Neutral Citation Number: [2013] EWHC 2534 (Fam)

Case No: FD10F0051

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/08/2013

Before :

MRS. JUSTICE ELEANOR KING DBE

- -

Between :

M	**Applicant**
- and -	
M	**1st Respondent**
-and-	
YURI BARKOV	**2nd Respondent**
-and-	
SNOWDEN PROPERTIES LIMITED	**3rd Respondent**
-and-	
PANKRATROV TRUST LIMITED	**4th Respondent**
-and-	
HIGHLANDS INVEST LIMITED	**5th Respondent**
-and-	
CARTER COURT LIMITED	**6th Respondent**

- -
- -

NIGEL DYER QC & JULIET CHAPMAN (instructed by **Mishcon De Reya**) for **Applicant**
CHRISTOPHER WAGSTAFFE QC & LAURA HEATON (instructed by Withers LLP) for **Respondents 4, 5 and 6**
(Respondents 1, 2 and 3 not in attendance and not represented).

Hearing dates: 24th January 2013 to 1st February 2013

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Approved Anonymised 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.

.....

MRS. JUSTICE ELEANOR KING DBE

This judgment is being handed down in private on ..... It consists of ..... pages and has been signed and dated by the judge. The judge hereby gives leave for it to be reported.

The judgment is being distributed on the strict understanding that in any report no person other than the advocates or the solicitors instructing them (and other persons identified by name in the judgment itself) may be identified by name or location and that in particular the anonymity of the children and the adult members of their family must be strictly preserved.

Mrs. Justice Eleanor King DBE :

Introduction

1. This is an application by the wife for an order for financial relief under Part III of the Matrimonial and Family Proceedings Act 1984 following her divorce in Russia from her husband.

2. In addition to the husband and wife there are five other parties to the proceedings:

    - Yuri Barkov (Yuri), (2nd Respondent), the husband's son from his first marriage.

    - Snowden Properties Limited (Snowden), (3rd Respondent) a company held in Yuri's name.

    - Pankratrov Trust Limited (Pankratrov) (4th Respondent) a company wholly owned by the husband.

    - Highlands Invest Limited (Highlands) (5th Respondent) and Carter Court Limited (Carter Court) (6th Respondent) two companies wholly owned by Pankratrov.

3. Mr Dyer QC represents the wife. Doing the best he can he puts the assets in the case (at least those assets his legal team have been able to trace in the absence of any proper disclosure by the husband), at about £107m; of that figure some £91.6m is represented by eleven commercial properties in Russia from which H's business used to trade during the marriage. These properties were owned under the Pankratrov structure in the early days of these Part III proceedings but have been transferred to a newly created Belize structure during the course of the litigation. The remainder of the identified wealth is held in eight English properties worth together about £141,002,337, of which £5,857,830 represents 4 properties and a garage held by Pankratrov, Highlands and Carter.

4. It is with these properties worth £5.8m, a tiny minority of assets in percentage terms, that the Court has been concerned for seven days. Pankratrov, Highlands and Carter argue that they own both the legal and beneficial interest in the properties in question and accordingly the wife can make no claim for the transfer to her of the properties, albeit she can seek the transfer of the husband's 100% shareholding in Pankratrov. The wife argues that the husband has at all times retained the beneficial interest in the four properties (and garage), which include the husband's London home and garage, and his country home in Northumberland.

5. The wife seeks orders which will enable her to receive all the properties in this jurisdiction together with a lump sum which she will attempt to enforce in other jurisdictions. The only asset held in the name of either of the parties is the former matrimonial home (FMH), which between the trial and judgment has been sold. All the other matrimonial assets are held through company structures and in particular the real property within this jurisdiction is held as follows:

i) Snowden Properties Ltd is a UK registered company. Yuri owns the shares in the company and is the sole director. The company owns three properties Flat 1 Effes Road and Flat 6, Effes Road and Garage J.

ii) Pankratrov Trust Ltd is registered in Cyprus and its two wholly owned companies Highlands Invest Ltd and Carter Court Ltd are registered in Nevis. The sole director of Pankratrov is Mr Boris Glukhov, a longstanding employee of the husband. These companies hold the following assets:

a) Quinta Castle, the husband's country home is registered in the name of Pankratrov.

b) Flat 4, Effes Road is registered in the name of Highlands

c) Flat 28 Broadwalk Way (Broadwalk Way) and Garage 78 is the husband's London home and is registered in the name of Carter Court.

6. It follows that in order for the wife to achieve her aim of having these properties transferred into her name as part of her relief in these Part III proceedings, she will have to satisfy the court that, notwithstanding the fact that these assets, (which she asserts are matrimonial assets) are held in the names of companies, the husband nevertheless retains, in each case, the beneficial interest in the relevant property. It is against this background that orders were made joining Yuri and the companies to the proceedings accompanied by orders for the wife to file formal pleadings against any entities in respect of which she contended the husband to have a beneficial interest.

7. Points of Claim were accordingly filed in respect of the following entities:

i) Rekabe Estate Ltd and Haristrust Ltd - points of claim plead that the husband owns these companies but other than a declaration no further relief is sought.

ii) Snowden– the points of claim is based on the companies holding the properties on a resulting trust for the husband who, it is agreed made a direct payment for the properties. In the alternative it is pleaded that there is a common intention constructive trust in relation to the properties the husband being a shadow director and his intention therefore being capable of being imputed to the companies.

iii) Russian commercial properties – the points of claim plead the basis upon which it is said the husband owns these properties which are held in a 'new' off shore structure in Belize (that is to say established during the currency of the proceedings). A declaration is sought that the husband owns these properties. The wife seeks a lump sum to reflect her matrimonial interest in assets rather than a transfer of shares in the Belizean companies.

iv) Pankratrov, Highlands and Carter Court - the points of claim is based on the companies holding the properties on a resulting trust for the husband who, it is agreed, paid for the properties. In the alternative it is pleaded that there is a common intention constructive trust in relation to the properties, the husband being a shadow director and his intention therefore being capable of being imputed to the companies.

8. Only Pankratrov, Highlands and Carter Court have filed defences and been represented in court. Neither the husband as the owner of the companies, nor the directors (Yuri and Mr Glukhov) have attended or given evidence. It is noteworthy therefore that in respect of assets, which on one view are safely out of the jurisdiction and beyond the reach of the courts, the husband has not sought to defend the wife's case. The only assets he has sought to protect are those in the UK and more particularly those under the Pankratrov umbrella which, significantly, include his homes. That this is no co-incidence is demonstrated by the fact that, when the wife agreed to meet the husband in order to see if they could reach an agreement in relation to these proceedings he was reluctant to discuss the case except for saying that he had bought Broadwalk Way *for his own*. He also said to the wife *I live in Broadwalk Way it is my home*.

9. Pankratrov, Highlands and Carter Court resist the wife's claim on the basis that the properties are held in companies outside the jurisdiction for, they say, well recognised tax planning reasons which would fail to achieve the tax advantages sought in the event that the husband retained the beneficial interest in the properties. Far from retaining the beneficial interest, it is submitted, it would be a priority for H to dispose of any interest he had in any of the properties in question.

Structure of the Judgment

10. In order to render the complexity and volume of the material manageable this judgment will deal with the issues in the following way:

    i) The husband's engagement with the proceedings;

    ii) The background of the marriage and acquisition of the assets in general;

    iii) The wife's evidence;

    iv) Evidence in relation to the husband's intention at the date of purchase of the Pankratrov, Highlands and Carter Court in particular as evidenced through his dealings with Withers in their capacity as his conveyancing solicitors;

    v) Rekabe Estate and Haristrust;

    vi) Snowden;

    vii) Pankratrov and the Russian commercial properties;

    viii) The law in relation to resulting and common intention constructive trust and the impact of the Supreme Court's decision in *Prest;*

    ix) Conclusions and Orders

The Husband's Engagement with the proceedings

11. Between 20th July 2010, when leave was given to commence Part III proceedings and February 2012, the husband was represented by leading London solicitors; first by Messrs Farrers, and subsequently by Withers LLP. During that period the husband, to a certain extent, engaged with the proceedings. On 17th February 2012 however

Withers came off the court record and since that time the husband has paid no active part in the proceedings. He has neither attended hearings nor complied with orders of the Court; he is in contempt many times over.

12. The husband has, however, remained active behind the scenes, moving company structures from offshore haven to offshore haven when the net cast with such skill and determination by Mr Dyer's team has closed in. In addition the husband has for significant periods of time, retained Withers as legal advisors in relation to the proceedings although they have not come on the record. I am satisfied therefore that the husband has at all times been completely in touch with the progress of the litigation whilst playing no active part in it.

13. At a directions hearing on 11 November 2011 the final hearing of the wife's applications was listed to start on 21 January 2013 for 4 weeks. As months passed and order after order for disclosure was ignored, it became apparent that neither the husband nor any of the other respondents had any respect for the authority of the court. The Pre-Trial Review hearing was held on 1 November 2012 and, despite having been ordered to attend that hearing there was no attendance by any of the Respondents. On 12th December 2012, Withers LLP (the husband's (former) solicitors) unexpectedly came on to the record, not as one might have expected once again to resume representation of the husband, but to represent only the husband's companies Pankratrov, Highlands and Carter Court the 4th, 5th and 6th Respondents, at the trial listed to start a matter of weeks later.

14. Mr Wagstaffe QC appeared to represent the three companies, supported by the usual cast of characters appearing in such cases, including junior counsel, a senior partner from Withers, at least one associate solicitor and various others whose precise role is unclear. The only person Mr Wagstaffe had missing from his entourage was a human client; the directors of the companies he represented were as elusive as the husband, they neither filed a statement nor attended court to give evidence and be cross-examined.

15. Yuri and Snowden Properties (held in his name), the 2nd and 3rd Respondents, have taken no part in the proceedings. They have not filed points of defence or any other evidence; they have been neither represented nor attended Court; they too are in contempt many times over.

16. The Husband, despite continuing to obtain and pay for advice from Withers behind the scenes, has failed to disclose, file a statement or attend court for the final hearing.

17. The case has been a fantastic charade with the husband a shady puppet master in the background. At fabulous cost, (£1.4m and counting), those representing the wife have crossed and re-crossed the globe in an attempt to trace the husband's assets, every penny of which has been acquired during the course of the marriage. Orders have been obtained in Cyprus, the BVI and Seychelles but even as those representing the wife unravelled the Pankratrov structure, (as set out later in this judgment), the husband was one step ahead, transferring those self same assets across the Caribbean Sea to Belize where, I am satisfied, that realising the danger of being identified as the beneficial owner of Pankratrov, the husband for the first time used a Panamanian intermediary specifically to ensure that the Belize structure would have no information about the beneficial interests to disclose to this or any other court.

18. Finally, and showing singular audacity, the husband sent his companies "in to bat" on his behalf at the trial; in that way he was able to fight the case in relation to the only assets about which I am satisfied he cared and which were within the jurisdiction without having to expose himself either to cross-examination or punishment for contempt of court. In her oral evidence the wife said *The money was extremely important …for my husband. The money gave him possibilities to manipulate, to rule, to control and that is the main part of his personality. So money was important to him.* The wife's description of the husband is perfectly reflected in manner in which he has conducted this litigation.

19. It is now exactly three years since permission to commence the Part III proceedings was granted. The costs are vast. The wife must have hoped the hearing in January would bring this part of the proceedings to an end but unhappily it was necessary to wait until the Supreme Court had given its judgment in *Prest v Petrodel Resources Ltd and Others* [2013] UKSC 34 before judgment could be given.

20. I should make it clear that Mr Wagstaffe QC and junior counsel Miss Heaton should be in no way tainted by the criticisms made of the husband. Mr Wagstaffe has done what he properly could do on behalf of his clients; he has been in an unenviable position and if he has been driven to attempt to reinvent the wheel in relation to the law of resulting trusts, it is hard to know what other forensic avenue was open to him.

Background

21. The husband and wife are Russians who have lived in England since August 2005. The husband is 49 and the wife is 48. They started to live together in 1989 and were married in 1991. The couple separated in the autumn of 2008 (H says November 2008) and a divorce was granted upon the wife's petition on 6th February 2009. The marriage subsisted, therefore, for 17 years.

22. There are two children of the marriage, Vladimir, age 19 who is at university in England and Anatoli, aged 15, who attends boarding school in England. The husband and wife each have a child from a previous marriage. The wife's daughter, Francesca, aged 28, was legally adopted by the husband. She came to England to go to school in 1998 and continues to live in the UK. Francesca suffers from a bipolar condition and remains largely dependant upon her mother, financially and emotionally.

23. The husband's son, Yuri is 26 years old and bears his mother's surname. Almost all his life he has lived in France, first with his mother now with his partner and their child. The wife says that the relationship between Yuri and his father has often been difficult with periods of estrangement. It is not known how Yuri earns his living, but it is known that he left school having failed to complete his Baccalaureate and that he did not attend university.

24. The husband and wife met in 1987 in the factory in which they both worked. The husband was a telephone technician and the wife worked in the factory's cultural department. In his first affidavit dated 1 October 2010, ("the October affidavit"), the husband contended that he was already a man of considerable wealth when the parties started to live together in 1989. I do not accept that to be the case. Not only, as I will set out in more detail in due course, is the husband a wholly unreliable historian but the Court also has the benefit of third party evidence from a woman called Ana

Heurner, a family friend and employee of the husband from that period of their life. Ms Heurner's evidence that the husband became prosperous after 1989 ties in with the fact that it was only in 1988 and 1989, after the extensive Gorbachev economic reforms and the demise of the Soviet planned economy, that the citizens of Russia had the opportunity to capitalise upon the existence of the new free market.

25. Initially the parties lived in a modest two-bedroomed flat that the husband's parents had given to him. About the time the parties started living together the husband began to import computers (a scarce commodity) and thereafter set up an electronics business at the beginning of 1991. Another business, selling household goods, followed and the seeds of the husband's success were sown. Rather than renting premises from which to run his retail outlets the husband bought the properties. As each new shop was opened he worked hard to pay off the borrowing obtained to buy the building until he owned a string of valuable commercial properties in Russia. The wife describes the husband as having poured scorn on businesses that did not own their own trading properties referring to them as mere "traders".

26. In the wake of the husband's financial success came a lavish lifestyle for the family. For many years they lived in a large (10,000 sq. ft.) 18th Century country house with accompanying household staff and holidays to match. For a period of time between April 1998 and May 2000 the family lived in France. Despite their great wealth, their personal life was not entirely happy and for a brief period the parties separated. The husband suggests they were apart for 4 years, I accept the wife's evidence that it was for a far shorter period of time.

27. By 2004 increasing competition was affecting the profits of the businesses. The husband decided to close them and let out the commercial properties. The wife says, and I accept her evidence, that the husband told her that the properties generated rent of US$800,000 per month. These commercial properties are the bedrock of the matrimonial capital and it has been the rents they generate that have funded the family's lavish lifestyle.

28. In August 2005, the family left Russia and moved to London. Prior to leaving the husband set about transferring the ownership of his commercial properties to jurisdictions outside Russia. The wife was not aware of the detail of the plans, although her husband discussed with her the whimsical or family names he chose to give to some of the newly created companies and English LLPs he set up to hold the properties. I accept that in all their discussions the husband never suggested tax mitigation as a reason for putting the Russian commercial properties into the specially created LLPs.

<u>The acquisition of the English properties</u>

29. The wife's evidence is that the family were very happy together when they first moved to England. In August 2006, the FMH in central London was bought as a family home in the joint names of the husband and wife. The husband paid £3.825m for the property. In the October affidavit he said *the money was from my personal savings derived from my earlier business enterprise in Russia. I then spent out £1m on refurbishment*".

30. The following year in 2007, the husband bought more properties in London: Flat 1, Effes Road and Flat 6, Effes Road and Garage J.

31. These latter properties were registered in the name of Snowden Properties Limited, a UK registered company in which the husband and wife each held one of the two issued shares and of which the wife was the company director. Again, in relation to the purchase of each of these properties the husband said in his affidavit that the money was *from his personal savings derived from his earlier business enterprise in Russia.* The wife said that the husband told her that *to register in the company's name is the same as to register them in their own name.*

32. In September 2007, the family moved out of the FMH and into Flat 6, Effes Road to allow the FMH to be completely refurbished. The wife in her written material and oral evidence spoke of the marriage coming under increasing strain in the autumn of 2007 in part due to the husband's refusal to address the family's immigration status, before finally coming to an end in the autumn of 2008.

