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IN THE FAMILY COURT
SITTING IN THE HIGH COURT
[2020] EWFC 102

RS19D03070

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday, 24 November 2020

Before:

MR JUSTICE HOLMAN

(sitting throughout in public)

B E T W E E N :

SHARON THERESA HOROHOE — Applicant

- and -

CIARAN JOHN HOROHOE — Respondent

MISS ANN HUSSEY QC and MISS HENRIETTA BOYLE instructed by Goodwins Family Law Solicitors appeared on behalf of the applicant.

MISS ALEXIS CAMPBELL QC and MR DANIEL MUTTON instructed by OGR Stock Denton appeared on behalf of the respondent.

(Dates of hearing: 3-10 November 2020)

J U D G M E N T

(A s a p p r o v e d b y t h e j u d g e)

MR JUSTICE HOLMAN:

Preliminary observations

1 I begin this judgment with three preliminary observations.

2 First, the oral evidence and the argument occupied six long days in court. With the complete agreement of both parties and all their legal teams, and of the three non-party witnesses, I heard the whole case, and now deliver this judgment, live in an ordinary and public courtroom at the Royal Courts of Justice. There were many twists and turns in the evidence, and indeed during the course of the hearing several original (not photocopy) documents had to be produced or prepared. In my view, it would have been impossible to have a fair and effective hearing of this case by any "remote" or "hybrid" means, and I am very grateful to all concerned for their willing participation.

3 Second, at a directions hearing on 2 October 2020 I implored both parties to settle this case. I expressly recorded on the face of my order that day the following: " … the court today, in discharge of its duties under FPR rule 1, very strongly urged both parties to make a determined and open minded attempt to settle this case before substantial further costs are expended, and to avoid the destructive effect of a contested hearing." At that stage, the combined costs of the parties were recorded on the face of the order as being about £256,000. The projected combined additional costs to the end of a final hearing were recorded as being about a further £227,000. That has come to pass, and the combined costs are now, in round figures, at least £500,000, and probably more, because the hearing over ran.

4 At the outset of the main hearing itself, I again implored both parties to find some compromise basis for settlement. I warned them that a contested hearing could be very damaging to their relationship, as it has proved. I pointed out to them that their open positions were, as they remain, very polarised. The wife sought, and still seeks, £5 million or even £5.5 million. The husband, relying on an alleged post-separation agreement which was substantially implemented, offers her nothing. I pointed out that in that situation there is huge litigation risk for both these parties, and that wise people (which these parties essentially are) would strive to settle on some common ground between these two extremes.

5 Despite my very clear urgings, both at the outset of, and repeatedly during, the hearing, and despite my rising for an hour or more at the outset to enable the possibility of settlement to be further explored, there has been no settlement. I deeply regret that fact, and the huge costs which have now been incurred, and the damage which has been done to this whole family.

6 Third, I have been immensely grateful to Miss Ann Hussey QC on behalf of the wife, and Miss Alexis Campbell QC on behalf of the husband, and to their juniors and the solicitors on both sides, for their sustained presentations and argument on behalf of their respective clients. That does not make the central decision which I have to make (namely, whether to give decisive weight and effect to the alleged agreement) any easier, but the presentation of the case in the courtroom was a masterclass to behold. I hope that both parties will feel, as they should, that their legal teams could not have done more for them.

Introduction and background

7 In this narrative, and generally in this judgment, I will incorporate my findings of fact on the many disputed issues. I make clear, therefore, that when I do make findings on disputed issues of fact, I do so on the ordinary civil standard of the balance of probability. Although they have been separated for over ten years, the parties are still legally married to each other, there being a decree nisi of divorce but no decree absolute. I will therefore refer to them as the husband or the wife, or at times as Ciaran or Sharon.

8 Both parties originate from, and were brought up in, the Republic of Ireland. The husband was born in June 1968, and the wife in April 1969. He is now fifty-two, and she is fifty-one. Both migrated to England to work. The husband was employed as a carpenter. The wife was a trainee nurse. They met in England when he was about twenty-one and she was twenty. She was living in nurses' accommodation. There is a sterile dispute about the precise point when staying overnight with a girlfriend merged into living together, but from some point during 1992 they were living together. They were still young. They each had modest incomes as a carpenter and a young nurse. They had no other capital or money at all.

9 The parties married in April 1994. They bought their first home with a mortgage in 1995. Also in 1995 the husband began to work, still as a carpenter, on a self-employed basis as a sole trader. In 1998 he incorporated a company, Horohoe Construction Limited ("Construction" or "the company"). It began as little more than the husband and an occasional self-employed subcontractor carpenter; but it later grew, and it now flourishes. The parties each owned 50 per cent of the shares in the company.

10 The parties have three children, two daughters born in 2000 and 2003, and a son born in 2004. These children are now aged twenty, seventeen and sixteen.

11 Sadly, by 2009 the marriage was breaking down. The husband moved out between May and September 2009, when he returned. The family spent Christmas 2009 together in Ireland, but in January 2010 the husband left again, never to return. The duration of the premarital cohabitation and the marriage itself was thus about seventeen to eighteen years. It makes no difference whatsoever whether it was a year or so more or less than that.

12 The wife remained in the then matrimonial home at Merrion Avenue in Stanmore. The husband lived in temporary, and he says at times very makeshift, rented accommodation. The children spent time with both their parents. In late 2010 the wife was diagnosed with breast cancer, for which she received surgery, then chemotherapy and then radiotherapy. I fully accept her account that the year 2011 was a very difficult year indeed for her. She was receiving the painful and debilitating treatment; she was still caring for the growing children; and she renovated and moved into a new house, which remains her home, in Uxbridge Road, Hatch End. This purchase was facilitated by a pay-out of £1,076,500 which the parties received from a critical illness insurance policy as a result of her cancer.

13 The husband clearly has an eye for property development opportunities, and by 2012 the parties owned a desirable, if modest, portfolio of mixed residential and commercial properties. The legal titles to some of these were embedded in a second company, Horohoe Properties Limited ("Properties"), which was also owned by the parties jointly and equally. Additionally, the husband says, and I accept, that in the years following the near collapse of the western banking system in 2008, Construction had a very difficult period. The main activity of the husband personally, and of Construction, had been (and again now is) carpentry and similar fitting-out work for other builders and developers. This largely dried up during the post 2008 recession. So, in order to keep trading, and to keep his

subcontractors employed, the husband diversified for a period into buying properties which he and Construction renovated at cost, and then sold at a profit. There was, therefore, a period of property trading by Construction which featured in the accounts of the company at that time, but which later ceased when the mainstream business of working as a contractor or subcontractor for other builders and developers resumed.

14 The husband says that it was only in about 2013 or 2014 that the company began to pick up again in this mainstream activity. The husband says, and I accept, that in about 2012 the only direct employees of the company were himself and the wife, who was the company secretary. Everyone else was a self-employed subcontractor or part-time office staff. There was, he says, a lady called Marian, working three days a week in the office. Marian had become his girlfriend, and by 2012 they were, as they remain, living together. Another lady called Ann provided part-time, ad hoc, book keeping services through her own business. There were about eight to ten people in all, working self-employed for the company.

