St John's CHAMBERS

Family Affairs: June 2017

Financial Remedy update (04.03.17 – 13.06.17)

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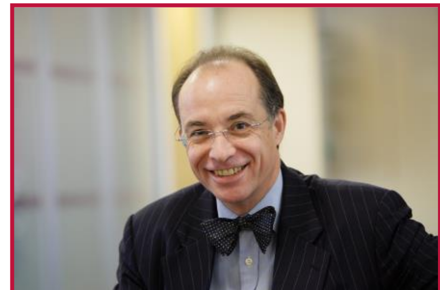

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Procedure

***Mickovski v Liddell* [2017] EWCA Civ 251** was an application for permission to appeal which introduces no new principle. Its main interest lies in the reminder by Macur LJ that (perhaps in particular, *ex tempore*) judgments delivered at the end of a day, when the court has heard full argument and evidence, should not be read in isolation but that the principles restated recently by the President in in *Re F* [2016] EWCA Civ 546 at [22-24] and Lord Hoffmann's comments in *Piglowska v Piglowski* [1999] 1 WLR 1360 should be applied. The recorder had been entitled to reach the conclusions she did (rejecting H's application to vary downwards a periodical payments order and capitalising it at a slightly higher figure than W sought) and H's application for permission to appeal was dismissed with costs.

Two CA decisions arose from ***Assoun v Assoun*** [2017] EWCA 21 and 370. H and W were engaged in long running financial remedy proceedings in England and the US. In 2016 H applied in England to vary a 2013 maintenance order and discharge arrears. W applied without notice for and was granted an order (pursuant to *Hadkinson v Hadkinson* [1952] P. 285) barring him from proceeding until he had paid her the debt due under the 2013 order. H appealed on the basis that the *Hadkinson* order was procedurally unfair and disproportionate, and that he

[1] I would like to acknowledge the assistance of a pupil, Iain Large, in the preparation of this article

did not have sufficient resources to discharge his obligations under the 2013 order. H was found to have been in wilful default, to have failed to discharge his obligation to provide full and frank disclosure (including in a statement which was a condition of the permission to appeal [2016] EWCA Civ 881) and to have used every tactical device that he could to frustrate the wife and the court. The CA therefore, and on the particular facts, refused his appeal, but Ryder SP made clear that in any future case he would expect there to be meticulous attention to the appropriate *inter partes* procedure set out in the rules, practice directions and pre-action protocols unless the applicant has grounds to establish the need for an expedited and/or without notice application. Applicants should expect the court to scrutinise adherence to the rules and practice directions of the court and to refuse or adjourn an application that does not comply with them. Another condition of the permission to appeal was that H should pay into court £30,000. W sought payment out of this sum which the court's order had described as security for costs. H argued she could not receive it since she was represented *pro bono*. W argued that she was still owed more than that sum by H who had lost his appeal against the *Hadkinson* order to which the £30,000 related. H claimed W had not been frank to the English or American court about the debt and that he should be able to prioritise repayment of his debts in his interests, including purging his contempt to regain access to the court. This was rejected. The payment in was designed to represent part of his debt, he lost the appeal and must relinquish the sum. It was inappropriate to litigate issues before the Texan court. He lost the chance to prioritise his debts with the appeal.

Anonymity

Whether appeals are heard in public or in private depends, it seems, on the level at which they are heard. In ***Norman v Norman [2017] EWCA Civ 49*** when refusing W's application for anonymity and while stressing that nothing in their judgment affected the judicial disagreement (arising out of the interpretation of FPR r.27.10) as to whether financial relief hearings at first instance should be heard in public or private, or as to the extent to which such proceedings can be reported, the CA made clear that the usual rule in financial remedy appeals (in the Court of Appeal) would be that hearings would be in public, but in ***FF v KF*** **[2017] EWHC 1093 (Fam)** Mostyn J held that appeals to the High Court from the Family Court are governed by FPR 27.10, so that the default position is that they are heard in private.

