Neutral Citation Number: [2018] EWHC 2973 (Fam)

Case No: FD17F00034

IN THE HIGH COURT OF JUSTICE

**FAMILY DIVISION**

Royal Courts of Justice

Strand, London, WC2A 2LL

Date: 06/11/2018

**Before** :

THE HONOURABLE MRS JUSTICE ROBERTS

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**B E T W E E N :**

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| --- | --- | --- |
|  | **NN (“the wife”)** | Applicant |
|  | **- and -** |  |
|  | **(1) AS (“the husband”)**  **(2) SS (“the husband’s father” or “Professor S”)**  **(3) AS (“Amal”)**  **(4) LS (“Lina”)** | Respondents |

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**Justin Warshaw QC and Joshua Viney** (instructed by **Simons Muirhead & Burton LLP**) for the Applicant

**Damian Garrido QC and Fiona Hay** (instructed by **Abbey Law**) for the First Respondent

**Tim Amos QC and Michael Gleeson** (instructed by **Penningtons Manches LLP**) for the Second, Third and Fourth Respondents

Hearing dates: **Monday, 2 July to Friday, 13 July 2018**

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Judgment Approved

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

**Mrs Justice Roberts :**

*Opening remarks*

1. Over the course of ten days in July this year (2018), I dealt with the final hearing of cross-applications made by various members of an extended Egyptian family whose interests in these proceedings arise as a result of marriage and consanguineal kinship. The first application in time is that of NN (“the wife”) who, on 17 March 2017, was given permission by Russell J to apply to the English court for financial relief following an overseas (Egyptian) divorce. Her substantive application under Part III of the Matrimonial and Family Proceedings Act 1984 (“the 1984 Act”) was issued on 22 March 2017.
2. Within the context of that Part III claim the wife asserts that her former husband, AS, is the legal and beneficial owner of three properties in central London and a yacht which is currently moored in Egypt. He accepts that he has a one-third interest in two of the London properties which he claims he owns in equal one-third shares with his two sisters, the third and fourth respondents. He denies having any beneficial interest in the third London property (mortgage free and worth some £5.7 million) and/or the yacht. Whilst he accepts that his name appears on the documents of title to both, he asserts within these proceedings that he holds the entire beneficial interest in each for his father, the second respondent.
3. On 7 March 2018, the wider family members were joined as parties to the wife’s Part III proceedings in order that, pursuant to s 14 of the Trusts of Land and Appointments of Trustees Act 1996, they might formally assert their claim to beneficial ownership of the various properties which were and are under attack by the wife in the context of her Part III claim.
4. The material before the court which has been generated over the course of sixteen months of litigation is voluminous and, condensed to its final form, runs to eight bundles of documents. As the proceedings have developed, the wife has extended the reach of her allegations into the territory of sham, forgery and metadata manipulation. In support of their collective denial of her case, the respondents have adduced evidence from their Egyptian lawyers and other professionals involved in the various property transactions. There have been extensive forays into forensic tracing exercises. Vast quantities of information have been produced from Egypt and elsewhere, much of which has had to be translated from its original Arabic content. Over the course of the trial I have heard evidence from all five parties and (by video link) from the Egyptian lawyers who were involved in one way or another in the various property transactions.
5. There is also expert evidence in the form of two reports from expert witnesses. The first (which was not the subject of challenge) was from Mr Dennis Willetts, an expert in digital forensics. His report, produced in June 2018, dealt with the interpretation and meaning of certain pieces of metadata which were referenced in some of the pleadings. The second was a report from Mr Anthony Stockton. He was the wife’s witness whose evidence was directed towards her allegation that the husband, or someone acting on his behalf, had forged the signatures of the second third and fourth respondents on some documents evidencing their beneficial entitlement to interests in the disputed property. He attended court and was cross-examined on the contents of his report.

*What the parties seek in the context of the English Part III proceedings and the counterclaim made by the second, third and fourth respondents*

1. In terms of outcome, the husband’s father and his two sisters seek declaratory relief in respect of their respective beneficial interests in the three London properties and the second respondent’s interest in the yacht. In addition, the husband’s sisters seek damages in the form of mesne profits arising as a result of the wife’s continuing occupation of one of the London properties.
2. The wife’s Part III claim is predicated on the basis that the husband’s wealth (including his access to financial resources) is “immense”. By her opening salvo in March 2017, she represented to the court that he had global assets worth “in excess of £100 million”. Those assets, she contended, were held in a number of jurisdictions around the world including Egypt, Dubai, the Cayman Islands, Belgium, the United States of America, the United Kingdom and Switzerland. This was the basis of the evidence on which she relied to secure an early freezing order in relation to the London properties. The husband was given less than 24 hours’ notice of that application and did not seek to resist the freezing injunction whilst reserving his right to contest her claims as to beneficial ownership of the properties.
3. In April 2018 the wife made an open offer to compromise her claims in this litigation. That offer forms the basis of her presentation to the court as it was opened by Mr Warshaw QC on the first day of the hearing. In short, she seeks the transfer of the London apartment (worth £1.55 million gross) in which she currently lives with the parties’ 9 year old son, A, on the basis that the mortgage will be redeemed from the sale proceeds of the most valuable of the two remaining properties (said by the respondents to be owned by the husband’s father). From those proceeds, she seeks an additional lump sum of £2.25 million. All other assets would remain in the ownership of the party who currently holds them, and the husband will pay child support at the rate of £30,000 per annum together with educational costs.
4. That offer of £3.8 million, which is put forward on the basis of a financial clean break with no order as to costs, has to be seen in the light of the fact that these parties were divorced in Egypt in December 2015 at a time when the wife had a degree of independent financial wealth emanating from her own family. At the time of the divorce in Cairo, the wife was represented by an Egyptian lawyer, Mr S, who held a power of attorney which enabled him to enter into negotiations on her behalf to secure financial terms. Mr S was a long-standing friend of her family and had acted for them, and her own father in particular, in relation to a number of transactions over the years. The wife accepts that Mr S held a power of attorney and had instructions to act on her behalf in the divorce negotiations but claims she was in a state of significant distress at the time and did not appreciate or fully understand the terms of the deal to which he committed her.
5. Under the terms of the Egyptian Divorce agreement, the husband had agreed to pay the wife an additional lump sum of EGP 5 million (then worth about £215,000[[1]](#footnote-1)) and to maintain the financial status quo ante. This involved her remaining in one of the London properties in which she had lived with their son since 2012 when she moved to London. Whilst she remained responsible for A’s primary care, the husband agreed to continue paying the mortgage on the property from his own resources and to maintain the monthly payments he had been making at the rate of £5,000 per month to cover her expenses. That agreement has been implemented in terms of the receipt by the wife of the lump sum payment (funded, on the husband’s case, by an advance of funds from his own father). She continues to live rent free in the apartment which has been her home since 2012 and the periodical payments of £5,000 per month have been maintained. It is clear to me that these payments have been supplemented since the Egyptian agreement by her continuing ability to draw significant sums as a joint signatory on the husband’s credit cards. That facility appears to have been terminated in December 2016 against the background of the husband’s allegations that she was abusing her position by significantly overspending on his accounts.
6. There is an issue between the husband and wife as to who instigated the Egyptian divorce. That dispute has to be seen against the particular dynamics of this marriage as it evolved following the wife’s expressed wish to live in London so as to secure naturalization and, ultimately, British citizenship. Whilst the husband had both Egyptian and British nationality, he remained resident for most of their married life in their former matrimonial home in Cairo. These are matters which I shall need to address at a later stage of this judgment but it is accepted by the parties that, following their divorce and the implementation of the Egyptian Divorce agreement, the husband continued to make financial provision on a voluntary basis over and above that agreed including some gifts of jewellery to the wife.
7. Following the Egyptian divorce, the wife waited some fifteen months before launching her Part III proceedings in London. I have struggled to identify precisely what was, or might have been, the precipitating event for her decision to litigate in this jurisdiction. It is clear that tensions between husband and wife had continued, not least in relation to his allegations of her overspending on the credit cards and her cross-allegations of his unwillingness to meet additional expenditure which she says she incurred in relation to their son. There have been parallel proceedings ongoing in the Family Division in relation to A and his contact with his father. The wife alleges that he took steps in December 2016 whilst she and A were spending the holidays with her family in Cairo to prevent her from returning with their son to London. That issue was resolved in January 2017 when the husband signed the necessary papers allowing A to return with his mother to London. However, the tensions between them as parents continue with the wife alleging that she is now unable to risk returning to Egypt with A in case he is once again prevented from leaving that country. She suspects that the husband’s objective is ultimately to secure a state of affairs whereby A is raised in Egypt. She sees his actions as a fetter on her ability to travel freely between the two countries and these issues, together with the financial issues which arose in relation to payments for A, appear to have provided the catalyst for her decision to draw the line and achieve a final clean break between them in financial terms. As she states in her written evidence,

“[My own] and [A’s] financial security became increasingly at the whim of the Respondent’s ever-changing mood. [I felt I] had been left with no other option but to instigate proceedings for financial relief in the English courts to protect [myself and A].” **[1/C:99]**

1. Before turning to the background, it is important to note at this stage that, in the context of the Egyptian Divorce agreement, the wife had advice from English matrimonial lawyers in addition to the advice she must be taken to have received from her Egyptian lawyer, Mr S. But a matter of weeks before the Egyptian agreement was concluded, she had been advised by Mishcon de Reya, a well-known leading firm of specialist London divorce lawyers. She states that the purpose of the consultation which she attended in December 2015 was to gain clarity about her rights in England. She consulted that firm a matter of days before a scheduled trip to Cairo where the Egyptian Divorce agreement was concluded. Before leaving London she had instructed Mishcon de Reya to issue an English divorce petition which they duly did a matter of days after her initial consultation.
2. No further steps were taken in relation to that petition once the deal in Egypt had been struck and I can only proceed on the basis that such inaction was the direct result of instructions from the wife to put matters on hold. As far as I am aware, there has never been a formal application to withdraw, or dismiss, the English petition but no steps were taken to engage the jurisdiction of the English court prior to the issue of her Part III claim.
3. When the current Part III proceedings began in March 2017, the wife had approximately US$1.2 million in her bank accounts in Switzerland. These were funds transferred to her by her own father during the marriage. He had made his money from the oil business (and, in particular, from selling his interest in an oil rig). She told me that these were funds which had been made available to her “to secure a decent life” in circumstances where she received no financial support following a divorce from her first husband. Following her remarriage in 2007, she appears to have been supported financially by the husband and/or his family. When she moved to London in 2012, she confirmed that she did not use this capital to meet her day to day expenses in London; these were being met by the husband. Rather she regarded the funds as available for the ongoing costs of her two adult sons from her first marriage. In addition, she had (and still has) a 50% beneficial interest in a London flat which is worth about £1 million and which is mortgage free. That property had been purchased jointly with her brother as an investment using money given to her by her father. She did not dispute that her invested Swiss funds had throughout the last year generated an income for her of £125,000 per annum.
4. The husband’s position is that, if the court decides to exercise its jurisdiction in relation to the wife’s Part III claim, he has secured the consent of his father and sisters to propose that the wife’s occupancy of the London flat should be extended until A competes his secondary education or her earlier remarriage or voluntary vacation of the property. In the event of his death during that term, he undertakes to make testamentary provision so as to ensure that A inherits his beneficial interest in the property. He offers to maintain the mortgage payments on the flat on a secured basis. The quid pro quo of his ability to make this offer with his family’s consent is his willingness to compensate his sisters for their interest in two-thirds of the market rent which would otherwise be generated were the wife not in occupation of what they contend to be one of the jointly owned London apartments. He offers to maintain the payments of £5,000 per month towards A’s support and guarantees to secure those payments.
5. These terms have been approved as an open offer by the second, third and fourth respondents in an email dated 22 June 2018.
6. As the months of this litigation have gone on, the costs have inevitably escalated significantly. I am told that, between them, these parties have spent a sum of just under £1.4 million. Those costs, paid and unpaid, as between husband and wife have had a significant impact upon the remaining assets which appear on the agreed schedule as currently available to the husband and the wife in the context of her Part III claims. It was Mr Garrido QC’s position in closing that, including some disputed properties which she is alleged to own in Egypt, the wife has assets in the order of £2.8 million after payment of her costs including funds paid over in satisfaction of the Egyptian Divorce agreement. In contrast, he submitted that the husband had assets in the order of £1.5 million after payment of his costs, all of which were entirely non-matrimonial in terms of provenance.
7. Stripped to basic terms, it is agreed that – subject to my determination as to the husband’s interests in the disputed properties and the yacht and a resolution (if such is possible) as to who owns what in terms of properties in Cairo and elsewhere in Egypt – the assets in the case are just under £2.4 million. The wife’s net interest in the London investment property which she co-owns with her brother is just under £416,000. She has liquid cash funds of c. £665,000 most of which is held in Egypt and Switzerland but these funds are now offset by a liability of over £400,000 in respect of legal costs. Some £350,000 is owed to her English solicitors and a further £64,000 is due to Mr S, the Egyptian lawyer who represented her in the Cairo divorce.
8. What is clear is that the wife has made a very significant financial investment in this litigation. She has done so in the expectation that, leaving aside any conclusions which this court might reach in relation to the sufficiency of the overall financial benefits which the terms of the Egyptian Divorce agreement provided for her, she will succeed in discharging the burden of proof which she bears in relation to her early allegations of the true extent of the husband’s wealth and thus the resources available to him to meet her claims. In contrast, he now claims to be in debt as a result of having to realise personal assets to meet mounting legal costs. His net annual income for the year ended December 2017 was just over £100,000. He claims to have no steady income at present having lost his employment in the family business during the currency of these proceedings.
9. Much of the wife’s case is underpinned by a very significant financial deal which was concluded in 2016 (although under negotiation in 2015 when the Egyptian Divorce agreement was signed). It concerned the disposal of 75% of the S family’s interest in a University complex in Cairo. In its early stages, the deal was potentially worth US$1.2 billion. It is the wife’s case that the husband had, and has, a legitimate expectation of receiving from his father many millions in US dollars from this deal in the negotiation of which he had played a significant role.
10. As matters currently stand, it is Professor S’s case that his son has no such expectation of personal benefit and that the additional family wealth created when the negotiations were concluded is owned and controlled by him as a central “pool” of family wealth regardless of the interests of members or shareholders recorded on the Companies Register in Cairo. In this context, it is common ground that, unlike his two sisters who are each registered as 20% shareholders, the husband has never held shares in the corporate entity which owned the University although he was well remunerated as an employee during the period during which he was involved in the pre-contract negotiations.
11. Thus, the central issues of fact in the case, as identified by Mr Warshaw and Mr Viney in their opening note, are these:

(i) the ownership of the three London properties held in the husband’s sole name;

(ii) the status of US$5 million paid to the husband in 2015 towards the end of the marriage in anticipation of the sale of the university;

(iii) the status of a further US$10 million arising from the same transaction; and

(iv) the true extent of his other resources.

1. **The background**
2. The facts relating to the celebration of this marriage and the timing of its demise are not controversial although, as I have said, there is a significant issue as between husband and wife as to who instigated the divorce.
3. The wife is 49 years old. She was born and brought up in Cairo and has had Egyptian nationality since her birth in 1969. She secured British citizenship through naturalisation in November 2015 having by then lived in London for three years.
4. Having completed her secondary education in Cairo, the wife graduated from the American University in Cairo and went on to develop a successful career as a freelance journalist. For the next seven years, from 1991 to 1998, she worked for a number of publications before moving to one of Egypt’s leading national newspapers, El Ahram. She worked on that newspaper for the next ten years until 2008.
5. For most of that period she was married to her first husband whom she married in Cairo in 1991. They were divorced in 1999 and there are no remaining financial ties between them. Two sons were born during that marriage. H (now 26 years old) lives and works in Texas where he is financially independent. A (now 23 years old) graduated from an English university and now works in London as a trainee accountant. The wife accepts that the husband has always treated her two elder sons as children of the family and has provided for them generously during their marriage.
6. That marriage was celebrated on 27 April 2007 in Cairo. It was a second marriage for the wife and a third marriage for the husband. The parties had met in London at the end of 2006 and, by all accounts, swiftly made the decision to marry.
7. The husband was born in England as a result of his father’s residence in the United Kingdom where he was completing his PhD. When he was 5 years old, the family returned home to Egypt where his father began a very successful career as an educationalist. It was a role in which Professor S excelled and one which, with his obvious commercial acumen, he was able to develop into a highly profitable commercial enterprise.
8. The husband was educated in Egypt and in the United States where he attended university in Los Angeles to study business. He lived in London for six years from 2001 to the beginning of 2007. It is common ground that his previous business in Egypt had collapsed and he left Cairo with numerous creditors pursuing him. He accepts that he did not have a penny to his name. It seems that whilst in London, he worked to establish a number of commercial activities or franchises, but none was particularly successful and he lived off what he was able to earn from time to time as a truck driver, a car trader and as a photographer.
9. This period in London coincided with a breakdown in the relationship between the husband and his father who did not seek to conceal his disappointment at his son’s failure as a businessman and what he regarded to be his lack of any sensible work ethic. He has been described in these proceedings as “the black sheep of the family”, an epithet which – at the time – probably had some substance as far as the family was concerned. In December 2006, at about the same time as these parties met, there was a *rapprochement* between father and son. Professor S travelled to London and offered to clear his son’s debts (then some US$4 million or c.£2 million on then prevailing *fx* rates) on the basis that he would then be free to return to Egypt to assist in running a new university which Professor S was setting up in Cairo. That move was described during the course of the hearing as a “financial bail-out” and it is probably an apt description. Its relevance lies in the fact that it is accepted by all the parties to this litigation (including the wife) that, when the husband returned to live in Cairo in 2007, he was more or less completely broke. That appears to be the basis upon which he started married life with his new wife. He was aware at the time that she had independent wealth of her own although the wife told me that he never enquired about the extent of her financial resources.
10. Following their marriage, the wife continued to live with her parents in the home they had previously shared in Cairo whilst their Egyptian matrimonial home in Sakara was being built. It seems that they were able to integrate into their family life all four of the children they shared from their previous marriages. The husband had two sons of his own who were then 15 and 12 years old. The wife left her job with El Ahram in 2008. As she explained to me, she had been living as a divorced woman in Egypt for over ten years and she wanted to make a success of this marriage by investing her time and energies into her second marriage.
11. The husband worked in his father’s employ for the next ten years and, from time to time, made some money from other businesses which he ran on the side. He has always been very interested in luxury motor cars and was able to indulge his passion by acquiring vehicles (largely on finance) which he then traded at a small profit.
12. The wife has made much during these proceedings of the standard of living which the parties enjoyed as an incidence of their married lives together. In her Part III statement dated March 2017, she said this:

“The lifestyle we lived during our marriage was incredibly lavish. We had five large villas across Egypt, and had five permanent members of staff who would travel with us wherever we went. We had a fleet of luxury cars including Bentleys, Ferraris, Range Rovers, BMWs, Porsche and Mercedes. We would travel extensively on first class or business class and regularly go on holiday. The Respondent would also purchase me luxury gifts of jewellery and expensive watches. He would also shower [A] with presents, at times spending several thousand pounds at once in toy stores such as Hamleys. Our personal expenditure was around £30,000 each month. Money was never any object.”

