J v V (Disclosure: Offshore Corporations)

Family Division

[2003] EWHC 3110 (Fam), [2004] 1 FLR 1042, [2004] Fam Law 398

HEARING-DATES: 16 December 2003

16 December 2003

CATCHWORDS:

Financial provision -- Disclosure -- Offshore corporations -- Costs of enquiry dependent upon reliable disclosure -- Thyssen defence -- Prenuptial agreement not significant

HEADNOTE:

The husband and wife had been married for 10 years and had three children, aged 13, 11 and 10. The wife had signed a prenuptial agreement purporting to prevent her from claiming against the husband's assets. The husband had vigorously defended the wife's divorce petition, while simultaneously attacking the wife's character. The wife sought financial provision of £6 million from the husband, whom she claimed held an equal one-third share in a family company worth $100 million, plus other significant capital assets. The husband's position was that his financial resources were much more limited than that claimed by the wife. Following a 15-day hearing into the extent and value of the husband's resources, the judge found that the husband's credibility had been severely damaged by his conduct of the case and in particular his non-disclosure of audited accounts of the company in question. The wife's costs were of the order of £700,000.

Held -- awarding the wife a clean break lump sum of £3,315,000 --

Considering all the financial resources available to the husband, and making use of the informal paperwork drawn up for private consumption, which was a better guide to the underlying reality than the formal paperwork, the husband's financial resources were valued at over £15 million. This was not a case for an equal division and the award was based on the wife's needs (see paras [113], [114]).

Per curiam: in cases involving a lavish standard of living funded through offshore corporations, which were designed and intended to be impenetrable, respondents who wished to prevent the instigation of an exhaustively searching enquiry had to be, from the outset, perhaps even fuller and franker in the exposure and explanation of their assets than in conventional onshore cases. If they did not, the applicant was likely to believe that assets were being hidden amongst complex corporate undergrowth. Because the husband in this case had distanced himself from the assets, the wife and her advisers had not been prepared to take the husband's assertions at face value and had been justified in their refusal to do so (see paras [17], [18]).

The prenuptial settlement signed by the parties was of no significance in this case. Quite apart from the obvious unfairness of its terms, it had been signed on the very eve of the marriage, without full legal advice, without proper disclosure and had made no allowance for the arrival of children (see para [41]).

Where cases involved marriages of short to medium length, and wealth had largely come from sources other than the efforts of the respondent during the course of the marriage, the Thyssen defence, under which the respondent made an admission as to the overall value of the available wealth, could still usefully be deployed. Even in the longer marriage cases where a 50/50 split was the aspiration, applicants might be prepared to compromise over precision, providing sensible admissions at a high figure were made, in order to avoid acrimonious, lengthy and very expensive proceedings (see paras [128], [129]).

Sophisticated offshore structures were very familiar nowadays to the judiciary trying ancillary relief proceedings and did not impress, intimidate or fool anyone. If clients used such structures to avoid disclosing their true wealth, they could not expect much sympathy when it came to the question of paying the costs of

the enquiry which inevitably followed, whatever the outcome of the proceedings was and whatever offers had been made, as, without reliable disclosure, applicants could not properly judge the merits of an offer (see para [130]).

NOTES:

Statutory provision considered

Matrimonial Causes Act 1973, s 25

CASES-REF-TO:

Al-Khatib v Masry [2001] EWHC 108 (Fam), [2002] 1 FLR 1053, FD
Thyssen-Bornemisza v Thyssen-Bornemisza (No 2) [1985] Fam 1, [1985] 2 WLR 715, [1985] FLR 1069, [1985] 1 All ER 328, CA
White v White [2001] 1 AC 596, [2000] 3 WLR 1571, [2000] 2 FLR 981, [2001] 1 All ER 1, HL

COUNSEL:

Florence Baron QC and Nigel Dyer for the petitioner; The first respondent appeared in person assisted by his litigation friend who was a qualified Greek laywer; Morgan Sirikanda for the second respondent; Nicholas Cusworth for the third respondent; The fourth and fifth respondents did not appear and were not represented.

PANEL: Coleridge J

JUDGMENTBY-1: COLERIDGE J

JUDGMENT-1:

COLERIDGE J: Introduction: the parties and the 'big issues'

[1] This is the fifteenth day of the hearing of an application for ancillary relief brought by J (the wife) against her former husband V (the husband) following upon the termination of their 10-year marriage. Almost the whole of the hearing has been devoted to an enquiry into the extent and value of the husband's financial resources. It has been a most painstaking, and at times painful, process involving, as it has, not only the parties to the marriage but four other corporate entities who own most of the principal assets used, one way or another, by the parties during the marriage. Thus the second respondent is a Liberian (bearer share) company, E Corp, registered in Monrovia which owns the former matrimonial home, a large house in Surrey (PL House). The third respondent is similarly a Liberian company called PER Ltd which owns a flat in London (B Square). The fourth and fifth respondents are, respectively, a Gibraltarian company (TY Ltd) owned by a Liberian company (WI Corp). Between them they own an 85ft motor yacht called TY moored for most of the time in Naples.

[2] By her application the wife seeks financial provision worth essentially £6.05m. It is made up of £2.25m for housing in England, £550,000 for housing in Italy and £2.75m by way of capitalised income (at the rate of £111,000 pa). She also seeks £500,000 to defray future costs of litigation in Italy if it becomes necessary in circumstances I will deal with below. In satisfaction of that award the wife seeks declarations as to ownership and then transfer of property orders in relation to the bearer shares owning the various assets set out above. Any outstanding balance in her favour would be constituted by a lump sum order. She also seeks periodical payments for the children at the rate of £12,000 pa together with their school fees. Undoubtedly she will be looking as well for her costs which stand at around £700,000. That is an unusually high figure even by the standards of this very expensive type of litigation but it is wholly justified, she maintains, by reason of the husband's stance in and conduct of the proceedings from first to last. I shall, of course, have to consider that in the course of this judgment. It has been part and parcel of this enquiry.

[3] At an early stage of the hearing the husband made a written open offer. It was to pay £1m to the wife for her housing needs but structured in a way that would ultimately benefit the three children of the marriage. On the income side his offer said 'existing monthly payments to continue. Within 6 months I will exercise my

best efforts to convert into Duxbury fund'. Converting that offer into money, he is currently by order required to pay £3,475 per month plus the outgoings on PL House (estimated by the husband at £12,500). The cash element is, therefore, £41,700 pa. On a conventional Duxbury basis that is just about £900,000. If the outgoings are included in the calculation then the annual figure is £54,000 and the resulting Duxbury calculation about £1.2m. But I am not sure the husband meant this higher figure by his offer. He also offers £8,000 pa for each child and ongoing school fees.

[4] The wife has been represented throughout the whole of the application and hearing by specialist solicitors, leading and junior counsel. The husband was until mid-September 2003 similarly represented. However, since that time he has been in person because, he maintains, he can no longer afford their services. The wife says that is mere 'window dressing'. Whatever the true position, he has represented himself throughout this hearing powerfully and with considerable skill. For that purpose he has had the not inconsiderable assistance of a McKenzie friend, Ms MA, who is a fluent English-speaking lawyer from Rome. She is normally employed by the firm who acts on behalf of the husband's wider family in Italy and for the V Shipping Group (V Group), the family-owned and run shipping enterprise from which almost all the most important issues in this application derive. Ms MA was potentially a witness in this case as she has first-hand knowledge of some of the transactions which have had to be analysed. However, in the event that has not presented any real problem and her knowledge of V Group and its activities has, I am sure, been of great assistance to the husband in the presentation of his case. The husband has, therefore, been able to examine and cross-examine the witnesses fully and make detailed submissions, both written and oral.

[5] So far as the conduct of the hearing itself is concerned, I have done my best to ensure that at all times the husband, despite his lack of formal representation, had a completely fair and full hearing and that he has not been at a disadvantage. To that end, I have given him considerable latitude so far as the rules of evidence are concerned. Finally, to ensure that he had the best opportunity of appreciating the wife's case and so I understood fully his case, I allowed him (with the wife's counsel's consent) to make his final submission last -- normally the privilege of the applicant.

[6] Both E Corp and PER Ltd have been fully represented throughout this hearing by specialist counsel. That, of course, has been of considerable benefit to the husband since they all to a greater or lesser extent 'sing the same song'. This has allowed the husband to concentrate on the 'big issue' in the case: the extent and value of the husband's interest in V Group; the wealth-creating engine of the whole of the husband's family in the widest sense.

