Neutral Citation Number: [2025] EWCA Civ 1055

Case No: CA-2024-000509

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE FAMILY COURT
SITTING AT THE ROYAL COURTS OF JUSTICE
Mr Justice Francis
[2024] EWHC 740 (Fam)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31/07/2025

Before:

LADY JUSTICE KING
LORD JUSTICE MOYLAN
and
LORD JUSTICE SNOWDEN

- -

Between:

JENNY ALZENA HELLIWELL	**Claimant/ Respondent**
- and -	
SIMON GRAHAM ENTWISTLE	**Defendant/ Appellant**

- -
- -

Deborah Bangay KC & Lydia Newman Saville (instructed by **JMW Solicitors**) for the **Appellant**
Lord Faulks KC & Jennifer Palmer (instructed by **Payne Hicks Beach Solicitors**) for the **Respondent**

Hearing date: 19 March 2025

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Approved Judgment

This judgment was handed down remotely at 2pm on 31 July 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lady Justice King :

Introduction

1. This is an appeal by the appellant husband Simon Entwistle ('the husband') against the making of a final order in financial remedy proceedings by Francis J ('the judge') on 15 March 2024. The judge decided to give effect to a so-called 'drop hands' pre-nuptial agreement ('the agreement'), which had been entered into by the husband and his former wife Jenny Helliwell ('the wife'). Under the terms of the agreement, the husband was to receive no settlement upon divorce. The judge determined, however, that fairness required that a lump sum order of £400,000 should be paid to the husband in order to satisfy his assessed needs.

2. The husband appeals both the judge's decision to uphold the agreement and his subsequent assessment of his needs.

3. For the reasons given in this judgment I would allow the appeal against the determination that the agreement be given effect as, in my judgment, the judge erred in law in concluding that on the facts of the case, the wife's deliberate non-disclosure, on current figures, of some 73% of her wealth did not serve to vitiate the agreement.

4. The validity or otherwise of the agreement has an impact upon the assessment of the needs of the husband (see [12] below). In the light of my conclusion that the agreement should not be given effect, there must be a reconsideration of the husband's needs and in particular his housing provision. This court is not in a position to carry out such an assessment and the matter will therefore be remitted to the High Court for a fresh consideration of the husband's needs.

5. Further litigation is not an outcome that either party would have wanted, but it is to be hoped that notwithstanding the unfortunate way the litigation has been conducted by the parties to date, that, even now, agreement can be reached without the necessity of a further distressing hearing.

Background

6. Both parties are in their early forties. The husband is a UK national who moved to live in Dubai in 2014. He was previously married for a short period of time. There are no children of that marriage. In 2016 when he met the wife, the husband was working as a qualified accountant for PWC and earning £120,000 per annum.

7. The wife works for her father ('the father') in the family business. She has not been married before. She has had the misfortune that for many years, she has suffered from serious mental health problems requiring hospitalisation for significant periods of time.

8. There was a dispute at trial as to when the parties started to live together. The judge preferred the evidence of the wife and found the date of their cohabitation to be May 2017. Whilst the actual date makes no difference to what is a short childless marriage, the finding against the husband in this regard significantly damaged his credibility in the eyes of the judge.

9. In December 2017, the parties became engaged. The husband left his role at PWC in January 2018 to work for one of the father's companies. The arrangement did not work

out and the husband left this employment in February 2019. The husband commenced a year-long online trading training programme. This was initially successful, but following the breakdown of his health following the end of the marriage, the business failed and the husband is not currently working.

10. The parties married on 12 July 2019. By September 2021 the marriage was in difficulties. The wife says it came to an end in April of 2022 and the husband in August 2022 when he moved out of the matrimonial home. The judge made no finding as to the date of final separation, but however one looks at it, the marriage lasted for about three years with the relationship having started in August 2016 and cohabitation in May 2017.

11. The wife comes from a very wealthy family. Her father is a businessman with an extensive property and business portfolio in the Middle East. The wife owns assets in her sole name worth between £60m and £70m, and earns approximately £650,000 per year, the majority of which is rental income from her property portfolio but which is supplemented by a salary from her father.

12. At the time of the trial, the husband had, on his case, net assets of approximately £850,000, although £500,000 of this is tied up in the equity of a property shared with his parents.

The Agreement

13. The husband and wife entered into the agreement on the day they married, 12 July 2019.

14. The actual interpretation of the agreement as such is not in dispute. It was drafted in terms of a 'drop-hands' agreement, that is to say that upon divorce, each party would retain their own separate property and split any jointly owned property as to 50% each. The agreement provided for English governing law and jurisdiction and stated that neither would bring a claim in another jurisdiction. At the heart of the dispute is whether the wife's undoubted failure to disclose the majority of her substantial wealth should have the consequence that the agreement should not be upheld by the court.

15. A proper understanding of the course of the negotiations on both sides and the form and extent of disclosure leading up to the signing of the agreement is important and must be established before one can go on to determine whether there has been material non-disclosure on the part of the wife in the circumstances of the case. It follows that I do not agree with the judge's view at para. [81] that 'the focus in this case is not about the advice that the wife received but the advice that the husband received'.

16. It is common ground that having become engaged in around December 2017, the possibility of a pre-nuptial agreement was first raised towards the end of 2018. In March 2019, the husband told Sam Hall, the solicitor who had represented him in his first divorce, that a pre-nuptial agreement was being considered.

17. On 12 May 2019 the husband sent an email to Sam Hall, saying that he was anticipating receiving a draft prenuptial agreement and asking if it could be reviewed on his behalf. He said:

> "I do not wish this step to become a long drawn out process as we are agreed on the fundamentals however clearly I am keen to ensure that everything from a legal perspective is correct. I therefore really only need a brief "red flag" review of the document done by your team – i.e. what I need to be aware should I enter into an agreement as is currently drafted."

18. The draft agreement was accordingly sent to the husband who sent it on to Judith Klyne on 14 May 2019. The draft agreement was designed to provide financial disclosure as set out below.

19. In the Interpretation section at the start of the agreement there are the following relevant definitions (my emphasis):

    1. *"Current Separate Property/Assets" means any and all property of any nature owned directly or indirectly by a party to this Agreement on the date of its execution, including, without limitation:*

        a) The property/Assets of each party set out in Appendices A & B attached

        b) All personal articles owned directly or indirectly by a party ….

        c) All business assets, shares and investments, including without limitation all remuneration…..

    2. "Future Separate Property/Assets" means any or all property of any nature acquired by a party to this Agreement held in his or her sole name subsequent to the date of this Agreement……

    3. "Joint Property/Assets" means

        a) The Property/Assets of both Jenny and Simon set out in Appendix C attached….

    4. "Pre Acquired Property" means the property and other assets of the parties listed in Appendices A, B and C attached.

    5. "Separate Property/Assets" means Current Separate Property/Assets and Future Separate Property/Assets.

20. Attached to the agreement were five Appendices. Appendix A & B relate respectively to the separate assets of the wife (A) and the husband (B). Appendix C relates to joint assets. Appendices D & E relate to each parties' liabilities.

21. All five of the appendices were blank in the draft sent to the husband on 14 May 2019. They simply state in red print "To insert details".

