Neutral Citation Number: [2013] EWHC 3637 (Fam)

Case No: FD07D02865

IN THE HIGH COURT OF JUSTICE

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22/11/2013

Before :

Mr Justice Moor

- -

Between :

Michelle Danique Young	**Applicant**
- and -	
Scot Gordon Young	**Respondent**

Mr Rex Howling QC and Miss Suki Johal for the **Applicant** (instructed by Vardags)
The **Respondent** appeared in person, assisted by Ms Kelly Edwards (solicitor from Sears Tooth & Co) on the first and last day of the trial
Mr Ben Patten QC for the witness, Mr Stephen Jones, a solicitor
Mr Philip Cayford QC for the witness Mr Paul Osborne, a solicitor
Miss Sarah Cockerill QC for the witness Mr Poju Zabludowicz
Mr Charles Hollander QC for the witness, Mr Michael Slater, a solicitor

Hearing dates: - 28th October to 15th November; 18th November; and 22nd November 2013

JUDGMENT

MR JUSTICE MOOR:-

1. I have been dealing with an application for the full range of financial remedies by the Applicant, Michelle Young (hereafter "the Wife") against the Respondent, Scot Young (hereafter "the Husband"). I mean no disrespect in calling them Husband and Wife but do so merely for the sake of convenience.

2. I must also consider an application dated 24th October 2013 made by the Husband to vary a maintenance pending suit order made by Black J in 2009 to a nominal figure and to remit the arrears, which the application says currently amount to £1,265,000.

3. This case has been quite extraordinary even by the standards of the most bitter of matrimonial breakdowns. It has been conducted in the full glare of the Media. Extremely serious allegations have been bandied around like confetti. Some of these allegations can only be described as "*wild*". The case has cost the Wife millions of pounds in litigation fees. It has taken some six and a half years to come to trial. There have been around 65 separate hearings. At an earlier stage, I committed the Husband to prison for six months for contempt of court. I am now going to have to make a large number of findings of fact in relation to matters that are very hotly in issue. I have also decided that I have to be highly critical of the way in which the case has been conducted at various times by both parties. In many respects, this is about as bad an example of how not to litigate as any I have ever encountered.

Legal Representation and costs

4. Mrs Young has been represented by Mr Rex Howling QC and Miss Suki Johal, instructed by Vardags. It has rightly been made clear to me that both counsel and Vardags are doing this on the basis that they will get paid only if Mrs Young succeeds in obtaining a significant lump sum from Mr Young. Moreover, there is no uplift on their normal fees if there is full recovery.

5. Her previous advisers have been paid by a number of different litigation funders. I accept entirely that a litigant who has no assets and cannot obtain legal aid is in a very difficult position in funding very complex litigation. In one sense, the Wife did amazingly well to be able to obtain as much litigation funding as she did, given that she had no security to offer. The amounts spent, however, are truly eye watering. She has had three separate arrangements. The first was with an organisation called Harbour who provided her with funding of £400,000. The arrangement was terminated on 4th December 2009. She then obtained funding from Bracewell Law who provided £1,000,000 before terminating the arrangement in July 2012. Finally, she reached an agreement with ASCL and others. Pursuant to this arrangement, the sum of £2,733,712 was advanced, which included a loan of £626,000 from Ideas Workshop.

6. I was told by Mr Singleton QC who appeared on behalf of Mrs Young on 3rd October 2012 that she had funds from ASCL and others that were sufficient to carry them to the end of a fully contested hearing. As the amount of funding was £3 million, Mr Singleton was absolutely correct. For reasons that completely escape me, the money was entirely spent long before the final hearing commenced. Worse, many of the straightforward directions that I made were simply not complied with. For example, I directed that the Wife file a report from a Mr Luke Steadman of Alvarez & Marsal Global Forensic Dispute Services LLP by 1st March 2013 as to the Husband's financial

position. It is right to note that Mr Steadman did file a statement in November 2012 responding to an Affidavit of the Husband. I have found his statement very helpful but no report was filed either by 1st March or at any other time.

7. I recognise that this case has been as complicated a Financial Remedies case as has been dealt with before these courts. I accept that it has not been helped by the fact that the Husband has been found to be in contempt of court for failing to provide full and frank disclosure. The Wife has had to engage in considerable self-help, which has increased her costs dramatically. She paid her first team of Forensic Accountants from FTI Consulting £500,000 for investigating the case and providing two Preliminary Reports. Indeed, I understand FTI has a claim against her for a further £300,000 of costs that she has not paid. I do not criticise these costs as I accept that this was a case of huge complexity, in which FTI had to consider 127,721 documents from electronic media as well as a further 39,359 pages of hard copy documents.

8. The problem was that, when FTI's final bill of £300,000 was unpaid, the Wife had to change forensic accountants. She went to Alvarez and Marsal and Guidepost Solutions, a firm of investigators instructed at the same time. I accept entirely that the process will have had to start almost entirely again. I am told, however, that Alvarez and Marsal have claimed £800,000 in costs and Guidepost Solutions some £700,000. I have not heard submissions on behalf of either entity and I am therefore not able to say anything further about how these costs came about. It is, however, a fact that, having spent £800,000 on FTI Consulting, a further £1.5 million was incurred without production of a final Accountant's report. Worse, it meant that the Wife ran out of litigation funding long before the final hearing commenced. Moreover, when a further application was made to adjourn in June 2013, I was told that the Wife felt constrained to employ a third firm, who were likely to charge another £750,000. This was not possible as she failed to secure any further litigation funding despite her best efforts to do so.

9. I make it equally clear that I do not want to say anything that makes it even more difficult for litigants to obtain litigation funding in the future, particularly given that there is no legal aid available in this area any more. Nevertheless, the Wife has had over £4 million in litigation funding. She has also spent some of her own money and owes around £750,000 to lawyers and accountants over and above the litigation funding. She had therefore spent around £5 million without getting to the final hearing or having produced a final forensic accountant's report. Her current solicitors and counsel have produced a costs schedule showing costs incurred by them of a further £1,605,052. I should say that £180,000 of this related to an earlier period when Vardags represented the Wife. In total, it means the Wife's costs of this litigation have been around £6.4 million. Whilst I accept that this has been exacerbated by repeated changes of solicitors, in part as a result of the litigation funding issues, and that this case has been as complex as any I have dealt with, I consider the total amount spent to be completely unacceptable.

10. I remind myself of the overriding objective in Rule 1.1 of the 2010 Family Procedure Rules that cases must be dealt with justly. This case has fallen foul

of just about every part of this rule. So far as practicable, cases must be dealt with expeditiously and fairly yet this case has taken nearly seven years. They must be dealt with proportionality. Even though this Husband's affairs were exceptionally complicated, the case has not been dealt with proportionally at any stage. Parties are to be on an equal footing. The Wife has been able to spend around £6.5 million in funding whilst the Husband has been in person virtually throughout. I entirely accept that, if I find that he has hidden substantial assets, it will follow that his decision to act in person was a deliberate tactical one. The Rule goes on to say that expense has to be saved. There has been absolutely no saving of expense in this case. Finally, the court has to allot to each case an appropriate share of the court's resources. It is difficult to see how 65 preliminary hearings followed by a final hearing lasting 20 days can possibly be a fair allocation of this court's limited resources on one case.

11. It follows that I am quite sure that in cases such as this, there should be rigorous control on the amount spent, in particular, on expert evidence. It cannot be right that all the litigation funding is spent long before the final hearing, which is, on any view, the most important part of the entire litigation exercise. Maximum figures need to be placed on the disbursements incurred. If the solicitors and clients are not willing or able to do so, the court will have to impose limits. Without such restraints, litigation funders will be put off supporting these cases for ever.

12. I have deliberately decided not to deal with the terms on which the Wife's litigation funding is said to have been advanced. I have not heard from the litigation funders. It may be that the Wife will, in due course, challenge the enforceability of the agreements. It would be completely wrong for me to say anything that might influence any such litigation. I will therefore be dealing with the case on the basis that the Wife has total debts of around £6.5 million connected with this litigation. Moreover, her liabilities may increase substantially if the funders can enforce the terms of their contracts with her.

13. As already noted, the Husband has appeared throughout the final hearing in person, although he did have assistance from Ms Kelly Edwards of Sears Tooth and Co in the run up to the trial. She assisted in the preparation of the final version of his Replies to the Wife's Questionnaire and in the preparation of his section 25 Statement. Moreover, Ms Edwards was present in court to assist him on Day 1.

14. I do not underestimate in any way the difficulties the Husband has faced in conducting this case on his own. This has been one of the most complicated Financial Remedy cases ever seen in these courts. It has been conducted under the glare of Media attention. It would have been difficult enough for a very experienced QC well versed in the work. For the Husband it has been compounded by the health difficulties that I accept he has suffered. I will return to this in due course. I consider that he has actually performed with dignity and not inconsiderable skill. I have also tried to take into account his difficulties and assist him in so far as I can without doing injustice to the Wife.

I am satisfied that both parties have had a fair trial and that the findings of fact to which I have come are fully justified.

The Law

15. I am asked to make orders pursuant to the Matrimonial Causes Act 1973. My powers are to be found in sections 23 and 24. I can deal with the matter shortly. At this point, the Wife is seeking a lump sum pursuant to section 23(1)(c). In order to decide whether or not to make such an order, I must apply section 25. It is the duty of the court to have regard to all the circumstances of the case. Both the children here are now adults, so they are no longer my first consideration, although they undoubtedly remain highly relevant. I must then have particular regard to the matters set out in subsection (2), namely:-

    (a) The income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity, any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;

    (b) The financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;

    (c) The standard of living enjoyed by the family before the breakdown of the marriage;

    (d) The age of each party to the marriage and the duration of the marriage;

    (e) Any physical or mental disability of either of the parties to the marriage;

    (f) The contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family;

    (g) The conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it; and

    (h) The value to each of the parties to the marriage of any benefit which, by reason of the dissolution …of the marriage, that party will lose the chance of acquiring.

16. I will return to many of these sub-sections hereafter. At this point, I only need mention two. First, it is rightly not alleged that conduct is relevant in this case, other than the allegation that the Husband has been hiding his assets. Second, the contributions of both parties to the marriage have been equal. It was made clear in the seminal House of Lords decision of White v White [2001] 1 AC 596 that there is to be no discrimination in Financial Remedy

cases between the breadwinner and the homemaker, as each, in their respective roles, contribute equally to the family. Indeed, White goes on to decide that, in the absence of good reason to the contrary, the fruits of the marriage are to be divided equally. The Husband quite properly accepts in his Opening Note that, if he had any assets, there should be equal sharing between him and the Wife. It follows that my sole task is to determine his true financial position.

17. The Wife's case is that he is hiding very considerable assets. She alleges that he is worth "*many hundreds of millions of pounds*" or even that he is worth "*a few billion at least*." His case is that he is insolvent with a deficiency of £28 million. I remind myself that the burden of proof is on he or she who seeks to assert a positive case as to disputed facts, although it is for the respondent to the application to provide to the applicant and the court all the relevant information. This has been described as the duty to provide full and frank disclosure.

18. The standard of proof is the civil standard, namely the balance of probabilities. There have been a number of authorities over the years as to how the court should deal with cases involving alleged non-disclosure. In J v J [1955] P 215, Sachs J said at p227:-

> *"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."*

19. And at p229, he said:-

> *"…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 – insofar as such inferences can be properly drawn."*

20. These passages were approved in Baker v Baker [1995] 2 FLR 829, where Butler-Sloss LJ said that the principle had been accepted for over forty years where a spouse was found to have lied and to have been guilty of material

non-disclosure of relevant financial information. It continues to apply. It has been said that it is up to the respondent to open the cupboard door and show that the cupboard is bare. If he does not do so, the court can draw the inference that the cupboard is not bare. As explained in Baker, this is not an improper reversal of the burden of proof. It remains for the applicant to prove her case. A failure by the respondent to discharge the duty of providing full and frank disclosure can, however, lead the court to draw inferences that are appropriate.

21. There are issues in the case as to the extent to which the Husband has lied to this court and/or to others. Indeed, it is part of his case that he has misled banks and individuals as to his financial circumstances in the past but he says he has told me the entire truth. First, I must decide whether or not he did deliberately tell lies. If I find that he did, I have to ask myself why he lied. The mere fact that someone tells a lie is not in itself evidence that the person concerned had undisclosed assets. An individual may lie for many reasons. They may possibly be "*innocent*" ones in the sense that they do not denote a false presentation of his current financial position. They may be lies to bolster a true case; or to protect someone else; or to conceal some other disreputable conduct or out of panic, distress or confusion. In this case, earlier lies may have been intended to conceal a collapsing financial empire. More recent ones may have been to conceal previous wrong doing.

22. It follows that, if I find that the Husband has lied to me, I must assess whether or not there is an "*innocent*" explanation for those lies that does not support the Wife's case that he has hidden assets. However, if I am satisfied that there is no such explanation, I can take the lies into account in my assessment of his case that he is penniless and hopelessly bankrupt.

23. There has been some debate as to the relevance of the fact that the Husband remains an un-discharged bankrupt. I accept that any assets that were owned either beneficially or legally by the Husband on 9th April 2010 (when he was made bankrupt) are now vested in his joint trustees in bankruptcy [section 306, Insolvency Act 1986]. Pursuant to Re Holliday (A Bankrupt) [1981] Ch 405, the Court is therefore precluded from making property adjustment orders. The Court is not, however, precluded from making a lump sum order, provided consideration is given to the level of his debts, statutory interest and the costs of the insolvency when weighing in the balance the quantum of any lump sum order (see Hellyer v Hellyer [1996] 2 FLR 579).

The History

24. The Husband was born on 10th January 1962 and so is aged 51. He describes himself in his Form E as an entrepreneur. It is clear that his entrepreneurial activities have been primarily directed in three areas. First, he has been involved in the property market. Second, he has developed and run various technology companies. Third, he has invested seed-corn capital into start up businesses in the hope that they will prosper. He accepts that, "*almost*

invariably", these investments would be held for him by his lieutenant, Mr Gwilym Davies as bare trustee.

