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Neutral Citation Number: [2024] EWFC 233

Case No: 1687776694753867

**IN THE FAMILY COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 8 July 2024

Before :

**STEPHEN TROWELL KC SITTING AS A DEPUTY HIGH COURT JUDGE**

Between :

IN

**Applicant**

- and -

CH

**Respondent**

**Brent Molyneux KC and James Finch** (instructed by **Mishcon de Reya**) for the **Applicant Husband**

**Ann Hussey KC and Phillip Blatchly** (instructed by **Manders Law**) for the **Respondent Wife**

Hearing dates: 24 June 2024

**Approved Judgment**

This judgment was handed down remotely at 10.30am on 8 July 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR STEPHEN TROWELL KC

**Mr Stephen Trowell KC:**

1. This matter came before me on the 24 June 2024 for a one day hearing of cross applications. The Husband, was represented by Brent Molyneux KC and James Finch. The Wife was represented by Ann Hussey KC and Phillip Blatchly.
2. The Husband had applied by D11 dated the 21 March 2024 for an order pursuant to section 33(3)(e) of the Family Law Act 1996 in effect terminating the Wife's Home Rights in respect of the matrimonial home upon the basis that:
  - (i) he undertakes to increase his maintenance pending suit payments by £35,000 per month to enable the Wife to rent alternative property,
  - (ii) that it was intended to sell the matrimonial home,
  - (iii) that the proceeds of sale will be held in an escrow account from which the Wife's rent, his rent, and the children's school fees will be paid.
3. The Wife brought an application on the 28 March 2024, again by D11, under section 17 of the Married Women's Property Act 1882 and Family Procedure Rules 2010 r. 20.2 (1)(c)(v) for an order for the sale forthwith of a motor yacht (hereafter 'the yacht'), , and that the Wife should have conduct of the sale. It was part of her application that the proceeds of sale of the yacht could be used to discharge the mortgage on the matrimonial home.
4. Both parties had indicated on their respective D11s that they could not be dealt with on paper because submissions would be required. On the 8 April 2024 I gave directions, on paper, for simultaneous concise statements in support of the parties' applications and in response to the other's application and then simultaneous statements in reply and set the matter down for a 1 day hearing.
5. I had already dealt with an MPS and LSPO application between the parties on the 17 November 2023, and a First Appointment in the Wife's application for financial remedies on the 17 January 2023. On the 1 May 2024, I dealt with a variation of the LSPO, in part because of the costs of these applications. There is to be a private FDR before Mr Dyer KC in July 2024.
6. On the 17 June 2024 an application, again in D11, was made by the Wife to adjourn and relist this hearing for three days on the basis, among other things, that the time estimate was insufficient to allow for the necessary cross examination in relation to the Wife's beneficial interest in the matrimonial home. That is a point of significance because both parties urged on me the analysis of the law set out by Recorder Allen KC in *RA v KS* [2023] EWFC 102(B), to the effect that the Wife's Home Rights cannot be terminated pursuant to section 33(3)(e) if she has a beneficial interest. If she does have a beneficial interest her Home Rights can only be suspended or restricted pursuant to section 33(3)(d). That would mean that the Husband could obtain an order requiring the Wife to vacate the property but, given he could not terminate her rights in the property, the property could not be sold.
7. I agreed with the Wife that given the dispute of fact that had emerged in the statements I did need to hear oral evidence. I disagreed that I needed to adjourn the

case for a three day hearing. I allowed instead for one hour of focussed oral evidence of each party on the issue of the Wife's beneficial interest in the matrimonial home. The balance of the case I dealt with on the basis of submissions. This inevitably put pressure on the time

estimate and has required this written judgment. Further, Miss Hussey asked, and I consented knowing this judgment would need to be reserved, to put in written submissions on the law in relation to beneficial interests in land.

