Judgments

FAMILY DIVISION

Neutral Citation Number: [2007] EWHC 2033 (Fam)

Royal Courts of Justice

12 July 2007

Before:

MR. JUSTICE MOYLAN

(In Private)

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B E T W E E N :

C C Applicant

- and -

R C Respondent

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J U D G M E N T

(As approved by the Judge)

MR. JUSTICE MOYLAN:

1 This is my judgment following the hearing of the wife's ancillary relief application. The parties met in 1984, married on 22nd April 1988 and separated on 27th September 2005. The husband is now aged 63 (having been born on 17th May 1944), and the wife is now aged 50 (having been born on 23rd September 1956).

2 I am confident that it would surprise most people to hear that the focus of the disputed evidence in this case has been on what occurred in the years

1984 - 1988. The perceived forensic purpose of this focus has been two-fold; first, to seek to identify the moment when the parties began cohabiting or became committed to each other, and secondly, having identified that date, to seek to identify what wealth the husband owned at that date for the purpose of establishing the extent of his pre-marital wealth.

3 Each party blames the other for this. The husband saying it was caused by the wife asserting that he had no significant wealth when the relationship started. The wife saying it was caused by the husband asserting that he was extremely wealthy at the date of the marriage.

4 I appreciate that certain passages in the speeches in *Miller* and *McFarlane* might seem to require almost an account of the sources of the family's wealth. However, these passages have to be put in context and, in particular, have to be applied in the framework of the Matrimonial Causes Act 1973. It would, in my view, be a very regrettable step if parties were obliged or even encouraged to conduct a financial account after a long marriage. I do not consider that this can be what the House of Lords intended. I will return to this later in my judgment.

5 At this hearing the wife has been represented by Mr. Mostyn QC and Miss Bangay QC, and the husband by Mr. Pointer QC and Miss Harrison. The wife's case simply expressed is that she is entitled to half the current wealth, being approximately £22.2 million, as the vast bulk of it has been generated during the marriage or since the start of the parties' relationship, and there exists no justification for it being shared other than equally between the parties.

6 The husband's case also simply expressed is that the wife's award should be limited to that required to enable her to meet her needs (generously assessed) as a result of the husband having already accumulated considerable, if not most of his, wealth by the date of the marriage or the commencement of the parties' relationship.

History

7 The husband was born on 17th May 1944. He graduated from the University of Birmingham in 1965 with a degree in mathematical physics. He went to work for English Electric Computers in Stoke on Trent and then, in 1969, moved to Manchester where he worked for the Stock Exchange, running their computer system outside London.

8 As well as being employed, the husband began to purchase residential properties. In the early 1970s the husband left his employment and began working full time in the property business. In 1976 he entered into a partnership with two brothers. They principally bought and sold residential properties, but they also bought a trading estate in Salford

and an office building in Manchester.

9 In 1980 the husband left the partnership, receiving £50,000. He then set up in business through two companies, Mersey Estates Limited (which was incorporated on 24th July 1980) and Trawden Forest Properties Limited (which was incorporated on 24th September 1980). These companies still exist, but for many years they have been subsidiaries of a holding company called Armstrong Brooks (which was incorporated in 1988).

10 Trawden and Mersey were set up to conduct property dealing. Over the years of their existence they have bought and sold, to quote from the husband's replies to questionnaire, "hundreds of individual properties". The main focus of the business, at least in the early years, was the purchase of large vacant industrial estates, which were then divided into units, usually simply on paper, and sold on as soon as possible.

11 I will deal with the nature of the husband's business in a little more detail in due course. But, for example, in the first year Trawden had a turnover of £115,000 and made a profit of £13,000, after directors' emoluments and management fees of £22,800. The turnover reflected the sale of properties which had cost £64,000, a substantial increase within one year.

12 In his affidavit of 4th August 2006, the husband says:

"I discovered that there was an enormous demand for small freehold factories and developed a lucrative business buying large vacant sites all over the UK and selling them off in smaller sections. During the period 1980-1987 I purchased a major factory complex every three weeks".

13 By 1984 the husband was living at 40 Cavendish Road, Ellesmere Park, Eccles, a property he had bought in 1983, and was running his business through Trawden and Mersey Estates. A large number of documents had been produced dealing with the husband's then financial circumstances, and I will return to these later in my judgment.

14 The wife was born on 23rd September 1956. She graduated from Bristol University in 1979, followed by an MA in Medieval Studies and a PhD in Medieval Literature at York University. By 1984 she was living in a property in York, which she had bought in 1983 for £15,500 with a loan from her parents and a mortgage. She was working as a freelance writer, teaching MA students at Leeds University, marking A Level papers, designing book covers and making woodcuts. It is not suggested other than that she was earning only relatively modest amounts.

15 The parties met in 1984, when the wife answered an advertisement placed in the Guardian by the husband, which read:

"Wealthy eccentric privately printing humorous book needs well paid freelance help from someone with literary and publishing experience".

I am not aware whether the wife, in fact, ever undertook the work referred to in the advertisement, but the parties started their relationship.

16 At this stage I propose to set out a broad account of the history of the parties' relationship and marriage. Later in this judgment I will deal in more detail with the development of their relationship in the years 1984 - 1988.

17 In 1985 the wife sold her house in York and bought a house in Salford, at 1 Gore Avenue. She moved her possessions there in September 1985. In October 1986 the parties went to the United States with the intention of emigrating there. A house was purchased in America at the end of 1986. They travelled to and from the United States until July 1987, when the planned emigration was abandoned and the parties returned to live in England.

18 The parties do not agree about their engagement. The husband says there was no formal engagement. The wife says they became engaged in September 1987. They married on 22nd April 1988 at Gretna Green. The first matrimonial home was 40 Cavendish Road. They then moved to a property called Vigox House in Manchester, before moving to their final matrimonial home, Parklands. This property was purchased in 1994 for £880,000.

19 The husband says that after the boom years of about 1980 - 1988 the “opportunities for dealing stalled”. His major business vehicle is now a holding company called Armstrong Brooks Limited, which was incorporated on 30th June 1988. The wife owns a nominal one share, but the company is effectively owned by the husband. Trawden and Mersey Estates, as I have said, are subsidiaries. Whatever the precise position over the intervening

years - and there was also a foray into pubs, which ended in 2003 when they were sold - approximately 90 per cent of Armstrong Brooks' current gross assets are held in cash.