25. The Wife was born on 18th May 1964, so she is aged 49. She previously worked in retail fashion but has been a housewife and mother for many years. It has rightly not been suggested that she has any significant earning capacity now.

26. The parties met in 1988 and began to cohabit in 1989. They married on 31st March 1995. As the marriage did not break down until 2006, I will treat this as a 17 year marriage, which is a marriage of significant length.

27. There are two children. Scarlett was born on 18th September 1992 and so is aged 21. Sasha was born on 19th November 1994, so she had her 19th birthday during the hearing. Both are students in London. They continue to reside with their Mother.

28. There is no doubt that the parties started with virtually nothing. They lived with the Wife's parents initially. The Husband asserts that he had some savings that he invested in their first marital home but he did not own his own property when they met. I therefore proceed on the basis that any assets that I find the Husband now has were generated during the relationship.

<u>The Standard of living</u>

29. There is no doubt that their standard of living increased exponentially. There is some dispute as to exactly how lavish it was but no dispute that a very great deal of money was spent. The Husband says the family lived beyond its means but he was not, in any way, a reluctant spender. The Wife says that their lifestyle was luxurious. She points to a collection of watches she says the Husband had worth in excess of £1 million. On her 40th birthday, she says he bought her a Graff diamond set worth £1 million and that her wedding ring also cost £1 million. In her oral evidence, she told me that the family lived on vast estates with staff. She said that he would regularly spend up to £5,000 in restaurants and told her the annual bill for restaurants was up to £1 million.

30. The Husband accepted that the family had a very expensive lifestyle but denied it was as lavish as the Wife alleged. He said he had only ten 10 watches, the most expensive of which was worth £70,000. He said that he got the jewellery for the Wife's 40th birthday from Giraffe and it cost £150,000. He said the wedding ring cost £50,000. He denied that the family spent anything like £1 million per annum on restaurants.

31. I have to say that, in relation to this part of the case, I prefer the evidence of the Husband. The Wife accepted that she sold all her jewellery at auction through Sothebys in 2008-2009 for around £160,000 to £180,000. Even allowing for a very significant uplift on cost when jewellery is purchased in retail jewellers, I cannot see that the jewellery can have cost as much as the Wife alleges. Further, I consider the alleged restaurant expenditure to be

almost impossible. The Wife accepted they went out a couple of times per week. Even if they spent £5,000 each time, that would only be £500,000 per annum but I do not think it was nearly that high. Regrettably, the Wife was exaggerating but there is no doubt that the expenditure was, by any normal standards, extremely high.

The Husband's business career

32. In 1997, the Husband purchased a 50% interest in a company known as Dione Investments. Mr Pojo Zabludowicz acquired the other 50% interest. Dione was involved in chip and pin sales machines. The technology appears to have been ahead of its time and there is no doubt the company was very successful. He says the purchase price was around £8.6 million of which the Husband contributed £2.6 million, of which he borrowed £2 million. He paid less than half the purchase price for a 50% share because he had found the investment and it was his project.

33. The same year, he purchased Woodperry House, Woodperry, Stanton St John, Oxford. He took a mortgage of £2.5 million and a loan of £1.5 million from Ian Chisholm.

34. In the year 2000, the Husband commenced an involvement with EU Smart. He secured investment of £2 million and acquired for himself an 18.5% interest. The company raised approximately £22 million in relation to digital stamp technology via the Post Office. It was developing the online equivalent of a registered letter. The following year, he negotiated a contract between a company called Tele2 and the Post Office to sell top-up phone cards in the Post Office. He says he received commission of approximately £2 million per annum for four years to 2005 when the commission ended.

35. On 22nd March 2001, he sold Woodperry House for £13.5 million and purchased Wentworth Park, Prune Hill, Engelfield Green, for £16 million together with £800,000 for the fixtures and fittings. He took a mortgage of £11 million with Coutts. He did not retain the property for long as it was sold on 24th September 2001 for £19.53 million plus £1 million for the fixtures and fittings. On any view, this was a tidy profit in only six months.

36. He says that in 2002 EU Smart ceased trading with significant debts. The Husband's case is that he purchased all the investor's shares for 12 pence in the pound using secondary lending. He estimates he lost around £2.5 million of his own money.

37. On 14th May 2002, pursuant to a shareholders agreement, he purchased £178,500 worth of shares in a company called EPOSS, which was also involved in mobile telephone top-up cards. The intention was to use the Dione chip and pin terminals to allow telephone top-ups. His partner was a man called John Peter Williams. Subsequently, he invested a further £2.5 million. By November 2003, the Husband owned 18.56% of EPOSS plus 32.07% of the preference shares, at a total cost to him of £4.6 million. As was so often

the case, he held the shareholding through four nominee companies as well as holding a further 3.75% through a company known as Pre-Pay Solutions. He says that the company got into financial difficulties and that, in 2006, he pledged shares to Mr Williams and to the Bank of Scotland as security for various liabilities.

38. On 24th September 2002, he purchased 39 Chester Terrace, NW1 for £2.75 million with a mortgage of £2.2 million from the Bank of Scotland.

39. In December 2002, a schedule of his assets was produced by the Husband for presentation to Coutts & Co. The Wife discovered the schedule hidden on a computer given to the girls after the separation. There has been much dispute as to the veracity of the schedule but, on the face of it, it shows that the Husband had or was to receive assets worth £312,925,000. It is important to note, however, that it does include £210 million of future royalty receipts from Tele2 and a company called MVNO.

40. In 2003, the Husband received commission of £2.84 million from Alpha Telecom. On 19th February 2003, the Husband purchased through Condor Corporate Services Ltd, a property known as Blunt House for £2.35 million plus VAT. He utilised two bridging loans from the Bank of Scotland of £1.89 million and £411,000. Blunt House became the headquarters of Dione Developments Ltd. A few days later, on 28th February 2003, the Husband purchased Wootton Place, Church Street, Wootton for £6 million with a mortgage of £5 million from Bank of Scotland.

41. The Husband had a close relationship with a solicitor, Stanley Beller who was the principal of Beller & Co. Mr Beller has since been struck off for reasons that I will explain in due course. On 3rd March 2004, Beller & Co wrote a letter which said that the firm was able to confirm that "*the assets of Mr Young and his family interests exceed £120 million*."

42. During 2004, the Husband acquired a number of properties in Eaton Square. In March, he purchased the leasehold of 112 Eaton Square for £6.25 million with a mortgage from Coutts. In April, he acquired the lease of 28 Eaton Square for £360,000. His case is that this money was loaned by a Mr Jonathan Brown. In August, he purchased the freehold of 112 Eaton Square for £1.85 million again with a mortgage from Coutts. On 11th October 2004, he acquired a short lease of 27 Eaton Square for £335,000. He says he sold this short lease to the late Boris Berezovsky in December of that year for £350,000.

43. In October 2004, Dione Plc was sold to Lipman Electronic Engineering. It seems tolerably clear that the Husband received $23 million for his shares, although this may have been net of various payments (but not income tax). This was out of total up-front consideration of $69 million. He did not receive half as, by then, GE Capital had an interest in the business. There were earn out provisions that could have increased the total price by $33.4 million in cash plus 442,105 shares in Lipman, estimated as being worth approximately a further $10 million, provided Dione met various EBITDA targets going

forward. The Husband says that GE Capital insisted that they got all their money "*up-front*" so that he was entitled to 50% of any earn-out. This would have been a further $21.5 million plus $5 million worth of shares. The Husband says that, unfortunately, there was a Government delay in introducing legislation for chip and pin machines such that he did not get any of this deferred consideration. Lipman itself, however, did very well and was sold to the multinational, Verifone, for somewhere between $790 and $970 million in 2006.

44. In February 2005, the Husband says he was invited to invest in a Russian property deal that has been named Project Moscow by a friend, Ruslan Formichev. The investment was made through a company called Parasol Participations. His case is that he could only do so by borrowing money from his business friends and partners. He says that he managed to raise a significant amount of money which was invested but could not provide the entire amount promised. In March 2006, his involvement in the project collapsed. Until the trial, it had been a central plank of his case that he had lost a very significant sum of money in this transaction and this had led to his financial collapse. During the trial, he accepted that he had not lost any money. Indeed, I had already formed the view that it was difficult to see how he had lost anything significant. As I will explain in due course, on 30th August 2006, an Acquisition Agreement was signed by which Mr Formichev returned $20.5 million to the various investors so as to acquire all the B shares in Parasol. An issue I will, however, have to determine is the extent to which any of his business friends and partners lost money as a result of this deal and are now genuine creditors of the Husband.

45. On 8th July 2005, Stanley Beller wrote to Olivier Millie, the director of a bank in Monaco, that "*we are able to confirm that the assets of Mr Scot Young exceed £120 million*."

46. There were further property transactions during 2005 both in Eaton Square and elsewhere. On 14th July 2005, the Husband purchased 111 Eaton Square for £11.5 million with a mortgage from Bank of Scotland of £11.25 million. On 10th August 20005, he acquired the residue of a lease of 29A Eaton Square for £245,000. He says the money came from Jonathan Brown and that he held the lease on trust for Mr Brown. He says he received commission of £55,000. On 1st November, he says he sold both 111 and 112 Eaton Square for £12 and £12.2 million respectively. In late 2005, he sold the then matrimonial home, Bakeham House, Wentworth for £19 million. He was, however, still purchasing property. In November 2005, he acquired Buckingham Suite, 26/27 Belgrave Square for £4.15 million from Ekaterina Berezovskaya, although it is said that (part of the) consideration was deferred. Later that month, he purchased 29 South Lodge, 245 Knightsbridge for £3.15 million with a mortgage from Bank of Scotland for £2.7 million.

47. On 15th December 2005, he acquired 3467 North Moorings Way, Coconut Grove, Miami for $6.4 million plus $500,000 for the contents with a mortgage from the Bank of Scotland for £3.8 million. The property was purchased

through a BVI company, Greenfield Horizon Ltd (BVI). The Wife and the children moved to Miami that month.

48. In January 2006, the Husband says that he attempted to purchase 21 Upper Grosvenor Street for £6.6 million. His case is that he paid a deposit of £760,000 but could not complete the purchase. He also offered to buy 901 The Knightsbridge for £14.1 million plus £900,000 for parking spaces.

The Husband's alleged financial meltdown

49. The Husband's case is that it was around this time that he became aware that he was facing financial meltdown. He says that EU Smart Ltd was placed into administration. He adds that, in February 2006, he transferred his interest in a company known as Fosse Developments Ltd to a business associate, Stephen Kay in "*part settlement of monies owed*."

50. There is no doubt that the Husband was heavily indebted to the Bank of Scotland at the time. Although he used Fox Williams as his main solicitors, he also had a very close relationship with a Mr Stanley Beller of Beller & Co, Solicitors. On 23rd February 2006, Mr Beller wrote to Mr Alastair Kennedy, Senior Director of the Bank of Scotland that "*you can accept this letter as my confirmation that we are holding securities to the value of not less than £15 million for the benefit of Scot. You may accept this letter as my renewed undertaking that we will hold a minimum sum of £6 million to your order until further notice*".

51. On 28th February 2006, he wrote a further letter to Mr Kennedy saying that his firm "*currently holds in excess of £4.2 million in cleared funds for Scot Young. If instructed by Mr Young, these moneys could be remitted to Bank of Scotland this afternoon by CHAPS transfer. We presently control securities to the value of approximately £13 million where Mr Young is the beneficial owner. A schedule providing a breakdown of these securities is attached. In addition, we control a block of O2 shares where Mr Young is also the beneficial owner. This block of O2 shares underpins the £6 million undertaking that has been given by my firm to your specialist property finance division.*" The Schedule was headed Jersey Shareholdings. It included Lloyds Bank shares said to be worth £3.57 million; Eircom shares worth £4.53 million; M & S shares worth £1.29 million; Woolworths shares worth £1.03 million and Prudential shares worth £3.25 million, making a total of £13.67 million.

52. On 28th February 2006, the Husband wrote a letter to Mr Beller from 28 Eaton Square. He wrote in relation to the O2 shares and referred to an undertaking given by Mr Beller to Fox Williams dated the same day to remit the sum of £6 million to Fox Williams. The Husband's letter said:-

> "*The purpose of this letter is to confirm that you are irrevocably instructed, upon release of the Undertaking, to forthwith initiate the sale of my portfolio of 3,100,000 ordinary shares in the capital of O2*

PLC which currently support the Undertaking and to account to the Bank of Scotland Private Banking for the net proceeds of such sale. I confirm that the closing price on 27th February 2006 of 199.5 pence per share valued the O2 Portfolio at £6,184,500".

53. It is thus clear that at this point in time, the Husband and Mr Beller were telling the world that Mr Beller held at least £24 million in assets that belonged beneficially to the Husband. In fact, it seems tolerably clear that no money was remitted pursuant to any of these undertakings. In particular, the O2 shares could not be sold due to an offer made by Telefonica to acquire the entire share capital of O2 at exactly this time. A letter from Mr Beller to the Bank of Scotland dated 8th March 2006 indicates that the cash option of £2 per share had been accepted and the form of acceptance despatched to the receiving agent. The letter went on to indicate that Mr Beller would account to the Bank for the proceeds upon receipt which would be despatched within 14 days of receipt of the acceptance form.

54. In addition, it appears that Mr Beller had given an undertaking to hold £2,200,000 to the order of the Zabludowicz Trust. He subsequently said that he had paid the sum of £2.2 million to the Husband on the Husband saying that the Zabludowicz Trust had consented, when it had not.

55. Things came to a head on 22nd March 2006. Mr Beller told the Bank of Scotland and others that he could not comply with the various undertakings he had given. His case was that the Husband had come into his office and had removed the various share certificates without Mr Beller's knowledge or consent. Mr Beller was subsequently struck off the roll of solicitors for failure to comply with his undertakings. He appealed to the Divisional Court but his appeal was finally dismissed on 24th July 2009 by Thomas LJ and Burton J. The judgment recites that Mr Beller had been duped by the Husband, who was dishonest but that was no excuse.

