IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
[2019] EWHC 1107 (Fam)

No. FD18F00029

Royal Courts of Justice
Strand
London, WC2A 2LL

Wednesday, 17 April 2019

Before:

MR JUSTICE HOLMAN

(sitting throughout in public)

B E T W E E N :

IRINA YURIEVNA VILINOVA — Applicant

- and -

(1) IGOR IVGENIEVICH VILINOV
(2) HINALY COMPANY LIMITED — Respondents

MR P. CHAMBERLAYNE QC (instructed by Camilla Baldwin) appeared on behalf of the applicant.

THE RESPONDENTS did not attend and were not represented.

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:

Introduction, the procedural history and the engagement of the parties

1 Although they have already been divorced in Russia, I will for convenience refer to Irina Vilinova as "the wife" and her former husband, Igor Vilinov, as "the husband." Without any objection by or on behalf of the wife, I heard the whole of this case in public and I now deliver this judgment in public. This is the final substantive hearing of (i) the former wife's claims under Part III of the Matrimonial and Family Proceedings Act 1984 ("the 1984 Act") for financial relief after an overseas divorce; and (ii) a claim now to be adjudicated upon within the Part III proceedings, by a company, Hinaly Company Limited ("Hinaly"), that the wife owes to that company an enforceable debt of £2 million plus accrued interest, pursuant to a "loan agreement" which was signed by the wife, and by the husband "on behalf of" Hinaly, in his capacity (at the time of signing) as sole director of Hinaly. The "loan agreement no. 01/2013" bears the typed date March 18, 2013, although, as I will later describe, the actual date upon which it was signed is disputed. The wife says that it is a sham.

2 Both parties are Russian and the husband continues to live there. The wife has clearly been habitually resident in England and Wales since in or about 2012. In 2016, in circumstances which I will later describe, the husband obtained a divorce from the wife in Russia. On 13 April 2018, in proceedings No. FD18F00029, I granted permission to the wife to apply for an order for financial relief under Part III of the 1984 Act, and gave certain consequential directions. On 24 April 2018 the very well-known firm of Mishcon de Reya solicitors, stating that they were acting for Hinaly, lodged with the London Court of International Arbitration a formal "Request for arbitration." It named Hinaly as claimant and the wife as

respondent, and sought an award that the wife pay to Hinaly £2 million plus contractual interest and costs, in reliance upon the loan agreement which bears the date 18 March 2013.

3 The wife issued her substantive application for financial relief after an overseas divorce in prescribed form D50F on 10 May 2018. At a hearing on 11 May 2018, of which, as the order made on that date recites, the husband had had no notice, Baker J ordered at paragraph 3 that "There be permission for the applicant to serve the respondent [viz the husband] with all documents within her substantive application under Part III... by alternative means to facilitate service by:- (a) post to the Dispute Resolution Team at Mishcon de Reya LLP [with full postal and email addresses specified] as the solicitors representing the respondent's company, Hinaly Company Limited; and (b) the personal email address last known by the applicant to be used by the respondent being [and the email address is then specified]."

4 A further hearing was fixed by Baker J for 18 May 2018 at which Mr Patrick Chamberlayne QC represented the wife and Mr Martin Pointer QC and Mr Joshua Viney, instructed by Mishcon de Reya, represented Hinaly. The order of 18 May 2018 recites that the respondent (viz the husband) had had notice of the hearing but did not attend and was not represented. At the hearing on 18 May 2018, at which Hinaly were so formidably represented, Cohen J, amongst other matters: (i) joined Hinaly as a party to the Part III proceedings as second respondent. They remain a full party to this day; (ii) restrained Hinaly until further order from progressing the arbitration proceedings No.183930 in the London Court of International Arbitration; (iii) ordered each of the husband and Hinaly to answer certain questions which had been put in a letter from the wife's solicitors, Camilla Baldwin, to Mishcon de Reya; (iv) gave permission to the wife to serve documents upon Hinaly by post to Mishcon de Reya or by email to the email addresses of named people within Mishcon de Reya; and (v) varied paragraph 3 of the order of Baker J of 11 May 2018 by discharging

paragraph 3(a), which had permitted service upon the husband by post to Mishcon de Reya, and replacing it by service "by post to Flat 7, Gubernskogo Street 42-A, Novorossiysk, Russia" which is the flat in which the parties used to reside and where, it appears, the husband still does reside. The order of 18 May 2018 left undisturbed paragraph 3(b) of the order of 11 May 2018. The upshot is that, with effect from 18 May 2018, the wife was permitted to serve the husband by post at Flat 7 in Novorossiysk and by email to his specified last known email address.

5 I am quite satisfied that since 18 May 2018 right up to 5 April 2019 the wife's solicitors, Camilla Baldwin, have sent a considerable number of letters to the husband at the specified Flat 7 address, and emails to his specified email address. He has had very full notice by the methods permitted by Baker J and Cohen J of these proceedings and of all the orders made in these proceedings, and of the date of this final substantive hearing. He has never replied to, nor even acknowledged, a single one of those communications. He has never communicated directly or indirectly with the court, nor filed any document with the court. He has never attended, or been represented at, a single hearing, including the substantive hearing last week, and he is not present or represented here today. He has been in total breach since mid-June 2018 of an order to file a Form E giving full details of his property and income, and in total breach since late August 2018 of an order to answer certain questionnaires. In short, the husband has never, from first to last, engaged at all with the court or in these proceedings, nor contributed a single word or document to them.

6 As I said at paragraphs 16 and 17 of my recent judgment only a month ago in *Hammoud v Al Zawawi* [2019] EWHC 839 (Fam) in somewhat similar circumstances of non-engagement in Part III proceedings by a former husband resident abroad, "A respondent cannot simply ignore court orders and hope that the proceedings will go away." In this case, as in that case, I must, of course, nevertheless strive to reach an outcome which is just and fair to both

parties. Nevertheless, it is no fault or responsibility of anyone but the husband himself that I have had the difficult task of deciding this case without any submissions or argument on behalf of the husband; without any written or oral evidence from him; without any cross-examination on his behalf of the wife; and with very little evidence of his means, save such scraps as the wife has been able to provide or produce, perhaps most significantly from the conveyancing file of Philip Ross Solicitors to which I will later refer.

7 The position of Hinaly has been different. Until after a hearing on 16 January 2019 they have continued to participate vigorously and forcefully in these proceedings. They have filed statements by a member of Mishcon de Reya, Zachary Segal, dated 17 May 2018, and by Andrea Rishael Vallabh, now the sole director of Hinaly, dated 22 June 2018. Those statements essentially deal with the past and present structure of Hinaly, and of the Albatros Trust which now indirectly owns Hinaly.

8 Hinaly fully participated in two further interim hearings before myself on 24 July 2018 and 16 January 2019. On each occasion, Hinaly were represented by Mr Stephen Trowell QC and Mr Viney, instructed by Mishcon de Reya. The final hearing in the week of 8 April 2019 was expressly fixed by, amongst others, the clerk to Mr Trowell and Mr Viney (who are in the same chambers) on dates convenient to them.

9 I remember very clearly the hearing on 16 January 2019. That hearing clearly proceeded on the basis that at the request of, or with the agreement of, Hinaly the court would, at the present substantive hearing of the Part III claim, also hear all the evidence and argument in relation to the claim of Hinaly that the wife owes £2 million to Hinaly plus contractual interest, and would adjudicate upon that claim. Upon the oral application of Mr Trowell, for Hinaly, the wife gave a number of undertakings to preserve and not further diminish her assets so as to be able substantially, if not wholly, to satisfy any judgment made against her

in favour of Hinaly. Both the wife and Hinaly were ordered to make disclosure by list "in relation to the alleged loan", and Hinaly were required to answer certain interrogatories. Amongst other matters those interrogatories required Hinaly to produce the accounts or the financial records of Hinaly in the period in which the husband was the sole director of Hinaly (said to have been until 1 October 2014, so well after the date of the alleged loan), and bank statements of all bank accounts operated by Hinaly since 1 January 2013. One purpose of production of the accounts was obviously to see if the alleged loan was shown as an asset of Hinaly in their accounts, and one purpose of production of the bank statements was to see if, identifiably, Hinaly ever did pay the £2 million in question. Most importantly, the order provided that the wife must file and serve her Points of Claim in relation to the alleged loan by 20 February 2019, and that "Hinaly must file and serve a reply to the Points of Claim by 8 March 2019". I emphasise the word "must" in that sentence. The reason why the Points of Claim and reply were to be filed and served in that order (viz the wife first) was that, as Mr Chamberlayne accepts, the loan agreement appears valid on its face and was admittedly signed by the wife, and the burden is upon her to prove that, as she alleges, it is a sham.

