

This approved judgment was handed down by the Judge by circulation to the parties' representatives by email. The time and date of hand down is deemed to be 10.00 a.m. on 19 July 2024.

IMPORTANT NOTICE This confidential judgment was delivered in private. The judge has given leave for this version of the judgment to be shared with legal representatives, parties and relevant professionals on condition that (irrespective of what is contained in the judgment) the anonymity of the children and members of their family must be strictly preserved. All persons must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

BP v AP (financial remedies – final hearing) [2024] EWFC 206 (B)

Case No: EZ18D05389

IN THE FAMILY COURT SITTING AT OXFORD

IN THE MATTER OF THE MATRIMONIAL CAUSES ACT 1973

Judgment date: 19 July 2024

Before: HHJ Vincent

Between :

BP

Applicant wife

and

AP

Respondent husband

Pauline Lewis, instructed through the public access scheme, for the applicant wife
Joseph Switalski, instructed by through the public access scheme, for the respondent husband

Dates of hearing: 24-25 April 2024

APPROVED JUDGMENT

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

AP v BP and others (financial remedies – section 37 application to set aside disposition) [2023] EWFC 170 (B)

Introduction

1. The wife is 49, the husband 59. They were cohabiting from 1998, married on 24 August 2002 and separated in May 2017. They have three children together; 'A', aged 23 lives with the husband, 'B', 16, and 'C', 14, live with the wife.
2. The wife has an older son from a previous relationship, 'D', who is 31.
3. The husband has a daughter, 'E', 13, who was born from a relationship he had outside the marriage in 2010.
4. The petition for divorce was filed on 24 August 2018. Decree nisi was obtained on 3 April 2019.
5. This is the final hearing of the wife's application for financial remedies which was made on 31 October 2018.
6. Since then, the parties have been almost constantly involved in litigation against one another, in the Family Court, but also in the High Court, in disputes arising from the ownership of a business (and associated companies) relating to the husband's work as a content creator, commentator and influencer. This work started out with making sports content videos with (Company A), television appearances, making documentaries, making promotional videos and entering into agreements for product endorsement or charging for his appearance, or for giving talks at sports-related events.
7. It is the husband's case that this business is his alone. He says he has put in all the work and is entitled to all the benefit.
8. It is the wife's case that the business was her idea, that she participated fully in its set up and operation at the outset, but was later frozen out by the husband. She is a 70% shareholder in Company B, the company originally set up as the vehicle for collecting revenue from Company A. She says she is entitled to compensation for the profits which she says she has been deprived of in the past, and to which she would be entitled to in the future.
9. In around November 2018, just after these proceedings commenced, the husband set up two new companies, Company Y which was the umbrella company for a number subsidiary companies connected with the production of television programmes that the husband was involved in, collecting revenue connected with his appearances on television or relating to programmes made on television, collecting revenue relating to his work as an influencer, or through brand promotion, merchandising deals. Company Y collected all the revenue from Company A and his other business activities in place of Company

B. Company B didn't receive any income from Company A thereafter and stopped trading sometime in 2020.

10. At around the same time, the husband entered into an agreement with his accountant, in which the accountant was to hold 90% of an umbrella company, Company Y, on trust for the husband. In his Form E, the husband then suggested that he in fact was the legal owner of only 10% of Company Y. The agreement with the accountant was soon discovered and revealed to be a sham. There is no issue in these proceedings that the husband is the sole owner and beneficiary of Company Y and its subsidiary companies. The accountancy expert Mr Pym proceeded on the basis that Company Y was 100% owned by the husband.
11. In January 2017 the husband had entered into an agreement with two businessmen, PN and GN in which they set up a company together called Company X. The plan was that PN and GN would raise investment for Company A/Company B and once Company A/Company B reached a value of £5 million, PN and GN would gain a stake in those companies as well as Company X, which was intended to be a business that provided the same format for other sports teams, not just Team X. In the event that business relationship broke down. The husband says PN and GN never provided the investment, PN and GN said the husband reneged on his agreement to transfer a stake in his company to them. In October 2019 PN and GN issued proceedings in the High Court against the husband, the wife and their business partner ML (who is the camera operator and editor of the videos), all of whom were signatories to the agreement with PN and GN.
12. In December 2020 that litigation was settled by the husband and ML. They agreed to pay £250,000 to PN and GN, by which settlement they understood PN and GN would no longer pursue them for a stake in Company A/Company B.
13. Unbeknown to them, PN and GN had shortly before the settlement entered into a secret agreement with the wife, which led to the wife transferring shares in Company B to PN and GN, so that they gained a controlling interest in the company by a different route. Their intention was ultimately to remove the husband and ML from the business, but to retain the name, intellectual property and thereby revive their original business plan.
14. Acting as the controlling shareholders in Company B, PN and GN took steps to contest the husband's application to register the Company A trademark. They then sent him a further letter before action, effectively seeking to relitigate the case that had previously been settled.