15 By contrast, the company now employs about ten full-time staff paying PAYE. In addition, there are six or seven full-time, but subcontracted, quantity surveyors and estimators, and approximately ninety on-site workers (a number which has increased, without generating any extra income for the company, by the need to employ marshals to supervise on-site during the COVID 19 pandemic).

The agreement

16 In 2012 the parties, who by now had been permanently separated for over two years but who remained amicable, clearly jointly contemplated separating out their assets, which at that time were almost entirely jointly owned. The wife says that the husband said that it had

become urgent to do so if they were to avoid stamp duty on property transfers between the two of them. There were discussions between them. In addition, they have both known for many years a man called Maurice Cahill whose own business was then (he has since retired) that of an independent financial advisor. He had been the financial advisor to both the husband and the wife for many years, including arranging their many mortgages, and indeed arranging the critical illness insurance policy from which they had benefited by over £1 million.

17 Mr Cahill also considered himself to have been a personal friend of them both. Having recently been through a very expensive divorce himself, Mr Cahill offered to assist the parties in their negotiations in order to avoid, or minimise, expensive legal costs. The tragic irony is that an expenditure of perhaps a few thousands of pounds of legal costs in 2012 might well have saved and avoided the catastrophic expenditure of over £500,000 now. But hindsight is easy. I heard oral evidence from Mr Cahill, and I do not doubt his sincerity and good intentions in 2012.

18 For many years the parties have also engaged Mr Anthony Wu, a certified chartered accountant, and his firm, Lee Anthony & Co, as the accountants both for the companies and for the parties personally. Mr Wu also had meetings with both parties during 2012, and contributed tax advice to their negotiations.

19 In a period between March and September 2012 (viz six months) there was an evolution of schedules and spreadsheets showing the parties' various jointly-owned properties, their cash assets, and a proposed split between them. Although Mr Cahill was later to use and amend these spreadsheets, he was adamant in his oral evidence that he could not personally have created the spreadsheets as he lacked the technical computer skills to do so, although he

could amend figures within them. Mr Cahill said, and I accept, that the person who first prepared and produced the spreadsheets and schedules was the wife, and indeed there is an email from the wife to the husband dated 15 March 2012, now at bundle page H190, to which she clearly attached a number of documents which she had prepared. Although the husband is clearly a shrewd and successful businessman, he has no accountancy training of any kind, and I am quite clear that as between the two of them, the wife was the more numerate.

20 Mr Cahill had meetings with both the husband and the wife separately but, he says, not together. On 1 August 2012 Mr Cahill prepared and supplied to both parties a document headed "Ciaran and Sharon Horohoe - proposed split of assets at August 2012", now at bundle pages H17 to 19. This document had two principle headings: "Property assets" and "Cash assets".

21 Under "Property assets" the document stated "All properties held are to be divided as agreed per schedule attached and if either party disagrees with the listed property valuations, they are at liberty to seek further independent valuations if so required." The attached schedule was an evolution of the spreadsheet first created by the wife in March.

22 Under the heading "Cash assets" was a calculation demonstrating (on the stated figures) that, in order to achieve an equal cash split, the wife needed to pay to the husband a balancing figure of £53,221. The document recorded that the wife owed the Construction company £70,000 for refurbishment works which it had carried out in 2011 on the property at Uxbridge Road, which was by then her home, and which she was going to receive as her own sole property.

23 The document continued:

> "Horohoe Construction Limited and Horohoe Properties Limited - Sharon agreed that all interest in the said companies be held solely in Ciaran's name only, and that she foregoes any financial interest in the said companies, including their premises and offices at … 118 Windermere Avenue, Wembley … "

24 The document continued by making reference to continuing monthly payments from the husband to the wife for child maintenance, and maintaining private health insurance; and that once the assets had been split, the wife would be responsible for her own fuel and phone bills, and her tax and life insurance premiums.

25 The document concluded:

> "MATTER OF VITAL IMPORTANCE and agreed by both parties:- Protection of all assets owned by both parties are to be protected as future inheritance for their children, in order that 'sideways disinheritance' be avoided. Wills, trusts etc are to be considered in relation to this matter.
>
> This proposal has been prepared following meetings with both parties independently and is of course, still open for further discussion amongst the parties pending final agreement."

26 Both parties received that document in early August 2012. On 6 September 2012 the wife went by prior appointment to the offices of EM Collins & Co, solicitors in Pinner, and there consulted a partner, Aisling Collins, in connection with the proposed agreement. The wife said in her oral evidence that she had been encouraged by her family to see a solicitor. I note from their writing paper in 2019 that EM Collins & Co are associated with "resolution.

first for family law" and "family mediation network" and described themselves as solicitors and mediators. They appear, therefore, to have specialism and expertise in the field of family law.

27 The wife says that she had no prior knowledge of the firm, and selected them after online research by herself. She says that she spent about one hour with Aisling Collins, and paid her a relatively nominal fee of, she thinks, about £45. There was no further retainer to act after that meeting, and no further involvement at that time by EM Collins & Co or any other solicitors. That, however, appears to have been as a result of the wife's own decision and choice. I am not aware that there was any impediment or resistance by Aisling Collins to advising or assisting the wife further, if the wife had so requested and instructed, and of course paid.

28 On behalf of the wife, Miss Ann Hussey QC accepts that the purpose of the meeting on 6 September 2012 was to give instructions, and to seek and receive advice, in connection with the evolving negotiations with the husband. The wife does not otherwise waive privilege in relation either to her instructions or to the advice. I stress, however, that it is not suggested on behalf of the wife that she received "bad legal advice" in the sense of that phrase in the seminal judgment of Ormrod LJ in *Edgar v Edgar* [1980] 1 WLR 1410 at page 1417.

29 I know, therefore, that the wife did seek, and did receive, legal advice between Mr Cahill's document of 1 August 2012 and his later letters of 25 September 2012, to which I will refer below. I do not know the content of that advice, save that it was not "bad" advice, and save for the following. It is a quirk of this case that when, six and a half years later in March 2019, the wife petitioned for divorce, the husband instructed Aisling Collins and EM Collins & Co to act for him. As I understand it, he was completely unaware that the wife had

previously consulted Aisling Collins in 2012, or indeed any solicitor. He, as the wife had done, merely sought out what appeared to be a local firm of solicitors with expertise in family and matrimonial matters.

30 In 2019 (and still now) the wife was instructing a different firm of solicitors, Goodwins Family Law Solicitors in Harrow. Goodwins complained to Aisling Collins that she had previously advised the wife in 2012 on a matter (namely the asset split) which was obviously still germane to any financial remedy proceedings between these parties. By a letter dated 23 April 2019 Aisling Collins stated that the paper file from 2012 had been destroyed, and that she now had no recollection of the meeting with the wife in 2012. She stated that she had considered the code of conduct and consulted with the Professional Ethics Team, and that the firm could see no basis to justify their declining to act for the husband. So, EM Collins & Co (whose name appears later to have changed to Collins & Hoy) continued for a period to act on behalf of the husband, although they now no longer do so.

