

This approved judgment was handed down by the Judge remotely at a hearing and by circulation to the parties' representatives by email. The time and date of hand down is deemed to be 10.00 a.m. on 29 August 2023.

This judgment is linked to: AP v BP and others (financial remedies - appeal - disclosure - privilege) [2023] EWFC 169

Neutral Citation number: [2023] EWFC 170 (B)

IN THE FAMILY COURT SITTING AT OXFORD

IN THE MATTER OF THE MATRIMONIAL CAUSES ACT 1973

Draft judgment sent: 17 July 2023

Approved judgment handed down: 29 August 2023

Before : HHJ Vincent

Between :

AP

Applicant husband

and

BP

Respondent wife

and

PN

GN

Second and third respondents (intervenors)

Joseph Switalski, instructed by Newton Kearns LLP for the Applicant husband

Rhiannon Lloyd, instructed directly by the respondent wife

Rosanne Godfrey-Lockwood, instructed by CMS solicitors, for the intervenors

Date of hearing: 12 and 13 June, and 29 August 2023

APPROVED JUDGMENT

Introduction

1. The husband (58) and the wife (48) lived together from 1998, were married in August 2002, and separated in May 2017. They have three children together, aged twenty-two, fifteen and fourteen. Each of the parties has a child from another relationship.
2. The wife petitioned for divorce on 24 August 2018. The wife's application for financial remedy was issued on 31 October 2018. Decree nisi was pronounced on 3 April 2019. The first appointment in the financial remedy proceedings took place on 26 April 2019, but thereafter the proceedings have stalled, as the parties have become embroiled in litigation with the intervenors concerning the parties' businesses [Company A] and [Company B] Limited.
3. That litigation has now spilled into the financial remedy proceedings. The husband discovered at the end of July/early August 2021 that the wife had sold shareholdings in [Company B] to the intervenors. He alleges that she did so with the intention of undermining his position in his commercial dispute with them, and, crucially for the purpose of this application, to deplete the assets of the marriage which are the subject of the parties' dispute within these financial remedy proceedings.
4. By an application made on 22 December 2021 the husband seeks, pursuant to section 37 of the Matrimonial Causes Act 1973, to set aside the two sets of transactions by which shares in [Company B] were transferred from the wife to the intervenors.
5. The wife made an application for the intervenors to be joined to the financial remedy proceedings in February 2022.
6. A hearing took place in October 2022 in respect of disclosure of documents relevant to the section 37 application. The District Judge refused the husband's application for disclosure, finding that the documents were subject to litigation privilege.
7. I heard an appeal in respect of that decision in March 2023. I allowed the appeal. My judgment is [published on the National Archives as *AP v BP and others (appeal – disclosure – privilege)* [2023] EWFC 169]. Paragraphs 4 to 26 set out the relevant history, and the various transactions that led to the share transfers that are the subject of this application, repeated here:
 4. *The husband is a media personality. He is the founder and frontman of [Company A], a media channel, which posts content about sport.*

5. *Income from [Company A] was collected by another company, [Company B], which was incorporated on 6 November 2012. The husband's colleague ML was the production assistant and held a 30% shareholding in [Company B] (30 shares). The remaining 70 shares were held by the wife. She says she was responsible for marketing, advertising and selling merchandise. The husband disputes the extent of her involvement. He says she held her shares wholly for his benefit, because his credit rating at the time precluded him from opening a business bank account.*
6. *On 10 January 2017 the company [Company X] Ltd was incorporated. Its directors and equal shareholders are the intervenors, GN and PN.*
7. *On 16 January 2017, the husband and ML entered into a shareholders' agreement on behalf of [Company B] with [Company X]. The intervenors were investing money into [Company A]/[Company B], In return for their investment, they intended to gain a stake in those companies.*
8. *In a side letter (also signed by the wife) it was agreed that once [Company B] and [Company A] reached a value of £5million, the beneficial ownership would be transferred to [Company X].*
9. *On 2 February 2017 the husband was appointed a director of [Company X].*
10. *On 1 May 2017 the husband and wife separated.*
11. *The wife alleges that post separation, the husband set up a new group of companies, transferring ownership of [Company A] to that new group, cutting it loose from [Company B]. The husband says that [Company A] belongs solely to him. The shareholding in the new company is owned 90% by the husband's accountant and 10% by the husband, but it is alleged by the wife that the accountant holds his shares on trust for the husband. She says [Company A] is a part of [Company B] and should not have been separated in this way. She alleges that these transactions represent an attempt by the husband to divert matrimonial property away from her.*
12. *On 29 October 2018 the husband's directorship of [Company X] was terminated.*
13. *On 31 October 2018 the wife commenced financial remedy proceedings against the husband.*

14. *On 3 October 2019 the intervenors and [Company X] commenced proceedings in the High Court against the husband, the wife and ML, asserting that there had been breaches of the shareholders' agreement. It was alleged that the value of the relevant companies had exceeded the agreed threshold of £5 million, yet the beneficial ownership of [Company A]/[Company B] had not been transferred to [Company X].*
15. *On 4 December 2020 this litigation was compromised by way of settlement agreement and Tomlin order. The husband and ML agreed to pay £250,000, plus £100,000 costs to the intervenors. The wife was not a party to the settlement, and did not participate in negotiations. She was subsequently discharged as a party to the litigation in May 2021.*
16. *Unbeknownst to the husband, on 30 October 2020, the wife had entered into an agreement (the agreement) with the intervenors. She agreed to assign 51 of the shares in [Company B] to the intervenors, for the sum of £51. This left her with 19 and ML with his original 30. The intervenors signed the agreement on 3 November 2020.*
17. *It is accepted that neither the husband nor ML were told about this agreement at the time, either by the wife or the intervenors.*
18. *In February 2021 the wife and the intervenors entered into another agreement, providing that if the wife obtained ML's 30% shareholding, she and the intervenors would split it between them.*
19. *Again, it is accepted that she did not tell ML or the husband about this agreement.*
20. *On 25 March 2021 the intervenors wrote to the Court to say that the [Company X] litigation had been settled 'in principle'. The wife was formerly discharged as a party to the [Company X] litigation on 20 May 2021.*
21. *On 7 July 2021 the wife procured the transfer of ML's 30% shareholding to her, in exchange for W waiving £10,000 ML purportedly owed to [Company B].*
22. *The wife did not tell ML about her earlier agreement with the intervenors. Neither ML nor the husband knew at this time that the wife had already agreed to transfer 51% of the [Company B] shareholding to the intervenors.*

