



Neutral Citation Number: [2023] EWHC 1544 (Fam)

Case No: ZZ20D61511

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 14 June 2023

**THE HONOURABLE MRS JUSTICE ROBERTS**

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**Between :**

**SS**

**Applicant**

**- and -**

**IS**

**Respondent**

**(Application to vary nuptial settlement; extracting value from business assets;  
appropriate structure for meeting sharing claim; treatment of non-matrimonial assets)**

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**Nichola Gray KC** (instructed by **Boodle Hatfield**) for the applicant  
**Jaqueline Julyan SC** (instructed on a direct access basis) for the respondent

Hearing dates: 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup> and 15<sup>th</sup> May 2023

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**JUDGMENT**

**Mrs Justice Roberts:**

*Introduction*

1. This is an application by SS (“the wife”) for a financial remedy order against IS (“the husband”). Both parties are Russian nationals. The wife has British citizenship and intends to remain living in England following the conclusion of these proceedings. The husband has indefinite leave to remain in this jurisdiction and holds dual Romanian nationality. Whilst he sees London as his home for the foreseeable future, his business affairs are structured through several international trust structures whose collective principal purpose appears to be the reduction, if not elimination, of the personal tax consequences for the husband of operating commercially in this jurisdiction.
2. The parties met in their early twenties when both were students living in Moscow. Having lived together from 2003, they were married in February 2004 and their first child, W, was born later the same year. At that point in time they had more or less nothing in terms of assets and were living with the wife’s parents. Over the course of the next three years they had acquired, renovated and sold their first home and moved into a second property in Moscow.
3. By this stage the husband had taken his first tentative steps towards establishing his career in the restaurant business. He describes himself as an entrepreneur and is justly proud of all he has achieved during a working life which started when he was 15 years old. Together with one of his close childhood friends, MP, they embarked together on their first commercial enterprise in Moscow which was funded with a loan from the husband’s father. The early years of their restaurant venture proved successful. As profitability increased, the husband and MP opened several more restaurants and were soon able to invest in the acquisition of a commercial property portfolio. In 2007, discussions began about the possibility of expanding into London with a new venture. The husband approached TA, another childhood friend who was then working between Moscow and London. He agreed to become a partner and TA subsequently moved to London to launch their first restaurant in Mayfair. Over the course of the next three years, two more restaurants were launched as part of a successful chain. In 2011, the three partners came up with an idea for a new restaurant concept (“the B&L business”). The first flagship restaurant was launched at the end of that year. As a result of its success, the husband and MP decided to leave Moscow and relocate to London. The husband and MP sold the majority of their Russian business interests and moved with their families to this jurisdiction. By the end of 2012, MP’s brother had joined the business ventures. In this judgment, I propose to refer to them as “the P brothers”.

4. The parties realised US\$3 million when they sold their Moscow apartment in anticipation of the move. On arriving in England, they rented an apartment in Cadogan Square where their second child, F, was born in May 2012. In 2013 they purchased the former matrimonial home in Knightsbridge for £4.55 million with a substantial interest only mortgage of c.£3 million. The property was purchased in the sole name of the husband. Following the parties' separation in September 2020, that property has remained home to the wife and their children who are now respectively 19 and 10 years old. Their son, W, will be attending a central London university from September this year. He is currently living in a flat which his father has rented although he returns regularly to the family home to see his mother and sister. F is a pupil at a private London day school. She is a talented ballet dancer and is likely to move later this year to a well-known London ballet school where she will continue with her education in parallel with perfecting her craft as a dancer.
5. The wife issued a petition seeking dissolution of their marriage in October 2020. Her application for a financial remedy order followed in December that year. Since separation the husband has been renting various properties in central London. He is now living with a new partner who has her own career. Although she is contributing to some of their joint outgoings, there is no current suggestion that she is financially dependent on the husband.
6. In terms of litigation history, the matter was transferred to the High Court following an early directions hearing on the basis of the apparent complexity of the husband's financial affairs. On behalf of the wife, Ms Gray KC submits that his failure to engage fully in the disclosure process in a timely and transparent manner has led to unnecessary delay and expense and, in certain respects, amounts to litigation conduct. She relies on aspects of that conduct as supporting the case she advances on behalf of her client in relation to the need for security. As will become apparent, the only asset available to satisfy the wife's claims in this jurisdiction is the equity of c.£2 million in the former matrimonial home. All other assets, including the value of the business assets (the majority of which are accepted to be matrimonial and thus properly the subject of equal sharing) are held in Jersey and Panamanian trusts.
7. Thus, in this case, the court is dealing with a relatively long marriage of seventeen years during which two children have been born. The husband has an older son, E, who is now 20 and currently studying in Switzerland. E is supported by his father although, given his age, this is unlikely to be a long-term financial dependency.
8. The wife has not worked since the parties arrived in London. She qualified as a lawyer whilst living in Russia and practised in that jurisdiction for about six years before becoming a full-time mother to their two children. Prior to the breakdown of the marriage, she had started a degree course at the conclusion of which she hoped to achieve a BA in art and conservation. The pressures of the divorce and this litigation resulted in a decision, taken jointly with her university, to take time away from her studies for a period. She intends to return to her course as soon as she is able and is

hopeful that it will provide the platform for a new career in that field. She recognises that her ongoing responsibilities to the family will limit to a greater or lesser extent the income she will generate in future from that source.

*The asset base including the corporate structure beneath the offshore settlements and the issues engaged in computation and distribution*

9. As the case was opened, it appeared to be common ground that the assets in the case amounted to c.£9 million on the basis of the value attributed by the SJE to the husband's business interests. For these purposes, the court has had the benefit of two reports from Ms Faye Hall, formerly of Smith & Williamson and now with Evelyn Partners. The figure of c.£9 million is based upon the conclusions she has reached in her updated report dated 25 April 2023 in relation to the value of shares held by the trustee of the settlements of which the husband, or the husband and wife, are beneficiaries. It reflects her expert view of what an arm's length sale transaction between a willing seller and purchaser would be likely to achieve were the shares in the various corporate entities held by the trusts to be sold. Because of ongoing developments between the husband and his business partners, that figure may need to be adjusted in the light of the open proposals which the parties have advanced at this final hearing.
10. Both parties accept that the resources in this case are insufficient to achieve a clean break at this point in time in terms of the wife's ongoing income claims. They have agreed that she should continue to receive periodical payments for a period of ten years. The issues for the court to resolve in this context are (i) whether that period should be extendable, and (ii) how much she should receive. This, in turn, has engaged issues about the husband's ability to draw an income from the business both now and going forwards.
11. Whilst I have referred to the P brothers as the husband's and TA's business partners (which they remain), it would be more accurate to describe them as former, or disaffected, business partners. Despite their longstanding connection, any relationship between them founded on trust and confidence has long since evaporated. Since 2018/2019 they have been engaged in formal attempts involving their lawyers and trustees to terminate their business partnership and thereby extract from joint structures a fair value for the assets held within them. Whilst the husband's relationship with MP and his brother appears to have broken down completely, the wife remains on reasonably friendly terms with MP, his wife and their family. She accepts that she was aware of the tensions between her husband and his business partners and was kept informed to a greater or lesser extent of the state of the ongoing negotiations between them which, at one stage, in 2021, involved a proposal for a share swap which would separate out the shareholdings in the various entities. Most recently, MP, who was called as a witness at the final hearing, made a proposal to purchase the shares held by the Jersey trust of which the husband and wife are the sole beneficiaries. The consideration which MP's trustee has offered, payable in cash,

exceeds the forensic valuation of the shares produced by the SJE. Ms Hall is aware of the current offer but regards the trustee as a ‘special purchaser’ for these purposes.

