Case No : RG11D00397

Neutral Citation Number: [2014] EWHC 175 (Fam)
IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Date: 31 January 2014

Before
Mrs J Roberts QC sitting as a Deputy High Court Judge

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B E T W E EN :

US

Applicant

and

SR

Respondent

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Miss Deborah Bangay QC and Mr Richard Sear (instructed by Pinsent Masons) for the Applicant

Mr James Ewins and Miss Fitzrene Headley (instructed by Levison Meltzer Pigott) for the Respondent

Hearing dates : 14th to 25th October and 8th November 2013

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J U D G M E N T

Introduction : preliminary observations

1. This matter was listed before me as a 10 day fixture commencing on 14 October 2013 with two days allowed for judicial reading time. The litigation flows from cross-applications for financial remedy orders. The Applicant, US ("the Husband"), issued his application in May 2011. The Respondent, SR ("the Wife"), issued her application some eleven months later in April 2012. Whilst the marriage has since been dissolved, the Decree nisi pronounced in February 2013 having been made absolute the following day on 15 February 2013, for the sake of convenience I propose to refer to the parties in this judgment as "Husband" and "Wife". Each should be aware that I intend no disrespect to either in doing so.

2. The parties were married in August 2000, having by then lived together in a relationship which involved cohabitation for at least 5 years. Three children (all daughters) were born to this couple during that relationship. At the date of their parents' marriage, the girls were respectively 5 years, almost 4 years and 5 months old. A is now 19, B is 17, and their younger sister, C, is 13 years old. The commencement of the litigation was advertised in December 2010 when the Wife's (then) solicitors served a draft Petition seeking dissolution of the marriage. The Husband issued his own Petition in the R County Court at the beginning of March 2011. In the years which followed, the proceedings have been characterised by increasing mutual hostility and multiple allegations on each side involving unauthorised property dealings and a failure to comply with the obligations owed by each party to the other and to this Court to make full and frank disclosure of their respective financial positions. The proceedings have proliferated with litigation in Russia and in this jurisdiction. Many hundreds of thousands of pounds have been spent by this family on supporting various teams of lawyers in each jurisdiction. I am told that the total costs generated to date are now just under £1 million[1], a staggering sum given that this case cannot, by today's standards, be seen as a "big money"

[1]The Wife's costs to date (including fees paid to her two previous firms of solicitors) are £381,830 (of which £289,582 has been paid). The Husband's costs according to the Form H which was sent to me after the conclusion of the hearing are £572,612.76 which includes an allowance of £15,000 for future costs. He has paid a total of £564,900 towards those costs.

case regardless of the merits of either party's case in relation to the existence of undisclosed assets.

3. To state that the litigation is likely to have proved to be a financial disaster for this family is an understatement. I have been provided with competing schedules which show that the liquid assets available to this family amount to some £4 million (depending on the value to be attributed to one of the Russian properties), with a further £1.763 million / £2.14 million held in the Husband's three pension funds, one of which is now in payment. At the outset, each side contended that there were further undisclosed assets which were being concealed from the Court. By the time the hearing concluded after eight days of oral evidence, Miss Bangay QC and Mr Sear abandoned that aspect of their case which relied on the existence of undisclosed assets held by the Wife. Instead, they seek to persuade me that I should reattribute to the Wife's account a further sum of c.£1.63 million representing either the value of properties which she has disposed of one way or another during the course of the marital breakdown at an undervalue, or being monies which she has spent or dissipated unreasonably. Mr Ewins and Miss Headley contend that the Husband still holds (or should be treated as holding) significant but unquantified sums either in the form of cash, shares or by way of property ownership. In their opening submissions, they contended on behalf of the Wife that the Husband *"must have several million pounds of shares hidden under the name of a third party"*.

4. These are all matters with which I shall have to deal during the course of this judgment as I proceed to make findings of fact based upon all the evidence which was put before me. However, the salutary lesson which flows from all that has occurred to date is that this couple and their children are likely to be facing a very different financial future in their retirement (for that is what beckons) from that which they might have enjoyed had matters been dealt with differently. In terms of the allocation of responsibility for the present state of affairs, that will come at a later stage of this judgment following my analysis of the facts. However, it is right to record at the outset that the Husband is likely to have to bear responsibility for a significant element of the costs

incurred to date and the effective "derailment" of what should have been a full final hearing which was listed in contemplation of a final resolution of both the computation and distribution aspects of the cross-applications currently before the Court.

5. At a very late stage of these proceedings, it emerged that he had over the course of more than two years of this litigation, and on a number of different occasions, deliberately misled the Court, the Wife and her advisers and his own legal team as to the true state of his finances. He failed to disclose the existence of two offshore accounts (in Dubai and Jersey) one of which, as at May 2012, contained a sum of US$845,065, being undisclosed earnings from an extended contract of employment with an offshore company registered in the BVIs. What his own legal team have since described as *"the big lie"* has, since it emerged a month before this hearing, contaminated the entire approach of the Wife's legal team in terms of their preparation for trial. Thousands of pages of documents have been re-scrutinised and the scope of enquiries of third parties and other entities (supported by orders which I made at the outset of these proceedings) has resulted in a situation where, as both sides acknowledged, the enquiry which I have conducted over the course of 9 days has inevitably been limited to an *OS v DS* fact-finding exercise[2]. Throughout the course of the hearing, I was presented on an almost daily basis with fresh evidence in the form of responses relating to the disclosure orders which I made. The Husband's (admitted) lies to this Court and his deliberate falsification of evidence (which took the form of forged bank and credit card statements) is conduct of the most egregious nature. He has shown himself to be contemptuous of his former wife and equally contemptuous of this Court. He has been in flagrant breach of the clear obligation which he owes to both to provide a full, frank and transparent exposition of his financial circumstances with the inevitable result that huge expense, additional work and the very valuable resource of court time has been taken up unnecessarily. The impact

[2]When that joint submission was made to me on Day 6 of this hearing, at the beginning of the second week, I indicated that I would keep matters under review as the evidence progressed and, in particular, as it became clear what – if any – responses there were to the third party disclosure orders which I granted the previous week.

of that conduct on the outcome of these proceedings and any sanctions which flow from it will be matters which I shall address later.

6. However, it is right to record at this juncture that, in a number of important respects, the Wife's own integrity has been impugned principally in respect of her dealings with a portfolio of matrimonial properties acquired during the course of the marriage.

7. When this hearing commenced on 16 October 2013, after two days of judicial reading, I had before me 17 court bundles of documents. As further evidence came to light, additional bundles were lodged. As I write this judgment, the documentation in this case – including counsel's opening and closing submissions – now occupies a total of 25 lever arch files. In terms of what the Husband's own counsel have referred to in their closing submissions as the *"confusing miasma of evidence"*, both legal teams were confronted with a formidable challenge. A number of satellite issues emerged during the course of the hearing with which I dealt as they arose. I have had the benefit of detailed written submissions from counsel at the start of and conclusion to this case. In terms of the fact-finding exercise on which I am about to embark, I have read and listened to submissions on the law and the correct approach which I should apply to the categorisation of the many issues arising. I have already expressed my thanks to counsel for the careful and (no doubt) time-consuming investment they have made in their combined attempts to assist me in my task of establishing the facts in this case.

8. Before turning to that analysis, I need to say something about the background to this case, the family with whom I am dealing and the litigation history which brought us to the hearing in October and November of last year.

Background

The Husband's employment history

9. The Husband is now 62 years old. Following the dissolution of his marriage to the Wife, he has remarried. He is currently living with his third wife, GS (who is 26 years old), and their 2 year old daughter (K) in a rented apartment in Kazakhstan. His first wife, DS, to whom he was married for over 16 years and with whom he appears to have maintained a reasonably close relationship, died in January 2013. Her death brought to an end his obligation to meet a joint lives periodical payments order, although he did not disclose the fact of her death or the cessation of that financial obligation until shortly before the start of this hearing.

10. The Husband's working life has been spent in the oil and gas industry. Having graduated from University with a geology degree, he began his career in the United States. He returned to the UK to work in the North Sea and subsequently found employment with B Corporation, which was later to become B Ltd. Throughout the years of his first marriage, the Husband lived both in Scotland and in London. In 1995, he was employed by G Ltd as the company's national manager in Russia, at which point he moved to Moscow.

11. Thus, by the time he met the Wife, the Husband had already established a successful career in the gas and oil industry and was accustomed to living an expatriate lifestyle which had involved a number of moves. He was in his early forties when they met whilst he was on one of his frequent business trips to Moscow. Whilst there is an issue between the parties as to the point at which they began to live together, it matters not for the purposes of this judgment. The Husband accepts that their relationship developed quickly and, certainly by the end of 1994, he was living in her apartment on each occasion when he was in Moscow. Their first child, A, was born on 13 December 1994 during a visit to his home town in Scotland. The following year, he secured permanent employment with G Ltd and the family of three moved into a rented property in Moscow, provided by his employers. B, their second daughter, was born on 14 September 1996.

12. In 1999, the Husband was promoted to the role of CEO of G Ltd for an Asian country. The family moved again and their youngest child, C, was born in that

country on 16 February 2000. All three children have dual British and Russian nationality.

13. The parties were married on 4 August 2000.

14. The following year, in 2001, the Husband relocated to work from G Ltd's Head Office in the South of England. At that point, the family moved into one of the properties which is the subject of the cross-applications for financial relief. FC in the South of England had been purchased by the Husband some two years earlier, in 1999. It became the family's English home, and it is where the Wife and the children continue to live in the aftermath of the breakdown of the marriage.

15. 2002 saw a hiatus in the Husband's employment position. He was made redundant by G Ltd, receiving a severance package of c. £180,000. He managed to secure a non-executive directorship with the I Ltd, a British company which ran trade exhibitions and conferences. That position was secured in part because of the company's extensive connections with Russia and the Husband's experience of working in that country. He was subsequently to accept a full-time position with I Ltd on a salary of US$700,000 per annum. For the next two years, he was based in Moscow whilst the Wife stayed with the children in their English home.

16. It is not disputed that during his period of employment with I Ltd, the Husband received a number of share options in addition to his annual salary. When his employment with I Ltd ended in 2005, he encashed those options and received approximately £1.5 million on which he paid no tax because of his status as a Russian resident. Throughout the course of the next three years, from 2005 to 2008, he was unemployed and the family was dependent upon savings he had generated over the years and the funds which flowed from the exercise of his options.

17. After a number of months of unemployment in England, the Husband decided to explore opportunities in Moscow. The Wife and the three children moved with him and took up residence in Property R, a newly constructed property

which the Husband had purchased as an investment in 2005. The children attended local international schools.

18. In 2006, having failed to obtain full-time employment, the Husband began to explore other options locally in Moscow. He set up a small consultancy called ABC International LLC in which the Wife had some peripheral involvement. In the two years of its operation, between 2006 and 2008, the business made a loss although the Wife was to tell me during the course of her oral evidence that she regarded it as the platform which gave him the profile which was later to prove attractive to head hunters in the industry.

19. Thus, in the three year period between 2005 and 2008 (when the Husband celebrated his 57th birthday), the family was living in the main from capital. The Husband's case is that he earned little and his increasing concerns about his ability to provide for the needs of his family provided the catalyst for the acquisition of property investments which it was anticipated would provide both rental yield and future capital appreciation.

20. In 2008, he secured a part-time role as an independent director with J Ltd for which he was paid an annual fee of US$60,000. Whilst his duties as a director do not appear to have been extensive in terms of the work involved, his appointment to the board is one of the factors relied upon by the Wife in these proceedings as evidence of the opportunity for further equity participation in that company's shares. The Husband denies that he has ever held, or been entitled to hold, shares in that company.

21. His "dry run" in terms of remunerative employment was to end in August 2008, some three years after the end of his role with I Ltd, when he was appointed as a senior advisor to K Ltd in Kazakhstan. His role within the company was international business development and his acceptance of the position led to the family being separated once again, with the Wife and the two younger children remaining in Moscow as he took up residence in a rented apartment in Kazakhstan. (A, by this stage, was attending school in the UK and living during term times with a close family friend.)

22. The Husband's contract with K Ltd was initially for a period of 12 months. Through an offshore subsidiary called MH Ltd (an entity registered in the British Virgin Islands), he entered into a service agreement for 12 months from 17 September 2008 with an option to renew for a second year on what was described as *"mutually acceptable terms"*. His remuneration was fixed at US$500,000 net per annum on the basis, as the Husband told me, that his employer would be responsible for regularising the tax position with any relevant tax authorities. The $½ million was to be his on a tax free basis. In addition, for the first year, he was to receive a guaranteed contractual bonus of US$200,000 paid quarterly, together with expenses incurred for rent and utilities. Pre-paid flights were provided on a monthly basis to visit his family in Moscow and on a quarterly basis to the United Kingdom.

23. That contract was renewed for a further year on 17 September 2009 on terms which saw an increase in his base salary to US$600,000 per annum but without any contractual entitlement to a bonus. As before, he had no liability for tax on this income which was paid monthly on presentation of invoices which he generated and submitted to MH Ltd.

24. At the point when the Husband's contract was renewed for a further twelve months in the Autumn of 2009, there did not appear to be any evidence of the impending fracture in the marriage which was to come. It seems to be common ground that the long term plan of a return to the UK for the children's education would be postponed until the beginning of the academic year beginning in September 2010. There are, within the core bundles, copies of email correspondence which the Husband had with the headmistress and registrar of X School in the South of England over the early part of 2010 which anticipated their return in September of that year.

25. Whilst I shall in due course need to deal with the circumstances surrounding the breakdown of the marriage and the milestones in the litigation which flowed from it, it is appropriate at this point to state how the Husband's case in relation to his employment developed thereafter.

26. Given the history of his employment relationship with K Ltd (through MH Ltd) up to that point, it might have been expected that there would have been another round of negotiations in September 2010 with a view to a third "rollover" contract. By that point, the marriage had plainly foundered and lawyers were involved both in England and in Moscow. There had already been a number of dealings with the Russian property portfolio and extensive email correspondence between the parties directly as to settlement of their financial affairs.

27. Throughout, and until he served his third witness statement dated 17 September 2013 (less than a month before the commencement of this hearing), the Husband had maintained in these proceedings that his employment with K Ltd had come to an end in September 2010 and that he had received no further remuneration or other financial benefits thereafter. He maintained that position from his first voluntary disclosure in Form E (July 2011), through Replies to Questionnaire in February 2013 and in correspondence sent by his solicitors on his instructions. In September 2013, he revealed not only his seamless transition into a third 12 month service contract (which in fact turned out to be a further 15 months ending on 16 December 2011) at an annual fee of US$650,000 net, but also the diversion of those funds into a previously undisclosed H Bank account which he had opened in Dubai before giving instructions to transfer the funds to another undisclosed H Bank account in Jersey. As at mid-September 2013 when he made that disclosure, the balance in the latter account was US$873,652. He was forced to explain how he had consciously and deliberately taken the decision to conceal the existence of that continuing income stream (and the monies he was accruing as a result). By his own admission, he concocted a careful strategy to conceal the existence of these funds from the Wife, her advisers, his own advisers and the Court and by his actions directly implicated his employer in that plan *("I therefore asked K Ltd not to pay my salary until I had thought about how I might protect those payments….")*.

28. However, his culpability goes beyond non-disclosure, egregious as this particular conduct – on its own – may be. In order to cover his tracks, the

Husband, with the assistance of his present wife, was obliged through use of a computer programme fraudulently to redact and alter entries appearing on bank and credit card statements which had been disclosed, pursuant to orders of this Court, as genuine copies of originals so as to conceal the existence of expenses and other entries which might point to his continuing employment. This was achieved by downloading the original statements online to a laptop computer and altering the numbers by means of an Adobe reader programme. Whilst the Husband was to tell me that he did not have the necessary technical skills to undertake this task, his present wife, GS, did. She is therefore directly implicated in his fraud on this Court.

29. The breath-taking arrogance which I find the Husband displayed in his actions sits uncomfortably with the statement which he made only the previous month in August 2013. In a long statement sworn in support of his claim in harassment for injunctive relief against the Wife (listing, as it does, the sad catalogue of events which demonstrate the complete disintegration of this litigation into a war of deep attrition), the Husband stated, on oath,

> *"I found it extremely disquieting to think that someone is digging into my personal life (particularly in circumstances where I have always given full and frank disclosure within the Family Proceedings) [sic] it has been alarming to discover the extent of SR's determination to do whatever it takes to achieve her aims."* (my emphasis)

30. I shall have to consider the extent to which these lies contaminate the remainder of his evidence as to the likelihood (or otherwise) of further non-disclosure and/or the existence of other assets when I come to examine the Husband's motives in presenting a false case to the Court. For present purposes, I make it absolutely clear that I do not find any exculpation in his statement offered in partial mitigation of his actions to the effect that *"the scale of the additional funds in the Jersey account is nowhere near as large as the wild figures asserted by SR at various times in these proceedings. In addition, I am confident that the failings in my own disclosure will be found to*

be significantly surpassed by SR's misconduct both in the proceedings and (more broadly) since our separation".

31. In terms of his current situation, it remains part of the Wife's case that he continues to work in a remunerative capacity of one sort or another and that he has earned income which is not reflected in his current disclosure. The Husband contends that his only source of income since December 2011 when he ceased to work for K Ltd (through MH Ltd) is income from one of his three pensions which he is now drawing at the rate of c. £18,500 per annum. (He has recently commuted almost £200,000 from one of his pension funds to meet ongoing income needs, including litigation costs.) In the light of his age (62) and the poor state of his health, he sees little prospect of further employment in future. He wishes to establish a home in the United Kingdom with his present wife and their daughter but the financial outcome of these proceedings and the potential for adverse findings by this Court may have a significant impact upon the family's qualification for entry on a permanent basis.

32. His evidence to me was that, apart from a one-off piece of consulting work for the KHK in January 2012, he has received no income. He invites me to accept that the prospects of his earning substantial (or, indeed, any material) sums in future are remote. Whilst there was no formal medical evidence before me as to the state of his health, I am aware that he has in the past suffered from high blood pressure for which he was treated in the summer of 2012 as an in-patient and for which he continues to take medication. I was also able to observe at first hand the breathing difficulties which he was experiencing during parts of the hearing whilst giving his oral evidence. These did not appear to me to be feigned and, at one point, I had to adjourn proceedings for a short time in order that he could undergo a medical examination to determine whether or not he was in a fit state to continue.

The Wife's position and contribution to family life

33. The Wife is now 48 years old. She is a Russian national and was born and brought up in the T region of Russia. On completing her studies in 1990 (she obtained the equivalent of an English undergraduate degree), she moved to Moscow where she found work as an administrator both for local companies and within her family company. She has not worked in any remunerative capacity since 1994 when she gave birth to A.

34. She and the Husband met in Russia when she was 26 years old. Their relationship developed the following year and, whilst there remains an issue as to precisely when cohabitation was established on a permanent basis, I accept the Wife's case that she has devoted the majority of her adult life to the Husband, their marriage and the family.

35. I also accept the Wife's evidence, although there is no real issue between the parties, that through the latter years of their relationship, the family was able to enjoy an increasingly good standard of living which, whilst not extravagant, involved few financial constraints. Together they were able to build up and manage a small property portfolio (paid for, I accept, by the Husband); they enjoyed comfortable, well-appointed homes in Moscow and in England and they were able to educate their children privately. Certainly over the last two years of the marriage, the Husband had the benefit of some significant tax free earnings. The Wife speaks in her written evidence of holidays at five star resorts three times a year and I was told about one particular family holiday spent over their last Christmas together in Bali. The children (in particular, A) enjoyed horse-riding and I heard evidence about the costs of livery at a local establishment in Moscow, as well as the not insubstantial costs of repatriating to the UK one of the children's horses at the end of the marriage.

36. Inevitably, there is some disagreement between the parties as to the effective date of the breakdown of this marriage. The Wife contends that the direct catalyst for their separation was the Husband's decision to pursue his relationship with the woman who was to become his third wife. The Husband's case is that the development of that relationship may have led him to conclude that divorce from the Wife had become inevitable but it was not,

in isolation, the sole cause. I have seen email exchanges between these parties which lead me to conclude that, from the Wife's point of view, there were undoubtedly strains in her relationship with the Husband before his relationship with GS developed. Whilst I allowed each of the parties a certain amount of latitude in their cross-examination on this point because of the context which the breakdown of the marriage provides for the more difficult analysis of the various property transactions which were ongoing throughout this period, I have come to the clear conclusion that in the weeks between April and June 2010 (which culminated in the incident at a hotel in London) the parties' relationship was in a state of turbulent flux. However, it is clear to me it was the Wife whose distress at its demise was more acute. I think it is highly likely that she would have been willing to repair the marriage at several points during the early part of 2010 had the Husband not determined to pursue his relationship with his present wife.

37. The contemporaneous email exchanges between them reveal something of the Wife's sense of betrayal and her consequent insecurities, both personal and financial, which quickly surfaced once the Husband disclosed to her the existence of his relationship with GS. It is not difficult to understand the Wife's predicament: she had agreed to relocate on a permanent basis with the children to a country which was not her own with all the change which such a move would bring. She believed that she would be making that move with the security which marriage to the Husband had brought her and would continue to provide. In the midst of the unfolding of that new chapter of family life, she found herself supplanted in his affections by a much younger woman who, at least in this Wife's mind, was the potential usurper of much of the financial security which had been available to the family up to that point in time. The Wife was very honest about the depth and extent of the anger which she felt towards the Husband. As he himself accepts, she had a long history of depression and was emotionally vulnerable. Indeed, that fragility had manifested itself in more than one episode when she had been treated as an in-patient both in Moscow and in England.

38. In due course, I shall need to analyse in some detail the chronology which flows from the Husband's revelation to the Wife in the early part of 2010 that he was involved in another relationship, involving as it does the subsequent litigation ongoing in this jurisdiction (and, to a lesser extent, in Moscow) and the various property dealings which were undertaken during this period. Before embarking on that exercise, I need to address aspects of the law which I shall have to apply in the context of my assessment of each of these parties as witnesses to the truth and my findings of fact. By way of preface, I have heard and read very detailed submissions on the law from both sides. Miss Bangay QC and Mr Sear have provided me with a bundle containing 24 authorities, including the recent decision of the Supreme Court in *Prest v Petrodel Resources Ltd* [2013] 2 FLR 732. I do not propose in this judgment to restate what are, in many respects, established points of law.

The Law

39. Because there is common agreement that it will not be possible to move forward with decisions as to distribution until findings of fact have been made as to computation, I need say no more at this stage about the powers available to me under sections 23 and 24 of the Matrimonial Causes Act 1973, nor the factors set out in section 25 which will guide the exercise of my discretion. Absent agreement between the parties, that will be an exercise for another day.

40. Thus, we come to the overarching issue of conduct and the plethora of issues which flow from the myriad of allegations made by each of these parties against the other. Miss Bangay QC and Mr Sear have in their closing submissions drawn a clear distinction between marital and litigation misconduct and the consequential impact of findings in respect of each of the two categories. With certain reservations with which I shall deal later, I agree that this is a principled and helpful approach.