[7] So far as that big issue is concerned, the wife's case is simple. She maintains that the husband, with his elder brother, NV, and his younger brother, AV, equally own, manage and benefit financially from V Group. That was, is and always will be the position given, in particular, the history of V Group and the closeness of the Italian family unit. Whatever the documents, legal structures or witnesses may now purport to say, the underlying reality is that each has a one-third interest in the whole business. V Group is worth today, she maintains, on the open market in the order of $100m and so the husband's one-third interest about a third of that sum. If that is too simplistic an approach because of the acknowledged illiquidity of V Group as a capital asset, look, she says, to the value of the annual income stream which has always flowed from it into the family coffers. Year on year the family have drawn down by way of dividend about $8m and capitalising the husband's share of that arrives at a sum at least as great if not greater than simply valuing the husband's share on the open-market basis. If that sounds illogical it is because the wife maintains that, unusually, the value of V Group to the family is greater than to an independent investor. Finally, the wife says, in this regard, that any attempt by the husband to distance himself from V Group or its value is pure manoeuvring for the purposes of limiting her claim.

[8] The husband very considerably contradicts the wife's case. First, he says he only has a one-third interest in two of the five revenue-generating companies which make up V Group: M Co and RF Co He does not have an interest in the two biggest and most productive companies in the group: IN Ltd or RU Ltd. Those are owned by his brothers and/or outside interests. He acknowledges that to the outside world in general and the shipping world in particular the three brothers are seen as one and the same. He also accepts that he is fully involved in the running of the business, albeit not quite to the same extent as his brothers. But, he says he does not have the same shareholding as them and so the value of any share he does have is much less than theirs. Furthermore, he does not benefit financially, on an ongoing basis, to the same extent. So far as the overall value of V Group is concerned, he says the figures proposed by the wife are wild and

exaggerated (albeit that they might have been proposed by V Group's own accountants once upon a time) and that in any event in the real world V Group is unsaleable despite the best efforts of the brothers to do just that in 2001. If V Group is worth anything today it is on a break-up basis at about $15m. As to valuing the income stream, that is too precarious as the group is presently facing appalling trading conditions which are worsening by the day. According to him and his brother no dividend can be guaranteed this year at all. It is a very black picture that he and his brother paint.

[9] Apart from the big issue surrounding V Group there are also significant issues involving the other assets and the other respondents.

[10] The husband and E Corp maintain that the beneficial interest in PL House does not belong to him but, by virtue of an oral trust arrangement entered into at the time of the husband's first divorce in 1984, to the children of his first marriage, LA (27) and LT (25), when they attain 31. In the meantime he has the right to live there but no more. The wife says this is yet more manoeuvring. There was never any such suggestion during the marriage. The house was always and in every way treated by the husband as his. If there was any discussion at the time of the first divorce about the long-term future of PL House it has never been mentioned to her subsequently and could not possibly, in any event, give rise to a trust.

[11] So far as B Square is concerned, the husband says it belongs entirely to his brother NV because the bearer shares in PER Ltd are held by him. PER Ltd says (insofar as it can have a different voice given that it consists of nothing other than B Square and its instructions seem to come from NV!) that either the company itself or B Square belongs equally to the husband and his two brothers. In either event both insist that B Square does not belong solely to the husband. The wife says this is just more 'smoke and mirrors'. The flat has always been, since before the marriage, theirs and it is owned really by the husband. They have used it, not to anything like the same extent as PL House, whenever and however they liked. Whatever the documents may show, that is the reality. NV was prepared to concede in evidence and to avoid further debate that the flat was equally owned by the three brothers but the husband does not seem to accept that concession.

[12] Finally, the boat. This, says the wife, is in reality the husband's; it is his pride and joy and kept immaculately. They used it exclusively as their family 'second home' especially every summer cruising round the Mediterranean. The husband stayed on it whenever he was in Italy which was as much as twice a month. It was, she says, the reward from the rest of his family for a particularly successful business venture in South America which benefited the whole family. The husband always referred to it as his. That may be largely so, says the husband but, first, it is not used exclusively by him but by other members of his family and for corporate entertaining and secondly, it is not owned by him but by him and four others of whom two at least are his brothers.

[13] Those are the issues as to value and ownership which have dominated the hearing. There are other issues relating to the value of some development land on Sicily and the extent of the husband's potential indebtedness to Lloyd's and his brother NV and I will identify them and resolve them when dealing with the main issues in the overall context of the husband's resources.

[14] The written evidence in the case has been very extensive indeed. Including the affidavits from the parties and their witnesses there have been no fewer than 30 lever-arch files of documents. I have been referred to a great many of them. Apart from the written evidence, I heard orally from the wife, the husband, the husband's brother NV and Mr AB, the Italian family lawyer. I also heard evidence from Mr F who was involved in efforts to dispose of part of the business in 2001 and from Mrs CE who invested $1.5m in V Group in 2001. I heard finally from two company valuers, Mr Timothy Lawrence and Mr Arthur Davy.

[15] Finally, I have been fortunate enough to have been provided with lengthy, very detailed and precise written submissions from all counsel and the husband himself. They are all of a very high standard and cover all the arguments comprehensively. I am conscious that I shall not do full justice to them in this judgment but I can assure their authors that I have perused and considered them at very great length. I have incorporated parts of the written arguments by cross-reference in the judgment.

The conduct of the proceedings

[16] It is impossible to consider this case or make findings about ownership/value of assets etc without considering them in the context of the manner in which the case has progressed and been conducted. The

reasons why this application has required so much detailed investigation are complex and interrelated but familiar and wholly predictable. First, it is accepted by all that the family enjoyed a very high standard of living funded in the final analysis largely and for most of the marriage by V Group. True it was that during the marriage for a year or two the husband had success in his involvement both individually and corporately with the Lloyd's insurance market. But essentially the wealth flowed from V Group dividends. Secondly, the V family are resident but non-domiciled in the UK. This provides familiar and entirely proper fiscal advantage if care is taken in the manner in which wealth/funds arrive in this country and the way in which assets used here are held. Unsurprisingly, therefore, there is a network of offshore, largely Liberian, corporations involved in the ownership of the assets used by the parties and in the administration of family funds. Nothing is more calculated to set the bells ringing in a specialist lawyer's mind than to be faced by such wealth contained within such a structure. It is designed and intended to be impenetrable and when it supports a lavish standard of living it is invariably like a red rag to a bull.

[17] In order to prevent the instigation of an exhaustively searching enquiry, respondents to such applications are required to be from the outset perhaps even fuller and franker in the exposure and explanation of their assets than in conventional onshore cases. Otherwise skulduggery is instantly presumed. Applicants justifiably believe that advantage is being taken to hide assets from view amongst complex corporate undergrowth. To begin the process of disclosure, as here, by, without more, denying legal and beneficial ownership of all-important assets in the case by virtue of such arrangements is, quite simply, foolish and unhelpful. And once applications of this kind get off on the wrong foot they never regain equilibrium. The husband in this case, from the word go, has distanced himself from the assets used by the parties in the way I have described in paras [7]-[12] above. Unsurprisingly the wife and her advisers have not been prepared to take the husband's assertions at face value and have done everything they can to explore the underlying position and so protect the wife's interests.

[18] They have been further justified in their actions by virtue of the fact that at the outset of the proceedings the wife found a considerable volume of documents (the Hildebrand documents) relating to the husband's financial and business affairs which seemed to belie what he was presenting in sworn testament to the court. There were numerous documents connecting the husband to precisely those assets in which he said he had no interest. Production appointments followed which again showed the husband representing to banks that he was the owner of the assets in dispute. Finally the wife obtained possession of a very detailed valuation of V Group by PriceWaterhouseCoopers (the PWC report) dated November 1999 instigated by the three brothers and valuing V Group at in excess of $100m. It did not come via the husband and the conventional disclosure route. Its arrival justifiably heightened the wife's suspicions about the husband's means and his disclosure generally.

[19] But matters have been made far worse by other actions of the husband during the progress of the proceedings calculated, says the wife, to pressurise her into reducing her claim or withdrawing completely. First, the husband chose to defend, until the bitter end of a fully contested hearing, the divorce itself. On the one hand he asserted that the marriage had not broken down irretrievably. On the other hand he launched a head-on attack on her character and attributes as a wife. The hearing resulted in a decree nisi and indemnity costs order in the wife's favour. Her costs for the suit at that time were £136,000. This was despite the fact that the wife's open position was that she would accept a decree against herself based on her own behaviour if this would avoid a defended suit. The husband now accepts his error of judgement in this regard but the damage has already been well and truly done. I have read the judgment of the learned recorder. It does the husband no credit.

