

JERSEY / JUDGMENT

Between v T [2021] JRC 275 (04 November 2021)

[2021] JRC 275

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judgment

the commissioner:

Introduction

1. The Petitioner and Respondent were married in England in 1995 and they have one adult son, A, who was born in 1996. The parties moved to Jersey in 2010, the Petitioner obtaining housing qualifications as an essentially employed person, but unfortunately the marriage came under stress and the parties separated in May 2016. The Petitioner's business was sold, with the result that she lost her essential employee status and could no longer reside at the property in Jersey, which had been acquired by a company, Company L, which was owned jointly by the Petitioner and the Respondent. Consequent on the divorce, there were ancillary relief proceedings heard in the Royal Court, and judgment (Commissioner Clyde-Smith sitting with Jurats Grime and Ramsden) was handed down on 15 th January 2019, S v T (Matrimonial) JRC 008 (the "Substantive judgment"). The Act of Court was prepared and subsequently discussed, being finalised on 23 rd January 2019. Accompanying the Act is a note made by the Court, intended to be of assistance to counsel in relation to the construction of the Act. 2. The material orders made by the Court, as shown in the Act of 23 rd January 2019, were as follows: (i) The Petitioner should transfer all of her interest in Company L (which owned Property C and surrounding lands) to the Respondent free and discharged from all claims to the intent that the Respondent could procure the sale of all the real estate on such terms as he considered fit, retaining the net proceeds of sale and any other assets of the company as his absolute property. The transfer was to be completed on or before 12 th February 2019 with vacant possession of the matrimonial property, other than the coach house and studio apartment above, which was occupied by Company P. Further details of the conditions in relation to Property C are set out below, in paragraph 13. (ii) The Petitioner was also to transfer two properties situated in the United Kingdom to the Respondent as soon as practicable after 12 th February 2019, namely the property known as Property B with adjacent strip, and the property known as Property F. Property B and Property F were owned by Company J and the adjacent strip was currently in the joint names of the parties. Again, further detail is given below, in paragraph 28. (iii) The T RBS

Pension Scheme (the "Scheme") should be wound up forthwith - the expectation was that the Petitioner would receive £425,000 and the Respondent £274,130. Again, further detail is set out below, in paragraph 41. (iv) The Petitioner would make a lump sum payment to the Respondent in the sum of £3 million on or before 12 th February 2019. (v) The Petitioner would procure the transfer of three motor vehicles to the Respondent - a Lamborghini Murcielago, a Ferrari Scuderia and a Morris Traveller, again with more detail below, in paragraph 37. (vi) There was liberty to apply as to the timing and implementation of the order, including arrangements for the transfer of the properties and the costs arising therefrom. 3. These arrangements were intended as a clean break between the parties to enable them to get on with their independent lives in the future. 4. Unfortunately, those expectations have not been met. There was no appeal against the orders of the Royal Court, but, the Respondent complains, the Petitioner did not comply with them on a timely basis. Furthermore, the condition of Property C, when transferred to the Respondent, was not as had been anticipated and compensation has been claimed in respect of this and other matters by a summons issued by the Respondent on 2 nd May 2019. That summons claimed the following relief: (i) An order that the Petitioner pay the Respondent compensation of £113,056 arising out of the condition of Property C when transferred. This figure has subsequently been amended to £111,020.40. (ii) An order that the Petitioner pay the Respondent the rent paid to her in respect of Property B for the period 12 to 28 th February 2019 in the sum of £1,173.68 and £1,215 for a replacement Bosch microwave. (iii) An order that the Petitioner pay the Respondent the rent paid to her in respect of the property Property F from 12 th February to 31 st March 2019 in the sum of £2,604 and an unpaid electrician's bill of £336. (iv) An order that the Petitioner pay the Respondent the sum of £10,315.76 in respect of garage bills paid by the Respondent for the Lamborghini Murcielago. (v) An order that the Petitioner pay the Respondent the lump sum of £3 million plus interest. The lump sum was subsequently paid and the only extant claim in that respect is for interest. (vi) An order that the Petitioner pay the Respondent maintenance of £17,175 for the period February to March/April 2019 with interest thereon. (vii) An order that the Petitioner pay the Respondent interest from 12 th February to 28 th April 2019 in the sum of £1,590.33, with interest continuing to accrue until such time as the Respondent's pension monies had been transferred. In addition, an order that the Petitioner compensate the Respondent in the sum of £18,750 in respect of the Respondent's additional UK income tax liability brought about by the Petitioner's failure to transfer to the Respondent's pension monies prior to 5 th April 2019. 5. There were other matters raised by the summons, including particularly the question of costs in respect of the Substantive proceedings. All the other matters raised by the summons have, however, now been dealt with and, accordingly, we are left with the heads of claim set out above. 6. There have been other summons issued since the delivery of the Substantive judgment but it is convenient to refer to the judgment of Commissioner Clyde-Smith on 17 th May 2021 [unpublished] at paragraph 1(iv) where he said this: "There are the following substantive issues therefore to be dealt with as between the parties:- By his summons of 10 May 2019, the Respondent claims compensation, costs and other sums as set out in paragraphs 1, 2, 3, 4, 5 (in relation to arrears of interest only), 6,