33. The wife's case is that in the face of the deterioration of the marriage the husband changed his pattern of buying property in London. Hitherto any property (3 to date) bought in London was owned by both of them either directly or through Snowden Properties. As the marriage collapsed, the wife says, the husband took steps to put the property out of her reach. To this end the wife alleges that in November 2007 the husband forged her signature on a share transfer form transferring her share in Snowden (and therefore her interest in Flat 1, Effes Road and Flat 6, Effes Road where she was living with the husband and the children), to a Nevisian company called Marsh Estate Limited. On 2nd November 2008 the husband in turn transferred both Marsh Estate's interest and his own interest in Snowden to Yuri. The husband's written case was that the wife agreed to this and signed the transfer form on 14th November 2007. The wife's response is that she would not have countenanced transferring her interest to Yuri in any event, let alone at a time when the marriage was strained. Further, at the time of the alleged transfer the family were on holiday in a remote island and there was no question of discussion about property transactions.

34. In April 2008, H bought Flat 4, Effes Road. This flat was on the same level and shared a balcony with Flat 6, Effes Road where the family were living. Flat 6 is a two-bedroomed property and the boys were therefore sharing a bedroom. The wife said in evidence that the plan was that the adjoining Flat 4 would be incorporated with Flat 6 and would enable the boys to have separate bedrooms and in addition there would be a guest suite available which would be particularly useful as Mr Glukhov was a regular visitor, coming to England to take instructions from the husband in relation to the running of the business. It was at this difficult time in their marriage that, for the first time, the husband did not buy a London property in such way as to give his wife a 50% interest in the property. Notwithstanding the fact that it adjoined the matrimonial flat, Flat 6, Effes Road, and was to be an extension of the matrimonial home, the flat was not put into Snowden Properties ownership but instead was bought through Highlands Invest Limited, the 5th Respondent. The husband paid £1.18m once again saying in his statement that it was funded from his *personal savings*. Although Highlands is a Nevis company owned by the husband, Yuri (then age 21) was made the sole director (but not a shareholder). The result was that the two flats were to be held beneficially, the husband suggests by two different companies.

35. When they took possession of the flat the husband immediately threw himself into a programme of renovations and alterations. The wife described the husband as a *Very talented designer. He was absolutely crazy about all our flats and all our houses where we lived. It was his babies and he was extremely proud about them.* Notwithstanding this the husband subsequently said in his October 2010 affidavit that he had bought the property as a home for Yuri and that "*Yuri lives there with his partner and has done so since its purchase*".

36. This is simply untrue and in my judgment is one of many examples of the husband making up what seems to be the best story at the time he tells it. At best Yuri has stayed at the flat for a week or so as a visitor.

37. After the parties separated in the latter part of 2008 the husband bought Broadwalk Way for £2.5m, through the 6th Respondent, Carter Court. The first Director was a man called Anton Karin of Bolivia who was replaced by Yuri on 10 October 2008 about the time the parties separated*:* In the October affidavit the husband said:

> *I bought this through Carter Court… I paid £2.5m. The money was from personal savings derived from earlier business enterprise in Russia. About £50,000 was spent on refurbishing it, which I provided.*

The husband later changed his story saying that this purchase had not in fact been funded from personal savings but from monies provided by way of a loan to him from a company he owned called Rekabe Estates Limited.

38. On 12th January 2009, the wife petitioned for divorce in Russia. Having been habitually resident in England and Wales since 2005 the wife could have petitioned in the UK but had not taken advice from the English solicitor and wrongly believed that as a Russian who had married in Russia she should would have to divorce in Russia. On 6th February 2009, a Russian divorce was granted. The wife was represented, the husband was not represented nor in attendance. The Court made a declaration that the husband had been notified of the hearing. Consequently, the marriage was formally dissolved in Russia on 3rd March 2009.

39. On 23rd July 2010 the husband made an application in Russia (out of time) seeking to appeal the granting of the Russian decree absolute, claiming he had been unaware of the Russian divorce until a few days previously. On 4th August 2010 a Justice of the Peace granted the husband's application. The wife appealed that decision, which appeal was heard on 11th October 2010 when the decree absolute was restored on the basis that the husband had been notified of the proceedings and knew of the judgment. In the course of the his judgment the Russian Judge said:

> "*Furthermore, the Court paid also attention to the fact that signature on behalf of the defendant the power of attorney issued in the name of [A.B.] does not correspond visually to the defendant's signature in a power of attorney issued in the name of [A.Y.]*"

40. The wife's case is that this is a second example of the husband forging signatures when it suits his purposes to do so.

41. On 1st December 2009, the husband bought for (£2.75m) Quinta Castle which was a substantial property, formerly run as an hotel, in Northumberland. The deposit and completion monies came from the husband's Latvian bank account and the purchase was registered in the name of Pankratrov. Having said in the October affidavit that he had bought Quinta Castle with a loan from ABLV, (a Latvian Bank), the husband subsequently said that the loan was in fact from Rekabe Estates Limited which had then been paid into one of his ABLV accounts. In relation to this loan the husband said that on 6th June 2008 he had entered into a personal loan agreement with a company called Rekabe Estates for €7m with a repayment date of 1st July 2011. That loan is unsecured but in default gives Rekabe Estates the option of security over various properties which include two of the Snowden properties and also Flat 4, Effes Road, registered in the name of Highlands.

42. In the October affidavit the husband said that, when finished, there would be eleven guest rooms in the main building at Quinta Castle which he might sell or might operate as a hotel via a company. This again was a blatant lie as the conveyancing file shows that it was always his intention to convert the property to a private residence for his own use and he had been granted change of use planning permission several months before filing the October affidavit.

43. Quinta Castle was the last of the English properties to be bought, all of which then were funded directly by the husband and in relation to which, in his October affidavit he said:

> *There are properties in England which, in effect, I own.*

44. Following the final separation, the wife left Flat 6, Effes Road and moved to a rental property where she has remained since.

45. The common feature of the English properties is that each of them was bought for the exclusive use of the family; the FMH, Flat 6, Effes Road and Flat 4, Effes Road as matrimonial homes, Flat 1, Effes Road as the husband's office and Broadwalk Way and Quinta Castle as the husband's London and country homes after the marriage broke down.

46. Although he continued to pay the children's school fees after the separation, the husband did not provide the family with any other support, leaving the wife dependant upon a long term friend, and her friend's husband; they provided the wife with rent of £2,850 per week and £20,000 per month for living expenses plus legal fees. The wife estimates that she now owes them a total of £5m.

47. During the course of the marriage the husband had routinely remitted money from off-shore accounts to fund the family's expenditure. The wife's bank statements reveal a monthly allowance being paid from entities that the husband has either not disclosed (e.g. Palmers Property, Hall Property Ltd, Lenin Capital LLP) or not admitted to owning (Rekabe Estates Limited). The last voluntary spousal maintenance payment was made on 10th September 2009. In light of the withdrawal of financial support an application was made on behalf of the wife on 20th July 2010 for leave to commence Part III proceedings. The order was granted and the husband ordered to file an affidavit by 31st August 2010. Freezing injunctions were also made in relation to the UK properties.

The Proceedings

48. On 10th August 2010, Farrer & Co filed a Notice of Acting on behalf of the husband.

49. On 9th September 2010 the wife filed an affidavit in relation to her Interim Periodical Payments application. By this stage the husband's affidavit was a month late. The affidavit was finally filed on 1st October 2010 and a first appointment held in front of Mrs Justice Parker on 5th October 2010. The husband on that occasion was represented but did not attend. Mrs Justice Parker ordered Forms E (by 9th November 2010) and made provision for questionnaires and replies to questionnaires. The freezing orders were continued. In the light of the wife's allegation that the husband had forged her signature, Mrs Justice Parker made a specific order that by 19th October 2010 the husband should deliver up the original transfer documents purporting to transfer the wife's interest in Snowden to Marsh Estates.

50. On 18th October 2010 there was an interim maintenance hearing before me. The husband, in breach of the order of Mrs Justice Parker, had failed to file an affidavit in reply to the wife's application for maintenance pending suit and, as in the hearing in front of Mrs Justice Parker, the husband chose not to attend. The Husband was however represented by leading and junior counsel. No explanation was offered for the absence of the affidavit and when the matter had to go over to the next day he did not take the opportunity to file an affidavit overnight.

51. The Court, therefore, had available to it only the October affidavit, this had been filed with no supporting documentation and gave the Court no idea as to the extent of the husband's wealth other than the properties already identified by the wife as being in the UK. The only reference he made to his total wealth was to say that a Forbes Estimate of his wealth at £150m was an exaggeration. He made no mention of income whatsoever and, in relation to his failure to maintain his family, said that he believed that the wife had sufficient means of her own and she would have asked if she had needed financial assistance.

52. In light of this singular lack of co-operation, Mr Dyer QC made the unusual application that the Court should consider making a *Hadkinson* Order given the wilful nature of the husband's conduct in the proceedings and in particular his continuing contempt of court in failing to file an affidavit or produce the transfer document as ordered by Parker J. Mr Scott QC, on behalf of the husband, was unable to offer the Court any offers of future compliance or assurances of disclosure. Having read and considered both sides skeleton arguments. I excluded the husband's legal team from further participation in the hearing, on the basis of H's contempt. I allowed the husband's continued involvement in the proceedings upon certain terms.

53. The husband made a number of revealing comments in the October affidavit which he has subsequently tried to explain away whilst still failing to file proper evidence, adequately to answer the questionnaire or attend court to give evidence.

54. Whilst the husband has failed at every step of the way to provide any honest disclosure or to engage in the proceedings he has equally, at every step of the way, indulged in satellite litigation which has achieved nothing other than to be costly and distressing to the wife. The application to discharge the Russian decree absolute is one such example; the interim maintenance hearing is another where Mr Scott QC, (no

doubt upon instructions), argued that the Court had no jurisdiction to order interim maintenance in Part III proceedings. Another example is of the husband having issued TOLATA proceedings in a local County Court seeking an order for the sale of the FMH, forcing the wife to respond by seeking a declaration of her interest in the property. Most recently he has issued proceedings in Russia seeking the transfer from the wife to him of two flats (Flats 22 and 23 at Karl Street in Moscow) held in her sole name and worth £1.2m; this application has been made despite the husband having said in his October affidavit that he had bought the flats and given them to his wife.

55. Following the hearing on 18th October 2010, the court made an order for the husband to pay maintenance at the rate of £38,333 per calendar month and legal fees of £10,000 per calendar month. The order made by Mrs Justice Parker for the production of the transfer documents in relation to Snowden Properties was repeated. It should be noted that, although it was submitted that I had no jurisdiction to make an interim periodical payments order, the husband at no stage suggested that the level of periodical payments sought by the wife was in any way excessive.

56. During the course of November 2010, Farrer & Co came off the record and Withers filed a notice of acting. The Forms E were due in the following day, 19th November 2010. The wife's was filed, the husband's was not.

57. On 21st February 2011, Withers sent a cheque for the arrears of interim maintenance of £357,040 to the wife's solicitors. On 12th April 2011, Withers sent what they described as a letter of disclosure providing partial information which purported to comply with Parker J's original order of 5th October 2010 in relation to information in respect of the property purchases and seeking to give the husband a further extension to file and serve his Form E (which was by now six months late).

58. In the meantime, behind the scenes, those representing the wife had been trying to discover the whereabouts of the husband's considerable wealth.

59. In her first affidavit of 13 July 2010, the wife listed a number of companies which she remembered the husband having spoken of during the course of the marriage. They were:

    i) Pankratrov Trust Limited;

    ii) Impala Enterprises LLP;

    iii) Toli Properties LLP;

    iv) Lenin Capital LLP;

    v) Weber Designs;

    vi) Gagarin Tours;

    vii) Palmers Properties Limited.

60. In his affidavit in reply (the October affidavit), the husband agreed that he was the owner of Pankratrov Trust but avoided dealing with the other companies, merely denying having discussed business with the wife.

61. Searches from Companies House dated 26 April 2011 threw up information about the LLPs identified by the wife. The search revealed four LLPs incorporated in late 2007. From September 2008 until September 2009 the only members (owners) of these LLP's were Pankratrov and Yuri.

62. The four LLPs were:

    i) Impala Enterprises LLP;

    ii) Toli Properties LLP;

    iii) Lenin Capital LLP;

    iv) Trotsky Capital LLP

63. The accounts filed in Companies House for the LLPs for the period ending in 2009 are much abbreviated and show the companies not to be trading and carrying a small loss on the balance sheet. Searches were carried out in October/November 2010 by the wife's Russian lawyers in Russian property registers, which not only gave the lie to the accounts filed in Companies House but showed where much of the husband's wealth was being hidden. The Russian property registers show that the 4 LLPs own Russian companies which in turn own real estate in Russia.

64. Having achieved this breakthrough, the endeavours of the wife's legal team thereafter, established for the first time that through Pankratrov Trust Limited (which the husband accepts he owns in its entirety), there were in existence six Russian properties together with two companies called Palmers and Gagarin Tours LLP, none of which had been disclosed by the husband. Organogram 1 prepared by Miss Chapman and attached to this judgment shows how the Russian properties were held through the Pankratrov structure.

65. In the light of these discoveries, on 9th June 2011 the wife applied for, and I made, worldwide freezing injunctions in relation to the undisclosed companies which had been identified by the wife's legal team at Mishcon de Reya. Withers received the affidavit in support dated 8 June 2011 disclosing all the documentary evidence in relation to the Russian properties owned through the Pankratrov structure.

66. On 20th June 2011 the husband finally filed his Form E. In that document he acknowledged owning 100% of the shares in Pankratrov but, notwithstanding the affidavit from Mischon de Reya of 8th June 2011, it said the only assets it held were the UK properties and that there was a company debt of £4m which had been used partly to fund renovations and to pay the wife's interim maintenance. The Form E is a travesty. It is largely blank; it makes no mention of any Russian property. It states that the husband has no income and concludes by saying that the total value of his assets is - £473,924.60.

67. Faced with such blatant non-disclosure, during the course of July 2011 those representing the wife obtained freezing and disclosure orders in the BVI, Cyprus and Switzerland.

68. On 25th July 2011 the husband filed a second affidavit preparatory to an inter partes hearing which took place on 26th July 2011. This is the only occasion when the husband has attended Court. In that affidavit the husband said that he had not found it easy to give instructions or to take advice, given the language barrier. Despite having transferred his instructions to Withers on 15th November 2010, it was only now he said that he understood completely what the Court required of him. The husband maintained the fiction that Pankratrov owned only the English properties, worth, he said, in the region of £3.4m. No mention was made of the six Russian properties so far identified by the wife, worth together something in excess of £48m.

69. During the remainder of 2011, in the absence of proper disclosure from the husband, the wife continued in her endeavours to trace assets. On 10th November 2011 (11 months late), the husband finally replied to the wife's questionnaire. The husband failed to answer the questions in any meaningful way, and used the document as a vehicle to attempt to unscramble the one reference to the properties in Russia which he had made in the October affidavit. In the October affidavit the husband had said "*after I stopped the business the properties were sold; I did not continue to own them or let them*". That was clearly untrue as he still owned them. The questionnaire followed up asking the husband to identify, by address, all the properties that were sold. His response to that request was to say that the various properties had in fact been leased to him and not owned and therefore they were not sold but the leases were simply not renewed. He said that the mention of the properties being sold in his first affidavit had been "*an error of translation*" and should have referred to stock and assets and not to real property. In my judgment, that is a perfect example of the husband's willingness not only to lie at will but to lie in the face of the incontrovertible evidence to the contrary as contained in Mr David Lister's affidavit in support of the freezing orders in June 2011.

70. In relation to the Russian properties the husband said in his replies to the questionnaire that *The Respondent is making further enquiries and the answer to these questions will follow.* It goes without saying that no answers have been forthcoming save that (having come on the record) an application was made for funds to be released to the companies to pay legal their fees. In support of her application 2013 Mr Mark Harper of Withers LLP made a statement dated 9 January 2013 in which he said that he *understand and am informed* that neither Pankratrov nor the subsidiaries Highlands and Carter Court are trading companies and the only assets held are the three English properties.

71. During the course of 2012 the TOLATA proceedings issued by the husband in the Central London County Court were transferred and consolidated with these proceedings. The wife was not being paid maintenance and was anxious for the FMH to be sold as soon as possible. Accordingly, an order was made on 10th July 2012 (on what was the husband's original TOLATA application) for the sale of the FMH with the wife's solicitors to have conduct of the sale. Unhappily, a sale at a very advantageous price was lost as a consequence of the husband carrying out building works in the property without the proper consents.

72. By the summer of 2012 the wife found herself in an unenviable position; the husband was playing no part in the proceedings and, to her and the children's considerable distress, he was no longer seeing the boys having been an involved and loving father prior to the financial remedy proceedings. The endeavours of the wife's legal team had revealed only one asset held outside some form of company structure, namely the former matrimonial home. Snowden Properties, of which she had previously owned 50%, had, on her case, been put beyond her reach as result of a fraudulent transfer.

The Resulting Trusts claim

73. So it was that on 10th August 2012 that those representing the wife issued Points of Claim in relation to Snowden, Pankratrov, Carter Court and Highlands. In each case the primary relief sought was for a declaration that in each case the property held by the company was held on trust for the husband absolutely.