8. Miss Hussey asked for permission to appeal my case management decision and then for a stay of proceedings to enable her to appeal it. I refused her applications. I will not rehearse those arguments and my reasons here.
9. I now prepare this judgment with the benefit of the parties' opening written submissions, the oral evidence (given via translators) of both parties on Wife's beneficial interest in the matrimonial home, counsels' submissions at the hearing and in writing (which were in fact a little delayed and the final version of Miss Hussey's submissions were only received by me at about 2 o'clock on the 1 July 2024) and the bundle that was prepared for the hearing, which contained in particular two statements from each party, and a letter from GT LLP. GT identify themselves as acting for a company known as AB Limited, which they assert own the yacht legally and beneficially. GT, while making clear that they neither accept service of the Wife's application or jurisdiction of this court, set out that they do not consider that the Married Woman's Property Act 1882 can have any application here because any question of ownership is not between the Husband and the Wife but between the Wife and them.
10. The tasks that I need to perform in this judgment are to:
  - (i) Set out the relevant context of these applications;
  - (ii) Set out in summary the law in relation to beneficial interests in land as it is relied on in relation to this case;
  - (iii) Determine whether the Wife has a beneficial interest in the matrimonial home;
  - (iv) Consider whether the Married Woman's Property Act can be used as the Wife contends, how to deal with AB Limited, and whether it is appropriate through Family Procedure Rules r. 20.2 (1)(c)(v) to give the Wife conduct of sale of the yacht;
  - (v) Determine in the light of those decisions and findings what order I am making under section 33 of the Family Law Act 1996, which will require me to consider the factors set out in section 33 (6) and my conclusions above.

*The Relevant Context:*

11. The parties are engaged in financial remedy proceedings ancillary to their divorce.
12. The Husband is in his mid-60s and the Wife is in her mid-30s. They have 3 children: 16, 14 and 9. The elder two children are at boarding school. The children and the Wife remain living at the former matrimonial home.
13. The Wife issued Family Law Act proceedings in 2023 making allegations as to the Husband's behaviour. That application was compromised, with no admissions, on the basis of the Husband moving out of the house into rented accommodation. At the time the maintenance pending suit application was initiated the 2023 Family Law Act application was not resolved and the Wife put forward in her statement in support of her claim for maintenance pending suit different budgets: one on the basis that the

Husband moves out of the matrimonial home, and one on the basis that he did not, in which she sought maintenance to rent an alternative property for her and the children.

14. The matrimonial home has a value of £42 million agreed for purposes of the FDR. It has a mortgage secured against it of some £27 million. The yacht has a value of €35.5 million agreed for the purposes of the FDR.
15. The Husband has unquestionably been a man of very great wealth. It is wealth made through businesses in his native country. I have been shown summary pages of the report of the Single Joint Expert directed to report as to the value of those business interests. That tells me that in 2007 (a date posited for cohabitation of the parties) the Husband's business interests were worth over £565 million. It is his case that his financial position has been ravaged by war. That is supported by the SJE who report that taking into account cross-indemnities the business interests are now worth minus £32 million.
16. I record that Miss Hussey tells me that the report raises more questions than it answers; that it is recently received; and that it will need to be considered by her shadow expert. Further in her written closing she draws to my attention that three businesses of the Husband's had increased their profit in 2023 over 2022. This judgment is not the place for an analysis of the current overall financial position of the Husband. Indeed, I only have excerpted pages from the report. I do record however that it is likely that the war will have had a negative effect on the Husband's resources.
17. The Husband set out in his Form E that the matrimonial home was owned by a company, and that his share in that company was 85.1%. Subsequently, on the same day as his letter before action in this application (16 February 2024), he asserted that he was the sole beneficial owner of that property and produced a nominee agreement dated the 21 November 2013 between him and the company to that effect.
18. The Husband had flagged up in his Form E that the original mortgage term on matrimonial home in 2013 was five years and that although that had been renewed for another five years in 2018 when he had sought to renew it in 2023 for a further five years, he was only able to obtain a one year extension because of the effect of the war upon his finances.
19. The mortgage is due for renewal again this August and it is his case that he anticipates that renewal may be refused, or, if granted, will be only on the basis of allowing an orderly sale of the property. He draws to my attention that he believes that the loan will be called in if the bank becomes aware of his impending divorce. It is to manage an orderly sale that he has made this application. He points out that an orderly sale conducted on his behalf is much more likely to generate a good price than a sale conducted by the bank. Further he says he is running out of liquidity to meet the substantial outgoings that he has including the £55,000 per month spousal and child maintenance (in addition to school fees) and the LSPO already made by me (which will need to be considered further after the FDR) of £620,000. The mortgage costs him some £186,000 pm.