23. *On 30 July 2021, pursuant to the agreement she signed on 30 October 2020, the wife transferred 51 of her shares in [Company B] to the intervenors (25 to one and 26 to the other), thereby giving them a majority interest in [Company B].*
24. *The single joint expert in the financial remedy proceedings reported on 12 November 2021. He valued [Company B] at £177,000 if it does not own [Company A] and £592,000 if it does own [Company A]. This represents a significant proportion of the assets in the financial remedy proceedings, and [Company A] is the family's primary income stream. The husband asserts that even if these shares were not held on trust for him by the wife and she owned them outright, they should be regarded as matrimonial property. On the expert's valuations, 51% of the shareholding is either £90,000 or £301,000. The husband questions why the wife sold them for only £51.00. He asserts that this is an attempt by her to dispose of matrimonial assets.*
25. *Following the agreement signed by the wife on 30 October 2020, the intervenors supported the wife in opposing the husband's application to register the [Company A] trademark. Once they were shareholders in [Company B] themselves, the intervenors applied to acquire the [Company A] trademark, obtaining an order on 3 November 2021. There is ongoing litigation about this between the intervenors and the husband.*
26. *On 24 February 2022 the intervenors, as majority shareholders, served on the husband and ML a letter of claim asserting that [Company A] has been unlawfully misappropriated, seeking to set aside any transaction that separated it from [Company B], and claiming damages.*

Amendments to the chronology

8. In my chronology I described only one set of share transfers, of 26 and 25 shares to GN and PN respectively on 30 July 2021. The husband seeks an order in respect of those transactions, but also in respect of a further disposition of the 30 shares acquired by the wife from ML on 9 July 2021. On or around 27 July 2021, the wife transferred a further 8 shares to GN and 9 shares to PN, retaining 13 for herself.
9. By 31 July 2021, the wife held 32 shares in [Company B], and the intervenors 34 shares each.
10. Some further changes are required to my chronology:

- The husband has accepted that his holding company is not owned 90% by his accountant, but that he entered into an agreement with his accountant providing that his accountant held 90% of the shares of the holding company on trust for the husband.
 - The dates of the various share transactions are not agreed.
 - The reason for the two different valuations of [Company B] given by the single joint expert is not about whether [Company B] owns [Company A] or not, but are about the husband's contribution to the business. The expert proceeds on the basis that the only value to [Company B] is connected to its ownership of the [Company A] brand. If the husband were to be involved with the business, the higher valuation applies, if not, then the lower one applies.
 - I now understand that the investment from the intervenors into the company did not come directly from them, but was an agreement to raise investment from third parties.
11. On this last point, in cross-examination PN accepted that the agreement was for £95,000 of investment to be raised for [Company X] Ltd and £5,000 for [Company B], but in fact the sums were never paid. The relationship between the intervenors and the husband broke down shortly thereafter. Each side will say the other was to blame. This appears to be the seed of the dispute between the intervenors and the husband, and which eventually led to the litigation between them, the husband, the wife and ML, commenced in October 2019, whereby the intervenors were seeking redress for what they said was a failure to implement the terms of the shareholders' agreement to transfer the beneficial ownership of [Company A]/[Company B] to [Company X] Ltd once the value of [Company A]/[Company B] reached £5m. The intervenors alleged that as a result, they suffered loss in the form of revenue from the activities from [Company A] and the missed opportunity to have a stake in [Company B], which was, they say, to be the umbrella company for a whole range of sporting online TV channels, with associated benefits in the form of sponsorship and merchandising deals.
12. The husband does not dispute that he separated [Company A] from [Company B], and from around November 2018 caused all income he received for his work with [Company A] to be received by a new business, P Holdings Limited. It is the wife's (and the intervenors') case that [Company B] owned [Company A], and in his actions the husband has stripped out [Company A] from [Company B] and thereby deprived the wife of substantial income, and of her share in a business in which she was a driving force. The husband will say that he was becoming increasingly frustrated with being told at meetings that he was

entitled to nothing at all from the business, when he was the one who was working full-time to generate all its income, and when he says the business was entirely based on his media persona, his knowledge and contacts, and the content he created.

13. In her most recent statement the wife suggests that the [Company A] channel generates significant revenue online, and sponsorship from big name clients, generating income in the hundreds of thousands. She alleges that the husband has unlawfully deprived her of her rightful share in this income, and has failed to recognise her contribution and vision for [Company B] and the subsidiaries it was intended to create.
14. The husband says that all the income has been generated only by his own efforts, at least since the parties' separation. The husband says that the wife is under a misapprehension that she has enlisted the intervenors to support her in a fight against him. He says they have taken advantage of her, and she has been an unwitting instrument of allowing the intervenors to wage a battle against the husband, with disastrous financial consequences, which will not just have a ruinous impact on him, but on the wife, and their whole family.
15. The husband asks the Court to set aside the two sets of dispositions of [Company B] shares.
16. Following the appeal, the intervenors filed and served the agreements, the stock transfers and email correspondence between them and the wife relating to the agreements.
17. The section 37 application itself was listed before me over two days on 12 and 13 June. I heard evidence from the husband, the wife and PN.
18. I received written submissions from the parties by 30 June 2023 and reserved this judgment.

