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IN THE CENTRAL FAMILY COURT

First Avenue House
42-49 High Holborn
London

Before HER HONOUR JUDGE EVANS-GORDON
On 31st MAY 2023

IN THE MATTER OF THE MATRIMONIAL AND FAMILY PROCEEDINGS ACT 1984

A (Applicant)

-v-

B (Respondent)

MR A BARNETT-THOUNG-HOLLAND (instructed by HANNE & CO) appeared on behalf of the Applicant
MR W TYZACK (instructed by KINGSLEY NAPLEY LLP) appeared on behalf of the Respondent

APPROVED JUDGMENT ANONYMISED

WARNING: 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, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

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JUDGE EVANS-GORDON:

1. This is A's, to whom I will refer as the applicant, application made pursuant to part 3 of the Matrimonial and Family Proceedings Act 1984 ("the 1984 Act"). The respondent is B. The proceedings are limited to the disposition of the proceeds of sale of a property known as "the property", a property that at all material times was registered in the respondent's sole name. The applicant is represented before me by Mr Barnett-Thoung-Holland and the respondent by Mr Tyzack, both of counsel. I am very grateful to them both for their assistance in this matter.

2. Notwithstanding the relatively limited remit or scope of the proceedings this case has already been subject to six hearings, excluding this one, one of which was an appeal hearing before Moor J. His view, expressed in the final paragraph of his judgment, was that he wished to achieve a final conclusion with a minimum of extra cost and dispute. Nearly 14 months later that has proved to be a forlorn hope. Despite Moor J's directions both parties applied to the court for, in effect, further directions following an unsuccessful FDR. That delayed the proceedings by some two to three months.

3. The total costs incurred to date, at indemnity rates are £403,228. The net proceeds of sale of the property are £1,216,339 after allowing the respondent the costs expended by him in preparing the property for sale. This is typical of the way the parties have conducted themselves in the divorce and financial remedy proceedings in New Zealand, where, I am told, costs of approximately NZ$2 million have been expended. It does not take a genius to calculate, taking those two sets of court costs into account, how very much better off both these parties would have been had they behaved in a more proportionate manner.

Background

4. The applicant is 48, she was born in New Zealand, while the respondent, aged 61, was born in England. They met in Manchester in 2000 where the applicant was working as a nurse and the respondent was a surgeon. On a date somewhere between September 2004 and January 2005 both parties began cohabiting in the property which the respondent had been given by his father in 1994. The parties married in New Zealand in 2006 but continued to live in England in the property until August 2007. At that point they moved to rental accommodation while substantial works were carried out to the property. These were funded by the respondent's father's estate and loans from his mother. The parties returned to the

property in August 2009 although it appears the works had not been completed. They did not remain for long but emigrated to New Zealand in December 2009 where they have remained.

5. The marriage broke down in 2011 and the parties separated on 25 May of that year. It appears that they have been in hostile litigation ever since. This hearing is only the latest bout as I am told that there are going to be further, what we would call, Children Act proceedings in New Zealand. These parties have two children now aged 15 and 14. Sadly, as Moor J observed their parents' conduct has done untold damage to their children. As I have said they have litigated about the divorce, the financial arrangements and their children. See the judgment of Moor J for further details.

The Litigation

6. In February 2015, in New Zealand, Judge Rydall made a final order on the applicant's maintenance claims in the sum of NZ$433,000. Whenever I refer to dollars they are always New Zealand Dollars. This represented four years of maintenance at approximately NZ$8,500 per month, capitalised. On appeal, appeals having been lodged by both parties, the sum was reduced to NZ$383,000. An attempt at a second appeal was, in my view, mercifully refused.

7. Separately, and it seems largely consecutively, the parties also litigated about what is called 'relationship property' and, concurrently about the children. In the relationship property case, the judge held that she had no jurisdiction to make orders directed at real property in England but nonetheless ordered that the applicant be liable for 50% of the debt owed to the respondent's mother in relation to the loans for the extension and renovation of the property. This debt was NZ$1.2 million. The net result was that the applicant was in debt to the respondent in the sum of NZ$433,040. The judge noted that while this may appear to be unfair the remedy lay elsewhere, ie, in the English courts. There was an appeal and on that appeal the debt was reduced by a small amount to NZ$397,000.

8. Later the respondent instituted bankruptcy proceedings against the applicant in relation to the NZ$397,000 debt. As Moor J observed at paragraph 13 of his judgment, this left the applicant with little choice but to bring proceedings in England and Wales.

English proceedings

9. The proceedings here started on 17 September 2020. They were launched on the basis of section 15(1)(c) of the 1984 Act which provides jurisdiction on the ground that a former matrimonial home is within the jurisdiction.

10. It took three hearings to get a resolution of the permission stage, the last being the appeal before Moor J on 13 April 2022, some 17 months after issue of the application.

Moor J allowed the appeal and granted permission to make the claim. It has taken over a year for the final hearing to get before me because of the parties' disputes about directions and disclosure.

