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Neutral Citation Number: [2023] EWHC 3438(Fam)

Case No: PT2019000131  
and FD19F000104

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**

MS Teams as from  
The Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Date: 20 December 2023

**Before :**

**Mr Justice Moor**

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**Between :**

**Dr Azari Ebrahim Hilal Aldoukhi**

**Applicant**

**-and-**

**Dr Maytham Mahmoud Haji Haidar Abdullah**

**Respondent**

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Mr Michael Glaser QC and Mr Gillon Cameron (instructed by Helen Pigeon Solicitors Limited) for the **Applicant**

Mr Mr Barry McAlinden (instructed by Karam, Missick & Traube LLP) for the **Respondent**

Hearing dates: 18<sup>th</sup> to 20<sup>th</sup> December 2023

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# JUDGMENT

## MR JUSTICE MOOR:-

1. In October 2021, I heard two applications made by Dr Azari Ebrahim Hilal Aldoukhi. The first was pursuant to the Trusts of Land and Appointment of Trustees Act 1996 (hereafter “TOLATA”). The second was brought under Part III of the Matrimonial and Family Proceedings Act 1984. In relation to each application, the Respondent was her former husband, Dr Maytham Mahmoud Haji Haidar Abdullah. As on the last occasion, I propose to refer to them as Dr Aldoukhi and Dr Abdullah respectively.
2. I refer to the public judgment that I gave, dated 18 November 2021, with Neutral Citation Number [2021] EWHC 3086 (Fam), for the history and background to the dispute between the parties. As I understand it, my judgment was not appealed to the Court of Appeal, even though Dr Abdullah had asked me for permission to appeal, which I refused.
3. In the judgment, I noted that the I only had marketing appraisals for the three properties. Knight Frank had suggested that Albion Gate be marketed at £2.25 million; The Piazza at £2.25 million to £2.5 million; and Craven Street at £4.5 million. I worked on these figures when I calculated the net equity but, in relation to The Piazza, I actually used the higher figure of £2.5 million, for reasons that are not immediately clear to me. I made the point that, if these figures were attained, the net equity would be approximately £3.8 million, without any allowance for the loans to Shamu claimed by Dr Abdullah.
4. I found that the parties were joint tenants of all three properties in law and equity, as there had been express declarations of trust. The rule in Goodman v Gallant applied. Dr Aldoukhi had no liability to Shamu. Dr Abdullah was to be treated as the sole owner of Shamu. There should be no equitable accounting until the date on which the joint tenancies were severed. Thereafter, the only equitable accounting that was required related to the fact that Dr Abdullah had paid off a UBS mortgage in the sum of (£1,534,085). It followed that, in the TOLATA proceedings, Dr Aldoukhi had to account to Dr Abdullah for half that sum, namely £767,042. I then said that Dr Abdullah was expected to receive £1,096,750 from Albion Gate; £308,750 from The Piazza; and £503,750 from Craven Street. This would give her a net total of £1,909,375 less the equitable accounting in relation to the UBS mortgage repayment. However, in the Part III proceedings, I found that both Albion Gate and Craven Street were matrimonial homes. I decided that I should direct that Dr Abdullah pay her a lump sum of £767,042 to restore to her the sum she owed him as a result of equitable accounting, such that both parties received the same amount, which I calculated would be £1,909,375 on the basis of sales at the market appraisals. Finally, I made a contingent lump sum in favour of Dr Aldoukhi, if Shamu was ever successful in suing her for any debt claimed by Shamu against her.