The law

19. Section 37 of the Matrimonial Causes Act 1973 provides as follows:

37 Avoidance of transactions intended to prevent or reduce financial relief.

(1) For the purposes of this section "financial relief" means relief under any of the provisions of sections 22, 23, 24, [F124B,] 27, 31 (except subsection (6)) and 35 above, and any reference in this section to defeating a person's claim for financial relief is a reference to preventing financial relief from being granted to that person, or to that person for the benefit of a child of the family,

or reducing the amount of any financial relief which might be so granted, or frustrating or impeding the enforcement of any order which might be or has been made at his instance under any of those provisions.

(2) Where proceedings for financial relief are brought by one person against another, the court may, on the application of the first-mentioned person—

(a) if it is satisfied that the other party to the proceedings is, with the intention of defeating the claim for financial relief, about to make any disposition or to transfer out of the jurisdiction or otherwise deal with any property, make such order as it thinks fit for restraining the other party from so doing or otherwise for protecting the claim;

(b) if it is satisfied that the other party has, with that intention, made a reviewable disposition and that if the disposition were set aside financial relief or different financial relief would be granted to the applicant, make an order setting aside the disposition;

(c) if it is satisfied, in a case where an order has been obtained under any of the provisions mentioned in subsection (1) above by the applicant against the other party, that the other party has, with that intention, made a reviewable disposition, make an order setting aside the disposition;

and an application for the purposes of paragraph (b) above shall be made in the proceedings for the financial relief in question.

(3) Where the court makes an order under subsection (2)(b) or (c) above setting aside a disposition it shall give such consequential directions as it thinks fit for giving effect to the order (including directions requiring the making of any payments or the disposal of any property).

(4) Any disposition made by the other party to the proceedings for financial relief in question (whether before or after the commencement of those proceedings) as is reviewable disposition for the purposes of subsection (2)(b) and (c) above unless it was made for valuable consideration (other than marriage) to a person who, at the time of the disposition, acted in relation to it in good faith and without notice of any intention on the part of the other party to defeat the applicant's claim for financial relief.

(5) Where an application is made under this section with respect to a disposition which took place less than three years before the date of the application or with respect to a disposition or other dealing with property which is about to take place and the court is satisfied—

(a) *in a case falling within subsection (2)(a) or (b) above, that the disposition or other dealing would (apart from this section) have the consequence, or*

(b) *in a case falling within subsection (2)(c) above, that the disposition has had the consequence,*

of defeating the applicant's claim for financial relief, it shall be presumed, unless the contrary is shown, that the person who disposed of or is about to dispose of or deal with the property did so or, as the case may be, is about to do so, with the intention of defeating the applicant's claim for financial relief.

(6) *In this section "disposition" does not include any provision contained in a will or codicil but, with that exception, includes any conveyance, assurance or gift of property of any description, whether made by an instrument or otherwise.*

(7) *This section does not apply to a disposition made before 1st January 1968.*

20. *'[T]he application of the first-mentioned person' at section 37(2) plainly refers to the person making the application under section 37, within existing financial remedy proceedings. Section 37 is for the benefit of both applicants and respondents in financial remedy proceedings.*
21. *'Defeating' a claim for financial relief includes, '...**preventing** financial relief from being granted to that person...', '...**reducing** the amount of any financial relief which might be so granted...', '...or **frustrating** or **impeding the enforcement** of any order which might be or has been made at his instance...' (section 37(1)).*
22. *Section 37(2)(a) gives the Court the power to prevent a disposition about to be made in order to protect assets that may be the subject of a claim for financial remedy. Section 37(2)(c) gives the Court power to set aside a disposition after a final order has been made, where the intention was to frustrate or impede the implementation or enforcement of that order.*
23. *The husband asks me to exercise the powers given by 37(2)(b). That provides that the Court may set aside a disposition that has been made before final orders within financial remedy proceedings, where the disposition has been made with the intention of defeating the application for financial relief within the meaning of section 37(1), and if the disposition were set aside, different financial relief would be granted to the applicant.*

24. Section 37(5) establishes a presumption in respect of the intention of defeating the application for financial relief. If the dispositions were made less than three years before the application was made and the transactions are found to have defeated the claim for financial relief within the meaning of the section, it shall be presumed that the person who disposed of the property did so with that intention.
25. The presumption may be rebutted (section 37(5); '*unless the contrary is shown*'). The burden falls upon the person seeking to rebut the presumption, in this case the wife. The intervenors' intentions are of no relevance at this stage of the exercise. The court must be satisfied on a balance of probabilities that the wife did not act with the intention of defeating the claim for financial relief when she made the dispositions.
26. An intention to defeat a claim for financial relief, '*does not have to be the dominant motive in the transaction; if it is a subsidiary (but material) motive then that will suffice ..*' Kremen v Agrest and Fishman [2011] 2 FLR 478 at paragraph 9(i).
27. Even if the Court finds that the wife did have the intention of defeating the claim for financial relief, that does not mean the transaction is automatically set aside. Section 37(4) provides a potential defence to the intervenors. This would be established if they can prove that:
 - (i) The dispositions were made for valuable consideration;
 - (ii) The intervenors acted in good faith in relation to them; and
 - (iii) The intervenors were without notice of any intention on the wife's part to defeat her husband's claim for financial relief.
28. The burden of proof is on the intervenors to establish all three limbs, (see para 11 of Kremen v Agrest and Fishman [2011] 2 FLR 478).
29. The 'knowledge' required by the third limb, notice of W's intentions, extends to constructive knowledge which, per Farwell J in Hunt v Luck [1901] 1 Ch 45 goes as far as: '*...knowing something which ought to have put him to further inquiry, or from his wilfully abstaining from inquiry, to avoid notice...*'

The evidence

30. Many of the questions put to the husband were a dress-rehearsal for the full financial remedy application, seeking to explore the extent of the husband and wife's contributions to the business, or to expose the husband as having acted

immorally, and thereby justifying the wife's actions as retaliation or self-preservation. The wife and the intervenors assert that the husband stripped out [Company A] from [Company B], in order to deprive the wife of any meaningful interest in the business, and that he has acted selfishly and dishonestly by then seeking to transfer ownership of [Company A] to a separate holding company. This may or may not be the case, but these are matters for the substantive application. There is no application before the Court in respect of any disposition said to have been made by the husband.