10 I clearly remember that at the hearing on 16 January 2019 Mr Trowell asked me to rule and direct that the question of the validity of the loan should be heard and adjudicated upon as the first issue, so that Hinaly could then leave and avoid the costs and inconvenience of attending, or being represented at, the whole of the Part III hearing. I was not willing to give a direction to that effect, since I considered it to be a matter for the discretion of the judge at the substantive hearing (who might not have been me) to determine the order in which issues were heard and adjudicated upon. I personally would have been unlikely to be willing to give a discrete judgment upon the loan as a first issue. I would have wanted to hear all the oral evidence of the wife and all the oral evidence of the husband (if he attended to give any evidence) before deciding upon their respective integrity and reliability, and

making findings on the issue of sham, which depends entirely on things said and done between them. Accordingly, paragraph 10 of the order of 16 January 2019 provided as follows:

> "The order in which the issues are to be dealt with at the final hearing is a matter for the judge to decide at the final hearing, but currently it is anticipated that any evidence and submissions in relation to the Hinaly alleged loan will be heard first."

11 By paragraph 6 of the order of 16 January 2019, Hinaly were positively required ("must") to file and serve a reply to the Points of Claim, i.e. positively to plead their case, and paragraph 10 clearly contemplated that the issues as identified in the Points of Claim and reply would be tried at the present hearing, and that there would be a judgment on those issues which would be binding on both parties under the normal principles of *res judicata*. Despite their very robust involvement in these proceedings up to and including the hearing on 16 January 2019, Hinaly, too, have since disregarded and, indeed, are in breach of all those parts of the order of 16 January 2019 which apply to them. Hinaly have not made any disclosure by list or at all. They have not answered the ordered interrogatories nor supplied any documents. They have not supplied any of the ordered accounts or accounting documents, nor any bank statements. The wife delayed her Points of Claim in case Hinaly gave late disclosure, which they did not do, and she finally filed and served her Points of Claim on 5 March 2019, fourteen days late. If one were consequently to add fourteen days to the time for Hinaly to file and serve their reply, the date would be extended from 8 to 22 March 2019; but Hinaly have not filed their reply by that date or at all.

12 On 13 March 2019 Mishcon de Reya, then still acting for Hinaly, sent an open proposal to Camilla Baldwin on behalf of the wife. It proposed that on certain terms Hinaly "shall agree not to pursue the arbitration claim against your client in any jurisdiction" and that "our

respective clients shall undertake not to bring claims against the other anywhere in the world." This is curious. It was Hinaly's own case to the London Court of International Arbitration (LCIA) that an arbitration clause in the loan agreement required arbitration by the LCIA and not in any other jurisdiction or arbitral tribunal; and in any event, Hinaly were by now inextricably committed to their claim being adjudicated upon by this court and in these proceedings.

13 Camilla Baldwin did not respond to that particular letter. On 21 March 2019 Mishcon de Reya sent further letters to the court and to Camilla Baldwin enclosing a formal notice of change of solicitor dated 20 March 2019 which purports to be signed (the signature is illegible) by a director of Hinaly, and states that Hinaly now (viz from 20 March 2019) acts in person. Mishcon de Reya asked Camilla Baldwin to direct all future correspondence to Hinaly Company Limited, including their response (if any) to the proposal letter of 13 March 2019. Since 21 March 2019 Camilla Baldwin have sent further documents to Hinaly at their registered address in the British Virgin Islands. Nobody has attended the present hearing from or on behalf of Hinaly. Hinaly were, of course, perfectly entitled to cease to instruct Mishcon de Reya and to act in person. However, just as in the case of the husband, Hinaly, having become a fully engaged party to these proceedings, cannot now simply ignore court orders and hope that the proceedings will go away.

14 I must give a fair trial to, and decide fairly, the claim of Hinaly, but it is no fault or responsibility of anyone but themselves that I have not had the advantage of any oral or written evidence on their behalf apart from the statements of Zachary Segal and Andrea Vallabh; that there has been no cross-examination of the wife on their behalf; and that I have not heard any submissions or argument on their behalf. I wish to stress that I intend to decide the issue of whether the agreement is valid and enforceable, or is a sham, upon due

consideration of the evidence and material that is available to me. I do not simply dismiss or strike out the claim of Hinaly on the grounds that they have not appeared to advance it.

The facts

15 When I make findings of fact, I do so on the ordinary civil standard of the balance of probability. In the absence of any evidence or disclosure by, or on behalf of, the husband, much of the evidence is inevitably that of the wife. For this reason, and although she had already filed and served several detailed written statements, I required her to give oral evidence upon oath. She was questioned in some detail by both Mr Chamberlayne and myself, and I had a sufficient opportunity to assess her as a witness. Although she speaks with a heavy accent, she has a good understanding and use of English and can express herself perfectly intelligibly and well. I considered her oral evidence to be fair and balanced. She did not obviously exaggerate her accounts or her case or her claim, and at no point did her evidence seem obviously untrue or unbelievable. I consider her evidence to be honest and reliable, although it has not been tested on the anvil of cross-examination.

16 The essential facts and chronology are as follows. The husband was born in September 1962 and is now aged 56. The wife was born in January 1972 and is now aged 47. They are both Russian citizens who were born and brought up in Russia. Since November 2018 the wife is now also British. They first met when the wife was 16. They married in Russia on 28 December 1991 when the wife was still 19. As I will later describe, the marriage broke down in late 2013, so the effective duration of the marriage was about twenty-two years.

17 The parties have three children. The eldest, A, was born in August 1992 when the wife was aged 20. A is now aged 26, lives in Russia and is independent and married with a child of his own. The second, B, was born in March 1999. He is now aged 20 and currently at

university in Australia. The third, C, was born in June 2005. He is now aged 13. Since May 2006, when he was still 10, he has resided in Russia in circumstances which I will later describe. The wife has not been able to see her son since then, which is unbearable to her.

18 The family backgrounds of both parties were modest. At the time of the marriage neither had any assets at all, and only very modest incomes. The husband had graduated with a degree and was working as a loader in the Novorossiysk Dockyard for Novorossiysk Commercial Seaport JSC which I will call "NCS". The wife worked as a teacher until she was 22 when the parties became able to afford to rent their own flat. The husband asked her to stop working and she did. She has not worked since. For a period the parties lived with the wife's parents as they could not even afford to pay rent on their own. It follows that all the assets which either party now possesses have been generated during the course of the marriage or since its breakdown. There has been no inheritance or accretion from other outside sources.

19 The husband's career rapidly blossomed. By 1996, five years after the marriage, he had become the CEO of NCS, and NCS itself has now become Russia's largest seaport operator. With the husband's rapid promotion came higher income, shares in the company, wealth and other perks or privileges. The standard of living of the family rapidly improved. At paragraph 18 of her statement dated 3 April 2019 the wife says that following the husband's promotion to CEO "It seemed that overnight he became wealthy and the quality of our lives changed substantially for the better..." He was able to buy a substantial flat in an expensive neighbourhood in Novorossiysk which became their home, and another one in Moscow. The children were sent to "the very best private schools" in Russia, and later, as I will describe, to private schools in England. They hosted lavish parties. They went on expensive holidays several times a year. They flew by private jets (hired, but not owned, by

the husband) "all over the world and stayed in suites at the most luxurious, world-renowned hotels to include... The Berkeley and Claridge's..."

Hinaly and the Albatros Trust

20 By about 2005 the husband considered that it was necessary or appropriate for him to shelter his wealth and he began to set up the sort of structure that rich people do to that end. The dates and information which follow are based upon the statements of Zachary Segal of Mishcon de Reya dated 17 May 2018, and Andrea Vallabh, who is based in Switzerland, dated 22 June 2018, the truth and accuracy of both of which I accept.