20. The Husband related in his Form E that a private aircraft that had been held by a business in which he had an interest had been sold in April 2023 for some £8 million. A loan had been taken by him from the business which was being used to meet the family's expenses. Further, though he gave a figure of some £20 m as income for next year in his Form E he had asserted that this was (a) distributions of historic retained earnings (b) that payment will need to come from working capital, and (c) that it would be used to support and finance his businesses 'against the backdrop of a dire economic situation in the light of the war'.
21. The Husband gave details of the yacht as a chattel in his Form E. He produced a valuation and set out that the yacht was owned by a company, AB Limited, in which he owned 90%. He set out that the expenses of the yacht were funded by way of a loan from another company CD. That debt stood at nearly £9 m at the time of the Form E. The Husband recorded in his Form E that CD were the managers of the yacht and he had had to ask them to provide their service on credit for some time because he had limited resources outside his native country.
22. It is the Husband's case that the yacht is being sold. The Wife's application being considered at this hearing is to enable her to take over the sale of the yacht, to the end of applying the proceeds of sale to meeting the mortgage on the matrimonial home. It is her case that although the Husband, says he was trying to sell the yacht, the reality is that there is no attempt to sell it. This, she says, is because the Husband is trying to arrange matters so that she and the children are forced to leave their home while the Husband continues to retain his cherished possession – the yacht.
23. The Wife points to the facts that (i) the Husband had made a statement to sell the yacht and donate the proceeds and, (ii) when the matrimonial home was remortgaged in August 2023 part of the repayment strategy was a sale of the yacht, and yet still there is no sale.

*The Law relied on as to the Wife's beneficial interest in the matrimonial home.*

24. The Wife relies on either a common intention constructive trust or proprietary estoppel. Miss Hussey tells me that she can establish common intention to share ownership when the property was bought, either by way of express discussions, or drawing inference from conduct (which is Rosset I or Rossett II) and detriment thereafter, which gives rise to a constructive trust. Alternatively, she can establish representation or assurance that the Wife will acquire an interest in the property, reliance by the Wife on the representation or assurance, and detriment incurred as a consequence of the reliance.
25. Miss Hussey does properly draw to my attention that proprietary estoppel may not give rise to a beneficial interest.
26. Mr Molyneux tells me that for there to be a common intention constructive trust there needs to be (i) a common intention at the time of the purchase and (ii) detrimental reliance thereafter. He does not in his closing submissions separately address the possibility of proprietary estoppel.

27. He does draw to my attention the case of *Thompson v Humphrey* [2008] 1 FLR to submit that the Wife cannot argue that she has suffered a detriment by moving to England. Miss Hussey refers me to *Winter & Anor v Winter & Anor* [2027] EWCA Civ 699 to urge on me that I should not take a narrow view when considering detriment.

*Whether the Wife has a beneficial interest in the matrimonial home*

28. In her Form E the Wife did not assert a beneficial interest in the matrimonial home, despite saying she believed she had a beneficial interest in a number of properties in her native country, and indeed, in the yacht. What she says in the Form E about ownership is that:

*The property is held by an overseas company,. Further information (including detail of the parties' interest in the company) is required.*

29. In cross examination she was asked why she did not assert a beneficial interest if she believed she had one. Her answer was that the significance and meaning of beneficial interest was not explained to her and she reminded me that her English was not good. She was unable to explain why, if that was the case, she did make assertions as to beneficial interests in other properties.

30. In the questionnaire that she raised of the Husband (which was served before he disclosed the nominee agreement) she asked him under a heading 'FMH'

*Does the respondent accept that he is the ultimate beneficial owner of the property?*

31. It was put to her that this question was premised on the basis that she believed he was the ultimate beneficial owner, and was, at the least, a very odd question if she believed that she had a beneficial interest in the property.

32. The Wife struggled to understand the question in cross-examination, which is not surprising given the question was put through an interpreter, but even after several attempts at recasting the question she failed to explain why her questionnaire put the question to the Husband as it did.

33. The Husband's solicitors wrote what was effectively a letter before action on the 16 February 2024 which asserts that the Husband would be seeking a termination of the Wife's rights to occupy the family home pursuant to s33(3)(e) 'because your client has no beneficial interest in the property'.

34. The Wife's solicitors responded to that letter on the 29 February 2024. There is no suggestion in that letter that s33(3)(e) will not apply in the circumstances because the Wife had a beneficial interest in the property. Instead, there is the following paragraph:

*You make reference to the law in the determination of applications for an order for sale. It is not disputed that the court has the power to terminate matrimonial home rights under s33(3)(e) Family Law Act 1996. Those rights can only be terminated if the factors in s.33.6 have fully been taken into account.*

Those factors are then considered.

