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Case No: 1668-7958-6193-2057

IN THE FAMILY COURT
SITTING AT THE ROYAL COURTS OF JUSTICE

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16 July 2024

Before :

MR JUSTICE CUSWORTH

- -

Between :

ED — **Applicant**

- and -

OF — **Respondent**

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- -

Michael Glaser KC (instructed by **Mishcon de Reya LLP**) for the **Applicant**
Alexander Thorpe KC (instructed by **Blick & Co Solicitors**) for the **Respondent**

Hearing dates: 8 – 16 July 2024

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JUDGMENT

This judgment was handed down in court at 10.30am on 9 September 2024 by circulation to the parties or their representatives by e-mail and by release to The National Archives on 24 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.

Mr Justice Cusworth :

1. This judgment concludes financial remedy proceedings between OF and ED, whom I shall refer to in this judgment, conventionally, as the husband and the wife. The husband was born in 1974, so is about to turn 50. The wife was born in 1981, so is currently 43. They began to cohabit in 2006 and married in 2007. They have 2 children, A, born in 2011, and so nearly 13, and B born in 2014, so now aged 10. The parties separated in August 2022, and their divorce application was issued later that year. This was therefore a 16 year marital relationship.

2. The husband is an established and successful songwriter and producer, who has produced and co-written with some of the biggest musical acts currently still working and touring. Save for a small amount of value created by the husband before the parties began to cohabit, it is accepted that the balance of the substantial value of his back-catalogue of work is a matrimonial asset, and that in broad terms, subject to questions of liquidity, taxation and valuation, it should be shared broadly equally between the parties. Already the company which holds the bulk of the parties' assets is owned as to 51% by the husband and 49% by the wife. That this application had ended up in a trial with significant costs expenditure on both sides is because the parties sadly have been unable to agree either upon the safe value to attribute to the catalogue or how any sharing of its value should be implemented.

3. In addition to the company which holds the catalogue, there are others which hold a studio and manage ongoing production and song-writing. I will deal with these later. The parties' other assets can be briefly identified. The wife continues to live at the former family home in North London ("the Family Home"), valued at £3.73m, but subject to a mortgage of £2.314m, with the children of the family when they are with her. The parties also own 3 flats (Flats 1-3) in the same property in North London, but with a combined equity of just under £220,000. Aside from these properties the husband has various investments, including in a not yet delivered sports car, and outstanding loans coming to a total of just over £1m, and wife has an ISA and two cars, together with a share in one of the loans coming to just over £180,000. The joint loan (total outstanding value £127,000) may never in fact be repaid. Together, the

parties' have pensions with a combined value of just over £740,000. It can therefore be seen that it is the value of the husband's interests in the music business which forms the principal area of dispute and interest in the case.

4. Before I approach the structure and make up of those interests, I should briefly address the authorities which address the question of valuation of private companies in financial remedy proceedings, relied on by both parties, although as I will explain, this is not one of those cases where there has never been any thought that there might be a sale of the parties' interests.

5. The law: In *Versteegh v Versteegh* [2018] EWCA Civ 1050 King LJ said as follows:

> 134. It is undoubtedly far more satisfactory for all concerned if a court can, with sufficient confidence, settle on a valuation of a business to the necessary standard of proof, that is to say the balance of probabilities. Not to do so is unsatisfactory for the applicant (still often the wife) and is often equally frustrating for the respondent (husband) particularly if the result is, as in this case, the making of a *Wells* order.
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> 135. Notwithstanding the disadvantages of the present situation, considerable unfairness can be caused to either, or both, parties if the approach is to be that in a sharing case, there is an absolute requirement on the court to settle on a valuation (come what may) and that, if the variables render such a valuation to be particularly friable, the court should simply adopt a conservative figure.
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> 136. In *H v H* [2008] 2 FLR 2092 Moylan LJ highlighted the fact that the vulnerability of valuations had been specifically recognised by the House of Lords in *Miller v Miller; McFarlane v McFarlane:* [2006] UKHL 24, [2006] 1 FLR 1186. Moylan LJ said:
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> > "[5] The experts agree that the exercise they are engaged in is an art and not a science. As Lord Nicholls said in *Miller v Miller; McFarlane v McFarlane*[2006] 2 AC 618 [26]: "valuations are often a matter of opinion on which experts differ. A thorough investigation into these differences can be extremely expensive and of doubtful utility". I understand, of course, that the application of the sharing principle can be said to raise powerful forces in support of detailed accounting. Why, a party might ask, should my "share" be fixed by reference other than to the real values of the assets? However, this is to misinterpret the exercise in which the court is engaged. The court is engaged in a broad analysis in the application of its jurisdiction under the Matrimonial Causes Act, not a detailed accounting exercise. As Lord Nicholls said, detailed accounting is expensive, often of doubtful utility and, certainly in respect of business valuations, will often result in divergent opinions each of which may be

