

SHERIFFDOM OF GLASGOW AND STRATHKELVIN AT GLASGOW

[2019] SC GLA 22

F396/14

JUDGMENT OF SHERIFF A Y ANWAR

in the cause

AF

Pursuer

against

AF

Defender

Act: Thompson
Alt: Smith

GLASGOW, 14 March 2019. The sheriff having resumed consideration of the cause, Finds the following facts to have been admitted:

(1) The parties were married on 28 April 1984 in Pakistan. The marriage was registered on 4 May 1984. The parties have four children, all of whom are over the age of 16.

(2) Following the parties' marriage they resided together in Pakistan until around 1999. The pursuer came to the UK in 1999. The defender came to the UK in 2001.

(3) The defender was unable to work in the UK until 2008; however, she worked on an ad hoc basis as a beautician. In or around 2008, the defender established a beauty salon business.

(4) Throughout the parties' marriage, the pursuer was physically abusive and aggressive towards the defender. The pursuer drank to excess and gambled. The pursuer did not contribute to the household finances while in the UK. The pursuer did not assist with childcare or other family responsibilities or activities.

- (5) In 2008, the pursuer was convicted of assaulting the defender.
- (6) The parties separated on 8 February 2013. They have not cohabited since.
- (7) In February 2013, the defender raised proceedings in the sheriff court seeking *inter alia* interdicts prohibiting the pursuer from (a) molesting the defender by abusing her verbally, by threatening her and thereby placing her in a state of fear and alarm and distress, or by using violence towards her and (b) from damaging or destroying the matrimonial home or any items of furniture or furnishings therein. Interdicts *ad interim* were granted in those terms on 11 February 2013.
- (8) In or around mid-February 2013, after service of the *interim* interdicts upon him and while the defender was in Pakistan, the pursuer entered the matrimonial home with cutting and drilling equipment and attempted to access a safe in the defender's bedroom. He was unable to do so.
- (9) In 2014, the pursuer was convicted of a contravention of Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010, the offence being domestic in nature. The pursuer was made subject to a non-harassment order for a period of three years requiring him to refrain from approaching, contacting or communicating, or attempting to do so, with the defender. The non-harassment order also required the pursuer to refrain from entering the former matrimonial home.
- (10) The pursuer has been removed from the UK by the immigration authorities on two occasions. His current immigration status is unknown. He has never been entitled to work in the UK.
- (11) As at 8 February 2013, the matrimonial assets included but were not limited to:

- (i) the matrimonial home valued at £220,000; the defender and her eldest son held title to the property as joint proprietors to the extent of 75% and 25% respectively as at 3 February 2013; the defender's title is valued at £165,000;
- (ii) a plot of land in Renfrewshire with a value of between £5,000 and £10,000; and two further plots of land in Renfrewshire with nil values; title to each plot is held by the defender;
- (iii) the defender's interest in a beauty salon business valued at £30,000;
- (iv) £4,315.85 representing a payment arising from an insurance claim in respect of stolen jewellery;
- (v) the defender's credit balance of £41.01 held in TSB Cash ISA Account Number XXXXXX68;
- (vi) the defender's credit balance of £219.57 held in Bank of Scotland Account Number XXXXXX81;
- (vii) a residential property purchased using funds provided by the defender and the parties' son, OF, in Pakistan ("Bilal Town House"), title to which was held by the pursuer and the value of which is unknown;
- (viii) a plot of land in Pakistan ("Mousa Salhad-1"), title to which is held by RS (being the name by which the defender was known in Pakistan), the value of which is unknown and upon which the pursuer's siblings have erected a residential property without the defender's consent; the pursuer's siblings continue to occupy the residential property;
- (ix) the pursuer's interest in a plaza, residential buildings and land in Pakistan, the value of which is unknown;
- (x) an unknown quantity of cash kept in a safe in the defender's bedroom.

- (9) As at 8 February 2013, the matrimonial liabilities included:
- (a) the defender's debit balance of £475.45 in TSB Account Number XXXXXX68;
 - (b) the defender's debit balance of £1,089.93 in Bank of Scotland Account Number XXXXXX55;
 - (c) the outstanding mortgage in respect of the matrimonial home of £128,357.26.
- (10) The defender and OF paid for substantial improvements and renovations to the matrimonial home. The costs of doing so were approximately £97,000. The pursuer has not contributed to the cost of property improvements or of daily living.
- (11) The defender and OF have been responsible for all payments in respect of the mortgage of the matrimonial home.