31. I must focus on the dispositions of the shares and the wife's and the intervenor's intentions at that time.
32. The husband's evidence was helpful to provide the context for the transactions with which I am concerned. I found him to be a reliable witness. He answered questions in a straightforward and open way. He did not seem to be overthinking the answers, or trying to put forward some particular narrative, but gave frank and clear answers based on his own knowledge and understanding.
33. He accepted that he had misled both the wife and the Court in the financial remedy proceedings by asserting that his accountant owned ninety percent of the holding company that he set up. This is not the case, he owns all the shares. His motivation in giving that wrong information was to try and keep assets that he regarded as his, outside the financial remedy proceedings. He said in his witness statement and in his oral evidence that he knows he was wrong to do this. He says that he will continue to argue in the financial remedy proceedings that [Company A] rightfully belongs to him. However, he accepts that it is an asset that falls to be considered within those proceedings, that any notion that his accountant had shares in it was a fiction, and that it is for the Court to determine the extent to which any asset held either by him or his wife should be dealt with in order to establish a fair outcome.
34. When she gave her evidence, the wife was fixed on her own narrative. This narrative was so relentlessly negative about the husband that she seemed at times wilfully to refuse to accept some quite basic facts, and gave contradictory and implausible answers. This undermined the credibility of her evidence.
35. When she gave evidence about the transactions with which I am concerned, her explanations seemed contrived and contorted. She gave evidence consistent with the case put on her behalf, that she acted to protect herself in the litigation and in retaliation to the husband's actions in setting up a holding company and informing the wife that his accountant was the majority shareholder of that company. However, her explanation came across as something that had been crafted after the event, and does not sit with the chronology, the contemporaneous documents, nor the evidence of other witnesses.

36. Within these proceedings, she had a number of opportunities to tell the Court about her dealings with the intervenors, but she did not do so, either at the hearing on 26 February 2021, when giving updating disclosure on 15 May 2021, nor when giving a statement for the single joint valuation expert Mr Pym, on 20 June 2021. She justified herself by saying that if the husband had known, he would have tried to stop her.
37. Mr PN gave evidence on behalf of himself and his uncle, GN, although it is his uncle who provided the fuller statement. Mr PN's statement simply confirmed and agreed what his uncle had said. His oral evidence was unhelpful, evasive, at times rambling, and full of denials, which appeared to be given only for the sake of disagreeing with the questioner, and disregarding of objective facts.

Analysis

38. The evidence I have heard and read paints a picture of secret manoeuvres, manipulations and underhand dealings, at the heart of which is a battle for control of [Company A].
39. Each of the parties has presented a more detailed chronology than the one I set out in my earlier judgment, highlighting some of the many areas of factual dispute.
40. I am mindful of the wider disputes between these parties, including the financial remedy application itself. I must only make findings that are necessary to resolve the present application, focusing on the dispositions which I am asked to set aside.
41. The agreement signed by the wife and the intervenors was made after they approached her in August 2020 for a meeting in person, followed up with five or six zoom calls. The agreement went through a number of drafts in correspondence.
42. The agreement was signed by the wife on 30 October 2020, and by each of the intervenors on 3 November 2020. The agreement provided for the following:
 - (i) The intervenors to be appointed to the board of [Company B] and for 51% of the shares in [Company B] to be transferred to the intervenors;
 - (ii) Once the share transfers had taken place and the intervenors were appointed to the board, the intervenors agreed:

- to settle claims made against the wife in the October 2019 [Company X] litigation;
 - to fund [Company B] taking legal action against the husband (subject to obtaining legal advice on the merits) in respect of the claim the wife asserted [Company B] had in respect of losses she says the husband had inflicted on the business by stripping [Company A] out from it;
 - this funding was in the form of a loan, repayable by [Company B] ‘on demand’.
43. The wife signed the stock transfer forms at the same time as she signed the agreement. Consideration for those shares was set at £51.
44. The agreement provided that the share transfers would not be approved by [Company B] whilst the husband and ML remained directors, and that the intervenors could request the share transfers be registered ‘at their discretion’. The agreement states, *‘it may be that GN/PN decide that the share transfers will not be notified to the board or company secretary of [Company B] pending completion of the steps outlined below to remove Mr P/ML as directors of [Company B] and pending the appointment of GN/PN as directors of [Company B].’*
45. In the agreement, the wife agreed to take steps to remove the husband and ML from the board of [Company B], and to appoint the intervenors in their place, so that they and she would become the directors.
46. The intervenors agreed to fund [Company B]’s costs of objecting to a trademark application that the husband had registered in respect of [Company A], and there was mention of consideration of support for a claim the wife might bring against ML for some of his shareholding.
47. The agreement expressly stated that the decision about when the share transfer would take effect was to be in the hands of the intervenors, and that it was contemplated that this would be delayed so as not to alert the husband or ML to the agreement. In the circumstances, it is disingenuous for the wife and the intervenors to suggest now that the share transfer took place on the date the wife signed the stock transfer form.
48. I am satisfied to the standard of a balance of probabilities that the transfer occurred, in line with the terms of the agreement at a later date, on 30 July 2021, only once the husband and ML had been removed as directors and the intervenors had been appointed in their place.