35. It is very odd that there is no assertion that s.33(3)(e) does not apply if it were the Wife's case at that time that she had a beneficial interest in the property.
36. The only conclusion arising from considering these three documents (the Form E, the Questionnaire, and the letter of the 29 February 2024) is that during this period of time the Wife did not have at the forefront of her mind that she had a beneficial interest in the matrimonial home. It might be possible to explain the question in Questionnaire and the solicitor's letter on the basis that the possibility had not been considered. But, that cannot hold in relation to the Form E representation. She was in the Form E making representations that she did hold beneficial interests in other properties so the concept must have been clear to her, and instead of advancing it she specifically raises the possibility that she might have an interest in the company that holds the property.
37. The Wife first asserted that she had a beneficial interest in her letter of the 28 March 2024, after the Husband issued his application. In that letter there is a bare assertion with no rationale provided. She was asked in solicitor's correspondence to particularise her case. She declined drawing the Husband's solicitors' attention to my direction as to statements, and requiring to see the conveyancing file.
38. It is in the light of a change in position, after the Husband's application, that Mr Molyneux advances his argument that the Wife's case as to a beneficial interest is a concoction created in order to frustrate that application.
39. Miss Hussey is logically able to meet that criticism head on: the Wife's claim to a beneficial interest is either good or bad in itself. That it was not presented earlier might be because she had failed to understand earlier that what had happened gave rise to such an interest.
40. While I accept the logic of that position it does not take into account, as I must, how likely it is that the Wife's account of what had occurred is accurate and how that can be squared with the fact that though it is accurate she had overlooked it before the Husband's application.
41. Her account of her case as to beneficial interest is given in her statement of the 28 May 2024. I turn to that.
42. She says in summary in that statement and maintained in oral evidence:
  - (i) The Husband was very generous to her. - This is not controversial.
  - (ii) The Husband bought an apartment for her in her native country in 2007. She was 'very upset' to subsequently discover that it was not held in her name but in the names of companies. The Husband re-registered it in her name and when she sold it in 2019 she kept the money. - The Husband accepts the apartment was held by companies and the Wife kept the money when it was sold. He did not accept that it had been re-registered prior to sale. I do not consider the difference important. What is clear is that he agreed she should have the money from that property.



- (iii) She had believed that she had a beneficial interest in other properties in her native country. - This is not accepted. I do not need to resolve this issue to deal with these applications.
  - (iv) She had misgivings about moving to England. In particular, leaving her dream home in her native country and she did so on the basis of assurances that she would have the security of a home in her own name. - This is denied. This is an issue to which I will need to return.
  - (v) The Husband referred to the matrimonial home as 'our home', or 'our house' and as his gift to her, most particularly at a birthday party in 2013 shortly before completion on the house. She says that he told everyone at the party, including various members of her family, that the house was a gift for her birthday. - This is denied. I will need to return to it.
  - (vi) Further, when shortly after she gave birth to the parties' youngest child, the Husband did not buy a present for her (as he had when the other children were born), saying that the house was her gift. - This is denied. I will need to return to it.
43. The Husband says that the decision to move to England was a joint decision. The parties had considered England or Switzerland, and the Wife chose England. He said there was no question of security. His very extensive wealth provided that. He said there were no assurances of a property being bought in the Wife's name or joint names but agreed that the move was on the basis that they would have a good family home in England. And that had happened.
44. The Husband had no particular recollection of the birthday party. He denied saying that the house was a gift to the Wife. He accepted that he referred to the property as 'our home' but denied that he would refer to it as 'our house'. It was pointed out by Mr Molyneux that no other member of the Wife's family had submitted any evidence to the court.
45. The Husband said that he did buy a present for the Wife on the birth of the youngest child. He denies he said the house was a gift to the Wife.
46. Before I turn to give my views on these issues I must refer to a further piece of evidence. The Wife's solicitors inspected the conveyancing file on the purchase of the matrimonial home in May. They had raised a point that there was no consent to the mortgage and waiver of right's document as would have been expected given that the Wife was occupying the property.
47. The Wife's position in her statement was that she did not recall signing such a document. Further she asserted that it was only on instructing solicitors following separation and inspecting the Register of Title that she discovered that a company was the legal owner. This she says was a shock to her.
48. A Consent to Mortgage and Waiver of Rights document was subsequently found. It was the one from the August 2018 remortgage. That document refers to the company as the mortgagor and the borrower. It says in terms that any rights or interests the Wife might have under Section 30 of the Family Law Act 1996 will be postponed and will be subject to the Lender's rights and powers under the mortgage.