12. Whilst the process of disclosure in these proceedings has not been without its difficulties, the position which emerges at their conclusion is relatively straightforward.
13. The husband is the settlor of three offshore trusts:-
  - (i) the Fine Trust (based in Jersey);
  - (ii) the Cyrium Foundation (a Panamanian settlement); and
  - (iii) the Hato Investing Foundation (also based in Panama).

*The Fine Trust*

14. The Fine Trust was settled in December 2012 during the subsistence of the marriage. The only two beneficiaries are the husband and wife. It is accepted that this is a fully nuptial settlement which is capable of variation under s.24(1)(c) of the Matrimonial Causes Act 1973. The trust has an interest in over 30 companies connected with various aspects of the restaurant businesses in which the husband is involved. There are three main holding companies: POHL, GCG Investments Limited (“GCG”) and FSH Limited (“FSHL”). The husband contends that FSHL is non-matrimonial because it is the corporate vehicle through which a new restaurant business is run and that business was acquired post-separation.

*POHL*

15. The Fine Trust currently holds 32.3% of the shares in POHL which is registered in the BVIs. TA, the husband’s business partner, holds 5% of the shares through his own trust structure. The P brothers, through their respective trusts, hold 58% (and thus the majority) of the remaining shares. POHL, through a subsidiary company, owns shares in the main restaurant franchise, the B&L business. That chain is now established internationally with franchises in London, Singapore, Kuwait, Thailand and Malaysia. The updated valuation report produced by the SJE values the interest of the Fine Trust in POHL at £381,000 on the basis that it lacks current equity value with liabilities exceeding net assets.

*GCG*

16. The other corporate limb of the trading partnership with the P brothers is GCG which is also based in the BVIs. This is the vehicle through which several more London-

based restaurants operate. A franchise of one chain based in Switzerland closed in 2015 and the commercial activities of this company are now carried out entirely in the UK. The shares are owned through their respective trust structures by the husband and wife (34%), the P brothers (56%) and TA (10%). The SJE has valued the interest of the Fine Trust at £2.02 million on a discounted basis or £2.88 million on a pro-rata basis.

17. These valuations now have to be considered in the light of previous and ongoing discussions between the trustees of the Fine Trust and the trusts set up for the benefit of the P brothers. It is accepted that the trustees of each take their respective instructions from their principal beneficiaries.
18. As part of the ongoing attempts to extract themselves from an increasingly difficult business partnership, the P brothers instructed their trustees to make an offer to purchase the shares in both POHL and GCG held by the Fine Trust and TA's trust for a sum of £7.5 million. That offer was made in March 2021. It followed an earlier proposal in January 2021 for what was effectively a "share swap" whereby the P brothers would receive all the shares in POHL and the husband and TA would retain all the shares in GCG.
19. Those offers have now been superseded by the latest proposal from the P brothers' trustees. The share swap has been abandoned and replaced by a cash offer. There is currently on the table an offer of £2,584,000 for the POHL shares held by the Fine Trust together with a further £4,080,000 for the GCG shares (a total of £6,664,000). In parallel, the P brothers seek to buy TA's shares in both companies for a cash consideration of £1,580,000. That composite offer values the combined shareholding held by the two trusts at £8,244,000, a figure significantly in excess of the SJE's updated valuation.
20. Ms Hall, the SJE, has been made aware of this offer. She deals with it in paragraph 2.2.4 of her updated report<sup>1</sup> in these terms:-

"Both of the offers made by the [P brothers'] Trusts are in excess of my estimate of the value of the Fine Trust's interests in POHL and GCG. However, as [the P brothers] are existing shareholders (via their respective trusts), they would be considered to be special purchasers and therefore their offer may still be commercially rational (as the detailed share transactions could result in them holding a sole interest in the companies)."

21. I will return to the current position in relation to these negotiations when I deal with the open proposals which each of the parties has made to conclude these proceedings. For present purposes, it is sufficient to record that, whilst the wife seeks at this point in time to retain her 50% interest in the shares in both POHL and GCG through a variation of the Fine Trust, the husband wishes to buy her out with a cash offer. For

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<sup>1</sup> [627]

these purposes he has used the current offer from the P brothers as the baseline of his calculation of the lump sum she should receive.

*The Cyrium Foundation*

22. The Cyrium Foundation is a bare trust which was set up in Panama in 2008. The husband is the sole beneficiary. It holds a 40% interest in a Cypriot company called AI Limited, the other 60% being owned or controlled through the P brothers' trusts. As a corporate entity, AI appears to have been the vehicle through which loans have been made to the various restaurant businesses owned and operated by GCG. Its income is limited to interest earned on those loans and the accounts from 2018 show little activity in terms of administrative or other expenses which might suggest wider commercial activity. The SJE has valued the company by reference to its net assets of US\$89,000.
23. Ms Gray KC has been critical of the husband's disclosure in relation to the Cyrium Foundation, its operation and the manner in which funds have been channelled through AI. I find that criticism to be entirely justified. The Foundation does not produce financial statements. The husband has provided some bank statements and has responded to questions about certain transactions related to the accounts. There is evidence of funds being used to meet the family's ongoing expenditure needs in London and of interrelated financial activity with the P brothers. Between March 2014 and June 2020, the Foundation distributed approximately £4.95 million to the husband<sup>2</sup>. The husband has provided some bank statements related to these transactions, but there is little in terms of a clear paper trail before the court in relation to these distributions. Whilst the husband's interest may appear less material to outcome in financial terms given the value ascribed to AI, it has a wider resonance because of the existence of loans which appear to be owed by another corporate entity called PLTL. According to an earlier Cypriot auditor's report, a significant majority of AI's net assets is reflected in a loan made by the company to PLTL. That loan, recorded in the 2020 accounts as US\$614,000, has not been discounted to reflect risk of recovery. For the purposes of her first report the SJE reviewed PLTL's accounts for the year ended 31 December 2020. From that review, Ms Hall concluded that, like AI, PLTL operated as a corporate financier. It advanced loans to other entities within the trading group and its operating income reflected interest received on those loans. Given that the three companies which had been advanced loans by PLTL are all owned by GCG, Ms Hall concluded that AI was indirectly financing the trading activities of GCG, albeit through PLTL. As at December 2020, PLTL's current account stood at £2.12 million. The accounts state that the company is under the control of two separate offshore Foundations owned by the P brothers with each Foundation owning 50% of the shares in PLTL. Loans of £4.39 million had washed through PLTL having come in from various sources including its parent companies. Ms Hall concluded in her first report that<sup>3</sup>:

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<sup>2</sup> [199]

<sup>3</sup> [563]

“Based on the information set out above, it appears reasonable to conclude that [PLTL] receives funds from [AI and the Foundations] and, in turn, advances funds to restaurants owned by GCG.”

24. This analysis suggests that the husband’s interest through his Foundation’s 40% shareholding in AI is restricted to a NAV of just over US\$35,000 (i.e. 40% of US\$89,000 owed to the company by PLTL). However, at a very late stage of these proceedings (and only six weeks before this final hearing), the husband asserted that he had a binding, albeit undocumented, agreement with the P brothers that he should be entitled to recover 40% of the entire sums owed by PLTL. In his replies to questionnaire in August 2021, he had stated there was an outstanding loan of £3.3 million due from GCG to PLTL which he described as “a company owned by [the P brothers]”. In an email which he sent to Ms Hall and the wife’s solicitors on 24 March 2023, the husband said this<sup>4</sup>:-

“There is one important piece of information that I would like you to know. For a number of year now I am trying to get 40% of the loans from [PLTL] company (assigned to my trust). Beneficial owners are [the P brothers], and technically I have nothing to do with that company. As you know [PLTL] holds loans in GCG (it was an investment vehicle). It was an old verbal agreement with [the P brothers] from years ago that 40% of [PLTL] loans should be mine. But unfortunately [they] never transferred these 40% of loans to me or my trust. I was writing to them a number of times, but they never responded. I have also asked trustee of Fine Trust to try and get these loans assigned, but without any results.”