15. The husband issued an application in the Family Court to set aside the wife's disposition of shares to PN and GN. The application was eventually listed before me. I allowed the application and made orders pursuant to section 37 Matrimonial Causes Act 1973 to set aside the share transfers.
16. As a result the threat of commercial litigation instigated by PN and GN has now fallen away. They no longer have an interest in Company B so do not have standing to bring litigation.
17. Nonetheless, on behalf of Company B, the wife continued to contest the application to register the Company A trademark, successfully. The Intellectual Property Office has declared the trademark to be owned by Company B. The husband is appealing that decision.
18. All these different actions in the courts have cost enormous sums of money to the business, and to each of the parties personally.
19. The wife asserts that she was entitled to receive remuneration as a shareholder of Company B, and the husband has wrongfully deprived her of that money. She says that the husband has hidden his true income from the court, and that he has sufficient funds to compensate her for her lost remuneration from the business. She seeks a lump sum payment of £1.45 million as well as transfer of the family home to her.
20. The husband says the wife is not entitled to a share in the business. Firstly he says her contribution to it has been minimal. Secondly, he says her conduct in making secret deals with PN and GN led to extensive litigation that has led to him being mired in debt and without funds to meet his own needs, let alone to 'compensate' her, either to the extent she is seeking, or at all. He proposes that she retains the family home and he retains the business, and each of them bear their own liabilities.

The law

21. In deciding what orders should be made, I must have regard to the various factors set out in section 25 of the Matrimonial Causes Act 1973. Depending on the circumstances of the case, some of those factors may have more weight than others, and some may not be relevant to the issue at hand, but the law is clear that I must have regard to each of them. Further, the first (but not paramount) consideration of the court must be given to the welfare of any child of the family, in this case B and C.

Financial Misconduct/adding back

22. Miss Lewis argues that the husband's litigation conduct has been such that the Court should take it into account when considering what award to make.
23. Under section 25(2)(g) of the MCA 1973, the Court may regard as relevant to its decision making a situation where a party has severely depreciated or destroyed the matrimonial assets. As Baroness Hale makes clear in *Miller/McFarlane* such conduct must be '*gross and obvious*' (at [145]). But where it is so, as Lord Justice Cairns said in *Martin v Martin* [1976] 3 All ER 625 at 342G:

Such conduct must be taken into account because a spouse cannot be allowed to fritter away the assets by extravagant living or reckless speculation and then to claim as great a share of what was left as he would have been entitled to if he had behaved reasonably.

24. See also Bennett J in *Norris v Norris* [2003] 1 FLR 1142 and *R v B and Capita Trustees* [2017] EWFC 33, in which Moor J said at paragraph 84:

'[I]f a spouse has created unnecessary debt or incurred unnecessary liabilities, this detracts from his or her contributions as well as meaning that the assets have been reduced. Moreover, provision needs to be made for liabilities that have not yet been discharged.'

The evidence

25. I am familiar with the case, having heard an appeal relating to disclosure, the section 37 application (at which I heard evidence from the parties), and dealt with some case management hearings in between. At the final hearing I have read the bundle and supplementary documents which now stand at about 1300 pages. I heard evidence from the wife and the husband and have considered the helpful written and oral submissions from Mr Switalski (who has represented the husband throughout proceedings) and from Ms Lewis (who was instructed only very recently before the final hearing.)

The wife

26. BP has her own clear narrative, which she conveyed to the Court with confidence. However, her narrative is framed by her own perspective, and is not at all consistent with the overwhelming weight of the evidence, including accounts, financial statements, expert reports, contemporaneous minutes of meetings, emails and other correspondence.

27. She made a number of assertions which were not credible, because there was no evidence to support what she said, or the evidence that was there pointed towards a different conclusion.
28. I formed the same impression of the wife's evidence when I heard her give evidence in August 2023:

'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.'

'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.'

The husband

29. AP also presented much the same as he did when I heard him give evidence in August 2023. I formed a favourable impression of him as a witness:

'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 over-thinking the answers, or trying to put forward some particular narrative, but gave frank and clear answers based on his own knowledge and understanding.'

30. The husband has provided detailed disclosure of his company accounts, business and personal expenditure, and the explanations he gave in answers to cross-examination were borne out by the documentary evidence.
31. I am satisfied that the financial information is an accurate reflection of his income and expenditure.
32. The husband frankly accepted, that there has been intermingling of his personal and business accounts. He makes no real distinction between the two. The directors' loan account has been used to meet expenses including the costs of the commercial litigation with PN and GN which are clearly business-related, but has also funded the litigation concerning the set aside application (less clear

whether purely related to the business), as well as the financial remedies proceedings (plainly personal). Money has been drawn down from the DLA to meet his monthly living expenses and to pay for renovations to a house inherited by the husband and his brothers in order to get it ready for the rental market. The husband said that sometimes if his current account is out of money, then he has used the DLA to pay for a supermarket shop. Equally, he said sometimes he will use his own personal account for a business expense, for example to buy a sports jersey to be signed and given away as a prize.

33. He also accepted that some relatively small sums of money he received for personal appearances on Cameo were received directly to his personal account, when he ought to have paid them into the business account.
34. The schedules to the Director's Loan Account statements set out which items of expenditure are for business and which for personal. The loans for legal fees are separated out into the different pieces of litigation involving PN and GN, and in respect of the divorce. All the borrowing has come from the Director's Loan Account, and the husband is liable to repay it, whether a draw down was made to meet a personal or business expense, because he is the 100% owner of Company Y.

Section 25 checklist

35. I now consider each of the section 25 factors in turn.

(a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;

Income

36. The husband has been receiving a salary of £12,000 a year from the business and in addition to that he has been withdrawing £3,500 a month from his Director's Loan Account. This is broadly consistent with Mr Pym's finding in 2021 that he was paid an average of £82,000 a year (which is £58,000 net - £4,800 a month).
37. I reject the wife's repeated assertions that the husband has failed to disclose other income streams, or that he has not accounted for the ways in which he has used the various Director's Loan Account drawdowns. I have been provided with detailed figures which show clearly money received in and out of the accounts. The wife does not trust the husband and has convinced herself that

there is more money out there, but she has not succeeded in picking any holes in the financial statements provided to me, nor has she produced any evidence to undermine the clear and cogent evidence given by the husband.