22. There were two recitals on the face of the agreement which related to legal advice (I and J):

> "I. Jenny and Simon have entered into the Agreement freely and voluntarily without undue influence, duress or coercion or

> without any promise or representation other than as set out in this Agreement, and all the terms herein represent the entirety of the Agreement between them. They are each entering into this Agreement free from pressure of any kind and having given full consideration with the help of their independent legal advisers to the ramifications of entering into this Agreement.
>
> "J. Simon has received independent legal advice from (insert name and address or Lawyer), OR has made it clear to Jenny and hereby acknowledges, that he does not wish, or need to, receive independent legal advice; he acknowledges that he is intelligent and (insert profession) and fully understands the terms and implications of this Agreement, prior to the execution of this Agreement and is fully aware of the rights and claims that he is surrendering pursuant to this Agreement."

23. Recitals R. and S. read as follows:

> "**Full Disclosure**
>
> *R. Jenny and Simon have fully and frankly disclosed to each other their financial resources and liabilities which are set out in summary form in Appendices A,B,C,D and E to this Agreement*.
>
> S. Both Jenny and Simon recognise that the disclosure provided to date each to the other is not completely detailed but each *acknowledges that such disclosure has been substantially complete in all material respects and on this assumption they each voluntarily and expressly accept the disclosure provided by the other as being sufficient to enter into this Agreement*, and they both waive rights to further disclosure or enquiry. In particular Jenny and Simon have not sought to have and do not wish to have any further valuations of the various assets contained in Appendices A and B."
>
> (my emphasis).

24. Paragraph 32 of the agreement provided for any dispute arising out of the agreement in the first instance to be "referred to a family law trained financial mediator".

25. At the end of the agreement, in addition to the space for the signatures of the parties, were Lawyer's Certificates to be signed by each party's legal advisers in order to confirm that their respective client had entered into the agreement freely and with the benefit of independent legal advice. The agreement had attached to it a lawyer's certificate signed on behalf of the wife. There was no equivalent certificate for the husband.

26. The following day, 15 May 2019, the husband had a telephone meeting with a solicitor Judith Klyne to whom he had been referred by Sam Hall. The Court has the benefit of a copy of Ms Klyne's annotated copy of the agreement as well as a copy of the full attendance note made of that meeting, the husband having waived legal privilege. The wife, as she is entitled to do, has not waived her privilege. The Court, other than knowing that her father was present at some or all the wife's meetings with her legal advisors, has only the email trail and her statement to assist as to why she failed to disclose a significant portion of her assets.

27. The attendance note records Ms Klyne's reservations about the document as drafted. She emphasised that she could only give limited advice without the appendices having been completed. An important aspect, she emphasised, was that the wife's separate property was to be ring-fenced notwithstanding any contributions made by the husband. The note says:

> *"… assets are heavily weighted in her favour, concern is restrictions on you. Contributions will not be taken into account, need to be comfortable with that.* [the husband] *saying yes comfortable. Her father given money for current house, not expecting anything back. JK saying just be careful of putting large sums in her sole property, maybe discuss joint names".*

28. A theme of the meeting was Ms Klyne's concern that it had to be made clear that the husband's needs would be met and she noted that she had said that the husband must be "happy with worst case scenario". Ms Klyne told the husband that she would not sign the Lawyer's Certificate as matters stood and that what she had done was simply to give a high level review without having seen the appendices. She explained that she would expect to be involved with negotiations with the lawyers, to see the figures and reach agreement with the other side. She told the husband that he could still sign the agreement without legal advice. The husband told Ms Klyne that he was comfortable with the terms of the agreement and that he and the wife were very open and could discuss things and that they were both sensible people. The husband said that if something did happen they could be "agreeable" and that he hoped that they would build joint assets going forward.

29. On 21 May 2019, following his meeting with Ms Klyne, the husband sent an email to James Berry Law. In it he sought clarifications about contributions made by him after the initial purchase of assets by the wife. The email goes on to say that other than that, *"the document as drafted is fine. However without sight of the appendices, the lawyer representative page will not be signed and should be removed. I have been informed that this should not have any bearing on the document".*

30. On 9 June 2019, James Berry Law responded to that email saying that they understood that the husband was seeking independent legal advice and asking for details. They said any amendments made in the light of his (the husband's) question about contributions would need to be agreed. So far as joint assets and the family home were concerned the email said that he should discuss it with the wife and seek legal advice. The email concluded "*I am seeking my client's instructions to complete the appendices and will revert to you as to when the appendices can be mutually exchanged."*

31. Two days later, on 11 June 2019, at 6.32 pm, the wife sent an email ('the copy and paste email') to the husband with the intention that he should copy and paste its contents into an email which he would send to her solicitors. It was drafted in the following terms:

> "Good evening
>
> Thank you for your email.
>
> I did seek legal advise [sic] but the lawyer stated she could not sign the required documentation without having seen the appendices.
>
> I am satisfied now with the agreement as it stands without any amendments required from my side.
>
> As I see it there are two options -
>
> 1) The Appendices are omitted completely and my lawyer will sign to say she has over seen on my behalf
>
> 2) The Appendices are inserted and I will sign and note that I did not wish for legal advise [sic]
>
> Option 1 is preferable as this is truthful, however if it is legally required for the Appendices to be inserted then I shall agree to go with Option 2.
>
> Please note that Jenny and I will be traveling now and return to Dubai on the 19th June when we will be keen to get this agreement signed and the matter closed.
>
> Kind regards,
>
> Simon"

32. Just nine minutes later, the husband sent an email to James Berry Law 'copy and pasting' the entire email as just received from the wife. It was copied even down to the typographical errors contained in her draft and replicated above.

33. James Berry Law replied to this email the following morning, 12 June 2019, saying that in order for the Court not to question the validity of the agreement, a Law Commission report recommended that at the time of making the agreement both parties receive disclosure about the other's finances. The wife's lawyer said that: *"in instances where there has been failure to disclose, the validity of the Agreement has been questioned by the Court"* He went on: *"In the light of the above, I will be advising my client to make the disclosure to you and subject to her instructions the disclosure appendix can be mutually exchanged."*

34. James Berry Law therefore had themselves, acting on behalf of the wife, proceeded on the basis of Option 2 and rejected Option 1 which had been suggested by the wife to be

the preferred route in the copy and paste email she had sent to the husband. Option 1 would have meant that there would have been no disclosure at all, contrary to the structure of the agreement as drafted.

35. For the sake of completeness, it should be noted that the Law Commission report *Matrimonial Property, Needs and Agreements (Law Com No. 343) February 2014* to which James Berry Law referred, recommended that both parties should receive disclosure of material information about the other party's financial situation and that it should not be possible for that requirement to be waived. In the Law Commission's subsequent *Financial Remedies Scoping Report*, published 18 December 2024, after the Supreme Court's decision in *Radmacher*, the Law Commission rehearsed the recommendations made in their earlier report that:

> "7.13 We also recommended that QNAs *[sic]*be invalid if made less than 28 days in advance of the marriage or civil partnership. Both parties should receive disclosure of material information about the other party's financial situation, and it should not be possible for this requirement to be waived. Both parties should also at the time the agreement is made receive legal advice about the nature of the agreement and its effect on their rights, which cannot be provided by the same lawyer."