20 As so often seems to happen as a result of litigation, each party, to differing degrees, has made allegations essentially about the conduct of the other. Again, each side blames the other. From my perspective, both are to some extent responsible. There was, in my judgment, no justification for the husband relying on the matters he set out in that part of the form E which deals with bad behaviour or conduct, even though he made it clear that this related to the breakdown of the marriage and not to the wife's conduct during the marriage. Likewise, I can see no justification for the wife also relying on this paragraph by the general incorporation of the statement she annexed to her form E. This statement was an unfocused document, but it included allegations about the husband's behaviour which were as unnecessary as the allegations he had made.

21 This pattern continued in the parties' respective affidavits, with yet more unnecessary and, no doubt, hurtful allegations. I make it clear that none of the allegations made by either party about the other's behaviour has had any effect on my decision and, in my view, none of them should ever have been made.

22 I have heard oral evidence from the husband and the wife and have read those parts of the bundle to which I have been referred. I have also received comprehensive written and oral submissions from the advocates for each of the parties. I have, of course, taken all the matters raised by them into account when reaching my decision.

Pre-marital Relationship and Wealth

23 I turn now to deal with the issue of pre-marital relationship and wealth. The parties respective cases, broadly stated, are as follows. The wife's primary case in opening was that the husband had no significant wealth at the date of the marriage. It was contended that 95 per cent of the present wealth was generated during the marriage, and

accordingly, that the husband's pre-marital wealth did not justify a departure from equality.

24 In the wife's final submissions her case had developed. It was said that:

"Much time was spent on examining the nature of the parties' relationship from 1984 - 1988. The relevance of this is that it is clear that the husband's business, in fact, took off [and elsewhere in the note 'or began to take off'] in this period".

The wife still maintains that there was no:

"signal difference between the husband's positions at 1984 when compared with 1988. On either footing, the husband's position was modest compared to what he and the wife achieved during the marriage. It was during the marriage that the money was made".

25 Alternatively, it is argued that, even if the husband's wealth did develop significantly during the years 1984 - 1988, no distinction should be drawn between these years and the years of the marriage, having regard to the nature of the parties' relationship from 1984.

26 The husband's case is that the pre-marital years should not be added to the years of the marriage, as the parties were not sufficiently committed to each other and did not cohabit until they married. In addition, the husband contends that he was wealthy, both in 1984 and in 1988. I have been provided with a number of schedules showing the properties owned by the husband's companies in each of the years 1984 - 1988. The husband has also produced a schedule of his estimated wealth as at the date of the marriage.

27 At this stage in my judgment I do not propose to deal with these factual issues but on the approach I consider I should adopt. In respect of the potential significance of a pre-marital relationship, I have been referred, among others, to the decisions of:

(a) *CO v. CO* [2004] 1 F.L.R. 1095, in which Coleridge J. referred to periods of :

"Committed, settled relationships ... in the context of cohabitation" as "capable of being as important a ... factor ... as any other, akin to the duration of the marriage".

(b) In *J v. J* [2004] 1 F.C.R. 709, Bennett J. took into account the fact that the relationship had endured for seven years from the date on which it became "a commitment", being when the parties became engaged.

(c) In *M v. M* [2004] 2 F.L.R. 236, Baron J. did not:

"draw any distinction between the years of cohabitation and those of the marriage. ... I am clear that ... it is a couple's commitment to each other by cohabiting that is the relevant start date for consideration in most cases".

(d) In *Miller* and *McFarlane*, Baroness Hale makes passing reference to matrimonial property as consisting of:

"everything acquired during the marriage (which should probably include periods of pre-marital cohabitation and engagement)".

28 On the issue of the potential significance of pre-marital wealth, I have been referred, among others, to the decisions of:

(a) *White v. White*, including the passage from the speech of Lord Nicholls, when he refers to the effect of property acquired before the marriage and inherited property:

"Plainly, when present, this factor is one of the circumstances of the case. It represents a contribution made to the welfare of the family by one of the parties to the marriage. The judge should take it into account. He should decide how important it is in the particular case. The nature and value of the property, and the time and circumstances in which the property was acquired, are among the relevant factors to be considered".

(b) In *P v. P*, in which Munby J., after quoting Lord Nicholls, referred to the difference that can exist between different types of inherited property; and

(c) again *Miller* and *McFarlane*, and also *Charman v. Charman*, to which I will return later.

29 The form of the factual dispute in this case raises a dilemma, which reflects also the recognised tension between predictability and flexibility in approaching and outcome. On the one hand, I am reluctant to enter into any extensive analysis of the development of the parties' relationship between the date when they met in 1984 and the date of their marriage, or of the extent of the husband's wealth at that time. If I were to do so, I would appear to endorse the need for such an analysis.

30 On the other hand, in the authorities to which I have been referred, albeit in differing ways, the date on which the parties began living together or became committed to each other and the extent of the wealth generated since that date were taken into account as relevant and, it could be said, significant factors. The House of Lords in *Miller* and *McFarlane* might also be said to have given added importance to this analysis, taking, for example, Lord Nicholls' references to the "real difference" between "matrimonial property" and "other property".

31 We, practitioners and judges alike, are still in the relatively young days of exploring the consequences of *Miller* and *McFarlane*. As a decision, it has, in my experience, probably been analysed and argued over more than any other decision in this field during the last 30 years. One of the clear trends which has already emerged has been for practitioners to construct their respective cases based on the speeches for all purposes as though the extracts used were statutory provisions. Coleridge J. referred to the dangers of this approach in *RP v. RP* [2006] E.W.H.C. 3409, when he said:

"They (the speeches or rationales highlighted in the speeches) are very helpful in ensuring the court achieves a fair result and does not become stuck or formulaic in its approach as it has done from time to time in the past. ... However, care needs to be taken to ensure that these passages are not treated as some kind of quasi-statutory amendment".

