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Case No: ZC14D00753

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22/11/2016

Before:

MR JUSTICE MOYLAN

- -

Between:

IBTISSAM ALI CHRISTOFOROU	**Applicant**
- and -	
CHRISTAKIS CHRISTOFOROU	**Respondent**

- -
- -

Mr J. Southgate QC and Mr M. Bradley (instructed by **Withers LLP**) for the **Applicant**
Mr C. Howard and Mr A. Tatton-Bennett (instructed by **Hughes Fowler Chambers**) for the **Respondent**

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Approved Judgment

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

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MR JUSTICE MOYLAN

Mr Justice Moylan:

Introduction

1. This is my judgment determining the wife's financial remedy application. The wife is represented by Mr Southgate QC and Mr Bradley; the husband is represented by Mr Howard QC and Mr Tatton-Bennett.

2. The resources in this case total, subject to as yet unquantified tax, in the region of £50/55 million. Although his is a long marriage and although the parties had no wealth when they married in 1980, both seek a departure from an equal division. I will determine the substantive issues raised by the parties but the husband, in particular, has litigated in a manner which is contrary to the duty placed on parties "to help the court to further the overriding objective": r. 1.3 FPR 2010.

3. This failure can be demonstrated by the husband's contention that he should be awarded the additional sum of €17,622 to compensate him for the wife's unequal division of the balance in an account. I appreciate that a number of small sums can add up to a significant amount. I also recognise that, if the court too readily ignores what might be tactical accretion or expenditure of small amounts, parties might be encouraged to engage in such behaviour. However, to descend to this level in this case having regard to the available resources is, frankly, absurdly disproportionate.

4. In *H-J v H-J (Financial Provision: Equality)* [2002] 1 FLR 415 Coleridge J, commenting on the effect of *White v White* [2001] 1 AC 596, cautioned against "the broad and sweeping reform underlying the speeches" in that case becoming "bogged down in a welter of zealous, over-sophisticated and costly forensic analysis …". In my view, this applies forcefully to the application of the sharing principle following *Miller v Miller; McFarlane v McFarlane* [2006] 2 AC 618. The court's assessment is broad because the objective is broad fairness, not arithmetical precision, an objective which is also consistent with the delivery of proportionate justice.

5. I am not in a position to set out a specific final order in this judgment because of a number of uncertainties, in particular in respect of tax. Accordingly, I set out my determination of what I consider to be the main issues which divide the parties. This will provide the framework for the application of the sharing principle.

6. The specific issues which I consider that I need to address are:

   (a) Has either party failed to give full disclosure of their resources; each alleges that the other has failed to disclose certain specific assets;

   (b) Is the husband the beneficial owner of the shares held in the wife's name in a number of property owning companies;

   (c) Should any resources be notionally added back;

   (d) Should the husband alone be responsible for tax penalties;

   (e) Is there any property which should not be shared equally

between the parties, principally on the basis that it is not marital property;

(f) Should the husband be provided with funds to meet the costs of litigation involving third parties including the parties' children;

(g) There are a few additional matters, which I propose to address, including in respect of tax;

(h) How should certain assets, which both parties seek, be allocated. This applies to both companies and certain individual properties.

7. There is a significant unquantified tax liability because of the manner in which the husband has conducted his and the family's personal and business finances. Both parties are participating in the Liechtenstein Disclosure Facility.

History

8. The parties married in 1980. The marriage came to an end in 2014. The husband is aged 66. The wife is aged 63. They have two children, Alexander aged 35 and Nicholas aged 33.

9. The husband was born in England. The wife was born in Lebanon. They met in Cyprus in the late 1970s and moved to England shortly before they married. When they married the parties had no significant wealth and lived on their combined earnings.

10. The husband is resident in Cyprus and has been resident there for some time (he says since 2010). This will have an impact on the tax payable on transfers as between the parties and on the tax payable on the sale of assets. It is not necessary for me to determine when the husband became non-resident.

11. The wife remains living in London and will continue to do so. It is agreed that the former matrimonial home will be transferred to her.

12. In 1985 the husband set up a company, called C. Christo Ltd ("CC") through which he has built up a substantial residential and commercial property business. It is involved in property sales and lettings; the management of rental properties; and property development. The company has a number of full-time employees. Since 2013 it has operated from premises at 66/70 Parkway in Camden. They were acquired in 2009 and extensively adapted for use as the offices of CC.

13. The wife and one of the parties' children, Nicholas, were directors of CC until December 2014. Nicholas had worked in the business for several years and, until the breakdown of the marriage, it was expected that he would take over the business on the husband's retirement. Following the end of the marriage they have fallen out so this will no longer happen. Nicholas has set up another property business.

14. An agreed asset schedule has been prepared. The gross total is in the region of £50/55 million. A substantial part (approximately £40 million) is held in a number of special purpose onshore and offshore property owning companies. The largest by value, and

representing approximately half of the value of these companies, is called Docklock Ltd. This owns properties in North London including 66/70 Parkway. Some of the shares in these companies are held in the wife's name. It is the husband's case that the wife holds these shares on trust for him. This would not be a relevant issue but for the fact that whether the shares are beneficially owned by the husband or the wife will have different tax consequences.

15. Apart from a joint bank account, with nearly £8 million, which is notionally allocated for tax, and the former matrimonial home (valued at £2.7 million) the bulk of the rest of the wealth is represented by properties in North London (£6.6 million) and Cyprus (£3.7 million) held in the husband's name.

16. It is the husband's case that his parents, in particular his father (who died in 2011), made very substantial financial contributions both by giving him properties and by funding the acquisition and development of properties. Based on these factual assertions, it is the husband's case that three of the London properties and all of the Cypriot properties are not marital assets. It is submitted that funding from the husband's parents was the "genesis" of CC and, in the husband's opening submissions, that *all* of the Cypriot properties came to the husband via his father.

17. When the marriage broke down the wife transferred a substantial sum (just under £12 million) from an account in Switzerland to an account in Beirut. The wife's then solicitors asserted that "the proceeds of this account are derived from (the wife's sister's) various personal shareholdings and property interests and therefore do not constitute matrimonial funds in any way". This was untrue, as the wife accepted during the course of her evidence. She also accepted that what she had done was a mistake and said she was sorry for having done this. The monies were subsequently transferred into the joint account referred to above.

18. There is a dispute between the husband and the children as to the ownership of three properties. I deal with this further below but in summary this relates to one property in Cyprus (plot 507), which is owned in Nicholas' name but which the husband asserts is held on trust for him, and two properties in London (3 Torriano Mews and 2A Lincoln Parade) which are held in the names, respectively, of Gracestone Properties Ltd (Cyprus) and Allied City Estates Ltd but which Alexander claims are held on trust for him.

Proceedings

19. The wife commenced her financial application in October 2014. The First Appointment took place on 11th March 2015. The wife's costs total £1.4 million. The husband's costs total £1.3 million. Despite some of the complexities of this case, to have spent a total of £2.7 million is an astonishing sum which is wholly disproportionate to the issues. I will clearly need to decide whether it is appropriate to make an order for costs at a future hearing when I determine the form of my order.

Final Hearing

20. At the final hearing I heard oral evidence from the wife, the husband, a building contractor from Cyprus and from three accountants, two of them in tandem. I have also read a substantial number of documents.

21. I propose to summarise only parts of the evidence in this judgment but I have taken it all into account when determining the issues set out below.

22. Whilst the wife has undoubtedly acted tactically since the marriage broke down, including by not always giving an accurate presentation (for example, in respect of the transfer of £12 million referred to above), I found her generally to be an honest witness.

23. In coming to this conclusion, I make clear that I have taken fully into account the husband's case in respect of a declaration of trust dated 13th October 2014. By this document, signed by the wife and purportedly signed by the husband, the wife declared that she held her shares in the property owning companies on trust for Nicholas. It is the husband's case that he did not sign this document.

24. A report, dated 15th February 2016, has been obtained from a handwriting expert. The expert was not called to give evidence. Her report notes that the conclusions which can be drawn from an examination of the questioned signatures (on the declaration and a letter dated 14th October 2014) "are limited by the fact that only poor copies of these signatures are available". Further, the husband's signatures are "extremely simple and variable" and "vulnerable to simulation and difficult to authenticate". In her opinion there is "more support for the view" that the signatures are simulations. She gives the lowest positive qualitative conclusion, namely that there is weak evidence that the signatures are not genuine.

