Neutral Citation Number: [2018] EWFC 77

Case No: ZC16D00198

IN THE FAMILY COURT
SITTING AT THE ROYAL COURTS OF JUSTICE

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 04/12/2018

Before:

THE HONOURABLE MR JUSTICE MACDONALD

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Between:

Her Royal Highness Tessy Princess of Luxembourg, Princess of Nassau and Princess of Bourbon-Parma	**Applicant**
- and –	
His Royal Highness Louis Xavier Marie Guillaume Prince of Luxembourg, Prince of Nassau and Prince of Bourbon-Parma	**First Respondent**
-and-	
L'Administration Des Biens De S.A.R. Le Grand Duc De Luxembourg	**Second Respondent**

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The Applicant appeared In Person with the assistance of a McKenzie Friend
Mr James Ewins QC (instructed on a Direct Access basis) for the **First Respondent**
Mr Stewart Leech QC (instructed by **Withers LLP**) for the **Second Respondent**

Hearing dates: 16, 17 and 18 October 2018

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Judgment Approved

This judgment was delivered in private. The Judge has given permission for this version of the judgment (and any of the facts and matters contained in it) to be published on condition always that the addresses of the parties, the names of the children and the name and address of the children's school must not be published. For the avoidance of doubt, the strict prohibition on publishing the addresses of the parties, the names of the children and the name and address of the children's school will continue to apply where that information has been obtained by using the contents of this judgment to discover information already in the public domain. All persons, including representatives of the media, must ensure that these conditions are strictly complied with. Failure to do so will be a contempt of court.

Mr Justice MacDonald:

INTRODUCTION

1. In this matter I am concerned with the final hearing of an application by Her Royal Highness Tessy Princess of Luxembourg, Princess of Nassau and Princess of Bourbon-Parma (whom I shall hereafter refer to as 'the wife') for financial remedy orders against His Royal Highness Louis Xavier Marie Guillaume, Prince of Luxembourg, Prince of Nassau and Prince of Bourbon-Parma (whom I shall hereafter refer to as 'the husband'). The L'Administration Des Biens De S.A.R. Le Grand Duc De Luxembourg (hereafter the "ADB"), whose role in these proceedings I shall explain in more detail below, is the Second Respondent.

2. The wife represents herself at this final hearing, with the assistance of a McKenzie Friend, Mr Holden. She has done so with dignity and with very considerable skill. The husband is represented by Mr James Ewins, Queen's Counsel instructed on a Direct Access basis. The ADB is represented by Mr Stewart Leech, Queen's Counsel. I have already delivered one judgment in this matter, published as *HRH Louis Prince of Luxembourg v HRH Tessy Princess of Luxembourg (Publication of Offer)* [2017] EWHC 3095 (Fam), concerning the reporting restriction order that remained in place for the final hearing but which will stand discharged upon the handing down of this judgment, subject to the rubric at the head of this judgment.

3. At the outset of the hearing I dealt with a number of preliminary issues by way of a series of short *ex tempore* judgments. In particular:

    i) I determined that it was appropriate for the wife to be assisted by a McKenzie Friend, but declined her application to accord Mr Holden rights of audience for the purpose of conducting cross-examination on her behalf having regard to the guidance set out in *Practice Guidance: McKenzie Friends (Civil and Family Courts)* [2010] 2 FLR 962. As I have noted, the wife acquitted herself admirably in the conduct of her own case before this court with the assistance of Mr Holden.

    ii) I determined that the attendance note of a meeting that took place on 16 January 2017, between the then solicitors for the wife and a representative of the organisation that was to become the Second Respondent, the ADB, for the purpose of exploring options for settlement was privileged and should not be admitted into evidence.

    iii) I determined that this court did not have jurisdiction to decide issues concerning the fate of the wife's Royal titles following the granting of decree absolute, the arrangements for communication between the wife and the Royal Family of Luxembourg following the conclusion of these proceedings or the compilation of a joint Press Release from the wife and the husband concerning these proceedings. In addition, I made clear that any issues with respect to the arrangements for the children to spend time with their parents fell to be considered in separate proceedings, if necessary. At present, there is no dispute on that issue.

    iv) I determined that what the wife framed as a claim for "loss of reputation", centring on certain alleged conduct by a number of individuals and organisations, and dealt with substantively in the wife's written evidence, was not a claim that this court could deal with in the context of financial remedy proceedings. For the avoidance of doubt, I was further satisfied that the

matters set out in the wife's statement did not meet the threshold provided by s 25(2)(g) of the Matrimonial Causes Act 1973 in that the alleged conduct was not of such gravity that it would be inequitable to disregard it in determining the wife's application.

v) Finally, I determined, during the course of the final hearing, that it was not necessary for the court to order the disclosure of the husband's credit card statements in circumstances where his bank statements indicated the total sums required to settle his credit card liabilities.

4. In deciding this matter, the court has had the benefit of the documentary evidence contained in the court bundle prepared by the Second Respondent, together with a separate bundle of documents prepared by the wife, many of which documents duplicated those contained in the court bundle. The court heard oral evidence from the wife, from the husband and from Mr Albert Wildgen, the current President of the Second Respondent ADB. The court also read the respective Skeleton Arguments of the parties and heard comprehensive and eloquent closing submissions from Mr Leech, Mr Ewins and the wife, for which written and oral submissions the court is grateful.

BACKGROUND AND EVIDENCE

5. The husband is the third son of HRH the Grand Duke of Luxembourg (hereafter the Grand Duke) and HRH the Grand Duchess of Luxembourg (hereafter the Grand Duchess). The wife is also Luxembourgish. She is not of Royal descent.

6. Given the particular issues that arise for determination in this case, and for reasons that will become apparent, before considering the background to, and the course of the marriage in so far as is relevant to the financial issues that this court must determine, it is necessary to set out certain matters concerning the regulation of the wealth of the Luxembourg Royal Family. On this issue the court has had the benefit of a jointly instructed expert report prepared by Professor Kinch dated 10 November 2017 and setting out and explaining the relevant legal provisions. Professor Kinsch is a partner in the firm of Wurth Kinch Olinger in Luxembourg and a 'Professeur Honoraire' at the University of Luxembourg specialising in constitutional and private international law. The evidence of Professor Kinch was not the subject of challenge by way of cross-examination. All of the matters set out in the following paragraphs are matters that are in the public domain.

7. The fortune of the Grand Duke is defined in the Family Pact of 1783, as restated by the Grand Ducal Decree of 11 June 2012. The constitutional basis of the Restated Family Pact is set out in Art 3 of the Luxembourg Constitution of 17 October 1868, as construed in the Declaration of the Luxembourgish Prime Minister dated 25 July 2011. Professor Kinsch makes clear that pursuant to the aforesaid legal provisions, the Restated Family Pact distinguishes between different elements of a reigning Grand Duke's fortune. First, those elements comprised of the GroBherzogliches Fideicommisss (in German) or the fidéicommis grand-ducal (in French), which elements of the fortune are intended to be passed on to future Grand Dukes (what Mr Wildgen referred to in his oral evidence as the "old family money"). These elements are, broadly, analogous to the Crown Estate in the United Kingdom. Second, those elements of the fortune comprised of monies received by the Grand Duke from the

State of Luxembourg. These elements are, broadly, analogous to the Civil List in the United Kingdom.

8. The Family Pact of 1783 also created the ADB. As noted above, the Family Pact has been modified during the ensuing 235 years, but it remains the case that under the Restated Family Pact the ADB is a structure that holds and manages, on behalf of a reigning Grand Duke, both the GroBherzogliches Fideicommiss / fidéicommis grand-ducal and the assets comprising those monies received by the reigning Grand Duke from the State of Luxembourg in accordance with the provisions I have outlined above. During the course of his oral evidence, Mr Wildgen, the current President of the ADB, confirmed that he also manages what he termed the 'personal' or 'private' monies of the Grand Duke. The function of the ADB is further described in the law of 16 May 1891 entitled *Loi concernant la fortune de la Maison Grande-Ducale de Luxembourg* (which translates as "law concerning the private fortune of the Grand-Ducal House of Luxembourg"). Art 1 refers to the Family Pact of 1783 and Art 2 refers to the role of the ADB as follows:

> "Le Souverain est représenté judiciarement et extrajudiciarement, pour sa fortune privée, par le préposé à l'administration de ses biens, qui élira à ces fins domicile dans la Ville de Luxembourg".

which translates as:

> "The Sovereign is represented, judicially and extrajudicially, for his private fortune, by the administration of his possessions, who shall elect domicile for these purposes in the City of Luxembourg".

9. The jointly instructed report of Professor Kinch further makes clear that, by the terms of the Restated Family Pact and the law of 1891, the competence of the ADB, acting in the performance of its legal duties, is restricted to managing the fortune of the Grand Duke, rather than the affairs of the members of his family more widely.

10. Within the foregoing statutory and constitutional context governing the wealth of the Grand Duke and having regard to the case advanced by the wife, a key issue in this case is the identity of the person or legal entity who provided the money for the various property transactions that it has been necessary for the court to examine in this case.

11. In his statement to this court, Mr Wildgen informed the court that, given the potential for doubt over its precise legal standing in foreign jurisdictions, it was and is considered inadvisable for the ADB to enter into contracts with respect to assets abroad, or to hold assets in its own name abroad. Accordingly, Mr Wildgen explained, where it is necessary to purchase real property outside Luxembourg such property is purchased in the name of one or more members of the Royal Family on the clear understanding they hold the property in question as nominees of the ADB. Within this context, Mr Wildgen stated as follows as to the manner in which the purchase of such foreign assets was funded:

> "In such cases the funds for the purchase (and all costs of purchase) are typically provided by the ADB (from assets belonging to the [GroBherzogliches Fideicommiss / fidéicommis grand-ducal]) or from the

> private funds of HRH the Grand Duke. They are transferred directly to the vendor, and the property is then acquired in the name of the member(s) of the Royal Family. The property might be used by any member of the family. The individuals hold the legal title as nominees and enter into a declaration which generally takes the form of a document known as a 'compromis de vente' (i.e. sales contract) with the ADB, or unilateral declaration signed by the nominees, in which they confirm that they hold the asset on behalf of the ADB and/or that, on request, they will surrender the asset to the ADB."

12. As I have noted, the Restated Family Pact of 1783 distinguishes between the elements of the Grand Duke's fortune that comprise assets intended by law to be passed on to future Grand Dukes and therefore the subject of special restrictions, namely the GroBherzogliches Fideicommiss / fidéicommis grand-ducal, and other assets in the Grand Duke's fortune, which he may transfer freely. Within the foregoing regime, Professor Kinch makes clear in his report that, with respect to the disposal of the assets comprising the GroBherzogliches Fideicommiss / fidéicommis grand-ducal, Art 13 of the Restated Family Pact provides that the mortgaging or pledging of assets that are included in the GroBherzogliches Fideicommiss / fidéicommis grand-ducal is prohibited without the express consent of the President of the ADB. In line with the evidence of Professor Kinch, Mr Wildgen confirmed during his oral evidence that the ultimate authority for such transactions involving the GroBherzogliches Fideicommiss / fidéicommis lie with HRH the Grand Duke of Luxembourg, but that the Grand Duke is subject to stringent regulations requiring him to ensure that the monies are used in the interest of the family. With respect to the elements of the reigning Grand Duke's fortune comprised of those monies received by the Grand Duke from the State of Luxembourg, Mr Wildgen concurred that somewhat lesser restrictions apply, the Grand Duke being free to transfer assets to third parties pursuant to Art 5 of the Restated Family Pact.

13. Further, in his report Professor Kinch opines that the GroBherzogliches Fideicommiss / fidéicommis grand ducal, has a separate legal personality, this being, in Professor Kinch's opinion, self-evident from the opinion of the Council of State (an advisory body to the Luxembourg government composed of eminent jurists) of 17 March 1891, which opinion is part of the legislative materials of 16 May 1891. Professor Kinch details that the Council of State opinion provides that there is a principle of "separate legal personality of [a sovereign's] private fortune, which allows it to be represented by an agent with the power to act in court." Professor Kinch concludes that, if that view is accepted, then the GroBherzogliches Fideicommiss / fidéicommis grand ducal must be considered analogous to a private foundation endowed with legal personality, with the ADB in charge of its management. This evidence of Professor Kinch was not challenged by the wife.

14. Within this context, during the initial stages of these proceedings, there was a dispute between the parties as to whether the ADB itself constituted a separate legal entity, as distinct from simply being part of the reigning Grand Duke's services. Specifically, the wife contended through her then solicitors that the ADB was not a separate legal entity capable of holding property. In his statement of evidence, Mr Wildgen concedes that, by reason of the manner of its creation, and the absence of the relevant developed legal concepts and entities at the time it was created in 1783, the ADB

cannot easily be categorised as a company, trust or foundation. However, Mr Wildgen contended that the Family Pact confers a separate legal identity on the ADB under Luxembourg law, which independent legal identity has been confirmed most recently by a declaration made by the Prime Minister of Luxembourg on 25 July 2011. Mr Wildgen's evidence in this regard is supported by the expert report prepared by Professor Kinch dated 10 November 2017 who, whilst acknowledging the point has never been tested in court, opines that in addition to the GroBherzogliches Fideicommiss / fidéicommis grand ducal having a separate legal personality, the ADB also has a separate legal identity for the reasons set out in the expert report.