32 Charles J. made the same point in *H v. H* [**2007**] E.W.H.C. 459. Quoting from that decision at para.33(vii):

"In identifying the rationale for awards in *Miller* and *McFarlane*, the House of Lords through both Lord Nicholls and Baroness Hale are not setting rigid rules or formulae but are identifying principles guiding the court's approach and thus its reasoning in applying the Matrimonial Causes Act".

33 Continuing with para.34:

"In my view point (vii) is important and the paragraphs I have mentioned acknowledge the tension between promoting fairness (a) by enabling parties and advisers to predict results, whilst (b) retaining the flexibility given by the statute that is necessary to enable a fair result to be achieved in the circumstances of the given case".

34 He then continues, and I propose to quote a number of paragraphs from this decision, starting at para.40 under the heading "The approach to the guidance in *Miller* and *McFarlane*:

"40 Both sides correctly acknowledged that the task of the court was to apply the statutory test and thus to have regard to the s.25 criteria. Thus, for example, it was common ground that the husband's income and earning capacity were matters to which the court was directed to have particular regard.

"41 However in my judgment from that correct starting point both sides fell into error in arguing what were described as the "hot topics" by treating, or seeking to treat, the guidance given by the House of Lords as if it was a series of statutory tests and that a pass or a failure of those tests led to particular and set results.

"42 The arguments were, or came close to, an assertion that given the length of this marriage and, because of that the force of the application of the yardstick of equality to the fruits of the marital partnership, it was appropriate at the first stage of the court's reasoning for it (1) to define the matrimonial property with precision, (2) to divide its value in half, and (3) to treat that result as an established and unalterable part of the award. ...

"43 In my judgment this is an incorrect approach because (i) it ignores the flexibility of the statutory provisions and the objective of achieving a fair result in the given case that was emphasised by the House of Lords, and (ii) it seeks to impose a certainty or rigidity of division on a foundation of the matrimonial property and thus on a concept that (a) is not expressly mentioned by the Matrimonial Causes Act, and (b) cannot always easily or precisely be identified and valued".

35 Continuing at para.46:

"46 In my judgment I should not fall into similar error by reference to the phrases and concepts "matrimonial acquest"

and “family assets” (and therefore matrimonial property) which can also be described as alluring judicial phrases. This is particularly so because:

“i) they lead to an application of the yardstick of equality and thus to a quantification of an award (as did the phrase “the wife's reasonable requirements” by reference to a Duxbury calculation when a clean break was ordered),

“ii) even though the yardstick of equality applies readily and with force to such assets, it does not do so as a matter of course, and it does not necessarily lead to an equal division of the capital value of the matrimonial property,

“iii) as Lord Mance points out, it is as to the extent and identification of this concept that Baroness Hale (and the majority of the House of Lords) differ from Lord Nicholls although, as I have mentioned, it is accepted that this difference is in most cases not going to produce a different result, and

“iv) whichever approach is adopted to the concept of matrimonial property, it is not always easy to identify all of it precisely.

“47 I appreciate that there are attractions in seeking to achieve clarity by applying judicial guidance, and the concepts set out therein, but it seems to me that particularly when such concepts themselves introduce uncertainties and value judgments the attraction is flawed and can lead to a flawed progression of analysis and argument in achieving the ultimate goal of an application of a statutory test to achieve a fair result.

“48 I hasten to add that that does not mean that the process of reasoning identified by the guidance given by the House of Lords is not to be followed. Rather in my view it means that when following it, with a view to achieve the overall aim of a fair result, the court must take care not to create set or rigid stepping stones, or apply a formulaic approach, that is not set out in the statute.

“49 So it seems to me to be more sensible, and in accordance with the statutory test and the guidance (i) to have regard to the particular circumstances of a given case when considering concepts such as the matrimonial property and the application of the yardstick of equality and thus to the range of reasonable possibilities in their application, (ii) to stand back and take an overview to the circumstances of a given case by reference to those possibilities and the guidance and the flexibility built into it, and therefore (iii) not to take a formulaic or progressive approach that introduces a set and unalterable ingredient of the award (e.g. half of the matrimonial property) particularly when an aspect of its evaluation is not clear or common ground”.

36 I felt at times during the present case that I was being urged to adopt an approach which could be described as formulaic in more than one respect. By way of example, Mr. Mostyn seemed to go as far as submitting that

pre-marital wealth was only relevant and could only justify departure from equal sharing if the asset remained intact, and possibly only also if it amounted to an heirloom. In this, he relied on the decision of Munby J. in *P v. P* [2005] 1 F.L.R. 576 at para.37, and para.25 in Lord Nicholls' speech in *Miller* and *McFarlane*. I do not consider that these passages have the effect contended for by Mr. Mostyn. The point being made, in my view, in each of those paragraphs was that the weight to be given to inherited or pre-marital wealth might depend on the nature of the asset. It was not, in my view, being suggested that no weight would be given if the asset no longer existed or it was not an heirloom or not

one received with the expectation that it would be retained *in specie* for the future. Lord Nicholls gives the example of "modest savings introduced by one party".

37 In addition, the formulaic approach is being applied to the debate about the effect on a court's decision of property being defined as matrimonial or as non-matrimonial. Hence, in his closing submissions, Mr. Mostyn asserts that "all the property is matrimonial", and relies on *Charman v. Charman* in the Court of Appeal at para.66, where it is said that the sharing principle:

"applies to all the parties' property but to the extent that their property is non-matrimonial there is likely to be a better reason for departure from equality".

38 The need to establish both what Baron J. called the "relevant start date" and the extent of each party's resources at that date could be said to be a consequence of the focus in *Miller* and *McFarlane*, on what was described variously as the "matrimonial property" or the "matrimonial acquest" or the "fruits of the matrimonial partnership", and the effect of this on the application of the sharing principle. The perceived advantages to each party of delaying or advancing the start date and hence increasing or diminishing the extent of the pre-marital wealth result in the type of factual disputes which have arisen in the present case.

39 It will already be apparent that I am reluctant to encourage such disputes. It would require the courts and the parties, to adopt that well known metaphor used by Coleridge J. in *G v. G*, to "rummage around in the attic", but worse, in my view, an even more dusty and opaque part of the attic than that being explored in *G v. G*. Further, the more influential the factual conclusion might be seen to be in determining the outcome, the more the parties would be willing to devote time and money on the investigation with the full panoply, for example, of accountants and other valuers. It also assumes that the concepts being sought are clearly identifiable.