8, 9, 10, 11, 12, 13 and 14; By her summons of 10 March 2020 at paragraph 4, the Petitioner seeks to strike out the Respondent's claims contained in paragraphs 1, 2, 3, 4, 5, 6, 8, 9, 10 and 13 of his summons. By paragraph 5, she seeks the return of the overpayment and by paragraph 6, takes issue with the Respondent's claims to the extent that her strike out application is unsuccessful. In paragraph 9 she seeks the costs of her summons on the indemnity basis." 7. The Claim for the return of the overpayment arises because when the Petitioner eventually paid the lump sum of £3m which she had been ordered to pay, she overlooked her right to deduct the sum of £418,967.68 which had been paid to the Respondent from her share of the Scheme pursuant to the Royal Court's order of 24 th May 2019. 8. With the exception of the overpayment made by the Petitioner to the Respondent, these are the matters which this Court is now concerned with today. As regards the overpayment, there is no dispute that this was made and that the Respondent should account to the Petitioner for it. However, he has as yet unquantified claims for costs arising out of the Substantive proceedings and for the matters covered by this judgment; and only when the costs and interest calculations are settled can the overpayment be repaid by way of set-off against the amounts found to be due to the Respondent. In relation to the strike out application, it is right to record that Advocate Mistry accepted that the strike out summons is there formally, but in reality it is to be dealt with as the Petitioner's defence to the substantive proceedings, the matter having received full argument. We add only that we do not think that the strike out summons would have been successful, had it been argued, because the Respondent's summons for the various orders in question discloses matters which are reasonably arguable. 9. The directions given by the Commissioner on 17 th May 2021 dealt with the claims for costs, which have now been resolved, and with the remaining claims and defences. The essential procedural orders were: (i) The Respondent's claims and the Petitioner's defences, her strike out application and her claim for the return of the overpayment would be heard together. (ii) The parties should attend upon the Bailiff's Judicial Secretary to fix a date, estimated at two days, for the hearing before the Inferior Number of the outstanding matters - if possible, with one or both of Jurats Ramsden and Ronge sitting. In the event, that administrative arrangement has not been possible and we have had different Jurats sitting on this case. (iii) Affidavits filed by the parties would stand as their evidence in chief. They were given leave to file addendum affidavits by close of business on 24 th May. Leave would be required to cross-examine either party on their affidavits. (iv) The Respondent would serve his skeleton argument and bundle by close of business on 14 th June, and the Petitioner would serve her skeleton and bundle by close of business on the same date. The Respondent had liberty to file a reply in relation to his claims. (v) There was liberty to apply, and costs were left over. 10. The provisions for liberty to apply resulted in two summons subsequently being taken out relevant to this final hearing. The first was an application by Advocate Mistry on behalf of the Petitioner seeking the Court's leave for the Petitioner to attend the final hearing remotely as well as seeking other relief, in particular a prohibitive order that the Respondent be not entitled to cross-examine the Petitioner. Advocate Sinel issued an application to cross-examine the Petitioner on her affidavit and, in addition, to adduce further evidence. He also sought leave to add