11. His Honour Judge Lewis directed Forms E without attached disclosure and refused to permit questionnaires on the ground that the parties appeared to be incapable of acting proportionately. This observation, echoing Moor J's comments, was further borne out by the parties' lodging, without permission and contrary to the order of Deputy District Judge Hodson of 22 December 2022, a bundle of 691 pages and a second bundle of 262 pages, 953 in total. I refused an application for permission to rely on those bundles largely because it appeared to be an attempt to circumvent Moor J's clear directions following the appeal and because I was not inclined to allow the parties to rehash the New Zealand litigation.

12. A shorter bundle of 383 pages was lodged although I did allow the applicant to rely on an additional 12 pages of materials from the initial long bundle. Further the respondent was allowed to adduce the property particulars relied upon by the applicant when she made her initial application as she said in oral evidence that she could not remember what they were and did not accept counsel's representations as to what they were. Unsurprisingly, in my view, I had ample evidence in the 400 to 410 pages before me.

Positions

13. As far as the positions are concerned the respondent's last open offer dated 3 April 2023 nets down to £550,000 as at today's date. This is calculated as follows: £650,000 as at 9 February 2023 reduced by £100,000 in relation to his legal costs incurred since the date of the February offer, a waiver of the New Zealand relationship debt which now stands at £204,843 including interest, he will pay the children's school fees for the rest of their secondary education, he will pay the costs of the appeal and below as ordered out of £76,298 held by his solicitors.

14. The applicant's open offer of 3 April 2023 is a lump sum of £800,000 primarily for housing but also to meet other capital needs, £19,000 for her Legal Aid costs at that time, £40,000 for medical costs, the respondent to pay the school fees and the waiver of the New Zealand debts.

15. The difference between the parties before me is £300,000. They are agreed on all other matters. The issues are the housing budget, need for chattels, primarily furniture and fittings, the applicant's medical conditions and funding for treatment, the impact of her medical conditions on her housing needs and the extent and nature of the applicant's liabilities.

The Law

16. The law was helpfully set out by Mr Tyzack in his position statement with which Mr Barnett-Thoung-Holland was in agreement. There is no issue over the principles, the issue is over the application of the principles to the facts of this particular case. As I have already indicated the court's jurisdiction was established on the basis of section 15(1)(c) of the 1984 Act. The question of permission of course had been dealt with by most recently Moor J.

17. As far as my decision is concerned, the applicable law is set out in ss.16-18 of the 1984 Act and in the leading case of *Agbaje v Agbaje* [2010] UKSC 13. The 1984 Act provides as follows:

> **"16 Duty of the court to consider whether England and Wales is appropriate venue for application.**
>
> (1) Before making an order for financial relief the court shall consider whether in all the circumstances of the case it would be appropriate for such an order to be made by a court in England and Wales, and if the court is not satisfied that it would be appropriate, the court shall dismiss the application.
>
> (2) The court shall in particular have regard to the following matters—
>
> (a) the connection which the parties to the marriage have with England and Wales;
>
> (b) the connection which those parties have with the country in which the marriage was dissolved or annulled or in which they were legally separated;
>
> (c) the connection which those parties have with any other country outside England and Wales;
>
> (d) any financial benefit which the applicant or a child of the family has received, or is likely to receive, in consequence of the divorce, annulment or legal separation, by virtue of any agreement or the operation of the law of a country outside England and Wales;
>
> (e) in a case where an order has been made by a court in a country outside England and Wales requiring the other party to the marriage to make any payment or transfer any property for the benefit of the applicant or a child of the family, the financial relief given by the order and the extent to which the order has been complied with or is likely to be complied with;
>
> (f) any right which the applicant has, or has had, to apply for financial relief from the other party to the marriage under the law of any country outside England and Wales and if the applicant has omitted to exercise that right the reason for that omission;
>
> (g) the availability in England and Wales of any property in respect of which an order under this Part of this Act in favour of the applicant could be made;
>
> (h) the extent to which any order made under this Part of this Act is likely to be enforceable;
>
> (i) the length of time which has elapsed since the date of the divorce, annulment or legal separation.

17 Orders for financial provision and property adjustment.

(1) Subject to section 20 below, on an application by a party to a marriage for an order for financial relief under this section, the court may—

(a) make any one or more of the orders which it could make under Part II of the 1973 Act if a divorce order, nullity of marriage order or judicial separation order in respect of the marriage had been made in England and Wales, that is to say—

(i) any order mentioned in section 23(1) of the 1973 Act (financial provision orders); and

(ii) any order mentioned in section 24(1) of that Act (property adjustment orders); and

(b) if the marriage has been dissolved or annulled, make one or more orders each of which would, within the meaning of that Part of that Act, be a pension sharing order in relation to the marriage.

(c) if the marriage has been dissolved or annulled, make an order which would, within the meaning of that Part of that Act, be a pension compensation sharing order in relation to the marriage.

(2) Subject to section 20 below, where the court makes a secured periodical payments order, an order for the payment of a lump sum or a property adjustment order under subsection (1) above, then, on making that order or at any time thereafter, the court may make any order mentioned in section 24A(1) of the 1973 Act (orders for sale of property) which the court would have power to make if the order under subsection (1) above had been made under Part II of the 1973 Act.