41. In particular, in reaching my conclusions as to where the truth lies in terms of the assets which are available for distribution in this case or which should be treated as reattributed to one or other of the parties (the central issue to be

determined in this particular exercise), each party invites me to draw adverse inferences and to reflect in the drawing of such inferences the impact of lies (admitted and alleged). It is the former concept which underpins the cases advanced on behalf of both the Husband and the Wife; it is the latter which is relied upon by the Wife as establishing, Mr Ewins would say conclusively, her case against the Husband. In terms, he submits (para 123 of his written closing submissions) that the Husband's deceit and forgery justify a stance whereby the burden should rest conclusively on his shoulders to prove he does not have more assets. He submits that in order to succeed in rebutting the Wife's case as to the existence of other assets what is required is *"a categorical negative"* which has not yet been forthcoming in the volume of responses to the third party disclosure orders which I made against various individuals and entities at the commencement of the hearing.

42. In this context, I remind myself of the direction in relation to the telling of lies approved by the Court of Appeal in *R v Lucas [1981] QB 720* to the effect that a lie told by a defendant (or a witness in other proceedings) can only strengthen or support the case against him if the tribunal charged with fact-finding is satisfied that (a) the lie was deliberate, (b) it relates to a material issue, and (c) there is no innocent explanation for it. There are many reasons why people lie, for an example, in an attempt to bolster an otherwise truthful case, or out of shame, or out of a wish to conceal disgraceful behaviour. On the other hand, in appropriate circumstances, lies can establish a proper and secure foundation for drawing an adverse inference against the individual who has lied.

43. In the very recent case of *Young v Young [2013] EWHC 3637 (Fam),* a similar issue arose in a case with which Mr Justice Moor was dealing[3]. There, the wife was alleging financial non-disclosure on a massive scale running to hundreds of millions of pounds (if not billions) in circumstances where the husband's case was that he was insolvent to the tune of £28 million. At paragraph 21, his Lordship said this :

[3]Judgment in *Young v Young* was handed down on 22 November 2013.

> "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."

44. Here, there is no issue as to whether or not the Husband deliberately told lies. He admits that he did and that, in doing so, he misled not only the Wife and her advisers but also his own legal team. The question for me is whether I can legitimately move, without more, from that admission to a finding that, on the balance of probabilities, he continues to conceal from the view of the Court further undisclosed assets. In essence, Mr Ewins invites me to walk down that path on the basis that it is a conclusion I must reach unless the Husband is able to establish on the basis of reliable and credible evidence that no such assets exist.

45. Without in any sense detracting from the clear expression of condemnation of the Husband's deception which I have made on more than one occasion thus far in this judgment, I take the view that Mr Ewins' binary test on this issue does not entirely reflect the law as I must apply it.

46. The standard of proof is the civil standard, namely the balance of probabilities. That much is not in dispute here.

47. The doctrine of drawing adverse inferences in financial remedy cases is one which is long established. In *J v J [1955] P 215,* Sachs J (as he then was) said at page 227 :-

> "In cases of this kind, where the duty of disclosure comes to lie upon the husband; where a husband has – and his wife has not – detailed knowledge of his complex affairs; where a husband is fully capable of explaining, and has the opportunity to explain, those affairs, and where he seeks to minimise the wife's claim, that husband can hardly complain if when he leaves gaps in the court's knowledge, the court does not draw inferences in his favour. On the contrary, when he leaves a gap in such a state that to 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."

48. Butler-Sloss LJ was subsequently to approve that passage some forty years later in *Baker v Baker [1995] 2 FLR 829*. However, in a unanimous judgment, the Court of Appeal held that notwithstanding the duty on a respondent to a financial application to demonstrate that he had made full and frank disclosure, the burden of proof remains on the applicant who brings the claim to establish that there are resources available to meet her claim. It will always be open to a tribunal of fact to draw adverse inferences in appropriate circumstances but the approval by the Court of Appeal of Ward J's judgment at first instance suggests that there has to be an evidential foundation of some kind to support the drawing of an adverse inference. What Ward J (as he then was) said in *Baker* at first instance was this :-

> "In directing myself as to the proper approach I am of the view that a petitioner who brings a claim for ancillary relief assumes the burden of proving that there are the resources available to meet her claim. In my judgment the extravagant lifestyle that was adopted during the marriage up to and after repossession of Red Lion Yard and, not unimportantly, after the breakdown of the marriage, leads me to infer that this respondent who had gone to elaborate lengths to preserve his wealth, had the means to support that lifestyle. The evidential burden now falls on him. This is not ordinary civil litigation."

Butler-Sloss LJ held that Ward J was not displacing the general duty of the applicant to prove her case. She had, in his view, prima facie discharged that

duty and the husband had failed to comply with his obligation of disclosure in the particular circumstances of this type of litigation.

49. The destination of the evidential burden considered in *Baker* was revisited in the much more recent judgment of Mostyn J in *NG v SG (Appeal : non-disclosure) [2012] 1 FLR 1211, [2011] EWHC 3270 (Fam)*. At paragraph 7, his Lordship said this :-

> "There must surely be a sound evidential basis for reaching a conclusion as to the scale of undisclosed assets. The court should not be led into a knee-jerk reaction that says simply because evasiveness and opacity is demonstrated there is some vast sum salted away. This is not to say that the court has to put a precise sum on the scale of the hidden assets, let alone to identify by reference to evidence where they are or what they compromise : see *Al-Khatib v Masry* at para [89] and *Ben Hashem v Al Shayif* at para [70][4]."

50. Thus it is clear that, before the court moves to a finding that there are undisclosed assets, there must be some admissible evidence of hidden funds, even if the estimate of the value of such funds is by its nature very broad. Sometimes there may be evidence of the existence of hidden assets revealed by documents improperly obtained; sometimes a wife is able to give direct evidence of observations made by her or of things said to her by the husband (as is the case – in part - which the Wife seeks to advance here, as I shall come on to explain). In the absence of such direct evidence, the Court may need to look to the husband's lifestyle; it may need to consider the scale of any ongoing business activities in which he is involved. But it seems clear that what is required is some form of cross-check which supports the reasonableness of the Court's conclusions in relation to adverse inferences.

51. In paragraph 16 of his judgment, Mostyn J provided a useful and succinct summary of the law, thus :-

[4][2002] 1 FLR 1053, [2009]1 FLR 115

*"***[16]** Pulling the threads together it seems to me that where the court is satisfied that the disclosure given by one party has been materially deficient then:

(i) The court is duty bound to consider by the process of drawing adverse inferences whether funds have been hidden.

(ii) But such inferences must be properly drawn and reasonable. It would be wrong to draw inferences that a party has assets which, on an assessment of the evidence, the court is satisfied he has not got.

(iii) If the court concludes that funds have been hidden then it should attempt a realistic and reasonable quantification of those funds, even in the broadest terms.

(iv) In making its judgment as to quantification the court will first look to direct evidence such as documentation and observations made by the other party.

(v) The court will then look to the scale of business activities and at lifestyle.

(vi) Vague evidence of reputation or the opinions or beliefs of third parties is inadmissible in the exercise.

(vii) The *Al-Khatib v Masry* technique of concluding that the non-discloser must have assets of at least twice what the claimant is seeking should not be used as the sole metric of quantification.

(viii) The court must be astute to ensure that the non-discloser should not be able to procure a result from his non-disclosure better than that which would be ordered if the truth were told. If the result is an order that is unfair to the non-discloser it is better that the court should be drawn into making an order that is unfair to the claimant."`

52. Finally, I bear well in mind the observations made by Lord Sumption who delivered the leading judgment of the Supreme Court's recent decision in *Prest v Petrodel Resources Ltd &Ors [2013] 2 FLR 732, [2013] UKSC 34*. In that case, and amongst other issues in the context of matrimonial financial

claims, the Court had to examine evidence in relation to the beneficial ownership of certain properties which was incomplete and, in critical respects, obscure. In the context of discussion about a different scenario (the civil liability of a railway company for injury suffered by trespassers on the line), Lord Sumption said this (page 756) :-

> "…. There must be a reasonable basis for some hypothesis in the evidence or the inherent probabilities, before a court can draw useful inferences from a party's failure to rebut it. For my part, I would adopt, with a modification which I shall come to, the more balanced view expressed by Lord Lowry with the support of the rest of the committee in *TC Coombs & Co (A Firm) v IRC* [1991] 2 AC 283, [1991] 2 WLR 682 at 300 and 696 respectively :
>
> > 'In our legal system generally, the silence of one party in the face of the other party's evidence may convert that evidence into proof in relation to matters which are, or are likely to be, within the knowledge of the silent party and about which that party could be expected to give evidence. Thus, depending upon the circumstances, a prima facie case may become a strong or even an overwhelming case. But, if the silent party's failure to give evidence (or to give the necessary evidence) can be credibly explained, even if not entirely justified, the effect of his silence in favour of the other party may be either reduced or nullified.'

53. His Lordship continued,

> *"***[45]** The modification to which I have referred concerns the drawing of adverse inferences in claims for ancillary financial relief in matrimonial proceedings, which have some important distinctive features. There is a public interest in the proper maintenance of the wife by her former husband especially (but not only) where the interests of the children are engaged. Partly for that reason, the proceedings, although in form adversarial, have a substantial inquisitorial element. The family finances will commonly have been the responsibility of the husband, so that although technically a claimant, the wife is in reality dependent on the disclosure and evidence of the husband to ascertain the extent of her proper claim. The concept of the burden of proof, which has always been one of the main factors inhibiting the drawing of adverse inferences from the

> absence of evidence or disclosure, cannot be applied in the same way to proceedings of this kind as it is in ordinary civil litigation. The considerations are not a licence to engage in pure speculation. But judges exercising family jurisdiction are entitled to draw on their experience and to take notice of the inherent probabilities when deciding what an uncommunicative husband is likely to be concealing. I refer to the husband because the husband is usually the economically dominant party, but of course the same applies to the economically spouse whoever it is."

54. In terms, this exposition of where the law stands in relation to the evidential burden of proof seems to me to close the circle neatly in terms of the observations made by Ward J (and upheld by the Court of Appeal) in *Baker* (see para 47 above). There is no doubt that in appropriate circumstances, adverse inferences can be drawn against a party who has failed to make proper disclosure of his or her financial circumstances, but such inferences must be properly drawn (*per* Eleanor King J in *M v M [2013] EWHC 2534 (Fam)* at para 202, approving Sachs J in *J-PC v J-AF [1955] P215*) and they must be reasonable inferences based upon admissible evidence.

55. As to adverse inference, it seems to me that, particularly in the circumstances of this case, care needs to be taken in differentiating between the two separate concepts which flow from the drawing of adverse inferences against a party. In this case I am asked by each party to draw adverse inferences against the other. In the case of the Wife, she relies on lies told by the Husband about the existence of funds which he had always denied (but which he has now been forced to reveal) as the basis for her case in relation to the existence of other assets which he has yet to disclose. This limb of the concept of adverse inference is likely to result in one of two findings. Either the asset or assets (in whatever form they may take) exist and are assumed to be available to the non-disclosing party, or they do not. Depending on the conclusion which is reached, in the second stage of decision-making as to distribution, that non-disclosing party will either be presumed to have access to those assets or he will not. The other potential outcome from drawing an adverse inference against a party is different. This sounds in presumed or notional reattribution. If, for example, a judge is asked to find that a party has deliberately, wantonly

and wrongfully disposed of an asset at an undervalue (let us say through an unauthorised sale of that asset at less than its open market value) and has squandered the proceeds without notice to the other party, the adverse inference which the court is likely to be asked to draw is that the party at fault should be presumed to be holding funds to an equivalent (and full) value of the asset which has been sold. This is the process of notional reattribution which is fundamentally different from a finding that a party should be presumed to have access to funds or assets which it has found actually to exist. Thus, in notional reattribution cases, when a judge comes to the second stage of deciding how to distribute assets as between the parties, he or she will be conducting that exercise on the basis of an assumption that a party should be treated as holding an asset or assets which it is acknowledged do not exist. Each is a form of add-back but in one case the court's finding is to the effect that the assets (or the value of the assets) is actually available to a party; in the other, the finding is to the effect that it should be treated as being available but is not.

56. In this context, and particularly in circumstances where each of the parties makes against the other very serious allegations of misconduct, it becomes important to distinguish between two forms of conduct : matrimonial misconduct and litigation misconduct. As I have said, the distinction has been highlighted by Miss Bangay QC and Mr Sear in their opening submissions and I accept that the distinction is an important one because findings in respect of each attract different sanctions. In the case of matrimonial misconduct, a positive finding against a party is likely to operate as a form of financial penalty in that party who is found to have perpetrated the misconduct is likely to receive less in terms of the quantification of the award made at the conclusion of proceedings, but subject always to the overarching consideration of fairness. Section 25(2)(g) of the Matrimonial Causes Act 1973 imports into the judicial discretionary process the ability, in appropriate circumstances, to take account of marital misconduct if it would be inequitable to disregard it. On the other hand, litigation misconduct, such as a failure to make disclosure of assets or a financial presentation which is established to be defective in some form or another, sounds in an award of costs.

57. This distinction has been recognised by the courts in a number of cases. In *Tavoulareas v Tavoulareas[1998] 2 FLR 418, CA*, Thorpe LJ said this at page 426 and 427 :-

> "The criterion of conduct under s 25(2)(g) of the Act is clearly stated to be relevant if the court concludes that it would be inequitable to disregard it. But it does seem to me that a clear distinction must be drawn in all these cases between what might loosely be described as marital conduct and what might conveniently be described as litigation conduct. It seems to me as a matter of construction that s 25(2)(g) is plainly aimed at marital misconduct. If the applicant's misconduct is limited to misconduct within the ancillary relief case long after the separation of the parties, it is, in my judgment, questionable whether that factor should go to diminish the quantum of the financial award.
>
> This question arose in the case of *P v P (Financial Relief : Non-Disclosure)[1994] 2 FLR 381*. In that case the applicant wife had been exposed (coincidentally by Mr Mostyn's cross-examination) to have been guilty of considerable misconduct of the financial case. He relied upon a decision of Lincoln J in *B v B (Real Property : Assessment of Interests)[1988] 2 FLR 490* in submitting that, as a result of that misconduct, the court should reduce the wife's award on the application of the s 25(2)(g) criterion. In ruling on that submission, I said (at 392H) :
>
> > 'It seems to me that in such a case such price as is to be paid by the dishonest litigant is a price in costs, not in reduction of the appropriate share of the available assets. The suggestion contained in the last sentence of Lincoln J's judgment that maxims of equity should be applied to deny or reduce relief I cannot follow. It seems to me that the court has a duty to discharge a statutory function on the application of the statutory criteria, and maxims of equity have nothing to do with it.'
>
> A more extreme case is *M v M (Financial Provision : Party Incurring Excessive Costs)[1995] 3 FCR 321*. At 330H I said :
>
> > 'Conduct is only relevant insofar as the wife relies upon the manner in which the husband has conducted these proceedings. Ordinarily speaking, it seems to me that the manner in which proceedings are misconducted is to be reflected in orders for costs rather than directly in the scale of the awarded sum.

> However, this seems to me to be the exceptional case where the husband's strategy has been so extreme that it would be inequitable to disregard it. It seems to me that it is appropriate to look at the quantification of the wife's share not of what remains today but of what would remain today had that policy of waste and destruction not been pursued.'"

58. Thorpe LJ returned to the distinction in the later case of *Young v Young [1998] 2 FLR 1131*, CA where he emphasised again the need to delineate the two forms of misconduct. At page 1140, he said :

> "Only in the rarest cases will the litigation misconduct have so squandered assets as to require reflection in quantification (as an example see *M v M*[cited above]). Of course there will also be cases in which the court discerns both marital misconduct and litigation misconduct. In those cases it is open to the court to reflect the marital misconduct in the quantification of orders and the litigation misconduct with costs penalty."

59. In relation to the Wife's case against the Husband concerning his lies and the allegation that he has yet to make full disclosure of his assets, I shall in due course make my findings on the basis of my analysis of the evidence. Those findings will either establish the existence of other assets through the process of the drawing of adverse inferences against him or they will not. Inevitably, his litigation conduct in presenting the court with a false and fraudulently manufactured financial presentation has the potential to sound in an order for costs at the end of the day.

60. However, the more difficult question in this case, as far as I am concerned, is the categorisation of the conduct which is alleged against the Wife in terms of her disposal of two of the Russian properties during the currency of the litigation at what is alleged to have been a significant undervalue.

61. Whilst I accept that marital conduct for the purposes of section 25(2)(g) can apply to an act by a spouse which takes place after the effective breakdown of the marriage, the allegations relied upon against the Wife in relation to the disposal of the properties amount, in effect, to an allegation of wanton

dissipation of matrimonial resources during the currency of the litigation. In this context, it may be said that there is an element of elision between the two types of conduct to which I have referred above and thus a tension as to how such conduct, if established, should be reflected in any findings I make at this stage.

62. In their opening submissions to me, Miss Bangay QC and Mr Sear say this at page 29 (para 198(b)) :-

> *"The situation in relation to the alleged disposals of Property B and Property K is potentially different. If the court is satisfied that W either retains a beneficial interest in either (or both) of the properties or else is likely to receive a financial benefit in respect of either or both of them in the future, this can be reflected in the computation of the assets now and ought to be reflected in costs. If, however, the court finds that the disposals were genuine but irresponsible transactions at an undervalue, there is some tension in the authorities as to whether that should be reflected either by a notional reattribution to W of such sum as will fairly represent the 'loss' (ie. at the 'computation' stage) or by an adjustment at the 'distribution' stage of the case (cf. Le Foe v Le Foe & Woolwich plc [2001] 2 FLR 970, FD)".*

63. I shall have to return to the proper application of these principles to my findings of fact in due course. For present purposes, and in the context of reattribution, I propose to say only the following in relation to established principles :-

(i) A spouse cannot be allowed to fritter away or dispose recklessly of assets and then claim as great a share of what was left as he or she would have been entitled to if they had behaved reasonably : *Norris v Norris [2003] 1 FLR 1142* approving *Martin v Martin [1976] Fam 335* per Cairns LJ;

(ii) However, an important caveat to that principle is that a notional reattribution has to be conducted very cautiously, by reference only to clear evidence of dissipation (in which there is a wanton element) and the fiction does not extend to the treatment of sums reattributed to a spouse as cash which he can deploy in meeting his future needs : *Vaughan v Vaughan[2008] 1 FLR 1108, CA* per Wilson LJ;

(iii) A party seeking to attribute to the other assets which no longer exist must identify either a disposal of assets with the aim of defeating their claim or the wanton dissipation of funds. Short of such a disposal or dissipation, a party could do what he or she wished with their money : *N v F (Financial Orders : Pre-Acquired Wealth)[2011] 2 FLR 533 per* Mostyn J.

It is, perhaps, not without significance that during the FDR hearing in May last year, Mostyn J himself was to observe of the Wife's position (ie. inasmuch as there was a transfer at an undervalue, it was brought about by necessity) that, whilst intellectually pure, the process of reattribution does not actually recreate any actual money. In circumstances where, as I have already described, the majority of the visible assets in this case are likely to be required to meet the future needs of these parties and their children in their different circumstances, absent findings that either the Husband has a continuing and substantial income stream and/or has access to significant assets which he has yet to disclose, needs are likely to dominate the distribution process. In these circumstances, and in the light of the need for caution highlighted above, I may need to tread with care before proceedings down the road to reattribution depending on the findings I make after my analysis of the evidence.

My observations about the parties as witnesses

64. Before I embark upon that analysis, it will be convenient at this point to record my general impression of these parties as witnesses. Both parties gave their

oral evidence over the course of several days and I had a very good opportunity to assess each as a potential witness to the truth.

The Wife

65. I observed the Wife to be completely exhausted and overwhelmed by these proceedings. I am aware that there was a problem initially with her medication in that she had been without her anti-depression medication on the first day of her evidence. That problem was remedied by the second day but it did not displace my impression of her as a woman who had found the process of litigation, particularly since the summer, to have been an overwhelming experience. She has had to contend not only with her own psychological problems, but also with those of their elder daughter, A, who herself suffered some kind of emotional breakdown in the summer of last year. She told me something about the difficulties she had experienced in providing the sort of care she would have wished for the children over the many months during which she has been trying to establish the truth about the Husband's financial circumstances.

66. The Wife gave her evidence throughout with the assistance of an interpreter. Whilst I am satisfied that her English is good enough to have enabled her to follow the proceedings and understand questions which were put to her, she required assistance from the interpreter in many of the answers she gave to me, particularly where those answers involved an explanation of often complex transactions or historical detail. I am satisfied that the interpreter, Mrs G, was able properly and effectively to convey to me both the substance and import of the Wife's evidence. Obviously, I was able to observe her demeanour and emotions for myself. She was distressed through much of her evidence but her demeanour for the most part was appropriate and I had the impression that she understood very well the significance of the enquiry on which the Court was embarked.

67. That said, in several respects, I found the substance of the Wife's evidence to be confusing, inconsistent and in some respects misleading. At times it was

difficult to draw out a coherent narrative in her responses to the questions which were put to her, particularly in relation to some of the aspects of the various property transactions which she undertook following the breakdown of the marriage, and the application of funds realised as a result. I appreciate that aspects of that evidence were technical and involved an appreciation of property law and procedure different from our own. However, on many of the issues arising from her use of significant sums of cash realised as result of the property sales, I found her evidence to be unhelpful and unreliable. Whilst accepting, as I do, that it is not easy to reconcile historic expenditure from cash receipts without some form of contemporaneous record (which we did not have here), I was at times left in a position where I was simply unable to reach any reliable conclusions as to where money had gone.

68. I was left in no doubt as to the raw and bitter emotions felt by this Wife as a result of the breakdown of her marriage to the Husband. Whilst taking proper account of her psychological vulnerability and her obviously fragile emotional state, she behaved on occasion with bitterness and spite towards him and those with whom he associated. She herself was to accept without reservation that many of the things she had said and written were entirely inappropriate, if not scandalous in their content.

69. Some of her actions in disclosing various material and information to third parties were not only wrong but in breach of orders made by the Court. However, I took her apologies to both the Court, her Husband and his present wife to be genuine and sincere expressions of remorse and I am prepared to accept that much of what occurred was driven not only by her personal distress but also by an overriding desire to establish the falsehoods which were being maintained to the Court by her Husband.

The Husband

70. The Husband also struck me as a man who has not come through these proceedings unscathed. His evidence had a greater fluency because he, unlike

the Wife, was not in difficulties understanding or responding to questions which were put to him. He is plainly not a man who enjoys the best of health but he was obviously anxious to conclude proceedings and withstood many hours of robust and effective cross-examination whilst in the witness box. For the most part, he remained calm and quietly spoken during the delivery of his evidence but at various points he became flushed, nervous and argumentative and I took the view that on occasions he was dissembling.

71. In terms of his recent admissions and *"the big lie"*, he made his apologies to the Court but there were times during his evidence when I suspected that he did not fully appreciate the seriousness of the position in which he finds himself. There was a note of flippancy, if not arrogance, in some of the answers which he gave, particularly on the occasions when he was seeking to measure the scale of his own transgressions against those of his Wife. At one point it seemed to me that he was seeking to suggest that his own 'forgeries' were of a far superior quality than those which he alleged that the Wife had produced. He was vague and hesitant in his responses to Mr Ewins when he was being asked questions about the precise manner in which the forged bank statements had been produced and the time period over which those forged documents had been created. Whilst he may well have been motivated by a desire to protect the position of his present wife (who appears to have been the technician who actually produced the false statements), I did not have the impression that he genuinely appreciated the extent to which his actions were likely to attract the opprobrium of the Court, were he to be discovered.