31 Thus it was that, in the course of a dispute as to the scope of instructions to an expert witness, Mr Gary Miller, who was to perform valuations of the companies, Goodwins, on behalf of the wife, wrote an open letter to Aisling Collins dated 11 October 2019 which included:

> "Further, in your letter to our client dated 10 September 2012, you yourself even state: 'you [viz the wife] were also unaware of the value of Horohoe Construction and the amount and liquidity of the capital held by the business. This is an important piece of information which in my view you must establish before you can negotiate a financial settlement' … "

32 Clearly (as Miss Hussey accepts) that is a quotation from a longer letter dated 10 September 2012 in which Aisling Collins recorded the meeting of 6 September 2012, and recorded, or gave, some advice. Miss Hussey accepts that, to the extent quoted by Goodwins in that open letter of 11 October 2019, the content of the legal advice actually given to the wife on 6 and / or 10 September 2012 is now open and no longer privileged, and that I can take it into account. Miss Alexis Campbell QC, on behalf of the husband, has not sought to argue that the letter of 11 October 2019 constitutes a waiver of privilege in relation to the whole letter of 10 September 2012, or that the whole letter of 10 September 2012 must now be disclosed. Accordingly, I have not seen it and I have no idea what else it said.

33 On 25 September 2012 Mr Cahill prepared two letters in identical terms, one addressed to the husband (now at bundle pages H13 to 15) and the other addressed to the wife. The only differences are that in the first line of the letter to the husband there is a reference to " … all aspects of yourself and Sharon's joint assets … ", whereas in the letter to the wife the name Sharon in that quote is altered to Ciaran. It is otherwise the same letter.

34 The version in the hearing bundle addressed to the husband was produced by the husband in the course of his disclosure. The wife has never disclosed her version of that letter, but Mr Cahill produced his file copy of it from his file during the course of his oral evidence. He recalled that he had deliberately produced a separate letter for each of them as he wanted personally to sign it to each of them (as we can see that he did on the husband's version at bundle page H15). Mr Cahill recalled that, being top copy letters, he had posted and not emailed them. This recollection gains support from an email which the husband sent to the wife on 26 September 2012, now at bundle page H208, in which he told her that Maurice had told him that he was "sticking a copy in the post to both of us today".

35 I am satisfied on a balance of probability that Mr Cahill did post the wife's version of that letter to her on 26 September 2012, and that it was correctly addressed, including the correct postcode, which is clearly shown in the top left-hand corner of Mr Cahill's retained copy of the letter. As the probability is that correctly-addressed post is delivered, I am satisfied on the balance of probability that the wife did receive it even though she now says that she does not recall doing so, and has never produced it. I am further satisfied on the balance of probability that she would clearly have read the letter at the time, for she is not the sort of person to ignore important post.

36 The figures in the letter itself of 25 September 2012 are exactly the same as in the document of 1 August 2012, and indeed the letter is clearly a computerised cut and paste of the 1 August document, the only difference being slightly different wording (although the sense is exactly the same) in the paragraph beginning, "MATTER OF VITAL IMPORTANCE". The concluding sentence of the letters remains the same: "This proposal report has been prepared following meetings with both parties independently and is of course, still open for further discussion amongst the parties pending final agreement."

37 Some of the figures in the attached schedule of "Property portfolio and proposed split of ownership" had changed from that attached to the document of 1 August 2012. The principal changes were that the gross value of the wife's home at Uxbridge Road (which she was to receive in her sole name) was increased from £810,000 to £1,200,000; and the gross value of a house in Ireland (which the husband was to receive) was increased from £100,000 to £150,000. A new footnote was added to the effect that once a current tenant vacates it, the rental income from a house in Elmgrove Crescent, which was to be transferred to the wife, was expected to increase by about £350 per calendar month.

38 The section in each of the document of 1 August 2012 and the letters of 25 September 2012 headed "Property values" clearly stated that " … if either party disagrees with the listed property valuations, they are at liberty to seek further independent valuations." Neither party did so. The final sentence of both the document of 1 August and the letters of 25 September 2012 states that the proposal " … is of course still open for further discussion …" There was no further discussion, and no further negotiation.

39 Over the course of the next two years the terms were substantially implemented. On 28 February 2013 the wife formally transferred her 50 per cent share in Horohoe Construction Limited to the husband, and on 8 March 2012 she signed the prescribed form formally resigning as company secretary. On 28 February 2013 the wife gave to the husband a cheque in the sum of £145,000, which he paid into his personal account with Allied Irish Bank the next day. Whilst this appears to have been an overpayment, both leading counsel agree that it was substantially the correct balancing payment that the wife finally needed to pay in order to achieve an equal division of the cash in the light of Mr Cahill's calculations.

40 Between 2012 and 2016, with no great haste, most of the jointly-owned properties were transferred into the sole name of the one or the other, in accordance with the schedules attached to the document of 1 August 2012 and the letters of 25 September 2012. All these transfers took place several years after the separation (which was in January 2010), and none of them was in the first year of separation. Neither party paid any stamp duty on any transfer, nor declared any capital gain nor paid any capital gains tax in relation to any transfer. Mr Wu, their personal accountant, was asked about the regularity of this, but his answer was that they had each signed their own tax returns, and in the context of these proceedings the matter was not taken any further.

41 Some transfers remain outstanding in relation to a house and piece of low value land in Ireland which has always been accepted and treated as the property of the husband, and in relation to the incomplete or imperfect title of Horohoe Properties Limited to some garages in Wembley. In relation to the "MATTER OF VITAL IMPORTANCE", no trusts have been created, and the wife has not made a recent will. The husband has, although I do not know its terms.

42 Despite these relatively minor outstanding matters, it is in my view clear that the terms recorded in Mr Cahill's letters of 25 September 2012 were substantially implemented an appreciable time ago. Save for some continuing child maintenance, each party has fended for himself or herself for many years, and their financial affairs appeared to have been both separated and settled.

43 Understandably, the wife, and Miss Hussey and Miss Henrietta Boyle on her behalf, now attach great weight to the concluding words of Mr Cahill's letters: " … still open for further discussion amongst the parties pending final agreement." They submit that the phrase "pending final agreement" negates that the letters themselves contain, or record, "final agreement".

44 Thus far, I agree with them. Clearly, either party could have initiated "further discussion" and, if either had done so, there would not at that point have been any "final agreement". But neither party did do so. Rather, as I have explained, they began to implement the terms of the letter, most notably by the wife paying the cheque for £145,000, and transferring her shares in the company in late February 2013.

45 Whilst I quite agree that the agreement was not "final" in September 2012, there came a point when, by the absence of further discussion, and by the implementation of it, it did become "final". I do not need to identify that point save to say that it was clearly long before March 2019 and the commencement of the divorce proceedings and the wife's claims for financial remedies. I intend, therefore, to refer in the rest of this judgment to "the agreement", meaning the terms contained in the letters and schedule of 25 September 2012, which do evidence an agreement between the parties which had been concluded and substantially implemented well before the commencement of these proceedings, and which both parties appear to have relied upon. If it is necessary to add the adjective "final", I do regard it as having become final.

The period since September 2012

46 Apart from effecting property transfers from time to time, the six years between early 2013 and March 2019 seem to have been relatively uneventful as between the parties, although they remained married to each other. I am pleased to record that they appear to have collaborated well in relation to arrangements for their three children, who roughly divided, and do still divide, their living time between their two parents.