Nevertheless, representatives of the media may attend by virtue of FPR 27.11 and PD 27B and if they do so in a case concerning children, section 97 of the Children Act 1989 will prevent identification of the child. In any event, a reporting restriction order preventing identification of

the parties and of their financial affairs may be made (see *Appleton v News Group Newspapers Ltd* [2015] EWHC 2689 (Fam)). In *FF v KF* no order was made under rule 27.10 directing that the appeal be heard in open court on the granting of permission, so it was heard in the usual way, in private. There was no good reason why the parties should be identified. The judgment was therefore anonymised.

The husband in **Giggs v Giggs [2017] EWHC 822 (Fam)** initially applied to exclude the press from the financial hearing. Although H did not pursue this, Cobb J made clear that the burden would have been on him to satisfy the court such an order was necessary. H also sought a reporting restriction order in respect of the parties' financial information whether of a personal or business nature. Financial Remedy disputes are private proceedings under the definition of FPR 2010 r.27.10. As they concern inherently private matters, there is a strong 'starting point' that they should be conducted in private (see *DL v. SL* [2015] EWHC 2621 (Fam), [13]);

There is also an implied undertaking in financial remedy proceedings that information provided under compulsion, for example under FPR 2010 r.9.14, will not be used for other purposes (see *Clibbery v. Allen* [2002] EWCA Civ 45). Exceptions do apply if information is already in the public domain, or if the facts show such disgraceful conduct by one or more parties that they forfeit the right to such protection (see *Lykiardopulo v. Lykiardopulo* [2011] 1 FLR 1427; *Wyatt v. Vince* [2016] EWHC 1368 (Fam)). However, not only do the adults have (qualified) rights to respect for their private and family life (under Article 8), but the parties' children had their own Article 8 rights which deserved protection. The press had rights to freedom of expression (albeit subject to some restrictions: Article 10 ECHR) and when Article 8 and Article 10 rights both arise, the court must consider how these rights interact and/or collide, exercising its judgment upon the individual facts of the case. The children's Article 8 rights are likely to be affected by a breach of their parent's privacy interests, but the children also have independent privacy interests of their own. Exceptional public interest must be demonstrated by editors to override the normally paramount interests of children under 16 (see *PJS v. News Group Newspapers Limited* [2016] 2 WLR 1253, [72-74]). In the circumstances, any public interest in media access to the parties' financial information was significantly outweighed by the rights of the parties, and their children, to privacy in the circumstances.

Contribution:

Chai v Peng **[2017] EWHC 792 (Fam)** was the resolution of what Bodey J described as "titanic" litigation between the 70 year old wife and 78 year old husband (the chairman of

Laura Ashley, *inter alia*). H's claim that he had made a special contribution was rejected. Although he had been a hugely successful and well regarded entrepreneur who had the foresight to see how to make the most of Malaysia's progressing business economy over the last 40 years and accumulated a fortune of over £200m, the evidence showed that he was merely in the right place at the right time (an expression used by Holman J in *Gray v Work* of the husband in that case whose contribution was assessed as not reaching the rarified category of "special") and he astutely made the most of it through his business acumen and hard work. In cross-examination he accepted that he had never described himself as a 'genius', agreed that he had not come up with any particular invention, nor done anything particularly innovative in the commercial sphere, and accepted that the expansion of the markets in which the companies traded would have happened "… as a normal development of a multi-national company". Moreover (and importantly) the judge observed that "it must usually follow that the harder the entrepreneur breadwinner had to work at his business, the more the responsibility of childcare and domestic infrastructure would have fallen to the home-making wife. That is particularly so here, where one of the children has Tourette's syndrome and the other is on the autistic spectrum….Accordingly, when I set the husband's substantial contribution as breadwinner against the wife's substantial contribution in the home and in caring for the children (much if it on her own, on different continents from the husband), I conclude that there is no room here for a reduction from equality based on any differential between the parties' respective contributions to the marriage."