38. The overdrawn DLAs have been declared in the company tax returns; 33.75% corporation tax is incurred on the overdrawn sums, and interest accrues on the unpaid balance.
39. I accept the husband's evidence that his brother has given him some money recently to help him out, but that this is not a regular monthly amount. Further, he has supplemented his income with cameo appearances, which pay around £100 or £200 a time.
40. The husband has a long list of liabilities (considered in more detail below). He does not have a mortgage capacity.
41. As well as bringing up the children of the family, the wife has always worked. She is imminently to start a new job, which pays £32,000 a year (before tax). In addition she works in a hospice, which pays £7,000 a year (before tax). In her witness statement she said she would be giving up the hospice work but in her oral evidence she said she intended to continue with it. She receives £1,100 a month from the husband in child maintenance and some child benefit payments (£1800 a year). Ms Lewis submitted on her behalf that she received £50,000 net a year but that may be a gross figure. On the evidence before me, I find that £32,000 plus £7,000 gross would equate to around £31,000 net, plus £1800 child benefit payments and £13,200 child maintenance would leave her with about £46,000 in hand.
42. The wife has a mortgage capacity of £235,000 on a re-mortgage, and slightly less on a fresh mortgage.

Assets

43. The parties jointly own the former matrimonial home. Pursuant to directions at the FDR three estate agents' estimated valuations were obtained. The average of the three estimates comes out at £525,000.
44. The outstanding mortgage is £233,366. After cost of sale the equity would be £275,884.
45. The husband is sole owner of a property [*rental property Q*]. The average of the estate agents' valuations is £130,000. I adopt that figure. There is an outstanding mortgage of £88,922. This property was purchased during the marriage as an investment. It forms part of the pool of marital assets.

46. The property is let out to tenants. The husband gave evidence that tenants are paying him a monthly rent which does not cover the mortgage payments, so it is operating as a loss. However, the property is in need of redecoration and some repair, so he has agreed with the tenants not to raise their rent. The tenants have expressed an interest in purchasing the property for £130,000. The sale would attract capital gains tax but as it is a private sale the costs of sale would be reduced.
47. I accept the figures put forward by the husband, that after costs of sale, mortgage and capital gains tax, the equity would be £26,818. However, there is a charge to NRAM registered against the property, of £54,940, which will extinguish the equity.
48. In 2021 the husband inherited a 25% share of his father's property. It is valued at £330,000. It currently has tenants. The husband said that one of his brothers invested the largest amount of funds into the property, and is the only one receiving the rent at the moment. The husband has borrowed £42,545 from the Director's Loan Account in order to fund his share of the renovations. There are no plans to sell this property, but if it were sold the husband's 25% share after costs of sale and capital gains tax would be £79,790.

Accounts and investments

49. The wife has £6,000 worth of shares in Santander. Neither party has significant savings or investments or money in their current accounts.

Companies and sole trading operations

50. The husband has an interest in six limited companies that either exist to operate Company A or process income the husband generates from his work with Company A, other television work, media appearances, sponsorship, or similar.
51. **Company Y** is the holding company for Company Alpha, Company Beta, Company Gamma, Company Delta and Company Epsilon.
52. All these companies were valued by the single joint expert Mr Pym in his report in November 2021. The husband's accountants have updated the figures using the same methods as Mr Pym. Mr Pym's report is clear, he sets out clearly the source material relied upon, and explains the reasons for reaching the conclusions he did. I rely upon his expert assessment. The updated evidence from the husband's accountants was directed as a proportionate means of adjusting the valuations given that Mr Pym's conclusions were reached two and a half years ago. The figures used have come from the various company

accounts, and no challenge has been made to their accuracy. I accept the updated valuations.

53. **Company Beta** provides the services of the husband as ‘a content provider to third parties’. It operates the Company A channel (which in 2021 had 1.45 million subscribers), and the ‘El Jefe channel’ (launched in April 2016 and which had 180,000 subscribers in 2021). The goodwill of the company is personal to the husband. It was valued by Mr Pym at £112,534, (net assets £202,141 less DLA debt of £89,607.) In his report he noted that the balance on the loan account that increased to £165,379 as at 30 September 2021, but he did not have updated information for the net assets, so was not able to adjust his valuation.
54. **Company Gamma** is the company used to produce content for various online platforms including Company A. The company generates income from the online channels (predominantly Company A) and associated multi-media platforms on which the husband appears. It is reliant on him to bring income to the business.
55. Mr Pym concluded that there was a significant amount of income outside the Company A brand that was reliant upon the husband personally and did not have a separate realisable value.
56. However, noting that the goodwill and trademark of Company A was found to be vested in Company B, Mr Pym he concluded that if Company A were to be sold, it may have a realisable value of its own. There now exists a substantial back catalogue of content that would continue to have a residual, although likely dwindling value.
57. In 2019 Company A generated income of £237,031, in 2020 £770,857 and in 2021, £1,290,644. The accounts include costs of content creation and overhead costs of operating the company, but no directors’ remuneration.
58. Looking at its income stream and comparing to a similar type of business, Mr Pym concluded that the goodwill and trademark value of Company A could be at put at £600,000 if the husband remained the main presenter on Company A (predicting continuing income of around £1.2 million from video contact and associated endorsements and other contracts generated by the husband, and applying a multiplier of 0.5). Mr Pym valued the trademark and goodwill at £185,000 if the husband was no longer the main presenter (on the basis that Company A would continue to generate some income from existing content but this would dwindle as no new content would be generated, and there would be no associated income from influence contracts). Limiting the earnings just to Company A’s online channel he applied a lower multiplier of 0.25 to account

for the decline in income, and arrived at a figure of 0.25 (earnings to 31 March 2021 of £746,951 x 0.25).