based on sound reasoning. The purpose of valuations, when required, is to assist the court in testing the fairness of the proposed outcome. It is not to ensure mathematical/accounting accuracy, which is invariably no more than a chimera. Further, to seek to construct the whole edifice of an award on a business valuation which is no more than a broad, or even very broad, guide is to risk creating an edifice which is unsound and hence likely to be unfair. In my experience, valuations of shares in private companies are among the most fragile valuations which can be obtained."

6. In the same case, Lewison LJ developed the words of Moylan J in *H v H* thus:

185. The valuation of private companies is a matter of no little difficulty. In *H v H* [2008] EWHC 935 (Fam), [2008] 2 FLR 2092 Moylan J said at [5] that "valuations of shares in private companies are among the most fragile valuations which can be obtained." The reasons for this are many. In the first place there is likely to be no obvious market for a private company. Second, even where valuers use the same method of valuation they are likely to produce widely differing results. Third, the profitability of private companies may be volatile, such that a snap shot valuation at a particular date may give an unfair picture. Fourth, the difference in quality between a value attributed to a private company on the basis of opinion evidence and a sum in hard cash is obvious. Fifth, the acid test of any valuation is exposure to the real market, which is simply not possible in the case of a private company where no one suggests that it should be sold. Moylan J is not a lone voice in this respect: see *A v A* [2004] EWHC 2818 (Fam), [2006] 2 FLR 115 at [61] – [62]; *D v D* [2007] EWHC 278 (Fam) (both decisions of Charles J).

7. He continued at [195]:

195. There may be cases in which a judge is left with no alternative but to fix a value. In other cases, instead of fixing a value, a judge may order the asset to be sold, so that the market will fix its real value. In yet other cases, an asset may be divided in specie: this is known in the jargon as "*Wells* sharing": see *Wells v Wells* [2002] EWCA Civ 476, [2002] 2 FLR 97. Where the judge comes to the conclusion that he can make no more than a wild guess at the value of an asset, and it is common ground that the asset in question should not be sold, *Wells* sharing may be the only option left.

8. Moylan LJ in *Martin v Martin* [2018] EWCA Civ 2866 then returned to the theme. He asked:

93. How is this to be applied in practice? As referred to by both King LJ and Lewison LJ, the broad choices are (i) "fix" a value; (ii) order the asset to be sold; and (iii) divide the asset in specie: at [134] and [195]. However, to repeat, even when the court is able

> to fix a value this does not mean that that value has the same weight as the value of other assets such as, say, the matrimonial home. The court has to assess the weight which can be placed on the value even when using a fixed value for the purposes of determining what award to make. This applies both to the amount and to the structure of the award, issues which are interconnected, so that the overall allocation of the parties' assets by application of the sharing principle also effects a fair balance of risk and illiquidity between the parties. Again, I emphasise, this is not to mandate a particular structure but to draw attention to the need to address this issue when the court is deciding how to exercise its discretionary powers so as to achieve an outcome that is fair to both parties. I would also add that the assessment of the weight which can be placed on a valuation is not a mathematical exercise but a broad evaluative exercise to be undertaken by the judge.
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> 94. …The need for this approach derives from the fact that, as said by Lewison LJ, there is a "difference in quality" between a value attributed to a private company and other assets. This is a relevant factor when the court is determining how to distribute the assets between the parties to achieve a fair outcome.
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> 95. It might be said… that it would be unfair to award one party all the "upside" in the event that the valuation proves to have been an under-estimate. That, however, is intrinsic in an asset being volatile. There is potential for the value to increase as well as decrease. If one party is not participating in that risk and is obtaining what Thorpe LJ referred to in *Wells v Wells* as a secure result, one aspect of achieving that result is that, because they don't have the burden of the risk of a decrease in value, they also don't have the benefit of an increase in value…
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> 96. …it is all about weight and balance. Not placing undue weight on a valuation and seeking to achieve a fair balance of risk between the parties in the allocation of the assets.

