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Case No: ZZ19D88433 and BV19D24031

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 27 October 2021

**Before :**

**MR JUSTICE PEEL**

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**Between :**

**CAROLINE JILL CROWTHER**

**Applicant**

**- and -**

**PAUL ANTHONY CROWTHER**

**STEVEN ANDREW KNIGHT**

**CARASOL GROUP LTD**

**CASTLE NOMINEES LTD**

**CASTLE SHIP MANAGEMENT LTD**

**MARITIME ATLANTIC LTD**

**Respondents**

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**Charles Howard QC and Alex Tatton-Bennett (instructed by Hughes Fowler Carruthers)**  
for the Applicant

**Justin Warshaw QC and Justin Kitson (instructed by TSPMH Law) for the First**  
**Respondent**

Hearing dates: 15, 19, 20, 21 and 22 October 2021

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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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Mr Justice Peel :

Introductory comments

1. When starting my reading into this financial remedy case, I noted with dismay that W's s25 statement is her 15<sup>th</sup> statement in the proceedings and H's is his 26<sup>th</sup>. There have been no fewer than 34 court hearings. The bundles (4 of them; a core bundle, a library bundle and two supplemental bundles) exceed 6,000 pages. The parties have argued before me about almost every imaginable issue, no matter how trivial. Unsurprisingly, the legal costs are enormous:
  - i) W's costs (excluding divorce, children, and occupation order proceedings, but including the costs of Admiralty proceedings and a preliminary issue referable to financial remedies) are £1,427,606;
  - ii) H's costs (on a like for like basis) are £920,316.
2. The total costs are therefore about £2.3m. Given that at the start of the hearing I was presented with a composite asset schedule on which W asserted the net assets to be £1,374,266 and H asserted the net assets to be £386,547, it can be seen that, subject to any finding of hidden resources, the costs are utterly disproportionate. My task is far more difficult than it should be precisely because the visible assets are now so limited. In the end, I have largely had to concentrate on how to divide the debts fairly.
3. I was startled to discover in early September 2021 that the parties' respective petitions, which had been lodged in September 2019, over 2 years ago, had not reached decree nisi. I was told that there had been inordinate delay by the court processing the suits. I gave directions in respect of W's petition, but at the start of trial neither petition had made much progress, and neither party was close to obtaining a certificate of entitlement to a decree. The consequence is that at this hearing I can deliver a judgment, but I cannot make an order until the pronouncement of decree nisi; **Rezai-Namaghi v Atapour [2020] EWHC 3729 (Fam)**. Given the level of bitterness between the parties, and inability to resolve any issues, I cannot say with any confidence that, even though both parties agree the marriage is over and they must be divorced, decree nisi will be obtained any time soon.
4. The lack of cooperation between the parties and their lawyers was very apparent. The mercifully limited exposure I have had to the inter-solicitor correspondence was sufficient for me to see that there appears to have been an almost complete breakdown of constructive communication. At the trial itself, there were over thirty issues on the composite asset schedule presented to me, some of trifling amounts; by the end of the trial, only minimal attempts had been made to resolve the many smaller items, despite encouragement from me to do so.
5. At the time of the Pre-Trial Review before me on 30 July 2021, it was expected (certainly on W's side) that W would receive on 1 October 2021 a sum of £670,000 from the 2<sup>nd</sup> to 6<sup>th</sup> respondents in this case pursuant to a settlement agreement in December 2020 to which I shall return. H sought to freeze the said monies. I was told that W had entered into an agreement with her lawyers that unless they received all outstanding fees, and their costs to the end of the trial, from the said £670,000, they

would cease to act for her. I refused H's injunctive application. In the event, the £670,000 was not paid.

6. Accordingly, on 4 October 2021, W applied to me for, inter alia, an order for release of £500,000 from the net proceeds of sale of the FMH, such sum being required to cover her unpaid costs, and costs until the end of trial. I was told that unless W's solicitors received that sum, they would cease to act. Given that W's solicitors had already received from W in total (divorce, non-molestation, children, and financial remedy proceedings) costs exceeding £1m, and given that more than £1.8m remained in the joint account holding the proceeds of sale which would be available for distribution at trial, it might be thought rather unattractive for W's solicitors to adopt this position. In the event, I ordered a release of £300,000 and, happily, W's solicitors continued to act, notwithstanding their earlier protestations which indicated that W might be left to contest these proceedings in person.
7. At the PTR, I directed that counsels' skeleton arguments be limited to 20 pages, in accordance with the Statement of Efficient Conduct of Financial Remedy Hearings allocated to a High Court Judge which makes plain that the 20-page limit includes appendices. That was ignored by H's counsel who filed a 20-page skeleton and a further supplemental, highly detailed, 15 pages of appendices. This disregard of the Efficient Conduct Statement should not happen again.
8. There have been two previous reported judgments in this matter; (i) in the Court of Appeal relating to a freezing injunction ([2020] EWCA Civ 762) and (ii) a judgment of Lieven J ([2020] EWHC 3555 (Fam)) concerning the settlement of a set of preliminary issues. Each judgment gives a clear sense of the hotly contested issues which have beset this couple.
9. Each party thinks the other is, to use their own words, "out to destroy" them. These proceedings have been intensely acrimonious. They, and their lawyers, have adopted a bitterly fought adversarial approach. I asked myself on a number of occasions whether the aggressive approach adopted by each side has achieved anything; it seems to me that it has led to vast costs and reduced scope for settlement. The toll on each party is incalculable (W was visibly distressed during the hearing) and, from what I have heard, the impact on the children has been highly detrimental.

### **The background facts**

10. H and W married on 28th September 1996, after a year and a half of cohabitation. W is 51, H is 55. They have 3 children aged 22, 20 and 15. H has two older children from a previous relationship. Although there is nominally a shared care arrangement in respect of the youngest child, I am satisfied that he spends more time with W when not at boarding school; it is notable that during the pandemic he lived primarily with her, and was home schooled by her. During the marriage, the parties operated a maritime business (which was H's background, skill, and inclination) and in addition bought a series of properties which they lived in as their marital homes, renovated, and then sold on for a profit, of which the largest project by some distance was the most recent FMH at Landhurst. They also owned a serviced office centre from which the marine business operated called Maritime House, which was bought in 1998 and sold in 2018. H was largely responsible for the maritime work, although W assisted on some financial and administrative matters. W told me, and I accept, that the project management for the

various properties was carried out by them both. In total, they bought and sold 7 homes (including one in France). According to H, the total profit generated over the years from the purchase and sales of marital homes was £8m, whereas according to W it was £3m. The reason for the disparity between their presentations was that they adopted different assumptions such as whether to include purchase and selling costs, how to allow for mortgages, and the precise quantum of renovations cost. I do not consider it necessary to make a finding on this, nor was I referred to primary evidence to enable me to do so; suffice to say that a great deal of effort, coupled with rising property prices, enabled them to generate capital which (together with business income) allowed them to sustain an affluent lifestyle. I have the real sense that they were a partnership in the truest sense, working together and doing all they could for the benefit of their family. It is a matter of great sadness that all their hard work has ended in this highly acrimonious litigation.

11. In 2003 they moved to France for a few years; H says this was because of a sharp decline in the marine side of the business whereas W described it to me as a lifestyle move. I suspect it was a bit of both. In France, H branched out into yacht broking, aircraft management and aircraft chartering, none of which seem to have been particularly successful. Back in the UK, in 2010 they started a business, which operated vessels providing services in the construction of offshore wind farms and oil and gas subsea operations.
12. Until 2012 the vessels (5 in all bought over time) were ultimately owned by H and W through subsidiaries of a company called Med Marine Charters Limited, while a limited partnership, Atlantic Marine & Aviation LLP (“AMA”), owned by H and W, dealt with the operation and management of the vessels.
13. The businesses, and property developments, were sufficiently successful to enable H and W to enjoy a very high standard of living. They lived in a luxurious house in Sussex, bought in 2014 and sold in late 2020 for £4.5 million, owned a house in France worth more than £3 million, employed a housekeeper and fulltime gardener, educated their three children privately, owned horses (for which purpose they employed a groom), a collection of expensive cars, and a private aeroplane. They enjoyed frequent, high-end holidays. In 2016 they spent £50,000 on H’s birthday, and in 2018 £100,000 on the wedding of H’s daughter from a previous relationship. I am quite satisfied that this couple did not conduct their personal finances according to a set budget, or a set level of income. They relied on irregular, but large, sums of money being made available to them through a combination of (a) profits turned on their various homes and (b) the marine operations (e.g the back-to-back sale of a ship for a £1.2m profit in 2017). They became accustomed to taking out mortgages on their properties for lifestyle purposes, thereby accessing the profits generated by renovations and rising property values.
14. In 2012 they were introduced to Mr Knight. He is a UK qualified chartered accountant who has specialised in international tax planning and asset management. In 1989 he was appointed to manage the Gibraltar office of Price Waterhouse but when that office was closed in 1992, he decided to stay in Gibraltar and to set up his own business, the Castle Trust Group (“Castle”), to take over Price Waterhouse’s private client and trust portfolio of clients. Castle has been operating in Gibraltar for over 28 years. He appears to have been highly successful, with hundreds of wealthy clients.