40 I do not consider that this is what the House of Lords in *Miller* and *McFarlane* intended when giving the general guidance contained in that decision as demonstrated, for example, by the following extracts from the speeches. Lord Nicholls said, with my emphasis added, at para.27:

"Where it becomes necessary to distinguish matrimonial property from non-matrimonial property [this recognises that it is not always necessary]".

41 To quote further from that part of his speech where he considers matrimonial property and non-matrimonial property, starting at para.21:

"21 A complication rears its head at this point. I have referred to the financial fruits of the marriage partnership. In some countries the law draws a sharp distinction between assets acquired during a marriage and other assets".

42 He then gives the example of Scotland and continuing with the quote from his speech:

"In England and Wales the Matrimonial Causes Act 1973 draws no such distinction. By s.25(2)(a) the court is bidden to have regard, quite generally, to the property and financial resources each of the parties to the marriage has or

is likely to have in the foreseeable future.

“22 This does not mean that, when exercising his discretion, a judge in this country must treat all property in the same way. The statute requires the court to have regard to all the circumstances of the case. One of the circumstances is that there is a real difference, a difference of source, between (1) property acquired during the marriage otherwise than by inheritance or gift, sometimes called the marital acquest but more usually the matrimonial property, and (2) other property. The former is the financial product of the parties' common endeavour, the latter is not”.

“23 The matter stands differently regarding property ('non-matrimonial property') the parties bring with them into the marriage or acquire by inheritance or gift during the marriage. Then the duration of the marriage will be highly relevant”.

He then summarises the position set out in *White v. White*.

43 Continuing at para.25:

“25 With longer marriages the position is not so straightforward.

Non-matrimonial property represents a contribution made to the marriage by one of the parties. Sometimes, as the years pass, the weight fairly to be attributed to this contribution will diminish, sometimes it will not. After many years of marriage the continuing weight to be attributed to modest savings introduced by one party at the outset or the marriage may well be different from the weight attributable to a valuable heirloom intended to be retained *in specie*. Some of the matters to be taken into account in this regard were mentioned in the above citation from the *White* case. To this

non-exhaustive list should be added, as a relevant matter, the way the parties organised their financial affairs”.

44 Then, continuing at para.26, under the heading “Flexibility”:

“26 This difference in treatment of matrimonial property and

non-matrimonial property might suggest that in every case a clear and precise boundary should be drawn between these two categories of property. This is not so. Fairness has a broad horizon. Sometimes, in the case of a business, it can be artificial to attempt to draw a sharp dividing line as at the parties' wedding day. Similarly the 'equal sharing' principle might suggest that each of the parties' assets should be separately and exactly valued. But valuations are often a matter of opinion on which experts differ. A thorough investigation into these differences can be extremely expensive and of doubtful utility. The costs involved can quickly become disproportionate”.

“27 Accordingly, where it becomes necessary to distinguish matrimonial property from non-matrimonial property the court may do so with the degree of particularity or generality appropriate in the case. The judge will then give to the contribution made by one party's non-matrimonial property the weight he considers just. He will do so with such generality or particularity as he considers appropriate in the circumstances of the case”.

He then goes on to deal with flexibility.

45 Baroness Hale addresses the issue under the heading “The source of the assets and the length of the marriage”. Reading passages from her speech, starting at para.147:

“147 Nevertheless, such debates are evidence of unease at the fairness of dividing equally great wealth which has either been brought into the marriage or generated by the business efforts and acumen of one party. It is principally in this context that there is also a perception that the size of the non-business partner's share should be linked to the length of the marriage”.

“148 The strength of these perceptions is such that it would be unwise for the law to ignore them completely”.

“149 The question, therefore, is whether in the very big money cases it is fair to take some account of the source and the nature of the assets, in the same way that some account is taken of the source of those assets in inherited or family wealth. In the 'matrimonial property' to consist of everything acquired during the marriage (which should probably include periods of pre-marital cohabitation and engagement) or might a distinction be drawn between 'family' and other assets?”

46 She gives the answer to that question at para.152:

“152 My Lords, while I do not think these arguments can be ignored, I think that they are irrelevant in the great majority of cases. In the very small number of cases where they might make a difference, of which *Miller* may be one, the answer is the same as that given in *White v. White* in connection with pre-marital property, inheritance and gifts. The source of the assets may be taken into account but is importance will diminish over time. Put the other way round, the court is expressly required to take into account the duration of the marriage. If the assets are not 'family assets', or not generated by the joint efforts of the parties, then the duration of the marriage may justify a departure from the yardstick of equality of division”.

47 These limited references are probably sufficient to demonstrate that, in my view, the court is not required to identify property as being matrimonial or non-matrimonial. I also note Lord Hope's reference to the Scottish Courts having found that, under the Family Law of Scotland Act 1985:

“The definition of matrimonial property was capable in other ways, on occasion, of producing very real injustice”.

This is another reason for caution in or even the resistance to the universal adoption of a formulaic approach, because any such approach, unless accompanied by sufficient flexibility, would be bound to result on occasion in real injustice.

48 Having debated the dilemma I have described for longer than I intended, I have no real answer to it, save to say that a flexible approach is required to ensure that the court's focus remains on achieving a result which is fair. Of course, as the Court of Appeal said in Charman, judges must be loyal to the guidance given on a topic by the House of

Lords. However, it is the application of guidance, not the rigid application of any specific formula coupled with a requirement to find clear and precise boundaries. The approach I propose to adopt is to set out the relevant factors drawn from s.25 and then to consider the principles of need and sharing, neither party having submitted that this is a case in which the principle of compensation has any application.

Section 25 Factors

49 So turning to those factors and, first, financial resources I was provided with a schedule of assets which was agreed, save for differences in the valuation of the husband's shares in three private companies; the difference amounting in total to £285,000. The difference depends on whether a minority discount is or is not applied to the husband's interest in those three companies. As the wealth totals just over £22 million, this difference amounts to just over one per cent, so I propose to deal with it briefly.

