

ENGLAND AND WALES / JUDGMENT

Mario Michael v Stalo Michael

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Neutral Citation Number: [2025] EWCA Civ 1668 IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM HIGH COURT OF JUSTICE FAMILY DIVISION HIS HONOUR JUDGE HESS
SITTING AS A DEPUTY HIGH COURT JUDGE 1653-3397-6938-2607 Before: LADY JUSTICE KING
and LORD JUSTICE MOYLAN

- ----- Between: MARIO MICHAEL

- and - STALO MICHAEL

- -----

- ----- Case No: CA-2025-001578 Royal Courts of Justice Strand, London,
WC2A 2LL Date: 18 December 2025 Applicant Respondent Christopher Wagstaffe KC and
Max Lewis (instructed by CJJ Law) for the Applicant Thomas Haggie (instructed by Kingsley
Napley LLP) for the Respondent Hearing date: 12 November 2025

- ----- Approved Judgment This judgment was handed down remotely at
14.00 on 18 December 2025 by circulation to the parties or their representatives by e-mail
and by release to the National Archives. Judgment Approved by the court
for handing down. Michael v Michael Lord Justice Moylan: 1. 2. 3. 4. This judgment follows
an oral hearing of the husband's application for permission to appeal from the final financial
remedy order made on 1 July 2025 by HHJ Hess, sitting as a Deputy High Court Judge. The
husband's application for permission to appeal advanced a number of grounds. I refused
permission to appeal on paper save in respect of three grounds (1, 3(c) and 3(d)) which I
adjourned to an oral hearing. Those grounds, which I set out in full (with abbreviations),
are: "1. The learned Judge erred in his approach to the question of the taxes payable
consequent upon the court's finding as set out in the judgment of 12 August 2024 that the CN
Trust was a sham. In particular:

- a. The learned Judge should have attempted to quantify the liability as best he could, and
- b. The mechanism adopted by the Judge for dealing with this liability was flawed in any event
as it requires H first to pay to W the lump sum ordered by the court, then to pay HMRC such
sums as were found to be due and owing, and only then to recover from W one half of the
sum actually paid to HMRC subject to a maximum of £7.5m.

- c. The Judge was wrong to impose a cap of £7.5m in relation to the extent to which H could recover the sums paid to HMRC from W. Whatever the total sum payable, it was a matrimonial debt and should have been fully reflected as part of the sharing exercise.
- 3. The Judge erred in any event in his assessment of the value of H's interests in H (UK). In particular: he erred in his approach to:
 - (c) the value of a development at LR, and
 - (d) the value of a wholly owned subsidiary of H (UK)'s named PEL." At the hearing, the husband was represented by Mr Wagstaffe KC and Mr Lewis and the wife was represented by Mr Haggie (with a Skeleton Argument by Mr Pocock KC and Mr Haggie), all of whom had appeared below. The background circumstances and the history of these proceedings is set out extensively in the judgments given by the judge on 12 August 2024, reported at [2024] EWFC 463, and on 11 June 2025, reported at [2025] EWFC 245. The former judgment followed a 12 day hearing in July and August 2024 and dealt with a number of preliminary issues. One of those was whether a trust, the CN Trust, was a sham. The judge decided that it was a sham and that the assets purportedly owned by the trust (in particular, 100% of the shares in an English company called H (UK) Ltd) Judgment Approved by the court for handing down. Michael v Michael were in fact beneficially owned by the husband. This was a significant finding for two reasons. First, because a significant proportion of the parties' wealth (some 75%) was represented by assets which were held within the purported trust structure. Secondly, because the effect of the judge's finding was to create a significant potential tax liability of the husband's arising from a restructuring that took place in 2020. 5. 6. I propose to use abbreviations for most of the companies and the properties I refer to in this judgment. I have dealt with the issues raised on behalf of the husband at greater length than necessary to determine this application, in deference to the comprehensive submissions advanced by Mr Wagstaffe and Mr Lewis. However, for the reasons set out below, I have come to the clear conclusion that the proposed appeal has no real prospect of success. There is also no compelling reason to grant permission to appeal. The Financial Remedy Judgment 7. 8. 9. 10. The judge found that the parties' capital resources totalled approximately £40 million. In arriving at this figure, the judge dealt with a number of factual issues between the parties. Although only some of them are directly relevant to the current application, I propose, in order to provide the broader context, to refer to all the "controversial items" as set out in the judgment below:
- (i) the value of the husband's shares in a company called MBL and related issues including as to "certain dividend payments"; (ii) The value of the husband's shareholding in H (UK) Ltd; (iii) The "potential liability to tax arising from the findings of 'sham' which I made in my judgment of 12th August 2024"; (iv) The wife's "add-back claims". Only (ii) and (iii) are relevant to the current application. H (UK) Ltd is a holding company which owns 100% of the shares in an English company called PEL Ltd and 100% of the shares in a Cypriot company called HI Ltd ("HIL"). It also owns shares, typically 50%, in a number of other

English companies and an LLP. Most of the companies and the LLP are engaged in property investment/development save for HIL which does not trade but is owed just over £8.5 million by other companies within the group (principally, H (UK) Ltd). Expert evidence was provided by three single joint experts. The properties owned by the respective entities within the structure were valued by a single joint property expert in a report dated 15 May 2024. These values were then used by a single joint expert chartered accountant to value the parties' "business interests". His final report was dated 10 February 2025. It stated that, in "the interests of proportionality and in order to avoid repeatedly updating my calculations, I have agreed with [the husband] and [the wife's solicitors] that I will rely on draft management accounts provided for the majority of the Entities, for the period to 31 March 2024. Where information has Judgment Approved by the court for handing down. Michael v Michael 11. 12. 13. been provided at a subsequent date that is straightforward to incorporate and/or material to my valuation approach I have taken it into account in my report". A third single joint expert gave evidence as to the husband's "potential tax exposure" arising from the CN Trust having been found to be a sham. The judge heard oral evidence from a number of witnesses including the husband, the wife and each of the experts referred to in the previous paragraph. The judge summarised the applicable legal principles. In respect of the valuation of shares in private companies he referred to the need for caution when deciding what weight to put on such valuations. The expert had valued the husband's shares in H (UK) Ltd at just under £25 million. The wife challenged this sum and contended for a total of £47 million. This was based very largely on challenges to the values ascribed to three specific developments which I will call: (a) WGR; (b) CR; and (c) LR. In his closing submissions below, the husband contended for a total net value of £28.9 million. He advanced points in response to the wife's case and, in addition, sought a reduction in the figure given by the expert for a number of reasons including to reflect a "minority discount" in respect of companies in which H (UK) Ltd had a 50% interest. The judge accepted this last submission and applied a 20% discount to the relevant figures giving a total deduction of £3.8 million.