FINDINGS IN FACT AND LAW:

- (1) The marriage of the parties has broken down irretrievably as established by the parties' non-cohabitation for a period in excess of two years.
- (2) The relevant date for the purposes of section 10(3)(a) of the Family Law (Scotland) Act 1985 is 8 February 2013.

FINDINGS IN LAW:

- (1) The marriage of the parties having broken down irretrievably as established by the parties' non-cohabitation for a period in excess of two years, the pursuer is entitled to decree of divorce as first craved.
- (2) The pursuer having failed to discharge the onus of proof, no orders as second and third craved ought to be made.

NOTE:**Introduction**

[1] “O, what a tangled web we weave; when first we practice to deceive!” (*Marmion: A Tale of Flodden Field in Six Cantos*” by Sir Walter Scott, Printed by Clarendon Press, Oxford, 1889, Canto VI, stanza XVII, lines 332 – 333).

[2] In the present case, the pursuer’s web of deceit had become so confused and complex that he had found himself caught in its fine threads as he continued to spin his yarn. The defender too was adept at weaving a tale. The story which unfolded before the court during this proof should serve as an object lesson to those seeking financial provisions upon divorce. It perhaps also illustrates the need for greater case management powers in relation to cases involving craves for financial provisions upon divorce. In particular, this case falls into the category of cases identified by the Supreme Court in *Kennedy v Cordia (Services) LLP* 2016 SC (UKSC) 59 (at paragraph 51) in which an absence of judicial case management powers limits the court’s ability to make prior rulings on the admissibility of expert evidence (or indeed other chapters of evidence).

[3] The pursuer sought decree of divorce, payment of a capital sum and an order for the sale of the matrimonial home. He did not insist upon his craves for *interim* aliment, interdict in terms of section 18(1)(b)(ii) of the Family Law (Scotland) Act 1985 (“the Act”) and various other ancillary orders. The defender did not seek any orders. The defender did not oppose the pursuer’s crave for divorce.

[4] In terms of section 8(2) of the Act, the court is directed, where an application for financial provision has been made, to make such order, if any, as is (a) justified by the principles set out in section 9 of the Act and (b) reasonable having regard to the parties’ resources. There must be an evidential basis for such an award. In order to apply the

statutory principles of sections 8 and 9 of the Act, the court requires first to ascertain and value the net matrimonial property. The *onus probandi* or burden of proof rests upon the party seeking financial provisions. On he who asserts, not he who denies, is the obligation to prove; *ei qui affirmat, non ei qui negat, incumbit probatio*. Such a party requires to formulate and prove his or her entitlement (*Williamson v Williamson* 1989 SLT 866 (OH); *George v George* 1991 SLT (Sh Ct) 8; *Ali v Ali* 2001 SC 618). In the present case, for the reasons set out below, the pursuer failed to discharge that burden.

Procedural History

[5] These proceedings commenced in April 2014. In July 2014, the case was sisted for investigations. In January 2015, the sist was recalled and the defender's agent withdrew from acting. The defender was allowed time to appoint new agents and thereafter an options hearing was assigned. The record was closed and a preliminary proof was assigned to take place on 7 September 2015 on the question of whether the parties were married; the defender contended that the parties "went through a ceremony in Pakistan" when she was 14 years old and that she was not the individual named on the marriage certificate produced by the pursuer.

[6] The preliminary proof was discharged to allow parties further time to investigate. The defender's second solicitor withdrew from acting. The defender appeared personally at a peremptory diet on 3 November 2015 and stated to the court (her statement being recorded in the interlocutor of that date) that the parties were married; however, she had "obtained a divorce from the High Court in Pakistan in 2013". A further preliminary proof was assigned for 24 February 2015 and the defender was granted a period of 28 days in which to lodge a Minute of Amendment recording her new position and was also ordered to

lodge documentation supporting her position. In December 2015, the defender's third solicitor withdrew from acting.

[7] In January 2016, the preliminary proof was again discharged, to allow the defender's new solicitors to take instructions and for the Minute of Amendment previously allowed, to be lodged. In March 2016, on the pursuer's motion, the expenses of the proceedings to date were granted in favour of the pursuer. The sheriff's note accompanying the interlocutor reads as follows:

"I granted the pursuer's motion for expenses to date given that (1) the defender made a complete *volte face* from insisting that the parties were not married, to alleging that they were married but were divorced in 2013 in Pakistan; (2) since advising the court orally of her position in November she has neither updated her pleadings nor lodged documentation in support of her new position; her general conduct of the litigation, including several changes of solicitor, has caused significant delay and expenses".