72. I listened with particular care as he gave me his own explanation for his failure to disclose the earnings from K Ltd which he had accumulated in the H Bank account. He was frank in his admission in response to a question from Mr Ewins that he probably would not have admitted the existence of that account had it not been for the fact that he had been "found out" following the orders made by Moor J at the Pre-Trial Review.

73. He told me that he made the decision to conceal the existence of his continuing employment and the funds he was generated from it in or about

May 2011 when he realised that the Wife had disposed (or purported to have disposed) of three of the Russian properties. He told Mr Ewins in cross-examination that his decision to manufacture the forged bank statements was taken about two months before the FDR hearing in May 2013 after discussions with his present wife when it became clear to him that the only funds he might be able to access in future were the savings he had been accumulating in the H Bank account. He realised that he could not disclose the existence of those funds without revealing the fact that he had lied about working for a further year. He told me that he did not know what to do and that he was trying to come up with a solution over a period of time. He was worried that there was a real possibility that he might end up with nothing because this is what the Wife had threatened. All the properties into which he had invested his capital were in Russia and the position with FC was not secure given the registration by the Wife of a notice against the title. He said that he was still very concerned about this Court's ability to enforce any orders it might make in respect of the two remaining Russian properties. He had been shocked by the extent of the financial demands which the Wife was making to settle her claims. He concluded,

> *"I wanted to admit it but I didn't know how. To continue the lie was the only thing I could think of and I know that was wrong."*

74. The Wife's demands to which the Husband was referring were those set out in an email which she sent to him in November 2010 and, reflecting for a moment, I have to say that unless Mr Ewins is right in his contention there are many millions of pounds which have yet to be disclosed in these proceedings, it was a very surprising position for the Wife to take. It may, of course, be no more than a further expression of the strength of her conviction as to the likely scale of his wealth.

75. He was later to tell me that he suspected that his Wife had known throughout that he was working. If that is so, it demonstrates an entirely callous disregard not only of his own obligation to make full and frank disclosure in these proceedings but also for her peace of mind. It adds substantial force to Mr

Ewins' submission to me that many of the less creditable actions she took in her attempts to expose him as the dishonest litigant which he was were driven in part by his own default.

76. There is another aspect of this Husband's character and attributes which it would be wrong to ignore. Whilst he appears to be presently estranged from his three children, I am persuaded that, prior to the breakdown of the marriage and throughout a considerable period of these proceedings, he was a devoted father to each of his girls. That much is acknowledged by the Wife in many of her early emails to him. He looked after them without assistance from the Wife during his visits back to the UK and I have evidence that he was closely involved with assisting A with one of her school projects. At one stage, when her health was failing as a result of the stress of the divorce, the Wife even suggested that he might be the better parent to care for the girls. When A had her own psychological crisis in the summer of 2012, the parties appeared to be able to put their differences behind them for several weeks when the Husband returned to FC to be with the family. The solicitors' correspondence at the time reflects the temporary moratorium in the proceedings whilst the family was struggling through these difficulties.

77. I say this not in any way to exonerate the Husband's conduct but to reflect the fact that, whilst obviously capable of highly dishonest and discreditable behaviour, he has also shown himself to be a decent, caring and responsible father to these children in the past and I hope that, whatever else a conclusion to these proceedings may eventually bring, he will at some point repair his relationship with them.

The acquisition of and subsequent dealings with the property portfolio in England and Russia

78. At this stage, I propose to say something about the various properties which were acquired by the parties during the course of their relationship as partners / spouses. I propose to set out the background to their course of dealings and

the development of the written and oral evidence as it was tested forensically during the hearing. Thereafter, and insofar as I have not already done so, I propose to set out my specific findings comprehensively at the conclusion of my judgment.

79. Aside from the English property at FC, in the South of England (which is the only property held in the Husband's sole name), the parties owned during the marriage a portfolio of four separate properties in Russia, of which – on the Wife's case - only two now remain in the ownership of this family.

Property K

80. In 1997, some three years into their relationship (but prior to their marriage), the Husband's case is that he agreed to finance the acquisition of some land and the cost of building a small property as a home for the Wife's elderly mother. A site was identified adjacent to the Wife's sister's home in Property K[5]. The Husband puts his total contribution at between US$40,000 and $50,000. He says that the balance of the overall cost was met through interest which had accrued on funds he had lent to the Wife's brother-in-law (a loan about which I know no more). Work was ongoing for about 18 months and the Husband contends that he remitted cash funds to Russia which he used to pay the builders. He says the property was subsequently transferred into the Wife's sole name.

81. The Wife's case is that it was she who funded the acquisition costs through the sale proceeds of two different properties, one belonging to her mother (who contributed $15,000) and the other to her. She has subsequently averred that any contribution which the Husband made was repaid to him in the sum of US$55,000 by way of two 'money gift contracts'. In her section 25 statement, she says that the Husband contributed a sum of US$25,000 which was repaid to him in May 2008. Whilst the circumstances of its acquisition are unclear

[5]In fact, it appears that two separate plots were purchased and both were subsequently the subject of the transfer of the property, with the residential dwelling house, to the Wife's sister.

because of the conflicting accounts given by the parties, there is no dispute between them that this was the home occupied by her mother albeit that the title to the property was, until July 2010, registered in the Wife's sole name.

82. According to the Wife's evidence, she sold the property to her sister, I, on 25 July 2010 because she needed cash to fund repairs to Property R. I say "sold" although the documentation produced by the Wife shows that the transaction was put into effect by her execution of a deed of gift to her sister. I have seen a copy of an English translation of a Russian document, produced by the Wife, which is dated 25 July 2010 and which is headed "Land Parcels and Residential House Gift Contract". The contracting parties are the Wife and her sister. There is no reference at all in the document to any consideration paid for the transfer; indeed, it is expressly stated to be a gift. In contrast, the Wife says that the agreed price for the transfer was $120,000 with one half of that sum being paid "up front" and the balance due from her sister on an unspecified, but deferred, basis. She has produced what is said to be an English translation of a contemporaneous "Contract for Settlement" bearing the same date as the Deed of Gift. That document records on its face an obligation on her sister to repay the sum of $60,000 within three years on an interest free basis (this presumably being the deferred portion of the consideration). According to the Wife's section 25 statement, by October 2013 her sister had repaid all but £24,500 of the outstanding balance. She says she knows not when the balance will be repaid because her sister needs to sell her own property in order to make the full repayment and there is some defect or delay in securing the registration of her ownership of that property in the local Russian Land Registry.

83. The Wife was cross-examined about this transaction. She accepted that the 'Debt Contract' had not been notarised and was unable to provide any information about the individual who had drafted it. She was asked about the application of the first tranche of $60,000 which she said she had received from her sister. Whilst she had stated earlier in replies to a questionnaire that it had come to her in cash and she had immediately paid it to the contractor who was carrying out the repairs to Property R, she was to retreat from that

position in her oral evidence. When it was pointed out to her that at that date she had sufficient money in her accounts to meet the cost of the repairs and that there was nothing by way of a receipt from the builders, the Wife told me that it was her practice to pay in cash (just as it was the Husband's). I find it difficult to reconcile that evidence with the fact that she appears to have withdrawn cash of c.£9,000 from her bank accounts in three separate transactions between 2 and 9 July 2010; those withdrawals she herself had identified as being destined for the Property R repairs. Further, she told me that she anticipated cashflow problems as her future overheads were likely to be high given that she was in the process of relocating the family (and the horse) to the UK. It is difficult to understand in those circumstances how she felt she was in a sufficiently liquid position to loan to her family some RUB500,000 (c.£11,000) on 27 August 2010, just over a month after the sale/gift transaction had been completed.

84. The evidence in relation to the sale of Property K and the Wife's case in relation to it is very far from satisfactory. The only evidence I have in relation to the cost of repairs at Property R (said to be the reason for the disposal of the property) is a single sheet of paper which bears some manuscript figures and dates and which suggests that as at 21 July 2010, there was a balance of some RUB 1.7 million to pay which included the cost of materials and a deposit on account of the work to be undertaken. That same document bears a headline figure of "2,350,000". I know not whether that is the figure relied on for the total cost of the work.

85. There is a further issue over the Gift Contract relating to Property K which is the absence of any reference in the document effecting the transfer to the fact that the Wife had by that stage secured from the Husband forms of spousal consent to put into effect the transfer to her sister. I shall come back to the various documents signed by the Husband as they related to the property portfolio in due course, but it is right to record at this juncture that there is a significant issue between the parties as to the circumstances in which these documents came into existence and the Husband's knowledge of their legal effect under Russian law. The English translation of the Gift Contract purports

to have been signed on 25 July 2010 yet there is reference in the body of the document itself to an application made by "the Grantor" (the Wife) on 30 December 2010. Whether this was an application for formal registration of the transfer of the property into her sister's name, I know not. It appears that registration was formally completed on 21 January 2011, so it may very well have been. However, it does not explain why a document which purports to have been signed on 25 July should contain a reference to another document prepared some five months later, unless the original was backdated.

86. In another curious development, and notwithstanding that she had purportedly transferred the property to her sister on 25 July 2010, the Wife obtained two separate valuations of the property in August and September 2010 (one at US$140,000 and one at US$120,500). The August 2010 valuation produced by Ms AA specifically referred to problems achieving a sale of the property because of the "lack of the road". These valuations she sent to the Husband by email despite having notified him by a separate email dated 31 August that year that she had sold the property. She explained to me during her oral evidence that she had taken this step *"automatically"* in order to demonstrate the real value of Property K. She said that she was aware that if she had not taken this step, she would inevitably have been asked why she had not done so and that she had requested property valuations for their entire portfolio because *"we were about to divide everything"*. Whilst the Wife has at various points in her evidence relied on a position that the Husband had no interest in Property K (it being outside what she has called the "marital régime"), it seems to me that even she would now acknowledge that, in the absence of a properly concluded agreement between them reflected in an order of the court, there was little option but to *"carry on with the process"* as she was to tell me in cross-examination.

87. Pausing there, I should say that in relation to all the property transactions and dealings undertaken by these parties in Russia (including the execution of various consents and powers of attorney), I do not have the assistance of any expert evidence as to the appropriate formalities required locally in Russia to effect transfers of the properties in circumstances where transactions are being

undertaken against the backdrop of marital breakdown. Perhaps of greater significance is the absence of any direct evidence from the Russian lawyers who were involved in the preparation and execution of the various documents which the parties were to sign. Whilst I appreciate that the two sale transactions were conducted on the basis of private arrangements put in place by the Wife (and were, thus, not arm's length transactions as we would understand the term), I would have been greatly assisted in reaching my conclusions as to the documents signed by the parties as between themselves had I had some evidence from the lawyers which each instructed at the time. That evidence is not before the court and there has been no order for its production during the case management stages of this litigation. That is not intended as a criticism of either side's preparation : I am only too well aware of the problems confronting the Wife's legal team (in particular) in the run up to this hearing. I make the point simply because, in reaching my conclusions, I have had to proceed on the best available evidence which, in many respects, leaves many questions unanswered.

Property R

88. In August 2005, following his resignation from I Ltd in Moscow, the Husband had made the decision to invest in Russian real estate as a hedge against future unemployment and to secure some financial stability for the family. It was no doubt a sound investment given the rising local property market. Property R was part of a new development which was being constructed and the property was purchased "off plan". The Husband has stated that he paid about US$1.7 million for the plot and the construction costs to acquire the "shell" of the property, with a further US$375,000 spent on the internal specification and 'fit out' costs. I have been taken to the original contract documents which suggest slightly different costs but it matters not for the purposes of this judgment. It is accepted that the property was acquired and finished using capital generated by the Husband from his savings and/or the funds generated by the encashment of his I Ltd share options.

89. Insofar as there is an issue between the parties as to the Wife's (non-financial) contribution to this property, I accept that she was involved to a significant extent in choices made by the parties in terms of the internal specification and finish. It was the family home for a period of time and she would have undoubtedly been involved in making it a comfortable home for the family, even if she did not have the financial means to meet the bills as they came in.

90. The property was transferred into the joint names of the parties at the end of December 2006, the family having made it their home following the move from England at the beginning of that year. It has since been let from time to time, the rental income now forming part of the Wife's means of support.

91. I have seen photographs of the property in the development and the two expert valuations of Property R commissioned for the purposes of this hearing. In September 2010 after the marriage broke down, and as part of the ongoing dialogue between her and the Husband, the Wife had procured valuations of Property R in the sum of US$4.6 million and US$4.9 million. The two expert valuations commissioned for the purposes of this hearing (when it was intended to be a full final hearing) are between US$4.25 million (*per* the Wife) and US$4.882 million (*per* the Husband). The difference is just under £400,000 and it is not an issue which I am asked to resolve for the purposes of this hearing.

92. Property R remains one of the two Russian properties which this family owns. I heard much during the course of the evidence about the Wife's purported sale of the property in February 2011 to a Mr AAA. This transaction is alleged to have occurred just days after the Wife issued her Russian divorce proceedings and days before the Husband's English Petition (he then being unaware of the Russian proceedings). I propose to deal with the sequence of events in relation to this abortive transaction in my analysis of the course of the parties' dealings with one another in the context of the litigation chronology. For present purposes, it is enough to record that the purported sale did not proceed and litigation between the Wife and Mr AAA in Russia eventually led to a compromise agreement between them whereby he agreed

to accept three months' rent as consideration for the sale contract being set aside.

Property A

93. Property A was purchased in April 2006 as an investment vehicle. Whilst the Wife was involved in finding the property, it was acquired with capital provided by the Husband at a total cost of US$760,000. The value of the property has been agreed at US$1 million.

94. Initially, the property was rented to commercial tenants at c. US$6,500 per month. By 2009, the rental yield had fallen to c. US$4,000 per month. The Wife dealt with, and was in receipt of, the rental payments. On 23 October 2009, the Husband had executed in the Wife's favour a power of attorney which was designed to enable her to manage all the dealings with Property A and its tenants in his absence. Between the end of July 2011 and June 2013, there was no rental income, the Wife contending that she needed to keep the property as a base for herself and the children during school holidays which have been spent in Russia. (It appears to be the formal registered address of the Wife and the girls in Moscow.) In May 2013, she entered into a new 12 month lease. The current tenant is an Embassy. The Wife is in receipt of rental income from this property of c. £3,600 per month.

Property B

95. This was the third property to be added to the family's Russian investment portfolio. Originally purchased in 2006 from Russian developers as two separate apartments, the parties decided to undertake a lateral conversion to form a single dwelling. The Husband contends that he used the remaining

balance of the funds generated by the proceeds of sale of his G Ltd and I Ltd shares to finance the initial cost of US$1.8 million. Although the Wife contends that she was involved in arranging finance on this project, I have not seen any evidence of that. What I do have in the bundles is evidence of payments made in roubles by the Husband from his Unicredit account in November 2006 and together totalling some US$1.772 million. In her Form E (May 2012), she stated that Property B was purchased using funds which H had given to her as a gift in thanks for her input into the Property R and Property A projects. I take the view that whether or not that was her understanding of the position, the provenance of the Property B funding was the Husband's (then) capital but that, regardless of that direct contribution, the property was acquired – beneficially at least – as a family asset.

96. The property remained under construction for several months after the initial agreement to purchase. The build was completed by September 2007. In September 2007, the Wife secured her registration as being entitled to entrepreneur's relief. As a Russian national, she able to secure the benefit of tax relief under the local fiscal régime which was not available to the Husband.

97. The precise conveyancing mechanism adopted in this transaction to transfer good title to the parties is not entirely clear. It appears that in December 2008 and in exchange for four promissory notes, the developer issued to the Wife in her sole name a contract for each of the flats (3 and 4) showing a total consideration of just under RUB27 million (a much lower consideration than the price actually paid, nearer RUB47 million). The Wife contends that she subsequently learned that two of the four promissory notes were issued in respect of payment for the value of a "right to buy". Whilst I have in the bundles copies of the two contracts for flats 3 and 4, I have not seen a full run of these documents which the Wife says she was obliged to return to the developers in the context of the litigation which was to follow.

98. From what I can glean from the documents, a further sum of between US$275,000 and US$325,000 was subsequently spent on refurbishment and a further US$83,000 odd for a garage.

99. The wife was subsequently involved in litigation with the developer in the Russian courts in order to perfect the title, the developer having apparently failed to provide her with the appropriate documents. According to her evidence, whilst she was successful in 2009 in securing orders against the developer to provide proper title documents, it was insisting that the global consideration shown as the purchase price was the sum of just under RUB27 million, being the figure appearing in the original contracts for sale. (I have not seen the full run of Russian pleadings but I suspect that there were tax advantages to the developer in taking this stance.)

100. The Wife's case is that she was unable to establish at the court hearing that the parties had paid almost double that sum for the two flats. Quite why the proceedings were not adjourned in order to enable her to put that evidence before the court, I do not know. It seems inconceivable to me that both she and the Husband would not have known that a proper title with documents in support would be required in the event that they should at some point in the future wish to sell and realise their investment. She says that she telephoned the Husband whilst at court and asked what she should do and that he told her to leave matters as they stood and simply agree. Given the extent of the investment at stake, I find that hard to believe.

101. From the Wife's evidence it appears that, following that hearing, she made an application to the appropriate local land registry to combine the two titles to reflect the fact of the conversion into a single apartment. In order to do that, she says she surrendered her original documentation in return for the single document of title which then reflected the (much lower) consideration of just under RUB27 million.

102. The relevance of these events lies in the dealings which the Wife was subsequently to have with a Mr O, the purchaser of Property B, who – some two years later, in January 2011 - offered to purchase the property at "face

value" (an offer which the Wife accepted) despite the fact that it then represented not only a significant discount on the actual price paid at the time of purchase but also (apparently) a knock down price which did not reflect an open market value at the time. I shall come back to this transaction in due course in the context of my specific findings, including representations made by the Wife at various points as to the Husband's beneficial entitlement to 50% of the sums she had received from Mr O.

103. Prior to its sale, the property generated a rental income of between US$18,500 and US$20,000 per month. I have expert evidence from Baker Tilly (relied on by the Husband) that at the time of the sale to Mr O, the property was worth some US$2.667 million and could have produced an ongoing rental yield of US$82,000 per annum.

The Garage at Property B

104. I have already referred to the additional consideration paid by the Husband for the garage at Property B. This was paid for by the Husband "off plan" in July 2007 but it appears that it was not completed at the same time as the apartments. Neither the existence of the separate garage or its value was reflected in the disclosure which the Wife made in either of her Forms E (July 2011 and May 2012).

105. Having subsequently revealed its existence, the Wife appeared to reassure the Husband that she could not dispose of it without his consent. In an email dated 27 December 2012, she wrote,

> *"You knew well that I was flying to Moscow … you knew well that I cannot sale [sic] anything without your content [sic] and I am not doing that … you knew that to get ownership paper for garage I need your notarise content for Register Cadastar … you knew well that I don't have finances to continue further."*

106. In fact, without further notification to the Husband, she sold the garage on 24 April 2013 and received approximately £43,000, all of which has been spent on living costs and legal expenses. She says she was able to sell the garage having received title deeds on 25 December 2012. The statement which I have from Mr O, the alleged purchaser, is silent on the point.

107. It is contended on behalf of the Husband that this was another sale at an undervalue, the garage having been valued by Baker Tilly on 14 April 2013 at US$129,000 (some US$72,000 more than the sum which the Wife received).

Events as they unfolded after April 2010 when the Wife became aware of the Husband's relationship with GS: the parties' visits to the office of a local notary and the documents which they executed on those occasions

108. 2010 was the year which heralded the return of the family from Russia to England in order that the children could take up places in X School in the South of England at the beginning of the new academic year in September. The Husband remained in Kazakhstan pursuant to the contract with K Ltd (through MH Ltd) which he had renewed the previous September. I know from his itinerary that he was frequently travelling on business and no doubt the plan was that he would return to the UK to spend time with the family as and when he could. The Wife and children apparently intended to return to Moscow for the school holidays. The family's income at that point consisted of his salary (US$600,000 per annum, tax free) and the rental income from Property A and Property B. As the breakdown of the marriage played out in the early part of that year, it was not until the summer of 2010 that the Wife and children returned to live in FC in circumstances to which I shall come.

109. It is the Husband's evidence that he first met GS, his present wife, in February 2010 at a British Embassy reception which both attended. After a little more than two months, they had begun a relationship which was

consummated sexually by May 2010. The Husband's case is that he told the Wife he had met someone else in mid-May during one of his visits to Moscow. The Wife's recollection is that she received this news in February that year during one of his visits to Moscow. She says she did not take him seriously. When he visited the following month, in March 2010, she says that he asked her to arrange a visit to a local notary's office so that he could sign over to her his half share in Property R and Property A. At that stage, it appears to be the Wife's case that these documents were intended to do no more than facilitate her involvement with the ongoing rental arrangements.

110. When the Husband left later in March 2010 to travel to Vienna, the Wife says she found amongst his papers an email written nine days earlier to one of his business colleagues asking for assistance in obtaining a visa for GS whom he (inaccurately) described as a member of the K Ltd team. The Wife told me that she had given a copy of this email to her previous solicitor at X Firm and it had been returned to her amongst a large bundle of original documents when she ceased to instruct that firm. The Husband denies that he left this email on view for the Wife to find and contends it is evidence of her having hacked into his computer without authorisation.

111. The Wife tells me she was devastated and, apparently, furious. She subsequently telephoned the Husband who told her that he had a choice to make and she was not to put him under pressure. The Husband accepts that the Wife was very distressed and that there were several discussions which flowed from his revelation when different options were discussed. He describes it as a time when they simply *"muddled through"*.

The Property R Power of Attorney and the Property A Deed of Gift transactions : 8 April 2010

112. In April 2010, whilst the Wife was still in Moscow, she and the Husband attended the office of a Notary. At the time, there was an ongoing

dispute between the parties and the Property R developers in relation to a number of repairs which were required at the property. The Wife contends that the Power of Attorney which he signed on that occasion in relation to Property R was designed to enable her to deal with those matters locally in Russia on his behalf. An English translation of the document (which is dated 8 April 2010) shows that he did indeed delegate those functions and responsibilities to her for a fixed period of three years. His signature was witnessed on that occasion by GV, the Notary Public of the city of Moscow.

113. From documents which I have seen, it appears that on the same day, 8 April 2010, the parties signed a second agreement (a "Gift Agreement") pursuant to which the Husband transferred his 50% interest in Property A to the Wife. The agreement provided that the Husband was relinquishing his interest in any ownership of the property for a nil consideration and that the transfer of the gift was to be executed by its delivery and registration in the *'Administration of the Federal Service for State Registration, Cadastral Records and Cartography for the City of Moscow'* (which I take to be the Land Registry). Stamped on the bottom of the Gift Agreement is the formal registration date (5 May 2010) as recorded by one, TNG, on behalf of the Registrar.