14. WGR and CR were both owned by the same subsidiary company in which H (UK) Ltd owned 50% of the shares. The wife contended that the value of these properties should be increased by just over £21 million, increasing H (UK) Ltd's interest by approximately £10.5 million. 15. 16. In respect of (a), WGR, the wife contended that a sum of £13 million had wrongly been omitted from the valuation of this property. The source of this sum is not relevant. Although this addition was "initially" resisted on behalf of the husband, it was ultimately conceded in the husband's written closing submissions. However, the husband submitted that it "should be ameliorated by a number of deductions". The judge accepted three of these, totalling approximately £2.8 million, which included a deduction for additional corporation tax. This led to a sum of £5 million being added to the expert's valuation of H (UK) Ltd's interest in the relevant company which owned WGR. I refused the husband permission to appeal the judge's rejection of the two further deductions sought by the husband. In respect of (b), CR, it was argued by the wife that this development had been valued on the basis of "hope value" because, at the date of the valuation, a planning application had been made but "it was

uncertain whether it would be granted". It had since been granted and the wife sought "an upwards adjustment to the value to reflect that fact". The judge dealt with this in his judgment as follows: "(iii) ... [The wife's counsel] makes the point that the accepted practice in financial remedies cases is to value assets at the date of the trial and so significant developments post the valuation exercise, but pre the trial, should be factored into a fair valuation exercise. Judgment Approved by the court for handing down. Michael v Michael (iv) Against that, and this was Mr Wagstaffe's response, rather backed up by the comments in the oral evidence of [the property expert], is that on the facts of the present case it was agreed that the valuations would be targeted at the date of 31st March 2024 and, particularly in a case where there are a large number of items, some of which may have gone up in value and some down, it would not be fair to allow one party to cherry pick some items (which might suit them) and ignore others (which might not). Further, it was not just a matter of increasing a valuation figure by a notional amount on the grounds that planning permission had now been granted, as a proper review would have to look again at building costs arising. Mr Wagstaffe made the point that in every case involving valuations a target date had to be set, which would always be some time before a trial date, and doing that was not in any way a breach of the principle that items should be valued at the trial date.

- (v) In my view, the court has a discretion to look at post valuation events if it thinks it fair to do so, but also not to permit that if it would be unfair to do so. In my view the subsequent grant of planning permission on its own (and without any building work actually having been done) is not sufficient to justify a revaluation of the [CR] project and on this item I agree with Mr Wagstaffe. I decline to re-open the valuation and [the business valuer's] utilisation of the figures in the overall valuation is sound and reliable, so I make no change on this basis." 17. In respect of (c), LR, the wife relied on a "number of things" to challenge the figure given by the single joint expert. The single joint expert had given a gross development value of £32.5 million with a residual value of £15.36 million and a total prospective annual rent of £1.9 million. The first matter relied on by the wife was to question the approach taken by the expert. To quote her submissions, as recorded in the judgment: "[The valuer] valued this asset as having a gross development value of £32,482,000. He was instructed there were remaining costs to completion of £4,987,692, and opined there was a present residual market value of £15,360,000...This is the figure that finds its way into [the share valuation] report. That figure (£15.36m) therefore leaves c.£17.1m "off" the valuation of a property with three months left to complete. This surprising write-off arises from the completely unreal assumption the property would be sold, incomplete, to an unrelated third party ahead of completion, for that purchaser to have to "pick up the pieces" and complete the development. It self-evidently represented a pessimistic and artificial view of value." Judgment Approved by the court for handing down. Michael v Michael 18. 19. 20. 21. 22. 23. 24. The expert "was clear in his oral evidence that his valuation was on an incomplete basis". That basis, it was submitted, "was only going to be valid for three months anyway, and as a matter of reality no longer applies" as the development had been completed. The second matter relied on by the wife was that, it had emerged that, a valuation had been undertaken

by another valuer at the same time as the single joint expert. This had been undertaken for the purposes of securing bank lending and gave a gross development value of £40 million with a prospective annual rent of £1.9 million. Thirdly, the development had, in fact, been let at an annual rent of £2.75 million for 5 years. Taking an equivalent yield, to the £1.9 million rent used by the single joint expert, would give a gross value of £47 million. It was submitted on behalf of the wife that, having regard to these factors, the value of £15.3 million was no longer sustainable. The wife accepted that, if the value was increased, “the actual borrowing and remaining cost figures should be deducted from those values”. It was said that the wife had undertaken the relevant exercise in her “updated appendices”. It was submitted, therefore, that including the “financing” secured in respect of projects and “the current financial positions of the companies, properly captures” the position. It was also submitted that, in a statement provided by the husband during the hearing, he “largely perpetuate[s] the (irrelevant) theme of equating cash flow/profit over the course of a project with the value of the asset at the end of the process”. The court was concerned with net asset value and not the profitability of individual developments. The judge decided to increase the gross value of LR by £10 million but then to make certain deductions “along the same lines” as the deductions he had made in respect of WGR giving £8 million thereby adding £4 million to the value of H (UK) Ltd’s interest. The result of all the adjustments made by the judge was to increase the value of the husband’s interest in H (UK) Ltd from the total given by the valuer of £24.9 million to £34.28 million (not the £47 million sought by the wife). The judge then, as referred to above, reduced this by £3.8 million to reflect, as sought by the husband, a “minority discount” for those entities of which the husband (through H (UK) Ltd) owned 50%, giving a net total of £30.5 million. It is relevant to note, and I repeat, that the figure proposed by the husband in his closing submissions for the value of the husband’s shares in H (UK) Ltd had been £28.9 million. I would also note that the judge rejected other small adjustments proposed by the wife. In respect of PEL, the husband submitted that the judge should adjust the value given by the experts having regard to the following matters. These related significantly to, what were said to be, the consequences of receivers having been appointed by the judge by his order in January 2025. The first was that, as a result of the receivers being appointed, the bank, which had a first legal charge over PEL’s properties, had called in its loan. Additionally, the amount due to the bank had risen from £4.1 million to £7.2 million including because of further borrowing of £1.8 million in November/December 2024 (which I deal with further below). Judgment Approved by the court for handing down. Michael v Michael 25. 26. 27. 28. 29. Tax 30. The receivers had provided two reports to the court, the first in March 2025 and the second shortly before the final hearing in May 2025. Mr Wagstaffe relied on a schedule in the first report which gave a “Low end valuation” for the value of PEL’s properties at £8.8 million and a “High end valuation” of £11.4 million. He sought to contrast this range with the value given by the single joint expert of £11.35 million. The low end valuation was said to be the value that would be obtained if the properties were sold by auction. In their first report the receivers recorded that the bank had told them that “it is usually their policy to sell properties in receivership by public auction”. Based on this, Mr Wagstaffe submitted to the judge that “there is now a significant