56. Unsurprisingly, the Husband was asked about what happened to the O2 shares in the Wife's Questionnaire. He responded that he was not prepared to explain, citing the privilege against self-incrimination. In fact, the privilege against self-incrimination is not available to him in Financial Remedy applications, although any information provided under compulsion cannot then be used against him in a criminal trial. His case before me is that the O2 shares and all the other shares purportedly held on his behalf by Mr Beller simply did not exist. He is unable to say why Mr Beller would be prepared to lie on his behalf given such enormous sums of money were at stake, other than to say that he was looking after Mr Beller by, for example, paying the cost of Mr Beller's son's Bar Mitzvah at the Dorchester Hotel.

57. Not surprisingly, as soon as the Bank of Scotland heard that the undertakings could not be honoured, they called in the loans and instituted possession proceedings against the Husband. I heard oral evidence from Mr William Raeburn, former Executive Member of the Bank of Scotland, who told me that all the Husband's properties were sold, recouping £21,890,126 for the Bank but leaving a shortfall of £3,355,440.

58. It appears that the Husband briefly admitted himself to the Priory Hospital in Birmingham on the 22nd March 2006 before flying to Miami to be with the Wife and children. It is said that this was at the suggestion of Mr Stephen Jones, a solicitor from Jirehouse Capital. Although Jirehouse had never acted for the Husband, they acted for a number of the Husband's business associates and creditors who were the investors in Project Moscow. Jirehouse proceeded to organise a restructuring of the Husband's affairs and, in particular, to attempt to arrange repayment of the creditors. As I have already noted, Mr Formachev agreed to buy back the Parasol Participations Shares for $20.5 million, which was paid to various creditors of the Husband by Mr Jones.

59. The Husband's case is that March 2006 saw the implosion of his business empire leaving nothing but debts to HMRC, the Bank of Scotland and his business friends and colleagues. To the contrary says the Wife. He realised his marriage was breaking down. He manufactured his business implosion whilst removing every asset that he could and hiding it out of the reach of the Wife.

<u>The computer evidence</u>

60. Later, the Husband gave a computer to the children. He had attempted to wipe the hard drive but the Wife's computer experts were able to recover a number of deleted documents. They included two documents in particular:-

    (a) A schedule dated December 2002 prepared by the Husband for Coutts Bank. It purports to show assets totalling £312,925,000. Of these, £17.5 million is said to be cash held by Fox Williams for the Husband. The Schedule then divides the other assets into risk classifications, namely "*Cautious*", "*Moderate*" and "*High*". The figure under "*Cautious*" is un-particularised but said to be worth £16 million. Mr Howling, not unreasonably, asks me to infer that these are the shares subsequently held by Mr Beller. There is nothing listed under "*Moderate*" but under "*High*" is a total of £279,425,000. Included within this column are a number of private investments. Dione is valued at £21.975 million plus a loan of £2.35 million. Alpha Telecom is valued at £8.6 million. The last two entries are by far and away the largest amounts, namely "*MVNO Royalty Income from 1st March 2003, say 6 years - £60 million*" and "*Tele2Royalty 6 years - £25m pa - £150 million*".

    (b) A document headed March 2006 prepared for the Bank of Scotland with the assistance of Fox Williams. It is also clear that part of the information for this document came from the Husband's right hand man, Mr Gwilym Davies. The document has four columns, namely "*Assets*"; "*Value paid*"; "*Current value*"; and "*Profit*". It includes the Husband's property investments and his interests in private companies. It does not include any publicly quoted shares held by Mr Beller. The

"*Value Paid*" column totals £159,660,000. The "*Current Value*" figure is £382,241,496. The "*Profit*" figure is therefore £222,554,496. It is clear from notes on one version of the Schedule that the property valuations were supposed to relate to a series of Knight Frank valuations. There are a number of properties on the Schedule that the Husband does not accept he ever owned or even had an interest in. I will have to return to these in due course but they include a value of £20.65 million given to 21 Upper Grosvenor Street and £30 million to Lincoln University Halls of Residence. Most importantly, the Schedule includes a value of £200 million for "*Project Mayfair*" subject to total development costs of £100 million, with £5 million "*already committed*". The interests in private companies include MIG (in which the Husband's 22% share is valued at £8 million), Qiosks (in which his 20% share is valued at £20 million) and IDM Cityscape (100% valued at £16 to £20 million).

61. I am going to have to consider the competing arguments regarding these Schedules. The Wife says they are compelling evidence of the true value of the Husband's assets at the time. The Husband says they are works of fiction that were designed to bolster an imploding financial position.

62. I have already noted that it was on 22nd March 2006 that the Husband briefly attended the Priory Hospital in Birmingham and the Wife received the telephone call from Stephen Jones of Jirehouse Capital informing her of her Husband's financial meltdown. As noted, the Husband moved out to Florida to be with the Wife and children but the marriage was on its last legs.

<u>The litigation against the Husband</u>

63. Litigation against the Husband then commenced in earnest. On 10th April 2006, a trust controlled by Mr Pojo Zabludowicz obtained a freezing order in the Queen's Bench Division from Butterfield J to secure £2.35 million. On 4th April 2006, Lightman J made a freezing order for £5.8 million in litigation commenced by the Bank of Scotland. Indeed, on 23rd May 2006, the Bank of Scotland called in loan facilities made to the Husband and issued a claim in Chancery Division for £13.11 million. On 4th June 2006, Collins J made a freezing order against the Husband, Greenfield Horizon Ltd and Condor Corporate for £24 million on the application of Mr Stanley Beller, his previous solicitor. By August 2006, the Husband was asserting insolvency in an Affidavit he filed in one of these set of proceedings.

64. The Bank of Scotland repossessed the Husband's property assets and began realising those assets in the summer of 2006. Buckingham Suite, 26/27 Belgrave Square was sold in August for £4 million. 29 South Lodge, 245 Knightsbridge went for £3.25 million. At the end of October, the Bank sold Wootton Place for £9.5 million. On 15th December 2006, 39 Chester Terrace was sold for £3.1 million. Three days later, Blunt House in High Wycombe, once the home of Dione Ltd, was sold for £6.25 million. Finally, on 28th March 2007, 3467 North Moorings Way, Coconut Grove, Miami was sold for

$6.9 million, although I accept that this was a voluntary sale by the Husband, albeit under the threat or repossession.

65. On 14th September 2006, a consent order was made in the Queen's Bench Division in the proceedings brought by the Zabludowicz Trust for judgment against the Husband for £2.2 million plus interest, payable by 26th September 2006. Stanley Beller discontinued his claim on 30th April 2007.

The breakdown of the marriage

66. The parties separated on 5th November 2006, when the Wife and children returned to London and resided in a rented property at 14 Regent's Park Terrace. The rent of £104,000 per annum was paid by a family friend, Sir Tom Hunter. On 9th May 2007, the Husband transferred £100,000 to the Wife, which was said to be the repayment of money owed to the Wife's mother. The Wife issued a divorce petition on 8th June 2007. Around the same time, the Husband returned briefly to the UK before moving in July 2007 to Berlin, where he stayed in the Ritz Carlton Hotel at a cost of €100 per night. He says this was paid by Mr Richard Kay, on whose behalf he was exploring potential property investments in Germany.

67. The Wife presented a petition for divorce on 8th June 2007. A decree nisi was finally granted on 27th February 2013. It has not been made absolute as yet. There will have to be a decree absolute now for two reasons. First, these parties must be finally divorced. Second, any final Financial Remedies order that I make cannot be enforced until the decree has been made absolute.

The Wife's Financial Remedies application

68. The Wife's application for Financial Remedies was launched on 19th June 2007. It has taken six and a half years for it to come to trial. I do not propose to do other than detail the most significant parts of the sorry litigation history. The Wife herself applied for a freezing injunction against the Husband on 19th June 2007. Moylan J froze assets worldwide up to £60 million. Numerous properties and shareholdings were included in the order. Subject to certain specific amendments, the injunction has remained in place ever since.

69. On 14th August 2007, the Husband swore his Form E. It was completed in manuscript by the Husband himself. He said he was of no fixed abode and that all his property had been repossessed by the Bank although he still owed them some £2 million. His only asset that he listed was a watch worth £20,000. He said he was "*technically insolvent*" with liabilities of £27,834,109. He said he was maintaining the Wife and the children out of "*money borrowed from friends*." He said he would continue to do this until he started earning money again. He said that, once he was back in business, he believed he would be able "*to generate a substantial income and properly provide for my wife and children*."

70. The Wife swore her Form E on 11th September 2007. She said she had an income of £121,200 from Stephen Kay for her rent as well as £92,000 from Harold Tillman and £20,000 given to her in cash. Her income needs and those of the children were put at £45,435 per month, including rent of £10,100 per month. If the children and rent are excluded, she said she required £29,635 per month for herself or £355,620 per annum. She put her capital needs at £7,500,000 of which £5 million was for a house in this country. She described the lavish lifestyle enjoyed during the marriage.

The quest for full and frank disclosure

71. A monumental battle ensued thereafter to attempt to secure full and frank disclosure from the Husband. The Wife's legal advisers drafted detailed and lengthy questionnaires with the help of forensic accountants. The court made orders for the Husband to answer these questionnaires and produce all relevant documents. At times, he did not reply at all. At others, he provided replies which the court subsequently found to be inadequate. The Wife first applied for his committal to prison on 18th May 2009. Parker J found him to be in contempt of court and committed him to prison on 29th June 2009 for six months suspended for 92 days on terms that he provide the answers in full by 7th September 2009. He did not do so. He was in hospital for thirteen days from 28th August to 10th September 2009. He subsequently instructed Payne Hicks Beach solicitors and replies were served on 11th November 2009 together with 50 or 51 lever arch files of documents.

72. For a number of reasons, including difficulties the Wife was having with funding the litigation, there followed a significant delay in progressing matters. In January 2011, Mostyn J made an order that the Wife was not to issue any further applications for the committal of the Husband. It was subsequently agreed that this was because Mostyn J considered the case should be heard on the evidence before the court and, if appropriate, adverse inferences should be drawn against the Husband. In October 2012, the Wife applied to adjourn the final hearing which was listed in November 2012. Reluctantly, I agreed to the application as the case was simply not ready for trial and the time estimate of ten days was inadequate. The case was re-listed for October 2013 with a twenty day time estimate.

73. Subsequently, I made a further order that the Husband answer the Questionnaire by 10th December 2012. There is no doubt that he did not do so although he did subsequently purport to provide answers on 14th January 2013. I heard a fresh application for his committal to prison on 15th January 2013. My judgment was delivered on 16th January 2013. For the reasons expressed in the judgment, I found to the criminal standard of proof that the Husband remained in contempt of court. I sentenced him to six months in prison. Although I made him well aware of his right to apply to me to purge his contempt, he made no such application. I do, of course, recognise the difficulties inherent in answering a detailed questionnaire whilst in prison. He was released in mid March 2013 after he had served half his sentence.

Financial support for the Wife

74. There is no doubt that, following the separation, the Husband continued to maintain the Wife and children generously. A schedule produced by the Husband entitled "*The Young Family and its assistance from friends*" shows total financial support for the family (including the Husband himself) for the period 2006 to 2009 in the sum of £1,175,599. In his answers to Questionnaire, he produced a table of gifts he had received since then for rent, living expenses and the like. The total is approximately £315,000. One of the issues I am going to have to decide is where all this money came from. The Husband says it was loaned/gifted to him from generous friends, some of whom are very wealthy and well known. The Wife's case is that, in large part, he was channelling his own hidden resources utilising the help of these friends.

75. The Wife received her last "*maintenance*" payment in April 2008, although the payments for rent and school fees continued for a time. The Wife says that he then stopped the rent on her property in Regent's Park Terrace in June 2009 because she was alleging he was the beneficial owner of the property. She had to vacate on 21st November 2009 to avoid eviction. She moved with the children to a cheaper property at 39 Carlton Hill, St John's Wood, where the rent was £1,500 per week. Indeed, on 12th November 2009, a sum of £50,000 was provided by the Husband for the rent for that new property. She says that the ending of her maintenance itself coincided with her finding evidence on the hard drives of the computers given by the Husband to the children that he was worth £400 million. She applied for maintenance pending suit. She claimed that the Husband had made it clear to her that he would only commence payments again if she dropped her claims against him.

76. Her application for maintenance pending suit came before Black J on 17th to 18th December 2009. She described the Husband's Form E as being "*so uninformative as to be nearly useless*." Although she said it was inappropriate to make findings of fact without oral evidence, she surveyed the luxurious standard of living during the marriage, the documents as to the Husband's wealth found on his computers and the alleged benefactions from friends averaging out at £400,000 pa. She came to the conclusion that she should make an award of £27,500 per month plus rent and school fees to cover both the Wife's general maintenance and her need to fund the litigation. It is clear that she considered that this broadly reflected the support the Husband had historically been providing to the Wife and children. The Husband has made no payments under this order whatsoever. The arrears are currently just short of £1.3 million excluding the rent and school fees.

The passport issue

77. The Husband had returned from Berlin in March 2009. On 12th March 2009, Hogg J directed the tipstaff to seize his passport. The court has held it ever

since, namely some four and a half years. This is a very long period of time indeed. He applied for its return on 11th May 2009. The application was adjourned on a couple of occasions and eventually heard by Mostyn J on 27th January 2012. On 3rd February 2012, he refused the application. His judgment is to be found at [2012] EWHC 138 (Fam). He did so, in part, on the basis that the final hearing of the case was to take place in October of that year. He did, however, remark that he considered that even that period was at the "*extremities of the court's powers*". As a result of the adjournment of the final hearing, the passport has, in fact, been held for 20 months since his decision, although it is right to note that the Husband has not applied again for its return.

The bankruptcy proceedings

78. On 9th April 2010, the Husband was made bankrupt on a petition presented by HMRC. There were a total of 20 creditors, claiming to be owed £27,772,128 excluding interest and costs. Of these creditors, HMRC said it was owed £1,607,321. On 9th April 2011, an interim order was made to suspend the Husband's automatic discharge from bankruptcy. He remains an un-discharged bankrupt. On 1st June 2012, the Wife applied to annul the bankruptcy. Registrar Barber transferred the application to the Family Division on 9th July 2012. On 2nd October 2013, I adjourned the application generally on the basis that the Wife could restore it if she obtained a significant lump sum at this hearing.