59. Because this goodwill attaches to Company B as a result of the IPO decision of 3 November 2021, Mr Pym did not attribute any value in it to Company Gamma.
60. The wife currently owns 70% shareholding in Company B, which has been found to own the goodwill and trademark of Company A.
61. The husband has appealed the IPO decision and hopes to bring the trademark and goodwill associated with Company A back under the umbrella of Company Y.
62. He says the IPO's decision was based only on consideration of the wife's evidence in opposition to registration. The husband did not file any evidence to explain why the goodwill in the business attached to him personally. The wife submitted evidence to the IPO asserting that it was Company B that used the Company A signs and operated the Company A online channel, and on the basis of this evidence being unchallenged, the IPO ruled in her favour.
63. Alternatively, the husband invites me to find that the wife holds the shareholding in Company B on trust for his benefit.
64. Mr Pym valued Company Gamma on a net assets basis. In March 2021 the net assets of the company were £409,679, but the Director's Loan Account was overdrawn by £183,808 in March 2021. That had increased to £238,448 by 30 September 2021 but Mr Pym did not have updated figures in respect of the net assets, so again valued as at March 2021 (at £225,000).
65. **Company Alpha** was valued at £3,407, but Company Y owns 80% of the share capital so the husband's interest in Company Alpha is £2590 (80% of £3407 less a 5% discount to reflect lack of control).
66. **Company Delta** is a dormant company of no value.
67. **Company Epsilon** was given a value of £997.
68. Using his valuations of the subsidiary companies, Mr Pym calculated the value of Company Y to be **£310,000**. (Valuations of companies as above less liabilities of just over £31,000).
69. However, he did not consider it likely that a willing buyer would be found for the Y Group of companies, given their dependence on the personal goodwill of the husband. Similarly, he doubted that any purchaser would be willing to buy

Company A, because of the ongoing trademark/goodwill dispute, the uncertainty of whether the husband would continue to be involved, and the impact of him no longer.

70. Further, Mr Pym concluded that neither Company Y or any of its subsidiary companies had any liquidity, and no prospect of borrowing or otherwise raising finance to provide liquidity.
71. Financial statements relating to **Company B** showed turnover of £70,174 in 2016, £298,514 in 2017, £427,916 in 2019 and £972 in 2020 (after revenue started to be collected by the Y group of companies). The wife had not prepared any management accounts nor had there been any transactions in respect of Company B since then.
72. Mr Pym could not base an earnings valuation on income in 2021. A £10,205 loan to ML had been written off, believed to be in consideration for transfer of his shares to PN and GN. Although that transaction has been reversed I have not heard that the loan has in fact been written off, so will leave it as it is. My understanding is that ML continues to hold 30% of the shareholding.
73. So the value of Company B is effectively the same as the valuation of Company A, less the loan to ML and factoring in the £1828 net assets. With the two alternative figures for the valuation of Company A, the overall valuation for Company B comes in at either £177,000 or £592,000. The wife's shareholding of 70% puts the valuation of her ownership at £123,900 or £414,400, but a further discount of 5% is applied to reflect that she does not own the shares outright. The final valuation is £117,705 or £393,680.
74. Again, Mr Pym doubted that a purchaser would be found, for the same reasons he gave in respect of the Company Y companies.
75. Mr Pym's valuation of the wife's interest in Company B was based on his understanding that she had gifted her shares to PN and GN, in fact her interest is now 70%, so either £412,876 or £122,376. Consistent with Mr Pym's approach, a further 5% discount should be applied to reflect the existence of another shareholder; so £392,230 or £116,257.
76. At the year to end March 2020 Company B had £1088 in the bank and other assets and liabilities of £740 net. By June 2021 there was only £13 in the bank. It had not traded since April 2020. Mr Pym concluded it had no liquidity, and, as with the Y group of companies, there was no prospect of borrowing or otherwise raising finance to provide liquidity.
77. Updated figures based on accounts to year end March 2022 were obtained from the husband's accountants by direction of District Judge Wakem. The cost of

re instructing Mr Pym for an update was determined by her to be disproportionate.

78. I have reviewed the updated calculations, for year end to March 2022, and year end to March 2023, and seen the source material that fed into them. The accountant has shown the workings in helpful tables, which refer back to the statements. I am satisfied that they can be relied upon, albeit this is not an expert report. The wife in general terms said that she did not accept the figures, but again, was not able to point to any respect in which she said they were inaccurate or the primary evidence was unreliable. The explanation for the change in figures comes down to the increase in the drawdowns in the Director's Loan Account. These are the figures which inform the figures entered by the husband on the ES2 statement of assets and liabilities and which I accept.
79. As predicted by Mr Pym, the amounts outstanding in the Director's Loan Accounts (£683,771) have extinguished any value left in the Y group of companies. Company Alpha is valued at £2,966 and Company Epsilon at £670.
80. Who owns the Company B shareholdings? 70% of them are in the wife's name, but the husband says she holds them on trust for him. She says no, she was given that shareholding because of her contribution to the business.
81. I have found no evidence to support the claim that she made at the final hearing that the reason she holds a 70% shareholding was the whole project was entirely her idea, and it would not have happened without her. I prefer and accept the husband's evidence that the business evolved over a period of time, as a result of an idea that he had and that he put into action, starting with him posting videos on his online channel, eventually developing the Company A channel and pursuing other opportunities that arose as a consequence of the growing popularity of the content he posted.
82. There is no evidence to support the wife's claim that it was her idea to expand the business to other sports fan channels. The evidence is that discussions around that were between the husband, PN and GN and other contacts of the husband's.
83. It may well be that the wife did have an idea of expanding the business beyond this particular sport to other types of 'sports fans', and to have specialist channels devoted to fans of particular interests. However, whether she had that idea or not is irrelevant, as there is no evidence of any steps being taken by her or anyone else towards expanding the business in that direction, let alone generating income from such activity.