25. It is not necessary for me to determine this issue in part because it is agreed that the declaration is either to be treated as ineffective or is to be set aside. Further, even if the husband's signature was simulated, I would place this in the same category as the wife's transfer of the sum of £12 million, namely a very foolish step taken in order to seek to obtain what was considered to be a tactical advantage which was never going to succeed. Even with this conclusion, I would still decide that the wife's evidence is largely reliable.

26. In contrast, in my view, I need to treat the husband's evidence with considerable caution. When assessing his evidence I have, of course, considered the extent to which it is based, for example, on faulty or mistaken recollection or the absence of documents. I have come to the clear conclusion that his evidence, when dealing with contentious issues, was largely based on an indifference to the truth and was motivated by what he seeks to achieve in these proceedings rather than on his true recollection of events. I am satisfied, from the way in which significant elements of the husband's factual case have mutated during the course of these proceedings and from the way in which he gave his evidence, that this has, to a significant extent, been deliberate.

Section 25 Factors

Resources

27. Given the context of this judgment, it is not necessary for me to set out a more detailed exposition of the assets than the summary in paragraphs 14 and 15 above. I, therefore, turn to deal with the issues which most conveniently fall to be considered under this heading.

(a) Undisclosed Resources:

28. The first is whether either or both of the parties have failed to give full disclosure of their current resources.

(i) The Husband

29. The wife alleges that the husband has failed to disclose the following: (a) his interest in a company called Fika Trading Ltd; (b) his interest in a company called Interfine Properties Ltd; (c) unaccounted rental income held by CC which is due to companies owned by the husband/wife.

30. I can deal with point (c) shortly. The wife alleges that CC, which has acted as managing agent for properties owned by family companies, has retained rental income paid to it and has not accounted to those companies for the sums due to them. The latest accounts for CC are as at 30th April 2015. These show that CC's cash at bank and in hand has increased over the year from £1.2 million to £2.7 million and that the amount due to creditors has increased from £1.6 million to £ 3 million. In his oral evidence the husband said, baldly, that very little of this belongs to the family companies. Given my view as to the reliability of the husband as a witness, he will have to supply a breakdown of the relevant balances and the sums due to the companies, as at the date of the distribution of the companies between the parties, to ensure that he is not able to manipulate the figures and seek to obtain a larger share of the marital wealth by retaining funds within CC, which has not been ascribed a value in the asset schedule.

31. (a) Fika Trading Ltd is a BVI registered company which has, or appears to have, an interest in an investment at Mandria Beach, Cyprus. It is the wife's case that the husband has an interest in Fika. The husband denies this and states that the company is owned by the Piitarides family for whom "we" provided corporate services.

32. The wife relies on a number of documents. One of these is a document dated 5th January 2009 which, in his oral evidence, the husband accepted he "probably" signed in the wife's (maiden) name. This document states that the wife is the 100% beneficial owner of the company pursuant to a trust deed dated 27th December 2006. It appears that Fika's director is Fiducitrust International Inc.

33. By letter dated 24th March 2016, Fiducitrust Services Ltd (a Cyprus registered company), as registered shareholders of the company pursuant to the trust deed, wrote to the wife, as the "beneficial owner of 100% of the shares". The letter states that all instructions and documents have always been provided by the husband and then says:

> "We have been provided with information that in the context of the services offered by (CC) in collaboration with (the husband) you were providing corporate representation and other related services to clients and indeed in the case of Fika Trading Ltd you were offering such services/representation to Mr Solon Piitarides whose funds the company is holding … we are being requested by Mr Piitarides to assist with the resolution of this matter".

34. Other documents relate to a venture involving Fika and Solon Piitarides Developments Ltd ("SPD"). There is an agreement between them dated 30th June 2008 by which Fika will acquire a 50% shareholding in a proposed investment at Mandria, Cyprus. The husband accepts that he signed this in the wife's name. There is also an agreement dated 5th January 2009 by which SPD sells Fika 50% of the shares in a company called Holdtime Investments Ltd.

35. No witness statements have been provided on behalf of the Piitarides family. Instead the husband has provided letters which purport to have been written by or on behalf of Mr Piitarides and his family. By letter headed "Re Fika Trading Limited/Piitarides Family" and dated 25th September 2015 a firm of Cypriot advocates write on behalf of Mr Solon Piitarides and the family:

> "The sole beneficial interest/ownership in the shareholding of the company is for the benefit of the Piitarides family …
> The Piitarides family has since 1985 retained (the husband) through his trading company (CC) to acquire, develop, rent, manage and sell properties in the UK …
> The Piitarides family has used the services of (the husband) and (the wife) … in the legal ownership and representation of (the company)."

36. There are other letters from Fiducitrust giving more detail of the involvement of the Piitarides family in Fika. There is also evidence of a payment by Fika in July 2013 (of the sum of €23,000) to an account in Cyprus in the joint names of the husband and his father. This was said by the husband to be fees for corporate services. In the context of the husband's case in respect of his father's financial contributions it is relevant to note that this account was still in joint names.

37. Mr Southgate can legitimately question the evidence which is relied on by the husband. The absence of any statement filed by or on behalf of the Piitarides family has not assisted. Further, solicitors making assertions in letters, clearly based solely on the instructions they have been given, are not helpful.

38. Mr Southgate can also question why there would be an agreement between two companies (Fika and SPD) when both are said to be owned by the same family. And, why would letters be written by CC, referring to "my clients" being interested in a joint venture with SPD, when those clients are the same people who own SPD.

39. However, despite these questions, I am persuaded that the husband does not have an interest in Fika. I consider it more likely that the structure was created by the husband for the benefit of the Piitarides family and not for his own benefit. Having seen the perceived benefits of using his wife's name (and where necessary, a Lebanese address) for his own affairs, the husband has also sought to provide these benefits to others.

40. This vignette provides a window into how regulatory and other authorities can be misled by a superficial picture which can be painted relatively easily. The wife was clearly never the true beneficial owner of Fika. This assertion, in a document signed by the husband in the wife's name, can only have been made with the intention of deliberately misleading some person or body. I do not know the extent to which

others were involved in or took improper advantage of this charade but it is clear that the husband was directly involved in creating this inaccurate paper trail.

41. (b) Interfine owns a property at 67 Lawrence Road, London. It is the husband's case that the company and the property are owned by a client of CC. CC has been acting for the client as consultants and managing agents in respect of this development.

42. The husband states that the Christoforou family (led by his father) was a party to the development of 58/80 Lawrence Road with Interfine and a company called Chandler Properties Ltd. This account conflicts with a letter he wrote dated 24th October 2003 (and other documents) in which the only investors are said to be a trust owned by third parties (to whom the letter is addressed) and Interfine. If this is right it would mean that the husband's investment was made through Interfine.

43. The husband says it was also mooted that he would be involved in the development of 67 Lawrence Road, owned by Interfine. This would be achieved by the Christoforou family and Chandler Properties becoming shareholders in Interfine. The Christoforou family's shares would be held in the wife's name "as was common practice". In the event both Chandler Properties and the husband decided not to become involved in the development of 67 Lawrence Road.

44. A director of a Cypriot company called PremierPlus Ltd has written letters dated 2nd March 2015 and 24th August 2015. These state that the shareholders of the company are a Mr Ioannis Zavros and Mrs Demetra Avraamidou. They also confirm that neither the wife nor her sister have held any shares, legally or beneficially, in the company.

45. There is an unsigned and undated declaration of trust by which Demetra Avraamidou declares that she owns the shares in Interfine on trust for the wife. The husband explains that this was part of the unimplemented plan. There is also a letter, headed Interfine Properties Ltd and dated 26th January 2004, from CC to Mr Georgallis in which the wife is referred to as a "mutual client" who is enquiring whether the legal documentation identifying the beneficiaries has been completed.

46. The wife also relies on Interfine appearing in a schedule of bank accounts under the title "Partnership Companies" along with Allied City Estates Ltd. The latter is owned as to 50% by the husband and 50% by Mr Georgallis.

47. The husband's case on this issue, as with much of his evidence, is confused and confusing and is not consistent with some of the documents. Further, as with Fika, he has chosen not to adduce any evidence from the alleged owners of Interfine. The most persuasive evidence that the husband has an interest in Interfine is the fact that it appears as a "Partnership" company in the schedule of bank accounts and the documents which support his having made an investment through Interfine. The other documents are less persuasive than they might appear because of the use made by the husband of the wife's name to create misleading ownership structures for others.