15. According to Mr Knight's written evidence in the preliminary issue proceedings, H explained that he and W owned a number of vessels, and were endeavouring to buy another one, but the business was highly leveraged, and they were struggling to finance their debts. Mr Knight said that he considered that the business of operating offshore vessels was attractive, and he saw an opportunity to invest in it. A detailed summary of the subsequent discussions and iterations of proposed collaborations is contained in the Court of Appeal judgment which it is not necessary to repeat here.
16. The upshot was that a meeting took place in Gibraltar on 21st November 2012 attended by H, W and Mr Knight. It was agreed that there would be two agreements, one being an agreement whereby a newly formed Castle entity, Castle Ship Management Ltd ("CSM"), would take over the indebtedness, together with ownership of the five vessels owned by H and W (the Atlantic Guardian, Atlantic Surveyor, Atlantic Cougar, Atlantic Wind and Atlantic Carrier), which would then be bareboat chartered back to AMA. The second agreement was a Family Settlement which it was contemplated would protect W and the children in the event of H's early death. It was envisaged that part of the income which would come to AMA from sub-chartering the vessels would be paid into the Settlement to build up a fund. In the event, however, no money was ever transferred into the Settlement.
17. As a result, a formal agreement dated 22nd November 2012 was concluded, governed by Gibraltar law, and signed by H on behalf of Med Marine Charters Ltd and by Mr Knight on behalf of CSM. It recorded that Mr Knight and CSM represented the interests of loan note holders who had made a series of loans to Med Marine on which the latter had defaulted, and that in full and final settlement of their claims it was agreed that the beneficial title to all five vessels was transferred to CSM by way of a transfer of 100% of the shares in each ship owning entity; and that the vessels would be bareboat chartered back to AMA. In addition, the agreement stated that AMA had agreed to purchase a commercial charter yacht from a company called CD One Ltd but, because it was unable to complete the purchase, it nominated CSM as the buyer, as it was entitled to do under the terms of the Memorandum of Agreement for the purchase of the yacht. The yacht was subsequently renamed as the Atlantic Endeavour.
18. A bareboat charter, between CSM and AMA, was concluded on 24th November 2012 and was also signed by Mr Knight and H. It covered the five vessels named above "and all other vessels beneficially owned by" CSM, so that any vessel acquired in the future would be subject to the charter. The charter was stated to be for a firm period of 10 years, extendable by mutual agreement, but with either party having a right to terminate it at any time. The hire rate varied for each vessel depending on its gross tonnage and "operational days" on sublet time charter. The expectation appears to have been that the vessels would operate during particular seasons for between 120 and 180 days a year. Hire would be paid by AMA when the vessels were earning hire on sub-charter.
19. Over time, about £1.6m in total was advanced to H and W by way of personal loans from Mr Knight/Castle to fund their lifestyle; it is possible that other sums were gifted, although the evidence was not entirely clear. In addition, £500,000 was loaned by IFP (another company owned by Mr Knight) to assist in the purchase of the most recent marital home. Further, Mr Knight/Castle allowed AMA to build up unpaid charter fees which rose to £5.6m. The total indebtedness owed to Mr Knight/Castle by H and W personally, and by their business, therefore ran to nearly £8m.

20. H says that the business was successful from 2012 to 2015 but then took a downturn. In 2017, the one-off transaction by way of back-to-back sale of one ship to which I have referred generated £1.2m, but operational profits declined. As a result, H and W decided to sell the Maritime House property in 2018 which generated £2m net equity.
21. By 2019, the parties' marriage was in trouble. In September 2019 each of them issued a petition for divorce. Thus, the marriage (including cohabitation) lasted some 24 years. On 18 September 2019, W filed her Form A. It is H's contention that the precipitating factor for the breakdown was a relationship between W and a local builder, Mr X, with whom she still has a personal relationship. Whether that was truly the catalyst is immaterial for my purposes; of note is that H has repeatedly referenced Mr X's involvement and, in my view, has harboured a real sense of anger towards W and Mr X. In September 2019, W moved out of the FMH, and is now living in relatively modest rented accommodation nearby at a cost of £2,000 per month including payment of utilities. H moved out of the FMH in October/November 2020 and lives in a much more lavish property at a rental cost of £6,500pm; I was unconvinced by his protestations to me that he had sought cheaper rental properties, but had been unable to find one.
22. I am satisfied that H has generally enjoyed a considerably higher standard of living than W since September 2019. He has enjoyed an income not available to W, the largesse of Mr Knight (who, for example, allowed him to spend two weeks for free on one of his high-end yachts in August 2021), has depleted capital and has had the benefit of monies spent by his new partner on, for example, eating out (a £1,000 family meal in St Tropez being an example). The disparity between his rented accommodation and that of W, in terms of both cost and size, is striking. Both have funded the eye-watering legal costs from a mixture of their own resources, loans, and monies released from the proceeds of sale of the FMH.
23. Shortly after the issue of the divorce petitions, H travelled to Gibraltar for a meeting with Mr Knight. That was followed on 19th September 2019 by CSM giving notice of termination of the bareboat charter to AMA with immediate effect "following our continued requests for payment of our hire charter fees". However, on the same day, CSM concluded a new bareboat charter with Atlantic Marine Offshore & Subsea Services Ltd ("AMOSS"), a new company established by H (and which had been set up by him in May 2019), which was subsequently renamed AOSS (in July 2020) and then Castle Ship Technical Management Ltd. ("CSTM") (in January 2021). H accepts that the new business essentially carried on where AMA had left off. All the assets and resources of AMA (including vehicles) were transferred to his new company. The staff all joined him. AMA instantly became a valueless shell and was subsequently liquidated. W lost all her entitlement to income. Although I am satisfied that H warned W he might take steps of this nature, the plain fact is that the effective closure of AMA (the parties' joint business) to be replaced, phoenix like, by a new, replica business owned and operated by H, and enabled to carry on all the previous activities of AMA, was done without W's consent and immediately after petitions had been issued. It is hard to conceive of a more inflammatory way to set about divorce proceedings.
24. One of the consequences of the AMA liquidation is that the unpaid charter fees totalling £5.6m became irrecoverable by Mr Knight/Castle. It is a testament to the strength of

the relationship between H and Mr Knight that nevertheless they continue to have a close working association.

### **The freezing injunction proceedings**

25. On 19th December 2019, W applied to Lieven J for an injunction to restrain the respondents, that is to say H on the one hand and the second to sixth respondents (Mr Knight/Castle) on the other, from disposing of, charging, or diminishing the value of the various vessels said to be worth c£8 million. W contended that the arrangements entered into in 2012 and described above were a sham. She acknowledged that “on paper it looks like Castle Ship Management have owned their ships since 2012”, but said that this was not the reality and was only done to “reduce our tax liabilities”, the reality being that “100% of the shareholding in Castle Ship Management Ltd is held on trust for us”. As the Court of Appeal pointed out, what her evidence came to was that H had conspired with Mr Knight to conceal from HMRC that ultimately the vessels were beneficially owned by H and W; that this was done to evade tax; and that what Mr Knight gained from this arrangement was a relatively modest annual fee. Her case was explicitly (as acknowledged in the Court of Appeal) unlawful tax evasion as distinct from legitimate tax avoidance, albeit that W stated she was not a participant in unlawful activity. In a later statement, H said that a finding of sham could have resulted (on advice he had received) in tax liabilities on them both of £10m including interest and penalties. Lieven J granted the freezing order sought, with a return date of 10th March 2020.
26. By the time of the return date of the injunction before Holman J, the lease/bareboat charter arrangement between Mr Knight/Castle and AOSS had been terminated, on 24 February 2020. Instead, AOSS was receiving income for technical management services provided to Mr Knight/Castle
27. Holman J was able to observe Mr Knight and H during the hearing and commented, based on their interaction, that there was obviously a friendly relationship between them, as well as a business relationship. Holman J discharged the freezing order against the second to sixth respondents. W appealed that decision.
28. On 16 June 2020 the Court of Appeal reversed the decision of Holman J. In so doing, Males LJ listed eleven reasons to support W’s submission that there was a “good arguable case” that the 2012 arrangements were indeed a sham.

### **The Admiralty proceedings**

29. On 25th February 2020, CSM and various associated companies of Mr Knight issued proceedings in the Admiralty Court claiming a declaration of legal and beneficial ownership of the various vessels. In addition, they claimed the monies said to be owed to them by H and W or their companies.
30. On 6 July 2020 the Admiralty claims were transferred to the Family Court, notwithstanding the resistance of H and Mr Knight/Castle. The various Castle Group companies became parties to the divorce proceedings, as did Mr Knight.