5. My orders are both dated 7 December 2021. In the TOLATA order, I made orders for the sale of all three properties, with equal division of the net equities. Dr Abdullah was to pay the mortgage and service charges pending sale. Dr Aldoukhi was to pay him £767,042 by way of equitable accounting. I directed that Dr Abdullah was to pay Dr Aldoukhi £291,007 in respect of costs by 21 December 2021, a sum I had summarily assessed on the indemnity basis. In the Part III proceedings, I directed that Dr Abdullah pay Dr Aldoukhi the sum of £767,042 to eliminate the equitable accounting. I also made the contingent lump sum in respect of any prospective Shamu litigation. Finally, I directed that Dr Abdullah pay the sum of £200,000 towards Dr Aldoukhi's costs by 21 December 2021.
6. It is asserted on behalf of Dr Aldoukhi that, contrary to my orders, Dr Abdullah did not pay the mortgage instalments to UBS nor the service charges on some or all of the properties. It is also asserted that he rented out Albion Gate to two separate tenants and he kept the rental income. There is no doubt that, on 17 February 2022, UBS issued a demand letter in relation to the mortgage on The Piazza and, on 18 March 2022, they did the same in relation to Craven Street. On 16 May 2022, UBS appointed Knight Frank as Receivers to deal with the sale of both properties. Knight Frank were instructed to market Craven Street at a guide price of £5.25 million and The Piazza at a guide price of £2.75 million. I note that both figures were considerably higher than Knight Frank's own figures produced prior to the trial. Perhaps inevitably, the prices had to be reduced on 14 September 2022 to £4.795 million and £2.45 million respectively.
7. On 5 December 2022, Knight Frank accepted an offer of £1,900,000 on The Piazza. Dr Aldoukhi asserts that this was some £600,000 less than the anticipated value at the trial, but I have already noted that this is on the basis of the higher market appraisal given by Knight Frank at the time and makes no allowance for any reduction from that figure in the negotiation process. The outstanding mortgage was (£1,871,349), having been £1,820,000 at trial. The costs of the Receivers, estate agents' costs and legal fees came to £126,947. I note, however, that this included solicitors' fees of £19,440 and estate agency fees of £19,950, which would have been charged in any event on a sale to a third party. Overall, there was therefore a shortfall of (£98,297). As it turned out, Dr Abdullah offered to match the purchase bid of £1.9 million and complete within a month. It might be said that this was surprising, given that he had not been paying the mortgages or the service charges. He says he funded it from borrowing but no charge has been taken against the title. Moreover, the Receivers required him to discharge the entire debt, which meant he had to pay an extra £98,297. He did so. The money was received on 15 December 2022.
8. An offer was then received for Craven Street in the sum of £4,130,000. This was some £370,000 less than the marketing appraisal used during the trial. The redemption statement shows mortgage arrears of £124,008 plus other expenses which increased the figure to £152,798. The figure charged by the Receivers was £252,734, although it is clear that this included legal fees of £33,600 and estate agency fees of £111,510, which would have been payable

even if there had been no Receivership. Again, it appears that Dr Abdullah offered to match the offer but the Receivers went ahead and exchanged contracts with the other purchaser. He complains about that in these proceedings but I take the clear view that this is a matter between him and the Receivers and not something for me to deal with. The net equity was £344,487 but only £330,000 has been received to date. It was paid to Dr Aldoukhi in its entirety.

9. In relation to Albion Gate, a cash offer was received in the sum of £1,925,000 on 24 April 2023. It appears it came from a Kuwaiti citizen known to Dr Abdullah. Dr Aldoukhi makes numerous complaints about the way in which Dr Abdullah had been behaving in relation to the sale of this property, including installing tenants without her consent, leading to the tenants obstructing viewings of the property by smoking in the property; refusing access to bedrooms and being generally difficult. She therefore applied to the court to have sole conduct of the sale.
10. I heard the application on 26 April 2023. My order notes, by way of recital, that Dr Abdullah had rented out the property and the tenants were frustrating the sale. I also noted that he had failed to pay the mortgages on the other two properties, causing UBS to appoint Receivers. I directed that Dr Aldoukhi was to have sole conduct of the sale of Albion Gate after 17 May 2023. Vacant possession was to be given by the same date. On sale, the net proceeds were to be frozen, pending any application issued by Dr Aldoukhi for an account of the proceeds of all three properties to be taken. Dr Aldoukhi had not executed the TRI on The Piazza. I directed that she do so. Dr Abdullah was to pay her costs in the sum of £10,000. I understand he has done so.
11. Dr Aldoukhi's application for an account and for damages is dated 25 April 2023. It alleges that Dr Abdullah had failed to progress the sales properly and had breached the order to pay the mortgage payments and service charges. It is asserted that all of this resulted in loss in value as a result of the appointment of the Receivers and the delay. She also applied, on 7 July 2023, for a Single Joint Expert to value the properties at various different dates.
12. The matter was heard by me on 11 July 2023. I directed that Dr Aldoukhi file her Points of Claim by 22 September 2023. Points of Defence were to be filed by 13 October 2023, with any reply by 3 November 2023. I appointed Knight Frank as the Single Joint Expert and directed that the application be heard over three days commencing on 18 December 2023. On 16 August 2023, I made an interim charging order over The Piazza in the sum of £556,115, relating to the costs of the earlier proceedings, including interest.
13. Dr Aldoukhi's Particulars of Claim are dated 22 September 2023. The pleading contends that my judgment said that it was fair and proportionate that she should receive in total £1,909,375. It says that she is also owed costs, including interest, of £561,388, as at 22 September 2023. The document further pleads that Dr Abdullah immediately breached the 2021 order by not making the payments on the mortgage or service charges on either The Piazza or Craven Street, leading to the demand letters and the appointment of