18 Matters to which the court is to have regard in exercising its powers under s. 17.

(1) In deciding whether to exercise its powers under section 17 above and, if so, in what manner the court shall act in accordance with this section.

(2) The court shall have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who has not attained the age of eighteen.

(3) As regards the exercise of those powers in relation to a party to the marriage, the court shall in particular have regard to the matters mentioned in section 25(2)(a) to (h) of the 1973 Act and shall be under duties corresponding with those imposed by section 25A(1) and (2) of the 1973 Act where it decides to exercise under section 17 above powers corresponding with the powers referred to in those subsections.

(3A) The matters to which the court is to have regard under subsection (3) above—

(a) so far as relating to paragraph (a) of section 25(2) of the 1973 Act, include any benefits under a pension arrangement which a party to the marriage has or is likely to have and any PPF compensation to which a party to the marriage is or is likely to be entitled, (whether or not in the foreseeable future), and

(b) so far as relating to paragraph (h) of that provision, include —

(i) any benefits under a pension arrangement which, by reason of the dissolution or annulment of the marriage, a party to the marriage will lose the chance of acquiring, and

(ii) any PPF compensation which, by reason of the dissolution or annulment of the marriage, a party to the marriage will lose the chance of acquiring entitlement to

(4) As regards the exercise of those powers in relation to a child of the family, the court shall in particular have regard to the matters mentioned in section 25(3)(a) to (e) of the 1973 Act.

(5) As regards the exercise of those powers against a party to the marriage in favour of a child of the family who is not the child of that party, the court shall also have regard to the matters mentioned in section 25(4)(a) to (c) of the 1973 Act.

(6) Where an order has been made by a court outside England and Wales for the making of payments or the transfer of property by a party to the marriage, the court in considering in accordance with this section the financial resources of the other party to the marriage or a child of the family shall have regard to the extent to which that order has been complied with or is likely to be complied with.

(7) ……….

20 Restriction of powers of court where jurisdiction depends on matrimonial home in England or Wales.

(1) Where the court has jurisdiction to entertain an application for an order for financial relief by reason only of the situation in England or Wales of a dwelling-house which was a matrimonial home of the parties, the court may make under section 17 above any one or more of the following orders (but no other)—

(a) an order that either party to the marriage shall pay to the other such lump sum as may be specified in the order;

(b) an order that a party to the marriage shall pay to such person as may be so specified for the benefit of a child of the family, or to such a child, such lump sum as may be so specified;

(c) an order that a party to the marriage shall transfer to the other party, to any child of the family or to such person as may be so specified for the benefit of such a child, the interest of the first-mentioned party in the dwelling-house, or such part of that interest as may be so specified;

(d) an order that a settlement of the interest of a party to the marriage in the dwelling-house, or such part of that interest as may be so specified, be made to the satisfaction of the court for the benefit of the other party to the marriage and of the children of the family or either or any of them;

(e) an order varying for the benefit of the parties to the marriage and of the children of the family or either or any of them any ante-nuptial or post-nuptial settlement (including such a settlement

made by will or codicil) made on the parties to the marriage so far as that settlement relates to an interest in the dwelling-house;

(f) an order extinguishing or reducing the interest of either of the parties to the marriage under any such settlement so far as that interest is an interest in the dwelling-house;

(g) an order for the sale of the interest of a party to the marriage in the dwelling-house.

(2) Where, in the circumstances mentioned in subsection (1) above, the court makes an order for the payment of a lump sum by a party to the marriage, the amount of the lump sum shall not exceed, or where more than one such order is made the total amount of the lump sums shall not exceed in aggregate, the following amount, that is to say—

(a) if the interest of that party in the dwelling-house is sold in pursuance of an order made under subsection (1)(g) above, the amount of the proceeds of the sale of that interest after deducting therefrom any costs incurred in the sale thereof;

(b) if the interest of that party is not so sold, the amount which in the opinion of the court represents the value of that interest.

(3) Where the interest of a party to the marriage in the dwelling-house is held jointly or in common with any other person or persons—

(a) the reference in subsection (1)(g) above to the interest of a party to the marriage shall be construed as including a reference to the interest of that other person, or the interest of those other persons, in the dwelling-house, and

(b) the reference in subsection (2)(a) above to the amount of the proceeds of a sale ordered under subsection (1)(g) above shall be construed as a reference to that part of those proceeds which is attributable to the interest of that party to the marriage in the dwelling-house."

18. In *Agbaje* the Supreme Court stated that the proper approach to Part 3 simply depends on a careful application of sections 16, 17 and 18 in the light of the legislative purpose, which is the alleviation of adverse consequences of no or no adequate financial provision being made by a foreign court in a situation where there were substantial connections with England. The Court went on to set out the approach both to the substantive decision as well as to that on permission. It is said that the court must take account of the provisions of section 16(2), section 18(2) and section 18(3) when coming to its decision because none of those sections independently contain an exhaustive list of the relevant matters. The Court noted that all the circumstances of the case are also relevant as set out in section 16(1) of the Act. It said that the matters in section 16(2) may be relevant to those in section 18 and vice versa.