114. The Wife's case is that the visit to the Land Registry was undertaken on the same day as the Gift Agreement was signed, ie. 8 April 2010. I find it difficult to understand why, in this event, the registration of the gift did not bear the same date as the Deed of Gift itself. The Husband's case is that no such visit to the Land Registry happened on that date, although he accepts that he must have signed the Deed of Gift, albeit it that he did not fully understand its contents or legal effect.

115. According to the Husband's written evidence, there was a discussion between them in late March /early April 2010 about the transfer of Property A into her sole name in order to take advantage, amongst other considerations, of her entitlement to local entrepreneur's relief. However, he says that his understanding, informed by the Wife's explanation at the time, was that the

document he signed was no more than a power of attorney which would enable her to manage the property and secure a reduced rate of tax on the rental income (6% instead of 13%, which would have been the flat tax rate without the benefit of her entrepreneur's relief). He contends that the documents were prepared by the Wife and typed up by the notary's assistant. He contends that he could not read or understand the formal contents (other than names and addresses) as his Russian was far from fluent. In response to the Notary's questions addressed to him in Russian, it is his case that the Wife effectively "coached" him in his responses although he knows neither what he was asked nor how he responded. He says that the Wife had made it clear to him that if his answers were not satisfactory, there would inevitably be a delay whilst the documents were translated into English. According to the Husband, there were subsequent discussions between them about Property A and the fact that she could not sell the property without his permission.

116. It seems clear from what each party has said that discussions between them about the future of the marriage continued. The Wife says, and I accept, that this was an acutely stressful period for her. She tells me that she had little understanding of the detail of their financial circumstances throughout the marriage and, with the prospects of its imminent demise, she felt isolated and exposed. There had been a plan for the family to spend Easter 2010 together in Kazakhstan. The Husband suggested a holiday instead in Egypt but declined to join them at the eleventh hour. The Wife says that this was the catalyst for the final separation and that, for a week at the end of April 2010, she was unable to contact him at all.

117. In this her recollection is not entirely accurate (as the documents I have seen show) but life and experience teach us that it is seldom possible to define the precise point at which a disintegrating relationship has finally broken down. I have seen an exchange of emails at the beginning of May 2010 where she was effectively vacillating between asking the Husband to buy perfume for her and delivering to him an ultimatum *("You need to choose – family or her. By tomorrow give me the answer");* his response was that he would try to visit the family the following week.

118. The contemporaneous medical evidence in the bundles gives me a significant and valuable insight into the Wife's state of mind at this juncture. Some four days before this exchange of emails, she had a consultation with Dr G at the International Clinic in Moscow. The doctor records her diagnosis on that occasion as *"stress-induced depression (Acute, Final)"* and observes on a subsequent appointment a week later on 6 May 2010,

> *"Patient is depressed, is crying. Continues to take Zoloft and alprazolam. Will benefit from in-patient treatment and psychotherapy."*

119. That the Wife was far more deeply affected by the breakdown of the marriage is evident from further exchanges of emails between them. The Husband had, of course, moved on and it is clear that he was anxious to do so without what he referred to as *"the unpleasantness of lawyers"* who *"only result in a greater degree of bitterness and cost everyone dearly"* (5 May 2010). The Wife says that the Husband followed up his 5 May email with a telephone call saying he would prepare all the documents and she needed simply to sign in the presence of a lawyer. I do not accept that this call occurred and certainly not in the context of an offer by him to transfer to her outright any interest he might have had in their joint property portfolio. It is one of the Wife's consistent complaints (which I do accept) that she was unable over the course of many months to extract from him composite terms of settlement.

120. It appears that the Husband did indeed travel to Moscow arriving late in the evening on 9 May 2010. The Wife describes a sleepless night during which they discussed matters until the early hours. She alleges that he became physically abusive when she reacted to his taunts about his present relationship and his plans for a future with GS. She alleges she was hit with a belt with sufficient force to cause bleeding**.** When she told him she could no longer cope and intended to get in-patient treatment at a hospital in England (leaving him in charge of the girls), there was a further altercation during which she alleges that he assaulted her again. The Husband denies that he

behaved violently towards the Wife. I believe that her account has been embellished. Even if there was a physical confrontation in the course of their argument, I find it highly unlikely that an injury of this severity would not find reflection in the medical records which were produced at the time. Further, the parties' dealings with one another in the ensuing weeks, the Wife's decision to leave the children in their father's care and the later email correspondence (which makes no reference to or suggestion of this level of violence) lead me to the conclusion that I can place little reliance on this aspect of the Wife's evidence.

121. She was hospitalised at a Clinic in England shortly afterwards. The husband visited her in hospital during the first week of in-patient treatment.

122. By 28 May 2010, the Wife was back in Moscow with the children. There were further discussions between the parties during which she says the Husband informed her that if she loved him, she would let him go since he wished to be with his girlfriend at any cost and he no longer wished to deal with the wife. Whilst the Wife's evidence is vague at this point, she relies on an understanding gleaned from previous conversations to the effect that the intention was that he would keep *"all his bank accounts, shares and income"* which she understood to be significant. She and the girls would *"get the Russian properties"*. The Husband denies that there was at this stage any agreement to this effect and he relies upon months of continuing correspondence between the parties directly and their solicitors which, he says, demonstrates quite clearly that there was never any accord or agreement as to what was to happen in terms resolving their financial issues.

123. Nevertheless, the Wife contends that this discussion and the agreement which she understood to flow from it prompted her to arrange a second meeting with the lawyers who had been instructed in relation to Property R.

124. On 21 and 22 June 2010, the Wife was in hospital undergoing a cosmetic surgical procedure. Two days later, the parties attended a meeting at the office of the Notary, Miss B.

Property R : further Power of Attorney and spousal consent to sale; Property B, Property K and Property A : spousal consents to sale : 24 June 2010

125. That there was a meeting at the Notary's office on 24 June 2010 which was attended by both the Husband and the Wife is not in dispute. It is the Husband's case that this meeting was set up by the Wife and that he was presented with Russian documents, without the presence of an interpreter. Present at the meeting, apart from the parties, was Mr AR, the assistant to the lawyer who handled the Property R transaction. According to the Wife, the object of this exercise was to put in place three separate powers of attorney in favour of three different lawyers who would then be in a position to complete the transfer of the title of Property R and the other Russian properties to her. I have translations of those documents in the bundles. The three lawyers named in the power of attorney are Mr K, Mr RA and Mr RO. It is clear from the translation that the Husband was giving to those individuals the authority to represent his interests to *"all authorised bodies including the notarial office and the Directorate of the Federal Registration Service for state Registration, Cadastral records and Cartography for Moscow"* relating to the conclusion and registration on the division of shares in the Property R property. There is further specific provision in the Power of Attorney for a gift to the Wife of his half share in the property with specific provision conferring on the three attorneys the right *"to conclude and sign the Gift Agreement of the aforementioned real estate"*.

126. The Gift Contract in relation to Property R was subsequently perfected some two months later on 26 August 2010 by Mr K, the Husband's attorney, and Mr RA, the Wife's attorney. Quite how this was achieved in circumstances where I have no evidence that either party gave instructions to complete the transactions, I know not. But that is what appears to have happened.

127. I have also seen a translation of the Spousal Consent which was signed by the Husband on the same occasion in which he gives consent to the sale of

Property R (land, house and garage), *"at a price and on terms and conditions to be established at [the Wife's] discretion".* The document goes on to record the Husband's acknowledgement that he has had clarification from the notary of the relevant parts of the Russian "Family Code" and, in particular, an explanation as to the fact that property acquired by spouses during the marriage was treated as their joint property and its disposal could only be carried out by mutual consent.

128. On the same occasion, as I can see from translation of the documents in the bundle, the Husband signed spousal consents to the sales of Property B, Property K and Property A. In her written evidence, the Wife contends that she was unaware at the time that he had signed these documents and that he only informed her of their existence subsequently. She says that she found out that these documents existed on the morning of 30 June 2010 as events unfolded at the hotel in London. She further contends that she did not have copies of those spousal consents until October 2010 when she collected them from her lawyer's office during a half-term visit to Moscow.

129. It is the Husband's case that, whilst he accepts that his signature appears on each of these documents, he did not understand the nature and legal effect of the documents which he was signing but, instead, relied upon the Wife's explanation to him of their intended effect. I have had difficulty with this aspect of his evidence since it is not at all clear to me what he did think he was signing. Whereas he refers in his statement to an agreement between them that the properties should be transferred into her name to take advantage of the tax relief which was available to her (but not to him), he nonetheless contends that there was a tacit agreement to treat the properties (as between them) as joint assets. He told me that the reason behind the paper transactions was their impending departure for the United Kingdom which had by then been in the planning for months. At one stage it was suggested to him that he might have been planning to deceive the Wife by selling the properties. He said, and I accept having seen the documents, that it would have been impossible for him to procure such sales without her consent.

130. Thus, I have to look elsewhere in the evidence to try to establish what it was that these parties thought they were putting into effect by the series of transactions undertaken in April and June 2010. Much has been made by Miss Bangay QC of the Husband's inability to speak fluent Russian and/or to understand the complexity of technical or legal documents. The Wife, for her part, contends that, whilst he was not fluent, he had an adequate grasp of the language and had frequently opened conferences by addressing his audience in Russian. Whilst the Husband's conduct to date in this litigation causes me to scrutinise with great care and caution all aspects of his evidence to this Court, I find it is unlikely that he could, without assistance, have understood comprehensively the detailed content of these legal documents and that he was, to an extent, relying on his own subjective interpretation of what he thought he and the Wife had agreed, if not on the direct translation by the Wife of those documents. I suspect that at that stage he was more likely to have been consumed by his new relationship and was, no doubt, suffering the inevitable feelings of guilt for the predicament in which he was placing the Wife and the children in the light of her manifest distress.

131. I am reinforced in this view by the fact that all personal email correspondence between the parties appears to have been conducted in English, despite the Wife's less than perfect use of that language. As I have recorded earlier in this judgment, she was assisted throughout the hearing by an interpreter and, whilst she appeared to understand most of the questions which were put to her, she chose to give me the majority of her answers in Russian, which were then translated to me by the interpreter. I have not seen a single example of any form of communication directly between these parties in Russian. If, as the Wife contends, the Husband was fluent in that language to the extent of being able to understand detailed legal documents, I question why there is not some evidence of domestic everyday communication between them in that language (which would plainly have been easier for her). She did not seek to challenge the Husband's evidence to me that English was the language spoken in the home during the marriage. Whilst the children appear to have some proficiency in Russian (I know not whether they are fluent

Russian speakers), the Husband never spoke Russian at home, as the Wife herself was to accept.

132. As to the effect of the transactions in April and, more particularly, June 2010, I look to further support for my understanding of what was actually in the minds of the parties at the time to both their own and subsequent solicitors' correspondence as the litigation was underway.

133. In terms of the emails passing between the two parties, it is perfectly clear to me that the Wife herself at no stage believed that the transactions involving the Russian properties which were undertaken in October 2009, and April and June 2010 were part of the process of implementing a clean break settlement between them. As soon as 7 July 2010 (just a week after the incident at the hotel in London to which I shall come), she was writing to the Husband asking him for settlement proposals in the light of her intended move to the UK. The following week, they were corresponding about the work which needed to be done at Property R, with the Husband advocating that they should sell all the properties. At the end of August that year, the Husband was again writing to the Wife about what was to happen to the properties *("You want funding but have all the property – not feasible")*. That prompted the Wife, by way of an immediate response, to forward to him details of estate agents' valuations for the properties with an indication (for the first time) that she had sold Property K for US$120,000. On 31 August 2010, the Wife sent a lengthy email to the Husband containing a list of 19 points, dealing with the divorce, the children's issues and the properties. She asked him to set out what he saw as a fair settlement both on an interim and a final basis and referred him to the valuations which had already been sent. In that email, she refers to her understanding that he had changed his mind about giving her all the properties and concluded her email with a request that the Husband should set out in writing what he proposed before she left Moscow. Specifically, in the event that he was intending to make a claim again the properties (option B, as she put it), she offered to *"cancel the registry of Property R on my name [sic] and ½ would be on your name as original"*.

134. By September 2010, having arrived in the UK, the Wife was again emailing the Husband with a list of her anticipated expenditure and an assurance that all the Russian properties were on the market for sale but the market was slow and she had concerns as to how they should live in the meantime. Her email concluded with a further exhortation to the Husband to make some final settlement proposals. The valuations which she had sent to him (dated 8 September 2010) confirmed that, as of that date, the properties had a combined estimated value of **US$9.87 million** (or just under **£6.5** million). By mid-November that year, she had decided to take the initiative and set out a list of her own demands in terms of settlement. (These are the settlement terms to which I referred earlier in paragraph 74.) By that time she had taken English legal advice, as is clear from the correspondence and the terms of her email. Leaving to one side the feasibility of the proposals she made, this was what she was asking for by that stage :-

> *"Main points :*
>
> *2.1 Family house in England. Outstanding mortgage should be paid up promptly. The house should be transferred to the kids.*
>
> *2.2 The Trust should be set up to cover all and every possible cost of our kids [sic] educations (private schools, Oxbridge Universities including living costs, post-graduate education, etc).*
>
> *2.3 All Moscow properties will remain in my ownership and shall be excluded out of any settlements.*
>
> *2.4 Living cost/maintenance of £10,000UKP per month after tax, adjusted annually to keep up with level of UK salaries.*
>
> *2.5 ½ of your future income (onshore and offshore), personally guaranteed by your Kazakz partners.*
>
> *2.6 The lump sum of $10,000,000USD after taxes to me personally as compensation.*
>
> *2.7 You will undertake to spend 10 weeks every year with our kids, but without anyone of your new family."*

135. On 2 December 2010, the Husband's solicitors wrote to Mr J of R & R (the Wife's then solicitor). It is clear from that letter that each of the parties

was in the process of preparing voluntary financial disclosure. In that letter, the Husband's solicitors make the following request :-

> *"As a matter of some urgency, however, we shall be grateful if you could let us have your client's Undertaking not to deal in any way with the 4 properties held in her name in Russia. Whilst they are held in her name, they are marital assets and only came to be vested in your client's name for tax reasons"*.

136. On 17 December 2010, Mr J responded. He wrote (on the Wife's instructions) to record the fact that the properties *"presently owned by the parties"* had, with the Husband's agreement, been on the market for sale since June although no offers had been received. He went on to confirm, specifically, that the Wife agreed not to enter into contracts to sell any part of them without first consulting the Husband and that she would seek his agreement before any such sale. In the event he chose to withhold his agreement unreasonably, she would apply to the court. Mr J concluded that letter by confirming his understanding of Russian law that the properties could not be sold without a notarised letter of agreement from a spouse.

137. I do not know whether the Wife had, by that stage, fully informed her English solicitor about the documents which were signed in Moscow some six months before. It appears from Mr J's letter that she had not and she accepted as much when she was cross-examined on the point. I shall need to decide whether that was a deliberate omission on her part or simply a tacit acknowledgment by her that, whatever might have been her understanding of the common intention at the time, it had now been superseded by an acceptance that the Russian property portfolio was "back in play" as far as the ongoing negotiations were concerned. Certainly, by 27 December at the end of 2010, the Wife sent an email to the Husband to confirm that, as he was well aware, she could not sell anything without his consent and she was not taking steps to sell.

138. In the light of what I have heard and read, I reject the Wife's case that (a) there had been an explicit and concluded agreement between them by June 2010 and that (b) the Husband subsequently reneged upon it. That said, these discussions were ongoing at the time when the parties (and particularly the Wife) were coming to terms with the breakdown of their marriage and all that flowed from it. The Wife's emotional health was fragile, to say the least, and I have reached the clear conclusion that, whilst each was trying to establish some solid financial parameters, there was never a specific meeting of minds when they were *ad idem* as to a concluded settlement.

139. I reject the suggestion that it was the Husband who was the driving force behind setting up the various meetings at the notary's office. I accept that he attended and signed the documentation which was put before him but I find that it was prepared if not by the Wife then on her instruction and in circumstances where she well understood the import of those documents. Specifically, I reject her evidence that <u>he</u> had given instructions to the lawyers to prepare the four spousal consents for sale and/or that he had given instructions to his lawyers to provide her with copies of the same the following October. That evidence cannot sit with the letter which Mr J wrote on her instructions to the Husband's solicitors on 17 December 2010. Indeed, it is quite clear from a letter which Mr J sent to the Husband's solicitors on 17 May 2011, some five months later, that he himself had not been made aware of the existence of the spousal consents for sale in December. In response to a letter he had received on 6 May 2011 from McGrigors (predecessors to H's current solicitors who had taken over conduct of his case), Mr J was responding to urgent enquiries made on the Husband's behalf about his recent discovery that three of the Russian properties had been sold (Property K to the Wife's sister, the sale of Property R and Property B). No doubt having taken the Wife's instructions, he responded by serving on McGrigors copies of the notarised gifts and consents to sale. Whilst acknowledging, somewhat grudgingly, that the Husband might be entitled to 50% of the proceeds of Property B (some RUB13 million), Mr J maintained on the Wife's behalf that she was perfectly entitled to sell Property K and Property R without further account to the Husband. By way of further justification, his letter continued,

"When US made those gifts as part of his decision to try and manage if not resolve his financial affairs with SR my client relied upon the same. Additionally, in and by his actions US ensured that henceforth the properties were SR's separate property and fell outside of the marriage and thus outside of any application with respect to the marriage….".

140. Whilst Mr J may well have been responding in accordance with the instructions he received from the Wife, that statement cannot possibly sit with the internal dialogue between the parties which was reflected in the emails passing between them over the last six months of 2010.

141. In order to set in context the disposals of the three properties (or the purported disposal of Property R), it is necessary to look at those transactions against the background of the litigation process as it unfolded. Before I turn to that exercise, I need to address the cross-allegations which flow from the incident at the hotel in London on 30 June 2010.

The incident at the hotel in London : 30 June 2010

142. Having attended at the offices of the notary on 24 June 2010 in the circumstances I have explained, the Wife flew to England. She had medical appointments and was due to meet with her English solicitor, Mr J, on 29 June (this, unbeknown to the Husband). She told me that she had set up that meeting because the Husband had told her that he would send her a written proposal for settlement and any terms would have to be signed in the presence of a lawyer.

143. It happened that both parties were in London overnight on 29/30 June 2010. The Husband had flown from Moscow to attend a corporate event being held at a hotel in London. It was also his birthday and he planned to spend time with the children at FC. Whilst they were physically estranged by this point, their email correspondence over the previous fortnight demonstrates clearly the extent of the residual feelings of attachment which the Wife still had for the Husband. He, in his turn, appeared to be open to constructive dialogue in order to find a solution to their difficulties. They are painful emails, but – at that stage - they are not angry emails. Their overriding tenor is the need to protect the children from the consequences of the marital breakdown. In one, the Wife appears to acknowledge the extent to which her capacity to parent the children alone in England had been compromised as a result of what she described as her *"mental upset"*.

144. There is an issue between the parties as to whether the Wife's presence on that occasion was by invitation from the Husband. She contends that he wanted her to be there as his wife since *"it was important to his Kazakh colleagues from a presentational point of view"*. The Husband told me that no other wives were attending and, although she had wanted to be present, he had tried to dissuade her by telling her that it was purely a business occasion. He was aware that she was due to attend an appointment at a Clinic, but he was unaware that she was seeing her solicitor earlier on 29 June 2010.

145. The Wife tells me that she had wanted to stay in a separate room but the hotel was fully booked and she therefore accepted the Husband's invitation to stay in his room. I am in difficulties in accepting the Wife's evidence about these arrangements. It seems to me from everything which I have read and heard about their communications at this time that, despite her contention that the marriage had broken down by April that year, she was still not through the (obviously) painful process of emotional disengagement from the Husband. He had moved on. The Wife was to tell me in cross-examination that the driver who took her back to the airport the following morning had also been instructed later in the day to collect GS from the airport in order that she could

join the Husband. Whether or not that was the case, it seems to me inherently unlikely that the Husband would, on 29 June, have been encouraging the Wife to stay in his hotel room. She contends that there was a discussion between them before he left for dinner about a settlement. Given that they had together attended at the offices of the notary to sign the Gift Deed and spousal consents only a few days earlier, effecting what the Wife believed (or so she told me) was a settlement of the Russian properties on her, I find it difficult to understand what more needed to be said.

146. It is the Wife's case that the Husband made two statements on that occasion which shocked her. The first was to the effect that *"my partner wants a property, so Property A should go to her"*. The second was a response to a question from the Wife about his shares, in terms of *"Forget about that. I will find a way not to pay you a penny. I would rather give money to solicitors than to you"*. She alleges that this is when he told her about the consents to sale which he had executed on 24 June. I have already rejected her evidence that he had given instructions to prepare those documents. I regret that I do not accept her evidence about these statements.

147. She says that she spent the night alone in the hotel room until about 3am. When the Husband returned he was in drink. There was an altercation, she says, which resulted in her leaving the room to find another room. None was available. The following morning, they continued arguing. The Wife accepts that, in the face of verbal provocation, she hit the Husband with a pillow. She says he punched her twice, once on her face and once to her chest, close to the site of her recent surgery. She told me in cross-examination that the Husband had pushed her so hard that she flew to the opposite wall. She called the police from the hotel bathroom.

148. The Husband denies the assault. I have seen the police report of the incident. From that report, it appears that the investigating officers considered that evidence of injuries to the Wife were too minor to warrant the production of photographic evidence. The Husband's account of events was that it was

the Wife who punched him in the face and that he later woke to find her holding a pillow over his face. He pushed her away with an open hand.

149. It was suggested to the Wife in cross-examination that such marks as may have been visible on her face the following day were the result of various cosmetic procedures she had undergone at the same time as the cosmetic breast reduction surgery the previous week. (These injuries were described in the police report as *"minor swelling to top lip and reddening of left cheek plus chest pains"*.) She denied that she had undergone any form of microdermabrasion. Having seen the receipts from the medical clinic which were produced at court, I accept her evidence on this point.

150. In relation to the events on the morning of 30 June 2010, it is suggested on behalf of the Husband that the Wife deliberately engineered the entire situation and that she orchestrated his public humiliation in that he was removed from the hotel in handcuffs by police in front of work colleagues. I do not accept that she designed any such strategy. Notwithstanding the fact that she had taken preliminary advice from a solicitor about her situation the previous day, I take the view that the most probable explanation for these events arises from the Wife's continuing wish to engage in a dialogue with the Husband over the future of their marriage. She was obviously in an emotionally unstable state at the time. Had her earlier accounts of severe violence against her by the Husband been true (the drawing of blood from a blow with his belt some six weeks earlier in May 2010), then I doubt whether she would have put herself in such a vulnerable position. I accept that the Husband did not invite her to spend the night with him in the first instance. However, I do not absolve him of all responsibility for this incident. I suspect that he had been drinking when he returned to the room. I accept that there was aggression and verbal abuse given and received when he declined to take breakfast with her and, whilst it is not necessary for me to make detailed findings about who did what to whom, I am prepared to accept that the aggression manifested itself in some violence on both sides. I tend to believe the description which the Wife gave to me of the manner in which she was pushed to the far wall by the Husband.

151. As far as the Husband was concerned, that event clearly marked the final end of the marriage, and he communicated the same to the Wife. She felt sufficiently angry and aggrieved to spend over £2,000 on the purchase of watches at the duty free shopping area of Heathrow as she made her way home to Moscow later that day.