36. On 17 June 2019 the husband provided the disclosure necessary for those Appendices relevant to him and confirmed (in accordance with "Option 2") that he would not be showing the appendices to his lawyer with the result that he would be the only signatory on his side.

37. On 18 June 2019 an email was sent to the husband with the Final Agreement "with Assets updated" attached.

38. It will be recollected that Appendix A was the critical Appendix so far as the wife's assets were concerned, the heading being "Current Separate Property/ Assets of Jenny Alzena Helliwell". As noted at para. [18] above, Current Separate Property/Asset is defined as: *"any and all property of any nature owned directly or indirectly by a party to this Agreement on the date of its execution, including without limitation… the property/Assets …in Appendix A."*.

39. In summary therefore the wife expressly represented under the agreement that she had "*fully and frankly"* (Recital R) disclosed in Appendix A to the agreement *"any and all property of any nature owned directly or indirectly by [her] on the date of its execution,*" with each party acknowledging that the disclosure "*is not completely detailed but each acknowledges that such disclosure has been substantially complete in all material respects"* (Recital S).

40. The following assets were disclosed by the wife in Appendix A:

"1.	Various Properties Dubai:	USD 16 million
2.	Various Properties France:	USD 2 million
3.	Bank Accounts – UAE:	USD 250,000

4.	Bank Accounts - Singapore:	USD 5 million
	Total Assets:	**USD 23,250,000. [£18,206,735]"**

41. The husband declared £1m of assets at Appendix B, and Appendix C listed various equities held in joint names to a value of £700,000. No liabilities appear at Appendices D or E.

42. The former matrimonial home is legitimately not included in Appendix A as at the time of the agreement it was held in the father's name and was not transferred to the wife until June 2021. The wife however failed to include £47,878,800 of assets owned by her in Appendix A. The assets owned but not disclosed by the wife were agreed at 2024 values by Counsel to be as follows:

Business Assets:	
JA Investments Assets Ltd (2015):	£10,683,761
Prime Equestrian SARL (2007):	£1,294,856
Prime Projects International Holding Co. Ltd 92006):	£8,057,171
Winston Holdings Company Ltd (2013):	£18,194,012
Property:	
2 plots Jumeriah Beach:	£8,000,000
50% Wimbledon property lived in by the wife's mother:	£1,649,000
Total of non-disclosed Assets:	**£47,878,800**
Total assets (including disclosed assets):	**£66,085,535**

43. There is a minor dispute between the parties as to the value of the JA Investments, but it is agreed that the difference between them would not affect the outcome. What is significant is that, taking the wife's assets at £66m, the wife's disclosed only 27% of her assets notwithstanding that her own lawyer had himself recognised in his email to the husband on 12 June 2019 that where there is failure to disclose, the validity of the agreement could be questioned by the Court.

44. In her witness statement the wife gave the following explanation for her failure to disclose the majority of her assets:

> "I did not consider it appropriate to set out as part of an appendix to our agreement, shares which my father had placed in my name as a form of inheritance planning. Although he had placed assets

> in my name, and legally they were 'mine', I believed (and continue to believe) that in reality these remained my father's assets. I do not consider that I am able to access these until after his death, whatever the legal position may be. My father is an intensely private person and I did not want the document to contain details of what I believed to be his business affairs, particularly as I knew it was a document which Simon would show to third parties, such as his family and particularly his mother, whom he trusted implicitly and had been significantly involved in his divorce from his first wife. It is correct, as Simon says, that my father is concerned about tax. Simon knew the approach I was taking and understood the reasons why. This is something we discussed.
>
> Appendix A does not include reference to my 50% interest in my mother's house in Wimbledon. I regard it as her asset and do not believe I can realise my interest during her lifetime (whatever the legal position may be). I was concerned about tax, this being the reason my mother had put 50% of the property in my name, and I did not want to record my interest in writing. Simon was aware that I had an interest in the property as I discussed it with him."

45. The wife and her solicitor signed the 'Lawyer's Certificate' on 26 June 2019. The certification included a paragraph saying that, prior to the wife signing the agreement, her lawyer had advised her 'with regard to it, on the terms included in it, and on their meaning and effect'. One can safely assume given the terms of the certification, that the wife was well aware of her obligations under the agreement and as recorded on the front page under the rubric 'Important Notice', that the agreement was not only intended to create legal relations between the parties, but that it was intended to: *"confirm their separate property/assets and to be determinative of the division of their property/assets in the event of divorce"* (my emphasis).

46. On 27 June 2019, the wife collected the agreement, which was not then produced for the husband to sign until the 12 July 2019, the day of their wedding in the Seychelles.

47. Following the parties' separation, the wife issued her Form A on 16 September 2022. The husband's solicitors responded by proposing that the agreement should be set aside for material non-disclosure and that the parties should instead, focus on the husband's needs. The husband's solicitors expressed their concern about the incorrect statement of the wife's financial position contained in Appendix A and highlighted that material non-disclosure vitiates a pre-nuptial agreement. The wife declined to adopt this approach and instead, on 9 November 2022, issued a Notice to Show Cause as to why the agreement should not be upheld.

The Judge's judgment

48. The judgment is reported at [2024] EWHC 740 (Fam). The judge gave a detailed summary of the background to the parties' relationship, its subsequent breakdown, and the history of the proceedings. He observed at the outset that the case was, in his view, a 'paradigm' for how not to conduct litigation following the breakdown of a short,

childless marriage. He described how difficult each of the parties had found giving evidence and said that the 'misery affecting both the husband and the wife was palpable'.

49. He found the wife to be honest and reliable in her evidence, the husband he found to have been 'less than honest in relation to at least part of his evidence'. The judge also commented that so far as the dispute of fact as to the date of the start of the parties' cohabitation, he found it unnecessary to decide if the husband had persuaded himself that the date he gave was the truth, or whether he was lying deliberately.

50. The judge recorded that the wife deposed to assets of £61.5m with an income of £600,000 pa net which the husband said should be £74m with an income closer to £1m a year. The judge did not feel it necessary to decide who was right saying:

> "12. What difference, I ask rhetorically, does it make after a short childless marriage whether the economically stronger party is worth £50 million, £60 million or £70 million, when none of the capital forms any part of the marital acquest, but was gifted to that person by a parent? I ask that question absent of prenuptial agreement, although there is one present here which just adds to the overall risk assessment. For the avoidance of doubt, this is not to condone dishonest or careless disclosure by the wealthy party."

51. The judge however did not in addition record or take into consideration, that the issue was not in relation to quantum as between £61m or £74m, but related to the wife's failure to disclose all but £18m of her assets of between, now, £61m and £74m.

52. The wife's position before the judge was that this was a short childless marriage with a 'drop hands' pre-nuptial agreement entered into freely by the husband with legal advice in circumstances where he understood the consequences. The agreement she argued should be given determinative weight. Although it was right that there had been some non-disclosure by the wife, the husband was well aware that he was marrying an extremely wealthy woman and so the non-disclosure did not undermine the validity of the agreement.