Compliance with or enforceability of any foreign award is also a relevant matter, section 18(6).

19. The court went on to set out various principles which have been helpfully summarised by Mr Tyzack and I have taken them from his position statement:

> "a. It is not the purpose of Part 3 to allow a spouse with some English connections to make an application to England to take advantage of what may well be the more generous approach in England to financial provision;
>
> b. Mere disparity between an English outcome and the foreign outcome will certainly be insufficient to trigger the application of Part 3;
>
> c. Hardship or injustice is not a necessary precondition for the exercise of the jurisdiction;
>
> d. The court will not lightly characterise foreign law or the order of a foreign court as unjust;
>
> e. The amount of financial provision will depend on all the circumstances of the case;
>
> f. Where the connection to England is not strong and the claimant has received adequate provision from the foreign court Part 3 should not be used simply as a top up.
>
> g. There is no rule that provides that the award should be the minimum to avoid injustice."

20. Essentially section 20 provides that the court is limited to the disposition of the value of the matrimonial home in England and Wales, it can only make an order for capital and may not make a maintenance order.

21. The Court of Appeal considered the meaning of adequacy of a foreign award in the case of *Zimina v Zimin* [2017] EWCA Civ 1429 when King LJ said, "The court will necessarily consider the adequacy of the provision as of the date upon which the foreign order was made. Ordinarily an application made under Part 3 will be sufficiently proximate to the making of the foreign divorce so that an assessment of the adequacy of the provision at the date at which it was made followed by a similar assessment conducted by reference to the trial date would lead to the same outcome and see in one of those rare case where there is significant delay between the divorce and the part 3 proceedings the wording of section 18 unequivocally requires the court to take into account all the circumstances as they are which necessarily includes those at the date of the trial". Those are extracts from paragraphs 61, 62 and 63 of her judgment taken from Mr Tyzack's position statement.

20. Reliance has also been placed on the words of Moor J in *Pierburg v Pierburg* in which he was referred back to his own decision in *MA v SK* [2015] EWHC 887 where he said that, "Where the connection with this country is limited he should make an award on a needs light basis". I agree with Mr Barnett-Thoung-Holland when he submitted that the connection with England in this case is rather stronger than the connection with England in either of *Pierburg* or *MA v SK* although he did accept that there was an impact on the level at which needs were assessed.

21. It is common ground on the basis of the offers that it is appropriate for this court to make an order and I agree with the position adopted with the parties in that respect primarily because the New Zealand court simply could not deal with the former matrimonial home. It acknowledged that it could not do so and therefore it cannot be said that this court is in any way being disrespectful to the New Zealand decisions in making orders in relation to that property.

The Evidence

22. As far as the evidence is concerned, I heard oral evidence from three witnesses: the applicant, the applicant's mother, Ms JA, and the respondent. The applicant was at times emotional. I do not criticise her for that. Her statements were on occasion, however, extravagant, without factual basis and sometimes plainly wrong. Her tendency to exaggerate means I have difficulty in accepting much of what she says particularly when it is not supported by her own independent documentary evidence. Ms JA is in her 70s and clearly struggled with tiredness. All the witnesses are in New Zealand where the time the hearing started was for them 10 pm at night.

23. The respondent was a moderately spoken witness. There were occasions when his evidence flatly contradicted that of the applicant's such on whether New Zealand has the equivalent of the National Health Service and what had happened to the New Zealand property market over the last two years. He was proved to be the more accurate. However, I do also acknowledge that his conduct in some of the litigation has not been as moderate as his presentation as a witness.

Discussion

24. I have to take into account all the relevant factors. The parties have a moderate connection to this jurisdiction. The respondent was born here and lived here until 2009. He is a British citizen. The applicant came to the United Kingdom in approximately 2000 and lived here until her return to New Zealand and 2009. She too is a British citizen. They lived together in the United Kingdom for at least five years, some of that time in the property. The

property was retained for 12 years after the move to New Zealand and sold only during the course of this litigation. Both their children were born in this country. Now there is a greater connection with New Zealand. They have lived there since December 2009. The respondent works there and has done so at all material times. The children are settled there. All the property, save for the proceeds of sale of the property, is in New Zealand. They are both citizens of New Zealand and neither is evincing any intention to move elsewhere. But for the property they would not be litigating in this country. There is no connection known to me with any other country.

25. The applicant was awarded £191,000 in New Zealand which she received, albeit it disappeared on debts and legal costs almost immediately. The applicant has exercised every right she has against the respondent. As stated, the proceeds of sale of the property are available in this jurisdiction following its sale on 13 January 2023. Any order made in this jurisdiction is limited to the proceeds of sale and therefore will be fully enforceable. It has been nearly 10 years since the divorce and the applicant filed this application approximately a year after the last substantive New Zealand order was made in the financial remedy proceedings.