15. I do not need to descend into the detail provided by Professor Kinch on this point as, following the receipt of his report, on 6 February 2018 the wife communicated her acceptance of the fact that the ADB does have a separate legal identity capable of holding an interest in property and the ADB was accordingly joined to these proceedings as Second Respondent. Whilst in her closing submissions, the wife appeared at points to return to her contention that the ADB did not have a separate legal personality capable of holding a beneficial interest in this jurisdiction, she did not formally resile from the position indicated by her on 6 February 2018, nor did she seek to challenge the evidence of the expert concerning the status of the ADB as a separate legal entity. Within this context, as will be seen below, the wife concentrated her submissions on seeking to persuade the court that the purchase monies used by the ADB to buy the former matrimonial home belonged not to the ADB but to the Grand Duke, the wife pointing out in particular that the statement of Mr Wildgen described the ADB as implementing the decisions taken by the Grand Duke and Mr Wildgen's oral evidence that it was the Grand Duke who decided which property in London would be purchased.

16. Returning to the wider relevant background and evidence in this matter, the parties commenced their relationship in 2004 whilst the husband was a student, and the wife was a non-commissioned officer in the Luxembourg Army. The wife contends that she was asked by the husband and the Grand Duke to give up her position in the army following the birth of the parties' second child in March 2006. During cross examination, the husband conceded that this was the case by reason, he contended, of the purported incompatibility of that role with the wife's status as a Princess of the Grand Duchy of Luxembourg. The husband stated that his family had, nonetheless, funded the wife's education thereafter to allow her to secure alternative employment.

17. The parties were married on 29 September 2006. The parties have two children, aged 11 and 12, the first born, as I have noted, in March 2006 and the second in September 2007. In 2009, the wife was formally recognised as a member of the Royal Family and granted her titles by Royal Decree. During the course of their marriage, the parties lived and studied in the United States between 2009 and 2011, before moving to live in London to further pursue their respective studies.

18. Having regard to the issues the court is required to determine in this matter, the court heard a good deal of evidence regarding the parties' property arrangements whilst living in the United States and, specifically, the circumstances by which their US property came to be bought and then sold. For her part, in her chronology dated 8 May 2017, the wife asserted that the US property was owned by the husband. In her 'Points of Defence' document, dated 4 June 2018, the wife likewise contends that the US property was "owned outright" by the husband. During cross examination, Mr

Ewins put to the wife that, as at June 2018, she was aware from the settlement statement relating to the US property, and contained in the wife's bundle, that this was not in fact the case. In response, the wife stated that she had meant to suggest in her documents that the US property was owned under the "same structure we had in London", this being a reference to the former matrimonial home to which I will come. Ultimately, she accepted that the documents showed that the legal title to the US property was held by the husband and the Grand Duke.

19. During the course of this exchange, the wife also suggested that some of the monies with which the property in Florida had been purchased had been offered to the husband by the Grand Duchess personally, following a conversation that took place between the parties and the Grand Duke and the Grand Duchess, the property then being purchased with money provided by both through, but not by, the ADB upon the instruction of the Grand Duke. The wife made no mention in her statement of a conversation leading to money being given personally by the Grand Duchess to the husband for the purposes of purchasing the US property and did not provide further details of that conversation in her oral evidence. When questioned by Mr Leech, the wife stated the Grand Duchess had said she would be happy to contribute personally to the purchase of the property. Within this context, I note that the statement of Mr Wildgen attests that the US Property was purchased with the private funds of the Grand Duke as opposed to funds from the GroBherzogliches Fideicommiss / fidéicommis grand ducal.

20. The wife also conceded to Mr Leech that the documentary evidence before the court showed that the legal title to the US property was held by the husband and the Grand Duke, and that upon the sale of the US property, the funds "went back" to the Grand Duke through the ADB. Further, the wife also accepted during cross-examination that the sale of the US property post-dated the purchase of the former matrimonial home in London. The wife however, continued to maintain, as originally set out in her 'Points of Defence' document dated 4 June 2018, that the proceeds of sale of the US property were used as part of the purchase monies for the former matrimonial home, in the sense that the monies realised from the US property were paid into the "pot" out of which the monies to pay for the former matrimonial home ultimately came.

21. In his statement, Mr Wildgen asserts that the US property was owned by the ADB. This assertion is made on the basis of Mr Wildgen's evidence that the purchase price for the US property was "paid for entirely using HRH the Grand Dukes personal funds", which funds were "managed" by the ADB. Mr Wildgen confirmed in oral evidence that no *compromis de vente* was compiled and signed in favour of the ADB relation to the US property (in contradistinction, I note, to the position that later pertained in respect of the former matrimonial home in London). In his oral evidence he stated that this was because a "relationship of trust" existed between the husband and his father. In his statement, Mr Wildgen further states that the funds used to purchase the US property were returned to the ADB in their entirety. For his part, in his narrative statement, and in his replies to the wife's questionnaire, the husband states that he and his father "held the legal title as nominees/bare trustees for the ADB" as the beneficial owner of the US property. He likewise contends that the sale proceeds of that property were repaid in full to the ADB upon its sale in 2011.

22. As I have alluded to, the court bundle contains paperwork concerning the purchase and sale of the US property. An *Avis de Debit* dated 12 June 2009 shows that a

payment in respect of the purchase price for the property was made from an account belonging to the ADB. As I have noted, Mr Wildgen confirmed in his statement that the monies paid by the ADB came from the 'personal funds' of the Grand Duke (described elsewhere as 'private funds' but in any event as distinct from funds from the GroBherzogliches Fideicommiss / fidéicommis or from the funds provided by the Luxembourg Government). The documents show that the legal title to the US property was held by the husband and the Grand Duke. A 'Residential Contract for Sale and Purchase' dated 10 April 2011 details the sale of the US property. The relevant contract of sale names the sellers as the Grand Duke and the husband. A 'Settlement Statement' contained in the wife's bundle confirms this position. The respective signatures of the husband and the Grand Duke appear on the contract of sale. Finally, there is an *Avis de Credit* showing the sale price being converted to Euros and credited to an account belonging to the ADB. Mr Wildgen confirmed that those funds were returned to the Grand Duke upon the sale of the US property. Again, this documentary evidence was not challenged by the wife.

23. As I have noted, the context of the sale of the US property in 2011, following their respective graduations in the United States, was the decision taken by the wife and husband to move to London to further pursue their respective studies. Once again, the court has heard a great deal of evidence and argument regarding the circumstances in which the house in London that was to become the former matrimonial home came to be purchased consequent upon this decision. Given that the central issue in this case is who owns the beneficial interest in that property, it is necessary to examine the question of the ownership of the former matrimonial home in some detail.

24. The wife contends that she and the husband chose the London property. By contrast, in his statement, the husband states that whilst he and the wife viewed the property, together with a number of others, ultimately it was the Grand Duke who made the decision to purchase the London property as an investment, in which the parties could live whilst residing in London. In his oral evidence, the husband asserted that the parties had in fact been most taken by a different property but repeated that it was his father who had determined to buy the property that became the former matrimonial home. Within her 'Points of Defence' dated 4 June 2018, with respect to the purchase of the former matrimonial home in London the wife accepts that the entirety of the purchase price for the London property was paid by the ADB, she says at the request of the Grand Duke. In cross examination, whilst contending that there was no expectation that the property would be sold as "it was for us to keep and grow with our children", the wife also conceded that, were the former matrimonial home to be sold, the proceeds would be returned in their entirety to the ADB.

25. Within this context, the wife nonetheless contends in her statement dated 17 September 2018 that "Prince Louis and his father own the [London] property outright as joint tenants". The basis for this contention is the Form TR1. On that form, the transferees for entry into the register are listed as the husband and the Grand Duke, with the address for service listed as the Palais Grand-Ducal in Luxembourg. Under 'Declaration of Trust' on the TR1, the box stating that the transferees "are to hold the property on trust for themselves as joint tenants" has been ticked. The TR1 has been signed by both the husband and the Grand Duke and the signatures witnessed. Within this context, the title deed to the property lists the husband and the Grand Duke as owners of the title absolute to the property. The wife relies on the form TR1 as an

express declaration of trust in favour of the husband and the Grand Duke as joint tenants.

26. Further, the wife also relies in support of her case on an email sent during the course of the purchase of the former matrimonial home by Mr Istvan von Habsburg, a former Secretary General of the ADB, on 11 August 2011. In that email, Mr von Habsburg refers to the husband and the wife as owning the former matrimonial home. During the course of his oral evidence Mr Wildgen confirmed that Mr von Habsburg handled the purchase of the London property but asserted that he could not explain why Mr von Habsburg had described the husband and wife as owners of the property when this was never discussed and was never the intention.

27. Mr von Habsburg's email must be seen in context. The email is addressed to Simon Mapstone of Goodman Derrick LLP, the solicitors undertaking the conveyancing in respect of the London property. In his reply to Mr Von Habsburg's email on 11 August 2011, Mr Mapstone makes clear that the property has been purchased by the husband and the Grand Duke for occupation by the husband and wife and their children. Further, on the wife's *own* case, the property was not owned by the husband and the wife but by the husband and the Grand Duke. Within this context, I am satisfied that Mr von Habsburg's description of the parties as owners in his email of 11 August 2011 is a term of art or a shorthand, rather than an accurate description of the manner in which the London property was held, or intended to be held, following the transaction.

28. The husband denies that he is the beneficial owner of the former matrimonial home. In his statement to this court he contends that he and his father held the legal title to the former matrimonial home in the same manner in which the US property had been held. Accordingly, the husband contends in his statement that he and his father are the registered legal proprietors of the former matrimonial home and hold the legal title as nominees / bare trustees for the ADB. He states that the purchase price for the former matrimonial home was paid direct to the vendor's solicitors by the ADB and that the stamp duty and purchase costs for the property were also met by the ADB, which also continued to insure the property. Within this context, by a letter dated 5 September 2017, the husband indicated through his then solicitors that he accepted that neither he nor his father has a beneficial interest in the former matrimonial home and that the same is owned solely by the ADB. During the course of his cross-examination by the wife, the husband reiterated that he knew that his name appeared on paperwork relating to the London property, but he considered himself to be merely a nominee and believed that the ADB could have removed them from the property at any time, although he accepted that this would never have happened.

29. The ADB likewise disputes the wife's contention that the husband is a beneficial owner of the former matrimonial home. Mr Wildgen's statement sets out in detail the ADB's case in this regard and exhibits to it documents in support of that case. Mr Wildgen states that upon the husband and wife making the decision to move to London, he was informed by the Grand Duke that a property would need to be acquired in London and made available for the husband and wife to live in whilst they were based in London for their studies. During the course of his oral evidence, Mr Wildgen told the court that he had advised the Grand Duke to purchase a property in London as opposed to leasing a property in circumstances where the London property market looked to represent a good investment. Mr Wildgen stated that the ADB

funded the purchase of the property with monies from the GroBherzogliches Fideicommiss / fidéicommis as distinct from the Grand Duke's private funds (in contradistinction, I again note, to the manner in which the US property was funded). Exhibited to Mr Wildgen's statement is a statement of monies due on the purchase of the former matrimonial home, including stamp duty and purchase costs. Also exhibited to Mr Wildgen's statement are two *Avis de Débit* dated 8 July 2011 and 16 June 2011 showing payment by the ADB to the solicitors dealing with the conveyance of the former matrimonial home of the purchase price of that property. Documents exhibited to Mr Wildgen's statement also show payment by the ADB of insurance on the property.

30. Again, in contradistinction to the US property, the exhibits to Mr Wildgen's statement also contain a copy of a *compromis de vente* in respect of the former matrimonial home in London, together with a translation of that document. The *compromis de vente* states that the sellers are the husband and the Grand Duke, and the buyers are the ADB. Mr Wildgen told the court that he prepared the *compromis de vente* personally and had it signed by the Grand Duke. The *compromis de vente* is not signed by the husband and is not dated. By way of explanation, Mr Wildgen stated in cross-examination by the wife that he suspected that the absence of the husband's signature was an accidental omission and that, because it was awaiting the signature of the husband, which was not obtained, the *compromis de vente* did not come to be dated. Mr Wildgen stated that he had not dated it when it was drafted as he did not know on what date it would be signed. Mr Wilgden further confirmed that the *compromis de vente* was not registered in Luxembourg and nor was a Notarial Deed prepared, Mr Wildgen contending in his oral evidence that it was not possible to make a Notarial Deed in Luxembourg for a property located abroad.

31. During his evidence, Mr Wildgen contended that these matters made no material difference as the intention regarding the ownership of the beneficial interest of the property was and is plain from the manner in which the purchase was effected by the ADB using funds from the GroBherzogliches Fideicommiss / fidéicommis grand ducal, the manner in which the *compromis de vente* was drawn up and the terms of the same and the statements of the husband and the Grand Duke confirming they own no beneficial interest in the former matrimonial home. Within this context, Mr Wildgen stated that the *compromis de vente* simply confirmed a clear existing agreement that the beneficial interest in the property would be owned by the ADB. In his statement the husband points out that he provided a copy of the *compromis de vente* with his Form E dated 7 April 2017 and that the ADB wrote to the wife's former solicitors as early as 2 June 2017 setting out its case as to the effect of the *compromis de vente* and the ownership of the beneficial interest in former matrimonial home generally.

32. With respect to the wife's contention that an express trust was created in respect of the former matrimonial home by the manner in which the TR1 was completed, Mr Wildgen told the court that he did not know why the TR1 came to be completed in the way that it was, and that it was not possible to tell from the conveyancing file on whose authority the TR1 had been completed. Further, Mr Wildgen contended that no legal advice was given to the ADB, or to the husband or the Grand Duke, at any stage regarding the difference in English law between legal and beneficial ownership or between tenancies in common and joint tenancies. Mr Wildgen asserted that the

purchase of the former matrimonial home was the first time the ADB had bought real property in England.