risk that PEL's property portfolio or part of it will be sold by auction". I would also note that the receivers had been advised "that a sale by public auction would achieve a lower price and that a greater price would be achieved by a private treaty sale" and that the receivers recorded that the husband "had also been advocating for a sale by public auction". The next matter relied on by Mr Wagstaffe was that the sums due to the wife which were being enforced through the receivership would inevitably have to be paid by "extracting these sums from somewhere within the group". The sums due were arrears under a legal services payment order, arrears under a maintenance pending suit order (under orders made in December 2023) and a sum of £850,000 due on account of costs (under an October 2024 order). There were also the fees incurred by the receivers. It was submitted that payment of these sums would "require the sale" of PEL's property portfolio. The husband suggested that the value of PEL was nil but sought only the deduction of £2 million "to reflect the cost of complying with the court's orders". This included that this cost would be greater than that given by the expert. The expert's valuation had been based on the assumption that PEL would be sold as a going concern whereas, the effect of the receivership and the enforcement of the husband's liabilities to the wife was that the "assets within the company were being sold". This affected the likely tax and realisation costs. Accordingly, it was submitted in summary that: the husband "has to get the money from somewhere, and if he has to sell corporately-owned properties to pay it, that crystallises not only the corporation tax liability and the other costs of sale within the company, but also the tax H will have to pay on extracting that as a dividend". On this basis, it was submitted that it would be "reasonable to allow a reduction of £2 million to reflect the cost of complying with the court's orders". In her final submissions, the wife challenged the husband's "suggestion that W was running 'a new case' case that entitled him to lodge a (773 page) witness statement over the weekend prior to closing submissions". The wife had identified "major defects in H's presentation of the value of the assets and the reality of debts due to them which he knew about but had decided not to mention". The matters relied on by the wife resulted from her "discovery of [the husband's] dishonest presentation". The judge dealt with the potential tax liability arising from his finding that the CN Trust was a sham. Judgment Approved by the court for handing down. Michael v Michael 31. As set out in the judgment: "The background was that, until 2020, the assets of the 'trust' were its 100% shareholding in CNH Limited which in turn owned 100% of HI Limited (Cyprus). Both these companies were Cypriot companies and HI Limited then owned numerous subsidiary companies in the UK. On 23rd November 2020 a new company was incorporated in the UK, namely H (UK), which was also 100% owned by CNH Limited. On 24th November 2020 the subsidiary companies owned by HI Limited (Cyprus) were all transferred to H (UK) L. On the same day, 24th November 2020, the shares of [H (UK) Limited] were transferred by [CNH Limited] to the 'trust' for a nominal consideration of £1. The legal consequence of my declaring that the 'trust' was a sham was that the assets of the 'trust' were at all times beneficially owned by the husband. As such, the transfer of the shares of [H (UK) Limited] to the 'trust', i.e. to the husband, might be treated by the HMRC in the United Kingdom as an income distribution of the entire open market value of the assets of [H (UK) Limited], then said to have been worth

£30,212,015. Further, the income tax liability would have been due on 31st January 2022. Interest would be due on late payment. In addition, absent unprompted disclosure, penalties might be imposed of up to 100% of the liability at the discretion of HMRC. The liability might be a substantial amount.” 32. 33. The expert tax report for the final hearing set out the potential sums due (including interest and penalties), based on three different possible factual outcomes, as being respectively, £5.9 million, £17.98 million and £28.4 million. In his closing submissions, the husband submitted that the judge could rely on the tax expert’s evidence. It was additionally submitted that, during the course of his oral evidence, the expert “effectively jettisoned” the option of the potential tax being as low as £6 million. This was based on the expert’s “view [being] that the chances this strategy succeeding were 25%” which it was submitted was an “assessment [which] was intended to mirror tax counsel’s policy of never advising that the chances of success were lower than 25% nor higher than 75%”. This also meant that the court did not have “to explore the difficult issues which might otherwise have arisen, such as who now owns” CNH Ltd. This was a reference to the husband’s case, challenged by the wife, that CNH Ltd had been transferred to another company, B Holdings, which the husband said was “nothing to do with him”. How the transfer might have been effected, when CNH Ltd was owned by the trust (and hence, on the judge’s finding, H) was not explored at the trial. 34. It was further submitted that “whilst there is still a spectrum”, there were elements, such as the degree of culpability and the likely penalty, in respect of which “the court can narrow down the options and make a more informed assessment of the likely overall cost”. It was submitted, on this basis, that the “realistic best case” was £19.8 million and the “realistic worst case” was £34.96 million. The ultimate submission Judgment Approved by the court for handing down. Michael v Michael was that the judge should “conclude that the overall liability to HMRC is” £27.4 million. 35. In her closing submissions, the wife questioned the expert’s “apparent change in his view of ‘prospects’” of the lower estimate when, it was submitted, the evidence had not materially changed since his report. The wife’s overall submission was that the “court may prefer to take an approximate figure”. 36. The judge summarised his conclusions as to the effect of the tax expert’s evidence as follows: “[78] His evidence was to the effect that, given my sham finding, the share transfer of 24th November 2020 would be likely to give rise to a UK tax liability in the name of the husband. His report (and his subsequent oral evidence) suggests that this tax liability could end up somewhere within a very wide range of outcomes. He emphasised that the way HMRC deal with these things depends on the discretion of the appointed case-worker/investigator and it is impossible to predict who that might be or how sympathetic such a person might be to the dilemma which has arisen. The possibilities ranged from the share transfer being treated as a capital distribution or as employment income or as the purchase of shares with the consideration left unpaid. [The expert] could not be sure where the facts of this case would end up, but felt that all outcomes were possible and that the HMRC were used to a situation such as this where a court decision imposed a transaction that nobody was anticipating at the time it was made such that the documentation did not necessarily determine the real effect of the transaction. The width of outcomes was made yet larger by the discretion likely to be