48. However, when viewed overall, although I am sceptical about the husband's account, I am not persuaded that the husband has an interest in Interfine. Although, as referred to above, the husband is not a reliable witness, the evidence is not sufficient to persuade me that he has a current interest in Interfine.

(ii) The Wife

49. The husband alleges that the wife has failed to disclose assets she has in Lebanon.

50. It is his case that, in 2001, his parents gave the parties £450,000 which they used to purchase a property in Lebanon in the wife's name. He travelled to Lebanon in 2000/2001 and the wife's brother acted for them in the purchase. There are no documents relating to this, the husband alleging that the relevant file was removed by Nicholas from the offices of CC in October 2014. When the husband was asked why this property was not referred to in his Form E, he replied that it had not come to mind.

51. The husband's inability to give any specific details about this property, although he says he was in Lebanon to effect the purchase, significantly undermines his case. Further, in the absence of any corroborative evidence, I am not satisfied that any such property exists.

52. In addition, the husband asserts that the wife owns a flat which she was given by her parents and in which he stayed on several occasions with the children.

53. The wife's evidence is that she has never owned a property in Lebanon. Her father and brothers each own a flat in a block which was originally owned by her father.

54. I am satisfied by the wife's evidence that she does not own a flat in Lebanon.

(b) Beneficial Ownership of the Wife's shares:

55. The parties own a number of onshore and offshore property owning companies. The evidence as to who is the registered legal owner of the shares in these companies is not wholly clear, probably because the parties have been focused on which of them receives which companies rather than on the present structure. This issue was not explored during the hearing so the following is not intended to be determinative.

56. The wife appears to have the following shareholdings registered in her name: Docklock Ltd (incorporated in May 1986) 50%; Ridlington Ltd (incorporated in April 1989) 50%; Counterclaim Ltd (incorporated in May 1988) 1%; Agate Properties Ltd (IoM) 100%; Docorp (BVI) 100%; Arion Developments Ltd (IoM) 100% (Arion owns Anglo Properties Ltd (IoM), Consort Properties Ltd (IoM) and possibly also Kiafa Ltd (Cyprus); Consort owns Hadleigh Enterprises Ltd (IoM)). There is another company, Mountfield Properties Ltd (IoM); the shares are held in the name of the wife or her sister.

57. In his Form E the husband asserted that the wife held *all* her shares on trust for him.

58. In his Replies dated 15th June 2015, the husband said, in respect of the onshore companies, that when he became non-domiciled in or around 2011 the parties agreed "for reasons of tax efficiency" that the wife would consent to declaring that "the properties" were held by her on trust for the husband. They never got around to executing a formal declaration.

59. As for the offshore companies, the wife was the "official legal owner", in her maiden name and "on her Lebanese passport", for "reasons of tax efficiency" and based on the (husband's) decision that at a future date they would reside in Cyprus. It is difficult to see what "tax efficiency" reasons there would have been for the shares being registered in the wife's name if, as the husband asserts in his s.25 statement, the wife was holding the shares as a "bare nominee" for him.

60. A meeting took place on 19th October 2015 attended by the parties and their legal advisers. During the course of this meeting the husband said that, in respect of the offshore companies, there were declarations of trust which had been left blank. He had prepared these himself and had not received any professional advice. They were left blank in anticipation of an "act" happening in the future; if necessary they would have been filled in at the time. He then said that some of them had been completed but he could not recall for which companies.

61. The husband also refers to the use of the wife's sister's identity for the purposes of holding shares and an account in Switzerland.

62. At the same meeting, when the husband was asked why he said the wife held her shares in the onshore companies on trust for him, he denied ever saying this. It was then pointed out that he had said this in his Form E.

63. In his s.25 statement the husband says, in respect of the onshore companies, that there was no need to have any formal documents because there was never any doubt that the wife held her shares on trust for him. As for the offshore companies, declarations of trust and powers of attorney "were created in my favour" but these documents had been removed by Nicholas from CC.

64. In cross-examination, contrary to what he had said in his statement, the husband said that the declarations of trust for the offshore companies were left blank on the advice of accountants who had prepared the documents. This evidence is also inconsistent with the information he gave during the October 2015 meeting when he said that *he* had drawn up the deeds himself, copying them from those prepared for other clients. He added that the reference in the note of the meeting to "he" was not to him.

65. Also, when asked what the "act" was, as referred to in the meeting, the husband said that he would have sought advice from the accountant on the disposal of the company. How the declarations were completed would "depend on the situation arising". Importantly, when it was suggested to him that nothing had been decided, he replied that he could not recall.

66. As for the onshore companies, the husband's oral evidence was equally unsatisfactory. When he was asked about the alleged agreement in 2011 (as referred to in his Replies) he said that his mind had gone blank. When asked about his comment in the October 2015 meeting, that he had never said the onshore companies were held on trust, he pretended that he was confused about the meaning of and difference between legal and beneficial ownership.

67. The husband was also asked about a stock transfer form in respect of the wife's shares in Docklock ("DL"). He said he had been advised that the most tax efficient way of transferring the shares to Nicholas was, first, for them to be transferred to him and,

then, after 6 months (so that the transfers were not linked), to transfer them to Nicholas.

68. The advice, which was given to the husband in early 2014, is confirmed in a letter dated 10th March 2015. It is based on the wife being UK resident and the husband being non-UK resident. The advice is also clearly predicated on the wife being the beneficial owner of the shares in her name in DL. If the husband was already the beneficial owner there would have been no need to transfer the shares to him to seek to avoid the crystallisation of UK capital gains tax, as referred to in the letter. This evidence is, therefore, contrary to the husband's case that he is the beneficial owner of these shares.

69. I am satisfied that the wife is the beneficial owner of the shares in her name. The husband's case as to how any trust arose was never clearly articulated. In respect of the onshore companies it might have been based on an express agreement in or around 2011 but, as referred to above, in his oral evidence the husband was unable to recall this agreement. Indeed, the husband has been unable to advance a consistent or, in my view, plausible case as to the creation of any trust. There are important elements in the evidence which are contrary to his case, including the 2014 advice in respect of the DL shares and the husband's evidence that the declarations of trust (in respect of the offshore companies) were left blank because their completion would depend on the "situation arising". This evidence was effectively an admission that he would put forward whatever case was most tax advantageous at the time, which is inconsistent with the wife holding the shares on trust for him.

(c) Should any resources be notionally added back:

70. The wife seeks the reattribution of sums spent by the husband (i) in an application for a freezing order against her and Nicholas, made and determined within these proceedings, and (ii) in proceedings in the Queen's Bench Division brought by the husband against the children.

71. The injunction application was determined by Roberts J: *C v C* [2015] EWHC 2795 (Fam). She ordered the husband to pay the wife's and Nicholas' costs on an indemnity basis and further provided that these costs "will be accounted for in the final order in the financial remedy proceedings by way of add-back; i.e. notional reattribution to the husband's assets". There has, therefore, already been a significant element of reattribution.

72. The latter proceedings received very little attention during the course of the hearing.

73. Is the notional reattribution sought by the wife justified in this case on the basis that the husband's conduct would be inequitable to disregard, applying *Vaughan v Vaughan* [2008] 1 FLR 1108?

74. As to the injunction proceedings, I do not propose to make any additional order because I consider that this matter has been dealt with sufficiently by the terms of Roberts J's order. As to the latter proceedings, I am not persuaded that the husband's conduct justifies any add-back, largely because I do not have evidence which would support such a conclusion.

(d) Non-Marital Property

75. The husband contends that a number of properties are not marital assets in that they were given to him by or were acquired with resources provided by his parents. This applies both to properties in England (186, 230 and 232 Camden High Street) and in Cyprus (effectively all the Cypriot properties).

76. This argument raises both evidential and legal issues. In my view, the comments made by Coleridge J in *H-J v H-J* also apply to the court's approach to the determination of whether there is non-matrimonial property, namely "property … from a source wholly external to the marriage", as described by Lord Nicholls in *White v White* [2001] 1 AC 596 at p. 610E/F; or assets which are not "the property of the parties generated during the marriage otherwise than by external donation", as described in *Charman v Charman (No 4)* [2007] 1 FLR 1246 at para 66. It is not proportionate to require the court to embark on an undue, and costly, forensic analysis when seeking to determine whether there is property which is not the product of the parties' endeavours during the course of their relationship.