49. The document was put to the Wife in oral evidence. She accepted that it bore her signature. The document was witnessed by a solicitor who says on the document that he has explained to the Wife the effect of the consent and ‘to the best of my knowledge’ she has understood the advice and entered into the deed willingly. The Wife said in oral evidence that she remembered signing the document, but that she could not remember meeting the solicitor and she would just sign what was presented to her by the family office without proper explanation. In her written closing submissions Miss Hussey made clear that she did not impugn the integrity of the solicitor. I must therefore hold that the document was explained to the Wife by him.
50. The unavoidable conclusion then is that I must reject the Wife’s evidence that it was only on inspecting Land Registry Title to the property that the Wife became aware that a company was the legal owner of the matrimonial home.
51. Miss Hussey urges on me that before considering who is telling the truth on the issues I have highlighted above I should reflect on:
- (i) The Husband’s Form E is inaccurate: it is accepted by him he had missed out a property and disclosed it only by subsequent letter; it omitted the nominee agreement (now produced) in relation to the matrimonial home; it failed to disclose multiple companies which have subsequently come to light; it did not mention an overseas company from which he has now obtained a loan.
  - (ii) He was late in meeting court deadlines for document production on 4 occasions and payment of maintenance and LSPO on one occasion;
  - (iii) The Wife was giving oral evidence on an occasion when she was not expecting to give that evidence and with an interpreter on obscure issues of property law;
  - (iv) The Husband was obfuscatory and could not remember the particular birthday party on which the Wife relies for the assurances.
52. I also caution myself that because of the procedure that I have adopted to hear oral evidence on this beneficial issue I have prevented a wide ranging cross examination of the Husband which may have highlighted other areas where it might be established he was not being honest.
53. I do bear these points in mind and shall therefore limit my general observations and focus on my findings on the particular issues in dispute. In general terms I considered the Husband a man used to power and used to getting his way, but now enormously stressed if not broken by the turn his life has taken. He appeared to me to treat the court with respect but I must treat his evidence with care. The Wife was charming and engaging: she was frightened understandably by the experience of giving evidence. Even accounting for the effect of having an interpreter I find she fell back on incomprehension when the questions became tricky.
54. I reject the Wife’s case that she has a beneficial interest in the matrimonial home.
55. Her position is undermined by the presentation of her position in Form E, Questionnaire and the letter of the 29 February 2024. It makes no sense that having been ‘very upset’ by discovering that the apartment in her native country was owned by a company and not in her name as she considered it ought to have been, she did not assert a beneficial interest in

the matrimonial home in the Form E, if, as she says, she first discovered this by her solicitors' involvement on separation.

56. Further it makes no sense that she should ask the Husband if he accepted the property was beneficially his when she considered it beneficially part hers.
57. And further still, as I have already said, it must follow that she knew the home was owned legally by a company from the Consent to Mortgage and Waiver of Rights document that she signed and the solicitor explained to her. Her first knowledge of this cannot have come with the involvement of her solicitors on separation. I cannot consider her evidence as reliable.
58. Turning to the factual issues to which I said I would return:
- (i) I agree with the Wife that it is highly likely that the Husband was the driving force to move to England. The Wife has not however proved on the balance of probabilities that she left her native country on assurances that she would have security of a property in her own name in England. I accept the Husband's case that the parties' security was his wealth. I consider it highly unlikely that a man who has arranged all his affairs through corporate structures would have assured the Wife that something different would happen on a move to England.
  - (ii) I agree with the Wife (and the Husband) that the Husband would refer to the matrimonial home as their home. It clearly was, but that does not give the Wife more than the Family Home Rights which are the subject of the Family Law Act application. I accept on the balance of probability that he might have referred to the property as 'our house', or the equivalent. I do not consider that this carried any connotation of beneficial ownership. On the balance of probabilities, I do not consider it likely that the Husband would have said that he was gifting the house to the Wife at her birthday party or otherwise. I think it entirely likely that he boasted of the house that he was providing for her and their family as their English home at the party before completion of the purchase. That is particularly likely if he was, as I have found, the driving force in the move to England.
  - (iii) I do not think that it is at all likely that he would have gifted a house now worth some £40m to the Wife on the birth of the youngest child. I make no finding as to whether the Husband did or did not gift the Wife jewellery at that time. I consider it entirely possible that he indicated that the home in England was what he was providing – meaning that he was providing the family with somewhere very nice to live, not that he was making the beneficial interest over to the Wife. I find it extremely unlikely that if the Wife believed the Husband had gifted her the house the Form E, Questionnaire and letter of the 29 February would have been written in the terms highlighted above.
59. In the light of these findings it is unnecessary for me to consider whether moving to England could amount to a detriment sufficient to give rise to a constructive trust, or an interest pursuant to the doctrine of proprietary estoppel.