50 I have read the expert reports filed on behalf of each party. The husband gave evidence about the nature of each company and his involvement in them. There is a significant difference between the first company and the second two. The first, AC plc, was incorporated in July 1995. The husband and a man he described to me as being his closest personal friend each owned 50 per cent of the shares. As a result of employee share options, the husband's interest is now effectively 43 per cent. The husband is involved in the management as chairman, and speaks to the other shareholder and director most weeks. Applying the pragmatic approach of Coleridge J. in *G v. G*, I have no doubt the husband is likely, if and when the situation ever arises, to receive the full undiscounted value for his interest in this company. I do not, therefore, propose to apply a minority discount.

51 The other two companies are AS Limited and AIE Limited. They were incorporated respectively in 2001 and 2002. The husband merely invested in each of these companies. He is not involved in the management of the companies at all, beyond speaking occasionally to the directors. He refers to himself as “a sort of elder statesman”. He owns 30 per cent of the issued shares in each company.

52 In contrast to AC Plc, I consider it right to apply a discounted value in respect of the husband's interest in these companies. He is more of an investor than a partner, and I consider it appropriate to take the discounted value to reflect the fact that he has a minority interest. The companies are not quasi partnerships and it cannot be said that the husband will receive the non-discounted value for his shares.

53 The capital resources are as follows.

A) The parties' properties, their main home valued at gross £2.9 million, and a flat in London worth gross £340,000.

B) The husband's interest in his main company valued at net £11.3 million. As I have already said, the assets now consist very largely of cash and nobody has sought to argue that this is a risk asset.

C) The husband's shares in the three companies I have mentioned, worth net £750,000. These are clearly risk assets.

D) Pension funds worth £6.6 million.

E) £324,000 held in an offshore trust.

The simple mathematical total is approximately £22.2 million.

54 Neither party has, in the context of this wealth, any significant earning capacity. In particular, I do not regard the wife as having an ability to generate a significant income, and certainly not sufficiently significant as would affect my decision.

Standard of Living

55 The wife contends that the parties lived an opulent lifestyle. The husband disputes this. Mr. Pointer submitted, without any perceptible irony, that the wife's case on this was threadbare. Opulence is a relative word and I do not propose to seek to apply any particular adjective to describe the parties' standard of living during the marriage. They lived in a large, valuable, unusual property with a theatre and many Art Deco features, but one described by one of the valuers as requiring significant refurbishment, having had very little work done to it since the 1920s. They also had a flat in London. I accept the husband's evidence that their annual expenditure was in the region very broadly of £100,000 per year. They did not spend large amounts on holidays, clothes or, it appears, indulge themselves, save possibly for cars.

Ages

56 The husband is aged 63 and the wife is aged 50. The parties married on 22nd April 1988 and they met in 1984.

Contributions

57 Each of the parties made full contributions. Both worked, although it is clear that the gross income received by the wife frequently, if not usually, matched or was less than the expenses incurred by her in generating this income. I will deal later with the extent of the husband's pre-relationship wealth. The wife has sought to say that she made a significant contribution to the husband's business. While she undoubtedly made a contribution, it was not a business partnership.

58 It has not been argued that either parties' contributions should affect my decision, save, as I have said, in respect of the husband's pre-existing wealth. It is, therefore, regrettable that both parties dealt, in particular in their affidavits, with other issues relating to contributions. This was wholly unnecessary.

Financial Needs and Obligations

59 Neither party has any financial obligations or responsibilities which I need to take into account. As for their own needs, in my view they are each entitled to have resources which would enable them each to live at the same standard of

living. This applies both to housing and income needs.

60 If I were to decide this case by reference to needs, I do not see why the wife should not be entitled to accommodation of the same or similar level to that enjoyed by the parties during the marriage. Resources are available to permit this to be achieved, and the same applies in respect of income needs.

Conduct

61 I have already expressed my criticism of the fact that conduct was initially raised in this case. It has not formed any part of either party's submissions at this hearing.

Pre-Marital Relationship

62 I now turn to the pre-marital relationship. I have already described my reluctance to become engaged in any detailed analysis of the development of the parties' relationship in the years 1984 - 1988. Parties should not be encouraged to expect the courts to enter into any extensive investigation of the nature of their pre-marital relationship many years later. It can also raise issues which do not appear in the Matrimonial Causes Act 1973 in specific terms, and over which there could be an active debate in the search for precise definitions. I propose to give my broad assessment of the situation.

63 I have described how the parties met in 1984. Their relationship then developed over the course of the next four years until they married in April 1988. In addition to their written evidence, both parties gave oral evidence about the way in which they lived and the way in which their relationship progressed during this period.

64 There was frankly something unattractive about the almost intrusive nature of the questioning and the attempt to find certainty in the development of their relationship. The parties were being asked to try and reconstruct the nature of that relationship over 20 years after the event. Each probably had a different perspective at the time, let alone after 20 years, added to which they are now locked in litigation. I also obtained the impression that both the husband and the wife felt uneasy about being asked to define the nature of their relationship during those years, although I came to the conclusion that, perhaps inevitably, one sought to enhance and the other to diminish the nature of their relationship.

65 The conclusion I have reached is that the parties had a fluctuating relationship in the period 1984 to the end of 1987 or early 1988. As witnesses, I found that the wife was more prone to exaggerate to assist her case than the husband. He was more careful in his oral evidence than the impression given by his affidavit evidence, although he too could exaggerate.

66 By the end of the evidence it was clear to me that, even on the wife's evidence alone, the parties were continuing to maintain separate homes until from, or very shortly before, their marriage. The wife, in cross-examination, was asked when she and the husband decided they would spend their lives together. She replied that it was when they became engaged which she says occurred in September 1987. She gave this answer, although the parties agree that they went to the United States in October 1986 with the intention of emigrating. This plan was not fulfilled and was abandoned in July 1987. The wife also said in cross-examination that she was “living at both places”, in the husband's property and her own property, in the years 1985, 1986 and 1987. She gave this reply to explain why she was on the

Register of Electors for her property in each of these years.