[8] The pleadings were eventually amended. On the pursuer's motion, commission and diligence was granted together with an order in terms of section 20 of the Family Law (Scotland) Act 1985. A preliminary proof was assigned for 20 March 2017; having heard the evidence, the sheriff refused to recognise as valid the decree of divorce issued in Pakistan (*AF v AF* 2017 SLT (Sh Ct) 211). The expenses of the preliminary proof were granted in favour of the pursuer.

[9] The pursuer lodged a Minute of Amendment. A proof in respect of the pursuer's craves for financial provisions was assigned for 20, 21 and 22 November 2017. On August 2017, the defender's fourth solicitor withdrew from acting. In November 2017, on joint motion, the defender having instructed new solicitors, the proof was discharged for discussions to take place between the parties. A further proof was assigned for February 2018. The pre-proof hearing in January 2018 called before me. The note attached to the interlocutor of the pre-proof hearing reads as follows:

“This action has been ongoing since 2014 yet parties are still seeking disclosure of financial information from each other. There are numerous calls for information in the pleadings and three specifications for the recovery of documents have been lodged. Parties are personally required to attend [the continued pre-proof] hearing. The court expects a full and frank discussion regarding exactly what each party is seeking, how parties intend to establish their respective claims, what information is outstanding and why information remains outstanding. . .”

[10] At the continued pre-proof hearing on 8 February 2018, the case again called before me. The note attached to the interlocutor of that hearing reads as follows:

“I spent considerable time during this hearing and the preceding hearing explaining to the agents and to the parties what I foresaw as clear evidential concerns. For example, the parties have lodged documents and valuations obtained from Pakistan but do not propose to lead any evidence from any witness who can speak to their provenance or authenticity. The parties have made bold assertions about various items of property which are averred to be matrimonial assets however there are no independent valuations in respect of these items. Various calls have been placed on the parties and information remains outstanding. Notwithstanding that this action commenced in 2014, neither party is yet in a position to lodge a statement of assets and liabilities and the pursuer’s agent has repeatedly failed to lodge a draft joint minute of admissions. Both agents agreed that the action could not simply drift from diet to diet . . . Both agents acknowledged the risk that the court may have insufficient information before it to make any determination”.

[11] Regrettably, it would appear that further Specifications of Documents were lodged by both parties and further proof diets were discharged.

[12] The proof finally commenced before me in September 2018. After five days of evidence over a period of several months, I heard submissions on 10 January 2019. I issued an *ex tempore* decision on 7 February 2019.

The evidence

[13] The pursuer, Mr Adamson (a forensic chartered accountant) and the pursuer’s brother, AA, gave evidence. Mr Fiaz gave evidence by live TV link from Pakistan.

[14] The defender and her sons, OF and IF gave evidence. On behalf of the defender, Mr Campbell, a chartered surveyor, also gave evidence.

The evidence for the pursuer

[15] The pursuer's evidence was confused, contradictory, rambling and at times he was clearly dissembling. He was evasive in his responses to straightforward questions. His evidence was entirely lacking in credibility. I am unable to place any weight upon his evidence, except to the extent that it is supported by that of another reliable and credible witness or by documentary evidence lodged on his behalf. There was little of either. I regard it as important to set out in detail my assessment of his evidence.

[16] Throughout these proceedings and during the proof, the pursuer appeared to have no regard for the duty incumbent upon him to make full and frank disclosure of his income and assets;

- (a) During the preliminary proof before Sheriff Miller in March 2017, the pursuer asserted in his evidence "I have property on Great Western Road, a business also, 2 lands, 3 cars and I have invested in my son's business"; "I've got businesses in Pakistan and here also"; and in response to a question about the pursuer's ongoing business interests in Pakistan, he asserted "I've got shops, a property, a plaza, I get rent from it". This was entirely inconsistent with his position on Record at that time. During cross examination in the present proof, he stated "I don't have any [property] . . . show me the proof".
- (b) Numerous calls had been placed upon the pursuer in relation to his income and assets which remained largely unanswered; when these were put to him during cross examination, he claimed that he had never been asked to

produce information relating to his assets. Referring to the defender, he stated “she’s not asked for anything . . . if she had asked, I would have told . . . I’ve given all my papers to my solicitor and that is the end of the matter”. He asserted that the defender’s solicitor had “only asked for this information today”.