26. The matters referred to in section 18 of the 1984 Act are, on the facts of this case, limited to section 25 of the Matrimonial Causes Act 1973. My first consideration, of course, is the welfare of the parties' two minor children while they are minors. It is common ground that the applicant has no income and little or nothing by way of assets. She is a discretionary beneficiary of the A Family Trust set up by her father and mother while her father was still alive. The assets in that trust are Ms JA's home and cash of a little under NZ$1.17 million. Ms JA is also a beneficiary of this trust. It has never paid out anything to the applicant although it did distribute a piece of land to one of her siblings. The applicant has not worked, as far as I can tell, since her move to New Zealand, although the New Zealand court obviously envisaged a return to work by February 2019 as that is when the maintenance, had it been paid monthly, would have expired. She is in receipt of state benefits and child support from the respondent. This appears to be paid in some way via the government.

27. The applicant started training for a chaperon role with Drug Free Sport New Zealand but only attended one training session. She gave two reasons for not proceeding; she felt she needed tax advice because the role would be self-employed and this involves complex paperwork. Secondly, she said she had no time because of the respondent's appeals, directions conferences and Children Act proceedings. Given the training sessions were for four hours each either once a fortnight or once a month (the applicant could not recall) this

does not seem to me to be a reasonable excuse for dropping training. I have no evidence as to the complexity of paperwork in being self-employed but, by comparison with this country, it is not so complex that it would prevent a person from taking up self-employed work.

28. Also, the applicant is developing some sort of product in the field of dental health which she feels may be very lucrative, but it is difficult to evaluate what the income generating capacity of that product may be. As far as obligations are concerned, she is obliged to house and care for herself and her children and to repay her liabilities.

29. The respondent has the proceeds of sale of the property in the order of £1.2 million but accepts that a significant part of that will go to the applicant under any order I make. The home in which he lives is worth somewhere between £1.2 and £1.7 million but is held in a trust which will eventually benefit his children. The house will certainly meet his own housing need throughout his life. He may or may not have a life plan worth £132,000, there was a dispute about that, but it was not explored in the evidence. Fortunately, it is not necessary for me to make a finding on the point.

30. The respondent also has business interests valued at either £168,000 (per the applicant) or a little under £29,500 (per the respondent). Again, there was no significant evidence, and I will make no finding. The businesses are the respondent's source of earned income. I disregard the relationship debt owed by the applicant because of the agreement on it.

31. The respondent also an has interest under one, or possibly two, further family trusts. The applicant attributes the full capital values of those to him being approximately £3 million. These assets, of course, do not belong to the respondent whatever their value but are a resource potentially available to him even if he has not received a distribution to date and intends to accumulate the trust assets for the parties' children.

32. The respondent's income is either a little under £29,500 from his business interests plus the sum of approximately £15,000 per annum received from his NHS pension. Or it is £132,000 net of child maintenance but including pension according to the applicant. The respondent's business interests have significant liabilities which affect the amount of income he receives whatever the level of that income.

33. The applicant's primary need is housing for herself and the children when they are with her. It is common ground that this need should be met by a court order. The issue is what is reasonable housing for her. She also has debt, and the respondent is prepared to meet that to the extent that the debts are hard and enforceable. There is a dispute about the level of hard debt and to what extent other debt is soft.

34. The applicant says she needs £85,000 to pay for her non-housing costs. She sets out the cost of the actual property at £715,000 and needs a further £85,000 to pay for the costs of the move, legal costs of the purchase, both of which are accepted by the respondent, some to pay furniture, to pay her liabilities and in addition to that the Legal Aid charge and her medical expenses which she sets at £40,000.

35. The respondent's needs are largely met. On any footing he will be able to discharge the majority, if not at all, of his debt or his businesses' debts almost irrespective of whatever order I make. This will obviously increase his earnings. It is likely, in my view, that his earnings will increase in any event as the effects of COVID reduce.

36. The respondent plainly expects to be able to afford to live in a £1.7 million house and to pay his daughters' school fees, child maintenance, to meet his needs and those of the children when they are with him. It seems to me that the standard of living enjoyed during the marriage is less relevant today given the length of time since separation. It also seems to me that whatever standard of housing is provided to the applicant in these proceedings it will not result in an unacceptable differential between the parents. There is frequently a differential in accommodation following a divorce. The applicant is 49, the respondent 61 and the marriage lasted approximately 10 years, possibly a little over. They have now been separated for longer than they were married.

37. It is common ground that the applicant has a number of health issues including problems with her spine, some osteoarthritis, an issue with her shoulders and coronary artery disease. She also has a diagnosis of PTSD. The applicant's back and shoulder issues, or certainly her back issues, originate in an accident that took place in 1997. The respondent accepts that these conditions exist. The issue is whether her condition is as bad as she alleges and whether they have the impact on her life that she claims. The other connected issue is what impact, if any, they have on her housing and medical needs.

38. The respondent is relatively healthy. He is on statins and may have blood pressure issues which are likely to be largely attributable to 11 years of stressful litigation. He is, of course, at 61, relatively close to retirement.

39. There does not seem to be any question but that each made equal contributions to the marriage and there is no relevant conduct, although the applicant raises issues of litigation conduct concerning matters around Forms E and questionnaires, but it seems to me it is more appropriate to treat that as a costs issue rather than a conduct issue.