33. With respect to the intention of the parties regarding the occupation of the property that became the former matrimonial home, in her statement, the wife states that the London property that became the former matrimonial home was "bought by Prince Louis's father as home for them to grow their family in and live at". In cross examination, the wife told the court that the property "was for us to keep and grow with our children". However, when pressed by Mr Ewins, she also stated that she and the husband had thought they would stay in London for at least two years to finish their degrees but would then "see what we would do", stating that "we just took it one day at a time". In his statement, the husband contends that the property was occupied as the family's home but that he never signed any formal documentation in relation to that occupation. During the course of his oral evidence, the husband told the court that when they arrived in London, the husband and the wife believed that they would stay for the duration of their studies but had not excluded the possibility that they might remain in the property longer. As I have noted, on behalf of the ADB, in his statement Mr Wildgen stated that the property was purchased by the ADB using funds from the GroBherzogliches Fideicommiss / fidéicommis grand ducal for the husband and wife to live in whilst they were based in London for their continuing studies.

34. Very sadly, the marriage broke down in the summer of 2016. The husband moved to Paris where he currently resides with his sister in a family property. The husband expressed an intention to the court to move out of this property and into rented accommodation funded by himself as soon as he is able to afford to do so. The children spend time with each parent but at present reside with the wife in the former matrimonial home in London. *Decree nisi* was granted on 17 February 2017. Application for financial remedy orders made on 25 January 2017.

35. During the course of the ensuing financial remedy proceedings, the parties contrived to exhaust the majority of their liquid funds on legal costs, spending between them approaching £500,000. The wife continues to owe some £66,000 to her former solicitors. The upshot of this extremely unfortunate situation is that the options available to the court to meet the respective needs of the parties arising out of their marriage are now far more constrained than they might otherwise have been. It is one more example, of the far too many similar examples seen by these courts, of couples engaging in expensive and protracted internecine financial warfare, the only result of which is to place them, and their children, in a materially worse position than they would have been had they been able to engage constructively in seeking a consensual solution.

36. With respect to the assets that are said to be available for distribution, I have already dealt above with the evidence concerning the disputed ownership of the beneficial interest in the former matrimonial home. In addition, the evidence and argument at this hearing has also centred on the inheritance prospects of the husband, the extent to which the husband's family would assist him in meeting any order made by the court and the current position with respect to the husband's business interests.

37. With respect to the issue of the inheritance prospects of the husband, it is accepted by the husband that he has already received inheritance monies in the sum of €510,750. The husband however, contends that his prospects for any further inheritance remain

uncertain. In his answers to the wife's questionnaire, the husband conceded that at the time the early payment was made there was discussion of the further inheritance monies, possibly in the region of €1M, being paid to him and his siblings were this to be affordable. The husband asserts however, that this was stated as no more than a possibility and certainly not a firm expectation, with no timescale being discussed. The husband repeated this position in his statement. Within this context, the husband contended that he has no expectation of receiving any further inheritance in the foreseeable future. The wife rejected this assertion and stated that it had been made it clear that this future payment was "much more than a possibility". The wife however, conceded in cross-examination that no timeline had been discussed.

38. With respect to the question of whether, as the wife contends, the husband will be able to rely on a willingness by his family to provide him with funds to meet any award made by the court to the wife, the Court has received a copy of a letter dated 9 October 2018 from Le Maréchal de la Cour (the Marshal of the Court) to the husband written on behalf of the Grand Duke and the Grand Duchess. Whilst the letter expresses concern that its contents remain "absolutely private", the contents of the letter are entirely anodyne in nature and express a position that might be taken by any number of parents whose adult children find themselves in the situation in which the husband now finds himself.

39. The letter makes clear that the Grand Duke and the Grand Duchess are prepared to continue pay their grandchildren's school fees and their medical insurance. Through their son, the Grand Duke and the Grand Duchess also indicated to the court that the payment of medical expenses for their grandchildren will include costs not covered by a private healthcare policy. Within this context however, the letter from Le Maréchal de la Cour on behalf of the Grand Duke and the Grand Duchess makes clear that, as a matter of precedent, principle and fairness between the husband and his siblings, they do not intend to increase the funds they provide to the husband by way of an allowance as a means of meeting any financial award made by the court for the wife.

40. During her cross-examination and closing submissions, the wife made clear that she did not accept that there was, in fact, this limit on the financial resources that the husband could gain access to from his family. In cross-examination she told the court that there was precedent within the family for greater levels of help to be given to family members. The wife also contended that the Grand Duke regularly made the husband gifts of money and that the husband "has never had an issue with money". She maintained that the husband would be in a position to ask his parents for an increase in his allowance or an advance in his inheritance to enable him to meet any obligations imposed upon him by the court. Further, the wife contended that in circumstances where the husband had been able to obtain an unsecured loan in the sum of £50,000 to pay his legal expenses for this hearing, he would also be able to obtain a loan to meet obligations imposed on him by the court. Within this context, the wife contended that the husband would not, for example, have a difficulty in finding the extra £20,000 per annum representing the difference between his current income and the figure in child maintenance sought by the wife.

41. The husband denied during cross-examination that he would be able source further funds through the beneficence of his parents if the court made orders that exceeded his own financial capacity. He contended that it was clear from the letter from Le Maréchal de la Cour that his parents would not give him money to meet an award

made to wife by the court, nor would it be fair on his siblings were they to do so. This position reflected that set out in his statement that his family cannot be, and are not a "resource" to which he can resort at will, that his family do not intend to treat him more generously than they do his siblings and that they intend only to make provision for him and his siblings "that is fair, equal and consistent with the established historical custom and practice of the family". The husband did concede he might be given 'travelling money' by his father upon leaving a holiday destination as a result of his father asking him if he had cash on him, but this never extended beyond €300 or so, given perhaps five or six times per year. During his oral evidence, the husband confirmed that, perhaps unsurprisingly, the Bank of Luxembourg considered him good 'security' in his own right and, candidly, he conceded that he would be able to obtain further unsecured loans. However, the husband questioned how he would meet these additional liabilities given his current income position.

42. With respect to the current business position of the husband, an issue regarding the husband's business interests developed during the course of the hearing as a result of an entry on a website called 'CrunchBase'. In his statement the husband confirms that he held 150 shares in Audaces Seed Investors Ltd, as confirmed by a copy of the share certificate, which had a value of £30,000 at the time his Form E was filed. Thereafter, in his statement dated 14 September 2018, the husband states that the staff of Audaces Seed Investors Ltd moved to a company called U-Kobo and that, in consequence, Audaces Seed Investors Ltd "will be liquidated and so my investment has been lost". The husband contends that he received no money for his shares in the company albeit, as a goodwill gesture for being an early investor in Audaces Seed Investors Ltd, he *may* receive shares in the company that owns U-Kobo. During her closing submissions, the wife produced a print out from the 'CrunchBase' website which appeared to show the sale of a company called Audaces Impact (a name that differs to that of Audaces Seed Investors Ltd) to U-Kobo on 1 September 2018 for £3M. The website entry listed the husband as a Board Member / Adviser of Audaces Impact and described him as "Chairman of Audaces Next Gen Committee". The husband denied any knowledge of this development.

43. Following the wife leading this evidence, the husband obtained further information by way of clarification. The court has been provided with an email from Guy del Piane of Audaces Impact. That email draws a distinction between Audaces Seed Investors Ltd, a "vehicle" incorporated in the British Virgin Islands, which Mr del Piane confirms the husband received shares in as a result of his investment, and Audaces Impact, a Luxembourg registered special limited partnership, which was the subject of the entry on "CrunchBase". Mr del Piane disclosed no link between the husband and Audaces Impact. Mr del Piane further stated that he is the author of the entry on "CrunchBase", which entry contained a number of errors arising out of information taken from an internal draft document being disclosed and that those errors have since been corrected. With respect to Audaces Seed Investors Ltd, the company in which the husband held shares, Mr del Piane states that this entity is indeed being wound up and that U-Kobo is a new endeavour being developed by most of the ex-Audaces partners. He further confirms that, given the husband's personal relationship with the partners of U-Kobo, it remains the intention in due course, and following some measure of success, that U-Kobo will offer shares as a gesture of goodwill via a passthrough entity in the United Kingdom.

44. Finally, with respect to capital assets, as regards the husband's interest in the property in Paris in which he currently resides rent free, the husband states in his statement that he has a "*nue-propriété*" (bare interest) of 8,200 shares in the property and his four siblings each own the same. The remaining shares are owned by his parents and he is a minority shareholder. The husband states that he is unable to sell the shares without the consent of his parents, who have the *usufruit* (akin to a life interest trust) in the property. He states that this structure provides his parents with exclusive entitlement to use the property and its revenue. The husband repeated in cross examination that this arrangement represented a structure to buy the property in Paris and that he has no expectation of realising his interest. He stated that the house was purchased by the ADB.

45. With respect to income, the wife accepted that she currently earns £75,000 per annum gross and in her previous employment earnt some £40,000 per annum gross. The wife informed the court that on 29 August 2018 she handed in her notice at her current employment. The wife did not mention her intention to hand in her notice in her revised Form E dated 17 September 2018, which she completed in order to set out her up to date financial position for the court at this hearing. The wife contended that this was because she had not altered all of the boxes in her original Form E as drafted by her former solicitors and that her failure to mention the position in respect of her employment was not an omission of bad faith. However, a comparison of the two Forms E makes plain that she had in fact altered the relevant box in which she could have mentioned, but did not, the fact she had given notice on her employment. The husband does not currently have remunerative employment. His current income comes from an annual allowance of €40,000 gross paid to him by his parents.

46. With respect to future earning capacity, during the course of the hearing the wife was treated by Mr Ewins and by Mr Leech to a veritable blizzard of compliments regarding her intelligence, her qualifications and her experience. These compliments are not misplaced. The wife is plainly a highly accomplished person. When in the Luxembourg army she was posted to the Luxembourg Embassy in London and the Permanent Mission of Luxembourg to the UN. She has a degree in International Relations, a first-class degree in International Studies and a Masters Degree from SOAS. She is a UN Aids Global Advocate and an Associate Fellow at the Global Health Security Department at Chatham House. The wife has founded an NGO called 'Professors Without Borders' where she is a Director of Partnerships and Logistics. As I have noted, the wife conceded that she currently holds a position with a gross annual salary of £75,000.

47. In seeking to further demonstrate the wife's virtues, Mr Ewins referred the wife in cross-examination to a recent article in Paris Match in which the wife articulated her desire for a career in politics or diplomacy. Against this, the wife pointed out that she can find it challenging to gain employment on her own merits, in circumstances where many of the opportunities provided to her are simply to take advantage of her perceived network of contacts. Indeed, the wife expressed an earnest wish that she *could* find employment on the basis of the education and talents repeatedly prayed in aid by the husband and the ADB, rather than on the basis simply of who she is perceived to be and the contacts she is perceived to have. I found her expressed frustration palpably genuine. With respect to the Paris Match article, when it was put to the wife by Mr Ewins that not everyone gets a cover story in Paris Match, the wife

countered that she works very hard, but a magazine cover story does not provide her with a paying job.

48. With respect to his future earning capacity, in his statement, the husband contends that:

> "The custom and indeed the current expectation in my family has been and is that members, save for HRH the former Grand Duke Jean, HRH the Grand Duke, and the Heir Apparent, my eldest brother Guillaume, the Hereditary Grand Duke, are financially self-sufficient, I am therefore expected to develop my own earning capacity, and live according to my own means, which I fully intend to do so (*sic*)".

49. Within this context, the husband contends that the income he receives from his parents is entirely voluntary on their part and, at the age of 32, he is feeling an increasing obligation to become self-sufficient. The husband has a qualification in aeronautical management and a private pilot's licence and a BA in Communications. The husband asserts that he was unsuccessful in gaining employment with these qualifications. He has now also completed a Masters degree in psychological studies and has established a consultancy focusing on directional counselling. He told the court that he continues to undertake training in this regard. The husband however, contends that the consultancy does not yet provide any income.

50. With respect to their income needs, the wife's budget for herself and the children in her original Form E was £167,989.86 per annum and, in her revised Form E, £157,609.86 per annum. The husband contends that this is wildly unrealistic having regard to the extent of the parties' joint annual income and in his closing submissions, Mr Ewins submitted that a realistic appraisal of the needs of the wife and children results in a figure of £57,346 per annum.

51. The original budget advanced by the husband was £83,370. The wife contended during cross-examination that the "vast majority" of the husband's outgoings are catered for by the fact he lives in property owned by his family. During his oral evidence, the husband conceded that he lives rent free in a property which has the benefit of a maid and a cleaner, and that his utility bills, television service and health insurance are paid by his parents. The husband further conceded that when he goes on holiday he pays for his air travel, but accommodation is ordinarily provided at properties owned by the family. Indeed, in cross examination he stated that his parents pay for everything in the household and that, at present, his outgoings are "very minimal". As I have also noted however, the husband expressed the desire to move towards self-sufficiency and towards renting his own property. Within this context, during his closing submissions, Mr Ewins provided a revised budget for the husband of £25,750 per annum.