#### *The Yacht Application*

60. The Husband in his oral evidence said that the yacht was his.

61. That has to be contrasted with his presentation in his written evidence both in his Form E and his statements in these proceedings, namely that the yacht is owned by AB Limited. Neither Miss Hussey in cross examination or Mr Molyneux in re-examination asked him to explain the inconsistency.
62. Mr Molyneux did in closing say that I should not over read the word ‘his’. It is the Husband’s in the sense that he has the use of it, and AB is a company ultimately under his control, but the yacht is owned by AB.
63. There is no dispute that it is legally registered in the name of AB and they are in correspondence asserting beneficial ownership of it.
64. I asked Miss Hussey how, when AB are not joined to the proceedings, and they are asserting ownership (with some good cause) I was meant to be dealing with an application under the Married Woman’s Property Act, which deals with questions ‘between husband and wife’ to sell what they considered to be their yacht.
65. In short, her response was that AB had been served with the application and had chosen not to engage in the proceedings and so I should make an order and give them a limited opportunity to engage before putting it into effect. This is not adequate. On a simple analysis the yacht is legally theirs (at least) and so this is not a dispute between husband and wife. I acknowledge that the Husband refers to the yacht as his but that cannot mean that I can reach through AB and its corporate responsibilities (involving the debt to CD now at some €13.6 m), pull the yacht out and sell it without AB being a party to these proceedings.
66. In relation to the alternative jurisdiction proposed in the D11 application, namely FPR 2010 r.20.2 (1)(c)(v) I asked Miss Hussey whether she wanted to address me on the different analyses of this section by Mostyn J in *BR v VT* [2015] EWHC 2727(Fam) and Cobb J in *WS v HS* [2018] EWFC 11 in the light of the practical (but not principled) retreat of Mostyn J in *SR v HR* [2018] 2 FLR 843. She did not wish to do so. I therefore shall not embark on a further review myself as to whether the Family Procedure Rules do in fact give rise to an independent power of sale. Even if I were to find the rules did give me such a power, I would remain hindered in dealing with the application without the involvement of AB.
67. I therefore reject the application made by the Wife.
68. However, my analysis of the Husband’s conduct in relation to the sale of the yacht does not end there. There is good reason to ask why, if the Husband is expecting the mortgage on the matrimonial home will not be renewed (as he says), and why when he had advanced in 2023 the sale of the yacht as a route to repay the mortgage, there has not been progression of that sale.
69. A potential answer to that and the related question I posed as to why, when the agreed value of the yacht is €35.5 m, is the yacht being marketed at €47 m, can be found in the letter from the Wife’s preferred selling agents. They relate that sale price tends to be 20% of last ask price, and that an asking price of €47m would lead to a sale price of approximately €35m to €37m. I am told (though I do not think the

underlying document appears in the bundle) that W's preferred selling agents themselves seek an appointment period of 12 months on the basis that 'most yacht sales take a significant amount of time to gather momentum' in part because there are 'limited seasonal buying windows'.

70. A further criticism of Miss Hussey as to the Husband's *bona fides* in selling the yacht was that he had incurred very considerable outgoings on the yacht including having work done on it and leaving it crewed. That is what lay behind the increase in the debt to CD. However, Mr Molyneux drew to my attention, W's preferred selling agents had advised themselves that to sell the yacht it should be in a good state of repair and crewed.
71. Criticism is made by Miss Hussey of the agents employed to sell the yacht. She says they are too small. That is disputed. I do not have evidence to enable me to consider whether they are too small or not. I note the listed steps that are set out in the Husband's statement as being taken to sell the yacht. Those steps do appear to be a genuine attempt to bring about a sale.
72. I have formed the view that AB, and behind them the Husband, is making genuine attempts to sell the yacht. I do find, however that the Husband is not seeking to sell the yacht in a hurry. He is endeavouring to get a good price rather than just trying to get whatever he can.