Further attempts by the Wife to obtain discovery

79. The Wife has applied at various times both for Inspection Orders (to obtain documentation from third parties) and for Search and Seizure orders. She has also applied for orders against various computers used by the Husband. Search and Seizure orders are particularly draconian. I do not propose to set out here full details of the orders obtained but they included orders against a storage depot in Banbury; a hotel room where the Husband was staying; the Husband's previous rented property; the business premises of a company known as Baron & Co, operated by a Mr Constantine; the address of the Husband's girlfriend, Ms Reno; and the offices of Jirehouse Capital. Jirehouse applied on 22nd March 2012 to set aside the order in relation to its premises. It was subsequently agreed that the order would not be executed on terms that any documents held by Jirehouse which related to the Husband's financial affairs would be copied to the Wife's solicitors.

80. The Wife seems to take the view that she has in some way been disadvantaged by a lack of litigation funding such that it was impossible for her to make further applications. I reject any such assertion. She has made far more applications than in any other case I have ever come across. Indeed, I believe further applications would have amounted to an abuse of process. If it was impossible to prove her case from the applications she has made, I consider it would have been impossible for her ever to prove her case. Draconian orders,

such as Search and Seizure orders, are an important part of the court's armoury but they have to be used sparingly and the court has to proceed cautiously. I accept that this was a suitable case for the use of such orders but the number obtained by the Wife was at the very limit of what was appropriate even in this exceptional case.

81. I have, of course, found that the Husband is in contempt of court in not providing complete or even adequate answers to the Wife's Questionnaires. In that respect, he is to be criticised substantially. Indeed, he has paid the penalty by being committed to prison for a long period. It should, however, be noted that in other respects, he has not obstructed the process of evidence gathering. In particular, he waived privilege into all files held by his previous solicitors, Fox Williams and Wright Hassall. He has allowed investigation of his computers by independent IT experts. He has signed various letters of authority to enable the Wife to make further enquiries of various professionals. Whilst I do not agree that the latter is, in general, an acceptable way of complying with a duty to give full and frank disclosure, it is a useful tool if the other side make such a request.

82. The Wife has made a number of serious allegations against third parties. I will have to deal with some of them in detail when I come to my findings of fact. At one point, she alleged that the Husband had an interest in American Idol. Mr Simon Cowell heard of this allegation and made an application to the court. On 13th April 2011, Mostyn J made an order that, if the Wife intended to pursue any allegations against Mr Cowell, she should give 14 days notice to his solicitors. She has not done so. I have read an enormous amount of documentation concerned with this case. I have seen absolutely no evidence that the Husband had any interest in American Idol. The allegation should never have been made.

The OS/DS hearings

83. There is no doubt that this case has been beset by difficulties. Both parties have suffered significant ill health. The Wife has regularly had funding difficulties which have caused the case to be put on hold. Long periods of time have elapsed with little happening followed by intense periods of litigation activity. There came a time when Mostyn J was asked to hear evidence from a number of witnesses, including the Husband, over approximately four days, pursuant to the decision of Coleridge J in OS/DS [2004] EWHC 2376; [2005] 1 FLR 675. Extensive evidence was given but all those witnesses have been required to give further evidence before me.

84. I must confess to considerable reservations about this procedure. I have found it quite difficult to follow the transcripts of the evidence given to Mostyn J. All the important evidence has had to be repeated before me. I have come to the conclusion that the OS/DS hearings have not assisted the progress of this case whilst taking up considerable court time at, no doubt, significant expense.

85. There is clearly an important role for the taking of oral evidence before a final hearing. I have, however, come to the conclusion that it should not be an unfocussed, wide ranging trawl through the evidence without findings of fact being made at the conclusion of the hearing, as happened in this case. I entirely accept that it is unhelpful to be too prescriptive. There may be situations where such a hearing is valuable for a specific reason but, in general, I take the view that it is only a proper use of court resources if one of the following two scenarios apply:-

    (a) As in certain Public Law cases, where it leads to specific findings of fact that become res judicata so that the issues need not be revisited at the final hearing. An example would be a case in which there is an issue as to whether or not a Trust is a Post Nuptial Settlement. This can easily be determined separately and it is clearly important that the parties know the result so they can then formulate their approach to the rest of the case. In such circumstances, the same judge would almost always have to conduct the final hearing. Moreover, if the case is to be dealt with in this way, the parties' respective rights to a fair trial pursuant to Article 6 must be carefully considered. It may, for example, be unfair to one party to consider a specific part of the case in a vacuum, particularly if issues of credit arise.

    (b) By analogy with the case of Khanna v Lovell White Durrant [1995] 1 WLR 121, it is part of an exercise in obtaining pre-trial discovery of documents where the witness is asked to give specific evidence by way of explanation of the document or how it came into his or her possession. Inspection Orders pursuant to FPR 21 are a very valuable tool in the court's armoury. I would envisage additional oral evidence only being necessary where it will assist the future conduct of the case either by shaping the remainder of the discovery process or in ruling out a specific line of enquiry (see Frary v Frary [1992] 2 FLR 696 at 703B).

The Wife's 2012 and 2013 applications to adjourn

86. Following the OS/DS hearings, Mostyn J set the matter down for a ten day final hearing in the autumn of 2012. That hearing was listed before me. On 21st September 2012, the Wife applied to adjourn the final hearing to the first open date after 1st March 2013 with a time estimate of 15 days. I was told that Bracewell Law had decided to put the legal funding of the Wife's case on hold in the spring of 2012 and had stopped paying her then solicitors, DWFM Beckman as well as FTI Consulting. The Wife had subsequently instructed Winckworth Sherwood and obtained the further litigation funding I have already outlined. I was told, however, that it was too late to get the case prepared properly for the final hearing and that it was considered that the time estimate was inadequate.

87. On 3rd October 2012, I very reluctantly acceded to the request to adjourn as I accepted that the case could not be ready in time and that the ten day time

estimate was inadequate. I therefore adjourned the case to this final hearing with a time estimate of twenty days. I made it very clear that I could not envisage any further adjournments. I also reserved the case to myself on the basis that all applications should, in future be listed before the same judge to secure judicial continuity.

88. As I have already noted, no final accountant's report was received on behalf of the Wife and she ran out of litigation funding. A further application was made on her behalf in June 2013 to adjourn the final hearing by a new firm of solicitors, Hughes Fowler Carruthers. It was again said that the case was not ready for trial and that a fresh firm of accountants would have to be instructed, starting from scratch at a projected cost of approximately £750,000. I refused the application to adjourn on the basis that it was exactly the same as the application made nearly a year earlier, which I had indicated I was only prepared to grant once. The case simply had to proceed. It is clear that this was entirely the right decision. The Wife's new team of lawyers have performed wonders in getting the case in shape in time. The Husband has been ably assisted in the run up to the hearing by his solicitors. Both parties have filed section 25 statements. The Husband has filed statements from various third parties dealing with the financial assistance he has had since 2006 as well as providing further Replies to the Wife's Amended Questionnaire. The Wife has obtained a report from a Mr L Burke Files of Financial Examinations and Evaluations of Tempe, Arizona, who has given oral evidence.

The Wife's Hadkinson application

89. At the June hearing, the Wife additionally applied for an order pursuant to the case of Hadkinson v Hadkinson [1952] P 285 to prevent the Husband from participating in the final hearing given that he had been found to be in contempt of court. I rejected the application, having considered carefully a number of important authorities and, in particular, the decision of Bodey J in Mubarak v Mubarak [2006] EWHC 1260 (Fam); [2007] 1 WLR 271. I accepted that the Hadkinson jurisdiction does apply in family cases and that there will be occasions in which it is proportionate and not in breach of a litigant's Article 6 rights to make a restriction on participation in the litigation. I considered this was most likely to take the form of an order putting the litigant on terms such as to comply with a previous order or, if the litigant is incurring costs, to require a matching payment to the other party. Moreover, I held that such orders are more readily available where the litigant who is in contempt is the litigant making the application and, as a result, putting the other party to expense.

90. For my part, however, I was concerned about extending the Hadkinson jurisdiction to contested final hearings for Financial Remedies. The court has to apply Section 25 of the Matrimonial Causes Act. It has to get to the bottom of the financial affairs of the parties. It is important that the court makes a proper investigation and produces a judgment that is not only fair but also right and correct. I consider that restricting the right of one party to participate

in that exercise is difficult and, at times, has the potential to lead to injustice. It is, of course, right that the Husband has been found to be in contempt of court to the criminal standard of proof. The Wife is entitled to be very aggrieved about that. I do accept that it is has put her to considerable additional expense in costs. I will have to consider this contempt when I decide where the truth now lies. Nevertheless, having considered all that, and whilst making it abundantly clear that this court expects and requires its order to be obeyed, I took the view that it was not right to restrict the Husband's participation in this final hearing.

The final hearing

91. The final hearing started before me on 28th November 2013. I had three reading days followed by twelve days of oral evidence and one day of submissions. I heard from both parties and from twenty two witnesses, many of whom were called pursuant to Witness Summonses. The Husband gave evidence for around three complete court days, spread out over very nearly a week. I do not in any way minimise the difficulties he faced as a litigant-in-person in such a complicated case. I consider that, given the difficulties he faced, he has conducted himself with considerable skill and great dignity. I have made allowances for the fact that he has been in person and have done everything that I can to make the trial a fair one and Article 6 compliant.

92. I also wish to pay tribute to Mr Howling QC and Miss Johal who have appeared on behalf of the Wife, ably supported by their instructing solicitors. This case has been as complex as any this Division has ever encountered. They took on the case at the last minute yet have managed to become completely conversant with the huge volume of paperwork. The case was presented to me with great ability. Nothing more could have been said or done on their client's behalf.

The health of the parties

93. It is a sad fact that both parties have suffered from serious ill health during the course of these proceedings. I have made orders preventing the Media from reporting any details in relation to the Husband and I would have made a similar order in relation to the Wife had I been asked. There is, however, no restriction against reporting what now follows.

94. I do not intend to deal further with health issues other than to say three things. First, there have been suggestions by the Wife at times that the Husband was feigning his ill-health. I reject that completely. I have seen the medical reports and I accept them. Second, I do accept that the strain of this litigation is likely to have been a contributing factor to the ill health of both these parties. Third, I do not consider it necessary to go into further detail because it does not appear to me that their health is relevant to the exercise I have to perform. So far as the Wife is concerned, I very much hope that her ill health is completely behind her. So far as the Husband is concerned, he has not said

that he is unable to work going forward. Provided he takes his medication and absent the strain of these proceedings, I am satisfied that he will be able to control his health difficulties and rebuild his life.

The parties' respective cases

95. As I have already noted, the Wife's case is that the Husband is worth a very great amount of money that he is hiding from this court and his trustee in bankruptcy. In terms of evidence, she relies in particular on:-

   (a) A "*Preliminary*" report from Mr Mark Bezant, a Chartered Accountant from FTI Consulting dated 14th April 2012;

   (b) An Affidavit of Malcolm Hebron of Guidepost Solutions dated 7th November 2012;

   (c) A Statement of Luke Steadman, Partner in Alvarez and Marsal also dated November 2010;

   (d) The Report of L Burke Files dated 22nd October 2013;

   (e) Various letters from Mr Carl Biggs, a New Zealand Chartered Accountant, who is also an Associate of the Institute of Chartered Accountants here;

   (f) The evidence of various witnesses she summonsed to court and, in particular, the Husband's former solicitor, Stanley Beller; and

   (g) Documents obtained by her during the discovery process that she argues are inconsistent with the Husband's case.

96. It was not necessary for Mr Hebron and Mr Steadman to give oral evidence as the Husband accepted what they had to say. The others all gave oral evidence before me. The Wife asks me to find that the Husband is worth at the very least hundreds of millions of pounds. In his main report, Mr Files put the Husband's wealth at a maximum of £779 million although conceded that this should be discounted for prudence by 50%. This would reduce the figure to approximately £400 million. It goes without saying that this approach is unscientific and fraught with difficulties.

97. The Wife then says that she should have a lump sum of half the sum I find the Husband to be worth. In Opening, she said she was prepared to accept £300 million in full and final settlement of her claims together with her costs. By the end of the trial, she had instructed her counsel to argue that she should receive £400 million, apparently based on the oral evidence of Mr Files.

98. She supports her contention by arguing that the Husband has previously offered, on an open basis, to settle her claim for the sum of £300 million. She relied on the Attendance Note of a meeting that took place between the

Husband and her solicitors on 25th August 2009 and on an Affidavit from a photographer, Mr Dennis Gill, dated 17th December 2009. I will return to both documents in due course.

99. The Husband's case remains that he is penniless and bankrupt to the tune of at least £28 million. He therefore contends that, as there are no assets, I should dismiss the Wife's claims. He says he hopes to get back into business once the dust has settled on this case whereupon he will repay his debts and support the Wife and children once again.

The Wife as a witness

100. The Wife gave evidence before me on the first day of the trial. By comparison with the Husband, her evidence was relatively short. I do not question in any way her honesty. I regret to say, however, that I do not consider her evidence to be reliable. She has become utterly convinced that her Husband is a liar who has hidden vast resources. She sees conspiracy everywhere. She is convinced that the Husband engineered his financial meltdown in the early part of 2006 knowing that his marriage was to end. She believes this was with the sole purpose of keeping his assets safe from her claims. She is convinced that, if the Husband once owned a property, he must still own it today. A good number of the Husband's properties were repossessed and sold by the Bank of Scotland. Her response to this is to say that the Husband has managed to use his undisclosed resources to purchase these properties back from the Bank and that he has then placed them in the name of nominee companies. She makes these allegations even when there is no evidence whatsoever to support the allegations. In addition, every time a friend of the Husband's has provided money to either the Husband himself or to her/the children, she is convinced that this must be the Husband's money that he is channelling to her via his friends and associates.