21 The husband caused Hinaly to be incorporated in the BVI on 5 January 2006. Upon incorporation, he was the sole shareholder and sole director. On 21 April 2008 a trust known as the Albatros Trust was established under the laws of the BVI. The sole trustee of the Albatros Trust is Continental Administration Services Limited (CAS), a company incorporated in St Kitts and Nevis. Andrea Vallabh, Jay Vallabh and Susanna Vallabh, all based in Switzerland, are the three directors of CAS. On 22 April 2008 the husband's shares in Hinaly "were cancelled and CAS became the sole shareholder of Hinaly, holding the shares on trust for the beneficiaries of the trust." From 22 April 2008 the husband was a beneficiary (and, so far as I am aware, the sole beneficiary) of the Albatros Trust until 7 February 2012. Upon that date the husband was excluded as a beneficiary and the parties' three children, A, B and C, were added as (so far as I am aware, the sole) beneficiaries of the trust. Certainly, as at the date of his statement in June 2018, Mr Vallabh says that "The children remain the sole beneficiaries of the trust."

22 Although his shares in Hinaly were cancelled in April 2008, the husband remained the sole director of Hinaly until 1 October 2014 when he was removed. Upon that date, Andrea

Vallabh was appointed the sole director of Hinaly and has remained the sole director. These arrangements were patently orchestrated by the husband. Since February 2012 the structure has been that Hinaly owns assets (I have no idea what or how much). Hinaly itself is owned by CAS. CAS holds the shares as trustee for the three children. The husband ceased to have any position in the structure after he was removed as the sole director of Hinaly in October 2014. Since then there has been and is, as Mr Zachary Segal put it at paragraph 10 of his statement of 17 May 2018, "an overlap between the three directors of CAS [the three Vallabhs including Andrea Vallabh] and the sole director of Hinaly [Andrea Vallabh]."

23 It costs money to establish and maintain international structures of this kind, and Mr Chamberlayne submitted that ordinary people on ordinary incomes do not establish structures of this kind unless there is wealth to shelter. That, of course, tells one nothing at all about the scale of the wealth. Hinaly undoubtedly has owned funds and has made payments as I will later describe. In the absence of any disclosure at all, I have absolutely no idea whether Hinaly still owns funds or how much. As a matter of legal structure, a veil was clearly drawn.

24 Since April 2008 the husband has not had any share in Hinaly. Since February 2012 he has not been a beneficiary of the Albatros Trust. Since October 2014 he has not been a director, but until then was the sole director, of Hinaly. That was not, however, the reality in practice. By 2013 the husband was neither a shareholder in Hinaly nor a beneficiary of the Albatros Trust on whose behalf CAS own their shares in Hinaly. He was merely the sole director. But documents found by the wife and exhibited to her statement dated 25 March 2019 clearly show that on 15 April 2013 the husband instructed the bankers of Hinaly to "Please transfer from my [sic] account 'Hinaly Company Limited'... the amount of US$1,500,000..." to a specified account named "Le Platt Company Limited." The wife does not know who or what Le Platt Company Limited is or was, nor the purpose of the payment;

but the document appears to evidence that even in April 2013 (after he had ceased to be a beneficiary of the trust) the husband was able to, and did, treat Hinaly's funds as his own ("my account").

25 Other documents evidence that on 18 December 2013 the husband caused Barclays Bank in Monaco to close two accounts and transfer the assets (the closing balances are not specified) to an account of Hinaly Company Limited in Geneva, Switzerland. One document pertains to an account which the husband describes as "my account Hinaly Co Limited." The other pertains to an account described as "my personal account" and purports to be signed by the wife, Vilinova, Irina. She says that the signature is not hers and she was never aware of the personal account in question with Barclays.

26 Further, the wife's own bank statements with Société Générale clearly show that on 25 February 2014 she received £19,950 into her account from Hinaly Co Limited marked "Financial support"; on 10 November 2015 she received £20,000 from Hinaly Company Limited marked "Gift"; and on 4 March 2016 she received £8,000 from Hinaly Company Limited marked "Gift". The wife was not a beneficiary of the Albatros Trust, and the only probable explanation for these payments is that the husband, although ostensibly no longer connected in any way with Hinaly or the Albatros Trust, caused them to be made for the purposes stated. As Mr Chamberlayne put it at paragraph 29 of his opening note dated 3 April 2019 "The husband clearly forgot that he should not still be using Hinaly to provide money to the wife." The wife, who was not privy to these detailed structures (which have been explained by the statements produced on behalf of Hinaly during the present proceedings), says that in 2010 the husband introduced her to Andrea Vallabh as the man who would be looking after his money for him.

The move to England

27 During 2010 the parties decided that B should be privately educated in England and he was sent as a boarder to a preparatory school in Sussex in autumn 2010. In 2011 the parties decided that C should go to the same school but, being only 6, as a day boy, and that the wife would move to England to facilitate this. Initially, she lived in a rented property called Oak Lodge. The wife required a Tier 1 investor visa in order to remain in the United Kingdom. By a Letter Direction dated 12 December 2011 the husband, describing himself as "the beneficial owner" of Hinaly, directed himself as "the sole director" of Hinaly to pay a dividend of £1,100,000 sterling to the wife into such account as she may direct. On 7 December 2011 that payment had actually been received into an account in her name which was opened for the purpose with Société Générale Hambros, and marked "Funds received Hinaly Co Limited."

28 During 2013 the parties decided to buy a house in England and found Bluebells in Warnham, West Sussex. The purchase was completed on 3 April 2013 at a price of £2 million. The husband gave instructions to the conveyancing solicitors, Philip Ross, but the purchase was in the wife's sole name. The husband told her that Bluebells was a gift for herself and the children. The solicitors acting on the purchase were Philip Ross. Pursuant to an order made by me in these proceedings on 24 July 2018, Philip Ross have produced their conveyancing file. I have not personally studied or seen the whole of that file. I am told that it shows the wife as the client. There is no reference upon the file to the purchase monies having come from Hinaly or that Hinaly had loaned any money to her. There is a reference to the deposit of £200,000 being paid from a joint account in the names of the parties in London and to the balance being paid by, or from, an asset management company in Switzerland called Dome Capital.

29 However, what there is on the file are two highly significant documents. The first is a copy (in parallel Russian and English texts) of a "Contract for Purchase - Sale of Securities" dated 12 September 2007, which evidences the sale by the husband personally to a third party of 76,726,242 shares in NCS for a total price of US$14,739,111. The second is a bank statement from Investsberbank which appears to evidence receipt of precisely that sum, namely US$14,739,111, into a personal account in the name of the husband on 19 November 2007. I assume that these documents were produced by the husband for anti-money-laundering purposes to satisfy Philip Ross of the legitimacy of the source of the funds, albeit some five and a half years later. At all events, they appear clearly to indicate that by 2007, after about eleven years as CEO of NCS, the husband had amassed not less than 76.72 million shares in the company (he may, of course, have had more and only realised a part of them) and had generated wealth of not less than US$14.739 million.

30 The wife says that over Easter 2013 she and the boys were staying with the husband in Novorossiysk in Russia. Easter Sunday in 2013 was on 31 March. She says that she kept careful records of her movements in and out of the United Kingdom after she moved here in 2011 and that she has a record that she and the two younger boys and the husband flew back to England in a private jet on 14 April 2013. They flew from Anapa in Russia to Farnborough, Surrey. She says that they then slept for about two nights at the house which was rented by them, Oak Lodge, and then moved into the newly purchased house, Bluebells. The husband helped with the process of moving. The wife says that it was while they were moving into Bluebells a few days after 14 April 2013 that the loan agreement relied upon by Hinaly was actually signed by both parties in the presence of each other. I will, for convenience, describe more fully her evidence in relation to that when I consider the discrete issue of the validity of the alleged loan below.

The divorce and legal proceedings in Russia

31 The wife says that towards the end of 2013 she flew with the husband and children in a private jet to Russia for the Christmas holidays. During the flight, he told her that England was her place to live and that she should get a job, not because she would need money but so as not to be lonely. He said he would give her money. When she arrived at their apartment in Russia, she found her clothes and belongings already packed in suitcases. She realised that this meant their marriage was at an end. She returned to England. The parties remained on good terms and the husband continued to support her and paid the school fees.

32 In 2016 the parties agreed that they should divorce. The husband told the wife that as she was a Russian citizen she would have to divorce him in Russia as a divorce in England would not be valid. He told her that B and C would both also have to travel to Russia to sign documents there to confirm that they wished to live in England with their mother. The wife says that C did not want to go to Russia and cried when she told him that he needed to. She assured him he would be returning home (viz to Bluebells) after the holiday.