40. I turn now to the applicant's housing. As I have said she claims a budget of £715,000. The respondent says the appropriate budget is between £471,000 and £507,000 in round

terms. The applicant put forward properties in 2020 ranging in value from NZ$835,000 to NZ$899,000. The average price being NZ$878,000. The property particulars put forward by her in April 2023 range in value from NZ$1,320,000 to NZ$1,580,000. The average price is NZ$1,429,400, an increase of NZ$551,400 or 63% over little more than a two-year period. When asked why there was such a large increase her response was that property prices had doubled. She also asserted that her health had deteriorated so her requirements for appropriate fittings is now much greater.

41. After the oral evidence, counsel together very helpfully considered the New Zealand housing market and agreed that the increase in the property market in the wider Hamilton area was 21% over the last 2 years This, in my judgment, is an example of the applicant's tendency to make extravagant, hyperbolic statements.

42. As to her health needs the applicant says her spine is very unstable; she must have walk in showers with no lip, she needs grab rails, there must be no hedges in her garden and all equipment in the kitchen must be at waist height. The medical evidence I have does not support this. The most recent letter from her general practitioner is dated 27 February 2023. It was not, in fact, prepared in relation to her housing needs but in relation to her ability to work at present. That letter states that the applicant has a recurrent L5-S1 disc prolapse with radiculopathy in both legs. Her treatment for this is covered by the ACC therefore she is not treated publicly. The ACC is a no-fault compensation scheme in New Zealand which pays for all consequences of accidents. At paragraph 7 of the letter it says that, "Following three operations the applicant's spine has become stable although she continues to suffer pain, numbing et cetera in her legs". She has since then seen a pain specialist, but she told me they declined to administer an epidural as a recent incident requires further consideration by a back specialist, the appointment for which is in August. There is no medical evidence that the applicant's back has become unstable. The appointment with the pain specialist had been arranged by 27 February therefore it was unrelated to any subsequent incidents. The applicant herself is the only person who says her back is unstable.

43. The other three non-cardiac conditions relate to osteoarthritis in her right shoulder and calcific tendinopathy, with perhaps tendon damage or bursitis in her left shoulder. The treatment for her right shoulder is pain relief and that condition should improve over time. There is a potential treatment which is an injection of platelet rich plasma. This is not available either through the ACC or through public health and I agree with the respondent that this is likely to be because the evidence that such an injection is beneficial is not yet established. The treatment for the applicant's left shoulder is ibuprofen and paracetamol and

possibly a steroid injection. There is no evidence, other than the applicant's own, that she has a need for specialist housing arrangements as she is claiming or that it is as extreme as she claims.

44. I accept the respondent's evidence to the effect that if specialist equipment is necessary the ACC would pay. The fact that they have not done so to date suggests that the need is not established. If a need is established in the future, it is likely the ACC will pay because it will be attributable to the accident in 1997. I am not satisfied, therefore, that the applicant's health needs require a more significant level of housing now than two years ago.

45. The housing particulars put forward by the respondent in May 2023 were put forward in response to the sharp increase in the value of the applicant's revised particulars. When asked about them the applicant's reasons for dismissing them were on occasion, I am afraid to say, absurd or lacking in any proper foundation. One property was dismissed on the basis that the colour scheme was too grey. A second was dismissed on the basis that it probably was not double glazed and probably suffered from damp and mould. The applicant made no attempt to view any of the properties or make any enquiries and had no proper basis for her comments. I have had as good an opportunity as she has to view the photographs on which she bases her view and, in my judgment, one cannot possibly tell whether the windows are double or single glazed or form a conclusion that the property is likely to be damp or mouldy.

46. The applicant dismissed a third property on the basis that it was in a dangerous area of Cambridge because of gangs. It is on the same street as one of the properties she herself had put forward in 2020, King Street. While her selection was number 72 and the respondent's was number 105, it does not seem to me that the distance between them can be that great, certainly not such that it is too dangerous to be in the one and not in the other. I also accept the respondent's evidence that he would not put forward properties which would place his children at risk. In my judgment, this is more hyperbole by the applicant.

47. Considering all these matters it seems to me that housing of the type put forward by the applicant in 2020 is still suitable for her. If I apply the increase in the property market to the average value of her chosen 2020 properties, and Mr Tyzack helpfully provided me with a schedule of all the calculations, I arrive at a figure of NZ$1,062,380. This is higher than the average of the properties put forward by the respondent in 2023 but he was prepared to accept that the applicant's 2020 properties were appropriate for her up until April 2023 and I cannot see what has changed. Further the respondent's properties include three Hamilton properties and Hamilton is slightly cheaper on average than Cambridge which brings his average down. The average of the applicant's properties increased in value by the increase in

the property market means she requires a housing purchase fund of £510,000 in round terms. To this figure must be added the costs of the purchase, the costs of the move which it appears to be common ground is something of the order of £1,750 in round terms.