101. Examples of this in action are to be found in two manuscript documents found in the Husband's possession when a Search and Seizure order was executed against him. She is convinced that her Husband has been doing business with a Mr Mark Pritchard. She told me that two words written on a Payne Hicks Beach Post-It Note proved this as she says the words say Mark Pritchard. Although I am not a handwriting expert, it is pretty clear that the first word is "*March*" not "*Mark*". Although it is difficult to decipher the second word, it is absolutely clear that it is not "*Pritchard*". The second document refers to the flotation of Facebook. It mentions an individual who may have 7.2% of the shares and an investment management company with a potential 10% interest. It then says "*will make $4.5 billion*". The Wife interprets this as meaning that the Husband will make $4.5 billion. This is a completely unjustified interpretation. Another small example is to be found in the names assigned to Fox Williams files held on behalf of the Husband. One of these files was headed "*Marriage Walk*". It was suggested to the Husband that this was a file so named as it contained the details of how he was going to arrange his financial affairs on the breakdown of his marriage so as to defeat the Wife's claims. I considered this to be inherently unlikely at the time it was

put to the Husband. When his former solicitor, Paul Osborne of Fox Williams was asked about this file, he said that it related to an abortive purchase of a property in Bletchley Park. I was not at all surprised.

102. In the same way, the Wife challenged the evidence that was given by a number of friends and associates of the Husband that they had provided financial support at the request of the Husband in the period from 2006 to 2009. The Wife required two of those friends, Sir Philip Green and Mr Richard Caring, to attend court. Sir Philip had given a statement dated 6th August 2013 in which he said that he had loaned the Husband a total of £80,000, in two tranches. First, he loaned £50,000 on 22nd September 2008 paid to the Estate Agents dealing with the property the Wife and children were then living in, namely 14 Regents Park Terrace. He said that this was a deposit for the purchase of the property. Second, he loaned £30,000 on 12th December 2008 for the purpose of rent on the property. He confirmed that both sums came from his personal resources and he had provided the money after a request from the Husband. He was cross-examined by Mr Howling. He confirmed that these were loans, made as a favour to the Husband, which will be repaid if the Husband is ever able to do so. He said he had never held money on behalf of the Husband and he asked the rhetorical question, why would he swear an Affidavit that was untrue? I accept his evidence in its entirety and unreservedly.

103. Mr Caring confirmed as true the contents of his witness statement dated 13th August 2013 but unsigned at the time. His statement said that he had loaned the Husband £50,000 on 17th September 2009, which had been paid to Payne Hicks Beach, as he had known the Husband for many years and decided to help him and his family when he heard of his difficult financial position. In cross-examination by Mr Howling, he said that he had been asked for financial help by the Husband many times and, eventually, he felt it was something he should do. He confirmed that it was a loan although he did not really expect it to be repaid. Again, I accept his evidence entirely and unreservedly.

104. I have formed the clear conclusion that neither of these witnesses should have been required to attend court. I find that they were required to attend on the firm instructions of the Wife. I am not clear if she did so because she believes, quite erroneously, that they were lying or whether she just wanted to embarrass her Husband and create even more publicity for her case. In any event, there was no evidence whatsoever that either gentleman was not telling the truth. They should not have been required to attend to give evidence.

The Wife's financial position

105. I accept that the Wife is in a very difficult financial position. She has had no support from the Husband since 2009. She is not working and I accept that she would find it very difficult to earn anything more than modest sums. She is renting Apartment 24, 10 Rochester Row, London, SW1 where she lives with the two children of the family. The rent is £3,500 per month but her housing benefit is only £1,335 per month. She also gets £242 every four

weeks in child tax credits but that would cease when Sasha attained the age of 19 as has now happened.

106. She has received help from her sister and brother-in-law but she told me that had now ceased. She indicated that the children were being supported through Higher Education by a family friend. She did not want to name the friend. I did not require her to do so although I did note the irony that she was not prepared to name the source of any funding she receives whilst being so critical of the Husband's position in relation to the funding he says he has received.

The Wife's needs

107. The Wife's case in her Form E was that she required £5 million to purchase a mortgage free property in Central London, in the area of the children's school, which was, at the time, Francis Holland. She said she required £500,000 for refurbishment and furniture together with £2 million for a holiday home, making a total capital need of £7,500,000. I accept that the overall figure would have increased somewhat since, given the rise in Central London property prices but I take the view that this would not increase the amount to more than say £10 million. Given the standard of living during the marriage, I am quite satisfied that this figure would be entirely reasonable assuming the Husband has the means to pay such a sum.

108. The Wife then sought maintenance for herself of £29,635 per month, which equates to £355,620 per annum. Again, based on the standard of living during the marriage, this is not unreasonable in itself. Using the capitalisation formula to be found in the Duxbury tables, she would need approximately £9.4 million to cover such an amount index linked for the rest of her life. Added to her capital requirements, she would need around £20 million to maintain the sort of standard of living enjoyed during the marriage for the rest of her life. I make it clear, however, that if I find the Husband is worth more than £40 million, the Wife would be entitled to half of the enhanced figure pursuant to her entitlement to share in his resources, even if that exceeds her needs generously assessed.

109. I should, however, add that the Wife has not stuck to her Form E. First, in her Section 25 statement, she says she would like to purchase a property in Belgravia or a similar prime Central London location such as Mayfair, Knightsbridge, Hyde Park or South Kensingon. She puts the total cost at between £15 and £20 million plus the costs of purchase at up to a further £1.4 million plus furnishings at £1 million. The Husband's case is that the parties only lived in Central London for some three to four years in the mid 1990s when they were renting a property in Lyall Mews. Second, she increased her budget to £55,020 per annum, saying she was up-rating it for inflation but completely forgetting that the earlier figure included £10,000 per month as well as the costs of the children at some £5,000 per month.

110. I consider the change of tack by the Wife in relation to her property needs is entirely litigation driven. If the Husband is worth hundreds of millions of pounds, as she contends, it would be perfectly reasonable for her to own a £20 million property in Belgravia but, if he is not, she will have to set her sights somewhat lower. Equally, I am satisfied that, notwithstanding the effect of inflation, a budget for the Wife of over £350,000 per annum is more than sufficient.

The Husband as a witness

111. By reciting the factual history of this case, it will immediately become apparent that the Husband has some serious evidential difficulties. I will mention only a few at this point. Both Parker J and I have determined to the criminal standard of proof that he has been in contempt of court in failing to provide full and frank disclosure of his financial position. Although I accept that he has remedied part of the deficiencies, there undoubtedly remain serious gaps which I will return to in due course. Second, whatever findings I make in relation to the Stanley Beller undertakings, I will be forced to find dishonesty on the part of the Husband. Either he removed the very valuable share certificates from Mr Beller's custody, thereby putting Mr Beller in breach of his undertakings such that Mr Beller was struck off as a solicitor or he perpetrated a significant fraud on the Bank of Scotland in claiming he owned share certificates when he did not. Moreover, he accepts that he placed assets in the name of nominees and offshore entities throughout his business career. All this means that I have been forced to the conclusion that I need to see if there is corroboration for what he says before I accept his evidence as to his financial position.

112. This does, of course, mean that I have to treat with equal caution the documents prepared for Coutts in 2002 and for the Bank of Scotland in 2006. The Husband's case in relation to these Schedules is that he was "*bigging*" himself up. In relation to the Bank of Scotland Schedule, his case, in reality, is that he was lying to the Bank as to what he owned. It would be illogical to treat those Schedules any differently to the rest of the Husband's evidence. Indeed, I have come to the clear conclusion that I am unable to rely on the figures included therein without more.

The alleged offers

113. Before turning to my main findings, I must deal with the issue of whether or not the Husband has made any bona fide offers to the Wife to settle this litigation. This is important because, if he had done so, it would be convincing evidence that he had the resources to enable him to comply with his proposal.

114. Mr Dennis Gill, a professional photographer was stationed outside the Nobu Restaurant in October 2009. There were some discussions about some photographs Mr Gill had taken of the Husband, whereupon Mr Gill says that

the Husband said to him "*between me and you mate, I offered her £27 million and she refused it, only a greedy cow would refuse that*." No objection was taken to the admissibility of this evidence when the Husband had lawyers. Indeed, I took the view that, if such a statement had been made, the Husband had waived privilege in relation to the offer by recounting it to a third party. Moreover, the Husband dealt with it in his Opening Note, prepared with the help of his solicitors.

115. The Husband's case is that he never said this to Mr Gill and he never made any offer of £27 million to his Wife. There is no doubt that I must treat Mr Gill's evidence with great caution. When he gave oral evidence before me, he began by saying "*I could have misinterpreted it due to my hearing problems*." He added that "*I could have been wrong; I could have been right*." He said that both parties had offered him money to help them. In cross-examination by the Husband, he changed tack and said he was "*1000% sure that you said that*". Frankly, I cannot rely on Mr Gill.

116. The Husband had, however, denied that he had made such an offer. I therefore allowed the Wife to put in "*without prejudice*" documents to rebut his evidence if she was able to do so. Mr Howling was unable to put in any letter offering £27 million, although he did say that the evidence of such an offer may be in the possession of a previous solicitor who is holding on to papers pursuant to a lien. On the balance of probabilities, I have concluded that there was no offer of £27 million. I am reinforced in that conclusion by the fact that the Husband, in his Opening Note, referred to a meeting on 25th August 2009 whilst denying any offer of £27 million. I do not believe he would have done that had he known he had made such an offer, as he would have expected Mr Howling to produce it to rebut his case.

117. The Meeting on 25th August 2009 did, however, take place. As it was referred to in the Husband's Opening Note, I permitted Mr Howling to adduce a copy of his solicitors Attendance Note. Indeed, this meeting was also specifically referred to in the Husband's Opening Note, so there is no question that any privilege attaching to this meeting has been waived.

118. The meeting records the Husband making an offer to the Wife of £300 million, of which £100 million was to be paid to the Wife with £100 million to each of the two children. The Wife rejected the proposal. In his Opening Note, the Husband says this:-

> "*The Respondent never made an offer of £300 million as referred to at paragraph 29 of the Applicant's opening note. The Applicant asked for £300 million (her offer starting at £1 billion).....The Respondent is ashamed to say, he stated that if Ronald Reagan became the next US President (he was already dead), Jeremy Beadle (of You've Been Framed) walked through the door and the Tooth Fairy arrived, she could have the money. The Respondent apologises for being so flippant but he was in a manic state at the time…and he was admitted to hospital on 28th August 2009. The Applicant's suggestion was so*

ridiculous that the Respondent thought he would make it even more ridiculous."

119. I have read the Attendance Note carefully. There is no doubt that there are a significant number of references that support what the Husband says. He repeatedly refers to the film, Brewsters Millions, in which a character had to "*win*" an inheritance of £300 million by giving away £30 million. He says in relation to a discussion the night before that he was "*joking*". He refers to "*if I had a magic wand…"* and later "*I don't have any money; I'm going to prove that I have no money; (I've) brought documentation…"* He was asked by the Wife if it was a joke and he said it was not a joke "*but I don't have any money*". Finally, he referred to the offer as a "*hypothetical*" offer and asked if the Wife would accept. She said "*no*". He responded "*I'm penniless and you turned down £300 million"*.

120. I have come to the conclusion that this was not a serious offer capable of acceptance. I remind myself that the Husband was admitted to hospital some three days later. The references in the Attendance Note make it tolerably clear that the Husband was not serious. I have to take into account everything else I know as to the Husband's financial circumstances. I am clear that he is not, and never has been worth £600 million (so as to justify giving his Wife and children £300 million). I doubt whether the Wife thought he was serious either. He was pleading very significant debts. Even if he did have assets, they were all hidden in the names of nominees or offshore companies, giving rise to huge enforcement issues. Any sensible litigant would have "*bitten off his hand*" to get £100 million in such circumstances, yet the Wife said no. It follows that I cannot rely on any offer made by the Husband as evidence that he has undisclosed assets. I put this aspect of the case completely out of my mind.

<u>The Wife's expert evidence</u>

121. The Wife relies on a number of different reports and statements from accountants and investigators. First, there is an Affidavit from a Private Investigator, Mr Damian Ozenbrook. He says that his firm watched the Husband during February 2012. The Husband behaved as though he was doing business. He used three separate telephones and was talking into the phones the whole time. He referred to the Husband having wads of £50 in cash and having meetings with "*business runners*". He says the Husband was once overheard asking about the "*longevity of a project*".

122. Second, there is the evidence of Mr Mark Bezant of FTI Consulting who produced a preliminary report on 14th April 2012. He deals with a very significant number of deficiencies in the Husband's disclosure. He specifically refers to the O2 shares; to the Dione proceeds; to IAC Holdings; Acme; Tictocology; Allied Minds; BTG and Gold Oil. He says "*in short, it appears to FTI Consulting that Mr Young's disclosure was at the least incomplete and, in some respects, disingenuous"*. Mr Bezant gave oral evidence before me. I accept his evidence.

123. Third, she relies on an Affidavit of Malcolm Hebron of Guide Post Solutions dated 7th November 2012. He states that he interviewed a Mr George Constantine on 27th September 2012. Mr Constantine denied business dealings with the Husband. He was shown an email dated 4th October 2011 from Chris Dunhill which says "*Constantine looks after Scot's properties which he doesn't have technically anymore*". Mr Constantine claimed this was made up. He was then asked about money passing through the accounts of his business entity, Baron & Co, on behalf of the Husband. He accepted that he had been receiving money for the Husband from friends of his, such as £10,000 from Smoke House Holdings (owned by Jonathan Brown) in early 2011 as well as payments of £4,333 per month rent for Barrie House (the Husband's then flat) from Justin Williams. He also accepted that £55,000 had been made available in tranches from a Mr Louis Creaven in the summer of 2011. This money had been mainly drawn down in cash. Mr Hebron was not required for cross-examination. It follows that there is no dispute as to the factual matters set out in his Affidavit, although there is a dispute as to the interpretation I should put on, for example, the Dunhill email. These are important matters that require proper answers from the Husband.

124. Fourth, there is a statement from Luke Steadman, a partner in Alvarez and Marsal. He surveys 31 investments made by the Husband prior to the March 2006 hiatus. 14 of these were property investments. 13 were unquoted business investments. 2 were quoted businesses and 2 involved the receipt of royalties. There were a further 10 potential investments that the Husband has said he considered but did not proceed with. Between 2001 and 2006, Mr Steadman calculated that the Husband made net gains on 17 investments of £42.2 million. He said that there were 14 investments in which he had insufficient information to come to a conclusion. Of the investments that made a profit, £22.8 million came from property transactions. £8.5 million came from unquoted businesses and £10.8 million from quoted businesses. Further, he points out that 4 of the investments that the Husband says he did not proceed with are included in the schedules produced for the Bank of Scotland at significant values.