- (c) A specification of documents had been served upon the pursuer. During cross examination, he was asked why he had failed to produce the information required. He responded “I didn’t receive any papers . . . if my lawyer has not told me then that’s that”. I did not regard his position as tenable. Indeed, there was no suggestion that the pursuer’s solicitor had not received instructions with regard to the motion seeking commission and diligence. The pursuer went on to explain that he had an arrangement with his solicitor whereby his solicitor was required to send the pursuer a text message advising him that correspondence was being sent to a particular address, in order that the pursuer could attend to collect it. It became clear that the pursuer was not residing at the address in the instance and that neither he nor his solicitor had advised the court of that position.
- Notwithstanding further enquiries by the court, there remain concerns that the address provided to the court is not accurate (the defender’s agent having previously attempted service at that address).
- (d) A Commission was arranged for 24 August 2018. The pursuer did not attend. The defender’s agent explained on the first day of the proof that he had been informed by the pursuer’s agent that the pursuer had no intention of attending (the defender’s agent also explained that he was not seeking any

orders of the court in relation to the pursuer's conduct and that the defender was no longer insisting on the Commission). The pursuer's agent did not challenge that description of events. The pursuer dishonestly claimed to have no knowledge of the Commission.

- (e) During his evidence, the pursuer asserted that he owned shops and a flat which had been built on land he claimed to have been inherited from his father. He then asserted that he received rental income from these. There was no reference to any such properties nor to the rental income, on Record. His solicitor, Mr Thompson who appeared surprised by the nature of the pursuer's evidence, moved to amend the Record and to obtain and lodge valuations of these properties. The motion to amend the Record was refused *in hoc statu*. It was made clear to the pursuer's solicitor that he would require to have a draft Minute of Amendment with copy valuations and full details of the properties before such a motion would be considered by the court. No such Minute of Amendment has been lodged. It can readily be inferred that the necessary information was not forthcoming from the pursuer.

[17] It was a matter of agreement that the pursuer had arrived in the UK in 1999. It was also agreed that he had been removed from the UK twice by the Home Office. He may have been removed more often. Item 5/30 of process was an email from a member of staff at the Home Office addressed to the pursuer's solicitor. It stated *inter alia* "as [AF] has exercised deception it is entirely possible that he could have had enforcement action taken against him following the use of other identities". The pursuer accepted that owing to his immigration status, he had no right to work in the UK. Yet, he claimed to have (a) contributed significantly to the purchase of the family home in 2007 (during examination in chief he

explained that he had contributed £40,000 however, during cross examination, he stated his contribution was £20,000); (b) to the set up costs of the defender's business in the sum of £20,000; (c) to the renovations to the family home; (d) to the mortgage repayments; and (e) he claimed that he had purchased a diamond necklace and earrings for the defender at a cost of £27,000 (which, he claimed, she had retained). There was no supporting evidence of any such payments, nor was there evidence from any other source (nor mention in his pleadings) of the purchase by the pursuer of a diamond necklace and earrings. When challenged as to the source of these funds, the pursuer stated that he had sold properties in Pakistan and a retail business named "Amjad Traders" in Pakistan. There were no averments setting out the addresses of these properties, when they had been sold, nor how much money he had received upon the purportedly sales. There was no documentary evidence of his title to any such properties. When challenged, he claimed that upon the sale of property in Pakistan, all documentary evidence is retained by the purchaser and that therefore he had no access to such documents. When he was asked for evidence of remittances from Pakistan to the UK, he gave an implausible response. He explained that from the sale of these unidentified properties, he had given up to 40 people rupees in Pakistan in differing amounts. Those individuals had then asked their relatives to give the pursuer an equivalent sum in sterling. He stated that he had collected these debts over a period of up to 7 years. According to his evidence, he had arranged for a sum of up to £87,000 to be remitted to the UK in this manner. Finally, when he was asked how he had paid the mortgage for the family home, he eventually responded that he had done so from his gambling winnings. He claimed to have earned between £500 and £1,000 every day from gambling. His winning streak appeared to be both astonishing and entirely improbable.

[18] The pursuer's evidence was coloured by his clear desire to seek revenge against the defender for excluding him from the matrimonial home. He referred to being "thrown out of the house" repeatedly during his evidence. During the proof, the pursuer left the court room to switch off his mobile phone. IF explained during his evidence, that at that time, the pursuer had approached him in the witness room, asked for his assistance in switching off his phone and stated "she kicked me out of the house and that is why I am doing this . . . she kicked me out so I'm now getting my revenge." It was clear that the pursuer was willing to go to any lengths, including fabricating his evidence, in order to seek that revenge.