9. That these valuations need to be approached in the realistic and pragmatic ways which have been identified by the Court of Appeal is now therefore clear and settled law. In fact, in this case, although the vast majority of the value to be divided is comprised within the business, there is in addition to the SJE valuation a series of other way markers and pointers which can light the court with a fair degree of confidence towards its conclusion.

10. The Companies: With those principles in mind, I will now turn to the music interests which are creating the issue in these proceedings. In addition to the husband's catalogue, he has also purchased a studio in North London, where he can produce with the various artists with whom he works. This studio is essentially loss-making,

but allows the husband to continue to produce the works which will in due course become part of the valuable catalogue. Prior to an attempt to sell the rights to the catalogue to the well-known brand 'ABC' in 2020/1, the studio's losses were offset within the company by the income generated from the catalogue. However, in order to enable the proposed sale to take place, these two parts of the husband's operation were separated out into different companies by April 2021.

11. This means that, as currently configured, the losses of the studio are separately assessed to tax from the income stream generated by the catalogue. The different companies which now exist are as follows. 'Studio' owns the studio property and equipment. This company deals with the husband's solo recording with W, discussed below. There is also a holding company ('Studio Holding') above Studio which also holds X Limited (which operates the studio) and Y Limited 2 (a new record label). 'Catalogue', is the principal intellectual property ('IP') rights owner, with its own holding company ('Catalogue Holding'). There is finally a company set up for future music publishing – 'Future'. As indicated, the husband has 51%, and the wife 49%, in each of these companies.

12. Subsequently, ABC sought to renegotiate their originally offered deal, first reducing the value of their offer, then restructuring it to require only a purchase of the IP in the catalogue, and no longer a purchase of the now separated out company, Catalogue. This had very negative tax consequences for the parties, and rendered the earlier costly restructuring of the company unnecessary. Further, an offered earn-out which might have brought the value of the sale up by a significant amount was proposed on terms that required the catalogue to achieve 10% compound growth for each of the five years following the sale. The husband tells me, that he did not believe that this was in any way achievable. Absent that growth, the price finally offered was £Xm up-front, subject to the deduction of any income received by the parties prior to the finalising of the deal.

13. Whilst the wife was made aware that the offer with the headline figure of £Y had been made, she had not had it explained to her until a letter of 6 April 2023, that the husband considered that the deal in the terms offered should not be proceeded with. In

that letter, his solicitors gave 2 reasons – one, the fact that the earn-out was unachievable, and the other that the parties' children as their heirs might, under the terms of the offer, still be held liable for suits against the catalogue many years into the future. He says that the latter reason was his primary reason for withdrawing from those negotiations, and that was something which he had clearly communicated to the wife. If that was his emphasis, this may explain why her perception remained that the offer had been one that really valued the company at £Y, whereas in reality it was significantly less.

14. Whilst the negotiations were still in the process of unravelling, these financial remedy proceedings were under way, with the first directions appointment taking place on 3 March 2023. On 13 March 2023, prior to the 6 April letter, the wife had written indicating that she was prepared to accept the ABC deal proceeding, but I am satisfied that at that stage she had not understood that the deal offered was never likely to achieve a gross sum of £Y for the parties, which I accept was the basis on which at that time that she was offering her consent.

15. At the point of the collapse of the ABC negotiations, on 6 April 2023, another player in the marketplace called XYZ also made an offer to purchase the catalogue, and the basis of that bid appears to have been a share sale, as opposed to an asset sale, which would make it significantly more valuable for the parties in terms of its tax treatment. XYZ offered £Z – so a significantly better offer than the £X on an asset sale basis being proposed by ABC.

16. However, the husband did not pursue any discussions at that point, nor did he appear to engage with the proposal at all. He told me that he was at that time preoccupied with his mother's final illness, and that he also fully expected that the downward trajectory of the figures put forward by BC would be mirrored if any talks commenced with XYZ. He also said that he did not take on board at that time that the offer was on the basis of a share sale – indeed his legal team asserted that it was news to them when a statement just before trial was received from the husband's solicitor acting in these matters, which confirmed the basis offered. Whilst this apparent lack of engagement is surprising, given keen thought being applied at the time to the ABC

negotiation, I am not in a position to determine why this particular trail was left to go cold. In any event, there has never apparently been any follow up to that offer, so it is not known whether they may still retain an interest in its resurrection.