52. The parties differed in their evidence as to the standard of living enjoyed by them and their children during the course of the marriage. The wife contended that their lifestyle was luxurious. She stated that the family had spent most of their holidays in family properties in Europe and could stay in such properties rent free with staff at their disposal. The wife noted that she and the husband had houses bought for them to live in wherever they wished to live and never wanted for funds, setting out in her statement those amounts she contends were made available to the parties, negating

their need to resort to spending capital. The wife further states that passports, driving licences, medical insurance and medical appointments were organised and paid for, as were cars to the airport and flight upgrades. The children's schooling and health costs were also paid for. By contrast, the husband portrays a lifestyle that he describes as "relatively modest".

53. Within the foregoing context, the wife's open offer was provided on 24 September 2018. The wife's open offer is predicated on her case that the husband owns at least 50% of the beneficial interest in the former matrimonial home and that his financial options for satisfying an award made by this court are significantly wider and more remunerative than he concedes, in particular by way of a substantial further inheritance, the support of his family in satisfying any award made by the court, further monies by way of a loan having regard to his status as a member of the Luxembourg Royal Family or a combination of these options. The wife's open offer provided, in so far as it dealt with matters that fall within the jurisdiction of this court, as follows:

    i) A lump sum of £1.5M plus purchase costs to buy a family home for herself and the children or a life interest in a home purchased for £1.5M with a reversion to the husband's family;

    ii) A "small additional lump sum" to be paid upon the disposal by the husband of his shares in Audaces Seed Investors Limited;

    iii) A further lump sum of €17,500 to make provision for a car to be used by the wife and the children when in Luxembourg or an agreement that a family car is made available during their stays in Luxembourg;

    iv) Spousal maintenance in the sum of £10,000 per annum until the termination of the child periodical payments order or earlier re-marriage;

    v) Child periodical payments of £30,000 per annum per child until completion of their tertiary education or the age of 22 years old, whichever is later;

    vi) Payment by the husband or his family of school fees and fees for health insurance for each child until they finish their first university degree;

    vii) An agreement that the husband pay the wife's outstanding legal fees in the sum of £66,267 together with any additional fees incurred in the implementation of the court's order.

54. The wife's position evolved somewhat subsequent to her open offer and appeared to vacillate somewhat during the hearing. In particular, in a Position Statement dated 11 October 2018, the wife sought a property transfer order with respect to the former matrimonial home or, in the alternative, the payment of a lump sum of £4M. With respect to spousal maintenance the wife sought £100,000 per annum for a period of 15 years. However, during questioning with regard to these changes, the wife also indicated that her revised position was based on her having a property until her eldest child finished his tertiary education, at which point she would "give it back", albeit it had been her hope to keep the house. She returned to this theme in her closing submissions, stating that, as the "single mother of two European Princes", she was

simply "asking for a house for her and the children, and some financial support, over a period of 15 years".

55. In circumstances where an important element of the husband's open offer is comprised of the position taken by the ADB with respect to the former matrimonial home, and by the Grand Duke and the Grand Duchess with respect to support for the children's educational and medical provision, it is convenient to deal with those positions before turning to the open position of the husband. Both positions are predicated on the submission that the beneficial interest in the former matrimonial home is owned by the ADB.

56. With respect to the position of the ADB, by an open letter dated 11 December 2017 the ADB set out its open proposals as follows:

i) The notice that the wife has registered against the title of the former matrimonial home in London shall be withdrawn forthwith;

ii) A new property will be brought in the name of the ADB (via nominees of the ADB's choice) at a cost of £1.5M;

iii) The ADB will meet the stamp duty land tax and legal costs for the acquisition;

iv) The property will, within reason, be in a location of choice of the wife at any reasonable location in London or the South East of England with the wife identifying the property to be purchased but with the ADB to have ultimate approval, which approval will not be unreasonably withheld;

v) The wife and the children will be granted a formal licence to remain living in the property rent free until the date the younger child completes his full time tertiary education (limited to a first degree) irrespective of whether the wife remarries or cohabits in the interim;

vi) The ADB shall be responsible for all agreed expenditure of a capital nature which relates to the property. The day to day outgoings will be met by the wife;

vii) The offer is conditional upon the wife and the husband signing a non-disclosure agreement in broadly the following terms:

> "The Applicant undertakes to the Court and agrees with the Respondent not to, whether directly or indirectly, publish or communicate any confidential or private information, on the internet or social media, or to any newspaper, magazine, publication or book, or in any written correspondence whatsoever to any third party, or on any broadcast on television or radio or by any form of communication, whether in writing, electronic or spoken or otherwise, and whether in the UK or in any other jurisdiction or which shall contain negative views or negative comments about either party or their wider family (to include generally in respect of the Luxembourg Royal Family), whether in relation to their marriage,

> their personal and financial affairs, or in relation to the private business or information of the Luxembourg Royal Family."

57. Upon the court enquiring whether the ADB was really saying that the housing of the wife and the young children of the family was conditional on the signing of a non-disclosure agreement, Mr Leech on behalf of the ADB made clear to the Court (and had sought to make clear, albeit in rather Delphic terms, in his Skeleton Argument) that the open offer of the ADB stood notwithstanding a refusal by the wife (or the husband) to sign a non-disclosure agreement, which the wife was reluctant to do, not least because she rejected the idea that she had ever spoken publicly in a negative or derogatory manner about the husband or his family. Indeed, Mr Leech went further and made clear to the court that, in the event that the court acceded to the case advanced by the husband and the ADB (and emphasising that what the ADB is prepared to provide is ultimately a matter for it and not the court) the ADB considers the elements of the open proposal it advances to constitute a binding obligation, required to provide a solution in an otherwise insoluble case.

58. With respect to the position adopted by the Grand Duke and the Grand Duchess, as I have noted above, that position is set out in a letter dated 9 October 2018 from Le Maréchal de la Cour to the husband on behalf of the Grand Duke and the Grand Duchess.

59. Within the foregoing context, the husband's open offer is set out in a document provided on 24 September 2018. With respect to housing, the husband refers to the offer made by the ADB as detailed above and to the stated intention of his parents in respect of school fees and health insurance. In addition, the husband proposes:

    i) That the wife's claims for spousal maintenance be dismissed;

    ii) That he pays child periodical payments of £3,000 per annum per child until they respectively cease full time secondary education;

    iii) That he transfers the ownership of the family car into the wife's sole name;

    iv) That there be a clean break;

    v) That there be no order as to costs as between the husband and the wife.

THE RELEVANT LAW

Trusts of Land

60. The wife drew to the court's attention, during the course of her closing submissions, to the case of *Tebbutt v Haynes* [1981] 2 All ER 238, in which Lord Denning MR observed as follows with respect to the role of the court in cases of this nature:

> "It seems to me that, under s.24 of the 1973 Act, if an intervenor comes in making a claim for the property, then it is within the jurisdiction of the Judge to decide on the validity of the intervenor's claim. The Judge ought to decide what are the rights and interest of all the parties, not only of the intervenor, but of the husband and wife respectively in the property. He can only make an order for transfer to the wife, of property which is the

> husband's property. He cannot make an order for the transfer to the wife of someone else's interest."

61. *Prima facie,* the transfer of the legal title to a property will carry with it the absolute beneficial interest in the property conveyed. In the circumstances, a person who is not the legal owner of the property who asserts that he is the beneficial owner has to be able to establish a trust of land under which the legal owners hold their legal interest on trust for the beneficial owner. A trust of land can be created expressly, by means of fully satisfying the requirements of s 53(1) of the Law of Property Act 1925, or by operation of law, by means of a resulting trust (in circumstances where the property is purchased in the name of the legal owner with the money of the beneficial owner) or a constructive trust (in circumstances of common intention between those concerned, a change of position on the part of the beneficiary and a finding that it would be unconscionable to deny the claim). Section 53(2) of the Law of Property Act 1925 provides that the requirement in s 53(1)(b) that the trust be evidenced in writing does not affect the creation or operation of resulting, implied or constructive trusts. The burden of proof lies on the person asserting the existence of a trust of land.

62. In this case, the wife relies on the completed, signed and witnessed TR1 as conclusively declaring the beneficial interest of the husband (and the Grand Duke) in the former matrimonial home. In *Pettit v Pettit* [1970] AC 777 at 813 Lord Upjohn said:

> "… the beneficial ownership of the property in question must depend upon the agreement of the parties determined at the time of its acquisition. If the property in question is land there must be some lease or conveyance which shows how it was acquired. If that document declares not merely in whom the legal title is to vest but in whom the beneficial title is to vest that necessarily concludes the question of title as between the spouses for all time, and in the absence of fraud or mistake at the time of the transaction the parties cannot go behind it at any time thereafter even on death or the break-up of the marriage."

63. Within this context, in *Goodman v Gallant* [1986] 1 FLR 513 the Court of Appeal held that an express declaration of trust in the conveyance governed the beneficial interests in the property, Slade LJ saying as follows at 517:

> "In a case where the legal estate in property is conveyed to two or more persons as joint tenants, but neither the conveyance nor any other written document contains any express declaration of trust concerning the beneficial interests in the property (as would be required for an express declaration of this nature by virtue of s. 53(1)(b) of the Law of Property Act 1925), the way is open for persons claiming a beneficial interest in it or its proceeds of sale to rely on the doctrine of "resulting, implied or constructive trusts": see s. 53(2) of the Law of Property Act 1925. In particular, in a case such as that, a person who claims to have contributed to the purchase price of property which stands in the name of himself and another can rely on the well-known presumption of equity that a person who has contributed a share of the purchase price of property is entitled to a corresponding proportionate beneficial interest in the property by way of implied or resulting trust: see, for example, *Pettitt v. Pettitt* [1970] AC 777,

> 813-814, *per* Lord Upjohn. If, however, the relevant conveyance contains an express declaration of trust which comprehensively declares the beneficial interests in the property or its proceeds of sale, there is no room for the application of the doctrine of resulting implied or constructive trusts unless and until the conveyance is set aside or rectified; until that event the declaration contained in the document speaks for itself."

64. In *Pankhania v Chandegra* [2012] EWCA Civ 1438 the Court of Appeal was concerned with an appeal against a decision of the judge to impose a constructive trust in favour of the defendant, notwithstanding that the conveyance which transferred the property purchased by the claimant and the defendant with the assistance of a mortgage contained an express declaration of trust declaring that they had the property as tenants in common in equal shares. In allowing the appeal, Lord Justice Patten said as follows:

> "[16] The judge's imposition of a constructive trust in favour of the defendant was therefore impermissible unless the defendant could establish some ground upon which she was entitled to set aside the declaration of trust contained in the transfer. He seems (in paragraph 2) to have misunderstood the significance of the transfer which not only made both claimant and defendant legal owners of the property but also spelt out their beneficial interests. The whole of his judgment proceeds upon the footing that he had a free hand to decide what was the common intention of the parties at the relevant time but that inquiry was simply not open to him unless the defendant had established a case for setting the declaration of trust aside.
>
> [17] A declaration of trust can be set aside for fraud, mistake or undue influence but nothing of that kind is alleged in this case. In *Wilson v Wilson* [1969] 1 WLR 1470 Buckley J rectified a transfer containing a declaration of trust under which two brothers declared that they were joint tenants of the property in equity in circumstances where neither of them appreciated the effect of the declaration of the beneficial interest; appreciated that the transfer was a deed; and where they clearly intended that one brother should be the sole beneficial owner. But there was no claim for rectification in this case and Mr Small for the defendant has not advanced a case that the transfer could be rectified so as to omit the declaration of trust. There was no evidence at trial that it was inserted by mistake or that the parties intended to execute a transfer in materially different terms. There is no evidence in the form of the solicitors' file as to how the transfer came to include the declaration of trust and on whose instructions nor do we know what input (if any) the building society had with regard to the form of the transfer although it seems to me unlikely that it would have been concerned with anything beyond both parties being legal owners so that they became parties to the mortgage."

65. Within this context, in *Pankhania v Chandegra* Mummery LJ stated the key principle shortly, as follows:

> "In the absence of a vitiating factor, such as fraud or mistake, as a ground for setting aside the express trust or as a ground for rectification of it, the

> court must give legal effect to the express trust declared in the transfer. In the absence of such claims the court cannot go behind that trust."

66. The operation of this clear and long settled principle pre-supposes that the parties who make an express declaration of trust are *entitled* to do so. Within this context, Mr Leech reminds the court of the wording of s 53(1)(b) of the Law of Property Act 1925 (emphasis added):

> "…a declaration of trust respecting any land or any interest therein must be manifested and proved by some writing signed by *some person who is able to declare such trust* or by his will."

67. Pursuant to s 53(1)(b) of the Law of Property Act 1925, only a person who is "able" to declare a trust of land may do so. Within this context, where the property is held on trust, it is only the beneficial owner who is able to declare the trust of land for the purposes of s 53(1) of the Act.

68. Within this context, Mr Leech further cites the following passage from Lewin on Trusts at [03-017] with respect to the wording of s 53(1)(b) (emphasis added):

> "The section requires the declaration of trust to be manifested and proved by some 'writing signed by some person who is able to declare such trust …'. The words 'who is able to declare such trust' do not necessarily mean the legal owner. *Where real property is held on trust it is the owner of the beneficial interest who is able to declare the trust for the purposes of the section and has to sign the memorandum or other writing: the holder of the legal estate is regarded as a mere conduit pipe in such a case*. Section 53(1)(b) contains no provision that the declaration of trust may be signed by an agent."