[19] AA's evidence was tailored to assist his brother, the pursuer, rather than the court. It was of limited compass and relevance. I noted the reluctance with which he acknowledged, during cross examination, that the pursuer had been removed from the UK on two occasions. Despite claiming to have a good relationship with the pursuer and speaking to him every day by telephone, AA was unable or unwilling to provide any details of the circumstances in which the pursuer had been removed from the UK. Yet, he claimed to have detailed knowledge of the parties' relationship and to some extent, their financial affairs. When this apparent contradiction was put to him, he responded "he is my brother and now he needs my help". It was clear that AA's knowledge was based, to a large extent, upon information provided to him by the pursuer. AA accepted that he had instructed Mr Fiaz on behalf of the pursuer to provide a valuation of properties in Pakistan. When he was questioned on his commercial relationship with Mr Fiaz, he appeared unable to recall the number of properties he had purchased using Mr Fiaz's services. His evidence in that regard was incredible. Where his evidence was contradicted by the evidence of the defender's witnesses, I have preferred the latter.

[20] I found Mr Adamson's evidence to be measured and considered. He candidly explained the difficulties encountered by him when he was instructed to value the defender's beauty salon business.

Admissibility of Pursuer's Expert Evidence – Mr Fiaz

[21] The pursuer led evidence from Mr Fiaz, who gave evidence from Pakistan by live TV link. He was described as a skilled witness. There was no CV. There was no letter of instruction. There was no expert report. There was also no objection by or on behalf of the defender to the evidence of Mr Fiaz.

[22] During his submissions the pursuer's agent recognised the difficulties with the court placing any weight upon Mr Fiaz's evidence, for the reasons set out in paragraphs 30(c) and (d) below. Accordingly, at the conclusion of the proof, the pursuer no longer sought to rely upon Mr Fiaz's evidence. Notwithstanding that concession, I regard it as important to set out my concerns in relation to Mr Fiaz's evidence in full.

[23] Mr Fiaz spoke to two faxed copy letters lodged in process (items 5/26 and 5/31). The first ("Report 204") related to a property in Pakistan ("the Bilal Town House"). It read "on the request of [AZ] we confirm that the 10 Marla house single storey, three bedrooms, two bathrooms and a small lounge house situated [in Pakistan] in my opinion in 2013 valued at about RS 32,00,000 rupees". AZ is the pursuer's brother and resides in Pakistan. The second ("Report 218") related to a plot of land in Pakistan ("Mousa Salhad-1") which was stated to be valued at RS 1,12,50,000 rupees in 2013. There were no photographs or plans attached to either report.

[24] In the recent Supreme Court decision of *Kennedy v Cordia (Services) LLP supra*, delivering the judgment of the court, Lords Reed and Hodge noted (at paragraph 57):

“It falls in the first instance to counsel and solicitors who propose to adduce the evidence of a skilled witness to assess whether the proposed witness has the necessary expertise and whether his or her evidence is otherwise admissible. It is also their role to make sure that the proposed witness is aware of the duties imposed on an expert witness.”

Regrettably, it would appear that the pursuer’s agent had lost sight of his role in this regard.

The instruction of Mr Fiaz appeared to have been delegated to the pursuer and his relatives.

[25] At paragraph 44 of their judgement, the Supreme Court set out four considerations which govern the admissibility of skilled evidence, namely

- (i) whether the proposed skilled evidence will assist the court in its task;
- (ii) whether the witness has the necessary knowledge and experience;
- (iii) whether the witness is impartial in his or her presentation and assessment of the evidence; and
- (iv) whether there is a reliable body of knowledge or experience to underpin the expert’s evidence.

[26] Applying these considerations, in my judgment, the evidence of Mr Fiaz was inadmissible.

[27] Firstly, I am not satisfied that Mr Fiaz had the necessary knowledge, experience or qualifications to provide skilled evidence in relation to the valuation of property. No evidence was led as to the qualifications necessary to act as a surveyor in Pakistan. Mr Fiaz stated that he was 34 years of age and that he had 15 years experience as a surveyor. He later stated that he had acted as a surveyor for 12 years. He was asked during cross examination on two occasions whether he held any qualifications related to surveying and valuing property. On both occasions he replied “I have experience”. When he was asked again, he finally conceded he held no such qualifications. He explained that he held a degree in “Simple Arts”.

[28] Secondly, I did not regard Mr Fiaz as an independent and impartial skilled witness. It was clear that he had been instructed by the pursuer's brothers with whom he had a long standing and on-going commercial relationship. He did not appear to have been appraised of the duties and responsibilities of expert witnesses.