Receivers. It repeats the contention that the sale price of the Piazza was £600,000 less than the anticipated value at trial and that Craven Street sold for £370,000 less. It claims that, as she has so far only received £330,000, she is due to receive a further £2,140,763. In relation to Albion Gate, she complains that Dr Abdullah permitted multiple tenants to occupy the property, who were then present when viewings were conducted. It is said that Dr Abdullah failed to prevent these tenants from blocking viewings. The property was in a mess in the sales brochures. The tenants were smoking and failing to allow viewers to see the entire property. She does note that a bidding war has developed between two Kuwaitis for Albion Gate. She claims both are associates of Dr Abdullah but, if he was behind these bids, he would hardly have allowed the two bidders to increase the price incrementally to £2,400,000. She seeks an order that she receive the entire proceeds of Albion Gate and, thereafter, a sale of The Piazza to make up any shortfall. A chronology is exhibited setting out alleged difficulties created by Dr Abdullah in relation to the marketing of the three properties but this entirely predates the hearing before me in 2021.

14. Dr Abdullah's Defence is dated 13 October 2023. It denies that he failed to progress the sales of the properties properly or that any such failure/breach resulted in a loss of value. He does not admit that he failed to comply with orders. He denies that Dr Aldoukhi is entitled to the relief claimed. He makes the point that my judgment said that the "net proceeds may vary upwards or downwards depending on the eventual sale prices" and that the order provided for an equal division rather than the set figure of £1,909,375, which he claims was merely an example based on the figures used during the trial. He denies that his failure to pay the mortgages or service charges delayed the marketing of the properties. He denies that the properties sold for less than anticipated. The pleading makes the point that he was under garnishment in Kuwait and did not have the money to pay the mortgages or service charges. He says that there is a further order in Kuwait that he pay £5 million to his father. The document then says that Dr Aldoukhi permitted tenants to occupy Albion Gate after she assumed sole responsibility for the sale. It denies that the sales brochures showed the properties in a mess. As he was not present, he could not prevent the tenants from smoking or blocking access. He persuaded the two Kuwaiti buyers of Albion Gate to increase their offers up to £2,400,000, which is £120,000 more than the offer originally accepted by the parties and £150,000 more than the figure used in the judgment.
15. Dr Aldoukhi decided not to file a Reply. Her statement is dated 24 November 2023. She says she was happy to sell all three properties before the hearing before me in 2021, but Dr Abdullah refused pending that hearing. Dr Abdullah had said he was paying the mortgages on 18 February 2022 but that was untrue. In addition, significant service charge arrears had built up, including £51,600 for The Piazza alone. Craven Street had as much as £124,008 unpaid interest. The sales of both properties did not complete until December 2022/January 2023. At the time of her statement, the unpaid service charges in relation to Albion Gate were £57,649 and £6,667. Dr Abdullah has still not applied to transfer The Piazza to his sole name, even though he has paid in full and she has signed the TR1. She then makes points about the two properties selling for considerably less than the valuations in

2021. She then refers to the Receivers' costs at £252,734 in relation to Craven Street and asserts that the net equity, which was £369,899, would have been £622,809 without the appointment of the Receivers and the mortgage arrears. She adds that £39,599 had been retained by the solicitors due to litigation instigated by the purchasers but she has no details. In relation to The Piazza, she makes the point that there should have been no estate agents' costs given that Dr Abdullah bought the property. She then details her complaints against the tenants of Albion Gate as I have already set out above. She makes the point that she did not consent to any tenants being allowed into the property. She has discovered that a County Court Judgment has been entered against her for £14,007 in relation to the service charges on the property. Finally, Dr Abdullah has agreed to pay £37,500 to acquire Dr Aldoukhi's half the chattels in Craven Street. I note, however, that elsewhere the figure is given as being £37,000.