48. The respondent accepts that the applicant will need some money to furnish and fit out a new property and he proposes £5,000. The applicant's open offer seemed to suggest £50,000 was necessary but in closing Mr Barnett-Thoung-Holland put the figure at £12,000.

49. There was a conflict of evidence about the extent of the furniture the applicant already has. The photographs she provided of her current home do not show the full extent of the photographed rooms and they do not show all the rooms in the property. It would, however, be disproportionate for me to make findings about whether the applicant has three or five sofas. It seems to me to be likely that the applicant will need some funds for curtaining, lighting et cetera and is likely to need some new furniture. £5,000 seems to me to be on the low side. Doing the best I can on the limited evidence available to me, it seems to me that a figure of £10,000, or NZ$20,000, is likely to cover all necessary, as opposed to desirable, items for a new home. When added to her current furniture she should have adequate furniture. Accordingly, a reasonable housing fund is £521,750 being property at £510,000, costs of purchase move at £1,750 and furnishings at £10,000.

50. I am not satisfied that there is any proper basis for awarding a sum for ongoing maintenance. This is an income expense not a capital expense. The applicant is not entitled to maintenance, and, in my view, it is not proper to dress up such a claim as a claim to capital.

51. I turn now to the medical expenses. In her open offer the applicant seeks funds for medical treatment. It is suggested that the necessary sum is £40,000. The evidence in support appears to be a letter from a private clinic offering angiograms and angioplasty and what might be described as minor corrective treatment. The open offer states that, and I quote, "Without this recommended private cardiac surgery our client is at risk of dying from a heart attack at any time". This statement is not consistent with the medical evidence of the GP. He says that the applicant's coronary artery disease is being managed by optimisation of antianginal therapy and management of risk factors through aspirin, metoprolol and atorvastatin. The condition is mild to moderate and slowly progressive. Whether intervention by stent or by bypass will be necessary in the future will require investigation. It is clear that the applicant has not yet been referred for such investigation. The applicant said there was no equivalent of the NHS in New Zealand while accepting that there was some

public health service. So, she told me, if she had a heart attack she will be taken to accident and emergency but will not be given a stent even if she requires it.

52. Again, counsel have agreed on a position on the public health service in New Zealand and that is that the public health service in New Zealand is not dissimilar to the NHS. Given that position I cannot accept the applicant's evidence in respect of her heart condition or the availability of treatment for it. I accept that waiting lists may be long but acute cases are treated earlier and I am satisfied that if the applicant presents in A&E with an acute condition requiring a stent or a bypass she will be treated appropriately.

53. Her oral evidence and the statement in her open offer are further exaggeration. As already stated the platelet rich plasma injection is not warranted on the basis that it is not yet accepted as effective treatment. She already has an appointment in relation to her recent back issues and there is no evidential basis put forward for saying that the ACC will not fund further treatment. Further, the applicant is a beneficiary of her family trust, she can always seek help from that, something she has not done to date.

54. I now turn to the liabilities excluding the Legal Aid charge which, it is common ground, will have to be met out of any award. The applicant claims liabilities of £393,893 on the agreed ES2. However, from that can be deducted immediately the £240,443 being the relationship debt and interest which the respondent agrees to waive. This leaves £153,450.00. The respondent accepts that the applicant's hard debts have to be discharged, but he does challenge some of these hard debts on the basis that they are included in the £76,000 odd figure which he must pay as a result of Moor J's costs order; and that there is double counting in the sum of at least £19,000 in relation to some of the monies claimed as being repayable to the applicant's mother.

55. As far as the hard debts, which it is accepted by the respondent must be paid, are concerned these are the costs order of I think it is Wyles J in New Zealand in the sum of £3,208, a Westpac personal loan of £5,819, a New Zealand Legal Aid debt relating to new care of the children proceedings, a second New Zealand Legal Aid debt of £257 relating to a Legal Aid debt for civil proceedings, an outstanding invoice of a Doug Burgess in the sum of £645, the New Zealand Ministry of Social Development debt of £1,197, the outstanding sums on three Vodafone telephone handsets in the sum of £494, rent arrears of £440 and legal fees relating to tenancy proceedings in the sum of £610. This totals £19,128.

56. The respondent does not accept the balance consisting of a debt to the applicant's mother in relation to bankruptcy costs and UK legal fees in the sum of £30,298; a loan from the applicant's mother in relation to living costs in the sum of £13,287; two debts owed to a

K&E C, one of which relates to a car they provided in the sum of £2,800 and a further, £830, another debt of £3,750, and a loan from the applicant's aunt in the sum of £1,030 in relation to emergency dental treatment. That totals £50,195 however there is a double counting in that figure in relation to the debt owed to the applicant's mother because £19,000 we can see is attributable to costs incurred up to and including the decision of Moor J and therefore, they are included in the £76,000 which is being held for the payment of those costs.

57. The balance of the debts are challenged on the basis that they are soft debts. In addition, the respondent challenges the debts to Dental Vision International in the sum of £4,739 and Burgess Mee's unpaid invoice in the sum of £1,223, the latter again, because of double counting as it is attributable to work done up to the hearing before Moor J.