[20] Secondly, the husband provoked an application for interim provision by cutting off the wife's allowance. That having taken place and the resulting order not being to the husband's liking, he fired the staff who had been with the family for years save for one employee who has remained as his personal servant (and who gave evidence at the divorce hearing for him). More recently he or his family (it matters not which) have instigated civil and criminal proceedings in Italy in relation to the Hildebrand documents obtained by the wife at the beginning of the proceedings. Those proceedings are both potentially embarrassing and threatening if the wife wants in the near future to return to her home country.

[21] Then it transpires that proceedings have been commenced in Italy by, or on behalf of, the children, LA and LT, to determine their rights under the so-called trust which hold the shares in E Corp or PL House. This despite the fact that the self-same issue is before this court and has been since the outset of the

proceedings. I am entirely satisfied that this is not at their personal instigation and it all adds to the suspicions which pervade every nook and cranny of this case.

[22] Quite apart from these procedural side-shows, the wife complains of systematic non- and late disclosure. She has produced two schedules providing details. One was produced at the outset and is entitled 'Schedule of H's non-disclosure'. The other, produced at the beginning of the hearing, 'Schedule of time delay'. Neither of them is to any degree controversial. The husband's response is really that he left it all to his legal team and they have let him down. He was able to demonstrate that in one or two instances the replies given on his behalf did not entirely accurately reflect his instructions.

[23] I would have been prepared to give him the benefit of the doubt about many of these disclosure points but for one very serious omission of his for which I hold him entirely responsible and which goes to the root of his credibility and that of his case generally.

[24] For at least the last 2 years the wife and her team have been pressing for the production of audited accounts of V Group. This was backed up by court order on 23 November 2001. None was ever produced by the husband as it was always asserted that none was ever prepared. That of course turned out to be untrue when the PWC report became available, complete with its audited financial statements for the years 1995-1999. The position next adopted by the husband was that although there were some produced for the 5 years 1995-1999 there were none for 2000 or later. That was his clear position up to the hearing and until almost the last day of the hearing. He was supported in this assertion by his witness Mr F, who maintained that position in evidence before me and in answer to direct questioning by the wife's counsel. However, on 3 November, after Mr F had concluded his evidence, the wife's solicitor was allowed by Mr F to check that all the documents he had in his briefcase were indeed all the documents which he had earlier disclosed at the beginning of the hearing as being relevant and in his possession. It was in those circumstances that she came across, in Mr F's briefcase, accounts for 2000 audited as before by PWC.

[25] I have had no proper explanation for this appalling act of non-disclosure, other than the husband maintaining an assertion that he did not know of their existence. I do not accept that for an instant. But the matter does not rest there because it transpired, upon examination of the 2000 accounts, that the figure previously put forward by the husband and given to his own valuation expert as the accurate figure for gross distributions from V Group for that year was 50% less than the audited figure: $4.7m as opposed to $9.4m. The overall effect of this very late discovery is to shake to its core any confidence that I was beginning to feel in the husband's factual assertions and carefully reasoned case on the matters in issue. His lawyers cannot possibly be blamed or held responsible for this hiding of crucially important documents and information.

[26] I have drawn attention to these matters because the court cannot shut its eyes to these things when considering the parties' credibility overall. It is driven to ask: why this lack of disclosure? And why are these actions and steps being taken? Is it to prevent the court doing its job properly or getting at the truth or is it to pressurise and intimidate the wife into settling unfavourably? Or all three?

[27] Before turning to the background and chronology let me then consider the two parties.

The wife and husband

[28] The wife is an elegant and sophisticated lady of 43. Her father was a diplomat. She herself was educated in Paris and Rome. She speaks four languages. She met the husband when she was 28 and married when she was 30 by which time she was 6 months' pregnant with the parties' first child. She has not worked during the marriage or been expected to do so. Throughout the marriage she has been a full-time mother and home-maker at PL House where three staff were permanently employed. On the yacht there were five permanent crew. I think she is still mystified by her husband's antics over the period of these divorce proceedings. I do not think for one moment she can be accused of being a 'gold digger' or of planning the proceedings or any of the number of other very hurtful allegations which the husband has accused her of. In one sense her claims against the background of the life the parties led are perfectly reasonable. She cannot be expected to assess their attainability because she has not been privy to the detail of the husband's commercial or financial arrangements. She only knows what she was told by the husband and how the family lived and she has not, I find, exaggerated that.

[29] This is the second time the wife has had the ordeal of being in the witness box for a prolonged period. This time she had the added indignity of enduring being cross-examined by her husband. Throughout

I found her to be entirely straightforward and honest so far as her recollection of events during the marriage was concerned. I entirely accept her evidence about what she was and was not told about the arrangements underlying PL House; namely that no special arrangement or trust involving the children of the husband's first marriage was ever mentioned to her prior to these divorce proceedings.

[30] Her recollection of the number of nights spent at B Square is not, in the end, I think accurate. She put it at up to 10 nights but in the end was prepared to accept it may have been less. It matters not which is true, it was only very few in the context of the amount of time the parties had the flat available for their use at night had they chosen to sleep there. That of itself provides little guidance to ownership.

[31] The husband suggested to her that she knew that his finances had been in decline for a number of years and was choosing to ignore that fact in her pursuit of him. Her response was that the husband always moaned about a shortage of money generally and lived on his nerves which woke him at night. But, despite this, his spending continued at the same rate so she just accepted this as part of his make-up and their life. I accept that.

[32] She has been strongly criticised by the husband for the manner in which she found and used the Hildebrand documents. In the context of English proceedings in general and these proceedings in particular none of the criticisms holds water. The use of Hildebrand documents in English ancillary relief proceedings is perfectly permissible subject to certain conditions as to early revelation to the party who owns the documents. When that general point is added to the fact that, absent these documents, the picture of the husband's finances would be even more incomplete in a number of crucial respects than it is anyway, I find her conduct entirely understandable, justified and above criticism. I should not have hesitated to criticise her and her lawyers if I had felt they had over-stepped the mark. They did not. I hope the husband will do everything in his power to bring the Italian proceedings in relation to this aspect of the litigation to a swift end. I am satisfied that he can if he chooses to do so.

[33] The husband is 55 and the second of the three sons of the founder of the Italian shipping empire from which all the wealth in this case springs. His elder brother is NV (57) and his younger brother is AV (53). His mother was English and he was educated in Rome and England where he secured a Masters degree in law. He is naturally very charming, but also shrewd and highly intelligent, as his conduct of these complex proceedings has amply demonstrated. I think he has genuinely and at the eleventh hour tried to be helpful during this hearing. Unfortunately he is somewhat hamstrung by his earlier manoeuvrings. He is, he says, normally a negotiator and peacemaker. I think that is so. But he is, I find, devastated by the break-up of his marriage which seems to him to have been unnecessary and to have come, so far as he is concerned, out of a clear blue sky or at least one with only very few clouds in it. This factor has, I am sure, seriously clouded his judgement throughout these proceedings so that he has been prepared to employ almost any tactic to try, as he would consider, justifiably, to save it. This led to his forlorn defence of the suit and I am sure explains his unco-operative behaviour in relation to disclosure throughout the lead-up to this hearing. I think it also explains why, even now, I find myself still sceptical about some of his evidence and that put forward on his behalf. His early denials about ever having any interest at any time in PL House were not typing mistakes. And I have mentioned the sudden appearance of the audited 2000 V Group accounts in the last days of the hearing showing a major discrepancy in the distribution figures for that year.

[34] I am not impressed either by the explanations put forward for the apparent unreliability of the PWC report. It is said that the figures given to that firm to enable it to write its report were knowingly and deliberately grossly inaccurate. The purpose apparently was to orchestrate a false picture prior to flotation, or to provide ammunition to persuade investors to invest their money in the group (including apparently his friend, Mrs CE) or for the purposes of ratcheting up the value prior to negotiation over a possible sale. Of course a certain amount of licence is to be expected in these circumstances but this went, I find, far beyond that. The profit figures were 'baloney' according to NV. None of this I find reassuring when I come to try and get to the bottom of the husband's true worth now. So that is the parties.