16. Dr Abdullah's statement is dated 24 November 2023. I accept the point made by Mr Glaser KC, who appears on behalf of Dr Aldoukhi with Mr Cameron, that the statement does raise a significant number of points that I dealt with in my judgment in 2021 and which are clearly therefore *res judicata*. Dr Abdullah does say that Dr Aldoukhi refused to agree a sale of Albion Gate in 2018. He then says that he has not obstructed any sales since the trial in 2021. He adds that Dr Aldoukhi allowed tenants to occupy Albion Gate until 4 September 2023, several months after she took over sole conduct of the sale on 17 May 2023, relying on one email from a caretaker at the property in that regard. There is, however, no other evidence that she has rented the property out and I do not accept that accusation. He says she should be responsible for all outgoings on the property since May 2023. He makes the point that he has managed to get the price of Albion Gate up to £2.4 million, when the parties had previously accepted an offer of only £2.28 million. He adds that the final sale price is £150,000 in excess of the figure used at the trial, although I do note that contracts have not yet been exchanged. He justifies some of what has happened by the fact that he is constrained by travel bans imposed in Kuwait and says that the Receivers acted reasonably.
17. The Single Joint Expert, Vanessa Griffiths of Knight Frank, reported as to the value of all three properties at various dates from 2018 to now in a report dated November 2023 but only released to the parties shortly before this hearing, when Dr Abdullah paid his half of the costs of the report. I do not propose in this judgment to rehearse the values given for the properties before the hearing in 2021 for reasons I will explain later in this judgment. Suffice it to say that the valuations given for Albion Gate were £2,265,000 in December 2021 and £2,265,000 in July 2023. The Piazza was £2,070,000 in December 2021 and £2,000,000 in December 2022. Craven Street was £4,480,000 in December 2021 and £4,350,000 in January 2023.
18. Both Mr Glaser KC and Mr Cameron for Dr Aldoukhi and Mr McAlinden for Dr Abdullah produced helpful documents at the commencement of the case. Mr Glaser KC and Mr Cameron note Dr Abdullah's ability to purchase The Piazza, apparently for cash, even though he had not paid the mortgages and service charges. They make the contention that their client should receive the

net equity in the properties on the basis of the valuations at trial, namely £1,909,375 plus the costs awarded by me with interest. On this basis, they say that Dr Aldoukhi is owed approximately £2.15 million, having only received £330,000 to date. They further claim that she should receive her half share of the rental income received by Dr Abdullah for Albion Gate since the trial.

19. Mr McAlinden on behalf of Dr Abdullah, makes the point that, if the properties had sold for more than the figures at trial, it is inconceivable that Dr Aldoukhi would have restricted herself to the sum of £1,909,375. He adds, however, that Dr Abdullah should have the entire uplift in the sale value of Albion Gate from £2.28 million to £2.4 million as he had negotiated the increase. I have to say that this does seem to me to give rise to the same potential criticism as he had just made in relation to Dr Aldoukhi's submissions. He adds that Dr Abdullah obtained a loan to buy The Piazza that he describes as a "leveraged buy out", which I take to mean that he had borrowed the sum in its entirety. The only slight surprise in relation to this is that the entity making the loan has still got no security for it. Mr McAlinden adds that his client has a judgment against him in Kuwait in the sum of £3.45 million. He criticises the position of Dr Aldoukhi by making the point that very quick sales can look like forced sales and reduce the price whereas a considered sale often leads to a better price. He contends that my orders are clear and should be given their natural meaning. Any decline in sale prices was due in no short measure to market forces. He argues that Dr Aldoukhi cannot cherry pick the best date to value each property for her advantage. He makes the point that Dr Abdullah has already paid off the outstanding costs and expenses of the Receivership in relation to The Piazza by paying the additional sum of £98,297 over and above the sale price. He adds that, in relation to Craven Street, the costs of solicitors and estate agents are legitimate disbursements as they would have been necessary even if there had been no Receivership. Finally, he makes the point that Albion Gate is selling for a higher figure than that used at trial.