49. The husband resigned as a director of [Company B] on 25 November 2020.
50. On 4 December 2020 the intervenors reached an agreement to settle the [Company X] litigation with the husband and his business partner ML, which involved the husband paying £250,000 to the intervenors. The terms of the settlement are unambiguously clear that the ‘claims’ to be settled were defined as *‘all claims and counterclaims made by a party to this agreement in the proceedings’*.
51. By a further agreement made in or around February 2021, also not disclosed to the husband, the intervenors and the wife agreed that the wife would explore with ML the possibility that he would transfer his 30 shares in [Company B] to the wife, and that upon that transfer taking place, she would hold five for herself, and hold the remaining twenty five shares on trust (split eight for her, eight for GN and nine for PN). This agreement provided that the intervenors, *‘will be entitled to give directions to [the wife] as to what to do with the ML shares [held on trust] and [the wife] agrees to act in accordance with the directions given.’*
52. Around the same time, on 5 February 2021, ML resigned as a director of [Company B].
53. Neither the husband nor ML was aware of any of the wife’s agreements with the intervenors until the filing of statements at Companies House on 30 July 2021.
54. The wife says in her statement that ML transferred his 30 shares to her on 9 July 2021. The wife says she signed the stock transfer forms on 27 July 2021, transferring a further eight to GN and nine to PN in line with their directions, as per the February 2021 agreement. The statement filed at Companies House was dated 17 July 2021, and filed on or about 30 July 2021.
55. In his valuation report, Mr Pym said he had received conflicting information as to the basis upon which ML considered he was transferring his shares. Text messages between him and the wife evidence her telling him that he owed the company £10,205. There are some messages which suggest that he agreed to forgo his shares if he did not have to repay the loan i.e. the loan was written off by the company in return for the shares. However, in another message, the wife states that in return for the shares, she would become liable for the £10,205 and she would owe it to the company rather than him. The wife’s own statement is similarly contradictory and unclear. At one point she describes ‘taking over’ the loan, elsewhere in the statement she says that ML had been ‘released’ from the debt.

56. The net effect of the two sets of transactions was that the wife moved from holding 70 shares and ML holding 30, to the wife becoming a minority shareholder with 32 shares, and each of the intervenors held 34 shares each.

Are the transactions reviewable dispositions within the meaning of section 37(5) and section 27(2)(b) of the Matrimonial Causes Act 1973?

57. The assets of the family are a modest amount of equity in a mortgaged property in which the wife lives, and then the businesses [Company A] and [Company B]. The single joint expert valued [Company B] (on the basis that it did own [Company A]) at between £177,000 and £592,000. The higher value would apply if the husband continued to work for [Company A]; at the moment [Company A] and its activities are his primary source of income.
58. Originally, [Company B] was the vehicle by which the revenues for [Company A] were collected. When [Company B] was incorporated in November 2012 the shares were owned 70% by W and 30% by ML (she says it was 80% to 20% but later the husband and ML agreed to increase ML's share to 30% without consulting her). The husband says the wife had no significant involvement in the business, but held shares on trust for his benefit, because at the time he had a poor credit rating and was not able to open a business account or hold the shares for himself. The wife says no, the decision was made for the business to be put in her name because the husband needed to 'instil trust' following previous failed business ventures and a relationship the husband had out of the marriage which had produced a child. There is a record of her saying that she wanted to build a family business together with her husband, and to make sure that *'this other girl would have no claims on the business or family assets.'*
59. Whether or not her 70% share in [Company B] was owned wholly by her, or whether all or part of her share was held on trust for the husband, while the shareholding remained in her name, it fell to be considered as an asset within the financial remedy proceedings.
60. It has been asserted that as the husband had stripped out [Company A] from [Company B], [Company B] had no real value and the share transaction could not then be said to have depleted the assets of the marriage to any significant degree. This argument is inconsistent with the valuation of the single joint expert, with the whole premise of the wife's and the intervenors' claims, that [Company A] is rightfully owned by [Company B], and with the actions of the wife and the intervenors, which show clearly the value they themselves attached to the shares.
61. In selling 51 shares in the business to the intervenors, the wife substantially reduced the available funds within the financial remedy proceedings. On Mr

Pym's valuations, 51 shares represents a minimum of £90,270 and a maximum of £301,920.

62. In addition, the transaction led to the intervenors becoming majority shareholders in [Company B], with the express intention of frustrating the husband's attempts to register the trademark, with the intention of pursuing further litigation against him and incurring significant debt in respect of both actions which was to be charged to [Company B]. In all these ways this led to the prospect of any order the Court made in the financial proceedings being obstructed or prevented from being carried out.
63. The second transaction concerns shares acquired by the wife from ML for her own benefit, and for the benefit of the intervenors. She argues that rather than deplete the marital assets, this transaction had the effect of increasing them. She says before the transaction ML held 30 shares, none of which were in the pot of marital assets, and after the transaction, she held 13 of those shares, which do now fall to be considered as part of the assets of the marriage.
64. It is in my judgement artificial to regard these two transactions as completely separate, as they worked in a chain. As stated in the wife's witness statement, the intention of the intervenors was to achieve by alternative means what they had hoped to achieve through the earlier shareholders' agreement. This was a two-stage process, acquiring the wife's 51 shares, and then consolidating their position by removing ML as a shareholder and acquiring a proportion of his shares. The second transaction would not have happened without the first.
65. However, even if one is to look at the second transaction separately, this narrow and simplistic analysis of owning none of ML's shares, and then owning 13 of them, ignores the cost to the business of this transaction. In broad terms this was:
 - A reduction to the book value of [Company B] of the £10,205 director's loan being written off;
 - Potential liability of the business to ML, who on any view was not given full and frank disclosure of the circumstances before he was persuaded to relinquish his shares to the wife;
 - The intervenors becoming majority shareholders in the business, thereby preventing either the husband or wife and therefore the Court, being able to implement any orders that may be made within the financial remedy proceedings in the way that would have been possible before.