### **Preliminary issue and settlement thereof**

31. On 17 July 2020 Lieven J directed there should be a preliminary issue hearing as follows:

“IT IS ORDERED THAT:

The Preliminary Issues

1. There shall be a trial of the following preliminary issues (“the Preliminary Issues”):
- i) the beneficial ownership of Atlantic Enterprise, Atlantic Tonjer, Atlantic Endeavour and Atlantic Explorer and the respective offshore companies which legally own them;
  - ii) the beneficial ownership of Atlantic Discovery;
  - iii) the beneficial ownership of funds presently held offshore by the second to sixth respondents; who is entitled to the chartering income from the disputed vessels; and an appropriate account of such chartering income if it is owed to the applicant and/or the first respondent; and
  - iv) whether the applicant wife and the first respondent husband and family companies owned by them are indebted to the second to sixth respondents (all of whom are represented by Mr Knight), upon the basis that the pleadings in the Admiralty division shall stand in the preliminary issues in relation to (i) and (ii) above.”
32. W’s pleaded case in the Admiralty claim is summarised in her description of the arrangements as “an elaborate conspiracy” between Mr Knight/Castle and H “to perpetrate a fraud” upon the court and W, that H is “the controlling mind” of Mr Knight/Castle, and that the joint aim of H and Mr Knight/Castle has been to “reduce the value of the assets available for distribution in the divorce proceedings”. Relief was sought on the grounds of sham, conspiracy, and fraud.
33. On 3 December 2020, shortly before trial of the defined preliminary issues, Lieven J received an email informing her that W and Mr Knight/Castle had settled the preliminary issue. It was later asserted by H that he had “no knowledge of or involvement in the settlement”; that is contradicted by solicitors acting on behalf of Mr Knight/IFP who in a letter to H dated 29 March 2021 said that: “you were aware of the Settlement when it was being brokered and finalised.” I heard no evidence on this, and make no finding.
34. The essential terms of the agreement (as further clarified by Lieven J by order dated 22 December 2020, after a hearing attended by all parties on 10 December 2020) were:
- i) All claims and counterclaims as between W and Mr Knight/Castle were withdrawn on a no admissions basis;
  - ii) The proceedings were stayed on a Tomlin basis;
  - iii) W unequivocally and unconditionally withdrew her case on the preliminary issues advanced by her against H;
  - iv) W unequivocally and unconditionally withdrew each and every allegation of conspiracy, fraud and sham against H as set out in her case on the preliminary issues;
  - v) W unequivocally and unconditionally withdrew each and every application for declarations against H that he was the beneficial owner of the various vessels referred to in the pleaded case;
  - vi) W shall only rely on those parts of her pleaded case against H insofar as they do not make any allegations of fraud, conspiracy, or sham against H and/or assert or allege any beneficial ownership of the vessels in dispute;
  - vii) W is released from any and all debts allegedly owned by her to Mr Knight/Castle;



- viii) Specifically, W is released from any liability for the original £500,000 loan, together with interest thereon, made to H and W by IFP to assist in the purchase of the FMH.
- ix) Mr Knight/Castle agreed to pay W two lump sums being
  - i) £80,000 by 24 December 2020; and
  - ii) £670,000 by 1 October 2021.

The settlement agreement expressly annexed a draft Tomlin order, staying the proceedings pending implementation of the terms of the agreement.

- 35. It is not a matter for me to make findings as to why each party entered into the settlement. Many reasons may have come into play such as an assessment of prospects of success, legal costs, and the possibility of tax implications.
- 36. Lieven J made an order for W to pay H's costs of and occasioned by the preliminary issues, on the indemnity basis. Lieven J described W's conduct of the admiralty/preliminary issues litigation as "fairly extraordinary". W had argued in the strongest possible terms that she was the victim of a conspiracy to defraud her of millions of pounds of matrimonial assets. The allegations she had made were extremely damaging to H and Mr Knight. H had been faced with a barrage of allegations and hugely complex litigation, which ultimately W elected not to pursue. Lieven J decided that there was no reason to depart from the general proposition that if a party decides to discontinue an action or part of an action, then they should generally be expected to pay the costs, a proposition strongly reinforced where the allegations which have been withdrawn are fraud and conspiracy.
- 37. In the assessment process, which has yet to be concluded, H has claimed costs against W in the sum of £358,727. I hazard an estimate that on the indemnity basis, H may be entitled to recover 90% thereof i.e about £322,000. W has paid £80,000 on account.
- 38. There has been significant dispute between H and W as to whether W has sought to litigate before me issues which she is barred from pursuing by reason of the settlement agreement, and the clarificatory terms of the order of Lieven J of 22 December 2020. It is necessary to remind myself of the nature of the specific allegations:
  - i) That the ships were beneficially owned by H (or H and W), and not Mr Knight/Castle, and the arrangements entered into in November 2012 were a sham;
  - ii) That the bareboat charters between Mr Knight/Castle and H and W's businesses were shams;
  - iii) That loans claimed by Mr Knight/Castle against H and W were shams and were not duly owed;
  - iv) That H and Mr Knight were engaged in a conspiracy to defraud W in the financial remedy proceedings by denying her the ability to claim against assets beneficially owned by H solely, or H and W jointly.
  - v) Because it is relevant to the financial remedy proceedings, I should add that W had also challenged the £500,000 loan made by IFP. IFP was not, and never has been, a party to the Admiralty proceedings or to the financial remedy proceedings, although Mr Knight, its owner, has been a party. As noted above,

the said loan formed part of the settlement agreement entered into between W and Mr Knight/Castle.

### **Sale of FMH**

39. In November 2020 (and pursuant to an interim order for sale obtained by W in July 2020), the FMH was sold for £4.5m; the net proceeds of sale were £3,587,067. The monies were, and continue to be, held in a separate account to the joint order of the parties. They have been depleted by sums paid out for legal costs; £1,118,488 to W and £571,413 to H. The total sum remaining on account is just over £1.8m.

### **The witnesses**

40. Before I turn to the various issues, including a number of important preliminary matters, it is necessary to record my impression of the witnesses:

- i) W was clear, composed and measured in her evidence. I thought she was truthful. She tried her best to give accurate answers during a day of robust and searching cross examination. It seemed to me that this litigation has been exceptionally draining for her, and she has found it difficult to look beyond the end of this hearing in terms of where she might live, and what she might do.
- ii) H was also composed. Overall, I felt he was trying to answer truthfully, particularly when he was challenged about alleged hidden resources. However, he feels a great sense of anger towards W and, I suspect, her solicitors for the conduct of the litigation. As a result, he tended to display a sense of injured righteousness which occasionally led him to give answers which were not entirely convincing. In part, that is because he has a different perception from that of W in respect of events. He did not acknowledge any culpability for the litigation which has unfolded; strikingly, he said to me that “I can be litigious when something is deeply unfair as these proceedings have been”. In my view, he understated the strength of his relationship with Mr Knight. He was unable to acknowledge what I consider to have been the destructive approach to closing the joint business and setting up a replica business in his sole name in September 2019 with all resources, staff and operations transferred to his new company. Overall, I felt that he was a little too self-exculpatory.
- iii) Ms Y gave evidence on H’s behalf. It was very unedifying. She and her husband lived near the parties and were close friends for many years. H owes her husband money. Initially supportive of W when the marriage broke down, she has now lost all sympathy for W and has clearly taken H’s side. She has barely spoken to W for 2 years. She and her husband spent 2 weeks on the Atlantic Endeavour with H and his girlfriend this summer. It became apparent in her evidence that her concern is more to do with matters relating to the children, and her view of W’s conduct on a personal level, than anything relevant to the financial matters. She was genuine and honest in her evidence, but partisan to H. She told me that she believes H’s version of events. Much of what she said about W was very accusatory at a personal level; whether that is justified, I know not, but it is immaterial to what I must decide. Her perspective is that of a friend and neighbour, with an awareness of how H and W are viewed in the community. She was emotional when giving evidence, mentioning personal incidents relating to the parties and the children which are irrelevant to my determination

of the financial disputes. She made assumptions about certain matters, probably because subconsciously they favoured H. She accepted she had no direct knowledge of various matters in her written evidence. I do not blame her for any of this; she was asked to do a statement and she did so. In my judgment, it was inappropriate and unhelpful for H to have adduced evidence from her in this way. It raised the temperature notably during the hearing. If parties start calling friends and neighbours, financial remedy proceedings will turn into a battlefield between those who support each side. I strongly deprecate the way in which this unhelpful evidence, which added nothing to my understanding of this case, was placed before me by H.

### **Lead up to the final hearing**

41. After I heard the PTR on 30 July 2021, but before the final hearing started on 15 October 2021, a number of issues arose which required determination and/or case management by me on paper, there being insufficient court time to convene hearings.

### **The monies owed by Mr Knight/Castle to W**

42. As I have indicated above, under the terms of the settlement agreement, Mr Knight/Castle were due to pay W the sum of £670,000 by 1 October 2021. W's solicitors wrote to Mr Knight on 9 July 2021 seeking confirmation that the sum owing would be paid on time. There was no reply. The sum due was not in fact paid on 1 October 2021, and has not since been paid. W applied to me on 4 October 2021 for an order that Mr Knight/Castle do pay the £670,000, so that she would have an enforceable debt. I declined to make the order sought on paper, and on a summary basis, without hearing from the other parties. By email dated 6 October 2021, I invited all parties to set out their position by 13 October (i.e. before trial) on how I should deal with this issue. H did not reply. Mr Knight/Castle, by letter from solicitors dated 13 October 2021 (expressly stating that they acted for the second to sixth respondents) replied that (i) W is in breach of the settlement agreement, (ii) as a result she is not entitled to the monies sought, (iii) indeed, she is liable for a claim against her for breach of contract and (iv) the issue would require considered determination after what they submitted would be a 3-4 day trial, with pleadings and evidence. A further email dated 18 October 2021 was in similar vein. Adopting that approach would have required either adjourning the trial, to be heard together with this issue at a later hearing date, or continuing with the trial but leaving this issue to be determined separately thereafter.