exercised by the HMRC case-worker/investigator in relation to interest and penalties. A decision would be made as to the degree of turpitude in the original non-disclosure or late disclosure, the extent to which the disclosure was considered prompted or unprompted and the degree of co-operation with the HMRC in the course of the investigation. The range of possible outcomes was very wide – very broadly, a best case scenario of a liability of about £6,000,000 and a worst case scenario of about £30,000,000.” 37. The judge then set out the approach he proposed to adopt in respect of the potential tax liability: “[80] The uncertainty of this situation creates a very real difficulty for the court. If I make a finding that this tax liability will, on a balance of probabilities, be at a particular level and fix my order accordingly then the order could come to look very unfair in one direction or another if the actual level proves to be significantly wide of the mark, whether higher or lower than the figure identified by me. I raised with both legal teams Judgment Approved by the court for handing down. Michael v Michael the possibility of a formulaic answer, for example a reverse contingent lump sum order dependent upon the actual tax arising. For different reasons, neither legal team were very keen on this; but, having reflected further on this myself, I have concluded that such a way forward provides the only fair way forward here.” 38. 39. The judge summarised his conclusions as to the “realisable assets/debts” (save for the potential tax referred to above) in a table which totalled £40 million. The judge referred to two factors which he would take into account when determining the application of the sharing principle. First, that “perhaps in the region of 40%” of one of the assets (worth in total £7/7.5 million) had been acquired prior to the parties having commenced cohabitation and that this “would justify a departure from equality” taking also into account that “some of the wife’s assets were also held before the marriage”. Secondly, that the wife would be receiving liquid assets while the husband would be retaining “illiquid risk-laden assets”. 40. The judge then addressed the parties’ submissions “on who should be responsible for meeting the tax obligation arising from my sham trust findings”. He concluded as follows: “Mr Wagstaffe has wholly blamed the wife for this; but in my view this is unfair. The husband created the difficulty and, without doing what she has done, the wife would not have been able to claim a fair share of the family’s assets – certainly the husband would never have offered her one. Mr Pocock says that the blame wholly falls on the husband – he created the structure which has caused the problem and his conduct made it inevitable that the wife had to seek findings of ‘sham’. My view is somewhere between these two positions. The husband, in setting up the structure and by his conduct in defending it, must be regarded as the principal cause of the problem. On the other hand, in assessing the wife’s claims I cannot ignore the existence of the problem, further that she was happy to accept the benefits of the structure when she was still married, without much questioning of the husband’s methodologies. In reaching a solution here I bear all these thoughts in mind and, in making an order, create a fair balance between the competing positions.” 41. The judge recorded the proposals made by each of the parties which he considered both represented “wholly unfair outcomes”. The wife had sought £27 million and the husband had offered approximately £1.5 million. The judge ordered the husband to pay the wife a “series of lump sums” totalling £15 million, the last payment, of £7.5 million, being due in September 2026.

As for the potential tax, he explained his decision as follows: “The husband shall undertake to keep the wife informed of the progress in relation to the tax liability (if any) arising from the finding of sham. She will undertake to take all lawful steps she Judgment Approved by the court for handing down. Michael v Michael reasonably can to ensure that this liability is minimised and will keep the husband informed of any steps she has taken in this regard. In the event that a liability does arise from this source, and that the husband has actually paid that obligation to HMRC, then he will be able to reclaim from the wife 50% of what he has paid up to a cap of £7,500,000 (e.g. if he receives a liability of £15,000,000 and pays that liability then he will be able to reclaim 50% of that sum, i.e. £7,500,000, from the wife; but if the liability is higher than £15,000,000 then he will still only be able to reclaim £7,500,000 from the wife). The legal mechanism to be utilised to achieve this will be a reverse contingent lump sum. I have selected this cap, which I accept could disadvantage the husband in the event of an HMRC liability at the top end of the scale, largely in the context of my views as to the respective responsibilities for the accrual of this liability and in the context of the effect on the overall liability of the husband’s future behaviour, over which the wife will have no control. The wife’s legal team have suggested that the husband may not be averse to “consider cutting off his nose to spite his face, if he felt he had a realistic prospect of bringing W down with him” – although there is some force in this, I have not regarded it as a significant part of my thinking on the cap. I do not propose to distinguish in this context between a principal liability imposed by HMRC and any punitive element of the liability (e.g. late payment interest or penalties), the difference being factored into the selection of the cap. I have decided to include in my order a condition that the right to reimbursement will depend on the HMRC liability actually having been paid in an effort to introduce clarity into the mechanism; but if (for example) the HMRC obligation (as opposed to the actual payment) has been clearly established prior to the payment of the third lump sum it is clearly an option for the court to take that into account in relation to any enforcement application of the third lump sum. I do not propose to include in the mechanism any ‘long stop’ date for reimbursement by the wife to the husband – her potential obligation for reimbursement will last as long as his potential obligation to the HMRC.” 42. The net effect of the judge’s order would be as follows. Broadly expressed, if the tax was £6 million, the husband would retain/receive assets of £22 million (65%) while the wife would have assets of £12 million (35%). If the tax was £30 million, the husband would receive/retain assets of £2.5 million (25%) while the wife would have assets of £7.5 million (75%). The judge considered that his award created “a fair balance between the competing positions” and effected a fair outcome taking all the relevant circumstances into account. I would also note that, taking the figure which the husband invited the judge to take of £27.4 million as the tax liability, under the judge’s order, the wife would receive £7.5 (60%) million and the husband £5.1 million (40%).