77. In *N v F (Financial Orders: Pre-Acquired Wealth)* [2011] 2 FLR 533, Mostyn J said, at para 24:

> "If a party is going to assert the existence of pre-marital assets then it is incumbent on him to prove the same by clear documentary evidence".

I would not subscribe to the view that documentary evidence is necessary in every such case, if this is what Mostyn J envisaged, because the circumstances may be such that, even in the absence of documentary evidence, the court can and should making a finding as to the existence of non-matrimonial property. However, I agree with the underlying force of his observation, namely that, if a party seeks to establish the existence of non-matrimonial property, this must be demonstrated by clear evidence which does not require the court to engage in the sort of detailed forensic analysis which the husband's case in the present proceedings has required.

78. Indeed, so opaque and inconsistent have significant aspects of the husband's case been that I have considered whether to dismiss it with only a brief summary of the evidence. On reflection, I have decided that I need to explain my decision in more detail. I doubt whether I would follow the same approach again if faced with similarly unsatisfactory evidence.

79. Further, as identified in *White v White* and repeated in *Miller v Miller; McFarlane v McFarlane* [2006] 2 AC 618 this factor must be placed in context so that it is accorded proper weight in the s.25 balancing exercise. As Lord Nicholls said in the latter case, at para 25:

> "Non-matrimonial property represents a contribution made to the marriage by one of the parties. Sometimes, as the years pass, the weight fairly to be attributed to this contribution will diminish, sometimes it will not."

At para 148 Lady Hale said:

> "In *White*, it was recognised that the source of the assets might be a reason for departing from the yardstick of equality (see 610C–G and 994 respectively). There, the reason was that property had been acquired from or with the help of the husband's father during the marriage, but the same would apply to property acquired before the marriage. In *White*, it was also recognised that the importance of the source of the assets will diminish over time (see 611B and 995 respectively). As the family's personal and financial interdependence grows, it becomes harder and harder to disentangle what came from where."

80. In *K v L (Non-Matrimonial Property: Special Contribution)* [2011] 2 FLR 980, Wilson LJ (as he then was) said, when addressing the importance of the source of the assets:

> 18. Thus, with respect to Baroness Hale, I believe that the true proposition is that the importance of the source of the assets may diminish over time. Three situations come to mind:
>
> (a) Over time matrimonial property of such value has been acquired as to diminish the significance of the initial contribution by one spouse of non-matrimonial property.
>
> (b) Over time the non-matrimonial property initially contributed has been mixed with matrimonial property in circumstances in which the contributor may be said to have accepted that it should be treated as matrimonial property or in which, at any rate, the task of identifying its current value is too difficult.
>
> (c) The contributor of non-matrimonial property has chosen to invest it in the purchase of a matrimonial home which, although vested in his or her sole name, has – as in most cases one would expect – come over time to be treated by the parties as a central item of matrimonial property.
>
> The situations described in (a) and (b) above were both present in *White*. By contrast, there is nothing in the facts of the present case which logically justifies a conclusion that, as the long marriage proceeded, there was a diminution in the importance of the source of the parties' entire wealth, at all times ring-fenced by share certificates in the wife's sole name which to a large extent were just kept safely and left to reproduce themselves and to grow in value."

81. Although *N v F* preceded *K v L*, the above observations are reflected in one of the issues identified by Mostyn J in para 14, namely "whether the existence of non-marital property should be reflected at all" in the outcome.

82. It is the husband's evidence that his father was a wealthy man by 1956 and that, over the years, he was able to make a very considerable level of financial provision for the husband in a variety of ways including by giving him large sums and by paying for the construction of properties in Cyprus on land belonging to the husband or which were then given to him by his father. The total amount said to have been contributed by the husband's parents was not calculated during the course of the hearing but it appears to be in the region of £3 million and stretches from 1986 to 2008. I set out below how the husband's case on this issue has developed.

83. It is the wife's case that the husband's father lost much of his wealth in 1974 because it was invested in Northern Cyprus. She states that he was not in a position to benefit the family in the manner suggested by the husband but rather that, for many years, the husband financially supported his parents. He paid, what the wife describes as, "a kind of allowance". She would also often shop for clothes for the husband's father.

Camden High Street Properties

84. As referred to above, three of the properties which the husband asserts are not marital assets are on Camden High Street. Numbers 186 and 230 are owned by DL. 232 is held in the husband's sole name.

85. As to number 186, in his Form E the husband said that its purchase was financed with a 45.2% cash contribution (£126,000) from his parents when it was purchased in 1993.

86. In his Replies to Questionnaire, dated June 2015, the husband said that *he* had "only been able to put" the balance of £153,000 towards the purchase because he had just purchased another property for about £300,000.

87. In his s.25 statement, the husband gives a different/expanded account. In his oral evidence he explained that his Form E had been completed from memory and without access to the files. Adding that, at his age, his memory is neither accurate nor precise.

88. In his s.25 statement, the husband says that DL was formed in 1986; that his father gave him the initial funding of approximately £120,000; and that he and his father were equal shareholders. With this money they purchased a property in Camden High Street which they sold for a profit "shortly after". These proceeds were used in the purchase of 186 together with a further gift of £126,000. As a result, 186 was *entirely* funded by his parents.

89. In his oral evidence, when shown DL's accounts, which show that the company was dormant with no funds until the purchase of 186 in 1993, the husband said his evidence in his statement, about the formation of DL and the purchase of a property for £120,000, was wrong. He was referring to another company.

90. Shortly after the above evidence, the husband was asked where the sum of £153,000 (referred to above) had come from. He replied that he could not recall. He had no

answer to the differences in what he had said in his statement (100% from his parents) and in his replies (£153,000 from him).

91. The above is an example of the husband's insouciant approach to giving truthful evidence. He seemed singularly unconcerned about having to disavow his evidence in his Form E and then what he had said in his statement.

92. As for 230, in his Form E the husband said that it was financed with a 50% cash contribution (approximately £300,000) from his parents. In his Replies, the husband says that this was wrong. The property was purchased in 1992 in the name of a company called Sea Belt Agencies Ltd with a mortgage of £350,000 and a loan from his father of £300,000 "which was never paid back". The property was then purchased by DL for £600,000 in 2000 with a full mortgage.

93. In his statement, the husband reiterates that his father lent £300,000 which had never been repaid.

94. In his oral evidence, the husband said that the £300,000 was not a loan but a gift. The account given in his statement, that this sum was "borrowed" from his father, was wrong.

95. DL's accounts for the year ended 1987 show a director's loan account of only £101. Both the husband and his father are directors and equal shareholders. The company is said to have been dormant during that year. By 31st March 1988 the husband and the wife are the directors and equal shareholders. Summary accounts were produced for each of the years 1987 to 1993 (inclusive). In all of these it is stated that the company has not traded and has had no income or expenditure. It is not until the year ended 31st March 1994 that a tangible asset is added at a cost of £279,002 (being the purchase of 186).

96. I am not satisfied that the husband's parents made any contribution to the acquisition of these properties. The inconsistencies in the husband's evidence, and other aspects of the evidence, as referred to below, wholly undermine his case.

97. As to number 232, in his Form E the husband said that this was *given* to him by his parents in 1997.

98. In his Replies he said that he paid his parents £200,000 "consideration" for this property with the balance of the value of the property being a gift. The husband relies on a valuation dated 25th April 1997 of between £550,000 and £600,000.

99. In his statement the husband gives a different version, namely that his father "reinvested" the £200,000 in "properties purchased by" DL so that, in fact, his father received nothing for the property.

100. Importantly in respect of the husband's case on this issue, in his oral evidence, when being asked about CC, the husband emphasised that CC had "fuelled" the acquisition of *all* these properties and that CC has given "me" the money to buy the properties. He also said that DL has only become financially independent in the last 6/7 years with CC financially contributing towards DL "even recently". If this evidence is correct, it would clearly undermine the husband's case for categorising these

properties as non-marital assets because on no basis can CC be said to be a source external to the marriage.

Cypriot Properties

101. The properties comprise (i) a mixed use building in Nicosia (£1m.); (ii) a number (15) of undeveloped plots (£720,000) in Silikou; (iii) two houses on 4 plots (£183,000); (iv) two holiday homes in Silikou (£300,000 and £1.1m.); (v) a property in Nicosia held in Nicholas' name but which the husband asserts is held on trust for him (£410,000) (I deal with this separately below). Silikou is the village where the husband's family has lived for many years. The figures are net of costs of sale but not tax. In dealing with these properties, I do not propose to distinguish between Cypriot and UK pounds because the differences in exchange rates are immaterial to the issues I have to decide.