47 In 2013 the husband purchased a site and derelict building in Harrow, where over the next several years he and Marian, making full use of the services of Construction, built and created a fine house and garden now called Ros Comain. The husband was, and is, established in an apparently permanent relationship with Marian. Since September 2016 the wife has been in a settled relationship with a man called Joe. He frequently stays with her, although he still also retains his own home. The wife is well settled in her home in Uxbridge Road, which she likes and where she intends to remain.

48 The husband has continued to work very hard in his company, which long ago pulled out of the post 2008 recession, and which has become well established and successful. As I have already described, a total workforce of about ten in 2012 has grown now to one of over one hundred. The wife continues to nurse on a night-shift rota, involving sometimes one and sometimes two nights a week.

49 Both parties are Roman Catholics. In July 2018 the wife visited the Vatican, where she was assured by a priest that even if she divorced her husband, she could continue to receive Holy Communion. Thus reassured, she decided to commence proceedings for divorce in March 2019. The actual trigger may have been a dispute which arose at that time (the details do not matter at this stage) with regard to financing the eldest child, who was by then about to start at university.

50 The divorce proceedings could not have got off to a worse start. Without any prior warning to the husband whatsoever, and without any prior communication between the wife's solicitors and the husband, the wife presented a petition for divorce on 6 March 2019, which made allegations of unreasonable behaviour. This was completely unnecessary since the parties had already been completely separated for over nine years, and there could have been a non-judgmental divorce based upon two years' separation and consent or, if the husband declined to consent, five years' separation. Further, both parties were regularly committing adultery, as the other party well knew.

51 Miss Hussey bravely submitted that the behaviour allegations were "anodyne", but, anodyne or not, it was clearly very hurtful to the husband to be suddenly accused of unreasonable behaviour all those years beforehand. Worse was to come. In disregard of paragraphs 1.9.1,

1.11.1 and 9.2.1 of the Law Society Family Law Protocol, the wife caused the petition to be personally served upon the husband by a process server at his home, out of the blue, without giving him any advanced notification. This caused him the utmost upset and embarrassment, as the parties' son and one of their daughters was staying with him at the time, and were implicated in the service.

52 The wife claims that she was trying to avoid service while the children were there. But it is a feeble claim, for she could clearly have made arrangements with the husband for agreed service at an agreed time and place, or at least ensured that her process server did not serve while the children were staying with him. This was not a case where there was any need for a pre-emptive strike. There was no need for, nor any application for, a freezing injunction or similar without-notice remedy, and no question of some international jurisdiction race.

53 I mention these facts because I am clear from the husband's evidence that these facts, and certain other associated matters which he described in a very long and emotional answer during his oral evidence, but which I deliberately exclude from this public judgment, caused him the utmost hurt and distress, and may even now still be colouring his attitude to these proceedings. Having said that, I stress very clearly indeed that, although I am critical of the unnecessarily aggressive way in which the wife commenced these divorce proceedings, now eighteen months ago, those facts do not impact in the slightest upon my decisions in this case, and my award. I neither penalise the wife, nor compensate the husband, by a single penny because of these events.

The section 25 factors

54 This is the first occasion upon which the court is considering financial remedies following the decree nisi of divorce. I am therefore required by statute to consider and apply section 25 of the Matrimonial Causes Act 1973, as amended. It is my duty in deciding whether to exercise the powers under the Act and, if so, in what manner, to have regard to all the circumstances of the case. I must give first consideration to the welfare, while still minors, of the two younger children of the family. However, the elder of those two children (the younger daughter) will be eighteen in January 2021, and the younger is already sixteen, and it is not suggested that their welfare, while still minors, has any impact on the capital issues in this case. I must, in particular, have regard to all the matters listed in section 25(2) of the Act to which I now turn.

Section 25(2)(a)

Incomes and earning capacity:

55 The husband currently draws £60,000 per annum net from the company in a combination of salary and dividends. There is surplus cash in the company which the joint expert accountant, Mr Miller, described as "a moneybox", and the husband could, if he wished, draw more. But £60,000 net, together with his rental income, appears to finance his chosen lifestyle. The husband already works very hard indeed, and, save in the sense that he could draw more, he cannot increase his earning capacity. The current rental income from his rental properties is about £35,000 per annum.

56 The wife continues to work as a nurse on a night-shift rota. She has always worked nights. She currently works one or two nights a week, depending on the rota. I understand that she could increase that to a maximum of three nights a week (which is the equivalent, because of the hours involved, of a full working week). To that extent, she could increase her

earning capacity if she chose to do so, within her established profession, although I make no finding that it would be reasonable to expect her to do so. She is already able to lead the lifestyle of her choice on a combination of her nursing and rental income, and it is entirely her choice whether to work more in order to earn more. Her current net income from her employment is about £12,800 per annum. The current rental income from her rental properties, net of expenses, but gross before tax, is about £22,000 per annum.

Property and other financial resources:

57 The legal teams have very helpfully collaborated, and produced a very detailed schedule of the parties' respective assets both as at September 2012 and now. It has evolved during the course of the hearing, and is now in iteration V3 to which Miss Campbell added during her final submissions a version (H) V4. I am very grateful to all concerned for these schedules, which have been an essential route map throughout the hearing.

58 The wife has her own home at Uxbridge Avenue, having an equity of about £1,175,000; and rented properties in St Paul Avenue, Kenton, and Elmgrove Crescent, Harrow, which were transferred to her pursuant to the 2012 agreement, and have total current equities of about £459,000. Her current cash position is currently in debt, due principally to outstanding legal fees. She has pensions with a current CETV of about £44,000. The schedule V3 produces an agreed bottom line net worth of the wife of £1,624,491, which I round up to £1,625,000.

59 The husband's side is more complex and more controversial. His home is Ros Comain, having an agreed equity after notional costs of sale of £3,395,000. This was entirely created from a dilapidated site, first purchased in March 2013. The controversy is that in November 2019, during the subsistence of these proceedings, the husband transferred Ros Comain

from his sole ownership into joint ownership with his partner, Marian. Half £3,395,000 is £1,697,500. Miss Campbell submits that, consistent with the legal title as it now is, that amount should be deducted from the total net value of Ros Comain when valuing the husband's share. Miss Hussey submits that, as the husband gratuitously transferred the half-share to Marian during the very subsistence of these proceedings, that half-share should be notionally added back, and the husband credited with the whole of the equity.

60 I unhesitatingly reject Miss Hussey's submission and argument. The husband and Marian have been living together as husband and wife for many years. They selected the site and planned the construction of Ros Comain together. Marian made a substantial contribution to the purchase and / or building costs from the proceeds of her own former home. She worked physically on the construction site, and she planned and organised much of the interior layout and decoration. She and the husband clearly see this as their long-term joint home. It was entirely appropriate and justifiable that the husband transferred it into joint names, and I accordingly treat the net value of Ros Comain in his hands as £1,697,500.