Submissions

Judgment Approved by the court for handing down. Michael v Michael 43. 44. 45. 46. I propose to summarise the parties' submissions in respect of each of the relevant grounds. Ground 1: As set out in the husband's skeleton argument for this application, the "main thrust of [his] appeal is that [the judge] was obliged to grapple fully with the quantum of [the potential tax liability] but failed to do so". This was an issue of fact which, it was submitted, the judge "was obliged to determine as best he could". The "sheer range of possibilities both as to the basis of the liability due and also the applicable penalty thus made the issue of this liability the single most pressing issue in the case. It was not only one upon which the court was required to make findings, but one which both parties had invited the court to make such findings as it could. Unless those findings were made justice could not be done". This meant that the judge was "duty bound to do the best he could to quantify the liability on the material before him". Mr Wagstaffe relied on what Lewison LJ had said in *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5 ("*Fage v Chobani*"), at [115]: "The primary function of a first instance judge is to find facts and identify the crucial legal points and to advance reasons for deciding them in a particular way". The husband repeated the submission made to the judge below, namely that the possibility of the tax being £6 million should have been excluded. This was based on four factors. The degree of culpability which, it was submitted, HMRC would be likely to find was present in particular because of the findings which the judge had made against the husband. The expert's evidence, in response to being shown the share purchase agreement which he had not previously seen, that the chances of this outcome being achieved were significantly reduced. Mr Wagstaffe repeated the submission made below, namely that this evidence reflected the expert's earlier evidence that tax counsel never advise that the prospects of success are less than 25% or more than 75%. The third point was that the husband had said that he no longer had any interest in CNH Ltd which had been transferred to B Holdings "an unrelated entity" (see paragraph 33 above). This issue had not been explored at the hearing below but for this tax option to work, the judge would have had to be satisfied that CNH Ltd remained owned by the husband. 47. The fourth point which Mr Wagstaffe sought to raise was a new point which had not been raised below and related to the provisions of the Corporation Tax Act 2010.

48. Mr Wagstaffe forcefully submitted that the judge "was wrong not to even attempt to identify the liability with as much precision as was possible in the circumstances"; "whilst it was not possible to make precise findings as to the extent of the HMRC liability, the court could and should have excluded a number of "outlier" possibilities and thus establish a range within which, on a balance of probabilities, the liability would fall". If this had been done, the range of potential outcomes would have been, on a "realistic best-case scenario", £20 million and, on a "realistic worst-case scenario", £35 million. 49. The next part of the husband's challenge is to the way in which the judge dealt with the potential tax liability when determining his award. It was submitted that the judge "was wrong to impose a cap" and should have ensured that the liability was shared equally between the parties. It was a "matrimonial debt" and, Mr Wagstaffe Judgment Approved by the court for handing down. Michael v Michael submitted, there was no proper basis on which the judge could, in effect, immunise

the wife from this “conduct” or from the consequences of the husband’s “bad” decision. I would note that, as referred to above, the husband’s case in his closing submissions to the judge below invited the judge “to conclude that the overall liability to HMRC is” £27.4 million. That submission does not sit easily with Mr Wagstaffe’s submission to us that the judge “was wrong to effect a potentially unequal allocation of the potential tax liability” because that is what his submission to the judge would have done. The final part of the husband’s case in respect of the tax liability is that the husband has to pay the wife the lump sums due to her while the lump sum payable by the wife to the husband is only due after the tax has been paid by the husband. It is submitted that this imposes an unrealistic and a “deeply unfair” burden on the husband if the tax is at the higher end of the potential bracket. In response, Mr Haggie made the overarching submission that, in a number of respects, the husband was taking isolated points in support of his application for permission to appeal. He relied on *Fage v Chobani* which, at [114], had referred, among other matters, to the need for an appellate court to be mindful of the risks inherent in “island hopping”. In respect of the husband’s contention that the judge should have discarded the lowest sum identified by the expert in his written report, Mr Haggie submitted that the judge would have been wrong to do this because, contrary to Mr Wagstaffe’s submission, the expert had not dismissed this as a possibility. The judge had adopted the range of potential outcomes as put forward by the expert. As recorded in the judgment, the effect of the expert’s evidence had been that the liability “could end up somewhere within a very wide range of outcomes”. The judge had been entitled to accept this evidence. Further, Mr Haggie submitted that, if the judge had adopted a precise figure, he would have gone beyond what the evidence justified and reached a conclusion that would clearly have been open to challenge. As for the further point advanced by Mr Wagstaffe in respect of the lowest potential tax figure, namely that CNH Ltd was no longer owned by the husband, Mr Haggie additionally submitted that the husband’s case as to this was “wholly unclear” and “incoherent”. He pointed to the fact that it had been part of the husband’s case in his opening submissions to the judge that HIL, which was owed just over £8.5 million by H (UK) Ltd and PEL, was not an asset of H (UK) Ltd, as stated by the expert, because it remained an asset of CNH Ltd which, as referred to above, was said to have been transferred to B Holdings. This case in respect of HIL had been abandoned during the hearing and it was accepted that HIL remained owned by the husband. This, Mr Haggie submitted, raised considerable doubts as to the husband’s whole case in respect of B Holdings. The judge had also been entitled to include a cap on the wife’s potential exposure to the ultimate tax liability. As set out in the judgment, the issue of responsibility for the tax had been argued before the judge. The wife had submitted that “the blame wholly falls on the husband” while the husband had submitted the reverse, namely he “wholly blamed the wife”. This was an argument about conduct. The judge had been entitled to adopt the approach which he did, based on his conclusion that the husband “must be regarded as the principal cause of the problem”. 50. 51. 52. 53. 54. Judgment Approved by the court for handing down. *Michael v Michael* 55. 56. As for the structure of the order, Mr Haggie pointed to the fact that the final lump sum is not due until September 2026. The husband will have had ample time to deal with the tax liability before then.

Ground 3(c): this ground challenges the judge's assessment of the value of the development at LR.