1. That description of married life has to be seen against the background of her estimation of the husband’s personal wealth which, in 2017, she put at £100 million.
2. It is accepted that the husband earned well whilst in the employ of his father but there is a significant issue between the parties as to the extent to which he built up capital wealth in his own name during the subsistence of this eight year marriage. The husband contends that their former matrimonial home in Egypt was owned by his father and, on the balance of probabilities, it seems that Professor S must have been the provenance of the funds used to acquire the property since it is acknowledged that the husband had no independent means to finance such an acquisition at the time of their marriage. (The equity in that property was subsequently gifted to the husband by his father when, in 2017, there were ongoing discussions about the wife and A returning to live in Egypt where they would need a home of their own.)
3. There appears to be no issue but that, in the early days of the marriage, the husband and wife, with the extended S family, travelled widely and enjoyed holidays together. However, it is the respondents’ case that whatever lifestyle the husband and wife enjoyed during their marriage, it was funded by the husband’s earned income and such bounty as Professor S made available to his son and daughter-in-law. He is universally acknowledged within these proceedings as being a very generous husband, father and grandfather to his wide and extended family.
4. Professor S (who will celebrate his 80th birthday next year) is the President of a very well-known Academy in Cairo. He has been described by Mr Amos QC as having “had a remarkable career as an educationalist and businessman spanning decades”. He has worked in education and management for his entire adult life and was appointed as a government advisor before setting up the T Group of Schools and the Academy. The Group was founded in 1990 and comprises a number of schools offering secondary education, three higher technical education colleges, and the N University. This was set up in 2005 as an international establishment which was owned and operated through a limited partnership corporate entity.
5. Professor S has described the structure of the business model in this way in his written evidence:

“My family holds property and assets, not only in Egypt and in England, but also in the United States of America. I founded the [N] University in 2005 as a family business which was set up as a partnership. Myself, [my wife and my two daughters] were appointed to be the managing partners of the university, alongside a number of other non-family partners. However, despite the fact that a number of family members were partners, and notwithstanding the terms of the partnership contract, it was decided that Amal should have full authority to make any managerial or legal decision relating to the business. This authority was given on the clear, but unwritten, understanding that any substantive action should be discussed with the family to decide what is best for all of the family members concerned – the authority is for myself, Amal, Lina and my wife …”.

1. I have been provided with a copy of the partnership contract. That document makes it clear that the husband holds no shares or other interest in the business. He has never had such an interest. He was, of course, estranged from his family at this point in time and living in London.
2. In respect of his wider international wealth, Professor S is the owner of a portfolio of fixed income bonds which are held in Switzerland. Whilst they are held in his name, it is acknowledged within his immediate family that these assets are held for the benefit of his two daughters who will ultimately receive the income and proceeds of these investments. However, Professor S controls these investments in the meantime and the family appears to acknowledge that he has *carte blanche* to change the underlying nature of the investment portfolio or reinvest the funds in other assets in his absolute discretion. I was provided with evidence which confirms that this has happened on a number of occasions and specifically in relation to the transfer of funds which were used to invest in an Egyptian company called CI Capital.
3. In this way, it is the family’s case, led by the evidence of Professor S, that the manner in which the legal title of an asset is held does not necessarily reflect underlying beneficial ownership of assets which may from time to time be placed in the name of an individual family member. As and when investment opportunities arise which Professor S considers might benefit the family as a whole, he decides in whose name to invest his, or “the family’s”, money. He told me that, whilst there will often be discussion amongst the family, he is the ultimate decision maker, a position which is readily acknowledged by all the respondents in this case.
4. Professor S’s wealth is also tied up in a portfolio of properties which the family owns in the United States. He currently holds a portfolio of six commercial and residential properties which has been built up since 2015. At that point in time, Lina was spending a significant amount of her time in America and had applied for a green card. Having decided to invest in the US, Professor S and Lina travelled to New York, Stamford, Connecticut and Miami to oversee the purchases which are held through a corporate vehicle in their joint names, albeit managed by Lina. Professor S plainly regards these as family assets albeit that there is an acceptance by all his family members (confirmed in their evidence) that he is entitled to the proceeds to distribute as he sees fit amongst them.
5. Professor S has not sought to put a figure to his global wealth which now includes the proceeds of the sale of 75% of the family’s interest in the N University to a global investment fund (the A Group). However, it is clear that he is immensely wealthy and has very clear views about how his family wealth should be managed and who should benefit from it.
6. Before turning to the acquisition of the three London properties which inform the focus of the computational aspects of the wife’s Part III application, I need to say something about the circumstances in which she came to be living in London in one of those properties.

*The wife’s move to London in 2012*

1. On the wife’s case, and notwithstanding that he had only recently been reintegrated into “the family fold”, the husband was keen to relocate to London on a permanent basis almost from the outset of their marriage. She maintains that the plan was to acquire a smaller property initially whilst they looked for a larger and more permanent family home in the capital. She describes how they made an initial trip to London in October 2008 when she was six months pregnant with their son. During that trip, they were in contact with several agents and viewed at least one property.
2. A was born in London at the Portland Hospital in January 2009. His birth coincided with the final arrangements for the purchase of the first of the London property acquisitions in an apartment block in Central London (“Flat 117”). Contracts for the purchase were exchanged a week after A’s birth and the sale concluded on 2 March 2009. By that time, the parties had returned to Cairo and there they remained as a family for the next two and a half years. They did not use the apartment although the husband’s sisters and their friends did stay there on occasions when they visited London.
3. When A was 3 years old in mid-2012, and with political events moving swiftly in Egypt following the Arab Spring in January 2011, a decision was taken – on the wife’s case – that the family would move permanently to London. She accepts that, initially at least, she would be living for much of the time on her own since the husband had to remain in Egypt for his work. She recalls that he promised to try to get to London to spend ten to fifteen days a month with them.
4. He was then employed by his father as General Director of the N University. His net income from that source was supplemented to a certain extent by a very small residual income from two of his former London enterprises (a fitness club and a restaurant business). Whilst I do not have evidence of his income in 2011/2012, I have a certificate from his accountants confirming his net income from all sources over the three years 2014/2016 to be as follows:-

y/e 2014 (all sources) £230,525

y/e 2015 (all sources) £328,345

y/e 2016 (all sources) £241,082.

1. By the time these proceedings began, his income (comprising salary and bonus) was just under £140,000 per annum.
2. The wife has accepted that, on his return to Cairo at the end of 2006, the husband had no assets at all and would have been heavily in debt but for the largesse of his father who paid off his creditors. Without accessing her capital (which she accepts was preserved), she must have been aware that he needed to work in order to finance the family’s lifestyle. Even on this level of remuneration, it must have been clear to her (given she tells me that they shared every detail of his life in the family business) that this was not an income which, without more, would sustain a life of first class and business travel with all the trappings she describes as a regular incidence of their lifestyle from the early days of the marriage. It is difficult to see how, in these circumstances, he would have been in a position to fund what she describes as their joint intention on their move to London to build up a portfolio of London property investments. The University deal at this stage was a long way into the future.
3. In April 2011, the wife and her brother jointly purchased an investment property in the block adjoining that in which Flat 117 was situated. The husband made no contribution to that purchase which was financed by money gifted to her by her father.
4. In May 2011, whilst still living in Cairo, the wife began the administrative process of applying for indefinite leave to remain in the UK. Various works of redecoration were undertaken at Flat 117 which had been let out periodically since its acquisition in 2009. As I have said, it is accepted that the property was also occupied from time to time by the extended family (including the husband’s two sisters) on occasions when they stayed in London. At the beginning of February 2012, the wife was granted indefinite leave to remain in the UK. The following summer, on 23 August 2012, she and A left the family home in Cairo and moved into Flat 117. On the wife’s case, this was intended to be a permanent relocation and their intention was to look for a more substantial family home.
5. The husband has a different recollection of events, as do his family. Whilst acknowledging that she wished to obtain British citizenship, he contends that one of the reasons for her move was her wish to make the move with one of her sons from her first marriage so as to avoid the compulsory military conscription to which he would be subject as an Egyptian resident. The husband’s evidence is that there were serious difficulties within their relationship by this stage and those difficulties were exacerbated by the unhappy relationship which the wife had with the children from his first marriage. He contends that he had always intended her move with A to be temporary and of no more than three or four years’ duration. By that time his elder sons would be independent and living away from their family home and she and her elder son would have acquired British citizenship so as to enable them to travel freely between the two countries.
6. Given his case that he owned Flat 117 jointly with his two sisters, he told me that he had to secure their agreement to his wife’s occupation of the flat during this period. He undertook to meet all the expenses of the property including servicing the mortgage without a contribution from them for the three or four years she would be living there. Her occupation would mean the loss of the rental income against which these outgoings had previously been offset.
7. Each of the husband’s sisters was aware of the wife’s wish to secure British citizenship. They were aware of her concerns about the increasing political instability in Egypt. There were discussions in the family and both sisters confirmed to me their agreement that she should be permitted to live in Flat 117 notwithstanding that they would lose their rental income and the opportunity to use the flat as a base whilst travelling in London. Both Amal and Lina support the husband’s case that this was to be a temporary move at the end of which the wife and A would return to live in Cairo. Indeed, Lina appears to have recognised the strains which such a move might place on the marriage. In her written evidence she recounts several “difficult family discussions” during which she sought to point out the potential problems of splitting a family between two different countries. She said that she cautioned the wife about the cultural implications of an Egyptian husband and wife living apart from one another for long periods of time.
8. It is clear from the wife’s own evidence that on occasions she found life alone in London a struggle following her move in 2012. The husband, who remained living in Cairo, did not spend as much time with the family as she hoped he might. In her written evidence, the wife refers to this period of their marriage as *“long distance family life and marriage breakdown”* which she dates between 2012 and 2015. She accepts that she was effectively living by herself with A in London for the last three years of the marriage. The holidays which they were able to spend in Cairo did not appear to alleviate the pressures on the relationship although she accepts that the husband was a very good father to their son during this period.

*The decision to end the marriage*

1. I have some insight into the dynamics of this marriage from an email which the husband wrote to the wife in November 2015. The wife contends that she had no idea that he was preparing to divorce her when he announced his decision to do so in that email.
2. I have read that document carefully. I listened to both the husband and wife being cross-examined about its contents. It is a deeply personal communication written by one spouse to another at a time when he could not possibly have known that it would end up as one of many thousands of pages of documents in a major piece of litigation. On any view, it would be impossible to construe that email as a husband demanding of his wife a divorce. That is expressly what he seeks to avoid. His intention is plainly to separate without a divorce and, if necessary, without advertising the fact of their separation to anyone. With some justification, in my view, he recounts that this is more or less the manner in which they were already living their lives.
3. What appears to have prompted the husband’s email is the wife’s own repeated demands for a divorce. He begins his email, *“Today you have requested a divorce, and you have done so the day before yesterday too, and you demanded it a hundred times before and the last occasion when we had an argument two months ago.”* He speaks of the attempts he has made to contain some of her more volatile mood swings and his attempts to keep the family in tact despite his feelings of depression and weariness with the state of the marriage. He sets out four “points” or goals which should guide their future decision-making, and these include ensuring a settled and stable life for A; preserving their mutual dignity; avoiding any further set-backs for the children from the wife’s first marriage; and ensuring that the wife’s parents were not upset or worried about her.
4. The wife described this letter as the husband’s attempt to ‘set up’ a situation or scenario which justified his subsequent actions in divorcing her. Having listened to them both over a number of days in the witness box, I do not accept that description of this email or its underlying purpose. It was described by Mr Garrido as a letter written more in sorrow than in anger and I accept that description. In many respects it is a very measured document, recognising and respecting many of the qualities which the wife brought to the marriage and to family life. The husband was able to point to several underlying tensions within the marriage which had surfaced regularly in moments of discord over the years. They do not need to be repeated in this judgment but I accept them as the husband’s subjective perception of the reasons underlying his wish to separate. As he put it,

“We only live once, and we are barely living it, living life without life. Unfortunately, we were unable to protect each other. I wasn’t able to and neither were you. And everything we do now is just plastering/bandaging wounds.

Your repeated demands for divorce and your defensive stance along with your statements like you don’t need my money or for me to leave, has hurt me, upset me, and made me feel like I deserve it.”

1. I have been provided with a run of WhatsApp messages which the wife sent to the husband following receipt of this email. It is clear from those exchanges that, confronted with what she perceived to be the husband’s decision to end the marriage, she was hysterical. The husband during these exchanges attempted to calm her down and advertised an intention to come to London to speak to her within a matter of days.
2. The wife denies having previously sought a divorce. She points to the fact that, only the previous month, she was assisting the husband to invest the US$5 million which his father had sent to him following the completion of the sale of the university. The wife confirmed to me that she was very concerned about the possible impact which any separation might have on her application for naturalisation. The husband did not seek to interfere in that process. Indeed, on the wife’s case he signed all the necessary papers before he sent his email on 5 November 2015. The husband recalls signing the papers on his subsequent visit to London a few days later. In any event, her certificate of naturalisation is amongst the material in the court bundles and is dated 30 November 2015.
3. Within less than a month of receiving the husband’s email, the wife had set up the meeting in central London with Mishcon de Reya and had given that firm instructions to issue an English divorce petition before travelling with A to Cairo on 10 December.
4. It appears from the evidence of both parties that the husband finally pronounced a *talaq* which was effective to end their marriage under Sharia law when the wife arrived at the airport following her journey from London.
5. It is clear that relations between husband and wife were extremely strained at this point. The husband had arranged for separate cars to transport the family to their respective destinations in Cairo. The wife saw this as a personal humiliation. A scene ensued. The wife alleges that he received a call from a “girlfriend” (which the husband denies). She says she was so angry that she did indeed demand a divorce there and then at which point he pronounced a *talaq*.
6. These, then, were the events which led to the Egyptian Divorce agreement which was concluded some two weeks later whilst the wife and A were still in Cairo. I will need to return to that agreement and its impact on her Part III claim in due course.
7. **The disputed property transactions**
8. Before dealing with that aspect of the claim, and against that background, I propose to turn now to the circumstances in which the disputed property transactions took place. The three London properties are:

(i) Flat 117, GH Building, Central London (“Flat 117”);

(ii) Flat 507, JK Building, Central London (“Flat 507”); and,

(iii) the LM Flat, Central London (“the LM Flat”).

In addition, I shall need to consider

(iv) the acquisition of the yacht (“PQ”).

1. Before doing so, I need to address the law and the basis on which the claims from the extended family are pleaded.

*The law in relation to the counterclaim maintained by the second, third and fourth respondents*

1. The court has no jurisdiction to transfer the disputed properties, or any part of the underlying equity, to the wife or to order the sale of any of those properties unless it is satisfied that the property in issue is property to which the husband is entitled, either in possession or reversion: see ss 24(1) and 24A of the Matrimonial Causes Act 1973.
2. There is no issue but that, prima facie, the husband is entitled to the full beneficial ownership of all three properties since he holds the legal title to each. The court’s starting point is that equity follows the law and that the beneficial interests reflect the legal interest. But this presumption will be displaced if the court is satisfied that the parties intended a different arrangement. The burden of proof in these circumstances lies upon the person seeking to assert that the beneficial ownership is different from the legal framework of ownership: per Baroness Hale in *Stack v Dowden* [2007] 2 AC 432 at paras [54], [56] and [58].
3. The principles set out in *Stack v Dowden* were reviewed and further elucidated by the Privy Council in the later decision of *Marr v Collie* [2017] UKPC 17, [2017] 2 FLR 674. That was a case which concerned a dispute over the beneficial ownership of property acquired by an unmarried couple over the course of a 17 year relationship. The legal titles to the properties in issue were held in their joint names but the appellant claimed that he had provided the majority of the purchase funds for the various acquisitions. Both parties gave conflicting accounts of their respective intentions at the time of purchase. The judge at first instance held that there was a distinction to be drawn in the application of the *Stack v Dowden* principle when the property in question was primarily purchased as an investment rather than as a home. Because the respondent had not rebutted the presumption of a resulting trust, he concluded she was not entitled to an equal share of the underlying value of the property portfolio. That decision was reversed by the Court of Appeal on the basis that there was cogent evidence that the respective intentions of the parties at the time was that the respondent should have an equal share. The appellant’s appeal to the Board was allowed and the case remitted to the Supreme Court in the Bahamas.
4. From paragraph [36], Lord Kerr provided a comprehensive analysis and review of the jurisprudence flowing from the decision in *Stack v Dowden* including *Laskar v Laskar* [2008] EWCA Civ 347, [2008] 2 FLR 589 and *Jones v Kernott* [2011] UKSC 53, [2012] 1 AC 776, [2012] 1 FLR 45.
5. His Lordship noted the passage in *Stack v Dowden* where, at paragraph [69], Baroness Hale had said,

“….Each case will turn on its own facts. Many more factors than financial contributions may be relevant to divining the parties’ intentions.”

These could include: any advice or discussions at the time of the purchase which cast light on their intentions at the time; the reasons why the property was acquired in the name of the legal owner and the intended purpose of the acquisition; the nature of the relationship between the parties; the manner in which it was financed, both initially and subsequently; how their financial arrangements were structured, “whether separately or together or a bit of both”; and how the outgoings on the property were discharged.

1. In *Laskar*, a daughter had agreed to assist her mother financially in order to exercise her right to buy the council house in respect of which she had been a secure tenant. There was no question of the property being occupied by either as a home: immediately on acquisition, the property had been let as an investment vehicle. In these circumstances, Lord Neuberger Of Abbotsbury said:

“In this case the primary purpose of the purchase of the property was as an investment, not as a home. In other words, this was a purchase which, at least primarily, was not in the “domestic consumer” context but in a commercial context. To my mind it would not be right to apply the reasoning in *Stack v Dowden* to such a case as this, where the parties primarily purchased the property as an investment for rental income and capital appreciation, even where their relationship is a familial one.”

1. In *Marr v Collie* the Board rejected the submission that *Laskar* was authority for the proposition that the principle in *Stack v Dowden* (that a conveyance into joint names indicates legal and beneficial joint tenancy unless the contrary is proved) applies only in the ‘domestic consumer context’. Where there is reliable evidence to the contrary, Lord Kerr said that it would be ‘illogical and wrong’ to impose a resulting trust solution on the subsequent distribution of the property acquired by a cohabiting couple in circumstances where their contributions to an investment property had been unequal: see paragraph [49].
2. However, as his Lordship went on to stress in paragraph [54], “*context* counts for, if not everything, a lot. Context here is set by the parties’ common intention – or by the lack of it”. Thus, acknowledging that initial intentions at the time of purchase may change, it is necessary in each case, and on its particular facts, to examine (i) why the relevant property was acquired and purchased in the sole or joint name(s) of the relevant party or parties; (ii) the common intention or intentions of the relevant parties at the time in relation to the entitlement of any non-legal owner to a share in the property regardless of any contribution made towards the cost of acquiring the property in question; and (iii) the subsequent course of conduct of the relevant parties over the years in which they dealt with the property.
3. What is clear is that the answer to these questions is not derived from the triumph of one presumption over another. Every case turns on its facts and it falls to the judge determining the issue of disputed beneficial ownership to reach such conclusions as may be justified by a rigorous forensic analysis of the evidence.
4. In this case, the wife asserts a beneficial interest in Flat 117 on the basis that it has been “the family home” since 2012[[2]](#footnote-2). She asserts no such beneficial interest in relation to either Flat 507 or the LM Flat. Rather, she asserts that these properties are owned legally and beneficially by the husband and, as such, fall to be considered as a resource in his hands to meet her Part III claim.
5. In terms of the evidential burden in this case, it is accepted that the onus lies on Professor S to show that he holds, and is entitled to, the beneficial ownership of both the LM Flat and the yacht, PQ. In relation to Flat 117 and Flat 507, the burden falls on Amal and Lina to establish their beneficial interests in the two flats. In terms of *context*, none of these property transactions can be seen as arm’s length commercial arrangements between unconnected investors. Each was undertaken (on the wife’s case) by the husband or, (on the husband’s case) in the context of either funding or other arrangements put in place by members of a close family unit.
6. The other legal principle which falls to be considered in this context is whether or not any sums made available to the husband in connection with the property transactions can, or should, be treated as outright gifts from his father, or alternatively, his sisters. This question arises principally in relation to the acquisitions of the LM Flat and the yacht. A gift is effective when the donor intends to make a gift and the recipient takes the property or thing given and keeps it, knowing that he has done so: see *Halsbury’s Laws*, volume 52 (2014) at 201. In this context, it is the intention of the *donor* (here, Professor S and his two daughters) which is crucial: see *Meisels v Lichtman & Ors* [2008] EWHC 661 (QB) per Blake J. “Gifts require the donor to intend that the gift shall not be returned to him”: para [74].
7. Of central relevance to the LM Flat transaction is the question: did Professor S intend the delivery of the funds which were made available to the husband to complete the transaction to be an unambiguous or unequivocal delivery of a gift to his son?
8. Whilst the wife does not rely on any formal presumption of advancement, I bear in mind that my task is to ascertain the parties’ true intentions by considering the evidence of the entire transaction. This involves considering objectively all that was said and done at the time. In this context, the court’s survey is not limited but can include a wide range of evidence including, if appropriate, any transactional history or course of dealings which may be relevant to inform the court’s conclusions.
9. **The circumstances in which each of the properties in issue was acquired**