74. On 31st August 2012, Snowden, Pankratrov, Highlands and Carter were joined as parties with an order that Points of Defence be filed by 26th October 2012. The parties were further ordered to attend the pre-hearing review listed on 1st November 2012.

75. The pre-hearing review duly took place on 1st November 2012. None of the Respondents attended the hearing.

76. As previously noted, on 12th December 2012 Withers came on record, this time to represent Pankratrov, Highlands, and Carter Court. They filed Points of Defence on their behalf on 21st December 2012.

77. Whilst there are separate Points of Claim and of Defence in relation to each of the properties owned under the Pankratrov umbrella, the basis of the claim and defence is the same in respect of each of the properties. The Points of Defence in relation to Pankratrov says at point 3;

> *"… it is specifically denied that H provided the said purchase monies in the character of a purchaser in his own right. It is averred that H provided the said purchase monies in the character of an investment in a company of which he was the owner. In particular it was specifically not intended by Pankratrov that it would acquire Quinta Castle in the character of a trustee for the benefit of H. The reason for the formulation of a specific intention that Pankratrov would file the legal and beneficial interest in Quinta Castle is that it was advantageous for H in tax terms for him to be the owner of a company that acquired a property, rather than the owner of a property directly (whether in terms of holding the legal and beneficial interest in the property or of beneficial interest only).*"

78. And at paragraph 9.2:

> "*It is admitted that in his affidavit sworn on 1st October 2010 H stated 'There are properties in England which, in effect, I own'*".

79. The Points of Defence go on to deny that any admission or aversion made by a member of a company, (namely the husband), can bind that company and that in any event that statement by the husband intended to convey nothing other than that he might be conveniently be regarded as the ultimate beneficial owner of the relevant properties and companies. Pankratrov it was said would rely upon the context within which the husband made the statements relied on by the wife in the October affidavit.

80. In relation to Quinta Castle, Pankratrov pleaded that Pankratrov had spent "*substantial sums of its own money*" on the renovation and development of Quinta Castle. Pankratrov therefore sought a declaration that it holds Quinta Castle on trust for itself and the husband in such proportions as the Court thinks fit.

81. On 14th January 2013, Replies to the Defences of Pankratrov, Highlands and Carter Court (4th, 5th and 6th Respondents) were filed. The Points of Reply can be summarised as follows:

    i) That the Respondent has failed to produce any evidence to rebut the presumption of a resulting trust in favour of the Respondent in particular by filing any evidence from a director or any evidence which contradicts the sworn evidence of the Respondent which is entirely consistent with the properties being held for him on a resulting / constructive trust.

    ii) That, in the event that there is no resulting trust, there was a common intention between the Respondent and the company that that the equity in each property would vest in the husband and under a constructive trust it did vest in the husband. This assertion is based on the fact that this was the husband's intention, and is consistent with surrounding circumstances, and further that his intentions were the companies' intentions at least for the purposes of the transaction. To this end it was pleaded that the Respondent was/is a shadow director of the company and his knowledge and intention was/is therefore the company's knowledge and intention.

82. Points of Claim were also filed in relation to two companies based in Cyprus, Rekabe Estates Limited and Haristrust Limited, (see Organogram I) in companies in relation to which the husband asserts that Yuri is the beneficial owner. Yuri has not filed a defence.

83. Finally, Points of Claim have been filed in relation to eleven properties in Russia called collectively the "Russian commercial properties". These comprise the six properties originally held through the four Pankratrov LLPs together with a further five properties discovered during the course of the proceeding when the husband dismantled the LLPs, moving the legal ownership of the properties across from the BVI to newly created structures in Belize.

84. The Court agreed to conduct an urgent directions hearing on 15th January 2013 following the late involvement of the 4th, 5th and 6th Respondents in the case. Statements were filed by three solicitors employed by Withers LLP who had been involved in the Pankratrov / Highlands / Carter Court purchases. Orders were made for the companies to make specific disclosure, for Withers LLP to provide inspection facilities, and for the companies to reply to a short questionnaire. The inspection appointment duly took place and Withers LLP provided the documents requested. In

breach of the order of 15th January 2013 no disclosure was made by the companies. Replies to the request for disclosure were woeful. In the main, each question received the response "*to follow*". When Mr Dyer took exception to the document on the first day of the trial further instructions must have been taken from the Companies. The amended replies are of no more value. The ubiquitous "*to follow*" has simply been replaced by the rubric that *"Mr Boris Glukhov was not a director of the company at the time of the purchase and is therefore unable to assist."*

85. Finally of note in the context of the proceedings, disclosure from Withers has revealed that the husband continued to take advice from them during the course of 2012 (in relation to these proceedings). Withers indicated to the court that they have been taking their instructions from Boris Glukhov as director of Pankratrov, and from Yuri as director of Highlands.

86. Neither Yuri as director of Carter Court & Highlands nor Boris Glukhov as director of Pankratrov have attended Court or filed evidence. I accept that Yuri and or Mr Glukhov may be the conduit through which instructions are conveyed to Withers, I am however absolutely satisfied that those instructions ultimately came from the husband and the husband alone.

87. In order for the court to determine the central issue – namely whether the husband owns the beneficial title of the English properties – it is necessary to understand the background to their purchase and of the funding of those purchases.

Rekabe Estates Limited/Haristrust Limited

88. On 7th August 2007 a company called Haristrust Ltd was incorporated in the Cypriot company register. On 3rd April 2008 a company called Rekabe Estates Limited was similarly incorporated in the Cypriot company register. The five thousand issued shares in Rekabe Estates are registered in the name of Haristrust. For a period between November 2008 and November 2010 Yuri was the director of Rekabe Estates.

89. In the October 2010 affidavit the husband failed to disclose the existence of Rekabe Estates either in relation to having provided funds for the purchase of Quinta Castle or Broadwalk Way or otherwise. In their letter of additional disclosure dated 12 April 2011 Withers said on behalf of the husband that, contrary to his earlier statement, Rekabe Estates had funded the purchase of both properties. In relation to the company itself Withers said "*We are endeavouring to obtain further information on this and will be provided as soon as it is available*". None has ever been forthcoming.

90. In his Form E dated 20 June 2011, for the first time the husband asserted that Haristrust holds the Rekabe Estates shares as nominee for Yuri and that Yuri is in fact the beneficial owner of Rekabe Estates [see organogram I]. The husband has declined to provide bank statements on the basis that he does not have any legal or beneficial interest in the company. The husband said in his Form E and in an additional statement that, "*…at the end of 2007, "impressed by the person(al?) development of Yuri"*, who he said *had developed excellent business and language skills*, he decided to help Yuri start a company. Yuri was at this time aged 21. The business plan, the husband said, was for wealthy contacts of the husband's to provide funds for Yuri to invest on their behalf in the UK property market. To this end, the husband said

Rekabe Estates was registered in Cyprus with the shares owned by Haristrust as nominee for Yuri. The husband described an elaborate and unlikely business model whereby Yuri located the properties and arranged the commercial loans. The money was to be lent to Rekabe Estates who would then loan the money personally to the husband, who would purchase the property, refurbish it and sell it on; when Rekabe Estates would be repaid.

91. The husband said it was pursuant to this plan that he signed a loan agreement dated 6th June 2008 with Rekabe Estates whereby Rekabe Estate provided multi-currency unsecured loan facilities to him equal to €7m. The relevant terms of the agreement are as follows:

Article 1:

i) The loan is unsecured;

ii) The repayment date is 1st July 2011;

iii) H was to use the money borrowed "For investments into real Estates property and into the real estate business in the United Kingdom";

iv) Rekabe Estates "is not obliged to monitor or verify how any amount advanced under the agreement is used".

Article 4

v) Interest accrues on the loan principal at 7%;

Article 6:

vi) In the event of default Rekabe Estates may require H to charge Flat 6, Effes Road, Flat 1, Effes Road *(both owned by Snowden)* and Flat 4, Effes Road *(owned by Highlands)*.

92. The loan agreement further shows that both Rekabe Estates and the husband share a common bank in Latvia.

93. In December 2008, according to the Withers letter of disclosure of 12th April 2011, the husband bought Broadwalk Way, his present London home, and then in December 2009, Quinta Castle, his country home.

94. In the Point of Claim drafted by Nigel Dyer QC dated 2nd November 2012 the wife avers that Rekabe Estates is not a property investment enterprise and that there is no valid and enforceable loan between the husband and Rekabe Estates. Rather, Rekabe Estates was incorporated by the husband in order to be a conduit for him to move his money out of Russia into England and the loan is therefore a sham.

95. In particular, they rely on the fact that:

i) Neither the husband not Yuri have produced any evidence documentary or otherwise whether by way of any accounts or any loan agreements with Russian investors, receipts issued or any bank statements or ledgers showing

sums received from investors; indeed there is no evidence of there ever having been any investors satisfied or otherwise.

ii) There was no demand for repayment of the loan after 1st July 2011.

iii) Yuri was a young man in his early 20s with no experience in property development in England or elsewhere then living in Paris.

iv) In the October affidavit the husband failed when it was relevant to depose to the existence of Rekabe Estates, the property development enterprise or the €7m debt.

v) The purchases of Broadwalk Way and Quinta Castle have never been described as investment properties renovated with a view to achieving a profit on sale. Broadwalk Way was purchased "*from my personal savings derived from my earlier business enterprise in Russia"* and Quinta Castle was purchased with "*a loan of £2.75m from ABLV Bank*" and following refurbishment "*I will either sell it or run as a hotel*". The two properties together account for most of the loan (£5.25m ie €5.86m at the exchange rate of 1.1168€ to the pound in Dec 2009) before very considerable sums were spent on refurbishment. At all times since their purchase the two properties' sole use has been as the husband's homes.

96. Since the date of the pleadings those representing the wife have had disclosure of Withers LLP's conveyancing file in relation to the Broadwalk Way and Quinta Castle. The conveyancing file makes it completely clear that at the date of purchase the intention was that Quinta Castle was being bought for residential use. In July 2011, a matter of weeks before the husband filed his statement indicating the building was to be used as a hotel, Withers were actively involved in applying to the planners for a change of use from a hotel to residential uses.

97. Having bought the Broadwalk Way and Quinta Castle purportedly using money borrowed from Rekabe Estates, (a company allegedly owned by Yuri), Broadwalk Way was thereafter put in the name of Carter Court and Quinta Castle into Pankratrov, two companies wholly owned by the husband. Yuri, who was supposed to own Rekabe Estates, had no interest in either Carter Court or Pankratrov and was not a director of either company; although somewhat bizarrely, Yuri signed the Quinta Castle transfer as someone "*acting under the authority of the company*".

98. I have considered whether the fact that Yuri signed that transfer should be regarded as some indication that he does in fact have some interest in Rekabe Estates as suggested by the husband. I have concluded that it does no such thing but is simply a further example of what I have concluded is the husband's complete disregard for what he would regard as legal niches and is a reflection of his chaotic approach to the property transactions. That Yuri signed the transfer was merely a reflection of what I am satisfied was the husband's general approach namely that, so far as he was concerned, whether it was money in Rekabe Estates, department stores in Russia or country houses in Northumberland, all the properties and wealth were his and his alone, and it was a matter of compete indifference as to how they were held, provided they were out of reach of his wife following the divorce.

99. An example in support of this conclusion can be seen in an e-mail sent on the husband's behalf by his PA Helena Klebb on 18th March 2009 which reads as follows:

> "*Mr M has asked me to check with you if Snowden Properties Limited is the owner of both his Flats 1 and 6 Effes Road.*
>
> *Mr M also needs to know what is the best way to change his garage ownership to company 1.*"

100. The inconsistency and illogicality of the husband's assertions in relation to Rekabe Estates are, says Mr Dyer, encapsulated by the fact that on H's case by borrowing €7m from Rekabe Estates he is in effect borrowing from his son, yet two of the properties that he has offered as security for the loan are properties, which on the husband's case are owned by that same son Yuri. I have found myself time and again thinking 'nonsense' as one absurd proposition after another is put forward by the husband – his explanation of the nature and purpose of this loan is one such occasion and is in my judgment simply nonsense.

101. If any further confirmation is required that Rekabe Estates is simply a conduit for the husband to move money into the UK it is supplied by the fact that between September 2008 and September 2009 a sum in excess of £200,000 was paid directly into the wife's bank account by Rekabe Estates as part of the wife's allowance from the husband for her living expenses.

Snowden Properties Limited

102. Snowden was incorporated in the UK on 17th August 2007. Two shares were issued, one to the husband and one to the wife. Both were appointed directors. The wife signed all relevant documents relating to the company's incorporation and a company called Busby UK Ltd was used as the formation agent.

103. A few months later, according to the October 2010 affidavit: "*using my personal savings derived from my earlier business enterprise in Russia*" H bought:

a) Flat 6, Effes for £3.45m on 2nd October 2007;

b) Flat 1, Effes for £1.365m on 23rd November 2007.

104. Both properties were registered in Snowden's name with Withers acting in the conveyancing. Privilege has been claimed in relation to these transactions and the files have not been made available for inspection. Only three months after Snowden had been incorporated the husband unilaterally changed the ownership of the company. No board minutes or resolutions have been disclosed which might indicate that the husband's actions were either sanctioned or done with the knowledge or consent of the wife as his co-director. The wife has not resigned as a director nor has her appointment been terminated.

105. On 14th November 2007, at a time when I am satisfied the marriage was already under considerable strain, the wife's share was transferred to a Nevisian company, Marsh Estates Limited. The husband has produced a share transfer form which he maintains was signed by the wife on 14th November 2007. In March 2008 Yuri was made a

director and on 2nd November 2008, the Snowden shares, now held by Marsh Estates, were transferred on to Yuri. From 2nd November 2008 onwards therefore, the shares in Snowden Properties have been held by Yuri. The wife denies having any knowledge of these transactions.

106. There has been one further transaction in relation to Snowden; in September 2007, a garage, Garage J had been bought in the joint names of the husband and wife for £185,000. After the separation, in June 2009, this garage was transferred from the parties' joint names to Snowden. W's case is that her signature on the TR1 form was forged.

107. H has given different accounts for these transfers in his first and second affidavits. In the October affidavit he said that he and the wife had made "*a verbal agreement*" that the company should be transferred to Yuri, and that after the wife had left him he contacted Snowden's administration company, Busby, to arrange the transfer. He admits that:

> "*After [my wife] left me, and as we had agreed, I contacted the administration company …. And asked them to arrange the transfer of shares …. They said they would do it the best way and would inform [my wife]. I was not involved in the process but was later informed that Yuri had become the sole shareholder of the company.*

The husband purported to expand on this explanation in his second affidavit of July 2011 when he said:

> *We were all so keen to ensure that some of the family's assets should be protected in case I was pursued by any of the creditors from my previous business ventures in Russia. Although [my wife] and I agreed that the shares would be transferred to Yuri I was unsure of exactly how I wanted this to take place. I therefore decided initially to transfer the shares to Marsh Estates Limited which was a company in which I owned the shares. In doing this it gave me the freedom to decide exactly how and when I would transfer the shares. This would enable me to act quickly once I had taken advice on my options as I authorised the transfer unilaterally without needing my wife's signature. I did not see a problem with this as my wife had already agreed that the shares would eventually be transferred to Yuri and this was the first step in that process'*."

108. The wife's case is that she made no agreement, verbal or otherwise, to transfer Snowden to Yuri. Why, she says, would she have done something prejudicial to her interests when the marriage was under strain? She did not, she says, sign the share transfer document H has produced.

109. Similarly H has produced the TR1 form dated 8th June 2009 in relation to the garage which he says was signed by the wife and witnessed by Helena Klebb. The wife also denies signing this form and pointed out that by then she and her husband had been separated for over six months so it was even more unlikely that she would have

agreed to part with a joint asset, no matter how small. Helena Klebb, the husband's personal assistant, appears on the papers throughout the case writing many of the e-mails relating to various conveyancing transactions. She was undoubtedly a confidential secretary. Ms Klebb has neither filed evidence nor been called to give evidence in relation to any issues, let alone that she witnessed an important signature.

110. The wife draws attention to the fact that it would appear that she is not alone in casting doubt on the signatures on documents produced by the husband:

i) The wife is clear that she did not sign the share transfer form or the transfer in relation to Garage J.

ii) The Federal Judge in relation to the husband's application to revoke the divorce noted a discrepancy in the husband's signatures in official documents submitted for the appeal.

iii) The Court has seen a copy of Yuri's signature as he signed it on his passport and in relation to the TR1 dated 1st December 2009. That, so far as I am aware, is the only occasion when Yuri signed a document in front of what I can be forgiven for calling a reliable third party namely, Mr Mitchell, the property partner at Withers. Whilst accepting that I am not a handwriting expert, it is perfectly clear that those signatures bear no resemblance to a number of other documents purportedly signed by Yuri in relation to property transactions.