[29] Thirdly, I was unable to discern what body of knowledge or experience underpinned Mr Fiaz's opinion. He was asked to explain the methodology adopted by him. He provided simply a bold assertion that his valuation was based on a "construction rate" prevalent at the time. That "construction rate" was in turn informed by his experience in his own construction business. I was unable to discern the relevance of that experience. His valuation appeared to be an entirely subjective assessment; a "gut feeling" or a figure plucked out of the air. He was unable to provide any rational or objective basis for it.

[30] Quite apart from issues of admissibility however I also had serious concerns in relation to the reliability and credibility of Mr Fiaz's evidence. His evidence was simply put, extraordinary:

(a) During cross examination, he conceded that he did not enter and examine Bilal House. He provided no explanation of the basis upon which he had been able to describe the internal layout of the property in Report 204. When asked how he could be sure of his valuation, he simply replied "because it was all in front of me". Quite what had been in front of him was not clear to me;

(b) He asserted that he had visited the land described in Report 218 in 2013, yet his report was dated 2010. He would appear to have provided his report prior to examining the site. He was unable to satisfactorily explain this paradox;

(c) He stated that he was aware that AZ owned the property described in Report 218. He then looked up and to the right, whispering could be heard in the room before he

corrected himself and asserted that the pursuer owned the property. He was asked how he knew this. He stated that he had seen the title deeds for the property which, according to him, named the pursuer as the proprietor. The title deeds were put to him (item 5/30 of process). He acknowledged that the proprietor was described as "RS". He again looked up to his right. Again whispering could be heard in the room. He then stated that the property was "matrimonial property".

(d) Having noted the whispering in the room and Mr Fiaz's tendency to look up and to the right before answering a question, Mr Fiaz was asked by the court to confirm whether others were present with him and to move the camera to allow the court to see the room in which he was giving evidence. The door to the room was clearly ajar.

[31] Even if I had been satisfied that Mr Fiaz was indeed a skilled witness, I would not have attached any weight to his evidence. His valuations were entirely unreliable and worthless.

The defender's evidence

[32] The defender's evidence too was unreliable and lacked credibility. It was clear that she was prepared to fiercely protect what she regarded as her assets, the product of her labour (and that of her children), at any cost.

[33] In the course of these proceedings, the defender has maintained that she was not married to the pursuer and thereafter, that they had been divorced in 2013. During the proof before me, there were two areas in particular which gave rise to serious concerns in relation to the defender's veracity.

[34] Firstly, the defender too paid no regard to the duty upon her to disclose her assets. During these proceedings, her position on Record has vacillated between on the one hand denying that she had any financial interest in a beauty salon business (she stated that this earlier denial was “a major mistake” by her previous solicitors, of whom there had been at least four) and denying that she owned property in Renfrew, to on the other hand, subsequently admitting that these were indeed her assets. No valuation of the land owned by her in Pakistan was provided to the court on her behalf. The accounts she provided for the beauty salon business appeared to be incomplete and inaccurate. They related only to the year ending April 2009 and April 2010. She had produced her tax returns for 2012 and 2013. There was no information for 2011. No valuation of the defender’s business had been provided to the court by the defender. The financial information she had provided hampered the pursuer’s expert in his attempts to produce a reliable valuation. Mr Adamson stated at page 12 of his report (item 5/29) that

“the accounting information appears to me to be incomplete and unreliable and therefor falls short of the minimum required to produce a business valuation that the court may be able to rely upon”.

It was clear that the defender had been deliberately obstructive in that regard. It was only with reluctance and after court intervention that the defender finally admitted that she owned land in Pakistan.

[35] Secondly, the defender denied that there had been a safe in the family home on at least six occasions during her evidence. She was adamant that no safe existed; “there was no safe in my house and never has been”. On 22 February 2013, the defender had sworn and lodged an affidavit in relation to proceedings at her instance in which she sought and obtained various interdicts against the pursuer and an exclusion order in terms of section 4

of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 with powers of arrest. In her affidavit, at paragraph 12, she stated *inter alia*

“on 10 February 2013 . . . my husband had hired heavy duty cutting equipment and despite the terms of the [interim interdict] had sought to break open the safe in my bedroom which I had locked before I left. I found in the house receipts for the cutting equipment, crow bars, hammers and drilling equipment that he either purchased or hired in order to attempt to break into my safe . . . we have security cameras at the house and I have viewed the film. You can clearly see my husband coming into the house with two acquaintances carrying the heavy duty machinery”.