69. Mr Leech further points to the footnote at the end of the sentence "it is the owner of the beneficial interest who is able to declare the trust" at [03-017], which footnote refers back to [03-004] in Lewin on Trusts which states:

> "The first method of creating a trust is for the settlor to declare himself to be a trustee of property belonging to him. If the property is in his own name, he simply makes a declaration. If the intended trust property is held by nominees or other trustees for the settlor, he directs the nominees or trustees to hold it on the intended trusts."

70. Within this context, in opposition to the case advanced by the wife based on the TR1, the husband and the ADB submit that the principles governing the creation of a resulting trust are engaged with respect to the purchase of the former matrimonial home, with the result that the husband and the Grand Duke never reached a position in respect of the former matrimonial home where they were "able" to declare the trust for the purposes of s 53(1)(b). In the circumstances, it is important also to summarise the principles governing the creation of resulting trusts.

71. Whilst there is no longer scope for the application of the principles governing resulting trusts alone in so called 'domestic consumer contexts', where one person makes a financial contribution to property purchased in the name of another where the

parties intend to live together (see *Stack v Dowden* [2007] 2 A.C. 432 at [31]), in other contexts there is still scope for the application of resulting trusts (see *Laskar v Laskar* [2008] 1 W.L.R. 2695 at [17]).

72. With respect to resulting trusts, when real or personal property is purchased in the name of a stranger (in equity), a resulting trust is presumed in favour of the person who paid the purchase money, if he did so in the character of purchaser (*Rochefoucauld v Boustead* [1897] 1 Ch. 196). With respect to real property, this principle has a very long pedigree. In *Dyer v Dyer* (1788) 2 Cox 92 at 93, Eyre LCB observed that:

> "The clear result of all the cases, without a single exception, is that the trust of a legal estate, whether freehold, copyhold, or leasehold; whether taken in the names of the purchasers and others jointly, or in the name of others without that of the purchaser; whether in one name or several, whether jointly or successivè; results to the man who advances the purchase money. This is a general proposition, supported by all the cases, and there is nothing to contradict it; and it goes on a strict analog to the rule of the common law, that where a feoffment is made without consideration, the use results to the feoff or. It is the established doctrine of a Court of equity, that this resulting trust may be rebutted by circumstances in evidence."

73. The modern approach concerning the establishment of a resulting trust is that such a trust can be established by evidence of the intention of the purchaser (see *Kyriakides v Pippas* [2004] 2 FCR 434 at [74] and [76]) or, absent such evidence, by way of a presumption that is not rebutted by evidence of a counter presumption of advancement or an intention to make an outright transfer (see *Vandervell v I.R.C.* [1967] 2 A.C. 291 at 312 and *Westdeutsche Landesbank Girozentrale v Islington LBC* [1996] AC 669 at 708A).

74. A *vital* ingredient in creating a resulting trust is establishing that payment of the purchase money for the property was made in the character of a purchaser. In most cases, the person who claims to be the real purchaser pays the purchase money direct to the vendor, and, so long as it is clear that he was not a lender or giving a gift, there should be no difficulty in showing that it was he who was the provider of the purchase money in the character of purchaser (see Lewin on Trusts (19th Edtn.) at [09-049]). In *Hashem v Shayif & Anor* [2008] EWHC 2380 (Fam); [2009] 1 FLR 115 Munby J (as he then was), made clear at [114] that:

> "…whether A provided the money by way of gift, or by way of loan, or *qua* purchaser is, in the final analysis, a simple question of fact, to be determined in the light of all the evidence as to the relevant circumstances, including, subject to the rule in *Shephard v Cartwright* [1955] AC 431 (see per Viscount Simmonds at page 445), the parties' evidence as to their intentions at the time."

Post Nuptial Settlements

75. At the hearing on 13 October 2017, the wife sought and obtained permission to amend her Form A to seek a variation of a post nuptial settlement. In *Ben Hashim v Shayif and Others* Munby J (as he then was) made clear that there are two questions for the court when considering the variation of a post nuptial settlement. First, is there such a settlement in existence? If so, second, what is the property comprised in that settlement in respect of which the court can exercise its powers under s 24(1)(c) of the Matrimonial Causes Act 1973? With respect to the first question, the provision of housing for one or both parties to a marriage can constitute a nuptial settlement (see *N v N and the F Trust* [2006] 1 FLR 865, *Ben Hashem v Shayif and Others* ibid and *NR v AB* [2016] EWHC 277). With respect to the second question, the answer will depend on the facts of the particular case. In *Ben Hashem v Shayif and Others*, Munby J observed as follows in this regard:

> "Everything will, of course, depend on the facts of the particular case. In some cases the facts will show that what has been created is an interest analogous to a life interest (or even successive life interests) or to a term of years certain. In some cases (and the present is one such case in my judgment) the interest created, although sufficiently enduring to satisfy the criterion of making 'continuing provision', will be analogous to a licence or tenancy determinable either at will or not notice. It is all a matter of fact."

Inheritance Prospects

76. A finding that a party's expectation under a will or other expectation of inheritance constitutes a financial resource will be a rarity by reason of the uncertainties both as to the fact of inheritance and as to the timescales within in which the inheritance will be received. These uncertainties will usually make it impossible for the court to conclude that an inheritance is property that is likely to be had in the foreseeable future for the purposes of s 25(2)(a) of the Matrimonial Causes Act 1973 (see *Michael v Michael* [1986] 2 FLR 389 at 396).

Bounty

77. In this case, and notwithstanding the express assertion to the contrary in the letter from Le Maréchal de la Cour, the wife relies on the contention that the husband has received in the past significant 'bounty' from his extremely wealthy parents and that, should the court make an order that the husband is not able, on the face of it, to satisfy from his own resources, the court can be satisfied that his parents will make good the deficit by way of further voluntary contributions. Within this context, I note that in *Thomas v Thomas* [1995] 2 FLR 668 the Court of Appeal held as follows:

> "…the court is not obliged to limit its orders exclusively to resources of capital or income which are shown actually to exist. The availability of unidentified resources may, for example, be inferred from a spouse's expenditure or style of living, or from his inability or unwillingness to allow the complexity of his affairs to be penetrated with the precision necessary to ascertain his actual wealth or the degree of liquidity of his assets. Another is that where a spouse enjoys access to wealth but no absolute entitlement to it (as in the case, for example, of a beneficiary under a discretionary trust or someone who is dependent on the generosity of a relative), the court will not act in direct invasion of the rights of, or usurp the discretion exercisable

> by, a third party. Nor will it put upon a third party undue pressure to act in a way which will enhance the means of the maintaining spouse. This does not, however, mean that the court acts in total disregard of the potential availability of wealth from sources owned or administered by others. There will be occasions when it becomes permissible for a judge deliberately to frame his orders in a form which affords judicious encouragement to third parties to provide the maintaining spouse with the means to comply with the court's view of the justice of the case. There are bound to be instances where the boundary between improper pressure and judicious encouragement proves to be a fine one, and it will require attention to the particular circumstances of each case to see whether it has been crossed."

78. Against this, as Nicholas Mostyn QC (as he then was) observed in *TL v ML (Ancillary Relief: Claim against Assets of Extended Family)* [2006] 1 FLR 1263 at [84], the observations in *Thomas v Thomas* must be placed in their proper context:

> "It is important to bear in mind, when considering the width of the words used, what the Court of Appeal was in fact endorsing. As I have mentioned, it was an award of capital and income that did not exceed in either respect what was Mr Thomas' as of right. There is in my view a big difference between that state of affairs and what is urged on me here - an award that very substantially exceeds what is H's, in the hope and expectation that CL will make up the difference."

79. Within this context, in passages endorsed by Munby J (as he then was) in *C v C (Ancillary Relief: Trust Fund)* [2010] 1 FLR 337, Nicholas Mostyn QC went on in *TL v ML (Ancillary Relief: Claim against Assets of Extended Family)* at [86], [88], [101] and [104] to hold that:

> "[86] I think that a clear distinction is to be drawn between, on the one hand, the position where the person being encouraged is a member of the payer's family and, on the other hand, where he is a trustee in a fiduciary relationship with the payer. In the former case the payer has no more than a mere spes of bounty which may, at the election of the provider, reasonably or unreasonably, be withheld. In the latter case the provider has a legal obligation to consider the beneficiary's interests. The very reason for the existence of the trust is to provide benefit for the beneficiary.
>
> …/
>
> [88] This exposition sets out with clarity the very different nature of, on the one hand, the relationship between a fiduciary and his beneficiary; and, on the other, that of mere donor and donee. If the court makes a reasonable request of trustees to make funds available to meet an ancillary relief award then it can assume that ordinarily the trustees will accede to such a request. The same cannot be assumed of a request of a mere donor, for it is his prerogative to be unreasonable, if that is his inclination.
>
> …/

> [101] The correct view must be this. If the court is satisfied on the balance of probabilities that an outsider will provide money to meet an award that a party cannot meet from his absolute property then the court can, if it is fair to do so, make an award on that footing. But if it is clear that the outsider, being a person who has only historically supplied bounty, will not, reasonably or unreasonably, come to the aid of the payer then there is precious little the court can do about it.
>
> …/
>
> [104] [The family] can stipulate the assistance they offer, and the terms on which it is to be provided. It is up to them. Whether or not I think it is reasonable is fundamentally irrelevant."

Distribution

80. Once the court has determined at the first stage what financial resources are available ('computation'), it must proceed to the second stage and determine how to fairly distribute those resources ('distribution') (*Charman v Charman (No 4)* [2007] 1 FLR 1246). In doing so, the court must have regard to the factors set out in s 25 of the Matrimonial Causes Act 1973. The goal of Matrimonial Causes Act 1973 Part II is fairness. Within this context, as noted by Lord Nicholls in *Miller v Miller, McFarlane v McFarlane* [2006] UKHL 24, each party to a marriage is entitled to a fair share of the available property, and the search is always for what are the requirements of fairness in the particular case.

81. The needs of the parties arising out of the marriage are a question of fact for the court. The core financial needs will generally centre on the provision of housing and on meeting present and future income. In the context of a case of need, which this case plainly is, in *Miller, McFarlane* Lord Nicholls observed as follows at [11]:

> "When the marriage ends fairness requires that the assets of the parties should be divided primarily so as to make provision for the parties' housing and financial needs, taking into account a wide range of matters such as the parties' ages, their future earning capacity, the family's standard of living, and any disability of either party. Most of these needs will have been generated by the marriage, but not all of them. Needs arising from age or disability are instances of the latter."

82. Finally, there is an issue in this case as to whether the court should effect a 'clean break' between the parties or make an order, either substantive or nominal, for spousal maintenance. Section 25A of the Matrimonial Causes Act 1973 imposes on the court a duty to consider whether it would be appropriate to exercise its powers under the Act to ensure that the financial obligations of each party towards the other are terminated as soon after the grant of the decree as the court considers just and reasonable. In *Mathews v Mathews* [2013] EWCA Civ 1874, an appeal against a decision of Mostyn J to refuse an application for a nominal periodical payments order, the Court of Appeal, having been taken to the decision of Wilson J (as he then was) in *S v B (Ancillary Relief: Costs)* [2005] 1 FLR 474 in which Wilson J refused an appeal against the making of a nominal spousal maintenance order, observed as follows:

> "It seems to me that the corollary of what Wilson J there said is that, whilst the nominal order in that case was not appealable, so too ordinarily the refusal of a judge to make a nominal order will not be appealable because it cannot be shown to be wrong in principle. We are here concerned with an exercise of discretion but it is an exercise of discretion in which Parliament has indicated that there should be a clear presumption in favour of making a clean break, in the sense that that is something which the court is mandated to consider, whether it would be appropriate to bring about a complete break between the parties, so far as concerns financial matters, as an initial consideration."

THE SUBMISSIONS

The Wife

83. The wife submits, in a point she emphasised repeatedly during her evidence and submissions, that the money to purchase the property was not the ABD's money, but rather money belonging to the Grand Duke, which money the ABD paid on the instruction of the Grand Duke in order to purchase the London property and which money included the proceeds of sale of the US property. During her closing submissions, the wife again emphasised Mr Wildgen's evidence that the funds held and administered by the ABD were the funds of the Grand Duke, Mr Wildgen's evidence that the Grand Duke was the ultimate authority for how those funds were spent, that the statement of Mr Wildgen described the ABD as implementing the decisions taken by the Grand Duke and, finally, Mr Wildgen's oral evidence that it was the Grand Duke who decided which property in London would be purchased as a home for the husband and wife whilst they remained in London.

84. Within this context, the wife submitted that the beneficial ownership of the former matrimonial home is the subject of a valid express declaration of trust by virtue of the completion of the TR1 and that, in the absence of the *compromis de vente* having been signed by the husband, dated, registered in Luxembourg and made the subject of a Notarial Deed (or any other document complying with the requirements of s 53(1) of the Law of Property Act 1925), the husband has not validly divested himself of his beneficial ownership of the former matrimonial home under an express trust created by the TR1. As noted, the wife also relies on Mr von Habsburg's description of the husband and wife as 'owners' to reinforce her submission, the wife making the point that this description was provided by the person with day to day responsibility for the transaction that led to the London property being acquired.

85. In the circumstances, the wife submits that where, in accordance with the observations of Lord Denning in *Tebbutt v Haynes*, it is the task of the court to decide the rights and interests of all the parties in the former matrimonial home, the husband's share of the beneficial ownership of the former matrimonial home constitutes a matrimonial asset capable of distribution within the context of these proceedings and seeks a property adjustment order accordingly.