The subsequent sales (and purported sale) by the Wife of Property K, Property R and Property B and the progress of the litigation

152. Earlier in this judgment, at paragraphs 78 to 107, I have set out the circumstances in which the parties acquired their portfolio of Russian properties and the subsequent dealings which the Wife undertook in relation to those properties, having by then executed the series of legal transactions which I have described. I turn now to examine the circumstances of those dealings and my findings in relation to the Wife's conduct in undertaking them.

Property K

153. I have already described the circumstances in which, in July 2010, less than a month after the events at the hotel in London, the Wife entered into a contract which purported to gift to her sister the property at Property K, albeit that it is the Wife's case that the underlying consideration was US$120,000. I have referred to the contemporaneous contract which records her sister's obligation to pay to her a sum of US$60,000 which the Wife contends represents the deferred element of the purchase price agreed between them. Of that sum, it is said that the debt due has now been reduced to £24,600.

154. I have referred to the deficiencies and apparent absence of formalities in these documents at paragraph 82. I have dealt with the concerns which I have about the Wife's alleged lack of liquidity to fund the Property R repairs (and the consequent need for the sale) in paragraph 83. The Wife accepted in cross-examination that she could not remember whether the Deed of Gift was

actually signed on 25 July 2010. It is common ground that it was not, in fact, registered until 30 December 2010.

155. The Wife did not alert the Husband to that transaction until 31 August 2010, as I accept. She appeared to suggest during cross-examination that this was the first time she had committed the fact of the sale to writing, implying that he may have been aware of the sale because of something she had said before this date. I do not accept that evidence. I find that, if the transaction was indeed a genuine disposal of the legal and beneficial title to the property, it was undertaken without notice to him. Miss Bangay QC and Mr Sear contend that the entire transaction was a sham and that the Wife is still the owner of the property. In support of that submission, they rely not only on the deficiencies in the various documents, the absence of any reliable evidence of the first tranche of the alleged consideration having been received by the Wife, the flaws in her case as to a shortage of ready cash at the time and the fact that she appears to continue to have free use of the property whenever she is in Russia. I have already referred to the absence of <u>any</u> reliable evidence as to the receipt or application of the US$60,000 which the Wife maintains she applied towards payment of the Property R repairs. During the course of the oral evidence, I asked the Wife whether she thought it important to establish the evidence of the receipt and application of these funds in the light of the inaccurate responses she had given in her Replies to Questionnaire. Nothing was forthcoming during the remaining days of the hearing from any source (and specifically not from her sister) and I am therefore left in a position of having to reach conclusions on the basis of the Wife's evidence alone.

156. Without expert evidence as to the effect of formal registration of the Deed of Gift at the end of December 2010, it seems to me that the case in relation to the transaction being an obvious sham (and, thus, of no legal effect or consequence whatsoever) is not without its difficulties. As I have said, I have no evidence at all from the Wife's sister to assist me in unravelling this legal knot. There may well be other reasons for the Wife's (and children's) presence during holiday periods at her sister's / their aunt's property (if it is indeed now her property). However, those doubts do not preclude an enquiry

as to whether it would be right to reattribute to the Wife in these proceedings the value of the property or the sums which she has received as consideration for the transfer (including the unpaid portion of the debt which she says remains outstanding from her sister). When the Wife was asked about why she had not produced the spousal consent to the sale of Property K when the transfer was registered on 30 October 2010 (she having received the same earlier that month), she told me that she did not have the document with her when she attended at the Land Registry and knew that she would have to pay a fine of RUB1,000 as a result of its absence. Again, I do not have evidence to assist me with the administrative process of land registration under Russian law, but it seems to me that her response demonstrates a remarkably cavalier approach to matters.

157. When cross-examined about the submission of two valuations of Property K just a matter of weeks after its sale, the Wife's response was that she had taken this step as she knew it would be expected of her in circumstances where *"we were about to divide everything"*. She accepts that in July 2010 when she entered into the transaction with her sister, all the Russian properties were being advertised as available for sale on a central Moscow property register; she was aware that the Husband's position at the time was that all the properties should be sold; and she was merely waiting for settlement proposals as to the appropriate division of their assets. She told me in specific terms that although she considered there had been an initial agreement, the absence of a formal order in the matrimonial proceedings meant that they were obliged to carry on with the process. She agreed in response to a question from Miss Bangay QC that one of the first letters written by her (then) solicitor, Mr J, on 1 December 2010 (setting out the need for a clear agreement that neither party would significantly change their existing asset structure without agreement from the other in writing) was a sensible proposal. Further, she accepted that she understood from the Husband's solicitors' response on 2 December (to which reference has been made above in relation to the undertaking not to deal with any of the four Russian properties) that no transactions were to be undertaken without prior consent. She went on to elaborate her answer by telling me that her belief was

that the reason why he had agreed to execute the gifts of his half share was to avoid paying tax on his interest in any sale proceeds.

158. Specifically, the Wife confirmed that she understood that the Husband would have a reasonable expectation that nothing was going to happen in terms of dealings with the four properties unless and until there was what she called *"a proper settlement"*.

159. It seems to me inevitable in those circumstances that the Wife is to be taken to have received value for the (unauthorised) gift transaction to her sister on behalf of herself and the Husband. That leaves only the question as to whether she received full value (to include the debt outstanding) and whether the sums she received were subsequently spent on a genuine need to meet outstanding costs or expenses for which each of the Husband and Wife had a joint liability.

160. In this context, I have already referred to the unsatisfactory state of the evidence in relation to the cost of the Property R repairs. Whilst I am satisfied that that there were defects at the property which required further work (both parties agree upon that), the evidence in relation to the works which were actually undertaken by the contractors and the sums expended by the Wife in meeting these costs is far from clear. In her oral evidence she was unable to provide me with any further assistance. From one of her personal Unicredit accounts, she apparently made a loan of some RUB500,000 (c.£11,000) to her mother and sister just a month after the Gift Contract of Property K. In Replies to Questionnaire, she stated that that loan was *"to secure a deposit for a future purchase of property"*. I know nothing more about this transaction but it seems to me that it sits unhappily with the Wife's account of a liquidity crisis. I also bear in mind that the bank statements she has produced (which have now been collated into a chronological sequence) appear to show that, as at 8 July 2010, just over a fortnight before the Gift Contract was signed, she had RUB1.74 million standing to the credit of her Unicredit account ending …. 3385. From annotations which she has provided in respect of withdrawals from her Unicredit account ending …0901, she appears to have withdrawn a

series of fourteen cash payments, each in the sum of RUB20,000, over the course of three days from 2 to 5 July 2010. Together these total RUB280,000. At the same time, she was in receipt of the rental income from Property B which was at that time producing US$20,000 per month[6] (although this appears to have ceased by the end of August 2010, just before she left to return to the UK). Property A was producing an additional RUB120,000 (US$4,000) per month in rental income.

161. In terms of my findings, I am left in little doubt that her disposal of Property K to her sister was part and parcel of a strategy to liquidate the Russian property assets at the earliest opportunity and I am reinforced in that impression by her subsequent dealings with Property B.

Property B

162. Many of the same considerations which I have outlined in paragraphs 133 to 135 of my judgment as they relate to the expectation of an underlying beneficial joint interest in Property K apply in relation to the sale of Property B, and perhaps with even greater force.

163. By the end of 2010, the Wife's English solicitors had served in draft her English divorce petition. In the letter which accompanied that document (written on 1 December 2010), the Wife's solicitor had stated explicitly that agreement was needed that neither party would *"significantly change (in form, current jurisdiction, charge etc) your* [sic] *assets and income without the agreement of the other in writing"*. The following month, on 20 January 2011, and without notice to the Husband (or, one has to assume, her English solicitor), the Wife agreed to sell Property B to Mr O for a total consideration of RUB26 million (about US$900,000 or £560,000 on exchange rates prevailing at the time). The property had been valued just four months earlier by two separate agents at US$2.178 million and US$2.4 million. On any

[6]This was the lease to Mr D.

view, the price at which she agreed to sell represented a very significant discount on what was likely to have been the true market value at the time.

164. I have a statement from Mr O which is dated 18 October 2013. I admitted the statement as hearsay evidence because I was told that he was unavailable to give evidence in person or by video link because of business and travelling commitments. He has not made himself available for cross-examination and thus the weight which I can attach to what he says in his statement is something which I must take into account. For the most part, his evidence confirms the facts of the transaction as they were explained to me in greater detail by the Wife. Of the "knock down" price (for thus I find it was) at which he secured the property, he says *"it was clear that SR needed to sell her property quickly, which enabled me to dictate my terms"*.

165. It appears that Mr O was an individual who was already known to the Wife in that she had been introduced to him by her sister in 2009. They were reintroduced in January 2011 when he became aware that that she wished to sell Property B. She was cross-examined about the circumstances in which she had agreed to sell at what she accepted was a significant undervalue. She also acknowledged that she was extremely angry with the Husband at the time. She explained it to me in these terms :-

> *"I just wanted access to liquid funds quickly so that I was in a position to instruct lawyers in Russia to continue litigation and by then I did not want to continue to litigate in London. The sale was to give me a fighting fund in Russia. I was offered that money and I took it."*

166. She told me that she spoke to Mr O on the telephone soon after 4 January 2011. She confirmed that no lawyers were instructed in connection with the sale and there was no conveyancing file as such. They apparently met in Moscow, a document was drafted and they subsequently attended the local Land Registry together. It appears that Mr O is involved in property development and, as even the Wife admitted, he knew he was buying at a very good price. As far as I have been able to ascertain, there is no evidence that he

even saw the property or undertook a survey; the transaction was completed merely by a verbal agreement and the exchange of documents.

167. This produced for the Wife immediate cash in hand. The entire purchase price was apparently paid entirely in cash in two tranches. RUB13 million was paid on 20 January 2011 with the balance coming early the following month. The Wife describes her relationship with the Husband at the time as *"being at war with each other"*. She told me that the cash she received from the sale was placed in a safe at her niece's property. By the beginning of February 2011, she had already started to spend it.

168. Quite how these funds were applied remains unclear to me. Whilst some RUB1.5 million of the first tranche had made its way into the hands of her Russian lawyer, Mr D, it appears that the Wife gave away a further RUB7.5 million in loans. In response to questions put to her during cross-examination, she told me that she had given RUB6 million to a Mr AK, an old friend, to assist him with setting up a new business. There is no loan agreement or other documentation to support that loan. A further RUB1.5 million was paid to her sister (V) who was in financial difficulties as a result of a divorce from her husband. Again, there is no loan agreement or document available. She told me that, of the first tranche, as at the end of January 2011, she had spent all but the sum of RUB4 million, RUB1.6 million of which was paid into her H Bank account and RUB2.4 million, which remained in the safe. She told me that the second tranche of RUB13 million in cash which she received from Mr O was placed in the same safe.

169. Amongst the documentation which the Wife had produced with her Form E sworn in May 2012 was a breakdown of how she had used the proceeds of sale following her disposal of Property B in January 2011. The schedule she produced sets out her purported expenditure between January 2011 and April 2012 (some 15 months in total) and purports to explain the application of some RUB24,400,000. A cash balance of RUB3,250,000 (some £68,000) was said to be held in a safety deposit box with Sber Bank in Moscow. The Wife explained that she had completed this document from a

pro forma provided by her solicitors at the time. She agreed that nowhere in this document was there any reference to the RUB7.5 million loans made to her sister and Mr AK. As she was cross-examined on the various items in the schedule, it became clear that many figures were simply estimates and others were not genuine items which she recognised. She was driven to agree with Miss Bangay QC that the presentation reflected in the schedule was wholly unreliable as an accurate representation of how she had applied the proceeds of Property B.

170. What I do know is that on 16 May 2011, the Wife transferred 50% of the sale proceeds of Property B (RUB13 million) into a Unicredit account in her sole name. Those funds were transferred out the same day into two separate savings accounts. By the time she came to disclose her finances in her first Form E (in July 2011), she disclosed a Unicredit account which was said to hold RUB13 million in which her interest was 0% *("This is held in trust for my husband")*. She accepted that sum represented 50% of the Property B proceeds. By the time she came to swear her second Form E in May 2012, that account had been closed and there is no reference to the existence of those funds elsewhere, her total account balances by that stage being just over £2,300.

171. I heard evidence about how that annotation relating to the trust came into being. The Wife had a meeting with a forensic accountant, Mr T, on 6 July 2011 shortly before she returned to Moscow. I was provided with a copy of an earlier draft of her (2011) Form E which bore several annotations in Mr T's handwriting. The Wife contends that Mr T misunderstood her explanation about these funds and their treatment. She says that she did not understand how to complete the Form E and was struggling with language difficulties and making herself understood. She says that she has never accepted that 50% of the Property B sale proceeds belonged beneficially to her husband and the use of the word "trust" was Mr T's, rather than her own. She explained that what she had said to Mr T was that the attribution of these funds was contentious because under Russian law, property as between spouses is treated as being jointly owned.

172. Insofar as she now seeks to say that, at the time of the deal she made with Mr O, she had an honest belief that she was beneficially entitled to the entire net proceeds of sale, I reject her evidence. Not only was she offering various assurances through her solicitors as to the preservation of these properties, I find that she was well aware at the point of sale that there was likely to be an issue about the proceeds, notwithstanding the spousal consents to sale which were then in her possession. I find that in her initial discussions with the accountant, Mr T, she was providing information which confirmed the Husband's potential entitlement, albeit that she has now resiled from a complete acknowledgement of that position. Whilst I accept that English trust concepts may not have been recognised as such by the Russian court, it is equally clear to me that the Wife in her discussions with Mr T was well aware of the potential for dispute over the beneficial ownership of these funds.

173. As to what happened to that RUB 13 million earmarked for the Husband's account, it is clear that the funds remained on deposit until 18 July 2011 when they were withdrawn in cash. The Wife told me that she took the cash out of the bank and placed it in her niece's safe because the Husband (who was by then aware of the sales of the Russian properties) had threatened to freeze all her assets from the foot of proceedings he had himself commenced in Russia. Thereafter, whilst it is impossible to conduct any complete analysis, it appears that these funds too were subsequently spent on lawyers' fees and living costs. I do not have a breakdown, but the Wife was to tell me about significant sums she had remitted to the UK to pay her English lawyers (some £44,000 went to F Co). There was a further dispute over the heating system in Property R which had failed and damaged the property as a result of which the Wife paid some RUB2 million to the O Group. And there was a significant payment out to private investigators (to which I shall come). In addition over this period of time, it seems that the Wife recouped the two loans she had made from the Property B proceeds. She told me that this cash was all she had left to live on.

174. Thus, two issues flow from the sale of Property B. First, how much – if any - of the RUB26 million which the purchaser paid should be reattributed to the Wife's account given that this was plainly a matrimonial property in respect of which she now accepts no settlement had been reached ? That question requires consideration and some analysis of whether she acted reasonably in spending what amounts to the entirety on those sums in circumstances where even she accepts her analysis of that expenditure is wholly unreliable. Secondly, given that the sale to Mr O was plainly at a significant discount in the light of true market value, if there is to be a reattribution, what is the proper figure at which to fix it ?

175. In terms of reaching any clear conclusions as to how the Wife spent the cash she received from Mr O, I am left in an almost impossible position. I accept that in the months between January 2011 and April 2012 (the period covered by her analysis for Form E purposes) she will have had expenditure which included not only living costs but part of the relocation expenses of moving the family back to the UK in September 2010. She undoubtedly had both legal and medical costs, as well as rent in Moscow for a short period before Property A became available as a base for the family when they returned in the holidays to Moscow.

176. Miss Bangay QC produced for me a breakdown of monies which the Wife had alleged she spent during the period June 2010 to March 2013. It amounts to £946,174 (or just under £1 million in less than 3 years). The Wife agreed in response to a question put to her during cross-examination that this is probably what she had spent. The reconciliation shows that, of traceable funds, just under £170,000 went to her lawyers (although the Wife was to tell me that a significantly greater sum was paid out in legal costs), some £332,800 was spent on living expenses leaving unexplained cash expenditure of just over £205,000 and unidentified debits from her bank accounts of just under £240,000. Whilst the monthly average spend increased over this period (largely because of the increased burden of legal costs from June 2011 to May 2012), it shows a flat average spend of approximately £344,000 per annum.

177. The late delivery of statements in respect of many of the Wife's Russian bank accounts and the absence of full translations (other than her own selective handwritten annotations) coupled with the Wife's own inability to provide the court with any clear or complete explanation as to how she applied the cash funds she received from the sale of the Property K and Property B sales leaves me without any proper forensic trail to demonstrate how these funds have been spent (as she claims they have). It is accepted that the Husband ceased to make any financial contribution towards the family's expenses after May 2011 when he discovered that the properties had been sold. I have already taken into account the fact that this was a period when she had heavy overheads in terms of the cost of relocating the family to England. She was running teams of expensive lawyers in two jurisdictions and spending significant sums on the private investigations she was pursuing into the Husband's financial affairs. The annual budget which she produced with her Form E in May 2012 suggests a financial need (including the children's expenses) in excess of £215,000 per annum. That includes the cost of running a home in this country and in Moscow. In circumstances where the Husband had been earning a six figure tax free salary equivalent to some £400,000 per annum, that budget cannot be dismissed as purely aspirational for so long as that income remained available to him. Of course, she had the income from the Property R rent (which she puts at about £85,400 net per annum). Whilst it is not territory into which I must tread for the purposes of this fact-finding exercise, I suspect that the availability of an investment rental income and the amenity of two homes in different parts of the world may not be available to this Wife in future, unless I am persuaded about the missing millions still said to be held by the Husband.

178. Against these expenses, she had income during this period (aside from the Property B proceeds) from the rent which was coming in from Property A ($42,000 over three months); she had received three payments totalling $76,000 from the Husband; she was continuing to charge payments to the Husband's credit card and he was meeting the English accommodation expenses at FC. Miss Bangay QC in her closing submissions put his total

support between May 2010 and April 2011 at £176,147, a figure which was not challenged by Mr Ewins.

179. What, then, of the Wife's justification for the sale of Property B ? She maintained that she needed a fighting fund to commence litigation against the Husband in Russia. She had already instructed English solicitors who had served a draft Petition on the Husband's English solicitors. There does not appear to have been any issue taken by him as to jurisdiction. Yet on 21 February 2011, almost immediately after the sale of Property B, she instructed Russian lawyers to commence divorce proceedings in Moscow. Much of the information supplied in those proceedings was misleading. She sought to give the impression of a Russian-based family, resident in Moscow, and a father who was not making any financial contribution to the family's financial support. Whilst it is true that there were no formal arrangements in place for interim financial provision, it is not disputed that he was meeting all the children's educational expenses including the fees at X School in the South of England which they had been attending since September 2010; he was paying the mortgage and other utility bills on the property at FC in which they were living during term time; he had provided cash for a car for the Wife's use and she was (or should have been) in receipt of about US$45,000 per month from rental on the Russian properties.

Property R

180. It may well be that the Wife felt more comfortable litigating in Russia; it may be (and I suspect, more likely) that she believed she would be in a stronger position in relation to claims against the Russian property portfolio in a Russian court, given the existence of the documents which had by then come into being. I am told that those documents would have been determinative in a Russian court. I have no evidence to that effect and I do not know whether the circumstances of their execution may have provided the Husband with a potential defence to her claims in the Russian court. It may be that she felt better enabled to pursue covert enquiries into the Husband's financial

circumstances using contacts she had made in Moscow. Wherever the truth lay, just one week after the issue of her Russian divorce proceedings, she had negotiated a sale of Property R to Mr AAA (again, without notice to the Husband). The purchase price agreed upon was RUB120 million (about US$930,000) as against a 2010 valuation of US$4.6 million.

181. I have already referred to the events leading up to the purported sale transaction earlier in this judgment at paragraph 92.

182. When she was asked about why she sought to sell Property R (having only recently secured in cash the entire net proceeds of Property B), the Wife accepted there was no financial imperative for the sale, but said she needed to acquire a home in England. She said she felt unable to rely on the continuing availability of the home at FC because she was required by the Husband to vacate the property every time he returned to see the children. Given that there were by now proceedings underway in England and in Russia which would inevitably involve a final dénouement of this family's financial arrangements, I find myself unable to accept that answer. I have come to the clear conclusion that the purported sale of Property R was another step taken by the Wife to liquidate assets in Russia as a *fait accompli*.

183. Once again, there is very little documentary evidence about this transaction. I have no correspondence between the Wife and Mr AAA who, I am told, viewed the property for the first time a matter of weeks, if not days, before the sale was concluded. When she was asked why it was not until shortly before the final hearing (and pursuant to an order made by Moor J at the pre-trial review in September 2013) that she had produced the contract, she told me that she had not seen any necessity to provide a copy because the property was in her sole name.

184. It is probably unnecessary for me to descend into detail about the reasons for the abortive sale and the subsequent litigation over the property in Russia regarding the recission of the sale contract. I have not seen the Russian pleadings. However, according to the Wife's explanation to me, there should have been two separate contracts for the house and the land. The

purchase price of RUB30 million shown in the contract dated 28 February 2011 was for the house alone. There was no reference to the separate consideration for the land which would have increased the total sale price to RUB120 million (which she thought she had agreed). She had intended to remit the cash proceeds to one of her Russian accounts for onward transmission to the UK. The contract, as drafted, would not have enabled her to justify remission of the full purchase price. For reasons which are not clear to me, the sale nevertheless proceeded on the basis of the defective contract and Property R was duly registered in Mr AAA's name in April 2011. The following month, the Wife commenced proceedings in the Moscow courts. Initially, Mr AAA was seeking a payment of RUB3 million to compromise the litigation. Instead, the parties reached an agreement (a copy of which was produced by Mr Ewins during the hearing). Mr AAA received directly from the tenants then installed at Property R a further three months' rent. No money changed hands as between him and the Wife who thereafter received the Property R rent in full for May, June and July 2011. As part of the compromise, the title was rectified and the property remains part of the parties' resources for the purposes of these financial remedy claims. Nonetheless, I take the view that her attempt to dispose of the property is likely to have been part and parcel of her strategy to liquidate the Russian assets before further traction had been achieved in the English divorce proceedings.

The English divorce litigation

185. As 2011 moved into 2012, the litigation between these parties was ongoing in two separate jurisdictions. The Husband had applied to 'freeze/arrest' all assets generated by the Property R transaction in the Russian courts. (By this stage, his undisclosed income stream from the third K Ltd service agreement had just come to an end.) Although he failed in his attempts, he launched an appeal.

186. Meanwhile, at the end of January 2012, solicitors then instructed by the Wife (F Co) wrote to the Husband's solicitors offering to concede her habitual residence in England in order to allow the divorce to proceed in this jurisdiction. That offer was accepted. On 9 February 2012, W's solicitors wrote again on the issue of maintenance for the Wife and the children :-

> *"In terms of the issue of maintenance it is clear … that our client does not receive any maintenance from your client for her or the children. Whilst he meets the mortgage and a few bills relating to FC (a property owned by him) our client meets all of the other household and day to day expenses for her and the children here and in Russia without any assistance from your client. This is the reason that her finances are stretched and she is unable to meet any additional expenses. As a result, and given your client's legal obligations in terms of maintenance, our client has had no option but to use funds from the Property B monies and will continue to do so."*

187. The Husband's solicitors responded to that letter pointing out that, in terms of support, the Wife had her share of Property B (which he insisted had been sold at an undervalue), as well as receipt of the entire rental income from Property R and Property A. Correspondence between the solicitors over the rental stream from the Russian properties continued throughout the early months of 2012.