The background

[35] This is not complex and can be quite shortly stated. I have covered the parties' early years. The husband married for the first time in 1974. He had two children with his first wife: LA who is now 26 and LT who is 24. That family moved into PL House in 1978, it having been bought the previous year in the name of E Corp for £92,000 with money provided by the husband's mother. Sadly that marriage foundered after 10

years. Divorce proceedings ensued and a negotiated settlement led to the wife being provided with enough to buy a home for herself in a fashionable part of Chelsea together with a lump sum of an amount which has not been revealed to me. It is said by the husband and E Corp that it was in the lead-up to that divorce that negotiation led to the setting up of the 'trust' which now entitles LA and LT to an absolute interest in that property when they attain 31.

[36] The husband and wife in this case met in March 1988 and began cohabiting by May. During that summer the parties found B Square. It was bought for £305,000 and completion was in September that year.

[37] On 7 July 1990 the parties married in a religious ceremony, 2 days later there was a civil ceremony. CV was born on 18 October 1990 (13), NNV on 22 January 1992 (11) and MV on 14 October 1993 (10). The whole family remain even today at PL House with the three children attending school in Surrey. At one time there seemed as if there might be a dispute about CV now moving into the English public school system but the husband has now conceded that the wife's wish not to unsettle him by moving schools at this turbulent time is reasonable. He may move later.

[38] In 1998 plans were drawn up for a major refurbishment of PL House. This entailed the whole family moving out, which they did in March 1999, not returning until October 2000. The scale of the refurbishment was self-evidently huge: about $1.25m was spent on the home. The wife told me that the marriage was already strained before she moved out but she hoped when they moved back in things would improve. Sadly they did not as is evidenced by the fact that a divorce petition was filed 5 months later on 25 March 2001. A decree nisi was pronounced after the defended hearing on 6 June 2002.

[39] The rest of the history of the proceedings is set out in a chronology prepared by the wife's counsel and contained in the folder of submissions handed in at the commencement of this hearing. It is accurate and I rely upon it. The part relating to the proceedings themselves runs to some 14 pages. I have already alluded to the difficulties faced by the wife's advisers in obtaining the disclosure in this case. Looking at the chronology, need I say more. I think not. So that is the background.

The Matrimonial Causes Act 1973, s 25(2)A-G

[40] I turn now to consider the statutory framework governing this application and in considering the familiar subsections I will resolve the principal issues in the case as they arise. Before looking at them individually and in detail, however, it is vital to remember that the first consideration is the welfare of the three children of the family. They have been in the midst of this matrimonial maelstrom for the past 21/2 years. The orders I make will attempt to extricate them from that as soon and as permanently as possible.

[41] I should also, as a preliminary point, deal with the prenuptial agreement. I mention it only to put it to one side in this case. Nowadays, occasionally, their existence can be of some significance but not in this case. This contract was signed on the very eve of the marriage, without full legal advice, without proper disclosure and it made no allowance for the arrival of children. It must, in my judgment, therefore, in this jurisdiction fall at every fence, quite apart from the fact that the terms were obviously unfair, preventing the wife from claiming against the husband's assets.

Subsection a: income, earning capacity, property and other financial resources

[42] Hereunder lie the real issues in this case as I have already summarised. Let me, however, make one or two preliminary points.

[43] The concept of a 'financial resource' is a very broad one. It covers far more than merely property that is in the direct legal ownership or possession of one or other of the parties. Any arrangement that provides financial benefit to a party falls to be considered, evaluated and ultimately included as an asset. Mere voluntary and unenforceable arrangements can sometimes fall into this net especially if they arise out of a family arrangement or moral obligation of one kind or another. The court should always be determined to get at the reality of arrangements so far as they affect or apply to parties and not be fobbed off with clever devices designed, for instance, to present moving targets to the internal revenue services of the western world, however properly constructed and above board they may be.

[44] That is very pertinent in this case where, as I have mentioned, the husband lives in the UK under the familiar non-domicile regime. His affairs are organised perfectly properly to take advantage of this status.

However, sometimes when the court looks at the structures holding assets it is has to look behind the formal paperwork drawn up for public consumption. Sometimes the more informal paperwork drawn up for private consumption is more useful and a better guide to underlying reality.

[45] Coupled to that point is the fact that the entities which hold the assets in this case are, in the main, Liberian bearer share corporations. Ownership of such shares moves as the shares are 'born' by one person after another. Thus entire companies can transfer in the twinkling of an eye or even by the merest change of mind on the part of the person for the time being holding the shares. That is, of course, highly flexible and convenient to those who would seek to change ownership of assets swiftly but it leaves no reliable paper trail. In this case there are documents which establish strict legal ownership by, for instance, E Corp and PER Ltd of their underlying assets but nothing to show who really beneficially owns the shares. For that I have to look at the whole family picture and history. So far as V Group is concerned I have not seen any documents which establish share ownership. All the evidence is, at best, second hand.

[46] Then there is the acknowledged fact in this case that assets were sometimes held for the benefit of a family member by way of 'allocation'. Mr AB referred to E Corp shares being allocated to the husband at an early stage when PL House was regarded as the husband's, but then that arrangement changing when the 'trust' came into being. Miss Baron QC, counsel for the wife, referred to this arrangement as 'earmarking' in the context of her assertion that ownership in this family was always a fluid concept designed to afford the family maximum financial flexibility and freedom of movement.

[47] Finally, Miss Baron reminded me forcefully of the fact that in circumstances where, as here, there is serious and chronic non-disclosure I am entitled to draw adverse inferences about the ownership and value of assets (see Al-Khatib v Masry [2001] EWHC 108 (Fam), [2002] 1 FLR 1053).

[48] At the end of the day having heard this case over 3 weeks I am quite sure that the formal documents, even if I had them all, would not tell the whole story. This is a family whose finances are inextricably intertwined as between the family members both vertically and laterally. It is impossible to look at the husband's position in isolation from either his two brothers or the rest of his family.

The husband's resources

V Group

[49] There are two issues affecting V Group: first, what is the size of the husbands interest in the group; and secondly, what is the value of V Group as a whole and so of any such interest? I have outlined the nature of the issues in paras [7] and [8]. How are they to be resolved?

[50] V Group comprises five separate entities owned by the family. I have mentioned four of them already in para [7]. They are:

-- M Co which operates six ships mainly active in and around Italy and adjacent waters.

-- IN Ltd which is active worldwide.

-- RU Ltd which is an operator, on a global basis, of two exceptionally large ships.

-- RF Co which owns and operates a floating crane.

-- ML which is an inactive holding company.

[51] The husband accepts, as I have said, that he has an interest in M Co and RF Co but otherwise says he has no financial interest in the rest of V Group.

[52] According to the business profile in the PWC report which was prepared at the instigation of the three brothers in November 1999, V Group 'is widely recognised as one of the leading market players in the industry . . . enjoys a high reputation'. There are many similar statements to be found in the 'profiles' within the PWC report.

[53] Also, according to the PWC report 'the group prepares financial statements as if it were a single legal entity . . . the shares of these companies are understood to be all controlled by the family and associates'.

[54] In support of the wife's assertion that the husband has in reality a one-third interest in V Group, whatever he or his witnesses may say or the documents may say, the wife relies upon a number of factors tending to link the husband closely with the business. They are summarised fully by Miss Baron in her final submissions and Mr Lawrence makes the same or similar points in his report.

[55] So far as what might be described as the circumstantial evidence that the husband is a full participant in V Group, there is really no dispute. The husband accepts that all and sundry who have any dealings with V Group assume, are intended to assume and are entitled to assume that there is no distinction to be drawn between the three brothers. Banks, business colleagues, potential investors (eg Mrs CE), competitors, potential purchasers and others in the industry would assume on the evidence of their own eyes that they were equal owners and partners. He accepts that he spends a great deal of time and energy working in V Group and that he is fully involved on a day-to-day basis. But, he says that is all no more than window-dressing for the world and it does not reflect the reality of his position which is that, unlike the other two brothers, he has a much lesser interest, confined to only two of the five V Group companies. So is there any other extraneous evidence supporting the wife's case in this respect?

[56] In the core bundle there is a translation of an Italian memo dated 3 December 1999, one month after the PWC report was produced. It was found by the wife in the Hildebrand documents. It is, apparently, from someone with the initial letters PAAS and it is apparently directed to the three brothers. On its face it sets out the shareholding of the three brothers in IN Ltd and RU Ltd. Beyond a doubt if that memo is reliable it shows the three brothers with one-third interests in the two companies. Mr AB, the V Group company lawyer, accepted in evidence that PAAS could refer to one of the lawyers in his office.

