an order pursuant to s.15(1)(a)(i) of the Act of 1996 granting the applicant the sole right to reside in the Address A property pending the sale of the Address A property to the respondent's exclusion;
- (8) orders pursuant to s.17(2) of the Act of 1996 granting the applicant pension adjustment orders entitling her to the entire (100%) of the spousal (widow's portion) death-in-retirement benefits in the respondent's pension in the event of him pre-deceasing her together with an order pursuant to s.17(26) of the Act of 1996 preventing a variation of this order;
- (9) orders pursuant to s.15(1)(b) of the Act of 1996 and s.36 of the Act of 1995 granting such declaratory orders as may appear appropriate and in particular in relation to the monies previously frozen by the court in the amount of [Stated Sum];
- (10) orders pursuant to ss.13 and 19 of the Act of 1996 granting the applicant such lump sums as may appear appropriate from the net proceeds of sale of Address F;
- (11) orders and cross orders pursuant to s.18 of the Act of 1996 blocking either party from applying to the estate of the other for financial relief pursuant to s.18(1) of that Act; and
- (12) an order for some partial costs relating to the proceedings if the court in its discretion considers it appropriate so to do.

III

Facts

a. Marital History.

3. The parties were married some years ago and have a number of adult children. One of the adult children lives with the applicant. The family home is at Address A. Both the applicant and respondent currently live in the Address A property which has been partitioned.
4. The applicant was a homemaker and continues to have her own business on the side. The business is operated from Address B, a property that was inherited by the applicant from her parents and which has been in her family for long years. At the time when this judgment is being written, the Address A property is held in the sole name of the applicant.
5. Following a history of difficulties in the parties' marital relationship, their marriage has broken down and they have been separated for a period in excess of two years out of the three years prior to the issuance of these proceedings. There is no possibility of a reconciliation being effected between them; the applicant was quite clear on this last point in her oral evidence.

b. Gambling.

6. During the closing years of the last century and into the present century, the applicant and respondent gambled heavily on property, using borrowed monies to do so. However, in the mid-'noughties' the applicant became worried about the degree to which the parties were financially exposed as a result of these gambles and declined to participate further. Thereafter, the respondent, who appears to have had a weakness for property gambling, persuaded certain of his children to join him in same. By drawing those children into his gambles, the respondent engendered a situation which he doubtless never wished for but which was always a foreseeable prospect, viz. that the children's lives and/or credit ratings would be considerably blighted if the gambles that he had arranged were to fail, and in the end, unfortunately, they did.
7. Although the applicant joined the respondent for a time in his property gambling, he was the true driver in this regard and the management of the mortgaged properties that he acquired for a time as a result of his gambles was essentially his responsibility. For her part, the applicant combined being a homemaker with running her own business, which business she still owns and operates.
8. All of the property gambles came to a disastrous end when the property 'bubble' burst circa. 2008. In the years since then a judgment in the amount of many millions of euro was obtained by Creditor 1 in respect of the borrowings secured on Address C. For its part Creditor 2 appointed a receiver in relation to the couple's mortgaged properties more generally.

c. Dealings with Creditors.

9. The manner in which the applicant and respondent have responded to the travails that their imprudent gambles have latterly visited upon them both is notable. The applicant

has consistently sought in a candid and sensible manner to arrive at some form of agreement with the couple's creditors and, indeed, with the respondent. The respondent maintains that he has proceeded in a like manner, but, regrettably, he has not always done so.

10. Before turning to the last-mentioned point in more detail, the court should perhaps mention that a feature of the respondent's contentions in the course of this application was his criticism of the applicant for having taken trips abroad during the height of the couple's gambling frenzy. The court would but note in this regard that the applicant could have taken vast numbers of holidays abroad and would still not have run up the enormous liabilities that the couple's various property gambles, driven primarily by the respondent, eventuated for them both.
11. Returning, however, to the respondent's efforts to depict himself as someone who has consistently sought to find a resolution to the financial woes that the failed gambles visited on himself and the applicant, the principal witnesses he called in this regard, an eminent solicitor and an experienced banker, could but point to the fact that up to a considerable time ago the respondent was making some efforts to resolve matters. However, unlike the applicant's efforts, his endeavours have in the end yielded no positive outcome, a fact which seems telling as to what the respondent was prepared to offer to the creditors. By contrast, the applicant's sensible dealings with creditors have consistently proved more successful. Thus, she previously managed at an earlier point in those dealings to reach a comprehensive proposed settlement with Creditor 1 which would, *inter alia*, have seen her retain a house for herself at Address D on which she would have paid a manageable mortgage. That agreement fell through because of the respondent's failure to agree to same. The court notes that the respondent appears to consider that he had reasonable grounds for such refusal. However, the key point to note in this regard is that the applicant's consistent realism has consistently yielded in proposed settlement agreements (including those now before the court); the respondent has never achieved like success.
12. Recent letters from the respondent's solicitor-friend proposing some form of mediation between the applicant and the respondent have no substance to them: they contain no proposals other than a proposal to talk. Mediation between the parties operated by a capable senior counsel failed entirely, so there is no reason to believe that a proposal to talk further without any concrete proposals would meet with any success.
13. Ownership of the various loans from Creditor 2 used to finance the couple's property gambles were eventually transferred by Creditor 2 to Creditor 3 in late-2018 as part of a bundle of loans. The applicant applied to restrain this transfer and succeeded, as a result of that application, in having the Address A property and one other property left out of the transfer portfolio. The second of these properties was the one at Address D which was at one point intended to be the subject of the arrangements described above and which fell through. Judgment has since been obtained in respect of Address D.

d. The Failure of the Marriage and the Respondent's Behaviour.

14. Judicial separation proceedings were commenced by the applicant in 2013. Those proceedings were heard over various dates in 2015 and 2016 but never came to anything.
15. The respondent sought at the hearing before this Court to depict himself as a reasonable man who seeks only what is fair and who wishes his wife well. However, over a prolonged period he has, the court notes with regret, behaved badly towards the applicant, requiring her, at a time when she has little money, repeatedly to engage lawyers and appear in court to obtain all manner of orders against him. On one occasion, for example, the applicant had to procure a court order requiring of the respondent that he pay his share of utility bills. The respondent has also behaved in a volatile manner, with the result that the applicant previously obtained interim barring orders against him, followed later by a related undertaking of the respondent.
16. Remarkably, the respondent appears to maintain in his post-hearing written submissions that he has never had a barring order issued against him (*"The allegation that I was barred from the family home is clearly incorrect"*). Perhaps the respondent genuinely believes this. However, if the court might respectfully draw his attention to Book 3 of the Pleadings (*"High Court Orders"*) – there have been a remarkable 32 such orders in proceedings between the parties to this time – he will find: (i) at Tab 6, an interim barring order of 5 November 2014; (ii) at Tab 7, an interim barring order of 13 November 2014; and (iii) at Tab 8, an Order of 18 November 2014 in which the court notes the respondent's undertaking to *"restrain from molesting, assaulting, threatening, harassing or otherwise interfering with or putting in fear the Applicant"*. That any such orders have been vacated and/or varied does not mean that they have never issued. And that such orders had to be made is a serious matter. In this regard, the court reiterates the following observation made by it in its judgment in *X v. Y* [2020] IEHC 525, at para. 47:

"There is no context in an intimate relationship in which domestic violence is permissible....A party to an intimate relationship should never have to live in the fear and/or with the actuality of domestic violence being perpetrated upon that party. There are no 'ifs' or 'buts' in this regard, no exceptions, no mitigating circumstances. Domestic violence and/or the threat of domestic violence (even where no actual violence ensues) is always unacceptable."

17. Notably, the applicant was so fearful for herself that at one point she left the Address A property; she seems less fearful now that one of her adult children is living there with her. The respondent submitted orally and in his post-hearing written submissions that he has never been violent towards his wife, by which he presumably means that he has not hit her. But that is to mistake the nature of an interim barring order which can issue where, to borrow from s.8 of the Domestic Violence Act 2018 (which echoes s.4 of the Domestic Violence Act 1996 in this regard (the provision under which the orders were granted)), and so far as relevant to these proceedings, *"the court...is of the opinion...that there are reasonable grounds for believing – (a) there is an immediate risk of significant harm to the applicant...and (b) the making of a protection order would not be sufficient to*

protect the applicant". So the issuance of an interim barring order is a most serious matter and a court of law has repeatedly come to the just-described opinion, an opinion that, doubtless, is never arrived at lightly, not least though not only because it is so damning of the actions and/or character and/or reputation of the subject of the barring order. And it does not much improve matters that a court is subsequently satisfied to accept an undertaking in lieu of an interim order; it would, presumably, only see a need for such an undertaking if it thought there to be a risk that the actions which it is undertaken not to do might otherwise be done.

18. The fact that the above-mentioned orders issued and that the above-mentioned undertaking was given and the fact too that the applicant is in fear of the respondent when by herself has obvious implications for her request (to which the court will accede) that she be allowed sole residence in the Address A property pending the sale of same. This will come, however, not without some hesitation on the court's part, subject to certain short-term arrangements to allow the respondent to source alternative accommodation and not be rendered homeless, the court being mindful in this regard that (i) the respondent at all times has available to him a generous pension that is a multiple of the average industrial income, to which the applicant has made no claim and thus that he will be able to avail of rented property elsewhere, and (ii) insofar as the applicant's personal safety is concerned (a) the house is now partitioned, and (b) an adult child lives with her, giving her a double level of protection.
19. In passing, the respondent appears latterly to have taken to behaving in a mean-spirited manner at Address A. So, for example:
 - at a time when he, the applicant (and, with the applicant, an adult child) are living in a partitioned family house, the respondent has apparently taken to stomping about upstairs occasionally and also to making noise at irregular hours.
 - the respondent appears to have taken umbrage at fairy lights being hung over the porch entrance to the house so as to throw some light for the applicant to see by when she returns home in the dark and is fearful that there could be someone lurking about in the dark pathway by which she makes her way into the back of the Address A property (access by the back entrance being necessary because of the way in which the Address A property has been partitioned).
 - because of the way in which the Address A property has been partitioned, the applicant has to cross into the respondent's part of same to reach the switch that turns on the heating in her part of the Address A property. The respondent objects to this and appears to consider that the applicant should come back to the High Court and seek an amendment of the partition order so as to facilitate some form of arrangement whereby the applicant can turn on the heating when she needs it. Perhaps technically she does, but does the respondent genuinely believe (a) that it is appropriate that the applicant should be left without heating? (b) that the High Court, on application being made to it, is going to do anything other than engineer a solution whereby the applicant can turn the heating on and off? (c) genuinely

believe that he or his estranged wife would get into trouble with a court for allowing her to flip a switch up or down? and (d) in any circumstances, but particularly in the straitened circumstances in which he and his wife have existed post-separation, consider it an appropriate use of money to seek the approval of the High Court to turning the heating on and off in circumstances where the applicant's obvious need to access the heating switch was missed by the parties, and hence not ordered by whichever judge made the partition order, on the day that order was made? The court must regrettably conclude that the respondent has acted as he has in this regard just to be mean.

20. All these behaviours count with a court; for if a man is inclined to self-centredness and/or selfishness in his general behaviour he will find himself facing an uphill battle in seeking to establish his being more generally a reasonable man.

e. Intimate Personal Details.

21. In a step at the hearing of this application which, to put matters mildly, was ill-advised, the respondent at one point in the proceedings introduced before the court an intimate detail from the applicant's long-distant past which the court did not need to know and which the respondent insensitively, even cruelly, described as "*baggage*". When the court realised what was afoot, stopped the respondent and indicated that it had no desire to hear about intimate matters that were not relevant to the application at hand, the respondent insisted over the objections of the applicant's counsel that the matter was relevant.
22. For the avoidance of doubt, what was mentioned was *irrelevant*, ought not to have been mentioned, and did not advance the respondent's position. The respondent could easily have pointed to the particular occasion that he sought to highlight as having a special family significance without going into any more detail. If he hoped to colour the court's impression of the applicant in this regard, his efforts rebounded to his own discredit. By way of general note, as the court observed in *X v. Y, op. cit.*, at para. 49, (there in the context of undue emphasis on a party's sexuality, though the point extends to the situation that presented in these proceedings), although issues relevant to an application can always be raised "*one does not squander all entitlement to privacy on entering a courtroom*".
23. Again, such matters count with a court; for if a man is inclined to treat his estranged wife with such disregard and/or discourtesy in court, he will find himself facing an uphill battle in seeking to establish his being more generally a reasonable man.

IV

Failure to Disclose

a. Respondent's Failure to disclose.

24. When it comes to the question of financial disclosures, the court respectfully adopts as correct the following written submissions of counsel for the applicant:

"No proper accounts of his [the respondent's] business, no tax returns, no employment detail summary (formerly P60) for 2019 (available since early 2020) were provided, nor any statement in respect of the second [pension-type payment repeatedly]...paid into a separate bank account. He referred to his accountant but never called him nor did he provide an overview of his financial affairs. It is submitted that in cross-examination by junior and senior counsel that he failed to satisfy the questions as to the substantial sums passing through his bank accounts, his actual rental income, and the detail of figures set out in his affidavit of means. With regard to the latter, it is submitted that nothing in that document may be relied upon nor can his word be relied upon in respect of same. It is clear that he has other assets including [his new business]...and [certain assets of same]....He has several sources of income from [his former profession]; rent from [Address E]...rent from the property at [Address F]....The [respondent's]...pension was payable throughout the Covid 19 lockdown whilst the applicant had to close her business".