67 Having given my conclusion, I will now set out the history of their relationship in a little more detail. The relationship started in the middle of 1984. They both had their own houses and their own work. They would spend variable amounts of time together, with the wife travelling to visit the husband at his house in Manchester. At Christmas 1984 the wife decided to end the relationship, but the husband persuaded her not to. She remained living in York and visiting the husband, until she sold her home in York and bought the property I have mentioned in Salford. In her affidavit the wife said that she sold the property in York in July 1985 and moved to live with the husband until she bought her property in Salford in September 1985.

68 In cross-examination the wife was shown the transfer of her York house, which demonstrated that its sale was not completed until 3rd September 1985. She accepted that the gap between the sale of her York house and the purchase of her Salford house was much shorter; probably only about three weeks. In her oral evidence the wife explained that this was a long time ago, or in her words "too long ago" for he to be able to recollect the detail.

69 This is a small point, but it is an example of the difficulty of seeking to investigate the nature of the relationship many years later. Further, in my view, it shows the way in which a case can become enhanced through the litigation process, not necessarily as a result of deliberate lying, but as a result, no doubt, of the perceived pressure to put down a precise history, when precision is not in fact possible.

70 I have no doubt that the wife moved to Salford in 1985, in part to be nearer to the husband. However, as she says in her affidavit, she bought her own property because she "wished to retain a measure of financial independence". In her oral evidence she said that she wanted to retain her own independent dignity. I do not accept that the parties were living as a couple at this time, as asserted by the wife in her affidavit. In her affidavit she said that she and the husband "spent our evenings and most nights together, either at his house or mine", and that they were living "between our homes". In cross-examination she accepted that the husband had never or almost never stayed at her property. Whilst it is clear that the parties were spending a significant amount of time together and the husband was, by this time, providing the wife with financial support, they maintained their separate homes, and also, in my judgment, spent significant periods apart in those respective homes.

71 The position developed in October 1986 when the parties travelled to the United States. They agree that they went there with the intention of emigrating. The parties do not agree about how much time was spent in the United States and how much in England over the course of the next nine months. However, by July 1987 the United States plan had been abandoned. The parties returned to England. There is, again, an issue between the parties about whether they were or were not living together after their return. Part of this may be a matter of perception. However, they still kept their separate properties and, I have concluded, spent variable but increasing amounts of time together.

72 The parties also do not agree about their engagement. In her affidavit the wife says simply that they became engaged in September 1987. In her oral evidence she expanded on this, and said that they became engaged on her birthday, when she and the husband were in Lincoln. The husband contends that there was no specific engagement. He says that over a period of time the wife was pressurising him to marry, but he would not agree. He gradually relented, but put conditions as to the nature of the celebrations. This was, he said, in early 1988. Whether the parties agreed to marry in September 1987 or early 1988 would have no effect on my decision, so I do not propose to resolve this dispute.

73 I have not referred to all the evidence and submissions on this issue, as I do not consider it necessary for me to do so. The only additional point I will deal with is Mr. Mostyn's specific reliance on the reference by the parties in their personal correspondence in 2005 and 2006, to "20 or 21 years of my life [was one phrase] together". I do not consider that these statements carry the implication that Mr. Mostyn tries to build on them.

74 I have set out my broad conclusions on the evidence. This is not, in my view, a case where, again to use the expression of Baron J., there is a clearly defined "start date" prior to the date of the marriage. However, the absence of such a date does not mean that I ignore the fact that the parties were in a relationship since 1984. I take that relationship fully into account as one of the circumstances of the case.

75 I now turn to deal with the husband's financial position in the years

1984 - 1988. Each party's factual case is at either end of the spectrum. The husband asserts that he had "amassed the majority of my wealth prior to marrying" the wife. The wife asserts that he had only modest means at any time prior to the marriage.

76 The husband has produced a volume of evidence in support of his assertion that he had a well-established business by 1984 and 1988. This evidence has been challenged by Mr. Mostyn as being inconsistent, inaccurate and incomplete and, as a result, that no reliance at all can be placed on any of it. For example, he points to differences in some of the figures given by the husband at different stages in the proceedings, and to differences between the husband's figures and the figures appearing in the stock lists for the companies. Criticism is also made of the way in which the documents have been disclosed. Whilst some of the documents and information could have been provided earlier, I do not consider that this has affected the outcome. I have been taken through the correspondence and Mr. Pointer has made the point that no request was made for the production of additional documents, either at the hearing on 2nd February **2007** or at the hearing on 5th June **2007**, when substantive other directions were given. Further, when assessing this point, it is worthy of note that the wife only requested information for the period from 1984 by letter dated 13th June **2007**.

77 It would, in my judgment, be foolish after a long marriage or relationship either to expect or to require a party involved in ancillary relief proceedings to produce a detailed account of the state of their financial affairs at the commencement of the marriage or relationship. On several occasions in the course of his evidence the husband replied, to a question put to him in

cross-examination, that he and his advisors had done the best they could after a lapse of some 20 years. Different cases will, of course, throw up different factual issues and different factual solutions to those issues. However, in the present case I do not accept the general assault mounted by the wife on the evidence produced by the husband. The quest for historical financial certainty was never going to be achieved and, in my view, was not a necessary quest in any event.

78 It would, therefore, be foolish for me to seek to undertake a task which only an accountant and valuer could undertake, namely to arrive at a precise view as to the extent of the husband's wealth at any point in the period from 1984 - 1988 (and I repeat that I am not suggesting that this was either necessary or even appropriate). I propose to make a broad assessment of the position, taking into account the points made, both during the evidence and in the parties' respective submissions.

79 My conclusion is that the husband had significant resources throughout the period 1984 - 1988. He had started the property business since at least 1972. He might not have made much money in the very early years, but they provided the foundation from which he was able to take advantage of what he called "the boom years of the 1980s". The husband points to the fact that in 1984 he owned his own home, a substantial property in Manchester, a number of expensive cars and his business. I propose only to refer to some of the evidence produced in support of the husband's case that he was a man of wealth in 1984 and even more so in 1988.