33 The wife and boys arrived in Novorossiysk on 29 May 2016. The boys stayed with their father. The wife stayed with her sister-in-law. The husband told her they must meet at the court on 31 May 2016, which they did. The wife did not have a lawyer and had not received any legal advice. The wife says that in the courtroom the judge spoke only to the husband and not to her. At this point, the husband produced documents from which the wife saw (as the divorce certificate makes clear) that a judge had made a "divorce decree" on 18 April 2016 and that the marriage had already been "dissolved" on 19 May 2016, some eleven or so days earlier and, she says, entirely without her knowledge. A copy of the divorce certificate was given to her on 31 May 2016.

34 The wife says that she was then told to attend with the children at a notary and there sign two agreements which had already been prepared by the husband. She had no independent advice and felt pressurised into doing so. The notary did not explain at all to her or the children what they were being asked to sign. C was only aged 10. The gist of the financial "agreement" was that the wife would retain Bluebells and any other assets then in her name. The husband would retain all else. There was no mention of any loan by Hinaly to the wife. The court approved the "amicable" agreement on the basis of "having heard the parties." It had not actually heard from the wife. There had been no disclosure at all. She had not had any legal advice. She had been taken completely by surprise and must have been overwhelmed by these events. She had been set up and ensnared by the husband.

35 Another agreement did provide that B and C would live with their mother in England and continue at school in England and visit their father in Russia during school holidays.

36 The next day the family were gathered at a family party including the wife's parents and other family members. The husband was abusive towards the wife and humiliated her. She threw her glass of champagne in his face. He physically attacked her until restrained by others. She ran from the room and spent the night at her parents' home. The children were staying with their father. The wife and the children were due to fly back to England the next day. The wife attended at the airport expecting both boys to be brought to the airport for the flight. B was brought to the airport shortly before the gates were due to close. C was not brought. The wife must have been in a hideous dilemma, for B was due back at his boarding school the next day. She felt she had no choice but to leave with B and then take steps to get C back once she was in England. She has never since seen C again.

37 On 7 June 2016 the husband sent the wife an email stating that C (who was then still aged 10) had taken "a grown-up decision to change his application regarding the place of

residence" and, on the same date, an application in the name of C was signed by C stating that he consents to residing with his father in Russia. On 8 June 2016 the husband sent the wife a highly abusive email in which he stated, "This will be a long, drawn out trial, as I warned you... you are no mother..... you are a bandit and a heap... You as the last piece of stupidity abandoned the children at night... you simply don't exist anymore with our family - you just don't exist..."

38 On 10 June 2016 the husband sent to the wife an email informing her that he had written a statement to the police concerning a criminal case to be brought against her for deliberately causing minor damage to his health. This was apparently a reference to events at the party. The husband sent the wife further highly vituperative emails, including one on 1 July 2016 describing her as a liar, a thief, and simply a whore, and referring to her breath-taking stupidity and total illiteracy.

39 On 1 August 2016, at a hearing of which the mother had notice but did not attend, the Russian Court determined that the place of residence of C would be with his father. On or about 2 October 2016 the husband sent the wife a long letter in which he stated that he had left to her and B and C £3 million: namely, Bluebells worth £2 million and the £1 million in Hambros Société Générale. He proposed that, as C was now living with him, the wife should "voluntarily on the basis of an out of court settlement" transfer one-third, namely £1 million, to C before 1 November 2016. The letter continued with the following threat:

> "In the event that you refuse to transfer the above amount or do not reply to my letter before 1 November 2016, I will be obliged to apply to the... Regional Court in Novorossiysk with a claim for the protection of the property interests of our minor son C... in that case, in the court hearing you will be obliged to produce documentary evidence of your ownership of the house and the securities in an investment account in a foreign bank opened in your name and all the transactions from the time it was opened until now, which doubtless would draw the attention of the Russian Federation tax authorities, since the opening of an account in a foreign bank and all

> transactions and securities on the account are violations of the tax law for currency residents, which you are, according to the Russian Federation tax code.
>
> It is not possible to predict what the decision of the court would be, but the trial would be a great financial and emotional burden on all parties: the loss of working time and accordingly loss of earnings, court costs... for each party the costs would be considerable. It is also possible that the court may decide to place all the above property under conservatory arrest. For the children this would be a loss of time from their education due to compulsory attendance in the court hearings. For B, this would be critical before his exams. For C this would once more be psychological stress, from which he has begun to recover in the course of his treatment. The judicial assessment and legal consequences of a trial in the Russian Federation, prepared by tax consultants are set out in annex 1 to this letter."

40 The "legal analysis of the trial" attached as annex 1 to that letter sets out in considerable detail a contention that the wife, being a non-resident Russian citizen, had failed to declare and pay tax on dividends, and postulated a fine "which could be more than one million British pounds sterling" and criminal liability punishable by up to three years' imprisonment. The document ends:

> "Conclusion: the trial is extremely dangerous and bears large financial risks and the risks of criminal prosecution by the tax authorities for Irina Vilinova both in Russia and in the UK."

41 Since receipt of that letter, it is very understandable that the wife has not dared to risk returning to Russia and so she cannot see C even if the father would permit her to do so there. Conspicuously, the one thing that letter of 2 October 2016 and the attached legal analysis do not mention is that the wife owes Hinaly £2 million or any other sum at all. The thrust of the letter is that the husband has left her with assets of £3 million, albeit that she should pay one-third to C.

42 The wife did not comply with the demands in the letter of 2 October 2016, and it was not long after, on 15 February 2017, that the wife received the first letter from Mishcon de Reya on behalf of Hinaly demanding that she should pay to Hinaly the sum of £3,315,842, being

repayment of the alleged loan, penalty and interest. During June 2017 the husband obtained from a court in Russia an order that the wife must pay significant child maintenance to him for C.

The wife pays £400,000 to A and shares Bluebells with B

43 In January 2018 the wife was forced to close her investment account when the bank informed her that they required a minimum of £2 million on deposit. She had about £1 million. At this, she panicked and decided to transfer £400,000 to A in Russia. As I understand it, she did so in order to put that money beyond the reach of Hinaly who were continuing to maintain their claim. I have been informed by Mr Chamberlayne that the wife considers A to be loyal to her and trustworthy and he will repay that £400,000 to her on demand. About the same time the wife also transferred Bluebells into the joint names of herself and B, in part to appease the husband and in part to support B's application for a student visa for Australia so as to show he has property in England.

The wife's subsequent move of house

44 Whether wisely or not, the wife also decided to sell Bluebells in order to create some liquidity and further to appease the husband. She sold it on 31 August 2018 for £1.5 million and purchased a much more modest property at 38 Brick Lane, Slinfold for £500,000. She says that, after payment of fees and stamp duty, she was left with about £780,000 from the proceeds of sale of Bluebells. From these net proceeds she transferred a further £450,000 to Russia into accounts in the names of A and B there. Mr Chamberlayne told me that the wife is confident that each of A and B would repay their shares of this sum to her on demand. The new house at 38 Brick Lane has similarly been purchased in the joint names of the wife and B.

The Hinaly claim

45 As I have already stated, the wife does not know, and I do not know, the source of the funds with which Bluebells was purchased, apart from the initial deposit which came from a joint bank account of the husband and wife in London. Ultimately, of course, all the wealth has been generated by the husband and he was the source of it. The actual payment to Philip Ross was made by, or received from, Dome Capital in Switzerland. For the purpose of considering Hinaly's claim, I am prepared to assume, favourably to Hinaly (but without so holding or making a finding to this effect), that they did indeed provide the money indirectly through Dome, if not directly. Philip Ross' report on title to the wife dated 15 January 2013 records that, "Funding. It is understood that this shall be a cash purchase from the buyer's own funds." A handwritten note on the Philip Ross file is headed "Mr Vilinov." It notes his role with NCS, records that "House in Irina's name", and notes "Source of funds, tax declaration $14 million." This clearly relates the source of the funds to the $14.73 million received by the husband from the share sale, of which evidence had been supplied to Philip Ross and is on their file. There is no hint on the file of any of the funding being a loan, whether from Hinaly or anyone else.

