Neutral Citation Number: [2019] EWHC 3572 (Fam)

Case No: ZC16D00276

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/12/2019

Before:

MR JUSTICE COHEN

Between:

TT — **Applicant**

- and –

CDS — **Respondent**

The Applicant husband appeared in person
Mr Charles Hale QC (instructed by **JMW Solicitors LLP**) for the **Respondent wife**

Hearing dates: 18th – 22nd November 2019

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE COHEN

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.

The Honourable Mr Justice Cohen :

Introduction

1. I have been hearing claims by the parties for financial remedies following the breakdown of the marriage between the husband and wife. The husband issued his proceedings first in time, but for reasons which I will set out later in this judgment I have treated the wife as the applicant. I shall refer to the parties hereafter as H and W.

2. W is aged 45 and H is aged 44. They met while students at university and in 1995 commenced cohabitation. They did not marry until 2005 but had remained in the interim fully engaged together in their lives and business activities. They separated in 2016 in highly acrimonious circumstances. I therefore treat the relationship as one of 21 years with the quality of the relationship pre-marriage being indistinguishable from that post-marriage.

3. The parties have two children now aged respectively 13 and 9. They have been deeply affected by the breakdown of the relationship and the stress that it has placed upon them. They live with their mother and have very limited contact with their father.

4. During their time together the parties built up a successful business in the provision of mobile telephones. I shall call their business "AM". It has associated companies which are of no significance to this judgment. The business provided the parties with a very good but not opulent standard of living.

5. Everything that the parties now have has been built up during the course of the marriage. W accepts that the division between the parties of their assets will be governed by the provisions of the Matrimonial Causes Act. H has sought to argue that a significant part of the assets is owned by his mother (whom I shall call by her first name, "Wanda"). A claim to ownership made by Wanda, supported by H, has been decisively rejected by Mostyn J. H remains aggrieved by that decision but neither he nor Wanda appealed the decision and I am bound by it.

6. H remains very close to his mother. When in London he lives with her at 45AG which is her home, albeit now held jointly in her and W's names. There is no doubt that in the early years both H and W received significant assistance including financial assistance from Wanda. He attributes all the success that the parties have had to the help from his mother and his own efforts. The relationship between Wanda and W is now poor and Wanda is totally allied with H.

Chronology of the litigation

7. In or around 2014 the marriage became unhappy. In the summer of 2016 the parties agreed to move to Miami full-time, where they were the owners of a luxury penthouse which I shall call the "Miami property" and run their business from there. At about the same time W entered into a relationship with another man. W moved with the children in October 2016 and H was due to follow soon afterwards. Shortly before the move H became aware of W's infidelity. He caused W to be removed, with the children, from the Miami property on the basis that he was the legal owner of the property. He alleged that she had abducted the children to America. He issued divorce proceedings the

following day on 4th November 2016 and at the same time, issued but did not serve his Form A. He also commenced proceedings in respect of the children.

8. In May 2017 Wanda issued proceedings in the Chancery Division (as I will call it for convenience despite the subsequent name change) against W, the gist of them being that Wanda claimed that she was the beneficial owner of the family business and residential properties. She also filed a statement in the financial remedy proceedings asking that they be stayed until the conclusion of the Chancery proceedings. Soon afterwards H sought likewise that the proceedings that he himself had issued for financial remedy orders should be adjourned until the conclusion of the Chancery proceedings. On 9th June 2017 the financial remedy proceedings were re-allocated to a Family Division judge. Until very recently they have largely been handled by Mostyn J.

9. It would make this judgment of excessive length if I was to go through each of the hearings that have taken place. The litigation has been on a massive scale and the allegations of H's behaviour amounting to conduct which it is said by W that the court should have regard to are very extensive. It should have been apparent to the parties that the time estimate provided for this hearing was inadequate.

10. In November 2017 contested Hague Convention/wardship proceedings came before me. The background was that in August 2017 H had taken advantage of the fact that W had informed him that she would unavoidably be some hours late in collecting the children from H following an agreed period of summer holiday contact to H in America to remove them from Miami back to England. In my judgment I described his behaviour as "deplorable" and that, contrary to his assertion, it was plain that the relocation of the children to Miami was consensual and that they were habitually resident in Florida.

11. H did not appeal the decision. Instead he embarked on a course of conduct seeking to achieve the removal of the children from the mother and the removal of the mother and children back to England by the making of multiple complaints about her immigration status and treatment of the children to various US authorities. Suffice it to say that his accusations have achieved nothing other than to cause enormous upset to W and the children.

12. On 29th November 2017, H, W and Wanda, all represented by leading counsel, appeared before Mostyn J where he gave directions in respect of the preliminary issue which he defined as "to whether Wanda is the 100% beneficial owner of the company and the properties". The order recited that the Chancery proceedings were stayed and Wanda was joined as second respondent to the financial remedy proceedings. Directions were given for the hearing of an application by H for maintenance pending suit and LSPO, it being H's case that he was being deprived of funds from the business.

13. H had since November 2016 been represented by solicitors and counsel but on 1st February 2018, H's solicitors, on their application, were removed from the record. On 11th April 2018, H's application for interim provision was struck out in consequence of his large number of failings to comply with court orders which are set out over 6 paragraphs of the order. Orders were made for interim sales and for the payment out of the proceeds to W of various cost orders which had been made against H. At

paragraph 21 of the order it was recited that W undertook (my emphasis) that she would make the following payments "*in priority order*":

a) Payment of H and W's tax bills as a result of any income paid from the business;

b) Direct payment of the mortgage and service charges on the parties properties including 45 AG (capped at £14,000 pm);

c) The children's school fees and expenses (up to £6,300 pm);

d) W and children's outgoings (up to £11,000 pm);

e) *H's outgoings (up to £5,000 per month).*

14. If everything that the order set out was paid, the amount that would be required was £36,300 per month plus tax bills. I struggle to see how W could have thought that the business could meet this level of outgoing but whilst W has found it possible to make the first four categories of payments (parking the dispute as whether or not in the circumstances she was liable for payment of the expenses of the Miami property), she has for a prolonged period of time not made the payments to H. She says that the funds were not available, which H challenges.