80 The husband has produced historical accounts for his companies. These show that the husband's business was well established, both in 1984 and in 1988. Mr. Mostyn submitted, it appeared almost as a matter of principle, that the husband should not be able to argue that these accounts do not show the value of his then business interests. It is true that the net asset value set out in the balance sheet in the accounts appears at this distance in time to be relatively modest, rising from £107,000 in 1984 to £425,000 in 1988. However, it is well known that company accounts, in particular balance sheets, do not necessarily by themselves show the true value of a business. For example, in this case the properties usually appeared in the accounts at the lower of cost and net realisable value, as against actual value.

81 Another measure of the size of the husband's business might be the level of the turnover. Gross sales through Trawden and Mersey Estates were £514,000 in 1984 (with the gross profit of £234,000), £1.06 million in 1985 (with a gross profit of £400,000), £1.25 million in 1986, £893,000 in 1987, £867,000 in 1988 and £3 million in 1989, a very significant part of this last figure being a property known as Centre Lane.

82 Schedules have been produced showing the properties owned by the husband's companies at the accounting year end for 1984, 1985, 1986 and 1987, and as at the date of the marriage. The values of these properties have been updated to January **2007**, derived from statistics held by the Valuation Office Agency. These are purely notional as, apart from two small units, the properties no longer exist. Further, the schedules were only supplied extremely late without any proper time for considered criticism. However, they provide very broad support for the contention that the husband's business was reasonably substantial in the years 1984 - 1988.

83 In a letter dated 9th April 1985 the husband wrote to the then Prime Minister, Margaret Thatcher, on the subject of factories on Merseyside. In it, he said that he had purchased 1.7 million square feet of empty factories in the previous two years. There is nothing to suggest that this was other than a truthful assertion.

84 The husband has produced a schedule of assets and liabilities as at the date of the marriage, which estimates his then total net worth at just over £5 million. Elements of this are undoubtedly flawed. There is a valid question over whether all the company liabilities have been included. This is not susceptible of a simple answer, as many of them are income debts, and some are debts due to the husband and to the pension fund, which does not appear in the schedule, but which was then worth something in the order of £200,000.

85 In addition, some of the values ascribed by the husband are clearly inaccurate. However, broadly assessed, the effect of the schedule is to show that the husband, in particular through his companies, had significant resources at the date of the marriage. One property alone, Centre Lane, which the husband had bought for £110,000 at the end of 1986 or early 1987, was sold in May 1989 for £1.75 million after he had bought an additional three acres for £70,000, pursuant to a pre-existing option. Whilst the figure given by the husband of £2 million cannot be justified, I accept that this property was worth well in excess of £1 million and, as a result, by way of example, that the company balance sheet could justifiably be increased to reflect this.

86 I do not propose to go through each property listed in the schedule. Mr. Mostyn succeeded in showing that some of the figures were considerably inflated. On the other hand, Mr. Pointer produced further schedules which provide sufficient support for the husband's case that the properties owned by his companies were worth very substantially more than the value given for them in the accounts.

87 The husband has also very recently produced property cards held by his conveyancing solicitors for the years 1982 - 1990. These list the properties for which the solicitors opened files in each of these years. They do not necessarily indicate completed transactions, but they provide general support for the existence during those years of an active business. They also provide support for the fact that the companies owned the sites listed by the husband in the other schedules produced on his behalf. As I have already said, I have come to the clear conclusion that the husband had substantial resources, both in 1984 and in 1988.

88 Having summarised my conclusions on the evidence in this case, I turn to the exercise of my discretion under the Matrimonial Causes Act. I have already referred to the guidance given by the House of Lords in *Miller* and *McFarlane*. I have also referred to the decision of *Charman v. Charman*, in which the Court of Appeal gave additional guidance. Mr. Pointer submitted that the passages to which I will refer are obiter and should not be followed. He also submitted that the present case is one in which the focus should primarily be on the wife's needs, with a generous appraisal of those needs. This is not, in my judgment, a case in which the wife's award should be confined to an assessment of her needs, however appraised. That would not result in an award which would be fair.

89 Further, as a judgment of the Court of Appeal and a most powerful Court of Appeal, I consider that I should apply the guidance given in *Charman v. Charman*, which in any event is consistent with the guidance given by the House of Lords in *Miller* and *McFarlane*.

90 Starting at para.65, after a passage from Lord Nicholls' speech in *Miller* and *McFarlane* has just been quoted:

“65 It is clear that the court's consideration of the sharing principle is no longer required to be postponed until the end of the statutory exercise. We should add that, since we take “the sharing principle” to mean that the property should be shared in equal proportions unless there is a good reason to depart from such proportions, departure is not from the principle but takes place within the principle.

“66 To what property does the sharing principle apply? The answer might well have been that it applies only to matrimonial property, namely the property of the parties generated during the marriage otherwise than by external donation; and the consequence would have been that non-matrimonial property would have fallen for redistribution by reference only to one of the two other principles of need and compensation to which we refer in paragraph 68 below. Such an answer might better have reflected the origins of the principle in the parties' contributions to the welfare of the family; and it would have been more consonant with the references of Baroness Hale in *Miller* at [141] and [143] to “sharing … the fruits of the matrimonial partnership” and to “the approach of roughly equal sharing of partnership assets”. We consider, however, the answer to be that, subject to the exceptions identified in *Miller* to which we turn in paragraphs 83 to 86 below, the principle applies to all the parties' property but, to the extent that their property is

non-matrimonial, there is likely to better reason for departure from equality. It is clear that both in *White* at p.605 F-G and in *Miller* at [24] and [26] Lord Nicholls approached the matter in that way; and there was no express suggestion in *Miller*, even on the part of Baroness Hale, that in *White* the House had set too widely the general application of what

was then a yardstick".

91 The Court of Appeal then go on to consider the principles of need compensation returning at para.72:

"72 The enquiry required by the principle of sharing is, as we have shown, dictated by reference to the contributions of each party to the welfare of the family and, as we make clear in paragraph 85 below, the duration of the marriage here falls to be considered.

"73 Then arises a difficult question; how does the court resolve any irreconcilable conflict between the result suggested by one principle and that suggested by another? … Ultimately, however, in cases in which it is irreconcilable, the criterion of fairness must supply the answer. It is clear that, when the result suggested by the needs principle is an award of property greater than the result suggested by the sharing principle, the former result should in principle prevail. … It is also clear that, when the result suggested by the needs principle is an award of property less than the result suggested by the sharing principle, the latter result should in principle prevail".