53. In response, the husband contended that he should not be held to the terms of the agreement. Not only had there been material non-disclosure, but he said that he had been persuaded to enter into the agreement as a sop to the father, but that the wife had assured him that he would always be provided for as he had 'married a Helliwell'. The judge accepted at para. [82] that the agreement was something that the father had insisted on.

54. The judge found the husband to be a clever man familiar with reading important documents and that he was not the sort of person who would fail to understand the significance of what he was being told or what he was signing.

55. The judge referred to the agreement itself, highlighting those recitals in which the parties expressed their desire to have an agreement (D); that there was disparity in the assets in the wife's favour (E); that it was to be a drop hands agreement (F); that it was

to be binding (G); that they entered into it voluntarily without undue influence (I); and that they had sufficient time for independent legal advice and reflection (J).

56. Later in the judgment the judge set out the operative clause found at clause 24 of the agreement which constitutes the central 'drop hands' provision:

> "24. In the event of the divorce of [the wife] and [the husband] neither of them will make any financial claim of any kind arising out of their marriage, or otherwise, against the other, including but not limited to, claims for a lump sum, property adjustment orders, periodical payments, maintenance pending suit and pension sharing orders save that this provision shall not apply to financial claims for the benefit of any child born to them both."

57. Regarding this provision, the judge observed at para. [113] that it would be 'hard to think of' a more comprehensive clause dismissing future financial claims', or one which was written in 'more straightforward plain English'.

58. The judge was somewhat scathing of the husband's case saying that:

> "…the idea that the husband in some way signed this with his fingers crossed behind his back relying on the representation, 'You will be all right because you have married a Helliwell' is risible, and I reject that piece of evidence of his completely. Even if it was said, it was plainly overridden by this agreement which is absolutely clear in its terms."

59. In setting out his approach to the determination of whether the agreement should be binding on the husband, the judge referred to *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 *('Gestmin')* and to Lord Leggatt's well known judgment in which he said facts should be based on 'factual findings on inferences drawn from the documentary evidence and known or probable facts'. In reliance upon that approach, the judge said:

> "83…It is, in my judgement, essential to see what the husband read, was advised about, did and signed, rather than attach much evidential weight to an unrecorded conversation and a conversation which the wife denies ever happened. I hark back here to the passage quoted above in the judgment of Leggatt J as he then was. I am going to do what was suggested in that case and what is obviously right, which is to look at the documentary evidence rather than pay much attention to after the event claims, particularly as they come from somebody who I have already found to be less than honest in relation to at least part of his evidence."

60. The judge turned at para. [101] to the issue of disclosure which he regarded as the 'strongest part of the objection' to be 'launched against the agreement and its validity'.

61. The only part of the agreement quoted by the judge in relation to disclosure was the recital at (R) which said that:

> "Jenny and Simon have fully and frankly disclosed to each other their financial resources and liabilities which are set out in summary form in the Appendices A, B, C, D and E to this Agreement."

The judge did not refer to recital (S), or the definition of 'Current Separate Property/Assets', or Appendix A and nowhere did he set out the extent of the non-disclosure by reference to the disparity between the assets disclosed by the wife as compared with her actual assets.

62. The judge noted that Ms Bangay KC for the husband had referred to the fact that the wife 'openly admitted that she deliberately grossly underestimated her wealth by excluding a business interest and some property assets'.

63. In response to this submission, the judge said that:

> "102. My recharacterization of that statement would be that the wife did not know the full value of her assets and did not know the assets even that she owned or what their value was. She did not want to ask her father and risk incurring his wrath for the reasons that I set out above. But I agree that the wife did not give full disclosure. I have found that she was very reluctant to ask her father about the detail of her assets and I have found that she was doing her best to tell the truth about her worth.
>
> 103. It is important to record that the prenuptial agreement incorporates disclosure in summary form in Appendices A and B. It records that disclosure was substantially complete. It was obvious to the husband that the wife was extremely wealthy and whilst understanding that full and frank disclosure is always the gold standard to aim for in a prenuptial agreement, if, as here, there is an understanding that one party is exceptionally wealthy, you cannot, as the economically weaker party, simply get out of the consequences of the prenuptial agreement because the number that was provided in terms of the wealth was a number that was lower than the truth or lower than it should have been. The judge will look at the effect in each individual case.
>
> 104. It is clear that the husband was expressly advised by Hall Brown to seek further disclosure and he declined to do so. The husband says that he was put under unreasonable pressure by the wife. I reject this submission."

64. The judge's judgment contains no further analysis of the issue of non-disclosure and did not address the husband's case as summarised in written closing submissions where it was said on his behalf that the wife had: '[failed] to provide disclosure and when provided it was dishonest' and that, 'Such deliberate concealment - £18m - £70m - is material.' Further, the judge did not address the husband's submission that the approach to set aside for non-disclosure found in the cases any of a consent order, an *Edgar* agreement or a *Xhydias* order, should apply equally to deliberate non-disclosure in pre-nuptial agreements.

65. With respect to the judge, on the facts of this case and the terms of the agreement signed, it was not just that disclosure is some generalised 'gold standard'. Here the parties had signed a binding agreement expressly stating that the wife had "fully and frankly" disclosed 'any and all property of any nature owned directly or indirectly [by her] including, without limitation … the property/Assets … in Appendix A'. This is not a case where the 'number' was simply 'lower than the truth or lower than it should have been'; it was a case where 73% of the assets were deliberately not disclosed because the wife and her father were 'concerned about tax'.

66. Despite his reference on two occasions to *Gestmin,* the judge referred only to the attendance note of Ms Klyne. There is no reference or analysis of the chronology of negotiations or to the email trail between the wife's solicitors and the husband: in particular there is no reference to the wife's behaviour or motivation in sending him the copy and paste email whereby the husband would agree either to no disclosure, or alternatively, to his seeing her assets on the basis that his lawyer would not see them. Further, the judge made no reference to the fact that the wife's lawyer was clearly conscious of the need to give proper and full disclosure in Appendix A.

67. The judge was of the view that, despite the non-disclosure, the husband was well aware that the wife was extremely wealthy, and that this, he suggested, prevented the husband from relying on non-disclosure of particular assets to vitiate the agreement.

68. It was absent consideration of this important documentary evidence, that the judge considered only the early legal advice which had been given to the husband by Ms Klyne prior to the intervention of the wife. Having cited the key passages of Ms Klyne's attendance note, including an exchange where the husband was advised that the solicitor would not sign the proposed "Lawyer's Certificate" in the agreement without such full disclosure, the judge found that the husband had received 'good, sensible and correct' advice. He said at [121]:

> "It is hard to think of anything that could be clearer in terms of the advice that the husband received. He had the opportunity, did he not, of refusing to sign the agreement. It might have ended the relationship, or they might have stayed living together and not married, but he made that choice. There is no point in having these agreements, and I would be riding roughshod over the decision of the Supreme Court in *Granatino v Radmacher* if I did not give regard to this prenuptial agreement."

The Wife's knowledge of the business assets

69. The judge discussed in a number of places the relationship of the wife with the father. He described it as 'complicated and often uneasy' and one where there was a great imbalance of power. The judge held that the wife did not really know what assets were in her name and said that she was anxious, if not actually afraid of asking her father for details. The judge said:

> "64….I can well understand that the wife did not want to ask her father for details of her financial resources if it meant enquiring into something that he regarded as deeply private."