43. The points made on behalf of Mr Knight/Castle were:
- i) W had prevented H from repaying the original £500,000 due to IFP which had assisted them in the purchase of the FMH. Although under the terms of the settlement agreement, W had been forgiven her own liability for the debt, H had not been so released. The total sum due now is said to be £634,000. Mr Knight/Castle said that the sum due from H was intended to be used as capital investment for the boat charter business, allowing it to pay W the £670,000. Thus, so it was argued, W's actions in successfully opposing the release of the said sum to H from the frozen proceeds of sale of the FMH prevented Mr Knight/Castle from receiving monies from IFP which would have enable them to pay W £670,000 by 1 October 2021. As I understand the argument, this circuitous payment route was an implied term of the settlement agreement; certainly, there is no express reference to such a term which I have seen

anywhere in the papers, and it seems peculiar that H could (as suggested by Mr Knight/Castle) be party to an implied term of an agreement to which he was not a party. So, say Mr Knight/Castle, the doctrine of the Prevention Principle is in play and justifies non-payment.

- ii) W is in breach of the agreement by seeking to reopen issues already determined by the preliminary issue settlement (this argument appears to have been prompted by H informing Mr Knight that W was trying to re-litigate such issues in the financial remedy proceedings).
  - iii) W failed to disclose liabilities relating to one of the boats.
44. The same letter said that Mr Knight would be overseas for the entirety of the hearing and unable to attend. In the circumstances, it was said that this issue should not be dealt with at the financial remedies trial.
45. It is important to bear in mind what I am being asked to determine. The application before me is to make an order for payment of £670,000 pursuant to the Tomlin order attached to the settlement agreement.
46. The 9<sup>th</sup> edition of Foskett on Compromise summarises the proper approach to such a situation:

11-22“Where parties agree that a Tomlin order should be made, traditionally the terms of the agreement have been scheduled to the order staying the proceedings. Those terms do not thereby become orders of the court and cannot, for example, be enforced directly by proceedings for contempt. In the event of default, the party wishing to enforce any of the scheduled terms as an order must apply to the court under the “permission to apply” provision in the order for such order or direction as may be appropriate to convert the contractual obligation into one enforceable by judicial process.

11-23Where the term sought to be enforced is one requiring the payment of money, the court will make an order that the sum be paid. Unless the court specifies a different date for compliance, such an order will be enforceable after 14 days have elapsed from the date of the order. Where the term relates to the performance of some other act, an order directing performance must be obtained before proceedings for committal or for relief under any other provision are instituted. Equally, where the term provides that a certain act shall not be performed, an injunction restraining commission must be obtained before the issue of any further enforcement process. Where the term relates to the execution of any conveyance, contract or other document, the court may direct its execution by the relevant party in the first instance, and, thereafter, in default of compliance, nominate another person to do so.

11-24The court will decline to enforce terms that are too vague. It is possible that the court would entertain a claim for damages arising from an alleged breach of a Tomlin order without requiring the institution of a fresh action.

11-25Circumstances may arise in which a party prima facie obliged to comply with a provision in a Tomlin order schedule will seek to resist the making by the court of an order to enforce that provision. Non-compliance with some other provision in the schedule by the party seeking the order for enforcement may, in some circumstances, constitute a basis for the court refusing to make the order. This will depend upon an analysis of the contract reflected in the schedule. The

question has arisen of whether terms forming part of the agreement between the parties, but not incorporated in the schedule to the Tomlin order, may be relied upon to resist the making of such an order.

11-26 In *Horizon Technologies International Ltd v Lucky Wealth Consultants Ltd*, C and D settled certain proceedings between them by means of a deed of settlement which itself included a provision that upon execution of the deed both parties would apply jointly to the court for an order in the Tomlin form. The terms of the Tomlin order and its schedule were set out in one of the eight substantive clauses of the deed of settlement. The terms to be incorporated in the schedule provided, inter alia, for a series of payments to be made by D on or before specified dates, the first two such payments being direct to C and the remaining seven payments to a Chinese company. It was provided that default in payment of any of the sums would result in all the specified sums becoming due and payable forthwith. The other substantive clauses of the deed of settlement were to come into operation upon the making of the Tomlin order. One of those clauses provided that the terms set out in the deed were “interdependent on each other” and that “breach or failure to observe any of the provisions ... shall forthwith discharge the parties of the other part from further performance”. The Tomlin order was duly made and D made the first of the payments provided for in the schedule. Before the second payment fell due, a director of D (who was a party to the deed) alleged that C had failed to comply with one of the provisions of the deed (which was not incorporated in the schedule to the Tomlin order) and D, relying upon the clause referred to above, claimed to be released from any further performance of its obligations. On the issue of whether D was prima facie entitled to rely upon the clause referred to in order to resist C’s claim for an order to enforce the provisions of the Tomlin order, the Judicial Committee of the Privy Council held that D was so entitled. It was said that the schedule to the Tomlin order was, “clearly an integral part of the deed, but put, as it were, in parenthesis to take advantage of the Tomlin order procedure for summary judgment, so that the payments could be quickly and cheaply enforced”. As part of the deed the provisions in the schedule remained “subject to all its provisions”, including that referred to above.

11-27 Parties who agree to a Tomlin order will usually seek to secure enforcement of its provisions in the manner described above. However, it should be recalled that the agreement which led to the making of the Tomlin order still retains its own independent existence. It follows that, in appropriate circumstances, a party may choose to seek a remedy under that agreement rather than pursuant to the Tomlin order.

11-28 In *Islam v Askar*, the facts of which have been given previously, C sought to overcome the procedural difficulties he was experiencing by commencing a fresh action based upon the agreement reached in the exchange of faxes. The Court of Appeal held that, whilst the normal remedy would be to enforce the Tomlin order, there was no reason in principle why C should not be granted a remedy in this separate action”.

47. I am quite satisfied that it is fair and just for me to make an order in the terms sought against Mr Knight/Castle, thereby converting the agreement to pay £670,000 into an enforceable debt:

- i) Mr Knight and Castle are parties to the proceedings. Although aware of this final hearing, they have not attended, nor been represented. They have known for

many months of the non-payment to IFP by H. They have had ample opportunity to prepare, and pursue, a case against W, and to defend the application made by her. They must have known for some time that payment would not be made, and ignored correspondence from W's solicitors on the topic in the run-up to 1 October 2021. True, W's formal application was not made until 4 October 2021, but it could hardly have been made sooner since the breach of term (i.e non payment) did not occur until 1 October 2021, and her lawyers had clearly put Mr Knight/Castle on notice prior thereto.

- ii) There is no evidence before me to justify a conclusion that Mr Knight has an arguable case that the settlement agreement contained an implied term as to how the monies would be paid. The circuitous arrangement described, if truly intended, would surely have been carefully set out in detail in the agreement. I struggle to see how H could be subject to such an implied term when he was not a party to the agreement. In the absence of clear evidence that such a term was included, I see no reason to adopt the course suggested by Mr Knight/Castle.
- iii) Nor does it seem to me to be credible that the payment of £670,000 is dependent upon receipt of the monies by IFP. From what I have seen and heard, Mr Knight is a man of very substantial financial means. He was personally a party to the settlement agreement, and therefore to the obligation to pay £670,000, as were 4 of his companies. I am unpersuaded that the Prevention Principle applies to this matter.
- iv) I do not accept that W has breached the agreement. Her legal team have made it clear that she does not resile from the terms of the settlement agreement, and in any event my judgment would not entertain W making claims in such a way. The suggestion made by H (and apparently relayed to Mr Knight/Castle) that W is claiming the IFP loan to be a sham is made because of a witness statement by W dated 24 November 2020 within the preliminary issue proceedings, a statement which pre-dates the settlement agreement and which has been included in the bundle before me in the same way that vast tracts of evidence have been placed before me; it is not indicative of W pursuing a case of sham. Her case before me is that the IFP loan will be treated as a soft loan and not thereby repayable; that is very different from a contention as to sham.
- v) It is open to Mr Knight/Castle to pursue W in a separate claim if they think fit, but I do not see any reason why she should not be entitled to an enforceable money judgment.
- vi) As for the suggestion that there are liabilities referable to one of the boats, I fail to see the relevance in circumstances where all agree that the boats have since 2012 belonged to Mr Knight/Castle, and there is no reference to such liabilities in the settlement agreement.