61 There is a relatively minor dispute as to the gross value of a rental property owned by the husband at 243 Edgware Road. The agreed joint expert valued it at £630,000. The husband says that that value should be discounted by 11 per cent for a lack of planning permission when the building was subdivided. The expert says that there must have been planning permission. The net difference after deducting notional costs of sale and CGT is between an equity of £496,284 or one of £429,063, a difference of about £67,000.

62 On this issue, I propose to follow what the single joint expert (who did not give any oral evidence) has said in his report, and treat the net equity in 243 Edgware Road as £496,284. The dispute will not have the slightest impact on the outcome.

63 A much bigger dispute is as to a fair appraisal, for the purpose of these proceedings, of the net value of the husband's 100 per cent shares in Horohoe Construction Limited. The issues here are now, first, the correct treatment of an alleged debt of £704,863, said to be owed by the company to a key employee, Mr Allan O'Sullivan; and second, the correct treatment of an inter-company loan made by the Construction company to the Property company.

64 Mr O'Sullivan has worked for, and with, the husband for many years. He is now a director of Construction, and owns non-voting B shares. The husband has produced a document, now at bundle page H167, which is typed on the headed writing paper of Construction, and bears the date 18 May 2007. It is headed, "Financial agreement". It is signed by each of the husband and Mr O'Sullivan. It purports to set out the terms of Mr O'Sullivan's self-employed relationship with the company, and includes, "Allan O'Sullivan to receive a 10 per cent share of gross profits once direct overheads have been considered." It is said that, pursuant to that agreement, there is a running balance currently owed by the company to Mr O'Sullivan of £704,863, as at the end of 2019.

65 There is no witness statement from Mr O'Sullivan in this case, and he did not give oral evidence. The single joint expert who valued the company, Mr Miller, pointed out that there is no provision anywhere in the company accounts for this alleged debt, and no reference to it. Further, when the company's longstanding accountant, Mr Wu, gave oral evidence, he initially gave a markedly different account of Mr O'Sullivan's remuneration and entitlement. Far from referring to a 10 per cent share of gross profits, Mr Wu said that the agreement between Mr O'Sullivan and the company is that the company will pay 10 per cent commission to Mr O'Sullivan for the business that he brings in. Mr Wu said that Mr O'Sullivan used to invoice the company for the sums owing to him. Mr Wu said that no

figure appears in the accounts because Mr O'Sullivan has not invoiced and asked to be paid, and therefore has not been paid.

66 When the document at bundle page H167 was shown to him, Mr Wu did an about-turn. He said that he now retracts what he had earlier said about 10 per cent commission, and that he should have said 10 per cent of the gross profits. This very unsatisfactory state of the evidence in relation to this issue led me to feel very sceptical about the true authenticity of the photocopied document in the bundle at page H167, and late on Friday, 6 November (during the course of Mr Wu's oral evidence) I called for the original to be produced.

67 On the penultimate day of the hearing, Monday, 9 November, the original was produced. I was told that Mr O'Sullivan had extracted it from his own files during the weekend. The original which was produced, was clearly the original from which all subsequent copies at bundle page H167 have derived. The alignment of the written signatures and date with the typed words and dotted lines is exact. Miss Hussey described the original as looking rather "war worn". It certainly had the appearance of a piece of paper which is no longer new, or fresh or recent. There are some creases. Part of the right-hand side is torn or worn away. Another tear is stuck with Sellotape on the back. Examination of the original satisfied me, on a balance of probability, that the original document is not of recent creation, and could well date from its purported date of May 2007. I am thus satisfied, on a balance of probability, that bundle page H167 is a photocopy of a genuine document signed by the husband and Mr O'Sullivan in 2007, and containing the terms, even if somewhat vague, of a contract between the company and Mr O'Sullivan.

68 The next question is whether amounts are currently owed by the company to Mr O'Sullivan. There were further produced on the Monday morning, 9 November, eleven sheets of

computer printout, which I was told Mr O'Sullivan had printed during the weekend from the running electronic records maintained within the company's computer system in relation to amounts owed to, and amounts paid to, or drawn by, Mr O'Sullivan. The actual printouts had been made that weekend, but the recorded data goes back to May 2007.

69 Almost all payments made up to February 2015 are shown as "bill". Those from May 2015 are shown as "cheque". It was on 15 April 2015, between those two dates, that Mr O'Sullivan became a director of the company. A table and summary on the first sheet shows a balance "still owed to AOS" of £704,863.37.

70 Clearly, the manner in which, and point in these proceedings at which, these running sheets were produced is highly unsatisfactory. I do not have any actual evidence, such as a statement of truth from Mr O'Sullivan, as to their authenticity. It would, however, have been wrong and disproportionate further to prolong the hearing while such evidence was obtained. In my view, I am entitled to, and must, simply take a view. The detailed data and information in the sheets headed, "Quantity surveying 4 per cent bonus scheme for Allan O'Sullivan" is of a kind which it would be difficult to fabricate, certainly at short notice. Overall, these sheets have the appearance of being authentic printouts from a genuine electronic running record, and on the balance of probability I do conclude that they evidence a current debt owed by the company to Mr O'Sullivan of £704,863.

71 As the running total starts from 2007, a question might arise as to limitation and enforceability, but it is not likely that the husband, who reposes complete confidence in Mr O'Sullivan, and regards him as his right-hand man, would wish to take a limitation point against him. The reality appears to be that Mr O'Sullivan, like the husband, is treating the company as "a moneybox". He appears not to need the money now, but will draw it in the

end. Under this head, I accordingly deduct £704,863 from the gross value otherwise given to the company by the single joint expert, Mr Miller.

72 Mr Miller carried out a valuation of Construction as at 2020, and concluded that the company, and accordingly the husband's 100 per cent shares in it, is worth a mean of £8,964,000 (before deducting the debt to Mr O'Sullivan). In reaching that valuation, Mr Miller included as an asset of Construction an inter-company loan. This was loaned *by* Construction *to* the Property company, and is now owed by the Property company to Construction. Assuming that the debt is a good debt, and that it is ultimately recoverable, it is plainly an asset of Construction, and correctly feeds into the calculated value of the Construction company, when viewed in isolation.

73 But I agree with the husband and with Miss Campbell that, for the purposes of this case, the inter-company loan should be deducted from the calculated value of Construction, for otherwise there is double accounting if one attributes to the husband both the value to Construction of the inter-company loan *and* the value of the property assets held by the Property company which, like Construction, is his alter ego. Since both companies are the alter ego of the husband, the loan is, in reality, simply an asset in one of his pockets, and an equal liability in the other.

74 For the purposes of this case, and for making a fair, overall appraisal of the husband's current net assets and wealth, I exclude the loan from the value of Construction but do count in all the property assets of the Property company as assets of the husband.

75 After deducting the amount owed to Mr O'Sullivan (£704,863), the inter-company loan (£1,380,251), and the CGT inherent in the company's shares, with entrepreneurs' relief (viz

£1,275,777), the net value of the Construction company to the husband is about £5.6 million, as shown in Miss Campbell's schedule (H) V4.

76 The net assets in the Property company are about £2,828,500. The husband's personal property portfolio, including his half-share in Ros Comain, is worth net about £3,800,000. After allowing for unpaid legal costs, the husband has a small cash surplus of a few thousand pounds. He has £150,000 in pension funding.