[57] The husband and his brother NV dismiss the document out of hand. They disavow any previous knowledge of it and say it is meaningless and worthless. On the last day of the hearing in his final submissions the husband produced a document entitled 'none paper memo' purporting to record a conversation with one of the lawyers in his office confirming that he was not the author of the PAAS memo. What is to be made of it?

[58] I find that it is and always has been what it purports to be, namely a memo drawn up by one of the family/company lawyers setting out, on a side of A4, what the shareholdings in the group were prior to any discussion as to future rearrangement. It is just the kind of document that a lawyer would produce in those circumstances to aid discussion by setting out the status quo. It records that 'under discussion: transfer of shares to further holding'. This is completely consistent with the production of the PWC report at the time when strategic discussions/decisions as to the future of the group were taking place. There can be no other explanation for this document other than that it is a forgery. No one suggests that. I am unconvinced by the husband's protestations of ignorance in relation to this document and its insignificance, as he suggests, in relation to this centrally important issue.

[59] I also find it very strange that neither NV nor AV have produced sworn written statements dealing with their brother's different position in the group. This has been a central and live issue throughout the application. The brothers are all close. But it was not until NV stepped into the witness box that he supported his brother's version indicating that he had a larger share than the husband because he had put up more money of his own than his brother at a time when it was needed. On its face this was a logical explanation but coming at the eleventh hour and backed by no documents it is somewhat unconvincing.

[60] I have come to the conclusion on all the evidence in relation to this crucial issue that the husband is not being frank with the court. I find that he has an interest in V Group equal to his brothers. I am prepared to accept that there are other small, minority family interests existing for historical reasons from the time when their father started the original shipping company. Doing the best I can, I shall take them at an overall participation of 10%. So each brother has 30%. I am also asked to accept that there are significant foreign shareholder interests now in the group. I do not accept that, in the absence of clear documentary evidence, they have such a participation as shareholders. There may be some more informal arrangement whereby they participate in the profits of RU Ltd. I think they are best included under the heading of 'off balance-sheet items' (OBIs) as to which see below.

[61] The documents relating to lists of companies also tend to support this finding, but, given that they are far older and could be capable of other explanation, I place less weight on them.

The value of V Group

[62] Given that throughout the proceedings the husband has denied, to a significant extent, participation in V Group, it is unsurprising that his evidence as to its value has been late and unsatisfactory. In any event the valuers he has employed have only been in possession of such very limited financial information as was provided to them by or on behalf of the husband. That did not, of course, include the 2000 accounts. Their contribution to this debate must, therefore, be very flawed and, in the end I find, unhelpful.

[63] Over the course of the proceedings there have been no less than nine attempts at valuing the group. They are summarised by Miss Baron in a table in her final submissions. The values range from $154m (PWC) at the top to $14m (Arthur Davey) at the bottom. Mr Timothy Lawrence produced a very carefully reasoned report in February 2003 building on the PWC report, bringing it up to date by reference to published information about shipping in general and V Group in particular. Of course he was not, at that stage, in possession of the 2000 audited accounts. He arrived at a bracket, by the familiar capitalisation-of-maintainable-profits method, of between $95m-$122m. More recently, armed with the latest accounts, he has not really revised his valuation.

[64] Mrs CE, who invested in the group in May 2000, paid $1.5m for a 1.5% stake in the business. She was in possession of the PWC report but told me she was uninfluenced by it. Given that the three brothers regarded the PWC report as, apparently, ridiculously exaggerated it is surprising that she should have been given it at all. She says that she was influenced by her own knowledge of V Group, the brothers' general business reputation and her friendship with the husband. But the documents which were drawn up at the time by the husband are quite unequivocal in valuing V Group at $100m.

[65] Overall, therefore, it is hard to criticise Mr Lawrence's methodology and so his conclusions. But in the end I must tread with very great caution in this area for two main reasons.

[66] There is no doubt at all that strenuous and genuine attempts were made by the brothers to liquidate part or all of their holdings in V Group by flotation on the stock market and/or sale of part or all to outsiders. Involving Mrs CE was all part of the strategy which started with the production of the $40,000 report by PWC. Mr F was employed, on commission, to seek the best buyer or investor he could amongst the big players in the field. Apart from his behaviour over the hidden 2000 accounts, I found him to be a convincing witness.

[67] Despite his best efforts he drew a complete blank. He could not elicit one offer from any source at any price and despite letting it be known that the brothers were prepared to be very flexible about terms. His explanation for this negative reception really came down to three factors. First, the PWC figures were regarded by those in the industry as almost laughably inaccurate because they did not take account of what has been euphemistically described as OBIs. Secondly, and as a corollary of the first reason, the brothers were seeking far too much for the group: $80-$100m. And thirdly, V Group is part of the Italian shipping community which, it seems, is regarded as a closed shop to outsiders with its profitability linked strongly to that special connection.

[68] The husband and his brother also made great play of the significance of the OBIs. It was explained to me by them, and they were supported by Mr F, that all in the industry acknowledge that significant sums of money have to be paid out to government and other officials involved in any shipping operation and these amounts do not find their way onto the balance sheet (or more likely the profit and loss accounts) of the V Group companies because they are, to put it bluntly, mostly in fact bribes, illegal commissions and the like. I am urged to pay proper regard to the OBIs in any valuation exercise which I undertake. Even Mr Lawrence, reluctantly, accepts that perhaps this factor must be included. The difficulty once again in this case is to know, with any confidence, at what level they should be included. Once again no documents of any kind are available to me albeit that one might expect careful records of this kind of payment would be maintained one way or another by V Group. Figures supplied to the husband's accountants are said to show payments amounting to $4m pa. Mr Lawrence considers they might amount to about 11% of that figure but it is possible they include the payment in respect of the foreign interests so they may be somewhat larger.

[69] So how should I approach this valuation exercise overall? On one view, I suppose, if the company as a whole (or in part) is unsaleable it is valueless. But the issue cannot be ducked in that way because, whether it is saleable or not, V Group has produced a very large income stream for very many years which has supported the whole of the husband's family and, despite the gloomy prognostications of the husband

and his brother, it is likely, I find, to continue to do so. There will be good years and less good years because of the inherent unpredictability of the business which is dependent on 'windfalls'. But overall I find that the income stream will not dry up but will flow more or less steadily in years to come albeit at a lower level perhaps than in the past.

[70] Mr Lawrence seeks to approach the valuation question from another angle, having finally been provided with the documents relating to failed sales attempts and the last-minute 2000 accounts. He sets out to value the income stream in the hands of the family. That approach is in support of Miss Baron's position that the value of this company to the family is, in real terms, greater than its value on the open market. I think it also reflects my own misgivings, expressed as the hearing progressed, that perhaps for the s 25 exercise valuing the income stream might provide a better benchmark for the exercise I was engaged in than trying to pin down the open-market value in circumstances where there truly might not be one.

[71] By this route I am urged to find an average annual net dividend of about $8m pa for the whole of V Group (net of OBIs) or $2.67m for the husband's one-third share. I should then, it is said, capitalise that at 6% (ie a multiplier of 16.4) giving the value of the husband's likely future dividend stream at $44m or £27m.

[72] It is essential to the exercise which I am undertaking, ie the calculation of the proper capital sum to be paid to the wife on a clean break basis, for a figure to be ascribed to the husband's interest in V Group. I have to have a benchmark figure for the larger balancing exercise which I am required to undertake. If, perhaps, this case were being dealt with on the basis of ongoing income provision only it might be possible to avoid the need to find a capital value. But both sides seek a clean break and I am urged by statute to strive to achieve it and I am sure that, after this marathon litigation, it is in the best interests of all, particularly the three children.

[73] Looking at the table I think an average dividend stream for V Group of $8m pa is perfectly attainable and a reasonable prediction as to the future based only on the past. But I shall reduce that to $7m because of the future uncertainty of the industry as described to me by most of the husband's witnesses (and acknowledged by Mr Lawrence). 30% of that (rather than 33%) is $2.1m pa.