46 The wife says, and I accept, that there was never any mention whatsoever by the husband of any of the purchase funds being a loan at any time on, or prior to, completion on 3 April 2013, by which time the money (whatever its source) must, of course, have been paid. Rather, the husband had told her that Bluebells was a gift to her and the children. As I have described above, the parties and the children were in Russia over Easter 2013 and returned to England on 14 April 2013. Over the next few days they first stayed at Oak Lodge and then moved in to Bluebells. The wife says that in this period while they were both together at Bluebells the husband told her that she needed to sign a loan agreement "for tax

purposes." He told her that the existence of the agreement would be to her advantage so as to ensure that the purchase price of Bluebells was not considered by HMRC to be part of her or his income. He assured her that in truth and reality the £2 million was a gift, and that she would never be required to repay the money, which, in any event, she would never be in a position to do without becoming homeless. The husband then produced to her a fully drafted loan agreement document which was stored on his iPad. He emailed it to her and she printed it out while they were both in the room together. She had no legal advice; but, in reliance upon his representations and assurances, she and he then signed it in the presence of each other at Bluebells. The husband kept and took with him a scanned copy of the signed agreement. The wife said that she herself still has the original at home.

47 It follows from the above that it is not disputed or in issue that the signatures on the agreement are the genuine signatures of both parties, and that the wife did sign the document knowing that it purported to be a loan agreement. It bears the typed date March 18, 2013. There is no handwritten date beside either signature as to the actual date of signing, but I accept the evidence of the wife that it was actually signed by each of them a few days after 14 April 2013. It is headed "Loan agreement No. 01/2013" and describes Hinaly registered in the BVI as the lender "represented by the director Mr Igor Vilinov acting on the basis of the Articles of Association", and describes the wife as the borrower. Clause 1.1 provides that "The lender shall grant to the borrower a loan for the amount of GBP 2 million" and that the interest rate is 1 per cent per annum. Clause 2.1 provides for repayment not later than the date of the loan granting "or earlier upon the lenders' request." Significantly, clause 2.1 defines the date of the loan granting as "the date of crediting of the loan to the bank account of the borrower specified in clause 6". Clause 6 specifies a bank of the borrower in Geneva, with HSBC London the "correspondent bank." So far as I am aware, no money ever was paid by Hinaly into the wife's specified account in Geneva or to HSBC in London.

48 There are a number of other detailed provisions. Clause 5 provides that the agreement is governed and construed in accordance with English law, and provides for arbitration by the LCIA in the event of any disputes. The agreement is "SIGNED ON BEHALF OF THE LENDER..." by "Igor Vilinov Director."

49 That agreement required repayment by a date not later than six months after the loan was credited to the borrower's specified bank account. Assuming (without so holding) that Hinaly had credited £2 million into the specified bank account shortly before completion on 3 April 2013, that required repayment in or around late September 2013. The wife did not make any repayment by that date or at all and was not asked to make any repayment, but in October 2013 the husband told the wife that it was necessary to sign another document. He told her that this was also a requirement for tax purposes and that the money continued not to be repayable. He sent it to the wife by email on 29 October 2013 and the wife has said that she still has the covering email of that date, although I have not seen it. This document is headed "Additional agreement to the loan agreement No. 01/2013 dated 18.03.2013". It bears the typed date 15 October 2013, although the wife says that it was signed later than this. Again, it describes Hinaly as the lender, represented by the director, Mr Igor Vilinov, and the wife as the borrower. The husband signed it as "Director of Hinaly Co Limited in the person of Mr Igor Vilinov." It amended clause 2.1 of the first agreement to substitute a date for repayment of the loan and interest of March 18, 2018. It provided that other provisions of the first agreement shall remain in effect and shall operate unmodified.

50 Clearly, the second agreement does not of itself impose any new obligation upon the wife, and if the first agreement is of no effect, being a sham, then the second agreement, which is "additional to" and amends the first agreement, must fall with it. Hinaly might have argued, if present, that the fact that the wife signed the second agreement in some way evidences or

supports that she did think that the first agreement was valid, effective and binding upon her. But, in reality, the signing of the second agreement is equivocal. If, as the wife asserts, the husband had told her that the first agreement was not binding upon her and said the same about the second one, then the fact that she signed the second one is equivocal on the issue of sham.

51 There has not been a word of evidence by, or on behalf of, either Hinaly or the husband, although the thrust of the wife's case has been clearly set out for some time in her various statements and her Points of Claim. Hinaly obviously possess copies of the two agreements and would rely upon them as meaning what they say. Mr Chamberlayne readily accepted that the two documents appear valid on their face; and that if they were not sham, they would create a binding contract to repay the loan and interest, assuming that Hinaly did indeed advance the money. Mr Chamberlayne says that there is, in fact, no evidence that Hinaly did advance any money and, accordingly, no evidence that Hinaly gave any consideration, and no evidence that the loan agreement was ever triggered; but he submits that even if Hinaly did advance the money and even if the agreement was in that way triggered, it was, and is, a sham. As I have said, I am prepared, very favourably to Hinaly, to assume (but without holding or making a finding to this effect) that they did directly or indirectly advance the money, and I will ignore the somewhat legalistic or technical point that, on any view, there was not literal compliance with the provision of clause 2.1 for crediting the loan to the borrower's specified bank account. The question still arises: were these agreements sham and therefore unenforceable?

52 As Mr Chamberlayne rightly accepted, the burden of proof must be upon the wife to prove on the balance of probability that they were. In the absence of any evidence from the other parties, and finding her to be a credible and reliable witness, as I do, I accept the wife's evidence and account, which I have narrated, of the circumstances in which the agreements

were signed and of the statements and representations which the husband made to her. The husband signed the agreements expressly on behalf of Hinaly as the director (and we now know, the sole director at the material time) of Hinaly. If he signed as director and had the authority to contract on behalf of Hinaly, he must also have had the authority in that capacity to make the collateral statements and representations which he made to the wife. In the well-known case of *Snook v London and West Riding Investments Limited* [1967] 2 QB 786 Diplock LJ said at p.802 that the meaning of the word and concept of sham is:

> "... acts done or documents executed by the parties to the 'sham' which are intended by them to give to third parties... the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations (if any) which the parties intended to create... For acts or documents to be a 'sham', with whatever legal consequences follow from this, all the parties thereto must have a common intention that the acts or documents are not to create the legal rights and obligations which they give the appearance of creating."

53 In the later case of *National Westminster Bank Plc v Jones and others* [2001] 1 BCLC Neuberger J said at paragraph 45 that:

> "... the whole point of a sham provision or agreement is that the parties intend to give the impression that they are agreeing that which is stated in the provision or agreement, while in fact they have no intention of honouring with their respective obligations, or enjoying their respective rights, under the provision or agreement."

54 A passage in the judgment of Arden LJ in *Stone v Hitch* [2001] EWCA Civ 63 at paragraphs 65 to 69 helpfully repeats and elaborates the principles to be drawn from *Snook*. In my view, what happened in the present case falls squarely within these statements of what is a sham. The intention of the husband on behalf of Hinaly was made express to the wife and is clear. It was, to borrow the language of Neuberger J, to give the impression to tax authorities that they were agreeing that which was stated in the loan agreement, while in fact (as the husband expressly said) Hinaly had no intention of enjoying their rights under the

agreement which, he said, would never be enforced against the wife. The money remained, he said, a gift and not a loan. As the wife signed in reliance upon that clear representation of the husband and his statement that it was a tax advantage to her to do so, she must have shared in that intention.

55 In the language of Diplock LJ in *Snook,* on the basis of the husband's representations and statements, the agreement was intended to give to third parties, such as HMRC, the appearance of creating between the parties legal rights and obligations - viz a repayable loan - different from the actual legal rights and obligations (if any) which the parties intended to create. In the present case they did not intend to create any rights and obligations since a gift does not do so. It is my view, and I hold, that both loan agreements were clearly shams and the wife has discharged the burden of proof upon her. The money was a gift and the wife does not owe Hinaly any money at all.

Declaration

56 The next question is how I should give effect to that conclusion in the procedural circumstances of the present case. Currently, Hinaly have formulated their claim in writing to the LCIA. Hinaly have been restrained from progressing those proceedings until further order, but the arbitration proceedings or the claim have not been dismissed. As I have explained, the claim of Hinaly now clearly falls to be adjudicated upon in the present proceedings, and it was clearly contemplated as recently as the hearing on 16 January 2019 that it would be; but, in breach of paragraph 6 of the order of 16 January 2019, Hinaly have failed to plead their claim, so, arguably, there is no actual claim before me for me to dismiss. Further, there is a clear threat implied in the letter of Mishcon de Reya of 13 March 2019 that if the terms of that letter are not accepted, Hinaly may pursue their arbitration claim "in any jurisdiction", and the letter proposes cross undertakings "not to bring claims against the

other anywhere in the world." No such undertaking has in fact been given by Hinaly. For these reasons, Mr Chamberlayne has submitted that I should give effect to the above holding by making a formal express declaration on the face of the court's order to the effect that the two loan documents are shams, as I have found them to be.