15. On 7th June 2018 at a pre-trial review of the preliminary issue, H undertook to complete repair works to the Miami property so that it could be rented out by 1st July 2018 and that the rental received was to be used to discharge the mortgage and service charge. If that had happened, it would have relieved W of the bulk of the £14,000 per month notionally allocated under paragraph 21(b) of the order of 11th April 2018 and reduce the total sum that was required to come out of the business to meet items (a-e) to something close to £25,000 per month.

16. On 6th July 2018 at the end of a four day hearing on the preliminary issue, Mostyn J rejected Wanda's claim that she had a beneficial interest in the properties and businesses and declared that "the applicant and first respondent jointly hold the entire beneficial interest in the company and properties" and that Wanda held the entire beneficial interest in the property at 45 AG and that H and W were jointly and severally liable for the mortgage on the property which had been taken out for their benefit and were (as they had always agreed) to indemnify Wanda in respect thereof. H and Wanda were ordered to pay W's costs of those proceedings jointly and severally and to make a payment on account of £150,000 by 16th August 2018 (of which no part has been paid).

17. On 21st August 2018, W made a without notice application which came before Moor J who made orders excluding H from interfering with AM and injunctions requiring him to give up keys to the company premises, return documentation, not to contact the employees or customers, not to enter company premises or in any way interfere with the business.

18. At the return date on 24th August before Newton J the injunctions were continued. They remain in place.

19. On 4th December 2018 Mostyn J found that H had been guilty of contempt of court in failing to complete the repair works to the Miami property and vacate it by 1st July and that he had not placed the property on the market for rent by 2nd July. He was committed to prison for 28 days suspended upon his vacating the premises by 11th December and placing the property on the open market for rent by 12th December.

20. On 4th April 2019 the matter came back before Mostyn J on W's application for a freezing injunction against H, who had purported to execute a transfer of the title of the Miami property to his mother. He was injuncted from dealing with the equity in the property and required to file a statement setting out exactly what he had done. On the return date H and Wanda were further injuncted from dealing with the property in any way and Wanda was required to swear an affidavit setting out what steps she had taken and whether she intended to rely on the terms of the alleged transfer to her. That affidavit was due by 18th April and the order provided that if she failed to file such an affidavit W should be deemed to have made an application to set aside the transfer. The order went on to provide that W should have sole conduct of the rental of the property.

21. Mostyn J went on to make provision for the filings of updated forms E and questionnaires and directed that there should be a valuation of the business by Grant Thornton and expert tax advice from Smith Williamson, both as single joint experts. Provision was also made for valuation of the three flats which the parties owned in a block in Ealing.

22. It is to be noted that for most of these hearings H had been represented by solicitors and counsel. Notwithstanding his solicitors coming off the record in February 2018 he was advised by another firm of solicitors until about November 2018. H was then unrepresented until March 2019 when his first solicitors came back on the record and they continued to act for him save for a period of some weeks in summer 2019 until H became unrepresented in September 2019.

23. The final hearing was allocated to me. The matter was put before me on paper in the light of the fact that Wanda had not confirmed her position and I directed that she should be added as intervenor to the proceedings for the limited purpose of the application to set aside the purported transaction and I ordered her to attend the pre-trial review fixed for 16th September 2019.

24. At the pre-trial review there was no appearance from Wanda and H appeared in person. I was satisfied that she had been served with my earlier order. H accepted that his mother was aware of the hearing. He confirmed to the court that he had not transferred the Miami property to his mother and I therefore ordered that unless Wanda filed an affidavit by 27th September setting out:

    i) Her intention to argue that the property had been transferred to her and;

    ii) Any documentary evidence in support of her contention

    she was to be debarred from making any claim to that effect. I gave her permission to apply to vary or discharge the order. She has made no such application and has filed no evidence. No argument has been addressed to me that H and W are anything other than the entire legal or beneficial owners of the property and I therefore disregard the purported transfer.

25. At the hearing H admitted that he had rented out the Miami property. That would have been in plain breach of the order of Mostyn J that W alone was to have that right. H alone has received the income.

26. None of the valuations and expert evidence ordered by Mostyn J had taken place. H claimed that he did not have the money to pay for his share of the costs and W claimed that she did not either. Faced with this highly unsatisfactory situation I ordered as follows:

    i) Evolution Capital, a firm of financial advisors, who had valued the company in 2015 to give advice on its development, were asked to give a valuation of the company in the light of its development as revealed by the financial documents since 2015. The original involvement of Evolution had been on a jointly instructed basis and I saw no reason to question their impartiality. H was extremely anxious about the operation of the company by W and wanted a full audit going back years to cover every single bank statement and transaction of the company. This would plainly have required an adjournment of the final hearing and I refused it. But, to try and mitigate his concerns I required that the report should be sent to the accountants of the company and that they should produce a document setting out any areas of disagreement with the report and their assessment of the valuation of the company both gross and net of tax;

    ii) I discharged the order for Smith Williamson to provide advice and directed that a report should be provided from the accountants for W detailing the tax consequences of the sale of the business. I permitted H to put in his own report in respect of tax if he so wished. The company accountants have provided a brief report. H has not put in any evidence on this issue.

    iii) I discharged the order for valuation of the London properties but permitted the parties to instruct agents for the purpose of valuation of those properties. In fact, no valuations have been put before me.

27. I made provision for the filing of:

    i) Conduct statements by the parties, which have been filed;

    ii) Section 25 statements by 21st October; W has filed her section 25 statement, but only on 14th November 2019, 4 days before the trial began and H has not filed any s.25 statement at all. The only mitigating factor is that so much evidence has been filed by the parties over the last two years that there is little if anything that either could say which would take the other by surprise;

    iii) H wished to serve evidence from two company employees which he said would show how W had mismanaged the business. I gave him that permission provided it was made clear that they did not need to be involved if they did not wish to be. No such statements have been filed and the only evidence came from H and W.

iv) I provided that the parties should agree a chronology, schedule of assets and schedule of facts that they seek to prove and a witness template not less than 14 days before the hearing.

v) I directed that trial bundles should be filed at court no later than 4pm on 2nd November 2019; they were lodged at court on Wednesday 13th November.

vi) I directed that in the event of non-compliance the parties could apply to me for urgent directions. No such application was made by either party save that on Wednesday 13th November H wrote to my clerk, without informing W, seeking that the hearing be adjourned. I was on leave and my clerk replied that he should apply, if so minded, to the urgent applications judge. No application was made.