*Family Law Act s. 33 (6)*

73. Having determined that the Wife has no beneficial interest in the matrimonial home I turn now to the factors under section 33(6) to consider how to exercise my discretion under section 33 (e).
74. *Housing needs and housing resources of the parties and any relevant child.* I must bear in mind that the matrimonial home bears a central part of a family's emotional life. It carries that load here for the Wife and children. There can be no question however that they will be rehoused inadequately if I allow the Husband to sell it. The Husband has proposed that he pays rent at £25,000 a month (a reduction on his original suggestion of £35,000 a month). I can set that rental figure as I consider appropriate – and I will consider the figure further, and provision of a deposit, below. The Husband is in rented accommodation already. I do not consider it appropriate for me to attach anything more than minimal weight to the fact that the Wife was prepared to move into rented accommodation in advance of her own Family Law Act application. That was, she said, because of the Husband's behaviour. It does not mean she is happy to leave the matrimonial home.
75. *Financial resources of each of the parties.* The Wife has only her jewellery. The Husband's resources are very much in issue but he is continuing to conduct himself as a man with very substantial resources. I do not consider that bankruptcy is round the corner, but there is very real force in his argument that his affairs are not what they were. The war will have had an effect. The SJE report underlines his argument that his financial position is much worse than it was. The fact that he was only able to renew his mortgage for one year in 2023 and that he indicated at that time that he was planning to sell the yacht to repay the mortgage does indicate that the bank are nervous about the mortgage.

76. Miss Hussey has drawn to my attention that the Husband's case has shifted during the currency of these proceedings such that in his application he was asserting that there was no prospect of extending the facility beyond August 2024 whereas in his witness statement he says the bank might grant a short extension. Indeed, shortly before the hearing the Husband was provided with a pack to enable him to make an application for an extension, and a valuer attended at the property the day after the hearing on behalf of the bank.
77. Miss Hussey also draws to my attention that the Husband has not been pursuing the application with the bank for an extension of the mortgage with any assiduity. A letter was sent out by email on the 21 March 2024, with no more than a reminder of the mortgage term. After some exchange of emails at the end of March, the bank chased for information for a renewal at the end of April 2024, and that was not answered till the 23 May 2024. (I do note that the correspondence makes enquiries about the sale of the yacht and the home.)
78. Further, Miss Hussey draws my attention to the personal financial statement prepared by the Husband as part of the remortgage application. The one dated May 2023 puts the Husband's net worth at £112 m. It says that there will be dividend income of some £9.5 m for the next year.
79. There is not a great deal of force in the Husband's change in tone about the likelihood of an extension. A sale will inevitably take some time. It does seem likely that the bank would rather have the Husband do the work of selling the property than sell it themselves. If they take the view that the property needs to be sold then it is likely that they will grant a short extension.
80. Mr Molyneux answers the charge that the Husband has been tardy in making his application for an extension by pointing out that the Husband has not been well. He has been in a clinic suffering from depression. And by pointing out that managing his business during the war has taken a lot of his time. I consider this a weak response. I consider that the Husband has not been that worried about seeking the extension for the same reason set out above. The bank will provide a short extension to enable him to sell the property – if they take the view it should be sold.
81. Mr Molyneux says that the personal financial statement submitted to the bank is a representation designed to encourage an extension. He says that the Husband would be criticised either way on this point: if he adopted the figures of the SJE then he would be accused of self-sabotaging his application. He makes the point that his representation won't be simply accepted by the bank and reminds me that last year the Husband only got a one year extension. I can see force in this response but it does make clear to me that I must treat the representation of the Husband's net worth by the SJE with caution.
82. Where does this take me?
  - (i) As I have set out, I think the Husband is likely to secure an extension on the mortgage. I think that talk of him teetering on the edge of financial ruin is overstated. I do think however that in the light of the one year extension last

year, and the so far failed plan to sell the yacht, the bank are likely to grant him an extension but on the basis that he sells the property.

- (ii) It does appear to be rational to sell the property. The mortgage is very large. The property is very valuable. His fortunes are suffering a reversal. The Husband has produced realistic evidence that it will probably take a year to a year and a half to sell the property. The house is likely to generate more money on a sale if the property is marketed by the Husband, and his team, rather than the bank.
- (iii) The Husband has now accepted that the Wife and children can stay in the property until it is sold.
- (iv) While the Wife in Form E considered that she might remain in the matrimonial home in the long term, she has not advanced that position in these proceedings, and the insecurity which the very large mortgage presents does not suggest that is a likely long term outcome.
- (v) The Wife can with force say that she should not have to give up the family home until the resolution of this case. Two moves are worse than one.