111. I accept the wife's evidence that she did not sign either transfer form.

112. On the 28th July 2009, Ms Klebb sent an e-mail on behalf of the husband to Mrs Price a conveyancing solicitor at withers who handled the husband's property purchases which said as follows:

> "*There is another question we have for you. Mr M has a property registered for a UK registered limited company. He would like to transfer the property to an offshore company. Both companies have the same beneficial owner, what is the procedure? Does it have to be a sale or can we find a cheaper and easier way? Please let us know the details and your fees for the transaction?*"

113. Mrs Price gave evidence that as a consequence of receiving that e-mail she rang Ms Klebb. The UK Company being discussed was Snowden. At that stage Mrs Price had no idea that the company was in Yuri's name and she was of the view that Ms Klebb did not know either. To her it was obvious that the husband was the beneficial owner of the properties held by Snowden. The husband was advised by Mrs Price that tax would have to be paid upon the transfer of the Snowden Properties to an offshore company. The matter progressed no further. When asked questions about this Mrs Price said it was clear that she and Withers did not have the full picture. It was, she told the court, abundantly clear in relation to the earlier purchases that the husband did not want tax advice and Mrs Price did not want to get involved so she was very careful, she said, to keep her distance. In relation to Snowden, Mrs Price said the husband was *clearly not that bothered to go offshore or he would have paid the tax*

and done it. He did not want to pay the CGT, which would have been the price of going offshore.

114. The wife's pleaded claim for a transfer of the Snowden Properties is based on Snowden holding the properties on a resulting trust for the husband; this would allow the properties to be transferred directly to her. The wife has also sought orders to set aside the transfer of the Snowden shares owned by her and the husband to Marsh Estates and then the subsequent transfer by Marsh Estates of the Snowden shares to Yuri. This would have the effect of putting the shares back in the names of the husband and the wife.

115. The set aside claim, it is submitted by Mr Dyer, was pleaded assuming that Yuri would play a part in the proceedings; now that Yuri has not, he submits that if the Court accepts the resulting trust point it may be unnecessary to set aside the dispositions as well. Yuri would remain the sole shareholder of Snowden but the company would not own the properties.

Pankratrov and the Russian companies

116. The wife says, and I accept, that when the family decided to relocate to England the husband wished his Russian assets to be held outside Russia. The husband accordingly set up four UK registered LLPs in which to place his Moscow commercial property. The husband, as has already been recorded, sought to mislead the Court in his written material and initially said he had sold his Russian properties. When asked for proof, he changed his story to suggest that he had only ever held the properties as a leaseholder.

117. Fortunately for the wife, the husband's enjoyment of choosing what he felt to be whimsical names for his companies and in happier times, his sharing of that enjoyment with his wife, has meant that she was able to give her instructing solicitors the names of most of the LLPs and other companies, which in turn allowed them to make searches in Companies House and the Russian Land and Company Registries. This enabled her lawyers thereafter to obtain from the Court a disclosure order in the BVI. The resulting evidence was filed and served on Withers in November 2011. Withers were then acting for the husband and remained acting for him for a further three months. He therefore had every opportunity to have the significance of the evidence explained to him at an early stage. The evidence that was filed and which is summarised below has never been answered, challenged or disputed by the husband or indeed Pankratrov, (the 4th ,5th and 6th Respondents).

118. In August 2007, Lenin Capital LLP, Impala Enterprises LLP and Toli Properties LLP were incorporated, followed in December by Trotsky Capital LLP.

119. On 13th October 2008, at about the time the parties separated, Pankratrov Trust Limited was incorporated in Cyprus. (Pankratrov was the name of the husband's maternal grandmother.) On 10th December 2008, three connected things took place:

    i) Pankratrov Trust and Yuri were appointed members of three of the LLPs.

    ii) Pankratrov became the registered shareholder of the single share in Highlands and Carter Court.

iii) Shareholding agreements were signed each for Trotsky Capital and Toli Properties with Pankratrov holding as to 99% and Yuri as to 1%.

120. In September 2009, Pankratrov (i.e. the husband) and Yuri were replaced as the members of all the LLPs by ABC Admin Services SA (ABC) and by XYZ Managers SA (XYZ). These BVI companies provide "*Nominee director and shareholder services"* to the LLPs as was disclosed in subsequent BVI disclosure proceedings. That disclosure also included deeds of trust stating that ABC and XYZ were mere nominees and thus confirming that replacing Pankratrov and Yuri with ABC and XYZ had left the underlying beneficial ownership unaffected.

121. A sole practitioner accountancy practice, Abacus & Co, was engaged to prepare accounts for the four LLPs. Inspection orders were made against Mr Abacus. Abbreviated accounts were obtained for Impala Enterprises, Trotsky Capital and Lenin Capital which indicated that the LLPs did not trade, had no assets (either properties or subsidiary companies) and showed a small loss.

122. The partnership tax returns also indicated that the LLPs were not trading. It is undoubtedly the case therefore that the LLPs, registered in England as they were, were designed and operated to make them appear to be empty vessels.

123. The evidence produced from the inspection orders linked the husband clearly and unequivocally to the LLPs :

i) In relation to Abacus & Co the husband had signed letters of engagement in relation to Impala Enterprises, Lenin Capital and Toli Properties (using his initials as was his custom).

ii) He is then linked to the LLPs having signed (again, using his initials) as the designated member in the 2008 accounts sent to Companies House in relation to Impala Enterprises, Lenin Capital and Toli Properties.

124. During the course of these proceedings an application for a freezing and disclosure Order was made to the Eastern Caribbean Supreme Court against the registered agents, ABC and XYZ.

125. The freezing Order prevented ABC and XYZ from disposing of matrimonial assets which included the English LLPs and their underlying assets. The order also contained a wide disclosure order akin to a *Norwich Pharmacal* order which sought disclosure of ABC's and XYZ's files in order to ascertain the beneficial owners of the 4 LLPs.

126. When it came, the disclosure included an affidavit sworn by a Ms Carol Lesley, a solicitor on behalf of, ABC together with numerous documents. The most revealing of which were:

i) A "boiler plate" LLP agreement document between Pankratrov and Yuri on the one part and Trotsky Capital (and a second in relation to Toli Properties). The agreement names Pankratrov and Yuri as the members (or owners) of the respective LLPs as to 99% to Pankratrov and 1% to Yuri. These were the only two LLP agreements found on disclosure and Mr Dyer on behalf of the wife

asked the Court to infer that all the LLPs would have had the same boiler plate agreements as the LLPs were in all respects treated identically. I accept that submission.

ii) Ms Lesley, in her second affidavit said:

> *"Upon further investigation of the file I now discover that one of the correspondents noted that the English LLPs hold Russian companies that hold Russian commercial and residential property"*.

127. Notwithstanding the fact that the boiler plate documents establish beyond peradventure that Pankratrov was the 99% beneficial owner of the LLPs, it is of no surprise that there is no record of the husband by name in the client questionnaire, due diligence documents or system records.

128. As always, Yuri is notable by his absence. Mr Dyer's case is that the husband was once again masquerading as Yuri, there being no evidence whatsoever that Yuri ever contacted or corresponded with ABC and XYZ in the years 2009 to 2011. Amongst the disclosure there was ABC's questionnaire or "Know Your Client" (KYC) document. Drafted in identical terms for each LLP, Yuri (despite the fact that he is only a 1% owner according to the Boilerplate documents) is revealed as the beneficial owner. However:

a) His home address is given as Broadwalk Way; Yuri even on the husband's case has never lived there.

b) The e-mail address is that of the husband.

c) The mobile telephone number is that of Helena Klebb.

d) The password is the husband's year of birth.

129. Once again, the issue of the use by the husband of other peoples' names to sign documents arises. Yuri's signature appears on many documents in the ABC files, none of which match his passport signature, even to an inexpert eye.

130. Mr Dyer has drawn the Court's attention to a number of documents common to the four LLPs which he says, and I accept, clearly show instructions being given to ABC by the husband via Helena Klebb using the husband's e-mail address:

a) At the beginning of ABC's involvement an e-mail from the husband's e-mail address (the same one that Withers had used when they corresponded with the husband in relation to his property purchase in 2007) refers to a "*Our LLPs transfer*" manuscript notes show the precise structure which was subsequently found to be in place namely LLP leading to a Russian Company leading to Russian property.

b) In August 2010, a month after the Part III proceedings were started, Helena Klebb received an e-mail from ABC raising their concerns as follows:

> "*Would you please confirm whether the above LLPs have bank accounts, any financial activities they did during the year? I know you mentioned that they are non trading, but I have to be absolutely sure about that. I am sorry to chase you like this, but as I mentioned in my previous e-mail the accounts are heavily overdue and I want to avoid higher penalties ….*"

The reply sent the same day from *Mr M (*i.e. the husband) and signed by Helena Klebb said:

> "*I confirm that the LLPs are not trading, have no bank accounts and any financial activities.*"

131. In his Form E dated 20th June 2011, the husband said that apart from owning 100% of the shares in Highlands and Carter Court, the only asset held by Pankratrov was Quinta Castle.

132. Notwithstanding the façade in the LLP accounts that the LLPs did not trade and owned nothing, the Russian Company and Land Registers show a very different picture namely that the four English LLPs owned five Russian companies which in turn owned six commercial properties in Moscow. (Organogram 1) The six commercial Moscow properties in the LLP structures (per a Knight Frank valuation obtained in November 2012) are worth £48.268m.

133. During the course of the investigations into the LLPs a Seychelles registered company called Gagarin Tours was discovered with a strong connection to the husband. Gagarin Tours in turn owns a company known as Palmers or 000 Palmers Limited. In the Russian Companies register the husband is described as its *Head of a permanent executive body*. Two properties from where the husband's businesses had traded were mortgaged to Palmers and the register shows Palmers as owned by Gagarin Tours.

134. On 23rd September 2011, a *Norwich Pharmacal* disclosure order was obtained against Gagarin Tours' registered agent, Accran Seychelles Limited, to identify the beneficial owner, directors and bank accounts. On complying with the order the director and beneficial owner was identified as a man called Dmitry Zhukov. According to the electoral role, Mr Zhukov lives with Helena Klebb in London and is on the Pankratrov payroll. No further progress has been made in relation to Gagarin Tours or Palmers save that during the course of 2007 substantial sums of money were transferred on a regular basis from Palmers Property to the wife's HSBC account. I am not asked to make any orders in relation to these two companies but regard this as a further example of the husband sheltering behind his family and employees in order to maintain his anonymity, and confirming in the courts mind that through Snowden, Gagarin Tours and Palmers the husband has access to funds which even the effect of the wife's legal team have been unable too unravel.

135. On the 4th February 2010, Mr Abacus made enquiries with Busby about information necessary in order to prepare the 2009 accounts in relation to Toli Properties and Impala Enterprises. Busby's reply was most revealing:

> "*Dear Mr Abacus*
>
> *Toli Properties LLP*
>
> *Impala Enterprises LLP*
>
> *Lenin Capital LLP*
>
> *Trotsky Capital LLP*
>
> *Snowden Properties Limited*
>
> *All five companies belong to ONE BENEFICIAL OWNER.*
>
> *As far as we have been informed he had sold his businesses and the new beneficiary has taken those companies to another service provider and subsequently new accountants. Please mark all these companies as transferred and close the files.*
>
> *(The old beneficiary was not a very agreeable gentleman, anyway)"*

136. In fact the husband did not sell the businesses when he transferred them away from Busby rather I am satisfied that, having realised that the net was closing in, he reorganised his commercial property empire by moving it across the Caribbean Sea from BVI to Belize. In considering this email I bear in mind that Busby were involved with the husband from the earliest days in 2007 when the Snowden properties were bought and Dr Dolyanoy (as will be seen in relation to tax issues) was heavily relied upon. In my judgment Busby were better placed than anyone (other than the husband himself) to know who was the identity of the beneficial owner of the LLPs and of Snowden.

137. During the latter part of 2010 four new LLCs were registered in Belize to replace the English LLPs. The six properties identified as being held in the LLPs are now registered in the name of one of the new Belize companies; the sole director is Mrs Maria Barkavich**.** On this occasion the husband over reached himself as searches in the Russian registers have revealed that not only are those six properties now held in the new Belize corporate structure but also further five properties not previously detected. The wife refers in her statement to recognising these properties as having been ones from which the husband's business traded during the marriage.

138. There are therefore a total of eleven Russian commercial properties under the Belize company umbrella, which have been valued by Knight Frank at £91.6m with an annual market rental estimated to be US$18m. To complete the process of the transfer to Belize, on the 28th August 2012, Impala Enterprises, Lenin Capital and Toli Properties all received notices that they were going to be struck off. On 24th July 2012, Trotsky Capital was dissolved.

139. In his July 2011 affidavit the husband referred to Pankratrov being *all but dormant and no accounts were completed or filed. The company is on the point of instructing an accountant to prepare accounts and I will provide these as soon as possible.*

140. No accounts have ever been produced and despite orders for disclosure being made on 15 January 2013 no effective disclosure has been made.

141. The discovery by those representing the wife of the restructuring of the Russian commercial properties inevitably led to another round of litigation. On 18th December 2012, an ex parte freezing order and *Norwich Pharmacal* order were made in the Belize Supreme Court against BB Consulting Limited in their capacity of registered agents of the four new Belizean companies. On 21st December 2012, disclosure was provided. It confirmed that:

    i) To their knowledge the sole director of the Belize companies is a Russian national, Mrs Maria Barkavich.

    ii) They do not know the name and address of the true underlying beneficial owner and shareholders since incorporation. Details of the information have been requested from BB's intermediary Kean Management & Co based in Panama in an e-mail and repeated on 3rd January 2013.

    iii) On 3rd January 2013, the intermediary replied advising that the beneficial owner of the companies is Maria Barkavich, with no further information being produced. All BB's instructions come from the intermediary and BB has no information about the companies' bank accounts. The imposition of the intermediary in another offshore jurisdiction prevents, therefore, access to information about the true owners in the jurisdiction where the companies are registered.

The Evidence of the Wife

142. W gave calm, balanced and completely convincing evidence. She spoke of the early days in Moscow. She gave credit to the husband saying he was *a very talented and very successful businessman*. She was asked what the most important thing in his life was she replied saying:

> *As of the businessmen of that period in Moscow, all of them I will say is new money. The money was extremely important for them and for my husband. The money gave him the possibilities to manipulate, to rule, to control, and that is the main part of his personality. So money was very important to him.*

143. When asked if the husband struggled with the English concept of regulation and rules she said in a tone which was utterly convincing that he did not *struggle* with them he *ignored* them. *This,* she said, *is his personality.*

144. The wife was able to give an insight into a number of relevant issues. I accept her evidence in relation to each and together they serve to illumine the critical issue of the husband's subjective intention as to the beneficial interest in the properties:

(a) The husband did not pay tax in Russia and the wife believed that he did not pay tax in the UK. I am satisfied that he did not pay tax in the UK. He has not disclosed any tax returns (although it may be suggested that that in itself would not be surprising given the parlous state of his disclosure) but everything about the husband, including his willingness to file dishonest tax returns for Pankratrov, suggests, as was submitted by Mr Dyer, that the husband is one of those men "entirely off the tax radar".

(b) The husband and the family moved to the UK in August 2005. In 2007 the husband's visa expired; he took no action to renew it and the insecurity of the family's situation created serious tension between the couple. As soon as they separated the wife took steps to obtain an investor's visa which has subsequently been renewed. There is no evidence to suggest that the husband has ever regularised his situation.

(c) The wife gave evidence that a time came, shortly before they left Russia, when the husband *changed. S*he said she heard from friends in the same business who said *Nobody understands what my husband is doing. It looks like he is another person. He is doing a very dangerous thing.* The wife was clear that when he spoke of transferring his Russian property empire to the BVI it was not spoken of in connection with tax, but of holding the properties out of the jurisdiction of Russia. Mr Wagstaffe worked hard in cross examination of the wife to try and build a picture of H as a 'planner' who thought through each step of the creation of his empire and, by analogy therefore, was the type of meticulous man who would once in England plan through and put into effect the most tax efficient manner in which to hold properties he bought.

Not only, despite his skill, did Mr Wagstaffe utterly fail in that endeavour, but I am satisfied from the wife's responses that, far from being a meticulous planner who, within the confines of the law, sought properly to take advantage of holding his assets in a tax efficient manner, so far as this husband was concerned he took the Leona Helmsley approach to taxation namely: *"We don't pay taxes. Only the little people pay taxes...",*

(d) The wife spoke of the importance of money to the husband; this is borne out by the fact that until these proceedings the husband was a closely involved father and yet rather than give his wife of many years and the mother of those boys any money he has completely abandoned them, I was told of their distress when he didn't even contact them to hear their public exam results. This then is a man who seems to know the price of everything and the value of nothing and it hard to imagine him parting with the beneficial interest in anything – what reason would there be for him to do so? He does not pay tax anyway.