86. With respect to her continuing needs, the wife submitted that far from the picture of her that the other parties sought to create, she is not the 'superwoman' portrayed by the husband and the ADB during the course of the hearing (the title 'Superwoman' having been accorded to her in another magazine article relied on in cross

examination by Mr Ewins). Rather, following a long marriage, the wife contends that she is now a single parent caring for two children who have significant needs, in debt to her former solicitors and facing challenges in securing employment. As to the husband, in her Skeleton Argument the wife describes the husband's resources as unlimited in the context of his family background (the wife taking the opportunity to remind the court on several occasions during the hearing that the father still lives in his parents' property and receives an allowance).

87. In the circumstances, the wife contends, relying on *Thomas v Thomas*, that the husband's earning capacity is "somewhat irrelevant" where the court can be confident that his family would ensure that the husband met any award made by the court. In this regard, the wife invites the courts attention to *N v N* (1928) 44 TLR 324 in which Lord Merrivale P stated at 327:

> "The ecclesiastical courts showed a degree of practical wisdom… They were not misled by appearances… they looked at the realities … The court not only ascertained what moneys the husband had, but what moneys he could have if he liked, and the term "faculties" described the capacity and ability of the respondent to provide maintenance."

88. In these circumstances, the wife invites the court on the balance of probabilities to find that to the extent that the husband does not have the funds to meet an award then his family would undoubtedly assist him given the reality of the situation this "highly unusual" case where the court is dealing with a wealthy Royal Family with very substantial assets and a wife seeking a very modest award. Within this context, and where, as she would submit, the majority of the husbands outgoings are met, the husband is also likely to receive a further substantial inheritance and where he is able to supplement his financial position with unsecured loans, the wife contends that the husband can well afford to meet her and the children's needs through the orders for spousal maintenance and child periodical payments she seeks, which needs the wife continued to submit amounted to £157,609.86 per annum, albeit she accepted in cross-examination that economies would have to be made.

The Husband

89. On behalf of the husband, Mr Ewins adopted the submissions made by the ADB in respect of the ownership of the former matrimonial home, which submissions I deal with in outline below. In his closing submissions, Mr Ewins emphasised the similarities between the manner in which the US Property was purchased and held and the manner in which the former matrimonial home was purchased and held. In particular, Mr Ewins sought to remind the court that both properties were purchased with monies provided by the ADB, in respect of both properties the legal title was held by the husband and the Grand Duke and that there was no dispute between the parties that in respect of both properties upon any sale the proceeds would be returned to the ADB. Within this context, Mr Ewins submits that on the totality of the evidence before it, the court must conclude that the beneficial interest in the former matrimonial home is owned by the ADB.

90. With respect to the question of a post-nuptial settlement in relation to the former matrimonial home, on behalf of the husband, Mr Ewins did not dispute that the evidence before the court is capable of giving rise to a post nuptial settlement but

submits, as does the ADB, that the contents of that settlement must, on the evidence, be limited to a licence to occupy terminable at will or, at most, on reasonable notice. Within this context, Mr Ewins contended in his closing submissions that, having given a very clear indication to the court that it will bind itself to the terms of its offer if the court prefers its case, the housing provision which the ADB has assured the court will be provided to the wife and the children is significantly more advantageous to her than that which it is in the power of the court to confer upon her.

91. With respect to the disputed question of the extent of the financial resources on which the husband can call, Mr Ewins submits first that the husband's disclosure that a possible future inheritance is foreseeable does not bring any future inheritance within the definition of a financial resource for the purposes of s 25(2)(a) of the Matrimonial Causes Act 1973 having regard to the decision in *Michael v Michael*, where there is uncertainty as to the fact of, the timing of and the amount of any such inheritance. Within this context and reminding the court that the husband himself openly conceded the possibility of a future inheritance, Mr Ewins invites the court to accept the husband's evidence with regard to the uncertainty of his prospects of a future inheritance.

92. Second, relying on the decision of Munby J (as he then was) in *C v C (Ancillary Relief: Trust Fund)*, and noting the wife's concession that the funds the husband's parents pay to him are paid on a voluntary basis, Mr Ewins submits that the court cannot conclude that any such future voluntary provision that may be made to the husband by his family constitutes a financial resource in the sense referred to in *Thomas v Thomas*. Mr Ewins contends that, in circumstances where (as the wife accepts) this is not a trusts case and that, accordingly, the husband's parents owe no form of fiduciary duty to the husband, the evidence clearly demonstrates that the husband's parents are mere donors to their son, resulting in the husband having only a mere spes of bounty, which his parents may, reasonably or unreasonably, withhold from him, the reasonableness or otherwise of their chosen course of action being irrelevant.

93. Within this context, Mr Ewins submits that there is no evidence or other basis that justifies attributing to the husband a financial resource in the form of future support from his family. Indeed, Mr Ewins reminds the court that it has confirmation in the form of the letter from Le Maréchal de la Cour that the husband's parents have made clear that they will not depart from historical precedent and increase the voluntary funding they provide to the husband at present. Finally, even were the case to come within *Thomas v Thomas*, Mr Ewins argues that the provision to be made voluntarily by the husband's parents in respect of school fees and medical expenses, and by the ADB in respect of housing constitutes the requisite provision.

94. With respect to the wife's needs, Mr Ewins reminds the court that the husband will also wish to achieve financial independence. He submits that the court should accept the extremely limited nature of the husband's present resources represented by his income of €40,000 per annum gross dependent on voluntary payments made his parents. Whilst Mr Ewins concedes that the removal from the husband's budget of those items that are paid for by his family leaves him with a higher disposable balance, Mr Ewins submits that the court must take account of the fact that the husband's budget is not detailed and the provision he is ordered to make must be fair. Within this context, Mr Ewins submits that the wife is an educated, talented and

ambitious woman who the court can be confident will obtain employment at a similar level of remuneration to that she has enjoyed in her previous and current employment, namely between £40,000 and £75,000 per annum gross. Further, Mr Ewins submits that the wife's earning capacity and income are significantly higher than the husband's. In addition, Mr Ewins submits that the wife's budget is "utterly unrealistic" (that budget generating a £35,000 shortfall on her *own* case) and reminds the court that the wife accepted that the husband could not afford her demands on the figures he has given.

95. Within the foregoing context, and looking at the figures Mr Ewins submits that the court is dealing with a global family income of some £87,000 per annum net, that a *reasonable* budget for the wife is £57,346 (comprising her income need of £41,914 and children's income needs with the wife of £15,432) and that, accordingly, having regard to the wife's current income, the husband's offer to pay £6,000 per annum in child maintenance is fair, resulting in the wife having 66% of the available net income. Within this context, Mr Ewins submits that, in line with the decision of Mostyn J in *TW v TM* [2015] EWHC 3054 (Fam) citing *GW v RW* [2003] 2 FLR 108, whilst the CMS Formula does not apply in this case, because the husband is not resident in this jurisdiction, it supplies the starting point. In this case, Mr Ewins submits that the starting point of between £5,200 and £6,000 depending on the reduction applied with respect to the level of care afforded by the husband.

96. Mr Ewins urges the court not to make a nominal spousal maintenance order. He submits that any safety net for the children that a nominal spousal maintenance order may offer is already provided for by way of a child periodical payments order. Further, in circumstances where both parties have stated that they intend to pursue financial independence, Mr Ewins submits that the court should encourage this, particularly in circumstances where no spousal maintenance is being paid at present. To create that obligation now when the parties have embarked on the road to independence would, says Mr Ewins, be contrary to promoting a transition to independence as soon as is just and reasonable.

The ADB

97. On behalf of the ADB, Mr Leech submits that the former matrimonial home does not constitute a matrimonial resource for the purpose of the wife's application for financial remedy orders. His starting point is what he contends are the following facts which are either agreed or uncontroverted by the evidence of the wife:

    i) The entirety of the funds used for the purchase of the former matrimonial home came from the GroBherzogliches Fideicommiss / fidéicommis grand-ducal and not from HRH the Grand Duke's personal funds and not from the husband.

    ii) The total purchase price paid was £2,685,676 by way of two transfers from the ADB's account holding funds belonging to the GroBherzogliches Fideicommiss / fidéicommis grand-ducal.

    iii) The TR1 was signed by Prince Louis and HRH the Grand Duke. The 'Declaration of trust' box was crossed to indicate that they would hold the property on trust for themselves as joint tenants.

iv) There is no evidence of any advice having been given to the ADB, the husband or the Grand Duke in respect of the completion of the TR1 regarding the ways of holding property in English law, nor any evidence as to who (if anyone) gave instructions as to the manner in which the TR1 should be completed.

v) A *compromis de vente* was drafted by Mr Wildgen contemporaneously with the sale and signed by the Grand Duke. Although the *compromis de vente* was intended to be signed by the husband, it was not in fact signed by him. That fact only came to light during the course of these proceedings.

vi) The *compromis de vente* constitutes (i) an acknowledgement of debt and (ii) a document allowing the beneficial owner to take the legal interest in the property back into its name at any point. The effect of the *compromis de vente* as a matter of Luxembourg law is that, on demand, the ADB could compel the transfer of the legal interest in the property.

vii) The property was registered in the names of the husband and the Grand Duke rather than the ADB's given the potential problem of the ADB's standing in jurisdictions outside Luxembourg.

viii) The procedure adopted for the purchase of the former matrimonial home (i.e. registration in the name of one or more members of the Royal Family acting as nominees) is one that has been routinely used by the ADB in respect of properties overseas.

ix) Neither the husband nor the Grand Duke assert that they have any beneficial interest in the property. Further, the husband confirms that the sole beneficial owner of the property is the ADB.

98. Within this context, Mr Leech submits that there is no evidence that the husband and wife owned the beneficial interest in the property, and that the court should reject the suggestion that the email of Mr von Habsburg indicates otherwise. Second, Mr Leech submits that it is plain on the evidence before the court that the husband does not own a beneficial interest in the former matrimonial home, whether by way of an express declaration of trust, a resulting trust, an implied or constructive trust or by way of a gift.

99. Rather, Mr Leech submits that, where s 53(2) of the 1925 Act exempts resulting trusts from the formal requirements set out in s 53(1), the beneficial ownership of the former matrimonial home is the subject of a resulting trust in favour of the ADB in circumstances where the ADB provided the purchase monies from the GroBherzogliches Fideicommiss / fidéicommis grand-ducal. Within this context, Mr Leech further submits that not only is there no evidence to defeat the presumption of a resulting trust by way of a counter presumption of advancement or an intention to make an outright transfer, but that the evidence before the court demonstrates that it was the actual intention of the ADB, the husband and the Grand Duke that the beneficial interest would continue to be owned by the ADB and, thus, that the resulting trust arises out of an actual intention rather than simply a presumption (see *Lavelle v Lavelle* [2004] 2 FCR 418 at [14]).

100. Within this context, Mr Leech submits that neither the husband nor the Grand Duke were *able* to declare a trust for the purposes of s 53(1)(b) of the Law of Property Act 1925 in circumstances where the ADB, and not the husband and the Grand Duke, was the owner of the beneficial interest in the property under a resulting trust. Mr Leech submits that all the evidence before the court indicates that the ADB purchased the former matrimonial home with funds from the GroBherzogliches Fideicommiss / fidéicommis grand-ducal in the name of the husband and the Grand Duke as nominees and that all parties intended the ADB to own the beneficial interest in the property. In the circumstances, Mr Leech submits that in so far as the TR1 purports to show the husband and the Grand Duke declaring their respective beneficial interests, the declaration is of no effect because they had no beneficial interest to declare. Finally, and in any event, Mr Leech submits that if an express declaration of trust was made this would be a paradigm case for rectification on the grounds of mistake, given the evidence as to the source of the purchase monies, the intention of all of the parties to the transaction and the absence of any legal advice prior to the completion and signing of the TR1.

101. Mr Leech further submits that there is no basis on which the court can find the existence of a resulting trust to the husband in circumstances where it is plain that he made no direct contribution to the purchase of the property. Mr Leech submits that the only other way that a resulting trust could exist would be first, if the husband owned a beneficial interest the US property and funds from that property were used to purchase the London property or, second, if the US property was gifted to the husband. However, Mr Leech submits that the evidence makes plain that the husband did not own a beneficial interest in the US property and that, in any event, the proceeds of sale of that property post-dated the purchase of the property in London. Further, Mr Leech says that there is no evidence to support the wife's late assertion of a gift in respect of the US property.

102. Likewise, Mr Leech submits that the court could not find the existence of a constructive trust in the absence of any evidence of an express agreement or a course of dealing that would allow an inference to be drawn, Mr Leech pointing out that there is no evidence of the husband acting to his detriment and that equity does not assist a volunteer. Finally, Mr Leech submits that the evidence is wholly against the husband having been gifted a beneficial interest in the property, in relying this respect on the *compromis de vente* which he submits is wholly inconsistent with an intention to gift the beneficial interest.

103. Within the foregoing context, Mr Leech submits that there is no legal basis for a finding other than that the ADB owns the beneficial interest in the former matrimonial home by virtue of a resulting trust arising out of the ADB providing the money to purchase the property from the GroBherzogliches Fideicommiss / fidéicommis grand-ducal and the intention of all of the parties to the transaction and that, accordingly, the beneficial interest in the former matrimonial home is not a matrimonial resource available for distribution.