188. On 9 May 2012, at a hearing before Baron J, the issue of jurisdiction was finally settled. The Wife gave an undertaking that she would not deal with the remaining Russian properties (Property R and Property A) but it was agreed that she should continue to be entitled to receive the rental income from each. Forms E were duly exchanged, at which point the Husband discovered that the RUB13 million which he had understood to be earmarked in respect of his interest in the Property B sale proceeds had been spent. The Wife disclosed that she then had cash assets of c. £68,500 in a safe deposit box and just over £2,000 in her bank accounts. Her rental receipts from Property R (the only property to be let at the time) were then £124,750 per annum gross

(c. £85,000 per annum net of property related expenses). At that point in time, she estimated her annual income needs to be £215,250 per annum (£154,000 for herself and just over £61,000 per annum for the girls, including their school fees).

189. In June 2012, with the First Appointment just two weeks away, the Wife disclosed through her solicitors a number of "self help" documents to the Husband's solicitors. Whilst her solicitors confirmed that they had not seen the contents (copies having been taken and placed in a sealed envelope), they had been advised by counsel unconnected with the case that there may be relevant information contained within the documents.

190. One of those documents was a paying-in slip dated 3 May 2012. It records a cash deposit of US$500 credited to an account with H Bank Middle East Limited, Dubai which appeared to be maintained by the Husband. It was not an account which had featured in his disclosure thus far in these proceedings. With that document was a compliment slip bearing the details of PG Ltd and showing their central London address and signed by "SP". That company is a well-known international entity which specialises in international intelligence and financial enquiries in respect of both individuals and companies.

191. On 4 September 2012, the Husband's solicitors said this of the undisclosed H Bank account :-

> *"He confirms that he has an account with this bank with this number. He had forgotten about this account as it was opened in or around February 2011, with minimal or no use since. The account was opened at a time when our client was considering moving to Dubai however that plan did not come to fruition. Our client has requested copies of twelve months' bank statements for this account which will be forwarded as soon as the same are received."*

192. In fact, as is plain from the original copy statements relating to this account which the Husband produced at court on Day 3 of this hearing, the balance in that account as at 7 August 2012, less than one month prior to the

date of his solicitors' letter, was US$875,296.54. On that date, the account was more or less emptied (bar just under US$1,620) when the funds were transferred to another offshore account in Jersey. All this was undisclosed at the time.

193. The proceedings in this jurisdiction continued.

194. Following a First Appointment in June 2012, the matter came before Mr Justice Mostyn for a Financial Dispute Resolution hearing on 22 May 2013. I have a redacted copy of the transcript of that hearing in the bundles. Both parties were represented by junior counsel on that occasion. Two obstacles appeared to stand in the way of negotiation. First, there was the sale of Property B at US$550,000, an apparent undervalue (on the Husband's case) of anything up to £1 million. Secondly, there was the issue of the H Bank account, undisclosed until the beginning of September the previous year, in which the Wife was maintaining there were likely to be funds of up to US$1.6 million.

195. By the time Mr Ewins and Mr Sear had opened their respective cases to the learned Judge, there was still no sign of the copy statements for the Husband's H Bank account which he had said in September the previous year - almost nine months earlier – would be provided. As I shall come on to explain, the Husband's case is that, in the first week of January 2012, there was a burglary at his rented flat in Kazakhstan. The burglary is alleged to have taken place in his and his present wife's absence and, as a result, a number of documents and other items were removed. In response to a request that those statements be produced, Mr Ewins told the Judge that the Husband appeared to be saying that, if they had been received from the Bank following his earlier request, they were no longer available to him as a result of the burglary. It subsequently transpired that copies of the relevant statements had been sent by the Husband to his solicitors but they had only just been received and were then languishing in the post room of Pinsent Masons (McGrigors' successor). Mr Ewins told the Judge that it was the Wife's case that the

husband had failed to disclose earnings and/or significant transactions with K Ltd *("his erstwhile, and perhaps present, employer"* as it was put).

196. After a break in proceedings, copies of the (forged) H Bank statements were produced in court and shown to the Judge. Mr Ewins was quick to convey his client's instructions that she did not accept the veracity of the documents and required sight of the originals or alternatively permission of the court to contact H Bank directly. The Judge's response was, perhaps predictably, sceptical. Having expressed his view that the statements were obviously genuine, he said this to Mr Ewins :-

> *"It looks like H Bank. It quacks like H Bank. It lays an egg like H Bank."*

And a moment later,

> *"There is nothing in this point. It is time, I think, for you to get off the horse of suspicion and start talking – if you want my opinion."*

He was to conclude his remarks with this parting shot,

> *"As things stand, non-disclosure against the husband is completely unproven. You wanted my opinion about that. You have it. We all agreed that we would stand or fall at these documents. To retreat to the position that they are fake is singularly unclassy, in my view. So you have to now comply with your duty, which is to use your best endeavours to reach agreement at this FDR….."*.

197. Whilst there was some attempt to negotiate around a privileged (and redacted) offer which appears to have been made by the Husband (and considered by the court), the Wife's refusal to believe that the statements produced were genuine resulted in an abortive hearing with the Judge leaving the issue of directions to the parties' respective legal teams.

198. That Mr Ewins withstood the judicial gale which was blowing against him during that hearing is testament to his professionalism and tenacity in the light of the instructions he was receiving from his client. He had nothing

further to go on at that stage apart from those instructions, yet he stood firm. His vindication was to come, but only at the eleventh hour and only as a result of his own unrelenting efforts to uncover the forensic trail with the able assistance he was given by the Wife's new solicitors, Mr Ribet and Mr Myles of Levison Meltzer Pigott (LMP).

199. LMP began acting for the Wife shortly after the FDR hearing in mid-June 2013. By this stage, the litigation was being conducted against an increasingly febrile backdrop of allegation and counter-allegation in relation to each party's conduct. Questionnaires and Schedules of Deficiencies were produced on both sides. The costs were mounting and the Wife was without funds to meet her legal expenses.

200. On 22 July 2013, Moylan J dealt with an application made by the Wife for a legal services order pursuant to section 22ZA of the Matrimonial Causes Act 1973 (the old *A v A* application). On the basis that the Wife and children were to be permitted to reside at FC until the conclusion of the cross-applications for financial remedy orders and on the Husband's undertaking to remove the injunctions ("arrests") which were then registered, on his application, against the two Russian properties (which were otherwise mortgage free), the Wife was permitted to charge her interest in Property R and Property A in the aggregate sum of £200,000 for the purposes of funding her legal costs in these proceedings. On that basis, her application for a legal services order was dismissed with costs reserved to the final hearing.

201. I pause there only to remark that, had the court on that occasion been aware of the full extent of the Husband's available cash resources and the extent of his non-disclosure and contempt of court, it may be that a different view would have been taken as to the appropriateness of the somewhat circuitous route of requiring her to obtain funding by, effectively, mortgaging foreign properties. In their written closing submissions, Miss Bangay QC and Mr Sear have suggested that such an approach would be wrong in law because of the terms in which section 22ZA are framed. Whilst I accept that s 22ZA(3) is mandatory in its effect that the court must not make an order under the section unless it is satisfied that, without a contribution, an applicant would

not reasonably be able to obtain appropriate legal services, I disagree that the import of the 'reasonable' test does not allow a judge a measure of discretion as to the manner in which it is proposed the alternative funding should be obtained. The discretion is inbuilt into s 22ZA(1) and (2) in any event and, had the court been aware that liquid funds of more than $½ million were easily available to meet what was clearly a pressing need on the Wife's side with a final hearing looming in less than 3 months, I remain of the view that the outcome might very well have been different.

202. On 6 August 2013, the Husband's solicitors issued an application for non-molestation injunctions against the Wife. In his sworn witness statement in support of that application, in addition to cataloguing his complaints against her, he deposed to the fact that :-

> *"… it is relevant to SR's harassment of me that she retains the vast majority of the assets and the income whereas I am without any earned income";*
>
> *"Within the Family Proceedings it is my case that I have no income, apart from a modest pension (SR does not accept this) and the total assets of the family are assessed between £4 million and £5 million in broad terms. It is common ground between us that the Russian Properties and FC together make up almost all of the wealth of the family (save for my pensions) ….";*
>
> *"GS has been assisting me in locating and compiling documents for the Family Proceedings (such as writing to my banks to provide financial disclosure and internet research within the public domain into SR's activities against me and GS…";*
>
> [of the H Bank paying in slip and the Wife's use of an enquiry agent] *"I found it extremely disquieting to think someone is digging into my personal life (particularly in circumstances where I have always given full and frank disclosure within the Family Proceedings) …".*

That last statement was, of course, a blatant lie.

203. A Pre-Trial Review had been listed before Moor J on 6 September 2013. The Wife's solicitors had, the previous day, issued an application to adjourn the final hearing on the basis of both her inability to secure legal funding (principally, it seems, as a result of delays in the Russian Land Registry to remove the "arrest" entries against the two Moscow properties) and her failing health. I have in the papers a translation of a medical certificate dated 23 August 2013 signed by Dr K which records a period of hospitalisation in Moscow as an in-patient from 15 August to 5 September 2013 for the treatment of recurrent depressive disorder (moderate severity with somatic symptoms). Her consultant psychiatrist records a history of affective pathology with current depressive episodes in the last three years. The medical certificate records the completion of her treatment as an in-patient with a recommendation of continuing psychiatric care in the community and medication.

204. The statement sworn by Mr Ribet, her solicitor, in support of the adjournment, records the events of the summer (the admission of the parties' eldest daughter, A, to a psychiatric clinic following her disappearance and absence on a family holiday and the Wife's inability to procure the necessary legal funding before her own admission to hospital in Moscow).

205. I have been provided with a transcript of the hearing before Moor J. On that occasion, Miss Bangay QC appeared with Mr Sear for the Husband. Mr Ewins appeared for the Wife. The Judge quite properly enquired about the Wife's capacity to give effective instructions. Mr Ewins described his perception of her to the Judge in these terms :-

> *"...I do not think she is over the edge; I think she is on the edge. I think she is capable of giving instructions today. I do not believe that she has been for the last three weeks."*

206. During the course of discussion as to how the problems over the Wife's absence of legal funding might be circumvented, and with encouragement from the Judge, Miss Bangay QC was able to confirm that the Husband was willing to consider a Novitas loan secured against the equity in FC. However, as an alternative, she was then promoting the option of a sale of one of the Russian properties. I have to say that I do not understand how an agreement in principle from the Wife to follow that course would have produced funds in sufficient time to secure the listing of the final hearing but in response to the Wife's objections to realising the Russian assets (*"she still considers that the husband has substantial undisclosed assets")*, Miss Bangay QC told the Judge that *"There is not one shred of evidence that the wife has produced that the husband has not made full disclosure of his assets"*.

207. Of course, that statement was, on her (then) instructions, absolutely correct and it is, in my view, a further demonstration of the contempt in which this Husband held not only the court but also his distinguished legal team that he was prepared to allow the deception he had practised to continue, even at that point in the proceedings. I have no doubt that he was indeed anxious to proceed with the October hearing, confident in the knowledge that he had "got away with it" thus far and hopeful that he could secure final orders at the conclusion of that hearing based upon his continuing fraud on the court.

208. The solution to the funding *impasse* was an agreement that the Husband would allow the English property to be used as security for a Novitas loan whilst the Wife agreed to an immediate order for the sale of Property R. Mr Ewins put down his clear marker at the conclusion of that hearing that should the Wife succeed in her allegations of material non-disclosure at trial and in the event that Property R had not then been sold, the trial judge should have a discretion to rescind that order for sale, if appropriate.

209. It is clear to me from the transcript that positions at the Pre-Trial Review were polarising rapidly. Miss Bangay QC asserted on behalf of the Husband that the Wife appeared to have run through liquid capital of about £1 million which was impossible to trace without her Russian bank statements.

Mr Ewins was clinging to his submission over doubts surrounding the authenticity of the H Bank statements which the Husband had produced. The Judge made a raft of directions at the conclusion of that hearing including an order requiring the Wife to provide her missing bank statements and, significantly, an order which required the Husband to provide an authority which would enable the Wife to obtain directly from H Bank copies of his bank statements. The Husband was required to serve a sworn undertaking to the effect that he had made comprehensive, full and frank disclosure of all his assets. The Wife was injuncted from disclosing to any third party either orally or in writing any documents or information which she had obtained as a result of the litigation. (This latter order flowed from the Wife's – subsequently admitted – disclosure of the Husband's Kazakh lease to his landlord's local tax office.)

210. Some eleven days after that hearing, Mr Ewins and his team finally secured an overwhelming vindication for their client. On 17 September 2013, the Husband finally confessed to his deception. Whilst he described his conduct as *"a significant and conscious inaccuracy in the disclosure I have provided previously in these proceedings"*, it was, in truth, far more than that. It was a deliberate, conscious and sustained fraud perpetrated against the Wife, her advisers, his own legal team and the Court. As justification for his actions, he said this :-

> *"It was an act of desperation that I decided to squirrel away what funds I could in the hope that I would manage to preserve enough to eke out an existence in retirement if SR got her way."*

211. However, that was not the end of it. On 2 October 2013, he was obliged to make a further statement disclosing two further *"inaccuracies"*. First, he revealed that he had fraudulently altered American Express and other bank statements disclosed earlier in the proceedings to conceal expenses which might otherwise have revealed the fact that he was still working in 2010/2011. Secondly, he disclosed that his first wife, DS, had died in the early part of 2013 and he was no longer paying maintenance to her.

212. It can have come to no surprise to anyone that this disclosure coming as late as it did created enormous difficulties for the Wife's legal team who were no doubt side-lined from their preparations for trial and had, instead, to embark upon a process of revisiting much of the Husband's earlier disclosure to check for evidence of further concealment. Both parties' lengthy section 25 statements were late and only exchanged on the last working day before the hearing. I have already referred to the fact that I granted a number of third party disclosure orders at the start of the hearing. These were directed towards various individuals and entities and their purpose was to assist the Wife and the Court to discern whether the Husband had failed to disclose further assets or income.

The alleged break in at the Husband's Kazakhstan apartment

213. A further issue arose on Day 3 of the hearing (by which stage Miss Bangay QC was present in court to represent the Husband). It concerned one of the issues which I have to decide as part of this fact-finding exercise. I have already referred to the fact that the Husband's rented apartment in Kazakhstan is alleged to have been the subject of a burglary in the first week of January 2013. On 17 May 2013, the Husband's solicitors had served a copy of the police report regarding that break in. The Wife, in her very recent statement, had alleged that this document was a forgery, an issue which had not been raised at the Pre-Trial Review. The Wife's legal team had obtained a witness statement from AL, a lawyer working in London who was qualified both in English and Russian/Kazakh law. Such was the climate of suspicion by that stage that I was told the Husband's team had not been alerted to the fact that enquiries as to the authenticity of the report had been made for fear that he might sabotage or otherwise seek to influence them. I ruled that, if evidence as to the authenticity of this report was to come in, it must be on the basis of joint instructions to a single expert.

214. As a result, I was provided with a report from Mr VK, a member of the local Bar Association. That did not become available until 24 October 2013. The thrust of Mr Ewins' assault on the authenticity of the report produced by the Husband is that its particular reference (or KUZI) number does not relate to any incident which took place at the address shown in the report (the Husband's rented apartment which he shares with his present wife and daughter). That much appears to have been established as a result of enquiries undertaken locally. The Wife's case, in terms, is that the Husband and/or GS have manufactured both the account of the break in and the report or Certificate of Inquiry. It was, she alleges, an entirely "put up job" and the smashed family photographs and evidence of localised disarray which I see in the photographs which were taken at the time are entirely staged.

215. VK's evidence goes to the procedure which would be adopted under Kazakh law under the current Code of Criminal procedure. In terms, what he tells me is that an individual reporting a break in and theft of personal property would be issued with a notification token bearing a unique case reference number (or KUZI). That document (a pro forma) comes in two parts. A tear-off slip is given to the individual reporting the crime and a counterpart is retained for official purposes. He goes on in his statement to tell me what an English court might expect to see once a decision is taken to launch criminal proceedings in respect of a reported crime. In this instance, and in addition to the notification token, there would be further evidence of formal orders (i) instituting the criminal case, (ii) recognising the victim of the crime and (iii) recognising a civil plaintiff. The Husband was cross-examined about the absence of any documents other than the certificate he had produced. It seems to me that, in the absence of any suspects being identified and without evidence that a decision has been taken to prosecute any identified individuals as alleged perpetrators, it is not entirely surprising that these further documents are not available. As far as I am aware, no one in the Interior Ministry or other relevant prosecuting body has taken the decision to institute criminal proceedings.

216. Both parties have addressed the issue of the alleged burglary in their written statements and in their oral evidence. I also heard from GS about these events. At a late stage of the hearing, I admitted evidence from Ms NP and Mrs TGZ, the mother of GS, who witnessed at first hand the aftermath of the break in. NP is a paralegal in the employ of the Husband's solicitors who translated the list of questions which it was agreed should be put to the Husband's mother-in-law. That lady is, I was told, pregnant and unable to travel and it was not practical or feasible for her to give live evidence by means of a video link. Accordingly, I admitted her evidence as hearsay and I remind myself that it has not been tested under cross-examination.

217. What follows is the account of the break in as given to me by the Husband, his present wife and her mother.

218. Neither the Husband nor his wife was present in the apartment at the time the incident is alleged to have occurred. They were on holiday with their daughter in Spain for a New Year break. It appears that the Husband travelled to Spain via the UK and they arrived separately at the small guest house at which they were staying. The Husband's mother-in-law had checked the Kazakhstan apartment on the 6 January 2013 in their absence and everything appeared in order. When she returned two days later on 8 January, she discovered the outer door to the apartment was open although there was no evidence of a forced entry. According to the responses to questions put to her, the Husband's mother-in-law was alone when she made the discovery, her husband waiting for her outside the apartment in a car. She tells me that the door was open but the there was no damage to the locks, as I can see from the one of the photographs which she took at the time. This is how she described what she saw:-

> *"There were scattered books, papers, drawing-books from K's shelves in the hall. The contents of the glass closet were on the floor. All cabinet doors were opened and all belongings were dragged out to the floor. All framed pictures were scattered. The large frame was lined through by something. The sofa was moved away, later I noticed there*

was no laptop near iPod in its usual place on the table. The laptop cable connected to the socket behind sofa was also missing. All documents were scattered on the table in the study, all table shelves were pulled out, the contents were removed and scattered on the floor. All cases were opened and thrown about. All childhood pictures of US and K were crumpled, torn, scattered on the floor. The closet safe was opened, cabinet doors were unlocked. The box with ultrasound investigation pictures and newborn K's belongings was flipped over and opened. All bureau shelves were pulled out, everything was looked up and down."

219. She recounts that she called the police as soon as she entered the apartment and then made calls to alert the owner of the apartment block and a security officer of the complex (which I take to be the "local watch" body responsible for the security of the flats). The police arrived 30 to 40 minutes after her call. Three officers attended but did not appear to be interested once they realised the occupants were not local and were absent from the apartment at the time of the break in.

220. She tells me by her responses that she was at the apartment for about two hours in all. When she subsequently made enquiries of the police, she was told that the case had been referred to the Ministry of Interior. Some two weeks later, she obtained a note. She confirmed that the copy enquiry report produced by the Husband in court (which was shown to her) was the document she had received. As to how she had obtained that document, her answers reveal that she had telephoned the Ministry of Interior on several occasions and was eventually told to come and collect the document. She duly attended at the department. *"The girl who worked there told me that all papers were in the file on the table and I had to find mine and take it, then she closed the window. There was a big documents folder and various notes. I found the note and left."*

221. She confirmed that subsequently her husband arranged for the locks on the apartment door to be changed. It appeared that access was obtained by

using a master key which would not be widely available other than to *"special organisations"*.

222. She confirmed that no steps were taken to clean up or tidy the apartment prior of the return of her daughter and son-in-law some two weeks later.

223. Before taking up the Husband's account of what he says he observed first hand upon his return, I need to say something about the contemporaneous report which I accept he made about this incident to his solicitor, Mr Michael Pulford. I have a witness statement from Mr Pulford which is dated 22 October 2013. To his statement he has exhibited an email which he received from the Husband on 8 January 2013 (incorrectly dated 08.01.01) which included the following :-

> *"This morning I was informed by my partner's parents that our apartment was broken into sometime over the past two days. Professional job – no forcing of steel door but professional entry. Experts do not believe a standard robbery since TV, DVD player, microwave etc all still there. All papers ransacked, many files taken, all cash gone and all photos defaced, destroyed including our baby-box with early memories. Our laptop gone and all memory disks. Not sure what if anything of my papers left but no doubt at all this has been conducted by SR. We cannot prove this although we are checking whether she visited Khazakstan but I believe she is too clever for this. Since we believe she has employed people to watch us in Kazakhstan we have little doubt. But again, as with PG Ltd she can act as she wishes."*

224. On 14 January 2013, Mr Pulford had a video conference call with the Husband by Skype. He says that his client looked visibly shaken and that his mood alternated between anger, frustration and despair. The conversation lasted for almost an hour and a half during which time Mr Pulford had to spend time trying to calm and reassure his client.

225. I have well in mind the caution which Mr Ewins urges upon me when I consider this evidence of the Husband's report to his solicitor. It is equally capable of amounting to evidence of a self-serving statement in support of a fabricated case as it is of evidence supporting a contemporaneous report of a genuine break in. In the scale of the duplicity which this Husband has already practised on this Court, I certainly do not rule out such a self-serving statement as being the least likely explanation.

226. The Husband sets out his case in relation to the burglary in his statement dated 5 August 2013 sworn in support of his non-molestation injunction application. In that document he tells me that the only key which can open the door to the apartment is that held by him, his wife and the manufacturer's "master key". The latter, he says, is only available to senior police officers or security service professionals such as the FSB[7] or FSB-related agencies.

227. The Husband does not believe this to have been a genuine burglary as nothing of commercial value was taken apart from some cash, his laptop and memory sticks and a memory "block" containing details of his financial information, correspondence with his solicitors and digital photographs of K as a baby. Folders containing documents relating to the divorce proceedings, his bank accounts and K Ltd had been emptied. I have been shown copies of the photographs taken by the Husband's mother-in-law which appear to show blue markings striking through or obliterating the faces of each of the Husband, GS and their child. These photographs are lying on the floor of the flat, apparently framed and loose, scattered in a random manner on top of children's toys, utility bills from EON energy and South East Water (which appear to relate to FC), other partially obscured bank statements and correspondence (including what appears to be a mortgage statement from Nationwide in relation to FC).

[7]The Federal Security Service (FSB) is the Russian internal security and counterintelligence service which succeeded the KGB.