70. This observation cannot be reconciled with the wife's statement to which a statement of truth is attached and quoted at para. [43] above where she had said that she 'did not consider it appropriate to set out as part of an appendix to our agreement, shares which my father had placed in my name as a form of inheritance planning'.

71. Further, it was not the wife's case that she did not know the business assets were in her name. The issue of disclosure of those assets was put this way in the written opening submissions filed on her behalf:

> "64. W's disclosure at Appendix A did not include business assets / shares in her name but controlled by her father; she explains why in her statement and makes clear that she continues to consider that in reality these are her father's assets. Prior to these proceedings W had limited knowledge about these assets."

72. In her oral evidence the wife said that she had 'asked her dad about the assets in her name' but that they had not 'discussed it properly'.

> "I just said before that I did know there was assets or companies, that were in my name or part in my name, my name was attached to, but I didn't know the extent. I certainly didn't know anything about worth or numbers or anything like that, so I didn't think it was appropriate…"

73. It was put to the wife by Ms Bangay in cross- examination that she was aware when she gave disclosure that it was 'inadequate or dishonest'. The wife said that she 'didn't think it was dishonest'. She knew she said that there were assets in her name but not 'the extent'.

74. In the closing note filed on behalf of the wife, it was suggested by Mr Harrison KC that the parties had expressly agreed to exclude the business assets in the Appendix A in private conversations before the agreement was signed and that the wife did not know the values of the business assets. Therefore, even at the conclusion of the trial, it was not the wife's case that she did not know that she had the business assets in her name, just that she was unclear of their value and that her father controlled them. Her focus was more on the fact that she alleged that the husband was aware of the business assets held in her name.

75. The position therefore at the conclusion of the case was that in her written statement, the two position statements filed on her behalf and in oral evidence, the wife accepted that she was aware that significant and very valuable business assets were in her name, that she had spoken to her father about the assets prior to the signing of the agreement and that she knew that she had not made full disclosure of her assets. It follows that whilst this court is always reluctant to interfere with a finding of fact made by a judge who has heard all the evidence, (see *Volpi v Volpi* [2022] EWCA Civ 464; [2022] 4 WLR 48 para. [2]) the judge's finding that the wife was unaware that she had business assets in her name, and was effectively too scared to ask her father about it, cannot stand. It is clear from all the evidence that, whilst unclear of the precise worth of her business assets, the wife knew they were in her name, had talked to her father about it and had made a conscious decision not to disclose them in Appendix A.

Submissions post-judgment

76. The judge having reserved judgment thereafter delivered his judgment orally. At the conclusion Ms Bangay drew to the judge's attention the fact that, contrary to the judgment he had delivered, the wife had admitted in her statement that she had excluded assets. The judge said that he thought that he had said that 'she knew that there were other things, but that she was scared about asking about them'. Ms Bangay reminded the judge that that was not what the wife had said in her statement and the judge said that he was: 'very happy to make a correction to the transcript when it comes through, but I am confident that it does not make any difference to my decision'. Unfortunately, no such correction was made. Ms Bangay subsequently raised the absence of any chronology of the events leading up to the agreement or to the copy and paste email. The judge declined to expand his judgment.

77. Although Mr Harrison did not actively seek amplification of the judge's judgment, at a consequentials hearing before the judge on 20 March 2024, he filed on behalf of the wife, a document which he called a 'schedule of suggested amplifications'. This extensive document was designed, it would seem from the transcripts, to seek amplifications from the judge, if he felt it appropriate to do so, which if adopted would in effect provide an answer to the husband's proposed grounds of appeal. Mr Harrison clarified to the judge that, at that stage he was not himself seeking permission to appeal, but he specifically reserved his position as to filing a Respondent's Notice.

78. In my judgment the judge fell into error in his approach to the evidence regarding the wife's non-disclosure. Had the judge adopted the approach of referring to the chronology of events and documents including the emails leading up to the signing of the agreement, a very different picture would have emerged. For example, important in relation to any finding about either undue pressure or material non-disclosure, was the 'copy and paste' email sent by the wife and adopted, to his significant detriment, by the husband. The judge made no reference to that email or to the fact that the wife had prevaricated in giving her oral evidence about the email, accepting only that it was in her 'sent folder' and saying that she had no recollection of writing or sending it. The judge did not consider the evidence given as to discussions between husband and wife which must have occurred between them before the email was sent and about which there was an evidential dispute.

79. Rather than a naïve young woman who did not know she had tens of millions of pounds of business assets in her name and was too in awe of her father to question him, on the totality of the evidence the wife not only decided (whether on instructions from her father or not) that the majority of her assets would not be disclosed, but also, by sending the husband the copy and paste email intended to be copied to her solicitors, put him in a position where in order to have any disclosure at all, he would not be able to get legal advice in relation to that disclosure. It will be recollected that the only legal advice that had been given to the husband was at a time when no disclosure had been made but was anticipated under the terms of the proposed agreement.

80. Further, the wife's case that she was too uncertain, or did not think it to be appropriate to include the business assets in Annex A, provides no excuse whatsoever for her failure to include her interest in her mother's house, an asset which had nothing to do with the father's business and everything, she said in her statement, to do with tax.

The husband's needs

81. Having determined that the agreement should be given decisive weight, the judge turned to consider the husband's reasonable needs. The significant issue was whether there should be provision for him to purchase a property. The judge was in no doubt that under the terms of the agreement it would be 'wrong' for him to make such a provision. Providing the husband reasonable income of £110,000 p.a. plus rent for a house in Dubai for two years, resulted in the judge making a lump sum order of £400,000 in the husband's favour.

The Legal Context

82. The inevitable starting point, and indeed the only authority which the judge found it necessary to consider, is the Supreme Court's decision in *Granatino v Radmacher ("Radmacher")* [2010] UKSC 42, [2011] 1AC 534.

83. The facts of *Radmacher* are well known. As here, the wife was a woman of considerable wealth. She entered into a pre-nuptial agreement upon the insistence of her father. In *Radmacher,* no disclosure was made by the wife and the husband did not have any independent legal advice. The effect of the agreement in both cases was that neither party was to derive any interest in or benefit from, the property of the other during the marriage or on its termination. Lord Phillips, at para. [2] of his judgment, identified that the appeal raised the "question of the principles to be applied to an ante-nuptial agreement".

84. The first stage of the analysis is that identified at para. [67] namely: "Were there circumstances attending the making of the agreement that detract from the weight that should be accorded to it".