[74] I am impressed by the evidence recently produced by the husband and NV as to the particular difficulties faced by V Group at present, especially in Asia and Africa where shipping operations have gone very wrong and the costs involved in extrication are likely to be very unusually higher than usual. I am also persuaded that shipping in general is a business which is being squeezed very hard by the appearance of tighter international regulation. But NV was satisfied that V Group would survive, given its niche position in the market and Italian community in general. That is indeed, I find, the probability. But I shall err on the side of caution where the wife is exchanging the uncertainty inherent in being dependent on V Group for hard cash. I shall take a multiplier of 10; a 10% return so the husband's portion of the value of the income stream is for these purposes to be taken as worth $21m or about £12.7m. That is the figure I shall adopt in relation to this part of the case. But I must finally remind myself that that is only a figure. It is not even the open-market value. The problems of liquidity remain the same and will have to be fully considered and taken into account when deciding upon the rate at which any capital sum can be expected to be paid. The husband is actually in possession of a very substantial income stream, not its capitalised cash equivalent.

[75] Apart from the husband's interest in V Group he has interests in two other companies related to the shipping business. Both are linked to the main V Group business and I do not propose to ascribe to them any separate value.

E Corp and PL House

[76] Before turning to look in detail at the other two main issues involving E Corp and PER Ltd, I should consider one preliminary point. Both entities urge me not to tar them with the same brush as the husband so far as credibility is concerned. If I find, as I have, that there are serious concerns about the husband's credibility overall, it does not follow, they say, that they are also so tarnished. I am afraid I regard such pleas as wholly unrealistic. The idea that these two Liberian bearer share companies have some independent existence and speak with a voice other than the voice of the husband (and for that matter his brothers') is quite simply fantastic. I am afraid that, so far as credibility is concerned, they all sink and swim together but of course I shall consider carefully the points made separately by the two counsel for the corporations.

[77] E Corp bought PL House in 1977 and it has been occupied by the husband as his home since 1978: 25 years. Despite what the husband says about it, namely that it 'never' belonged to him, it is quite clear that it did at least until 1984, the year of his divorce from his first wife. Mr AB says it 'belonged/was allocated' to the husband until then when, by virtue of the 'trust' set up then for the benefit of the husband's elder two children the 'ownership' of E Corp passed to first his mother, and then NV to be held for the two children. I do not think that there can be any doubt that at least until 1984 the husband was the beneficial owner of E Corp and so PL House in every sense.

[78] So the question is: was there a trust arrangement properly so described in 1984 and did it have the effect of depriving the husband of his beneficial ownership at that time?

[79] The arguments and evidential points for and against the parties' respective positions are set out fully and carefully in writing in the closing submission documents of Miss Baron, Mr Sirikanda (for E Corp) and the husband. I am not going to repeat them here at length. I have them well in mind. Once again the husband is constrained to accept that any outside observer (bank, builder etc) would have been bound to conclude that PL House was his in every sense. I have already indicated that I accept the wife's evidence that at no time during this marriage was the existence of the trust mentioned to her by the husband or any other member of his family. So does it exist at all?

[80] I am satisfied that a discussion did take place at the end of the husband's first marriage involving the husband's mother and then father-in-law. I am satisfied also that some kind of informal understanding was arrived at which was to the effect that the two children would benefit in some way from the value of the house or its equivalent. But that the property itself was put in trust for them I do not accept. The parties were bound by no more than a moral obligation to see that the children were looked after financially. I simply cannot accept that if this arrangement was more than a flexible statement of best intentions it would not have been recorded either in a written document or at least some note of the conversations constituting the trust would have been made. I make every allowance for the informality of the Italian family traditional approach but this requires me to accept that a plan which was not to come to fruition for decades, and probably not until after the death of the parties to the arrangement, would have been wholly unrecorded in any form.

[81] And what kind of a trust is it that allows the husband who, on his case, has given the property away to trustees, to borrow $600,000 against the equity in it and then pay that sum to the benefit of those other than the beneficiaries? And that some 6 years after the trust had apparently been constituted? NV accepted in evidence that the lack of writing enabled the arrangement to stay flexible, which might be convenient in the future.

[82] In the end, I accept Miss Baron's submissions in this regard: I do not find any trust arrangement here. Accordingly I find that the husband is still the beneficial owner of PL House via E Corp. NV, if he is the holder of shares, holds them for the husband. That has not prevented the company being a vehicle for the passing of money on behalf of other members of the family from time to time. E Corp has been used as another 'corporate wallet' on occasions in just the same way as M Investments, another Liberian vehicle from which the husband has distanced himself during these proceedings, but which is and always has been a useful conduit for transactions for all the family as and when necessary.

[83] The agreed net equity in the property is £1.232m (although that is regarded by both sides as probably on the low side).

PER Ltd and B Square

[84] Again, I have been supplied with comprehensive written arguments/chronologies by counsel for the wife, PER Ltd and the husband himself. Miss Baron urges me to find no distinction between this corporate entity and E Corp. It is, she says, allocated to the husband in accordance with usual family practice. She relies again mainly on the circumstantial evidence surrounding the way in which the husband and wife found and used B Square and representations to third parties, banks etc. But she also draws attention to manuscript documents prepared by the family book-keeper, showing cash payments under various headings in respect of a number of corporate entities including PER Ltd and E Corp. But on their own those documents cannot be determinative.

[85] Mr Cusworth (for PER Ltd) in his argument has exposed distinctions between E Corp and PER Ltd and, standing back and looking at the whole evidential picture so far as the way the family organised its

ownership of assets, I am prepared to accept that it is in a different position from E Corp and PL House. I also agree with Mr Cusworth that the wife's case in this regard has changed over time. I am sure she is not inventing facts but I think she has convinced herself of the rightness of her assertions about B Square based on those facts and as the case has proceeded.

[86] In the end I am satisfied that this flat was part of the pool of the husband's family's assets, as described by Miss Baron, and as such owned by the three brothers equally. I am also satisfied that the husband can use it as and when he wishes and without charge.

[87] A sensible concession at an early stage by the husband would have saved enormous time and money so far as this aspect of the case is concerned. I am sure it was never beneficially owned solely by NV.

[88] The equity in B Square is agreed at £283,000; one third is, therefore, £94,000.

WI Corp/TY Ltd

[89] These are the companies which own the family motor yacht/small ship, the TY. Once again the wife asserts that this is in truth solely the husband's property. He maintains that it is a corporate asset owned by five individuals of whom three are the brothers and that it is not used solely by him but others and particularly for entertaining clients/customers. Again, looking at the overall picture, especially given the family shipping interests, I think it is most likely that this is owned by the three brothers jointly and that the expense is born wholly by V Group. I am not prepared, in the absence of any further explanation or documentary evidence, to broaden the ownership to five individuals. Who are the other two? What is their relationship to the family? I am not told.

[90] Finally, what is real value of the TY to the husband? I have no doubt that the husband has first call on its use because of his part in the South American ventures which led to its original purchase. It costs him nothing to use or run. It has a permanent crew of four/five and is kept in a state of permanent readiness. The wife says that the husband used to say that it cost $200,000 pa to run. He denies that but I accept the wife's evidence. The boat has an agreed value of £210,000, so a third would be £70,000. As a figure that is where I shall start. However, as a financial resource to the husband in the broader sense of an annual financial benefit which costs him nothing, it is worth very considerably more to him than that. The annual running costs are greater than that alone. Once again it is a case of the value to him being greater than the strict open-market sale value. I shall bear these matters in mind in the overall assessment of the husband's means and resources.

Other assets and debts

[91] There is a parcel of development land on the island of Sicily which the husband acquired by gift from his father and which is jointly owned by the three brothers. The one-third share is valued by the husband at £176,000. But it transpires that Sothebys currently have it on their books for sale (on the husband's family's instruction) at an asking price of $7.6m (£5.2m) so the husband's share on this basis would be £1.7m. The husband's explanation for the discrepancy is that this is an inflated asking price reflecting the exceptional beach location of the plot but that in fact a change to local planning regulations has rendered the plot of far less value. Once again no documentary or other evidence is produced to support the assertion although NV corroborated the husband's case orally. I shall take a somewhat conservative view of the value given that Sothebys' figure is only an asking price. I shall include the land at £1m.

[92] Finally, so far as the husbands assets are concerned, he has property in Rome with an agreed value of £487,000.

[93] There are other corporate entities which have figured during the application; notably the RA corporation. But I find that it has no separate value albeit that it is a useful pointer to the way in which the family own and manage their finances.

[94] Based on the above figures the husband's assets might be presented, in simple tabular form, in this way:

V Group	£12,700,000
PL House	£1,232,000
B Square	£95,000

The TY	£70,000
Sicilian land	£1,000,000
Italian properties	£487,000
Total	£15,584,000

[95] At the start of the hearing it seemed that the husband might have very considerable but not easily quantifiable debts arising out of his former participation in the Lloyd's insurance market. A figure of £952,000 was suggested by the husband. There is no doubt that in the mid-90s the husband was actively involved in this business both personally and corporately through a company. The husband maintains that this activity was his 'greatest source of income'. It certainly was profitable for 2 or 3 years, but since then it has been a generator of large liabilities rather than profits. During the course of the hearing further and more up-to-date information emerged from the underwriting agents and it would seem that now, although the losses might be as high as £1,221,393, there are funds and securities held at Lloyd's and stop-loss policies which themselves are worth £1,160,821 so the deficit is now estimated at around £24,000.

[96] The husband says he is indebted to his brother NV to the tune of £1,046,856. The figure is made up, he says, of about 70 amounts lent to him since the beginning of 2001 to cover living expenses and legal fees. The precise and complete breakdown was produced for the first time annexed to the husband's final written submissions. The wife, whilst she accepts that these sums have been paid via NV, does not accept that any of them are properly categorised as loans but rather payments due to the husband from V Group. They might, she says, be conveniently described as 'loans' because the fiscal implications of remitting those sums to the UK are obvious and anyway the husband is 'borrowing' money to paint the picture of a destitute. But they are not, she says, sums which are legally repayable in any strict sense. I am not prepared to treat these undocumented payments/sums as hard loans. Some money may be due to NV but the family financial arrangements/pot is quite large and flexible enough to absorb the small payments. In the end I shall make no deduction from the headline figure for these 'loans'.

[97] Although the husband has managed to defray his own lawyers' bills he most certainly does owe the wife costs arising from the defended divorce which he was ordered to pay . The figure amounts, with interest, to £147,555 net of the sum of £38,000 already paid. There is before me at this time, in a separate application not immediately now for my adjudication, an application by the husband to pay this sum owing in costs, by instalments. It has come before me by way of an application (on paper) for leave to appeal the costs judge's refusal to make an instalment order. Having now had the advantage of investigating the husband's means over 3 weeks, I can say that I see no basis for granting leave to appeal and I shall refuse that application. Accordingly that sum is now payable.

[98] At the end of the day I shall take the husband as a man with 'financial resources' valued at in excess of £15m.

Income

[99] It is impossible to calculate with any accuracy precisely at what level the husband's true income is or was and perhaps with a financial structure of this kind it is an artificial distinction to talk about an annual income in a conventional sense. First, income fluctuates with the fortunes of the business. Secondly, I have no figures which reflect, as I have found, the husband's full interest in V Group. Thirdly, with his UK fiscal status it would be inconsistent to find any regular large income remitted here; it would be unlikely to amount to the whole picture. Evidence produced by the husband's accountants showed 4 years' figures (1996-2000). The figure for 1997/1998 was £201,637; for 1998/1999 it was £231,724; and for 1999/2000 it was £141,098. However, there are in the Hildebrand documents manuscript cash payment schedules relating to M Investments, the 'corporate wallet' or conduit used by the family for transmission of money. These documents were compiled by the family book-keeper, for internal information purposes. They are only, of course, for one year: 1997. In that year they show payments to the husband of $689,874 and £86,750 respectively. Those figures bear no relation to the income figures provided by the husband for that year. The wife has calculated that the family was spending at the rate of £290,000 (not including the costs of the boat or B Square) and I think that provides as good a guide to the husband's ordinary expenditure/income as anything else. There were often capital payments on top.

The wife

[100] Her financial position is quite simple. She has an interest with others in three plots of land in Rome. They are worth in total £512,000. None of the properties is immediately saleable, one is occupied by her parents. One day, no doubt, she will benefit from their value.

[101] She has debts run up to pay her costs: £300,000 owed to Hambros and £130,000 to family members. She has no income other than the periodical payments payable by the husband at £3,475 per month. No one has suggested that she has an earning capacity.

[102] Those then are the financial resources of the parties but I must not (and do not) forget about costs. The wife's costs of this application to date are just under £700,000. That is a huge figure. Whatever happens it is inevitable that the husband will have to pay a large portion of that figure because of the findings I have made already about his conduct of these proceedings. He has, in his open offer, suggested he should pay £300,000. That is a realistic start. As I say, I cannot ignore these figures.

Financial needs/standard of living/age and duration of marriage

[103] I group those three subsections together because they cannot be looked at in isolation from each other. Against the background of the parties' standard of living, which I have already described, and given the parties' ages and the duration of the marriage (about 11 years), what are the wife's financial needs? These considerations are really determinative of the provision the wife seeks if Miss Baron's submissions are boiled down to their essentials. She does not really press her case principally on the basis of 'contribution', recognising, as the expert which she is, that with a marriage of this length, the wealth having derived from the husband's family, the driving factor is the wife's (and children's) needs. She advances her case in familiar terms: housing and income.

[104] The wife wants a home in England for which she says she requires £2m. I have seen particulars for properties in Surrey at that sort of price. I think they are on the large side and, although I do not have any particulars from the husband, I know enough about the housing market from my own knowledge and other similar cases to arrive at a proper figure. She would also seek £250,000 for costs and contents. She would also like a home in Italy for which she needs £550,000.

[105] The husband suggests £1m all in for the housing of the wife and children.

[106] As to income: the wife's future budget is £166,000 but Miss Baron, again ever the realist, restricts her claim to £111,000. Capitalised on the usual Duxbury basis she seeks a lump sum of £2.75m. I would not take serious issue with that annual figure for herself over the next 10 years or so, but I am not persuaded that it is appropriate that she should have that level of provision for the rest of her life once the children are off her hands. It is then too high.

[107] Amounts sought by the wife under all these headings come to £5.55m. She also seeks a further £500,000 to cover future litigation costs in Italy and £36,000 pa for the children plus their school fees.

[108] The wife also seeks some of the items on a Scott Schedule of Art/Chattels. Out of 61 items she seeks 21. The husband says they are not his because they belong to a family art trust of which he only has a quarter share. Nevertheless he offers nine of the items the wife seeks.

[109] The husband also needs a nice home and income but the orders which I contemplate will, in my judgment, mean that such aspirations will be well within his reach even having paid the wife her entitlement.

Contribution

[110] The husband's contribution to the wealth of the family via the family business, V Group, which derived originally from his father's shipping interests cannot be gainsaid. That is the source of the capital in this case; the business existed long before the marriage, however much it might be said that during the course of the marriage it has grown and prospered. The husband forcefully and repeatedly reminds me of that fact and also, as a corollary, that all the other assets, PL House, B Square etc, were bought before the marriage. He is right to emphasise these points. They are indeed very significant and I give them full weight when deciding upon the right provision for the wife.

[111] But that is not in any way to belittle the wife's non-financial contribution as a wife and mother. As a wife I have heard of nothing which could possibly diminish her entitlement. And as a mother, although the

marriage was not of the longest, this role, deriving from the marital relationship, will continue for another 10 years at least; in reality these days probably much longer.

Conduct

[112] I am pressed by the wife to put into the balance the husband's conduct of this litigation, his conduct over the defended suit and his prosecution of the Italian proceedings relating to the Hildebrand documents and PL House. These factors should enhance her claim or at the least err me on the side of generosity. Save in one respect I have decided these matters are more appropriately dealt with and included in costs arguments. But I am persuaded that, whatever the provision I arrive at, there should be a further figure to cover the wife's Italian legal costs if the proceedings are not rapidly discontinued. I agree with Miss Baron's submission that the wife's capital should not be diminished further by this litigation and that she needs the funds to instruct lawyers in Rome to protect her interests.

The right provision: striking the balance

[113] I have considered with care all the evidence and arguments so fully advanced before me during the course of this lengthy hearing. It has not been possible, in the course of this judgment, to cover every facet of the evidence and every argument. To have done so would have doubled its length. I have been hampered in my considerations by poor disclosure on behalf of the husband of which, of course, the wife and her advisers have justifiably made much. I have been urged to draw adverse inferences in relation to the husband's wealth and so give the wife the benefit of any doubt. In arriving at my conclusions I have, to some extent, done so, but I also must not forget that there is a genuine liquidity problem in this case in one very important respect. I accept that V Group has been genuinely marketed in the way I have described and that it has attracted almost no interest from outside investors. Accordingly its value lies in its ability to continue to provide a very high income principally for the three brothers in the coming years.

[114] In the end I have to do what is fair measured against the yardstick of equality. This is plainly not a case for a half-share or anything like that; the wife does not contend that it is. However, once the court departs from equality fractions tend to become arbitrary and carry almost no logical significance. It is far safer and better, I find in cases of this kind, properly to recognise the wife's contribution by looking carefully at her financial needs. In the end I shall order the following provision for the wife and children.