This focus on the lack of any disparity between the contributions such as would be inequitable to disregard was identified as core in the Court of Appeal's decision in ***Work v Gray* [2017] EWCA Civ 270** in which the Court re-affirmed the approach in *Miller / McFarlane* and *Charman No.4*. H sought a 61% share of the assets of $225m (61% was the midpoint in the bracket of departure from equality suggested in *Charman No 4*: 55 - 66.66%). W argued on appeal (which had not been argued below) that the concept of special contribution, at least if focused in financial contributions alone, should be discarded as discriminatory against the homemaker. The parties, in their late 40s, had 2 children during a 21 year relationship. All the wealth had been accumulated during the relationship (during H's employment with a private equity fund, Lone Star, until 2008, chiefly when he ran its office in Japan for 8 years). The CA rejected the suggestion that there was uncertainty in the application of the principle. They did not find reference to Australian jurisprudence helpful as the Australian statute was in different terms. The touchstone remained a fair outcome but there had been no such a change in perceptions of discrimination, equality or fairness since *Miller* and *Charman* as to warrant a different approach. The Court rejected the developments in the principle proposed by each party. W's contention

that special contribution required a combination of financial and other contributions had no principled basis. H's proposed test could elevate a financial contribution above others, nor could the contribution be separated from the contributor. The Court agreed with Holman J that the use of the word "genius" was unhelpful. If the contribution does not derive from the "exceptional and individual quality" of the contributor it would not be a special contribution. The suggestion that the concept was discriminatory (of itself) was rejected in light of the few examples of its application, and the fact that it is confined within very narrow bounds. The court is required by statute to consider contributions. The focus is not on whether the contributions are "matched" but whether there is sufficient disparity to make it inequitable to disregard. Save for this the Court upheld Holman J's analysis and rejected H's appeal against an equal division.

The exceptional nature of a special contribution was again highlighted by Mostyn J in ***WM v HM*** [2017] EWFC 25. H had started a business in 1978 and brought it to the relationship which commenced in 1986. The judge credited H with 20% of the current value of the property as non-matrimonial property and discusses the various approaches that enable a judge to reach such an evaluation, not limited to *Jones* and in this case determined on a linear temporal basis. During the years of the relationship Mostyn J held H had generated £145m which while "a highly creditable achievement it simply does not meet the standard of rarity needed to justify what is, after all, a highly discriminatory [*contrast the CA* above] unequal division of the product of the matrimonial partnership." He therefore divided the matrimonial property equally but on the facts it was reasonable for the husband who was 68 and wanted to work until 75 when the company would be sold, to be able to continue with his life's work if most of the wife's award could be provided by transfers of real property or in cash. The wife's shareholding in the company was increased from 1% to 17.5% which was about 26% of her overall award and was the shortfall on what could be raised and transferred immediately. Overall her award amounted to about 40% of the total assets (including the non-matrimonial assets).

In ***Work v Gray (Phase II: Computation and Distribution)*** **[2016] EWHC 562 (Fam)** it will be recalled that Roberts J held that a discount should be applied to the value of H's risk laden or partially illiquid investment funds and assessed the balancing sum accordingly. A similar discount was also applied by Bodey J in **Chai v Peng [2017] EWHC 792 (Fam)** who observed that it was a familiar approach to depart from equality of outcome where one party (usually the wife) is to receive cash, while the other party (usually the husband) is to retain the illiquid business assets with all the risks (and possible advantages) involved. To try to take account of this difference in the type of the assets with which the parties will be left he awarded W 40% in place of the 50% which she would otherwise have received. In ***WM v HM*** (above) however,

Mostyn J did not accept this approach arguing that to use discounted figures in valuing assets and then to move away from equality is to take into account realisation difficulties twice.