### The Law

20. I remind myself of the legal principles that I set out in my last judgment as to the burden and standard of proof; the difficulties of giving evidence in your second language; and the Lucas direction as to lies.
21. Mr Glaser relied on three authorities. The first was Tibbles v SIG Plc (trading as Asphaltic Roofing Supplies) [2012] EWCA Civ 518. CPR 3.1(7) provides that "a power of the court under these Rules to make an order includes a power to vary or revoke the order". In Tibbles, the Court of Appeal accepted that the rule is apparently broad and unfettered, but made it clear that considerations of finality, the undesirability of allowing litigants to have two bites of the cherry, and the need to avoid undermining the concept of appeal, all push towards a principled curtailment of the power. Indeed, in that case, the Court of Appeal decided that it is important to apply to the court to exercise the power within a short time period and not after a "very long delay". I do, however, accept that, in relation to her claim for damages, Dr Aldoukhi is within the three year period set down in the Limitation Acts. The

second authority was Dean v Barclays Bank [2007] EWHC 1390 (Ch) which decided that a Receiver, exercising a power of sale, is under a specific duty to take reasonable care to obtain the best price reasonable obtainable at the time. The third authority, Cottrill v Steyning and Littlehampton Building Society [1966] 1 WLR 753 (1962) is to the effect that the measure of damages is the profit the purchaser could have made on a resale.

### The oral evidence

22. I heard oral evidence over MS Teams from both parties. Having said all that, the evidence on this occasion was not central to my decision, in the way that it had been on the last occasion. It did not, in fact, assist me greatly in coming to the decisions I have had to reach. It did confirm a number of preliminary thoughts that I had prior to hearing the parties give evidence.
23. When asked questions on behalf of Dr Abdullah by Mr McAlinden, Dr Aldoukhi told me that she was not saying that she should have 50% of the value of the properties in 2015, but that she did think she should have 50% of their value from 2018, saying that was fair. The difficulty with that is that she has just cherry picked that date. She did not apply to the court for an order for sale until 12 February 2019. Even then, she did not apply for an interim order for sale and I was not asked to deal with this until the 2021 hearing. Dr Aldoukhi accepted that she did not appeal my order that provided for an equal division of the equity in the three properties on the basis of their eventual sale prices. She further accepted that she received the entirety of the figure of £330,000 from the sale proceeds of Craven Street. She told me that she paid £280,000 to her lawyers. She said this was by agreement with Dr Abdullah's previous solicitors, which is really the end of any potential criticism about this. I accept that there are arguments that she should have had a far higher proportion of the proceeds due to the question of the Receivership, but that is what I am dealing with now. I have therefore come to the conclusion that one-half of the money she received, namely £165,000, was, in effect, a payment on account of costs by Dr Abdullah.
24. She was then asked about Dr Abdullah's proposal to buy both properties, on the basis that he would match the offers received. She made the fair point that this meant that he must have had access to at least £6.4 million to enable him to do so. She also made the point that, if his evidence is correct that he borrowed the money, he must be in a position to pay the interest to the lender, unlike his failure to pay the interest to UBS. Finally, she was asked about the contents of Craven Street. She acknowledged that she had accepted his offer to pay her £37,000 for her share of the contents. She reminded me that Craven Street was a matrimonial home; that it included contents belonging to her, like her bed; and she had not claimed a share of the contents of The Piazza, as that was not a matrimonial home. All these were good points.
25. I then heard oral evidence from Dr Abdullah. He told Mr McAlinden, during his evidence in chief, that he could not pay the mortgages on the London properties due to the debts he had in Kuwait. He accepted that he did make an offer to match the prices on both The Piazza and Craven Street. He told me



that he managed to do a leveraged buy-out with his business partner, after he had to give up his shares in an offshore company to that business partner. He said it was not, therefore, really his money. It seems likely he was referring to Shamu. I have already made a finding of fact that Shamu should be treated as entirely owned by him. In fact, the exact details do not matter for this judgment.