85. In that context Lord Phillips said at para. [69]:

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

86. At para. [71] having referred to *Edgar v Edgar* [1980] 1 WLR 1410 he went on to say that:

> "71. The first question will be whether any of the standard vitiating factors: duress, fraud or misrepresentation, is present. Even if the agreement does not have contractual force, those factors will negate any effect the agreement might otherwise have. But unconscionable conduct such as undue pressure (falling short of duress) will also be likely to eliminate the weight to be attached to the agreement, and other unworthy conduct, such as exploitation of a dominant position to secure an unfair advantage, would reduce or eliminate it.
>
> 72. The court may take into account a party's emotional state, and what pressures he or she was under to agree. But that again cannot be considered in isolation from what would have happened had he or she not been under those pressures. The circumstances of the parties at the time of the agreement will be relevant. Those will include such matters as their age and maturity, whether either or both had been married or been in long-term relationships before. For such couples their experience of previous relationships may explain the terms of the agreement, and may also show what they foresaw when they entered into the agreement. What may not be easily foreseeable for less mature couples may well be in contemplation of more mature couples. Another important factor may be whether the marriage would have gone ahead without an agreement, or without the terms which had been agreed. This may cut either way.
>
> 73. If the terms of the agreement are unfair from the start, this will reduce its weight, although this question will be subsumed in practice in the question of whether the agreement operates unfairly having regard to the circumstances prevailing at the time of the breakdown of the marriage."

87. It is clear that Lord Phillips envisaged that the starting point for the first stage of his analysis required the application of conventional legal principles under which duress, fraud or misrepresentation can result in an agreement being of no legal effect: "the standard vitiating factors". The remainder of Lord Phillips's first stage of the analysis concerns cases in which the pre-nuptial agreement is not vitiated by any such factors, but where the weight to be attached to it might be reduced, or eliminated altogether, by factors such as undue pressure falling short of duress.

88. In *WC v HC* [2022] EWHC 22, *('WC v HC'),* a case where the allegation was that the wife had been put under undue pressure to agree a post-nuptial agreement, Peel J summarised this first stage of the analysis in the following way:

> "22.iv) The first question will be whether any of the standard vitiating factors, duress, fraud or misrepresentation, is present. Even if the agreement does not have contractual force, those factors will negate any effect the agreement might otherwise

> have. But unconscionable conduct such as undue pressure (falling short of duress) will also be likely to eliminate the weight to be attached to the agreement, and other unworthy conduct, such as exploitation of a dominant position to secure an unfair advantage, would reduce or eliminate it (para 71). The court may take into account a party's emotional state, and what pressures he or she was under to agree. But that again cannot be considered in isolation from what would have happened had he or she not been under those pressures. (Para 72)."

89. In *Radmacher*, having briefly disposed of the foreign element, Lord Phillips moved on to consider what impact the existence of an agreement, which was not vitiated or otherwise devalued by unconscionable or unworthy conduct, would have on the requirements of fairness. It was at this second stage of the analysis that Lord Phillips articulated what has become his seminal proposition to be applied in cases of both ante- and post-nuptial settlements:

> "75. The court should give effect to a nuptial agreement that is freely entered into by each party with a full appreciation of its implications unless in the circumstances prevailing it would not be fair to hold the parties to their agreement."

90. *MN v AN (Prenuptial Agreement)* [2023] EWHC; [2023] 2 FLR 756 was another case where the allegation was of undue pressure. Moor J again proceeded at para. [76], by reference to the now well established route of performing a two stage exercise, first by considering if there were any circumstances which should "eliminate or reduce the weight to be attached to the agreement" and second to see that the agreement operated fairly having regard to all the section 25 MCA factors including marital standard of living and needs, reminding himself that the children were the court's first consideration.

91. It follows therefore that the judge's first task was to consider, whether any of the standard vitiating factors were present by reference to all the evidence and in particular the facts and circumstances leading to the signing of the agreement,

Non-disclosure and deceit

92. *Radmacher* made clear that, as a general proposition, disclosure of assets by each party is not a legal requirement in order for there to be a binding pre-nuptial agreement. It is important to appreciate that *Radmacher* was a case in which Lord Phillips referred to the husband as being "indifferent to detailed particulars of the other party's assets", and that no disclosure or representations of any description had been made as to the wife's assets.

93. It must however follow from Lord Phillips's first stage of the analysis, that if the parties to a pre-nuptial agreement agree that disclosure *should* be provided, and there is then either deliberate non-disclosure, or deliberate misrepresentation as to a party's assets, the court must consider whether that vitiates or negates the agreement.

94. In *Cummings v Fawn* [2023] EWHC 830 (Fam); [2024] 1 FLR 117 *("Cummings")* Mostyn J considered non-disclosure in the context of a *Xydhias* agreement. Mostyn J

observed at para. [9] that the only difference between "a prenuptial, postnuptial, separation or "*Xydhias*" type of agreement is the closeness in time of the agreement to the hearing that determines whether it should be upheld". I agree with his view that the starting point should be the same whatever the type of the agreement.

95. In that case permission had been granted to appeal on a number of grounds, one of which was that the court had erred in its approach to the husband's non-disclosure of an inheritance worth at least £4m net by concluding that it was 'non operative'. The husband signed Forms D81 on two occasions with a statement of truth saying that he had made full disclosure of all the relevant facts. There was no mention of the inheritance with the consequence that Mostyn J observed at para. [59] that "The forms were not merely misleading: they were untrue."

96. Mostyn J went on at para. [65] to discuss his earlier judgment in *Cathcart v Owens* [2021] EWFC 86; [2021] All ER (D) (Nov) *("Cathcart")* where he had said that deliberate non-disclosure is a "species or subset of fraud". He explained that fraud and non-disclosure are separately identified as grounds for set aside under FPR PD 9A para 13.5 because there are some rare cases where material non-disclosure is inadvertent and therefore not fraudulent.

97. Mostyn J then dealt at para. [67] with the first stage identified by Lord Phillips in *Radmacher* (above), namely should non-disclosure result in the agreement being vitiated or set aside? He did so by reference to the Supreme Court decision in *Sharland v Sharland* [2015] UKSC 60; [2016] AC 871 ("*Sharland*"), a case where a husband had been dishonest as to the timing, and therefore the value, of his sale of his company. Mostyn J referred to the judgment of Baroness Hale at paras. [32]-[33] as follows:

> **"**32. There is no need for us to decide in this case whether the greater flexibility which the court now has in cases of innocent or negligent misrepresentation in contract should also apply to innocent or negligent misrepresentation or non-disclosure in consent orders whether in civil or in family cases. It is clear from *Dietz* and *Livesey* that the misrepresentation or non-disclosure must be material to the decision that the court made at the time. But this is a case of fraud. It would be extraordinary if the victim of a fraudulent misrepresentation, which had led her to compromise her claim to financial remedies in a matrimonial case, were in a worse position than the victim of a fraudulent misrepresentation in an ordinary contract case, including a contract to settle a civil claim. As was held in *Smith v Kay* (1859) VII HLC 749, a party who has practised deception with a view to a particular end, which has been attained by it, cannot be allowed to deny its materiality. Furthermore, the court is in no position to protect the victim from the deception, or to conduct its statutory duties properly, because the court too has been deceived. In my view, Briggs LJ was correct in the first of the three reasons he gave for setting aside the order.
>
> 33. The only exception is where the court is satisfied that, at the time when it made the consent order, the fraud would not have influenced a reasonable person to agree to it, nor, had it

> known then what it knows now, would the court have made a significantly different order, whether or not the parties had agreed to it. But in my view, the burden of satisfying the court of that must lie with the perpetrator of the fraud. It was wrong in this case to place on the victim the burden of showing that it would have made a difference."