- 83. *Likely effect of any order on health, safety and well being of the parties or the children.* The effect of the order if I grant it is that the Wife and children will need to move into rented property if the property is sold. Although that will cause emotional disruption and thereby effect well being it will have no effect on health or safety.
- 84. *Conduct of the parties.* I remind myself here of the Wife's allegation that the Husband is manoeuvring to retain the yacht while selling the home. Further, I consider that the Husband may be planning to run down the on shore assets by selling the home and meeting bills from the proceeds hereafter.
- 85. I do not on balance consider that these points can prevent a sale. They are risks that are to be managed by directions.
- 86. *S. 33 (6) Conclusion.* I remind myself that I need to consider all the circumstances of the case. On balance the view that I take in the light, in particular, of the parties' financial resources and ability to meet the housing needs of the Wife and children in rented accommodation, is that the property should be marketed for sale, and if an appropriate sale is forthcoming, sold, now. The Wife and children should remain in occupation until completion of the sale or if agreed a prior move to rental accommodation. Her Family Home rights can therefore continue for now, but will, subject to the provision of alternative rental accommodation, terminate on the completion of a sale.

### *Consequential Directions*

- 87. Having reached that conclusion, it is appropriate for me to make further directions governing:

- (i) How I expect the sale process to take place and the provision of information to the Wife;
- (ii) How the proceeds of sale are to be held and what can be paid from them;
- (iii) At what level of provision funds are to be made available to the Wife for rent, deposit, staffing, bills on new property.

88. I acknowledge that the parties will not have made submissions on each of these points and I intend here to make broad statements of intent such that the parties with their lawyers can agree draft directions to meet the intent. Should there be disagreement I will deal with that in writing.
89. I consider that the Wife should be kept fully informed of all material developments in the sale of the matrimonial home. That includes being kept informed as to the response of the bank to the application for the extension of the mortgage and being told who is instructed as selling agent and their advice as to what can realistically be achieved on a sale. Obviously as she is in occupation she will need to be told when visits are being arranged. I will place an obligation on her to not disrupt any viewings and to co-operate reasonably with the sale process. I require the Husband to keep her informed as to any offers made on the property, the agent's advice, and his response.
90. Further, to ensure there is clarity going forward, I require the Husband to keep the Wife informed as to all material developments in relation to the sale of the yacht. I expect him to produce at least every two months an account as to marketing and an account as to offers received.
91. The proceeds of sale are to be held after payment of the mortgage, costs of sale, and any tax on sale, in an escrow account to be held by solicitors who act on the sale, the details can be agreed but the account should be onshore.
92. The Husband shall make payment to the Wife, which can in due course be debited from the funds in the escrow account but for the first period (before sale) will need to be paid by the Husband, funds to cover her rent as set out below, or determined from time to time by the court, the deposit for the property, and a monthly amount for staff and bills.
93. Having looked at the particulars provided to me I consider up to £39,000 pm is appropriate for rent (subject to any variation application). That may need to be paid in periods longer than one month. The deposit will be whatever is required. The Wife seeks for household bills in addition to her maintenance £25,000 pm on the basis that those bills are currently met for her in the matrimonial home and £53,000 pm for staff on the basis that these are currently provided for her in the matrimonial home. The Husband does not advance any alternative figures. It is Mr Molyneux's case that if the matter does not settle at FDR, then he will need to bring an application to vary interim maintenance and that will be the time to consider these figures, and indeed the rent. I am not prepared to leave matters on that basis, although I will of course consider variation were any application brought. I direct therefore that the Wife should receive the extra £25,000 to her MPS to cover bills. In relation to staff I direct that the Husband should continue to provide the Wife with the use of staff in her new property as he has in the old one. It does not need to be identical staffing and I expect the parties to be able to agree that. These amounts can be funded in due course from the escrow account



but the Husband will need to provide funds in advance of the sale to enable the Wife to have rented an appropriate property one month ahead of completion of the sale.

94. I reject the Husband's application to meet school fees and his rent from the escrow account. I have made an order that he meets school fees already and the previous maintenance order was on the basis he met his own rent. Until a variation application is made that shall continue.

*Costs*

95. In the event that either party wishes to make a costs application I will determine that, together with the costs application made by the Husband in relation to the adjournment application on paper.