25. In his post-hearing written submissions, the respondent states, *inter alia*, that *"It is respectfully submitted that I did make full disclosures and I reject the slur on my character to the effect that I was guilty of contempt"*. The respondent did not make full disclosures and his oral testimony as to his financial affairs was less than credible. Unless the respondent wishes for the court to adjudicate at this time on whether or not he has been guilty of contempt, the court does not propose at this time to do so.
26. The respondent has been given every chance to remedy his behaviour, to approach these proceedings with due seriousness, to provide the applicant's advisors with such documentation as they have reasonably sought (still not done), to furnish them and the court with a complete view of his financial affairs (still not done), and to put across every issue that he wishes to place before the court. But there are two parties to these proceedings. Just as the court must strive (and has striven) to do the fullest justice to the respondent, it must do the same for the applicant. She wishes to be divorced from the respondent and she wishes to see her financial affairs resolved to the greatest extent possible. She finds herself confronted with a situation where in real terms there has been no progress in either regard for years. She finds herself married to the respondent when she does not wish to continue to be married to him. And she finds that, because of the respondent's behaviour, her financial affairs have been allowed to linger for some years in a state of limbo. Ultimately, however, time, tide, and courts, wait for no man: having given the respondent every possible opportunity to present his side of affairs and to reveal the (still unrevealed) complete truth as to his income, assets, and liabilities, this matter must proceed to adjudication and resolution on such evidence as is now before the court, subject to the civil standard of proof.
- b. Applicant's Candour.*
27. The applicant has sought at all times to behave in a candid manner as regards her financial position.

c. Affidavits of Means.

28. A deeply regrettable consequence of the foregoing and one that has placed the applicant, and the court, in a most difficult position throughout the proceedings is that little reliance can be placed on the overall financial position claimed by the respondent in the within proceedings. The court had hoped that perhaps the written evidence before it would be supplemented by oral testimony that at last brought clarity to the respondent's financial affairs. In truth, his oral testimony was deeply disappointing and entirely unpersuasive.
29. By contrast, save for the fees stated to be due to Accountant X, which appear from his oral testimony to have been waived, the applicant's affidavit of means, supported by comprehensive and consistent documentation clearly seek to be thoroughly candid and can entirely be relied upon and have been relied upon by the court. Consistent with this candour, the court found the applicant's oral testimony to be at one with the picture painted in the pleadings, she clearly sought in her answers to be as truthful as possible, and any answers she gave (unlike most of the respondent's answers in this regard) were thoroughly comprehensible and sensible.
30. The respondent seized upon the error in the affidavit of means concerning the fees owed to Accountant X as suggestive of a general deficiency in the applicant's figures. However, when someone who is patently seeking to be candid makes a mistake and admits to that mistake (as was immediately done here), courts will typically move on without demur because judges know that honest mistakes can be made by the best of us. Where, by contrast, someone comes to the court, as the respondent has done, failing completely to disclose the full truth of his financial position to the applicant and her advisors, failing completely to provide clear and reliable testimony in the witness box, instead giving answers that only confused and obfuscated and never clarified, such a person will find that his evidence is treated as unreliable, as, regrettably, is the case here when it comes to the respondent.

V

III-Health

31. The respondent has latterly suffered personal injuries which have resulted in physical ill-health and, he claims, an associated loss of cognitive ability. The evidence before the court, including evidence from the respondent's general practitioner indicates that the respondent has suffered from physical ill-health, though here is also evidence before the court which suggests that the respondent's physical ill-health at this time may not be as bad as was originally the case or as he now continues to maintain. So, for example, when the summons server who served notice of these proceedings finally managed, with difficulty, to track down the respondent (after failed efforts at service) to a car park, the following transpired (this was in October 2019):

"8. *I...met the gentleman in the car park. As the gentleman was getting out of the...car, I left my car with the summary summons, notice of motion, grounding affidavit and exhibits referred to above in my possession. As I approached the gentleman who was driving the...car, I recognised the gentleman as the [respondent. He]...opened the driver's door of the [car]...and on doing so, I immediately placed the documents*

in my possession on the first named [respondent's] lap and stated to him that he had been served with the documents. I then returned to my car.

9. *As I was sitting in my car in the car park...the [respondent]...ran across to my car and placed the documents under my windscreen wiper....[He] then ran back to [his]...car and drive off."*
32. Those do not seem the actions of a man entirely racked with physical ill-health, and the summons server has no motive to lie.
33. As to cognitive injury, the respondent has claimed to hospital doctors and to his general practitioner that he has suffered cognitively but there is no evidence before the court that any competent medic has tested the respondent for the claimed cognitive difficulties and accepted that they do in fact present. All that is on record are records of self-reporting by the respondent.

VI

Some Key Issues

a. The Respondent's Pension

34. The respondent has a most generous pension from his former professional life. That pension is greater than the average industrial income. In arriving at the position which saw him become entitled to that pension the respondent was consistently supported by the applicant. The respondent receives this pension whether he decides to work or not. It has been submitted, and the court accepts, that this pension is a marital asset. Even so, the applicant is not seeking any part of the respondent's generous pension, though she has asked that if he dies first she will get to enjoy the survivor's pension. The nominal pension pool that yields the respondent's pension is (mathematically, such is the scale, type and duration of the respondent's pension, it must be) a multiple of the estimated worth of Address B (there is no realistic way that that property with the valuation given to it by a reputable valuer (the 'Reputable Valuer Valuation') on 13 October 2020, as averred to in the applicant's statement of means, could yield the form and level of pension enjoyed by the respondent, even if Address B were sold in the morning, the full amount of the Reputable Valuer Valuation realised, and the entirety of the net proceeds generated by that sale invested thereafter).

b. Address B

35. The applicant inherited Address B which has been in her family for a number of generations. She operates her business from Address B. She also derives some rental income from Address B. So Address B provides her current income and, in the future, if she is allowed to retain Address B by the court (and she will be) will also be her 'pension pot'.
36. The respondent unconvincingly claimed throughout the proceedings that the applicant's business is a joint business (it is not) because he did various tasks in the business over the years. In truth, he did nothing beyond the occasional assistance that one would

expect any husband to provide to any wife in the conduct of a business; they were in no sense running her business together.

37. Entering into leases with tenants at Address B will always involve, for the applicant, the hassle that is an invariable aspect of landlord-tenant relationships. Moreover, the applicant's future dependency on rental income (unless she comes into the survivor's pension should the respondent pre-decease her) leaves the applicant exposed to unanticipated risks, such as the current Covid closure risk. In this respect the applicant's business earnings are unlike the respondent's pension which simply gets paid regardless. The nominal pension pool that yields the respondent's pension is (mathematically, such is the scale, type and duration of the respondent's pension, it must be) a multiple of the worth of Address B. It therefore seems a fair division of assets that the applicant, as she has proposed, should retain Address B in her own right and for her own use. In return, the respondent will get to keep *in toto* the pension entitlement that he enjoys (save as to the survivor's pension should he pre-decease the applicant, an issue to which the court returns later below).

VII

Some Financial Considerations

a. Creditor 1

38. In an agreement reached by the applicant's representatives with Creditor 1 during the course of these proceedings, Creditor 1 agreed to take a fraction of the sum outstanding to it in full and final settlement the quite enormous amounts still owing to it. It is a notably generous offer, with Creditor 1 clearly 'taking a view' as to what is practically realisable from the remaining assets. Indeed both Creditor 1 and Creditor 3 are respectfully to be commended for the approach they have each taken as regards the settlement arrangements arrived at with the applicant's advisors. This settlement agreement is predicated on the sale of the Address A property and the Address F property. In his post-hearing written submissions, the respondent observes of the details that were provided to him of a settlement that will see him relieved of a liability of several million euro:

"It is presumed that the reference to a 'final agreement been reached on the 22nd/23rd October 2010' is a typographical error. Indeed the assertion that [Creditor 1]... 'has agreed a full and final settlement of the debt remaining of [Stated Sum]... against the Respondent' is misleading because there could not have been a settlement with the Respondent in circumstances where Your Respondent was not even consulted before the matter was presented to the Court as a fait accompli. I set this matter out for the purposes of accuracy but fundamentally I am agreeable to the compromised figure, indeed I would welcome settlement and closure. And again I wish to thank all involved."

39. The court would but note in this regard that on being presented for consideration with a form of settlement which will see a waiver of several million euro of liability and to which one is fundamentally amenable: (i) mention of the fact that a document states '2010' instead of '2020' is hardly the key matter of focus; (ii) quite how the agreement was

reached seems of limited importance (though the remarkable agreement reached is testament again to the consistently sensible approach to matters adopted by the applicant and her representatives and indeed to the good commercial sense of Creditor 1 and Creditor 3); and (iii) what was presented to the court for consideration was not a *fait accompli* but a '*fait*' (a) to which the court might have regard, and which (b) the respondent was given several days by the court to consider. His thanks in those circumstances have a certain hollow ring and his whole approach points to what a difficult person he must have been for the applicant and her representatives to deal with over the last few years.

40. The court notes that in making the proposals that he has made in his final written submissions concerning the property at Address A, the respondent overlooks the fact that all of the property at Address A is to be sold as part of the settlement arrangements, which arrangements are very considerably to his benefit. Those settlement arrangements will be 'hard-wired' into the court's orders and there will be no departure from same. Doubtless it will be difficult for the respondent (as no doubt it will be difficult for the applicant) to leave Address A after living there for so many years, but leave they must if matters are sensibly and optimally to be resolved between them and with their creditors; that may be an unpalatable truth, but it is the truth nonetheless.

b. Creditor 3

41. At the behest of Creditor 3 a debt judgment issued against the parties last spring. Since then, the applicant through her agents has managed to negotiate with Creditor 3 an arrangement whereby Creditor 3 will accept payment of a percentage of the judgment amount as full and final settlement of the judgment debt. This arrangement will accrue to the benefit of both parties. However, the benefit to the respondent will only accrue if he withdraws an appeal against the judgment and order obtained by Creditor 3 last spring. The same observations as were made by the court in the immediately preceding section "a." of its judgment fall to be made *mutatis mutandis* as regards the settlement arrangements with Creditor 3. The respondent should note that when it comes to the arrangement with Creditor 3 the benefit of same will only accrue to him if he withdraws an appeal against the judgment and order obtained by Creditor 3 last spring.

c. 'Realization of Security' Account.

42. To the extent that there continues (if there continues) to be a dispute over the ownership of funds in the 'Realization of Security' account with Creditor 2, that dispute falls to be resolved in the separate proceedings commenced by the respondent within the ambit of the separate proceedings previously commenced by the respondent, with Creditor 2 as notice party. The court will order in these proceedings that the amount required to settle the mortgage with Creditor 2 on the Address A property is to be paid from the proceeds of the realty sales to be effected pursuant to the settlement agreements regardless of whether any dispute over the Realization of Security Account is continuing.

d. Mistrust

43. Creditor 1 and Creditor 3 are frustrated by what they consider, with justification, to be the remarkably slow pace of the within family proceedings. They have only been

persuaded to agree to a settlement on the basis that these proceedings are concluded and on the assurance that the court's orders will reflect the terms of the settlement agreements. The applicant has found dealing with the respondent to be difficult, and the court has touched above on how difficult he can be. The applicant is concerned to ensure that what is now ordered proceeds as seamlessly as possible. She has therefore sought that her solicitors should have sole carriage of the sales process and dispensing with the respondent's consent to the sales. Having regard to how the respondent has conducted himself to this point, the court will make this order. Having seen the respondent, heard his evidence, and considered all the pleadings and submissions, it has regrettably reached the conclusion that it does not believe that the respondent will not otherwise seek to create difficulty.

e. Accountant X

44. Accountant X was called on behalf of the applicant. He has achieved high rank in his profession and was an impressive witness. He is a family friend of the applicant's family and so has taken her case on for free. Despite this friendship, the summary document that he presented to the court took a notably balanced approach as regards his assessment of how the financial disposal of matters between the parties might proceed in such a manner as to achieve a basic level of fairness between them both. The respondent complained that Accountant X proceeded on various assumptions as to figures and sought to challenge them. With respect, however, the respondent cannot have matters always as he wants them. He has failed to provide the advisors to the applicant with full and proper financial disclosure so they must proceed on assumptions in trying to provide informed financial options to the court. Challenging those assumptions by reference to what the respondent knows or purports to know but is not satisfied for anyone else to know and will not fully and frankly disclose is no way for him to proceed.