57. Mr Wagstaffe submitted that the judge had been wrong to depart from the single joint expert's valuation. In simple terms, he submitted that the matters relied on by the wife, and accepted by the judge, did not justify increasing the expert's valuation at all. The effective valuation date for all the properties had been March 2024 and it was wrong to "cherry pick particular items that might have moved since and ignore others which might have moved the other way". He further submitted that it was wrong to take an increased value without also taking into account "the additional costs that have been spent in producing that uplift".
58. Mr Wagstaffe said that, on the first day of the hearing, the judge had given the husband permission to file a further statement setting out the additional costs incurred in relation to all the developments the valuations of which were being challenged by the wife. The statement is dated 16 May 2025. It sets out what are said to be the total costs incurred in the development of LR but does not directly deal with what "additional costs" had been incurred since the expert undertook his valuation. During the course of the hearing before us, Mr Wagstaffe accepted that this issue had not been explored during the hearing below, perhaps because the evidence was only provided towards the end of the hearing and after the husband had given oral evidence. I note that the total "build cost" as provided by the expert was £19.2 million of which just under £5 million was remaining. If the total build costs were as set out in the husband's statement (£23.8 million plus £387,000) the extra costs would be just under £5 million. 59. 60. 61. In response, Mr Haggie submitted that the judge had been entitled to take a higher figure for the value of LR, based on the matters relied on by the wife. He also submitted that the figure adopted by the judge had, in fact, been conservative having regard to those matters. The judge had added the gross figure of £10 million (£8 million after deductions) to the value given by the single joint expert of £15.3 million, giving a total of £25.3 million as against the expert's gross development value of £32.5 million. This gave a "cushion" of £7.2 million (or £9.2 million) even against that lower valuation. In summary, it was submitted that the judge "cannot be said to be wrong in respect of the value he attributed to this asset or [his] treatment of the moving picture of the groups' cash and liabilities". Ground 3(d): this ground challenges the judge's assessment of the value of PEL. The husband's case in support of this ground is that the judge failed to take into account "two important things [which] have happened to PEL's finances since" March 2024. These events, it was submitted, should have been reflected in the valuation for PEL used by the judge. There was "a clear inconsistency between [the judge's] approach to [LR] and his approach to PEL". The judge had also "misunderstood" the husband's case which was that the costs incurred in "extracting money from PEL to pay the interim orders would give rise to personal taxes that [the husband] would have to pay". Judgment Approved by the court for handing down. Michael v Michael 62. 63. 64. The first development relied on by the husband was that PEL's borrowings had increased from £4.1 million as at 31 March 2024 to £5 million by November 2024 and, as a result of a further bank loan of £1.8 million on 27 November 2024, to £6.8 million. These additional sums were said to have been expended in meeting

development costs on projects including LR. By the date of the final hearing, the sum due to the bank was £7.2 million because of the accrual of additional interest. The second was that, as a result of the appointment of receivers by the court, the value of PEL had been impacted in a number of ways. These included that the bank loan had been called in; that significant costs had been incurred by the receivers; and that the receivers had provided “their assessment of the funds that might be recoverable” in their report to the court which differed from the valuation provided by the experts in the case. Further, as referred to above, as a result of the appointment of receivers, it would cost the husband more to discharge the sums due under the interim orders. “Due allowance” should have been made for the total sum (arrears and costs) by deducting this from the value of PEL. As he had below (as referred to above), Mr Wagstaffe relied in particular on a schedule in the first receivers’ report which gave a “Low end valuation” for the value of PEL’s properties at £8.8 million and a “High end valuation” of £11.4 million which he sought to contrast this range with the value given by the single joint expert of £11.35 million. He relied on the reference in the receivers’ report to the bank’s usual policy being “to sell properties in receivership by public auction”, with the receivers having been advised “that a sale by public auction would achieve a lower price and that a greater price would be achieved by a private treaty sale”. Mr Wagstaffe submitted that, “on any view, there is some risk that these properties” would sell at a lower value. 65. In their second report, the receivers provide no additional information about value. They explained their decision not to do so as follows: “[The real estate agents] have advised the Receivers that initial soundings of the market show significant interest particularly in [one named property], but that a large number of the potentially interested parties may be connected to [the husband] and/or [a named company]. Given the recipients of this report and the potential to commence litigation to obtain possession from [the named company], the Receivers consider that providing a further update on the valuations and an estimated outcome statement could be prejudicial to the purposes of the receivership and the value that could be realised from the Properties.” They did, however, indicate that they were in the process of selling the properties by private treaty, having instructed agents to do so. 66. As to the additional loan of £1.8 million, the receivers recorded in their second report that of this sum £530,000 had been used to redeem a loan from another entity to PEL; that “initial analysis of the £1.15 million transferred ... show that [the husband] may have been diverting value from PEL” with further analysis being required “to Judgment Approved by the court for handing down. Michael v Michael 67. 68. 69. understand the position”; and that the balance of £120,000 had been used to service PEL’s existing facility with the bank. In response, Mr Haggie submitted that the judge had been entitled not to re-open the valuation of PEL. This was the same approach as the judge had taken in respect of the property, CR, when he had acceded to the husband’s submissions. As for the increased indebtedness, the same point applied. In addition, part of this related to a further advance of £1.8 million and there were real doubts, as set out in the receivers’ report, as to how this sum had been used. Further, the receivers were involved in PEL solely because of the husband’s egregious breaches of the interim orders made by the judge. He was, therefore, the sole cause of any additional costs which had been incurred including because the receivers work had been

“hampered by the efforts of the husband to frustrate their instruction”. Mr Haggie also submitted that it was relevant that the increase in PEL’s indebtedness by the additional loan had been in breach of an injunction forbidding him from doing so. Finally, in respect of this ground, Mr Haggie submitted that the judge had not misunderstood the husband’s submissions. In the husband’s closing submissions, it had been suggested that it would “cost the company over £2 million in terms of the properties that have to be realised” to enable the husband to “settle these liabilities” (under the interim orders) because of additional tax liabilities that would be incurred as a result of the properties being sold individually by the receivers and the monies paid to the husband as a dividend when the expert’s report had been based on the company being sold as a going concern. This had led to the submission on behalf of the husband that it would be “reasonable to allow a reduction of £2 million to reflect the cost of complying with the court’s orders”.