<u>The purpose of the off-shore companies - Tax mitigation?</u>

145. In the Points of Defence filed on behalf of Pankratrov, Highlands and Carter Court on 21 December 2012, less than a month before trial, it was pleaded that:

> *It is specifically denied that H provided the said monies in the character of a purchaser in his own right… In particular it was specifically not intended by Pankratrov that it would acquire*

> *Quinta Castle in the character of a trustee for the benefit of H. The reason for the formation of a specific intention that Pankratrov would acquire the legal and beneficial interest in Quinta Castle is that it was advantageous for H in tax terms for him to be the owner of a company that acquired a property, rather than the owner of a property directly (whether in terms of holding the legal and beneficial interest in the property or beneficial interest only.*

146. The court hears the husband's voice only in his two affidavits and to a lesser extent through the Withers letter of disclosure of 12 April 2011. In each the purchase of Quinta Castle and the London properties were addressed. Nowhere is it suggested by the husband that his intention in registering the properties in the names of the off-shore companies was to avoid tax, whether IHT or otherwise. In addition as already set out in the October affidavit the husband had said *there are properties in England which, in effect I own.* The Points of Defence seek to get around this damaging admission by saying that an admission made by a member of a company cannot bind the company; in any event it is said he was not saying more than that he is the ultimate beneficial owner and the court needs to look at the context in which it was said.

147. As recorded above in response to the order made on 15 January 2013 for the companies to reply to a short questionnaire, not only were the answers produced risible, mainly saying *to follow*, but not a single document was produced. A second attempt to provide information about the business was made on 28 January 2013. This version purported to have instructions from Mr Boris Glukhov who denied any knowledge about anything and still failed to produce any documents, even the accounts promised in November 2010.

148. The companies' case that the four properties in question were placed offshore for tax planning reasons comes then for the first time 4 weeks before the hearing and is unsupported by anyone directly involved. The only evidence was from the three solicitors from Withers who were involved in the conveyancing, each of whom gave evidence, Mr Mitchell, Mrs Price and Ms Canales.

149. Mr Mitchell is a property law partner at Withers LLP. He had overall responsibility in relation to Highlands's purchase of Flat 4, Effes Road as Mrs Price, an assistant solicitor who dealt with the husband's other purchases including the Snowden purchases, was on holiday. Neither Mr Mitchell nor Mrs Price speaks Russian. In August 2007 when the husband was buying the Snowden Properties, Mr Mitchell believed that the husband may require tax advice as Snowden was a UK registered, as opposed to offshore, company. A Russian speaking wealth planning assistant solicitor Ms Canales was brought in to speak to the husband.

150. Ms Canales gave short evidence, she had only a vague recollection of the meeting, she assumed that the husband lived in Moscow and she made no attendance note.

151. The meeting was not a success. It is agreed that the husband was clear that he did not want tax advice from Withers, he was already receiving tax advice from Dr Dolyanoy

of Busby the company who incorporated Snowden on 17 August 2007 on the husband's behalf and into which Flat 6, Effes Road and Flat 1, Effes Road and Garage J would be placed in the following months.

152. Ms Canales followed up the short meeting with what I am satisfied was a standard letter of advice dated 6 September 2007. Mrs Price says that it seemed to her that the advice Dr Dolyanoy was giving was poor but that the husband was clear that he did not want any further tax advice or communication from Ms Canales. In oral evidence she said *he obviously trusted Dr Dolyanoy completely as he preferred his advice to Withers. My impression was that he was listening to the wrong advice and so was grumpy with Ms Canales for giving different advice.*

153. The husband misled Withers on every level. At the beginning of his involvement with them he told them that he was non-resident and non domiciled when in fact he was throughout resident in the UK. This was not the only respect in which the husband misled Mrs Price or failed to follow her advice;

i) On 12th March 2009 Ms Klebb sent an email to Mrs Price about putting the Snowden properties offshore [see para 99], Mrs Price was not told that Yuri now held the shares.

ii) The first time that Mrs Price knew the marriage was over was when she was served with the matrimonial homes notice in July 2010.

iii) Mrs Price transferred the properties to Snowden without any contact with the wife. She accepted the transfer the husband gave to her and said that she didn't contact the wife as it was a transfer from a husband and wife to a company owned by the husband. Something, she agreed on reflection, that had been ill-judged on her part.

iv) He ignored planning requirements in relation to Broadwalk Way and moved into Quinta Castle without having exchanged contracts.

v) Finally, and significantly, any tax scheme would have failed in any event as the husband lived in two of the properties and ran the companies from the UK. *I didn't give any thought to him being a shadow director as I thought he was non-resident and he wasn't asking for tax advice. I just bought the property.*

In short, in my judgment, the husband 'ran rings' round Mrs Price.

154. Mrs Price gave evidence in a written statement and appeared in person. I am afraid I did not find Mrs Price to be a satisfactory witness; on occasion she prevaricated, was reluctant to make concessions (for example when the obvious inconsistencies of the signatures of the documents was put to her she tried to suggest it was because of the difference between Roman and Korilic script). I felt she was defensive about her role, although I fully accept it cannot have been a comfortable feeling for her to have come to realise the husband regularly misled her simply saying what suited him at the time. I also had the clear, although unarticulated, impression that Mrs Price found the husband an awkward and somewhat unpleasant client, a view as already noted shared by those working for Busby.

155. Notwithstanding the difficulty that she may have found with the husband as a client, I found Mrs Price' written statement to be unsatisfactory; it was drafted for her, she said, by a private client partner although she read it through. She said that the statement in relation to tax was based on her general experience and the fact that the husband presented the same profile as other '*non-dom'* purchasers she represented. Such misleading presentation of evidence is wholly unacceptable particularly where the whole focus of the companies' case depends upon that evidence.

156. On first reading her statement it appeared that whatever may have been his true (private) motivation, so far as Withers were concerned the husband was putting the companies into off-shore companies as a tax shelter. In the statement Mrs Price said a *tax mitigation scheme was discussed.* In cross-examination Mrs Price conceded that to call it a tax scheme was *a bit grandiose* for what it became clear was a short chat with no notes taken, no charge made the husband making it clear he did not want tax advice.

157. Later in the statement Mrs Price said that:

> *… it should be noted that mitigation of Inheritance Tax was a particular concern. Ms Canales accordingly considered a number of different ownership structures which featured Mr M as either the ultimate beneficial owner of beneficiary of the trust, but did not involve him actually owning or having a direct interest in the properties themselves, thus affording protection from Inheritance Tax.*

158. Looking at the only letter that was sent to the husband about tax written by Ms Canales, Inheritance Tax was but one of a number of taxes to which reference was made in general terms. Mrs Price did concede that she did not in fact know if Inheritance Tax was the husband's biggest (or of any), concern. The letter she said was a general letter sent out catering for a non domiciled client's needs. It is wholly misleading for Mrs Price to have given the clear impression in her statement that a bespoke tax mitigation scheme was being designed for the husband; nothing in my judgment could have been further from the truth.

159. Mr Mitchell's involvement was limited. He was present at the meeting in August 2007 but did not make a note. The discussion was in Russian which he does not understand. His recollection was that he had raised the question of whether the husband wished to take tax advice. Inheritance Tax was a concern but 'flagged up' amongst other concerns. I found Mr Mitchell to be a far more satisfactory witness than Mrs Price. He did not overstate the context or extent of the 'tax advice' given to the husband, and made no attempt to confabulate the short meeting with Ms Canales and its follow up letter into the creation of a formal tax mitigation scheme for the husband.

160. The brief meeting with Ms Canales took place in the context of the husband's purchases of the Snowden properties, properties which he chose to keep on-shore until he thought about sending them off-shore in July 2009 after the marriage had broken down, a transaction with which he did not proceed. My clear impression was that Mrs Price was extremely wary of the husband, she was rather more frank towards the end of her evidence. She said:

> *It is clear I and Withers didn't have the full picture. The message was clear that he didn't want tax advice and I didn't want to get involved so I was very careful to keep my distance. In relation to Snowden he was clearly not that bothered to go offshore or he would have paid the tax and done it.*

161. In my judgment none of the evidence adduced by Withers can be said to support the proposition put forward in the Points of Defence that the properties held by Pankratrov, Highlands and Carter Court were placed offshore as part of legitimate tax planning. Mrs Price was right when she said that the husband was *not that bothered to go off shore in 2007,* and I find that it was only when he wanted to put assets out of the reach of his wife that he started to put newly acquired properties off shore to be held in companies owned by him.

162. In any event no matter what Withers may have assumed was the husband's intention as to beneficial ownership, the fact remains that he was at no stage honest with Withers. Even had he claimed tax mitigation to be his intention I could not have taken such evidence at face value. He may well have been dissembling as he has in his limited evidence to this court: to take but one example in relation to Flat 6, Effes Road that property was transferred to Yuri via, what I am satisfied was a forged share transfer form, yet the husband said in the October affidavit that the property was bought specifically for Vladimir and Anatoli, the children of the marriage.

163. In my judgment, the husband's interaction with Withers points towards, and not away, from the husband retaining the beneficial ownership of the various properties:

i) It is common ground that in relation to each transaction the husband provided all the purchase monies, the file was opened in his name and the husband paid the bill, there were no board minutes for the companies, and no advice was given in relation to either tax issues or legal and beneficial interest.

ii) On the balance of probabilities, I am satisfied that he simply signed documents in Yuri's name as and when it suited him

iii) He had declined to take tax advice, there was no tax mitigation scheme and he was not interested in putting the Snowden properties off-shore when the marriage was subsisting.

iv) The husband's actions point away from a tax scheme – he did not carefully manage the Pankratrov, Highlands, Carter Court properties off-shore and create a suitable paper trail for the Revenue as Mrs Price said would be necessary in order successfully to mitigate the tax consequences; rather he lived in the properties and was, as was recognised by Mrs Price, clearly a shadow director. Any tax scheme would have failed.

The Law

164. The starting point is s24 Matrimonial Causes Act 1973 (which is incorporated into Part III claims by virtue of Matrimonial Proceedings and property Act 1984, s17(a)(ii)):

> *24 Property adjustment orders in connection with divorce proceedings, etc.*
>
> *(1) On granting a decree of divorce, …..the court may make any one or more of the following orders, that is to say—*
>
> *(a) an order that a party to the marriage shall transfer to the other party, to any child of the family or to such person as may be specified in the order for the benefit of such a child such property as may be so specified, being property to which the first-mentioned party is entitled, either in possession or reversion;*

165. In the present case almost all of the wealth created by the husband during the course of the marriage is held through off-shore company structures. The question for the court to determine is whether, notwithstanding the elaborate structures put in place by the husband, and notwithstanding their legal ownership, those properties are beneficially held by him on a resulting trust.

166. Any case mounted in the Family Division in financial remedy proceedings which seek to attack assets held in the name of a company or companies does so against the backdrop of two fundamental principles:

i) A company has a separate legal identity:

Salomon v A.Saloman and Co Ltd [1897] 2 AC 22 remains the highest authority for the proposition. Lord Halsbury LC said [page 30-31]

> "*It seems to me impossible to dispute that once a company is legally incorporated it must be treated like any other independent person with its rights and liabilities appropriate to itself, and that the motives of those who took part in the promotion of the company are absolutely irrelevant in discussing what those rights and liabilities are … the (Companies) Act appears to me to give a company a legal existence with, as I have said rights and liabilities of its own, whatever may have been the ideas or schemes of those who brought it into existence*"

In *Prest v Petrodel Resources Ltd and Others* [2013] UKSC 34 Lord Sumption said [8]

> "*Subject to very limited exceptions, most of which are statutory, a company is a legal entity distinct from its shareholders. It has rights and liabilities of its own which are distinct from those of its shareholders. Its property is its own, and not that of its shareholders.*"

ii) The legal principles to be applied are the same regardless of the Division of the High Court in which they are heard.

Munby J (as he then was) has had cause to comment to this effect on two occasions:

In *Whig v Whig* [2008] 1 FLR 453 at [60]:

> "*The Family Division applies precisely the same principles, and in precisely the same way, as the Chancery Division, or for that matter the Queens Bench Division*"

And in *Ben Hashem v Al Shayif* [2009] 1 FLR 115:

> "*The outcome of the Chancery proceedings cannot depend upon whether the case is heard, where it started, in the Chancery Division or, where it has be transferred, in the Family Division, any more than it can depend upon whether it is heard by a 'Chancery judge' or a 'Family judge*

167. In specific reference to s24(1)(a) Lord Sumption said in *Prest*:

> "*the words "in legal possession or reversion" show that the right in question is a proprietary right, legal or equitable. This section is invoking concepts with an established legal meaning and recognised legal incidents under the general law. Courts exercising family jurisdiction do not occupy a desert island in which general legal concepts are suspended or mean something different. If a right of property exists, it exists in every division of the High Court and in every jurisdiction of the county courts. If it does not exist, it does not exist anywhere.*"

168. It is within the embrace of these two fundamental principles that this court addresses the wife's claim that various properties, the legal title of which is held within various company structures, are in fact held by way of resulting or constructive trust by the husband. The importance of determining the beneficial interest is obvious as only then can the properties with which this court is concerned be categorised as property to which the husband is entitled *"either in possession or reversion"* under s.24(1)(a) MCA 1973.

169. Mr Dyer QC has throughout made it clear that he relies upon the doctrine of resulting trust. The wife's case is that the husband has at all times retained the beneficial interest in the properties and it is therefore neither necessary nor appropriate to seek to *pierce the corporate veil* as was done in *Prest* at first instance and which was disapproved by the Supreme Court. I note Lord Sumption's observations at [36] in relation to a party *concealing or evading the law relating to the distribution of assets of a marriage upon its dissolution.* The court has found that this husband set up and used corporate structures in order to conceal and evade his obligation to his wife and to frustrate the court from carrying out its statutory duty relating to the distribution of

assets upon the breakdown of a marriage. In the light of the way in which Mr Dyer puts his case, no argument has been developed as to how a court might treat such a finding absent a finding of a resulting trust and I express no view in relation to it.

170. The equitable concept of resulting trusts is well known and understood, I do not therefore propose to revisit *Gissing v Gissing* [1971] AC 886 and *Pettitt v Pettitt* [1970] AC 777 et al but simply to note that as recently as 2004 in *Lavelle v Lavelle* [2004] 2 FCR 418 Lord Phillips MR explained the formation of a resulting trust in these terms:

> ***" [13]*** *Where one person, A, transfers the legal title of a property that he owns or purchases to another, B, without receipt of any consideration, the effect will depend on his intention. If he intends to transfer the beneficial interest in the property to B, the transaction will take effect as a gift and A will lose all interest in the property. If he intends to retain the beneficial interest for himself, B will take the legal interest but will hold the property in trust for A.*
>
> ***[14]*** *Normally there will be evidence of the intention with which a transfer is made. Where there is not, the law applies presumptions. Where there is no close relationship between A and B, there will be a presumption that A does not intend to part with the beneficial interest in the property and B will take the legal title under a resultant trust for A. Where, however, there is a close relationship between A and B, such as father and child, a presumption of advancement will apply. The implication will be that A intended to give the beneficial interest in the property to B and the transaction will take effect accordingly. "*

He continued at [19]:

> *"In these cases equity searches for the subjective intention of the transferor"*

171. Mr Wagstaffe suggested that the wife's arguments in relation to the presumption of a resulting trust cannot be sustained in law. In brief his argument is the husband has caused the properties to be transferred to a company under his control for no consideration s60*(3) of the Law of Property Act 1925* therefore bites.

S60(3) provides:

> "*In a voluntary conveyance a resulting trust for the grantor shall not be implied merely by reason that the property is not expressed to be conveyed for the use or benefit of the grantee*"

Mr Wagstaffe argues that this section has abolished the presumption of a resulting trust arising from a transfer for no consideration although the point, he concedes, is not absolutely free from doubt; *Lohia v Lohia [2001] EWCA Civ 1691(at first instance).* In my judgment not only is it not free from doubt but it is in any event not conclusive as I note that in *Ali v Khan and Others* [2002] EWCA Civ 974 The Vice Chancellor said [24]:

> *"..it is not suggested that this proposition precludes a party to the conveyance from relying upon evidence from which a resulting trust can be inferred."*

172. Mr Wagstaffe, whilst noting that Lord Sumption in *Prest* considered that a purely nominal purchase price of £1 gave rise to a resulting trust maintained that as the Supreme Court had not been addressed on the *s60(3)* point, the argument remains unresolved and requiring determination.

173. I reject the submission for three reasons:

i) There was no voluntary conveyance. This was a classic example of a purchaser buying a property in another's name. Each of the relevant purchases were purchases at arm's length from third party vendors for valuable and full consideration; at no time were any of the properties held in the husband's name.

ii) Even if they were not the court is not precluded from relying on evidence from which a resulting trust can be inferred, there is a myriad of such evidence in the present case *(li Khan)*

iii) In *Lohia* on appeal Mummery LJ said:

> *s60(3) is so inextricably bound up in centuries of English legal history that it would be bold for this court to pronounce upon it without having heard very extensive argument, preferably in the context in which such a decision on the point was crucial to the outcome of the case*

I am not so bold.