VIII

The Documents Handed in by the Respondent

45. Various documents were handed into court by the respondent after the last day's sitting ended. The court understands that the applicant's counsel do not object to the said documents being handed in and, in truth, they provide a useful 'checklist' by which to gauge how the respondent considers that financial affairs should be addressed between the parties. The court sets out below, in Bold, in Bold, italicised text, the content of an email provided by the respondent and makes certain observations in respect of same.
46. *"Subject to the court's views it is my belief [that] where there are no dependent children the assets are divided 50/50 unless there was egregious conduct"*
47. Court Note: The court explores the applicable law later below.
48. *"[S]ignificantly by her own handwriting in documents such as [the] attached [it is not attached] dated 7th February 2014 and other documents submitted to court, [the applicant] agrees to a 50/50 split."*

49. Court Note: Even if the applicant made such an offer, no agreement was ever reached in this regard and there has been, to use a colloquialism, 'a lot of water under the bridge' since then without anything ever being agreed as the recent letters from the respondent's solicitor-friend proposing some form of mediation show. And the court has to ask '50/50 of what?' The full state of the respondent's financial affairs remains a mystery, thanks to the respondent. (Indeed, the court's impression from the respondent's oral testimony was that he seems remarkably flush with unexplained cash; as touched upon previously above, his 'explanations' in the witness-box in this regard were unsatisfactory and coloured by his failure to be frank with the applicant, her advisors, and the court, as to his true financial worth and position).
50. *"Notwithstanding the attempts by the other side to present their client [as] deserving if a favourable bias consideration based on false allegations of domestic violence I submit they have failed to prove this and submitted no evidence of violence because there was no violence"*
51. Court Note: The respondent has been the subject of interim barring orders. Court orders, including interim barring orders, do not issue for the asking. The applicant, consistent with her ongoing attempts at being candid, was calm and credible in the witness-box, and seemed genuinely in fear of the respondent and his volatile temper. The court notes that despite a stated wish to be scrupulously fair to the applicant, the respondent does not hesitate to indicate in effect, and in the face of the interim barring orders obtained, that the applicant was somehow guilty of falsehood in obtaining same. The court refers to its observations above concerning s.8 of the Domestic Violence Act 2018 (which echoes s.4 of the Domestic Violence Act 1996).
52. *"In addition, I have cooperated fully to achieve resolution with [Creditor 1]...and [Creditor 2] and my wife. In order to achieve that objective please see the recent letter of [Named Solicitor] to [the applicant's solicitor]...which was sent with my full authority and consent"*
53. Court Note: With respect, the respondent has not cooperated fully; on the contrary he has engaged in unhelpful behaviour. The recent letter has zero substance: years after the parties first went to court, and in a context where the respondent still refuses to be open about his financial affairs, it suggests a time-wasting mediation-style meeting to seek to resolve matters, but without making any proposals whatsoever. Previous efforts at mediation, which involved the services of a distinguished senior counsel, have entirely failed, and the fact that, even as recently as this recent letter, there were no substantive proposals emanating from the respondent is telling.
54. *"To achieve a balanced resolution and make proper provision for both parties and in view of my particular needs I submit the following:*
- * *I wish to be scrupulously fair to [the applicant]*
 - * *My priority is both [the applicant]...and I have a home free of burdens and income to live on*

- * *Negotiate full and final settlement with [Creditor 1] and [Creditor 2]/[Creditor 3]*
- * *Divide whatever else 50/50*
- * *Endeavour to protect our business at [Address B] subject to agreement on [the respondent's]...accommodation acknowledging [the applicant's] inheritance*
- * *Resolve indebtedness between the parties. [The applicant] owes [the respondent] her 50% share of repayments on the equity loan for [Address C].*
- * *Obtain clarity on the [Bank 4] monies...[a lump retirement sum paid to the respondent upon retirement]"*

55. Court Note: Although the respondent has repeatedly stated a desire to be fair to the applicant, he has consistently treated her badly since they became estranged, including, but by no means limited to, his failure to disclose his financial affairs in an open and proper manner. Additionally, the above list reads a bit like there are not overwhelming debts and debt judgments hanging Damoclean-like over the parties. The first and foremost thing to do if the parties are ever to get on with life is to see the creditors off. The applicant, with her advisors, has managed to achieve a quite remarkable couple of settlements with Creditor 1 and Creditor 3 which will also see Creditor 2 paid off. Those agreements are the driver of what must now occur. They will not see matters resolved as the respondent proposes; however, what he proposes is something to which no creditor has ever agreed, and it is the creditors who are largely in the driving seat for now. The reference to "*our business at [Address B]*" is wrong for the reasons stated above: it is the applicant's business alone and always was. The court returns to the lump sum issue later below.

56. *"Should it be necessary to sell [Address A]...and [Address F], both of which contain [the Respondent's]...inheritance, we will need to have in place suitable accommodation and give consideration to the following:*

[The applicant to]...*develop a home at the rear of [Address B]*

[The respondent to]...*convert the rear garage of [Address A]...*

[The applicant and respondent]...*either join their incomes for 50/50 division or retain their existing income*

[Retirement lump sum]...*be returned to [respondent] and [certain] lands at...[Address F]*

[The applicant] *retains sole ownership of [Address B] to be passed onto our...children...*

[The applicant and respondent] *amicably [to] divide...personal chattels in the family home."*

57. Court Note: It is a condition of the settlements arrived at between the advisors for the applicant and Creditor 1 and Creditor 3 that Address A and at least two of the folios that comprise Address F will require to be sold. The court has explained above why it sees the trade-off between no claim being made by the applicant on the respondent's pension *versus* the applicant hanging on to Address B to be a fair trade-off. The court returns to the lump sum later below. It is not for the respondent to decide to whom the applicant eventually bequeaths Address B. It is to be hoped that there could be an amicable division of jointly owned chattels, though the respondent's behaviour to date suggests that this may prove difficult; it became clear during the hearings, for example, that he has in the past removed some papers of the respondent from Address A and somehow even managed to access private communications between herself and a religious minister, a most egregious intrusion upon the applicant's right to privacy.

IX

Some Law

a. Section 5.

58. The starting point in divorce proceedings is s.5 of the Act of 1996, as amended, which provides as follows:

"5.—(1) Subject to the provisions of this Act, where, on application to it in that behalf by either of the spouses concerned, the court is satisfied that— (a) at the date of the institution of the proceedings, the spouses have lived apart from one another for a period of, or periods amounting to, at least two years during the previous three years, (b) there is no reasonable prospect of a reconciliation between the spouses, and (c) such provision as the court considers proper having regard to the circumstances exists or will be made for the spouses and any dependent members of the family, the court may, in exercise of the jurisdiction conferred by Article 41.3.2° of the Constitution, grant a decree of divorce in respect of the marriage concerned.

(1A) For the purposes of this section—(a) spouses who live in the same dwelling as one another shall be considered as living apart from one another if the court is satisfied that, while so living in the same dwelling, the spouses do not live together as a couple in an intimate and committed relationship, and (b) a relationship does not cease to be an intimate relationship merely because it is no longer sexual in nature.

(2) Upon the grant of a decree of divorce, the court may, where appropriate, give such directions under section 11 of the Act of 1964 as it considers proper regarding the welfare (within the meaning of that Act), custody of, or right of access to, any dependent member of the family concerned who is an infant (within the meaning of that Act) as if an application had been made to it in that behalf under that section."

59. As can be seen from the just-quoted text, no element of fault requires to be shown and, in fact, a divorce could issue over the objections of one spouse. Here, however, the applicant wishes for a divorce and the respondent does not object to the application for divorce. Unhelpfully, the concept of "*such provision as the court considers proper*", or

'proper provision' as matters are typically put colloquially, is nowhere defined in the Act of 1996.

60. The court is satisfied from the evidence as to the matters stipulated in s.5(1)(a) and (b) which it does not understand to be disputed in any event. It is item (c), the so-called 'proper provision' requirement that is consequently of focus. In approaching this aspect of matters, the court cannot pretend that it is unaware of, and respectfully echoes, the observations of O' Sullivan, K. in 'Rethinking Ancillary Relief on Divorce in Ireland: The Challenges and Opportunities' (2016) 36(1) *Legal Studies* 111-35, at pp. 134-35:

"[T]here are clear shortcomings in the highly discretionary approach to ancillary relief applied in Ireland pursuant to the Family Law (Divorce) Act 1996....In order to overcome these weaknesses, while simultaneously promoting consistency in judicial outcomes and facilitating parties reaching a fair settlement in an informal setting, what we need in Ireland are a priori declarations about the rights and responsibilities to which marriage gives rise, encapsulated within a more rule-oriented system of ancillary relief".

61. A notable benefit of such a rules-oriented approach is that it would yield a situation in which judges would not just bring to bear their own informed/instinctive sense of what is appropriate in any one instance but would be armed with a guide as to what expert research and societal wants suggest, on an a *priori* basis, to be appropriate, with judges free to depart from guidelines in any one instance but required to explain their thinking when they did.

62. The meaning of 'proper provision' was considered by the High Court in *W.A. v. M.A.* [2005] 1 I.R. 1. There, the applicant and the respondent executed a separation agreement which divided their property and assets approximately equally between them. Subsequently, the applicant's financial situation strengthened and that of the respondent weakened. Over a decade after the separation agreement the applicant sought a divorce and the respondent claimed for various counter-orders. The issue of 'proper provision' in the context of the granting of a decree of divorce arose, Hardiman J., sitting in the High Court, brought the dictionary definition of "*proper*" to bear (a perfectly legitimate approach to statutory interpretation) observing, *inter alia*, as follows, at pp. 15-16:

"'Proper'

This term is not defined in the statute and counsel did not refer me to any particular preferred meaning of it. I therefore interpret the word in its natural and ordinary meaning. This in itself is not an entirely straightforward exercise since the term has many meanings; the Oxford English Dictionary identifies some fourteen meanings with a number of subgroups. It is in fact a word of peculiar difficulty since, as the editors of the dictionary say:-

'The sense had already undergone great development in Latin, Romantic, and French, before the word was taken into English, where the chronological appearance of the census does not correspond with the logical development.'

With that caution in mind, the relevant meanings of the term appear to me to be as follows:-

- '(a) in conformity with rule; strict, accurate, exact ...,
- (b) such as a thing of the kind should be ...,
- (c) adapted to some purpose or requirement expressed or implied; fit, apt, suitable; fitting, befitting; what it should be or what is required ...,
- (d) in conformity with social ethics or with the demands or usages of polite society ...'

It will be seen that the dictionary definition leaves a good deal of scope for discretion in the interpretation of the word.

That discretion is trenched upon by [e.g.,] the need to consider the various matters set out in s 20(2)..." [Emphasis added].

63. Although these observations of Hardiman J. are helpful, ultimately what they point to is that what presents in the 'proper provision' context as it presently pertains under Irish law is a Lockean-type *tabula rasa* on which a judge brings her or his professional experience and knowledge to bear. In this regard, it is, again, difficult to disagree with O'Sullivan's reasoning, as considered above, that a more rules-oriented approach would be generally beneficial in this regard.

b. Some Case-Law of Relevance

64. The court has been referred to the decisions of the Supreme Court in *D.T. v. C.T.* [2002] 3 I.R. 334 and *Y.G. v. N.G.* [2011] 3 I.R. 717 and of the High Court in *M.K. v. J.K.* (No 2) [2003] 1 I.R. 326. Those cases are authority for, *inter alia*, the following propositions; references are to the page numbers indicated on the Lexis database.

The Constitutional/Statutory Scheme

- (1) In terms of applicable law, the starting point in a divorce case is Art. 41.3.2° of the *Bunreacht*, as amended by the 15th Amendment (and now the 38th Amendment also), the statutory machinery for the implementation of which is the Family Law (Divorce) Act 1996 (*D.T. v. C.T.*, Keane C.J., at p. 381).
- (2) The duty of the courts to ensure that proper provision is made for a spouse before a decree of divorce is granted flows directly from the provisions of Article 41 of the Constitution and it is in the context of that Article as a whole that the nature and extent of the duty set out in the Act of 1996, must be interpreted (*D.T. v. C.T.*, Murray J., at p. 424).

- (3) The Constitution and the Act of 1996 circumscribe the power conferred on the designated court, by obliging it, before it may grant a decree of divorce, to be satisfied of certain matters. The court must, if it is to act constitutionally, satisfy itself that the evidence proves these matters. The consent of the marriage partners cannot confer upon the court the power to dissolve their marriage so as to absolve it from this duty (*D.T. v. C.T.*, Fennelly J., at p. 433).
- (4) Section 20(2) sets out a long list of criteria to which a court must have regard in the making of financial orders. Furthermore, the list is not exhaustive and does not confine the discretion of the court. Section 20(5) perhaps complicates the matter further by requiring that, in the final analysis, the court should not proceed to make an order unless it would be in the interest of justice to do so (*M.K. v. J.K. (No 2)*, O'Neill J., at p. 346).

Clean Break?

- (5) When, following the 15th Amendment, the Oireachtas came to introduce divorce legislation, it was modelled to some extent on modern English divorce law. There is, however, an important difference. English legislation embodies the 'clean break' principle laid down by the House of Lords in *Minton v. Minton* [1979] A.C. 593 (*D.T. v. C.T.*, Keane C.J., at p. 384).
- (6) Irish law does not establish a right to a 'clean break'. However, it is a legitimate aspiration (*Y.G. v. N.G.*, Denham C.J., at p. 729).
- (7) The absence of specific statutory machinery for the making of 'clean break' provision should not preclude the court from seeking to do so in appropriate cases. In the present case, where the amplitude of resources makes it possible, the desire of the parties for financial finality should not be frustrated (*D.T. v. C.T.*, Fennelly J., at p. 440; see also *Y.G. v. N.G.*, Denham C.J., at p. 729).

Certainty and Finality

- (8) Keane C.J. did not believe that the Oireachtas, in declining to adopt the 'clean break' approach to the extent favoured in England, intended that the courts should be obliged to abandon any possibility of achieving certainty and finality and of encouraging the avoidance of further litigation between the parties (*D.T. v. C.T.*, Keane C.J., at p. 385).
- (9) The principles of certainty apply to family law as to other areas of the law. Certainty is important in all litigation. Certainty and consistency are at the core of the legal system. However, the concepts of certainty and consistency are subject to the necessity of fairness. Consequently, each case must be considered on its own facts, in light of the principles set out in the law, so as to achieve a just result. Thus while the underlying constitutional principle is one of making proper provision for the spouses and children, this is to be administered with justice to achieve fairness (*D.T. v. C.T.*, Denham J., at p. 403).