28. Almost immediately after the pre-trial review before me H instructed Payne Hicks Beach ("PHB") to act on his behalf. They of course had to familiarise themselves with the very extensive papers. On 8th October 2019 at the request of PHB, W's solicitors provided a copy of the documents that had been provided to Evolution Capital.

29. On 29th October PHB wrote "with a proposed revised timetable that will ensure that both parties are ready for the final hearing". With the benefit of hindsight, it is regrettable that W's solicitors agreed this proposed extension of time but that it not a criticism of them because they had no reason to think that PHB would cease to act. The relevant parts of the revised timetable required as follows:

i) By 5th November 2019 the parties should exchange replies to questionnaires. The extended questionnaire served on W by H was received only on 18th October and was replied to, one week late on 12/13th November with four files of documents. H never replied to W's questionnaire.

ii) Provision was made for the exchange of schedule of deficiencies and requests for further documentation if so advised by 8th November 2019. Neither party served a schedule of deficiencies or request for further documents.

iii) There was provision for the exchange of property valuations (which never happened) and for H to serve his expert tax advice, which also never happened.

iv) The time for filing and serving section 25 statements was extended to 13th November 2019. W complied, H did not.

v) The time for H serving statements from the two BM employees if so advised was extended to 13th November 2019, but they were not provided either.

vi) The draft chronology had already been provided to PHB by W's solicitors and on 4th November 2019 they were asked to proffer any comments.

30. Unexpectedly PHB came off the record on 4th November 2019 and thereafter JMW dealt exclusively with H. On 8th November they enclosed a copy of the working draft of the chronology and H was asked to make any amendments that he proposed. He never replied to that letter. He was also asked for any facts that he wanted to prove for the schedule of facts, and that too produced no reply from him.

31. At H's request, on 8th November 2019 he was sent again an electronic copy of the court bundle. JMW believe that this was the fourth time that the bundle had been provided to him. It was pointed out the bundle was going to be updated for the final hearing and a copy of that would also be provided.

32. On 11th November 2019 there was a very curious exchange of emails. H asserted that he had a prospective buyer of the business who he wished to show round and W was asked to confirm that the key employees would be available to meet him. W perfectly reasonably asked for the identity of the prospective buyer and details about him. No details were ever provided. In the circumstances it is hardly surprising that the visit did not happen.

33. On 11th November 2019, H was sent a copy of the draft index which was in two parts, namely those documents which were proposed to be included in the bundle and those which were not going to be included in the bundle. H made no comment or objection to the proposed index.

34. On 13th November 2019, H was sent by special delivery a hard copy of the index and the paginated court bundle. He had already been sent that by email. At his request he was also provided with additional bank statements relating to the business. When asked when replies to the questionnaire served on him might be received, he gave no answer.

35. It therefore follows that H can have no proper complaint whatsoever about the documentation with which he has been provided. He has quite wilfully ignored correspondence. I do not underestimate the challenges which face an unrepresented litigant but in my judgment H has sought to make a martyr of himself and quite deliberately put himself in a position where he could mount a claim for an adjournment.

Applications for adjournment

36. On various occasions during this hearing H has applied for an adjournment. Initially his application was based on the absence of valuations. I can deal with the issue of property valuations swiftly. The difference between the parties' respective valuation of the three London flats in their Forms E was minimal and expert evidence would not have assisted me. So far as the Miami property is concerned, there was a substantial difference between the parties' guestimates of value, with H advocating for $2.25m and W for $3m. I read the various appraisals put before me and heard argument. In the circumstances it would have been neither proportionate nor helpful to the outcome to have adjourned to obtain further evidence about the value of what is plainly a very individual property.

History and Valuation of AM

37. The parties have been engaged in a mobile telephone business for virtually all their time together. It has a number of underlying entities, but it is proper to treat them all as one.

38. The business was set up in 1997. H left his degree course without finishing it and I accept that he was the person most involved with the business at that time. W completed her course and was 18 months into her training contract with a leading firm

of accountants before she left to join H in the business in 1999. But I accept that even before then she was involved in supporting the business to the extent that she had hours in the day to do so. I am in no doubt that the business was always a joint plan and operation of the parties. As time went on it prospered as a result of both their efforts. By 2015 they were pondering its future development.

39. The 2015 Evolution Capital report on the company valuing it at £2.5m has proved an unexpectedly useful document to me. It shows that in 2013 and 2014 the turnover was broadly consistent with the turnover of 2017, 2018 and 2019. However, in each of the years 2013/2014/2015 there was a significant unadjusted operating profit whereas in 2017 and 2018 there was a loss and only a very small profit in 2019. All this indicates a business that was in a stronger financial position in the early years than it was in the later years. By way of contrast, the balance sheet for the later years was healthier than the balance sheet for the earlier years.

40. In 2014 there was an offer which the parties rejected of £2.5m for the business. Whether that offer would have gone anywhere is unknown. In fact, Evolution determined that the offer was of a fair figure. The parties had hoped for substantial accelerated growth and acquisition strategy over the course of the next few years so as to make the company have significantly more value. As it happens, that strategy was never put into effect and the company as it now is seems to me for all relevant purposes to be broadly the same company as it was in 2014/2015, albeit in a somewhat less healthy financial position.

41. The valuation in 2015 was done on a gross profit basis so as to show a mid-point figure of £2.65m and on an EBIT basis at a mid-point figure of £2.325m. This produced an average value of £2.5m.

42. The only difference in methodology between the two valuations is that a higher multiple had been applied to the 2015 valuation to the 2019 valuation. That is not surprising given the relative decline in trading performance and the cashflow problems of the company.