174. I therefore continue to approach the case on the basis that the circumstances in which the properties were bought give rise to a presumption in favour of their being a resulting trust.

Rebutting the presumption:

175. In *Tribe v Tribe* [1996] Ch. 107 Millet LJ explained the formation in similar terms to those in *Lavelle* and drew attention to the fact that the burden of displacing the presumption falls on the transferee

176. Over the years the courts have considered the ease or otherwise with which the presumption of a resulting trust can be rebutted. In *Westdeutsche Landesbank Girozentrale v Islington LBC* [1996] AC 669 HL Lord Browne Wilkinson said at 708A:

> *Under existing law a resulting trust arises in two sets of circumstances: (A) where A makes a voluntary payment to B or pays (wholly or in part) for the purchase of property which is vested in B alone or in the joint names of A and B there is a*

> *presumption that A did not intend to make a gift to B: the money or property is held on trust for A (if he is the sole provider of the money) or in the case of a joint purchase by A and B in shares proportionate to their contributions. It is important to stress that this in only a presumption which presumption is easily rebutted either by the counter presumption of advancement or by direct evidence of A's intention to make an outright transfer.*

177. The modern approach is set out succinctly in *Kyriakides v Pippas* [2004] 2 FCR 434 para 74 & 76 :

> *….The courts will always strive to work out the real intention of the purchaser and will only give effect to presumptions of resulting trust and advancement where the intention cannot be fathomed and a 'long stop' or 'default' solution is needed.*

178. In *Stockholm Finance v Garden Holdings Inc* (unreported 26 October 1995) a Princess Madawi had put property in the name of a company she owned called Garden Holdings. Robert Walker J said:

> *If a private company is sole legal owner of the house, and the occupier of the house is sole legal and beneficial owner of all the company's shares, then (so long as the parties remain solvent) there is no basic economic difference between the company being sole beneficial owner of the house, and being a nominee for the occupying shareholder. There will be incidental differences for instances the tax implications – and these may be of some practical importance as we have seen. But at a basic level a wholly owned company cannot be seen by its shareholder either as a potential rival to him in claims of ownership of property, or as a potential recipient of bounty from him. What goes out of one economic pocket comes into the other. In these circumstances I can see very little room for the application of the traditional presumptions as between Princess Madawi and Garden. I do not discount them completely but I must look first for evidence of actual intention before having recourse to the judicial last resort.*

179. The judge found that Princess Madawi's *actual* intention was to transfer the beneficial interest to the company. In those circumstances the presumption that had existed as a starting point in her favour evaporated. Mr Wagstaffe sought to elevate Robert Walker J's observation that in those circumstances he could *see very little room for the application of the traditional presumptions* into a legal principle to the effect that where the person providing the funds is also the sole owner of the company which owns the property, then there is no room whatsoever for the presumption. I do not agree and such a proposition would be inconsistent with the Supreme Court's approach in *Prest.*

180. In support of his submission Mr Wagstaffe also relies upon *Nightingale Mayfair Ltd v Mehta* [2000] WTLR 901 per Blackburne J [at 925C]:

> *"Over and above those matters Mr Munby submitted, and I agree, that the proper and natural inference from the decision by an individual to purchase a property in the name of a company and provide it with the funds to do so, especially where the company is controlled by the individual, is that the company should be the beneficial as well as the legal owner of the money and then the property."*

"per Blackburne J [at 926B-D]:

> *"Although not a director or shareholder of Omdeep and not a beneficiary of the Lotus Trust, Mr Mehta effectively controlled both Omdeep.…… The existence of this control renders it all the more likely that Mr Mehta's intention (as provider of the funds) was that Omdeep should become and remain the beneficial – and not just the legal – owner of the property."*

181. In *Nightingale Mayfair Ltd v Mehta*, as in *Stockholm Finance*, it was held that the underlying intention was that the Company in whose name the property was registered, should for various tax objectives be the beneficial owner. Notwithstanding that finding, I accept that the court should not over state the difficulty in rebutting the presumption in circumstances where an individual purchases a property in the name of a company where the company is controlled by the individual. The observations in *Westdeutsche Landesbank Girozentrale v Islington LBC, Stockholm Finance v Garden Holdings Inc* and *Nightingale Mayfair Ltd v Mehta* do however now have to be viewed against the backdrop of Lord Sumption's observations in *Prest* in relation to the matrimonial home: [51]

> *But I venture to suggest, however tentatively, that in the case of the matrimonial home, the facts are quite likely to justify the inference that the property was held on trust for a spouse who owned and controlled the company. In many, perhaps most cases, the occupation of the company's property as the matrimonial home of its controller will not be easily justified in the company's interest, especially if it is gratuitous. The intention will normally be that the spouse in control of the company intends to retain a degree of control over the matrimonial home which is not consistent with the company's beneficial ownership*"

Establishing Intention

182. In the American case of *Mackowik v Kansas City* 94 SW 256 at 264 Lamm J said that: *presumptions may be looked on as the bats of the law, flitting in the twilight but disappearing in the sunlight of actual facts* or, as Lord Sumption put it rather more

practically, [52] *Whether assets legally vested in a company are beneficially owned by its controller is a highly fact specific issue.*

183. In relation to direct evidence as to intention Mr Wagstaffe QC submits that the wife has failed to establish a prima facie case of any intention on the husband's part to retain the beneficial interest in the properties. He says that the wife is relying on the sort of bold assertion deprecated as *the world of Humpty Dumpty* by Munby J (as he then was) in: *C v C (Privilege)* [2008] 1 FLR 115. Per Munby J at para 50:

> *"Munby J:…. What is the evidence before me which is relied on as showing a prima facie case that the Anstalt is the alter ego of the husband?*
>
> *[Counsel]: My Lord, in the absence of any disclosure whatsoever from the husband and on the basis that the Anstalt has owned the family home for the last 23 years –*
>
> *Munby J: Yes, but the trustees of the Duke of Marlborough's settled estate no doubt have had Blenheim palace vested in them for 250 years and the Duke and Duchess of Marlborough have always lived there and so has their heir. The fact that the Duke of Marlborough has always lived in Blenheim Palace does not mean that the Trustees of his settled estate are his alter ego. Indeed they almost certainly are not.*
>
> *Munby J: I am sorry, that is the world of Humpty Dumpty and even this Division does not go that far. It is for the plaintiffs to establish their case, or at least to put forward a prima facie case. We do not work on a system by and large where the plaintiff says, 'well unless and until the defendant produces evidence to disprove our bald assertion, our bald assertion holds the field."*

184. Mr Wagstaffe relies on *Ben Hashem v Sharif* [2009] 1 FLR 115 (another case where there was a finding of an intention to transfer the beneficial interest in property to the company), as authority for the proposition that the so called rule in *Shepherd v Carwright* remains good law and the court should accordingly disregard in its entirety, the husband's damming October affidavit as a *subsequent declaration.* In his opening submissions Mr Wagstaffe argued strongly that the October affidavit, the whole tenor of which says the wife (and I agree) is in the language of resulting trusts, is inadmissible under the rule. In closing submissions, whilst not specifically abandoning the point, his reliance on it became as a whisper not a shout.

185. The rule in *Shephard v Cartwright,* as stated in Viscount Simmons' judgment, is that:

> *"The acts and declarations of the parties before or at the time of the purchase or so immediately after it as to constitute a part of the transaction, are admissible evidence either for or against the party who did the act or made the declaration… But*

> *subsequent declarations are admissible only as evidence against the party who made them and not in his favour"*

186. This says Mr Wagstaffe renders the October affidavit and other evidence which is capable of being regarded as evidence from the husband to retain the beneficial interest in the properties inadmissible against the companies. Mr Wagstaffe preys in aid the observations of Munby J (as he then was) In *Ben Hashem:*

> *Now whether A provided the money by way of gift, or by way of loan, or qua purchaser is, in the final analysis, a simple question of fact, to be determined in the light of all the evidence as to the relevant circumstances including, subject to the rule in Shephared v Cartwright [1955] AC 431 (see per Viscount Simmonds as page 445), the parties' evidence as to their intentions at the time.*

187. Munby J was not however referred to the case of *Lavelle v Lavelle* and had not therefore had the opportunity to consider Lord Philips MR's judgment where he said:

> *These authorities relied upon….have lost much of their force in modern times….. A less rigid approach should also be adopted to the admissibility of evidence to rebut the presumption [of advancement]"*

At paragraph 18, Lord Phillips MR then went on to quote Millett LJ (at page 129) in *Tribe*:

> *"But it does not follow that subsequent conduct is necessarily irrelevant. Where the existence of an equitable interest depends upon a rebuttable presumption or inference of the transferor's intention, evidence may be given of the subsequent conduct in order to rebut the presumption or inference which would otherwise be drawn".*

At para 19, Lord Phillips MR continued:

> *[19]" In these cases, equity searches for the subjective intention of the transferor. It seems to me that it is not satisfactory to apply rigid rules of law to the evidence that is admissible to rebut the presumption of advancement. Plainly, self-serving statements or conduct of a transferor, who may long after the transaction be regretting earlier generosity, carry little or no weight. But words or conduct more proximate to the transaction itself should be given the significance that they naturally bear as part of the overall picture…"*

188. If *Lavelle* was not enough to dispose of the argument Mr Dyer QC goes on to submit:

i) The inherent flaw in the rule in *Shephard v Cartwright* is that it fails to distinguish between subsequent acts and declarations which are evidence of post-purchase intention, and subsequent acts and declarations which are, in fact, evidence of intention at the time of purchase.

ii) The rule has to be seen in context, ie: this is not a claim brought by the husband against the companies for declarations of trust; this is a Part III financial remedy claim where the wife is claiming that matrimonial assets are held for the husband by third parties. The wife is therefore using the declarations made by the husband as evidence against him.

iii) The rule has to be relaxed to accommodate context. Context is important in family proceedings: see Munby LJ's judgment in *Richardson v Richardson* [2011] 2 FLR 244] when dealing with the (strict) rules of agency.

> *"51. Mr Dyer submits that this appeal should not be determined on the basis of what he calls the strict application of the law in relation to agency……..: What actual as opposed to constructive or imputed knowledge did the husband have on 25 September 2009 about the insurer's stance on indemnification under the policy? The answer to that question is, as he rightly says: None.*
>
> *[52] I agree with Mr Dyer.*
>
> *[53] I do not want to be misunderstood. The Family Division is part of the High Court. It is not some legal Alsatia where the common law and equity do not apply. The rules of agency apply there as much as elsewhere. But in applying those rules one must have regard to the context, and the relevant context here is the law of ancillary relief and, more particularly, as Mr Dyer has correctly said, the rules which apply where the question is whether an ancillary relief order should be set aside as between the husband and the wife's estate. And in that context the relevant legal principles are those to be found in the authorities to which I have referred. Someone in the husband's position is to be treated as knowing what, with the exercise of due diligence, he would have discovered. But in this context there is not to be imputed to him something of which he was entirely unaware merely because it was within the knowledge of an agent or employee."*

189. There is a tension between (the strict interpretation of) a rule of evidence and the court's statutory duty under s 18 of the 1984 Act to consider all the circumstances of the case, and the husband's duty to the court to provide full and frank disclosure of his assets (which is not a duty on a claimant in a civil claim). Section 18 provides that:

> *[2] The court shall have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who has not attained the age of eighteen.*

> *[3] As regards the exercise of those powers in relation to a party to the marriage, the court shall in particular have regard to the matters mentioned in section 25(2)(a) to (h) of the 1973 Act and shall be under duties corresponding with those imposed by section 25A(1) and (2) of the 1973 Act where it decides to exercise under section 17 above powers corresponding with the powers referred to in those subsections.*

190. The court is duty bound by statute to consider all the circumstances of the case and to achieve a *'fair'* result. It cannot do this by ignoring pertinent evidence, given on oath, by the husband, now in contempt, who declines to come to court to explain his statement.

191. I accept Mr Dyer's argument that the rule *Shephard v Cartwright* set out as long ago as 1955 has been overtaken by the modern approach that relevant evidence is admissible and the issue for the court is as to the weight such evidence should carry. Further it seems to me that the interpretation of a rule of evidence may be influenced by the court's statutory duty, whether under Part III or the MCA to *consider all the circumstances of the case* and to *achieve a fair result*. It would be absurd to rule as inadmissible affidavit evidence that the husband was ordered to file (over 2 years ago) to provide disclosure of his financial resources following the making of a freezing order.

192. Finally, to adopt the submission of Mr Wagstaffe would be inconsistent with Lord Sumption's recognition in *Prest at paragraph [45] of* the *substantial inquisitorial element* in claims for financial relief, and his expressed view that the concept of the burden of proof *cannot be applied in the same way to proceedings of this kind as it is in ordinary civil litigation.*

193. In the present case the wife advances a positive case. She does not merely rely on either *a bald assertion,* or on what Robert Walker J called the *traditional last resort*. Rather she submits that H's subjective intention can be gleaned from:

i) What he said in the October affidavit (and did not correct in his subsequent affidavit);

ii) What was said in e-mails by his agent, Helena Klebb, to Withers (Helena Klebb was not called by the Companies to explain what she meant);

iii) The pledging by the husband of the properties in Snowden and Highlands as security for his personal €7m loan from Rekabe Estate Ltd;

iv) The wife's evidence about the husband's personality: the husband, Mr Dyer submits, knows 'the solid tug of money'; he is not going to give away something he has bought.

v) The husband has not caused his company, Pankratrov, to prepare accounts (which Pankratrov is obliged to do), to reflect the properties as assets of the companies. He said he would do so in November 2011 but nothing has emerged.

194. These factors alone Mr Dyer submits enable the wife to assert a case far stronger than a mere prima face case. They allow the court also to draw adverse inferences in divining the husband's intention from his failure and the failure of the directors to participate in the proceedings.

Adverse Inferences

195. In the present case there are two aspects of the husband's litigation conduct which are capable of leading to the court drawing adverse inferences against him:

i) His silence and failure to attend court or to give evidence, or as the shadow director, to require the attendance of the directors to give evidence

ii) His non-disclosure and repeated contempt of court.

196. The relevant people to provide evidence of the subjective intention of the husband when he bought the properties are the companies and the husband. Whilst the presumption may be relatively easily displaced, the fact remains that burden of displacing that presumption is the transferee. (*Tribe).* The directors at the time the properties were purchased should have been called to give evidence.

197. In the case of Highlands and Carter the only director is Yuri. For Pankratrov, the director at the time that Quinta Castle was purchased was Anna Duboy, who is husband's cousin. It is now Boris Glukhov the husband's long-standing employee. None of these persons gave evidence. If they were able to give evidence in support of the case being advanced by the companies, then surely they would have been called as witnesses.

198. Lord Sumption discussed the approach to be adopted in a case such as this where the only basis on which the companies can be ordered to convey properties to the wife is that they belong beneficially to the husband. He said:

> *"The issue requires an examination of the evidence which is incomplete and in critical respects obscure. A good deal therefore depends upon what presumptions may properly be made against the husband given that the defective character of the material is almost entirely due to his persistent obstructions and mendacity".*

This description could, in my judgment, equally be applied to the husband in this case.

199. In considering the proper approach to drawing adverse inferences, Lord Sumption preferred the approach of Lord Lowery in *T C Coombs v IRC* [1991] 2 AC 283 to that of Lord Diplock in *British Railways Board v Herrington* [1972] AC 877,930-931 saying: at [44]

> "*There must be a reasonable basis for some hypothesis in the evidence or the inherent probabilities, before a court can draw useful inferences from a party's failure to rebut it. For my part I would adopt, with a modification which I shall cone to, the more balance*

> *view expressed by Lord Lowry with the support of the rest of the committee in R v Inland Revenue Commissioners, ex p TC Coombs & Co [1991] 2AC 283,300*
>
> > *In our legal system generally, the silence of one party in face of the other party's evidence may convert that evidence into proof in relation to matters which are, or are likely to be, within the knowledge of the silent party and about which that party could be expected to give evidence. Thus, depending on the circumstances, a prima facie case may become a strong or even an overwhelming case. But, if the silent party's failure to give evidence (or to give the necessary evidence) can be credibly explained, even if not entirely justified, the effect of his silence in favour of the other party may be either reduced or nullified.*
>
> *CF.Wisniewski v Central Manchester Health Authority*:

200. Lord Sumption went on to set out what he referred to as *modifications* in relation to the drawing of adverse inference in matrimonial proceedings saying [45]:

> *The modification to which I have referred concerns the drawing of adverse inferences in claims for ancillary financial relief in matrimonial proceedings, which have some important distinctive features. There is a public interest in the proper maintenance of the wife by her former husband, especially (but not only) where the interests of the children are engaged. Partly for that reason, the proceedings although in form adversarial have a substantial inquisitorial element. The family finances will commonly have been the responsibility of the husband, so that although technically a claimant, the wife is in reality dependent on the disclosure and evidence of the husband to ascertain the extent of her proper claim. The concept of the burden of proof, which has always been one of the main factors inhibiting the drawing of adverse inferences from the absence of evidence or disclosure, cannot be applied in the same way to proceedings of this kind as it is in ordinary civil litigation. These considerations are not a licence to engage in pure speculation. But judges exercising family jurisdiction are entitled to draw on their experience and to take notice of the inherent probabilities when deciding what an uncommunicative husband is likely to be concealing. I refer to the husband because the husband is usually the economically dominant party, but of course the same applies to the economically dominant spouse whoever it is.*

201. The court has been offered no explanation for the absence of witnesses or for the husband's silence. I adopt the terminology of Lord Lowery in *T C Coombes* and approved by Lord Sumption in *Prest* and find that what was already a powerful *prima*

case has become *an overwhelming case* in the face of the failure of the husband and directors to engage in the proceedings.