102. In his Form E the husband stated that, save for one plot recently acquired by him and one plot bought by his father in the early 1980s, *all* the plots owned by him had been given to him by his parents having been owned by his family "long before I met" the wife and some for centuries.

103. The husband gives considerably more detail in his s.25 statement of the contributions said to have been made by his father and in respect of the origin of the various plots. It contradicts the evidence in his Form E in that some of the plots are specifically said to have been purchased *after* the date of the marriage, albeit funded by his father who had returned to live in Cyprus after he retired in the late 1970s/early 1980s.

104. (i) Nicosia Building (plot 2069):

The husband's case is that his father paid for the construction of the property in Nicosia in the late 1980s/early 1990s after he had built properties for the husband's sister. He relies on a number of documents including receipts for payments by his father and a contract between his father and the building contractor, Kyratzis Construction Co. Ltd. The plot itself had been given to the husband by his mother in 1986. The total building costs are said to have been approximately £320,000.

105. In his statement the husband says that, in 2013, he spent a further sum of €120,000 on converting part of the property.

106. When being cross-examined, the husband was asked about a letter dated 1st December 2011 to him from a civil and structural engineer which refers to the expenditure of €468,000 on the renovation of this property. The husband's answers were not entirely clear and, in my view, deliberately so. He could not explain why he had failed to mention this expenditure which significantly undermines his case that the property is not marital. He did make clear that the sum of €120,000 was in addition to this earlier sum giving total expenditure by him on the property of €700,000.

107. The husband was also asked about a transfer, of €15,000 for professional fees and contractors, made in January 2010 from an account held with Credit Agricole to an account in Cyprus in the joint names of the husband and his father. The wife has produced a number of such documents dating from between May 2002 and June 2010. They follow a typical pattern. The husband sends a fax to the bank requesting that a

transfer be made. The transfer is then made purportedly "by order of" the wife's sister. The Credit Agricole account was in the name of the wife's sister before it was transferred into the wife's name.

108. In response to the question about the January 2010 transfer the husband replied that it would require a "very clinical exercise" to identify what belonged to him and what belonged to his father. He then added, as he attempted to explain this assertion, that this was because whatever his father had he gave to the husband. He then said that this specific transfer was probably to reimburse the father. This evidence was confused, as with much of the husband's evidence when he was being tested about his case. I have no doubt that this was one way in which the husband funded projects in Cyprus. It also demonstrates that the fact that payments in Cyprus might have been made by the husband's father does not establish that they were made with *his* resources.

109. The husband also relies on the evidence of Mr Kyratzis. He has provided a statement and gave oral evidence. He says that his company has undertaken a number of projects for the husband's father commencing in 1983. These included properties in Nicosia which he understands were then given to the husband's sister. In about 1986 he was instructed by the father to build a property in Nicosia on plot 2069. The project ran between 1987 and 1989 and he was paid by the husband's father. Further, again on the father's instructions, he built a property in Silikou (on plot 769/1) between 1995 and 2001 at a cost of nearly £550,000. Payment for this was received from the husband's father.

110. At this stage of the judgment, although it makes a broader point, I consider it appropriate to make this observation. The evidence in respect of the property in Nicosia is but one example of how the husband's case, that these properties are not the product of any wealth generated during the marriage, is ineptly formulated. I could use more strident language because, both during the hearing and when preparing this judgment, it is plain to me that, in many respects, the formulation of the husband's case has been speculatively advanced. It has been advanced in a manner which not only fails to comply with the overriding objective but, as referred to above, conflicts with it. It has seemed as though the philosophy which has been followed is nothing ventured, nothing gained and also, it seems to be assumed, nothing lost.

111. (ii) Undeveloped Plots

I have already referred to some of the husband's evidence relating to these plots. There are 15 plots. In his s.25 statement, the husband divides them into those plots (10) which have been in his family for many years and those (5) which were purchased by his father in his lifetime and given to the husband.

112. During the course of the hearing, the evidence in respect of the manner in which these plots were acquired became considerably more opaque and the husband's assertions, both in his Form E and his s.25 statement, were shown to be inaccurate. Contrary to what the husband said in his Form E, it became clear that a number of plots had been purchased during the course of the marriage. In addition, some of the plots said by the husband in his statement to have been owned by his family "for many years", were shown to have been purchased during the marriage.

113. For example, in respect of plots 542 and 627, said by the husband in his statement to have been owned by his family for many years, the property register certificates shows that they were purchased in the husband's father's name in 1992 for £3,300 and £3,650. This evidence is contradicted by a report dated 9th May 2016 (and provided by the husband after the conclusion of the hearing) but without explanation as to why it differs from the certificates.

114. When it was suggested to the husband that these plots had not been in his family "for many years", he replied that he considered 1992 to be many years. This answer wholly failed to address the fact that the husband's statement divided the properties into those (including 542 and 627) which had been in the family "for many years" and those which had been "purchased by my father in his lifetime". It was a very thin attempt to fabricate an answer to his previously inaccurate evidence.

115. The husband was also asked about plot 620 which does not appear to be listed in his properties. In an email dated 26th April 1999 he refers to having purchased this property for £6,000 through Mr Kyratzis. He replied that this was a plot they were going to develop together but which, perhaps, did not continue. This answer was not a coherent explanation of what had happened to the property.

116. When Mr Kyratzis gave evidence he explained that he had helped the husband with the registration of the property because he did not have the necessary papers. He also added that the person seeking registration needs to be present unless they have given a power of attorney. In my view, this would provide an explanation for the registration of properties in the husband's father's name even though they were being purchased by the husband.

117. The husband's evidence on this issue is wholly unsatisfactory. It was inconsistent and clearly unreliable. It was also confusing and confused. There was no real attempt to match the certificates to the properties and the report provided after the conclusion of the hearing merely added further to the confusion as it contradicted the husband's evidence and, apparently also, some of the certificates. The certified extracts from the property register do show that at various dates, all of which were after the date of the marriage, some plots were transferred from the husband's father to the father. However, this does not demonstrate how or when they were originally acquired.

118. (iii) Two houses on four plots

The husband asserts that these plots form part of a larger area which "historically" belonged to his family from the Byzantine period. These plots were transferred to him by his father who, in turn, had been given them by his father in 1985. In addition, he says that his father built a house in about 1990 which was his home until the larger property referred to below was built. In his oral evidence the husband accepted that his assertion in his statement that he had "never" been to the former house was incorrect.

119. Yet again, the husband's account does not tie in with the certificates he exhibits to his statement. One of them shows that one of the plots was acquired in 1999 by purchase (at a cost of £12,200). Another shows a plot apparently being transferred by his father to himself in 2000.

120. There is no corroborative evidence that the resources said to have been used in about 1990 to build the property now on the site were the husband's father's rather than the husband's. Neither the fact that contracts were with the father nor that he made the payments demonstrate that the resources used were his.

121. The wife asserts that, as with the other properties in the village, it was the husband who provided the purchase and development funds for this house which they used as a holiday home before the larger property was built. Plots might initially be purchased in the husband's father's name but this was not because they were being funded by him but for other reasons.

122. (iv) Two holiday homes:

The smaller house is on plots 921/1232. According to the husband, these plots were purchased in his name in 2002 for £32,000 "using funds from my father". His father then spent approximately €200,000 building the house. The works appear to have been carried out between 2005 and 2008/2009. Apart from the husband's assertions, there is no evidence that the monies used were the husband's father's resources.

123. There is evidence of payments, totalling approximately £100,000, from the parties' account with Credit Agricole to a civil engineer and project manager between December 2007 and July 2008. The husband said that these payments did not relate to this project because it had been completed by then. This answer was then shown to conflict with a document dated 22nd January 2008 and headed "Four bedroom house: Sylikou: Valuation No. 7". The husband said that this related to the Acropolis (Nicosia) property before changing his mind.

124. The wife's evidence is that this house has always been referred to as Nicholas' house as it was intended to be given to him at some point.

125. The larger house is on plot 1339. In his statement, the husband states that this plot was sold to his father by the church in 1988 for £72,000. He does not specifically refer to the fact that it was purchased in the husband's name (which appears from the land registry certificate attached to his statement). The husband's father then turned the property into a farm which runs at a great loss. In 1994 he said that he wanted to build a house "for me to stay in when I was in Cyprus". The father commissioned an architect and paid for the cost of the works of approximately €800,000. He then lived in the property until his death in 2011 and, according to the husband, "We would visit sometimes when on holiday in Cyprus".