interest claims to his summons, albeit that the claims for interest had been referred to in skeleton arguments lodged last year. There were other sundry matters raised for directions. All of these were dealt with by me as a single judge on 5 th October. The Respondent was refused leave to file a further responsive affidavit and failed in his application to cross-examine the Petitioner on her affidavits as a result of the serious ill health of the Petitioner, who was given leave to attend the hearing remotely if she was able to do so. In fact, she did not so attend. 11. Advocate Mistry made no application on behalf of the Petitioner to cross-examine the Respondent on the affidavits which he had filed. As a result, we had no oral evidence. The Court was obviously aware that the Respondent denied at least some of the content of the Petitioner's affidavit, because Advocate Sinel had wanted to cross-examine her upon it, but as Advocate Mistry did not wish to cross-examine the Respondent, we have to take it that except where the evidence of the Petitioner in her affidavits or the other documentary evidence gainsays what the Respondent said, we should proceed on the basis that the Respondent's affidavits are uncontested. 12. Accordingly, the evidence before us consists of affidavits of the Respondent dated 25 th February 2019, 2 nd May 2019, 14 th January 2020 and 6 th March 2020, with the various exhibits to those affidavits, and affidavits of the Petitioner dated 8 th October 2021. Although dated so late, they were in the same form as affidavits prepared for the March hearing in 2020 and further provided on 10 th June 2021, defects in the attestation clause having been corrected by Advocate Mistry at a later stage; together with the relevant exhibits to those affidavits. Advocate Sinel agreed that the affidavits were admissible and that this was, in effect, a documentary trial. He also submitted that, to the extent that there was a dispute of the affidavits, the Petitioner's defence that she was not responsible for damage to the property in question could be disregarded because the Court could infer from her general approach to the litigation and her view of the Respondent that it was likely that she did cause the damage in question, and secondly, in any event, if the damage had been caused by a third party, it was her responsibility under the Act of Court to put the damage right and remedy it. We will deal with those contentions later in this judgment. The individual claims Damage to Property C 13. The Act of the Royal Court of 23 rd January 2019 which gives rise to this claim so far as is relevant is in these terms: "Now this day, the Court ordered that:- (1) In relation to [Company L] (which owns [Property C] and surrounding lands); (a) subject to the consent of the Population Office the Petitioner shall transfer all of her interest in [Company L] to the Respondent, freed and discharged from any claims, to the intent that the Respondent shall procure the sale of all of its realty on such terms as he shall consider fit, retaining the net proceeds and any other assets of the company as his absolute property; (d) The transfer shall be completed on or before 12 February, 2019, ("the Completion date") at which completion meeting the Petitioner will provide the Respondent with duly completed share transfers, the resignations of the current officers without compensation for loss of office, the books and seal of the company and any other documentation that the Respondent may reasonably request; (e) On the Completion date the Petitioner will render up to the Respondent vacant possession of and the keys to [Property C] other than that part currently occupied by [Company P] (i.e. the detached coach house and studio apartment above),

removing all of her mobiliary effects (and for the avoidance of doubt leaving all fixtures and fittings and mobiliary effects belonging to the Respondent), save that the Petitioner may continue to keep any horses and other animals at [Property C] until such time as [Company P] vacates; (f) The Petitioner will procure that; (i) No tenancy or other right of occupation of any unit of accommodation at [Property C] shall be created; (ii) [Company P] will render up to the Respondent vacant possession of and keys to that part of the property it occupies on or before 17 March, 2019; (iii) Until the Completion date the whole property and thereafter that part occupied by [Company P] will be maintained in good order and nothing will be done to diminish the value thereof or prejudice its subsequent sale; and (iv) The current insurance cover for [Property C] will be maintained in force until the Completion date (to be insured thereafter by the Respondent); (g) [Company P's] continued occupation of the detached coach house and studio apartment above shall be free of any rent or other consideration past or present, but it shall be responsible for the cost of electricity and heating provided or other services consumed. The Respondent will procure that it shall have access to come and go and will not do anything to impede its business for so long as it is in occupation; and (h) The Petitioner shall write off and shall procure that [Company J] and any other company within the [Trust A] shall write off any claims they may have against [Company L], to the intent that the Respondent shall benefit from the assets of the company freed from all claims by the Petitioner or any company connected with her." 14. Advocate Sinel contended that the property was in good order on 23 rd January 2019. It had certainly been in good order when the Petitioner had caused it to be placed on the market with Thompson Estates, and we were shown a copy of the brochure and particulars for the property showing it had an asking price of £2.75m. The photographs in those particulars show a furnished house of substantial quality. It is described as a unique country dwelling which has "recently undergone a superior luxury transformation" . The particulars of sale are described by the Respondent as having been prepared in 2017 when he asserted that the Petitioner claimed he had no proprietary interest in it. There was no evidence put before us that it had deteriorated and was not in good order as at rd January 2019. 15. According to the Respondent, there was a delay in completion of the transfer to him of the shares of [Company L], but the house was completely vacated by the beginning of February 2019, when [Company P] also moved out. Completion is asserted to have taken place on 6 th March 2019, and the Respondent avers that he was unable to access the building until after that date because the Petitioner's employee would not release the keys to the Respondent's lawyers until the Petitioner confirmed that she should do so. The Respondent says also that the electricity supply was cut off on or around 4 th February 2019, thus allowing damp to build up. The claim under this heading is in respect of the following: (i) It is said that the Petitioner removed all fixtures and fittings including the Aga, fridges, wall mounted televisions, light fittings and bayonet fitted light bulbs, the washing machine and tumble dryer, curtain rails, curtains and smoke alarms. It is also asserted that the Petitioner removed unspecified personal property belonging to the Respondent and to their son A. (ii) It is asserted the Petitioner failed to maintain the property in good order including leaving it with severe damp, ruined carpets which had been badly soiled and stank of cat urine