202. The court may also draw adverse inference in cases of non-disclosure. In *J-PC v J-AF* [1955] P 215 Sachs J he said: p 227

> *In cases of this kind, where the duty of disclosure comes to lie upon the husband; where a husband has, and his wife has not, detailed knowledge of his complex affairs; where a husband is fully capable of explaining, and has the opportunity to explain, those affairs; and where he seeks to minimise the wife's claim; that husband can hardly complain if, when he leaves gaps in the court's knowledge, the court does not draw inferences in his favour. On the contrary, when he leaves a gap in such a state that two alternative inferences may be drawn, the court will normally draw the less favourable inference – especially where it seems likely that his able legal advisers would have hastened to put forward affirmatively any facts, had they existed, establishing the more favourable alternative.*

Sachs J continued at p 229:

> *.. it is as well to state expressly something which underlies the procedure by which husbands are required in such proceedings to disclose their means to the court. Whether that disclosure is by affidavit of facts, by affidavit of documents or by evidence on oath (not least when that evidence is led by those representing the husband) the obligation of the husband is to be full, frank and clear in that disclosure. Any shortcomings of the husband from the requisite standard can and normally should be visited at least by the court drawing inferences against the husband on matters the subject of the shortcomings – in so far as such inferences can properly be drawn.*

203. In *Imerman v Tchenquiz* [2011] Fam 116, the Court of Appeal specifically condoned the Family Division's use of drawing adverse inferences in cases of defective disclosure as an alternative to resorting to the disapproved *Hildebrand* practice.

204. On the facts of the present case, having drawn such adverse inferences as are appropriate against the backdrop of the wilful lack of disclosure and engagement by the husband and companies, the court has no difficulty, in concluding that the *inherent probabilities* are that the husband, (and the companies he controls), have throughout been endeavouring to defeat the claims of the wife; in particular, they have sought to disguise the fact that he retains the beneficial interest in the UK properties. I regard it as no coincidence that these are the only assets in respect of which she will have little difficulty in enforcing any order of the court.

Rebutting the Presumption

205. In the present case I have found that the husband did not place the properties in the names of any of the companies as part of a tax mitigation scheme. I have therefore

rejected the only evidence put before the court by the transferee to rebut the presumption that the properties are held beneficially for the husband.

206. That is not however quite the end of the matter. In *Prest* there was a finding that the properties were in the companies as part of a tax avoidance scheme. Adverse inferences were drawn which meant that, notwithstanding that finding, the presumption was not rebutted. The director filed a statement but did not attend for cross-examination. Findings were made which mirror those I make in this case namely that the husband both owned and controlled the companies. Lord Sumption said [47]

> *"The only directly relevant evidence given by Mr Murphy in his affidavit is a bald assertion that the companies are the sole beneficial owners of the shareholdings and the properties, but he declined to appear for cross-examination on it. The judge rejected his explanation that his health was not up to it. The judge's findings about the ownership and control of the companies mean that the companies' refusal to co-operate with these proceedings is a course ultimately adopted on the direction of the husband. It is a fair inference from all these facts, taken cumulatively, that the main, if not the only, reason for the companies' failure to co-operate is to protect the London properties. That in turn suggests that proper disclosure of the facts would reveal them to have been held beneficially by the husband, as the wife has alleged."*

207. Lord Sumption carried out the exercise of determining whether, in each case, the properties in question were beneficially owned by the husband. He concluded that all were in the beneficial ownership of Mr Prest. Lord Walker put it this way: [104]

> *"His conclusion that they are all in the beneficial ownership of Mr Prest is in my view irresistible, based as it is on positive evidence of the sources from which the purchases were funded, as well as on inferences drawn from the failure of Mr Murphy, a director of PRL, to attend court for cross-examination*

208. In the present case there is the additional factor that Flat 4, Effes Road and Flat 6, Effes Road were bought as matrimonial homes and Broadwalk Way and Quinta Castle as homes for the husband.

The Proper Approach

209. Drawing on *Stockholm Finance*, Mr Wagstaffe submitted to the court that the state of the law is now:

i) That where the purchaser puts the property into the name of a company of which he (the purchaser) owns that is sufficient without more to rebut the presumption.

ii) That the presumption, having been thus rebutted, the burden of proof shifts from the transferor (i.e. the company) being required to rebut the presumption to the transfer to prove that his intention was to retain the beneficial interest.

iii) In the present case the wife has failed to establish even a prima facie case that the husband's intention was to retain in case the beneficial interest in the relevant property.

210. I do not accept the submissions of Mr Wagstaffe. In my judgment the proper approach in law is as follows:

i) Whether assets legally vested in a company are beneficially owned by its controller is a highly fact-specific issue.

ii) The court must search for *evidence of the subjective intention of the transferor (Lord Philips)* or *evidence of actual intention*.

iii) In determining the intention of the parties the courts may, where appropriate draw adverse inferences against the parties, either in respect of their failure to give or call evidence to rebut the presumption, or by their failure to make proper disclosure within the proceedings.

iv) Only in the absence of evidence of intention will the law of presumption apply, which presumption will be easily rebutted by evidence of the transferor's intention to make an outright transfer.

v) Where the company in whose name the property in question is held is owned by the same individual who asserts that he has retained the beneficial interest by virtue of a resulting trust, there is less room for such a resulting trust to be established by a presumption in the absence of evidence of intention however :

a) The burden remains on the transferee to rebut the presumption

b) Positive evidence of the source from which the purchases are funded establishes the ordinary inference that the provider of the funds is the beneficial owner of the property absent any evidence to rebut that ordinary presumption of equity.

vi) In the case of the matrimonial home the facts are quite likely to justify the inference that the property was held on trust for a spouse who owned and controlled the company.

Shadow Director

211. It is not necessary for the purpose of this judgment to analyse the jurisprudence in relation to Shadow Directors. Shadow director is a term that in relation to certain statutes leads to particular consequences for example: a shadow direction can be liable in the same way and subject to the same sanctions as ordinary directors under the *Company Directors Disqualification Act 1986(s6) and The Insolvency Act 1986 (s214).*

212. Mr Wagstaffe does not seek to argue that the husband was other than a shadow director. Mr Dyer referred the court to *In Re Lo-Line Electric Motors Ltd [1988] 2 All ER 692*, where Browne-Wilkinson V-C said at p 699:

> *"…the definition presupposes that there is a board of directors who act in accordance with instructions from someone else, the éminence grise or shadow director"*.

213. The husband, says Mr Dyer, has at all times been the *éminence grise*. I agree. Mr Wagstaffe, whilst laying emphasis on the statutory use of the term, did not go so far as to suggest that the fact that the husband would inevitably be regarded as a shadow director has no relevance save within a statutory framework.

214. In my judgment the fact that a court finds that a person is a shadow director of a company is a valuable finding particularly where that shadow director provided the funds with which to purchase the property in question, and the court is seeking to ascertain his intention at the date of purchase. The fact that the husband had control of the company was clearly a significant feature in the view of the Supreme Court in *Prest at para[47]*.

215. Mr. Dyer does not seek to argue that the fact that the husband was a shadow director means that it inevitably follows that the court should impute the knowledge and intention of that shadow director to the company. There is he says also a different common law category namely *the directing mind and will of the company (*although that person may also be a shadow director).

216. Mr Dyer argues that, as a consequence of being the directing mind and will, the husband's intentions and knowledge can be imputed to the companies with the consequence that the court can find that both the husband's intention and that common intention as between himself and the company was that the beneficial interest should at all times remain his own.

217. The leading case is *El Ajou v Dollar Land Holdings Ltd* [1994] 2 All ER 685. At p.695, Nourse LJ, explained this concept:

> *The doctrine attributes to the company the mind and will of the natural person or persons who manage and control its actions. At that point, in the words of Millett J ([1993] 3 All ER 717 at 740):*
>
> *'Their minds are its mind; their intention its intention; their knowledge its knowledge.'*

218. In my judgment the husband was a shadow director, and at all times the directing mind and will of each of the companies. I satisfied that the husband and the husband alone made each and every decision in relation to the purchase and operation of the companies, and that the directors who from time to time were put in place, were acquiescent employees or family members who would have had neither the skill nor knowledge to carry out any of the duties of a company director.

219. Mr Wagstaffe advances a further argument namely that the husband does not come with clean hands and he therefore could not seek the equitable remedy of resulting or constructive trusts and, he submits, the wife cannot have a better case than the husband against the companies. This Mr Wagstaffe suggests is a second important issue not argued in the Supreme Court in *Prest* and requires determination. The husband, Mr Wagstaffe argues could not make good a claim against the companies based on his own dishonesty nor does the fact that it is the wife who pursues the claim rather than the husband cause that "fundamental principle" to apply with any less force. The dishonesty to which Mr Wagstaffe refers is the placing of the properties in the companies in order to avoid tax whilst at the same time retaining the beneficial interest.

220. In my judgment this is an argument without merit with which I deal only briefly. In the present case the husband had done nothing intrinsically unlawful in placing the properties in the names of the companies. I have found that the properties were not placed in the companies for tax reasons there is therefore no dishonesty on his part (by tax avoidance morphing into tax evasion), in retaining the beneficial interest. Moreover the doctrine of 'clean hands' acts as a shield in the hands of a third party in the face of a claim made for an equitable remedy. In the present case there is no effective third party to rebut any claim of the husband as the company and the husband are one and the same, their mind and will are as one; not because the husband owns the companies, (the companies have a separate legal entity), but because the directors of the companies are mere nominees acting to the direction of the husband. The husband is Pankratrov and Pankratrov acts entirely upon the direction of the husband; he cannot seek to use the shield against himself.

221. In any event this is a Part III claim and the court approaches the claim in that context: see *Richardson* and *Prest at para [45] There is a public interest in the proper maintenance of the wife by her former husband, especially (but not only) where the interests of the children are engaged.* In my judgment it would be inimical to the public interest described by Lord Sumption if a husband was able, as the directing mind and will of a company, to resist a claim from himself as the purchaser of the properties for a declaration that he holds the beneficial interest in the properties by way of resulting trust and thereby defeat the legitimate claims of the wife.

Findings in relation to Resulting Trusts

222. Applying the approach set out in paragraph 206 above I turn then to consider the evidence of the husband's actual intention gleaned form a number of sources. Mr Wagstaffe QC says the court should look at imputation, inference and direct evidence. I find it more helpful to categorise it in a slightly different way but which includes a consideration of each of his categories and to consider:

    i) Primary evidence, including that of material witnesses.

    ii) Other direct evidence of the husband's subjective intention.

    iii) All the circumstances of the case, including the court's assessment of the husband.

Primary evidence

223. It is not disputed that in relation to the properties held by Snowden, Pankratrov, Highlands and Carter Court the husband exclusively funded the purchases. At no time did any money go through the accounts of the companies. The properties do not appear as assets on any accounts.

224. Mr Wagstaffe has effectively conceded that the husband is, and always has been, the directing mind and will of the companies. I am satisfied that, (to borrow the words of Lord Sumption in *Prest [47]) the companies' refusal to co-operate with these proceedings is a course ultimately adopted on the direction of the husband.*

225. On the facts of the present case the court would not unreasonably anticipate oral evidence from: the husband, the directors of the companies, Yuri (in his various capacities) and the husband's tax advisors, each of whom would be able to give evidence capable of either confirming or refuting the resulting trust to be presumed from the payment of money.

226. The husband, Yuri and the directors having chosen to absent themselves from the case, the court is driven to drawing inferences.

227. Adverse inferences can be drawn against the husband by virtue of:

i) his failure to comply with orders to provide disclosure.

ii) his failure to come to court and give evidence.

iii) his silence in the face of the case against him.

228. Mr Wagstaffe seeks to argue that there is no prima facie case to become stronger let alone overwhelming. I reject that submission and set out in the next section dealing with evidence of the husband's subjective intentions, the evidence in support of a strong prima facie case that the husband intended at all times to retain the beneficial interest in the properties in the legal ownership of Pankratrov, Highlands and Carter Court.

229. Adverse inferences can be drawn not only against the husband but against the other parties. Adverse inferences can be drawn against Snowden (the 3rd Respondent) by their failure to file Points of Defence and attend court to give evidence. If this had been a Chancery Division case (as the companies argue in reality it is), judgment could have been entered against Snowden in default.

230. In relation to Pankratrov, Highlands and Carter Court, the only Respondents who have been represented in the hearing, the court must be careful not to be duped by the veneer of respectability which has been given to the case of the companies by their late entry into the proceedings, and their attendance at court by expensive, high profile and highly respected legal representation. The reality is that the companies' behaviour has been every bit as reprehensible as that of the husband and the court is not taken in by what is clearly a ploy by the husband, to argue the case via his alter ego companies, without running the risk of being sent to prison for contempt should

he appear or to have been made the subject of a *Hadkinson order*, this time perhaps, not upon terms.

231. The companies have:

i) Failed to file evidence or to comply with the court's orders for disclosure

ii) Failed to attend court to give oral evidence via their directors

iii) Have constructed a case based on the existence of a tax mitigation scheme which did not exist.

Direct Evidence

232. The husband's written material is only compatible with resulting trusts. For example:

i) The October Affidavit: this was drafted on instructions on his behalf by Messrs Farrers the husband said on oath:

- *There are properties in England which, in effect I own. But there is also a large loan from ABLV Bank [38]*
- Pankratrov: *I bought Quinta Castle through it. I am sole shareholder. Yuri is director I am not.[42c]*
- *Highlands: This is a Nevis company through which I own Flat 4, Effes Road.[42d]*
- *Carter Court: This is the company through which I own Flat 28, Broadwalk Way.[42e]*

ii) In his Form E in relation to the loan from Rekabe Estate he said; I *have not made money out of my property transactions as I had hoped.*

iii) In his second affidavit of July 2011: *The properties at Broadwalk Way and Quinta Castle have not increased in value at the rate we anticipated and this leaves me in a very difficult position. I am unable to sell them at a sufficient profit. Although I own the freehold of the land, I receive no income from the business*

233. The approach of the husband in his first early affidavit in October filed in response to the freezing orders was not to deny ownership of the properties, but to say that they are subject to substantial loans. I accept the submission of Mr Dyer that the language of this affidavit is the language of resulting trusts. Mr Wagstaffe's attempts to finesse away the significance of this or to suggest a benign interpretation, whilst ingenious, do not begin to hold water.

234. The husband is a shadow director of all of the Respondent companies. This is a description, but a telling one.

235. I find that the husband's actions in relation to the properties was at all times that of a beneficial owner, and a high-handed somewhat maverick beneficial owner at that. For example :

i) In relation to the purchase of Quinta Castle, (a complicated transaction whereby the hotel had to be wound up first and it was dealt with by way of a Put and Call deed). An email of 20 November 2009 to Mrs Price from the solicitors for the sellers which says:

> *One final point that I have been asked to raise is that it is a source of some concern to our clients and more significantly to their bankers, that your clients have asked for access to the property and have moved in there on an informal sort of licences basis, whilst they prepare for completion!*
>
> *Our clients have reluctantly agreed to this as a gesture of good will to your clients, but they are anxious and the bank is a bit unsettled at the purchaser taking occupation of the property prior to completion*

ii) On 3 February Mrs Price sent an email to a planning consultant in relation to the purchase of Quinta Castle:

> *At the time my advice to Mr M was that he should have a contract conditional on obtaining planning permission for residential use. Needless to say (and fairly typical for this particular client!) Mr M decided to go ahead and purchase the property regardless….. Mr M has now decided to apply for planning permission for change of use…*

iii) Mrs Price's desperate attempts to control H are again revealed in an email dated 26 March 2010 in relation to the application for change of use from an hotel to a private residential property

> *I have said to her in no uncertain terms (H's PA) that if Mr M starts carrying out building works before the planners have inspected, this is likely to jeopardise the application. She is going to tell Mr M this (again) although she admits that he may not take any notice*

iv) On 3 December 2009 Mrs Price sent an email to H passing on a letter from the council about unauthorised building works H was carrying out at Broadwalk Way.