126. The wife's case is that this property was developed by the family as a holiday home and that it has always been called Alexander's house because they intended to give it to him so that each son had a property in the village.

127. When giving oral evidence the husband was shown a number of documents in which he is dealing with building projects in the village of Silikou and in which he refers to them as his projects. For example, in a letter dated 17th January 2000 to Mr Kyratzis he states that unless the swimming pool is rectified "to *my* own specifications and finished to *my* satisfaction … monies will be deducted from the sum that *I* am holding"; in an email dated 5th September 2003 he complains about the work on "these projects" (being the "big house" and the "small house" in the village) as being

"too slow for *me*". He also says: "*I* have given Mr Kyratzis … a down payment of £40,000"; "*I* want to commence work on the (small) house to be concurrent … with the larger house"; and refers to safeguarding "*my* interests". (my emphasis).

128. The same pattern is repeated in other letters and emails in which the husband refers to: contracts between "myself" and the contractor and "Schedule of works for my main house" (7th September 2004); "all the projects *I* am involved in our village", "*my* projects" and "it is my intent to invest a figure in excess of £2m on refurbishment and new developments for the benefit of our village" (5th April 2006).

129. The husband was unable to provide any convincing explanation for the personal references to himself and the absence of any reference to his father. I do not accept that, as he sought to assert, he was simply helping his father. I have no doubt that these were his projects being funded with his resources. The properties were clearly built for the family as demonstrated, for example, by a schedule dated 2nd January 2000 which refers to the master bedroom, "Alexi's bedroom" and "Nicholas' bathroom".

130. The husband's attempt to distance the family from the larger house, in his s.25 statement, by saying that they would only visit "sometimes", was shown to be a lie. When challenged about this evidence, he first questioned whether he had said this (clearly having forgotten his earlier lie) and then, when shown his statement, resorted to a further lie by saying that he was referring to his father's previous house before ultimately saying that this was not what he intended to say in his statement.

131. There is other evidence relating to the husband's father's financial position. On 5th January 1999 the husband wrote, on behalf of his father, to the Inland Revenue. In this letter, the husband refers to his father as a "financially broken man". Legal fees had wiped out his savings and he had been forced to sell "the property to allow him to live in some comfort in his remaining years".

132. The husband was asked in his oral evidence whether this letter was true. After a long pause he said that he would have to read it carefully. He then said, wholly unconvincingly, that the letter was inaccurate but he had been told to say this by his father.

133. As referred to above, the wife says that, rather than her parents-in-law assisting them, the husband financially supported his parents. In an internal CC memo from the husband dated 5th January 1999, he asks for his father's bank account to be monitored so that it does not become overdrawn. He also requests that £1,000 be transferred (from CC) to the account and be treated as a loan from him to his father. There are other documents dealing with the transfer to the husband's father's account of small sums (between £500 and £2,500). In answer to questions about the memo, the husband referred to an agreement with his parents to pay them an income to live on. Any such agreement, and the need to make these modest transfers, are inconsistent with the husband's case that his parents were sufficiently wealthy to fund the purchase and/or the development of properties from, at least, this date.

134. I should add that I do not consider that the transfer, on 1st December 2008, of £500,000 to the Credit Agricole account on the "order of" the husband's father assists his case. The husband explained that he had not referred to this prior to the hearing

because he had "forgotten" about it. It is clear that the husband was in the habit of using accounts in the names of others (such as the Credit Agricole) to channel his funds. I have little doubt that he would use his father's accounts for the same purpose and that this sum was not from his father. This would also explain why £217,000 was transferred from this account to his father's account on 6th March 2007.

135. Finally, when the husband's father died, probate of his estate was granted by the Nicosia District Court. The order records that he died without a will; that he had no immovable property; and that his movable property did not exceed €12,000.

136. After, what I acknowledge is, an unduly lengthy analysis of the evidence, I return to the issue I must determine, namely has the husband established that there are any assets which are not and which, for the purposes of division, should not be treated as marital property and/or that, because of non-marital contributions (being contributions from the husband's parents), the current wealth should not be divided equally?

137. As referred to above, I agree with Mostyn J that, if a party seeks to contend that an asset should not be treated as a marital asset or that contributions from a source external to the marriage justify an other than equal division, it is incumbent on them to provide clear evidence to establish this point. This is *not* to create an elevated standard of proof. It is merely to state that, as an aspect of the overriding objective, a party cannot expect the court to engage in a detailed analysis to see whether an asset or part of the wealth is or is not or should or should not be treated as the product of the parties' joint endeavours. This is wasteful of time and expense and unnecessary to achieve a fair outcome.

138. I reject the husband's case that any of the above properties can be viewed as sufficiently from a source external to the marriage to justify being classed as non-marital and/or that there are any or any sufficient non-marital contributions to justify an other than equal division of the current wealth. The husband has singularly failed to provide clear evidence in support of his case. His evidence has been inconsistent and, in many respects, implausible.

139. I am satisfied that, far from having the resources which would have enabled him to make the contributions asserted by the husband, by 1985 the husband's father had limited resources as stated by the wife. The husband's case is contradicted by other documents including the letter to the Inland Revenue and the regular transfers made by the husband to his father as referred to above. It is striking, to say the least, that there is an almost complete absence of documentary evidence supporting the husband's case that his father or parents were able to deploy resources of £3 million between 1986 and 2008. The husband's attempt to explain this, at one point in his oral evidence, by the absence of cheque books and that the bank had gone "bust" was singularly unconvincing.

140. There are a number of reasons why, in my judgment, all of the above properties should be treated as marital assets. Even if the husband's parents made some contributions, the evidence does not enable me to "disentangle what came from where" and identify what part of the current wealth should fairly be categorised as being from a source "external to the marriage" (to adopt what Lady Hale said in *Miller v Miller; McFarlane v McFarlane* and Lord Nicholls' phrase from *White v White*). There is no sufficient evidential platform on which to make a "broad brush

departure from equality" as Mr Howard alternatively proposed in his final submissions when faced with what he described, with marked understatement, as "some undermining" of the detail of the husband's case.

141. For example, if I were to seek to make such a departure I would have to give appropriate weight not only to the contributions made by the husband's parents but also to the financial support provided to them by the husband. Given the evidence, I am wholly unable to conduct any such exercise as would be required to arrive at a fair result.

142. Even if I were able to determine that the husband's parents had made contributions in excess of the financial support they had received, and which might merit being reflected in my award, I would also need to be able to assess the extent to which the current assets remain the product of "external donation" (from *Charman*) rather than the product of the marriage so as to justify treating them as non-marital property.

143. I am, likewise. unable fairly to conduct any such exercise in part because of the incoherent manner in which the husband has advanced his case but also having regard to the husband's own evidence as to the pivotal part played by CC in providing him with the resources to buy (and, I would add, develop and maintain) the properties as well as the manner in which the property portfolio in London was managed.

144. As the husband said in his statement, CC did not charge for managing the properties and he has always "run my business and the intercompany arrangements" with "a degree of informality". All the London commercial properties have become so integrated into the marital business that it is not possible fairly to attribute any weight to any non-marital contributions. The evidence does not enable me to assess, even broadly, the continuing relevance of these contributions to the current values of these properties when measured against the weight to be given to the marital contributions.

145. Accordingly, even if I was satisfied that some of the assets might reflect contributions from the husband's parents, I would not be persuaded that such contributions justified those assets being treated as non-marital or otherwise justified an unequal division of the current resources when placed in context in the circumstances of this case.

146. More specifically, the only assets which I consider might fall into this category are 232 Camden High Street, sold to the husband at less than full value, and those undeveloped plots in Cyprus which were owned by the husband's family from before the date of the marriage. I do not include any of the other properties in Cyprus because I am not satisfied that their current value reflects, to any significant extent, contributions from the husband's parents because I am satisfied that they were developed with the husband's resources (and many, if not most, of the plots were also purchased with the husband's resources).

147. I am unable fairly to assess the extent to which these contributions (to 232 and the Cyprus plots) outweigh the financial contributions and support provided by the husband for his parents. I also consider it impossible to seek to "disentangle" 232 Camden High Street from the property holding and management business conducted by the husband and to determine what, if any part, of its current value should be treated as non-marital. Since 1997 it has been integrated into the marital business

and, as the husband said, DL has been financially supported by CC for a large part of that period.