rendering them unusable, animal damage, smoke marks caused by candles or oil lamps and damaged wooden floors. In addition, substantial quantities of rubbish and detritus were left at the property; a defrosted chest freezer containing raw meat and other food in the garage caused a bio hazard; lavatories were deliberately fouled and left unflushed; the property was soiled and filthy throughout; and there were damaged roofs, including one section where the Respondent asserted a person had deliberately broken courses of slates on the coach house ground floor office roof. The Respondent asserted the Petitioner's wanton vandalism made the property unmarketable at the time and he missed a window of opportunity to sell the house during the summer of 2019; or alternatively would have had to sell it at a very substantial undervalue. 16. The Respondent provided a schedule of costs and quotes totalling £110,020.40 for work to make good the damage to the property and to replace the fixtures, fittings and mobiliary items, and a summary of the work and costs of it that was scheduled to his affidavit. 17. In her affidavit in response, the Petitioner raised the following defence; (i) She asserted that she had only removed items which belonged to her and that under the Act of 23 rd January 2019 she was entitled to remove them. Furthermore, she asserted that the Respondent had to show ownership of the items claimed if he were to be successful in his present claim. As he could not do so, because she had paid for them, the items belonged to her and she had legal and beneficial title in them. (ii) As to redecoration and other maintenance work, her assertion was that the Respondent had to carry out the normal works of redecoration and general maintenance that any intending vendor would have to carry out and she should not be responsible for that work. In addition, the Respondent was in the process of selling [Property C], and the Petitioner asserted that in order to recover any damages from her for breach of the order, he would have to show that he had actually sustained a loss from that breach. (iii) As to the alleged damage to Property C, the Petitioner said, "I confirm from the outset is not admitted in its entirety" (sic). We take it from that admission that while not all of the alleged damage to Property C is admitted, some damage is admitted. (iv) The Petitioner went on to say that for the Respondent to succeed in liability, he had to establish that Property C was in good order on 23 rd January 2019, and that the damage sustained occurred between that date and the date of transfer to him; and that it was her actions which caused diminution to the value of Property C and/or that it prejudiced the subsequent sale. (v) The Petitioner did not admit damage to carpets, animal damage, paintwork or wooden floors, nor did she admit that she caused the damage if indeed that damage had been sustained. 18. We have seen a number of photographs of the property and we have taken into account this evidence together with the affidavits of the parties and the valuation from Thompson Estates. 19. In assessing this claim, we think it right to start with the form of the Act of Court. Paragraph 1(e) of the Order of 23 rd January 2019, permitted the Petitioner to remove her mobiliary effects from Property C. We reject the construction of the Order advanced by Advocate Mistry that she was also entitled to remove any fixtures and fittings. In our view, the Court Order enabled her to remove her mobiliary effects, but she had to leave all the fixtures and fittings; and also the mobiliary effects belonging to the Respondent. 20. We also consider that on its proper construction, the Act of the Court distinguished between mobiliary effects on the property which

belonged to the company Company L and those mobiliary effects which belonged to the Petitioner personally. We reached this conclusion because the Court clearly anticipated that the property would be sold and we therefore have considered which mobiliary effects belonging to the company might be expected to be left on site at the time of such sale. The Petitioner's claim that she paid for the items in question and therefore they belonged to her appears to us to be inconsistent with paragraph 1(h) of the Act of 23 rd January 2019, which required her to write off any claim which she or other companies might have against Company L with the intention that the Respondent should benefit from the assets of the company free from all such claims. In short, the Act of Court permitted the Petitioner to remove her personal property but nothing else. 21. We accept the submission of Advocate Mistry that the proper construction of the Act of Court requires the Petitioner to maintain the property in good order for the period from 23 rd January 2019, until the date it was delivered to the Respondent. There is nothing in the Act which required her to keep the property in good order prior to 23 rd January 2019, but it seems to us implicit from the order of the Royal Court that it considered that the property should be in an acceptable condition at the time of vacant possession being delivered to the Respondent. We accept that it was not. We also accept, however, that there is a distinction between maintaining the property in good order and putting the property in good order and, accordingly, the Petitioner is not responsible for making any improvements to the property before or after 23 rd January 2019 nor for any improvements made by the Respondent. 22. We note that the parties agreed at the substantive hearing that Property C should be transferred to the Respondent. It appears to have had an agreed valuation of £2.4 million at that time, although the Court expressed the view at paragraph 103 of the Substantive judgment that the property was probably worth more than that sum - apparently an oral offer of £2.6 million had been made but without sufficient detail to provide a sure basis for a higher valuation. The Respondent told us at the hearing that he had sold Property C this year for £2.8m but that during 2019 enquiries made in relation to the property revealed some possible purchasers were concerned about the loss of the Aga; and of course the sale price also reflected improvements which he had made to the barn, which it appears may have cost in the order of £154,000. We are satisfied on the facts that the Petitioner removed fixtures and fittings which belonged to the company - the Aga, the light fittings, and some of the white goods, and also that she left the property in a disgusting state such that it required extensive cleaning. We are satisfied that to the extent that some of these goods might be regarded as moveable goods, they were goods belonging to the company and not to the Petitioner. On the other hand, we have no evidence as to the second-hand value of the different white goods removed (the Aga not being replaced) and the assessment therefore of the Respondent's loss in relation to those goods can only be made against the difference in value of the real estate with those goods in place and its value without those goods in place. 23. We are quite clear that the Petitioner was not entitled to remove fixtures and fittings - this means that she was not entitled to remove the light fittings, which it is clear had been removed. 24. A substantial claim is made for the cost of replacement curtains in the sum of £32,126.00. The curtains had previously been made for this particular property. We are satisfied that they were moveable effects which belonged to