"77(c) With respect to Lord Mance, we do not agree with the suggested approach. Although there are isolated references in *Miller* to sharing "the residue" and "the balance", we consider that, had it wished to endorse the approach suggested by Mance L.J. in *Cowan*, the House would have made its view very much clearer. On the contrary the thrust of the decision in *White* and certainly in *Miller* itself is that the court should apply the sharing principle not just to part but to all of the property; and thus that in these large cases it is probable that the sharing, whether equal or occasionally unequal, will cater automatically for needs. But we also have a grave practical objection: from the point of view of the proportionate despatch of these large cases, whether by negotiation or adjudication, a system which invited not only, as now, expensive concentration upon the value of assets but also elaborate presentation of needs - the height of one budget no doubt being said to be entirely reasonable and the height of the other entirely unreasonable - would be the worst of both worlds".

92 The present case is one in which the application of the sharing principle will subsume needs. Taking into account all the factors set out under s.25 of the Matrimonial Causes Act and applying the guidance I have referred to above, the question I have asked myself is whether there exists, in the present case, any sufficient justification for dividing the present wealth other than equally between the parties.

93 I agree with Mr. Mostyn when he submits that, in order to establish such justification, especially after a marriage and relationship of the length present in this case, there must be factors of substance. I do not, however, as I have already indicated, agree with him when he submits that it is confined to cases concerned with heirlooms or their equivalent. The court's assessment is on a broader canvas.

94 I have come to the clear conclusion that the wealth owned by the husband prior to the marriage and prior to 1984 was substantial and justifies a departure from equality. None of the other features in the case merit separate consideration. It would be unhelpful to suggest that the assessment of the extent to which such departure is justified can be calculated by reference to any formula or clear mathematics. It would also be unhelpful to suggest that it must be justified in this way, as that would result in the dangers highlighted by Lord Nicholls at para.26 of his speech.

95 The essence is that, by the time the parties met, the husband was aged 40. He had been in the property business

for over ten years, had set up two companies in 1980 which, by 1984 and more so by 1988, were well established and successful, with a substantial asset base. This is not a case, as suggested by Mr. Mostyn, of modest savings, but one of substantial wealth. Taking all these factors into account, in my judgment, I would be achieving fairness if I awarded the wife 40 per cent of the current wealth, dividing the pension assets and the other assets separately in the same proportion.

96 Further, the husband has relied upon the right to the peaceful enjoyment of possessions provided by Article 1 of Protocol 1 of the European Convention on Human Rights. In *Charman v. Charman* Coleridge J. was met with similar arguments which he despatched simply and with an expression of hope that "This is the last time we shall hear of or see them". I agree. It is not clear to me that this article applies at all to the exercise by the court of its powers under the Matrimonial Causes Act. However, even if it does, the power given to the court under that Act is clearly proportionate and strike a fair balance.

97 Further, the power I have exercised to make an award in the wife's favour on the determination of her application for ancillary relief is a power that is in the public interest and is one that I have exercised in accordance with the conditions provided for by law. In my view, therefore, no separate issues arise under Article 1.

MR. MOSTYN: We know that your Lordship has not time to deal with any consequential matters. We will discuss how it should be paid and when it should be paid, and if there is any dispute we will come back to you. There is also chattel dispute. I do not know what it is. Miss Bangay is not here.

MR. JUSTICE MOYLAN: Nor do I.

MR. MOSTYN: If we need to come back we will ask for time before your Lordship.

MR. JUSTICE MOYLAN: Yes, thank you very much.

MR. MOSTYN: I do not know if my learned friend agrees with that.

MR. POINTER: I do not know whether we ought to clarify the actual award. Your Lordship says 40 percent. Are you leaving it to us to do the arithmetic, or do you want to divide them up, my Lord?

MR. JUSTICE MOYLAN: I think, because I have not gone down to the pound, what I was proposing is that the assets, apart from the pension fund, be aggregated together, and 40 per cent of that aggregated figure be awarded to the wife, and 40 per cent of the pension fund.

MR. POINTER: I agree with Mr. Mostyn. We will do some work on that and, if we have any query, we may have to come back to your Lordship.

MR. JUSTICE MOYLAN: Yes.

MR. POINTER: I perfectly understand … and that your Lordship has another case.

MR. JUSTICE MOYLAN: I have.

MR. POINTER: Your Lordship will direct that the chattel issue, if it cannot be resolved, will come back before your Lordship for two hours or half a day, whatever we require?

MR. JUSTICE MOYLAN: I do not know what it is.

MR. POINTER: There is a big problem about two chattels, my Lord, and it probably is going to require adjudication. We have been trying, but we cannot get over that.

MR. JUSTICE MOYLAN: Right. Then, if it has to come back, yes. Simply on submissions?

MR. POINTER: You will want a written statement from each side, but it will not need to be long.

MR. JUSTICE MOYLAN: Right. It is quite unlikely that that could happen this term.

MR. POINTER: I understand that, my Lord. I think your Lordship knows the way in which my client has put his case. Bearing in mind that time will start to run from now, I think it appropriate that I should ask your Lordship for permission to appeal to the Court of Appeal at this juncture ----

MR. JUSTICE MOYLAN: Yes.

MR. POINTER: -- which I now do. Your Lordship knows the way our case is being put. I am not going to spend time amplifying that application.

MR. JUSTICE MOYLAN: Certainly. Do you want to identify any particular feature that you would say I had wrong, or do you just say generally?

MR. POINTER: The scale of departure from equality, in the light of the resources pre-marriage that were demonstrated to your Lordship on the evidence, and the Human Rights point.

MR. JUSTICE MOYLAN: Yes, thank you very much.

MR. MOSTYN: I now make a similar application, whether it be activated or not, that we have to do it now, we have been told. Same grounds. Scale of departure - far too much.

LATER

98 Both parties have made an application for permission to appeal, one saying I have departed insufficiently from equality, and the other saying I have departed excessively from equality. In my view, I have applied the law correctly to the facts that I have found them, and that the decision that I have reached is within the proper limits of my discretion, and so I reject both applications for permission to appeal.

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