Haddon-Cave J awarded W 41.5% of "a fortune totaling just over £1bn" in ***AAZ v BBZ* [2016] EWHC 3234 (Fam)** in which H put his income needs at $25 million pa. H and the companies in which his wealth was held played no part in the hearing (the only time H had really engaged was for the FDR by video link from his yacht in the Caribbean) and was in breach of many orders regarding disclosure, valuation and settlement offers. W's counsel therefore identified the arguments which H might have adduced based apparently on his contentions in Form E, replies to questionnaire etc. Haddon-Cave J (a QBD judge) sets out at paras 21-35 a thumbnail sketch of the principles applicable to financial remedy claims, including the Court's entitlement to draw inferences from H's silence (see eg per Lord Sumption in *Prest v. Petrodel Resources Ltd*). Between paras 58-91 in a helpful *vade mecum* he sets out the basis for and process of analysing H's interests in the trusts and companies which held the wealth and concludes H had access to the trust assets and that the companies held assets on a bare trust for him (*Prest*). Paras 92-105 set out the basis for and analysis of W's claim pursuant to s.37 MCA 1973 and s.423 Insolvency Act 1986 (disposition was at an undervalue and entered into for the purpose of putting assets beyond the reach of W and/or otherwise prejudicing W's interests) to set aside H's purported transfer of assets to a trust. Absent any evidence from H, the presumption that this was designed to defeat W's claims led to the orders being made. H claimed he was wealthy before the marriage. It is axiomatic that if a party is going to assert pre-marital assets, it is incumbent on them to prove the same by clear documentary evidence. H had not. His contention that the marriage had come to an end many years earlier failed. He had forged Russian court documents, and there had been a reconciliation after a separation in the 1990s. The marriage lasted from 1993 until a failed reconciliation in 2014 The suggestion of a special contribution was rejected, the judge concluding that W who had been "a housewife" and "hands on mother" to the couple's now adult sons had made an equal contribution to the welfare of the family. Whilst H clearly worked very hard to create wealth out of a Russian oil and gas company (the shares in which he sold for $1.375bn in 2012, a value built during the years of marriage) and was resourceful, H's evidence fell far short of the exceptionality (or 'genius') test elucidated in the authorities. There was no post separation accrual. The judge could see no reason to depart from a 50/50 division but W was content with £453m or 41.5% which was the award made. Of this £224.4m was identified as the "maintenance" element to enable W to enforce in Switzerland under the Lugano Convention. Finally the judge sets out the

requirements for service overseas and concludes H and his corporate manifestations had all been appropriately served.
In a subsequent judgment, ***AAZ v BBZ & Ors*** [2016] EWHC 3349 (Fam), the judge rejected H's solicitor's claim that he was protected by legal professional privilege from answering questions about the whereabouts of certain assets. The claim to privilege was defeated by the 'fraud' exception. H's conduct had been seriously iniquitous. He had displayed a cavalier attitude to the proceedings and a naked determination to hinder or prevent the enforcement of W's claim. Moreover, there is no privilege in the case of a transaction (as here) caught by s.423 of the Insolvency Act 1986 or s.37 MCA 1973.

Fairness

In a case decided in November 2016 (but only recently reported) **Christoforou v Christoforou [2016] EWHC 2988 (Fam)** Moylan J stressed the need for proportionality, highlighted the necessity to prove and to evidence a non-matrimonial origin for assets, and held that where only a small proportion of the assets were non-matrimonial there would be no justification for a departure from equality.

Short marriage

The marriage in **FF v KF [2017] EWHC 1093 (Fam)** lasted less than 2 years although the relationship lasted, off and on, for 9. The most recent cohabitation was 2½ year. Mostyn J indicated he did not find the label "short marriage" helpful. H was 65, W 38 and suffered significant mental health problems and vulnerability arising from the marriage. Any earning capacity was very uncertain. H was worth £37m which was liquid and of which a little over £2m arose during the marriage, although given that the case was decided on needs, not sharing, Mostyn J criticised the time spent exploring this latter issue. The standard of living had been very high. W wanted £6m, H offered £1.75m. The common ground was that an award should be made up of a sum to settle W's debts of £300K, plus a home and an income, capitalised. W wanted a flat in London, H proposed a house in Cheshire at a third the cost. W wanted a life time *Duxbury* award, H proposed a discounted sum. The judge awarded £4.25m which appeared to have been based on a London flat and 10 years of income at a level less than her budget (which was less than the marital standard of living). H argued the award was greater than her "needs". Mostyn J in a succinct judgment of 21 paragraphs, observed that where the "needs" principle is concerned there is an almost unbounded discretion. The main rule is that,