the company and not to the Petitioner personally and she was not therefore entitled to remove them. Once again, however, the Court has not been given any valuation of the curtains which were fitted but merely a quotation in respect of replacement curtains which may or may not have been of the same quality. Indeed generally in that respect, the Court has not been shown any receipts for expenses claimed - there have been numbers of estimates and quotations, but the amount actually expended has not been demonstrated by bills received and paid. 25. We turn next to the reinstatement works, the cost of which (within the total of £111,020.40) is £43,183.70. In our view, some of these costs cannot possibly be regarded as falling within the terms of the maintenance obligations of the Petitioner - by way of example, the removal and replacement with repainting of what is said to be a defective Jersey verge, including the provision of a scaffold at £4,075.00, reflects work that could have been necessary at any time and falls outside the ambit of maintenance for the period between 23 rd January and the Completion date. Similarly the over painting of the existing garden walls with one coat of emulsion; similarly the replacement of roof slates, the refixing of gutters, the touch up paint timber cladding on external stores, the repair of cracks and repainting of the chimney, the renewal of guttering and down pipes, the test of all electrics and the provision of a report in that connection and the repair of damp in the boot room, touch up decoration of external walls where needed, the changing of all external door locks on the property and the replacement of broken roof tiles. In our judgment, all of these expenses are disallowed as falling outside the terms of the Petitioner's obligations. 26. In addition, the fact remains that the property was valued by the Royal Court at £2.4 million for the purposes of a division between the parties of the matrimonial property and four years later was sold at £2.8 million. We accept that some of that increase in value is down to the Respondent's expenditure on the coach house/barn, and no doubt some of it is down to an increase in market values between 2019 and 2021. Nonetheless, we are satisfied that the increase in value does to some degree reduce the extent of the loss for which the Petitioner ought to carry responsibility. Advocate Sinel agreed in argument that we should apply a broad brush to this part of the claim. In doing so, he must be taken to have accepted how difficult it is for the Court to be satisfied on the balance of probabilities as to which costs should properly be attributed to the Petitioner and which should not. We accept that the Respondent received the property in a condition which was not what either he or the Court expected when the Order was made for its transfer to him. On the other hand, we also think that, as he was expecting to sell the property, he should inevitably have anticipated carrying out such marginal improvements to it as any intending vendor would carry out in order to maximise a sale price. The Petitioner undoubtedly did prejudice any early sale of the property by the removal of some fixtures, fittings and effects which she was not entitled to remove, and this contributed to the delay and expense incurred by the Respondent in getting the property ready for sale. 27. Painting with a broad brush, we award the Respondent £15,000 compensation for the Petitioner's breach of obligations in relation to Property C. Property B and Property F 28. The Act of Court of 23 rd January 2019 in relation to Property B and Property F is in these terms: "The Petitioner shall procure the transfer of the following properties to the Respondent as soon as practicable after 12 February, 2019,