*Flat 117*

1. Flat 117 was purchased in March 2009 just over two years into the marriage. The husband and wife were then living in Cairo. He was employed by his father as the General Director of N University. He had only been working in that capacity for two years. He was maintaining the wife and, as she accepts, he had no assets of his own at that stage save for any savings which he may have made from his income. I have no evidence about that and thus do not speculate although, given his income and the standard of living described by the wife, it is difficult to see how he could have accumulated much in terms of savings. As I have said, the husband’s case is that the family home in Cairo which was purchased about a year into the marriage was funded by means of a gift from his father, a position which was not challenged by the wife.
2. Professor S’s evidence, supported by his daughters, is that there were several discussions amongst the family at about that time in relation to purchasing a property in central London. The family had longstanding connections with the capital dating back to the time when Professor S studied for his PhD in London in the 1960s. I heard from each of the second, third and fourth respondents that they and their families were regular visitors to London. The evidence of the S family is that the husband was given the task of identifying a suitable investment property given his recent experience of several years living and working in the capital. They told me that he was better placed to secure a mortgage given his previous residence and employment history.
3. The respondents’ case is that the Professor provided the funds for the balance of the purchase price of £800,000 which was not covered by a mortgage of £560,000 which was taken out in the husband’s name with Lloyds Bank Hong Kong. There is evidence in the papers of three transfers sent from the Professor’s Arab Bank account to the husband’s Lloyds account in July and August 2008. Those funds were subsequently transferred by the husband to the London conveyancing solicitors. Contracts were exchanged a week later on 27 January 2009. The transaction was completed on 2 March 2009.
4. On behalf of the wife, Mr Warshaw challenged these transactions as an attempt by the family to reconstruct events by reference to ad hoc transfers recorded in the 2008 bank statements which had been produced by the husband and Professor S. He points to the ‘churn’ of funds in the husband’s account which makes it impossible to trace the funds pound for pound into the transfer which was made to the conveyancing solicitors in respect of the deposit. That challenge comes as part and parcel of his challenge to the respondents’ case and his allegation on behalf of the wife that the documents allegedly produced and signed in Egypt are forgeries and sham transactions. That, it seems to me, is a separate issue. In terms of the initial funding of Flat 117, if the provenance of the £240,000 shortfall was not Professor S’s resources advanced in accordance with his intention to enable his three children to acquire a London property or family base, the question arises as to where those funds came from and who provided them? The husband maintains he did not then have the resources which would have enabled him to pay. His sisters have each confirmed that their father advanced the funds required to complete the purchase on the basis that each of his three children would share in the beneficial ownership of the property.
5. The transfer of funds to the husband over the summer of 2008 lends prima facie support to the family’s case that a decision had been taken in principle to invest in the London property market. The Professor’s written evidence is that the focus of their discussions took place in 2009. He states that,

“Whilst I provided the deposit (and all other funds required to purchase the property), I did so in order to provide Lina, Amal and [the husband] with a property in London. It was an investment which I was happy to provide for my children. ….it was understood and agreed by all the family that [he] was holding two thirds of the property on trust for Lina and Amal. In conjunction, it was understood that the property was intended to be for the use of the wider family as and when they travelled to London.”

1. That was the position which the Professor confirmed when he gave his sworn evidence from the witness box. I appreciate that this transaction took place nearly ten years ago at a time when the family did not have any expectation of having to defend its position in litigation in this jurisdiction. Thus I look to evidence of what was said or done at the time, or shortly thereafter, to further the family’s intentions and objectives.
2. The legal title was formally registered at the Land Registry in the husband’s sole name on 26 March 2009.
3. Professor S’s evidence, supported by his children, is that the family was anxious to take steps to resolve any ambiguity about the beneficial ownership of Flat 117 by formalising the ownership structure in a legal document drawn up by his Egyptian lawyers. He told me that, as a family, they had some reservations about the extent to which they could trust the wife’s intentions given that she had come into their midst as an “outsider”. There is reference in the evidence of all three interveners to the fact that there was some surprise when, in the Summer of 2008, she announced she was pregnant. Given that both the husband and wife already had grown families from their previous marriages, they had apparently announced that they did not intend to have children. There is some support for that position in the wife’s own evidence. She confirms that, having already had children, neither she nor the husband planned that she should become pregnant since having children together was “not a priority”. Whether or not that was the case, the wife had already made it known amongst the family that she and the husband intended to relocate to London in due course in order to enable her to secure British citizenship. It was in these circumstances that the family told me that they felt it was important to ensure the arrangements they had agreed in relation to the ownership of Flat 117 were recorded formally in a legal document. The husband acknowledges that it was highly unusual for the family to have documented a shared ownership arrangement but this step was taken at his father’s instigation because he had concerns about his relationship with the wife.

*The respondents’ case in relation to the involvement of the Egyptian lawyers*

1. In terms of those arrangements, and on the family’s case, the husband made contact with his father’s Egyptian lawyer, Mr Salaheldin. He had his own practice as a lawyer but was also employed as an in-house lawyer at the Academy which had been set up by Professor S. The husband telephoned Mr Salaheldin some ten or fifteen days before 14 May 2009 which is the date when the 2009 sale contract is said to have been executed. According to Mr Salaheldin’s evidence, he was asked to prepare a contract reflecting the husband’s (and the family’s) intentions that all three of Professor S’s children should share in the beneficial ownership of Flat 117. The Professor told me that the husband for his part was keen to ensure that each of the children was aware of the nature of their interests and thus their obligations to make contributions to the outgoings.
2. During cross-examination Mr Salaheldin confirmed the evidence which he had previously committed to writing that he had advised the husband that the date to be inserted in the sales contract should be the date upon which the formal registration of the transfer of the property in the husband’s name occurred, i.e. 26 March 2009.
3. Mr Salaheldin’s evidence is that he delegated the formal drafting of the 2009 sales contract to his colleague, Mr Al-Shabory. I have seen a copy of an invoice rendered by Mr Al-Shabory which is dated 26 March 2009. He subsequently confirmed to me during his oral evidence that he was paid in cash for the work he had undertaken. That work, and the form of the contract, was reviewed by Mr Salaheldin at Mr Al-Shabory’s offices towards the end of May 2009 at a scheduled meeting attended by both Egyptian lawyers and the three siblings. Both lawyers confirm that the contract was signed in their presence on that occasion by each of the husband and his two sisters. Mr Salaheldin witnessed the signatures. An electronic copy of the contract was sent at about the same time, or shortly thereafter, by Mr Al-Shabory to Mr Salaheldin on a USB flash drive or memory stick. In the meantime, Mr Al-Shabory has confirmed that he retained a photocopy of the signed contract bearing all three signatures of the husband and his two sisters.
4. As to the terms of the 2009 Sale Contract, I have a certified English translation of the original Arabic document. The husband is described as “the seller” and his two sisters as “the buyers”. The document records that: the husband is the legal owner of Flat 117; the title was transferred into his sole name because of his frequent presence in this jurisdiction and his ability to secure a loan on the property; and his confirmation that he acts as the representative of the partnership in terms of his own and his sisters’ interests. It records his wish to “sell and distribute a two-thirds share” so that each of the three siblings should become equal owners. Thereafter, the contract records the formal transfer of his legal interest as to one third to each of his two sisters on the basis that each would thereafter share all costs and “instalments due on the property” in equal shares. The final clause in the contract records the fact that four copies of the contract had been released to the parties and the “witnessed lawyer”.
5. Before turning to what happened afterwards in terms of the family’s course of dealing with the property, I turn now to the wife’s account of the circumstances in which Flat 117 was acquired.

*The wife’s case in relation to Flat 117*

1. Her case is that when she was about 6 months pregnant in October 2008, she travelled with the husband to London for a week in order to find a London home. An offer was made on one particular property which fell through. They returned to Egypt and were contacted shortly after their return when they were informed that another apartment, Flat 117, was available in the same development. They did not return to London to view the property but put in an offer which was accepted. It is no part of the wife’s case that the property was purchased as a long-term family home in London. Even on her case, Flat 117 was a temporary base whilst they looked for a larger and more substantial property.
2. For the next three years, it is accepted that neither she nor the husband took up occupation of Flat 117. Their matrimonial home was in Egypt throughout that period. They did no work at the apartment until 2012 in anticipation of the wife and A taking up residence for the purposes of her application for British naturalization.
3. So what happened following the acquisition of Flat 117? It is common ground that for various periods in 2010 and 2011, the property was let. It was managed throughout this period by Mr Tawadross, the husband’s agent, who collected the rent and carried out whatever work was necessary at the behest of either the tenants or the S family. There is no doubt that the extended family made use of the flat over those three years. Amal’s evidence is that she stayed at Flat 117 frequently between 2009 and 2012. She says that the short term lets were intended to assist in funding the outgoings. Lina’s (unchallenged) evidence was that she stayed at the flat at least once a year between 2009 and 2012 and often with friends. Her children were regular visitors to the UK during the summer months and she travelled with them to stay at Flat 117. I have evidence from three of Lina’s female friends, each of whom confirms that they stayed at Flat 117 at the invitation of the family in March 2009 and May 2010. It is clear from at the informal statement in the bundle from at least one of those visitors that she was under the impression that Flat 117 was Lina’s property. Lina herself states that it was common knowledge amongst many of her friends and family that Flat 117 was effectively her London home.
4. As to the financial arrangements between the three S siblings between 2009 and 2012, I was told by all three about an informal arrangement whereby the husband would from time to time tally up any outstanding costs which were not covered by the rental income. He told me, as did his sisters, that the family would gather for Friday supper at one of the family homes in Cairo and it was on these occasions that family business was discussed, including – from time to time - any accounting necessary in relation to the London flat. Both sisters told me that their contributions were made either in cash or through bank transfers. It is accepted that there are no formal records of account in relation to these transactions. I do have in the documents some contemporaneous records maintained by Mr Tawadross. These record receipt of rents and the payment of various items of expenditure such as maintenance costs and repairs, various kitchen items purchased (later in 2012) at the request of both the wife and the family and, in one particular instance in September 2011 (prior to the wife’s occupation of the flat), the cost of meeting delivery charges for a pair of Professor S’s ear plugs. There is no challenge from the wife’s legal team as to the *authenticity* of these particular records.
5. There is an issue between the wife and the family as to her state of knowledge in relation to the arrangements which were put in place in relation to Flat 117. Professor S is quite clear:

“I can clearly recollect that [the wife] was, during the course of normal family discussions, informed of my intention in relation to the purchase of the property. She knew and acknowledged that it was purchased for Lina, Amal and [the husband]. ….. following her decision to move to London, she was personally involved in family discussions with regard to the apartment and of the fact that other family members would be using it. I can specifically recall informing her that my sisters-in-law would need to spend some time there, as would I.”

1. Amal’s evidence, confirmed during her oral cross-examination by Mr Warshaw, was that, following her determination to move to London in 2012, the wife was directly involved in the family discussions which followed. Whilst she accepted that the wife had never directly sought her permission to live in the flat. Amal’s evidence was that:

“We therefore agreed that, as a goodwill gesture to [husband and wife], she could stay in Flat 117 for a few years (we all saw the move as a short term one and it was never contemplated that she would seek to make her permanent home in England). I can recall being keenly aware of the fact that this agreement was to the detriment of Lina and myself as it deprived us of the ability to use the property whilst we were in London as well as the rental income which we could have expected to receive. I was however prepared to make these sacrifices on a short term basis in an effort to assist my brother and his wife. [The husband] agreed that he would pay the outgoings for Flat 117 as long as [she] was staying there which … was always intended and understood to be a temporary arrangement.”

1. Lina’s evidence was that the wife was throughout aware of the way in which Flat 117 was held by the three siblings. She had understood the arrangement for the wife to live in the property to be a temporary state of affairs limited to the three years it would take for her to establish residence in London for the purposes of her naturalization application. She recalls being very surprised by the wife’s subsequent refusal to allow the family to use the apartment during one of the summer periods after 2012 when she (the wife) had returned to Egypt for a holiday.
2. Lina was cross-examined about a meeting which she had with the wife during the summer of 2017 following the initiation of these proceedings. Lina was staying in London, as was her habit during part of the summer months. They met at a well-known coffee franchise in London’s Oxford Street. Lina was clear that she had expressed to the wife her significant surprise and regret once she became aware of the wife’s Part III application. It appears to be accepted that the family was not immediately notified by the husband about the proceedings. This particular meeting appears to have been set up between the sisters-in-law in order that Lina could inform herself, and thus the wider family, about the nature of the claims which the wife was making in this jurisdiction. She recalls asking the wife how she felt able to advance claims in respect of Flat 117 and the LM Flat when she knew full well about the family ownership of those properties. The response she received from the wife was that she was seeking security for herself and A and that was all she cared about. The wife accepts making that statement to Lina but maintains now (as she did then) that she was not privy to the nature of any arrangements which the family had made in relation to the two properties.
3. In the presentation of her case in relation to the existence of the 2009 Sale Contract, Mr Warshaw and Mr Viney deny the authenticity of the document. It is challenged, along with the later documents, as a sham and a forgery produced or procured by the husband. In support of this case, she relies on the fact that the husband held himself out as “the owner” to the mortgage lender and failed to disclose that he was purchasing the property as a family investment. I shall need to return to this aspect of her case shortly.

*Flat 507* In December 2013, some four and a half years later and at a time when the wife had been living in Flat 117 for over a year, the family (on its case) decided to invest in another apartment. By this stage, the equity in Flat 117 had increased to the extent that the husband was able to secure a remortgage with FNB Bank which was thereafter secured on both properties. Flat 507 was purchased on 17 December 2013 for just under £500,000. The purchase was registered at the Land Registry on 16 January 2014. There was a shortfall of some £22,000 to which all three siblings contributed in equal shares. The husband’s evidence is that the shortfall was in fact £23,450 which included a ‘lock out’ deposit of some £5,000. Amal and Lina have confirmed that they paid their respective contributions to the husband in Egypt. According to Lina’s evidence, it was their common practice to use cash to account to one another for any dealings or settling of accounts in relation to the two London properties. She recalls sending cash by messenger to the husband’s home in Cairo which he then converted to sterling and remitted to London.

1. The wife confirms that she was aware that the purchase was being proposed in December 2013. Initially, the husband had proposed that his two sons from his previous marriage would be able to occupy the flat during term times since both were studying in London. He confirmed in his oral evidence that he saw the purchase as a means of saving the rent he would otherwise have to expend on accommodation for them in London. At least one of the husband’s elder sons was resident in Flat 507 for about a year. In 2015 both the sons moved into a rented apartment in the same block as Flat 117.
2. Although the wife accepts that she was not privy to the details, it is clear from the documents which have been produced that Flat 507 was rented out commercially for periods between October 2014 and December 2015. The property was managed, as with Flat 117, by Mr Tawadross who accounted to the husband for the rent and dealt with any repairs or maintenance issues.
3. On the family’s case, the purchase of Flat 507 was dealt with in a similar manner to the earlier purchase of Flat 117. Whatever concerns the family may have had about the wife’s intentions some three years earlier when Flat 117 was purchased did not appear to have been resolved. By this stage, as she herself concedes, she and the husband were, for the most part, living separately in different countries.

*The evidence of the Egyptian lawyers in relation to Flat 507*

1. I have evidence from the Egyptian lawyers about the documents which they confirm were produced in respect of this second transaction (“the 2014 Sale Contract”). According to Mr Salaheldin’s evidence, he was approached by the husband a few days after New Year’s Day in 2014. During that telephone call, the husband asked him to prepare a separate sale contract for Flat 507. The task was once again delegated to Mr Al-Shabory. Although dated 16 March 2014, there was some suggestion during the course of the oral evidence that the document had in fact been created by Mr Al-Shabory on 4 March 2014. Whilst Mr Al-Shabory has no recollection of the precise date, he was clear in his evidence that at some point shortly after he had drafted the contract, all three siblings (the husband and his two sisters) attended on the same occasion in his Cairo office where they signed the 2014 Sale Contract. Its terms were very similar to those set out in the 2009 Sale Contract and made provision for all three to hold identical interests in the property as to one-third each.
2. Mr Salaheldin’s evidence was that he was not present on the occasion when the 2014 Sale Contract was signed but he did subsequently receive a copy on a flash drive, or USB stick, sent to him by Mr Al-Shabory.
3. With the documentation produced by the Egyptian lawyers in relation to this second transaction, there is a record of the work undertaken and a receipt for the cash payment of EGP 1,000 received. These two documents are dated 16 January 2014. Mr Al-Shabory was asked about the discrepancy in these dates. His evidence was that each of these documents (the statement of work undertaken and the receipt of payment) were created in 2017 at the request of the husband who was being asked to provide confirmation in the English litigation as to his case in relation to his sisters’ interests in the two London apartments. The husband has confirmed that position and told me that it was never intended that these two documents would be represented as contemporaneous documents. He acknowledges that he contacted Mr Al-Shabory and requested them during the currency of this litigation.
4. However, both the husband and his sisters have confirmed that all three signed the 2014 Sale Contract during early March 2014.
5. The husband has been responsible for paying the FNB Bank remortgage at the rate of between £6,000 and £7,000 per month. He contends that he is no longer able to afford the payments. Since his elder son was in occupation during university term times from about 2014, the flat has not been generating a rental income to offset the mortgage payments. During periods when the property was let between 2014 and 2015, the husband maintains that he accounted to his sisters for any surplus rental income. Mr Tawadross’s management records for the relevant periods have been disclosed.
6. It is also clear that Flat 507 was used by Lina and/or her friends who stayed at the apartment in the summers of 2014, 2015 and in July 2016 whilst Flat 117 was unavailable because of the wife’s occupation. She has produced evidence from those friends which indicates that their understanding was that Lina was a part owner of the property.
7. The wife’s case in relation to the documents produced in support of the 2014 Sale Contract is identical to her case in relation to the 2009 Sale Contract: she maintains that the husband’s case and that of the S family is false, and the documents are either shams or forgeries created for the purposes of this litigation.