17. Mr Simnock of MGR was appointed as a single joint expert to value these various companies. Whilst his initial report of June 2023 was the subject of some reconsideration in the following month after comment from the parties, he has finally produced an updated analysis dated 19 June 2024, in which he records that he values recording and producer rights at in excess of £I , and publishing rights at in excess of £J, both before tax on the basis of asset values, leading to a gross valuation for the whole of the rights held in excess of £X. To achieve these figures he has applied the recognised Discounted Cash Flow ('DCF') methodology, taking a 9% Weighted Average Cost of Capital ('WACC') rate, although for illustration he has shown that a half point variation in the rate in either direction might have affected overall valuation by more or less 5%. This rate was reduced since his original 2023 valuation, when he had applied 9.5%. Such a rate applied now would have led to a valuation in excess of £K overall.

18. Mr Thorpe KC for the husband was critical of Mr Simnock's conclusions, and argued that a safer method to attach a reliable value would be to look to the actual offer made to purchase by ABC, but not then proceeded with. This of course chimes with Lewison LJ's remarks about testing the valuation to the exposure to the real market. However, given that, at least in part, I am satisfied that the husband's rejection of the ABC offer was down to his dissatisfaction with the price eventually available, and given the higher value of the XYZ offer (which as a comparable would have to have been for as much as £L, if on an asset sale basis, to have produced as much for the parties, and which the husband chose not to pursue), I am not persuaded that the ABC offer is a reliable indicator of current value. It was also revealed in his statement that the husband's solicitor was prepared to indicate in April 2023 on the parties' behalf that he considered the sum offered by XYZ a reasonable point at which they might have been interested in negotiating with XYZ, before that company made their offer. On a share purchase basis, their proposal was noticeably higher even than Mr Simnock's current valuation.

19. I am also keenly aware of the fragility of DCF valuations, and their dependency on assumptions which may or may not actually be borne out by events. Mr Thorpe KC suggests that the SJE was wrong to base his assumption upon a series of projections which he says are not properly evidenced and are reliant on industry-wide projections rather than specific to the growth shown by the specific rights in this case.

20. Mr Simnock has anticipated income based on the average of the last 5 years to 2023, over the unexpired copyright term, by a range of revised projected growth rates for the music industry prepared by a well-known MGR consultant. He has then factored in the fact that the actual growth rate of the income here has been lower than the general market rate of growth, by reducing his previously taken growth rates by 33% for recording and producer income and 25% for publishing income. There is thus a very significant degree of discretionary tweaking to the formulas, in circumstances where fairly small adjustments can make differences to the eventual outcome, to the order of millions of pounds.

21. However, I am fortified by the fact that £M (on which basis was not specified) was the figure which the husband's own solicitor let XYZ know that the parties' might consider; by the fact of the indicative value of the XYZ offer, even though it was not pursued by the husband; and by the fact that the husband himself clearly hoped to achieve more than was offered by ABC. Thus triangulated, I am satisfied that, whilst the SJE's valuation is unlikely to be a completely accurate indicator of the current true value of the IP rights in this case, it is likely to be reasonably close to that figure, and is, therefore, the safest available figure on which to proceed. I note, too, that Mr Simnock in his oral evidence was of the view that his valuation was, if anything, conservative.

22. Finally, as to the value of Studio, and Studio Holding, Mr Simnock concluded that the combination of losses and dividends in 2023 and 2024 had reduced the value of these companies to nil by the time of his recent report. His original 2023 valuation of Studio Holding had been in excess of £N in 2023. By 2 July 2024, the Directors' Loan Account in RR had grown to a value in excess of £1.5m, which remains an asset of Studio Holding and a personal liability of the parties. Mr Simnock pointed out that

any dividends taken to repay this loan would attract dividend tax at the top rate of 39.35%.

23. I have carefully considered all the authorities referred to above and the appropriate caution which they mandate. This, however, is not a case where Catalogue Holding has had, and is expected to have, no exposure to the market. Indeed, there were advanced negotiations for the sale of its IP which failed only 15 months ago. The husband explained that he wanted then to achieve a sale so that he could effect a clean break to end these proceedings. However, having gone through what was an expensive process – he says costing up to £800,000 – he tells me that he is sufficiently bruised not to want to go through it again in the near future. Be that as it may, he has nevertheless shown that there is a market for the family's principal asset, and that, once the value of the parties' respective shares has been fairly calculated, if he cannot raise what he needs to buy out his wife's interest by way of a loan, which is his desired option, then a sale can evidently be achieved to realise the due sum.