25. When he was asked about this during the course of cross-examination, the husband told me that he did not expect that either of the P brothers would mislead the court in relation to the existence of their undocumented agreement. Knowing that at least one of them was due to give evidence at this hearing, he had expected this issue to be resolved by agreement and an acceptance that he did indeed have an entitlement to 40% of the outstanding PLTL loans. (“*I did it to push them.*”) When that acknowledgement was not forthcoming, he notified Ms Hall of the position in order that she could reflect the true state of affairs in her updated report. When he was asked why he had not corrected what she had said in her original report, the husband told me that it was a very lengthy document and he had not absorbed everything which had been written over more than a hundred pages. It is clear from what the husband has said in his oral evidence that he is quite prepared to litigate with the P brothers in relation to what he claims to be his 40% entitlement to the outstanding PLTL loans. He maintains that he can prove the existence of the agreement from the foot of a representation made by the P brothers to one of their commercial lending banks in respect of an unrelated transaction. He told me he would borrow whatever funds he needed to pursue such litigation because he was “sure [he] can resolve the

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<sup>4</sup> [482]



problem at court with [PLTL] and POHL”. As to the current value of those loans, I have seen figures of between £2.54 million and £3.3 million which would produce between £1,016,000 and £1,320,000 for the husband’s account were he to succeed in his claims. For the purposes of her schedule, Ms Gray KC has included a figure of £1,016,000 as the potential value of recovery for the purposes of her calculations. In her written evidence, and before hearing what the husband said in his oral evidence at the final hearing, the wife accepted that she had no real understanding of whether he would recover this sum. In her opening skeleton argument, Ms Julyan SC invited the court to accept that his prospects of recovering any part of this loan were very low.

26. Having heard the husband’s evidence and the clear conviction he has in the merits of his claim in respect of his 40% share in the PLTL loan, I am not persuaded that the prospects of recovery are as distant as Ms Julyan SC has suggested. Pausing there, it is clear to me that the husband’s approach and the prospect of future litigation over the PLTL loan has informed to a significant extent the husband’s current approach to settlement and, in particular, the structure of the wife’s financial ‘exit’ from the marriage. He does not want to sell the shares held within the Fine Trust to the P brothers on the basis of their current proposal. He seeks to buy out the wife’s interest in those matrimonial assets and thereby retain the parties’ full interest in POHL and GCG in order to provide leverage for a revival of the 2021 share swap proposal. In terms of his own estimate of the value of the shares in the two entities, he told me that in relation to GCG he believed that a valuation based upon a multiplier of between 7 and 8 times EBITDA was reasonable. However, he did not wish to realise value in the POHL shares at this point in time because he saw greater value in those shares once the company was no longer bound by the agreement it had reached with some external Qatari investors who had acquired a 50% interest in the business in 2014. That investment had produced £4.7 million of liquidity for the Fine Trust. Although just under £2 million was reinvested by the husband in the business, some £2.8 million had been spent on supporting the family’s lifestyle in London. The husband’s expectation was that maximum value in the POHL shares was unlikely to be achieved for another three or four years when the Qataris “moved on”.
27. In terms, he told me that a combination of the share swap deal which was ‘on the table’ in 2021 and the leverage he believes he can secure in relation to the PLTL loan would have produced an outcome worth between £12 million and £13 million. He is clearly resentful of the fact that this sum could have been realised in 2021 had the wife cooperated at that stage.

*Non-matrimonial assets: the husband’s case*

*(i) FSHL*

28. There is a further corporate entity held within the Fine Trust. FSHL is the vehicle through which the husband and TA set up, and now run, a new restaurant venture in

Chelsea. The company was incorporated in this jurisdiction in November 2018, some two years before the marriage ended. Both the husband and TA are directors. It was created as a separate entity outside any structure involving the P brothers because of the tensions which then existed within that business dynamic. Initially the Fine Trust held a 70% interest in FSHL. From the initial disclosure provided by the husband, it had appeared that the interest held by the Fine Trust had been diluted as a result of an external financial investment made by an unconnected private investor during the period of the Covid pandemic. As I shall explain, separate enquiries addressed to Ms Hall during the course of the hearing have established that the third party investment has not had that effect. According to the updated report produced by Ms Hall in February 2023, the Fine Trust now holds 46.66% of the shares in the business.

29. The company runs a restaurant and, a few doors away, a wine bar. Both operate under a common ‘flag’ although they are separate commercial undertakings. The analysis produced by the SJE in her updated valuation report shows a significant improvement in the performance of the restaurant business over the past few months. Whilst the data for the two businesses is amalgamated for the purposes of preparing one set of accounts, Ms Hall has produced various charts showing the split of total turnover as between the two. She has produced an updated valuation of £4 million for the shares held by the Fine Trust. (Her original valuation based upon much more limited information in February 2022 when the financial recovery post-Covid was unavailable was £1,084,000.) The husband disputes that valuation on the basis that the SJE has applied an EBITDA multiplier which is too high given that this is a ‘stand-alone’ enterprise and not part of an established chain of restaurants with a well-known brand. In any event, he contends that the value in the shares in FSHL does not fall to be shared with the wife as matrimonial property because any value accrued represents an unmatched contribution by him in the period after their separation.
30. In terms of the chronology, it is agreed that the restaurant commenced trading in December 2019, some nine or ten months prior to the separation. The wine bar commenced trading in January 2022 (post-separation). The restaurant business was funded initially by capital lent to the business by both the husband and TA. It is accepted that the husband’s initial loan of £581,000 represented an investment of matrimonial assets belonging to the parties jointly. TA invested £249,000<sup>5</sup>. The first national lockdown resulted in the closure of the restaurant business before it had started to trade profitably. Both the husband and TA told me that this was a period of severe financial pressure. There was effectively no business to operate. Neither had an income and there was no guarantee when, or if, the restaurant would reopen and/or become a viable enterprise. The husband was subsequently able to persuade a married couple whom he knew to invest in the business although the investment was made in the name of the wife, EA. This couple ran a hotel business in the South of France but clearly saw potential in a future business venture with the husband and TA

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<sup>5</sup> [523]

at the helm. EA's investment was made in May 2021<sup>6</sup>. In return for an investment of £1,030,000, she acquired a 33.3% interest in FSHL together with pre-emption rights in relation to any future projects undertaken by the husband and TA. On this basis, it was agreed that the original loans made by the husband and TA to the business should be repaid in full leaving approximately £280,000 which was subsequently invested in the acquisition of the wine bar. In addition, each has given a personal guarantee to EA to secure the return of her investment.

31. The SJE has since clarified that, as far as she is aware, there was no separate or additional consideration paid to either the husband or TA which was specifically referable to the acquisition of the new class B shares which were issued to EA. The existing 100 ordinary shares (70 of which were held by the husband) were reclassified as class A ordinary shares. Both classes of shares rank equally with regard to dividends and any distributions should the company be wound up in the future. The class A shareholders are entitled to appoint two directors (currently TA and the husband) with EA free to appoint one further director.
32. There is provision for a new shareholder agreement. Ms Hall has been provided with copies of the revised agreement together with the two (as yet unsigned) loan agreements recording interest free loans of £753,872 and £180,000. The former reflects that the purpose of the loan was to enable the company to repay the existing directors' loans. The latter was paid to facilitate the development and maintenance of the wine bar<sup>7</sup>. Since the hearing concluded, and in the context of a question which I raised with counsel in relation to Ms Hall's report, I, too, have been provided with a signed copy of the shareholders agreement.
33. Of significance in relation to the husband's future income is the inclusion in that new document of an agreement that neither the husband nor TA will be entitled to draw any dividends from the business until the principal loan of £753,872 has been repaid to EA in full. Any dividends which are declared in future must be applied in the first instance towards repaying that loan. The agreement also records EA's entitlement to a right of first refusal to provide funding for any further projects which the husband and TA may take on. It is only in circumstances where she does not fully fund the project that they will be entitled to seek external investment.
34. On behalf of the wife, Ms Gray KC submits that, although the wine bar started to trade post-separation, it was established using assets of at least £334,000 which were extracted from the restaurant business. That figure appears in Ms Hall's first valuation report at para 11.7.3. TA confirmed during the course of his oral evidence that her analysis was correct. That figure is made up of the following:-

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<sup>6</sup> The SJE report refers to the external investment having been made in May 2021 whereas TA's statement refers to the agreement with EA having been concluded in February 2021(para 21) [399] although nothing turns on this point. TA accepts that the formal agreements were signed "later in spring 2021".