77 The effect of all the above is that I assess the overall current wealth of the husband for the purpose of these proceedings as £12,382,754, being the bottom line of Miss Campbell's schedule (H) V4, plus £65,000 (being the net amount that she has deducted, but I have not, in relation to planning permission on 243 Edgware Road), viz £12,447,754, which I round up to £12,450,000.

78 The combined joint net assets of the parties are accordingly about £12,450,000 plus £1,625,000, or £14,075,000. Of that total the wife has about 11.5 per cent, which Miss Hussey submits is unfair after a cohabitation and marriage of seventeen to eighteen years, and each party making equal and full contributions.

Section 25(2)(b)

79 Both parties have similar obligations and responsibilities for the last stages of their children's dependence. Essentially they each have similar needs.

Section 25(2)(c)

80 The standard of living enjoyed by the family towards the end of, but before the breakdown of, the marriage was comfortable but not luxurious. They generally took their holidays economically in Ireland. Both parties are now living in finer houses than they lived in before the breakdown of the marriage.

Section 25(2)(d)

81 The wife is now aged fifty-one, and the husband fifty-two. The duration of the cohabitation and marriage was about seventeen to eighteen years.

Section 25(2)(e)

82 Neither party currently has any physical or mental disability. The wife suffered dreadfully from cancer, which I do not minimise in the least. She does still take protective medication, but the cancer appears to be cured, or certainly in remission, and currently both parties lead normal, healthy lives for their ages.

Section 25(2)(f)

83 In my view, this is a case in which both parties made very full and equal contributions to the welfare of the family. Working in marital partnership, they pulled themselves up a long way from their penniless start in 1991 or 1992. The husband has clearly worked very hard, and still does, in establishing and expanding the Construction company, and in his generally successful property deals. The wife brought up the three children, and she actively assisted the husband with the company in its early days. She worked full-time or part-time as a nurse during parts of the marriage and since the separation.

Section 25(2)(g)

84 There is no conduct by either party in this case within the sense of paragraph (g). The facts in relation to the separation agreement may be viewed as a form of "conduct", but I prefer to view them as part of the circumstances of the case.

Section 25(2)(h)

85 Neither party has lost the chance of acquiring any benefit within the meaning of paragraph (h).

Analysis and outcome

86 If there had been no agreement in 2012, but the current respective financial circumstances of each party had been, without any underlying agreement, as summarised above, then in my view the wife would have been entitled to substantial further capital provision now. The starting point would have been a sharing claim, albeit focussed on the assets at the date of separation ("the marital acquest"), and with a very heavy discount for post-separation endeavour on the part of the husband, both in creating Ros Comain (which had nothing to do with the wife) and in greatly expanding the scale and profitability of his business.

87 But that would be to rewrite the facts of this case. A very significant or weighty circumstance on the facts of the case is the fact of the agreement and the circumstances surrounding it. I have of course been referred to a number of well-known authorities upon the impact of an agreement, including the seminal judgments of the Supreme Court in

Radmacher v Granatino [2010] UKSC 42. Both leading counsel suggested and submitted that the key starting point in the present case (which concerns a post separation agreement) is the judgment of Ormrod LJ in *Edgar v Edgar* [1980] 1 WLR 1410 at page 1417 where he said:

> "To decide what weight should be given, in order to reach a just result, to a prior agreement not to claim a lump sum, regard must be had to the conduct of both parties, leading up to the prior agreement, and to their subsequent conduct, in consequence of it. It is not necessary in this connection to think in formal legal terms, such as misrepresentation or estoppel; *all* the circumstances as they affect each of two human beings must be considered in the complex relationship of marriage. So, the circumstances surrounding the making of the agreement are relevant. Undue pressure by one side, exploitation of a dominant position to secure an unreasonable advantage, inadequate knowledge, possibly bad legal advice, an important change of circumstances, unforeseen or overlooked at the time of making the agreement, are all relevant to the question of justice between the parties. Important too is the general proposition that formal agreements, properly and fairly arrived at with competent legal advice, should not be displaced unless there are good and substantial grounds for concluding that an injustice will be done by holding the parties to the terms of their agreement. There may well be other considerations which affect the justice of this case; the above list is not intended to be an exclusive catalogue."

88 In the light of subsequent jurisprudence of the House of Lords and the Supreme Court, the references in that paragraph to "a just result", "justice between the parties", and "the justice of the case" should perhaps now be paraphrased as referring to "fair" and "fairness". The law strives to be fair to both parties, and a result which is fair is a result which is just.

89 Within the judgment of the majority of the Supreme Court in *Radmacher* at paragraph [75] there is a test:

> "The court should give effect to a nuptial agreement that is freely entered into by each party with a full appreciation of its implications unless in the circumstances prevailing it would not be fair to hold the parties to their agreement."

90 At paragraph [169] of her judgment in the same case, Baroness Hale of Richmond proposed a different test which, she said, sought to avoid the impermissible judicial gloss of a presumption or starting point in the test proposed by the majority, which I have just quoted. But I, of course, do loyally apply the test proposed by the majority, and with it the starting point that the court should give effect to a nuptial agreement.

91 The present case is a very fact specific case, and it is not, in my view, necessary to quote further or more extensively from authority than the above. I am quite satisfied that the agreement was freely entered into by both parties. They were both of full and mature age, and full capacity, and of similar and good intelligence. As I have already commented, of the two, the wife was the more numerate. Neither was in a dominant position, and neither exploited their position to gain an unfair or unreasonable advantage over the other. Mr Cahill said in his oral evidence that he was never worried that Sharon did not understand. He had dealt with her for years. She was very good at administration. He was never concerned that she was not playing an equal part in the negotiations.

92 In all respects bar one, the agreement was at the time fair to both parties, and even from the vantage point of eight years' hindsight remains fair to both parties. They divided their "cash assets" equally in accordance with the calculations of Mr Cahill.

93 It may at first blush seem odd or unfair that the critical illness insurance proceeds, paid as a result of the wife's cancer, were treated as evenly divided, but that was not unfair. As the wife herself said during her oral evidence, they had taken out a single policy on the health of both of them, and the premiums were paid out of the joint account. The purpose of the policy was not to compensate one of them for the pain and suffering of a critical illness, but to protect the family from the economic impact of critical illness. If he, not she, had suffered cancer, she would have expected to share in the proceeds. Further, the husband said in his oral evidence that although he would have been content for the wife to keep the proceeds as hers, she had been insistent at the time that they be jointly shared.

94 The properties were not evenly divided by value; but, as Mr Cahill was at pains to stress, each took what they agreed and wanted. He said that they each got what they wanted, and they were happy with it. He said that "They weren't going to sell them anyway." The schedule to the letters of 25 September 2012, now at bundle page H16, shows that, on the figures used by the parties by the end of their negotiation, the wife was to receive properties to the gross value of £2,160,000, having an equity after deducting the mortgages (no deduction was made at the time for notional costs of sale or any inherent CGT) of £1,818,406. The husband was to receive properties to the gross value of £1,420,000, having an equity of £1,137,025.

95 That appears to be an imbalance favouring the wife, but a large part of her property was her new home in Uxbridge Road to which a gross value of £1,200,000 was given. The rental yield from the properties to be received by the husband was considerably higher than that from the properties to be received by the wife.