66. Looking at the impact on the assets within the financial proceedings of both these dispositions:
- (i) the wife held 70% of the shares of [Company B], briefly then 100% of them, and finally just 32% of the shares. From her starting point she has reduced the assets of the business by 38%. On the single joint expert's valuation of [Company B], that equates to £67,260 (38% of £177,000) or £224,960 (38% of the higher valuation of £592,000);
 - (ii) Further than that, she has given the intervenors standing to pursue litigation on behalf of [Company B];
 - (iii) The consequence of the dispositions are that the husband is now having to spend time and money on litigation that he has already settled once, and monies loaned pursuant to the share transfer agreement are now said to be a liability of [Company B], the principal asset within the financial remedy proceedings;
 - (iv) The intervenors are now majority shareholders in the company who may not willingly comply with orders made within the financial remedy proceedings to dispose, transfer or otherwise deal with assets of the company if so directed by the family court.
67. I am satisfied that each of the transactions is (i) a disposition that took place less than three years before the date of the application; and (ii) would have the consequence of defeating the claim for financial relief (within the meaning of section 37(1) MCA 1973). This gives rise to the presumption (section 37(5)) that the wife disposed of the shares with the intention of defeating the husband's claim for financial relief.
68. Plainly the consequences of the wife's two separate share dispositions prevent the financial relief that the parties would otherwise have received being available. If the transactions stood, different financial relief would be granted. On the face of it the case is made out for an order to be made setting aside the dispositions pursuant to section 37(2)(b).

Can the wife rebut the presumption of intention to defeat the claim for financial remedy?

69. I was not impressed by the wife as a witness in her own cause.
70. I prefer the husband's evidence, supported by the contemporaneous text messages, that it was the wife who set herself up in opposition to him during the civil litigation. He was plainly urging her to take the advice of the company's

lawyers. I reject her claim that the husband and ML did not offer her any assistance, and that she was effectively forced by their actions to defend herself. I find that it was her own choice to separate her interests from the company in the way that she did.

71. The wife asserts that by entering into the agreements in October/November 2020 and again in February 2021 she was protecting her own position in the litigation. However, I have not seen any evidence to suggest that she, or anyone else, particularly the intervenors, was able to articulate the cause of action against her (separate from that against the husband and ML), what she was said to have done or what her liability might look like. In particular:
- The intervenors' pleaded case in November 2019 does not attribute any role in the business to the wife, and specifically states that while she is the majority shareholder, she is believed to hold her shares as a nominee or trustee for the husband 'for tax reasons';
 - She is named as a signatory to the side letter which it is argued amended the Shareholder Agreement (to which she was not a party) which is the subject of the claim, but it is plain from the pleading that the principal actors so far as the intervenors are concerned were the husband and ML;
 - This is consistent with the wife's own description of her discussions with the intervenors. She says their conversations were 'amicable', and focused on the conduct of the husband and ML. She says the intervenors recognised and acknowledged that she had not been party to and had no knowledge of the business negotiations they had with the husband regarding the business, and nor was she a party to the decision to renege from that deal;
 - on a straightforward reading of the settlement agreement made with the intervenors, the husband and ML in November 2020, the agreement settled 'all claims' brought by any party to the proceedings;
 - after she signed the agreement on 30 October 2020 she did not take any steps herself to extricate herself from the litigation.
72. The wife now says, her main intention was to take action to protect her position in response to her discovery that (as she was led to believe) the husband had assigned ninety percent of his share of his holding company to his accountant.
73. In her witness statement of 7 June 2021 she explains that [P Holdings Ltd], which holds a number of other companies, including [Company A], was originally incorporated with the husband as the 100% shareholder.

74. However, in his second form E dated 20 May 2019, the husband stated that he owned only 10% of [P Holdings Ltd]. This is not true, as the husband had entered into a nominee undertaking deed dated 15 April 2019 providing that his accountant, BM, and a co-director of the company, was holding 90% of the shares on trust for the husband.
75. This was dishonest. The husband maintained the assertion that he owed only 10% of this business in his Form E, at first hearing and in replies to questionnaires. Eventually when challenged, he conceded the true position and apologised.
76. Costs orders have been made against him because of his conduct in respect of this deception.
77. The wife says that in October 2020 she genuinely believed that the husband had disposed of 90% of the [P Holdings Ltd] shares, including [Company A]. She says that her actions served to increase the value of the matrimonial pot, because she gained the support of the intervenors in the ongoing battle to bring [Company A] back under the umbrella of [Company B], and after releasing 51 shares to the intervenors, she did then obtain another 13 from ML's share.
78. I am not persuaded by this narrative for the following reasons:
 - a) if the wife genuinely believed that [Company B] owned [Company A] then this was an argument she could pursue within the financial remedy proceedings, or she herself had standing as the majority shareholder to bring an action against [Company A] or the husband;
 - b) if the husband had successfully disposed of 90% of [P Holdings Ltd], on the face of it this was obviously a reviewable disposition which might be subject to a section 37 application to set it aside. At the least, it demanded an explanation. These actions, within the financial remedy proceedings would be the logical and straightforward response to the husband's actions. Entering into a secret agreement to effect a share transfer, remove directors and install new ones is unconvincing as a response;
 - c) in her oral evidence the wife twice said that she had first become aware of the nominee undertaking around the time she entered into the agreement with the intervenors (in October or November 2020). Later, she retracted this and said no she had only discovered this in May 2021, when she had received a copy of the undertaking in the post from an anonymous sender. I found her evidence on this to be evasive, contradictory and not credible. I prefer the evidence she gave unprompted in the witness box, and I find

to the standard of a balance of probabilities, that she was aware of the nominee undertaking by the time she entered into the agreement with the intervenors;