<sup>7</sup> This information has been set out by the SJE in an email dated 16 May 2023 which was sent to the parties' representatives.

- (i) £240,393 in respect of equipment, fixtures and fittings;
  - (ii) £4,500 for design costs associated with the wine bar;
  - (iii) £41,452 for loan deposits; and
  - (iv) £48,011 in respect of various expenses including legal costs for work undertaken in relation to branding the name of the wine bar.
35. In terms of the significant injection of matrimonial cash which was introduced when the restaurant was acquired, I accept that those funds have been returned to the parties in full. The remaining balance now sits in a joint bank account which has been frozen. Whilst Ms Gray KC is correct that adjustments on the accounts have been made to apportion as between the restaurant and the wine bar various elements of expenses and the value of existing fixtures and fittings, these are essentially accounting procedures. Whilst it might be possible to trace forensically an element of matrimonial funding from restaurant to wine bar, it is a very small element of the unapportioned value of £4 million which the SJE attributes to the business as a whole. The restaurant business was acquired towards the very end of the marriage as a completely new venture outside the structure of the two main holding companies which were operated with the P brothers. It had not achieved anything approaching its current level of profitability before it closed in March 2020 as a result of the pandemic. I accept that such trade as it was able to undertake by selling takeaways and cocktails through periods of lockdown would not have accounted for more than about 10% of normal turnover (which was the evidence I heard from TA). When trading resumed after a year of closures, the parties were living separately, each acknowledging that the marriage had by then broken down. I accept the point made by Ms Gray KC that it was the lifting of all restrictions within the hospitality business which enabled the restaurant to convert a position of financial stagnation to one where it is now running at full capacity on a regular basis. It was, as Ms Hall acknowledged, all set up and ready to go as soon as the doors opened for customers once more. I recognise that position would not have been achieved without the efforts and hard work of the husband and his business partner, TA. Whilst the husband brought to that task many years of commercial acumen and experience developed during the course of a lengthy marriage, it was, as I find, an unmatched contribution which is not entirely expunged by the initial use of the matrimonial funds which were deployed to acquire the business. I am satisfied that all of the cash was repaid to the parties after shares were acquired by EA. The remaining matrimonial ‘footprint’ within the business is the carry over of the various costs and expenses which I have reflected in paragraph 34 above.
36. In my judgment, this is one of those cases where a dividing line between matrimonial and non-matrimonial assets can be drawn, albeit that it is neither as sharp nor defined as that which existed in a case such as *C v C (Post-Separation Accrual)* [2019] 1 FLR 939. In terms of the restaurant business operated through FSHL, a line might be said

to have been drawn when the parties received full repayment of their matrimonial capital as a result of EA's investment in the business. That said, I do not accept the husband's argument that, from that point on, any value accrued must be considered as entirely non-matrimonial. With ongoing investment of the husband's time within the business and any reinvestment of profit into business development, the connections with the marriage as a partnership become more distant but the 'footprint' of that original investment is not erased completely because of its reflection in the initial start-up costs.

37. The wife is not seeking by her open proposals to benefit from a share in FSHL. Rather, she seeks to offset the value which the husband will retain as part of the quid pro quo for her retention of the equity in the former matrimonial home.

*(ii) The Hato Investing Foundation*

38. The Hato Investing Foundation is another Panamanian settlement which was set up in February 2021 after the parties separated. The beneficiaries of this settlement are the husband and the two children of the family. It owns the company which, in turn, operates the B restaurant in Holland Park. This is another new commercial venture which has been trading since November 2022. The finance for this restaurant, some £702,000, has been provided by the husband, TA and EA. Whilst it is not yet returning a profit, the husband's expectation is that performance and turnover will improve over the course of the next 12 months. The SJE has attributed a nominal valuation to this asset although she notes in her updated report that the business plans to acquire two further restaurants in due course. Ms Hall accepts that the business could be sold for a higher value if marketed professionally and supported by a reliable forecast of early profitability. Given the current plans to expand the business through the acquisition of other restaurant premises, I propose to treat the husband's interest in these shares through the Foundation as currently illiquid. I am satisfied that, within the foreseeable future, it is likely that the business will expand. That expansion is likely to be funded through a combination of loans from FSHL and/or EA who enjoys pre-emption rights as a result of her shareholders agreement with the husband and TA.
39. Neither party seeks to attribute anything other than a nominal value to the husband's interest through the Foundation in this new business which is agreed to be non-matrimonial in any event. Its future value lies in the ability of the three business partners to increase profitability and develop the brand in the future.

*Other assets*

40. Aside from the former matrimonial home which has an agreed equity value of c.£2 million<sup>8</sup>, it is agreed that the wife should retain the proceeds of sale from a small

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<sup>8</sup> The wife originally contended for a slightly lower net value of c.£1.95 million, the differential being a higher deduction for costs of sale. For the purposes of closing submissions, it appears to be accepted that a figure of c. £2 million is a reasonable assumption to make in terms of the net value of the property which she will be retaining at the conclusion of these proceedings.

holiday home in Cyprus. A sale has been agreed and, although there has been a problem with the title, that does not appear to have deterred the purchaser from what is hoped to be an early completion. The wife should receive c. £140,000 net from that sale.

41. The husband has recently sold an apartment in Moscow which he inherited from his late mother. That property was sold for RUB10 million (c. £100,000). There is a further property in Russia which was purchased by the wife's parents prior to the marriage. They have exclusive occupation of that property although it is held in the wife's name. She regards it as their home. The husband maintains that it is worth £80,000 but I propose to ignore that for the purposes of calculating value of the matrimonial and non-matrimonial assets in the case. It is much to the credit of each of these parties that they have provided substantial levels of financial support throughout the marriage to both sets of parents. The wife's parents are in their sixties. The prospect of the wife realising any value in the Russian country property is sufficiently remote to be left out of account for these purposes.
42. Neither party has any savings or cash reserves of any significance. There is only a nominal amount left in the frozen joint account and any funds left in the husband's current accounts are likely to be absorbed by the costs of these proceedings. I was told that he had to borrow in order to fund the costs of instructing Ms Julyan SC to appear on his behalf at his final hearing. He is likely to receive a sum of £350,000 from TA in the near future by way of repayment of a loan but that receipt is dependent on the sale of a flat owned by TA.
43. The husband invested in a meat processing plant in Belarus but appears to have lost money on that venture. Some time was spent during cross-examination exploring how much had been lost and the manner in which a series of start-up payments had been made to reflect his initial investment. These were, in the main, cash payments made to third parties. He was asked whether any of the payees were in fact holding funds on his behalf in that jurisdiction. The husband denied that was the case and undertook overnight a more detailed reconciliation of these payments which appeared to show an element of double-counting in his original replies to the wife's questionnaire.
44. Whilst I accept that the husband's somewhat unorthodox means of conducting business through (often significant) cash transactions will inevitably give rise to questions of this nature, I did not reach the conclusion that he has deliberately sought to hide from this court or the wife the existence of funds which are being held for his benefit by third party nominees. To be fair to Ms Gray KC, the point was not pursued in final submissions and, for these purposes, I make no findings in relation to the existence of undisclosed funds. The absence of such a finding does not displace my view, as expressed earlier in this judgment, that the husband's disclosure in this case has not assisted the wife and her advisers in achieving an early and transparent understanding of his financial circumstances. In particular, I do not consider she, or

they, can be criticised for not agreeing to the 2021 share swap proposal. I accept that their collective understanding of the family's financial circumstances at that stage was not sufficient to enable her to take that step without potential prejudice to her outstanding claims.