Appended to the affidavit was a photograph of the defender’s bedroom containing the safe and the cutting equipment. When challenged with this contradiction, she claimed that she “had made a mistake”. It was not credible that a traumatic event such as that described in her affidavit and in which the safe featured so prominently, was a matter in relation to which she could have been mistaken. I regarded her initial position that there was no safe in her bedroom as having been deliberately designed in order to avoid any inference that sums of money were stored in the safe at the date of separation. When she finally admitted that a safe had been present in the family home, it was her position that it was used to store paperwork and not for safekeeping money. Her evidence (particularly in light of Mr Adamson’s analysis of the defender’s bank accounts which indicated the defender’s use and storage of cash from business takings) was untenable.

[36] I am unable to place any weight upon the defender’s evidence unless it is supported by the evidence of another reliable and credible witness or by documentary productions.

OF

[37] While I had some reservations in relation to OF’s evidence, those were insignificant when compared to his parents’ evidence. He spoke with candour and regret about coping with the effects of his parents’ “abysmal” relationship. He spoke to witnessing his father

taking drugs, to his often being drunk and to the many instances of violence he had witnessed his father perpetrate upon his mother. His experiences had clearly had a lasting adverse impact upon him. He spoke to his father's attempts to break into the safe in the family home, to his gambling and to all family members being "under threat that he would steal things". He spoke to the support, financially and emotionally, that he had been able to provide and continues to provide to his mother. While it appeared at times during his evidence that his financial support of his mother, during his late teens and early twenties might have been exaggerated, overall I found his evidence straightforward and honest. I was struck in particular by his ready acceptance that his mother had overstated some of the costs of the renovations to the family home.

IF

[38] IF was an impressive and credible witness. He spoke in a straightforward and honest manner and did not seek to exaggerate his evidence. He stated clearly when he did not know the answer to a question. He too spoke of the lasting impact upon him of his father's conduct and largely supported his brother's description of family life prior to his parents' separation. He also spoke of his father's attempt to break into the safe in the family home. He smiled when he was asked whether his father contributed financially to the family income. He responded "he never even gave me school lunch money".

Mr Hugh Campbell

[39] Mr Campbell was measured, reliable and credible. He spoke to items 6/16/2 and 6/16/3 of process, being reports on the valuation of the family home and the costs of the

renovation carried out. There was no meaningful or effective challenge to the content of his report.

Submissions

[40] Agents were at one in relation to the applicable law. I was addressed at length on the issues of reliability and credibility of the witnesses, upon which this case very clearly turned.

Discussion

The matrimonial assets and liabilities

[41] Having considered all of the evidence and the submissions, I find the following items to be matrimonial assets.

The Family Home

[42] It was a matter of agreement that the property was valued at £220,000 and that as at the relevant date, title to it was held by the defender and her son to the extent of 75% and 25% respectively. The defender's share is accordingly valued at £165,000.

[43] I do not accept that the pursuer made any contribution to its purchase or to the renovations carried out. The costs of renovation were borne by the defender and OF.

Land – REN129848 and REN129849

[44] It was a matter of agreement that that the defender held title to these plots of land as at the relevant date. Production 6/16/1 was a report by David Ross of Allied Surveyors. As at the relevant date, the value of these properties was nil.

Land REN130120

[45] It was a matter of agreement that, as at the relevant date, the defender held title to this plot of land. It was a matter of agreement that this was valued at between £5,000 and £10,000.

Cash in safe

[46] I do not accept the pursuer's evidence that there was a sum of £65,000 in a safe in the matrimonial home as at the relevant date. The pursuer spoke to counting this money with the defender days before he left the matrimonial home. He described the cash as takings from the beauty salon and also some money which had been ingathered by the defender and was held by her on behalf of her "committees" (which I understood to be similar to a Scottish menage and in which case I could not ascertain in what sense the money was said to belong to the defender). The defender, OF and IF all spoke to the pursuer's gambling habits, and to the concerns that he would steal from family funds. In those circumstances, I regarded as highly unlikely the notion that the defender would have, a matter of days before separation, allowed the pursuer access to such a large sum of cash, had such a sum existed. Some cash may indeed have been stored in the safe, however, I am not satisfied on a balance of probabilities that it was the sum the pursuer contended it was.