43. Evolution now put the value at some £1.8m. It seems to me likely that a valuation in 2019 would necessarily produce a lower figure than a valuation in 2015. The following features stand out:

    i) Over the last three years the company has made an average unadjusted operating loss of around £54,000 per annum;

    ii) The company's overheads have increased;

    iii) The company's current assets have declined as have the net assets in 2018 and 2019;

    iv) The company has significant cash flow difficulties;

    v) Most of its customers are very small companies with a high churn of customers. This leads to lower multiples when a valuation is placed upon a mobile telecom business.

44. Evolution took the view that on a gross profit basis the company would be valued at a mid-point of £2.4m and on an adjusted EBITDA valuation at a mid-point of £1.3m. The average of those two valuations produced a figure of £1.85m. H does not accept the figure.

45. In her statement W explained the trading difficulties the company was having and the reason for them. They did not seem to me to be demonstrably wrong.

46. The accountants in the reply to the Evolution report very largely have said "no comment". There is nothing in their letter which suggests disagreement with the report.

47. W wants the business to be beneficially and legally her own. H wants to run and own the business himself. He regards himself as far the more able of the two of them, but he says that he will ensure that each of them will receive the same share of its income stream and value.

48. For reasons that will become obvious, it seems to me plain that the company will have to remain in the ownership of W. It is the only way that she can provide for the children and their needs are paramount. Exactly what the company is worth will not affect the outcome.

49. If I adjourned for a valuation, as H requests, the case would have to go off for months. H has already failed to pay over £200,000 of costs that he has been ordered to pay. He says that he is not in a position to pay them. He makes no offer in respect of the costs of the adjournment which would be unlikely to be much less than £100,000. He says that the cost of the valuation should be paid from the business. Somewhat inconsistently, he says that he did in fact commission his accountant to do a valuation, but the accountant had back pain which has disabled him from doing the work. The accountant's letter gives no indication of what work, if any, has actually been done. But, says H, what is really needed is a full audit of all AM's activities and bank transactions. This would plainly be an expensive and lengthy process.

50. Moreover, I am far from certain that if I did adjourn for a further valuation I would be any better off. The only guarantee is that this litigation which has torn apart all four members of the family would continue at ruinous expense.

51. If I was of the view that I had no evidence upon which I could rely at all, then I might have been more sympathetic to H's request but I do not regard myself as being so devoid of material that I cannot do justice between the parties.

52. H's next line of attack was to say he has not had an opportunity to consider the bundles. The bundles comprise material which the parties have had for months and in some instance years. In fact, H showed very considerable forensic skills and knowledge of the papers in his cross examination of W. He landed a number of punches, in particular upon the issue of W's compliance with the order for the priority payments. It was a formidable piece of advocacy bearing in mind that H, who is plainly intelligent, did so without any apparent reference to notes. I did not form a view that he was prejudiced by any lack of knowledge of what was in the bundles, which, as I have set out, he has had for some time.

53. At the start of the hearing W, at H's request, produced a bundle containing a run of bank statements which were not in the three trial bundles that I had authorised. I was handed a further lever arch file of documents which were unpaginated. Nearly all the documents comprise bank statements which H had had, but there were some additional documents, largely spreadsheets, prepared by W which H might not have had. H asked at the close of evidence on 19th November to be given a copy of that bundle in the same form as I had received it. He was duly provided with it.

54. I have done my best to assist H in the presentation of his case. I required W to give her evidence first even though she was not the applicant and I gave H time to prepare cross-examination over the evenings of the first two days of the case. In a yet further attempt to assist H, I did not sit on the morning of the third day to allow H further opportunity to read through the bundle of additional documents, most of which he had already had the previous week, before concluding his cross examination of W.

The Law – the Children

55. S.25 MCA 1973 requires me to give first consideration to the welfare while a minor of any child of the family that has not attained the age of 18. The two children of the family have suffered grievously as a result of the breakdown of the marriage and, in my judgement, by the behaviour of H towards them and their mother. I fully accept that he is devoted to the children but he is unable to show his love in a constructive manner. As I have already mentioned, he abducted the children from Miami to England and as is set out in my judgment in the Hague proceedings by the time that they were restored to the care of their mother they were in a state of distress.

56. Having determined that the children were habitually resident in Florida, something which H still does not accept, the issue of contact between H and the children was a matter for the courts of Florida. I have read a judgment of the Florida Family Court and it is extremely critical of H's presentation. That said, I did not read anything in it that took me by surprise. That he has seen so little of the children over the last two years is largely, if not completely, down to him. He is incapable of seeing the harm that he has done. H is appealing the order in Florida which grants him only supervised contact and requests or requires him to engage in therapy.

57. Both children have particular needs. A is a troubled child. On two occasions her attendance at school has had to be suspended because of suicidal ideation. She requires a high level of therapeutic input and counselling. S has significant learning difficulties. She is partially deaf and has severe dyscalculia and dyslexia and has severe processing issues.

58. They currently attend a private school in Florida where the fees are some $65-70,000 per annum for the two children. W is very anxious that they should remain at that school and H does not object albeit he regards the fees as being more than can be afforded.

59. These children more than most require stability and certainty. I find that it is plainly in their interests that they remain in their current schooling, if financially possible, as I find it to be. They are currently living in rented accommodation with their mother. She has made it clear to me that she does not wish to live in the Miami property as it has such bad memories for the children (it was the place from which they were abducted)

and she would wish to continue living with them in either rented or purchased accommodation in the Miami area.

Income and Earning capacity

60. Since June 2018, W has had sole control of the business. In the period since the parties' separation W has received from the business for the support of herself and the children:

£186,131 year to March 2018

£232,393 to March 2019

£130,451 (7 months to November 2019)

This is considerably less than had been drawn in the previous few years but is the most the business can sustain.

61. W accepts that her skills would enable her to get a job in industry, but she says that the children's needs are so great that she has to have a job that permits her largely to work from home and be a hands-on mother. This is one of a number of reasons why she is so keen to continue running the business on her own. She would not be able to exercise her earning capacity away from home and at the same time provide the children with the support that they need.