- d)* even on her own case, she knew about the undertaking (and therefore that the husband had the benefit of all shares in the holding company) by the end of May 2021, and before the transfer of the shares to the intervenors took place. So she knew that the assets of the company had not in fact been depleted yet allowed the transfer to take place in July 2021 nonetheless;
 - e)* I find that she knew the husband had acted in a way that was underhand and dishonest, and that he had sought to remove 90% of the assets of the holding company from consideration in the financial remedy proceedings. It is understandable that this might lead the wife to take some kind of action in retaliation. However, it is nonsensical to suggest that the action she took in entering the agreements was motivated by an intention to increase the assets that fell to be considered within the financial proceedings;
 - f)* If this truly had been her motivation, I query why she felt the need to keep the transactions secret. One might have expected her to tell the valuation expert of the change in position, but her statement prepared for the purposes of his report in June 2021 said nothing about it. She had opportunities to reveal what was going on, but she did not.
79. For the reasons set out above the action she took has been massively, potentially catastrophically detrimental to the family business. Any increase in shareholding by the acquisition of her thirteen shares from ML is massively outweighed by the transfer of hers and ML's remaining shares to the intervenors, resulting in them acquiring 68% of the business, by the prospect of two sets of commercial litigation continuing, and the costs of that litigation ultimately to be payable by [Company B] and/or the husband.
80. The wife made a choice to collude with the intervenors to cause maximum damage to the husband. She has created satellite litigation that did not need to exist. I accept the submission made by Mr Switalski that her motivations for this are various but include: her anger and upset towards the husband for his actions during the marriage and the financial remedy proceedings; her sense of being unacknowledged in relation to the business; her knowledge that the business is of essential importance to the husband; and her unhappiness at the prospect of not being involved in the business after these financial remedy proceedings

81. I am satisfied to the standard of a balance of probabilities that the wife and the intervenors did discuss the financial remedy proceedings during the course of their meetings between August and October 2020.
82. I find that she was actively seeking to mislead the Court when she suggested to me in her oral evidence that '*she did not recall*' whether or not the intervenors were aware of the financial remedy dispute during these conversations. The whole purpose of entering into the agreement was the shared purpose of causing damage to the husband. In the past the wife has made clear that she makes no distinction between the business and the personal, she shared details of the husband's conduct with their business partners and a financial adviser. Minutes of board meetings explicitly record her statements that the structure of the business was a response to his conduct in having a child outside the marriage, and betraying her trust. The relationship and the business are essentially intertwined, and I find that she did share with the intervenors details of the financial remedy proceedings in their discussions.
83. Although she initially denied it, during the course of her evidence it transpired that the intervenors had funded her counsel at the application and entered into a loan agreement with her in respect of costs relating to the financial remedy proceedings.
84. Having regard to all the evidence I have heard and read, I am not satisfied that the wife has rebutted the presumption with respect to her intentions in effecting the two separate dispositions of shares. Her motivation was to undermine her husband's position by removing him as a director of the company, replace him and ML with the intervenors and work together with them to further her own interests, and to undermine her husband's position in the business and in the family proceedings.
85. I find that the intention to defeat the claim for financial relief was part and parcel of the intention to undermine the husband's position within the business, if 'subsidiary', I am satisfied that it meets the test of being a 'material motive'.

Do the intervenors have a defence under section 37(4)?

86. The burden is on the intervenors to establish:
 - (i) The dispositions were made for valuable consideration;
 - (ii) The intervenors acted in good faith in relation to them; and
 - (iii) The intervenors were without notice of any intention on the wife's part to defeat her husband's claim for financial relief.

(i) Valuable consideration

87. The intervenors purportedly paid £51 for the first tranche of 51 [Company B] shares and nothing at all for the second tranche of 17 [Company B] shares.
88. On the single joint expert's valuation, the total of 68 shares is worth either £120,000 or £402,560. Plainly £51 cannot be regarded as good consideration for what they have obtained.
89. The intervenors did not pay anything at all for the second set of 17 shares. These shares were apparently gifted to them pursuant to the agreement made in February 2021.
90. PN made clear in his oral evidence that neither he nor his uncle had invested any money themselves into [Company B], nor paid money to the wife.
91. It was argued that the offer of funding the litigation that the wife wished to pursue against the husband on behalf of [Company B] amounted to valuable consideration.
92. The intervenors have given late or incomplete disclosure in respect of the litigation funding. The position appears to be that they have loaned sums in respect of [Company B]'s objection to the trademark action, in respect of a prospective claim to be brought by [Company B] against the husband in respect of the [Company A] income, and in respect of this application in the financial remedy proceedings. PN gave evidence that all sums loaned are repayable on demand by [Company B].
93. I am not satisfied that extending credit in respect of litigation funding that the intervenors themselves had a vested interest in pursuing amounts to valuable consideration for the shares themselves.
94. The only other 'consideration' said to have been offered is to absolve the wife of any costs liability in the [Company X] litigation. However, for the reasons given above, I have not been satisfied that there is any evidence that she was in reality at risk:
 - i.* The intervenors' pleaded case and the evidence they have given in these proceedings is that the husband and ML, not W, were the culpable parties in the [Company X] litigation;
 - ii.* The settlement agreement with the husband and ML, on any reasonable construction, dealt with all their claims including against the wife, in the

[Company X] litigation, and which covered them for all the costs they had incurred in the litigation, so they could not have sought any further costs from the wife in any event.

95. An alternative argument was made on behalf of the wife and intervenors, that because the husband had stripped [Company A] out of [Company B], he had effectively left her with worthless shares. In the circumstances, it is said £51 for the total of 68 shares received is valuable consideration.
96. I reject this argument because it is inconsistent with the actions of the intervenors and the wife. The wife and the intervenors have alleged that the husband has deprived them of their fair share of hundreds of thousands of pounds of income and of a valuable share in the business as a whole. Having the majority shareholding in [Company B] gave the intervenors standing to participate in legal actions against the husband (in respect of the trademark application and in respect of the loss of income from [Company A]). The evidence given by the intervenors was that they had so far spent £44,000 plus VAT in respect of the trademark litigation, and £105,000 plus VAT on pre-proceedings work in respect of the [Company B] litigation. This is some indication of the value that they place on the potential gains from the litigation. The shares were plainly not worthless to them.