The defender's interest in the beauty salon

[47] Having regard to Mr Adamson's evidence and the content of his report, it is clear that the salon was a profitable business at the relevant date and that those profits were understated. The defender has not produced a valuation of the business. Mr Adamson has

suggested that on the basis of the disclosed accounts and tax returns, the business was valued at between £20,000 and £40,000. Mr Adamson noted that after the date of separation, approximately £290,000 had been deposited into the defender's bank accounts over a period of around four and a half years. Assuming that all of this money came from the business, Mr Adamson suggested a valuation of between £40,000 and £80,000. However, in my judgment, it would be inappropriate to value the business based upon cash deposits after the date of separation. While Mr Adamson accepts that his valuation is inherently unreliable owing to the nature of the information provided by the defender, in my judgment, in the absence of any evidence from the defender on its value, the court is entitled to draw an inference most favourable to the pursuer (*Berry v Berry* 1990 GWD 12-617; *L v L* 2003 GWD 25-715). Accordingly, the value to be attributed to the defender's interest in the salon business as at the relevant date is £30,000 being the middle value suggested by Mr Adamson.

Land in Pakistan owned by the defender - Mousa Salhad-1

[48] No valuation had been produced by the defender. The valuation produced by Mr Faiz on behalf of the pursuer cannot be relied upon. In the absence of any reliable and credible evidence as to the value of this property, the court cannot determine its value.

Jewellery

[49] It was a matter of agreement that the defender received the sum of £4,315.85 in respect of jewellery stolen from the family home and this constituted matrimonial property.

[50] I do not accept the pursuer's evidence in relation to the purchase by him of a diamond necklace and earrings. No other witness spoke to the existence of any such jewellery. He did not have the means to make such a purchase.

The defender's bank accounts

[51] It was a matter of agreement that the defender held the sum of £150.90 in her accounts as at the relevant date. The pursuer did not have a bank account.

Bilal Town House

[52] It was a matter of agreement that the pursuer held title to the Bilal Town House at the relevant date. I accepted the defender and OF's evidence that they had provided the sums for the purchase of the property to the pursuer.

[53] In the absence of independent evidence or vouching, I do not accept the pursuer's position that he sold Bilal Town House in 2015 for £25,000. Nor, for the reasons explained above, can the valuation produced by Mr Fiaz be relied upon. The defender too sought to provide a valuation of Bilal Town house, being £55,397 as at the relevant date (item 6/13/1 of process). However, the defender appeared to accept that at the relevant date the property may have been a single storey dwelling house, whereas the valuation was based on a two storey dwelling house. Accordingly, in the absence of any reliable and credible evidence as to the value of this property, the court cannot determine its value.

The pursuer's commercial properties, business, residential properties and income from leases in Pakistan

[54] It was clear from the evidence that the pursuer owned other properties, commercial and residential and perhaps also a business, in Pakistan. He appeared to accept that he held title to these as at the relevant date. The pursuer has elected not to produce any information of the value of these properties as at the relevant date. The defender has also not provided any valuations from which any adverse inference may be drawn. Accordingly, in the absence of any reliable and credible evidence as to the value of these properties, the court cannot determine their value.

The matrimonial liabilities

[55] Parties were agreed that the matrimonial liabilities as at the relevant date, are those set out in findings in fact 9(a) to (c).

Application of the 1985 Act

[56] In light of the unsatisfactory evidence before the court, the court simply cannot exercise its discretion and apply the principles set out in the Family Law (Scotland) Act 1985. The court is empowered to make an order only if it is justified by the principles enunciated in sections 8 and 9 of the Act. Where the net value cannot be ascertained or inferred, the court cannot make an award – to do so would be, in the words of Sheriff Dean in *George v George* 1991 SLT 8 “a pure guess and justice is not done by guess work”. The onus of establishing an entitlement to a claim for financial provisions rests on the pursuer. He has failed to discharge that onus.

[57] I should add that even if all of the required information had been before me, taking account of (a) the special circumstances which existed in this case, in terms of section 10(6) of the Act, namely the source of funds used to purchase Bilal Town House, and the land in Renfrew; (b) the conduct of the pursuer in terms of section 11(7) of the Act, namely his dissipation of the family finances through his gambling, and his lack of contribution to the household financial or otherwise caused *inter alia* by his inability to earn and his repeated removals from the UK; and (c) the defender's payment of all costs of maintenance, renovations and mortgage repayments in respect of the matrimonial home since the relevant date, I would not have considered it appropriate to grant an equal division of the matrimonial property.

Decision

[58] Accordingly, I shall sustain the pursuer's first plea in law, there being no opposition thereto and grant decree of divorce as first craved. I shall repel the remaining pleas in law for the pursuer and refuse the remaining craves for the pursuer. I shall grant the expenses of the cause in favour of the defender save insofar as already determined.