57 The High Court, in which this case is proceeding and in which I am sitting, has a power to grant declarations. A declaration is a discretionary remedy. However, a declaration is a rare remedy in private law civil disputes such as a claim for repayment of a loan, and I am in no doubt should only be granted very sparingly and rarely. Mr Chamberlayne drew my attention to the recent judgment of O'Farrell J in *Office Depot International (UK) v UBS Asset Management (UK) Limited and Others* [2018] EWHC 1494 (TCC). The facts and circumstances of that case were far removed from those of this case. It concerned a warehouse with a leaking roof and an opposed application by the claimant to amend its pleadings to claim, amongst other matters, a declaration against the fourth defendants as to what remedial works, if any, the claimant was obliged to do. At paragraphs 46 to 49 O'Farrell J cited from authority and summarised the applicable legal principles in deciding whether to grant a declaration. In even further summary, the court has a wide jurisdiction to grant declaratory relief. Declaratory relief will only be granted where there is a real dispute between the parties. The jurisdiction is confined to declaring contested legal rights of the parties represented in the litigation before it. Declaratory relief will only be granted where the terms of the declaration sought are specified with precision. When deciding whether to make a declaration or not, the court should take into account justice to the claimant, justice to the defendant, whether the declaration would serve a useful purpose, and whether there are any other special reasons why, or why not, the court should grant the declaration.

58 Applying these principles to the unusual circumstances of the present case, I am satisfied that both parties, that is Hinaly and the wife, are properly parties before the court. Although

Hinaly are not now represented, that is their own choice having previously engaged high-powered representation. There is clearly a contest as to the legal rights of the parties. The terms of the proposed declaration have been specified with precision. In my view, justice to the wife requires that this issue is definitively and publicly ruled upon on the face of an order of this court. I do no injustice to Hinaly by granting a declaration. They have trailed their claim. They have had every opportunity of adducing evidence and argument if they wish to do so. The implied threat that Hinaly may yet seek to bring claims against the wife anywhere in the world needs to be as effectively nailed as it is in the power of this court to do.

59 Further, I will shortly consider the wife's Part III claims in the light of my finding as to the Hinaly claim. Accordingly, I will do so on the basis that she has no debt to Hinaly and they have no enforceable claim against her. If I had found that she did owe £2 million plus interest to Hinaly, I would have added that amount to the award I propose to make against the husband. In those circumstances, it would be a gross injustice to the wife if, later, Hinaly (the assets of which are ultimately held on behalf of these parties' own children) could revive their claim and seek to strip her of £2 million plus interest. She needs as much protection as I, by declaration, can give to her. For these reasons, I now formally declare, and will formally declare on the face of the order, that the two loan documents namely, (a) the "Loan agreement No. 01/2013" dated 18 March 2013 between Hinaly Co Limited and Mrs Irina Vilinova, and (b) the "Additional agreement to the loan agreement No. 01/2013 dated 18.03.2013", itself dated 15 October 2013, are shams, and that Irina Yurievna Vilinova is not indebted to Hinaly Company Limited at all.

The Part III claim and the 1984 Act

60 Jurisdiction in this case is clearly founded on section 15(1)(b) of the 1984 Act, namely, that the wife was habitually resident in England and Wales throughout the period of one year ending with the date of the application for leave; and, indeed, throughout the period of one year ending with the date the divorce took effect in Russia, namely May 2016. Whether or not the wife became habitually resident here while living in the rented house at Oak Lodge, she certainly did so after she settled into Bluebells in April 2013. Accordingly, the restrictions under section 20 of the 1984 Act are not in point and do not apply in this case.

The duty under section 16

61 By section 16 of the 1984 Act I must first consider whether in all the circumstances of the case it would be appropriate for an order for financial relief to be made by a court in England and Wales, and must, in particular, have regard to the matters listed in section 16(2) of the Act which I now specifically address in turn.

62 (a) There is a distinct, genuine and considerable connection between both parties and England and Wales. They made a joint decision that their two younger sons should be educated here. In furtherance of that decision, the wife has lived here, at the wish of the husband, since 2011. The husband voluntarily bought a house here for the wife and the children in 2013 and caused it to be placed in her name. The wife has lived here continuously ever since. She became a British citizen in November 2018.

63 (b) The connection with Russia, in which the marriage was dissolved, is also very genuine and very considerable. The parties are both Russian citizens who were born and brought up there. They married there. The wife lived there until 2011. The husband still lives there. Their eldest son lives there and, in the circumstances that I have described, their youngest son does as well.

64 (c) Neither party has any relevant connection with any other country outside England and Wales except Russia.

65 (d) The wife has not received, and is not likely to receive, any financial benefit in consequence of the divorce by virtue of any agreement or the operation of the law of a country outside England and Wales. As I have described, a financial agreement was signed in May 2016 within the Russian divorce proceedings. It did not result in her "receiving" any financial benefit. It merely provided, in essence, that each party would keep what he or she already had. I am not aware that any child has received, or is likely to receive, any benefit in consequence of the divorce.

66 (e) There has been no order by a court in a country outside England and Wales requiring the husband to make any payment or transfer any property for the benefit of the wife, and so, as regards the wife, paragraph (e) is not in point. In June 2017 the husband did obtain an order in Russia that the wife pay alimony to the husband for the maintenance of C. She has not complied with it and is not likely to do so.

67 (f) It is probable that if the wife had not been taken by surprise and ensnared by the husband in May 2016 as I have described, but had had proper service of the divorce proceedings, and access to proper, independent legal advice, she could have applied for substantive financial relief from the husband under the law of Russia. I do not have any expert evidence as to Russian law, but Mr Chamberlayne has drawn to my attention the provisions of Article 34 of the Family Code of the Russian Federation No.223-FZ of 29 December 1995, as amended. Article 34 appears to provide that "(1) The property acquired by the spouses during their marriage shall be their joint property" and that "(3) The right to the spouses' joint property shall also be enjoyed by the spouse who kept the home or who looked after

the children in the period of the marriage, or who did not have an independent income because of other valid reasons." Mr Chamberlayne also drew my attention to a narrative account of Russian family law in ICLG.com which at section 2, under the heading "Finances on divorce", appears to describe a community of property regime and a presumption of a 50-50 distribution of all properties acquired during the marriage except gifts or inheritance. "Spouses can decide to enter into a pre-nuptial or post-nuptial agreement in order to opt for a regime of separation of assets," but there is no evidence that these parties did so. In the absence of expert evidence, I am unable to say what quantum of financial relief might in fact have been granted to the wife if she had been properly advised and represented and had made appropriate application to the Russian Court, but this material makes it seem probable that, if she had applied, she would have received some substantive financial relief. The agreement actually signed in May 2016 essentially reflects a regime of separation of assets; but, in the absence of a pre- or post-nuptial agreement, it appears that there should have been a more even distribution of assets, depending, of course, on what the scale of the assets truly was. The wife omitted to exercise the right to apply because at the time she had been taken by surprise and ensnared by the husband and had no access to legal advice. Even if (which I do not know) it was, or even still is, open to the wife subsequently to make an application to the Russian Court, she cannot risk travelling to Russia because of the chilling threats of fines, imprisonment and criminal prosecution made by the husband as I have described.

68 (g) So far as I am aware, there is no property available in England and Wales in respect of which an order in favour of the wife could be made. The only known property is 38 Brick Lane which is already in the names of herself and B. However, this is not a case in which I am asked to make, or contemplate making, an order "in respect of" any specified or particular property, whether here or abroad; but, rather, an order for the payment of a lump sum.

69 (h) The wife recognises, and I recognise, that she may face considerable difficulties in enforcing any order I may make, especially as she cannot identify any property in England and Wales against which an order in enforcement may later be made. The total non-engagement of the husband and his breaches of existing orders do not bode well. But I repeat what I said at paragraph 43(h) of my judgment in *Hammoud v Al Zawawi* on this point. I am not willing simply to dismiss the present application pursuant to section 16(1) of the Act simply on the basis that enforcement may be difficult. To do so would be to give in to a form of blackmail, and would serve as an invitation to many overseas respondents simply not to participate in proceedings under Part III but to raise the spectre of the difficulty of enforcement. I do not regard these proceedings, or the making of an order within them, as pointless on the basis that any order would inevitably be ignored or disobeyed, unenforceable and ineffective.