*The acquisition of* the LM Flat

1. The LM Flat was purchased “off plan” whilst it was still in the course of construction. The purchase price was £6 million. The entirety of the funds invested in the purchase emanated from Professor S although there is an issue between the wife and the respondents as to whether some US$5 million was an outright gift to the husband. It appears to be accepted by the wife and her legal team that, as at 20 October 2015 (when contracts were exchanged), the husband had no independent wealth such as would have enabled him to compete the purchase without assistance from his father.
2. The purchase of this property coincided with the latter stages of the ongoing negotiations in Cairo for the acquisition by the A Group of the University and Academy business which had been set up and developed over the years by Professor S and other members of the S family. The initial offer from the owners of the investment fund related to the acquisition of the entire Group together with all the underlying corporate assets. Professor S’s original intention had been to retire from academic and business life when the sale was concluded. However, there were various issues which emerged over the course of the commercial negotiations which resulted in a change to those plans. When the contract was finally signed in 2016, it was only the University which was sold. Professor S retained ownership of the Academies and the related business entities. He put on hold his plans to retire and, on his evidence, embarked on a revision of his financial planning.
3. When it looked as though the entire business was going to be sold, Professor S told his three children that he intended to entrust to them a significant proportion of his wealth on the understanding that they would build up some security by investing in property or other assets on his behalf and on behalf of the wider family. He contends that each of his children understood that any funds they received could be called in at any time should the Professor need access to them for any reason. He acknowledged that these advances could loosely be described as “gifts” but maintains that each of his children knew and accepted that they were contingent or conditional gifts. These family discussions appear to have begun in 2015 as negotiations for the sale of the University business continued.
4. The husband accepted during cross-examination that both he and the wife were excited by the prospect of receiving a significant amount of wealth to invest. It is clear from the wife’s evidence that she was aware of her father-in-law’s plans from discussions she had had with the husband. They had begun to explore the possibility of purchasing a more substantial property and it is clear from the material in the bundles that the wife had kept in touch with central London estate agents with whom either she or she and the husband had earlier made enquiries. In August 2015, she completed her three years of residency in London. She knew at that point that she was likely to be granted British citizenship. The previous month, the parties were introduced to the LM Flat by one of the estate agents with whom they were in touch.
5. On 15 September 2015, the husband made an offer to purchase the property “off plan” for the sum of £6 million.
6. Both Lina and Amal had received funds from their father. The husband received an advance of US$5 million on the basis that a further US$10 million would be likely to follow. Those funds were deposited in his Credit Suisse account on 22 September 2015 and converted into a series of rolling fixed term investment bonds. Three days later, and no doubt “flush with cash”, he purchased a new Bentley through a central London dealer for £130,000.
7. Contracts for the sale of the LM Flat were formally exchanged on 20 October 2015, the husband having sent to the conveyancing solicitors, Charles Russell Speechlys LLP, the 10% deposit in the sum of just over £595,000. The contract was in the husband’s name, the wife accepting that she had instructed the estate agents to amend their original sales memorandum so as to delete her name as a joint purchaser.
8. The husband accepts that he was wholly dependent on his father to pay the second tranche of the completion monies since he had no funds over and above the Credit Suisse bonds. He had already used those reserves to leverage a loan for the 10% deposit.
9. Work on construction of the apartment block at the LM development proceeded through the winter months of 2015. However, it appears that by that stage there had been a change to the direction of travel of the commercial negotiations ongoing in Cairo in relation to the sale of the University. The terms of the sales contract were revised so as to provide for the retention within S family ownership of the Academies and related corporate entities. The sale of the business went ahead but only in relation to the University and its associated activities. The evidence which I heard from Professor S was that, since he was no longer liquidating the entire enterprise, he put on hold his plans for full time retirement and informed his children that he would continue to be involved in running the Academies. He recalled some of the funds which had already been distributed to his three children in anticipation of the sale of the entire enterprise in Cairo.
10. Each of Lina and Amal has confirmed that they repaid their father – at his request - a portion of the advance they had received. These funds, or a significant proportion of them, appear to have been invested by the Professor in CI Capital. Lina has produced documentary evidence of the return of her funds and the reinvestment undertaken by her father. Amal has also confirmed that she returned funds to her father.
11. As completion of the construction of the block of flats approached, the husband wrote to the selling agents to enquire whether he could assign his interest in the sales contract. He was told that he would first have to make the next contractual stage payment of just over £1.2 million. By that stage he had advertised his intention to sell the apartment on the open market as soon as he was in a position to do so.
12. On 18 May 2016 Professor S transferred to the London conveyancing solicitors the second instalment of just over £1.2 million from one of his accounts in Dubai. Some four months later, the husband was notified that he would be required to pay just over £4.2 million together with stamp duty in order to complete the purchase of the long leasehold title. Because of the fixed term nature of the bonds held within his Credit Suisse account (themselves the product of the Professor’s earlier payment to the husband of US$5 million), he had to leverage his contribution to the final payment by means of a loan of £2,040,00 against those Credit Suisse funds. The balance of just under £2.8 million was provided directly by his father who arranged to transfer the funds to Charles Russell Speechlys LLP on 23 September 2016. Thus, the provenance of the completion monies (some £4.84 million) came from funds which were either provided directly by the Professor or through (recalled) funds which had earlier been transferred to the husband.
13. Documents have been produced by the respondents during the course of this litigation which has enabled that forensic tracing process to be undertaken. The wife does not seek to challenge the provenance of these funds but she contends that the initial US$5 million was an outright gift to the husband as part of his entitlement from the deal involving the sale of the University in Cairo. As the case was opened, she was also suggesting through the asset schedule provided to the court that the balance of the US$10 million which informed the husband’s early expectations should also be factored in to a computation of the resources available to him in the context of her Part III proceedings.
14. Of course, by the time the purchase of the LM Flat was completed in September 2016, these parties were divorced and had been for some nine months. Of his relationship with the wife at the time, the husband says this:

“[We] were still married [when the US$5 million was transferred to me in 2015]. Our marriage was in terrible difficulty and she was frequently asking for a divorce. …. Nevertheless, we were soldiering on and trying to manage our difficulties. She did come with me to look at the LM Flat which I had alighted upon as a reasonable investment opportunity. ….. The LM Flat (whatever [she] may have hoped for) was never intended to be a matrimonial property. Had our relationship continued (and had my father made the additional advance of $10 million) it is possible that we would have lived in the flat (it was with that in mind that we asked for the wine cooler to be exchanged for a freezer). However, it would always have been a property that my father could have recovered at any time.”

1. The husband no longer has any remaining surplus interest in the Credit Suisse account, the entire deposit of US$5 million having been leveraged, on his case, to purchase the LM Flat and/or subsequently by his father. At his father’s request, he executed a Power of Attorney in Professor S’s favour.
2. By the time the Professor paid for the second instalment of the LM Flat in May 2016, he was well aware of the financial arrangements made between his son and daughter-in-law in terms of their Egyptian divorce. He had provided the cash settlement of EGP 5 million in December 2015. When the central London property market collapsed in the months preceding the Brexit vote in 2016 with the result that there was no realistic prospect of realising the equity within the foreseeable future, Professor S required the husband to formalise the arrangements in relation to the LM Flat.

*The case advanced by the respondents in relation to the involvement of the Egyptian lawyers in the sales contract relating to* the LM Flat

1. On the respondents’ case, Mr Salaheldin was asked to formalise the arrangements so as to record the Professor’s ownership of the property.
2. The 2016 Agreement Contract entered into by the Professor and his son is dated 27 September 2016. That is the date on which the long leasehold interest (999 years) was transferred into the husband’s sole name in accordance with the original contract terms. It is accepted that the contract was created by Mr Salaheldin after that date on 22 November 2016. As with the two previous transactions involving the Egyptian lawyers, I have also been provided with evidence of the work undertaken and the professional fees paid for the work.
3. Of crucial significance to the case advanced by the respondents is the evidence of Mr Salaheldin and the family’s accountant, Mr Ahmed Emam, both of whom confirm that they were physically present when, on the same occasion, the husband and his father attended a meeting at the Academy in Maadi for the purposes of signing the contract. Largely as a result of time constraints during the hearing, Mr Emam’s written evidence on this aspect of the case was not formally challenged by the wife. His written statement records his knowledge about the purchase of the LM Flat and the sums which the Professor had transferred to the London conveyancing solicitors. He confirms that he had advised Professor S that a transfer of the legal title would attract CGT and may have implications for tax on the Professor’s death. In a series of face to face meetings held at the Maadi Academy, Mr Emam’s evidence is that all these issues were explored and he gave his professional advice in relation to the purchase arrangements for the LM Flat.
4. He tells me in his written evidence that he recalls the meeting during which the Professor and the husband signed the 2016 Agreement Contract. He confirms that the document was signed in his presence by both. He further confirms that Mr Salaheldin was also present on that occasion. He saw both father and son put their signatures to the 2016 contract in November 2016.
5. Mr Salaheldin has confirmed in his written and oral evidence that he, too, was present when the 2016 contract was signed. He confirms that Mr Emam was present on the same occasion and that the contract was formally signed at the Academy in Maadi, Cairo. Mr Salaheldin has also confirmed that, although backdated, he provided the confirmation of the work undertaken and the fees which he received for his professional services.
6. Since completion of the purchase of the LM Flat, Professor S has met all the outgoings. Expenses are paid to either Mr Tawadross (who manages the property for the Professor) or to the husband. The property has been on the market for sale for many months and that remains the position. Professor S has continued to fund all the outgoings without contribution from the husband. The property has never been let on a commercial basis but is being offered for sale with vacant possession.

*The purchase of the yacht “PQ”*

1. The yacht was purchased on or about 2 December 2015 **[1/C:249]** for EGP 9.5 million (the equivalent of about £380,000). It has an agreed value for the purpose of these proceedings of just under £400,000. The yacht was purchased in the sole name of the husband when it was less than a year old. On the case advanced by Professor S, this was done as a matter of practicality to reflect the fact that he was the family member charged with undertaking all the arrangements for the purchase and delivery of the vessel. The yacht is currently moored at a berth in Egypt and the Professor’s evidence is that, whilst the whole family has enjoyed its use, his is the person who has primary use of the yacht. He told me that he regarded himself as its owner and that there was no question of the yacht being sold or disposed of without his consent.
2. The husband confirmed during his oral evidence that he paid nothing towards the cost of purchasing the yacht: the funds had been provided entirely by his father.
3. The yacht “PQ” is a monohull motor yacht which was built in April 2015. It is registered in Jersey where it was built. The registration certificate dated 14 December 2015 shows the husband to be the registered owner; his address is given in Egypt. Ten days later, on 24 December 2015, the husband executed a power of attorney which enabled the Egyptian captain employed to deliver the vessel to undertake all arrangements necessary for the transportation of the yacht from Cyprus (where it was berthed on purchase) to Hurgada in Egypt.
4. As to the family’s circumstances at the time of the purchase, I bear in mind that the negotiations with the A Group in relation to the revised sale transaction of the University in Cairo were well advanced by this stage[[3]](#footnote-3). Professor S had only recently recalled the funds which he had made available to his three children. The husband was contemporaneously trying to extricate himself from the purchase of the LM Flat as a result but had been told that he would need to complete the next staged payment before he could assign the benefit of the contract. The Credit Suisse funds which represented the transfer of US$5 million from his father had been leveraged by the husband to provide the 10% deposit when contracts were exchanged on 20 October 2015.
5. I bear well in mind that, at about the same time the yacht was purchased or very shortly before, the husband had leased a new Bentley from main London agents worth some £130,000. He was subsequently to provide the wife with a similar vehicle.
6. The picture which emerges from these transactions is one of expectation of the receipt of significant wealth on the part of both the husband and the wife. I accept that, by this point in time, there were difficulties in the marriage but, to use the husband’s phrase, the parties were “soldiering on”. I have no doubt that the expectation of significant independent wealth (an expectation which I find they both shared as negotiations with the A Group proceeded) provided not only an element of excitement but also a means of moving on from these difficulties into a new phase of life. I do not accept the wife’s case that, prior to the receipt of the husband’s email in November 2015, there were no discussions about the problems in their relationship or that divorce had never been a topic of discussion between them. It is plain to me from reading the various exchanges of messages between the parties and from my observations of her in the witness box that the wife has a tendency to exaggerated emotional responses. This would not be the first couple who found themselves falling back on the injection of unexpected wealth to mitigate the pressures of a marriage which was becoming increasingly loveless and unhappy for both, as I find it was by this stage.
7. Further, each has demonstrated an inclination for a lifestyle which involved overt displays of affluence and wealth. The wife lays great store on the standard of living which the family enjoyed during their marriage. Fast cars, motor bikes and expensive watches were accoutrements in which the husband indulged himself regularly. Whilst the cars may have been acquired in the guise of some form of business enterprise, he himself accepted that he did not make very much profit from his “motor trades”. The wife is reported to have set much store in her acquisition of designer clothes and handbags. The budget of her annual needs advanced with her Form E in May 2017 advertised an annual spending requirement of just under £500,000 per annum in mortgage free accommodation.
8. Whatever the underlying reality of their financial situation, I am satisfied that each in his or her own way regarded the pending sale of the University business as providing the opportunity for much greater financial security in the future. The husband’s expectations were no doubt underpinned by the discussions which he and his sisters had had with Professor S. Whether or not the wife was privy to those family discussions living as she was in London, I have no doubt that she had been informed of developments by the husband. I find that it is highly likely that he gave to his wife some highly embellished accounts of his expectations on this front. He is clearly a man whose sense of validation and self-worth flows not only from personal and business achievements but also from the trappings which those successes bring in their wake. To that extent, I accept the suggestion put to him by his own counsel, Mr Garrido, that the husband is no stranger to personal vanity. I have little doubt that the husband’s decision to live apart from the wife, communicated in his email sent in November 2015, came at a time when she was anticipating a life of ongoing financial security where she and the husband would be independently wealthy without recourse to the Professor’s largesse.
9. It seems to me that reports conveyed to the wife by the husband and in the wider press coverage of the University sale at a price of US$1.2 billion, the acquisition of a £6 million apartment in a prestigious central London development, the two Bentleys which were acquired and the subsequent arrival of a yacht were all aspects which fuelled this wife’s estimation of the extent of the husband’s personal wealth when she launched her application in March 2017. She admitted during the course of her oral evidence that her figure of £100 million was little more than a “guess”.
10. However, unless she is correct in her assumption that a significant fraud is being perpetrated on this court by the collective endeavours of the respondents and their supporting witnesses, it is clear that the husband did not at the end of 2015 have the personal resources with which to fund the acquisition of a yacht, far less to complete the purchase of a £6 million apartment. It is the Professor’s evidence that his son paid not one penny of his own money towards the cost of either although he accepts that, in common with the rest of the family, he has from time to time been allowed to use the yacht. There is no evidence that the husband has made any financial contribution towards the costs of maintaining the yacht or that he has had the resources to do so. I was shown several photographs of various family groups with their friends enjoying holidays or trips on the yacht. I am satisfied that, as an amenity or resource, it has been made available to the whole S family and the friends who have from time to time been invited to accompany individual family members on these trips. Professor S denies that he gifted the purchase funds to his son although he accepts that the yacht was purchased in his son’s name albeit not for his son’s benefit.
11. Having set out the circumstances in which the disputed properties were acquired and before I set out my conclusions in relation to the beneficial ownership of each, I need to address the case which is advanced on behalf of the wife in relation to the three Egyptian sales contracts. Her contention in these proceedings is that both she and the court have been the husband’s target of a duplicitous conspiracy which has involved the fraudulent creation of bogus documents which have been introduced with the sole intent of misleading and displacing the truth in relation to these transactions. That conspiracy, on her case, necessarily involves the participation not only of the husband but of his father, his sisters and the professional witnesses who have given evidence in support of the respondents’ cases.
12. **The wife’s case in relation to sham, forgery and the manipulation of metadata**
13. By her original points of claim, settled in March this year (2018), the wife alleges that all three Sale Contracts are shams created with the intention of conveying to her and the court the appearance of creating legal rights and obligations different from the actual rights and obligations which were intended by the husband and his sisters.
14. By the time she came to file her amended Reply to the respondents’ pleading in May 2018, her case was that any sums advanced towards the acquisition of the properties and the yacht by Professor S were either payments to the husband as of right or gifts.
15. On the same day she filed a Notice to Admit Facts in relation to the underlying metadata disclosed with the electronic versions of the three sales contracts which were served on 28 April 2018. In particular, she relied on dates upon which the Sales Contracts were last modified and the total editing times. She also pointed to the fact that the metadata suggested that none of the three electronic versions of the contracts which had been supplied appear to have been printed.
16. She relies on a letter dated 17 May 2018 produced by Marco Cura, Head of IT at the wife’s solicitors firm. In that letter, Ms Cura points to the fact that the author of the three contracts is identified as ‘a\*\*\*’, which is the same name as the parties’ son. She concludes that there are multiple ways of changing the metadata in a Word document, a fact which is readily acknowledged in these proceedings.
17. By their response on 31 May 2018 the second, third and fourth respondents admit that it is possible to amend the underlying metadata on a Word document but deny that they, individually or together, have carried out any such amendments. They further deny, if it be alleged, that they or any of them have drafted the contracts.
18. An appointment had been set up for the inspection by the lawyers of the various versions of the three contracts. This inspection appointment took place on 12 June 2018. Following receipt of the wife’s amended pleading in the aftermath of that inspection, Mr Stewart on behalf of his clients (the second, third and fourth respondents) took the decision to inspect the documents again in order to shed some light on the provenance of the various copy documents which were now in circulation. For these purposes he had informed the husband’s solicitor that he required the Egyptian lawyers to send directly to him the electronic copies of all three sales contracts in order that he might compare the documents with those which were already in circulation as a result of the annexures to the husband’s Form E. These were sent to him by Mr Al-Shabory and Mr Salaheldin on 27 June 2018. It appears from the pleadings that the documents sent to Mr Stewart by Mr Al-Shabory were pdf hard copies of the signed original sale contracts in relation to Flat 117 and Flat 507 together with electronic versions of draft (unsigned) contracts relating to the same properties. From Mr Salaheldin he received a pdf of the original signed document in relation to the LM Flat together with the electronic draft sales document.
19. On 25 June 2018 the lawyers met again. This meeting was attended by Mr Garrido, Ms Molan of Penningtons Manches LLP, Mr Gleeson, junior counsel for the Second, Third and Fourth respondents, and by Ms Akhtar, the husband’s solicitor. At that meeting, Ms Akhtar made available three Arabic documents which she said were the original Sales Contracts for Flats 117 and 507 and the original Sale Agreement for the LM Flat
20. Miss Akhtar has subsequently sworn a short witness statement in which she clarifies the position in relation to the versions of the documents which were exhibited to the husband’s Form E. She explains in that statement that her previous recollection had been that the documents her client had sent her in the course of her preparation for his Form E were copies which she further copied and included in the exhibits bundle. Having returned to her office from court on 3 July 2018 during the first week of this hearing, and following further discussions at court about the provenance of the documents, she looked at her file and now confirms that the documents sent to her by the husband to exhibit to his Form E were in fact originals. The documents which had been sent from Egypt by courier for inspection pursuant to the order which I made at the pre-trial review were further copies of the originals.
21. On 28 June 2018, in an amended Defence to the wife’s amended Points of Claim, each of the second, third and fourth respondents denied that they had been involved in, or had any knowledge of, any sham, forgery or metadata manipulation. Annexed to that pleading was a hard copy of the signed original sale contracts/agreement in relation to all three properties.
22. That is the background to the production of several iterations of the documents which were produced in relation to the transactions which took place in 2009, 2014 and 2016. Aside from the evidence of Mr Willetts in relation to the possibility of changing the metadata supplied in relation to any given document and that of Mr Stockton in relation to handwriting, there is no further expert evidence before the court in relation to the perceived differences in font type, spacing, the occasional alteration between Latin and Arabic script and ‘European’ and ‘Arabic’ numerals. From my own inspection of the documents, it is clear that the differences are small and relate, for example, to the position in the different versions of the end of a paragraph when compared with its position in terms of alignment with the words in the preceding penultimate line. There is nothing before the court to indicate whether these differences can be explained on the basis of different printers which may have been used to produce them or the electronic realignment which may have occurred in their transfer to different computers or laptops.
23. The husband denies having been involved in the creation or manufacture of any of these documents. Professor S and his sisters deny that they have manipulated or altered any of the electronic documents produced in these proceedings nor have they instructed anyone else to do so. Each has identified the signatures appearing on the documents to be their own.
24. It seems to me that the search for the truth in relation to the creation of these documents has to be undertaken against the backdrop of the wide canvas of evidence which is now available to the court. Against the background of all the relevant evidence, I have to reach a conclusion about where the truth lies and who, on the balance of probabilities, is telling the truth in relation to the creation of these documents. The outcome to that enquiry is essentially binary. Whilst there may be aspects of the evidence relied on by both the applicant and the respondents which lack essential credibility and/or which are contradictory or inconsistent with other aspects of their respective accounts, this is a case where one of two things happened: either the respondents signed the documents which are alleged to have been produced by the Egyptian lawyers on or around the dates which are now being advanced or they did not. If, as a family, they are deliberately lying to this court in order to resist what they may believe to be financial claims which have no merit (at best) or which they perceive to be predatory (at worst), then the inference must inevitably be that these instruments were manufactured on a fraudulent basis and for the purposes of this litigation. In these circumstances the court will have to enquire as to who is likely to have been the author of the documents. The wife’s case is that there is only one contender and that is the husband.
25. It is accepted on behalf of the wife that the burden which she must discharge in relation to her allegations of sham is the normal civil burden of proof which is calibrated on the basis of the balance of probabilities. The law in relation to allegations of fraudulent or sham transactions was set out comprehensively by Munby J (as he then was) in *A v A* [2007] EWHC 99 (Fam), [2007] 2 FLR 467 at paras [32] to [33]. [50] and [53]. In that judgment, his Lordship analysed and explained the classic definition of a sham by Diplock LJ in *Snook v London and West Riding Investments Ltd* [1967] 2 QB 786, [1967] 2 WLR 1010, and the observations of Arden LJ in *Hitch v Stone (Inspector of Taxes)* [2001] EWCA Civ 63, [2001] STC 214. I have directed myself in relation to both those authorities but do not set out the principles here since the learning has been helpfully distilled by Mostyn J in the more recent case of *Bhura v Bhura (No 2)* [2014] EWHC 727 (Fam), [2015] 1 FLR 153 at page 158 in this way:

“(i) A sham means acts done or documents executed by the alleged shammers which are intended by them to give third parties or the court the appearance of creating between them legal rights and obligations different from the actual legal rights and obligations (if any) which they intend to create.