236. The emails sent from Helena Klebb on behalf of the husband are equally in terms only compatible with a resulting trust for example:

> *Mr M asked me to check with you if Snowden Properties Ltd is the owner of both his flats 1 and 6 Effes Road.. what is the best way to change his garage ownership.*

237. Each of the London properties was bought for the domestic use of this family, whether as a matrimonial home Flat 6, Effes Road and the adjoining Flat 4, Effes Road, home office for the husband, Flat 1, Effes Road or homes for the husband following the separation of the parties (Broadwalk Way and Quinta Castle). The evidence is not only that the occupation and use of these properties by the family was entirely free of consideration whether by rent or otherwise to the companies, but, (as can be seen by the husband's actions in relation to carry out building works without permission), wholly incompatible with the companies' having the beneficial ownership of the properties.

238. Busby acted as the husband's agent in the setting up of each of the relevant companies. For many years Busby had his entire confidence from them, in the form of Dr Dolyanoy, he took his advice. Busby referred in terms in the email quoted above, to the husband as the beneficial owner of the 4 LLPs held in the Pankratrov structure and of Snowden properties.

239. The husband pledged the properties in Snowden and Highlands as security for his personal €7m loan from Rekabe Estate.

240. The husband has not caused his companies to prepare "accounts" to reflect the properties as assets. He said in November 2011 accounts would be produced. None have.

241. Mr Wagstaffe has been unable to draw the court's attention to any evidence which is other than consistent with an intention on the husband's part to retain the beneficial interest in the properties.

All the circumstances of the case

242. The written material, the evidence of the wife and even the evidence of Mrs Price has given the court a clear picture of the husband notwithstanding his absence. The husband is a self made man; I accept the wife's evidence that money is very important to him, equally I find that his homes are very important to him; he loves renovating them and happily spends considerable sums on them.

243. I am equally satisfied that the husband has no respect for regulations and does not regard tax as an issue for him; as I am satisfied on the balance of probabilities that he has paid little or no tax over the years (whether in the UK or Russia), and has no intention of doing so in future. The husband, I am satisfied, keeps absolute control over his empire, the court need look no further than the people he advanced as Directors of his companies: Yuri, his son; Anna Dubov, his cousin, (a housewife who has not worked outside the home for many years); Dmitry Zhukov the husband's driver and who lives with Helena Klebb; and in relation to Pankratrov, Boris Glukhov the husband's employee who regularly came to this country when the marriage was extant to take his instructions from the husband in relation to the businesses.

244. Mr Wagstaffe preys in aid Lord Sumption and Baroness Hale's reference to judges at first instance to being entitled to take into account the *inherent probabilities* in reaching factual conclusions. The inherent probability is, Mr Wagstaffe submits *frankly beyond contestation*, namely that a wealthy *'non-dom'* will hold their UK assets offshore for tax reasons. That may often be the case - not however in my

judgment in relation to this particular wealthy *non-dom* who, I find as a fact, did not put his assets offshore for tax avoidance but to place them beyond the reach of his wife.

245. I am entirely satisfied that the husband at all times intended to retain the beneficial interest in the UK properties whether owned by Snowden, Pankratrov, Highlands or Carter Court and that the only reason the companies have, on the husband's direction, failed to co-operate in these proceedings is because proper disclosure of documents or exposure of the Directors to cross-examination would very quickly have revealed that the properties concerned have at all times been held beneficially by the husband.

246. In relation to Snowden, I find that the husband forged the wife's signature in order to deprive her of her interest in the Snowden properties. Subsequently, in common with the other UK properties when the husband went on to put them into Snowden with Yuri as owner, he at all times intended to retain the beneficial interest.

247. It follows that having found that the husband intended to retain the beneficial interest in the UK properties, the presumption does not arise and neither does the question of whether the companies as the transferees can rebut it.

248. As the issue has been litigated at enormous expense and considerable length and the only oral evidence called has been in relation to the rebuttal of the presumption, I should make it absolutely clear that, even if the only direct evidence as to intention had been the funding of the purchases by the husband, in my judgment the companies would still have failed to rebut the presumption no matter how weak that presumption is stated to be in circumstances where:

i) The properties were not put into the names of the companies as part of a tax avoidance scheme

ii) The whole of the purchase price was provided by the husband and the properties do not appear as assets of the companies

iii) Powerful adverse inferences are to be drawn from the failure of the directors to make proper disclosure, attend court or give evidence.

The only logical inference to be drawn is what is and always has been in my judgment, blindingly obvious on the evidence, namely that the beneficial interest has at all times been retained by the husband.

<u>Common intention/Constructive Trusts</u>

249. Mr Dyer has had, as a fall back position, an argument that regardless of any findings in respect of resulting trusts, there is in any event in respect of each of the UK properties a common intention constructive trust.

250. It is not necessary to examine the law in relation to this topic other than to quote Munby J's formulation in *Ben Hashem;*

> *[127] the claim to a constructive trust is foundered on a wider range of circumstances than the mere fact that the husband initially funded the acquisition of the properties – in other*

> *words, is founded on an overall assessment of the conduct of the parties from which, it is submitted, one can properly infer a common intention justifying the imposition of such a trust.*

251. In my judgment on the facts of this case the court can properly infer such a common intention; the husband is a shadow director and his will and intention is the will and intention of the company. The court has found that the husband intended to retain each beneficial interest in the properties and it therefore follows inexorably that it was also the intention of the companies.

Additional points in relation to Pankratrov

252. The Quinta Castle transaction was made more complicated by the Put and Call option which provided for the husband to have the right to assign the benefit of the contract to a company of which he was a major shareholder. The vendors transferred the property to Pankratrov via a TR1 form executed by Yuri. Notwithstanding this roundabout process I remain satisfied that a resulting trust still applies. The husband provided the purchase funds and the property was conveyed into the name of Pankratrov. Whatever role Yuri may or may not have played it was always at the direction of his father with no intention that he, Yuri should benefit.

253. In its Defence, Pankratrov seeks a declaration that the property is held on trust as between the husband and itself to reflect the fact that the company has spent very substantial sums on refurbishment. I have no hesitation in dismissing this; Pankratrov has neither filed evidence nor called the director to give evidence about the level of expenditure, or to prove that it was genuine, or even that it was in fact Pankratrov's money rather than the Pankratrov bank account being a mere conduit for the husband's money.

The Part III claim

254. I turn then to determine the wife's claim within the Part III proceedings:

255. I find that:

i) Snowden Properties holds;

a) Flat 1, Effes Road.

b) Flat 6, Effes Road.

c) Garage J.

on resulting trusts and constructive trusts for the husband

ii) Pankratrov Trust Ltd holds Quinta Castle on a resulting trust and constructive trust for the husband

iii) Highlands Invest Ltd holds Flat 4, Effes Road Way on a resulting trust and constructive trust for the husband

iv) Carter Court Ltd holds Flat 28, Broadwalk Way and Garage 78 on a resulting trust and constructive trust for the husband

v) The husband is the sole beneficial owner of the eleven 'Russian properties' held through his companies, entities and nominees

256. Due to the husband's failure to make disclosure or to attend the hearing it is impossible for the court to work from a conventional schedule of assets. From the information/valuations available the identified assets are as follows:

FMH	3,604,907
Snowden Properties	4,539,600
Highlands	1,261,000
Carter Court	2,753,830
Pankratrov	1,843,000
Total English properties	**14,002,337**
Russian properties in W's name	**1,455,000**
Russian Commercial Properties	**91,605,000**
Total	**107,062,337**

257. This is a Part III claim. Section 18(3) requires the court to *in particular have regard to the matters mentioned in section 25(1) and (2) of the 1973 Act*. The award to the wife cannot exceed the award which would be made in a conventional financial remedy case. Part of *all the circumstances of the case* will be a consideration of any provision from a foreign court and if there has such provision whether it is *adequate.*

258. In the present case the wife has received no provision from a Russian court. It is accepted that the only provision that this wife, (who has made her permanent home in this country) will receive is that made pursuant to an order of this court.

s.25 Factors

i) *Income, earning capacity, property and other financial resources*

- I am satisfied that the wife has no independent earning capacity.
- I find that the husband has comprehensibly failed to disclose his assets. So far as income is concerned he undoubtedly receives substantial income from the Russian properties valued by Knight Frank in November 2012 with an estimated rental income of $18,115,714 pa.
- In addition to the UK properties and the valued Russian commercial properties the following resources have been identified, but it is impossible to put a value on them:
    - Rekabe Estates
    - Gagarin Tours LLP
    - Palmers/Palmers Properties Ltd

On the balance of probabilities I find that the husband has additional undisclosed wealth, whether through these three entities or elsewhere.

(ii) Financial needs, obligations and responsibilities

The wife has the entire responsibility for the two children of the family, although Vladimir is studying at University, Anatoli is only 15.

At the beginning of the proceedings the wife put her needs, taking into account the lifestyle of the family at £38,333pcm (£459,996pa). The husband in the MPS hearing whilst challenging the court's jurisdiction to make an order in Part III proceedings did not challenge the quantum. His tacit acceptance that the 'budget' was not unreasonable is reflected in the fact that on 21 February 2011, Withers sent a cheque for £357,040.54 to Mishcon de Reya representing the whole of the outstanding arrears of spousal maintenance and legal fees.

The wife in addition has been living in rented accommodation since the parties separated. She needs a suitable property in which to live with the children of the family and I note that the 'lost sale' of the FMH was £6.2m, I would regard this at the lower end of what it would be reasonable for the wife to spend on a family home, particularly taking into account that the intention of the family was to 'gut' the FMH and they had moved out to allow that to be done. I do not accept that the 'work' done by the husband in the recent past would have been to the standard that he would have wanted for himself and therefore one cannot regard £6.2m as the full 'post renovation' value of the property.

(iii) Standard of Living

This was exceptionally high as is reflected in the figure for maintenance.

(iv) The age of the parties and the duration of the marriage

The wife is 48 and the husband is 49. The marriage was one of 17 years.

(v) *Contributions*

The husband was the wealth creator, the wife the homemaker. Each contributed fully to the marriage. I am satisfied that the all the family's wealth was created during the course of the marriage.

259. The wife seeks half the identified assets as follows:

i) The transfer of the English properties together with the husband's residual share of the proceeds of sale of the FMH;

ii) A lump sum of £38m being approaching half the value of the 11 Russian properties after credit has been given for Russian residential properties held in wife's name and the English properties but without the wife's £5m debt added back. This would give the wife **£53,531,168** before what I very much fear will be the very substantial costs of enforcement.

260. In my judgment this is a case where, notwithstanding the formidable challenges for the wife in enforcing a lump sum order, it would be iniquitous if the husband was permitted, by virtue of his appalling litigation misconduct, to drive the court into an order which is substantially less than that which by virtue of the sharing principle, she would otherwise receive.

261. The wife is a fully contributing wife, all the wealth was created during the course of a substantial marriage of 17 years. The starting point must be that the assets are shared equally. The husband has failed, whether in writing or by attending court to make any submissions to the contrary. The wife does not seek an order of in excess of 50% of the known assets to reflect the overwhelming likelihood that even yet the court does not know the full extent of the husband's wealth.

262. I have considered carefully the wife's debt of £5m and whether it is right that it should be added back in its totality. I have not had direct evidence in relation to the debt, but again the husband did not challenge its genuineness (at a then lower amount) at the interim maintenance hearing. Again the husband has not taken the opportunity to attend court to cross-examine the wife in relation to the debt and as to whether it is 'hard' or 'soft'. I am conscious that, unless and until the wife succeeds in enforcing the lump sum order the only assets from which she will be able to repay the debt are the proceeds of sale of the English properties. It seems likely that the undoubted generosity of the wife's friends mean that they will not expect repayment until the wife's circumstances permit her to do so but it seems to me that allowance must be made for its repayment.

263. I therefore order:

i) The transfer of the UK properties to the wife

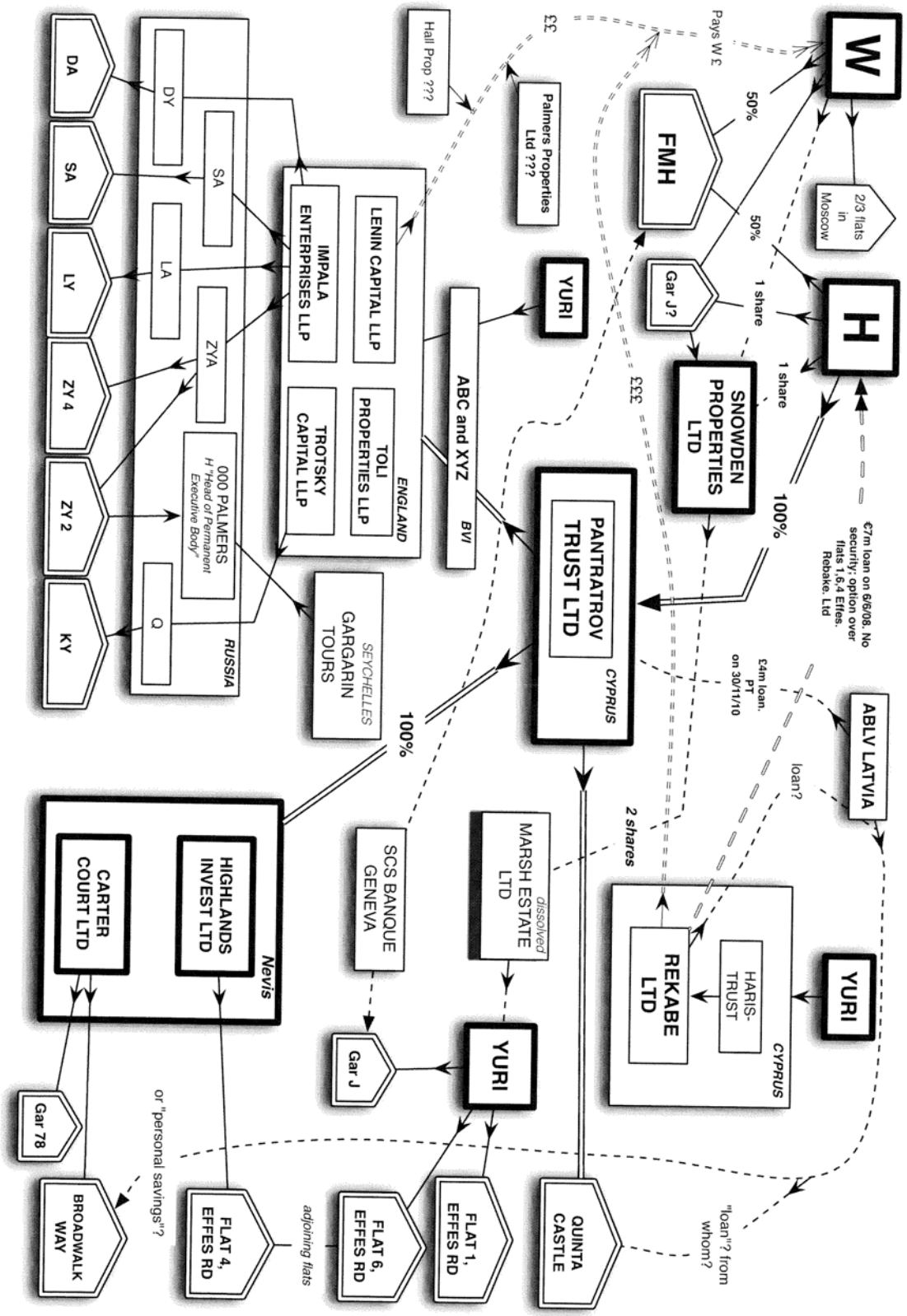
ii) The release to the wife of the husband's share of the balance of sale proceeds of the FMH

iii) Payment by the husband to the wife of a lump sum of £38m

264. As set out in the judgment, Quinta Castle, Flat 28, Broadwalk Way and Garage 78 are the properties in which the husband lives. Together those properties are valued at £4,596,830. The wife is willing to give the husband an opportunity to retain those properties on the basis that he pays to her a lump sum of £10m (credit will be given against the outstanding lump sum of £5,403,170). I am prepared to make an order in those terms and hope very much that the husband will have the good sense to accept the wife's offer which allows him to retain his homes.

265. I will make orders for child maintenance at the rate of £20,000 pa per child until each completes full time tertiary education and make provision for school fees and university costs limited to first degree.

266. Those are the orders of the court.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50%
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FMH
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Hall Prop ???
Palmers Properties Ltd ???
YURI
ABC and XYZ
BVI
PANTRATROV TRUST LTD
CYPRUS
€7m loan on 6/6/08. No security; option over flats 1,6,4 Effes. Rebake. Ltd
£4m loan. PT on 30/11/10
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LENNIN CAPITAL LLP
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CARTER COURT LTD
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BROADWALK WAY
or "personal savings"?
FLAT 4, EFFES RD
adjoining flats
FLAT 6, EFFES RD
FLAT 1, EFFES RD
QUINTA CASTLE
"loan"? from whom?