Determination

70. 71. I first set out a brief summary of the approach taken by an appellate court when determining appeals on the grounds advanced in this case. An appellate court gives very substantial weight to a trial judge’s findings of fact and evaluative conclusions and there is a high hurdle before it will overturn or interfere with them. This can be seen, for example, from the following. In *Henderson v Foxworth Investments Ltd and another* [2014] 1 WLR 2600, Lord Reed said, at [67]: “It follows that, in the absence of some other identifiable error, such as (without attempting an exhaustive account) a material error of law, or the making of a critical finding of fact which has no basis in the evidence, or a demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence, an appellate court will interfere with the findings of fact made by a trial judge only if it is satisfied that his decision cannot reasonably be explained or justified.” 72. In *Re R (Children) (Reunite International Child Abduction Centre and other intervening)* [2016] AC 76 [2015] UKSC 35, Lord Reed said, at [18]: Judgment Approved by the court for handing down. *Michael v Michael* “it is relevant to note the limited function of an appellate court Where the lower court has applied the correct legal principles to the relevant facts, its evaluation is not generally open to challenge unless the conclusion which it reached was not one which was reasonably open to it”. 73. To similar effect is what Arnold LJ said in *Lidl Great Britain Ltd and another v Tesco Stores Ltd and another* [2025] 1 All ER 311: “[110] It is common ground that, in so far as the appeals challenge findings of fact made by the judge, this Court is only entitled to intervene if those findings are rationally insupportable: *Volpi v Volpi* [2022] EWCA Civ 464, [2022] 4 WLR 48 at [2](v) (Lewison LJ). Equally, it is common ground that, in so far as the appeals challenge multi-factorial evaluations by the judge, this Court is only entitled to intervene if the judge erred in law or principle: compare *Magmatic Ltd v PMS International Group plc* [2016] UKSC 12, [2016] Bus LR 371 at [24] (Lord Neuberger of Abbotsbury) and *Actavis Group PTC EHf v ICOS Corp* [2019] UKSC 15, [2019] Bus LR 1318 at [78]–[81] (Lord Hodge), and see *Re Sprintroom Ltd* [2019] EWCA Civ 932, [2019] BCC 1031 at [72]–[78] (McCombe, Leggatt and Rose LJ), which was cited with approval by the Supreme

Court in *Lifestyle Equities CV v Amazon UK Services Ltd* [2024] UKSC 8 at [49] (Lord Briggs and Lord Kitchin).” 74. 75. 76. The same approach applies to challenges to the exercise by a judge of his/her discretion. An appeal court will only interfere with their decision if satisfied that it was outside the generous ambit within which reasonable disagreement is possible.

Ground 1: The principle focus of the husband’s proposed appeal is to challenge the manner in which the judge dealt with the potential tax liability. The “main thrust” of his appeal was, in summary, that the judge “was obliged to determine as best he could” the potential tax liability and “establish a range within which, on a balance of probabilities, the liability would fall”. The problem, in my view, with this part of the husband’s case is that the judge did seek to determine the tax liability “as best he could” and did determine the range within which he considered the liability would fall. In summary, he determined the potential liability, to adopt Mr Wagstaffe’s words, “with as much precision” as he considered possible in the circumstances of this case. The judge was very clear that, on his assessment of the evidence, it was not possible to identify the potential tax liability with any greater specificity than the range he set out in his judgment. He decided that the evidence did not enable him to be more specific as to the likely range of potential tax liabilities or where, within that range, the sum would fall. Accordingly, in reality, this is a challenge to a finding of fact and the question, simply expressed, is whether this was a finding which was not properly open to the judge. 77. I have no doubt that it was a finding which was properly open to the judge and that there is no basis on which this court could properly interfere with it, applying the Judgment Approved by the court for handing down. *Michael v Michael* 78. 79. 80. 81. 82. 83. principles referred to above. I propose to deal briefly with some of the matters relied on by the husband in challenging the judge’s finding. Taking the last matter relied on by Mr Wagstaffe first, it is too late now to seek to rely on what is said to be the effect of the Corporation Tax Act 2010. This would require expert evidence and would have had to have been addressed by the single joint expert. Applying the principles set out, for example, in *Singh v Dass* [2019] EWCA Civ 360, it is not now open to the husband to seek to raise this issue. The second point I address is Mr Wagstaffe’s submission that the judge should have excluded the lowest figure (£6 million) in the range given by the expert in his written report and should have adopted the potential range as advanced by the husband, namely between £20 and £35 million. There is, in my view, no prospect of the Court of Appeal being persuaded, for example, that the judge failed to consider or misunderstood relevant evidence or that the judge’s conclusion as to the potential tax range cannot reasonably be explained or justified. First, the expert did not jettison or discard the lowest potential figure. It remained a potential outcome even if the prospects of it being the eventual outcome were less than the other two potential outcomes. Secondly, Mr Wagstaffe accepted during the course of the hearing that it was open to the judge to determine that the “tax liability could end up somewhere within a very wide range of outcomes” and, equally, although the judge should have determined that it was “significantly less likely than the other outcomes”, that it was open to the judge to determine that the potential range was from £6 million to £30 million. His complaint was that the judge should have narrowed the bracket by accepting the range advanced on behalf of the husband. This might have been a course open to the