(ii) Subject to the next point, all the shammers must hold an expressed common intention that the acts or documents are not to create the legal rights and obligations which they give the appearance of creating. No unexpressed intentions of a shammer affect the rights of a party whom he deceived. The test of intention is subjective. The parties must have intended to create different rights and obligations from those appearing from the relevant document, and in addition they must have intended to give a false impression of those rights and obligations to third parties.

(iii) A sham transaction will still remain a sham transaction even if one of the parties to it merely went along with the shammer not either knowing or caring about what he or she was signing.

(iv) The court is not restricted to the four corners of the document. It may examine external evidence. This will include the parties’ explanations and circumstantial evidence, such as evidence of the subsequent conduct of the parties.

(v) The fact that the act or document is uncommercial, or even artificial, does not mean that it is a sham. A distinction is to be drawn between the situation where parties make an agreement which is unfavourable to one of them, or artificial, and situation where they intend some other arrangement to bind them.

(vi) The fact that parties subsequently depart from an agreement does not necessarily mean that they never intended the agreement to be effective and binding. The proper conclusion to draw may be that they agreed to vary their agreement and that they have become bound by the agreement as varied.

(vii) Because a degree of dishonesty is involved in a sham there is a very strong presumption that parties intend to be bound by the provisions of agreements into which they enter, and intend the agreements they enter into to take effect. However, this does not elevate the standard of proof, which is set at the balance of probability. Nonetheless the test is a stiff one and there is a requirement of very clear evidence given the seriousness of the allegation.”

1. As Mr Amos and Mr Gleeson remind me, where the allegation is of a serious nature, the wife and those advising her must be taken to know that it will require “a commensurate degree of cogency” to make it good. In other words, evidence of sham or forgery must be clear, logical and convincing: see Kitchin LJ in *Burns v Financial Conduct Authority* [2017] EWCA Civ 2140.
2. It is important to bear in mind that in this case the wife did not observe these events. On her case (disputed in part by the family) she was not privy to the property-related discussions which are said to have taken place prior to the acquisition of the three properties and the yacht. In these circumstances, she is driven to formulate her case upon the basis of representations made to her by the husband. Those representations have to be seen in the context of what she has been able to tell the court in relation to her own participation in events leading up to the property acquisitions. I have already found that it is highly probable that the husband presented her with an incomplete and somewhat exaggerated impression of the wealth and spending power which the completion of the University sale to the A Group would bring in its wake. She believed that the husband would be treated equally with his two siblings in relation to the dispersal of that wealth. She acknowledged during the course of her evidence that, over and above the US$15 million figure which she had been told about by the husband, she knew very little about Professor S’s intentions. Her information amounted to no more than reportage from the husband. In response to a question from Mr Amos during cross-examination, she told me that after the sale of the University, she understood that the Professor had divided his money between his three children and kept some for himself. Each was then entitled to invest that money as he or she chose. The plan which she and the husband had settled upon was to invest in real estate in London.
3. Whilst those may well have been discussions which she had with the husband, she was not privy to the discussions which Professor S had had with his three children and she cannot have known how the funds received as a result of the sale were divided. The evidence is that the consideration for the sale was not paid in full until May 2016, some five months after she and the husband had divorced. I can well understand how the timing of the advertised recall of the first tranche of US$5 million, coinciding – as it did – with the final breakdown of the marriage has raised grave concerns in this wife’s mind about the truth of the case which the respondents now put before this court. Indeed, it is right to record that, on her behalf, Mr Warshaw and Mr Viney have left no stone unturned in their forensic efforts to challenge the respondents’ case.
4. I bear well in mind in this context the fact that the wife was no stranger to the manner in which wealthy Egyptian families (including her own) operated their financial arrangements. Over the years since the failure of her first marriage, she has been the beneficiary of substantial financial support from her own family. This financial support has taken the form of the provision of a home for over ten years as well as the direct transfer of substantial funds to accounts in her name. She accepts that her own father is entitled to recall those funds (although she told me he would not remove her assets so as to see her in financial difficulty) and that he has had the use of funds held in Switzerland in her name through the use of a credit card facility. Her father provided the funds in their entirety for her investment with her brother in the investment property which they purchased in April 2011.
5. In my view there were, and are, serious deficiencies in respect of the transparency and reliability of the evidence advanced by both sides in this case. Notwithstanding the many thousands of pages of disclosure which the respondents between them have provided, there remain evidential gaps in relation to the wife’s and the court’s ability to complete a clear forensic trace of how funds were moved between various accounts prior to the acquisition of the assets which lie at the heart of the current Part III claim and the corresponding counterclaim.
6. As Mr Warshaw and Mr Viney have been able to demonstrate in their closing submissions, the narrative of these transactions has developed alongside the documents which have emerged as the litigation has continued. The documents initially produced by the husband with his Form E were each dated to match either the dates of registration in the office copy entries or, in the case of the LM Flat, the registration of the long leasehold interest. The documents produced by the Egyptian lawyers as evidence of work done and payment received were drafted to coincide with those dates. Without further explanation, any objective reader might reasonably conclude that those documents were created on the same dates as the contracts themselves.
7. Having absorbed the impact of the wife’s assertion that it was impossible for the contracts to have been created on those dates because the dates of registration would not then have been known, the family asserted that these dates were specifically inserted on the advice of Mr Salaheldin, an assertion which that lawyer has since confirmed in his own evidence. There is now an acceptance by both the family and the Egyptian lawyers that the three documents were in fact created on the date appearing in the underlying metadata, dates which – in all three case – post-date the contract dates by a matter of weeks.
8. Furthermore, as Mr Warshaw and Mr Viney submit with justification, there is still no clarity about the provenance of the first set of electronic documents. Miss Akthar’s evidence (which was not the subject of formal challenge) went some way to resolving that issue: she said that the documents supplied to her and copied into the husband’s Form E exhibit bundle were originals. What then of the apparent differences in the various iterations of the documents which are now before the court? As I have said, there is no expert evidence in relation to these formatting differences, albeit that they are small discrepancies. We have all had to proceed on the basis of what we can see from the face of the documents. The sales contracts/agreement record on their face that more than one copy was produced. Are those discrepancies adequately explained by the manner in which the different electronic versions were stored on flash drives and subsequently transferred from one computer screen to another? Alternatively, are Mr Warshaw and Mr Viney correct when they submit that the only logical conclusion is that the documents were not printed and signed at the same time?
9. Mr Willetts’ report dated 18 June 2016 does not assist with definitive answers to the issue of metadata manipulation. He examined printouts of the metadata properties pages in relation to all three contracts. Of his professional conclusions, he says this in paragraph 1.03:

“**1.03** The Word Document internal metadata shown in these Exhibits suggests no chronological inconsistency. The Word Document File metadata shows that all three documents were accessed and modified at a date much later than the internal metadata. One possible explanation is that, since the document was last accessed and modified, it has been emailed and the destination computer has created a new copy of the document with file metadata set to the date and time of receipt. However, this is a hypothesis which would require the construction of a processing history and chronology of the three documents before it could be evidenced as a fact.”

1. By way of elaboration, he states in para 4.05 and 4.06:

“**4.05** If a Word Document is processed within the confines of a single computer, there is likely to be high consistency between its internal and external metadata. When a word document is saved or closed, the internal metadata is updated and saved, and the file containing the Word document is saved within the file system at roughly the same time, so there should be alignment of the properties. But if a Word Document file is transferred to another computer, or to a portable storage device, the operating system creates a copy of the file at the new location. Depending on the software module used to copy the file, some or all of the file’s *[sic]* created, modified or last accessed metadata may be modified by the copy process. Therefore the internal metadata dates and the file metadata dates may diverge, despite no irregularity occurring in the processing.

**4.06** The three documents for examination also suggest that, at the time they were printed, they resided in the e-mail cache folder of the host computer. A Word Document sent as an attachment to an e-mail will be encoded and attached as an additional component of a multi-part e-mail. After delivery to its destination, the attachment will be decoded and a new file created to contain an exact copy of the Word Document. But at the new destination, the operating system will create in its directory new metadata for the Word Document file. So the content of the internal metadata of the Word Document will be unchanged, but it will no longer align completely with the internal metadata. There is only limited scope, according to the type of operating system in use, to preserve the file system metadata after an e-mail transfer of an attachment.”

1. Of the possible relevance of the reference to “a\*\*\*” in the author metadata, Mr Willetts confirms in his report that there are several easy ways of changing the ‘author’ metadata if the user has reason to do so. A simple navigation into the information page and the retyping over the current author is apparently all that is required. Whilst noting that in all three documents which he was sent, the author is shown as “a\*\*\*”, Mr Willetts confirms that it is not possible for him to deduce at what precise point in the installation and subsequent operation of the relevant computer lifecycle the text string “a\*\*\*” was inserted as author metadata, or indeed whether at some subsequent time the author metadata was changed to “a\*\*\*”.
2. In relation to editing time (a factor relied on by Mr Warshaw and Mr Viney as indicative of sham because of the total editing time recorded being respectively 3, 4 and 16 minutes in respect of three documents), Mr Willetts says this at para 5.06 (b) and (c) :

“If the Word Document file is COPIED to another location, such as a portable disk or USB device or a network drive, the integrity of the document container is maintained. All internal metadata is preserved, and “total editing time” operate seamlessly at the new location.

However, if the document is SAVED-AS to another disk or USB device or a network drive, the SAVED-AS document is treated as a new document and the “total editing time” reset.”

1. Finally, in relation to a query about “Last Printed Metadata”, Mr Willetts confirms in para 5.07 (f) of his report that it is possible to print a Word Document but to leave no record in the metadata that a print operation has ever occurred for that document.
2. There is evidence from Mr Al-Shabory that data (including the Word file relating to the Sale Agreement for Flat 117) was moved from an old computer and transferred to the hard drive of an updated computer system.

*Signatures and the evidence of Mr Stockton*

1. It has been an integral part of the wife’s case in relation to the sham nature of these property transactions that the signatures of the Professor and his two daughters are forgeries and that the most likely author of those forgeries is the husband.
2. On this aspect of the case, I had expert evidence from Mr Anthony Stockton. He attended court to answer questions about the report which he produced on 2 July 2018.
3. Having examined a number of specimen signatures provided by each of the second, third and fourth respondents, Mr Stockton reached the following conclusions:

(i) There is strong evidence to show that Professor S produced the signatures in his name on both the original and copy contracts provided in relation to the LM Flat Agreement Contract (2016).

(ii) There is a moderate level of evidence to show that someone other than Amal produced the signatures in her name on the original contracts examined although the evidence is inconclusive as to whether she signed the copy contracts produced. However, he could not exclude the possibility that she had signed the documents in a slightly different style of writing and that her signature was indeed genuine.

(iii) In the case of Lina’s signature on the 2009 and 2014 Sale Contracts, the evidence in relation to both is inconclusive and he is not able to say one way or another whether her signatures are genuine.

1. The wife now accepts that Professor S’s signature on the LM Flat Agreement Contract is genuine although Mr Warshaw and Mr Viney continue to press her case that the husband is the true beneficial owner of the property.
2. **Conclusions in relation to the credibility of the second, third and fourth respondents in relation to the disputed property transactions**
3. Where, then, does this evidence leave me in relation to the husband’s father and his two sisters?
4. The fact that a person is highly educated and has achieved significant professional success in his or her working life does not by itself assist one way or another in determining whether he or she is likely to be willing to lie to the court. I have given myself an appropriate *Lucas[[4]](#footnote-4)* direction and I bear well in mind that people can lie for a number of different reasons. Evidence of a previous lie, if established on the balance of probabilities, does not necessarily contaminate the whole of the evidence which a witness gives to the court.
5. I bear in mind that the two transactions in which Amal and Lina are said to have been involved occurred some years ago and, in the case of Flat 117, almost ten years ago. I am prepared to accept the evidence that neither became aware of this litigation or the claims which were being advanced by the wife in relation to the ownership of the three properties until sometime after this litigation commenced. If the 2009 and 2014 Sale Contracts are genuine, they will have had these documents and the evidence of the Egyptian lawyers to assist them but they are essentially dependant on their memory and recall of events.
6. Since much turns on my assessment of the credibility of the second, third and fourth respondents, I propose to say something about each.
7. Professor S has a number of degrees including a Masters and two Ph.D degrees for which he studied in English universities. Over a career which has spanned more than fifty years, he has held senior positions as a professor in various universities in Egypt, Kuwait and Qatar. He has advised various Egyptian government bodies and has published widely over the years. He has organised many governmental conferences and has extensive experience in industry having been the chairman of several stock exchange listed companies. More recently he set up as Founder and CEO the T Group of Schools and Academies which was the subject of the recent sale to the A Group. He has maintained several professional and other links with England and the United States. He is a Fellow of the Royal Society of Arts (UK) and of the American Society for World Scholars. He is a board member of several NGOs in Egypt and, recreationally, a member of prominent shooting and yachting clubs in Egypt. Over the years he has received many prizes and honorary awards from various national and international bodies. This is information which I glean from his curriculum vitae, the contents of which were not the subject of any challenge on behalf of the wife.
8. Amal has three degrees including a PhD in business administration from an English university, an MBA from the American University in Cairo and a BA in accounting. Since 2006 she has been a trustee and, later, Vice President of the N University and the Academies Group which her father set up in Cairo. She is a published author and occasional screenwriter.
9. Lina graduated with a BA from the American University in Cairo in 2000. She subsequently studied for a Masters degree in business administration at Heriot-Watt University, Edinburgh which she completed in 2005. Prior to joining the family business in 2006, she worked for four years as a business analyst for a bank. She was head of Planning and Development for the T Group where she has been, and remains, deputy chairman.
10. These are thus highly educated and dedicated professional women who have no doubt had instilled in them from a very early age the Professor’s belief in, and passion for, education in all its forms. They are members of a sophisticated cosmopolitan family which now enjoys a very comfortable lifestyle thanks in no small part to the generosity and financial planning of Professor S who is acknowledged in these proceedings to be a caring and generous patriarch who holds the respect of all his three children. Whilst there was a period of estrangement over a number of years whilst the husband was living in England, that rift appears to have been bridged in 2006 when the Professor reached out to the husband and persuaded him to return to the family fold on the basis of the clean financial bill of health which the Professor was willing to underwrite.
11. Those, then, were three of the individuals who went into the witness box to speak to their respective cases about the three property transactions which have enmeshed them in this litigation. I listened carefully to each of them bearing well in mind that these are family members who have come together to resist financial claims advanced by a former wife to whom they owe no allegiance, albeit that each spoke fondly of A, a grandson and nephew who continues to occupy his proper place in the extended family’s affections.
12. All four of the respondents, including the husband, gave evidence about the extensive use of cash in local Egyptian culture, even for significant business transactions. In common with many other wealthy families, they told me that cash was a regular means of transacting their day to day business. Lina described how the family driver or nanny would often be despatched with an envelope of cash to deliver to the husband if there was some accounting between them in relation to the expenses flowing from the two flats.
13. The husband has produced a copy of the sale contract relating to his purchase of a villa in the Caesar development next to the T Academy. That contract stipulates that the payment of the deposit for the villa, in a development supported by the local government department as part of its urban development programme, must be paid either in cash or by cheque. In similar vein, I was shown a separate contract for the sale of a marina property at El Gouna on the Red Sea. The seller in that transaction was an Egyptian development company listed on the Cairo Alexandria stock exchange. The reservation deposit in that case (just under US$36,000) was paid to the developer in cash with a formal notarised receipt having been issued to the husband as purchaser.
14. I have already referred to some of the husband’s personality traits and characteristics. He was cross-examined at some length about the two sales contracts for Flat 117 (2009) and Flat 507 (2014) involving his two sisters. He was clear in his account that his intention in signing the two documents was to confirm the three siblings’ joint ownership of the properties. He told me that in 2009, his father’s principal concern had been to protect the sisters’ interests in the event of his death in order that their ‘inheritance’ should not pass to the wife. This, he explained, was the reason why she had been described as an ‘outsider’ in family terms. He said that there was no real issue about the 2009 Sale Contract since no one expected him to die. As the marriage went on and the difficulties within it became more apparent, he told me that his father’s concerns changed over time. By the time the 2014 Sale Contract relating to Flat 507 was signed, A had been born; the family was divided and living in separate countries. By this stage, the Professor was expressing concerns about the wife’s intentions. I accept this as a true statement insofar as it concerned the dynamics in 2013/2014 of the Professor’s relationship with the wife. At one point in his own evidence, and unprompted, he told me that he and his daughters had been proved right in relation to their collective concerns.
15. The husband accepts that he did not alert the mortgagee to the fact that he was buying Flat 117 on behalf of himself and his two sisters and/or that it was an acquisition which was purchased as an investment. He further accepts that he represented on the mortgage application form that he held assets worth £2 million and made no mention of the fact that purchase funds were being gifted to him and his siblings by their father. He told me that, having been charged by the family to identify and purchase their initial London investment property, his concern was simply to satisfy the bank that he had the funds to complete the purchase. He explained that the “drive” to purchase in London at that point in time was motivated primarily by the fact that the Egyptian currency had crashed in value on the international exchange markets. The family was keen to limit its exposure and invest in sterling in the central London property market.
16. The husband remained composed through more than two days of cross-examination. He accepted that some of the ongoing requests for disclosure had irritated him given the volumes of disclosure he had by then produced in these proceedings. I am acutely aware that there have been parallel proceedings in the Family Division concerning A and that things said and done in those proceedings may well have coloured the wife’s (and her team’s) impression of this husband as a witness and litigator. I accept that some of his actions may have been overbearing. I am also prepared to accept the wife’s evidence that he was aggressive in his correspondence when she indicated an intention to continue with her Part III claim notwithstanding the apparent agreement reached in the context of the Egyptian divorce. He was, nevertheless, steadfast in his denial that he had fabricated any of the three sale contracts and/or that he had forged the signatures of either his sisters or his father on those documents.

*Professor S*

1. In relation to the three property transactions and the purchase of the boat, the Professor confirmed the detail of the funds he had made available in relation to each. He was meticulous to correct two minor points in his written evidence and was plainly intent on ensuring that his evidence was accurate. He was clear that all the purchase funds had come from him and that the various transfers which had been identified from the University accounts were referable to the property acquisitions. I had the clear impression that he took his oath seriously. He was very plain in his explanation for the manner in which the wealth he had created over a successful working life was ultimately held for the benefit of his wife and children (“for the family as a whole”) and equally clear that all his children respected the fact that any funds notionally allocated to them for investment or other purposes could be recalled by him.
2. He told me about the problems which the wife’s occupation of Flat 117 had caused particularly for Amal who felt she was being deprived of the use of her London base.
3. In relation to the LM Flat, Professor S told me that the deal with the A Group for the sale of the University had nothing to do with the discussions he was having with his children about giving each a sum to invest for their own and the family’s longer term security. In particular he denied that the husband had any outright entitlement to a sum of US$15 million. He explained his decision to withdraw from any payment over and above the US$5 million on the basis that all his personal plans in relation to retirement had changed once the basis of the sale of the business had changed. He confirmed that each of his two daughters had returned funds to his control when he had made the request of each of them.
4. Of his relationship with his former daughter-in-law, he told me that he began to feel uneasy about her intentions because she was very keen to remain in the Flat 117 despite the fact that she co-owned another investment flat with her family in London. She had subsequently refused to allow either of Lina or Amal to stay in the flat when they visited London even during periods when she was absent and away from London. He told me that the contracts in relation to Flats 117 ad 507 had been created at the time because the family wanted some legal certainty as to who owned what in order that they did not need to rely solely on their family understanding.
5. Whilst he could not recall all the details of the 2016 transaction, Professor S confirmed that he signed the 2016 LM Flat Agreement Contract in the circumstances described by Mr Salaheldin and Mr Emam and in their presence. That occurred at some point in November 2016 and prior to the currency of this litigation. He has identified the signature on the document as his and, as I have said, that much appears now to be accepted by the wife in the light of the expert evidence from Mr Stockton.