(10) A court may, in the appropriate circumstances, seek to achieve certainty and finality in the continuing obligations of the divorced spouses to one another. This is not to say that legal finality can be achieved in all cases and any provision made may be subject to review pursuant to s.22 of the Act of 1996, where that provision applies. However, the objective of seeking to achieve certainty and stability in the obligations between the parties is a desirable one where the circumstances of the case permit (*D.T. v. C.T., Murray J.*, at p. 432).

Broad Discretion

(11) While s.20(2) of the Act of 1996, lists in detail the factors to which the court is required to have regard in making the various financial orders provided for in Part III of the said Act, it is obvious that the circumstances of individual cases will vary so widely that, ultimately, where the parties are unable to agree, the trial judge must be regarded as having a relatively broad discretion in reaching what she or he considers a just resolution in all the circumstances (*D.T. v. C.T., Keane C.J.*, at p. 386; see also *Murray J.*, at p. 422).

(12) Normally, even in cases where the parties might be considered to enjoy a substantial degree of financial comfort, the finite resources of the parties will be an underlying prescriptive factor in the exercise of a discretion as to how those resources can be applied in making proper or fair provision for both spouses (*D.T. v. C.T., Murray J.*, at p. 423).

(13) The Oireachtas, in choosing the approach it enshrined in s.20, made a considered decision to confer upon the court a duty of a particularly broad discretionary character. This requires the court to pass judgment on the presence and, where they are present, the weight it attributes to an extremely wide range of specified considerations (*D.T. v. C.T., Fennelly J.*, at p. 435).

(14) The matters listed in s.20(2) of the Act of 1996, are designed to ensure that the court will have regard to all the wide variety of circumstances which should, in the interests of justice, be weighed in the balance when considering what is proper provision. The starting point in that regard must be, on the one hand, to the resources and on the other to the needs, obligations and responsibilities of the parties. There is no stated limitation on the financial resources or on the "*financial needs, obligations and responsibilities...*" to be considered by the court and which may be available for the purpose of making provision. They may extend to resources or to needs, obligations or responsibilities which either spouse "*is likely to have in the future*" (*D.T. v. C.T., Fennelly J.*, at p. 437).

Financial Needs

(15) The standard of living of a dependent spouse should be commensurate with that enjoyed when the marriage ended. The Act of 1996 specifically refers to matters to which the court shall have regard and these include the standard of living enjoyed by the family *before* the proceedings were instituted or *before* the spouses

commenced to live apart, as the case may be (*Y.G. v. N.G.*, Denham C.J., at p. 731).

- (16) If a party has new needs, for example a debilitating illness, that will be a factor to be considered by a court in all the circumstances of the case (*Y.G. v. N.G.*, Denham C.J., at p. 731).
- (17) Assets which are inherited will not be treated as assets obtained by both parties in a marriage. The distinction in the event of separation or divorce will all depend on the circumstances (*Y.G. v. N.G.*, Denham C.J., at p. 732).

[Court Note: Crowley, L. in 'Sheltering the Homemaker in Irish Family Law: Ireland's Failure to Evolve with the Shifting Social and Family Norms' (2018) *International Survey of Family Law* 271-96, at pp. 287-88, comments usefully as follows in this regard, in observations that the court respectfully adopts:

"[I]n YG v. NG [Footnote: [2011] 3 I.R. 717], the issue of inherited property and the extent to which it could be divided on divorce was raised for consideration. [Footnote: At the start of the marriage the parties had taken up residence in a house inherited by the appellant husband from his aunt and uncle. Additionally, he had come to the marriage with savings of IR£3,000]. Denham CJ. identified inherited property as deserving of special attention and confirmed the view that it should not necessarily be treated in the same manner as assets earned by one or both spouses in the course of the marriage. 'Assets which are inherited will not be treated as assets obtained by both parties in a marriage ... but the circumstances of each case should be considered specifically. [Footnote: Above n. 66, at 732]. Similarly in the earlier case of C v. C [Footnote: [2005] IEHC 276] O'Higgins J. demonstrated some reluctance to grant the extensive ancillary relief orders sought by the respondent wife, making repeated reference to the inherited nature of much of the property at issue. He identified the applicant as having 'a strong claim on the house, having inherited it on the death of his father, when the parties took up residence there. Additionally, O'Higgins J. noted that he 'had family connections with it for a very long time...[and that]...the respondent did not contribute either directly or indirectly to its acquisition...'. In determining the respondent's claim in respect of the family home, O'Higgins J. relied upon the views of Denham J. in the earlier case of T v. T, [Footnote: T v. T [2002] 3 IR 334] on the issue of benchmarks for asset distribution, noting her view that the concept of one-third as a check on fairness may have no application in some cases, including where the assets or future income of one of the parties is 'related to property brought solely by one party to the marriage...') [Footnote: Above n. 66, at 384-85]. Rather than dividing the inherited assets, he determined that in the circumstances, proper provision required the payment of maintenance and the purchase of a suitable house for the respondent, regarding such an approach as...

the best way to ensure the future of the business - which is the parties' main source of income - while at the same time being fair to both the applicant and the respondent. It also takes into account the fact that the properties were inherited by the applicant and brought into the marriage by him.

*Thus, although the legislation has not placed parameters upon the concept of matrimonial property, the Irish judiciary has shown itself willing to identify, based on source, property that might not properly be suited to a spousal claim. Certainly, it appears that property inherited by one of the parties may in appropriate circumstances fall outside the asset pool available for asset distribution. [Footnote: However, this is only possible where there are other assets available to satisfy the proper provision requirements of the Irish divorce law regime. It is reasonable to suggest that a property such as a family farm, where both parties have worked the farm for the duration of a lengthy marriage, may be perceived by the courts as transforming over time, from a property inherited solely by one spouse into a marital asset to which both parties can lay a legitimate claim, as evidenced by the successful claim of the dependent wife in *N. v. N.* (Unreported, High Court, Abbott J., 18 December 2003)....In *MK v. JK (or se SK)* [2001] 3 IR 371 at 382/83, McGuinness J. referred to the equal division made by the court in the English decision of *White v. White* [2001] 1 AC 596: 'It should be noted that the husband and wife in *White v. White* were not a couple with traditional roles but were business partners in a large farming enterprise. Throughout his speech Lord Nicholls stressed that the overall objective of the court should be fairness.'"]]*

- (18) Where one or both parties are in receipt of income, but their joint assets are not of such significant value as is the case here, the first task of the court will almost certainly be to consider what the financial needs of the spouses and the dependent children are. At one end of the spectrum, there will be cases in which, at best, no more than basic subsistence requirements at the most can be met. At the other, there will be both substantial assets and income available and the court will be concerned with the proper distribution, in terms of the section, of the available assets so as to ensure that proper provision is made for the spouses and any dependent children (*D.T. v. C.T.*, Keane C.J., at p. 386).
- (19) The Act of 1996 does not require the assets of the spouses to be divided between them and the dependent children in every case. There will be cases in which it would be solely concerned with the appropriate level of the maintenance to be paid by one spouse to the other and as to what is to happen to the family home. But in cases where there are substantial assets brought into being in circumstances where it would be unjust not to effect some form of division, the court will inevitably find itself having to determine, where the parties are unable to agree, how the assets should be divided and whether that division should take the form of a lump sum order or a property adjustment order (*D.T. v. C.T.*, Keane C.J., at pp. 386-87).

Non-Discrimination

- (20) The work of a spouse in the home cannot be a basis for discriminating against her by reason only of the fact that the husband was the major earner or the breadwinner during the course of the marriage (*D.T. v. C.T.*, Murray J., at p. 427).
- (21) Lord Nicholls, in *White v. White* [2001] 1 A.C. 596 emphasised that the whole tenor of English divorce legislation was the avoidance of a discriminatory approach: the fact that, as often happened, the wife had devoted the greater part of her time to looking after the children and caring for the home generally, was no ground for confining her share of the family assets, in the event of a breakdown of the marriage, to so much of the assets as met her 'reasonable requirements'. That is also the law in Ireland (*D.T. v. C.T.*, Keane C.J., at p. 389).
- (22) In *Cowan v. Cowan* [2002] Fam. 97, a so-called 'ample resources' case, Thorpe LJ, at pp. 118-19, summarised his understanding of *White v. White* [2001] 1 A.C. 596 as follows, "*Disapproved is any discriminatory appraisal of the traditional role of the woman as home maker and of the man as breadwinner and arbiter of the destination of family assets amongst the next generation. A calculation of what would be the result of equal division is a necessary cross check against such discrimination....Disapproved is any evaluation of outcome solely or even largely by reference to reasonable requirements.*" Provided that it is always borne in mind that in 'ample resources' cases an equal division of the assets is emphatically not mandated by the legislation, Keane C.J. considered that there should be no difficulty in adopting a broadly similar approach in this jurisdiction. (*D.T. v. C.T.*, Keane C.J., at pp. 389-90).
- (23) When a court is exercising its discretion in making provision for spouses on an application for divorce, the following should be considered: (i) in making such provision a spouse who has worked principally in the home during the course of the marriage should not be disadvantaged in the making of such provision by reason of that fact; (ii) both spouses are entitled, in principle, to seek that the provision made for them provides them with a measure of independence and security in their lives and there is no reason why, in principle, a non-earning spouse should be confined to periodic payments. The extent to which this can be achieved in practice will depend on the circumstances of the case, the resources available and the exercise of judicial discretion in taking into account all the factors referred to in s.20; (iii) a court has power to direct the payment of lump sum payments where this is considered an appropriate means of making proper provision for one or other of the spouses; (iv) all the resources, assets and income of the applicant and the respondent) should be taken into account (*D.T. v. C.T.*, Murray J., at pp. 431-32).
- 'Breadwinners' versus 'Homemakers'
- (24) The role of the dependent homemaker and child carer, usually the wife, is not to be disadvantaged in the distribution of assets by reason of having a non-economic role (*M.K. v. J.K.* (No 2), O'Neill J., at p. 349).

- (25) In Irish society today, it can no longer be assumed that the husband and wife will occupy their traditional roles in which the husband has been the breadwinner and the wife the home builder and carer. The roles may on occasions even be reversed and, in many instances, both husband and wife will be in receipt of income from work. In those cases where one spouse alone is working and, in the result, a significantly greater responsibility for looking after the home has devolved on the other, it is clear that under s.20(2)(f) of the Act of 1996, the court must have regard to that as a relevant factor (*D.T. v. C.T.*, Keane C.J., at p. 387).
- (26) A court is obliged by virtue of s.20(2)(g) to have regard to the financial consequences for either spouse of his or her having relinquished the opportunity of remunerative activity in order to look after the home or care for the family (*D.T. v. C.T.*, Keane C.J., at p. 387).
- (27) In assessing the “*proper provision*” under Article 41.3.2°, the court must look at both aspects of a spouse’s role in the family, *i.e.* the two sides of the coin. Thus the court must have regard to the role of the spouses in relation to the welfare of the family, to their contribution in looking after the home or caring for the family: s.20(2)(f). On the other side of the coin, the court must have regard to the effect on the earning capacity of each of the spouses of the marital responsibilities assumed by each, and the degree to which the future earning capacity of a spouse was impaired by reason of the spouse having relinquished or foregone the opportunity of remunerative activity in order to look after the home or care for the family: s.20(2)(g). By this total approach to the family role of a spouse and its effect, formal recognition is given to the role of caring for the family (*D.T. v. C.T.*, Denham J., at p. 402).
- (28) Article 41.3.2° of the Constitution and the Act of 1996, clearly require that value be placed on the work of a spouse caring for dependents, the family and the home. A long-lasting marriage, especially in the primary childbearing and rearing years of a woman’s life, carries significant weight, especially if the wife has been the major home and family carer (*D.T. v. C.T.*, Denham J., at pp. 402-03).
- (29) In ensuring that proper provision is made for the spouses of a marriage before a decree of divorce, the courts should, in principle, attribute the same value to the contribution of a spouse who works primarily in the home as it does to that of a spouse who works primarily outside the home as the principal earner. The value to be attached to their respective contributions in those circumstances is, perhaps, underscored by Article 42.1 of the Constitution which refers, *inter alia*, to the “*duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children*” (*D.T. v. C.T.*, Murray J., at p. 428).
- (30) Where substantial assets and income have accrued to one spouse in the course of the marriage, the court should take them into account in determining the proper provision to be made for the other spouse. They are available in order to make a

proper provision for the other spouse. In the case of a wife who has worked primarily in the home, she is just as entitled as her husband to have the 'fruits of the marriage', taken into account by the court in determining what provision should be made for each of them (*D.T. v. C.T.*, Murray J., at p. 430).