62. H says that W is using the children as financial pawns. He says that she should be a full-time stay at home mother and thus not to need the services of the nanny who steps in for the one week in four when the business requires W to be in England. Thus it is that he says, as part of his argument that he should be the one to run the business. He fails to see the irony in the argument.

63. H is by nature an entrepreneur. He described himself to me (modesty is not one of his virtues) as "the master of arbitrage". I have no doubt that he has substantial entrepreneurial skills. It is very easy to see how the parties made such a success of their business during their marriage. He is very much an ideas man and has particular abilities in marketing, training and sales. Her skills lay more in management and administration and accounts. Both of course are essential for a successful business. H says that he gets offered business opportunities on a daily basis.

64. H complains that he has been frozen out of the business and deprived of his company and income. He is undoubtedly right about that in the sense that the order of the court does deprive him of running the business, but he has only himself to blame for that.

65. However, I do consider he has a genuine point that to an extent W has not operated the financial controls contained in the order of Mostyn J of 11 April 2018 as intended. The order sets out (see paragraph 13) the priority in which payments were to be made. In autumn 2018, W ceased to make the payments to H. She says the business could no longer afford to pay them and as the lowest in the list of priority she was entitled to stop the payments to him. The schedule indeed shows that for three months she was unable to pay herself the full amount that she needed to meet her expenses. But, she told me in evidence that over the last five months the business has done much better, but she

did not restore H's payment even in part. Only with persuasion did she agree that she would make the payment for November 2019.

66. I do not accept that she could not have done more to make some payment to H, in particular over the last few months. I want to make it plain to H that I am saying this only on the balance of probabilities. I do not wish him to get ideas about seeking to allege that W was in breach of her undertaking and start contempt proceedings. It is also germane to note that it was not known at the time that the order was put in place in April 2018 that H was receiving rent from the three GH flats totalling £76,000 in the year to March 2019 and that he was also to receive in June 2018, the significant sum of just under £178,000 by way of a return of investment in PJM and just under £88,000 from the rent of the Miami property in summer 2019. Whilst I accept that the receipts from PJM and the Miami property might have gone straight to the meeting of H's liabilities, as he says, these were receipts that were not anticipated by W when she gave her undertaking and Mostyn J when he made the order.

67. H's lifestyle over the last three years has been extraordinary. He says that he has spent the time travelling the world, visiting over 20 countries per year and staying in the most expensive hotels through the courtesy of the enormous number of Airmiles that he had obtained. He has been accompanied by his girlfriend/partner who is described as a "social media influencer". He says that it is in the family's financial interest that instead of trying to generate an income from employment or self-employment, it is better that he preserves his non-domiciled tax status and lives a life of luxury on the back of the Airmiles. It is hard to follow the logic.

68. He is completely confident of his own abilities and says that if the court does not permit him to resume control of AM, he will set up a business in competition. Provided proper safeguards are put in place to protect AM, W, in my view rightly, does not object to such a course. I am satisfied that he will start off again, in a new enterprise and will prosper.

AM

69. As I have set out earlier in this judgment, the business has flat-lined over the last five years or so. In the circumstances of the extreme strife experienced over the last three years that is no mean achievement. W has proved that she can manage the business successfully without the involvement of H.

70. H says that he is the one who would be better able to run it in the future. He says that the staff's loyalty is to him rather than W. He described W as "an excellent receptionist" who was good at carrying out instructions. He says that he is the one who can grow the business in a way that she cannot. This demeaning description of her is unfair but unsurprising.

71. The steps that H has taken to undermine the business are set out in detail in W's conduct statement. They include withdrawal of £200,00 from the business account so as to leave insufficient to meet expenses, which H admits and says he was doing to preserve the funds; stopping the proper financial administration of the business; detailing his version of the divorce to staff; purporting to sack a senior employee; trying to break into the office and changing the locks etc. These are largely admitted by H but he says that they were all justified.

72. This is the appropriate place to comment on the parties. I found W to be in command of the detail of the case. She put up with a gruelling cross-examination with calmness. Her ability to keep the business running successfully whilst dealing with the litigation (much assisted by her lawyers) and care for the children showed that she has great reserves. Apart from her failure to make payments to H when she could have, she impressed as a witness.

73. H's presentation was different. Hugely self-confident, I find that he believed what he said in evidence, even when it was plainly unreliable. By way of example, his refusal to give credit to W for her role in the business, his actions in relation to the children, his constantly changing story about the investment in PJM, his insistence that every judge has got it wrong.

The other assets

74. The parties own flats at 43 and 44 GSH and 16 GSH, Ealing. 43-44 have been opened into one flat, although could be very easily reinstated into two, and they comprised the FMH until 2016. In his Form E, H values them respectively at £400,000, £475,000 and £484,000. W puts them at £500,000, £480,000 and £462,000. I have taken the mid-point for each. It is odd given the value H only recently put on the flats that he should seek to argue that they are undervalued at the mid-point. Each has a net equity in the sums set out in the attached schedule. 43 and 44 are in W's name and 16 is in H's name. H has installed tenants at 43-44, they being the three siblings that make up the business PJM to which I will turn shortly. It is his case that they will vacate if asked by him. They are close friends of H. He alone receives the rental of all three flats.

75. W would like to keep 43 and suggests that 44 and 16 should be sold and the equity be used towards payment of her debts. H would like to do all three of them up and then sell them in due course and share the proceeds with W.

76. The Miami property

This is a large and beautiful penthouse overlooking the sea at Miami. It was purchased by the parties with money which they had earned through the business and is subject to a substantial mortgage. The orders of the court make it absolutely clear that W alone was, as a result of various actions by H, to be entitled to rent out the property and use the rent to meet the expenses. H says that notwithstanding the order only he, as the legal owner, was entitled to sign rental documents. He does not accept that he was in breach of the order, albeit that it is obvious that he was, but says that in any event W suffered no loss as he let the property for the rent that W was willing to accept when she was seeking to let out the premises. This is yet another example of H's view that it is either "my way" or "no way". He simply was not willing to let W have anything to do with the apartment and even went to the extent of having W ejected from the building.