### The IFP loan

48. On 11 October 2021, IFP wrote to the court and the parties. The letter is signed by Mr Knight, the owner of IFP. The covering email came from solicitors, asserting an equitable charge against the proceeds of sale of the FMH in the sum of about £634,000, being the original £500,000 loaned to the parties in 2014 to assist in purchase of the FMH, plus interest. The loan is repayable in January 2024. There is no mention in the written agreement of security. The loan is supported by a personal guarantee from H. Mr Knight claims that he, H and W all orally agreed that the loan would be secured by a second charge against the FMH, ranking behind a HSBC charge and that the monies would be repaid on sale. HSBC objected to the registration of a second charge and no

further steps were taken. So, says Mr Knight, IFP has an equitable charge against the proceeds. The letter refers to the freezing order made by Holman J against H which (unlike the separate order against the Castle Group) was not the subject of the appeal to the Court of Appeal. Clause 13 of the recitals thereof records:

“The applicant wife’s agreement to the sale of the former matrimonial home is on the basis that:

- i) Steven Knight has personally confirmed in court today that a charge in favour of International Financial Placements Ltd or any other company owned by Steven Knight has not been registered against the former matrimonial home
- ii) Steven Knight has undertaken on behalf of himself personally and on behalf of International Financial Placements Ltd., not to, or cause to, register a charge against the former matrimonial home
- iii) Steven Knight agrees that the proceeds of sale of the FMH shall be held to the order of the court until determination of whether or not he is entitled to enforce his charge, provided always that £700k is held in the account at all times in the interim”.

49. The solicitors’ email states that “IFP are not and never have been a party to these proceedings, but they wish their position to be considered by Mr Justice Peel and that either the loan be repaid as part of these proceedings, or the freezing order be continued to allow for determination”.

50. H told me that Mr Knight/Castle have instituted legal proceedings against their former lawyers in connection with the settlement agreement. Quite what the basis of the claim is was not made clear to me, but my working assumption is that they are being sued over alleged negligence in connection with that agreement. H has been invited to join in arbitration proceedings in connection with the IFP loan. I have next to no information about these matters.

51. I reject the submissions made by or on behalf of Mr Knight/IFP:

- i) IFP have never sought to be joined to the proceedings, notwithstanding that, on their case, this issue has been “live” since at least the order made by Holman J in March 2020. They have not attempted to attend and present evidence or arguments before me. They were aware that W would seek to have the entire proceeds of sale released to her; that much was contained in W’s open offer (which I consider is likely to have been relayed to Mr Knight/Castle by H) and was reiterated in a letter sent directly to Mr Knight by W’s solicitors dated 15 October 2021.
- ii) The order of Holman J has, in my judgment, been overtaken by events, namely the settlement agreement. W has been expressly released from any liability under the IFP loan.
- iii) It is H’s case, of which Mr Knight is aware, not least because it has been communicated to him through solicitors, that he has no liability under the IFP loan because it was a joint debt (not a joint and several debt) and as a matter of law the release of one party from a joint debt automatically has the effect of releasing the other party. H says he has received clear and robust legal advice to that effect.

- iv) At the hearing before Lieven J at which the settlement agreement was incorporated in a court order, IFP was not a party, but nobody suggested IFP was not bound by the agreement to release W from the loan liability.
- v) W was not cross examined about the circumstances giving rise to the alleged equitable charge.
- vi) IFP apparently served a Gibraltarian statutory demand on H on 4 January 2021. I say “apparently” because the authenticity of the document has been challenged. Counsel for W pointed out that it is odd to demand monies which are not in fact due until 2024. Curiously, the demand requires any communication to be sent not to IFP, as one would expect, but to H. H thought this was a mistake. Although the document is odd, I do not have sufficient evidence to persuade me that the document is a fabrication.
- vii) Thereafter, there is no evidence that any steps have been taken by IFP to proceed on the statutory demand in Gibraltar, save for an unsigned document dated 15 February 2021 to H which says that “We are therefore putting you on 14 day (sic) notice that until the IFP loan and interest is paid in full no further payments will be made in respect of the services provided by any company or associate with which you are connected”. In fact, and contrary to this threat, Mr Knight/Castle have continued to pay H and subsidise the operations of CSTM. It may be that the intention behind this document was to assist H’s application to Lieven J for release of sums from the proceeds of sale to pay off this debt. The application was refused.
- viii) Although I do not doubt the validity of the original loan (and W cannot mount a case to the contrary, given the terms of the settlement agreement), all the evidence in this case shows a remarkable willingness on the part of Mr Knight/Castle to ignore, or not pursue, very large sums of money owned to them by H. I see no reason to think, notwithstanding the statutory demand, that the IFP loan is any different. In short, I find that: (a) it is not repayable by W as a result of the settlement agreement and (b) even if repayable by H as a matter of law (and H was confident that it is not), it is a soft loan and will not be called in.
- ix) I am not satisfied that IFP holds an equitable charge over the proceeds of sale of the FMH.
- x) It follows that in my judgment, there is nothing to prevent me from distributing the entire proceeds of sale regardless of the IFP purported claim.

### **Letter from Mr Knight in his personal capacity**

52. Finally, I record that I received on 12 October 2021 a letter from Mr Knight in his personal capacity. He had learned from H that “Mrs Crowther intends to raise the issues of sham, fraud and conspiracy once again against him at the upcoming hearing”. He told me in the letter that W should not be permitted to do so. I have read and taken his letter into account.

### **Res judicata**

53. Plainly, W is bound by the terms of both the settlement agreement and the terms of the order of Lieven J dated 22 December 2020. Cause of action estoppel and issue estoppel do not permit her to pursue the same allegations; in this regard I have in mind paragraph 26 of the Supreme Court decision in **Coke-Wallis, R (on the application of) v Institute of Chartered Accountants in England and Wales [2011] UKSC 1**. W’s s25 statement at times came close to crossing the line drawn by the settlement



agreement and the order of Lieven J, although the context was allegations against H of non-disclosure and conduct. However, the case categorically advanced on her behalf by counsel did not depart from the settlement agreement, nor was there any attempt to reargue those issues. W herself told me in the witness box that she did not resile from the settlement agreement. In my judgment, she is not entitled to re-argue matters pleaded by her in the preliminary issue, but she is entitled to pursue arguments as to (i) non-disclosure and (ii) conduct provided that she does not argue conspiracy between H and Mr Knight to defraud her, and /or argue that H is the beneficial owner of the ships and/or argue that the bareboat charter arrangements were a sham. I have at all times when considering my decision been alive to ensuring that W's case, and my findings, do not stray into the territory of matters already determined by the settlement agreement.

### Cohabitation

54. I unhesitatingly accept W's evidence that although she is in a relationship with Mr X, they have never lived together (apart from "bubbling up" for a period of 6 weeks during the pandemic), have no intention of living together, and are not operating a joint property business. She has received no money from Mr X's business (as the company accountant confirmed). W was completely convincing on these matters in her evidence and leading counsel for H was unable to make any headway on an aspect of the case about which H feels so strongly. In the end, it seemed to me that H relied mainly on what he had been told by others, and the fact of seeing Mr X's van at W's property (although that is not of itself surprising as Mr X has been carrying out a great deal of work at the estate where the property is located); that is comfortably outweighed by the evidence I heard from W, which I accept.
55. H has a partner Ms Z, although I do not find that they live in a state of cohabitation akin to marriage, with mutual financial dependency. Their relationship seems to me to be more enduring and committed than that of W and Mr X. They spend 5 or so nights a week together, she helps occasionally in H's business (albeit unpaid), and she appears to have been generous with her money on eating out and holidays. She seems to be a woman of some financial means. H thinks the relationship is going well and hopes that it will progress. That, however, is for the future. Both are going through divorces and have much to work through. I am not satisfied that they are living together, or presently have plans to live together, or are financially interdependent.

### Non-disclosure alleged by W against H

56. In **NG v SG [2011] EWHC 3270**, at para 16, Mostyn J enunciated the proper approach to take as follows:

"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 a 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 than that the Court should be drawn into making an order that is unfair to the Claimant.”

57. In **Moher v Moher [2019] EWCA Civ 1482**, the Court of Appeal did not dissent from those propositions, save in respect of (iii) where it concluded that the court is not required to reach a specific determination as to the figure, or bracket, of undisclosed resources.
58. Usually, in my view, the evidential platform for a finding of non-disclosure is established by one or more of the following:
- i) Direct evidence of an asset which the alleged non-discloser has not revealed (the classic example being the revelation of the existence of a bank account or accounts which feature nowhere in his/her financial presentation, and holding large sums of money);
  - ii) Failure to comply with court orders and/or provide adequate or complete responses to questions asked, from which failure the court feels able to draw inferences adverse to the alleged non-discloser;
  - iii) Evidence of a lifestyle which is wholly inconsistent with disclosed financial resources.
59. As to the first, amidst the vast tracts of documentation, W has only been able to uncover one bank account containing a one-off consultancy fee of £10,000 from a medical company which was not revealed by H (he says because of concerns about a non-disclosure agreement). £10,000 is not insignificant, and H’s failure to disclose the account is to be strongly deprecated, but I am satisfied that, by itself, that one bank account does not justify a finding that H has very substantial sums concealed from W and the court. During cross examination it was asserted that H has access to a trust, relying on a letter from 2013 about a possible property purchase which states at the end “This offer is approved by the Buyer’s trust”. H had no recollection of this, and it is right to say that, although the letter has been available for some time, he has never been asked about it in questionnaire or correspondence; the first time he was asked questions on this topic was in the witness box. I do not think H can be criticised for not being able to explain the reference to a trust in a letter which is 9 years old. It is also right to say that there has in fact been a trust in existence since 2012 (mentioned above),

although never funded. Further, the fact that H in written evidence dated October 2019 said that “I am not aware of any relevant trusts” is not altogether surprising; many years had passed, no monies had been settled into the trust, none had been paid out and it had never been used. There is no evidence of trust monies in the vast wealth of documents before me. W does not state that she was aware of, or ever heard talk of, trust monies. I decline to find that H has concealed assets contained in a trust.