96 Miss Hussey has submitted that within the schedule attached to the letters of 25 September 2012, now at bundle page H16, some of the properties to be received by the husband were undervalued, and that some to be received by the wife were overvalued, and in particular the value of her new home at Uxbridge Road. As I have already stated, there had in fact been alterations or adjustments since earlier versions of the schedule. In particular, the value attributed to Uxbridge Road had been increased from £810,000 to £1,200,000; and the value of the house in Ireland to be received by the husband had been increased from £100,000 to £150,000.

97 These adjustments must have been the product of discussion and negotiation. Mr Cahill did not invent them, he merely recorded what the parties themselves agreed, and notified to him. Both the document of 1 August 2012 and the letters of 25 September 2012 had made crystal clear that " … all aspects of … joint assets were discussed at length … ", and that " … if either party disagrees with the listed property valuations, they are at liberty to seek further independent valuations if so required."

98 In my view, it simply is not open to the wife now to assert, or object, that unfair or erroneous property valuations were used. She was familiar with most of the properties. She certainly knew exactly what her own home had cost, and the extent of the works of improvement and enlargement done to it. There is a dispute now as to by exactly how much the house was enlarged by work done by Construction to the attic floor, and as to the value added by that, and other work done. It is now far too late to trawl over that. Most people have some appreciation of the value of their own home, and if the wife thought that Uxbridge Road in its finished state was being overvalued, the time to say so was then, not now.

99 In my view, however, different considerations apply to the treatment within the agreement of the companies and the assets within them. The wife had had no active involvement in the companies for several years, although as company secretary she had seen, and indeed signed, the annual accounts. She did not have, and cannot reasonably be expected to have had, any informed personal knowledge and appreciation of the value within the companies which at that time she jointly owned. The agreement simply provided that, "all interest in the said companies be held solely in Ciaran's name only, and that she foregoes any financial interest in the said companies, including their premises and offices at … Windermere Avenue … "

100 The husband says, and I accept, that the wife wanted security and risk-free assets, so she took the properties she wanted, and was content to leave the companies with him. But the husband himself believed at the time that the companies had no current value. He believed that they were merely the alter ego of himself. The husband said in his oral evidence that: "… we discussed and agreed that the company had nil value … she was not involved in the business … I did not show her the accounts for either company … I never dealt with the accounts … *I personally believed it was worth nothing* [my emphasis]. It was my opinion. I did not have any evidence … I did not discuss whether the businesses had any value with any professional person."

101 I accept the evidence of the wife that the husband told her that the companies had no value as they were merely himself, and he could walk away from them. In fact, as I will describe, the companies did have value in 2012, and by transferring her shares to the husband, the wife was giving to him an asset of value to which no weight was given in the overall balance of an agreement which had evenly divided the cash including the critical illness policy proceeds.

102 The wife now believes that the husband "cheated" her, and that he knew at the time that the companies had value. I am not prepared to agree with that. I am prepared to accept, and do accept, the oral evidence of the husband that he genuinely believed what he told her, namely that the companies had no value. There was no attempt at any valuation by either Mr Cahill (who lacked the expertise), or Mr Wu, or anyone else. For what it is worth, Mr Cahill said during his oral evidence that in 2012 we were in the middle of a recession, and construction companies were owed hundreds of thousands of pounds. “Ciaran was the company.” That indeed was exactly the position also of the husband himself.

103 The wife was very clear in her oral evidence, and I accept, that at the time she trusted the husband, and when he said that the companies had no value, she trusted him, and relied upon him. Since, as will appear, the companies did have value, it follows in my view that this aspect of the agreement was founded upon a common mistake of fact. Both parties mistakenly believed that the companies had no current value. In the language of the passage from *Edgar v Edgar* quoted above, there was, on this aspect of the agreement, "inadequate knowledge". In the language of the passage from *Radmacher* quoted above, there was not, on this aspect, "a full appreciation of its implications" by either party. They both thought that the wife was not transferring an asset of any current value whereas, as will appear below, she was.

104 It must nevertheless weigh against the wife that, by the letter of 10 September 2012 quoted above, Aisling Collins had very clearly and expressly advised her that the value of, and the amount and liquidity of the capital held by, Construction was "an important piece of information which in my view you must establish before you can negotiate a financial settlement." I do not know what (if anything) Aisling Collins may have advised or said,

whether at the meeting on 6 September 2012 or in her letter of 10 September 2012, beyond the fragment quoted by Goodwins in their later letter of 11 October 2019, now at bundle pages H223 and 224, as to what steps the wife should take to "establish" those matters. But the very fact that the wife had sought the advice of solicitors, and had received that advice, but then did not seek any formal or independent valuation of the company, serves to underline the extent to which the wife trusted and relied upon the husband on this issue. In her mind, she did "establish" that the company had no value, because her husband told her that, and she trusted him.

105 The authorities make plain that the presence or absence of legal advice, and its content and quality, so far as it is known, may be relevant to the weight to be attached to an agreement. Ormrod LJ in *Edgar* referred to "possibly bad legal advice". Oliver LJ in the same case referred to "acting with competent legal advice". In *Radmacher* at paragraph [69] the majority said:

> "Sound legal advice is obviously desirable, for this will ensure that a party understands the implications of the agreement, and full disclosure of any assets owned by the other party may be necessary to ensure this. But if it is clear that a party is fully aware of the implications of an ante-nuptial agreement and indifferent to detailed particulars of the other party's assets, there is no need to accord the agreement reduced weight because he or she is unaware of those particulars. What is important is that each party should have all the information that is material to his or her decision, and that each party should intend that the agreement should govern the financial consequences of the marriage coming to an end."

106 These passages make clear that the absence of sound, or any, legal advice does not necessarily vitiate an agreement; but nor does the presence of sound legal advice necessarily

render it impregnable. It all depends on the content (to the extent that it is known) of the legal advice and the circumstances of the case in point.

107 As I have earlier said, Miss Hussey does not suggest or submit that the wife received "bad legal advice", and the fragment of that advice which has been disclosed represents very good or sound legal advice. But in the end it does not, in my view, require or justify that decisive effect is given to the whole agreement now. Rather, as I have explained, it tends to fortify the extent to which the wife was trusting the husband on the issue of the value, if any, of the companies.

108 I turn, therefore, to consider the value of, or value in, the companies in September 2012. Horohoe Properties Limited owned four properties, namely 118 Windermere Avenue, Wembley, garages at Elmside Road, Wembley, 90 Bollo Lane, Acton, and a site at Kenton Lane, to which the asset schedule at V3 gives an aggregate net value in 2012, after deducting notional costs of sale, of £607,220. The company had cash assets of £132,000, so there was, on a breakup, about £740,000 in Horohoe Properties Limited. In the document of 1 August and letters of 25 September 2012, which had contained detailed calculations of the cash split down to the last pound, that asset was given no value, and was merely subsumed in a sentence, "Sharon agreed that all interest in the said companies be held solely in Ciaran's name only … ".