(ii) Good faith

97. These parties have not acted with good faith towards the wife, the husband, nor to ML:
- i.* They entered into a clandestine agreement with the wife, a copy of which was not to be provided to her, before settling the [Company X] litigation with the husband and ML, without telling them about the agreement they had entered into with the wife to depose them from the board and acquire shares in the company without any financial outlay on their part;
 - ii.* They procured £250,000 from the husband. They did not tell the wife they were going to do that.
 - iii.* They assisted and facilitated the wife concealing these events from the husband and from the Family Court, until the husband became aware of the share transfers via Companies House in late July/early August 2021.
 - iv.* the November 2020 agreement provided that they were to notify the husband within seven days of the agreement having taken place. This was not done. PN said it was not an ‘executed agreement’ because after he and his uncle signed it he kept hold of it and did not ‘share it back with

the wife'. This argument is disingenuous and has no force. Secondly, he said he did not consider there was a need to notify until the share transfer and appointment of him and his uncle as directors had taken place. These are poor excuses. It is clear from the terms of the agreement itself that the reason for the delay was to conceal the truth from the husband and ML, because if they knew what was happening, they would not have entered into the settlement agreement and paid £250,000 to the intervenors, and would likely have taken action to prevent the shares being transferred to them;

- v. the intervenors delayed becoming Directors of [Company B] for as long as possible to ensure the husband and others did not become aware of what was going on.
 - vi. The intervenors have gone to great lengths to try to prevent disclosure of the agreement, and associated correspondence within these proceedings, spending thousands in costs in doing so;
 - vii. They have still not disclosed documents when required, including the funding agreement only referenced in examination in chief;
 - viii. They now say, per their evidence in chief and re-examination, that [Company B] owes them £190,000 regardless of what happens in this application. The failure to disclose that information before the hearing raises questions about their ability to act openly and honestly.
98. I find that they did take advantage of a commercially inexperienced individual going through a divorce, and they knew full well about the financial remedy dispute when reaching their agreements with her. They used this to further their own interests.

(iii) Notice of the wife's intentions in entering into the agreement

99. PN's answers in evidence about whether or not he knew the husband and wife were in dispute over their divorce were rambling, evasive, misleading and at times obviously untrue.
100. When asked if he knew about the divorce proceedings, he said, '*we knew there was some friction there, we knew that [the wife] was not aligned with [the husband's] view at that point, whether they were separated or going through a divorce, I don't know.*' He then asserted that he did not know about the financial remedy proceedings, that while he knew they were fighting about ownership of [Company A], he did not know about the divorce courts. He said

he knew about separation, he knew about the husband's infidelity, he could not say whether they were in proceedings, but he then wanted to make clear that there was 'definitely no discussion around financial remedies'. He was pressed again and said, '*we may have known about the divorce but we did not know about the financial remedy discussions.*'

101. Given that there was an initial in person meeting over lunch, then five or six zoom calls, and the personal nature of the dispute against the husband – PN told me that what brought them and the wife together was that both had been lied to by the husband – I do not believe PN when he said that he knew about everything except the financial remedies proceedings.
102. He gave evidence that he knew about the assertion that the husband had made in the family proceedings that [Company A] was owned by P Holdings Ltd. I find that this information came to him from the wife, because she was sharing information relevant to the financial proceedings in her discussions with the intervenors.
103. Having regard to the evidence I have heard and read, I am satisfied to the standard of a balance of probabilities that the intervenors knew full well that it was the wife's intention to remove shares from the pot of matrimonial assets, in retaliation for the husband's attempt to hide shares in the trust with his accountant. The intervenors were able to assist the wife in this, and thereby induce her to enter an agreement which was manifestly to their advantage, persuading her that they were pursuing a shared objective, when that has not proved to be the case at all.
104. To the extent that PN accepts that he and his uncle did know that the husband and wife were getting divorced and that they were arguing about the assets they owned, I find this in itself was something which ought to have led them to ask questions about whether or not the shares they were obtaining formed part of the assets in dispute within the financial remedy proceedings, and the wife's intentions in respect of them. The 'knowledge' required by the third limb, notice of W's intentions, extends to constructive knowledge which, per Farwell J in *Hunt v Luck* [1901] 1 Ch 45 goes as far as: '*...knowing something which ought to have put him to further inquiry or from his wilfully abstaining from inquiry, to avoid notice...*'.
105. For these reasons, none of the three limbs of the defence is made out by the intervenors.

Conclusions

106. The application to set aside both sets of dispositions of shares succeeds. Pursuant to section 37(2)(b) I will set aside the dispositions.
107. Consequential orders that return the position to what it was before the agreement of 30 October 2020 was entered into should be made i.e. to return the situation so that the wife holds 70 of the shares and ML 30, and the parties' and [Company B]'s position is restored.
108. There may need to be further consideration of consequential orders in respect of litigation funding to the wife in respect of the financial remedies litigation and/or other litigation, but said to be repayable on demand by [Company B]. I have not been able to reach a conclusion on this because I am not satisfied there has been full disclosure of those funding agreements, the amounts paid, and on what terms repayment is sought. I have not been shown a draft order of the orders and consequential orders sought nor heard arguments in respect of that.
109. I invite the parties to send me a list of typographical errors and to let me know if an order is agreed, within seven days. If an order is not agreed and/or any party seeks a hearing for judgment to be handed down I will list a hearing at which I can consider any areas of disagreement in respect of the orders, and costs.

HHJ Joanna Vincent
Family Court, Oxford

Draft judgment sent: 17 July 2023
Judgment handed down: 29 August 2023