77. H addressed me at length as to why it would make sense for his mother to be the one who would purchase the property. Neither H nor W seek to live there but H would like it retained if possible. He claims that it is worth no more than $2.25m. He relies on an estate agent's advice to that effect. W says that it is worth no less than $3m.

78. H's argument that his mother should be permitted to buy it was at first blush not without merit. She is owed by the parties £610,000 for money advanced to H and W by a commercial lender upon the security of the property at 45AG where she has lived for many years. If H is right about the value of the property the debt of the parties to H's mother could be, wholly or largely, extinguished if she was to take over the Miami property with a balancing payment made by her in the event that a valuation was carried out and showed a higher value than H anticipates.

79. In March 2019, H purported to enter into an agreement for the sale of the property to his mother. When this information emerged, it was the subject of various orders set out earlier in this judgment and the transaction, in so far as it ever existed, has lapsed. I was, however, astonished by the contents of the proposed contract which was sent to me when the case had concluded.

80. The contract provided for H's mother to take over the mortgage on the property and, on the basis of a value of $2m, for there to be a balancing sum due to the parties of £526,000. Yet, rather than that being used to pay off the mortgage on her property for which W and H had liability, only £300,000 was to be used for that purpose, and of the balance over £42,000 was to be paid to Wanda for "unpaid wages and return of any loans made by Wanda against (Miami property) payments and expenses including interest accrued" and the balance of £180,000 was to be paid to H alone. This was the most blatant attempt to prejudice W financially. True it was that the contract also provided that if a professional independent valuation produced a price of above $2m then Wanda would pay to H the difference with a 6% discount reflecting what would otherwise have been paid to an estate agent. This was an astonishing transaction for H to seek to enter into in the midst of financial remedy proceedings. It shows clearly his sense of priorities, with Wanda taking priority to W and the children.

81. I do not have the information which permits me to say precisely where the value falls within the bracket that the parties have identified but is not necessary for me to do so. I consider it likely that the price will be at the upper end of the bracket for the reasons that W gave, principally the extent of the outside area attached to the apartment. H wishes to keep the property and W is content with a formula that provides for H to pay a lump sum and only if he does not pay would the property be sold.

82. There is adjoining the Miami property a small beachside property ("cabana") for which W has received an offer of $195,000. Its value is not included in the value of the penthouse.

PJM

83. H is very friendly with three siblings whose initials are respectively P, J and M and who set up a property business which held four properties. They ran into financial need and approached H for assistance. In his Form E of April 2017, H said this:

"*The parties have lent £300,000 from BM to H's family friends P, J and M to help them run their properties*".

And, thus, he said that he had an investment owed back in that sum. W's case was similar, namely that the parties had invested the £150,000, being £150,000 from AM and £150,000 from their own resources. She said that with interest that was due under

the agreement which P, J and M signed, which the parties never got round to signing but upon which they acted, the sum due rises to some £500,000.

84. In June 2018, H received the sum of just under £178,000 from PJM and described the transaction in this way:

"*In reality by a way of a series of loans over a two and a half year period, funds were made available by me* [my emphasis] *to PJM and used by them to discharge debts and to fund various building and refurbishment works …*

Given the passage of time and the different sources from which the loan monies were made available, it is difficult for me to give an accurate figure for the total value of loans to PJM. Doing the best I can, I believe total value would have been in the order of £230-250,000.

Ultimately in circumstances where I agreed to accept a significantly discounted payment due to the heavy re-financing costs that PJM were required to pay, I agreed to accept a little less than £180,000 in full and final settlement to the amount due to me".

85. In support of what he said he produced an agreement dated 14th June 2018, signed by P, J and M, which purports to be in full and final settlement. H accepted in the witness box that the terms of the agreement were dictated or drafted by him.

86. One of the features of H's evidence is that he was never unable to give an answer. If he did not know he would state with certainty whatever was in his mind. When pressed as to what he had personally put in to PJM, he produced, almost in the same breath, five different figures ranging from over £200,000 to £88,000. He did not produce a single answer which was consistent with what he had put in his first Form E. I contrast that with W's production of a report produced from the BM accounting software which lists every payment made from the business and which totalled just under £148,000, consistent with her evidence.

87. I accept that £300,000 was advanced in the way that W describes and which H originally accepted. I accept that the parties operated on the agreement which although not signed by H was signed by P, J and M and which provided for payment of interest on £300,000. I do not believe H when he says that he is no longer entitled to any further payment in respect of the PJM project. I do not have the evidence which would permit me to try and assess what he is owed, but I am satisfied that he is entitled to a further payment.

The company (AM) continued

88. AM has been valued by Evolution at a mid-point figure of £1.85m. I recognise that this is an average of two figures which are significantly different. I therefore accept H's proposition that it may be worth a fair bit more (or less) than this figure. Any sale would of course attract tax and sale costs. The sale costs have been put at £142,000. This seems to me to be a high figure and may be subject to negotiation or which may be paid by the buyer. There would be a significant tax liability which would accrue if W remained resident in the United States. If at the time of sale she were to be resident in England she would presumably be able to take advantage of Entrepreneurs Relief. I

accept that there will be some tax payable on any sale but I regard the extent of the tax payable and sale costs as somewhat hypothetical.

89. The reality is that this business is the means of W receiving an income which enables her to house, educate and bring up the children and to provide for her own living expenses. I cannot see any circumstances in which the business is likely to be sold in the foreseeable future. For those reasons I do not think it is necessary for me to speculate further about its precise value.

Airmiles

90. It is W's case that H has had the benefit of 28 million airmiles which should have been shared between the parties. H denies that he has had anything near this sum but points out that in any event W has been able to build up her stock of airmiles to some extent. Because most of the AM stock is bought on credit card this enormous number of Airmiles has been able to be built up. W asks me to add back in excess of £400,000 for what she says is the value of the Airmiles. H says they could be purchased for a much lower figure. I decline to add back the Airmiles. The ones that are left are not of such a significant value as to affect the outcome of the case and they have largely gone to meet H's living expenses. Now that they have gone, I do not regard it as fair to seek to add back their value, whatever it may be in these circumstances.