save in a situation of real hardship, the "needs" must be causally related to the marriage. He referred to several big money cases where the "needs" awards were manifestly not what was "needed" for accommodation and sustenance. The main drivers in the discretionary exercise are the scale of the payer's wealth, the length of the marriage, the applicant's age and health, and the standard of living, although the latter factor cannot be allowed to dominate the exercise. In a short marriage case the discretion when assessing needs is particularly broad and fact-sensitive. Frequently (but not always) it would be assessed by reference to a term of years (as here) but might be a lifetime award (eg *Miller v Miller* at first instance). Here the judge's award, while generous, was well within the bracket and H's appeal was dismissed.

The apparent preference in *Charman* for Ld Nicholls' views in *Miller* insofar as they related to the application of the sharing principle to unilateral assets generated during a short marriage (not a factor in *Charman*) was held to be *obiter* and erroneous in ***JS v RS* [2017] EWCA 408**. This was a 6 year childless dual career marriage (until H's acceptance of redundancy in disputed circumstances in its final year) between parties in their 40s who had substantially maintained separate finances. Both had incomes of c.£100K but W had earned bonuses of £10.5m and funded the purchase of an initial property. The assets at trial were £6.9m discounted to £5.45m on H's concession to exclude the first property (SD) and other pre-acquired asset. Sir Peter Singer divided the £5.45m equally. W appealed arguing the separation of their affairs during marriage should be reflected in limiting the division to the parties' two properties. H contended that absent a nuptial agreement there should be equal sharing irrespective of the length of the marriage. After a full review of *White, Foster*, *Miller,* and *Charman* the CA adopted Baroness Hale's approach in *Miller,* upholding the concept of unilateral assets and the retention of separate property not automatically to be shared. W's bonuses were not family assets. To apply an automatic, blind 50/50 split in any case would be an impermissible judicial gloss on the statute. *Miller* itself established the principle of departure from equality in short marriages even allowing for the standard of living factor. It was not limited to cases of nuptial agreements. In addition to retaining SD, H would receive a lump sum to reflect the standard of living, a sum to fund his living in the property, and some share of W's assets. His total award would be £2m. It was wrong to have discounted the purchase of the first property

Maintenance

***Mills v Mills* [2017] EWCA Civ 192 – variation of maintenance**
Under a 2002 order, the wife (W) received periodical payments for herself of £1,100 per