*Liabilities*

45. In terms of liabilities, both parties have an outstanding debt in respect of their legal costs. The husband owes his former solicitors, Mishcon de Reya, £288,084. Interest is accruing on that debt and the interest as calculated by the husband's former solicitors currently stands at £19,000. In addition, he maintains that he has borrowed a sum of £40,000 from his girlfriend to finance the cost of this hearing. He has a personal debt of some £28,500 which is owed to a Russian individual although this is disputed. I did not hear any evidence about this.
46. In addition to outstanding legal costs of £167,260, the wife has taken personal loans from three individuals who are owed a total of £207,000. I accept that each of these loans will need to be repaid in due course although no one is currently pressing for immediate repayment.
47. Thus, as the case was opened to me, the wife had attributed to the assets a global value of £8,854,432 with the husband contending for a much lower asset base in terms of what was available for division of £4,874,632.

*The parties' open proposals*

**The wife's position**

48. The wife's open proposals were set out in a letter from the solicitors dated 3 May 2023. Leaving aside some fine-tuning, the broad framework of that proposal is as follows:-
  - (i) The wife retains 100% of the net equity in the former matrimonial home on the basis of a deferred sale in September 2023 when the current mortgage term comes to an end. In the event that she is able to redeem the mortgage before that date, she should be entitled to require a transfer of the legal title into her sole name. Pending sale, the husband is to be responsible for the mortgage interest payments;
  - (ii) The wife retains title to the Russian property occupied by her parents and she keeps the proceeds of sale of the property in Cyprus;
  - (iii) The proceeds from the sale of the husband's mother's flat in Russia remain with him and he will retain the sum of £350,000 which TA is due to repay once his property is sold;

- (iv) The Fine Trust will be varied so as to transfer to the wife 50% of the shares in POHL and GCG. This will be achieved by transfer of those shares into a separate settlement of which she is the sole beneficiary or to her directly. She seeks an indemnity in relation to trustees' fees and any tax payable on historic distributions out of either the Fine Trust or the Cyrium Foundation;
- (v) The husband to pay spousal maintenance for a 10-year, extendable term at the rate of £144,000 per annum. The payments will be index-linked to the CPI;
- (vi) In terms of child support, the husband is to be responsible for the children's educational costs and will, in addition, pay periodical payments for the benefit of each child in the sum of £30,000 per annum until they are 21 years old or complete tertiary education (to include a gap year). These payments will be CPI-linked and one third of any sums due will be paid to the wife during tertiary education. In the event of a CMS assessment which results in a reduction of this level of child support, there will be an automatic increase commensurate with that reduction in terms of the sums paid to the wife as spousal support;
- (vii) Subject to her ongoing income claims, there will be a capital clean break between the parties and the husband's income claims will also be dismissed;
- (viii) Each party meets their own costs save for a sum of £2,500 which is due pursuant to a costs order made against the husband in 2021.

### **The husband's position**

49. I have been concerned about the husband's lack of effective engagement in these proceedings as we approached the start of this final hearing. By my order dated 24 February 2023 following the pre-trial review, I directed both parties to exchange open proposals by 24 April 2023. Nothing was forthcoming from the husband until his position for these purposes found reflection in Ms Julyan SC's skeleton argument which was sent to the court and the wife's legal team on the morning of the first day of the hearing. Responsibility for the lateness of that offer cannot be placed at Ms Julyan's door. She had only just been instructed on a direct access basis and the husband had apparently chosen not to make himself available in the week before the hearing. Instead, he was out of the country in Japan. It is simply not acceptable in a case such as this where the legal costs on both sides have been significant that the wife's legal team came to court on day one of the final hearing without knowing the case they would have to meet. It is the antithesis of effective case management and will have increased the time needed for preparation by a considerable margin.



50. By his initial proposal, the husband agreed that the wife should retain the equity in the former matrimonial home which he put at £2 million. As to the business interests and the shares held by the Fine Trust, he proposed to retain them all free from any further claim by the wife on the basis that the shares in GCG and POHL were worth broadly the same as the equity which the wife was to receive from a sale of family home. Any value in FSHL was to be ring-fenced as a non-matrimonial asset. In addition, he offered to pay to the wife a lump sum of £500,000 which he proposed to borrow from a friend, DF. That offer was silent in relation to ongoing spousal support.
51. On day two of the hearing, and in the course of giving his evidence, the husband through Ms Julyan SC advanced an improved proposal. The structure of the offer remained the same but now he offered to pay to the wife a lump sum of £1,666,000. That new proposal was intend to reflect his willingness to ‘match’ the value of the offer to purchase the shares which was then on the table from the P brothers.
52. That offer, it will be recalled, amounted to a total consideration of £8,244,000 apportioned as to £6,664,000 for the Fine Trust’s shares in GCG and POHL and £1,580,000 for the shares held in those entities through TA’s trust structure. As to the manner in which the proposed lump sum payment to the wife had been calculated, Ms Julyan SC gave me these figures:-

Zelman’s offer for GCG/POHL	£6,664,000
Less tax at 20%	<u>(1,332,800)</u>
Shares (net)	5,332,000
Equity in FMH	2,000,000
Value of house and Zelman offer	7,332,000
50% for each of H and W	3,666,000

53. On this basis, the husband proposed that the wife kept the equity in the former matrimonial home and he would pay a lump sum of £1,666,000 to equalise their positions in relation to the value of the available matrimonial assets. He would retain 100% of the Fine Trust’s shares in GCG, POHL and FSHL on the basis of a capital clean break. His proposals in relation to spousal maintenance and child support remained as before.
54. Pausing there, it was clear from the evidence I heard from MP that the clear intent underpinning the brothers’ offer to purchase all the shares in GCG and POHL was to acquire exclusive control over those businesses on the basis that “the benefit of loans which are outstanding to the Fine Trust from POHL and GCG form part of this offer and will be assigned to the purchasers on completion”. This formulation captures any residual interest which the husband may have in the PLTL loan. It was equally clear from the husband’s evidence that, with the wife’s claims compromised, neither he nor

TA had any intention of immediately relinquishing their shares without a further round of negotiation in relation to the sale price. MP denied during the course of his oral evidence that the husband had any claim in respect of the PLTL loans. He acknowledged that his willingness to acquire the wife's shares even if the husband did not wish to sell would give his and his brother's trustees a stronger position to make decisions although he stressed that the voting rights of the husband and TA would remain unaffected and they would retain the benefits of the 'drag and tag' provisions which would provide protection for their position as minority shareholders. Those provisions were reflected in the shareholders agreement which had been put in place when the Qataris made their investment in the business in 2014.