26. He was then cross-examined by Mr Glaser KC. Dr Abdullah told me he did not put tenants into Albion Gate to frustrate a sale. He asked, rhetorically, why he would do so if he then invested so much energy in getting his contacts in Kuwait to increase their offers. I do not know if he did intend to frustrate the sale when he allowed the tenants into the property, but there is no doubt that the effect was to make it very difficult to sell the property whilst they were in occupation. In relation to the mortgages on the other two properties, he told me that he did pay the interest in December 2021 but, in February 2022, he received a demand from UBS to repay the entire amount, which he could not do. He said he tried to refinance but it didn't work. It is difficult to reconcile this evidence with the fact that he later had available £6.4 million to buy the two properties, but he made the point that his business partner would not be prepared to invest in a property owned jointly with Dr Aldoukhi. Perhaps more importantly, if he is solely responsible for mortgage arrears, service charge arrears and the costs of the Receivership, it is difficult to see what loss this has caused to Dr Aldoukhi. He then told me that Dr Aldoukhi should pay half the fees of the Receiver as she insisted on going along with unrealistic valuations put forward by the Receiver, which delayed matters. I do not accept this contention. He then accepted that he should be responsible for discharging the County Court Judgment in the name of Dr Aldoukhi in the sum of £14,007 as it was his responsibility to pay the service charges according to my order. He also accepted that he had agreed to pay Dr Aldoukhi £37,000 for her share of the contents but said that she should be liable for half the storage costs. He accepted that he knew the two bidders for Albion Gate, but made the point that it is a very small society in Kuwait. He said he persuaded them to buy, after he had resolved the issue about the air conditioning. I am minded to accept this evidence.

### My conclusions

27. I go back to first base, namely the order that I made on 7 December 2021. It was absolutely clear that the properties were to be sold and the proceeds divided equally. It did not give Dr Aldoukhi a fixed figure of £1,909,375. Indeed, Mr McAlinden makes a very good point when he says that Dr Aldoukhi would obviously have cried foul if the properties had sold for more than the figures used in the judgment but Dr Abdullah had tried to restrict her to the sum of £1,909,375. Indeed, at Paragraph [37] of my judgment, I made the point that the equity will vary upwards or downwards depending on the sale prices of the properties. I also made the point that the figures that I was working on were marketing appraisals, not valuations.
28. I accept that, at Paragraph [88] of the judgment, I did refer to both parties receiving exactly the same from the sale of the properties, namely £1,909,375,

but that is entirely neutral as I referred to each of them receiving that sum. I made the point that it would then be entirely up to them how they deal with their resources. In the Part III application, I am clear that I was not saying that Dr Aldoukhi had an entitlement to £1,909,375, either on the basis of sharing or need. The only adjustment I made pursuant to Part III was to ensure she got the same as Dr Abdullah by giving back to her the sum she would otherwise have had to account to him for, as a result of equitable accounting.

29. I do accept that there is power to vary my earlier order in certain very clearly defined circumstances, given the decision in Tibbles SIG PLC (trading as Asphaltic Roofing Supplies) [2012] EWCA Civ 518. The issue, however, is whether it is right to do so in this particular case. I am absolutely clear that I cannot consider anything that happened prior to the main hearing in October 2021. If there had been good reason for an adjustment in the order that I made at that point, it should have been dealt with at that hearing or, in accordance with Tibbles, very shortly thereafter. This must include any alleged default by Dr Abdullah in agreeing a sale of the properties up until that point. We are now two years further down the road and I cannot conceive that it would be right to contemplate any such adjustment to my earlier order now. I also bear in mind that this application would never have even been considered by Dr Aldoukhi if the property market had risen significantly during the last two years.
30. I do, however, accept that I must consider the position since I made my order, given Dr Aldoukhi's claim for damages. The question is whether Dr Abdullah has behaved in such a way that he has caused loss to Dr Aldoukhi. The first aspect is whether he has obstructed the sales in some way, which has caused her loss, by reducing the amount received on an eventual sale. I do not include, in this aspect, failure to pay the mortgages and service charges, which I will consider separately.
31. I will deal first with The Piazza and Craven Street. I accept that it took just over a year to sell both these properties but the property market has been difficult in London. I have heard no convincing evidence that suggests that Dr Abdullah obstructed the sales in any way. Indeed, delay cost him as the obligation was on him to discharge the mortgage and the service charges pending sale.
32. I accept that Receivers were appointed by UBS and this could potentially lead to a sale at a reduced value, but I am clear that there is no evidence that this actually occurred. A significant period of time elapsed between the appointment of the Receivers and the eventual sales, so it cannot be said they were rushed or forced sales. Moreover, Vanessa Griffiths of Knight Frank considers The Piazza had a market value of £2,070,000 in December 2021 and £2,000,000 in December 2022. Although the offer to purchase was £1,900,000, Dr Abdullah had to pay £1,998,297, which is almost exactly the same as the valuation. In any event, the difference of £100,000 is only some 5%. I have regularly been told that this is within the margin of error in valuations.