calendar month and the majority of the liquid capital from the marital assets, leaving the husband (H) with a small capital sum, his pensions and the business from which he earned his income. In the years following, W made a series of bad financial decisions, buying a string of properties with increasingly large mortgages, the eventual consequence of which left her in rented accommodation, having spent all of her capital from the divorce settlement. W made an application for increased spousal maintenance and/or a capitalisation of the same so as to achieve a clean break. H made an application for a decrease in payments and either a term order or capitalisation of a short-term order to lead to a clean break. H argued that W had already had the lion's share of the capital and that his maintenance obligations had already extended beyond the length of the marriage, and would, with the absence of a term order, extend beyond the time that the parties' son finished his tertiary education.
HHJ Everall QC found that H was reliable, truthful and frank. He had remarried, and supported his new wife, his wife's daughter, his child with her, his son with W and W. The judge analysed H's financial position, including his income and that of his capital interest in housing and in his business and found that he had could afford to pay the increased payments W was requesting. He found that W's monthly income needs were £2,982 and her net monthly income was £1,541 per month. This left her with a shortfall of £1,441 per month which was only partly met by H's £1,100 monthly maintenance payments. The judge dismissed both parties' applications, leaving H to continue his payments of £1,100 per month under the 2002 order. W appealed, arguing that the judge, having found that W could not increase her earnings, had found no basis on which to reduce her basic needs budget, or why she should live below the basic needs budget that he himself had approved. H argued that the basis for the judge's order could be construed as W's financial mismanagement, and/or that he did not have sufficient regard for W's earning capacity and/or that although he had not explained why he had reduced W's budget, he was still entitled to do so. The Court of Appeal held that the judge's findings were clear: whilst W had made a series of unwise investments she had not been financially profligate or wanton and there had not been financial mismanagement on her part. He had made specific findings that W had no greater earning capacity in her existing or any other employment but had made an error in principle in deciding that because W could not meet her needs, she would have to adjust her expenditure to reduce those needs, without explaining how. Without such reasoning, on the facts he had found, the conclusion was not open to him. H could afford to pay the increased maintenance payments and was therefore ordered to pay increased periodical payments of £1,441 per calendar month to meet the shortfall.

***B v G* [2017] EWHC 223 (Fam)** was a case on its facts. The parties were married and lived together for around 12 years and had one son, now 12 years old. H, having inherited significant sums from his father, was a wealthy man and had never worked. At 65, he was deemed to be incapable of earning any worthwhile income. W qualified as a mathematician and, although she claimed she would like to, had not worked for some time. As such her earning capacity was purely speculative. In 2013, Blair J, ordered that a £6M house, beneficially owned by H, should be sold and a lump sum of £1.6M paid to W. In the meantime, W was permitted to continue to live at the house and was to receive periodical payments for herself of £55,000 per annum and £10,000 per annum for the child. It was clear from the order and judgment that Blair J contemplated the house would be sold within a short space of time. However, that had not happened. H, wanting W to vacate the property, secured a loan against the house and paid W £1.6m, so she moved to rented accommodation. However, H could not afford to pay both the interest on the loan (£64,000 per annum) and W's periodical payments. At an earlier hearing when W had tried to recover the arrears which were beginning to accrue, the court held that the arrears should not be paid to W, whilst she still had the £1.6m from which to support herself. By the date of this hearing, the arrears were up to £37,919. Between the August 2016 hearing and the January 2017 hearing, W purchased a £1.4M flat. Taking into account stamp duty, legal fees, £80,000 spent on a failed business venture and various other expenses, most of the £1.6M had been spent. Holman J found that W had £78,000 of liquid capital available, and that she should not have to exhaust this to support herself. Accordingly, he would not "remit for all time" any of the arrears owing. Instead, he suspended the need for the H to pay the arrears until the date on which the property was sold. In the meantime, the maintenance was reduced by just less than £2,000 a month, until the completion of the sale.

H's appeal was dismissed by Baker J in ***Roxar v Jaledoust*** [2017] EWHC 977 (Fam) on an application to discharge or vary a periodical payments order which originally provided for payment on a joint lives basis. HHJ Hess had allowed H's appeal but, on a rehearing, had rejected evidence of a loan to H from a family company on the basis that the one paragraph letter in support did not prove the debt to the requisite standard of proof, and similarly H, a dentist, had shown a lack of enthusiasm for producing written information about his 2016 accounts or his future income, so the judge assumed a continuation of previous levels of income. He also found H to have an available and unexploited earning capacity because he was unwilling to earn so as to pay maintenance for W and support the home in which she lived with their son. He attributed an appropriate income and then, to incentivise H, tapered the provision towards retirement when there would be a clean break on a 50% PSO of the NHS pension. On appeal H produced substantial but ultimately unhelpful documentation (which did not comply

with Moor J's directions, and Baker J warned could attract adverse costs consequences) and had not demonstrated that Judge Hess's decision was wrong. Nor had he demonstrated that circumstances had changed so as to justify a further reduction in W's periodical payments.