148. Further, even in respect of the undeveloped plots the husband's case has been incoherently – and misleadingly - advanced. I am not satisfied that I can properly identify those which were indeed owned by his family prior to the marriage. Finally, if any other reason were required, the value of the plots, which arguably derive from the husband's family, is not sufficient to justify a departure from equality. The combined value is in the region of £390,000 (taking the plots listed in paragraph 42 of the husband's statement, excluding 542 and 627, even though I am not satisfied that all these plots were owned before the marriage). To descend to this level of analysis would be contrary to the overriding objective and inconsistent with the broad perspective required to achieve a fair result. A contribution of less than 1% of the gross value of the family's wealth is insignificant and insufficient to justify a departure from an equal division.

149. Accordingly, I reject the husband's contention that the circumstances of this case justify an other than equal sharing of the wealth on the basis of non-marital contributions. There are no or no sufficient non-marital assets and no or no sufficient non-marital contributions which, when weighed within the section 25 exercise, merit in fairness such an outcome.

Litigation Costs and other Ownership Disputes

150. The husband seeks additional sums to enable him to bring or defend proceedings. They have been divided into the following categories: (i) Lotigol; (ii) Wellsford; (iii) claims against the parties' children. The last of these relate to the ownership of three properties, one in Cyprus and two in London (as referred to above), as between, essentially, the husband and the children.

151. (i) Lotigol:

The husband seeks the allocation to him from the parties' joint account with Berenberg Bank of £840,000 to cover a potential claim (£240,000) and the costs of defending the claim (estimated at £600,000).

152. A letter before action has been sent on behalf of Lotigol Trading Ltd to the husband in his personal capacity and as a director of CC. Lotigol is owned by the wife's family (her sister and, I believe, her sister's children). It is alleged that the husband and/or CC acted for Lotigol in the purchase of a property in London. The letter before action alleges that, unknown to Lotigol, the husband purchased the property from the vendor, through Consort Properties Ltd, for £935,000 and on the same day sold it to Lotigol for £1.175m, thereby making a secret profit of £240,000 (as well as charging an agent's fee of £23,500).

153. The husband's case is that he and the wife should pay equally the costs of defending any claim which might be brought, as well as benefiting equally in any part of the alleged secret profit which is retained.

154. Clearly, if Lotigol's case is incorrect, there would be no justification for the husband alone having to bear the costs of this claim. However, in my view, the husband can

bear the costs of any proceedings with the wife contributing half of any unrecovered costs at the conclusion of the proceedings.

155. If Lotigol's case is correct, there would clearly be no justification in either party retaining any part of the improperly obtained sum. Again, however, I see no justification in the husband being paid the wife's potential share of this liability in advance of determination (either by agreement or court order).

156. What of the costs of proceedings if Lotigol is successful? In my view, the only possible justification for making the husband solely responsible, as between the husband and the wife, is if the husband's conduct in respect of this issue is conduct which it would be inequitable to disregard.

157. If Lotigol is successful it would mean that the husband had made, what is described as, a secret profit at the expense of the wife's family. Is this conduct which it would be inequitable to disregard? In my judgment, in these circumstances, the husband's conduct would be such that it would be inequitable to disregard. He would be responsible and, as between himself and the wife, solely responsible for obtaining this improper profit. If he has taken advantage of the wife's family in the way alleged, it would, in my view, be inequitable if I were to make the wife contribute to the costs of dealing with the consequences. I would not have reached this conclusion save for the fact that the victims of his actions (I stress, again, *if* Lotigol is successful) are members of the wife's immediate family. It is this element of the conduct which makes it inequitable to disregard and not the nature of the conduct in itself. I refer to this last point to make it clear that this is not an argument which I would expect to be capable of being more widely deployed in respect of business impropriety.

158. (ii) Wellsford:

There is a dispute between Anglo Properties Ltd and Wellsford Securities Ltd a company owned by the husband's sister and her children. The husband alleges that Wellsford owes Anglo approximately £1 million. Wellsford has commenced proceedings against the husband, CC and Anglo alleging, inter alia, that it is entitled to the profit made from the development of the airspace above a property (Fawley Mansions) owned by Wellsford.

159. The husband proposes that Anglo should be allocated to the wife and she can pursue the debt. He also proposes that £1.3 million (to cover the potential claim of £700,000 and litigation costs of £600,000) should be allocated to him in respect of the Fawley Mansions' claim on the basis that the parties share equally the burden as well as the benefit of this dispute.

160. In support of his case the husband relies on an agreement made between the wife and Nicholas (on behalf of himself and CC) and the husband's sister and Wellsford. Under this agreement, the husband's sister agrees not to sue the wife, Nicholas or CC in return for the provision of information. Whilst the husband might be personally affronted that the wife and Nicholas have agreed to assist his sister, I do not see how this agreement impacts significantly on my decision.

161. Having regard to the fact that the husband has controlled the business (as between the husband and the wife) the fair answer is clear to me. Anglo should be allocated to the

husband so that he can pursue this debt as may be appropriate. He will also be responsible for dealing with any claim brought by Wellsford. In coming to this conclusion I have also taken into account the fact that, although the husband says that the wife owns all the shares in Anglo, a director of the company replied to the wife's solicitors on 1st April 2016 saying: "we are unable to provide you with any information in respect of (the wife) owing to the fact that we do not hold any information in respect to KYC on (the wife) and the information that we do hold on (the wife by her maiden name) is incorrect".

162. As with Lotigol, I consider that if the husband has made a profit, to which he/the company is not entitled, at the expense of his sister and her family, he should be solely liable for meeting the costs associated with this claim. This would also be conduct which I consider it would be inequitable to disregard.

163. For the avoidance of doubt, I do not propose to make any advance allocation in the husband's favour in respect of either of the above matters. The wife's liability, if any, can be calculated when the respective matters have been determined.

164. (iii) The children: costs and ownership disputes:

The husband seeks £158,000 to meet the costs of proceedings with the parties' children. These include the costs of proceedings, £100,000, in respect of the property in Nicosia, which is registered in Nicholas' name but which the husband asserts is held on trust for him. Secondly, £58,000, in respect of possession proceedings brought by Allied City Estates (owned equally by the husband and a Mr Georgallis) against Alexander in the course of which Alexander has claimed that he is the beneficial owner of 2A Lincoln Parade. There is also a dispute between the husband and Alexander in respect of a property at 3 Torriano Mews registered in the name of Gracestone Properties Group Ltd but of which Alexander claims to be the beneficial owner.

165. The wife does not wish to litigate with the children and would accept that they own the properties referred to above.

166. In respect of the property in Nicosia, I propose that it is not allocated to either party but is treated, at present, as being owned by Nicholas. *If* the husband brings separate proceedings in respect of the ownership of the property he can fund the proceedings without any contribution from the wife. If his claim fails then he will remain solely responsible for the costs. If the claim succeeds then the net benefit (i.e. the net value of the property less unrecovered costs) should be divided equally between the parties because this would then have been established to be a marital asset. In saying this, I do not intend to give and do not give any indication that the husband should take such proceedings.

167. As to the claim by Allied City Estates, in my view the company can bear the costs of those proceedings (whether recovered or not) and there is no justification for the wife being responsible for any part of the costs. Given the value of the husband's share of the company (£3.4 million) this is a cost which can be absorbed within the company with no significant impact on the value of the husband's interest. This applies equally to the costs of any separate claim made by Alexander. If, however, Alexander

establishes that he is the beneficial owner of 2A Lincoln Parade, an adjustment might need to be made to reflect this fact.

168. As for the property at 3 Torriano Mews, I consider that I should follow the same approach as referred to above. The company (Gracestone) will be allocated to the husband. If he concedes that Alexander is the beneficial owner of the property by a date to be specified (within, say, 2 months), then an adjustment will be made to reflect this. If the husband does not make such a concession and/or Alexander brings separate proceedings in respect of his alleged interest, the husband/Gracestone can fund the proceedings. If Alexander's claim does not succeed, then the wife will contribute half of the unrecovered costs. If the claim succeeds, the husband/Gracestone will be solely responsible because the claim should not have been defended.