84. It is acknowledged that the wife did support the business in its early life, for example she has told me a number of times about a time she arranged a meeting with someone at Club X to do some filming there. She helped with administrative tasks and she was present at a number of meetings of directors, and discussions with accountants (although her involvement with these discussions was more active once the relationship was breaking down). But there is little evidence of her being involved in the more general activities of the business, certainly not to justify her being regarded as the instigating or controlling mind of the business, and the husband to have no interest in it at all.
85. The evidence given consistently by the husband in the various statements filed within these proceedings is borne out by the weight of all the other evidence in the case. Mr Pym confirmed his investigations via the internet noted that the Company A channel was created by the husband with his cameraman ML. I accept the husband's evidence that, *'the views and subscribers associate the work of the channel with me. I am the presenter of the content that is distributed on the channel. I am the face of the business. I do not mean to sound arrogant but without me the business is unlikely to have anywhere near the same level of success. In fact, if I were to leave Company A, it is likely that the channel would crash overnight. Any valuation of my business interests is inextricably linked to me.'*
86. Having regard to all the evidence I have heard and read I find that the reason the shareholding was set up and divided 70/30 to the wife and ML were personal. The husband had by that time had some businesses that had failed and did not have a credit rating or status to enable him to open a business account or hold shares for himself. Both parties made reference to this in their evidence. At the same time, the parties were still reeling from the husband's extra-marital relationship. In my earlier judgment, I recorded the following:
- '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.'*
87. At the set aside hearing, the wife contended that 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. In my judgment I referred to 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.'*

88. I acknowledge that this evidence in itself does not establish that the shares were to be held on trust for the husband. However, the contemporaneous documents make clear that the arrangements were a departure from what you might expect – the husband to be the shareholder, nominee on the business account – not for the reason that the whole venture was in fact the wife’s idea and she was to be the director of operations, but because the husband was required to demonstrate his commitment to his family and the wife, and because in practical terms, he was not able to hold the shares in his own name.
89. I find that the intention at the time the wife was given the 70% shareholding was for her to hold them on trust for the benefit of both her and the husband. The intention was that he would devote himself fully to the company, supported by her in a number of different ways (but not in the day to day running of the business) in order to promote the welfare of their family.
90. The profits of the business have been generated as a result of his work, his personality, the connections he has built within the industry, and his particular passion and interest in football.

(b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future.

91. The wife’s evidence about her liabilities was unclear. In her asset schedule she said her liabilities totalled £61,920. However, when answering questions in cross-examination it was apparent that a number of the listed items had been paid off. A loan from her mother of £30,271 in respect of which she obtained a mortgage on her mother’s property has been repaid in full and the charge removed. She does not have any outstanding legal fees. I was not taken to any evidence to show a £19,506 liability for tax credits overpayment, but in any event would not understand that to be subject to demand for immediate repayment in full.
92. I was not taken to the evidence to substantiate the remaining items on the wife’s list. She described in her oral evidence a loan from her father as a ‘soft loan’, by which I understood her to be acknowledging that he would not be actively seeking repayment. I have seen documentary evidence of a Lloyds loan standing at £3,442.00 and an Ikea store card account standing at £300.
93. I assess the wife’s current liabilities at £3742.
94. I accept the husband’s evidence that he owes his accountant £8,000.

95. There are two charges in his name against the family home to Link Financial (£8,679) and CL Finance (£2,190).
96. I accept the husband's evidence that he borrowed £9,133 from a friend (through his company OS Ltd) with the intention of paying off these debts to the charges could be removed, and at the time he hoped this would be a means of settling this case. In the event the parties did not reach agreement and those monies were used to fund his legal representation for the final hearing.
97. There is an outstanding judgment debt to NRAM of £54,940.
98. The two Director's Loan Accounts from Company Beta and Company Gamma stand at £683,771.
99. I accept that he has an outstanding energy bill of £2,159 and further outstanding legal fees of £65,327.
100. I accept the husband's evidence that his total personal and business debts currently stand at £844,199.

(c) the standard of living enjoyed by the family before the breakdown of the marriage.

101. When the parties were living together they had four dependent children between them. They were both working hard in a number of different ways to provide for their family. They have now been separated for six years. The various rounds of litigation have been financially ruinous for both of them. On any view they have less money available to them now than they did at the time of the marriage.
102. In all the circumstances of this case, the previous standard of living during the marriage is not a useful reference point in determining the question at hand.

(d) the age of each party to the marriage and the duration of the marriage.

103. This was a nineteen year cohabitation/marriage. The husband is now 59, the wife 49. There being modest financial resources now left to allocate, the length of the marriage or age of the parties is not a driving factor; this has become more a needs case than a sharing case.
104. Two of the parties' children are under eighteen, and their welfare must be the first consideration of the Court.