125. He deals with his understanding of Project Moscow, namely that the Husband had to purchase a 50% interest in the venture for $19.5 million as well as procure debt funding of $10 million. He says that the "B" investors provided $12 million plus £3 million (Jonathan Brown via Silverwing; Stephen Kay via Camrose; Pojo Zabludowicz via Tamares) plus further loans of $6 m from Ekaterina Berezovskaya and c£1 million from Legal & Equitable/Wilshaw. He refers to the fact that the Husband, at one point, says he only raised $18 m but the investors were repaid $19.5 in due course. He therefore considers it unlikely the investment made a loss, although he accepts that, on the basis of a further schedule showing the investors putting up more money, the maximum exposure was around $7 million.

126. Mr Steadman was not required to give evidence by the Husband. Again, it follows that his figures are agreed although the Husband does not accept that he has or had an interest in some of the companies referred to in the Report.

The consequence of this is that Mr Howling is entitled to require the Husband to show how it was that he went from making at least £42 million in the period 2001 to 2006 to being insolvent to the tune of £28 million immediately thereafter. It is a fair point for the Husband to say that the family spent large sums of money, although, ironically, my finding that the expenditure was not as great as the Wife contends does not assist the Husband in this regard. I accept there will have been significant interest payments on the various loans but, at the very least, there is a serious case for the Husband to answer. The simple fact of the matter is that he has not done so.

127. Indeed, Mr Steadman notes that the Husband has given three reasons for his financial crash, namely the lack of earn-out receipts from Dione, the failure of Project Moscow and the abortive sale of Wootton Place. Mr Steadman makes the fair point that the first represents a lost opportunity for additional gains rather than a further loss. The second created a maximum loss of $7million, which has, on the Husband's case, not been paid. The third did not create an overall loss. Indeed, the property was sold for £3.5 million more than the Husband paid for it. The case to answer gets even stronger.

128. Fifth, the Wife relies on a report dated 22nd October 2013 from an American financial investigator, Mr L Burke Files. He was asked to investigate the case this summer in the hope of obtaining further litigation funding for the Wife. He was acting on the same basis as the rest of the Wife's current legal team. In other words, he will get paid if she gets paid. His evidence was not agreed and he gave oral evidence before me. Mr Files undoubtedly has an engaging personality. I have to say though that I did not find his evidence helpful. His conclusion that the Husband was worth either £801 million or possibly £701 million involved nothing more than taking the Coutts and Bank of Scotland Schedules together and adding them up. There was no critical examination of the facts behind them. Perhaps the best example is that he added in the MVNO Royalty Stream and the Tele2 Royalty Stream at a combined value of £210 million without any consideration of whether or not they formed part of the assets to be found in the 2006 Assets Schedule. When I asked him about this, he said that this was the reason why he had reduced the value by 50% in his first Report. He also made a number of serious allegations against various individuals that were simply not supported by the evidence. One such allegation against a solicitor, Mr Paul Osborne of Fox Williams was reported in various National Newspapers. When Mr Osborne was cross-examined by Mr Howling, he quite rightly did not put this allegation to Mr Osborne as there was no evidence for it. I therefore reject Mr Files' evidence in this regard. I make it quite clear that Mr Osborne and Fox Williams have not acted improperly in any way in relation to the affairs of this Husband.

129. I regret to say that I consider Mr Files had a tendency to put two and two together and make five. He said that a reference in an email from Mr Stephen Jones to the Husband about "*$20 million walking out the door*" related to an investment in the Ocean Reef Resort Nevis. This was clearly not correct. It related to the acquisition by Mr Formachev's associates of the Husband's shares in Project Moscow. He alleged that Tamares was part owned by the

Husband when it is clear that it is a vehicle owned by Mr Zabludowicz. He made a number of frankly wild allegations, such as naming no less than 18 companies that he said the Husband may be using to hide assets. I do not accept his evidence. Indeed, I regret that it appears to have given succour to the Wife's belief that the Husband is worth "*billions of pounds*".

130. Finally, the Wife called Mr Carl Biggs, a Chartered Accountant. Whilst I accept his evidence in its entirety, it does not in fact assist me. Mr Biggs frankly accepted that he had only received limited papers. He made the fair point that the Husband had not disclosed all the relevant accounts. His calculations of the Husband's profits on the known ventures largely mirrored those of Mr Steadman. He did raise a number of important questions as to money that was passing through bank accounts for which he did have statements, such as Condor. He calculated that £22 million had passed through the Condor bank accounts, even though it was a property holding company. The Husband had not given a proper explanation.

131. Overall, there is no doubt that the Husband has not given full and frank disclosure. Miss Johal, junior counsel for the Wife, produced a Schedule of Omissions at the conclusion of the evidence. It covers a large number of questions and topics, such as 111 Eaton Square, Futuragene Plc, Legal & Equitable Loan, a debt of £650,000 to Roseberry Property Development Ltd and an alleged interest in BTG. The Husband has no answer to many of these points. He relies on his ill-health for lack of a clear memory as to what happened. He says that he does not have much of the relevant documentation, saying it is either held by third parties or has disappeared. The central question as to how he lost all his money remains unanswered.

The source of the family's financial support since 2006

132. The Husband swore his section 25 Affidavit on 29th October 2013. He says that he took huge risks in business that finally overwhelmed him. The family was living way beyond his real financial position. The proceeds of all his properties went to the Bank of Scotland.

133. When I committed him to prison for six months in January 2013, I specifically mentioned that he had not produced any evidence of the financial help that he allegedly received from March 2006 onwards, which the Wife calculates amounted to £1.75 million. This is a truly staggering sum for somebody who was, in effect, bankrupt. It is entirely right to note that the Husband partly remedied this defect with the help of Sears Tooth in August 2013. A significant number of statements were filed from his friends and business associates. The theme was the same throughout. They basically say that they were helping a good friend in dire need out of the goodness of their hearts. It was clear that they were well able to afford such generosity and, although they said that most of the payments were technically loans, they didn't really expect to be repaid. I do not need to go through them in detail. As I calculate the various statements, the loans made total £472,000. I make it clear that I accept all this evidence in its entirety.

134. It is, however, abundantly clear that this amount is well below the total amount provided by the Husband. Where did the rest of the money come from? How has the Husband been maintaining himself more recently? Why was money being channelled via Mr Constantine? Mr Howling has drawn my attention in particular to the fact that Mr Michael Slater, a solicitor who has acted for Rose Property Holdings, says in an email that a £300,000 loan was made from Rose Property Holdings, an entity closely associated with the Cash family, to the Husband but was paid via Mr Richard Kay's bank account. Although I have heard from a significant number of witnesses, the Wife's attempts to get Mr Richard Kay and Mr Kevin Cash to court have been unsuccessful.

135. I have already concluded that I cannot accept the Husband's evidence without corroboration. Equally, a significant number of the Wife's allegations have been wild. Where does that leave me? I have come to the conclusion that I must first analyse the Schedules of Assets produced for Coutts and the Bank of Scotland. Once I have done so, I propose to make findings as to the Husband's overall financial position in March 2006. I will then go on to consider his financial position today.

<u>My findings as to the Coutts and Bank of Scotland Assets Schedules</u>

136. I cannot accept at face value the figures or assets included in the Coutts and Bank of Scotland Schedules. The Husband is not reliable. Just as he has lied to me, he lied to Coutts and the Bank of Scotland. I will give a few examples. The 2006 Bank of Scotland Schedule refers to Project Mayfair. It says that the value paid was £100 million, the current value is £200 million and the profit is £100 million. Project Mayfair refers to an attempt to purchase 56 Curzon Street. I accept that the Husband was interested in doing so. He even went as far as to make an offer of £40 million to purchase the property. Mr David Conway, a solicitor, was acting for the Vendor. He gave evidence before me. I make it clear that I accept his evidence without hesitation. He told me that the Husband never exchanged contracts and he certainly did not complete. He told me that the property was eventually sold to Brockton Capital, represented by SJ Berwin. The Husband, again with the assistance of Sears Tooth, obtained an email from SJ Berwin. It says:-

> "*We are instructed that our clients do not know Mr Scot Young and as far as they are aware have never met him, had any dealings whatsoever with him or made any payments to him. We understand that he has no interest in the LLP, is not an investor in the Fund and as far as our clients are aware has no interest in any investor in the Fund.*"

137. This could not be clearer although the Wife simply does not accept it. Mr Howling was still instructed to put to me in his Closing Submissions that "(*the Husband) is more likely than not to have an interest in Project Mayfair.*" I reject this without hesitation. The Husband has no interest in Project Mayfair.

The height of the case against him was that he said that £5 million "*was already committed*" in the Coutts Schedule, although it says "*contracts about to be exchanged.*" Putting it at its highest therefore, this could only be preparatory work. It follows that the Schedule was thoroughly misleading. The current value was not £200 million and there was no profit, let alone £100 million.

138. Turning to the 2002 Coutts Schedule, I reject out of hand the figures given for MVNO Royalty Income of £60 million and Tele2 Royalty Income of £150 million. It is clear from the Schedules that both are future projections. We know that Tele2 did produce a royalty stream for the Husband but it amounted to approximately £2 million per annum for four years to 2005, when it ended. This comes to around £8 million not £150 million. The figure of £25 million per annum is pure fiction. There is absolutely no evidence that the Husband ever received anything from MVNO. He had no reason to hide his financial position between 2002 and 2006. The Wife has obtained staggering amounts of paperwork. There is nothing amongst the papers to show that MVNO produced any income let alone £60 million. I accept his evidence to me that it did not work out. It follows, however, that his figure for Coutts was simply made up.

139. I have decided that I do not need to analyse the rest of the 2002 Schedule now. It was produced some eleven years ago and much has changed since then. It is though clear that he was not worth £312 million in 2002. Indeed, he was not worth anything like that amount of money although he was a very wealthy man by any standards.

140. The 2006 Bank of Scotland Schedule does, however, require far greater analysis. Although it was prepared with the assistance of Fox Williams, I reject the suggestion that this, of itself, gives the Schedule legitimacy. I am satisfied that Fox Williams were just listing the figures the Husband gave. The first 16 assets are all property investments of one sort or another, including the matrimonial homes. The Schedule says that the values given are derived from Knight Frank valuations and I have no reason to doubt that. The figures given by the Bank of Scotland show the properties going for substantially less but there is nothing untoward in that. I am satisfied that the Bank got independent valuations and sold appropriately. The Schedule does not include the mortgages outstanding, only the purchase prices. As things turned out, the mortgages exceeded the sale proceeds. It follows that the March 2006 Schedule overstated the value of these assets considerably.

141. The Wife genuinely believes that the Husband bought all these properties back from the Bank. She points to the fact that all were acquired by corporate entities although I remind myself that there is nothing unusual about that so far as Central London properties are concerned. There is no evidence to link the Husband to any of these corporate entities, other than 39 Chester Terrace to which I will return in due course. Having heard from the Bank, I am satisfied that the properties were sold on the open market to genuine third parties. I reject the Wife's case. It follows that I have to come to the conclusion that,

rather than including these properties as an asset, I must take into account the £3.3 million still owed on them to the Bank.

142. The next two properties mentioned are 21 Upper Grosvenor Street and 23 Wilton Crescent. I will have to return to both in due course. The Schedule states that contracts had been exchanged to acquire both properties. So far as Upper Grosvenor Street is concerned, the Husband had paid a deposit of £760,000. He says that he lost this deposit. The property was eventually acquired by an entity linked to his friend and business associate, Mr Kevin Cash. I will have to determine where the truth lies in this regard. At this point, I merely note that the Schedule includes a valuation for the property of £20,650,000 with costs of £11,100,000 (including the cost of acquiring the freehold and full refurbishment). It is, of course, possible that the venture would, eventually, have made such a significant profit but it was not possible to include that in a Schedule of Principal Investments in March 2006. The most that could be included was the deposit.

143. Similar considerations apply in relation to 23 Wilton Crescent. The Husband paid a deposit of just over £100,000 which he says he lost. The property ended up with Mr Kay although he has since sold it on. The Schedule follows exactly the same pattern as it does with Upper Grosvenor Street, projecting a profit of over £1 million, whereas the investment at the time was only £100,000. The same is true of a third property, Star Lane, Ipswich where the Husband had exchanged contracts in the name of Star Lane Estates Ltd. A deposit was paid of £145,000. Again, the Husband's case is that it was lost and the property was eventually sold on to an unrelated third party. There is no evidence to link the Husband to this subsequent sale and I accept his evidence in this regard. The Schedule should therefore have said £145,000 invested rather than taking its usual course of putting in a potential profit of £5 million.

144. The next two items on the Schedule are two properties owned by Fosse Developments Ltd, namely Caerphilly, Moreton in the Marsh and Baldwyn's Farm, Pebworth. The Schedule attributes a value to them of over £1.5 million. These figures came from Mr Gwilym Davies, the Husband's nominee and right hand man. He gave evidence before me in a careful way. He had no reason to mislead the Husband or the Bank at the time and I accept his figures.

145. The thirteenth asset is Lincoln University Halls of Residence, known as Danesgate House. The Schedule says 50% of this asset is beneficially owned by the Husband. He denies that this was ever the case although Mr Beller wrote to him in 2003 saying that the Husband intended to repay a loan to Legal & Equitable by refinancing Danesgate House in the sum of £3.4 million. Mr Slater told me that the asset was owned by the Rose Trust (ie the Cash family), via one of its companies Northgate Securities. He accepted in oral evidence that there might be some arrangement between Mr Cash and the Husband of which he was unaware but he thought it was highly unlikely. Moreover, he said that he was staggered by the purported value of £30 million with planning permission. He said planning permission had not been obtained and the building was only worth £2 million. It follows that this was another

enormous exaggeration in the Schedule, even if the Husband did have a 50% beneficial interest in the property.