Tax Penalties

169. I do not take the same approach in respect of tax liabilities due either from the parties or any of the companies which they own. Although I accept that the husband organised the family's financial affairs, I do not consider that this is conduct for which he alone should bear the financial consequences. This is accepted by the wife save in respect of penalties. To the extent that the family has benefited from the husband's actions, the improperly obtained benefit and the costs of dealing with the consequences, including penalties, should be borne equally by the parties. It is a feature of the manner in which the husband conducted both his family and his business affairs and, as such, I do not consider that it would be fair for the wife to be sheltered from the consequences of his actions. Penalties are an integral part of the consequences and there is no justification for treating them differently from tax, interest and other costs.

170. An example of the way in which the husband conducted his financial affairs is the manner in which he used the wife's sister's and the wife's identities. Shares were registered in their names to seek to take advantage of their status as Lebanese nationals and, in the wife's case, purportedly of her residence in Lebanon. Indeed, the husband has expressly stated that between 1987 and 2012 "many companies" were incorporated in the wife's sister's name.

171. In a letter dated 27th October 2014, from a corporate services company in the Isle of Man, it is said that their records show the wife (by her maiden name), resident in Lebanon, is the beneficial owner of Agate, Anglo, Arion, Consort, Hadleigh, Mountfield, Mountview and Northwest Enterprises Ltd. From other documents, the inaccurate representations made by or on behalf of the husband include:

    i) that the wife and members of her family had been "substantial clients" of CC since 1985; CC had acted on behalf of the family in the acquisition and management of investment properties; the family's wealth derived from activities in the Gulf (letter dated 4th July 2012);

    ii) that the wife was living at an address in Beirut (many documents);

iii) that the wife is unmarried (letter dated 1st April 2014);

iv) that the wife is the "matriarch of a well known trading family in Beirut" (letter dated 18th July 2014);

v) that "due to health reasons she rarely travels outside Lebanon other than periodic visits to the Gulf to meet her immediate relatives" (letter 18th July 2014).

172. I have no doubt that these representations were made, and the ownership structures were put in place, for the purposes of evading tax.

173. The husband's case on the extent of the wife's knowledge about these matters has varied during the course of the proceedings. By letter dated 4th December 2014 the husband's then solicitors said:

> "Your client has never played any active role in the management of the family's business affairs. She has always delegated all management matters to my client, which has included providing him with authority to execute documents in her name and using her signature. This happened on all occasions during their marriage and in respect of all property and other business dealings."

174. During the course of cross-examination, the husband asserted that the wife was "fully aware" of the representations being made about her.

175. I am satisfied that the wife was not aware of what the husband was doing. It is clear from the evidence that he has always been responsible for managing and controlling the financial structure even when assets were held in the wife's name. The husband was in control of the management of the family's resources (both personal and corporate) and the wife would merely sign documents if and when asked. She was not always asked because, as referred to in the letter, the husband would often, if not always, sign documents in the wife's name. However, despite this, as referred to above, I do not consider that, as sought by the wife, the husband should be solely responsible for any tax penalties imposed.

Other Sums

176. I do not propose to add back or allocate an additional £80,000 to "compensate" the husband for costs incurred in respect of the transfer by the wife of the sum in the Credit Agricole account. This is not a sufficiently significant sum in the context of this case as to justify separate accounting. Further, although she was wrong to do so and compounded this by making a false assertion (as referred to above), I do not consider the wife's actions merit the allocation to the husband of this sum having regard to the circumstances of the case generally.

Tax Liabilities

177. As referred to above, there are a number of tax liabilities which will need to be taken into account to seek to ensure that the parties receive a broadly equal share of the

current wealth. The manner in which this is to be effected will need to be addressed in the formulation of the final order. However, I make clear that this is an issue which needs to be addressed proportionately. The purpose is not to effect a mathematically exact division but a division which is fair by reference to the principle that the wealth should be divided broadly equally.

178. One of the issues which has been raised relates to corporation tax arising on the sale of properties by UK registered companies. Initially the accountants proposed that only 50% of such tax should be deducted on the basis, it appears, that they had been asked to value the shares in the companies. However, both from their report and in their oral evidence, the accountants expressed the clear opinion that a third party would be unlikely to purchase the companies owned by the parties but would purchase the properties directly.

179. I accept this evidence because it seems to me very unlikely that a third party would purchase any of the private companies owned by the parties and thereby be exposed to any liabilities which the company might have. In these circumstances the net value of the companies needs to be calculated on this basis, namely with 100% of any potential corporation tax, rather than 50%, being deducted.

Security/Indemnities

180. I will consider this issue when determining the order. However, it is clear to me that there must be some level of security provided and also indemnities. The latter would include indemnities to seek to ensure that the parties do not continue this litigation through the companies or CC. There have been clear suggestions that this might happen. Accordingly, save in respect of any issue as to rental income due from CC to the companies (and any other issue specifically excepted), each party would have to indemnify the other for claims brought by them or by any company or business they retain against the other or any company or business retained by them. This is, what might be called, a fall-back provision as I would expect the parties to agree not to be pursue any such claims.

181. I will consider what other indemnities to order, once the precise terms proposed by each of the parties have been drafted, having regard to my judgment.

Allocation of assets

182. The parties agree about the allocation of some of the companies and other assets. In this judgment I propose to determine only the allocation of some of the disputed assets. The allocation of the other disputed assets can be addressed in the final order. The assets I deal with are: (a) Docklock; (b) 66/70 Parkway; (c) the properties in Silikou (on plots 921/1232 and 1339).

183. (a) Docklock:

The wife's seeks the allocation of Docklock to her because it is the company which she considers she is best placed to continue to manage with the assistance of Nicholas who has been a director of the company since 2010. As a result of his experience when working at CC, he is familiar with the company, its management and its assets. The wife has more confidence in the manner in which it has been operated than the

other businesses and has confidence in the company solicitors and bankers. In contrast, the offshore companies, which the husband proposes the wife should receive, have been managed through offshore entities with whom the wife has no relationship and in whom she, understandably, has little confidence.

184. The husband seeks the allocation of Docklock to him on the basis that he is emotionally attached to the company; that it would avoid the costs of extracting the three properties owned by the company which he seeks; and that there are additional financial and other benefits.

185. Weighing the merits of each party's contentions, I have no doubt that Docklock should be allocated to the wife. In my view the wife is much better placed to manage this company than most of the other companies. This provides the wife with a very substantial asset and results in the husband retaining a larger number of companies. This is a fair distribution given the husband's knowledge of, and involvement in, the management of the companies.

186. (b) 66/70 Parkway:

DL owns 66/70 Parkway which is occupied principally by CC. The husband states, and I accept, that the property has been developed to meet CC's needs. The building works were not completed for about 2½ years. Since then, as I have said, the property has been occupied by CC and its 13 staff.

187. It is clear to me that the husband should be allocated this property. It would not be appropriate to require CC to relocate to other premises. If there is a mechanism by which it can be effected, it would also not be appropriate to leave ownership with the wife, given the state of the relationship between the parties and the general principle that spouses should no longer be financially connected if this can be fairly achieved.

188. How is the transfer of this property to the husband to be effected? DL's distributable reserves totalled £3 million as at 31st March 2015. The premises have been valued at £3.2/3.25 million. During the course of their oral evidence, the accountants said that a transfer to the husband may be possible if there are sufficient distributable shares. The manner in which this is to be undertaken can be further considered when the order is being finalised. However, if there are insufficient distributable reserves it would seem to me that, as an alternative, the husband has more than sufficient resources to purchase the property from DL by making use of other assets/resources available to him.

189. (c) The properties in Silikou (on plots 921/1232 and 1339):

The wife seeks the allocation of these properties to her on the basis that, during the marriage, it was always intended that the larger property would be given to Alexander and the smaller one to Nicholas. Indeed, she says that the former was called Alexander's house and the latter Nicholas' house.

190. The husband seeks the allocation of these properties to him based significantly on his case that they are not marital assets. Additionally, he relies on the fact that Silikou is his family's ancestral village and that he lives in Cyprus and makes use of the larger

holiday home. In his oral evidence the husband gave this property as his address. However, he had not used this as his address for any of his statements which are in the bundles for the hearing. The only address in Cyprus which he gave (on one statement) was his address in Nicosia. Otherwise he gave his address as 73 Park Way, London.

191. I propose to order that these properties are allocated to the wife. I accept that the parties always intended that they would be given to the children. This is also the only means by which it is likely that the children will retain a family connection with the ancestral village. The husband explained that the properties have to be allocated together because they rely on a common water supply.

192. I will deal with any other outstanding issues when determining the form of my order.