W's Debts

91. The schedule shows W's indebtedness standing at £891,000. Of that over £613,000 is in respect of English legal fees and £34,000 in respect of US legal fees. There is also a significant sum due in respect of income tax 2018 and 2019 payable in the US to the tune of £93,000. The balance of her indebtedness is largely credit cards. All these expenses are documented and I accept them.

92. No less than 13 costs orders have been made against H. The value of the assessed costs orders is £267,782 (net of interest) of which some £61,000 only has been paid and that out of the sums received from court order sales. In addition, she has an order in her favour for costs to be assessed and she seeks some £67,000 in respect of them. If H had paid these sums then W's indebtedness would have been correspondingly reduced.

93. The parties have a joint liability to H's mother for the sum of £610,000. £300,000 was advanced in 2001 to clear debts and to buy business premises (subsequently sold) and £310,000 in 2003 to provide the deposit for the GSH purchases. Wanda, along with H, is jointly and severally liable to W for £150,000 payment on account of the costs of the preliminary issue plus such part of the outstanding claim for £67,000 as is assessed as due.

94. H is his mother's only child and he has a half-sibling by his father. I regard it as unlikely that Wanda would seek to recover the sum from her son, of whom she is so supportive. I have no doubt that she would seek to recover it from W if she could.

95. Wanda's home is registered jointly in the name of her and W and has been since the mortgage advances were made. This arrangement was necessary to obtain the advance as Wanda had no income and H was non-domiciled. The parties have always accepted that Wanda alone is entitled to the equity. I am told that Wanda's solicitors in the

preliminary issue proceedings are unpaid and have obtained a final charging order against the property for the sums that they are owed. I do not intend to speculate as to what might happen to the property.

H's other debts

96. H claims that he has liabilities of £758,000 and these are evidenced by documents provided with his Form E. I accept this figure. This includes the sum of £221,000 in respect of costs ordered to W which is the figure of £206,000 plus interest. If I remove this from the total £758,000 is reduced to £537,000. Of that sum of £537,000 some £170,000 relates to outstanding legal fees to his first solicitors and the balance of some £367,000 is very largely credit card debts.

97. I have excluded from these figures the sum of £865,000 which he says are loans from friends and relatives. In explanation in the witness box, H proffered that these were largely sums raised by his mother from friends in the Polish community who felt sorry for H (although why they should so feel while he enjoyed a sybaritic lifestyle is hard to fathom). There is not a shred of evidence of any of these debts. There is no breakdown between the lenders. Not one of the lenders is identified other than H saying that his mother was one of them in an unspecified amount.

98. It is astonishing that H is unable to provide any further detail. He says that he gave all the documents to the firm of accountants whose partner has back trouble. He says it covers everything from grocery bills to substantial sums. It is not suggested that he has a written agreement with any lender. I cannot exclude the possibility that there might be indebtedness, but I am not prepared on the evidence to accept this sum or to accept that any liability is a hard debt but I have not excluded the possibility of an indebtedness from consideration.

99. My reluctance to accept this alleged debt is increased by the difficulty in finding an explanation of a debt of this size in addition to his credit card debts in circumstances where H has been living either with his mother on his relatively infrequent stays in England or living off Airmiles when overseas.

100. I have also excluded from consideration an alleged indebtedness to a relative of H's who had done some work on or garaging of a Mercedes car for which he says H and/or W are responsible for. If there is any such liability H must indemnify W in respect of it.

Needs

101. Each party has an income need, W's being also for the children. I can have no confidence that H will provide for W or the children. While he says that he will, once he perceives himself being wronged in some way by W or feels indebted to his mother, the provision is likely to dry up. The needs of W and the children must be met by W out of the business. H can and will start again.

102. That said, there are somewhat different considerations that apply to the short-term. H has no current earned income and has taken no steps to achieve one. His rental income from 43-44 GSH will soon cease under the order I am about to make, and he will be left only with 16 GSH. I have not been addressed about interim provision, but I

envisage W being required to continue the monthly payments to H for a period that might extend up to 6 months. I will hear argument about this and the other expenses covered in the order of April 2018.

103. W needs a home for herself and the children. She is currently renting a property in Miami and it seems inevitable that this will continue even if, and it will be a matter for her, she sells rather than retains 43 GSH. H will continue to live a peripatetic life and has not suggested that he would wish to buy a home.

Conduct

104. Each party has made allegations that the other is guilty of conduct which it would be inequitable to disregard. It is unnecessary for me to go into the details although I have read both parties' conduct statements and W's statement in reply. What the statements show very clearly is that the financial links between the parties must be severed as far they can be. They emphasise how obvious it is that W must be the one who ends up in control of the business.

105. Much of H's conduct has been lamentable and although some of it has been punished by costs orders other aspects are not so easily recompensed. If there had been more money in this case it might become necessary to seek to put a financial value on the conduct that is set out. But, the sad fact is that the assets are simply not available in this case to seek to do other than meet needs.

106. W must be able to go forward in life without being excessively trammelled by debt. In so far as the resources are not there to enable H to have the same freedom, that is the inevitable result of statute requiring me to give first consideration to the children and because of the way that H has acted since the breakdown of the marriage which has been vindictive and irrational, and which has caused a huge and unnecessary haemorrhage of money to pay for this litigation.

107. Each party has put forward a vast number of arguments during the course of the hearing before me. I have re-read my notes of the evidence and all the documents that I was asked to read. I am not addressing arguments which I do not think help me determine the outcome of this case, but I have considered them.

Proposals

108. W proposes as follows:

a) She retains the company and holds all the shares beneficially;

b) Flat 43 GSH is retained by her and she will sell the other two properties to meet her debts;

c) The cabana is sold and the proceeds should go to her;

d) H retains PJM;

e) H retains the Miami property but on the basis that H either pays a lump sum of £500,000 or that it be sold and that sum be paid to W out of the proceeds with any balance to H;

f) H alone should take over the liability to Wanda.