free of any incumbrances: (a) The property known as [Property B] which is the ownership of [Company J]; (b) The strip of land which is adjacent to [Property B] and which is currently in the joint names of the parties; and (c) The property known as [Property F] which is in the ownership of [Company J]; The Petitioner shall instruct English solicitors forthwith to draw up and submit to the Respondent draft conveyances and shall make no claims in relation to [Property B], the strip of land or [Property F]". 29. Advocate Sinel asserts that the Completion date set by the Act of Court was 12 th February 2019. Completion in fact did not take place until 20 th March. He claims rent and interest for the period between 12 th February and 28 th February 2019 (in the case of Property B) and 12 th February and 31 st March 2019 (in the case of Property F). 30. There is regrettably nothing in the material put before us which assists either in relation to whether there was a firm completion or, if there was, as to what breaches of the Order if any have occurred on the part of the Petitioner for which she can be held responsible. It seems fairly clear from the notes of the Court in January 2019, in relation to the draft Act, that the 12 th February was determined as being the date on which any appeal against the Court's final judgment had to be entered; thus the Petitioner, if she wished to appeal, could make the necessary application for a stay before the expiry of that period. The Court was therefore expecting completion to take place as soon as possible albeit not before 12 th February. It is also of course the case that the Court would not have been aware of what formalities were necessary under English law to arrange for the draft conveyances to be prepared and completed. That might suggest the Court did not have in mind any date which would be regarded as a firm completion date for this particular set of obligations on the part of the Petitioner. We are doubtful as to whether 12 th February should be regarded as a firm completion date, but we do not have to resolve that point for reasons which appear below. If 12 th February were to be regarded as a firm completion date, we would then need to be satisfied as to the reasons why completion did not take place on or before that date. The closest we have come on the evidence put before us now as to the reasons for the delay is the assertion by the Respondent that the original contract submitted by the Petitioner's solicitors contained indemnities which were unacceptable. However, we do not know on what date the conveyances were submitted to the Respondent's solicitors, nor the date on which any argument over the indemnities was raised or settled. It is impossible in our judgment to say on the evidence before us that the Petitioner is responsible for the delay between 12 th February and 31 st March when we are told completion (in the case of Property F) took place. 31. Advocate Mistry raised the issue that the rent was due to Company J and therefore the Petitioner should not have to account for the monies personally. He relied in that context on the decision given by me as a single judge of the Court of Appeal in relation to the caveat proceedings on 20 th May 2020, when I pointed out that the caveat was lodged against any transfer of immoveable property by the Respondent which was owned beneficially through Company L - in other words the caveat was addressed to the Respondent and not to the company which actually owned the real property; and it was not clear whether the anticipated dissipation of the proceeds of sale would be effected by the company or by the Respondent. In reliance on those distinctions, and the criticism implicit in them, Advocate Mistry submitted that the Petitioner should not

have to account for the monies which she had received personally. He pointed out that the summons claimed reimbursement of rent paid to the Petitioner - but, he said, the rent had been paid to Company J. He accepted that the Petitioner was in control of Company J and beneficially owned it. 32. We have been shown emails from the letting agent which confirms that rent for Property F and Property B was sent to Company J; in the case of Property F for the period 1 st February - 31 st March 2019 and in the case of Property F for the period 1 st February

- 28 th February 2019. 33. We think there is nothing in these criticisms. The Court made it plain at the time of the Substantive Judgment that it was looking through the corporate structure for the purposes of effecting a division of assets as between the Petitioner and the Respondent. If there is a valid claim for rent for the periods in question, it seems to us consistent with the decision of the Royal Court in the Substantive judgment that rent paid to the Petitioner's company should be treated as rent paid to her. A careful reading of the caveat judgment in the Court of Appeal does not disclose that any different approach was taken there, the criticism in that case being that the identity of the respondent to those proceedings and therefore of the entity or person who was enjoined from passing contract was unclear. As the purpose of the caveat is to put prospective purchasers on notice that they should not complete the transaction in question, it was therefore unhelpfully addressed, which led to a number of technical difficulties with the caveat in question. What was said was that no leave to appeal was needed, but there were a number of criticisms which could be made of the approach which had been taken, not least the criticism that Advocate Mistry had been made an offer of an undertaking which provided all the security which the caveat was intended to provide. In the circumstances the exercise of discretion by the Royal Court in setting aside the caveat was one which it might be thought difficult to appeal successfully. 34. Be all that as it may, the further question which naturally arises, even if there were a firm completion date set by the Court, is this. The Respondent claims rent for a period before completion as well as after completion. On the face of it, the rent was properly payable before completion in respect of a period that spanned the intended completion date; and in the case of Property F did actually span the completion date albeit by not very long. There seems to us to be absolutely no basis in law upon which it could be asserted that the Respondent is entitled to any rent payable in respect of the period prior to the Court's anticipated completion date - and that is of course, to assume that the anticipated completion date should be taken as the right date for present purposes. That being so, one would have expected to see an apportionments provision. Certainly in respect of Jersey conveyances, apportionment of rent is, as Advocate Sinel submitted, absolutely standard practice; but whereas our experience is that without exception such apportionment takes place in accordance with the provisions of the contract in question, Advocate Sinel contended that the existence or otherwise of an apportionment clause was beside the point and was unnecessary. We reject that submission. Save for those cases where a claim can be made for unjust enrichment - and this is not one of those cases - the reason that the apportionment can be insisted upon under Jersey law is that rent paid before the transfer of

ownership in respect of a period covering both before and after completion is only apportioned if that is the agreement between the parties. Whatever may be the position under English law, in our view we are bound by the terms of the Act of Court dated 23 rd January 2019, which does not contain any provision for apportionment and by the absence of evidence as to anything different being agreed between the parties. We note of course that there is also merit in Advocate Mistry's submission that even if there had been a basis for apportionment, which there was not, there would have to be other compensating expenses apportioned such as insurance, rates and repairs. 35. For these reasons, in our view the claim for an apportionment of rent at Property C and Property F fails.