*Amal*

1. Amal and her sister, Lina, are very different individuals in terms of their personalities and presentations. Amal is a confident, and plainly accomplished, professional woman who gave her evidence clearly and fluently. Her delivery was authoritative and she plainly had much to say to the court. She explained to me that she had long wanted a London base because of the time which she spent in this jurisdiction. She accepted that the wife may have been involved with the husband in the initial property search for Flat 117 but that search was conducted in the context of their father’s agreement to invest for the three siblings:

“I felt personally that things should be clear; no one knows what will happen in the future.”

1. She has confirmed that she personally signed both sales contracts when they were presented to her. She acknowledged that the task of identifying their initial investment in Flat 117 was entrusted to the husband but she told me that this was precisely what happened when Lina was with Professor S in the United States acquiring the family’s US portfolio. Whilst Amal flew to Florida to assist in furnishing one of the investment apartments, she was not consulted about which properties would be bought. Those decisions were taken by Lina and her father.
2. She described the manner in which the family operated in relation to discussions about their family finances. In terms of her communications with the husband, Amal’s evidence is that her communications with her brother in relation to the purchase of Flat 507 were probably more frequent than any discussions he had with the wife. They were living in the same country and their family homes were very close to one another in a residential area of Cairo. They sat down together on most Fridays for family dinners. She confirmed that she had indeed paid her contribution towards the deposit on Flat 507.
3. Significantly, Amal told me that when her father requested the return of the advance of funds he had made to her in 2015, she set up a loan to repay EGP 10 million because the original funds were then invested in fixed term bonds which were yielding a return of 20%. In my judgment, not only does that demonstrate Amal’s acceptance and understanding of the revocable nature of any funds advanced by her father; it also reveals that she is an astute financial operator who clearly balanced the advantages of not terminating the fixed term deposits against the cost of financing the loan which she took out to repay her father.
4. Of one thing she was quite clear: she had signed the 2009 and 2014 Sale Contracts for the two London properties when the documents were presented to her in 2009 and 2014. She was taken to the documents and she identified the signatures as her own.

*Lina*

1. I had the impression that Lina is a quieter, more contained empathetic individual than her elder sister, notwithstanding her equally impressive professional qualifications. From her I gained a very real sense of the extent to which this was (and is) a very close family unit which frequently discussed many aspects of the various family business transactions in which they are all involved. Lina told me that she is a registered shareholder in many of her father’s companies but she accepts that does not mean she has any legal entitlement to those shares.
2. She was quite clear in her recollection that the wife would have been made aware of the involvement of the two sisters in the purchase of Flat 117 or she would not have agreed to her residing in the property. She said she had not instigated the preparation of the sales contracts but, when the arrangement was proposed, she supported the idea.
3. Of her knowledge about the state of the parties’ marriage in 2009, she said that she was aware “from day one” of the tensions which existed between the wife and the husband’s former wife who continued to live in the same city. She described how the wife would frequently be in tears when she complained to Lina and her mother about these difficulties.
4. She confirmed that the family seldom communicated by emails about anything. There was little need since she told me they saw each other so frequently and sometimes several times a week. Of the purchase of Flat 117, she recounted a discussion she had with her brother once he had found the property. He described to her its position just off the Edgware Road which they both agreed would suit the Professor very well with its many coffee shops and its local Arab community and late opening hours.
5. She told me that, prior to the wife taking up occupation in 2012, she would always ask her brother whether Flat 117 was free whenever she was making plans to visit London. She could recall three or four periods when she stayed there between 2009 and 2012. She remembered another occasion when she had made enquiries about the availability of the flat for her brother-in-law who had to fly to London with his son who required some urgent medical treatment. The husband informed her that the flat was being rented out at the time but he nevertheless paid for the rent on another apartment for her brother-in-law. On another occasion, her nephew and son wanted to stay in Flat 117 during a visit to London. When the flat was once again unavailable because of a commercial short term let, the husband agreed to offset the cost of another apartment against the income which would otherwise have been divided between the three of them.
6. These were spontaneous accounts which, in my judgment, had a clear ring of truth to them. Lina appeared to me to be an entirely credible and straightforward witness. She acknowledged when she could not recall the precise detail of some aspects of the evidence which was being put to her. She, too, was quite clear that she had signed the sales contracts in order to formalise the ownership arrangements of each of the flats.
7. She also confirmed that she had provided her share of the payment which she and Amal made towards the purchase of Flat 507.
8. My overall impression of the second, third and fourth respondents is that none of them was lying to the court in relation to the underlying substance of these transactions. I accept that each signed the sales contracts/agreement and that they signed hard copies of the documents at about the same time as they were created in May 2009, March 2014 and November 2016.
9. Mr Warshaw has accepted that he makes no challenge to the veracity or genuineness of the husband’s signature. As he acknowledged, his own signature is unlikely to have been forged. It is also accepted that Professor S’s signature is likely to be genuine. Notwithstanding the several unresolved issues which have been highlighted by Mr Warshaw and Mr Viney in relation to the circumstances in which these documents are likely to have been created and/or transferred between various computers or laptops, I find on the balance of probabilities that the case advanced by the second, third and fourth respondents is a truthful account of events as they unfolded to the best of their recollections. The plain and simple fact is that the wife knew very little about the inter-familial arrangements which were made amongst the S family members in the wider sense of their dealings with one another. I am prepared to accept that she was partially misled by the husband’s own tendency and inclination to exaggerate and embellish the extent of his own financial circumstances. I accept that he liked being seen as an apparently wealthy individual, as a “mover and shaker” amongst his peers and those with whom he came into contact in the course of his business dealings. He had available to him many of the trappings of significant wealth even if it was not obvious to those around him, including – at times – the wife, that the provenance of much of this apparent wealth was the generosity of his father.
10. I do not accept that the husband is the beneficial owner of the yacht. It is clear that he did not pay for the yacht and I accept the Professor’s evidence that all the funds came from him albeit that the arrangements for the purchase were entrusted to the husband. I regard the photographs which I have seen of the husband’s obvious enjoyment of the yacht to be entirely in keeping with the findings I have made about his obvious attachment to ostentatious displays of material wealth and privilege. It is equally clear from the number of photographs put before the court during the final hearing that the yacht was used by all the S family and I accept that the wider family’s use and enjoyment was not the gift of the husband but rather that of his father.

*Evidence of the Egyptian lawyers*

1. I have reached these conclusions and findings independently of the video evidence which I heard from the three Egyptian lawyers. There were a number of difficulties flowing from the translation of their oral evidence which was given in the main in Arabic. There were interpreters present in both Cairo and at in court in London. The family members are all fluent Arabic speakers and there were frequent interruptions from each of Mr Amos, Mr Gleeson, Mr Garrido and Miss Hay complaining that the substance or nuance of their responses had been lost in inaccurate translation by the court appointed interpreter in London.
2. Be that as it may, these were all professional witnesses who, in at least once case, had secured their legal qualifications at English universities.
3. In essence, the account which each gave me during their oral evidence can be summarised thus:

*Mr Salaheldin*

(i) Mr Salaheldin confirmed that he had drafted the LM Flat 2016 Agreement Contract. He was present and witnessed both the husband and the Professor signing the contract. It was thereafter generated in a number of copies so that each family member could retain a copy.

(ii) His role in relation to the purchase of Flats 117 and 507 was restricted to providing legal advice as to the date to be inserted on the face of each of the documents. He confirmed he was present in Mr Al-Shabory’s office when the contract for Flat 117 was executed by the three siblings. In contrast, he was not present to witness their signatures to the 2014 Sale Contract.

(iii) He confirmed that the record of work done and the invoices had been produced for use in these proceedings as evidence of what services had been provided to the family. He told me it was unusual for Egyptian solicitors to produce receipts as part of their professional dealings with clients.

(iv) Since the family was acting together in relation to the transactions, he saw no need to involve English lawyers.

(v) He had been retained by Professor S to act for the family from 2008.

(vi) In relation to the 2009 Sales Contract, he had delegated the drafting exercise to Mr Al-Shabory because of time constraints in circumstances where the family was keen to secure the rights of the two sisters and to ensure they were responsible for meeting their share of the costs.

*Mr Al-Shabory*

(i) The receipts which he produced as evidence of the work done was produced at the husband’s request during the currency of this litigation but in accordance with the system of records which his firm maintains in terms of the date when the work was done.

(ii) The contract in relation to Flat 117 was signed in his office. Three or four copes were signed at the time and all on the same date. The copies were printed by his secretary.

(iii) The contract for 117 was created and stored on a computer in his office. The computer system in his office had been updated over the course of the last ten years when the hard drives had been transferred from one computer to another. He confirmed, when taken to the document, that this was version which he supplied to Mr Stewart at his request in the week prior to the start of this hearing.

(iv) He prepared the contract for Flat 507 at the beginning of 2014 at some point between January and March 2014. It was produced within a couple of days of being given instructions.

(v) The contract for Flat 507 was signed in his presence and in his office by each of the first, third and fourth respondents.

(vi) His firm does not maintain client files or records beyond five years and, in any event, since his work involved a simple contract with no litigation, there was no regulatory requirement for records to be kept in any event.

(vii) He confirmed the evidence of Mr Salaheldin that, notwithstanding the proximity in time of their respective emails, the two lawyers were not together when they sent Mr Stewart the original versions of the contracts which he had requested.

*Mr Emam, Professor S’s personal accountant*

1. Mr Emam’s evidence was given more or less fluently in English. He confirmed that:

(i) He had been aware of the Professor’s intention to purchase the LM Flat during 2015. Whilst the husband had suggested the investment to his father, the decision to move ahead with the purchase was taken after the Professor had approved the purchase.

(ii) The US$5 million had been transferred from funds which the Professor held in Dubai.

(ii) To his knowledge there was no correlation between the sum of US$5 million and any notional ‘share’ which the husband may or may not have been entitled to from the A deal.

(iii) When there had been difficulties assigning the legal title from the husband’s name to his father, he had advised about the taxation issues and that there was no need for the transfer of the legal title provided there was a record of the parties’ intentions in relation to the underlying beneficial interest.

(iv) He was present when the husband and the Professor signed the 2016 Agreement Contract in the T Academy Building in the Professor’s office which adjoined his own.

1. Notwithstanding the evident deficiencies in some aspects of the evidence which I heard from the Egyptian lawyers and accountant, I am not persuaded that these professional witnesses are part and parcel of an extended conspiracy orchestrated by the husband, the Professor and/or his daughters. I do not close my eyes to the extent of the position of power and influence which the Professor and, to a lesser extent, the husband are likely to have been perceived to hold in the eyes of the Egyptian lawyers, each of whom has a close working relationship either with each other or with the family. The coincidence of the respective accounts from all seven of the alleged “co-conspirators” would not, of itself, have persuaded me of the truth of those accounts. Rather, I have looked at the wider canvas of the evidence. I have taken into account the family dynamic as it emerged so clearly during the course of nearly two weeks of evidence. I observed the Professor and his two daughters at close quarters in the court room not only during their time in the witness box but also as they sat together in the well of the court. I have found each to be a witness of truth. I believe them when they tell me that they have not conspired together with their lawyers to manufacture the case upon which the wife relies by way of a defence to their counterclaim in these proceedings. Small points can sometimes be telling. It would have been very easy (not to say convenient) had Mr Salaheldin’s evidence been that he observed the signing of both sales contracts involving the three siblings. That was not his evidence. He observed at first hand the signing of the documents relating to Flat 117 but was not present five years later when the contract for Flat 507 was signed.
2. If the respondents and their lawyers are telling the truth about the circumstances in which these transactions were effected, however imperfectly remembered with the passage of time, it follows that the husband cannot have manufactured the documents for the purposes of this litigation. It is common ground that several copies of the documents were produced at the time of signing. Whatever electronic or technical differences there may be in the eighteen iterations of the three sets of documents which are now before the court, I do not consider those differences or the absence of explanation in relation to some of the issues arising from the underlying metadata, to displace my findings in relation to the fundamental credibility of the family witnesses from whom I heard.
3. On the balance of probabilities I find that the second, third and fourth respondents have discharged the legal and evidential burden of proof which they bear in relation to the counterclaim and that the wife has failed to establish on the balance of probabilities that the transactions recorded in the documents are shams or otherwise fraudulent transactions manufactured by the husband.
4. As Mr Amos and Mr Garrido have acknowledged on behalf of their respective clients, the equitable claims of the second, third and fourth respondents only assume a direct practical relevance in this case if the wife’s Part III claim succeeds in passing through the section 16 and 18 filters put in place by the 1984 Act. I shall need to deal with the substantive Part III claim in the light of my findings in relation to the Egyptian Divorce agreement shortly. Nevertheless, it is important for these issues of beneficial ownership to be resolved on a free-standing basis because of the legal consequences of those decisions.
5. **The effect of the documents: the legal basis for my conclusions in relation to beneficial ownership of the three properties and the yacht**
6. In my judgment, and on the basis of my findings in relation to the facts as set out above, the contracts in relation to Flats 117 and 507 operate to establish beneficial ownership of these two properties by the three siblings in equal shares on the basis of a unilateral declaration of trust which operated to create (i) a constructive trust on the basis of the common intention of the parties; and/or (ii) a resulting trust arising from their respective contributions to the purchase price.
7. As I have found, the contracts have been signed by each of the parties to the transactions albeit that the trusts in respect of the two properties arise after the transfer of the legal title into the husband’s sole name. The trusts, and each of them, operate as a matter of law from the date of creation (here, May 2009 and March 2014). There is no doubt that, absent a finding of sham, the husband was entitled as the legal owner of the properties to declare such trusts for the benefit of his two sisters. The requirements of s. 53(1) (b) and (c) of the Law of Property Act 1953 are thus met in that the husband is a person “who is able to declare such trust” and, by his signature to the two Sale Contracts, he has “manifested and proved by some writing” his intention to declare such trust. The two Sales Contracts of 2009 and 2014 constitute the necessary declarations on the part of the husband and a sufficient memorandum of his intentions in relation to each of the properties. Even without the evidence of the Sale Contracts, s. 53(1)(b) and (c) of the 1953 Act would be met in this case because of what I have found to be the clear intention of the husband in 2009 and 2014 to formalise and record the beneficial interests of his two sisters in the properties. I accept that each made their respective financial contributions to the purchase price of each property either by way of a direct contribution in the case of both properties, and/or (in the case of Flat 507) through re-mortgaging the equity which represented their beneficial interests in Flat 117.
8. Notwithstanding the requirements of s. 53(1)(b) of the 1925 Act, it is clear from s. 53(2) that there is no formal requirement of a written declaration of trust in the case of the creation or operation of a resulting or constructive trust of land.
9. Mr Amos and Mr Gleeson also contend that the two Sales Contracts can be construed as executory sales contracts which have not yet been completed giving rise to the creation of a trust. Given my findings in relation to the existence of a clear declaration of trust in the sisters’ favour, it is not necessary for me to go further. However, in my judgment this particular analysis sits less happily with the expressed intentions of the parties as I have found them to be. Were the two Sale Contracts executory contracts for sale, the parties would still be required to take steps to complete the transactions and perfect the sales contracts (i.e. presumably the transfers of the legal titles into their joint names on the basis of full consideration received). On the basis of the evidence I heard and my findings in relation to the family’s intentions at the time of each acquisition, the more appropriate legal interpretation in my judgment is the resulting or constructive trust route.
10. The position in relation to the acquisition of the LM Flat and the 2016 Agreement Contract is different. Under the terms of the document which Mr Salaheldin drafted at the request of Professor S, the husband – in executing the document – has acknowledged that he acted as his father’s agent for the purposes of acquiring the property; that all “dues” (recorded as £6,640,575) have been paid by his father; and that he has no rights or entitlement to the property on the basis that his father “only shall benefit from all profits resulting from the transactions executed on the property”. In circumstances where I have found that the funds used to acquire the property emanated from the Professor, the 2016 document operates as a matter of English law to create a trust of the property for his absolute benefit. In this context, I am aware of the argument advanced on behalf of the wife to the effect that the sum of US$5 million advanced to the husband might be construed as an outright gift and thus the leverage of those funds through borrowings becomes a financial contribution from the resources of the husband. I am satisfied that the proper construction of that transaction between the Professor and his son was that of a contingent gift. Professor S acknowledged in response to a question from Mr Warshaw that it could be loosely construed as a gift but the funds were always subject to recall should circumstances change. That is what the husband acknowledges to have happened with the LM Flat. When it became impossible to reverse the sale transaction, and in circumstances where the husband had no resources to complete the purchase, the Professor was obliged to step into his shoes. The funds required to complete the transaction were provided by Professor S through further leverage of the Credit Suisse deposits and through a further injection of cash from his own resources. In signing the 2016 Agreement Contract (as I accept he did), the husband, as legal owner, declared a voluntary trust of his entire interest in the property for his father’s benefit.

*Constructive or resulting trusts?*

1. In terms of the legal analysis, in my judgment this transaction can be analysed as either a constructive trust arising as a result of a common intention between the two parties to the agreement or as a resulting trust arising as a result of the Professor’s funding of the property acquisition.
2. In terms of the yacht, this seems to me to be a classic case of a resulting trust. I have found that the entirety of the purchase price was provided by Professor S with the intention that it would be an amenity to be enjoyed by his entire family. I am satisfied that it was never his or the husband’s intention that the husband would have any proprietary rights or interests in the yacht.
3. By her open offer the wife does not lay any claim to the yacht or its underlying value as part of her Part III claim. Rather, it is offered by her as a vignette of the wealth and lifestyle available to the husband. Nevertheless, the ownership of the yacht falls within the embrace of the declaratory relief which the second respondent seeks as part of the counterclaim to the Part III application and that is why I deal with it here.
4. **The Part III claim and the relevance of the Egyptian Divorce agreement**
5. I have already dealt with the circumstances in which the husband sent to the wife his email dated November 2015 and the events which provoked the pronouncement of the *talaq* the following month when she and A arrived at Cairo airport.
6. I heard evidence from the husband, the wife and from Professor S in relation to the circumstances in which the Egyptian Divorce agreement came to be brokered and signed by the wife’s Egyptian lawyer and the husband in his offices in Cairo. In circumstances to which I shall come, I heard no evidence from Mr Serry, the wife’s Egyptian lawyer.
7. I am satisfied that the husband’s November email prompted the wife to re-evaluate her position within the marriage. I have already found that the marriage was not in the good shape which the wife contends it was at that point in time notwithstanding her recent trip to invest the Credit Suisse funds on his behalf. I do not believe that the email was in itself a precursor or a deliberate decision on the husband’s part formally to end the marriage. He plainly felt unhappy in the long-distance relationship he had with the wife and the email represented for him a line in the sand in terms of how he envisaged they would arrange their lives going forward. It is not for me in this judgment to reach any conclusions as to whether or not he had by then embarked upon another relationship as the wife alleges. He denies that this was the case.
8. The wife agreed during cross-examination that she had originally promised the husband that she would return with A to live in Egypt once she had secured her British citizenship. She said that was a ‘qualified’ promise but accepted that he was unhappy about their living arrangements when she moved to London in 2012. There does not appear to be an issue but that, in November/December 2015, she had made initial enquiries of schools in Cairo, including a joint approach which the parties made to the British International School in Egypt. On the wife’s case, she was made to go along with these arrangements as the quid pro quo for being allowed to return to London with A. She accepts that she told Lina at the time that she appreciated she might need to relocate back to Egypt in order to save her marriage.
9. She was anxious to stress to me during the course of her oral evidence that her husband’s decision to end their marriage was “quite shocking”. She blames that decision for its subsequent impact on their son and the difficulties he has since experienced at the various schools he has attended. Her language, at times, was florid. She told me that there was ‘no mercy in his decision’ which had left her ‘psychologically destroyed’. In my judgment she has ignored her own part in the events which finally caused the demise of this marriage. It was put to her that she had reneged on her agreement to return to Egypt in 2017 in part because she wanted to reinforce her financial claims in this jurisdiction. She said in response,

“I wanted a decent, fair and peaceful life. If that was my aim, why shouldn’t I do it ?”