24. The husband's offer, however, is predicated on what he says would now be the amount received if the parties were to go ahead at the price stipulated by ABC, but with reductions for the income since produced by the rights being sold. This, he says, would have reduced the value of what was being sold by now to £O, such that by his calculations, the net receipt for the wife that he would have to produce would be no more than £P, equivalent to her net receipt from a loan (of a lower amount) taken out against the shares of Catalogue Holding, and paid to her gross. He says that this is more, if anything, than the wife would have received from the deal if the ABC offer had proceeded, and that that figure should therefore be the sum of her receipt for her interest in the companies.

25. I am not satisfied that it is appropriate to reduce the value of the wife's interest from the date of the ABC offer to now calculate the value of her interest. The SJE, Mr Simnock, does not think that it is a reasonable practice, although he acknowledges that it is what ABC tend to try to do. Their offer was the product of a lengthy negotiation, during which the value of their offer was periodically reviewed downward, and its basis changed – there is no evidence that the figure which they

were putting was precisely calculated at a fixed point in time, but rather just part of a negotiated process. Whilst Mr Simnock's valuation remains current, there is no suggestion from him that similar discounting should apply.

26. For the reasons explained above, I do not accept that the rejected ABC offer is the best guide to the current value of the parties' interest in Catalogue Holding. I consider that the SJE's figure is the appropriate value to take for the purposes of this exercise. I further do not consider it fair to the wife to predicate the calculation of the value of her interest on the basis of taking out a loan to secure her payment without selling the whole catalogue. This is firstly because until April last year the husband was attempting to do just that in selling to ABC, and secondly because the wife should not be required to accept a lesser value, just because the husband now wishes to avoid a sale. Consequently, in arriving at a value I will assume tax rates and management commission on the basis that there will be such a sale. In terms of commission, this means an effective rate of 10%, rather than the 20% that would be payable on an ongoing basis in the absence of a sale.

27. As Mr Simnock confirms, distributions from a liquidation would ordinarily be treated as a capital distribution, subject to CGT at 20%. However, after prompting from the husband, he also accepted a possibility that the husband (but not the wife) might be caught by the 'anti-phoenix' Targeted Anti-Avoidance Rule (or 'TAAR'), which could cause distributions to be taxed as income at the dividend tax rate of 39.35%. This may bite if the husband is engaged in a similar trade within 2 years of his receipt of his distributions, and if one of the main purposes of the winding up is the avoidance or reduction of a charge to income tax.

28. Here, Mr Simnock makes the point that the primary purpose of the liquidation would not be to reduce tax but rather to finance the sum required in settlement of these proceedings. He nevertheless acknowledged that there would remain some risk that HMRC may seek to claim repayment at the greater rate, which would amount for the husband to an additional amount of tax on the basis of the SJE's valuation.

29. Mr Glaser KC, for the wife, seeks to argue that, as it would be the husband's choice whether to continue to work in the industry for the two years immediately following any sale, it should be assumed that any potential liability to the TAAR should be disregarded. The matter is not straightforward, however, as the husband has signed a contract with Record Company 1 on 21 June 2022. Under this arrangement, it has paid him a sum for which advance he has assigned the copyright of all of his compositions during the term of the agreement, likely to be for 4 years to June 2026, with the advance being repaid from the income stream generated by the work. It is therefore clearly contractually impossible for the husband to cease working in the trade at least until the expiry of the agreement, after which the company will not be able to recoup any unreturned balance. Thereafter, the husband might be said to have a 'choice' as to whether to rest and so avoid the risk of the additional tax, but not before.

30. I am clear that the husband will do what he can to avoid having to pay such tax. It is something to which presumably he and his advisors had given some thought at the time that the contract was signed in 2022, as by then the first wave of negotiations with ABC had already passed and the reorganisation of the assets into separate companies had already been undertaken. Clearly too, if a sale were avoided, the risk of the tax could be deferred until such time as the husband could of his own choosing take a break from his career. It would thus be wrong to assume in any circumstances that he would have to pay at the dividend rate, and so to reduce the wife's receipt by half of the additional tax automatically, in anticipation that the liability would fall in.