Apportionment is not automatic and is not inherent in the transaction. It was not included in the Court Order. Furthermore, it has not been established that the responsibility for the delay in completion after 12 th February lies with the Petitioner. In those circumstances, in our judgment the allocation of rental income goes with the ownership of the property in question at the time the rental fell due for payment. 36. In argument, claims made by the Respondent for the replacement of a microwave at Property C and unpaid electricians bills at Property F were conceded by Advocate Sinel in the course of submissions made - in our judgment, rightly, because there is no basis upon which such claims could be maintained as the Petitioner's responsibility under the terms of the Act of 23 January 2019. Garage bills 37. The Petitioner was required by the Act of 23 rd January 2019, to transfer three motor vehicles to the Respondent, or instead to pay the Respondent a further lump sum of £565,000.00. In fact, the Petitioner chose not to pay the further lump sum and the motor vehicles in question were eventually transferred. One of them was a Lamborghini Murcielago LP670 - 4 SV Coupé. This vehicle was held by Lamborghini Bristol and ultimately was collected by the Respondent from that garage. However, in order for the car to be released to him, the Respondent was obliged to pay two outstanding bills

- one dated 27 th December 2018 in respect of a seven-year 105 kilometre service in the sum of £1,258.37, and the other in respect of a bill dated 30 th January 2019 for other work - to replace leaking rocker cover gaskets, shock absorbers, leaking gear pipes and sundry other matters in the sum of £9,057.39. It is apparent that both bills related to work which had been carried out before 23 rd January. The bills are addressed to A, son of the parties, at Property C. We infer from this that A delivered the motor vehicle to Lamborghini Bristol for the work in question to be carried out, and as the cars were at that time in the ownership of the Petitioner, that he did so with her consent. 38. For the Respondent, Advocate Sinel contends that the liability is clearly that of the Petitioner. If she had elected to pay the £565,000 so as to keep ownership of the cars, she would not have been entitled to deduct from that sum the amount of the garage bills. It was apparent therefore that the Court intended that the Respondent should have the three motor vehicles with a combined value of £565,000 and it was not in accordance with the Court Order that he should have been required to pay £10,315.76 in order to retrieve the cars from the garage once ownership had been passed to him. Advocate Mistry, in contrast, submitted that the invoice was addressed to A, who had commissioned the work. He was the named customer. The Respondent had not established

that the Petitioner authorised the works to be done and therefore the loss should not be attributable to her. 39. We reject the Petitioner's submission. It seems to us clear that the cars belonged to the Petitioner; that before their transfer to the Respondent, arrangements had been made for work to be done on them; and that the cost of that work, whether the bill be addressed to A or not, ought to have been borne by the Petitioner rather than by the Respondent. Continued maintenance 40. The Respondent claimed continued maintenance due as a result of the Petitioner's delay in paying the £3m capital sum due, in the total sums of £6,488.33. He also claimed interest on the late payment of the capital sum. It appeared to us in the course of submissions that it was not legitimate to claim both - compensation by way of interest for not having the capital sum and the maintenance which was intended to be cancelled on receipt of the capital sum. Advocate Sinel conceded that the maintenance claim fell away, and we think he was right to do so. The Order of the Court of 23 rd January 2019 made it plain for the avoidance of doubt, that there was a clean break in the orders made, and it followed that maintenance thereafter could not be claimed. Additional Tax Liability in relation to the pension fund 41. The Act of Court of 23 rd January 2019 provides this: "The [T RBS Pension Scheme] shall be wound up forthwith with the expectation that the Petitioner will receive £425,000 and the Respondent £274,130.00, subject to any expenses properly and reasonably incurred by the Trustees. The parties will be responsible for any tax payable by them respectively on such distribution." The Order was that the arrangements for the transfer of the pension by the closing down of the fund should be made "forthwith". In fact, the transfer of the pension monies was only achieved by further process before the Royal Court, and that occurred on 24 th May 2019. The Act of Court on that day provides as relevant: "2. The bank shall transfer the sum of £274,130.00 from account [Redacted] in the name of the Trustees of the [T RBS Pension Scheme] directly to the Respondents' self-invested personal pension with Hargreaves Lansdown, the account details of which the Respondent will inform the bank forthwith or to such other account as the Respondent shall nominate." 42. We have seen email traffic between the Respondent and B, a co-trustee of the Scheme with the Petitioner, which starts with an email on 29 th January 2019 from the Respondent to B. In it, the Respondent unequivocally requires payment of £274,100.00 to him in accordance with the Court Order. He pointed out that both B and the Petitioner would be in breach of trust as well as UK pension legislation if the payment were not made. On 31 st January 2019, the response was received that the trustees did not currently have the relevant cheque book to hand but as soon as it was in their possession, they would issue a cheque. In fact, the arrangements were not completed other than through other court process, as has been indicated. 43. The nature of the loss alleged by the Respondent to have been sustained is this. If the pension had been transferred to him prior to 6 th April 2019, the tax which he would have to pay to the UK revenue authorities on his income would have been in the sum of £82,361.25, of which £80,475.65 would have been the tax on his pension. By the time the pension monies were paid in the following tax year, he had other income which put him into a higher tax bracket. As a result, the tax on the pension payment in the following year was £88,393.65, extra tax of £7,918.00. He asserted that it is immaterial as to what was reasonably in the contemplation of the Petitioner (other than her wish to be as