- (31) Section 20(2)(f) obliges the court to give due weight and consideration to the respective roles of the breadwinner and the homemaker, *i.e.* such weight as is appropriate in all the circumstances. It does not erect any automatic or mechanical rule of equality. Nor does it institute any notion of family resources or property to be subjected to division. Several considerations militate against the adoption of such rules of thumb. The children of the marriage have to be considered and their provision by one spouse may mean that property should not be equally divided. One or both of the parties may have entered into new relationships, possibly involving children. The supposed 'breadwinner' or 'homemaker', as the case may be, may not, depending on the circumstances deserve to be placed on an equal footing. It is only with the greatest care, therefore, that one should formulate any general propositions (*D.T. v. C.T.*, Fennelly J., at pp. 438-39).
- (32) In *White v. White* [2001] 1 A.C. 596, Lord Nicholls observes, at p. 605, that "*If, in their different spheres, each [spouse] contributed equally to the family, then in principle it matters not which of them earned the money and built up the assets. There should be no bias in favour of the money-earner and against the homemaker and the child-carer*". Fennelly J. adopted this language to the extent that he argues for equal recognition of the value of the contributions that may have been made during the marriage, in their respective roles, by the money-earning spouse and the home-making spouse (*D.T. v. C.T.*, Fennelly J., at p. 439).

Other Relevant Factors

- (33) Other factors to which the court is obliged to have regard is the standard of living enjoyed by both parties before the breakdown of the marriage, their respective ages and the duration of the marriage (*D.T. v. C.T.*, Keane C.J., at p. 387).
- (34) A party should not be compensated for their own incompetence or indiscretions to the detriment of the other party (*Y.G. v. N.G.*, Denham C.J., at p. 732).

Conduct of Parties

- (35) The conduct of the parties will be relevant where, in the opinion of the court, it would be unjust to disregard it (*D.T. v. C.T.*, Keane C.J., at p. 387).
- (36) Ultimately, when all these factors have been assessed by the trial judge, he or she must be satisfied that any financial orders made constitute proper provision for each of the spouses, and the dependent children, within the meaning of the Constitution and the Act of 1996 (*D.T. v. C.T.*, Keane C.J., at p. 387).
- (37) As to when it would be "*unjust*" within the meaning of s.20(2)(i) to disregard the conduct of each of the spouses, in *Wachtel v. Wachtel* [1973] Fam. 72, Denning MR said, at p. 90, that:

"There will no doubt be a residue of cases where the conduct of one of the parties is... 'both obvious and gross', so much so that to order one party to support another whose conduct falls into this category is repugnant to anyone's sense of justice. In such a case the court remains free to decline to afford financial support or to reduce the support which it would otherwise have ordered. But, short of cases falling into this category, the court should not reduce its order for financial provision merely because of what was formerly regarded as guilt or blame. To do so would be to impose a fine for supposed misbehaviour in the course of an unhappy married life ... in the financial adjustments consequent upon the dissolution of a marriage which has irretrievably broken down, the imposition of financial penalties ought seldom to find a place."

Keane C.J., in *D.T.*, agreed with the view expressed by Lord Denning in *Wachtel* that the court should not reduce the financial provision which it would otherwise make to one of the parties save in cases where misconduct has been "*obvious and gross*". (*D.T. v. C.T.*, Keane C.J., at p. 391; see also Denham J., at pp. 408-09).

Date of Valuation of Assets

- (38) As to the time at which the assets should be valued, the language of s.20(2)(a), and, in particular, the reference to "*property ... which each of the spouses concerned has or is likely to have in the foreseeable future*" is more consistent with an assessment by the court of the value of those assets as of the date of the hearing. Any other construction would seem to give rise to the possibility of injustice to either party. That was also the view taken by the Court of Appeal in *Cowan v. Cowan* [2002] Fam. 97, at p. 122 (*D.T. v. C.T.*, Keane C.J., at pp. 390-91).
- (39) The assessment of assets must be as of the date of trial or appeal. This is consistent with the wording of the statute which refers to "*circumstances exist*", "*the income...which each of the spouses concerned has or is likely to have*", "*the financial needs which each of the spouses has or is likely to have*". However, while the assessment of assets is at the date of the trial or the appeal, there may be important factors relevant to that sum to be taken into consideration in determining the proper provision for the spouses. *E.g.*, the fact that a considerable sum of money was acquired by a spouse after their separation, the basis for such a new acquired sum, or the existence of a deed of separation, may be very relevant (*D.T. v. C.T.*, Denham J., at p. 404).
- (40) Assets should be assessed as at the date of trial. However, there may well be circumstances as to their relevance as an asset base in providing proper provision. Thus, if the parties had no joint enterprise (such as a farm or business or professional practice) and one party after separation commenced and achieved success in a wholly new area, that may be a circumstance applicable to the determination of the asset base relevant to proper provision. While the factors set

out in s.20(2)(a)-(1) must be applied, it may affect the benchmarking of fairness (*D.T. v. C.T.*, Denham J., at p. 405).

Ad Seriatim Consideration

- (41) In determining proper provision, it is mandatory for the court to have regard, in particular, to the factors set out in s.20(2) of the Act of 1996. The relevance and weight of each factor will depend on the circumstances of each case. Best practice is to consider all the circumstances and each particular factor *ad seriatim* and give reasons for their relative weight in the case (*D.T. v. C.T.*, Denham J., at p. 402).
- (42) What the court of first instance must do is go through the various factors set out in s.20(2) *seriatim* and deal with the circumstances of the case in the light of these factors insofar as they are relevant to the circumstances of the case, assessing in the light of the evidence, the weight to be attached to each factor. Having completed that exercise, the court must then, in the light of s.20(5) of the Act of 1996, consider in a residual way and on the basis that the court's discretion is not confined solely to the factors set out in s.20(2) but must have regard to whether or not an order which the court might be disposed to make, having weighed up the various factors in s.20(2), should not be made unless it would be in the interests of justice to do so (*M.K. v. J.K. (No 2)*, O'Neill J., at p. 350).

Lump Sum

- (43) There is nothing in the Constitution or legislation which prohibits a lump sum as part of a financial ancillary order. In considering whether such an order is applicable, the provisions of the Act of 1996 must be applied (*D.T. v. C.T.*, Denham J., at p. 403).
- (44) The Constitution would require that the making of lump sum payments be ordered if, in the particular circumstances of the case, the court considered in its discretion that that was the appropriate manner by which proper provision should be made for the spouse in question (*D.T. v. C.T.*, Murray J., at pp. 429-30).

Proper Provision (not Division)

- (45) Under s.20(1) of the Act of 1996, "*the court shall ensure that such provision as the court considers proper having regard to the circumstances exists*" will be made for the spouses and any dependent children. Thus this duty requires the court to make proper provision, having regard to all the circumstances (*Y.G. v. N.G.*, Denham C.J., at p. 730).
- (46) The Act of 1996 enables the court to make a variety of financial and property orders; the purpose of the making of these orders upon the granting of a divorce decree is to ensure that proper provision is being made for a dependent spouse and children (*M.K. v. J.K. (No 2)*, O'Neill J., at p. 332).
- (47) In English matrimonial law, the court in divorce proceedings is primarily concerned with dividing assets as fairly as possible between the parties rather than making proper provision for the spouses and their dependent children. Such an approach

could not be adopted in this jurisdiction, where the appropriate criterion is the making of proper provision for the parties concerned (*M.K. v. J.K. (No 2)*, O'Neill J., at p. 348).

- (48) The scheme established under the Act of 1996 is not a division of property. The scheme provides for proper provision. It is not a question of dividing the assets at the trial on a percentage or equal basis. All the circumstances of the family, including the particular factors referred to in s.20(2) are relevant in assessing the matter of provision from the assets (*D.T. v. C.T.*, Denham J., at p. 404).
- (49) It is not the case that in making financial provision for spouses their assets should be divided between them. Neither the Constitution nor the Act of 1996 requires that, expressly or implicitly. It is rather that a spouse should not be disadvantaged by reason of the fact that all, or nearly all, of the assets and income in the marriage are those of the other spouse. It also means that in cases where there are very substantial assets belonging to one spouse which greatly exceed any conceivable day-to-day needs of either spouse, whatever their standard of living, those assets should not as a matter of course remain with the spouse who owns them, with the other spouse being confined to depending on periodic payments (*D.T. v. C.T.*, Murray J., at p. 428).
- (50) Proper provision should seek to reflect the equal partnership of the spouses. Proper provision for a spouse who falls into the category of a financially dependent spouse should seek, so far as the circumstances of the case permit, to ensure that the spouse is not only in a position to meet his/her financial liabilities and obligations, continue with a standard of living commensurate with his/her standard of living during marriage but to enjoy what may reasonably be regarded as the fruits of the marriage so that he/she can live an independent life and have security in the control of his/her own affairs, with a personal dignity that such autonomy confers, without necessarily being dependant on receiving periodic payments for the rest of her life from his/her former wife/husband. 'In principle' because in many cases the resources or circumstances of the parties will dictate that the only means of making future provision for the spouse in question will be by periodic payments from the other spouse (*D.T. v. C.T.*, Murray J., at p. 429).
- (51) The court must do what is "*proper*" in the sense of 'appropriate'. This is synonymous with what is "*fair*" or "*just*". In the moral sense, this is a clearly stated objective. In practice, it requires the court to weigh in the balance the infinite variety and complexity of the elements of human affairs and relationships and to arrive at a just result (*D.T. v. C.T.*, Fennelly J., at p. 434).

[Court Note: It seems to the court, if it might respectfully note, that this is an especially useful observation by Fennelly J. Often in divorce cases, to use a metaphor, the parties in truth need two cakes on which properly to survive as they go their separate ways but, in terms of assets, have only one cake between them. A divorce court cannot make two full cakes out of one full cake, it can only give

some of the one full cake to each party; in doing so, as Fennelly J. observes, it must (and can only) do what is “proper” in the sense of ‘appropriate’, i.e. fair or just in all the circumstances presenting.]

- (52) Any property, whenever acquired, of either spouse and whenever and no matter how acquired, is, *in principle*, available for the purposes of the provision. Thus, property acquired by inheritance, by chance, or the exclusive labours of one spouse does not necessarily escape the net. On the other hand, not all such property is automatically available either (*D.T. v. C.T.*, Fennelly J., at p. 437).

Continuing Obligation

- (53) Each spouse has a continuing obligation to make proper provision for the other and the resources which are available to each of them may be taken into account, so far as is necessary, to achieve that objective. Each case will necessarily depend on its own particular circumstances (*D.T. v. C.T.*, Murray J., at p. 430).

Limited Resources

- (54) Where there are quite limited resources available it may only be possible to provide for the basic needs of each spouse. On the other hand, different considerations would also arise where one spouse was independently wealthy before the marriage and the marriage was of a very short duration (*D.T. v. C.T.*, Murray J., at p. 430).

Agreement Between Spouses

- (55) It is evident that parties may well be able to compose their material and financial differences by agreement. Agreement is, in its nature, to be encouraged, a matter which is recognised in the legislation, in particular, by requiring the court to have regard to the terms of any existing separation agreement (*D.T. v. C.T.*, Fennelly J., at pp. 433-34).

X

Section 20

65. Among the reliefs sought by the applicant are orders under ss. 13-15 and 17-18 of the Act of 1996, it is necessary to turn to s.20 of the Act of 1996, which provides as follows:

"20.—(1) In deciding whether to make an order under section 12, 13, 14, 15 (1) (a), 16, 17, 18 or 22 and in determining the provisions of such an order, the court shall ensure that such provision as the court considers proper having regard to the circumstances exists or will be made for the spouses and any dependent member of the family concerned.

[Court Note: Here, the court’s only concern is with the spouses. There are no dependents.]

- (2) *Without prejudice to the generality of subsection (1), in deciding whether to make such an order as aforesaid and in determining the provisions of such an order, the court shall, in particular, have regard to the following matters:*

- (a) *the income, earning capacity, property and other financial resources which each of the spouses concerned has or is likely to have in the foreseeable future,*

[Court Note: As mentioned above, a particular difficulty that presents for the court in this regard, and more generally, is that the respondent has elected, for reasons which presumably work to his advantage, to be thoroughly wanting in frankness as regards his financial affairs. He has failed to vouch for his income and resources, there has been a complete absence of tax returns and no employment detail summary for 2019. In terms of the financial figures pertaining, the court therefore accepts the applicant's figures, whether as provided by or for her in evidence, to be the only reliable figures available to the court, and also correct figures, save insofar as they were expressly identified at the hearing of the within application to be incorrect (the amount for fees owed to Accountant X is notably incorrect). The income, assets and liabilities of the parties appear to be the following, though in truth, thanks to the actions of the respondent, his true financial position is not known:

Income of Applicant: Rental Income from Address B property; business income from business operated at Address B property. Details in Affidavit of Means.

Known Income Sources of Respondent: Pension; business income from new business. The pension detail is known. The business income is unclear and ultimately unknown.

Property Assets in Ownership of One or Other Party: The Address A, Address B, Address E and Address F properties. The court notes that the Address F properties were inherited by the respondent in his own right. The court notes that the Address B property was inherited by the applicant in her own right contains her business premises and represents her sole source of income. The court notes that the Reputable Valuer Valuation of the Address B property shows it to be such that even if the full amount of that valuation was available as cash-in-hand today, there is no realistic prospect that that cash amount could be invested in such a way as to yield the very generous pension that the respondent enjoys.

Other Assets of Applicant: 50% share in boat that respondent claims has been destroyed (no receipts have been provided by the respondent in this regard); vouched utility bill payments made for respondent.

Known Other Assets of Respondent: Lump sum retirement payment; assets of his new business; 50% share in boat that respondent claims

has been destroyed (no receipts provided). Only the lump sum is quantifiable. The respondent claimed at the hearing that his new business does not have the assets it purports to have but rather sources assets upon order; had management or company accounts been made available the true worth of the assets of his new business would be quantifiable. As it stands, they are not.