55. MP confirmed that their respective trustees would be able to finalise a share purchase relatively swiftly in between six to ten weeks. Because the purchasers were the trustees who, through their beneficiaries, knew the businesses well, they would not need to embark upon a process of lengthy due diligence as would be the case in an arm's length purchase.
56. Whilst MP told me that he would be unwilling to revert to the original 2021/2022 share swap proposal because of the six-figure sums which had already been spent (and, in his view, wasted) on legal and other fees, it was clear that he had not closed his mind to further negotiation in relation to an improved deal of some sort. The husband's position was quite clear from his oral evidence. Whether or not he is right, he appears adamant that he can resolve the issue of the PLTL loan. If he secures a concession or an adjudication that 40% of that loan is due to him, it removes that liability as a third-party debt from the accounts of GCG. That has the potential to increase significantly the value of the GCG shares. It represents potential latent value in the wife's 50% interest at this point in time and it would enable the husband and TA to trade through the next few years until the Qataris' "exit" (if that is the route down which they chose to go). Alternatively, it has the potential to provide greater leverage in the husband's hands for securing an improved offer from the P brothers if there were to be an outright sale at this point in time. I cannot 'crystal ball gaze' into whether the husband's expectations of success in his claim regarding the PLTL loan are well-founded. What I do know is that "cashing out" the value of the wife's 50% interest in those shares through the Fine Trust now will deprive her of the opportunity to take advantage of any uplift in their value following further negotiations with the P brothers. Whilst any subsequent increase in value as a result of future years of trading would represent genuine post-separation accrual in which she had no entitlement to share, I find that there is at the present time a reasonable prospect that she could achieve more for her 50% interest in the Fine Trust shares than the value reflected in the husband's current proposal which is fixed by reference to the current offer made by the P brothers.
57. I understand the husband's, and TA's concerns, about their position as minority shareholders in the event that she were to decide to sell independently but my task in

adjudicating upon the current financial remedy claims is to achieve a fair outcome as between the husband and wife on the basis of an application of the various factors set out in s.25 of the Matrimonial Causes Act 1973.

58. In terms of the husband's ability to raise the funds required to fund an increased lump sum payment to the wife of £1,666,000, this does not appear to have presented a problem. Having put his proposal 'on the table' during the course of his evidence on day two of the hearing, he arrived at court on the morning of day three with a revised letter from DF, his London-based friend, confirming the availability of an increased loan facility of £1,666,000 which would be available within 5 working days. That letter was accompanied, as before, with a bank statement confirming the existence of funds. In similar vein, he was confident in his evidence during the course of the hearing that, if he had to litigate with the P brothers to establish his entitlement to 40% of the PLTL loan, he would be able to access the necessary funds through borrowing. If he has such access to further borrowing, and I accept what he tells me for these purposes, he has not sought to improve his current offer to the wife above and beyond a cash payment of £1,666,000.
59. The husband's final position in terms of a composite proposal did not emerge until Ms Julyan SC's closing submissions on the final day of the hearing. That proposal was advanced in these terms:-
- (i) The wife retains the entire equity in the former matrimonial home (with the contents) together with the Cyprus property/sale proceeds and the flat in Russia in which her parents live. The wife is to be responsible for the mortgage after the next quarterly payment due in September 2023;
  - (ii) The wife retains the balance of the frozen funds in the Barclays account;
  - (iii) The husband will retain the sum of £350,000 owed to him by TA and the sale proceeds of his late mother's apartment in Moscow;
  - (iv) Within 7 days he will pay to the wife a lump sum of £1,666,000 in return for her 50% interest in the Fine Trust assets. In the event that all or part of the shares in POHL and/or GCG held by the Fine Trust are sold within the next 5 years, he will instruct the trustee to pay to the wife 10% of the net proceeds of sale on the basis she will be responsible for any tax which arises on such payment. Her status as a beneficiary would not terminate until the end of that 5-year period or on payment in full of all sums to which she was entitled, if that settlement occurred within a 5 year period;
  - (v) The husband would be responsible for meeting all outstanding fees owed to the Fine Trust;
  - (vi) The wife would have no further entitlement to any future distributions from the Cyrium Trust;

- (vii) The wife would be entitled to a full tax indemnity in relation to historic distributions from either trust;
  - (viii) The wife would receive ongoing spousal periodical payments at the rate of £36,000 per annum (index-linked) for a fixed non-extendable term of 10 years;
  - (ix) The husband will pay their daughter's educational costs through secondary and tertiary education together with periodical payments at the rate of £24,000 per annum. Those payments would be made to the wife until their child reaches the age of 18 years after which they will be paid directly to their daughter. Financial provision for their son will be a matter between the husband and their son but payments will be made directly to him and not through the wife;
  - (x) There will be a capital clean break between the parties on the basis of no order as to costs.
60. During the course of final submissions, I had asked Ms Julyan SC for a breakdown as to how that latest proposal was reflected in a revised net effect in relation to the parties' respective positions as they left this marriage since there still appeared to be some confusion in relation to his case in relation to the value to be attributed to FSHL. That enquiry led to an email which she sent to the court some days later on 19 May 2023 having taken the husband's final instructions. A revision in relation to the calculations resulted in a reduction in the CGT and a corresponding increase in the husband's proposal. He is now offering an immediate lump sum payment of £1,721,456 (together, I assume, with the 10% uplift in the event that all or part of the POHL/GCG shares are sold in the next 5 years).
61. Whilst neither I nor Ms Gray KC have had the opportunity within the formal context of the hearing to comment upon the figures which are presented within Ms Julyan SC's document ("Calculation of H's Proposal") which came with her email dated 19 May 2023, this appears to be the basis of the husband's approach to achieving an equal sharing of the matrimonial assets which are available for distribution.
62. In her final submissions, Ms Julyan SC was advancing a global figure of £9,705,364 for the net value of all the assets. That figure was based upon a valuation of FSHL at £6,718,364 adopting the husband's lower multiplier of x6 EBITDA and then deducting just under £3 million<sup>9</sup> as the value of the non-matrimonial element of the business. It made no allowance for any value in recovery of the PLHL loan.
63. By her latest figures ("Calculation of H's Proposal"), Ms Julyan SC now advances a final figure of £9,475,146 as the value of the available assets. The equity in the former matrimonial home remains constant at c.£2 million, as do the other property

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<sup>9</sup> (£2,987,000)

values and the crystallised bank balances and individual liabilities. The FSHL shares which the husband is to retain after paying the lump sum to the wife now appear with a value, net of CGT, of £5,307,200. That includes a non-matrimonial asset value after CGT of £2,389,600 which, on his case, leaves a sum of £7,085,546 available for sharing in terms of the matrimonial assets in the case. The wife's entitlement of £3,542,773 is to be met through the improved lump sum payment of £1,721,456, her retention of the equity in the former matrimonial home and the properties in Cyprus and Russia (together worth less than £220,000). She will be left to meet her own liabilities, including costs, of just under £375,000. The husband, on this scenario, will be left with cash and the TA loan (£382,630), the monies in Cyrium (£3,624), any value to be recovered from the PLTL loan through GCG, and the remainder of the business assets, including the post-separation, or non-matrimonial, assets.

64. There is little more that I need to say about the law and the application of s.25 MCA 1973 to the facts of this case. Over and above my findings in relation to the element of non-matrimonial property in this case and the extent to which FSHL is a matrimonial asset (see paragraph 36 above), the case turns on (i) the parties' respective needs going forward in terms of their ability to sustain their domestic economies in separate households; (ii) the period during which the wife is likely to require ongoing periodical payments and the rate at which the husband can meet her anticipated needs; and (iii) the overall structure for the capital clean break which both parties accept can and should be achieved at the conclusion of this hearing.