70 (i) The length of time which elapsed between the date of the Russian divorce in May 2016 and the wife making her application in April 2018 for permission to apply under Part III was two years. It is no fault or responsibility of the wife that it has taken a further year for them to be heard. She has frankly said that it was the threat of the Hinaly claim which really spurred her into making the Part III application. I do not consider that her delay of two years before applying is so long as to make it inappropriate for an order to be made.

71 After this review of the matters prescribed in section 16(2) of the 1984 Act, and anticipating my consideration of the matters to which I must shortly have regard under section 18 of that Act, I am satisfied that it is appropriate for an order for financial relief to be made by a court in England and Wales for the wife. The wife has long, strong and genuine connections with England and Wales and was cheated out of any fair or just consideration of her financial

position in Russia. Accordingly, I will now proceed to consider the application substantively.

Section 18 of the 1984 Act and section 25 of the 1973 Act

72 Sections 18(5) and (6) of the 1984 Act are not in point in the present case, nor, so far as I am aware, is section 18(3A). By section 18(2), I must have regard to all the circumstances of the case and give first consideration to the welfare while a minor of the remaining child of the family who has not attained the age of 18, namely C. C now lives with his father in Russia and there seems little prospect in the foreseeable future of his living with his mother, or even visiting her at her home in England. I have no doubt that whatever order I may make in favour of the wife, the husband will remain able to provide well for C, and I am willing to assume that he currently does do so. Thus, on the particular facts of this case, although I must give first consideration to the welfare of C while a minor, his welfare does not impact on outcome. I will, indeed, treat the wife as being now a single woman with no dependent minor children. That is, tragically, the reality of her position.

73 Section 18(3) of the 1984 Act imports into these proceedings under Part III the very well-known list of matters mentioned in section 25(2)(a) to (h) of the Matrimonial Causes Act 1973 ("the 1973 Act") and the duties under section 25(A)(1) and (2) of that Act. In that regard, I do intend that the order which I make in this case will be (once paid in full) on a clean break basis. I thus now address the matters mentioned in section 25(2) of the 1973 Act.

74 (a) Financial resources. I start with the wife. She owns 38 Brick Lane and, although she owns it jointly with B, I treat it (as Mr Chamberlayne accepts) as hers. It recently cost £500,000 which I take as its value. She currently has about £108,000 in liquid bank

accounts. She has a portfolio invested with St James' Place whose current value is about £185,000. Mr Chamberlayne agrees that I should add back the £400,000 paid to A and the £450,000 paid to A and B from the net proceeds of sale of Bluebells, on the grounds that they effectively hold it on their mother's behalf and would pay it back to her if asked to do so. I leave the value of the wife's watch and modest car out of account. Her total current assets are, accordingly, £500,000 plus £108,000 plus £185,000 plus £400,000 plus £450,000, or about £1,643,000. She has no current debts and she has already paid her costs of about £270,000 in full. Her solicitors in fact hold a small surplus.

75 The wife has no current income save that which her capital does, or could, produce. She last worked when she was 22, as a teacher. She told me that she would like to work in the future if she can. She said that it was always her dream to fly and she would love to work as a cabin crew. That no longer seems very realistic. Alternatively, she would like to work as a teacher, teaching English to foreign students. The problem with that, frankly, is that her own accent is not a good model of spoken English. However, she is a fit, intelligent and personable woman now aged 47, and it is probable that she could find some job which would generate income for her. Her claim is not advanced as an income-based or needs-based claim.

76 The financial resources of the husband are far, far more opaque as a result of his total failure to give any disclosure of his means, whether by Form E, discovery of documents, or narrative statement. He has clearly worked hard to generate the wealth and lifestyle which he is known to have generated. He is now aged 56 and appears still to be the CEO of NCS, a position he has now occupied for over twenty-two years since 1996. The documents obtained from the Philip Ross file show that after only about eleven years he had acquired at least 76,726,42 shares in that company. Probably, he had acquired more, since it seems unlikely that he would at that stage have sold his entire holding. Those shares were sold for

US$14,739,111. This, together with the wife's evidence of the lifestyle, is really all that I positively know about the husband's wealth. The rest is in the realms of inference or speculation.

77 In his opening note for this hearing Mr Chamberlayne described paragraph 16 of the judgment of Mostyn J in *NG v SG* [2011] EWHC 3270 (Fam) as "a handy summary of the principles in relation to non-disclosure." After a thorough review of the then previous authorities Mostyn J said at paragraph 16:

> "Pulling the threads together, it seems to me that where the court is satisfied that the disclosure given by one party has been materially deficient then:
>
> (i) The court is duty bound to consider by the process of drawing adverse inferences whether funds have been hidden.
>
> (ii) But such inferences must be properly drawn and reasonable. It would be wrong to draw inferences that a party has assets which, on an assessment of the evidence, the court is satisfied he has not got.
>
> (iii) If the court concludes that funds have been hidden, then it should attempt a realistic and reasonable quantification of those funds, even in the broadest terms.
>
> (iv) In making its judgment as to quantification the court will first look to direct evidence such as documentation and observations made by the other party.
>
> (v) The court will then look to the scale of business activities and at lifestyle.
>
> (vi) Vague evidence of reputation or the opinion or beliefs of third parties is inadmissible in the exercise.
>
> (vii) The *Al-Khatib v Masry* technique of concluding that the non-discloser must have assets of at least twice what the claimant is seeking should not be used as the sole metric of quantification.
>
> (viii) The court must be astute to ensure that a non-discloser should not be able to procure a result from his non-disclosure better than that which would be ordered if the truth were told. If the result is an order that is unfair to the non-discloser, it is better that than that the court should be drawn into making an order that is unfair to the claimant."

78 I have all those points firmly in mind, including that at point (viii). But in the end, as it seems to me, I have to make the best assessment, on a balance of probability, that I properly and reasonably can as to the scale of the husband's wealth on the material available. The husband sold shares worth US$14.73 million in 2007. He is unlikely to have sold all his shares. As well as those shares, he had been able by then to buy substantial apartments in both Novorossiysk and Moscow. On a very conservative view, he had generated wealth of at least US$16 million by 2007. In the absence of any disclosure by him, it seems to me a fair, reasonable and proper inference that in the ensuing twelve years, during which he has remained in his position and NCS has prospered and expanded, he will have acquired further shares and generated at least the same amount of wealth. It may be much more. The wife herself speculated that he might now be worth US$100 million. She may be right, but that is far too speculative. I conclude for the purpose of this judgment that the overall net wealth of the husband is not less than US$32 million, or the equivalent of about £25 million, less the £3 million which he has already made, or caused to be made, available to the wife. I therefore very conservatively assess his own wealth as not less than £22 million.

79 I have no idea where that wealth is held or secreted and, of course, the husband may currently still hold substantial shares in NCS which he has not realised. On this part of the case, Hinaly is a red herring. I have no idea what are the current assets of Hinaly, but it is inherently improbable that the husband will have piled all his wealth into a trust fund for his children and retained little or none for himself. I have no idea as to the current level of income of the husband, but I will assume that, as he is in a high-ranking position, his income amply funds all his personal current outgoings, including the needs of C, so that he is not dependent on his wealth to fund his ordinary living expenses. He can accumulate his capital.

80 (b) Financial needs and obligations. The wife currently has no financial obligations and responsibilities save for herself and perhaps B until he has finished at university. The husband clearly now has a financial obligation to C but to no one else apart from himself so far as I am aware. I do not have any measure of the husband's needs but, as I have stated above, I assume that all his expenditure needs, including those of C, can be met out of income and that he is comfortably housed with his apartment in Novorossiysk.

81 The wife produced a very reasonable budget indicating anticipated assumed needs for herself of about £53,000 per annum. A *Duxbury* based fund to produce that annual sum, index linked for life for a woman now aged 47, would be about £1.1 million. The wife has already downsized from Bluebells to 38 Brick Lane. She described it as a convenient and cosy house which she likes and where she proposes to stay even if possessed of significant additional capital. I treat that house, therefore, as matching her reasonable housing needs.

82 (c) I have already described the standard of living enjoyed by the family before the breakdown of the marriage. It was high.

83 (d) As I have stated, the parties are now aged respectively 56 and 47 and the duration of the marriage was about 22 years.

84 (e) Neither party has any relevant physical or mental disability so far as I am aware.

85 (f) The husband has contributed all the wealth and all the income apart from the earnings of the wife for a short period as a teacher. Both have made full contributions to the welfare of the children, and it was the wife who looked after the home until 2016. She still provides the home to which B will return from Australia. She has been disabled from providing the

home for C, but the fact is that it is the husband who is likely to do so in the future. In my view, both parties should be regarded as having, overall, made full and equal contributions.

86 (g) The litigation conduct of the husband in these proceedings has been very bad and his manipulation of the wife in relation to the Russian divorce and C has been appalling. However, I do not regard any conduct of either party as impacting on the overall size or amount of the award.

87 (h) I am not aware of the loss of any benefit by either party of the kind referred to in, or contemplated by, paragraph (h).

88 I am not proposing to exercise any power in relation to a child, and section 23(3) of the 1973 Act, which is imported by section 18(4) of the 1984 Act, is not in point.

Analysis

89 At paragraphs 47 to 51 of my recent judgment in *Hammoud v Al Zawawi* I summarised the law in relation to applications under Part III of the 1984 Act by reference to passages in the judgment of Lord Collins of Mapesbury in *Agbaje v Agbaje* [2010] UKSC 13, [2010] 1 AC 628. The law has not changed during the course of the last month and I incorporate those paragraphs into this judgment by reference. The essential points are that: (i) the legislative purpose of Part III is the alleviation of the adverse consequences of no adequate financial provision being made by, or available in, the foreign court; but (ii) the court is not limited to awarding the minimum amount required to overcome injustice; (iii) the proper approach depends on a careful application of sections 16, 17 and 18 of the 1984 Act in the light of that legislative purpose; (iv) it will never be appropriate for the court to make an order which gives the claimant more than he or she would have been awarded had all the proceedings

taken place here; (v) where possible, provision must be made for the reasonable needs of each spouse; (vi) subject to these principles, the court has a broad discretion and, where the English connections of the case are very strong, there may be no reason why the application should not be treated as if it were made in purely English proceedings.

90 This was a long marriage of twenty-two years in which the wife, who had married at 19, fully contributed as a wife and as a mother. All the wealth was generated during the marriage. It may have been arguable that some of the husband's current wealth was generated after the breakdown and separation, but in the absence of any disclosure, I have no basis for assessing that. If these had been "purely English proceedings" the sharing principle would have been applied and prevailed. I have conservatively assessed the husband's current wealth at not less than about £22 million. The wife now has £1,643,000. The combined total is about £23,643,000 of which half is £11,821,500. On that basis, the wife would, in purely English proceedings, receive an award of about a further £10 million. The English connections of this case are, in my view, now strong. But it would be an exaggeration to call them "very strong" in the words of Lord Collins, for it is easy to visualise a case with stronger connections than this one, for instance if both parties were actually living here. This is not a case in which the application should be treated as if it were made in purely English proceedings. But nor is it a case in which I should award the minimum amount required to overcome injustice. It falls somewhere between these two ends of the spectrum.

91 In view of the length of the marriage, the equal contributions, and the fact that all the wealth was generated during the marriage, I see no reason why the wife should be confined to a solely needs-based award which, as indicated, might have resulted in a *Duxbury* based award of about £1.1 million or thereabouts. I consider that even in Part III proceedings this wife is entitled to an element of sharing of the marital acquest. It appears, further, that if her

claims had been fully and fairly considered in the Russian proceedings on the basis of full and frank disclosure of the husband's wealth, she would have been entitled to a broadly equal share of that wealth.

92 The wife might, without obvious exaggeration, have pitched her claim at an award of about £10 million. She has not done so. She has limited her claim to a lump sum of £5 million. During the course of Mr Chamberlayne's oral submissions I summarised his submissions, with his agreement, as follows. "The wife and her advisors have taken a view. Arguably, under both English and Russian law she has a substantial sharing claim to as much as half of the wealth generated during the marriage (as it all has been). On that basis, even if the wealth is capped very conservatively at about US$30 million, she might realistically make a principled claim for about US$15 million less what she has already received and now holds. But, erring very much in the husband's favour and taking a realistic view of the difficulties of enforcement, the wife caps her claim at £5 million (about US$6.5 million) in addition to the assets she already holds. Mr Chamberlayne does not invite me to order more, but submits that if I order that amount, there is no possible risk of the award being too high or unfair to the husband."

93 I agree with that approach which I regard as both measured and well judged. An award of £5 million plus what she now holds of £1,643,000 would accord to the wife a little under 30 per cent of the conservatively assessed total wealth. That is a substantial discount from half, but reflects the nature of proceedings under Part III. Had the wife not capped her claim at £5 million, I might have awarded her more, although not as much as £10 million so as to give her half. As it is, I am satisfied that an award of £5 million certainly does not do any injustice to the husband. It is less than, and certainly not more than, the wife would have been awarded had all the proceedings taken place here. It leaves to the husband an assumed minimum of £17 million which must be sufficient provision for his own reasonable needs,

particularly as he still has his earned income. I will accordingly make a lump sum order in favour of the wife on a clean break basis in the amount of £5 million.

Costs

94 As between the wife and Hinaly, the ordinary starting point in civil proceedings should apply, namely, that the unsuccessful party must pay the costs of the successful party. On the issues between the wife and Hinaly, the wife is the successful and Hinaly the unsuccessful party. The wife is entitled to an order for costs against Hinaly. In my view, those costs should in this case be assessed on the indemnity basis to reflect the facts that: (i) Hinaly are in breach of the several orders made against them on 16 January 2019; and (ii) having participated in these proceedings and added substantially to the costs and complexity of them, Hinaly have at a late stage completely disengaged without in any way formally abandoning their claim, so that the wife has been forced fully to defend it.

95 As between the wife and the husband, the starting point in family financial proceedings, including proceedings under Part III of the 1984 Act, is one of no order as to costs. However, Family Proceedings Rules, rule 28.3 provides that the court may order one party to pay all or part of the costs of the other party when it is appropriate to do so because of the conduct of a party in relation to the proceedings. In so deciding, the court must have regard to the matters listed in rule 28.3(7) which I now do.

96 By his total failure to engage at all in these proceedings and his disobedience to all orders made, the husband has caused the wife to spend far more than she otherwise might have done in costs. There have been more hearings and they have been longer than they might otherwise have been. Her lawyers have had to fight every inch of the way. For these

reasons, in my view, the husband also must pay the wife's costs of and incidental to these proceedings, also to be assessed on the indemnity basis.

97 A great deal of preparatory work and court time has been taken up with both the Hinaly claim and the position of the husband and I am not willing to apportion the costs as between each of them. I will accordingly order both Hinaly and the husband jointly and severally to pay the costs of the wife of and incidental to these proceedings. Of course, she cannot recover twice over, and anything which she may recover from the one specifically in relation to costs must be credited against the liability of the other.

98 The final matter is assessment. The wife's solicitors have produced an overall statement of costs in prescribed form N260 having a bottom line total of £294,678.79 from which is now deducted £27,120 for the costs saved by non-attendance at court on Thursday and Friday of last week. That reduces the costs to £267,558.79 to which must be added £1,980 (inclusive of VAT) for the attendance today of Ms Emma Percy, a partner in Camilla Baldwin, and an assumed £1,000 for the cost of obtaining a transcript of this judgment. The final bill is therefore about £270,500.

99 Mr Chamberlayne has asked me now summarily to assess the wife's costs so as to save the yet further costs of a detailed assessment by a costs judge, which the wife may struggle to recover from the husband and/or Hinaly. For this reason, I am willing, very exceptionally, summarily to assess the costs, but a bill of this size and scale is way beyond the sort of bill that I would normally summarily assess. I do not have any sort of detailed itemised bill of the kind that would be prepared for a detailed assessment. I do not have the experience or knowledge to be able to assess the reasonableness of the charging rates, or the work done by different levels of fee-earners within the firm, or, frankly, the considerable fees of leading counsel. I will summarily assess the costs, but I must make a substantial discount to reflect

these matters. Although erring on the side very favourably to Hinaly and the husband, I propose to assess the costs at fractionally over 70 per cent of the full amount claimed, namely in the sum of £170,000. There will, accordingly, be an order that Hinaly and the husband must, jointly and severally, pay the costs of the wife summarily assessed in the sum of £170,000. Those costs and the lump sum payment of £5 million must all be paid on or before 31 July 2019, after which they will attract interest at the judgment rate. Once the lump sum has been paid in full, there will be a complete financial clean break between these parties.

CERTIFICATE

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