33. I accept that Vanessa Griffiths valued Craven Street at £4,350,000 in January 2023, as against a sale price of £4,130,000 but the difference is again only just in excess of 5%. Moreover, in the absence of specific evidence of mala fides by Dr Abdullah, it is difficult to see how it would be reasonable to attribute all of this reduction to him.
34. The second issue, however, is different. It is the appointment of the Receivers itself. There is no doubt that Dr Abdullah was in breach of my order, in that he did not pay the mortgages on The Piazza and Craven Street and did not pay the service charges on The Piazza and Albion Gate either. I reject his suggestion that he was unable to do so. He was able to purchase the Piazza from the Receivers and made an offer to buy Craven Street. There are only two possibilities. Either he had the cash to enable him to do so, in which case there was no impediment to him paying the mortgages and the service charges prior to the purchase, or he was able to borrow very significant sums, without the apparent need for security being offered. If it was the latter, it is impossible to see how he is able to pay the interest on the borrowings now, if he was not able to pay the original mortgage interest, nor how he can now pay the service charges on The Piazza, but could not then. There is no doubt that he was in breach of my order. I am prepared to accept that this led to the Receivers being appointed. On the balance of probabilities, I find that UBS would not have appointed a Receiver if he was up to date with his payments. He must, therefore, be responsible for the financial consequences of this appointment. In other words, he must pay, out of his share, the costs of the Receivership that would not have been incurred if he had not defaulted. I will return to this when I get to quantification.
35. I now turn to the third property, Albion Gate. I accept that Dr Abdullah has been responsible for difficulties in relation to the sale of this property. He installed tenants without the consent of Dr Aldoukhi. He kept the rental money but did not even pay the service charges on the property. The tenants were very difficult about permitting viewings of the property. They did not permit access to various bedrooms. They insisted on smoking whilst the viewings were being conducted. At least one potential purchaser refused to go ahead with a viewing.
36. The problem for Dr Aldoukhi, however, is that the eventual offer has exceeded the valuation figure of Vanessa Griffiths. She values Albion Gate at £2,265,000 both now and in December 2021, whereas the offer is £2,400,000. It follows that, although there has been delay, there is no actual loss as a result of Dr Abdullah's behaviour. I must remind myself that contracts have not been exchanged yet. I would take an entirely different view if the prospective purchasers were, mysteriously, to disappear with an eventual result of a sale price lower than £2,265,000 but that is not the position today.
37. I reject completely Dr Abdullah's argument that he should benefit entirely from the increase in the sale price. I am prepared to accept that he was instrumental in getting the price up to £2,400,000, but he did so on behalf of both himself and Dr Aldoukhi. Whilst I note that he, initially, wanted to

accept a lower offer of just over £2 million, Dr Aldoukhi refused this, so she too has contributed significantly to the increase in the offers.

38. In the same way, I reject Dr Aldoukhi's contention that Dr Abdullah should account to her for the rental income. When I gave my decision in 2021, it was on the basis that Dr Abdullah would pay the service charges on this property. The corollary of that is that he is entitled to keep any income from the properties. If that were not the case, Dr Aldoukhi would have had to pay her half of the service charges.