(e) any physical or mental disability of either of the parties to the marriage.

105. Not a relevant factor.

(f) the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family.

106. It is not the work of the court to carry out an account of all the contributions made during the marriage, each gave what they could to the best of their abilities at the time. The law does not take an account of who spent what when. There is not evidence in this case to justify a finding that one party should have any entitlement over the other on the basis that their contribution to the marriage should be regarded as exceptional.

(g) the conduct of each of the parties, if that conduct is such that it would be in the opinion of the court inequitable to disregard it.

107. My previous judgment set out my findings in respect of the wife's 'conduct' in entering into a secret agreement with PN and GN and transferring shares in Company B to them, with the intention of both defeating his claims in the financial remedy proceedings and undermining the husband's business interests totally.

108. As a consequence of that judgment, the share transfers were reversed, and PN and GN have been thwarted in their attempts to restart the litigation.

109. The wife was ordered to pay a contribution to the husband's costs, payable at the conclusion of these proceedings.

110. It would not be fair to impose further consequences upon the wife as a result of this conduct.

111. The husband was guilty of an attempt to prevent his business assets being considered as part of the assets within these proceedings. The agreement with his accountant was a sham and it was dishonest of him to declare on his Form E that the assets were not his. He has acknowledged that he acted deceitfully and wrongly and was penalised in costs. The Court has been given a full account by him of all his income streams, his expenditure and tax returns. There is no basis for taking this conduct into account in my assessment.

112. The wife alleges that this, and the following matters amount to litigation misconduct:

- Non-disclosure;
- Bad faith in seeking to register the trademark;

- Diversion of income from the wife's company Company B;
- Litigation misconduct against PN and GN resulting in a dissipation of company funds;
- Unreasonable open offers.

113. I have dealt with the non-disclosure issue above. Any issues about the trademark fall to be dealt with in those proceedings, I have not been shown evidence that the husband has either acted unreasonably or that his actions in this respect should weigh against him in the section 25 assessment. There is no evidence to support the assertion that the husband's dealings with PN and GN amount to litigation conduct. If anything, the wife's conduct in that respect closer resembles litigation conduct which the Court should take into consideration. However, for reasons given, I consider that it would not be fair to adjust the final outcome to reflect this.

114. For reasons outlined below, I have not found the husband's open position to be unreasonable. By contrast, I have found the wife's open position to be wholly unrealistic.

Analysis

115. The sad reality is that there is little room for manoeuvre.

116. Both the husband and the wife propose that the husband retains the business.

117. The husband proposes that the wife retains the former matrimonial home, and there is a clean break.

118. The wife proposes that the husband pays to her a lump sum of £1.45 million to be paid by instalments, periodical payments or a combination of the two.

119. In her position statement Ms Lewis sought the following:

- A payment of £155,000 representing a fifty percent share of 'the business';
- £200,000 representing what she says is half the Director's Loan Account drawings, implying that all this is money that has been dissipated by the husband;
- £300,000 representing half the value of Company A as valued by Mr Pym in 2021;

- £300,000, said to be 50% of the ‘increased value of the Company B intellectual property since 2021 ... notionally set at an increase of £600,000’;
 - Income ‘due from Company B between 2012 and 2018, *‘but not collected or paid or included in husband’s income’*. This sum is put at £200,00;
 - A further £300,000 for *‘potential unfair prejudice action against the husband for transferring the income from Company A away from Company B – breach of understanding and agreement which rendered inequitable results’*. This fund is put at £300,000;
 - Transfer of family home to the wife (£278,000).
120. The wife’s proposal for final orders was indicative of her approach throughout, which ultimately was fixated on seeking recompense from the husband, but was blind to the realities of the situation. In her assessment of the value of the business and the husband’s income, she has chosen only to look at the top line figures representing annual turnover before expenditure is taken into account, or Mr Pym’s valuations before the liabilities of the business are brought into the account. She has ignored Mr Pym’s assessment that all of these businesses are illiquid and that the valuations are essentially hypothetical, because there is no real prospect of obtaining a buyer for any of them.
121. It is of some concern that she indicates an intention to draw the husband into further litigation in respect of Company A.
122. There is no justification for a payment of £155,000 share of ‘the business’.
123. The wife has not been able to prove that she was personally entitled to 50% of all monies drawn down from the Director’s Loan Account, nor that the husband has used any of these monies in a way that could be regarded as wilful dissipation of assets.
124. Mr Pym did value Company A at £600,000 on the basis that the husband continued to present the TV programmes, but he did not consider there was any prospect of realising that through a sale, whether the husband remained involved or not. The wife has not persuaded me that she is entitled to a cash sum in respect of half his valuation. The next claim would appear to be claiming exactly the same ‘asset’ twice, or else the claim that the intellectual property in Company B would have increased a further £600,000 since 2021 is not based on any evidence.
125. Similarly, the wife has not established that the husband has hidden undisclosed income from the wife or the Court, let alone to the tune of £200,000, nor has she

proved that she has any entitlement to receive it. I found that the wife held the shares for the benefit of the husband and herself, and that the income he generated was to be spent for the general benefit of their family. There is no evidence to suggest that until the separation that did not happen. Both parties were working to their best of their abilities and contributing what they could, financially and otherwise, to the welfare of the family. Post separation neither party had to account to each other for their income.