109 The valuation of the Construction company in 2012 is more controversial and, frankly, much more speculative. After his oral evidence, and in the light of questions asked by Miss Campbell, Mr Miller, the single joint expert, produced a revised, and in fact higher, calculation of the value of the company as at 25 September 2012: see his email dated 6

November 2020 sent to both solicitors and headed "Re-run valuation at Sept 12", and the attachments to it. This gave a mean valuation, as at 25 September 2012, of £2,245,481 if property sales are included, or £1,666,171 if they are excluded.

110 The issue with regard to the inclusion or exclusion of property sales arises as follows. Prior to the post 2008 recession, and again since about 2013 (and still now), the business and activity of the Construction company has been, as I have described, providing carpentry and other work as subcontractors to other builders and developers. During, but only during, the recession, the company diversified into buying, renovating and then reselling properties in order to maintain work for the workforce, and to keep the company afloat.

111 Mr Miller opines, and Miss Hussey argues, that as that was the main activity of the company in and around the era of 2012, the proceeds of property sales should be included in any approach to valuation at that time. The husband and Miss Campbell argue that that was an abnormal activity during an abnormal period, and should be excluded.

112 To my mind, this particular argument shows the unreality of disputes of this kind as to historic valuation exercises done many years later. We now know that Construction weathered that recession, and was able, fairly soon after 2012, to resume its normal activity of working as a subcontractor. From the historic perspective of 2012 it might not have done, and might have continued property trading. Who knew then?

113 Where I do agree with Miss Campbell is that in 2012, just as in 2020, the amount of the inter-company loan, which stood then at about £547,500, should be deducted. There is also a dispute as to whether the net value of the shares should be assessed after deducting CGT (namely 10 per cent after entrepreneurs' relief) or, which is higher, tax on dividends. The

husband says that if he had had to extract money from the company in order to pay further capital to the wife in 2012, he would have done so by way of dividends, and suffered the extra tax.

114 In reflection of these issues, Miss Hussey for the wife has suggested a bottom line net value of the shares in the Construction company in September 2012 of about £2,237,000 (before deducting the inter-company loan), and Miss Campbell for the husband has suggested a bottom line of about £731,500. I would in any event recalculate Miss Hussey's net figure as £2,486,091 minus £547,477 (the inter-company loan), viz £1,938,614, upon which CGT at 10 per cent (with entrepreneurs' relief) would be £193,861, producing a recalculated net figure of £1,744,753.

115 We know in any event that as at 25 September 2012 the Construction company had cash in the bank of £880,827 (which is, of course, included in Mr Miller's valuation). Pulling together the net property and cash in the Property company (£740,000), the cash in the Construction company (£880,000), and the range of net valuations (which of course include the cash) from £731,495 to £1,744,753, I have concluded that the net value of the two companies, as at 25 September 2012, was not less than £1,500,000, of which a half share was £750,000.

116 The wife and the husband both believed that the value of the companies and her half share was zero. That resulted in an agreement being reached which, despite the legal advice, was unwittingly very unfair to the wife in its treatment of the company assets. In my view, I can, and should, isolate and remedy that unfairness now. The rest of the agreement stands. But there should be a further cash payment (or by agreement, property adjustment) to the wife now to correct the unfairness.

117 However, it does not at all follow that the wife should now be credited with a further £750,000 as at September 2012. It remains the case that the wife did not want to keep her shares in the companies. She wanted security, and the less risk-averse assets. The value of the shares was volatile and unpredictable, especially in the economic climate still prevailing in 2012. The husband took risk-laden assets, and it is as a result of his endeavour since then, as well as the improved economic conditions for his business, that they have since greatly increased in value.

118 So, in my view, the £750,000, which I have attributed as the value of the wife's shares in 2012, should be discounted by one-third to reflect the security to her of receiving cash. Fairness required that she received a further £500,000 in 2012. That figure clearly requires now to be indexed to take account of the lag of eight years between then and now. I was quoted a range of indices, including the FTSE 100, which increased by 8.33 per cent between September 2012 and May 2020; the CPI which increased by 13.5 per cent; the FTSE All Share which increased by 16.4 per cent; and the RPI which increased by 21.1 per cent. In addition, various well-known property indices were quoted, with increases ranging from about 32.5 per cent to 60 per cent.

119 There is, however, no necessary reason to suppose that the wife would have invested an extra cash payment in property, and I have concluded that the fair index to take is the RPI which I slightly round down to an increase of 20 per cent or £100,000.

120 I propose, therefore, to order the husband to pay to the wife a lump sum of £600,000. I will hear submissions as to time to pay. Once I have fixed that time, any late payment will carry interest at the judgment rate from time to time prevailing. There will inevitably be a short

interval between the conclusion of this judgment and the order being drafted and drawn. If, during that period, the parties negotiate and agree that the award should be satisfied in whole or in part by property transfers from the husband to the wife, then of course the order can (by agreement) be expressed so as to incorporate that agreement. But in the absence of agreement, it will be an order for the straight payment of a lump sum of £600,000.

121 I am satisfied that it is well within the means of the husband to raise and pay that sum, or to transfer properties to that net value. Even once paid, it will leave the husband very significantly richer than the wife. Essentially, his net wealth will reduce from about £12,450,000 to £11,850,000, and that of the wife will increase from £1,625,000 to £2,225,000. In percentage terms, the wife will have about 16 per cent, and the husband about 84 per cent, of the overall net current wealth.

122 That is fair because of, first, the weight which still requires to be attached to the agreement as a whole; and, second, the impact upon his current wealth of the husband's endeavour over the long period since 2012. The order will of course be on a clean break basis as between the parties, and all other claims of either party against the other will be dismissed, with an order under section 15 of the Inheritance Act 1975.

A fund for maintenance during further or tertiary education

123 As I have mentioned, a dispute arose between the parties as to financing the eldest child, now aged twenty, during her university education. The husband considered that she, like many or most other students, should obtain the maximum student loan available to her. The wife considered that the husband should pay all her outgoings, and continue to pay some maintenance to the wife in relation to her. The husband felt that he might end up both

supporting the child at university, and also paying maintenance to the wife while the child was living at university. Now, the wife asks that there should be what Miss Hussey and Miss Boyle call "a top slice education fund to ensure that the children's tertiary education / training can be financed."

124 The husband said in his oral evidence that the second daughter in any event has no intention of going to university, and that the son will not attain sufficient qualifications to do so. The husband said that he does not agree to any ring-fenced sum being set aside now, but that he will not turn the tap off. He pays the Child Maintenance Service assessed maintenance, and pays £65 per week to the eldest child while she is at university. He has offered to undertake to pay in respect of any given child the fees of one tertiary education course to first degree level, and accommodation expenses for the duration of the course. In relation to the eldest child's current student loan, he says that he will ultimately pay it off, but at a time of his choosing, and meantime he considers that she, like many other students, should have to obtain and manage her own loan.

125 These are the children of relatively prosperous parents, but they have all been educated through the State system. In my view, it is a permissible stance by the husband that they should obtain whatever student loans are available to them. He wishes to deal directly with the adult children in relation to their tertiary education, if any, and there is no evidence that he would leave any of the children in a state of current or future hardship. In my view, there is no justification for creating a so-called education fund on the facts and in the circumstances of this case, and I decline to do so.

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CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge.