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Case No: 1690-3090-4913-6367

IN THE FAMILY COURT
SITTING AT THE ROYAL COURTS OF JUSTICE

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29 July 2024

Before :

The Honourable Mr Justice Cusworth

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Between :

Wei-Lyn Loh — **Applicant**

- and –

Ardal Loh-Gronager — **Respondent**

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- -

Patrick Chamberlayne KC and **Richard Sear KC** (instructed by **Payne Hicks Beach**) for the **Applicant**
Michael Glaser KC (instructed by **Stewarts**) for the **Respondent**

Hearing dates: 25 – 26 July 2024

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JUDGMENT

This judgment was handed down remotely at 10.30am on 2 September 2024 by circulation to the parties or their representatives by e-mail and by release to The National Archives on 31 October 2024.

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This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media and

legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

Cusworth J :

1. This has been a preliminary issue hearing during which I have considered written pleadings and oral argument from leading counsel for both parties at a hearing on 25 July 2024. The issue between the parties has been the impact of the terms of the parties' Pre-nuptial Agreement ('PNA'), on the ownership of certain valuable chattels acquired during the parties' marriage, for all relevant purposes in the sole name of the wife, but purchased with funds drawn from joint accounts held by the parties. By the PNA, those joint accounts were to be treated as 'Joint Property'.

2. The Wife is Wei-Lyn Loh, aged 41, having been born on 28 November 1982. Her Form E disclosure as at September 2023 showed that she was enormously wealthy, with most of her wealth in business assets and the remainder liquid or in property. The Wife is also the beneficiary of a family trust.

3. The Husband is Ardal Loh-Gronager, aged nearly 34 having been born on 6 August 1990. He was previously a banker, having worked for Goldman Sachs, Morgan Stanley and then Credit Suisse. He left banking in 2018, he says in order to support her and to manage the renovations of the family home, 73-75 Avenue Road, London NW8 6JD ('Avenue Road') which is a very valuable and substantial property in North London. He then set up an investment partnership called Loh-Gronager Partners Ltd in July 2021, which was funded very largely by the wife. His disclosure at the time of the parties' PNA in 2019 was that he had a net capital worth of £650,000.

4. The parties began cohabiting in 2015, and entered into the PNA on 11 March 2019. They married on 12 October 2019, and separated on 10 May 2023, although the wife puts the true end of their relationship to the Autumn of 2022. Nothing however turns on this for the purposes of this application. The preliminary issue before me as indicated concerns valuable chattels purchased during the parties' marriage to furnish Avenue Road, and worth several millions of pounds. The chattels were acquired using funds held at the point of purchase in two accounts in the joint names of the parties. These

joint accounts are held with Barclays Bank Plc., and carry account numbers ending 7263 and 9556 (the 'Joint Accounts').

5. At the First Appointment on 13 March 2024, I ordered pleadings as to the preliminary issue which was then defined by counsel at [7] in that order as:

'the proper interpretation of Paragraphs 2.9, 19 and 22.4 of the PNA, namely whether the chattels acquired during the marriage using funds held in the Barclays Joint Accounts:

'a. are to be divided in accordance with the parties' respective contributions to the funds introduced into the Barclays Joint Accounts, or

b. are to be treated as Joint Property irrespective of the parties' respective contributions to the funds introduced into the Barclays Joint Accounts.'

6. The substantive question arising on the preliminary issue was therefore how the chattels fall to be characterised for the purposes of the PNA, and consequently the respective entitlements of the parties in those items following their divorce. Clearly the issue will not impact on any needs based assessment, as the items will remain within the parties' resources. In fact, neither party is ultimately suggesting that the chattels in dispute can be classed as 'Joint Property' under the PNA. Although Mr Glaser KC for the husband did initially assert this to be the case in response to a question from me, he later rowed back from that position.

7. The potentially relevant clauses of the PNA (not limited to those mentioned above) can be extracted and set out as follow:

DEFINITIONS

"Separate Property" *means property brought into the marriage by either party as identified in [the attached appendices] or acquired by them during the marriage through inheritance, inter vivos gift, family trusts, or business interests and/or which is subsequently converted to other assets including the Matrimonial Home…*

"Joint Property" *means any property acquired by the parties after the date of the marriage to include real property or business interest or investments acquired by the parties by whatever means to include purchase, gift, debt,*

inheritance or otherwise where the legal title held in joint names to include for the avoidance of doubt the joint account that Wei-Lyn and Ardal are setting up as provided for at paragraph 2.9 below.

PREAMBLE

Paragraph 2.9

As regards their finances, Wei-Lyn and Ardal intend on setting up a joint bank account in October 2019 which will be regarded as Joint Property irrespective of the contributions either Wei-Lyn or Ardal make to it from time to time. Both parties acknowledge and agree that Wei-Lyn will be transferring £250,000 from the outset into this bank account. It is also intended that Ardal will contribute financially towards this joint bank account and will transfer approximately £100,000 into it following the sale of his interest in the flat at New Atlas Wharf which he owns jointly with his father. Thereafter Wei-Lyn acknowledges and agrees to keep the joint bank account topped up to a minimum of £250,000 up until January 2022 when she will thereafter increase this to a minimum of £500,000. The purpose of setting up this joint bank account is to cover all utility bills and general household expenses at the Matrimonial Home and also both parties' day to day living expenses. Both Wei-Lyn and Ardal acknowledge and accept that in the event of divorce, the joint bank account will be closed and the balance divided equally between them.

Paragraph 2.15

Ardal and Wei-Lyn acknowledge that neither has made a contribution to the other's Separate Property and that this will remain their respective Separate Property during the marriage and will not become part of their Joint Property as a result of the marriage. In the event that Wei-Lyn or Ardal use any of their Separate Property for the other or for the benefit of them both they both fully accept that neither will acquire any interest in the other's Separate Property unless it has become Joint Property as defined in this deed. Ardal and Wei-Lyn also undertake by signing this deed that they shall not seek any disposition or distribution of capital or income or any other benefit (whether by advancement, appointment, or otherwise, and whether directly or indirectly) from the other as this will be considered their Separate Property other than as set out in this agreement.

Paragraph 4

In the event of a divorce, Wei-Lyn and Ardal will recover their separate property, their respective shares of any joint property… but will not make any claim against the other's separate property…

EFFECTIVE PROVISIONS

Paragraph 19

Wei-Lyn and Ardal shall be deemed to own any Joint Property equally by value regardless of the financial contribution or investment made to the same. For the avoidance of any doubt, the Matrimonial Home is not to be classified as "Joint Property" in itself as its definition and potential eventualities are dealt with in accordance with paragraph 2.16 above.

Paragraph 22.1

Wei-Lyn and Ardal will divide their Joint Property equally by value save for the Matrimonial Home…

Paragraph 22.2

The value of their joint property …and any jointly acquired chattels, will be agreed if possible, and in default of agreement shall be valued by a jointly instructed valuer.

Paragraph 22.4

Chattels acquired jointly during the marriage (other than Separate Property…) will be divided between Wei-Lyn and Ardal in accordance with the financial contribution made by Wei-Lyn and Ardal respectively to the purchase or acquisition of the same. Wei-Lyn and Ardal will draw up a list of jointly purchased chattels specifying the approximate financial contribution each has made to the acquisition of the same. Wei-Lyn will then have first choice of which Chattel she wishes to have with Ardal having second choice and they will continue to choose on an alternate basis until all the jointly acquired chattels have been divided between them. If the parties are unable to agree [] on the contribution made to the purchase or acquisition of a particular chattel then Wei-Lyn will have the option of buying the said chattel from Ardal at one half of the market value; should she decide not to do so, it will be sold and the proceeds of sale divided between them equally…

Appendix 1

Wei-Lyn Loh - schedule of assets…

Bank accounts… Barclays: £5,000,000 (set aside for refurbishment and furnishings)

8. **Background.** Although the parties disagree fundamentally about how these clauses operate in the events which have happened, the factual background between them was not considered by either to be a matter of sufficiently significant dispute to merit further witness statement evidence before this hearing. This, despite the fact that they had express permission to file such evidence in the event of disagreement after the exchange of statements of case, by my order at the First Appointment dated 13 March 2024. The following factual matters, although not their relevance or application, cannot therefore be a matter of principal issue.

9. The chattels were purchased using money then contained in the Joint Accounts. Whilst the money in those accounts was transferred into them (very largely) from the wife's personal accounts, paragraph 2.9 of preamble to the PNA records that the joint account *'will be regarded as Joint Property irrespective of the contributions either Wei-Lyn or Ardal make to it from time to time'.* Whilst it sits in that account the money in question is therefore jointly owned, albeit that it would be assumed by the PNA to be intended for use for the purposes for which the accounts have been established, as recorded in the document at paragraph 2.9, and discussed below at [12].

10. Both parties acknowledge that similar household furnishings to the chattels in dispute were initially purchased for Avenue Road using funds from the wife's personal accounts, with the husband arranging the purchase, and he does not claim any interest in those earlier purchased chattels. During the period in which these items were purchased, the husband was overseeing the refurbishment and furnishing work taking place at Avenue Road. The invoices were initially paid by the wife directly. Her case is that to make the payment of invoices more convenient, it was agreed that she would make payments into a joint account so that the husband could make the payments to third parties on her behalf without having to have recourse to her each time.

11. Whilst the husband does not dispute this factual account, he says that the consequence of that process, of which the wife should have been aware, was that all of the money paid by the wife into the joint accounts became 'Joint Property', and that any

acquisitions subsequently made with those funds must be treated as purchases to which each party made an equal contribution. He argues through Mr Glaser KC that the administrative inconvenience identified by the wife could have been addressed in other ways, and does not accept that this was the reason why the course described was taken. However, he does not suggest that the parties ever discussed the potential consequences of their actions, about which they now differ.

12. The intended purpose of the joint accounts is made clear by paragraph 2.9 of the PNA. It was '*to cover all utility bills and general household expenses at the Matrimonial Home and also both parties' day to day living expenses'*. Mr Glaser KC makes the point that even if the accounts were set up for this reason, they can be subsequently used for other purposes. I agree with him about that. So, whilst I also agree with him that the accounts were not set up for administrative convenience, they could also subsequently be used for that purpose. Furthermore, they were not evidently intended to be used for the costs of '*refurbishment and furnishings*' in circumstances where £5,000,000 of the wife's separate property had been earmarked for that purpose in Appendix 1 to the PNA. However, they were evidently used for that same purpose as well, as explained above.

13. It is acknowledged that the funds used to purchase the chattels were derived from the wife; specifically from funds paid into the joint accounts by her from accounts that previously comprised her Separate Property. Whilst the husband did pay a total of £200,000 into the joint accounts, the first £100,000 of that was paid in 10 January 2020, and sums totalling over £230,000 were then transferred by him into his own personal account by the following June. The second £100,000 which he paid into the joint accounts only arrived after the purchase of the disputed chattels.

14. It is also not a matter of dispute between the parties that the wife is now the sole legal owner of the chattels. Virtually all of the contracts pursuant to which the chattels were purchased were between the third party and the wife only. The PNA as explained defines Joint Property in the Preamble as property '*where the legal title is held in both names*'. The chattels are not therefore 'Joint Property' under the PNA. Each of the purchase contracts by which legal title in the items was transferred from the seller is to

the wife, save for one contract, signed by the husband only, where the wife says that he signed as her agent. Her assertion has not been challenged.

15. The PNA in fact describes three distinct categories of property, in that in addition to Separate and Joint Property there is also a separate class of 'Jointly Acquired Chattels', referred to in paragraphs 22.2 and 22.4 of the deed. This class must be distinct from Joint Property in that legal title to any such chattel must not held expressly in joint names. It was plainly intended to include chattels acquired during the marriage to which both had made some financial contribution from their respective separate funds, but which was not held jointly. Upon divorce, the value of this property was to be divided in the same proportions as the financial contributions made to the purchase by the parties' respectively. This contrasts clearly with the treatment of the joint accounts which by paragraph 2.9 were to be regarded as 'Joint Property' '*irrespective of the contributions*' either party made to it from time to time.

16. **The Parties' Positions.** Mr Glaser KC's case in essence is that, by operation of paragraph 2.9 of the PNA all money paid in by the wife has been rendered 'Joint Property', and so its subsequent use to acquire the chattels means that the financial contributions to their acquisition must be deemed to be equal and that the husband is therefore entitled now to share equally in their value, by operation of clause 22.4.

17. Mr Chamberlayne KC for the wife argues that the chattels purchased through the joint account are not 'jointly acquired chattels' at all because, he says, one party can purchase and solely own items using money emanating from a joint account. He relies on dicta from *Re Bishop [1965] Ch. 450,* which case explains that there can be situations where parties can purchase solely owned property from money in a joint account. Mr Glaser KC responds, accurately, that a clear agreement or declaration between the parties can override or rebut any presumption to that effect - whether as a starting point or otherwise.

18. This is clear from what Stamp J said at 458g in that case:

> ***'…i****n the absence of some circumstances or some evidence of intention that the joint account was to have a limited operation or was set up and kept up for some special purpose, each spouse has power to draw on the joint account not only for the benefit of the spouses but for his or her own benefit. In the absence of some circumstances from which one infers an agreement to the contrary, one must treat the joint account as truly a joint account, a joint account on which each party has power to draw to take the money out of the ambit of the joint account and to employ it as he or she thinks fit either for his own purposes or not, and if he does draw money out and invests it in his own name I see no room for any inference that be holds that investment on trust for himself and his wife either in equal shares or in any other shares…*
>
> ***…****the circumstances in relation to the joint account have to be regarded in order to ascertain the reason for its existence and to see whether it existed for some specific or limited purpose.'*

19. That each case will depend on its own facts is also clear from the later Court of Appeal authority of *Heseltine* [1971] 1All ER 952, where Lord Denning MR said at 956e

> *In some cases where husband and wife each contribute to a joint account, the proper inference is that they are putting their moneys into the account with the intention that they should belong to them both jointly. If the marriage breaks down, investments made out of that account belong to them jointly, usually half-and-half, although in the name of one only: see Jones v. Maynard [1951] Ch. 572. But there are other cases where one party provides all the money in the joint account, and it is only opened and used as a matter of convenience of administration. In such cases, if the marriage breaks down, the moneys belong to the one who provided them. So do any investments made with those moneys. Such a case was Thompson v. Thompson, on April 29, 1970;*

20. Mr Glaser KC argues that the PNA expressly overrides and rebuts any presumptions; that the joint account was 'Joint Property' and set up specifically to be so. He says that there is no room for an inference. However, whilst it is right that by paragraph 19 of the PNA the parties are to be deemed to own any joint property equally by value regardless of financial contribution, it must be remembered that the chattels in dispute here are not themselves Joint Property, but solely legally owned by the wife. The question is whether their acquisition by funds which had been paid into the joint account must be treated for the purposes of paragraph 22.4 as one to which the parties have made an equal financial contribution.

21. **Outcome.** The parties have indeed set out in the deed that is the PNA what was intended to be a clear account of their intentions going forward. The joint account was to be 'Joint Property' because it was intended to defray the parties' everyday living expenses for which they would otherwise be jointly liable. They were both intending to contribute to it, even if not in equal amounts. As noted above, they explained at paragraph 2.9 that purpose as: *'to cover all utility bills and general household expenses at the Matrimonial Home and also both parties' day to day living expenses'.* In those circumstances, they agreed that any money paid into the account would become Joint Property for that purpose. However, it is equally evident that they subsequently expanded the account's use.

22. In the PNA they made different provision for the acquisition of chattels, where these items would not be acquired in joint names and so become 'Joint Property'. Here, they agreed that if both made a financial contribution to the chattels' acquisition they would later be divided according to that contribution, which could however be treated as equal if the exact proportion of their respective contributions could not be agreed – paragraph 22.4.

23. It was also the case that the furnishing and refurbishing of the parties' home was, at least in large part if not wholly, anticipated to be undertaken by the wife from £5,000,000 of her identified separate funds in Appendix 1 to the PNA. The chattels in dispute were acquired from funds that originated as the wife's separate property, and have been acquired in her sole name. If the husband is to be treated as having made any financial contribution to their acquisition, it must be one that would be 'deemed' by the purchase money being paid first into the joint accounts. Was that the parties' intention?

24. Undoubtedly, any money paid into the joint accounts would, at the closure of those accounts, be treated as 'Joint Property' and divided equally (Paragraphs 2.9 and 19 of the PNA). But once money has left those accounts, and been paid elsewhere, for purposes other than the payment of utility bills and household expenses, would it inevitably continue to be so treated, for all purposes? If money paid in by the wife during the marriage had then been returned to the wife's sole accounts without being used, it would not surely have been treated as having become equally the husband's

money. And if it had then been used to acquire a chattel, he would not properly have been in a position to claim a share in that item. Why should the position be different if the money moves from a joint account to the purchase of a chattel in the wife's sole name without first being paid back into one of her accounts? For the reasons I give below, however, I need not answer that question definitively to determine the issue in this case.