Bankruptcy

In ***Armstrong v Onyearu & Another*** [2017] EWCA Civ 258 the Court of Appeal (for the first time since 1898) reviewed English and Commonwealth authorities since *Paget v Paget* [1898] 1 Ch 470 and confirmed that the principle of the equity of exoneration applies as between married or cohabiting couples whereby a co-owner who charges the property with money for the purpose of paying the other co-owner's debts is regarded in equity as lending, not giving, that money. The issue was to be dealt with as part of the law of debtor and surety, and the law was not to be changed to accommodate what was said to be the relationship between co-habiting couples in their family affairs in current times. Couples arrange their financial and family affairs in an infinite variety of ways. There was an evidential presumption that the parties intended that, as between themselves, the liability should fall on the debtor's share of the property and thus the co-owner was entitled to exoneration from that charge. H had borrowed money on the security of the family home to support his solicitor's practice. He paid the mortgage while W, a lecturer, paid other outgoings. The (temporary) survival of H's practice enabled him to contribute. His trustee in bankruptcy's argument that W had thereby indirectly benefited from the loan and should not therefore be entitled to rely on the equity of exoneration was rejected. The relevant benefit must be directly or closed connected to the secured indebtedness to rebut the presumption, although it may be rebutted by the evidence of a different intention, at the time the charge was given (although subsequent events may be considered for the light they shed on what the intention was), or that the loan was in fact for the co-owner's benefit. It was H and his creditors who directly benefited from the loan and any benefit to W was subject to a double contingency (a) that the practice would survive and (b) it would make profits on which H could draw, thus any benefit was too remote to bear an inference that she intended to assume the burden of the loan, and in any event the anticipated benefit could not then have been valued. Moreover, the clear trend in the law has been to provide financial emancipation to women and to enable couples to keep their property and financial affairs separate to such extent as they desire. It is consistent with this trend that the law should continue to treat couples separately where one stands surety for the debt of the other, unless the circumstances or the evidence show otherwise. Further, since the parties kept

their finances separate, by denying her an equity of exoneration, she would be paying not only her share of the expenses but also his, a result that did not accord with notions of equity.

Joint ownership

Marr v Collie [2017] UKPC 17 was an appeal from the Bahamas involving a Canadian banker (the appellant, M) working in the Bahamas and C, a Bahamian building contractor, who were in a personal relationship from 1991 to 2008 during which time they acquired a number of properties (vested in joint names without specifying the parties' respective beneficial interests), some works of art, a boat and a truck. M funded the purchases and C was supposed (but largely failed) to carry out work on the properties. C claimed the ownership of the properties and other items. At first instance the judge relied on *Laskar v Laskar* [2008] 1 WLR 2695 for the proposition that the *Stack v Dowden* presumption that beneficial ownership follows the legal ownership only applies to domestic situations and that it was not right to apply such a presumption in cases where the primary purpose of the property purchase had been as an investment, even if there was a personal relationship between the parties. On appeal C was largely successful in reversing this (the court in part at least relying on an email not before the trial judge and which had not been put to M in evidence). On appeal to the PC it was held that the lower courts had failed to focus on the intention of the parties at the time of acquisition of the investment properties and in the course of dealing with those properties. It was not a question of applying a presumption (in favour of equity following the law or of a resulting trust) depending on whether there was a 'domestic consumer' context or a commercial context. Ld Kerr reviews the case law but makes clear that *Laskar* is not authority that the principle in *Stack v Dowden* (that a conveyance into joint names indicates legal and beneficial joint tenancy unless the contrary is proved) applies only in "the domestic consumer context". Where a property is bought in the joint names of a cohabiting couple, even if that is as an investment, it does not follow inexorably that the "resulting trust solution" must provide the inevitable answer as to how its beneficial ownership is to be determined. "In this, as in so many areas of law, context counts for, if not everything, a lot. Context here is set by the parties' common intention - or by the lack of it." The case was remitted to the local court to investigate these issues.

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