104. With respect to the question of whether the former matrimonial home is the subject of a post-nuptial settlement, on behalf of the ADB Mr Leech did not seek to argue against a finding that the provision of a home for a married couple and their two children reflects sufficient nuptiality. But, says Mr Leech, in line with the authorities set out above, the question goes further than simply the existence of a settlement, to

what it contains. In this case, Mr Leech submits that, having regard to the evidence that the couple were permitted to occupy a property purchased by the ADB whilst they completed their studies in London, what was provided to the couple was simply a place to live. In the circumstances, Mr Leech submits that the evidence is wholly supportive of the nuptial settlement containing a licence to occupy terminable at will or, at the very most, on reasonable notice.

105. Albeit a stark one, Mr Leech submits that, in the circumstances and absent agreement between the parties, the court is limited on the wife's application to vary a nuptial settlement to granting her a licence to occupy the former matrimonial home terminable on 6 months notice and dismissing her claim for a property adjustment order. Within this context, and reminding the court that it has no power to compel the ADB to enlarge its offer to the wife, Mr Leech once again sought to contrast the foregoing highly constrained outcome with the offer made by the ADB, which he submitted would ensure that the needs of the children, the court's first priority, are met during their minority and until the end of the younger child's first degree, with the wife being provided with secure accommodation, rent and mortgage free whether she cohabits or remarries or not, over which 12 year period the wife, who is a highly capable, independent minded, ambitious person could establish herself and make provision for future accommodation.

DISCUSSION AND REASONS

106. Having regard to the evidence that I have heard and to the legal principles that I must apply, and given the constraints on the options before the court created by the large sums expended by the parties on their litigation to date, I have decided that the court is limited in this case (a) to dismissing the wife's application for a property adjustment order in circumstances where I am satisfied that the husband does not own a share of the beneficial interest in the former matrimonial home, (b) to making an order varying the post nuptial settlement I am satisfied exists in respect of the former matrimonial home to provide the wife and the children with a licence to occupy that property terminable on six months notice, (c) to making an order for nominal spousal maintenance and (d) to making an order for child periodical payments in the sum of £4,000 per annum per child. My reasons for so deciding are as follows.

Computation

107. As I have noted above, the overall task of the court is twofold. First, to identify the extent of the matrimonial assets (computation). Second, to determine how those assets should be distributed to achieve the overall aim of fairness having regard the statutory criteria set out in s 25 of the Matrimonial Causes Act 1973 (distribution). I deal first with computation.

(a) Ownership of Former Matrimonial Home

108. On the question of the ownership of the former matrimonial home, I am satisfied that the husband and the wife each did their best when giving evidence of their respective recollections regarding the circumstances in which, and the intention with which the former matrimonial home in London was purchased. Within this context, and where the matters in dispute on this issue centre largely on the parties' respective recollections of the arrangements concerning their home, in the circumstances of the

relatively complex legal principles governing the ownership of real property in this jurisdiction and the relatively complex financial arrangements of the Luxembourg Royal Family, at those points where I prefer the evidence of the husband and the ADB over that of the wife it is *not* because I consider the wife's evidence was inherently lacking in credibility on these issues, but rather because there was documentary evidence and, importantly, concessions by the wife in evidence, which supported the recollection of the ADB and the husband as to the legal and beneficial arrangement arrived at.

109. Within this context, having considered carefully the available evidence, I am satisfied that it demonstrates that the husband does *not* own a share of the beneficial interest in the former matrimonial home. In reaching this conclusion, I have had regard to the following matters:

i) The expert evidence before the court confirms that the GroBherzogliches Fideicommiss / fidéicommis grand ducal has a separate legal personality and that the ADB also has a separate legal personality. The wife did not seek to challenge the expert evidence by way of cross-examination during the course of this hearing. Further, following the receipt of the expert report, the wife conceded that the ADB was a separate legal entity.

ii) Whilst questioning whether it could be said that funds used to purchase the former matrimonial home in London belonged to the ADB, the wife did not dispute Mr Wildgen's evidence that the funds to purchase the former matrimonial home came from GroBherzogliches Fideicommiss / fidéicommis grand-ducal.

iii) The documentary evidence before the court shows clearly that the funds from the GroBherzogliches Fideicommiss / fidéicommis grand-ducal were paid by the ADB for the purposes of purchasing the former matrimonial home.

iv) The wife conceded that the sale of the US property was completed, and the proceeds from that sale returned to the ADB after the completion of the purchase of the former matrimonial home in London. The documents support this concession.

v) There was a clear distinction on the evidence between the manner in which the US property was purchased, namely by the ADB with the 'private' funds of the Grand Duke and without the completion of a *compromis de vente*, and the manner in which the former matrimonial home was purchased, namely by the ADB with funds from the GroBherzogliches Fideicommiss / fidéicommis grand-ducal and with the completion of a *compromis de vente*.

vi) The wife did not dispute that upon the sale of the former matrimonial home the intention of all parties, and her understanding, was that the proceeds of sale would be returned in their entirety to the ADB.

vii) Following the purchase of the former matrimonial home a *compromis de vente* was prepared which, whilst not dated or signed by the husband, evidenced the intention of the parties to the transaction with respect to how the property was to be held.

viii) The husband did not believe that he owned a share of the beneficial interest in the former matrimonial home and does not claim in these proceedings to do so. The husband was consistent during the course of the proceedings in stating this, based on what he contended was his understanding of the manner in which properties in foreign jurisdictions had been purchased historically, the intentions of those involved at the time of the purchase and the existence of the *compromis de vente*.

110. I am, of course, acutely aware that there exists in this case a TR1 that purports to contain an express declaration of trust in favour of the husband and the Grand Duke, upon which purported express declaration the wife seeks to rely. I am likewise, of course, acutely aware of the principle in *Goodman v Gallant* that where a relevant conveyance contains an express declaration of trust which comprehensively declares the beneficial interests in the property or its proceeds of sale, there is no room for the application of the doctrine of resulting or constructive trusts unless and until the conveyance is set aside or rectified and that, until such an event, the declaration contained in the document speaks for itself. However, on the evidence that is before the court in this particular case, I am satisfied that Mr Leech must succeed in his argument as to the ownership of the beneficial interest in the former matrimonial home, based on the express terms of s 53(1)(b) of the Law of Property Act 1925.

111. The declaration of an express trust purportedly evidenced by the TR1 can only be effective if, at the time they purported to declare it, the husband and the Grand Duke were "able" to declare a trust of the beneficial interest for themselves for the purposes of s 53(1)(b) of the 1925 Act. However, at the time they purported so to declare, I am satisfied that the beneficial interest in the former matrimonial home was vested in the ADB under a resulting trust for the following reasons.

112. It is important to note that this is not a 'consumer context case' in which a couple in an intimate relationship jointly purchase a property in which they intend to reside, perhaps with the assistance of a mortgage, and in the transfer document execute an express declaration of trust over the property in favour of themselves, thereby setting out their beneficial entitlement as part of the purchase they have made. In this case, the purchase monies for the former matrimonial home were provided from the GroBherzogliches Fideicommiss / fidéicommis grand-ducal and paid to the vendor by the ADB. The documentary evidence before the court confirms that the money in question was paid from the bank account of the ADB It is common ground between the parties that the intention was that, on any sale of the former matrimonial home, the monies provided from the GroBherzogliches Fideicommiss / fidéicommis grand-ducal would be returned to the ADB as the proceeds of sale. I am satisfied that there is nothing in the evidence before the court to suggest that the monies originally provided from the GroBherzogliches Fideicommiss / fidéicommis grand-ducal constituted a loan or a gift to husband and the Grand Duke.

113. In the circumstances, satisfied as I am on the unchallenged expert evidence before the court that it is more likely than not that the GroBherzogliches Fideicommiss / fidéicommis grand-ducal and the ADB have separate legal personalities, I am satisfied that the purchase monies from the GroBherzogliches Fideicommiss / fidéicommis grand-ducal were paid to the vendor of the former matrimonial home by the ADB in the character of a purchaser. Further, on the evidence before the court, I am satisfied that at the time the purchase monies from GroBherzogliches Fideicommiss /

fidéicommis grand-ducal were paid by the ADB it was the settled intention of the ADB, the Grand Duke and the husband that the ADB would hold the beneficial interest in the property. I derive that conclusion from the following matters:

i) As I have noted, the property was purchased by the ADB with funds from the GroBherzogliches Fideicommiss / fidéicommis grand-ducal.

ii) As I have also noted, the wife herself concedes that upon any sale of the former matrimonial home the proceeds of sale would return to the ADB.

iii) Whilst the *compromis de vente* completed in relation to the former matrimonial home contains omissions in terms of the husband's signature and a date, its existence in my judgment evidences an intention that the ADB would hold the beneficial interest in the property purchased with funds from the GroBherzogliches Fideicommiss / fidéicommis grand-ducal. Firstly, by reason of the distinction the existence of the *compromis de vente* creates between the manner in which the property in US property was purchased. When using *private* funds of Grand Duke to purchase the US property, no *compromis de vente* was drafted by the ADB. When using funds from the GroBherzogliches Fideicommiss / fidéicommis grand-ducal to purchase the former matrimonial home a *compromis de vente* was completed by the ADB. Whilst Mr Ewins emphasised the similarities between these two property transactions, in my judgment it is the differences between the manner in which the respective properties were purchased that are more significant. In particular, the fact that when the funds came from the GroBherzogliches Fideicommiss / fidéicommis grand-ducal as distinct from the private funds of the Grand Duke, a *compromis de vente* designed, as I am satisfied it was, to evidence the ADB's interest was employed. Secondly, by reason of the fact that, whilst incomplete, the terms of *compromis de vente* themselves constitute evidence of the intention of the husband, the Grand Duke and the ADB that the ADB would retain the beneficial interest in the former matrimonial home.

iv) The statement of the husband accepts he holds no share of the beneficial interest in the property. Whilst this might be regarded as a self-serving statement in the context of these proceedings, and therefore of lesser weight, it is consistent with the other matters I have set out in this paragraph.

114. Within the context of this evidence of intention, having regard to the modern approach to resulting trusts set out in *Kyriakides v Pippas*, I am satisfied that it is not necessary to go on to consider the operation of the presumption. In these circumstances and having regard to the legal principles set out above, I am satisfied that the effect of the matters set out in the foregoing paragraphs was to create, upon the payment of the purchase monies from the GroBherzogliches Fideicommiss / fidéicommis grand-ducal by the ADB, a resulting trust of the beneficial interest in the former matrimonial home in favour of the legal entity that provided the entirety of the purchase monies for that property. Whether the beneficial interest in the former matrimonial home is owned under the resulting trust by the ABD, which paid the purchase monies, or the GroBherzogliches Fideicommiss / fidéicommis grand-ducal, which provided the purchase monies, is perhaps a point of some nicety. However, it is not necessary to decide that point for the purposes of the decision this court has to make. The key point is that the purchase monies did not, I am satisfied, come from

the husband or the Grand Duke and they did not intend to own the beneficial interest in the property.

115. I remain cognisant of the principle in *Goodman v Galant*. However, whilst in *Goodman v Galant* the Court of Appeal stated that there is no room for the application of the doctrine of resulting or constructive trusts "unless and until the conveyance is set aside or rectified", in *Pankhania v Chandegra* I perceive the point as having been expressed in somewhat less absolute terms, with the Court of Appeal stating that there is no room for the application of the doctrine of resulting or constructive trusts unless the defendant has "established a case for setting the declaration of trust aside". Within this context, it seems to me that, given the foregoing evidence before this court, it would be artificial in this case to proceed on the basis of the TR1 when it is plain on that evidence that the husband and the Grand Duke were not "able" to declare a trust of the beneficial interest by reference to the terms of s 53(1)(b) of the Law of Property Act 1925 and, as Mr Leech submits, any application to set aside the declaration on the grounds of mistake would be bound to succeed (accepting that no such application is before the court). A trust of the beneficial interest in the former matrimonial home was not the husband's and the Grand Duke's to declare. In short, you cannot declare an express trust in a beneficial interest that is not yours (or, to indulge in the Latin, *nemo dat quod non habet*).

116. I have, of course, given careful consideration to the contrasting arguments advanced by the wife in support of her case that the husband *does* own a share of the beneficial interest in the former matrimonial home. I have dealt with the wife's contentions regarding the TR1 in detail above. With respect to the wife's assertion that some of the funds provided for the purchase of the US property constituted a gift to the husband from his mother, which funds were subsequently used to purchase the London property, as very properly accepted by the wife of her own volition, no corroborating evidence of the conversation said to ground that assertion is before the court or exists. The assertion was not raised by the wife prior to the hearing (she stating, perhaps understandably, that she had not appreciated the continuing legal significance of the disposal of Florida property within these proceedings). Further, the wife did not challenge Mr Wildgen's evidence that the funds to purchase the US property were provided by the ADB from the Grand Duke's 'private' funds and appeared to accept during her evidence that the proceeds of sale from the US property were returned to the ADB in their entirety. In any event, as I have noted above, the chronology makes clear that the former matrimonial home was paid for by the ADB with funds from GroBherzogliches Fideicommiss / fidéicommis grand-ducal prior to the sale of the US property. With respect to the wife's argument regarding the omissions in the *compromis de vente*, whilst it is plain that the husband did not sign that document and that the document is undated, those omissions do not act to alter my conclusions as to what intention is evidenced by the terms of that document within the context of my finding that the ADB paying for the former matrimonial home with funds from GroBherzogliches Fideicommiss / fidéicommis grand-ducal. Finally, with respect to the email from Mr von Habsburg, as I have already set out I am satisfied that Mr von Habsburg's description of the parties as owners in his email of 11 August 2011 is a term of art or a shorthand, rather than an accurate description of the manner in which the former matrimonial home was held following the transaction.