*Discussion and analysis*

65. In terms of the husband's latest proposal (post-cessation of the hearing) to pay the wife an increased lump sum of £1,721,456 as the "exit value" of her 50% beneficial interest in the Fine Trust (and for these purposes I proceed on the basis that his proposal to pay an additional uplift of 10% in the event of a sale in the next five years remains an integral part of his final proposal), I see significant benefits in that structure from her perspective. It extracts her from the potential time and expense of litigating in Jersey, should that prove necessary, in order to realise value through an independent transactional "exit" route of a sale of her shares to the P brothers on terms agreed between them. It removes at a stroke the potential tax implications of remitting funds onshore following any such sale. In circumstances where she is likely to need to use the equity in the former matrimonial home to rehouse herself and at least one of the children in London, where she intends to remain, she will need to repatriate funds if they are paid offshore to meet what is likely to be a significant part of her income needs going forward. The husband's calculation of the net assets proceeds from the foot of an assumption that 100% of the sale proceeds of GCG and POHL would be remitted onshore and taxed at 20%. Whilst that will be the inevitable result for so long as the wife remains resident in this jurisdiction in terms of her share of any sale proceeds, the husband's position is likely to be different. He has already demonstrated the extent to which he is able to avoid tax in this jurisdiction through

the use of his offshore structures. He has in the past operated on an international basis and the evidence before the court suggests that, going forward, he envisages a significant expansion of his business activities in this jurisdiction and potentially in other jurisdictions. He has advertised in his written evidence an intention to explore the potential of an expansion of the Chelsea restaurant business through franchises in places such as Istanbul, Vienna, New York and the United Arab Emirates<sup>10</sup>.

66. Ms Gray KC acknowledges on behalf of her client that the structure proposed by the husband has significant benefits from her client's perspective which would avoid the need to follow the recommendations of the expert report obtained from Mr Evans, the wife's Jersey lawyer. Her challenge to the current offer is twofold. First, it fails to meet the wife's needs and represents a shortfall in terms of her full 50% entitlement to the matrimonial assets. Secondly, it has been formulated from the foot of a value of £6.664 million which is assumed to be the maximum value available from a special purchaser in respect of POHL and GCG.
67. Because the wife accepts that she will take the equity in the former matrimonial home as the quid pro quo for her claim against FSHL, it is not necessary for me to quantify in precise terms the value of the matrimonial 'footprint' which I have accepted remains in FSHL. In its basic terms, it is represented by the £334,000 which has been apportioned in the accounts as the 'carry over' value of the assets extracted from the restaurant business when the wine bar was acquired as a separate part of the business. I accept that this figure adopted by Ms Hall from the accounts, and accepted as accurate by TA, is in the first instance an accounting exercise and not one which necessarily reflects an accurate value of matrimonial acquest in FSHL. Further, in terms of the husband's reduced valuation of the FSHL shares, I do not accept that he is necessarily correct in his challenge to Ms Hall's multiplier in circumstances where there is evidence that the value of FSHL has not yet crystallised through achieving full capacity in terms of turnover and profitability. Her multiplier was based on some future growth potential. When he was providing his updated disclosure to the wife's solicitor in an email dated 30 January 2023, the husband referred to new investments which were being undertaken with EA on the same conditions as the last restaurant opened in Holland Park in November 2022. These included new restaurants in Notting Hill Gate later this year and a further restaurant in Kensington in early 2024.
68. I am also persuaded that it would be unfair to the wife in the circumstances of this case to fix the value of her 50% interest in the Fine Trust by reference solely to the offer which is currently on the table from the P brothers. I have already referred to the husband's own expectations of achieving a significantly higher value through a combination of potential success after litigation and/or a leveraged negotiating position before any proceedings in the context of the PLTL loan recovery. TA has also confirmed his own expectations of achieving a better price for their combined shareholding if the share swap deal is not revived. The husband's position was that he

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<sup>10</sup> [379]

would hope to achieve a sale at around £17 million. He rejected the suggestion that the current proposal from the P brothers of £6.6 million was a good offer from his, the wife's, or TA's perspective. Even MP accepted in his oral evidence that he might be open to a counter-offer should one be forthcoming from the husband and/or TA. (*"We are ready to discuss but we did not receive a counter-offer."*)

69. For so long as the wife continues to hold shares independently, her position in any future negotiations with the P brothers is protected notwithstanding the consequences of a variation of the Fine Trust which would inevitably involve cost and additional expense. These are downsides, together with the potential for future remittance tax, which she is prepared to absorb in order to maximise value in the matrimonial assets she will retain. It is in these circumstances that her proposal for a variation of the post-nuptial settlement provides her with security and the opportunity to share in what the P brothers may be prepared to pay in order to acquire what are accepted to be matrimonial assets, including any enhanced value achieved as a result of negotiation around the PLTL loan, itself part of the matrimonial acquest in this case.
70. In my judgment there is insufficient evidence before the court to support a finding that the variation which the wife seeks would unreasonably prejudice the husband's position in terms of the resulting dilution in his own shareholding when combined with that held by TA. TA's position as a third-party minority investor/shareholder was always likely to be vulnerable to any change in the parties' respective holdings once their common interests through the Fine Trust were no longer aligned. Whilst I have not been taken to the specific provisions of the shareholders agreement between the P brothers, the Qataris and the husband (through their respective trustees), there was no challenge to MP's evidence that any minority interests were, and are, protected through the usual 'drag and tag' provisions in the event of a sale. A variation of the Fine Trust such as that which the wife seeks would not preclude the husband from pursuing his remedies in relation to the PLTL loan since that claim is based on a separate agreement reached during the currency of the marriage with his business partners which he claims to be able to evidence from the foot of existing documents. A variation will not leave the husband in the position of control which he would wish to achieve in order to re-enter the negotiating arena from a position of maximum bargaining power but the route to that particular 'exit' lies in his hands in terms of the sum he is prepared to pay to the wife to achieve a capital clean break. Given the existence of a 'special purchaser' who remains willing to conclude a deal, I do not regard his current offer as either a fair reflection of the potential value of her interest in the shares through the trust or one which meets her needs.
71. In this context I need to turn now to consider her income position and the competing positions which are being advanced in terms of spousal periodical payments. The wife is seeking £144,000 per annum, index-linked; the husband offers £36,000 per annum. In terms of the husband's remuneration and his active working environment, I am satisfied from the evidence that:-

- (i) The husband's time and effort is now concentrated on the restaurant portfolio which he runs with TA through FSHL and through the Hato Foundation. That portfolio includes the restaurant businesses in Chelsea and Holland Park and the anticipated openings later this year and next as a result of their commercial collaboration with EA;
- (ii) His ongoing involvement with the business conducted through POHL and GCG has lessened to the extent that he remains involved through management meetings and the odd attendance at restaurant premises. His status as a director of both companies entitles him to sight of the accounts and to be consulted in relation to strategic board decisions but these companies are not the vehicles through which he appears to be generating current or future economic growth in terms of potential income generation.
- (iii) Whilst he has a contractual entitlement to an annual salary of £150,000 from POHL, it is agreed that none of the directors has been paid from the business since 2018. Whilst the company's accounts show significant reserves of cash from which directors' salaries could be paid, the current impasse between the business partners has resulted in none of the directors receiving salaries;
- (iv) He has received a salary and bonus of £123,000 gross from FSHL but he accepts that he is able to defray a significant element of his personal expenditure through the business. Notwithstanding what I accept to be the limitations in the shareholders agreement he has with EA in terms of his own and TA's ability to take dividends from the business whilst her loans remain outstanding, there is ample evidence that the husband continues to enjoy what is on any view a high standard of living with few constraints on discretionary expenditure despite his apparent need to finance his representation in these proceedings through loans. It is clear from the company accounts that in excess of £230,000 of expenses on entertainment were put through FSHL in the 12 months to the end of November 2022. There have been frequent trips abroad in recent months (some related in part to the exploration of future business opportunities) and he continues to fund the rent on the flat he shares with his current partner as well as the flat in Holland Park which is currently occupied by the parties' son. The rent on that property is £42,900 per annum to which he has committed for a three-year term.

72. The husband's estimate of his own needs going forward as set out in his schedule of annual expenditure in Form E was just under £310,000 net per annum. A subsequent presentation relied on an annual budget of £278,000 per annum. The wife's needs in her Form E budget are said to be just under £106,000 excluding the children's expenses but with no allowance for mortgage costs.