146. The next asset is Blunt House, owned by Condor Corporate Services. It was the Headquarters of the Dione Group. The Schedule suggests it is worth £8.5 million although this also seems to be highly optimistic. The property was eventually sold to a company called Gladheath Limited on 22nd January 2007. There is nothing to link the Husband to Gladheath Limited. The Wife tells me that the Husband still owns it because the Trustees of the Grosvenor Estate sent a demand for a service charge on a leasehold property in Eaton Terrace to this address is 2010. As evidence that the Husband continues to own this property, nothing could be more tenuous. In any event, it is clear that the valuation of Dione House in the Schedule should be rejected because it was owned by Condor and there is a separate valuation for Condor.

147. The Schedule then lists eight shareholdings in private companies. The valuations of the first six all came from Mr Davies in an email he sent to the Husband which was copied to Paul Osborne on 16th February 2006. I have already mentioned Fosse Developments. Mr Davies valued the other six shareholdings as follows:-

(a) SMS – company valuation of £5 million giving the Husband's 60% shareholding a value of £3 million. However, it is clear that this valuation is based on a future contract to the NHS worth £400,000 per annum. On the balance of probabilities, I find that this contract did not go ahead. It follows that SMS did not have any such value. The Husband says the company has since been struck off.

(b) Condor – he says that Condor has financed and acquired a number of properties and currently owes the Husband just under £6 million. For the first and only time, the Schedule is more cautious saying the Husband had lent £4 million and further information was awaited from Mr Davies. It may be that this caution was related to the fact that the Schedule had already included a net value of £3.5 million for Blunt House which was undoubtedly owned by Condor. I have no reason to doubt Mr Davies' evidence so Condor was a significant asset.

(c) MIG – Mr Davies says it was "*the real jewel in the crown*" with earnings of £25 million that year. He says that, being conservative, the Husband's 22% would be valued at £8 million. These shares were subsequently transferred to Mr JP Williams in satisfaction of an alleged debt. Mr Williams told me that MIG was eventually sold, including earn-out and shares in the purchasing company, for $60 million, valuing the Husband's shareholding at $13.2 million.

(d) Essendex – Mr Davies said it was going from strength to strength, with annualised turnover approaching £5 million. He said that an offer of more than £3 million had been turned down the previous August and that the Husband's sharing must be worth £1 million. I accept this.

(e) Qiosks – Mr Davies reported that sales were growing at up to 20% per month which would produce an annualised income of $12 million in around a year. He valued the Husband's 20% shareholding as being worth $1 million. The Husband, however, ignored Mr Davies and put Qiosks in the Schedule at £20 million "*with exit projected at £100 million*". I find Mr Davies to be accurate, not the Husband.

(f) Finally, IDM Cityscape – Mr Davies was projecting into the future saying "*the guys are confident that we could establish a building management company within two years with an annual turnover of £100m and making 8% net. They have done it before. Value at that point would be £16-20 million.*" It is clear that this projection was based on both Projects Moscow and Mayfair proceeding, which they did not. These figures went into the Schedule, with the Husband promising the management a stake of up to 20%. The valuation was clearly fictional.

148. I am satisfied that the Schedule was not comprehensive. It does not include a significant number of businesses/assets that we know existed, for example, Project Moscow, a £200,000 investment in a beach villa in Nevis, one million shares in Futuragene, shares in Tictocology, Milvus, Xenos, Isentry and PUCA. Perhaps most importantly, it did not list any of the assets said to be held by Mr Beller which were supporting the various undertakings he had given. The Husband would, of course, say that this was because the shares did not exceed. As I have come to the opposite conclusion, it seems to me to follow that the omission was deliberate.

149. So what was the Husband worth at this time? Mr Beller had written in July 2005 that "*we have full knowledge of the financial affairs of Mr Young and we are able to confirm that the assets of Mr Young exceed £120 million. Upon confirmation of instructions we will (be) able to provide a detailed breakdown of such assets.*" The letter also says that "*In our view, Mr Young is respectable, responsible and of undoubted integrity.*" Given what is now known, it is clear that the latter comment was not correct although I have no reason to doubt that Mr Beller believed it at the time. If the Assets Schedule that was to be prepared was of a similar ilk to those I have seen, it could not possibly be relied on. I have formed the conclusion that Mr Beller genuinely believed that his client was worth at least £120 million but this was primarily as a result of what the Husband told him. It was a foolish letter to write. Mr Howling's submission that this amount of £120 million is over and above the assets on the two Schedules cannot possibly be correct. It is not even what the letter says. If that were right, the figure given would have been far higher. I have formed the conclusion that I cannot rely on this letter at face value.

150. It is clear, however, that the Husband retained valuable assets in March 2006. It would have been amazing if he had not. I am, however, sure that he was not worth "*billions*", nor "*hundreds of millions*", nor even "*£120 million*". I am far less clear as to what he was actually worth and will have to do my best, drawing such inferences as are appropriate to the evidence in the case overall.

My findings as to the alleged financial meltdown

151. So what was the truth behind the March 2006 meltdown? In some respects, I have found this the most difficult aspect of the case. Mr Howling, realistically and rightly, said in his Opening Note that "*it has to be accepted that the case which he argues about "financial meltdown" does have a prima facie plausibility about it.*"

152. There is no doubt that Mr Beller was unable to comply with his undertakings and that the Bank of Scotland repossessed the Husband's properties. Having heard the evidence, I am satisfied that Project Moscow collapsed and that Mr Formachev had to arrange to purchase the Husband's shareholding. The Husband left the jurisdiction, having briefly attended the Priory Hospital in Birmingham. I do not consider that any of this would have happened had the Husband's financial affairs been entirely satisfactory. I reject the suggestion that he engineered this situation just to get assets out of the reach of his Wife on a divorce.

153. On the balance of probabilities, I find that he realised that he had overstretched himself and decided that he had to make the best of a bad job. He could not raise the entire funding required for Project Moscow. He owed the Bank of Scotland just over £25 million and was having difficulty servicing the borrowing. He therefore decided to cut his losses and rescue as much as he could, whilst allowing the rest of his business empire to implode. He therefore attended at Mr Beller's offices and removed the share certificates. He left the jurisdiction to join his Wife and family in Miami. I do not believe that it is relevant at all whether this was suggested to him by Mr Jones or not.

154. I reject the Husband's case that the share certificates held by Mr Beller did not exist. I simply cannot see why Mr Beller would put his entire career on the line and expose himself to claims for over £20 million to assist any client, let alone one who was only putting business of around £40,000 per annum his way, even if that client was also being generous to him by, for example, paying for his son's Bar Mitzvah. Mr Beller was struck off. He would have been well aware that this was the likely penalty if he was unable to abide by his undertakings. Yet, on the Husband's case, he took on this huge commitment without any security from the Husband at all. If true, the very fact that the Husband had no security to offer would, of itself, be sufficient to make him refuse to give the undertakings. It is completely implausible to suggest he went ahead and gave £20 million worth of undertakings without any security. Moreover, the Husband himself wrote a letter on 28th February 2006 acknowledging ownership of the O2 shares and confirming irrevocable instructions to sell the portfolio. I cannot conceive how he would have written that letter had these shares simply not existed. The lie would have been almost immediately discovered.

155. I do accept that, in oral evidence, Mr Beller said that the O2 shares were in the Husband's name and he could not remember the identity of any of the corporate entities that held the other shares. In fact, the Husband has been unable to secure confirmation from the Registrars of Telefonica that he never

held 3 million O2 shares in his name but I suspect that he never did, if only because it was not the way he operated. I think Mr Beller was wrong about this. Indeed, the contemporaneous documents strongly suggest to me that these shares were also held by a nominee. Mr Beller's letter dated 28th February 2006 said "*In addition, we control a block of O2 shares where Mr Young is also the beneficial owner.*"

156. The Bank of Scotland sent the late Mr Kennedy and an assistant to see Mr Beller in February 2006 to satisfy itself that the security existed. I simply do not accept that Mr Beller would have been able to "*fob*" Mr Kennedy off by showing him a schedule of assets on a computer screen that did not exist. Mr Raeburn told me the Bank was satisfied. I find that was because the securities did indeed exist.

157. I am surprised that Mr Beller has no records and cannot name any of the entities that held the shares. Mr Beller says that the relevant papers were taken away by his creditors with the assistance of one of his employees. This does trouble me as I would have thought Mr Beller would have been able to get the documents back. It is for this reason that I am unable to make a finding on this aspect to the criminal standard. I am though satisfied on the balance of probabilities, particularly given the role of the Bank of Scotland as set out above along with the inherent unlikelihood of Mr Beller putting himself in such an untenable position.

158. It follows that I find, on the balance of probabilities, that the Husband removed O2 shares valued at £6.2 million and a further block of shares held in Jersey worth £13.67 million in 2006. I do not know how much these are now worth. For example, they included £1 million worth of Woolworth shares. Someone, possibly FTI, calculated that the shares, excluding O2, were valued at £20.3 million in April 2008 but we subsequently had the stock market crash and the demise of Woolworths. Based on a comparison of the FTSE100 index between March 2006 and now, the shares would be worth some £22 million.

<u>Did the Husband have any other assets?</u>

159. On the balance of probabilities, I have come to the conclusion that the Husband did have other assets. There was not, however, any additional "*earn out*" money received from the sale of Dione. I consider it would have been relatively easy to trace any such payments had the Husband received any, particularly given the enormous discovery process conducted in this case. I am also quite clear that he does not retain any interest in Project Moscow. In this regard, I accept the evidence of Mr Ruslan Formachev, who was impressive and clear that the Husband had not come up with all the money necessary for the acquisition of the 50% in Parasol Participations. Mr Formachev had to find other backers to repay the $20.5 million. I also accept Mr Formachev's evidence that planning permission was not granted. It follows that I consider the price paid for the 50% shareholdings was the best that could be obtained in the circumstances.

160. It is, completely impossible to produce any sort of schedule of the Husband's assets in 2006 due to the significant number of lies told by the Husband to so many people over such a long period. Mr Howling has asked me to find, on the balance of probabilities, that various individuals and corporate entities are holding assets on behalf of the Husband. The reason for doing so is that the Wife would then wish to commence enforcement proceedings against that entity. It is quite clear to me that I am unable to do so for two reasons, one of which is fundamental. None of these individuals or entities has been joined to these proceedings. Although some of the individuals concerned have given evidence, they have not had any opportunity to be formally heard on the issue. There have been no pleadings, so they would not know the case they faced. They cannot therefore be bound by any finding and it would be wrong for me to make any finding in their absence. Indeed, the Wife applied for freezing orders against 21 Upper Grosvenor Street and 39 Chester Terrace and then placed restrictions against the title to these properties. The legal owners, Boss Holdings Limited and Balymena Equities SA applied for the discharge of the orders. Mr Kevin Cash swore an Affidavit in support denying that the Husband had any interest in either property. I have not seen a copy of the resulting order but have been told that the Wife was forced to concede the point.

161. Second, having heard the evidence over a three week period, I am quite unable to say where the Husband has secreted his money, even on the balance of probabilities. What I am, however, able to say it that I am satisfied that his shares in EPOSS, Condor, MIG, Essendex, Qiosks, Xenos and PUCA had significant value. MIG was, as Mr Davies said, "*the Jewel in the Crown*". Most of these were transferred to Mr JP Williams in satisfaction of an alleged debt that is itself shrouded in mystery. Mr Williams undoubtedly did very well out of MIG but I cannot say that the Husband continues to own these shareholdings. Indeed, the evidence points the other way.

162. Nevertheless, the Wife has undoubtedly raised significant points about a whole series of other matters that the Husband has not dealt with to my satisfaction. By way of example, I am concerned as to:-

   (a) The arrangements following the exchange of contracts on 21 Upper Grosvenor Street and whether or not the Husband was reimbursed for the very substantial deposit of £760,000 he had paid for that property. It is clearly relevant that the property ended up in an entity closely connected to a good friend of his, namely Mr Kevin Cash.

   (b) In exactly the same way, the arrangements relating to 23 Wilton Terrace and the loss of the Husband's deposit of £115,000 when the property was eventually conveyed to Adamsland International Ltd, a company under the control of another friend, Mr Stephen Kay.

   (c) The fact that the Husband's name remained on the title of 27 Eaton Square for two years after March 2006, purportedly so that his tenancy could be used to enable enfranchisement.

(d) The arrangements regarding 28 Eaton Terrace, which appears to have ended up with another associate of the Husband, Mr Jonathan Brown. This is further complicated by references to the Veritas Foundation, an entity owned by Mr JP Williams. Mr Williams was completely unable to explain what this was all about.

(e) The true position regarding the Lincoln University Halls of Residence, albeit at a much lower value than stated in the Bank of Scotland Schedule.

(f) Whether or not the Husband has any interest in a company known as BTG. I have seen a number of documents in which the Husband is said to be from BTG. On 15th May 2005, Mr Beller wrote to the Zabludowicz Trust saying that he understood that the Trust and the Husband would soon be completing the purchase of 100% of the BTG shares. On 26th September 2005, another Attendance Note indicates that purchases were to be made through "*BTG (SY/PZ as beneficial owners*)".

(g) Whether or not the Husband had a shareholding in a Finnish technology company, Liekki Oy.

(h) The arrangements between the Husband and Legal & Equitable, owned by a Mr Lawrence, which are completely unclear to me even now.

(i) The fact that the Husband was, at one point, trying to purchase the Wife's rented property at Regent's Park Terrace. This would have been completely impossible if his finances had been as he says.

(j) The sum of £200,000 which the Husband accepted during oral evidence that he invested in a beach villa being developed on the Island of Nevis. While I accept that this is a small amount in the overall scheme of things, it is another indicator that there remains a cloak hiding the true financial position of the Husband.

163. I have already made it clear that I am quite unable to make any findings of fact that the Husband does have a beneficial interest in any of the above. All I can say is that I do not believe that the Beller shares were the only assets he retained control of at the time of his financial meltdown. I am satisfied that he made at least £42 million net from the various transactions that Mr Steadman identified. I do not believe these were the only transactions that made a profit. Indeed, I have identified a number of shareholdings with significant value in excess of their acquisition cost held at the time of the alleged financial collapse. I do, however, accept that he had significant expenditure to deduct from his "*profits*".