The effect of W's proposals is that she would end up with all the remaining capital assets or their value with the exception of the balance of the equity (if any) in the Miami property.

W invites me to add back the lost rental from the Miami property, H's rental income received from the GSH flats, the PJM receipt, the value of the Airmiles and other matters of what she describes as unnecessary expenditure to the total tune of £916,000 as set out in the net effect schedule, this then falls to be reduced by £187,000 which has been double counted in the PJM figure.

109. H on the other hand asks me to order as follows:

i) All three GSH flats should be sold by H when he has had the opportunity to renovate them, with the proceeds divided 50/50 but only if H receives the business.

ii) H should be permitted to run the business. He says the first payments of income drawn from the business should go towards the children and the balance then divided 50/50 between H and W. He says that he can be trusted to make the payments to the children and to W in a fair way;

He points out that if W gets the company he will start again and there will be continued conflict. He says the allegiance of the company employees is to him and that his capacity for forgiveness is very deep. He says that his closest friends are there running the company and the injunction stops him from having the form of relationship with them that he would like.

iii) The Miami property should be sold to Wanda at whatever its current value may be. If the equity in the Miami property does not permit Wanda to receive the sum of £610,000 then she would have the first call on the proceeds of the sale of the GSH properties for the shortfall;

iv) Only when everything has been sold, including the business, would W receive the costs ordered in her favour;

v) H will drop the litigation in respect of the children in Florida but he wants free access to his children and to be re-unified with them;

As will be apparent, these submissions were not submissions that followed the normal legal format and H has never made any open proposals. At the start of the case I told him that before he went into the witness box he must commit his proposals to writing. He did not do so but made his proposals at the start of his oral evidence. However, he made it clear that what he was seeking is a 50/50 division of assets and income with W after repayment to Wanda of everything that she might be owed.

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Outcome

110. It is obvious that this has been the most destructive litigation. There is no avoiding the fact that H is very largely responsible for the situation that has arisen. Since the breakdown of the marriage he has acted destructively and throughout the litigation without any regard to the normal rules.

111. Although H was unrepresented at this final hearing, which was most unfortunate, he has been represented for most of the way through these proceedings and has had the services or advice at different times of no less than four Queen's Counsel and three firms of solicitors, albeit PHB only for a short time**.**

112. It is inconceivable that the parties could work together in the business and as I have already stated the only way that I can be confident that W and the children are properly looked after and do not find themselves deprived of funds is if the beneficial interest in the business is transferred to W. Thus it will be that she is provided with an income which will permit her to run her home, pay the children's school fees and maintain an appropriate standard of living for the children. I very much hope that H's relationship with his children might be restored but that will be dependent on the way that he behaves. He will do himself no favours if he continues to try and cause trouble for W with either the Florida Children's Services or with the US Immigration Authority. I have made it clear to him during the hearing that he is not permitted to release papers or transcripts to authorities without the consent of the court.

113. In deciding how to distribute the assets I have sought as far as possible to ensure that H and W have no further cause to litigate or have to deal, for example, with issues such as enforcement or assessment of costs orders.

114. I am satisfied that 43 and 44 GSH should remain in the sole ownership of W. H should ensure that P, J and M move out as soon as W requires in accordance with what he has told the court about their willingness to leave. When they have vacated W will be able to restore the flats into two separate units and do the necessary works which will then permit her to sell 44. Whether W keeps 43 as her London home for her monthly visits will be her decision. The equity in 44 will go towards her costs liability. 16 GSH will remain in H's sole ownership.

115. The cabana will be transferred to W. She has a buyer at $195,000 and she will no doubt sell it as soon as she can.

116. The Miami property will remain in the sole ownership of H. W will receive a lump sum from H which is to be secured upon the property in the sum of £250,000. If it is not paid by date to be identified but provisionally 1 May 2020 the property is to be sold. W shall have conduct of the sale and after payment of her lump sum the balance will be paid to H.

117. There will be clean break between H and W as soon as possible.

Effect of the outcome on W

118. W will end up with the company AM plus as follows:

43 GSH £199,106

44 GSH £209,981

Cabana £142,974

Lump sum £250,000

£802,061

Debts (£891,000)

Deficit (£89,862)

119. I recognise that this leaves W with a small indebtedness to carry. I have no doubt that she can manage that. Whether she sells 43 GSH will be entirely a matter for her. If she does not, she will have a greater burden of debt to carry. On this basis W will forego further enforcement of the costs orders in her favour against either H or Wanda and H will indemnify W against any liability to his family members.

Effect of outcome on H

120. He retains the equity as follows:

16 GSH £168,052

Miami £1,253,203 at a value of $3m

Lump sum (£250,000)

£1,171,255

Debts (£537,317) documented and excluding costs ordered to be paid to W

£633,938

In addition, H will have whatever he is owed from the PJM venture.

121. This gives him sufficient, but only just, to pay his mother, if his mother actually calls for repayment of the money she has advanced. As already mentioned, I find that it is unlikely that these sums will be called in by her if it means H, as opposed to W, having to pay. If Wanda does not call for her money, then H is in a position to clear some of the undocumented liabilities if they exist. On this basis H must indemnify W against all claims made by his family.

122. Each party must pay any tax and other expenses in respect or arising out of the properties which he/she receives the benefit of. Thus, W will have to pay whatever tax or expense arises from the sales of 43, 44 and Cabana and H any tax arising from the sales of 16 and the Miami property.

123. I have considered whether the sum that W receives should be variable depending on the precise sum received for the Miami property. I have decided that it should not be. To do so would be to increase uncertainty and lead to argument about value and sale price.

124. The effect of this is that neither party will end up with much, if any, capital but W will end up with the business. H has brought this upon himself. In so far as there is a departure from equality it is necessary so as to meet the needs of the children and to meet W's debts which he has created in significant part.

125. I have attempted to reach what I regard as a fair outcome to both H and W in this unusual and unfortunate case.