228. During his oral evidence, the Husband told me that he believes the intruders copied a quantity of documents because he noticed that there was very little ink left in the printer cartridges which had been almost full when last used to print a boarding pass. Other inconsequential items had been taken including some of his wife's clothing, a watch and some unopened aftershave. He told me about a bright orange computer bag bearing the insignia of G Ltd which had been removed. That has some resonance with the email which he sent to Mr Pulford, his solicitor, on 13 January 2013, the day before their Skype conversation, when he referred to two "visitors" from Moscow. In cross-examination, he told Mr Ewins that his father-in-law had used his previous police connections to make some investigations which had revealed some CCTV footage taken at the local airport which appeared to show two individuals travelling together, one of whom had an orange bag.

229. He and GS had returned separately from Spain. She arrived back a week or ten days after the event; the Husband had travelled from Spain to Scotland no doubt as a result of the deterioration in the health of his first wife. GS was to join him in Scotland at the beginning of February before they returned to Kazakhstan together on or about 25 February 2013. The Husband told me that by the time he returned to the apartment, GS had tidied up the living areas but had left many of the documents which had been disturbed loose in the second bedroom which they used as a study.

230. Of the "KUZI 308" enquiry certificate, he said that the document was waiting for them on their return. He rejected Mr Ewins' suggestion that there had been no police or other official presence at the apartment (in this, of course, he was relying on what he had been told by others) and denied that either he or GS were in any way implicated in creating a 'set up' designed to deceive the court.

231. As I say, I maintained a healthy scepticism whilst I was listening to his evidence and I reminded myself when GS came to give her evidence that she, too, had collaborated fully with her husband in the deception he perpetrated over the forged bank statement and other documents.

232. She struck me as an intelligent and thoughtful young woman who was clearly finding the ordeal of giving her evidence a stressful experience. In circumstances where she was so closely implicated in her husband's fraudulent activities, I can understand why. She is plainly aware of the potential impact of findings in these proceedings upon her extant application for visa entry to the United Kingdom. On several occasions she declined to answer specific questions, choosing instead to invoke the privilege against self-incrimination. I explained to her that, in these circumstances, I was entitled to draw certain adverse inferences from her silence if I felt it was appropriate and she confirmed that she understood the position. Her English is good and she did not require the assistance of the interpreter who was present in court throughout her evidence.

233. She confirmed that neither she nor her husband had made any complaint to the police about the possible involvement of the Wife in these events. She confirmed that it was her parents who had made the report and who were provided with the enquiry certificate. Whilst measured in much of her evidence, I had the clear impression of genuine distress when she was telling me about the burglary and the state in which her home had been left. She described very graphically to me how she had tried to use bleach to remove some of the markings from the defaced family photographs and she wept as she described the manner in which her daughter's "memory box" had been strewn across the floor and damaged.

234. By the time he came to make final submissions to me in relation to the burglary, Mr Ewins continued to press his case that this was a completely "put up job" executed by the Husband with assistance from his wife. He says there was no break in, that they have deliberately staged the images I see in the photographs and that it is highly probable that the defaced photographs were no more than images printed from their computer at home and transposed onto the frame to make it appear as though the originals had been damaged. He points to a gaping lack of evidence in circumstances where there should be a trail of official enquiries. He asks me, rhetorically, where I find the photographic evidence taken by police from a wide angle lens showing the

complete disarray which is alleged to have been left by the intruder or intruders? He asks where I find the documents referred to in VK's evidence? All I have, he says, is a bogus certificate which bears a serial number which is completely unrelated to this incident or this property.

235. I bear all of this well in mind. I accept that there are many aspects of the evidence relating to this incident which raise questions to which answers have not been provided. I bear in mind that the evidence of the Husband's mother-in-law has not been tested in cross-examination, and that the evidence of denial of involvement comes to me from two protagonists, at least one of whom admits they are each implicated in lies and deceiving this Court. However, taking into account all that I have heard and read, I am not persuaded that this break in was orchestrated by the Husband and GS. Nor am I prepared to hold the Wife directly accountable or involved in these events.

236. As I indicated during the course of the hearing, I believe there is a much more plausible explanation and it is closely inter-connected with the Wife's decision to instruct other third parties, at considerable expense, to make investigations into the Husband's financial and other circumstances.

The instruction of PG Ltd and other third party investigations

237. It is clear from what I have said earlier in this judgment that the Wife had managed to obtain details about the existence of the Husband's undisclosed account with H Bank in Dubai. That set the hare running in terms of his need to cover his tracks and manufacture false evidence so as to avoid disclosure of his earnings during a period when he said he was without employment.

238. The true circumstances of her use of third parties for these purposes did not emerge until she was in the witness box giving her evidence and on my direction that she should supply the name of the individual whom she contacted and to whom she handed over a significant sum of money.

239. The Wife told me that, from October 2010 onwards, she had strong suspicions that the Husband was working because of things she was hearing from other people. She explained to me the effect which the strain of these proceedings and his non-disclosure had taken on her health and wellbeing. She continues to blame herself for not being available to the children as much as she would have wished because of the time she was having to devote to this case and exposing the Husband's deliberate untruths, as she suspected (and later knew) them to be.

240. In her section 25 statement, she had revealed her engagement of a private investigator in Russia who was able to use his contacts to establish details of the account number of the Husband's H Bank account. She says that she engaged another individual, through PG Ltd, who took the investigation further.

241. Whilst giving her oral evidence, she told me that she had signed a confidentiality agreement with the private investigators. I directed that she should disclose the name of the individual or individuals with whom she had been in contact with regard to covert enquiries against the Husband. It appears that three separate individuals representing three companies were involved in these enquiries. One was PG Ltd. When she was cross-examined by Miss Bangay QC, she said that in fact she had only contacted one individual and it was his decision to contact other third parties who were instructed to make the deposit with the Bank. The first investigator was Russian. She had no contract with him but gave a specific undertaking not to use his name in any future court proceedings. That individual was a gentleman called VM. She met him in Moscow in July 2011 and their meeting in a hotel coffee house (or somewhere similar) lasted approximately two hours. In addition to a payment of RUB3 million (some £58,000), she handed him a copy of the Husband's business card on which was printed his email address. His brief at that stage was to establish whether or not the Husband was working, something which the Wife told me was very important in terms of the Russian proceedings which were ongoing at that time. Over and above that, the Wife's evidence was that she had no idea what VM did because at no stage did he report back

to her save to tell her that the payment of US$500 had been made successfully to the credit of the Husband's H Bank account in Dubai.

242. She told me that VM works for the security service of a company called O Ltd. That company has offices in Dubai and he gave her the name of a contact of his at PG Ltd. It was a representative of this company who, the Wife believes, made the payment into the H Bank account.

243. Whilst at first she was reluctant to accept that VM had connections with the FSB, it became evident that she was well aware of the extent of the resources to which he was likely to have access.

244. She had referred in her section 25 statement to a printed document which set out the terms and conditions of PG Ltd. She produced this document during the second week of the hearing and it is now in the bundles. The Wife had signed it, as she stated, on 23 January 2012. She says she made no payments to PG Ltd directly although she visited their London offices. As far as they were concerned, she was attending as an overseas representative of O Ltd and at no stage did she disclose her full name to them. Specifically, she told me that this introduction to PG Ltd had been arranged by VM as a corporate referral through O Ltd.

245. She was asked about the apparent inconsistency with her previous assertion in Replies to a Questionnaire that on 9 April 2012 she had paid a sum of US$32,000 to an entity called "BHTE" which she had explained at that time was a payment to PG Ltd. Whilst she repeatedly stressed that she had no contractual arrangements with PG Ltd, she accepted that this sum had changed hands on the instruction of VM.

246. Regardless of whatever machinations were ongoing in the background, this much is clear to me. The Wife had parted with significant sums of money and had set in train a line of enquiry with an individual or individuals which had no specific parameters. She told me in terms, and I accept, that having handed over the sums of money for which she was asked, she had no further

involvement in the course taken by these third parties. Her determination to uncover the truth and the animus which she had towards the Husband by this stage of the proceedings is very clear from all that I have heard and read. I have no doubt that much of this was communicated in terms to VM during their two hour meeting in July 2011. She had set the hare running with little or no effective control over what might happen thereafter, and I am left in no doubt that the break in at the Husband's apartment in January 2013 was somehow connected with those activities and those individuals, whomever they may have been. For the avoidance of doubt, I do not make any findings that the Wife was directly involved in procuring or facilitating the break in. I am prepared to accept that she had no knowledge of it until it came to light on 1 February 2013 when Mr Pulford wrote to Ws (then) solicitors to alert them to these events and to suggest that she was involved.

AOL : the hacking allegations

247. I suspect that even the Husband now accepts that it was not the Wife who was attempting to hack into his computer and his AOL account. This aspect of the case was puzzling me. I could not understand how the Husband was able to log back into his AOL account so easily after each occasion when it was alleged that the Wife (using her own email address) had attempted to reset the password. Despite making disclosure orders against AOL (to which a positive response in terms of a full activity report was eventually received), we were no further forward until it transpired during the course of the Wife's oral evidence on the final day of the hearing that she had, by the delivery of the Husband's business card to VM, also disclosed his email address.

248. As the Husband accepted during Mr Ewins' cross-examination on Day 10, *"This morning it became crystal clear what has been happening"*. He acknowledged it was highly likely that the FSB or other third parties on her behalf, all of whom would have had access to much more sophisticated techniques, were responsible.

249. I accept the Wife's evidence that at no time did she personally take any steps to hack into the Husband's computer. I am not convinced that she had the technical sophistication to be able to do that, even if she had the motivation. I believe that the far more likely explanation is that this was part and parcel of the investigations by others which were underway at her behest as a result of the VM connection.

Conclusions and findings in relation to computation issues

250. I have already reached certain conclusions and findings in my analysis of the evidence which I have set out earlier in this judgment. In their closing submissions, counsel for both parties have produced lengthy schedules of the findings which they seek in terms of computation issues. I have already covered much of the ground in my judgment, albeit that I have not made specific findings in respect of some of the allegations which fall into the category of "marital misconduct" as that term is defined by Miss Bangay QC and Mr Sear in their submissions.

251. It seems to me that the two central issues which remain for determination are the following :-

(i) Has the Wife made out her case that there are other undisclosed assets which the Husband has yet to disclose? Principally, does he hold shares or own property either in his sole name or in the name of a third party entity over which he has effective control? Is he still in receipt of income from employment?

(ii) Is this a case where there should be reattributed to the Wife's account a notional sum to reflect her disposal of the properties (and use of the sale proceeds) without account to the Husband? If so, should that sum reflect the fact that she sold at an undervalue and what account should be taken of the fact that she says she spent some or all of the proceeds on meeting genuine expenditure needs for herself and the children? Is

the Wife, as the Husband alleges, hiding cash from the sale of Property B? Are either of the sale transactions 'sham' in the sense that, if the properties have been transferred, either her sister or Mr O is holding the property they received for her exclusive benefit?

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252. The remainder of the allegations in their respective schedules concern aspects of the conduct of each of these parties in respect of which I shall make findings, but which I consider to be peripheral to these two central issues.

The Husband : allegations he continues to hold assets and/or income which he has yet to disclose

253. I have already dealt with the burden of proof which each of these parties bears in relation to the issue of non-disclosure. I have reached the clear conclusion in this case that, notwithstanding the lies he has admitted, the Husband has now given a full account of his assets. I find that there is no reliable evidence from which I can safely conclude that he continues to deceive the court about his ownership of shares, property or any other cash funds. I have explained why I reject Mr Ewins' submission to me that, as a matter of law, his previous lies are a sufficient evidential foundation – without more - from which I can infer that he has substantial undisclosed assets, far less that they are likely to be equivalent to the (pre-sale) value of the Russian property portfolio or anything closer to his earlier suggestion of many millions of pounds.

254. I say that for these reasons. First, I have the Husband's evidence and the explanation which he gave to me of his reasons for withholding from the Wife information about his employment and the sums he was depositing in the H Bank account. It does not in any shape or form excuse his conduct but it provides a context for his actions which I am prepared to accept. Secondly, whilst Mr Ewins suggests that it is for the Husband to put before the court evidence which provides a complete answer to the non-disclosure case which is pursued, I do not see what more he can do. I have been prepared in this case

to make a significant number of disclosure orders against third parties, both resident in this jurisdiction and outside. I have given Mr Ewins, Miss Headley and their team as much room to manoeuvre in their further enquiries as they felt they needed. I did not seek to contain in any way the ambit of those enquiries at the start of the hearing because I took the view they had proper grounds for extending them as widely as they did. The only brake which I introduced was the guillotine which I imposed on the conclusion of the hearing which had then occupied this judge and the court for 11 days. Even then I indicated that I was prepared to receive further evidence flowing from third party enquiries if relevant information came to light between 8 November 2013 and the delivery of my judgment which I had promised to prepare over this New Year vacation. As far as I am aware, nothing further has come to light which might have a material bearing on the facts which I have to decide.

255. I bear well in mind Mr Ewins' warning to me that at least one of the Husband's professional colleagues, DA, has apparently been prepared to assist him in a misleading presentation to the court on an earlier occasion in these proceedings. To counter the possibility of this happening again, I allowed Mr Ewins and Miss Headley to cast their third party disclosure net sufficiently widely to encompass orders against individuals or entities who might provide independent verification of primary sources of information. I have been made aware of nothing which suggests the existence of other assets, including properties or shares.

256. As a result of the third party disclosure orders, I now have from ABC LLP, the solicitors acting for K Ltd, a detailed analysis of all sums which have been paid to the Husband together with the dates of each payment, the reason for the payments and the sums remitted. This analysis covers the period from 1 October 2008 to 16 December 2011. I have a copy of the List of Documents produced on behalf of the company dated 1 November 2013 which sets out all the documents within the possession or control of that company, including details of each of the service agreements into which it entered with the Husband.

257. In terms of property ownership in Kazakhstan, I accept the evidence which the Husband has put before the court as to ownership of both the rented flat in which he and GS are currently living and the home occupied by his mother- and father-in-law. Whist there was a suggestion that he might own property in Scotland because of a correspondence address which had previously been used for receiving his American Express statements, I have no evidence to suggest there is any substance in this line of enquiry, nor have I heard about any positive results from enquiries which were underway at the Scottish Land Registry.

258. In terms of equity participation in K Ltd, I now have evidence from Mr SM, a solicitor at ABC LLP, in the form of an email dated 1 November 2013. That email contains the following confirmation :-

> *'You have stated that a key focus of your enquiry, and that of the Court, is in relation to the award of shares/options/related benefits to US ..... To confirm, my instructions are that there was not, and there never has been, any award to US of this nature in or by either K Ltd or any subsidiary company ...'.*

259. I accept that this information is a statement of Mr M's instructions and I bear well in mind Mr Ewins' warning to me about the caveat in a further email dated 1 November 2013 (*'so far as our client is aware, US was not awarded any shares, options or related benefits ... '*). It is nonetheless supportive of the Husband's position. I have taken into account the earlier letter which was written by these solicitors in January 2011 to the effect that *'US is not an employee of K Ltd, nor does he have any ownership or controlling interest in either K Ltd or its assets'*. (That letter was written in response to the Wife's letter addressed personally to Mr I in which, amongst other things, she had threatened *'to instruct my English lawyers to consider my husband as an alternative controller and owner of all K Ltd external assets ... and to include those assets into our property'*.) Whilst technically correct (the Husband was employed through a subsidiary, MH Ltd), I accept that it causes those instructed by the Wife to look for copper-bottomed confirmation and I

have not been made aware of the content of any response which may by now have been received from K Ltd's auditors, Y & Z. Whilst it is a matter of public record that share options in K Ltd have been made available to some of the company's senior employees, there is still no reliable or admissible evidence or information before me which suggests that the Husband holds shares or that anyone else is holding shares on his behalf. The mere fact that he has lied in the past does not entitle me to enter into the realms of pure speculation and the enquiry has to stop at some point in order to enable these parties to move forward beyond this litigation.

260. It seems to me that the circumstances of the Husband's employment are also relevant to my decision on this issue. He did not have a full contract of employment but rather a series of limited rolling consultancy contracts, each of which lasted no more than 12 months before renewal (apart from the 3 months in lieu of notice at the end of his relationship with K Ltd). He was paid well by industry standards for the job which he did. The net benefit to him was the equivalent of a gross taxable income of over US$1 million. He told me that K Ltd has over 13,000 employees but only two or three ex-patriate consultants, of whom he was one. His evidence in relation to the termination of his contract was that he had been told on 16 September 2011 that his services were no longer required since the company was no longer undertaking the international work which he was brought in to advise upon.

261. As to his directorship in J Ltd, the Husband was appointed on a nominee basis as an independent director. His relationship with the company lasted for five years. His director's fee was US$60,000 per annum although his relationship with that company ended in June 2013. He tells me that this is a Russian family owned company and that the Articles of Association (which I accept I have not seen) preclude external share ownership outside the controlling family members.

262. Before me now in response to the third party disclosure orders which I made is an email from Mr YR, the Chief Financial Officer of J Ltd. That email is dated 23 October 2013 and it confirms that the Husband *'has no and*

never had any interest or any other ownership benefits via means of options, warrants or similar in the Group or any of its affiliates'.

263. I have to say, too, that I am highly sceptical about the basis for the Wife's conviction that he was generating an entitlement to equity or shares whilst with K Ltd or J Ltd. I have already rejected her evidence of an early discussion in 2010 leading to a concluded agreement that she would keep the Russian properties and he would keep his 'shares and savings'. In her section 25 statement, the Wife's evidence about these 'shares' (paragraph 69) is extraordinarily vague. She simply refers to a general discussion (without giving any specific details) which *'centred around an idea'* (no more than that) whereby he would keep all his '*bank accounts, shares and income which I understood, and still believe, were (and are) significant*'. She had experience of the Husband's previous ability to realise cash from the sale of his shares with I Ltd some nine years ago in 2005. She was pressed during the course of her oral evidence for more detail as to the basis of her belief that he was still holding shares. In response to questions put to her in cross-examination by Miss Bangay QC during the second week of the hearing (and for the first time), she told me that at some point in the later stages of their marriage, the parties had discussed buying a villa in Spain. Her preference was for the South of France. In order to fund that purchase (there was no discussion of selling the Russian portfolio), she said that her Husband had told her he was planning to work for three years with K Ltd and/or J Ltd and his remuneration would be modest but he would receive shares in lieu. There is no reference whatsoever to this discussion or those plans in her written evidence and I find myself unable to place any reliance upon it as evidence which suggests that what I have been told by the Husband is not the truth. As I have said, I do not regard the income he generated through K Ltd as being "modest" by any standards.

264. There is also the evidence that in 2012, the Husband had borrowed sums totalling approximately US$44,000 from his father-in-law. Those funds (or part of them) were paid into his Kazkommertzbank account. Those loans had been made in contemplation that he might purchase a property and, I

recall, to assist with some medical expenses which he incurred at the time of his present wife's confinement. The loans have since been repaid and the decision to investigate the purchase of property abandoned. Whilst I have nothing against which to test that evidence (apart from that of his wife, who confirmed the loans made by her father), I have to ask why he would be borrowing funds if he genuinely had access to substantial offshore resources. Further, there is nothing in the bank statements which he has now disclosed which suggests to me that this Husband is living an extravagant lifestyle or spending in a manner which is inconsistent with what he tells me about his lack of earned income.

265. Finally, in the context of the allegations of undisclosed equity participation, I come to a document written by the Husband called *'Documents Action Plan'*. First, I need to say something about the circumstances in which that document was presented to the court.

266. On the second day of the hearing (which should have been a reading day), I dealt with an application on short notice which concerned a photograph of a document which the parties' daughter, B, had produced to her mother the previous weekend (in other words, the day before the listed hearing date). It was one of four photographs although I have only been shown the one. The document in question was a note written by the Husband which was entitled *'Documents Action Plan*'. Mr Sear told me that the Husband accepted that it was his note and he believed it had been written in 2012. B had downloaded the original photograph from her camera onto her laptop. I was told that the original no longer existed on the camera. Mr Ewins told me, on instruction, that the note had been seen by B in 2011 at FC, that she had taken the photograph in August 2011 and had at that stage showed it to her mother (who does not now recall seeing it). Whilst the Husband was in Kazakhstan from 22 August 2011 (where his youngest daughter had just been born), he had been in the UK and at FC from 17 to 31 July 2011. I directed the Wife to file a witness statement as to the circumstances in which she had come into possession of this evidence and both the camera and laptop were brought to court and were the subject of further expert evidence.

267. As a result, I have a report from RJ of A Partners which is dated 23 October 2013. She states in paragraph 2.1 of her report that the metadata within the photographs suggests that they were all taken by the same camera on 22 October 2011 although it is not possible to determine where they were taken. They appear to have been downloaded to the laptop on 27 August 2012. She goes on to say in her report,

> *"The dates and times set in both the camera and the laptop were accurate to the current date and time when checked. As such, the dates stated in 2.1 above are accurate provided the dates on the camera and laptop have not been altered since the photographs were taken or copied to the laptop. … It appears that two of the four photos have been modified since they were copied onto the laptop, however it is not possible in the time available to ascertain the extent of any modifications. ….. In addition to the above, the SD card* [the camera memory card] *does not contain any photographs from the relevant time period, and appears to be either a different card to that which was used to take the photographs in question, or has been reformatted since the pictures in question were taken."*

268. The statement which was sworn by the Wife on 16 October 2013 appears to remove from the issue any further debate about the date. The first paragraph of her statement records the fact that B told her mother that the photographs were taken on 22 August 2012. It is accepted that the Husband was with the children at FC on that date.

269. The *'Documents Action Plan'* consists of a list of eleven points, some of which are simply headings and some of which prompt an action or question. Within the list is a reference to *'K Ltd– shares, share options'* and a reference to *'J Ltd – shares, options, etc'.* It is the Wife's case that these reference are highly suggestive of the fact that the Husband holds shares in either or both of these two entities.

270. The Husband's response to this evidence is that, whilst he cannot remember the precise date, this was a note or *aide memoire* (my description rather than his) which he believes he wrote in the week before an appointment with his solicitors. Pursuant to an order made at the First Appointment, he was due to file his replies to a questionnaire raised by the Wife's solicitors on 20 August 2012. The correspondence between the solicitors in the first week of August 2012 shows clearly an acknowledgement on both sides of slippage in the timetable for a number of reasons, including the Husband's recent admission to hospital in Kazakhstan. I have seen an email dated 10 August 2012 from the Wife's solicitor to Mr Pulford in these terms:-

> *"I know you were hoping to have a Conference call with your client this week and then to write to me with some suggestions about how to move matters forward in light of the fact we are now running behind the Court timetable as a result of your client's hospitalisation. I wonder if you have now had an opportunity to speak to your client and if you could update me as to the situation."*

271. In a letter dictated by the Husband's solicitors on 27 August 2012, I find specific confirmation of a recent meeting with the Husband. A subsequent letter from the Wife's solicitors confirms they were aware of that meeting which took place at some point during the week of 16 to 23 August 2012. Both the fact and timing of that meeting lend support to the Husband's explanation to me that the bullet points set out in the *'Documents Action Plan'* relate to the list of points he had to answer or deal with in his replies. They include matters such as the 'Divorce Certificate – S County Court' (a reference to his previous divorce and the provision he was making for his first wife), Russian tax advice and pension details. Much of this is ground covered in the questionnaire to which he was responding. Insofar as the Wife relies upon this evidence as probative of the existence of other assets, I am not satisfied that it establishes either ownership of shares or other assets. Insofar as it is necessary for me to make a specific finding, I am persuaded that it is much more likely to have been a document which was produced by the

Husband in 2012 as part of the exercise upon which he was about to embark by way of response to the Wife's questionnaire.