31. There has also been a dispute between the parties about the appropriate figure to insert for legal and accountancy fees. Whereas the husband says that he estimates, based on what happened in 2021, that costs of at least £500,000 can be expected, the wife points to the husband's own answers to questions in June 2023, when he put forward an estimate of £175,000 for legal fees and £20,000 for accountancy fees, as the amounts to be deducted from the proceeds in the event of a sale of the IP rights. I consider the appropriate figure to insert here, without any attempt at precision, is 1% of the value of the transaction.

32. Finally, in 2019 the husband sold his interest in a company called 'Independent' to Big Co, with whom the company had been a joint venture for him. As part of that transaction, in addition to receiving a lump sum of £2.5m, the husband also became entitled to deferred consideration for 30 years until 2049. This is received every 6 months. In his Form E, on 10 February 2023, he estimated the net present value of the income stream as some ££5.8m. At that stage, the income produced gross for him from the company for 2022 had been c.£700,000. This is received in addition to the income produced by Catalogue Holding, which has also historically offset losses in production which have run at significant levels.

33. There can, as identified above, be seen to have been a noticeable peak in the Independent income in 2022, due in large part to the success of a particular song by one band. No one is entirely sure what this income stream will produce going forward. The likelihood is a levelling off, with occasional undulations, but the exact level of ongoing receipt is impossible to anticipate with certainty. It is, however, clear that, although incapable of cash equivalent valuation now, this stream is substantial, and of matrimonial character.

34. Aside from the Independent position, the parties' current holding of assets, assuming that the wife retains the Family Home, as is agreed, and the husband retains the 3 investment flats; and the DLA is initially apportioned between them as to 49% to the wife and 51% to the husband, can be simply expressed. The total value of the assets to be divided is on this basis between £15m and £20m.

35. <u>The Parties' Positions</u>. Only limited adjustment is needed to achieve broad equality between the parties, before considering the income position. However, the parties' respective open positions are some way apart.

36. The husband offers a lump sum of what he says he will borrow from Coutts to buy her shares in Catalogue Holding. If there were to be a later sale for more than his assumed value he offers a contingent lump sum to make up 50% net of any surplus. On the basis that he indemnifies her in relation to the DLA, and the tax arising on the dividends over time required to discharge it, he then offers a 70% pension share to

bring the parties up to what he calculates as equality. Studio Holding and Future would be transferred to him and he offers £18,000pa per child plus school fees. By his borrowing, however, he would be obliging himself to repay Coutts at the rate of £500,000pa going forward, so he says that he needs to retain all of the Independent income to provide him with an income stream.

37. The wife does not as her primary position seek any order for a sale of the IP in Catalogue Holding. Rather she seeks to continue to enjoy the income stream which flows from it, although she is open to a series of lump sums commencing with the husband's proposed Coutts loan. She argues that any calculation of her capital entitlement should be on the basis of a valuation of her interest in Catalogue Holding at a level which she suggests should be, if anything, higher than that arrived at by Mr Simnock. She says that she would not interfere with the husband's business decisions if she continued for a prolonged period to be his partner. For his part, the husband expresses concern that in this scenario the parties may in future find that they had different priorities – artistic as opposed to financial – which may lead to clashes.

38. The wife further proposes that she will stay in the family home, on the basis that efforts will be made to get the husband's name off the mortgage, notwithstanding the absence of any impending capital sum from a sale or buy-out of her interests. She wishes the husband to guarantee her a floor of £400,000pa by way of income from Catalogue Holding and Independent together, on the basis that she is entitled to 50% of the total receipts from the 2 sources if greater than that. She does not seek to share in any future projects which the husband commences. She seeks child maintenance at the rate of £30,000pa per child plus school fees, in addition to the spousal figure.

39. Outcome. In circumstances where the husband has undoubtedly been spending at a significant rate in recent months, both from the Independent income and through the DLA, over and above the payments for the mortgage and other support for the wife and children, it is reasonable for him to take on a bigger share than the wife of the outstanding DLA. If the wife were to take responsibility for £650,000, that would leave the husband with a little over £850,000, or just over £200,000 more than her exposure. That amount would be reasonable if the husband also took responsibility for

the wife's January 2025 tax bill, as he has offered to do as a part of his settlement proposal.

40. On that basis, the value of the wife's 49% of Catalogue Holding net of her share of the Studio DLA would be £T. That, therefore, would be the net figure that the husband would have to raise, as well as taking over responsibility for the whole of the DLA, in order to achieve a clean break, on the basis of the other figures in the schedule.