60. As to the second, I am not persuaded that, save in respect of income resources to which I will return, there is a deficiency in disclosure enabling me to find that H has hidden resources. I regard H’s attitude to the litigation as having been unsatisfactory, to which I shall return below, but not such as to enable me to draw inferences against H. He has, ultimately, produced huge quantities of financial disclosure which has enabled W’s team to pore over his finances in great detail.
61. As to the third, W points to what she describes as H’s continuing spending at a very high level when he is pleading poverty. Again, I am not persuaded that this demonstrates that H has access to undisclosed capital:
- i) W produces a schedule of what she terms personal expenditure by H of £1,226,120 between September 2019 and September 2021. She points to the very substantial property rented by H in Kent rented by H at £78,000pa. She says that H has spent £242,000 on a yacht, £92,000 on cars and £76,000 on holidays.
  - ii) On closer analysis, however, the schedule is less striking than it seems. Just as important as the expenditure is the source of expenditure. A very substantial part of the spending can be traced back to (i) the sale of H’s aeroplane, (ii) living expenses loans from Schneider, (iii) his share of the proceeds of sale of Maritime House, (iv) loans from friends and family, (v) the sale of 2 cars, (vi) interim payment on account of the costs award made in his favour. He has also had income from his businesses, the backing of Mr Knight/Castle and payments towards items such as holidays and eating out made by his partner. Further, some of the expenditure relates to repayment of loans, business costs, legal fees, running costs of the FMH and the French property, payment of school fees, and there is a degree of double counting.
  - iii) Counsel for H produced a schedule at the start of the case, which I accept is broadly accurate, explaining the source of the funds, none of which indicate a hidden fountain of wealth.
  - iv) In closing submissions Counsel for H produced a further table suggesting that the true figure for H’s expenditure on himself and the children was about £434,000 rather than the £1,226,120 advanced by W. In my judgment, some of the points made on H’s behalf are valid, but it seems to me that on any view H was spending more than he should have done in the period, and certainly more than W. The £434,000 excludes the sum of £243,000 spent on the yacht, which was bought partly as a luxury, and partly to secure charter income if possible. And although W’s figures included business expenses, many of those expenses represent a personal benefit to H.
  - v) It seems to me that the schedule relied upon by W does not lead me to make adverse findings that H is concealing his resources. I am, however, left with the clear impression that, one way or another, he has been able to sustain a very comfortable lifestyle which has been rather higher than that enjoyed by W. It

also, to my mind, indicates that H has the confidence of a man who thinks it will all come good, and is positive about future prospects.

62. However, I am satisfied that H during these proceedings has at various times sought to conceal or minimise the extent of income available to him. At a hearing in December 2019, and in witness statements dated March 2020 and July 2020 he said he had no income. In a statement dated September 2020 he referred to “modest revenue” from the technical services but in October 2020 said no monies had yet been received. In fact, AMOSS bank statements produced just before a hearing before Lieven J on 15 October 2020 showed substantial sums being paid into AMOSS, including £153,000 on 14 July 2020, and £20,999 being paid by AMOSS to H on that day. Unsurprisingly, Lieven J concluded that H was guilty of non-disclosure of a most serious type. I agree. Shortly afterwards, it seems that H started receiving a fixed sum of £12,000 pm (£144,000pa) from AMOSS, but paid at source by Mr Knight/Castle. Piece by piece over time, a picture has emerged. H’s counsel produced a document at this hearing showing that from January 2020 to September 2021 H has received personal income from his businesses totalling £212,500. H has been, in my judgment, less than frank about his earned income.

### Conduct

63. W’s conduct case against H is lengthy. I select a number of specific examples:
- i) What she describes as the “destruction of the family business”, whereby the jointly owned AMA LLP was closed, W was effectively excluded from the business, and all operations, and resources and staff were transferred to AMOSS, H’s own business, in September 2019. A new bareboat charter with Mr Knight/Castle was entered into. H says that this all took place because of W’s malicious conduct during 2019, interfering with the operations of the business and effectively making it impossible for it to continue under joint ownership; he particularly cited W’s behaviour towards the staff, making impossible demands on them. Having heard the parties, I reject H’s case on this. There was no justification for taking this extreme step which cut W out of a joint business. I am quite sure that there was some friction between the parties, but not such as to justify denuding W of her share of the business. It was H who took the step of removing a business dongle in March 2019, which in turn prevented W from accessing financial records. Thereafter, so W told me, and I accept, she hardly went to either the office in Brighton or at home. She barely spoke to the staff, or indeed to H. H may well have found the situation irritating and inconvenient, but he largely retained control and there can be no justification for the actions he took.
  - ii) Allied to (i) above, the use by H of the “Boskalis litigation” monies:
    - i) AMA engaged in litigation by which it recovered from Boskalis about €2.5m. Of that, about €1.3m was used to repay creditors other than Mr Knight/Castle.
    - ii) In May 2019, a final sum of €670,000 became payable. It was owed to AMA. Nevertheless, H arranged for the monies to be paid into the AMOSS bank account. It will be recalled that AMOSS was a company in H’s sole name which had just been set up. He thereby diverted monies,

- to which W was equally beneficially entitled, into a company under his sole control.
- iii) The AMOSS bank account into which the monies were paid was not disclosed in H's Form E, although other AMOSS bank accounts were disclosed.
  - iv) Of the €670,000, €100,000 was repaid to W's father who had provided some financial assistance by way of loan to AMA.
  - v) H used about €15,000 for legal advice on his personal financial and divorce affairs, and €6,150 on personal drawings.
  - vi) Between 27 September and 1 October 2019, €480,000 was remitted to Mr Knight/Castle in respect of unpaid charter fees without W's knowledge, even though AMA had not in the previous 4 years made any such payments towards the total owing of some £3.6m.
- iii) In summer 2019, H sold the aeroplane for €248,629, which he used to purchase the yacht, Bianca Lucida, without informing W. H accepted in cross examination that it was a matrimonial asset.
- iv) H removed cars and chattels when he left the FMH in November 2020, and refused to say where they were stored. He transferred a Rolls Royce out of W's name.
- v) The non-disclosure of the Monzo account into which H had received a one-off consultancy fee of £10,000 paid by a medical company.
- vi) H placed GPS tracking mechanisms in W's cars, accessed W's private email accounts, instructed a private detective to follow her, and deleted files on W's computer.
- vii) H unsuccessfully resisted an order for sale of the FMH. He created a tenancy at property in the grounds of the FMH in name of his sister to try and prevent the sale.
- viii) During the proceedings, a number of judges have on a number of occasions commented on H's uncooperativeness, and found H to be in breach of orders.
- ix) H wilfully breached his duty of disclosure in respect of his income.
- x) To involve Ms Y was unnecessary and unhelpful. It was, I thought, a clear example of litigation overkill.
- xi) Indicative of H's general approach, it was submitted on his behalf that his housing needs are greater than W's, which I thought was little short of preposterous. And in his s25 statement he said "Caroline has more of an ability to earn in the future than I have" which I thought was untenable.

64. **In OG v AG [2020] EWFC 52** Mostyn J identified 4 situations where conduct is relevant:

- i) Very rarely, personal misconduct during or after the marriage;
- ii) The add back jurisprudence where there has been wanton dissipation by a party;
- iii) Litigation misconduct which is usually penalised in costs but can in rare cases sound in the award;
- iv) Lack of full and frank disclosure leading to adverse inferences.