25. The PNA sets out the purpose of the joint account, for which contributions were to be deemed equal – the meeting of household bills and living expenses. When the account came to be used for other purposes, such as funding the acquisition of items which the parties had intended to be divided between them according to their actual financial contributions, I am entirely clear that it cannot have been the parties' joint intention that the provisions in paragraph 22.4 of the PNA would be effectively overridden by paragraph 2.9 of the preamble. So, whilst money sitting in the joint account would continue to be treated as joint, once it left that account for a purpose other than that specified at paragraph 2.9, the fact that the money had spent time in that account would not necessarily be its only defining characteristic. Once the account came to be used for other purposes, the situation could be viewed as one of 'administrative convenience', and the parties' prior agreement about the joint discharging of household bills would not apply to each and every transaction from the account.

26. If the parties had intended otherwise they could easily have acquired any chattels purchased with those funds in joint names, and so rendered them 'Joint Property'. That would have been the logical process to follow had the interpretation of the PNA that Mr Glaser KC urges on me been the right one, and that understood by the parties at the time. It is therefore significant that they did not take that course.

27. The wife's position is that all the chattels are her 'Separate Property' in that the funds used to purchase the items constituted either money which she had prior to marriage, or money acquired from her business interests, which has been "subsequently converted to other assets". This must be the case, as they are held in her name, *unless* they fall into the category of chattels 'acquired jointly during the marriage', governed by paragraph 22.4 of the PNA. It is clear that items covered under that head were intended to be those

to the acquisition of which both parties have made a financial contribution, but which are not held jointly. If the use of the joint account as a conduit for their acquisition is sufficient to render them 'jointly acquired' then consideration would need to be given to the parties' respective financial contributions by that paragraph.

28. I am satisfied that the intention of the PNA is that this paragraph would relate to actual, as opposed to 'deemed', contributions. This is because the PNA itself does not anticipate a situation where the joint accounts are used to purchase valuable chattels, as opposed to meeting joint living expenses. Both paragraph 22.4 and Appendix 1 indicate that what the parties foresaw was that the wife would acquire any such items from her own funds, but that if the husband made an actual financial contribution, he would be recompensed proportionately.

29. There is also a difference between acquiring an interest in a fund which becomes joint property simply because it is paid by another into a joint account in which the acquirer has an interest, and making a direct financial contribution to any such acquisition. The husband acquired an interest in the joint account, because by the PNA it was Joint Property, but he did not make a financial contribution to it in the relevant period.

30. Paragraph 2.9 of the PNA speaks of the joint account becoming 'Joint Property' *irrespective* of the (financial) contributions which either party makes. By contrast, division of jointly acquired chattels under the operative paragraph 22.4 was to be done *in accordance with* the financial contribution made by the parties. The two provisions are clearly both separate and opposite in their effect. The PNA in both cases is clearly using the terms 'contributions' or 'financial contribution' to connote actual rather than deemed contributions, whether they are to be counted or ignored. The husband's case would involve deeming an actual financial contribution by him into paragraph 22.4, by reason of the operation of paragraph 2.9, when in fact he has not made any such contribution.

31. Given the parallel way in which the 2 paragraphs are expressed, it cannot have been the parties' intention for the husband to so benefit. They simply never anticipated in 2019 that the joint accounts would be used administratively as I find later became the case.

They intended that their respective actual financial contributions would be relevant for interests in any jointly acquired (but solely held) chattels, but not to their interests in 'Joint Property'.

32. The provisions at paragraph 22.4 are evidently designed to address any unfairness arising if one party acquires chattels in their own name after the other has made an actual financial contribution to their acquisition. They are not intended to enable one party to claim a 50% share in an asset which is not held by them or jointly, and to the acquisition of which they have made no actual financial contribution.

33. I am consequently entirely satisfied that the chattels in dispute do not fall to be treated as assets to which the husband has made a financial contribution for the purposes of the PNA, whether or not they have notionally been 'jointly acquired', as purchased with money from the joint accounts. In those circumstances the husband is not entitled under the provisions of the PNA to any interest in their value, and the items fall to be treated as part of the wife's separate property.

34. Further, if required, I am satisfied that in all of the above circumstances, the chattels cannot properly be classed as having been 'jointly acquired', in the absence of an actual financial contribution from the husband.