164. I have come to the conclusion that I should assume total additional assets of approximately £25 million over and above the money removed from Mr Beller of £20 million, giving a combined value of £45 million. This seems an

appropriate way to proceed, given in particular the value of MIG, Condor and Essendex.

The position since 2006

165. I am going to have to deal with his alleged debts hereafter. Before doing so, I propose to look at the Husband's lifestyle since 2006 to see if it disproves/ casts doubt on my conclusions above or, alternatively, if it supports my conclusion.

166. The Wife has investigated his living arrangements since the separation with a fine toothcomb. I have come to the conclusion that what she has discovered supports the conclusion that he is not a penniless man of straw with huge debts. The evidence also strongly suggests that he is still involved in business. It would be surprising if he was not. I have paid particularly regard to:-

(a) The huge level of financial provision available in the period 2006 to 2008. Whilst I accept that his friends have been very generous, I cannot accept that all this provision was borrowed. I find that he borrowed money where he could to try to support his case but the majority of the provision came from his own hidden resources, in part held for him by third parties. I accept that he stopped paying when the Wife started to uncover information on the laptops he gave the girls. For a time thereafter, the money was channelled to him via Mr Constantine at Baron & Co, something the court would not have known about had it not been for the Wife's investigations.

(b) His lifestyle is not consistent with being a penniless bankrupt. He continues to live in Central London in an expensive flat paid for by a "*friend*". He and Ms Reno eat out roughly twice a week. He has wads of cash in his possession.

(c) Mr Christopher Dunhill, a business associate of the Husband's, sent an email dated 4th October 2011 to a Mr Marek Bilinksi which said "*George Constantine good mate of mine and he looks after Scott's properties which of course he "doesn't" have technically any more"*. In an earlier email, he described Mr Constantine as the Husband's property adviser. I reject the explanation of Mr Dunhill that he was just trying to get the Husband an invitation to a property event. He was telling the truth as he understood it and it was the truth.

(d) On 17th August 2009, Mr Ed Jakeway sent the Husband an email which said *"Thanks for the introductions on Friday. Just to recap, you want me to set up an off the shelf UK limited company (Newco) with "Jimmy" as the director and Newco will acquire either the shares of an existing BVI company which owns property or Newco will acquire the Property itself out of the BVI company…Justin Williams will also require an EBT for his/your company…"* On 18th September 2009, he sent a further email which said "*I have started the ball rolling with*

City Trust in the Isle of Man...Are you making arrangements for the companies to be set up or shall I? Yesterday you suggested 2 IOM companies and presumably the other 2 will be UK." It may well be that Mr Jakeway did not take any further action but I reject the explanation of the Husband that this was a potential deal on behalf of Mr Jimmy Creed. Mr Creed gave evidence and I find that his role was that previously undertaken by Mr Davies. In other words, he would have been the nominee. It may be that Mr Williams was going to be an equal partner with the Husband in the venture. I do not know if this went ahead or even what it related to but the Husband is intent on keeping the cupboard door shut so we do not know what is going on behind it.

(e) I heard oral evidence from Mr Creed. Like the Husband, he is now a bankrupt. He told me he re-mortgaged his property and invested £300,000 in a company called Shop Robotics as well as loaning £112,000 to the Husband. I find it almost impossible to see why a man of relatively limited means, who told me that he was "*running low on money*" and needed to take a gamble to get back on his feet would loan such a large sum to a man with whom he had, according to him, never done business. None of this adds up at all.

(f) In March 2012, the Husband had a phone bill in his possession for his then residential address at 20 Barrie House in the name of Honeysuckle Property Investments Ltd. He had absolutely no explanation for this.

(g) There are numerous other similar loose ends. One example was a document said to have been found in the Husband's possession from Investec showing that a company called Intrasales Limited had £3,146,614 in its account in November 2011. It is impossible for me to find that this money belongs to the Husband but it is yet another unanswered query.

167. Whilst I accept that it is very difficult for the Husband to prove a negative every time the Wife makes a fresh allegation against him, taken together, all these loose ends and threads build up a convincing picture that the Husband has indeed failed to give full and frank disclosure and that he is hiding the truth.

<u>The Husband's debts</u>

168. Following the Husband going to Miami in March 2006, Mr Stephen Jones of Jirehouse Capital dealt with the fall out from Project Moscow, the repurchase by Mr Formachev's associates of the Husband's 50% interest in Parasol Participations for $20.5 million and the repayment of that money to the investors in Project Moscow.

169. I heard Mr Jones give evidence and I make no criticism of his conduct or the propriety of the arrangements he made. In fairness to him, I consider I should also deal with one email that has surfaced in the Press. It is clear that Mr Beller and Mr Jones have fallen out very badly. The email to the Husband dated 5th October 2006 says that "*PS Read the CMS letter (a firm of solicitors acting for Mr Beller) – they are accusing us of bribery and corruption!! And, by the way, thank you for all the many happy times I have spent at your house in Miami conjuring up the plans to screw Beller…where do they get this information from?*" I am quite satisfied, having heard from Mr Jones, that this was not an admission of spending times at the Husband's house in Miami concocting plans to do Mr Beller down. It was the opposite. He was commenting on an allegation by Mr Beller to that effect which he clearly denied and was asking where on earth it had come from.

170. Having acquitted Mr Jones of any impropriety, I have to say that I found it very difficult to follow exactly how much was owed to whom. At Paragraph 129 of a Witness Statement he filed in proceedings between Jirehouse and Mr Beller, he sets out the investments in Project Moscow and they come to about $21.5 million. Paragraph 144 of the same statement details the way in which the proceeds of sale of the shares were allocated. It is clear that $6,550,000 was part into a Nevis foundation called the SY Refinance Foundation and used to repay one of the investors, Ms Berezovskya and certain debts owed by Mr Beller. The latter appears to have been the price of securing an agreement. Mr Jones says the debts were nothing to do with Project Moscow but I certainly assume they were to do with the Husband and concerned the undertakings given by Mr Beller on his behalf.

171. So far as the former is concerned, Ms Berezovskaya was owed £4,663,676 of which she received £1,750,000 from the SY Refinancing Fund. Slightly surprisingly, the Husband executed a Promissory Note to repay the balance, namely £2,913,676 on 19th April 2009. He says he has not paid and explains the Promissory Note on the basis that he hoped to get back on his feet by then such that he could repay.

172. Mr Jones' evidence was that the maximum loss of the creditors was $7 million. Indeed, it is difficult to see how it could be any more than that and, as the payment to Ms Berezovskya related to Project Moscow, I find that it was actually less than this. In any event, it is impossible to see how the Husband's list of creditors as exhibited to his Form E in the sum of £27,854,109 is correct. This list includes an amount of £1,750,000 allegedly owed to Ms Berezovskya yet that amount had been repaid via the SY Refinancing Fund. The total said to be owing to Silverwing, Camrose and Legal & Equitable totals $24.5 million, which cannot be correct if it relates solely to Project Moscow. Moreover, there is a total said to be owed to the Zabludowicz Trust of $6.2 million. There are also three or four references to Jirehouse Capital. Given that Jirehouse are named alongside the £1,750,000 which is said to be owed to Ms Berezovskaya, it may be that these alleged debts were those repaid by the SY Refinance Foundation. It is all very unsatisfactory. On the balance of probabilities, I find that this list excludes any Project Moscow repayments.

173. There has also been considerable evidence given about significant cash repayments made to Legal & Equitable, a company controlled by Mr Lawrence. It was alleged that the Husband repaid Mr Lawrence between £3 and £4 million in cash. The Husband did not deny making significant cash repayments. He said he could not remember the quantum, which is quite remarkable given that we are talking about such large amounts. Moreover, the Legal & Equitable company balance sheet does not include any significant debt owed by the Husband. I did not hear from Mr Lawrence, who is not in the jurisdiction. On the balance of probabilities, I find that the Husband does not owe any money to Legal & Equitable.

174. Turning to the other debts, I find that they are at best massively overstated. I consider, however, that I can go further. The Husband told me that he offered the investors a loan arrangement for the first year of the Project Moscow investment, after which he would, at their election, either repay them or they would have equity. Apart from Ms Berezovskya, all these investors were close associates of the Husband. Many of them have lent him significant sums of money since. Some have been involved in ventures with him in the past which have made money. I take the view that they viewed this as an investment. Unfortunately, it did not prosper. On the balance of probabilities, I find that they do not consider the Husband owes them any further money.

175. There is another debt in the Schedule to Elizabeth Sears in the sum of $2,000,000. This is also completely shrouded in mystery. I am not satisfied that it exists any more.

176. It follows that, on the balance of probabilities, I find that the only true debts are those to HMRC, said in the Schedule to be for £944,344 but subsequently claimed by HMRC at £1,607,321 plus interest and penalties and the debt to the Bank of Scotland in the sum of £3,355,340. The Bank has previously said it will take £1.2 million in full and final satisfaction but I consider I should take the total amount owed. The Husband's total debts are therefore £5 million, although there will additionally be the costs incurred by his trustees in bankruptcy.

<u>Conclusion as to the Husband's wealth</u>

177. I have found that the Husband removed assets from Mr Beller in March 2006 worth around £20 million at the time. I have also found that he had other undisclosed assets at that date worth around £25 million. It follows that I find that he had assets of around £45 million in total at March 2006. This broadly equates to the money found to have been made by Mr Steadman plus additional uplift for the profit on the other ventures but less his expenditure over the years. I consider it would be wrong to find a higher sum than this. If he had been worth significantly more, I consider he would have dealt with the fall-out from Project Moscow and the Bank of Scotland rather than running away.

178. I have no idea what has happened since then. He will have spent some of the money on financing his living expenses and those of the Wife and children between 2006 and 2008 in so far as it did not come from his friends. He may have earned more from other undisclosed ventures. There may have been capital growth on what he had although he may also have incurred losses, if for example he retained the Woolworths shares. Doing the best I can, I find that he still has £45 million hidden from this court. As against that, I must deduct £5 million for his debts, making a net total of £40 million.

My award

179. The Wife is entitled to half, namely a lump sum of £20 million. This happens to equate with my view of her reasonable needs, generously assessed, so there is no question of my awarding her anything other than half of the assets. I can see no reason why the Husband should not pay the lump sum quickly, given that half the money he had in 2006 was held in shares which would have been readily realisable. I will therefore order him to pay in 28 days. As this is a High Court order, the lump sum will attract interest at the High Court Judgment debt rate of 8%, which amounts to £1.6 million per annum. I entirely accept this is a penal rate in the current economic climate. It gives a huge incentive to the Husband to pay quickly.

180. It follows that, given my findings, the maintenance pending suit order was thoroughly justified. The application to vary the order and remit the arrears is dismissed. The arrears must be paid within 28 days. I do not, however, intend to backdate the order further. In my view, far too much time has passed to do that now. Moreover, the order will end in 28 days. To do otherwise would be double counting as the Wife will get interest in default of payment thereafter.

181. My findings have all been made on the balance of probabilities. It follows that a Judgment Summons is not possible in this case unless the Wife is able to find further evidence in the future sufficient to prove that the Husband has the money to the criminal standard of proof. I note, in any event, that the maximum sentence of imprisonment following a Judgment Summons is six weeks. Given that the Husband has already served six months for contempt of court, it may well be that this would not be a particularly productive way of proceeding in any event.

182. I realise that the Wife will have difficulties in enforcing my order. I only have two things to say. First, this debt will exist for all time. The Husband will never be free of it. It is very much in his interests to discharge it so he can move on. Second, I have rejected all the more fanciful allegations made against him. I cannot see how he would have complied with an order for a lump sum of £300 million let alone £400 million. I hope that he will take the view that he is better off paying the lower sum of £20 million so that he can then concentrate on rebuilding his life.

183. There have been a phenomenal number of issues raised in the case. I have not dealt with all of them by any means. I have, though, dealt with all matters that I consider are material to my decision. In so far as I have not dealt with other issues, I take the view that they are not material and, even if I had made any findings of fact in relation to them, it would not have affected my overall conclusions.

184. I will have to deal with costs in due course. I can, however, give an indication at this stage. Although there is a presumption of no order as to costs in the Family Division, I can make an order if I consider it appropriate to do so as a result of the conduct of a party in relation to the proceedings. In deciding whether or not to do so, I can take into account, amongst other things, any failure to comply with orders of the court; any open offer to settle the proceedings; whether it was reasonable for a party to raise, pursue or contest a particular allegation; the manner in which a party has pursued or responded to the application or a particular allegation or issue and the financial effect on the parties of any costs order.

185. The Husband has not complied with court orders. He has, as I have found, not made any reasonable offer to settle the proceedings. He has been found to have misled the court as to his finances to a very significant extent. On the other hand, the Wife has raised issues that I have found to be completely unfounded. Having said that, many of these issues might have led to the discovery of undisclosed assets. The Husband brought these lines of enquiry on himself by failing to disclose properly. I do, however, accept that a significant amount of the work that has been done has had to be repeated by virtue of her frequent change of solicitors and accountants.

186. I will, of course, listen to argument but my provisional view is that I should not put these parties through the cost of a detailed assessment. Prima facie, I consider that the Husband's non-disclosure has been so great, that the Wife is entitled to her costs on an indemnity basis of what I consider this case should have cost if it had been properly conducted. In saying that, I do accept that this case was an enormous one on any view and required very considerable investigation as a result of the Husband's approach.

187. I will also have to deal with the Husband's passport. At this stage, I merely say that it has already been held for a period way in excess of what I consider was reasonable. I have only made findings to the civil standard of proof and, subject to further argument, I cannot see how it can be said that it is reasonable for the court to continue to hold it, even if the case law permitted me to so order.

188. Finally, I feel nothing but sympathy for the two children of these parties. Through no fault of their own, their parents marriage broke down. A marital breakdown is distressing enough for any child but, for the divorce to then be played out in the full glare of the Media in the way that has occurred in this case, must have been absolutely appalling for them. What has occurred has not been child focussed. I truly hope that the parents will reflect on this. I also hope that it does not happen to any other children.