65. I have reached the following conclusions:

- i) To have closed the family business, of which W was a joint owner, and simply transferred all assets, staff and operational activities to a new business owned by him, was egregious conduct which was so extreme that it cannot be ignored. H took all the benefit of, for example, numerous cars which he and other staff had access to. W lost the opportunity to share in income subsequently received by H through the phoenix business, or in the fruits of the Boskalis litigation which were used by H as he deemed fit. Most notably, H elected to pay Mr Knight/Castle ahead of other creditors of the family business. He clearly did so to stay on good terms with Mr Knight/Castle and bolster his new business arrangements with them, which excluded W. Thus, for example, the monies were not used to meet a debt owed by AMA to HSBC of £200,000 for which, as subsequently discovered, H had given a personal guarantee. It seemed clear to me that H intended that all the debts owed by AMA LLP would be written off in the inevitable liquidation. The subsequent HSBC liability under his personal guarantee came as a surprise to him. Had the Boskalis monies been used for the HSBC debt, that debt would not now appear on the asset schedule in these proceedings. Apart from the loss to W of the opportunity to share in the Boskalis sums, these actions by H set the tone for the litigation thereafter; inevitably, W regarded every act by H with extreme suspicion. This decision by H to force the closure of AMA and set up an identical business in his own name, to the complete exclusion of W, falls within the first category identified by Mostyn J and I am satisfied that, to use the words of the statute, it would be inequitable to disregard it. I propose to take it into account as part of the overall distribution.
- ii) I have already found that H is not, in my view, harbouring hidden assets.
- iii) H did, however, for a lengthy period of time conceal his income resources, although I am satisfied that I now have a reasonably accurate picture.
- iv) H's conduct of the litigation has been at times obstructive, and deliberately so. His evidence to me that "I can be litigious when something is deeply unfair as these proceedings have been" is indicative of his approach.
- v) W is not entirely free of blame in her conduct of the litigation. The unseemly correspondence in this case falls at the door of solicitors on both sides. W sold more horses than she was entitled to under various orders, although I accept this was an oversight on her behalf rather than a deliberate breach. She has pursued applications which have not always been meritorious; for example, at the PTR she sought repayment from the private school of monies paid on account of the youngest child's school fees, to enable her to pay a house clearance bill. The sheer scale of costs thrown at this case has been excessive. But overall, I

consider H to have been more blameworthy, and his approach to the litigation will be taken into account by me when considering costs.

**Computation: asset schedule**

66. I attach an asset schedule which comprises my findings. Dealing with the various items in turn, as shortly as I can:

Assets

- i) The principal asset is the proceeds of sale at £1,860,987.
- ii) I include £30,000 being H's usufruct interest in his mother's Italian property, but acknowledge that it is currently unrealisable.
- iii) I include the £670,000 due from Mr Knight/Castle, but it seems to me that there is a degree of uncertainty as to when, or whether, it will be paid, and the possibility that W may need to seek to enforce through the courts. I am minded to treat this as a contingent asset for these purposes.
- iv) I take the figure of £51,740 for the Raymont-Perot Settlement being settlement monies due from former tenants in France, less legal costs.
- v) I treat the Maritime House potential overage (described as possibly worth anything up to £200,000) as a contingent asset and, as the figure is so uncertain, ascribe no value to it.
- vi) I ignore the possible refund of Elton John tickets, and Twickenham debentures.
- vii) I take the figure for both parties' bank balances, and H's credit card which has a positive balance, from the most recent disclosure.
- viii) As to chattels;
  - i) I ignore the values of the general household chattels. The parties give widely differing values; H says £126,224, W says £261,196. There is no SJE valuation, and I am in no position to ascribe a reliable figure. They can be divided in specie. The most that can be said is that the parties may be able to raise some extra funds from sale of furniture.
  - ii) I ignore H's two watches and W's jewellery.
  - iii) I include the values of the yacht, cars, motorbikes, horses (at W's value, which I accept), and the gun collection in the parties' names, all of which are in my view capable of being sold to assist each party with their needs. I have split the difference in value for the yacht and the Rolls Royce, in the absence of expert valuations. I do not include the Chrysler driven by H as it seems clear that it belongs to his mother, although I have no doubt he will one day own it, and he derives benefit from it. Nor do I include the vehicles owned by the businesses. I ignore the Aston Martin which, previously owned by H, is now owned by Mr Knight/Castle; it is, however used by H and is clearly a benefit to him.

Liabilities

- ix) In respect of liabilities:
- i) I include the £200,000 under the HSBC guarantee as being owed by H. However, as noted above it relates to a debt due from AMA to HSBC. In circumstances in which H forced the closure of AMA, and its assets, including the €670,000 from the Boskalis litigation, were diverted to H's own company and used at H's direction, it seems to me that W has been deprived of the opportunity of having the sum paid by AMA. It forms part of the conduct finding which I have reached in respect of the Boskalis litigation.
  - ii) I have included the full amount due under the Macmillan and Ongley invoice. I reject H's argument that it is fictitious.
  - iii) I include the sum of £44,000 owed by H to Mr Y.
  - iv) I take the figure of £42,000 for the legal fees owed by H to previous solicitors. That was the sum asserted by H in applications to Schneiders for loans in February 2021, rather more recent than a document relied upon by H dated September 2020 which refers to £60,391 being owing. It is scarcely credible that the parties cannot agree something as simple as this, which must be a matter of record.
  - v) I accept H's figure for HMRC penalties for him arising out of his involvement in AMA which is evidenced by an accountancy calculation, together with H's estimate of personal tax due on income received.
  - vi) I include the figure of £100,000 for W's tax liability arising out her involvement with AMA. Although the sum is different from H's liability, it is evidenced by accountants, and I accept it.
  - vii) I will not include, as W seeks, a deduction of £50,000 for the estimated costs of pursuing the £670,000 through enforcement procedures. The figure is speculative, but I acknowledge that there is a potential liability of unknown amount.
  - viii) I ascribe a nil figure to the IFP loan for reasons already given
  - ix) The Arbuthnot Latham loan (the mortgage on the French property), now standing at £712,389 (€825,750), is owed by both parties. It is payable in instalments in December 2022, 2023, and 2024, last sum due Dec 2024.
  - x) W owes a total of £288,215 to her brother-in-law and her father, being loans advanced to her during these proceedings. I accept that she is required to repay these sums; they are not soft loans. The principal sum, £250,000, was advanced to W by her brother in law's company on strict commercial terms. She told me, and I accept, that her family will expect the return of these monies at the conclusion of the hearing. There was no real challenge to her evidence on this.



67. A simplified summary is:

Bank accounts	£21,494
H's interest in mother's property	£30,000
H's rental deposit	£9,000
Castle settlement balance	£670,000
Raymont-Perot settlement	£51,740
Proceeds of FMH	£1,860,987
Yacht/vehicles/horses/guns	£341,500
<u>Liabilities</u>	<u>-£2,246,346</u>
<b>Total net assets</b>	<b>£738,375</b>

**Computation: Income/earning capacity**

68. W told me how much she enjoyed renovating the various homes during the marriage. She is clearly capable, competent, and intelligent. The problem is that to build up a business in property development, design and renovation requires capital which she does not have and, realistically, will not have at the end of this brutal litigation. It is impractical to say, as H does, that she will be able to sustain a handsome living in this way. She told me with absolute clarity that she and Mr X will not go into business together (Mr X in any event is a jobbing builder, not a developer), nor is there any appetite among members of her family to set her up in business. She thought she might get a part time job, perhaps in secretarial/administrative work, albeit her skills are outdated. I conclude that her earning capacity is modest, although I am confident that once this is all behind her, she will want to embark on a new life and explore possibilities.

69. H's income and earning capacity has been more difficult to assess. As I have outlined above, H prior to separation ran the bareboat charter. He has produced a schedule showing that in the tax years 2011-2018:

- i) The average turnover of the charter business was £7.3m per year;
- ii) Average profit was £244,000pa;
- iii) Average partner drawings (for both H and W combined) was £718,000 per year.

70. Plainly, drawings far exceeded profitability. The main reason is that the businesses received very substantial loans from Mr Knight/Castle. From £849,000 in 2012, creditors increased to £4.3m in 2018, a rise of some £3.45m. These loans, which have not been repaid, cannot be challenged by W because of the terms of the settlement agreement. In addition to the sums through the business, the parties also had available to them the financial churn of property purchases, renovations, and sales. The combination of these sources funded the very high standard of living to which I have referred.

71. H has produced a schedule asserting that in the 2 years from September 2019 to September 2021, he has received through the marine business (now known as CSTM), and a one-off consultancy fee, a total of £212,500 gross, which is just over £100,000 per year. Principally, these sums are represented by technical services provided by H to Mr Knight/Castle, now payable in the fixed sum of £12,000pm which is routed from Mr Knight/Castle via CSTM. The vessels are owned and chartered by Mr Knight/Castle, while CSTM manages them. Mr Knight/Castle, in addition to H's salary,

pay all the wages of H's 7 employees, the office running costs and all other costs of the business which is currently loss making. In addition, CSTM pays £1,500pm towards H's rent (there being an office at H's rented property) which in turn is sourced from Mr Knight/CSTM. H has the use of the Aston Martin, owned by Mr Knight/Castle. Effectively Mr Knight/CSTM underwrite the entire costs of the business, as well as H's income and benefits.

72. Revenue into H's business for the past 2 years has been:

- i) £1.7m in 2020;
- ii) £1.6m to date in 2021.

These figures are far below the turnover enjoyed by H and W through AMA prior to separation. Partly that is because H is no longer operating charters, but providing technical services. Partly it is because there are now only 2 operational ships, as opposed to 6 in the heyday of the charter business.