Housing

[115] Taking all the factors into account, the capital required to provide the wife and children with a reasonably commensurate home in England (including furniture and costs) is £1,700,000. I do not think this is a marriage of sufficient length to justify a second home in Italy for the wife. She has family there and the children will continue to benefit from holidays on the yacht.

[116] So far as the items on the schedule are concerned, I do not accept that these are owned by a trust as suggested by the husband. There is no evidence to support it; it is once again an invention. However, being pragmatic and so that there can be no question but that the husband is entitled at least to the fraction of the overall collection which I shall transfer to her, I shall make an order for the transfer of a total of 15 of the 21 items sought by the wife. There is no dispute about nine. She shall have first pick of another six from the remaining 12.

Income provision

[117] I have already indicated that the figure sought by the wife (£111,000 pa) is not unreasonable for the moment and whilst she is having to provide a home for the children. But the overall capital calculation of income provision must also take into account the fact that at some future time the level of that income provision should be reduced. I come to that conclusion for two reasons:

(a) The wife's 'contribution by looking after the home and caring for the family' in this case (as I think in any case where the marriage is of this sort of length and where the wealth has largely been generated before its commencement and by the husband) is properly given full recognition by ensuring that she has a secure income for her life at a reasonable level; a pension for life as it were. However, that is not necessarily to be calculated throughout the whole period at the level required for the period when she is a full-time mother.

That would be wrong both in principle (given the length of the marriage) and also because it would fail to recognise the fact that her financial needs will actually reduce as the children leave the nest.

(b) As a part of that reducing need, the wife's housing needs will also diminish in the long term. When that occurs some capital will probably be released from her house and form part of her income fund.

[118] As well as taking into account these factors the court must also bear in mind the wife's own assets. They are not liquid at present but during her life they, or part of them, are likely to become so. They too will eventually form part of her income fund

[119] In some cases, it is possible with the aid of a Duxbury computer programme to calculate precisely the amount required to produce a given income stream from time to time and which also takes into account the introduction of a further capital sum or sums at some future date. I am not prepared to indulge in such a glorified speculation exercise in this case because it would be to impart a spurious accuracy to the calculations at this late stage in the balancing exercise when so many of the other underlying figures are shot through with uncertainty. I also have in mind that for enforcement purposes there is something to be said for keeping the calculations simple. So instead I propose to calculate the income provision on the basis of one simple income figure for the rest of the wife's life on the basis that in the first years it will be too low and in the later years too high. By this route, the annual income figure which I shall take is £65,000 pa. That figure, as I say, takes into account the wife's present and future requirements, her own capital and also her diminishing capital and income needs in years to come. The resulting capital sum is £1,515,000.

[120] I shall make further provision of £100,000 for Italian legal costs. If the proceedings terminate quickly it will not be payable.

[121] The overall capital provision under all heads is, therefore, £3,315,000.

[122] The parties, during the hearing, reached an interim agreement for income provision for the children so that I can, by way of a variation, reconsider it in the context of the overall financial provision. The wife seeks £12,000 pa per child; the husband offers £8,000. I need to look at this in two stages; before and after the wife and children leave PL House. So long as the wife continues in PL House and the husband continues, pursuant to the interim order, to pay the outgoings on the house, I shall take the husband's offered figure of £8,000. It will be payable from the date of this order. Once the wife and family leave it will be increased to £10,000 pa per child until cessation of tertiary education. The husband will also pay the children's school fees and reasonable extras.

[123] I indicated during the hearing that the time was long overdue when the parties should have separated in the children's interests. The wife would like, obviously, to be on her own and I think the husband now recognises the need for separation. I would like him to move out by 9 January 2004. If he is prepared to give me an undertaking to that effect I shall accept it. If not I shall make an order giving wife exclusive occupation from that date.

[124] In arriving at the figures for the wife and children set out above I have tried to balance the two pleas made respectively by the wife and the husband in their final submissions. For the wife it was said:

'The court will have to make an order that lends "judicious encouragement" to provide for the wife and children (see Thomas v Thomas [1995] 2 FLR 668).'

For the husband, on the other hand, it was said in his written 'final comment':

'I would invite my Lord to consider the fact that should a judgment be made that is attainable within the ambit of my financial abilities albeit with the undoubted necessity for me to make personal sacrifices and concessions -- and with the assistance and support of my family and friends -- it would be for best financial well-being of my wife and family. I think it has become clear that whatever the outcome -- I will need time to implement, in view of the present financial stress and liquidity difficulties that I am facing.

A judgment which would result in having to go through enforcement will only cause difficulties effecting my credibility and consequently my ability to earn in the future. Again this would have serious consequences on my wife and children who would well require my ability to give them financial support in future.'

[125] I have taken these points fully into account and deliberately not set the provision to the wife at the top of the bracket of possible provision in the hope and expectation that the husband will now come up with some sensible and concrete proposals for speedy compliance with these orders to avoid enforcement proceedings here and in Italy. I am prepared to consider the question of instalments after I have heard such proposals from the husband. Likewise I will consider the question of the continuation of injunctions and security.

[126] In the meantime the wife and children will continue to occupy PL House until 2 months after all sums are paid so as to enable her to find another home. The interim order for her, payable on the same basis as now, will be at the increased rate of £5,000 per month until the capital sums are paid and she leaves. I shall adjourn any application for transfer of property/sale orders for the time being unless the husband agrees to the transfer of PL House now. But that may not be necessary. The wife will no doubt want to consider the precise form of order/declaration which she seeks in the light of my findings.

And finally . . .

[127] At any given time there are, wending their way through the Family Division of the High Court in London, a number of cases which exhibit very similar characteristics to this one. They are a species of the, unattractively described, 'big money cases'. They are enormously and disproportionately expensive in terms of their cost to the parties and in terms of the amount of court time they consume. That is not in the parties' or the public interest. They invariably start with an attempt by the respondent to the application to distance him/herself from underlying wealth which then provokes an enormous disclosure enquiry by the applicant. Often one of the motives for obfuscation is a desire to protect from jeopardy carefully created fiscal arrangements. In this context I hope I shall be forgiven if I take this opportunity to mention two matters.

[128] First, the so-called Thyssen defence (see Thyssen-Bornemisza v Thyssen-Bornemisza (No 2) [1985] Fam 1, [1985] FLR 1069). That was a very useful mechanism employed regularly in the 1980s and 1990s for avoiding huge financial enquiries in circumstances where wealth was very considerable and where a respondent was prepared to make an admission as to the overall value of the available wealth and the broad categories into which it fell. It is sometimes said that nowadays, with the greater emphasis placed on fractions and 'contribution' since White v White [2001] 1 AC 596, [2000] 2 FLR 981, that this mechanism is no longer apt or useful. I do not agree. I agree with the editors of Essential Family Practice 2002 (Butterworths) in this regard (see p 2166). Especially where cases involve marriages of short/medium length and the wealth has largely come from sources other than the efforts of the respondent during the course of the marriage, Thyssen defences could still be usefully deployed. An application at the First Appointment stage to the High Court judge allocated to hear such a case might save enormous time and money by adjudicating on this as a preliminary issue.

[129] Furthermore, I hope I am not being naive in saying that even in the longer marriage cases where a 50/50 split is the aspiration, many applicants would, I feel sure, be prepared to compromise over precision providing sensible admissions at a high figure were made, in order to avoid acrimonious, lengthy and very expensive proceedings.

[130] Secondly, clients whose cases fall into this category do need to be reminded by their advisers that these sophisticated offshore structures are very familiar nowadays to the judiciary who have to try them. They neither impress, intimidate, nor fool any one. The courts have lived with them for years. If clients 'duck and weave' over months or years to avoid coming clean they cannot expect much sympathy when it comes to the question of paying the costs of the enquiry which inevitably follows. And that is so whatever the outcome eventually is and whatever offers have been made before final determination. Applicants cannot be properly and fully advised about the merits of offers by their lawyers unless the disclosure is full (even if in Thyssen defence form) and frank; all the cards must be put on the table face up at the earliest stage if huge costs bills are to be avoided.

DISPOSITION:

Judgment accordingly. WordStar 4.0B Messages 14 Feb 87Copyright (C) 1983,1987 MicroPro International Corp.All

SOLICITORS:

Levison Meltzer Pigott for the petitioner; Charles Russell for the second respondent; Constant & Constant for the third respondent.