98. Mostyn J emphasised at para. [73] that the principles in *Sharland* should be applied rigorously where fraudulent non-disclosure is proved. He concluded as follows:

> "[75] Therefore, where the court is dealing with an application to set aside a consent order, (or, as here, an application that a draft consent order should be rejected) on the ground of fraudulent non-disclosure, the court should not entertain any argument that the victim of the non-disclosure could, with due diligence, have discovered the material facts, and should apply stringently the principle that the consent order, and the underlying agreement, must be set aside unless the non-discloser can show by clear and cogent evidence that a reasonable person in the position of the victim of the deception would, if she had full knowledge of the facts, have reached the same agreement."

99. I agree that a similarly stringent approach must be taken in a case of fraudulent non-disclosure in a prenuptial agreement.

100. Moreover, Baroness Hale' reference to a reasonable person, should not be taken as imposing upon a victim of deceit a duty of due diligence. That this is case was made clear by the Supreme Court in in *Takhar v Gracefield Developments Ltd and Others* [2019] UKSC 13; [2020] AC 450; [2019] 2 WLR 984 at [63], where Lord Sumption observed,

> "… the basis on which the law unmakes transactions … which have been procured by fraud is that a reasonable person is entitled to assume honesty in those with whom he deals. He is not expected to conduct himself or his affairs on the footing that other persons are dishonest unless he knows that they are. That is why it is not a defence to an action in deceit to say that the victim of the deceit was foolish or negligent to allow himself to be taken in: *Central Railway Company of Venezuela v Kisch* (1867) LR 2 HL 99, 120 (Lord Chelmsford); *Redgrave v Hurd* (1881) 20 Ch D 1, 13-17 (Jessell MR). It follows that unless on the earlier occasion the claimant deliberately decided not to investigate a suspected fraud or rely on a known one, it cannot be said that he "should" have raised it."

101. In my judgment, these principles apply to a pre-nuptial agreement where a party has been guilty of fraudulent non-disclosure or fraudulent misrepresentation. If the misrepresentation was intended to cause the representee to enter into the agreement, the representor will have the burden of rebutting a strong evidential presumption that the misrepresentation played a material part in the decision of the innocent party to enter into the agreement: rebutting that presumption will require clear and cogent evidence."

The Grounds of Appeal

102. The husband's narrative Grounds of Appeal can be summarised into six headings:

1. The judge should have found the wife knowingly to have made a false and material non-disclosure. Her misrepresentation of her wealth was a vitiating factor particularly in circumstances of the husband having received only preliminary legal advice;

2. The judge was wrong to have upheld an agreement which was signed only on the day of the wedding;

3. The husband had been placed under undue pressure to sign the agreement;

4. The wife was in breach of paragraph 32 of the agreement having failed to mediate following the breakdown of the marriage;

5. The judge failed was adequately to provide for the husband's needs in that the provision for housing inadequate;

6. The judge had been guilty of gender discrimination in that the needs provision made by the judge for the husband was substantially less than the provision which would have been made to a wife in similar circumstances.

The Parties' Submissions

103. Ms Bangay submits that the wife was guilty of deliberate misrepresentation in her disclosure and that the husband had been put under undue pressure. There was, she submitted, no factual context contained in the judgment. Had there been one it would have clearly demonstrated the wife's dominant position. The judge wrongly analysed the circumstances surrounding the making of the agreement by reference only to the attendance note and failed to look at the emails. Had he done so she said, it would have been obvious that the attendance note revealed only an incomplete picture at best. The judge had been in error to reject the wife's admitted failure to disclose as a reason to upset the agreement.

104. Ms Bangay submitted that it is clear from the email of 12 June 2019 from the wife's solicitor to the husband that she was fully aware of the consequences of non-disclosure. Notwithstanding that being the case, she had deliberately only disclosed those assets which the husband knew about. It was never suggested, Ms Bangay said, that she was afraid of asking her father what her assets were and in any event her father was at the meetings with her lawyers. The wife had carriage of the document, the original draft was prepared by her lawyers, they had every opportunity to amend the warrant to saying that they were not disclosing business assets given to her by her father, but they did not do so; instead, she signed the agreement and failed to disclose over 70% of her assets.

105. Ms Bangay submits that the judge had been wrong at para. [104] of the judgment to say that "it is clear that the husband was expressly advised by Hall Brown to seek further disclosure and he declined to do so". Had the judge followed the email trail and analysed the events as they unfolded he would have seen that that was not a fair representation of the husband's position.

106. Ms Bangay did not discard her arguments with regard to the wife's failure to mediate or that a letter sent on behalf of the wife by her Dubai solicitors threatening a claim for maintenance in themselves undermined the agreement but rather, rightly in my view, she focused on the wife's non-disclosure and alleged that undue pressure had been put on the husband.

107. Even if the agreement were upheld, Ms Bangay said, the needs analysis concluded by the judge was flawed. The judge failed to consider those needs against the section 25 MCA factors, in particular there was no consideration of the quality and value of the former matrimonial home. It was in this respect that she factored in her discrimination argument submitting that, had the judge been considering a wife's needs at the end of a six year relationship with a very wealthy man, it was improbable that the court would have expected her to have been back on her own two feet after two years in a rented property, particularly when she had given up her first career to work for the family company and had had a period of significant mental ill health following the breakdown of the marriage.

108. Lord Faulks on behalf of the wife said that this was a case where the parties had chosen autonomy. There are public policy factors at play and if this Court interferes with the agreement, *Radmacher,* he said, "would not have achieved much". So far as the non-disclosure was concerned, whether the disclosure was sufficient goes to the materiality point in *Radmacher*. The husband knew the wife was rich, and it was a drop hands agreement. Whilst full disclosure would have been, he said, the "gold standard", the disclosure made was sufficient to make it an agreement entered into freely. The husband was indifferent to the particulars of the wife's wealth and he was content for there to be a drop hands agreement. When the issue of materiality was tested by Moylan LJ, Lord Faulks said that the non-disclosure may have been regrettable, but that it did not make any difference. The husband, he said, was an intelligent well-educated man who knew his wife was rich and had taken advice before agreeing to a drop hands agreement. The non-disclosure was not material notwithstanding that it would have been desirable for it to have been made.

109. The main focus of Lord Faulks's submissions substantially related to the conventional arguments (although no less valid for that) in relation to the court's reluctance to interfere on an appeal (*Piglowska v Piglowski* [1999] UKHL 27; [1999] 3 All ER 632), the dangers of island hopping (*Fage UK Ltd v Chobani UK Ltd* [[2014] EWCA Civ 5), and that where the evaluation includes findings as to credit, it is particularly inappropriate for the court to go against the judge's findings.

110. The needs assessment he said, was generous and there had been no need for the judge to have made any award at all. It is not, he argued, a matter of gender discrimination. Whatever frailties the husband may have had, he submitted, that does not mean that the judge should have ignored all the surrounding evidence and the intent of the agreement.

Discussion

111. It is clear in this case that the judge did not undertake what is now typically referred to as the Stage 1 analysis, as described by Lord Philips at para. [71] "The first question will be whether any of the standard vitiating factors: duress, fraud or misrepresentation, is present".