Liabilities of one or other party: Monies owed to Creditor 1, Creditor 2 and Creditor 3.

Other liabilities of Applicant: Legal and professional fees and incidental monthly outgoings as per the applicant's Affidavit of Means.

Known other liabilities of Respondent: Incidental monthly outgoings pointed to in the respondent's Affidavit of Means, save that the court understands from the oral testimony that the property expenses that were being paid in another jurisdiction are perhaps no longer payable. Unfortunately, the respondent's failure to disclose his financial position fully means that the court really does not have 'clear sight' of his liabilities.

- (b) *the financial needs, obligations and responsibilities which each of the spouses has or is likely to have in the foreseeable future (whether in the case of the remarriage or registration in a civil partnership of the spouse or otherwise),*

[Court Note: If the settlement agreements negotiated with Creditor 1 and Creditor 3 are paid, that will leave a situation in which Creditor 1, Creditor 2 and Creditor 3 have been seen off. At that time, because the Address A and Address F properties will have been sold (that is a requirement of Creditor 1 and Creditor 3 as part of the settlement), the sole properties remaining will be the Address B property and the Address E property. Both parties will require an income and some form of pension arrangement. As explained above, the respondent has a valuable defined benefit pension by way of permanent income. The applicant's sole source of income is from *her* business at the Address B property. The Address B property is worth a fraction of the nominal pool that yields the respondent's pension (mathematically this must be so given the scale and index-linked nature of the respondent's defined benefit pension versus the Reputable Valuer Valuation of the Address B property). To ensure that the applicant has an income and a pension, the Address B property needs to belong to the applicant alone. All of this means that both parties will have income sufficient to rent somewhere to live and the court is engineering into its orders a process whereby the parties will have the time to procure alternative accommodation.]

- (c) *the standard of living enjoyed by the family concerned before the proceedings were instituted or before the spouses commenced to live apart from one another, as the case may be,*

[Court Note: In the years since the crash of 2008 and after, the parties have lived on separate limited incomes. The applicant has lived off her business and rental income from Address B. The respondent is lucky to have a very generous pension and has lived off that. The respondent has also established his own business, has enjoyed income from Address E and appears to have cash otherwise available to him. The arrangements being ordered by the court will see life continue much as is for both parties, save that they will each need to seek alternative, perhaps rental, accommodation.]

- (d) *the age of each of the spouses, the duration of their marriage and the length of time during which the spouses lived with one another,*

[Court Note: Both spouses are approaching an age when they might wish to retire. The applicant has given the best years of her life to her marriage and needs the income from the Address B property and her business to see her through retirement. The respondent is already in receipt of a very generous professional pension. Throughout these proceedings the respondent indicated that he was consenting, in the event that he pre-deceases the applicant, for her to enjoy the survivor's pension. For the first time in these proceedings, in his post-hearing written submissions, the respondent states that "*I fail to comprehend how the Applicant can assert that the property is her pension for the future and simultaneously assert that she should be entitled to my pension on my decease arising out of the divorce proceedings which she instituted*". The court does not understand this to be a withdrawal of consent. Moreover, the want of comprehension which the respondent asserts is, with respect, surprising. The applicant rightly maintains that she helped the respondent build his professional career. She accepts that for now (and it may be for the rest of her life – who knows, with respect, who will die first of the applicant/respondent?) her earnings/income will be confined to the yield from the Address B property, including the business that she operates thereat. But she wishes, and the respondent has consented, that, having devoted the best years of her life to her marriage and her best efforts to furthering his career, she should have the additional certainty that she will receive the survivor's pension in the event that the respondent should pre-decease her.

In passing, it does not instil confidence in the extent to which reliance can be placed on the respondent's word that after maintaining throughout the hearings that the applicant should receive the survivor's pension he should seem, in his post-hearing written submissions, to teeter on welshing on this commitment, albeit that he does not quite do so. It is this unfortunately undependable side to the respondent that has in part informed the court's

decision to entrust solely to the applicant's solicitors the property sales that are to be effected following on, and as a consequence of, this judgment.]

- (e) *any physical or mental disability of either of the spouses,*

[Court Note: The applicant has no physical or mental disability. The respondent has suffered personal injuries and related physical ill-health latterly. He also claims to have suffered cognitive loss but there is no evidence of this beyond his own assertions of same to others. The court sees no reason why the respondent could not obtain rental accommodation that meets any particular physical needs he presents with.]

- (f) *the contributions which each of the spouses has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution made by each of them to the income, earning capacity, property and financial resources of the other spouse and any contribution made by either of them by looking after the home or caring for the family,*

[Court Note: The applicant acted as wife, homemaker and operated a small business on the side throughout the marriage; she also, in doing the foregoing and otherwise, supported the respondent in the furtherance of his career. The respondent pursued his profession and appears to have been the primary earner in the family. The respective past, present and future financial positions of each spouse have already been identified.]

- (g) *the effect on the earning capacity of each of the spouses of the marital responsibilities assumed by each during the period when they lived with one another and, in particular, the degree to which the future earning capacity of a spouse is impaired by reason of that spouse having relinquished or foregone the opportunity of remunerative activity in order to look after the home or care for the family,*

[Court Note: This is not an issue. The applicant managed to combine being a homemaker and operating her business. The respondent, aided by the applicant whenever possible, succeeded for a long time in the profession from which he has latterly departed with a pension.]

- (h) *any income or benefits to which either of the spouses is entitled by or under statute,*

[Court Note: No such income/benefits have been identified.]

- (i) *the conduct of each of the spouses, if that conduct is such that in the opinion of the court it would in all the circumstances of the case be unjust to disregard it,*

[Court Note: In placing himself in a situation in which multiple interim barring orders had to be obtained in respect of the respondent, and a related undertaking procured of him by the court, the respondent has behaved

towards the applicant in what, to put matters mildly, is so discreditable a manner as to bring himself within the “*obvious and gross*” conduct contemplated by Lord Denning in *Wachtel*. However, much though it seems merited, funds are so tight between the parties at this time that the court sees no way in which it could engage in a *Wachtel-style* reduction without occasioning hardship to the respondent, and therefore has not done so.]

(j) *the accommodation needs of either of the spouses,*

[Court Note: Regrettably, each spouse will ultimately need, following on the court’s judgment, to source alternative, likely rented, accommodation. However, by virtue of the manner in which the court is ordering matters, both spouses will be in a position where they will separately have the income to do so. To the extent that there are any net proceeds of sale from the sale of the Address A and Address F properties (to be effected as part of the settlement agreements), and the allocation of same is better done at a future time when the amount of any such proceeds is known.]

(k) *the value to each of the spouses of any benefit (for example, a benefit under a pension scheme) which by reason of the decree of divorce concerned, that spouse will forfeit the opportunity or possibility of acquiring,*

[Court Note: The value of the nominal pension pool that has yielded the pension that the respondent enjoys has been weighed by the court against the value of the Address B property (which pension is, mathematically it must be, worth a fraction of the nominal value that would yield as generous an annual lifetime pension as that enjoyed by the respondent). Otherwise, the applicant makes no claim on the respondent’s pension – a generous stance as she could stake a 50% claim on same – which will, as a result, be left to the respondent as his income. So the ‘trade off’ is that the respondent gets to keep his pension to and for himself, and the applicant gets to keep the Address B property which will function as her income and, when she retires, her pension. The respondent has agreed that in the event of his pre-deceasing the applicant, she will receive the survivor’s pension; the court does not understand him to have withdrawn this consent, though in making proper provision it considers it appropriate in all the circumstances presenting – including the fact that historically the applicant as homemaker and more generally acted to further the respondent’s career – to provide that the applicant should get the survivor’s pension in the event that the respondent pre-deceases her. In passing, the court notes that the Address B property has been in the applicant’s family for several generations and came to her by inheritance. The court recalls in this regard the observation of Denham C.J. in *Y.G. v. N.G.* [2011] 3 I.R. 717, at p. 732, that “*Assets which are inherited will not be treated as assets obtained by both parties in a marriage. The distinction in the event of separation or divorce will all depend on the circumstances*”. This observation buttresses the court in its sense that the

'trade off' described above is the best and fairest way of proceeding in all the circumstances presenting.]

- (l) *the rights of any person other than the spouses but including a person to whom either spouse is remarried.*

[Court Note: No other such rights have been raised as an issue.]

- (3) *In deciding whether to make an order under a provision referred to in subsection (1) and in determining the provisions of such an order, the court shall have regard to the terms of any separation agreement which has been entered into by the spouses and is still in force.*

[Court Note: There is no such agreement.]

- (4) *Without prejudice to the generality of subsection (1), in deciding whether to make an order referred to in that subsection in favour of a dependent member of the family concerned and in determining the provisions of such an order, the court shall, in particular, have regard to the following matters:*

- (a) *the financial needs of the member,*
- (b) *the income, earning capacity (if any), property and other financial resources of the member,*
- (c) *any physical or mental disability of the member,*
- (d) *any income or benefits to which the member is entitled by or under statute,*
- (e) *the manner in which the member was being and in which the spouses concerned anticipated that the member would be educated or trained,*
- (f) *the matters specified in paragraphs (a), (b) and (c) of subsection (2) and in subsection (3),*
- (g) *the accommodation needs of the member. (5) The court shall not make an order under a provision referred to in subsection (1) unless it would be in the interests of justice to do so."*

[Court Note: There are no dependents.]

- (5) The court shall not make an order under a provision referred to in subsection (1) unless it would be in the interests of justice to do so.

[Court Note: The court considers this necessary predicate to present.]

XI

Orders to be Made

66. The court identifies below the reliefs that are being sought and what it will order, in each case for all of the various reasons aforesaid:

67. (1) A decree of divorce pursuant to s.5(1) of the Family Law (Divorce) Act 1996.
68. Court Note: The court will grant this decree.
69. (2) An order for the immediate sale of the family home (the Address A property) pursuant to s.15(1)(a)(ii) of the Act of 1996 on the following terms, namely that after the deduction of the Creditor 2 mortgage and costs of sale that the net proceeds of sale would be held by the applicant's solicitors on the undertaking to discharge the sums agreed to be paid to Creditor 1 and Creditor 3 under the agreements with same.
70. Court Note: Section 15(1) of the Act of 1996 provides, *inter alia*, as follows:

"On granting a decree of divorce or at any time thereafter, the court, on application to it in that behalf by either of the spouses concerned or by a person on behalf of a dependent member of the family, may, during the lifetime of the other spouse or, as the case may be, the spouse concerned, make one or more of the following orders: (a) an order—... (ii) directing the sale of the family home subject to such conditions (if any) as the court considers proper and providing for the disposal of the proceeds of the sale between the spouses and any other person having an interest therein".

Consistent with the settlement arrangements reached with Creditor 1 and Creditor 3, which have a critical bearing on the future financial well-being of the parties, the court will make this order.

71. (3) An order that any remaining proceeds would be a matter for the court in its discretion to apply bearing in mind the applicant's liabilities and needs.
72. Court Note: The court will make this order but in determining how any, if any, such proceeds are to be applied, it will have regard to the then needs of both applicant and respondent.
73. (4) An order for the sale of properties at Address F pursuant to s.19 of the Act of 1996 which, after the discharge of the costs of sale, would be distributed as the court sees fit bearing in mind that if the Address A property does not reach its expected sale price and there is a shortfall that the applicant's solicitors are bound by undertaking to discharge any remaining part of the said debt first.

Court Note: Section 19 of the Act of 1996 provides as follows:

"(1) Where the court makes a secured periodical payments order, a lump sum order or a property adjustment order, thereupon, or at any time thereafter, it may make an order directing the sale of such property as may be specified in the order, being property in which, or in the proceeds of sale of which, either or both of the spouses concerned has or have a beneficial interest, either in possession or reversion.

- (2) *The jurisdiction conferred on the court by subsection (1) shall not be so exercised as to affect a right to occupy the family home of the spouse concerned that is enjoyed by virtue of an order under this Part.*
- (3)(a) *An order under subsection (1) may contain such consequential or supplementary provisions as the court considers appropriate.*
- (b) *Without prejudice to the generality of paragraph (a), an order under subsection (1) may contain—(i) a provision specifying the manner of sale and some or all of the conditions applying to the sale of the property to which the order relates, (ii) a provision requiring any such property to be offered for sale to a person, or a class of persons, specified in the order, (iii) a provision directing that the order, or a specified part of it, shall not take effect until the occurrence of a specified event or the expiration of a specified period, (iv) a provision requiring the making of a payment or payments (whether periodical payments or lump sum payments) to a specified person or persons out of the proceeds of the sale of the property to which the order relates, and (v) a provision specifying the manner in which the proceeds of the sale of the property concerned shall be disposed of between the following persons or such of them as the court considers appropriate, that is to say, the spouses concerned and any other person having an interest therein.*
- (4) *A provision in an order under subsection (1) providing for the making of periodical payments to one of the spouses concerned out of the proceeds of the sale of property shall, on the death or remarriage or registration in a civil partnership of that spouse, cease to have effect except as respects payments due on the date of the death or remarriage or civil partnership registration.*
- (5) *Where a spouse has a beneficial interest in any property, or in the proceeds of the sale of any property, and a person (not being the other spouse) also has a beneficial interest in that property or those proceeds, then, in considering whether to make an order under this section or section 14 or 15(1)(a) in relation to that property or those proceeds, the court shall give to that person an opportunity to make representations with respect to the making of the order and the contents thereof, and any representations made by such a person shall be deemed to be included among the matters to which the court is required to have regard under section 20 in any relevant proceedings under a provision referred to in that section after the making of those representations*
- (6) *This section shall not apply in relation to a family home in which, following the grant of a decree of divorce, either of the spouses concerned, having remarried, ordinarily resides with his or her spouse.”*

See the answer to relief (3). The court notes the undertaking and the solicitors must do as they are bound by such undertaking to do; they do not need to revert to the court for

further approval in this regard but have liberty to do so should any unanticipated issue present.