1. The thrust of that response is, of course, open to interpretation and the nuance of language.
2. The medical evidence in relation to the wife’s state of mind at the time is limited. I was shown a letter dated 15 November 2015 from an on-call out of hours “Night Doctor” service. Dr Haroon had attended Flat 117 shortly before 11pm. The husband was present during that visit and I assume that his presence coincided with the promise he made to travel to London to discuss matters with the wife after sending his November email about the future of their marriage. The wife described his two day visit as “the most unmerciful days in my life”. I have already made reference to her seemingly hysterical response in the WhatsApp exchanges which followed the receipt of his email. The GP’s record of his visit records a reported history of depression, anxiety and panic attacks which the wife had suffered in the past. She was advised to seek psychiatric counselling. The wife told me she had experienced a nervous collapse on that day. The next letter in relation to the medical evidence before the court is a further letter from the out of hours service dated 12 May 2017 some 18 months later. That letter relates to a visit made to Flat 117 by Dr Haroon on 1 April 2017 about a week after she had formally instigated her Part III proceedings. It records epigastric (or lower abdomen rib) pain and the fact she was then under a lot of stress. She was not at the time registered with a GP which suggests to me that she had not undertaken any formal therapeutic treatment or intervention between November 2015 and the beginning of April 2017.
3. The only other medical evidence before the court is a letter from Dr Ayman Zaghloul dated 12 June 2018, a consultant psychiatrist with whom, since August 2017[[5]](#footnote-5), the wife has been having weekly psychotherapy sessions. His letter contains much reportage by the wife but refers to “severe depressive symptoms in the form of profound low mood, loss of interest, loss of energy, increased lethargy, poor concentration, thoughts of hopelessness and low self-esteem”. There is a reference to a “traumatic marriage” and “a very difficult and volatile relationship with her husband” which led to the divorce. In my judgment that self-reporting sits unhappily with the wife’s account of a marriage which, in November 2015, was showing no signs of stress or discord.
4. It is a matter of record, as I have said, that the wife’s response to the husband’s email was to set up a visit to Mishcon de Reya shortly before she travelled to Egypt on 10 December 2015 when her solicitor was given instructions to issue an English divorce petition.
5. It was against that background that the wife arrived in Egypt and there followed a series of family meetings. She accepted that she had several telephone conversations with Professor S in the days following the altercation at the airport in Cairo.
6. There is very little clarity or consensus as to how the financial negotiations in the Egyptian divorce were instigated or how they developed over the next fortnight. The wife maintains that Professor S sent her the original terms of the family’s offer in a WhatsApp message. Her belief was that those were terms proposed at the time by the husband supported by his father. The Professor denied that he had sent any such message and told me he would not have known how to attach such a document to a WhatsApp message in any event.
7. I have within the bundles a printout of the wife’s WhatsApp account for 14 December 2015 when it is alleged the document was sent. She has confirmed she was in Egypt and using her Egyptian mobile telephone when it was received. I have also seen a document written in Arabic which bears, or appears to bear, a formal professional letter heading identifying the sender as a lawyer called Hassan Abd Moneim Hassan. It is dated 12 December 2015. Neither the wife nor the husband nor Professor S has any knowledge about this lawyer. None of them knows who he is and each denies any contact or prior dealings with him. A formal translation of that document is in the bundle. I have been able to compare it with a formal translation of the Egyptian Divorce agreement which the wife accepts was signed by Mr Serry on her behalf acting through a power of attorney which she signed. The terms are similar and the drafting layout (in terms of a preamble and recitals) look remarkably similar. I know not whether this document emanated from Mr Serry, nor whether he was involved in its production because I heard no evidence from him. What I can see is that the English translation of the Egyptian Divorce agreement which was signed by the husband and by Mr Serry as the wife’s attorney has been formally translated into English by “Serry Law Office”. That translation bears a formal stamp from Mr Serry’s office. When it was put to him by Mr Warshaw that the document had been produced by a lawyer whom he had instructed, the husband denied the suggestion.

*The wife’s counterproposal*

1. Whatever the provenance of the initial jpeg attachment, the wife accepts that she voluntarily made a formal counter-proposal to that offer. That counter-proposal was silent as to the sum of EGP 5 million which was being offered as a capital settlement. She did not ask for a greater capital sum. Her counter-offer proposed an increase from EGP 30,000 to EGP 40,000 per month (to include the cost of employees and a driver) if A and the wife were to return to live in Egypt. It requested that the property which the husband agreed to provide in Egypt as a home for A should be held in her name with A as her successor in title. It sought an increase from £5,000 to £8,000 per month for A’s maintenance whilst they were living in England. In the event that she and A were living in Egypt “next year” (i.e. in 2016), she sought payment of the school fees at the British International School. If they lived in the UK, the husband’s obligation was to be the payment of school fees in England. In addition, she wanted him to cover the cost of flights with A both from the UK and internally in Egypt. It is the wife’s case that she never received a response to that counter-proposal. She accepts that she was its author. I replicate its terms on the basis of the wife’s own translation of the document:-

“1. Monthly expenses: 40 thousands (workers including employees and driver)

2. Children’s apartments as agreed

3. House in the name of the mother and [A] should be my successor, in addition to [A’s] current apartment

4. Whilst living in the UK, as [the husband] knows, 8-9 thousand GBP per month

5. In case of living in Egypt next year, fees of the British School in the 6th of October city. In case of staying in the UK, the fees should be paid in full

6. If [A] goes to university, he should pay the expenses anywhere in the world

7. Health insurance with Bupa for [A] and me throughout the custody period

8. Upon return to Cairo in early September, he should provide a car and a driver for [A] and pay all their expenses

9. All flights tickets from the UK and domestic flies with [A]”.

1. It appears that the reference in paragraph 2 to “the children’s apartments” related to deposits which the husband had agreed to pay in relation to properties for the wife’s adult sons and which they had agreed should not be clawed back as a result of the divorce. The “house” referred to in paragraph 3 related to the provision of accommodation in Cairo were the wife and A to make their permanent home in Egypt.
2. She told Mr Garrido during the course of cross-examination that, prior to any involvement by Mr Serry, she and the husband had had several discussions about the terms of a divorce settlement. (“We discussed it a lot.”) She said that the written proposals which she received in Egypt did not come as any surprise to her since they mirrored the previous discussions she had been having with the husband. He had told her, according to her evidence, that the terms were intended to provide her with some additional security. She told me that she had been considering her counter-proposals since she received the husband’s original offer. I did not see a copy of any written proposals made directly by the husband to the wife. When asked why she had not produced that email, she told me that it had been sent at the beginning of December 2015 but she had deleted it from her account together with all the other emails he had sent which referred to separation because she did not want her elder son to read them.
3. However, she accepts that there were discussions between her own father and Professor S as part of the ongoing negotiations in relation to the divorce settlement. These discussions appear to have taken place on at least one occasion during a meeting which had been convened on a formal basis and included her brother who participated in the meetings (none of which was attended by the husband). The wife was present and she accepted during the course of cross-examination that she had been an active “driver” in those discussions. It appears that there were probably two separate meetings in which the two fathers were involved. (The wife accepts she mentioned nothing about these meetings in her written evidence.) The wife acknowledges that she asked Professor S to secure A’s future if there was to be a divorce. She acknowledges that there were discussions about specific figures during which the Professor told her that he believed the sum of EGP 5 million which he was agreeing to underwrite as a settlement was too much. She accepts, too, that the Professor said that negotiations in relation to the monthly maintenance payments would be something she had to discuss with the husband.
4. That evidence is not entirely at odds with the husband’s evidence. He told me that he had indeed had several discussions with the wife about the financial arrangements to be put in place following the divorce. He told me that the figures were not an issue since he was then paying £5,000 per month and in addition he was meeting the monthly mortgage payments on Flat 117 (as he had been since she moved there in 2012). He agreed that he proposed the figure of EGP 5 million. He told me that initially the wife said she was not interested in money because she was independently wealthy in her own right. He told her that she needed some security in the event he were to die whilst still maintaining the family.
5. At some point, Mr Serry, the wife’s family’s Egyptian lawyer, became involved. She confirmed to me that he was a trusted family retainer of some twenty years’ standing. The husband’s account is that Mr Serry sent him an email which set out the terms of the proposed agreement. He disagreed with one aspect which was that, if the wife died, A should live with his maternal grandmother. He said that A should in these circumstances live with him. That appears to have been agreed since it does not appear in the signed version of the Egyptian Divorce agreement. He was subsequently notified by the wife and her father that Mr Serry would attend his offices at the Academy in order to formalise matters. Mr Serry duly arrived with two hard copies of the final version of the agreement. The husband handed over a cheque for EGP5 million which his father had given him, they signed the two copies of the agreement together with the formal divorce papers which Mr Serry signed using the power of attorney which had been given to him by the wife. The agreement was formally witnessed by a Mr Kamal and a second witness who attended the meeting with the registrar.

*The position of Mr Serry*

1. Of the eight Egyptian lawyers who have been involved in these proceedings, Mr Serry is the only one who has not given any direct evidence, written or oral.
2. During the course of her oral evidence the wife volunteered that Mr Serry had sent to her solicitors an email which sets out the position in terms of his role in the Egyptian Agreement and local Egyptian law. She said, “He has explained it all”. Mr Warshaw told me on the fourth day of the hearing (and before he closed his case) that his solicitors had been making urgent enquiries of Mr Serry in order to ascertain the sequence of events in relation to the production of the documents which were being forensically examined by the court in the context of the Egyptian Divorce agreement. He advertised an application which he was likely to be making the following day (Friday, at the end of the first week of the trial) to admit a statement from Mr Serry and that the statement was likely to be based on the email which he had previously sent to the wife’s solicitors. We agreed to timetable Mr Serry’s evidence for the following Monday when the respondents’ Egyptian lawyers were due to give their evidence from Cairo via a video link.
3. The following day I was informed by Mr Warshaw that I would not be hearing any evidence from Mr Serry and that he was closing his client’s case.
4. I set out that factual exposition of the manner in which Mr Serry’s potential appearance as a witness was introduced into these proceedings. I am not entitled to, and do not, speculate about what he might have told me about these matters. The lawyer/client privilege in this litigation which the wife asserts is absolute and, for these purposes, I proceed solely on the basis of the evidence which I do have. I do know, as a fact, that Mr Serry has raised at least one invoice for professional services rendered to the wife for a sum of at least £64,000. That is the figure which is said to be outstanding and due although I have no information as to what, if anything, she has paid to her Egyptian lawyer.
5. On behalf of the wife, Mr Warshaw and Mr Viney submit that this is an agreement which is not *Radmacher*-compliant. It was procured in circumstances where the wife was pressured into agreeing a divorce and told by the husband that she would get nothing if she did not agree his financial terms. In particular, they submitted in their original skeleton argument that:

(i) there was no disclosure;

(ii) there was undue pressure;

(iii) the wife’s emotional state was impaired;

(iv) the terms of the agreement were not fair;

(v) the terms did not meet the wife’s needs;

(vi) neither party treated the agreement as though its terms should be effective.

1. Those assertions have to be considered in the context of all the evidence which I heard from the parties over the course of this two week hearing. It is a simple statement of fact that I have not had the benefit of any evidence at all from Mr Serry or from the wife’s father and brother who, on her own account, were active participants in the negotiations which preceded the Egyptian Divorce agreement. I have already dealt with the medical evidence in this case, such as it is. I do not regard that medical evidence, on its own, as sufficient to persuade me that this wife was not an able and active participant in the several discussions she had both directly with the husband and, thereafter, with Professor S in the presence of her own father and brother. She accepts that she formulated her own counter-proposals. By this stage she had already had advice from a leading firm of English matrimonial specialists which must be presumed to have included the potential extent of her claims and the approach which a court would be likely to adopt in the event of an English divorce. On her instructions, a petition had been issued in London on the very day she left the jurisdiction to travel to Egypt with A. She had anchored jurisdiction here; there was nothing to suggest that she was not in a position to communicate freely with her English lawyers about the steps she was taking in parallel in Egypt with the assistance of her own family members and a trusted family lawyer. The wife asserts privilege in relation to her dealings with Mishcon de Reya and that is her right. In the absence of Mr Serry and her family members from this hearing, she also asserts privilege in relation to his role in the Egyptian Divorce agreement.
2. Having listened carefully to the husband’s account of Mr Serry’s visit to his office on 23 December 2015, and taking into account everything which the wife has told me about the negotiations which took place in the fortnight after her arrival in Cairo, I am prepared to accept the husband’s evidence. I was able to observe for myself the store which this wife sets on maintaining her personal dignity and self-respect. She made reference to it on more than one occasion in her oral evidence. I believe the husband’s account of her initial reluctance to accept any money for herself. Whether that was genuinely her position at the time, I know not, but I believe it is what she said to him.
3. As to the absence of formal disclosure, there is no evidence that the wife, her father, or indeed Mr Serry ever requested disclosure as a condition, or condition precedent, to the agreement. The wife was fully aware of the deposit of US$5 million which had recently been invested in the Credit Suisse bonds in Switzerland. On her own case, she had been instrumental in that investment. She believed that the husband was the owner of the unencumbered equity in Flats 117 and 507. She was aware that contracts had been exchanged for the purchase of the LM Flat.
4. That information was in all probability conveyed to Mishcon de Reya during her initial consultation with them earlier the same month.
5. At that point in time, this wife had independent wealth of her own. As her Form E disclosed some seventeen months later, she had nearly £½ million in the form of equity in the London flat which she owned with her brother. She had cash in UK bank accounts and a portfolio of offshore investments worth over £1.2 million. Those assets had been generating for her a six figure income (£125,000 per annum) which, with the husband’s ongoing monthly payments for A, had enabled her to discharge her domestic economy in London where she was living in rent free accommodation. She was the owner of a number of expensive motor cars provided for her by the husband including a Bentley, a BMW, a Mercedes and a Range Rover. She has not been working during the intervening period and thus her capital has not been inflated by income receipts generated by her own efforts. Whilst her Form E reveals the existence of a bank loan of just over £60,000, this loan appears to have been incurred to meet credit card debts and (possibly) the costs generated by the issue of her Part III claim. The provenance of that wealth is almost entirely non-matrimonial, as I accept, leaving aside the cash sum which the husband through his father provided as a term of the Egyptian Divorce agreement. I am satisfied that this sum was indeed underwritten by Professor S whose cheque was handed to Mr Serry on the occasion of the signing of the agreement.
6. The financial agreement which was implemented in Egypt provided her with an additional sum of about £215,000, ongoing maintenance for A in the sum of £60,000 per annum (in addition to which she received voluntary payments towards his school fees (a further £60,000 per annum)). Further, her occupation of the London apartment (at a cost to the husband of a further £98,000 per annum) was preserved albeit only during the period throughout which she was responsible for him as a primary carer (which included terms as to her remarriage). The deficiencies in that arrangement have been ameliorated by the respondents’ current offer to make that home available to her for the next nine or ten years on a cost-free basis.
7. There is an ongoing issue between the parties as to the extent to which each owns property (or properties) in Egypt which have yet to be disclosed. Each alleges that the other has been the beneficiary of family wealth which is reflected in the ownership of property which has not as yet been factored into the overall computation of their assets. The evidence in relation to this aspect of the case was far from satisfactory and now rests largely on the drawing of adverse inferences.

*What happened next ?*

1. The wife’s case is that, having concluded the Egyptian Divorce agreement, she returned with A to London hoping that the husband would come to his senses and that their family relationship would be restored. The wife asserts that during 2016, the husband provided financial support for her and A over and above that provided for in the agreement. She contends that until the summer of 2016 she continued to hope for a reconciliation. The couple did not live together thereafter. The husband stayed at Flat 507 whenever he visited London to see A. They maintained what appears to have been a relatively civilised relationship. The husband accepted that he purchased an expensive watch for the wife and, shortly after the Egyptian divorce, put down a deposit on a new Bentley for her although the order was subsequently cancelled. She was still permitted to use his credit card accounts although this arrangement came to an abrupt end amidst allegations of significant over-spending on the wife’s part. The husband told me that the credit card facility was put in place for emergencies or top-up expenditure for A. Instead the wife ran up bills in excess of £130,000.
2. By the summer of 2016, it is clear that the parties’ relationship had deteriorated significantly. Each has described events in Cairo over that summer which show neither in a very positive light. There was an unpleasant physical altercation which took place in front of their son. The husband alleges that the wife hacked into his iCloud account and, without his permission, was sending emails from that account.
3. These are matters which do not require resolution in the context of the wife’s financial claims. Where they do have a resonance is in the wife’s failure to take any steps at that stage to initiate her claim. A further nine months was to elapse before she sought permission to proceed. If she had expectations of a rapprochement between them, those must have been dispelled by the summer of 2016. What I heard about thereafter were the ongoing difficulties in resolving issues relating to the husband’s payment for additional expenses incurred on A’s behalf. It is perhaps not without significance that the wife told me that her patience came to an end when he refused to pay an additional £100 for a hockey stick.

*The Law*

1. There is no issue as to the law which I must apply in relation to this Part III claim. It has been helpfully explained by King LJ in the recent case of *Zimina v Zimin* [2017] EWCA 1429. In that case her Ladyship analysed the proper application of sections 16 to 18 of the 1984 Act against the backdrop of the decision of the Supreme Court in *Agbaje v Agbaje* [2010] 1 AC 628. That case concerned a Russian divorce agreement made at a time when the husband did not have the benefit of independent wealth in excess of £40 million which was subsequently gifted to him by his father. The case turned largely on the wife’s future housing needs in circumstances where she was living in a central London property owned by an offshore trust of which the husband was a beneficiary. The Court of Appeal overturned the award of some £1.14 million which I made in the wife’s favour to meet future needs on the basis that those needs were generated not by the marriage or any inadequacy of the financial provision made at the time of the Russian divorce but rather by the exorbitant costs which had been generated by the English litigation.
2. The starting point is that, where there has been a foreign agreement or order following a valid divorce in a jurisdiction outside England & Wales, it is unusual for an order to be made in England under Part III.
3. Section 16 provides as follows:-

**16. Duty of the court to consider whether England and Wales is appropriate venue for application**

(1) Before making an order for financial relief the court shall consider whether in all the circumstances of the case it would be appropriate for such an order to be made by a court in England and Wales, and if the court is not satisfied that it would be appropriate, the court shall dismiss the application.

(2) The court shall in particular have regard to the following matters –

(a) the connection which the parties to the marriage have with England Wales;

(b) the connection which those parties have with the country in which the marriage was dissolved or annulled or in which they were legally separated;

(c) the connection which those parties have with any other country outside England and Wales;

(d) any financial benefit which the applicant or a child of the family has received, or is likely to receive, in consequence of the divorce, annulment or legal separation, by virtue of any agreement or the operation of the law of a country outside England and Wales;

(e) in a case where an order has been made by a court in a country outside England and Wales requiring the other party to the marriage to make any payment or transfer any property for the benefit of the applicant or a child of the family, the financial relief given by the order and the extent to which the order has been complied with or is likely to be complied with;

(f) any right which the applicant has, or has had, to apply for financial relief from the other party to the marriage under the law of any country outside England and Wales and if the applicant has omitted to exercise that right the reason for that omission;

(g) the availability in England and Wales of any property in respect of which an order under this part of this Act in favour of the applicant could be made;

(h) the extent to which any order made under this Part of this Act is likely to be enforceable;

(i) the length of time which has elapsed since the date of the divorce, annulment or legal separation.

1. Section 17 sets out the orders for financial provision and property adjustment which can be made under Part III. These include lump sum and property adjustment orders which are available pursuant to the court under sections 23(1) and 24(1) of the Matrimonial causes Act 1973.
2. Section 18 provides:

“**18. Matters to which the court is to have regard in exercising its powers under section 17**

(1) In deciding whether to exercise its powers under section 17 … and, if so, in what manner the court shall act in accordance with this section.

(2) The court shall have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who has not attained the age of eighteen.

(3) As regards the exercise of those powers in relation to a party to the marriage, the court shall in particular have regard to the matters mentioned in section 25(2)(a) to (h) of the 1973 Act and shall be under duties corresponding with those imposed by section 25A(1) and (2) of the 1973 Act where it decides to exercise under section 17 above powers corresponding with the powers referred to in those subsections.”