112. In the present case the non-disclosure of the majority of her assets by the wife was undoubtedly deliberate. The wholesale exclusion of the wife's business assets and her interest in the Wimbledon house in which her mother lived, was of a wholly different complexion from an agreement that round or approximate figures would be provided in respect of certain classes of assets, as was quite properly done in relation to the selection of assets which the wife chose to disclose in Appendix A.

113. Given that the wife was aware that the business assets and her mother's home were in her name, and her evidence was that she made a deliberate decision not to disclose them (albeit, on her case, for reasons connected to tax), it is in my judgment inescapable that her decision not to disclose those assets was fraudulent. Moreover, as in *Cummings,* this was not simply a failure to disclose: the deliberate non-disclosure falsified and made untrue the wife's express representation to the husband at Recital (R) of the agreement that she had made full and frank disclosure of her financial resources.

114. That would be bad enough: but the wife's deceit was made all the worse because the agreement contained a certificate signed by her lawyer that she had been given legal advice and where her lawyer had previously given a clear indication to the husband in the email of 12 June 2019 that he would be advising his client to make full disclosure of her assets. The wife's lawyer also emphasised that it was understood on the wife's side that absent disclosure, the validity of the agreement would be open to challenge.

115. It was also clear from the terms of the agreement itself that the statements in Appendix A were intended to induce the husband to enter into the agreement. That much is readily apparent from Recital (S) which stated in terms that the disclosure in Appendix A was "substantially complete in all material respects, and on this assumption [each of the parties] voluntarily and expressly accept the disclosure provided by the other as being sufficient to enter into this agreement".

116. The question nonetheless remains, as to whether, although the wife's concealment of the majority of her assets was fraudulent, had she discharged the evidential burden of showing by way of clear and cogent evidence that her deceit was immaterial.

117. Given the huge disparity between the actual disclosure and the wife's true wealth and that Ms Klyne had expressed her concern; (i) that the agreement had to demonstrate that the husband's needs would be met, and (ii) that she would also expect disclosure in order to negotiate with the other side, it is clear that a mere assertion on the wife's part that the non-disclosure was not material to the husband cannot be said to amount to clear and cogent evidence of that fact.

118. The high-water mark of the wife's case in this respect was that the husband had told Ms Klyne that he was (i) willing in principle to enter into a drop hands agreement; and (ii) that he had said in the copy and paste email that the wife had drafted (either on her own or with her father) and which the husband had simply forwarded to her lawyers, that he was prepared to go along with Option 1 and therefore receive no disclosure.

119. But matters did not rest there. In their reply the following day, the wife's lawyers insisted upon Option 2 under which disclosure would be given by the wife to the husband, and they had explained why they would be advising the wife to make disclosure in order that the validity of the agreement could not be questioned by a court. The husband then accepted Option 2 on the basis that he would respect the wife's

request for privacy by agreeing that his legal advisers would not see details of her wealth (thus depriving himself of further legal advice). But that was on the express basis – consistent with the explanation by the wife's lawyers and confirmed by Recitals (R) and (S) in the agreement - that the husband would himself see the full and frank disclosure to be contained in Appendix A.

120. In the end, of course, the husband had the worst of both worlds: no legal advice once disclosure was made and no honest disclosure to inform his decision making. There was, moreover, no clear evidence that, having accepted Option 2, the husband thereafter placed no reliance on the contents of Appendix A and Recitals (R) and (S). Further, because (as I have indicated above) the judge's analysis of disclosure was incomplete and based upon the mischaracterisation of the wife's deceit as simply being "a lower number than the truth or than it should have been", he made no findings which could properly support a conclusion that the contents of Appendix A played no part in the husband's decision to enter into the agreement.

121. Accordingly, in my judgment had the judge properly addressed Stage 1, he would inevitably have concluded that the deliberate decision by the wife not to disclose her business assets and her interest in her mother's house amounted to fraudulent non-disclosure which vitiates the agreement.

122. I should emphasise that this is a conclusion on the facts of this case and, in reaching it, it should not be thought that there has been some sort of seismic or even modest shift in the court's approach to non-disclosure in cases where there is a pre-nuptial agreement. The law is unchanged. So long as there is no statutory scheme, *Radmacher* will continue to bind this court; disclosure is desirable but not essential and that is equally the case with legal advice. Pre-nuptial agreements are about the autonomy of the parties to determine for themselves what should be the fair outcome in the event that their marriage fails.

123. Where however, as here, the parties agree and record in the document the extent of and approach to be taken to disclosure, they are agreeing as to what information is to be made available to enable each of the parties to make a decision as to whether they wish to be bound by the terms contained in the proposed agreement. Wilful or fraudulent breach of that agreement such that the disclosure made bears no resemblance to the true wealth of a party is entirely different from the position in *Radmacher*. In my judgment, such conduct is capable of being material non-disclosure as it deprives the other party of the information that they have agreed is necessary in order for them to decide whether to agree to a pre-nuptial agreement in the terms proposed.

124. Since the husband in the instant case was deliberately deprived of information which it had been agreed that he should have, in my judgment, the agreement cannot stand. It follows that the appeal must be allowed because the non-disclosure by the wife was (adopting Stage 1 of Lord Philips' approach) a vitiating circumstance which negated the effect of the agreement.

125. As the appeal must be allowed on this basis there is no need to go further and determine the other grounds of appeal which relate to the date of the agreement, undue pressure, or the wife's failure to mediate. Having said that, whilst the fact that the agreement was not produced for the husband to sign until the morning of the wedding would not on the facts of this case have in itself been sufficient to vitiate the agreement, it was clearly

highly undesirable and underlined that the wife and her father were in control of the process at all times.

126. Turning then to the judge's assessment of the husband's needs. The judge did not consider the husband's needs by reference to section 25 MCA. The only mention made in the judgment to section 25 MCA was in the context of the enforceability of the agreement where the judge comments that the section guides the decision and discretion of the judge but that section 25 does not mention pre-nuptial agreements. Whilst it is trite law that an experienced judge does not have to go slavishly through each part of section 25 MCA, the court must nevertheless be seen to have in mind each part of the section. The judge's approach was to consider the husband's needs by reference only to the schedule of needs which had been submitted on his behalf and not by reference to section 25 MCA and arguably he did not take into account, for example, the standard of living the parties had enjoyed, albeit in the context of a short marriage.

127. The judge's assessment of needs was understandably influenced by his decision that the agreement must be effected. For example, he said that it would be wrong 'in the context of the agreement' to expect the wife to buy the husband a house. The authorities are clear that the approach to needs is different where the pre-nuptial agreement has been upheld, see by way of example: *HD v WB* where Peel J held at para. [99] that the terms of the pre-nuptial agreement operated as a 'limiting factor upon considering H's requirements' and *Xanthopoulos v Rakshina* [2024] EWCA Civ 84 where the Court of Appeal upheld a 'needs light' approach in a case where a pre-nuptial agreement had been upheld. That being the case, the judge's assessment of the husband's needs must be set aside and reconsidered by reference to the section 25 MCA factors and without taking into account the terms of the agreement.

128. For all these reasons, if their Lordships agree, the appeal must be allowed.

Lord Justice Moylan:

129. I agree.

Lord Justice Snowden:

130. I also agree.