### Quantification

39. I now turn to the most difficult part of this judgment, namely quantification. I will deal first with Craven Street. The sale price was £4,130,000. The net equity received to date is £330,000, although it does appear that it should have been somewhat higher. I cannot resolve that issue. In fact, I am going to proceed on the basis of what I calculate the net equity should have been. It follows that, if anything further is paid, it is to be received by Dr Abdullah.
40. I am, however, clear that Dr Abdullah should be responsible for all the excess costs incurred as a result of the Receivership, as well as the mortgage arrears. I am prepared to accept that the Estate Agents' fees of £111,510 and the solicitors' costs of £33,600 were legitimately incurred. The latter may be slightly generous to Dr Abdullah but I have no way of knowing what would have been charged, absent the Receivership. The valuation fee would have been unnecessary if it had not been for the Receivership. I also consider that Dr Abdullah is responsible for the insurance premium and security, maintenance and management costs.
41. I have found the issue of clearance and storage costs more difficult. On the one hand, Dr Abdullah is going to keep all these items. On the other, Dr Aldoukhi accepts that half the furniture was hers, so she bears some responsibility for costs of clearance and storage. I have decided that the parties should share equally £10,000 of the costs but Dr Abdullah should pay the rest from his share, namely £8,810. In addition, he will pay any further storage costs.
42. The redemption figure for the mortgage included outstanding interest of £124,008; legal fees of £3,677; and costs and expenses of £25,112, making a total of £152,798. I am clear that Dr Abdullah must be responsible for the entirety of this sum. I cannot see that UBS would have incurred any legal fees or costs and expenses relating to the Receivership if Dr Abdullah had not been in default of his obligations under the mortgage.
43. It follows that, on the basis of a sale at £4,130,000, the only legitimate deductions should have been:-

(a)	Mortgage	£3,379,680
(b)	Legal fees	£ 33,600
(c)	Estate Agency fees	£ 111,510

(d) Clearance and storage	<u>£ 10,000</u>
Total	£3,534,790

44. This gives a net equity of £595,210. Each party is notionally entitled to half, namely £297,605. Whilst Dr Aldoukhi has already received £330,000, I allocated half of this towards Dr Abdullah's costs liability. It follows that she is therefore owed £132,605.

45. I now turn to The Piazza. For these purposes, I take the sale price at £1,900,000. The mortgage, however, was £1,820,000 and I accept that the solicitors' fees of £19,440 would have been incurred in any event. The estate agents' fees of £19,950 would not have been incurred as the sale was direct to Dr Abdullah. The net equity would therefore have been £60,560. Everything else is the responsibility of Dr Abdullah, but I note that he has paid £98,927 towards these debts. He therefore owes Dr Aldoukhi her one-half of the notional net equity, namely £30,280.

46. Finally, I turn to Albion Gate. I will proceed on the basis that it sells for £2,400,000. As there are no receivers' fees, the deductions for estate agents and solicitors will all be allowed in full. There is no mortgage, so the only deduction referable to Dr Abdullah is for the service charge arrears, which must come from his share. At present, the service charge arrears appear to be £57,649 and £6,667 although there may be a further liability accruing from 28 September 2023 to the date of sale.

47. In addition, Dr Abdullah owes Dr Aldoukhi the sum of £37,000 for the furniture in Craven Street.

48. If I assume estate agents and solicitors fees on the sale of Albion Gate in the sum of 3% plus VAT, they will come to £86,400. The net equity is therefore likely to be around £2,313,600. Each party is entitled to half, namely approximately £1,156,800, but the following payments must be paid to Dr Aldoukhi out of Dr Abdullah's share of the net equity:-

(a) Craven Steet	£132,605
(b) The Piazza	£ 30,280
(c) Furniture	£ 37,000
(d) Costs orders	£491,007
(e) Less costs paid	<u>(£165,000)</u>
Net due	£525,892

49. Dr Abdullah must pay the service charge arrears out of his share of the proceeds of sale. I cannot calculate the amount of interest due on the costs orders, given my ruling about the payment from the proceeds of sale of Craven Street. Overall, however, the net proceeds are to be divided equally without deduction of the service charge arrears, which are to be paid by Dr Abdullah. He is then to pay the sum of £525,892 to Dr Aldoukhi out of his share of the equity.

50. I recognise that I have made an interim charging order over The Piazza, in the sum of £556,115, although this sum is too high given my rulings on the payment on account of costs. I cannot see that this interim charging order will ever need to be enforced but it will remain in place as an interim order, with liberty to apply and will stand discharged on completion of the sale of Albion Gate.

51. I am very grateful to all the advocates and lawyers in the case for the great assistance they have given me. I make it absolutely clear that nothing more could possibly have been said or done on behalf of either.

Mr Justice Moor  
20 December 2023