74. (5) Orders pursuant to s.14(5) of the Act of 1996 directing the relevant County Registrar to sign and execute all necessary documentation to complete and process the said sales of the Address A property and Address F property without further order.
75. Court Note: The court will make such orders. Its rationale for so doing is as follows. Section 14(5) of the Act of 1996 provides that:

"Where—(a) a person is directed by an order under this section to execute a deed or other instrument in relation to land, and (b) the person refuses or neglects to comply with the direction or, for any other reason, the court considers it necessary to do so, the court may order another person to execute the deed or instrument in the name of the first-mentioned person; and a deed or other instrument executed by a person in the name of another person pursuant to an order under this subsection shall be as valid as if it had been executed by that other person."

Here, the scenario that presents is the "or, for any other reason, the court considers it necessary to do so" scenario. The "other reason" that presents here is that the respondent has, with respect, been somewhat obdurate throughout the currency of his separation. The best financial interests of the applicant and the respondent rest in the first instance on the making of certain property sales pursuant to the remarkable compromise arrangements that the applicant has latterly managed to agree with the creditors of herself and the respondent. The respondent's actions and attitude to date suggest that he may not be cooperative in ensuring that those sales and related steps progress as swiftly and smoothly as possible, even though it is in his own best interests that they do. Consequently, the court will accede to making the requested orders. In passing, the court notes that separately it will also order that the applicant's solicitors have sole carriage of all property sales arising and will dispense with the need for consents.

76. (6) A declaratory order pursuant to s.15(1)(b) of the Act of 1996 and s.36 of the Family Law Act 1995, that the applicant is the sole legal and beneficial owner of the property and premises at Address B.
77. Court Note: Section 15(1) of the Act of 1996 provides, *inter alia*, as follows:

"On granting a decree of divorce or at any time thereafter, the court, on application to it in that behalf by either of the spouses concerned or by a person on behalf of a dependent member of the family, may, during the lifetime of the other spouse or, as the case may be, the spouse concerned, make one or more of the following orders: ... (b) an order under section 36 of the Act of 1995".

Mindful of:

- (i) the fact that the court does not accept the respondent's (unconvincing) claim that the applicant's business is and/or has been operated as joint business between the parties (in truth, the respondent did nothing beyond the occasional assistance that one would expect any husband to provide to any wife in the conduct of a business; they were in no sense running her business together);
- (ii) the fact that the Address B property has been in the applicant's family for several generations and came to her by inheritance (the court recalling in this regard the observation of Denham C.J. in *Y.G. v. N.G.* [2011] 3 I.R. 717, at p. 732, concerning inherited property, that "*Assets which are inherited will not be treated as assets obtained by both parties in a marriage. The distinction in the event of separation or divorce will all depend on the circumstances*"); and
- (iii) the 'trade off' being made between, on the one hand, the respondent's pension and, on the other hand, the applicant having the Address B income as her income and future pension,

the court will make this declaratory order.

78. (7) *An order pursuant to s.15(1)(a)(i) of the Act of 1996 granting the applicant the sole right to reside in the Address A property pending the sale of the Address A property to the respondent's exclusion.*

79. Court Note: Section 15(1) of the Act of 1996 provides, *inter alia*, as follows:

"(1) *On granting a decree of divorce or at any time thereafter, the court, on application to it in that behalf by either of the spouses concerned or by a person on behalf of a dependent member of the family, may, during the lifetime of the other spouse or, as the case may be, the spouse concerned, make one or more of the following orders: (a) an order— (i) providing for the conferral on one spouse either for life or for such other period (whether definite or contingent) as the court may specify of the right to occupy the family home to the exclusion of the other spouse*".

Factors of relevance to the making of the above-mentioned order in the context of the within proceedings are that (i) the applicant has obtained interim barring orders against, and a related undertaking to the court from, the respondent, (ii) the respondent is a man of volatile temper (to the point that he has been found guilty of an offence arising from volatile behaviour at another premises), (iii) the applicant is fearful of the respondent, and he has made her life difficult during the time that the two have been residing in the partitioned family home. Having regard to those factors, the court will make the order sought. However, and not without some hesitation on the part of the court, in order that, in the immediate to short-term, the respondent does not end up homeless, the court will allow the respondent a further 8 weeks at Address A in order that he can obtain alternative accommodation for himself. At the end of that 8-week period the respondent must leave Address A. The court is mindful in this regard that the house has now been partitioned and that an adult child is living with the applicant, giving her a double level of

protection from the respondent. The court is mindful too that the respondent has latterly been somewhat difficult at Address A and will grant liberty to the applicant to apply for a curtailment of the 8-week timeframe if the respondent continues with his difficult behaviour. The court expressly notes and orders that during the 8-week period, the applicant shall have permission to enter the respondent's section of the partitioned house, unhindered, so as to access any electricity/heating switch which is contained in that part of the house but which affect the electricity/heating in what at this time is the applicant's part of the house. Once the respondent has quit Address A upon or before the expiry of the 8-week period, the applicant shall be free to move and reside in any part of Address A.

80. *(8) Orders pursuant to s.17(2) of the Act of 1996 granting the applicant pension adjustment orders entitling her to the entire (100%) of the spousal (widow's portion) death-in-retirement benefits in the respondent's pension in the event of him pre-deceasing her together with an order pursuant to s.17(26) of the Act of 1996 preventing a variation of this order.*

Court Note: Section 17(2) of the Act of 1996 provides as follows:

"Subject to the provisions of this section, where a decree of divorce ('the decree') has been granted, the court, if it so thinks fit, may, in relation to retirement benefit under a scheme of which one of the spouses concerned is a member, on application to it in that behalf at the time of the making of the order for the decree or at any time thereafter during the lifetime of the member spouse by either of the spouses or by a person on behalf of a dependent member of the family, make an order providing for the payment, in accordance with the provisions of this section, to either of the following, as the court may determine, that is to say—(a) the other spouse and, in the case of the death of that spouse, his or her personal representative, and (b) such person as may be specified in the order for the benefit of a person who is, and for so long only as he or she remains, a dependent member of the family, of a benefit consisting, either, as the court may determine, of the whole, or such part as the court considers appropriate, of that part of the retirement benefit that is payable (or which, but for the making of the order for the decree, would have been payable) under the scheme and has accrued at the time of the making of the order for the decree and, for the purpose of determining the benefit, the order shall specify—(i) the period of reckonable service of the member spouse prior to the granting of the decree to be taken into account, and (ii) the percentage of the retirement benefit accrued during that period to be paid to the person referred to in paragraph (a) or (b), as the case may be."

Section 17(26) provides that *"An order under this section [17] may restrict to a specified extent or exclude the application of section 22 in relation to the order."*

The respondent has not objected to the making of the order under s.17(2), albeit that in his post-hearing written submissions he has for the first time voiced a degree of complaint (but not withdrawn his consent) in this regard. For the reasons stated

previously above, having regard in particular to the applicant's having acted as homemaker and otherwise in furtherance of the respondent's career, the court in any event considers that the order sought under s.17(2) is fair and just. No objection was taken to the making of the order under s.17(26) which likewise seems in any event to be entirely fair and just in all the circumstances presenting. The court will therefore make these orders.

81. *(9) Orders pursuant to s.15(1)(b) of the Act of 1996 and s.36 of the Act of 1995 granting such declaratory orders as may appear appropriate and in particular in relation to the monies previously frozen by the court in the amount of [Stated Sum].*
82. Court Note: The court will leave these funds frozen pending the sale of the properties so that they are available to meet any unanticipated shortfall/s in funds. If no such shortfalls present it will at that time hear argument as to what it should do; it would welcome argument on why some or all of these funds should not be applied to discharge legal and professional fees presenting, not least as these proceedings have been made more complex by the respondent, in particular by his failure to make full financial disclosure. The court also proposes to make declaratory orders that the applicant is the 50% owner of the interest in the Address E property (which appears from all the evidence before the court to be marital property) and, for what it is worth, that the applicant is also the 50% owner of the couple's boat (which likewise appears from the evidence before the court to be marital property, albeit that the respondent claims, though without any independent evidence to support this, that it has been destroyed).
83. *(10) Orders pursuant to ss.13 and 19 of the Act of 1996 granting the applicant such lump sums as may appear appropriate from the net proceeds of sale of Address F.*
84. Court Note: The text of s.19 has already been quoted above. Section 13 provides as follows:
 - "(1) On granting a decree of divorce or at any time thereafter, the court, on application to it in that behalf by either of the spouses concerned or by a person on behalf of a dependent member of the family, may, during the lifetime of the other spouse, or, as the case may be, the spouse concerned, make one or more of the following orders, that is to say—
 - (a) *a periodical payments order, that is to say— (i) an order that either of the spouses shall make to the other spouse such periodical payments of such amount, during such period and at such times as may be specified in the order, or (ii) an order that either of the spouses shall make to such person as may be so specified for the benefit of such (if any) dependent member of the family such periodical payments of such amount, during such period and at such times as may be so specified,*
 - (b) *a secured periodical payments order, that is to say— (i) an order that either of the spouses shall secure, to the satisfaction of the court, to the other spouse such periodical payments of such amounts, during such period and at*

such times as may be so specified, or (ii) an order that either of the spouses shall secure, to the satisfaction of the court, to such person as may be so specified for the benefit of such (if any) dependent member of the family such periodical payments of such amounts, during such period and at such times as may be so specified,

(c)(i) an order that either of the spouses shall make to the other spouse a lump sum payment or lump sum payments of such amount or amounts and at such time or times as may be so specified, or (ii) an order that either of the spouses shall make to such person as may be so specified for the benefit of such (if any) dependent member of the family a lump sum payment or lump sum payments of such amount or amounts and at such time or times as may be so specified.

(2) The court may— (a) order a spouse to pay a lump sum to the other spouse to meet any liabilities or expenses reasonably incurred by that other spouse before the making of an application by that other spouse for an order under subsection (1) in maintaining himself or herself or any dependent member of the family, or (b) order a spouse to pay a lump sum to such person as may be specified to meet any liabilities or expenses reasonably incurred by or for the benefit of a dependent member of the family before the making of an application on behalf of the member for an order under subsection (1).

(3) An order under this section for the payment of a lump sum may provide for the payment of the lump sum by instalments of such amounts as may be specified in the order and may require the payment of the instalments to be secured to the satisfaction of the court.

(4) The period specified in an order under paragraph (a) or (b) of subsection (1) shall begin not earlier than the date of the application for the order and shall end not later than the death of the spouse, or any dependent member of the family, in whose favour the order is made or the other spouse concerned.

(5)(a) Upon the remarriage or registration in a civil partnership of the spouse in whose favour an order is made under paragraph (a) or (b) of subsection (1), the order shall, to the extent that it applies to that spouse, cease to have effect, except as respects payments due under it on the date of the remarriage or civil partnership registration.

(b) If, after the grant of a decree of divorce, either of the spouses concerned remarries or registers in a civil partnership, the court shall not, by reference to that decree, make an order under subsection (1) in favour of that spouse.

(6)(a) Where a court makes an order under subsection (1) (a), it shall in the same proceedings, subject to paragraph (b), make an attachment of earnings order (within the meaning of the Act of 1976) to secure payments under the first

mentioned order if it is satisfied that the person against whom the order is made is a person to whom earnings (within the meaning aforesaid) fall to be paid.

- (b) Before deciding whether to make or refuse to make an attachment of earnings order by virtue of paragraph (a), the court shall give the spouse concerned an opportunity to make the representations specified in paragraph (c) in relation to the matter and shall have regard to any such representations made by that spouse.*
- (c) The representations referred to in paragraph (b) are representations relating to the questions— (i) whether the spouse concerned is a person to whom such earnings as aforesaid fall to be paid, and (ii) whether he or she would make the payments to which the relevant order under subsection (1) (a) relates.*
- (d) References in this subsection to an order under subsection (1) (a) include references to such an order as varied or affirmed on appeal from the court concerned or varied under section 22.”*

To the extent that there are any net proceeds remaining this is a matter that ought properly to be addressed at a future time by reference to the respective needs of the parties at that time.