73. In terms of the wife's future earning capacity, I accept that she will be reliant on spousal maintenance and whatever capital she recovers in these proceedings for at least the next three or four years. Their youngest child is still to embark on her secondary education and will remain her mother's primary focus regardless of whether she is away from home at ballet school during the week. Whilst I accept that the wife is likely to wish to resume her studies when the dust from this litigation has settled, she is likely to be in her mid-forties by the time she qualifies and the income she can then expect to earn is unlikely to be sufficient without recourse to capital to enable her to achieve financial independence before the end of the ten year term which the parties have agreed as an appropriate period during which she should adjust to independence outside the marriage. Whilst she appears to have a relationship with another individual, it is not one which at this stage can be characterised as an existing or future partnership and there is no evidence of cohabitation, far less an intention to marry in the foreseeable future.
74. In terms of quantum, I start from a position that the husband's finances are such that the court is entitled to proceed from an assumption based on the evidence before it that his ability to access funds to meet his own and the wife's ongoing expenses is not restricted to the 'black letter' of the figures appearing in his financial disclosure. The picture presented to the court is one of significant flexibility in terms of both his ability to borrow and access funds through third party sources in different jurisdictions around the world. I am satisfied that his close business relationship with EA and TA, as fellow investors in a restaurant business which appears to have significant potential for future growth, will enable him to manage his financial affairs in such a way that meets needs going forward as assessed by this court. I bear in mind that he has committed to meeting the costs of the children's ongoing expenses including their future educational costs. I regard the wife's claims as bordering on aspirational but the husband's proposals in terms of her future financial support are too low.
75. Unless she achieves a settlement with the P brothers which enables her to redeem the significant mortgage on the former matrimonial home, the likelihood is that she will move to mortgage-free accommodation which I accept is likely to cost in the region of £2.5 million. With costs of purchase, her housing budget is likely to be c.£2.7 million. On the basis of the husband's current proposal, Ms Gray KC has produced a Capitalise calculation which demonstrates that her surplus capital together with the husband's proposed contribution of £36,000 per annum for the next ten years will produce an income of no more than c.£34,000 per annum for the rest of her life. That calculation excludes any earnings she is able to generate on her own account over the next 25 years assuming that her earning capacity extends into her 60s.
76. I accept, in accordance with the challenge mounted to the wife's budget by Ms Julyan SC, that there are some economies which can be made to the wife's budget. She will no longer be running the Cyprus property and I accept her expenditure on holidays

can be reduced. The cost of domestic support at home is likely to reduce over the course of the next few years although the wife will continue to need cover if she is working whilst their daughter is at home during school holidays.

77. Taking all these matters into account, I have reached a clear conclusion that the appropriate sum for the husband to be paying in terms of ongoing spousal support is £60,000 per annum, index-linked. In addition, I expect the wife to generate additional income through her own endeavours as she regains an earning capacity over the course of the next two to three years. Quite how she utilises that earning capacity will be a matter for her but I am satisfied that, with the sums which the husband will be paying in terms of spousal and child support, she will be in a position to manage her own domestic economy in mortgage-free accommodation and enjoy a standard of living which is commensurate both with that available to the husband and the assets available to the parties at the end of this marriage.
78. Given the length of the 10-year term agreed between the parties and the fact that the wife is still relatively young in terms of future economic activity, I take the view that there should be a s. 28(1A) bar on any application to extend that term. Both parties should be entitled to know the full extent of their financial obligations to, and dependence on, the other. I cannot know at this stage what the wife's recovery will be from any arrangement she is able to negotiate through the variation of the trust structure which I propose to make at the conclusion of these proceedings but I have confidence from the evidence before the court that it is likely to deliver value in excess of that which the husband is currently offering through his current lump sum proposal. It will be a matter for her as to how she structures her finances in terms of remitting those funds in a tax efficient manner but that is the inevitable result of the variation of the settlement which she seeks. From the foot of that outcome, she will have the financial security of knowing that she will be receiving ongoing income support for the next ten years. During that period she will have ample time to develop her own earning capacity in order to meet her needs going forward and provide, in due course, for the time when she is no longer in paid employment. The personal and financial circumstances of each of these parties may change as those ten years unfold but I am not in a position at this point in time to legislate prospectively for future events. It may be that the husband is in a position in due course to buy out any remaining income claims should his financial fortunes improve as I hope they might. What I can determine at this stage is that the wife will have sufficient time over the next decade to adjust without undue hardship to the termination of that ongoing spousal support so as to justify prospectively a bar on her ability to extend that term.

### **My decision**

79. I shall ask counsel to draw an order reflecting my decision in the following terms:-
- (i) The former matrimonial home will be transferred to the wife (at her election) or sold but not before 24 September 2023 with both parties having

conduct of the sale. The husband will pay the quarterly interest due on the mortgage (including any arrears) up to 24 September 2023 after which date, if the property is retained, the mortgage will become the wife's sole responsibility. In the event of a sale, the wife will retain the entire net proceeds of sale after payment of the estate agents' and solicitors' costs. Subject only to any personal possessions of the husband which remain at the property, the chattels and other contents shall remain the property of the wife.

- (ii) The wife will retain the net proceeds of sale from the Cyprus property together with the property at Korolev in Russia which remains the home of her parents.
- (iii) The husband will retain the net proceeds of sale of his late mother's property in Moscow.
- (iv) The husband shall retain the sum of £350,000 being the loan which TA is due to repay to him from the sale of his London flat.
- (v) The wife will retain any funds currently standing to the credit of the frozen joint Barclays account.
- (vi) The husband will provide the wife with an indemnity in relation to (a) any unbilled or outstanding fees due and payable to the trustees of the Fine Trust including the debt of £25,640 and (b) any tax on historic distributions to the parties from either the Fine Trust or the Cyrium Foundation.
- (vii) There will be a variation of the Fine Trust which provides for the transfer of 50% of the shares in POHL and GCG to a separate settlement or sub-trust of which the wife is the sole beneficiary. The precise arrangements for such a variation will need to be considered further but are likely to follow the recommendations set out in the expert report of Mr Damian Evans who has advised in relation to these matters in his report dated 2 May 2023. The wife will be responsible for all and any costs incurred in relation to the setting up of the separate settlement or sub-trust and any costs incurred in relation to securing advice and/or relief in the Jersey courts.
- (viii) The husband will pay to the wife periodical payments at the rate of £60,000 per annum, index-linked, for a ten-year non-extendable term.
- (ix) The husband will meet in full the costs of their son's tertiary education and the secondary and tertiary education of their daughter.
- (x) In addition to educational costs, the husband will pay to the wife periodical payments for their daughter at the rate of £24,000 per annum index-linked until she completes her tertiary education to first degree (to include any gap

year taken between secondary and tertiary education). I regard his offer in this respect as a reasonable one given the fact that he will be meeting the entirety of her educational costs which may well include an element for weekly boarding if she does indeed attend ballet school from this coming September. The payments shall be index-linked and during tertiary education one-third of the sum then payable shall continue to be paid to the wife with the other two-thirds payable directly to their daughter.

- (xi) In the event that the parties' son continues to live independently in accommodation provided by the husband, the husband will make payments to him at a rate agreed to be sufficient to cover his costs whilst undertaking a first degree from September 2023. In the event that their son returns to live at home with his mother, the husband will pay to her such sum as represents one-third of the sums provided for in para (x) above by way of a roofing element with the balance being paid directly to their son.
- (xii) On this basis there will be a capital clean break between the parties on the basis that the wife's income claims will stand dismissed on the 10th anniversary of the court's order. The husband's income claims will be dismissed on the making of the order.
- (xiii) There will be no order in relation to the costs of the financial remedy proceedings save for any existing orders already made in these proceedings which have yet to be paid.

80. That is my decision and the order will follow accordingly.

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