117. It follows in the circumstances that I must conclude that the husband does not own a share of the beneficial interest in the former matrimonial home. In the circumstances, I am satisfied that the beneficial interest in the former matrimonial home does not fall for distribution in these financial remedy proceedings between the husband and the wife.

(b) Post Nuptial Settlement of Former Matrimonial Home

118. Within the foregoing context, neither the ADB nor the husband sought to dispute that the former matrimonial home comprised a post nuptial settlement in circumstances where it had been purchased as a home for the husband, wife and children. As to the contents of the post nuptial settlement, on the evidence I have set out above I am satisfied that what has been created by that post nuptial settlement is an interest which, although sufficiently enduring to satisfy the criterion of making 'continuing provision', is analogous to a bare licence determinable on the giving of a reasonable period of notice.

119. In my judgment, this conclusion is consistent with the evidence the court heard regarding the parties' intentions with respect to the use of the London property. As I have noted, in his statement on behalf of the ADB, Mr Wildgen contended that the property was purchased for the husband and wife to live in whilst they were based in London for their continuing studies. Within this context, both the husband and wife gave evidence that was consistent with there being no firm or settled intention that the family would remain in the property for a defined period, let alone indefinitely. During the course of his oral evidence, the husband told the court that when they arrived in London the husband and the wife believed that they would stay for the duration of their studies, although they had not entirely excluded the possibility that they might remain in the property longer. Within this context, the wife stated that it was her understanding that the former matrimonial home had been provided for them for so long as they resided in London, she telling the court that the former matrimonial home was purchased "as a home for them to grow their family in and live at" and had been provided as a place where "we would raise the children". However, in addition, when pressed by Mr Ewins in cross examination, the wife also stated that she and the husband had thought they would stay in London for two years to finish their degrees but would then "see what we would do". Indeed, the wife told the court that "we just took it one day at a time". Whilst the husband was clear that the ADB would never have simply "thrown them out" of the property, within the foregoing context, no documents were signed by the husband and wife regulating their occupation of the property, setting out a defined term of occupation or the circumstances in which their occupation would come to an end.

120. In these circumstances, on the evidence before the court, there is no basis for concluding in this case that the contents of the post nuptial settlement extended to an interest analogous to a life interest or to a term of years certain. Rather, on the facts of this case, I am satisfied, having regard to the matters set out in the foregoing paragraph, that the post nuptial settlement that exists in this case created, in effect, a bare licence to occupy terminable on reasonable notice, that reasonable notice period being six months.

(c) Inheritance

121. I am likewise satisfied on the evidence before the court that the husband's prospect of a future inheritance is not sufficiently certain to enable the court to regard the same as a financial resource falling for distribution in these proceedings. It may well be that the husband will in due course receive further funds by way of inheritance. However, on the evidence currently before the court it is not possible, as the wife concedes, to say with sufficient certainty when he will do so. Nor is it possible on the evidence before the court to be sufficiently certain of the amount of any further payment to be made. In the circumstances, the husband's future inheritance prospects are simply not a sufficiently certain foundation upon which to rest an award to the wife.

(d) Husband's Family as a Resource

122. Whilst the wife's evidence and submissions have given me pause on this question, I am on balance satisfied that it would be wrong in this case to conclude that the husband's family represent a financial resource on which this court can rely when determining the ability of the husband to satisfy any award that it makes in favour of the wife. The court has before it unchallenged evidence indicating that the husband's family do not intend to fulfil such a role. In circumstances where the husband's parents are under no legal or fiduciary duty to assist him financially, the court must place considerable weight on this indication contained in the letter from the Le Maréchal de la Cour to the husband. Whilst the wife expresses the view that the husband's parents would make good any shortfall in his ability to meet an order made by the court, beyond this bare assertion there is no other evidence to gainsay the clear statement of intent in that letter. Within this context, I am satisfied that this is a case in which the husband has only "a mere spes of bounty", his parents being under no legal obligation to make financial provision for the husband and having stated expressly they do not intend to do so in the context of a clearly stated rationale, namely historical precedent and fairness between their children. It is, I am satisfied, clear on the evidence that they will not change their view.

(e) Other Potential Capital Assets

123. With respect to the husband's minority share in the property in Paris in which he currently resides, I am satisfied that there is no evidence to suggest that it could be liquidated, and the wife did not seek to suggest it could during the course of her closing submissions.

124. Finally, I am not satisfied that the wife has demonstrated that the husband has undisclosed business assets that would fall for distribution within these proceedings. Whilst it was appropriate to explore further the matters raised by the wife following her discovery of the material on the 'CrunchBase' website, I am satisfied that a satisfactory explanation has now been provided for that material. I am reinforced in this view by the fact that the company that is mentioned on the 'CrunchBase' website is a different entity to that which the husband held shares in. In the circumstances, I am satisfied that this new material, provided by the wife during the course of her closing submissions, does not properly fall for consideration when determining the appropriate orders in this case and the wife did not press the point during the course of her closing submissions.

125. Within the foregoing context, it is plain in the circumstances that the matrimonial assets available for distribution in this case are limited. Having regard to my findings on the key disputes between the parties as to the ownership of the former matrimonial home, the likelihood of the husband coming into a substantial inheritance, the willingness of the husband's family to provide him with funds to meet any award made by the court to the wife and the current position with respect to the husband's business interests, the position with respect to capital assets can be stated as follows:

Asset	Wife	Joint	Husband
Bank Accounts	£58,023	£1,442	£21,739
Investments	£20,000	-	-
Liabilities	(£67,339)	-	(£52,130)
Pensions	£2,625	-	-
TOTAL	**£13,309**	**£1,442**	**£(31,391)**

(e) Income and Earning Capacity

126. The wife's present income from her current employment amounts to £51,512 per annum net. Whilst the wife states that she has handed in her notice for the reasons I have summarised above, that figure represents her current salary. The husband's income from the allowance paid to him by his parents amounts to £35,398 per annum net. The total net income of the parties is therefore £86,911. With regard to the parties' respective budgets, I accept the submission that the wife's budget is unrealistic having regard to the income available to the parties on the unchallenged evidence before the court. As I noted above, the wife accepts that, within this context, economies will have to be made. I likewise accept the revised figures provided for the husband's budget, which figures now take account of the items that the husband concedes are funded by his family.

127. With respect to future earning capacity, whilst I accept that the wife faces challenges in securing employment, the wife's qualifications and qualities are nonetheless manifest. Within this context, at 32 years of age and whilst acknowledging that she bears the majority of the responsibility for caring for the children, I am entirely satisfied that the wife will be able to secure employment at least at the level of her current net income. With respect to the husband's earning capacity, at present I am satisfied that this is less than that of the wife. However, I take at face value the husband's desire to achieve financial independence and note that he has taken steps in this direction by seeking qualifications and starting a consultancy that he is working to make profitable.

Distribution

128. With respect to their needs, the wife's primary need is for a property in which she can continue to reside with the children and for a level of income sufficient to meet her outgoings and those consequent on the care and upbringing of the children, taking into account her own income and earning capacity. The husband has a similar need for a property in which he can reside although, whilst I accept his admirable desire to achieve independence in terms of his housing, that need is less pressing at this time than the similar need of the wife in circumstances where he has available to him a family property in which he can reside for the time being. With respect to his income

needs, I am again satisfied that, whilst his desire for independence is admirable, his income needs are less pressing than those of the wife given what the husband himself describes as his current 'minimal' outgoings. That said, I am also satisfied, for the reasons I have already given, that the husband is not able to call on his family's wealth to meet any award that exceeds his current income.

129. Within this context, whilst over the course of their 11 year marriage I am satisfied that the husband and wife had a quality of life commensurate with their position as members of a European Royal Family that has available to it considerable wealth, staffed properties in various different countries on the continent and funds to deploy to make housing provision in new locations as and when needed by the husband and wife, in the context of findings set out above the court's ability to meet the respective needs of the parties in this case as defined in the foregoing paragraph, let alone within the context of their former lifestyle, is strictly limited. The statutory criteria in s 25 of the Matrimonial Causes Act 1973 and the principle of fairness must be applied to the resources that are available for distribution. Within this context, the court must do the best it can with the matrimonial resources that are available. This is a challenge faced by courts up and down the country on a daily basis in cases where the matrimonial assets are insufficient to meet assessed need.

130. Within the foregoing context, having considered each of the factors in the s 25 checklist and having kept at the forefront of my mind the need to ensure fairness, I am satisfied that the court should proceed as follows:

i) In circumstances where the husband has no beneficial interest in the former matrimonial home, I am not able to make a property adjustment order in favour of the wife in respect of the same. I am satisfied that, in the circumstances, as regards the wife's housing need, this court is limited to varying the post nuptial settlement to provide the wife and children with a licence terminable on 6 months notice. Whilst I accept that this does not provide the wife and children with the degree of security that the court would wish, I am satisfied that this is the limit of the court's ability to intercede in this case as regards the housing needs of the wife and children.

ii) Within the foregoing context, I am satisfied that this is an appropriate case to make a nominal spousal maintenance order. Whilst I accept that the aim of both parties in this case is financial independence, against this the current position of the wife is *inherently* uncertain in circumstances where, on the face of it, she and the children have the benefit of a bare licence to occupy their current property and the wife is in the process of ceasing her employment and looking for a new job. In the circumstances, whilst I have every confidence that the wife will in due course establish herself, given the inherent uncertainties in her current accommodation and in her employment, on balance I am satisfied that the safety net of a nominal spousal maintenance order is justified in this case at this stage. With respect to the term of the nominal spousal maintenance order, it follows from the conclusion that, having regard to her current income and her earning potential, the wife will in due course establish herself, the term should cover only the period it will take her to achieve this adjustment. I am satisfied that the wife's current search for new employment will bear fruit in short order. However, notwithstanding her current income and her earning capacity, the task of achieving a secure

housing position will take longer. I also bear in mind that wife will be required to prioritise the children until they reach their later teenage years, which may impact on the speed at which she is able to adjust to her new circumstances. Within this context, and doing the best I can, I am satisfied that the term of the 'safety net' that comprises a nominal spousal maintenance order should be a period of six years. At the conclusion of that period the wife will have had, within the context of her extensive qualifications and her earning capacity as I have found it to be, a sufficient period of time to further develop her career and to secure housing provision and the youngest child will be approaching his majority.

iii) I am further satisfied that it is appropriate to order the husband to pay child periodical payments of £4,000 per annum per child. For the reasons I have already given, I do not consider it appropriate to make an order that exceeds the husband's resources such that he would be required to rely on the largesse of others in order to meet it. Likewise, I do not consider it appropriate to compel the husband to borrow money to meet his obligations. However, I am satisfied having regard to his revised budget that the husband can do more at this point in time with regard to meeting the outgoings consequent upon raising the children than is provided for by his open position. On his figures he has a surplus net income of £3,648. Within this context, I am satisfied that he can afford to pay £4,000 per annum per child and that such a figure is appropriate having regard to outgoings in respect of the children. I note again the assurance provided to the husband by his parents that they will continue to pay the school fees and medical expenses of the children. With respect to the term of the child periodical payments order, I am satisfied that the order should continue for each child until they attain the age of 18 years or cease their full-time tertiary education to first degree level including a gap year, whichever shall be the later.

131. Finally, as set out above, Mr Leech rightly reminds the court that it has no power to compel the ADB to enlarge its offer to the wife, which offer involves the purchase of a property in London in the sum of £1.5M with a right to occupy the same until the youngest child finishes his first degree. Within this context and given the orders that this court considers it is able to make, it will now be a matter for the wife to decide whether to take advantage of the proposal maintained by the ADB. A proposal that would enable the wife to reside in London rent and mortgage free over a period of some twelve years, during which extended period (and, as I have determined above, over a shorter timeframe within that period) she would, I have absolutely no doubt, be well able to achieve for her herself a position of financial independence, including adequate provision for future accommodation.

CONCLUSION

132. In conclusion, whilst a stark and in many respects unsatisfactory outcome, I am satisfied that on the evidence before the court that I must dismiss wife's application for a property adjustment order. I make an order varying the post nuptial settlement to provide the wife and the children with a licence to occupy the former matrimonial home terminable on six months notice, a nominal spousal maintenance order and a child periodical payments order in the sum of £4,000 per annum per child. I will receive submissions, if any, on the question of costs.

133. Finally, as I noted in *HRH Louis Prince of Luxembourg v HRH Tessy Princess of Luxembourg (Publication of Offer)* [2017] EWHC 3095 (Fam), following the breakdown of the parties' marriage the wife has been labelled in some sections of the foreign press as a "gold digger" and an incorrigible chaser of status. Nothing could be further from the truth.

134. In his statement for this final hearing, the husband states that "We married young and much has been expected from the applicant in her role as Princess. She undertook that role with grace and represented my family well, for which I am grateful to her." At its heart, this is simply a sad case about a young couple who determined to marry for love despite the considerable challenges posed by the way in which history, tradition and chance had conspired to define their respective social status and to shape attitudes towards their marriage. It is a case about a couple who thereafter, for a time, were happy together, before the fairy tale soured.

135. The fact that the wife chose in these circumstances to pursue financial remedies, as is her right in accordance with the law, does not act to equate her with those people who cynically form relationships with partners in order to obtain money or status. Although a legitimate exercise of the right to freedom of expression, and whilst the point does not fall formally for me to determine, on the detailed evidence that has been available to me I take the view that the manner in which the wife has been traduced in some sections of the press by the use of that malign characterisation is both unfair and unwarranted.

136. That is my judgment.