73. In addition to the technical services, H has established a new sole trading business, the Yacht Set, which is a high-end chartering operation with two yachts at its disposal. One of the yachts available is his own. The other was sold by Mr Knight/Castle to a finance house for €250,000 and is subject to a lease/buyback arrangement under which he can purchase it for a total of €329,000 in 4 years time, and is entitled to charter it in the meantime. I reject the submission that this was a transaction at an undervalue; there is no evidence to support such a conclusion. He hopes that he will generate sufficient from the high chartering fees to purchase the boat outright. He told me that he thinks the price is, if not a bargain, at any rate one he is comfortable with, and he thinks he will be able to make a profit on the capital value, particularly if he can carry out repairs. Overall, I felt that he looks forward to the future with a degree of optimism. At present, he anticipates an income of £3,000pm during the summer season which he hopes will increase to £5,000pm.

74. Accordingly, H says that his current/near future income is as follows:

- i) £12,000pm fixed technical consultancy fee;
- ii) £1,500pm paid by Castle towards his rent;
- iii) £3,000pm-£5,000pm from the Yacht Set during the summer season.

That would suggest a total gross income in the region of £180,000pa gross. However, H has additional benefits such as the use of the Aston Martin and other cars, and the availability of holidays on Mr Knight/Castle's yachts, which allow H to enjoy a standard of living beyond his strict means.

75. It seems to me that H and Mr Knight/Castle continue to have a close working relationship. They remain business associates. H continues to receive income and other benefits from Mr Knight/Castle. He was able to take the Atlantic Endeavour (at that time owned by Mr Knight/Castle), crewed by 6 staff, at no cost for 2 weeks in August 2021 and entertain family and friends; chartering commercially would have been inordinately expensive (the summer charter fee is €35,000 per week). Mr Knight/Castle have not sought repayment from H of the £5.6m loaned to H and W/their business. Mr Knight has no experience of marine business but H, of course, has long standing personal knowledge of different types of maritime operations. I am confident that H's

skills are of value to Mr Knight. H told me that “we” (i.e he and Mr Knight) are looking at acquiring new vessels. H’s expenditure post-separation, while not evidence of concealed assets, in my judgment nevertheless reflects an expectation on H’s part that he will continue to earn, and earn well, in such a way as to enable him to continue enjoying the sort of lifestyle which has continued largely unabated. It may be that he hopes his relationship with Ms Z, both personal and professional, will continue to develop. It seems likely to me that the current sums earned are not the limit of his earning potential and he will in fact earn considerably more over a number of years, with the backing of Mr Knight. Accordingly, his earning capacity far exceeds that of W. He will be able to replenish his coffers and rebuild in a way that W will not. Putting it another way, he will not need to access capital to meet his budgetary needs, whereas W will.

### **Needs**

76. W says she needs a property in the range £1.1m-£1.3m. That figure was not directly challenged but it seems to me, regrettably, that the sums available may not enable either party to purchase a property at anything like the level they would aspire to, although I note that H did not put forward property particulars for himself. They may have to continue to rent (as they have done in the past). In the end, they will have to tailor their needs according to available funds. At the risk of repetition, it is the incidence of costs which has directly led to this situation.

### **The law**

77. I have had well in mind all the matters set out in s25 of the Matrimonial Causes Act 1973, and that the parties’ youngest child is the first consideration of the court. I do not propose to go through each subsection of s25(2). I have already referred to the relevant matters in this judgment.

### **The parties’ proposals**

78. By his proposal, H offers an equal division of all the net assets which by the end of the hearing he put at £142,053 so that each party would have about £71,000. From that W would have to pay the legal fees due to him pursuant to the order of Lieven J which, as his counsel freely acknowledged, would render her bankrupt. On the other side of the coin, W’s proposal, based on her revised net asset schedule of £1,117,747, assumed that W would have about £1.25m and H would exit with about £140,000 of debt. Based on their open proposals, neither made any real effort to settle.

### **Conclusions**

79. I finally turn to my conclusions. Although I have considered everything I have seen and heard, in my view the principal factors are:

- i) The assets and income are as I have found them to be. There are no hidden resources.
- ii) H’s conduct in causing the closure of AMA and using the proceeds of the Boskalis litigation through his own business. W was deprived of the possibility of deriving benefit from her half share of those monies. The HSBC debt of £200,000 could have been paid out of it. W received no income thereafter, unlike H. W has thereby in my judgment suffered a significant loss of opportunity to derive financial benefit from AMA by reason of H’s actions.

- iii) W has limited earning capacity. H by contrast has current earnings of at least £180,000pa gross with the potential to earn significantly more, not least because of the backing of Mr Knight/Castle.
  - iv) The figure of £180,000pa does not tell the whole story. In addition, H has benefits available to fund a lifestyle in a way that is not open to W. The use of an Aston Martin provided by Mr Knight, and the free holiday on the Atlantic Endeavour are two striking examples.
  - v) W is, in my judgment, the principal carer of the youngest son, and is likely to be so until the end of university. Her needs are greater than those of H.
  - vi) Each party has a need to have their debts paid off, particularly those which are most pressing.
  - vii) The £670,000 is a contingent resource and in my view each party should share in it upon receipt. The alternative would be for W to retain all of it, but that would reduce her share of the proceeds of the FMH, and correspondingly increase H's share. That would be unfair to W, leaving her required to chase monies which are uncertain, carrying all the risk thereof and exposing H to none of the risk thereof.
80. In my judgment the primary requirement is to enable the parties to clear as much of their debts as possible. The remaining capital shall be divided unequally in W's favour to reflect the matters to which I have referred.
81. On the attached schedule I attach my distribution decision:
- i) The French mortgage and a handful of joint debts shall be deducted from the net proceeds of sale.
  - ii) Of the balance of the proceeds, H shall receive £200,000 and W the remainder (just over £900,000).
  - iii) H shall receive the benefit of the Raymont-Perrot settlement, after payment of the legal costs.
  - iv) Each party shall be responsible for their own debts.
  - v) Each party shall retain their own assets.
  - vi) Should there be any Maritime House overage, that is to be divided equally.
  - vii) H shall receive 50% of any monies recoverable from Castle pursuant to the settlement agreement, after deduction of unrecovered costs incurred by W referable to enforcement.
  - viii) H shall indemnify W in respect of the IFP loan.

- ix) H shall indemnify W in respect of the HSBC debt.
- x) On the 6 remaining issues as to general chattels, I endorse W's proposal. It is clear that, whether one takes W's valuation or H's, it is H who retains more both by number and by value.
- xi) There shall be a clean break. I consider it unthinkable that there should be a prospect of future litigation. This order factors in the imbalance in earnings/earning capacity as part of the capital division.
- xii) I invite the parties to agree child maintenance at £10,000pa starting on 1 November 2021, reducing to £5,000pa from the end of secondary education to the end of tertiary education (including a gap year). That figure appears to be comparable to a CMS calculation.
- xiii) H shall pay school fees and reasonable extras appearing on the school bill.
82. The above will be made an order of the court on the date of decree nisi or as soon thereafter as practicable.
83. The net effect is:
- |     |                |                 |
|-----|----------------|-----------------|
| i)  | <b>Husband</b> | <b>£77,414</b>  |
| ii) | <b>Wife</b>    | <b>£660,961</b> |
- That is an unequal split in W's favour for the reasons given.
84. I will make the order sought by W in respect of the Castle monies. That can be made now, and need not await decree.
85. As to costs, H is liable to W under two existing costs order in the total sum of £71,218. W is liable to H for costs under the order of Lieven J consequential upon the settlement agreement which, although not assessed, I estimate will be about £322,000, of which W has paid £80,000 (and is due to pay a further £100,000 under another interim payment).
86. Should the costs order stand against W it would have the effect, broadly, of equalising the net effect outcome. That would be thoroughly unfair to W given the matters to which I have referred. I could provide W with more from the marital assets to take account of the costs, but that might be thought to be intellectually dishonest. As it happens, however, I have firmly concluded that, for the reasons above, H is guilty of litigation misconduct and should pay a proportion of W's costs referable to the financial remedy proceedings which are about £735,000 (but not the preliminary issue or Admiralty proceedings, for which she alone must take responsibility). I consider that H should be responsible for approximately 25% of such costs, but it would be neater and simpler to make an order which has the effect of netting off all costs owed by one to the other so that there need be no further argument about costs assessment or payment. I intend, therefore, to make such order for costs as equalise all existing costs orders, to the extent that they are unsatisfied. Thus, by way of illustration:

Costs owed by W to H

MR JUSTICE PEEL  
Approved Judgment

£358,727 claimed by H  
£322,000 due to H (assuming 90% recoverable on indemnity basis)  
-£80,000 already paid on account by W  
**£242,000 assumed amount still payable by W to H**  
-£34,008 payable by H to W order 16 October 2019  
-£27,210 payable by H to W order 24 February 2021  
**£180,782 net due by W to H**

£180,782 is about 25% of W's costs. The order I shall make is that H must pay W such sum as equals the remaining sums due from W to H under the costs order of 22 December 2020, after netting off the sums due under the orders of 16 October 2019 and 24 February 2021.

Last word

87. The only beneficiaries of this nihilistic litigation have been the specialist and high-quality lawyers. The main losers are probably the children who, quite apart from the emotional pain of seeing their parents involved in such bitter proceedings, will be deprived of monies which I am sure their parents would otherwise have wanted them to benefit from in due course.