126. The £300,000 fighting fund sought has again no basis for being awarded in fact or law.
127. That leaves her seeking transfer of the family home to her, to which proposal the husband agrees.
128. Having regard to all the factors on the section 25 checklist, and to the evidence I have heard and read, I have concluded that, broadly, the proposal put forward by Mr Switalski on behalf of the husband represents the only workable solution, and is an outcome that is fair in all the circumstances.
129. The priority is to enable the wife and the children to be housed securely. Ideally, they would stay in the family home.
130. She could achieve that by taking on the mortgage. The outstanding balance is £233,366 and her mortgage capacity has been put at £235,000 so it should be feasible.
131. If the property is not sold, that would leave her with equity of £291,634.
132. If she is not able to release the husband from the mortgage, the house would have to be sold, after costs of sale, equity would be about £275,000. Together with her mortgage capacity, the wife would be able to rehouse for herself and the two minor children in the same area where they live now.
133. I find that the wife should be ordered to transfer her shareholding to the husband.
134. There are two charges registered against the FMH. They total £10,869 of debt in the husband's name. They remain payable. The husband will need to discharge the debts in his name in order to be released from the mortgage. His existing liabilities are colossal, but he continues to generate income from his business and has the Director's Loan Account available to him. If the parties agree for

the wife to discharge those debts and my order is altered on a pound for pound basis accordingly, that is a matter for them.

135. The husband is best placed to continue to derive an income from his work, which depends upon him having the rights associated with Company A. There is little practical value in it remaining in the wife's hands. She cannot sell it, it has no liquidity, she has no knowledge or interest in this sport, or knowledge of the way the business operates. She does not have the husband's contacts, does not know how to generate content. In her hands, without the husband's continuing involvement in Company A, it instantly loses hundreds of thousands of pounds in value. She could not hope to work with the husband productively, so there is little or no prospect of him remaining involved. The wife has in the past become involved in the business only for the purpose of undermining the husband's position. In all the circumstances, it would be perverse to leave Company B with her rather than to transfer it to the husband.
136. The wife's sense of entitlement to a share of the income generated by the husband, since their separation or into the future, is misplaced.
137. The husband is able to generate a substantial income from his business, but the accounts show clearly that the costs of generating the income are significant. He rents three studios in London, has in excess of twenty staff and contractors working to produce the content that appears on various media platforms, and a raft of associated expenses. That means that the profit on the bottom line is substantially less than the top line figure. The wife shows her naivety when she suggests that the income he generates through his business must be available to him to spend freely. Nonetheless, the husband can continue to expect to receive around £4,500 a month net. This is not quite enough to meet his obligations of monthly rent and payment of £1100 to the wife in child maintenance as well as his living expenses, although his daughter A contributes £500 a month in rent, so his position is tenable.
138. The wife will be able to continue to earn at her current level, with her income supplemented by maintenance and some child benefit. These payments will reduce and then stop once C is an adult, but she will at that point have equity in the house which will give her some options.
139. The husband is receiving the entirety of the business, which is on the face of it more valuable than the equity in the home. However, I regard that as a fair outcome because (i) the value is wholly extinguished by the husband's liabilities; (ii) this is plainly the husband's business through and through, as a result of his endeavours. He is best placed to maximise its return for the benefit

of himself and for the parties' children; (iii) for the reasons given, the wife's continued interest in it represents a risk and exposure to future liabilities.

140. The husband will not be able to obtain a mortgage and will continue to have to rent for the foreseeable future.
141. [*Rental property Q*] is in the husband's sole name but should be regarded as a joint asset.
142. The husband gave evidence to me that the property is operating at a loss and he proposes to sell it. It is likely that any proceeds of sale would be extinguished by the debt to NRAM, which will need to be discharged first, and then there will be a capital gains tax liability. In the event that there are any proceeds of sale, they should be split between the parties.
143. Putting the figures into a table, the effect of my decision is as below:

	Husband	Wife	Total
FMH		£275,884	£275,884
[rental property Q]	0	0	0
¼ interest in father's property	£79,790		£79,790
Accounts	£120	£2437	£2,557
Investments	£0	£600	£600
Personal liabilities	(£139,559)	(£3,742)	(£143,301)
Costs	£20,000	(£20,000)	£0
Net liquid total (A)	(£39,649)	£255,179	£215,530
Businesses			
Company A goodwill (70%)	£393,600		£393,600
Net value other businesses	£3,636		£3,636
DLA	(£683,771)		(£683,771)
Net total (B)	(£286,535)		(£286,535)
Total (A + B)	(-£326,184)	£257,724	(-£71,005)
Pensions			
	£6130	£14862	£20992

144. The husband ends up as he is now with his assets overwhelmed by his liabilities, but he will be able to continue to earn an income from the business, he should be protected from the threat of further litigation which has done so much to undermine, destabilise and bleed resources from his business.
145. The wife will receive security for her and the children of the family, with a realistic prospect of being able to stay in the family home, alternatively to use her mortgage capacity to rehouse in suitable accommodation.
146. Both of them are vulnerable because they have little in the way of pension provision, and neither of them will have any financial cushion to help them if they are unable to work for whatever reason, but regrettably, the resources are not there, they have all been used up, largely in pursuing destructive and expensive litigation.
147. I hope that the conclusion of this case will bring about some respite for them both. I wish them well for the future.