85. *(11) Orders and cross orders pursuant to s.18(10) of the Act of 1996 blocking either party from applying to the estate of the other for financial relief pursuant to s.18(1) of that Act.*

Court Note: Section 18 of the Act of 1996 provides as follows:

- “(1) Subject to the provisions of this section, where one of the spouses in respect of whom a decree of divorce has been granted dies, the court, on application to it in that behalf by the other spouse ('the applicant') not more than 6 months after representation is first granted under the Act of 1965 in respect of the estate of the deceased spouse, may by order make such provision for the applicant out of the estate of the deceased spouse as it considers appropriate having regard to the rights of any other person having an interest in the matter and specifies in the order if it is satisfied that proper provision in the circumstances was not made for the applicant during the lifetime of the deceased spouse under section 13, 14, 15, 16 or 17 for any reason (other than conduct referred to in subsection (2) (i) of section 20 of the applicant).*
- (2) The court shall not make an order under this section in favour of a spouse who has remarried or registered in a civil partnership since the granting of the decree of divorce concerned.*
- (3) In considering whether to make an order under this section the court shall have regard to all the circumstances of the case including—*

- (a) any order under paragraph (c) of section 13 (1) or a property adjustment order in favour of the applicant, and (b) any devise or bequest made by the deceased spouse to the applicant.
- (4) *The provision made for the applicant concerned by an order under this section together with any provision made for the applicant by an order referred to in subsection (3) (a) (the value of which for the purposes of this subsection shall be its value on the date of the order) shall not exceed in total the share (if any) of the applicant in the estate of the deceased spouse to which the applicant was entitled or (if the deceased spouse died intestate as to the whole or part of his or her estate) would have been entitled under the Act of 1965 if the marriage had not been dissolved.*
- (5) *Notice of an application under this section shall be given by the applicant to the spouse, civil partner or former civil partner (if any) of the deceased spouse, civil partner or former civil partner concerned and to such (if any) other persons as the court may direct and, in deciding whether to make the order concerned and in determining the provisions of the order, the court shall have regard to any representations made by the spouse, civil partner or former civil partner of the deceased spouse, civil partner or former civil partner and any other such persons as aforesaid.*
- (6) *The personal representative of a deceased spouse in respect of whom a decree of divorce has been granted shall make a reasonable attempt to ensure that notice of his or her death is brought to the attention of the other spouse concerned and, where an application is made under this section, the personal representative of the deceased spouse shall not, without the leave of the court, distribute any of the estate of that spouse until the court makes or refuses to make an order under this section.*
- (7) *Where the personal representative of a deceased spouse in respect of whom a decree of divorce has been granted gives notice of his or her death to the other spouse concerned ('the spouse') and— (a) the spouse intends to apply to the court for an order under this section, (b) the spouse has applied for such an order and the application is pending, or (c) an order has been made under this section in favour of the spouse, the spouse shall, not later than one month after the receipt of the notice, notify the personal representative of such intention, application or order, as the case may be, and, if he or she does not do so, the personal representative shall be at liberty to distribute the assets of the deceased spouse, or any part thereof, amongst the parties entitled thereto.*
- (8) *The personal representative shall not be liable to the spouse for the assets or any part thereof so distributed unless, at the time of such distribution, he or she had notice of the intention, application or order aforesaid.*

- (9) *Nothing in subsection (7) or (8) shall prejudice the right of the spouse to follow any such assets into the hands of any person who may have received them.*
- (10) *On granting a decree of divorce or at any time thereafter, the court, on application to it in that behalf by either of the spouses concerned, may, during the lifetime of the other spouse or, as the case may be, the spouse concerned, if it considers it just to do so, make an order that either or both spouses shall not, on the death of either of them, be entitled to apply for an order under this section”.*

The making of these orders was not the subject of especial focus at the hearing of the proceedings. Nonetheless, when it comes to making proper provision they seem entirely appropriate, fair and just, and the court will therefore make the orders/cross-orders sought.

86. (12) *An order for some partial costs relating to the proceedings if the court in its discretion considers it appropriate so to do.*
87. Court Note: Given that these proceedings have, regrettably been made more complex as a result of the respondent’s actions, notably the failure to make adequate financial disclosures (greatly hindering the applicant, her advisors and the court as regards bringing these proceedings to a fair and timely conclusion, and thereby engendering, *inter alia*, a rise in the applicant’s legal costs) the court will order that the respondent pay 50% of the applicant’s costs of these proceedings. No order for costs is being made against the applicant.
88. The court is mindful that for the creditor settlement arrangements to work it is necessary that the intended realty sales should proceed seamlessly. The court has also sought in the above-proposed orders to ensure that it does not ‘cut across’ the sales process or the settlement arrangements. If, inadvertently, the court has done so, the parties are at liberty to seek a suitable variation of the court’s orders at any time.
89. The form of the final orders to be made cannot easily be done by email and the court therefore proposes to schedule a further one-hour physical hearing of this matter within ten working days of the within judgment issuing so as to enable the form of the final orders to be agreed and to resolve the Address F Clarification Point. Given that the respondent is a lay-litigant, the court respectfully requests that within five working-days of this judgment, counsel for the applicant circulate to the respondent and the court a draft order reflecting the orders that the court has indicated that it will make. That will give the parties and the court a document to focus on at the further one-hour hearing.

**TO THE APPLICANT/RESPONDENT:
WHAT DOES THIS JUDGMENT MEAN FOR YOU?**

Dear Applicant/Respondent,

*I have dealt in the preceding pages with various issues presenting in this application. Much of what I have written might seem like jargon. In this section, I identify briefly to each of you some key elements of my judgment, in particular the orders that I intend to make. **This summary is not a substitute for what is stated in the preceding pages. It is meant***

merely to help you understand some key elements of what I have stated. To protect your privacy, I have referred to some properties/persons as, for example, 'Address A', 'Creditor 1'. The meaning of these terms is set out on the last page of this judgment and is being made available only to you.

I identify in Bold, capitalised text below what orders have been sought by the applicant and, in plain text, what orders I intend to make.

The applicant has come to court seeking the following orders:

(1) A DECREE OF DIVORCE. I will grant this decree.

(2) AN ORDER FOR THE IMMEDIATE SALE OF THE FAMILY HOME (THE ADDRESS A PROPERTY) ON THE FOLLOWING TERMS, NAMELY THAT AFTER THE DEDUCTION OF THE CREDITOR 2 MORTGAGE AND COSTS OF SALE THAT THE NET PROCEEDS OF SALE WOULD BE HELD BY THE APPLICANT'S SOLICITORS ON THE UNDERTAKING TO DISCHARGE THE SUMS AGREED TO BE PAID TO CREDITOR 1 AND CREDITOR 3 UNDER THE AGREEMENTS WITH SAME. I will make this order.

(3) AN ORDER THAT ANY REMAINING PROCEEDS WOULD BE A MATTER FOR THE COURT IN ITS DISCRETION TO APPLY BEARING IN MIND THE APPLICANT'S LIABILITIES AND NEEDS. I will make this order but in determining how any, if any, such proceeds are to be applied, I will have regard to the then needs of both applicant and respondent.

(4) AN ORDER FOR THE SALE OF PROPERTIES AT ADDRESS F THE PROCEEDS OF WHICH, AFTER THE DISCHARGE OF THE COSTS OF SALE, WOULD BE DISTRIBUTED AS THE COURT SEES FIT BEARING IN MIND THAT IF THE ADDRESS A PROPERTY DOES NOT REACH ITS EXPECTED SALE PRICE AND THERE IS A SHORTFALL THAT THE APPLICANT'S SOLICITORS ARE BOUND BY UNDERTAKING TO DISCHARGE ANY REMAINING PART OF THE DEBT FIRST. I will make this order but in determining how any, if any, such proceeds are to be applied, I will have regard to the then needs of each of you. I note the undertaking and the solicitors must do as they are bound by such undertaking to do. There is one point that will require qualification before the orders issue, viz. whether the settlement arrangements contemplate the sale of all of the Address F property or but two folios comprised within that property.

(5) ORDERS DIRECTING THE RELEVANT COUNTY REGISTRAR TO SIGN AND EXECUTE ALL NECESSARY DOCUMENTATION TO COMPLETE AND PROCESS THE SAID SALES OF THE ADDRESS A PROPERTY AND ADDRESS F PROPERTY WITHOUT FURTHER ORDER. I have regretfully concluded that the respondent's behaviour hitherto has, with respect, been such that he cannot be trusted not to act in such a manner as would frustrate the realty sales which are so critical an element of the agreements that have at last been reached with the creditors. I will therefore make this order which essentially means that a court official will be authorised to sign the documents necessary to complete the sales. Separately, and for like reason, I will also order that the applicant's solicitors have sole carriage of any property sales and that any need for consents be dispensed with.

(6) A DECLARATORY ORDER THAT THE APPLICANT IS THE SOLE LEGAL AND BENEFICIAL OWNER OF THE PROPERTY AND PREMISES AT ADDRESS B. I will make this declaratory order. I am heedful in this regard that the applicant's business is and always has been her business. I do not accept the claim that the business is or was operated as a joint business. The respondent provided nothing beyond the occasional assistance that one would expect any husband to provide to any wife in the conduct of a business. The two of you never ran the business together. I am mindful too that the property and premises at Address B were inherited by the applicant and have been in her family for several generations.

(7) AN ORDER GRANTING THE APPLICANT THE SOLE RIGHT TO RESIDE IN THE ADDRESS A PROPERTY PENDING THE SALE OF THE ADDRESS A PROPERTY TO THE RESPONDENT'S EXCLUSION. I will make this order. However, in order that, in the immediate to short-term, the respondent does not end up without accommodation, I will, not without hesitation, allow the respondent 8 more weeks at Address A, that time to be used to obtain alternative accommodation. At the end of that 8-week period the respondent must leave the Address A property. Given the respondent's recent behaviour at the Address A property, the applicant has permission to apply to me to curtail that 8-week timeframe, should that prove necessary. I will also order that during the 8-week period, the applicant have permission to enter the respondent's section of the partitioned house, unhindered, so as to access any electricity/heating switches which are contained in that part of the house but which affect the electricity/heating supply in what at this time is the applicant's part of the partitioned house. Once the respondent has quit Address A upon or before the expiry

of the 8-week period, the applicant is free to reside in all or any part of Address A pending the sale of the Address A property to the respondent's exclusion. I am mindful that the applicant has expressed fear of the respondent and previously obtained interim barring orders against (and a related undertaking from) him; however, as the property is partitioned and she has the company of an adult child living with her, I consider that this gives her double protection in this regard for the 8-week period (a period that I consider must be allowed the respondent to give him time to source alternative accommodation and not to be rendered temporarily homeless).

(8) ORDERS GRANTING THE APPLICANT PENSION ADJUSTMENT ORDERS ENTITLING HER TO THE ENTIRE (100%) OF THE SPOUSAL (WIDOW'S PORTION) DEATH-IN-RETIREMENT BENEFITS IN THE RESPONDENT'S PENSION IN THE EVENT OF HIM PRE-DECEASING HER TOGETHER WITH AN ORDER PREVENTING A VARIATION OF THIS ORDER. I will make these orders.

(9) ORDERS GRANTING SUCH DECLARATORY ORDERS AS MAY APPEAR APPROPRIATE AND IN PARTICULAR IN RELATION TO THE MONIES PREVIOUSLY FROZEN BY THE COURT. I propose to leave these funds frozen pending the sale of the properties so that they are available to meet any unanticipated shortfall/s in funds. If no such shortfalls present I will at that time hear argument as to what I should order in respect of these funds. I would welcome argument on why some or all of these funds should not be applied to discharge legal and professional fees presenting, not least as the protraction of these proceedings is attributable in no small part to the respondent. I also propose to make declaratory orders that the applicant is the 50% owner of the interest in the Address E property and, for what it is worth, that she is also the 50% owner of the couple's boat (which the respondent claims, though without any independent evidence to support this, has been destroyed).

(10) ORDERS GRANTING THE APPLICANT SUCH LUMP SUMS AS MAY APPEAR APPROPRIATE FROM THE NET PROCEEDS OF SALE OF ADDRESS F. Such orders are best made once it is known what sums are available. The court will hear argument and make such orders as seem to it appropriate once any such proceeds are in hand.

(11) ORDERS AND CROSS ORDERS PURSUANT TO S.18(10) OF THE ACT OF 1996 BLOCKING EITHER PARTY FROM APPLYING TO THE ESTATE OF THE OTHER FOR FINANCIAL RELIEF PURSUANT TO S.18(1) OF THAT ACT. I will make these orders/cross-orders.

(12) AN ORDER FOR SOME PARTIAL COSTS RELATING TO THE PROCEEDINGS IF THE COURT IN ITS DISCRETION CONSIDERS IT APPROPRIATE SO TO DO. Given that these proceedings have regrettably been made more complex as a result of the respondent's actions, notably the failure to make adequate financial disclosures (greatly hindering the applicant, her advisors and the court as regards bringing these proceedings to a more timely conclusion and engendering a related rise in professional fees) the court will order that the respondent pay 50% of the applicant's costs in these proceedings. No order for costs is being made against the applicant.

PLEASE NOTE that for the creditor settlement arrangements to work it is necessary that the realty sales mentioned above should proceed seamlessly. I have sought to ensure in the above-proposed orders that I do not 'cut across' that sales process or the settlement arrangements. If, inadvertently, I have done so the parties are free to approach me at any time to seek a suitable variation of my proposed/actual orders so that the said sales process and settlement arrangements can proceed as seamlessly as possible.

I will schedule a further **one-hour** hearing within ten working days of delivering this judgment. That hearing will serve two related purposes. First, it will enable the finalisation of the orders to be made following on my judgment. Second, it will provide a forum at which it can be clarified whether the settlement arrangements contemplate the sale of only two folios of the Address F property and, if so, what is to happen to the other two folios. **Please note that this further hearing is not an opportunity for you to appeal my judgment.** Because the respondent is a 'lay litigant', I have asked counsel for the applicant to circulate, within five working days after this judgment, a draft order reflecting what I have decided in this judgment. That will mean that there is a draft order to focus on at the one-hour hearing.

Yours faithfully,

Max Barrett (Judge)