judge but that is not the issue. The question is whether the judge made a demonstrable error or whether his finding as to the potential range was not rationally supportable. The clear answer is that he did not and that it was rationally supportable. The judge was clearly aware of the potential degree of culpability which was a matter that was included in the expert's evidence. The point advanced by Mr Wagstaffe as to the ownership of CNH Ltd appears not to have been explored during the hearing. If it was as significant as is now suggested, it would have had to have been properly addressed before the judge. In any event, it is not a point which is sufficiently clear as to undermine the judge's conclusion. I would further add that a court's findings are for the purposes of enabling it properly and fairly to determine the financial remedy application. As has been said on other occasions, the degree of specificity will depend on the evidence and will depend on what is required to enable the court properly to carry out the statutory exercise. In both respects, the judge's finding as to the potential tax range was a proper and sufficient finding for the purposes of determining a fair outcome. The next part of the husband's challenge is to the way in which the judge dealt with the potential tax liability when determining his award. It was submitted that the judge "was wrong to impose a cap" and should have ensured that the liability was shared equally between the parties. It was a "matrimonial debt" and should have been treated as such. Judgment Approved by the court for handing down. Michael v Michael 84. 85. 86. 87. 88. 89. 90. The judge has explained why he decided that the tax liability should only be shared between the parties up to a maximum of £15 million. He determined, as set out above, that "in setting up the structure and by his conduct in defending it [the husband] must be regarded at the principal cause of the problem" (emphasis added). Mr Wagstaffe recognised that the judge could leave the husband "to shoulder a greater burden of the matrimonial debts" if he decided that this was justified by the husband's conduct. That is what the judge did. This was a conclusion which was clearly open to the judge and which, in the circumstances of this case, justified his decision to impose a cap on the wife's liability in respect of this potential debt. The judge recognised that this would "disadvantage" the husband if the liability was "at the top end of the scale" and he has both explained and justified his decision that this would, nevertheless, provide a fair outcome as between the parties. This aspect of the husband's proposed appeal is without substantive merit. The final point raised by the husband is in respect of the structure of the judge's order, namely that the wife's liability to pay the husband up to £7.5 million only arises once the husband has paid the tax due to HMRC. The final lump sum payable by the husband is not due until 1 September 2026. There is, at present, nothing to suggest that the husband will not have been able to address the tax issue by then. I will consider grounds 3(c) and (d) together. As referred to above, the husband's case to the judge was that he should take the net value of H (UK) Ltd at £28.9 million. The judge took the value as £30.5 million. This is a difference of £1.6 million. This might seem a significant sum but it is only 4% of the total capital resources as determined by the judge of £40 million. This is not a percentage difference which would have any material effect on the judge's award and is not such as to justify the grant of permission to appeal in the context of this case. Secondly, I note that Mr Wagstaffe accepted, as "a perfectly proper statement of the law", the judge's observation that "the court has a

discretion to look at post valuation events if it thinks it would be fair to do so, but also not to permit that if it would be unfair to do so". He was right to accept this proposition, a proposition which, I would also note, is consistent with Mr Wagstaffe's submissions in respect of PEL, namely that the judge was wrong not to take into account subsequent events when determining its value. In any event, I consider that the judge's findings in respect of both LR and PEL were clearly open to him on the evidence. They are not findings which are materially undermined by the matters relied on by the husband. In respect of LR, the judge was plainly entitled to decide to add £8/10 million to the value of that property based on the matters relied on by the wife, in particular that the development had been completed and was not going to be sold in an unfinished state. As the judge observed, he had a discretion as to whether to depart from the expert valuation because of subsequent events. He exercised this discretion separately in respect of each property the valuation of which was challenged. The fact that the judge exercised his discretion in different ways in respect of different properties does not undermine that exercise. Indeed, it shows that he was properly considering Judgment Approved by the court for handing down. Michael v Michael 91. 92. 93. 94. whether, and if so how, to exercise his discretion by reference to the evidence in respect of each property. The other point advanced by the husband is that the judge should have taken into account the increased building costs. The evidence on this was, again, far from clear. It would not be unfair to say that Mr Wagstaffe struggled to provide a clear analysis of this point during the course of his submissions. Certainly, it was insufficient to demonstrate that the judge's decision to include an additional £8/10 million to the value given by the expert of £15.3 million was wrong. Further, as pointed out by Mr Haggie, this left a cushion of at least £7.2 million (against the gross development value of £32.5) which would appear to be more than any suggested additional building costs. In respect of PEL, the evidence before the judge was not such that his decision not to update the value of PEL can be seen to have been based on, for example, a demonstrable failure to consider material evidence or was otherwise flawed or wrong. The evidence as to the possibility that the properties might be sold by auction was not such as to undermine the judge's decision. This was no more than a possibility. Equally, the evidence as to the increase in the level of PEL's indebtedness was not such as to undermine the judge's decision. The information contained in the receiver's second report raised significant issues as to how the additional loan of £1.8 million had been used. I also see no merit in the husband's contention that the judge should have deducted the costs of the husband complying with the interim orders which included orders for costs (including a payment on account of £850,000). The husband's failure to pay these sums was his own responsibility and he should have been paying the sums due since the first orders were made in December 2023. The judge found that the husband "had absolutely no intention of complying with them in any meaningful way"; that he had "made it entirely clear that he intends not to comply with and to resist all enforcement of my orders and to do his very best to minimise any receipt of monies by the wife"; and that he "has also shown himself very willing to manoeuvre his asset position to obstruct enforcement if that is an option". In effect, the husband was and is seeking to take advantage of his own default. The judge was plainly entitled to reject this argument. Further, the husband's argument that

these sums should have been deduced would, if accepted, have meant that the wife would have been paying half the costs which the husband had been ordered to pay her herself. Finally, I do not consider that the judge misunderstood the effect of the husband's submission. The judge might have been wrong to say that the husband was seeking the deduction of the receivers' costs (although I am unsure about this), the judge was right to say that the husband was submitting, in effect, that the judge should "make a deduction of the value of some of the assets on the basis that the Receivers may extract what they wish in a way which is less advantageous to the husband than if he were extracting money himself". This was a point repeated by Mr Wagstaff, namely that the tax consequences of the manner in which the receivers extracted money would be greater than if the husband had been able to sell the business as a going concern. The judge was entitled to reject this submission because these greater costs were caused by the husband's previous failure to pay the sums due as referred to above. Judgment Approved by the court for handing down. Michael v Michael

Conclusion

95. I have not dealt with all the individual points made by the husband in support of the application for permission to appeal. However, for the avoidance of doubt, I have concluded that none of them, individually or collectively, have any real prospect of persuading the Court of Appeal that the judge's order was wrong. There is also no compelling reason to grant permission to appeal. Accordingly, in my view the application for permission to appeal on the grounds set out above must be dismissed. I would finally add that the effect of the judge's award (as referred to in paragraph 42 above) was well within the ambit of his discretion and that he was entitled to consider that his award created "a fair balance between the competing positions". Lady Justice King: 96. I agree.

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Prepared on 28 October 2026 · Esheria