Her Honour Judge Joanna Vincent
Oxford County Court
Draft judgment sent out: 29 April 2024
Approved judgment handed down: 19 July 2024

Supplementary Judgment on Costs

1. A costs order of £20,000 was made against the wife on 29 August 2023, not to be paid until the end of the case.
2. Following judgment in the financial remedy proceedings the husband seeks an order that the wife should pay a further £20,000 towards his costs. His proposal is that a charge is registered against the former matrimonial home (which is to be transferred into the wife's name provided she can release the husband from the mortgage), with interest at 5% and not to be capable of enforcement until the youngest surviving child of the family turns 18 or finishes secondary education, whichever is the later.
3. The costs order is sought on the basis that the wife's conduct since FDR has been unreasonable.

4. On behalf of the husband Mr Switalski says that following the FDR on 10 November 2023 the husband made an open offer on 14 November 2023, which led to without prejudice discussions. The husband was to pay off the charges on the former matrimonial home with a view to it being transferred into the wife's name. He says he then offered to be responsible for all the other liabilities (save for the costs order against the wife) and for there to be a clean break. He offered the wife £500 to obtain legal advice on his proposal for settlement, and that if they settled within 14 days, then he would not seek any further order for costs against her.
5. On 23 April 2024, the day before the final hearing, the husband made a further offer to settle:
 - FMH to be transferred to the wife subject to her ability to release husband from the mortgage;
 - Wife to be responsible for discharging the liabilities on the home;
 - Wife to pay £40,000 of costs to the husband (£20,000 existing order and £20,000 further costs), to be subject to a charge on the FMH, not to be enforced before the youngest child reached the age of 18 or finished school. Interest to accrue at 5%;
 - If the wife could not release the husband from the mortgage OR, once the youngest child reached the age of 18 or finished school, or upon both children of the family no longer living with the wife, the family home to be sold and the proceeds applied to (i) discharging the mortgage; (ii) settling the existing charges (if not already paid) plus the £40,000 costs charges plus interest, thereafter the remainder to be paid to the wife;
 - Otherwise the parties to retain their interest in other properties and to be responsible for their own liabilities.
6. I have not seen a schedule of costs, but the husband's solicitor has provided a letter setting out that since the FDR the husband had incurred £26,000 of fees.
7. The general rule in financial remedy proceedings (Family Procedure Rules 2010 rule 28.3) is that the court will not make an order requiring one party to pay the costs of another party.
8. The court may however make an order requiring one party to pay the costs of another where it considers it appropriate to do so because of the conduct of a party in relation to the proceedings (whether before or during them). (FPR 28.3(6)).

9. In deciding what order (if any) to make the court must have regard to:
- a. *Any failure by a party to comply with the rules, any order of the court or any practice direction which the court considers relevant;*
 - b. *Any open offer to settle made by a party;*
 - c. *Whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;*
 - d. *The manner in which a party has pursued or responded to the application or a particular allegation or issue;*
 - e. *Any other aspect of a party's conduct in relation to proceedings which the court considers relevant; and*
 - f. *The financial effect on the parties of any costs order. (FPR 28.3(7))*
10. Refusal to negotiate openly will amount to conduct in respect of which the Court will consider making an order for costs. See Mostyn J in *OG v AG* [2020] EWFC 52:
- 31. It is important that I enunciate this principle loud and clear; if, once the financial landscape is clear, you do not openly negotiate reasonably, then you will likely suffer a penalty in costs. This applies whether the case is big or small, or whether it is being decided by reference to needs or sharing.*
11. Having regard to the circumstances of this case, I am not persuaded that the wife should be ordered to pay a further £20,000 to the husband in costs, for the following reasons:
- (i) It has not been shown that since the FDR the wife has failed to comply with a specific rule, court order or practice direction;
 - (ii) Following the FDR in November there were some negotiations between the parties, but I have not been shown evidence that the ultimate failure of the negotiations at that stage can be laid at the wife's door;
 - (iii) The husband did then make a revised offer on 24 April, the day before the final hearing. But by this stage the parties had incurred the costs relating to the final hearing;
 - (iv) the case put forward by the wife at final hearing was in my judgement unrealistic and not supported by the evidence. In all the circumstances, it was unreasonable for her to contest the case in the way that she did;

- (v) at the same time, I have to note that the offer made by the husband the day before the hearing was less advantageous to the wife than the order ultimately made by the Court. The husband's offer did not give her the house outright but triggered sale at the happening of a number of different and uncertain events, and prioritised paying of the husband's debts before securing housing for the wife;
- (vi) That the husband did not ultimately achieve a better outcome than he had offered is not the same as taking an unreasonable stance in the litigation, as I have found the wife did;
- (vii) But was she unreasonable in rejecting the offers made by the husband? His offer imposed an additional £20,000 liability upon her which was likely to undermine any ability she might have had to take on the mortgage for the family home, so in effect it was forcing a sale of the property. The numbers were very tight;
- (viii) If she accepted his offer, the prospects of her achieving stability and security through ownership of the family home were much reduced;
- (ix) the Court has to decide whether a costs order is payable in principle, the methods by which a party may or may not choose to enforce it, or their agreement to wait for some years to do so, does not form part of the court's assessment;
- (x) in any event, in this case, the process of registering a charge against the FMH or any other property the wife owned, and of enforcing the charge in due course would bring with it further costs implications, and, as noted above, would be likely to undermine the wife's financial stability even if not enforced for some time, because of the likely impact upon her ability to raise a mortgage.

12. The wife's stance at final hearing was unreasonable in respect of her claims on the husband's business. However, considering all the circumstances and the 28.3 factors, I have concluded that it is not appropriate to exercise my discretion so as to make a costs order against the wife in respect of costs incurred since the FDR.

HHJ Joanna Vincent
Family Court, Oxford

24 June 2024