41. Given the potential issue with TAAR, which it is clearly in the interest of both parties to minimise if possible, it would appear to be prudent for the husband's deal with Record Company 1 to run its course before any attempt is made to actually sell the company. If the husband chooses to buy out the wife's interest in the company before then, he will be in a position to manage any sale of his interest, and so minimise the prospects of any additional tax arising. If, therefore, he chooses to buy out the wife's interest within 2 years, for the above sum, any future TAAR risk will be his, as he could defer any sale which might trigger the charge indefinitely, or until he chooses to take a break from the industry or retire, in which case the charge would anyway be avoided.

42. If the husband decides to go to market immediately, whilst still obligated to Big Co, he would then be choosing to take a risk with HMRC, and in those circumstances the TAAR charge should also be his responsibility if he cannot avoid it.

43. If, however, the husband determines against any attempt at a buy out of the wife's interest in the catalogue until after the expiry of the Big Co deal, there should then be a sale of his IP rights on the open market at that point, and I will so order. It would be both unnecessary and antithetical to what is here an eminently achievable clean break, to have these parties tied to each other economically in perpetuity. I agree with the husband that there is every possibility that there could be future issues between them that would lead to further rancour and cost.

44. It would then be reasonable, if the TAAR does apply on a sale after the expiry of the Big Co deal, for the burden of it to be borne in the same proportions as their

shareholding – so 51% / 49%. Pending any sale or buy out the wife should continue to receive her full entitlement to income from Catalogue Holding, although not subject to any guaranteed floor. It should remain split as presently, 51% / 49%, to provide a modest reflection of the husband's pre-relationship efforts in the business.

45. This leaves the Independent income. Mr Thorpe KC suggests that I should leave that income with the husband on the basis that he will also have the burden of repaying the Big Co Loan, which will hamper his income receipts going forward. I remind myself that the Big Co deal was a contract signed in 2022, only a few weeks before the parties' separation. The money injected into the business at that time will benefit the husband's future projects and compositions, but these will not benefit the wife. The Independent income, however, derives from work done and published during the marriage, in which the wife, unquestionably, should be entitled to share.

46. In those circumstances, I am satisfied that the Independent income stream should be divided equally between the parties going forward whilst it remains available, and at whatever level. The wife is entitled to her share of this income, and if the husband wishes to acquire that share at a time of buying her interest in Catalogue Holding, he will need to factor its value into the price offered. If he leaves it out, or if the parties cannot agree its capital value, then it will remain available to her, as to him. Whilst I will make an order for the sale of Catalogue Holding after 2 years, the Independent income will continue to be divided upon receipt, unless the parties can come to any alternative agreement. A significant consideration here is that its receipt is entirely passive, and requires no active management on an ongoing basis.

47. I am satisfied that this outcome is fair to both parties having considered all of the criteria in s.25 of the Matrimonial Causes Act 1973. It will leave both parties very comfortably able to meet their respective needs going forward. Without knowing precisely what the wife's likely income will be, she can expect to receive a substantial sum for her share in Catalogue Holding at some point, perhaps in the latter half of 2026, which will be more than sufficient for a clean break to be achieved between these parties. I have no doubt, too, that the husband will be able to continue with what has to date been a highly successful career in the music industry, and continue to

make arrangements which enable him to remain well-funded by the bigger corporate players in the industry.

48. Child maintenance. On the basis that both parents will likely have access to a substantial pre-earned income stream, or a lump sum to represent their share of its capitalised value, and on the basis that, whilst the children spend more time with the mother, they do spend substantial time with the father, I am satisfied that the father's proposal for child maintenance at £18,000pa per child is appropriate, on the basis that he has offered to remain solely responsible for their educational costs going forward.

49. I have not heard detailed submissions from either counsel on the basis of any judicially constructed formula, but I have considered the principles contained in the judgment of Mostyn J in *James v Seymour* [2023] EWHC (Fam) 844 as a cross-check to that outcome. The actual levels of income for the parties going forward are not entirely predictable, and may be significantly affected by the route chosen to implement this order, but they will nevertheless remain significant going forward.

50. I will leave it to counsel to draw an order which best reflects the contents of this judgment, and to seek to arrange a further short hearing in the next fortnight for the purposes of dealing with any other applications. I express the hope that the parties can now put this quite unnecessarily lengthy and drawn-out process behind them.