272. As to the future, whilst I accept that the Husband may be able to pick up the odd consultancy if he is fortunate enough to find a suitable opportunity, the reality of life is that this man is now 62 and his health is not good. Absent the issues of non-disclosure which have been generated in this litigation, I have my doubts as to whether any court would be prepared to impute to him an earning capacity of any significance and for any sustainable period of time. He is, in my view, unlikely to be in a position to present himself in the offices of any of the top headhunters or recruitment consultants and walk from there into an international position which is going to generate the sort of income he has been paid for the last two to three years of his working life.

The Wife : reattribution issues

273. I have found this a difficult issue in the light of my findings that :-

(i) the Wife's dealings with the Russian property portfolio were unauthorised and in breach of the clear representations which she was making at the time through her English solicitors;

(ii) she was at all material times aware that there was no consensus between the parties as to how their financial resources should be divided, far less an agreement which had been approved by the court;

(iii) she sold Property K and Property B (and attempted to sell Property R) as part of a strategy or course of conduct which was designed to liquidate the Russian portfolio without notice to the Husband and as quickly as possible before there was sufficient opportunity for traction to be established in the English proceedings;

(iv) because of my findings in relation to the Husband's lack of understanding of written and spoken Russian (at least as far as it extended to technical / legal documents), her actions necessarily involved an element of deception as to the nature and effect of the documents to which she procured his signature;

(v) because of the need for speed, and motivated in part by anger or spite, she was prepared to sell at a significant undervalue without any attempt at a commercial marketing exercise;

(vi) her actions have resulted in a considerable financial loss to this family.

274. I have come to the clear conclusion in the light of everything I have heard and read in this case that, despite the unsatisfactory nature of the evidence in a number of material respects, I am not led to a conclusion that the sales of Property K and Property B were sham transactions in the sense that they are of no legal effect. The burden of proof required is a high one : see Munby J in *A v A [2007] 2 FLR 467* at [17],

> "I wish also to make the point that, even in the Family Division, a spouse who seeks to extend [her] claim for ancillary relief to assets which appear to be in the hands of someone other than [her husband] must identify, and by reference to established principle, some proper basis for doing so. The court cannot grant relief merely because [the husband's] arrangements appear to be artificial or even 'dodgy'."

275. As I have said, by the time of their closing submissions to me, Miss Bangay QC and Mr Sear had abandoned any claim that there is evidence in the case which allows me to point to the existence of undisclosed assets or some form of 'backhand' payment made by Mr O to the Wife which she has thus far failed to disclose. Had it been made, I should also have rejected a submission to the effect that he now holds the property as her nominee. She also, by this

concession, acknowledges that the Wife has indeed run through all the cash which she received from the two property sales in addition to the rent she received from the retained Russian property. It is not suggested (and there is no reliable evidence which would enable me to find) that the Wife has an undisclosed account or accounts and/or that she retains significant sums of undeclared cash in her niece's safe, the SBER Bank safety deposit box or indeed anywhere else. Rather, the thrust of Miss Bangay QC's argument on behalf of the Husband is that I should reattribute to the Wife a sum representing funds which she should now be holding. I was in some difficulty discerning whether it is still alleged on behalf of the Husband that the Wife should still be treated as the owner of Property K. In the light of my earlier observations about the registration of that property in the name of her sister, I take the view that the Property K disposal falls to be considered under reattribution principles rather than as a property in specie which the Wife still owns and which can be sold pursuant to orders of this court to realise market value in due course.

276. The difference in value between the two asset schedules produced at the conclusion of the hearing is some £2.176 million. This sum is accounted for by a figure of £1.57 million (which is the sum which the Husband seeks to reattribute to the Wife's account as a result of the disposal at undervalue of Property K and Property B[8]), the value to be attributed to Property R and the tax liability which will be triggered by sales of the properties. At this stage of the proceedings, I am not asked to deal with the latter two issues.

277. Thus, leaving pension aside and ignoring for present purposes the value of Property R and tax, I am looking at a position of net liquidity of c. £4 million. That is the sum which is actually available to these parties to meet future housing and income needs. The pension report prepared on 21 May 2013 suggests that the Husband's three pension funds are likely to produce a gross retirement income of c. £57,000 per annum. The pension funds on their own will not support the income needs of the Husband, Wife and the children,

[8]For present purposes, I have not included the sum of £60,000 in the reattribution schedule spent on the costs of the Russian proceedings.

far less his new family who are also financial dependants at the present time. I do not know whether that computation takes account of the £198,000 odd which he has recently commuted to fund his legal costs. I suspect it does not, but in any event it is clear that, on the basis of my findings as to the Husband's absence of income and his lack of prospects for the future, some provision in respect of income needs will have to be made available for these parties' future income needs out of their liquid capital resources. I do not expect that the Husband will contend that this Wife has any effective earning capacity and she remains the primary carer for three children who have not yet achieved independence. It seems to me highly likely that Property R will have to be sold and that will bring to an end the rental income on which the Wife and children are currently living.

278. Miss Bangay QC submits that any findings I make as to reattribution may need to be revisited at the distribution stage to take account of future need but that this should not prevent me from reaching a conclusion as to the sums which the Wife should be treated as holding at the outset of the distribution exercise.

279. I have reminded myself about the law and, in particular, my analysis at paragraphs 55 to 63 of my judgment. I have not heard any submissions as to future needs nor the extent to which there is an issue as to what those needs, on both sides of the case, might be. But I now know a very great deal about these parties and their financial circumstances both as they are now and as they are likely to be in the future. On the basis that the Wife has indeed spent the entirety of the funds produced by the sales of Property K and Property B (as I find she has), what I am being asked to do, in effect, is to create a balance sheet as between these parties which assumes that she has available a sum of £1.62 million (the sum contended for on behalf of the Husband) to meet her future needs, which plainly she does not.

280. As both Miss Bangay QC and Mr Sear recognised in their opening submissions, the law does not <u>oblige</u> me to reattribute specific sums at this stage of the process in circumstances where I can take proper account of her

conduct at the distribution stage (see paragraph 62 above and paragraph 198(b) on page 29 of their original submissions).

281. I have given very careful consideration as to how I should proceed. One of the particular difficulties in reattributing a precise sum to the Wife's account is the complete absence of any reliable evidence as to how she actually spent the funds received from the sale transactions and the reasonableness of that expenditure. I have set out my analysis of this conundrum in paragraphs 168 to 178 of my judgment. I am therefore left with two alternatives. Either I accept that the entirety of the funds she received were indeed required to meet the costs which she was incurring throughout that period of time, or I fix upon some notional – and, inevitably, arbitrary - figure as to what it might have been reasonable for her to spend, much as Bennett J did in the *McCartney* case. In that case, the alleged 'overspend' ran to a seven figure sum and thus the figure fixed on by the learned judge (£500,000 or 40% of the overspend after allowance for legal costs, disbursements and the like) was entirely realistic and proportionate. It is significantly less here and, by the time an allowance has been made for legal expenses and relocation costs, probably not significantly in excess of the Wife's annual budget (which I accept is based upon the family's former standard of living).

282. Whilst I see significant attractions in deferring a decision on notional reattribution to the distribution stage of these proceedings when there will be the opportunity for a proper and holistic consideration of needs and the impact on the finances of any orders as to costs which might flow from these proceedings, I am also conscious of the vast sums which these parties have already expended on this litigation to date. I am hopeful that, with the issue of the extent of the Husband's non-disclosure conclusively resolved by my findings, the parties may well be in a position to begin negotiations which will obviate the need for a further hearing or hearings. Each has a first class team of lawyers on board and I would encourage them both to take this course and preserve what is left of the assets which will be much better utilised in meeting

the family's needs than in funding another expensive round of litigation in court.

283. In these circumstances, and to assist the process of further negotiations, I am prepared to offer my conclusion as to the sum which should be reattributed to the Wife in respect of the two Russian property sales (including the garage) which I propose to limit to £1 million, being the amount which represents, in round terms, the headline undervalue of Property B. I do not propose to reattribute any sums in respect of the cash funds which the Wife actually received from Mr O (c.£500,000) or the proceeds which she says have been received from Property K and the garage. These sums have been spent and I am simply not in a position to determine that this expenditure was either wanton or reckless[9]. However, I take the view that, on the basis of the range of expert valuation evidence which I do have, there can be no issue at all but that the sale of Property B to Mr O at a price of RUB26 million was both wanton and reckless. None of us can know what price she might have achieved had there been a commercial attempt to market the property in 2010 but I am quite clear that, by her actions, the Wife has deliberately disposed of a valuable investment at a very significant undervalue and, as a result, the parties have sustained a loss which cannot be ignored. I have limited the reattribution to £1 million which is less than the full overspend for which Miss Bangay QC contends. Her computation is based upon the highest point of the two formal valuations which suggested values of betweenUS$2.178 million and US$2.4 million (*per* the Wife) and US$2.667 million (*per* the Husband).

284. Whilst I recognise that there is no satisfactory explanation (let alone evidence) to support the use which the Wife made of the funds which she says she received from her sister on the sale of Property K, I take the view that the sale price was sufficiently proximate to the provisional valuation I have seen. I have already made reference to the agent's reference to some problems with road access and it may well be that US$140,000 would not have been realised after a commercial marketing exercise. I have no way of knowing but that is

[9]The Wife's evidence was that the proceeds of the garage at Property B had been spent entirely on the legal costs of the *A v A* hearing before Moylan J.

the conclusion I have reached and £1 million is the figure upon which I have fixed by way of reattribution in order to hold the balance of fairness as between these parties. Whether that notional figure can stand in full after a consideration of the Wife's needs will depend upon the next stage of negotiations and/or the findings of the court. Inevitably, some or all of that sum may need to yield to needs but I do not consider that the Wife can be wholly absolved from the consequences of her own conduct.

Other findings

285. Having resolved what I regard as the central issues of fact in this case, I turn now to my findings in relation to what I have called the peripheral issues. I do not refer to them in these terms to minimise the gravamen of either party's actions in terms of their conduct towards the other, but I do not consider that my findings in respect of any will necessarily impact upon the ability of the parties and their legal teams to embark upon attempts to settle this case. To an extent, many of the issues which have been identified separately in the detailed schedules which each side has produced fall to be considered in the wider context of the issues flowing from the property transactions and the Wife's use and application of the funds she received. Because I have dealt comprehensively with those issues in my analysis of the evidence and my findings as to reattribution, I do not propose to single each out here. Instead, I propose to deal with the other headline allegations of conduct and, where necessary, to restate as headline points the findings I have made earlier in my judgment.

The allegation of assault on 30 June 2010

286. I have dealt with this in paragraphs 142 to 151 of my judgment. I reject the suggestion that the Wife engineered the Husband's arrest by a false assertion that she had been assaulted. I take the view that each played a part in the events as they unfolded and that, in the course of a physical altercation, each was culpable.

The Wife's threats to the Husband contained in emails written on 19 October and 16 November 2010, and her letter to K Ltd (Mr I) dated 26 November 2010

287. The letter which the Wife wrote to K Ltd was disgraceful, as she herself admitted. It is fortunate that it did not result in the Husband's loss of employment but it clearly caused a great deal of distress and embarrassment. It was ill-judged and, although I am prepared to take proper account of the pressures upon the Wife at the time, it was an inexcusable communication. Her letters containing veiled threats to expose the Husband to journalists and other high level contacts she was seeking to develop in Moscow were high-handed, condescending and completely inappropriate. I have absolutely no doubt at all that she wrote those letters, as she herself has subsequently admitted. However, I have accepted her apology, which I find was genuine, and I do not propose to treat her conduct as sounding in either costs or under section 25(2)(g). I find that the Wife was sincere when she told me from the witness box that her attitude towards these proceedings had *"softened"* after she had listened to the evidence given by the Husband and his wife. She had never met GS before she saw her walk into the witness box and I do not underestimate the pressure she will have felt under difficult circumstances of seeing her Husband in court and listening to his account of events as they played out in the context of their unravelling marriage.

The Wife disclosure of the Husband's lease to the Kazakh tax authorities on 20 June 2013

288. The Wife has accepted that she was in breach of her obligations of confidentiality owed both to the Husband and this court and she has apologised. Whilst it does not represent any real mitigation, she was deep in the throes of trying to establish her case in relation to the existence of other assets, the Husband at that stage continuing to perpetrate his fraud on the court in relation to own non-disclosure.

Hacking into the Husband's computer and the Kazakhstan break in

289. I have dealt with these allegations in paragraphs 213 to 249 of this judgment. Whilst the Wife, through her connection with VM, may well have put in train the course of events which led to the hacking and the break in, I do not hold her directly or personally responsible for either. Specifically, I have found that she had no involvement in the methods deployed to obtain information and/or to intimidate the Husband although she is likely to have known what sort of access VM would be likely to have to high level security contacts and investigation techniques as the same may have been practised in the security world. To the extent that she resorted to the instruction of third parties in the face of the Husband's deliberate concealment of his true financial position, he must bear some responsibility, however inappropriate the means of his discovery might have been. It was, after all, the discovery of the H Bank account number which was eventually to lead to the disclosure of his false evidence. I accept, however, that the significant sums which the Wife paid to VM and others are an indication that she is likely to have realised that unorthodox (and possibly illegal) methods were likely to be used to elicit information about the Husband's finances. Whilst I do not in any sense condone what she did, her actions undoubtedly had their root in the Husband's defective disclosure.

The Wife's commencement of the Russian divorce proceedings

290. In terms of her litigation strategy, I do not consider that the Wife can be penalised for seeking advice about her position in divorce under Russian law. The wish by one party to secure for herself a legitimate juridical advantage in what may potentially have become a *forum conveniens* case is not something which would normally attract a costs sanction, notwithstanding her having advertised previously her intention to issue proceedings in this jurisdiction. The fact that she believed she would be in a better position to secure the Russian property portfolio in a Russian court may very well have constituted a legitimate juridical advantage and she was being advised, so I am

told, by an experienced Russian legal team. My censure of her conduct in securing the various documents by misleading the Husband as to their contents and her intended use of them has already been reflected in a reattribution of funds to her account. I accept that the particulars which she supplied in the Russian divorce petition were not accurate but I do not propose to add back the costs of those proceedings. The Husband had himself launched his own proceedings in Russia prompted by his discovery of the Russian property dealings. The Wife was to concede jurisdiction in England by the beginning of 2012 and the order made by consent by Baron J on 9 May 2012 dealt with the costs of the suit on the basis of the agreement which the parties had reached.

The Wife's retention of the Husband's documents and her failure to make full disclosure of all her bank accounts in her initial presentation in Form E

291. It is clear from an examination of her financial presentation in her initial Form E that the Wife had not provided a full account of all the bank accounts she maintained when she submitted those documents to the Husband's solicitors. She accepts these deficiencies in her early disclosure and I heard evidence as to the circumstances in which, from Moscow, she was liaising with her English solicitor and accountant in an effort to produce her draft Form E. I agree with Mr Ewins' submission to me that her errors of omission are on a wholly different scale to the Husband's non-disclosure. By the time she came to submit her second (and full) Form E in May 2012, most of the deficiencies in her disclosure as to bank accounts had been made good.

292. For the reasons set out in paragraph 90 of the final submissions put before me by Miss Bangay QC and Mr Sear (which I consider persuasive but which I do not intend to repeat *seriatim*), I am satisfied that the Wife has on occasion failed to give timely disclosure of documents in her possession belonging to the Husband. I bear in mind that for the most part, the complaints relate to a period when the Wife was pursuing her allegations of non-disclosure against the Husband and was also in the process of changing solicitors. When her current solicitors, Levison Meltzer Pigott, took over

conduct of the case in June 2013 shortly after the FDR hearing before Mostyn J, there were significant funding difficulties which were not resolved until the PTR in September that year. She had to contend with issues of her own health as well as A's psychiatric breakdown during that period and, subject to what I have to say about costs generally at the conclusion of my judgment, I consider it would be disproportionate to penalise this Wife in costs because of these litigation shortcomings when the Husband's own litigation conduct has been so appalling.

The Land Registry document issued by the Kazakhstan Land Registry and obtained by the Wife as potential evidence of property ownership

293. This issue arises out of the fact that the Wife was able to secure an official government document from the local Kazakhstan land registry which she believed to be evidence of GS's interest in a property. The property referred to was an address in Kazakhstan. That is, as I accept, the home of her parents and I have seen evidence which appears to suggest that the property was provided by the Kazakhstan government to her father free of charge in return for his long service in government employ (over thirty years work for the National Security Committee). The E-Gov document produced by the Wife (and dated 2 April 2013) in support of her contention that GS owned (or may have an interest in) the property was procured at her request by a friend of the Wife's called Miss B who, it appears, conducted a search at the land registry. That individual's name had been redacted on the version sent to the Husband's solicitors. GS told me that she was able to enlarge the document font on her computer screen and thereby reveal from underneath the manuscript redaction the identity of the individual who had requested the search of the register. In fact, it transpired that this document is not simply a document showing property ownership but is also a record of the official registered addresses of the individuals whose names appear on the face of the document. GS is recorded as being registered at her parents' address. I am told that her registration as a resident at this address entitled her to some element of beneficial ownership (she told me it was as to a one-sixth share) but whether this interest goes beyond some form of protected status of security

in relation to continuing residence at the property, I know not and it probably does not matter for the purpose of this inquiry.

294. There is an issue as to whether or not that document was obtained illegally and/or whether it was forged. By way of comparison, I have a copy of a similar government certificate which was obtained legitimately by GS on 13 May 2013 in relation to the same property. It bears a different date and certificate number but the format is more or less identical on the first page, apart from what appear to be some watermarks on the second document. By the time I travel to the second page of the document, however, I can see a significant difference between the two. In the list of rights registered against this particular property, the Wife's document shows a single name, that of GS. The formal certificate which was obtained by GS some six weeks later bears a full list of five names, being each of the family members. When the Wife was asked in cross-examination about the omission in her document of the other names, she told me that it was no more than a *"silly mistake"* in that when she had sent the document to translators, she had been asked whether she wished them to translate all the names on the second page. The Wife had asked them only to provide a translation of GS's name. It appears on the earlier certificate obtained by the wife as "GS born on June 12, 1987".

295. I am unable to accept that evidence as the truth. Had five names appeared on the Russian original dated 2 April 2013 but only one in the English translation, I might have been persuaded by that answer. However, the Russian document clearly shows only one name in the registration section and thus the Wife's evidence makes no sense.

296. In relation to Miss B's involvement in obtaining this document, the Wife told me that their daughters attended the same school and they sat together as members of a multi-cultural committee. She told me that she and Miss B had no social connection in the wider sense and that she had never enquired about her husband's job, influence or connections because *"it would have been impolite to ask"*. She described the suggestion that Miss B was a woman of some considerable influence as *"absurd"*. I was left at the

conclusion of this evidence none the wiser as to why, in this event, there was any need to involve a third party in obtaining the certificate and I did not find the Wife's evidence convincing.

297. The Husband told me that he was not alleging that the Wife's document was forged but it certainly appeared to have been edited. The Wife denies that she knew GS's IIN number prior to being handed a document which had been obtained by her lawyer in Russia. She did not know anything about the circumstances in which he had obtained it. Wherever the truth of this particular episode lies, I find that on the balance of probabilities the Wife did not act in good faith. There appears to be clear evidence of some editing or tampering with the April land registry document. Whether it was edited or forged, I know not but I am prepared to accept that it was not obtained by wholly legitimate means. The prospect of the Wife involving in these very personal affairs one of the school mothers with whom she had little or no personal connection is, I find, completely unrealistic and I do not believe it. Further, the Wife's assurance to me that she would never have done anything which might cause fear or apprehension to GS simply will not sit with the very personal (and sometimes excoriating) content of the letters and emails which she sent to both the Husband and other third parties.

Non-disclosure prior to the hearing of receipt by the Wife of rental income from Property B in 2010

298. The W admitted in cross-examination that she had not declared in her financial presentation receipt of three months' rent from Property B prior to its sale (a sum of US$42,000). I am asked to find that she concealed that income for almost three years. In fact, whilst it did not appear, as I accept, in any of her formal disclosure documents, the Wife told me that she had provided that disclosure informally to her previous solicitors, Forsters. Mr Ewins was subsequently able to produce evidence that she had indeed communicated receipt of that rent to them and I have now been provided with a copy of the email recording that fact. It is dated 4 May 2012 and it was sent to her

solicitors with a manuscript revision to the relevant page of her draft Form E. The fact that she had informally disclosed this fact to her previous solicitors does not, of course, detract from the force of Miss Bangay QC's submission that there was no formal disclosure to the Husband or his solicitors. It does, however, provide partial mitigation in terms of whether or not it was the Wife's intention to mislead.

Outstanding issues

Costs

299. I have recorded at various points throughout this judgment my view of the gravity of the Husband's position in relation to non-disclosure and concealment of assets. In their closing submissions to me, Miss Bangay QC and Mr Sear said this :-

> '*We suggest the cumulative effect of the true extent of W's deception on H, her contempt of court and her own serious non-disclosure at least neutralises the impact of H's lies*.'

I venture to suggest that is a bold submission for any advocate to make in circumstances where the non-disclosure involved, as it did in this case, not simply an omission to disclose but the deliberate fabrication of false evidence which was put before the court as the truth. It may be that in terms of value, the sale of property by the Wife at a significant loss was greater than the sum which the Husband failed to disclose. I do not regard that fact alone as absolving him of a costs penalty for his own conduct. The sale of the properties had been disclosed. It was a significant feature of the case and its forensic unravelling was always likely to occupy a significant part of the time which had been allocated for hearing the case. The fact that the Wife has failed to persuade me that there was a justification for her actions and the fact that I have found she has not established her case in relation to the Husband's knowledge as to the nature of the property dealings and the documents they both signed does not, in my view, neutralise or reverse the burden of costs in terms of his own non-disclosure.

300. I had considered making an order for costs but I have decided that, in fairness to both parties, I should reserve any decision to enable both parties to make further submissions in the light of the specific findings I have made. If, as I hope and expect, this judgment creates an early opportunity for resolution of the case in the round, then so much the better. If it does not or if costs need to be determined as a discrete point in isolation from the distribution process, I shall deal with matters on a separate occasion or on the basis of written submissions.

301. I have also decided that, at this stage of the proceedings, it would be inappropriate for me to take any further action in terms of the Husband's conduct by referring the matter elsewhere. It is not an option which I have dismissed but, in circumstances where Miss Bangay QC told me that she would wish to make further submissions on the point, I have decided to defer that decision until she has had that opportunity.

Pending sale of Property R

302. There is an extant application made on behalf of the Wife to set aside the order made at the Pre-Trial Review by Moor J in relation to the sale of Property R. That was not an application with which I was invited to deal in terms of the fact-finding process and I do not intend to rule on it, if it remains live, without giving the parties an opportunity to make further submissions. I have earlier in this judgment expressed my own view as to whether or not the property is likely to be available in the future as a vehicle for income generation, but I shall say no more at this stage.