58. As far as the Dental Vision International debt is concerned, in my judgment, that is not a debt that must be paid. The company to which it is said to be owed has been struck off the register because it became inactive. There is, therefore, as a matter of law no creditor to whom the debt can be paid. The cost of reinstating the company for a debt of this size is likely to be disproportionate therefore, in my judgment, it is highly unlikely to be pursued. Neither a director nor a shareholder of that defunct company has locus to claim the debt. At least that is the position under English law and absent evidence on New Zealand law I presume that it is the same in accordance with the general practice of these courts. Further the debt dates back to 2013/2014. Again, I have no evidence in relation to the New Zealand limitation law, so I presume it is the same as English law which is entirely reasonable given the common legal heritage of both countries. The period in this country would be six years so the debt is statute barred and irrecoverable.

59. As far as Burgess Mee is concerned, I agree that that work must relate to the permission to appeal and the appeal and that even if it is unpaid, it should nevertheless be included in that sum of costs ordered to be paid by Moor J and therefore it constitutes double counting.

60. As I think I might already have said if I remove the UK legal costs which are double counted the sum owed to family and friends is £31,195. If my arithmetic has gone awry no doubt counsel will assist by helping me with corrections after this judgment.

61. In relation to the monies owed to the applicant's mother I heard evidence from Ms JA. I am satisfied that she will not pursue her daughter for sums due to her. Indeed, the applicant's own evidence was to that effect. I accept that the applicant wishes to pay, and I accept that history shows that when she has had the money, she has repaid monies lent to her by her mother. However, Ms JA told me that if the applicant does not pay any sums still outstanding unlikely to be deducted from her inheritance in due course. While she told me

that there was trouble in the family over money she had lent to the applicant that did not seem to me to be a genuine reason for repayment of the sums because there have been other much larger gifts given to the applicant's other siblings, for instance a gift of land and later a business was given to her brother, C. Further, X was given a distribution of land out of the family trust.

62. In my judgment, the monies owed to Ms JA are a soft debt. There is no legal agreement, no intention to pursue the debt, no interest provision and it can be written off on Ms JA's death if necessary.

63. The same is true in relation to the debts owed to K&E C. The applicant's own evidence is that they will not be pursued because these are people she knows from church, they are Christians and have advanced her two sets of monies out of Christian feeling.

64. There is no real evidence in relation to the aunt's loan but there is no reason for me to believe that the aunt will pursue the applicant for these sums. Again, there is no legal agreement, no time to pay, no interest. I accept that the applicant wishes to pay soft debts. That is a matter for her. She can do so by, say, moving to Hamilton where property is cheaper and where both children will be at school in 2024. It is for her to manage her budget.

65. It seems to me therefore, that the applicant's needs are a housing fund of £521,750, a hard debt of £19,128 and her Legal Aid charge which I have taken from the ES2 as being £22,984 but that may be a different figure and I make it clear that it is whatever that figure is is her need. On the basis of the ES2 figure that yields a total need of £563,862. Mr Tyzack says this is a needs light case on the basis of Moor J's decisions because of a weak connection with the United Kingdom. He also says that the applicant is the author of her own misfortune. If she had accepted the February offer of £650,000, she would now have ample money to clear all her debts including the soft debts and to pay for medical treatment and would be left with a surplus even at the higher 2020 housing need. He says that her award should be limited to £550,000 for those reasons.

66. Mr Barnett-Thoung-Holland, unsurprisingly, disagrees with that. He points out, and as I have already indicated I agree with him, that there was a stronger connection to the United Kingdom in this case than in either of the two cases before Moor J but nevertheless he accepts that the relative weakness of the connection does mean that the needs are not treated at the high level that they would be, were this an entirely English case.

67. In my judgment, the applicant should receive the full £563,862 odd. I have reduced her housing budget to what I consider to be the reasonable amount if she wishes to remain in Cambridge. I accept her evidence that she will pay the soft loans and therefore it will be for

her to find a property, a suitable property, that will leave her with sufficient funds to do so. Reducing her housing budget further would eat too much into her housing budget and I bear in mind the words of King LJ in *Azarmi-Movafagh v Bassiri-Dezfouli* [2021] EWCA Civ 1184 in that respect. There are two children here, two minor children, they must be considered first, and they need adequate housing.

68. The reduction by the respondent of his offer between February and May by reference to his legal costs while prima facie entirely reasonable, his costs are very high due to his choice of solicitors, a matter for him, of course, he may spend his money as he wishes, but such costs were they to be subject to a detailed assessment are likely to be reduced by approximately 30 per cent. In this context that would still leave the respondent with an advantage in relation to his offer. He will retain sufficient monies to clear all his debts and will increase his income. He has sufficient resources, as I have already set out. At an award of £564,000 in round terms that is less than 50% of the net value of the matrimonial home on either parties' calculation, however, in my judgment, that is appropriate because it reflects both the short time lived in the property by the parties and the fact that it was owned by the respondent prior to the commencement of the relationship. One might have attributed rather more to the pre-marital ownership and source of the property, but given the monies spent during the marriage the award also reflects the added value during the marriage.