1. It is clear from the decision of the Supreme Court in *Agbaje* that the issue of what order, if any, should be made depends upon the combined effect of sections 16, 17 and 18. Neither hardship nor injustice are pre-conditions although both are relevant to the exercise of the court’s discretion. Whilst the court is entitled to make an award in the absence of hardship and/or injustice in an appropriate case, it is not the function of the 1984 Act to enable an applicant to secure a “top-up” of the provision made in the context of a foreign divorce simply to bring it into line with an application of English matrimonial law: see paragraph 70 per Lord Collins.
2. Having quoted extensively from Lord Collins’ judgment in *Agbaje*, Lady Justice King said this at paragraph 47 of *Zimin v Zimina*:

“Whilst the proper application of the *Agbaje* principles is not always straight forward, it is clear for the purposes of the present case that:

i) The legislative purpose is to alleviate the adverse consequence of no, or no adequate financial provision having been made by a foreign court in a situation where there are substantial connections with England.

ii) The duties under section 16 and 17 together impose two interrelated duties i.e. to consider whether “in all the circumstances of the case” England and Wales is an appropriate venue and, secondly, whether an order should be made “having regard to all the circumstances” including the matters in section 25(2)(a) –(h) of the Matrimonial Causes Act 1973.

iii) Part III cannot be used to ‘top up’ foreign provision in order to make it equate to an English award; it follows that mere disparity will be insufficient to ‘trigger’ the application of Part III.

iv) No element of exceptionality is required and neither injustice nor hardship are preconditions.

v) In considering quantum the court has a broad discretion subject to three principles:

a) Primary consideration is to be given to the needs of any children;

b) It is never appropriate to make an order which gives the claimant more than she would have been awarded had all the proceedings taken place in this jurisdiction;

c) Where possible the order should have the result that provision is made for the reasonable needs of each spouse.”

1. Following the decision in *Zimin v Zimina*, it is clear that the term ‘any financial benefit received by the applicant or a child of the family’ means *all* forms of financial benefit received by the claimant spouse howsoever that benefit is provided. In *Zimin* the Russian wife had retained, by operation of an agreement outside the Russian court order, the right to occupy, rent free, the trust property which was the children’s family home in central London during their minority. King LJ found this to be part and parcel of the financial benefit which was made available to the wife as a consequence of the divorce through a combination of the Russian order and the voluntary family agreement which post-dated that order. The fact that the provision made for the wife in that case in terms of her ability to occupy the London home did not extend beyond the termination of the children’s minority did not deter the Court of Appeal from determining that the financial provision made was adequate in all the circumstances of that case.
2. The date for determining the adequacy of the financial provision made for the wife in this case falls to be considered as part of all the circumstances of the case. The court will consider the adequacy of the provision at the date upon which the agreement was made. In cases where there has been a delay, it may also be necessary to look at the means of a paying party as of the date of the hearing: see paras 60 to 64 of *Zimin v Zimina*: “…the husband’s means and the adequacy of the provision as assessed at trial will, in any event be but one part of the overall picture, which will be considered against the backdrop of the provision as at the date of the divorce.”
3. As to the fairness of the agreement in the context of an application of the *Radmacher* test, I bear well in mind Lord Phillips’ quotation from the well- known passage of Lord Ormrod’s seminal judgment in *Edgar[[6]](#footnote-6)*. Given the wife’s acceptance of the fact that in December 2015 she was an “active driver” in the discussions which were ongoing between her own and the S family (albeit in the absence of the husband) and in the light of her previous lengthy discussions with the husband on the issue, I reject any suggestion that she was placed under undue pressure by him to conclude the agreement on his terms. Against the background of her very recent instruction of Mishcon de Reya (who remained on the court record at the relevant date), I find it inherently improbable that – were she under such pressure – she would not have availed herself of the opportunity to seek further advice from her English solicitors. She did not withdraw from Mr Serry the power of attorney which she had given him with a mandate to complete the agreement on her behalf. Whilst she seeks to advance a case now that she told Mr Serry that she intended to take no part in formalising the agreement, there is no suggestion from the wife that she regarded the advice she received from Mr Serry as being deficient or incompetent in any respect. There is no suggestion that at any point in the negotiations she communicated to her own father or to Mr Serry that she wished to withdraw from the proposed agreement or to revoke the specific power of attorney which she gave him to sign the agreement with the husband on her behalf. In the absence of any evidence from Mr Serry, I regret that I am unable to accept this aspect of her case. Once the agreement had been executed and the lump sum paid (and presumably “banked” by the wife), there was nothing further said or done by her or her English or Egyptian lawyers to indicate any intention to resile from the agreement. Its terms were carried through to include an agreement into which the husband entered in March 2017 to purchase in A’s name an apartment in Egypt which he contends had been chosen and selected by the wife[[7]](#footnote-7).
4. The interpretation which Mr Garrido and Miss Hay place upon the wife’s inaction flows from their portrayal of her as a litigant who was deliberately positioning herself to maximise her financial claims in this jurisdiction. On their case, the wife was waiting for the purchase of the LM Flat to be completed so as to advance her Part III claims from the foot of an assertion that he was the legal owner of a London apartment worth some £6 million. In this context, and with some justification in my judgment, they point to the wildly exaggerated assertions she made in her initial evidence referring to him as a man worth £100 million.
5. In my overall consideration of whether or not the provision made for her under the terms of the notarised Egyptian agreement was fair in terms of an application of the *Radmacher* test, I have to bear in mind the findings which I have made in relation to the beneficial ownership of the three London properties which have been the subject of the respondents’ counterclaim in these proceedings. Had the wife proceeded with her English divorce petition and an application for financial remedies in this jurisdiction, there would inevitably have been a fact-finding process at some stage of those proceedings in order to determine beneficial ownership. I have found that the first two sales contracts relating to Flats 117 and 507 were legitimate instruments which gave rise to the creation of constructive or resulting trusts in favour of the husband’s sisters. At the time the Egyptian Divorce agreement was concluded, the LM Flat was in its very early stages of construction. It had been purchased “off plan” when the 10% deposit was paid some eight weeks prior to the Egyptian agreement. The husband was frank in his admission that, had the Professor not recalled the sum of US$5 million when the parameters of the University sale contract changed, he and the wife might well have lived in the property. That never came to pass since they were divorced shortly thereafter. I have found that the 2016 Agreement Contract operated to create a trust of the entire beneficial interest in his father’s favour.
6. There is no issue but that the wife knew about the deposits held in the Credit Suisse accounts at the time she allowed Mr Serry to sign the Egyptian agreement on her behalf. She believed those assets to belong to the husband at the time. She was also aware of the state of her own finances and the investments which she held in Switzerland. In the light of my findings, it is difficult to see why an English court would or could in those circumstances condemn this agreement to one which had no weight in terms of its legal effect or consequence in a subsequent Part III application. Given there can be no doubt that its terms were recorded and, with the wife’s authority, agreed and subsequently implemented, I can find no solid or reasoned basis for holding that this agreement failed the test of fairness as explained in *Radmacher*. It was certainly adequate in terms of meeting the wife’s needs given the extent of her own capital resources at the time.
7. Mr Garrido makes what is in my view a powerful submission that one element of the integrity of the Egyptian agreement and its traction in these Part III proceedings is the wife’s acceptance of the proposal that she should be entitled to occupy Flat 117 on a cost free basis for the limited period of A’s minority. She agreed to that term and did not seek to extend those rights of occupation by the counter-proposals which she sent to Professor S. This was not thus some form of court-imposed *Mesher* solution but a voluntary and agreed limitation on her claims against the husband.
8. In *Zimin v Zimina*, King LJ reached the clear conclusion that the wife’s needs in that case were not generated by the husband who had adequately provided for her at the time of the Russian agreement but by her decision to embark upon litigation as a means to undermine two fundamental aspects of the original agreement, namely:

(i) that rather than having the occupation of the London home for the duration of the children’s childhood, she should now have the property transferred to her; and

(ii) notwithstanding that she had not sought provision for spousal maintenance and had agreed not to claim such provision as part of her divorce settlement, she now sought a substantial lump sum designed to provide her with an income significantly greater than that provided for in the agreement (see para 106 of King LJ’s judgment).

1. Those two observations might just as easily be made in the context of this wife’s Part III claims. They are precisely the terms which underpin the open proposals put before the court by Mr Warshaw and Mr Viney.
2. Standing back and surveying the requirements of sections 16 and 18 of the 1984 Act, it seems to me that the following are relevant factors in reaching my conclusions about the merits of this Part III application.
3. This was an Egyptian marriage which was celebrated in Cairo. Both parties are Egyptian nationals. The majority of this couple’s married life was spent in their matrimonial home in Cairo. At no stage during the three years between 2012 and 2015 when the wife was living in London did the husband relocate so as to join his wife and son. He continued to live and work in Cairo visiting as and when he could. The marriage was dissolved (validly, as the wife accepts) by an Egyptian divorce: section 16(1)(a) and (b).
4. The wife now wishes to make her permanent home in this jurisdiction. The husband has made financial provision within the Egyptian Divorce agreement and by his subsequent offer to extend her rights of occupation in Flat 117 to meet those wishes: section 16(2)(c).
5. The wife has received all sums due to her under the terms of the Egyptian Divorce agreement. That provision has been supplemented by voluntary financial benefits provided by the husband. Save in relation to issues which have arisen in relation to expenses incurred for A, he has complied with the terms of the Agreement: section 16(2)(d) and (e).
6. Since I did not hear from Mr Serry, the wife’s Egyptian lawyer, and because she has not chosen to put before the court any other evidence relating to Egyptian matrimonial law, I know not what rights she may have to apply to the Egyptian courts for extended financial relief in that jurisdiction: section 16(2)(f). In particular, I do not know, in the absence of any evidence from Mr Serry, whether the Egyptian Divorce agreement has been registered or formally converted into an order enforceable in that jurisdiction.
7. In terms of the availability in *this* jurisdiction of any property in respect of which an order in the wife’s favour could be made, my findings in relation to the computational aspects of this case leave only the husband’s one third interests in the two flats as targets of lump sum or property adjustment orders: section 16(2)(g) and (h). Together these are worth just over £340,000 (as agreed on the “stripped out” asset schedule which is now before the court). That is less than the equity in the wife’s London investment apartment which is agreed at just under £416,000. That, in my judgment, is of crucial relevance to the determination and resolution of the wife’s Part III claims. I suspect that the prospects of co-ownership with the husband’s sisters would hold no attraction for either her or them. The court could order a sale of those two properties in order to realise the husband’s interest in each but that does not appear to be an appropriate option given the assets which the wife holds (or, at least, has held if one disregards the impact upon her resources of the costs of these proceedings). As the Court of Appeal has made plain in *Zimin v Zimina*, the court cannot and should not exercise its discretion under Part III simply because the costs of an unmeritorious Part III application have depleted the applicant’s resources and given rise to a potential situation of need.
8. Both parties assert the existence or ownership of various properties in Egypt. It is said that there has been non-disclosure on both sides of the case. I have already said that the evidence about the existence or otherwise of Egyptian assets is unsatisfactory to say the least. The forensic investigation in this case has not been focused on these foreign assets but rather on the beneficial ownership of the English assets. For reasons which will become apparent, I have decided that I am in no position to make findings in respect of the Egyptian properties, nor is it necessary for me to do so.
9. In terms of delay (section 16(2)(i)), I bear in mind that the wife waited some fifteen months before launching these proceedings. As far as I am aware, and unlike the position in *Zimin v Zimina*, there was no prior advertisement at the time she concluded the Egyptian Divorce agreement that a Part III application might follow.
10. In terms of section 18(1) to (3) of the 1984 Act, I have given due and proper consideration to each and every one of the factors listed in section 25(2) of the 1973 Act. In particular I have borne in mind A’s interests as my first consideration.
11. A is now habitually resident in the jurisdiction of England and Wales. The court has jurisdiction to entertain financial claims on his behalf pursuant to section 15 and Schedule 1 of the Children Act 1989. The wife has chosen an alternative jurisdictional route for her financial claims and has extended those claims beyond those advanced on behalf of their son.
12. I ask myself the question: what order would an English court be likely to have made in the context of an English divorce on the basis of my findings in relation to the beneficial ownership of the three properties ? It could not accede to the wife’s position as reflected in her open proposals. To do so would be to make an order which would give her, as claimant, more than she *could* have been awarded had all the proceedings taken place in this jurisdiction. It would have required the husband to meet an award which could not be justified on the basis of my findings in relation to computation. Whilst I can well understand why Russell J granted this wife permission to proceed with her Part III claim on the basis of the evidence which was then before the court, that evidence has been challenged and found wanting. There is no evidential basis for her assertion that this husband has, or had, assets in the order of £100 million either now or in March 2017.
13. **My conclusions in relation to the wife’s Part III claim**
14. A’s needs are my first consideration in this litigation. On the basis that the financial arrangements embodied in the Egyptian Divorce agreement are not the subject of a formal order in the Egyptian divorce proceedings (and I proceed on that basis), I have reached the conclusion that his future security (and that of the wife as his primary carer) requires me to make an order in the context of the wife’s current application under Part III of the 1984 Act. In my judgment, and given the wife’s intention to remain living in this jurisdiction for the foreseeable future, she has established a sufficient connection with this jurisdiction to justify the making of an order.
15. However, in terms of quantum, I bear in mind the clear impact of the judgment handed down by the Supreme Court in *Agbaje* to the effect that it will never be appropriate for an English court to make an order which gives a claimant more than she would have been awarded had all the proceedings taken place in this jurisdiction.
16. I did not hear any submissions in relation to whether either the husband or the wife has, or is likely in the future to have, access to financial resources from their wider families on a *Thomas v Thomas* basis. It seems to me that there is wider family wealth on both sides of this case. I am satisfied that the husband has an earning capacity which will enable him to fulfil the obligations he has accepted under the terms of his open offer even if, as he maintains, he is not currently employed. I find that the wife, for her part, has an earning capacity which will enable her in due course to make a contribution to her future financial needs. I accept that her time and energies are currently absorbed with the care she is providing for their son. However, she is a highly intelligent woman who has in the past sustained her own domestic economy for a period of over ten years working at a senior position in journalism. I suspect that she will not be able to return to her previous level of earnings but, as A’s needs diminish in time, I can see no reason why she should not find some form of employment even if on a part-time basis. In the meantime, the raft of financial provision which the husband will be making will provide her with a secure home and an income stream in terms of the support he will be providing for A.
17. What has troubled me most in this case is the erosion of the wife’s capital base through the incidence of legal costs and the impact of that erosion on her investment income going forward. In circumstances where I have determined the extent of the husband’s assets in this jurisdiction and his inability without further assistance from his father to make a further lump sum payment from his own resources, there is insufficient evidence to proceed on the basis of adverse inference alone. As I have said, there are allegations and cross-allegations on both sides of the case that neither of the parties has provided a clear account of the property assets which they may hold in Egypt. There was very little forensic investigation of these matters during the course of the hearing and neither party has, in my judgment, proved his or her case to the requisite standard of the balance of probabilities in relation to the existence of any such assets.
18. The Court of Appeal has made it clear in *Zimin v Zimina* that, in circumstances where the foreign order or agreement was fair and likely to survive a *Radmacher* health check, as here, it is not a legitimate use of the court’s powers to order a lump sum in a Part III application to make good any deficiency in the calculation of future needs in order to address a shortfall which has arisen as a result of litigation costs. The wife in this case has failed in her aspirations to establish that the documents giving rise to the wider family’s beneficial interests in the three London properties were forgeries or sham transactions manufactured by the husband for the purposes of this litigation. That was the central thrust of her case. She has invested her own capital in pursuing that case and, following *Zimin*, the husband cannot be required to act as an insurer in respect of those litigation risks even if he had the financial resources to do so. It will not be forgotten that the respondent in that case had personal wealth of some £40 million but was not required to make up a deficit of some £1.4 million in terms of the wife’s needs as I assessed them to be.
19. In these circumstances, and in the light of the declaratory relief which I propose to grant in relation to the beneficial ownership of the three English properties which are the subject of the respondents’ counterclaim, my order will be confined to the open proposals made by the husband, supported by the members of his extended family. I regard it as entirely appropriate for the terms of the wife’s occupation of Flat 117 to be extended until A is 18 years old or until he completes his secondary education. It will be important for the details of the security offered by the husband to be clarified and agreed before any order is finalised. I shall leave the drafting of those provisions to the parties and their legal teams.
20. In terms of the wife’s occupation of Flat 117, I am making no order in relation to the claims of the third and fourth respondents in relation to mesne profits or an occupation payment or charge. I am not persuaded that the evidence which is currently before the court provides any legal basis for such a claim. This was essentially a family arrangement. Both Lina and Amal have accepted that they were willing to agree to allow their sister-in-law to occupy the property in order that she could build up the necessary period of residence which was necessary for her application for a British passport. By the time that process occurred, the husband and wife were divorced but, until at least the summer of 2016, sustaining a relationship which involved the husband sending a number of mixed messages to the wife.
21. I am aware that the support which the second, third and fourth respondents have given to the wife’s continuing occupation of Flat 117 over the next nine or ten years is dependent on the husband accounting to them for their one third share of the net income they could otherwise have expected to receive by way of rent. It seems to me that this is not a straightforward calculation as it is clear from the evidence of both sisters that they have historically expected to absorb significant “rent holidays” during periods in any given year during which family members or friends used the flat as a London base, particularly during the summer months. Inevitably, it seems to me that there will need to be further discussion amongst the family members as to how they will between themselves resolve these issues once they have digested this judgment. They are not issues for the wife whose occupation of the property will be secured during the period it continues to be her home.
22. For the avoidance of doubt, I will not be prepared to approve any order which requires her to vacate the property in the event of her cohabitation and/or remarriage. Whilst such an event might potentially trigger a review by this court, it will not operate as an automatic termination of her rights of occupation. In the event of the husband’s death during her occupation, he has proposed that his interest in the property will be inherited by A. In terms of drafting, any order I approve will provide for the ongoing security of the wife’s and A’s occupation in this event.
23. Aside from the outgoings and utilities on the property, the wife will be entitled to continue to occupy Flat 117 on a rent-free basis. The husband will make his proposals in relation to securing his continuing obligations to pay the mortgage although it seems to me that an obvious means of securing the wife’s position and increasing the underlying equity for the benefit of the husband and his two sisters would be to discharge the mortgage. Everything which I have heard about the family persuades me that this could easily be achieved albeit that I accept it will require the involvement of the husband’s family.
24. I hope and expect that the parties, with the advice and encouragement of their legal advisers, will be able to agree the terms of a draft order. I am conscious that there remains the unresolved issue in relation to the costs of these proceedings. Professor S assured me during the course of these proceedings that he would not see his grandson put in a position of prejudice or need. As head of the family, I am satisfied that he is in a position to exert considerable influence over his children in relation to any further determinations which this court may be asked to make in relation to the burden of costs. I hope that, having secured the declaratory relief which was sought by the respondents in these proceedings, he might reflect on the position insofar as it has repercussions for his grandson.

*Order accordingly*

1. The husband contends the lump sum was equivalent to c. £400,000 on then prevailing *fx* rates but this figure does not appear to be correct. [↑](#footnote-ref-1)
2. see para 2.1 of her Form E sworn on 15 May 2017 **[1/C:4]**. [↑](#footnote-ref-2)
3. It appears to be common ground that the sale transaction as it related to the University was completed in 2015 but the consideration or sale proceeds received over a two year period which extended into 2016.  **[2/C:279A]** [↑](#footnote-ref-3)
4. *R v Lucas* [1981] QB 720 [↑](#footnote-ref-4)
5. Although the letter refers to the wife having been referred by BUPA on 26 August 2018 (plainly an inaccurate date), the wife confirmed in her evidence that she had been seeing Dr Zaghloul for “maybe a year”. [↑](#footnote-ref-5)
6. [1980] 3 All ER 887 [↑](#footnote-ref-6)
7. This apartment was being acquired on the basis of an instalment payment plan. It appears that the apartment was sold at the beginning of February 2018 for the equivalent of c. £60,000. [↑](#footnote-ref-7)