difficult as possible) albeit that she was financially experienced and undoubtedly was aware that he was living in England from May 2016, when he left the matrimonial home. Accordingly, she was or should have been aware of the increased tax liability; but that did not really matter anyway because she did in fact cause the loss by her failure to comply with the Court Order for transfer of the monies through the winding up of the Scheme "forthwith". The Respondent relied on a letter dated 24 January 2020 from the accountants Smith & Williamson in these terms: "To whom it may concern. Smith & Williamson has calculated the amount of tax payable by [T] on the funds paid out from his pension fund. The amount of extra tax incurred by the payment being delayed beyond April 5, 2019, is £7,918.00. In arriving at this calculation we have used actual figures for 2018/19 and estimated figures for 2019/20 based on earnings to date." One difficulty with this letter is that it does not set out what tax liability actually arose from the transfer made on 24 May. The calculations are made on the basis of a payment of £274,130 being made directly to the Respondent personally as a distribution from the Scheme. In fact, the payment was made to a self invested personal pension ("SIPP") with Hargreaves Lansdowne which the Respondent had opened. Another difficulty is that there is no evidence that the tax has actually been paid. The letter is a theoretical assessment in January 2020 of what the additional tax might be - based on an estimate of the Respondent's income. We have not been shown any actual tax assessments. 44. Advocate Mistry submitted that it was clear from the Act of Court and the Substantive judgment that each party had to pay their own tax on the amounts received from winding up the Scheme. Accordingly, what might be payable by the Respondent by way of tax on this amount was not within the reasonable contemplation of the Petitioner. Furthermore, in the email traffic between the Respondent and B, it was appropriate to remember that the Respondent was aware that there was one more trustee and he did not address his communications to the Petitioner. There was no evidence that it was the Petitioner rather than B who caused the loss, if loss there was. Advocate Sinel's response to the latter point was that this was nonsensical. If B was to blame, where was the evidence of that? Neither the Petitioner nor B had made statements covering that particular issue. Furthermore, in the interval, the Petitioner had married B, and it could not be said that she could now hide behind him in so far as the claim was concerned. 45. We agree we should not distinguish between the Petitioner and B on the facts in this case. However, there is this difficulty. On 12 April 2019, the Respondent had written by email to B complaining again about the delay in the transfer of his pension. He described that, understandably, as "utterly unacceptable". It appears from that email from the Respondent to B that the issues of a potential deduction by the trustees for the tax due by the Respondent on the distribution to him personally of his share of the Scheme monies and of an indemnity for any further tax which might be assessed on the trustees were raised by F, on behalf of the Petitioner, in March. In order to meet those points, which could have given rise to further delays caused by argument over the quantum of the deduction, the terms of the requested indemnity and the Respondent receiving adequate assurance that his tax would in fact be paid, the Respondent opened the SIPP with Hargreaves Lansdowne, which enabled payment of his pension money to be made in full to that scheme. As that was the case, there was no need

for any discussion as to the requirements, if any, for set off or deduction for tax or anything else because it was a scheme-to-scheme payment. The Respondent's claim is based upon his subsequent removal of the pension monies from his SIPP. It was that removal, which must have happened after April 2019, which gave rise to the tax liability. He could have left the monies in the SIPP and if he had done so there would have been no such liability. Assuming that the Respondent has been required to pay tax on the withdrawal of the monies from the SIPP, it is hard to see how liability for that tax has arisen as a result of the Petitioner's conduct because on the facts it was the Respondent's decision to withdraw the monies in question and not hers. Until he took that decision, there was on his case no tax liability in that connection at all. The most that can be said from the delay is that he lost the opportunity to make the withdrawal in the tax year ending on 5 th April 2019. 46. The Respondent complains that the tax liability was increased as a result of the late payment of monies on the winding up of the Scheme. However, as has been illustrated, no tax was payable on the transfer of the pension monies which took place on 24 th May 2019. Another way of testing the causation issue we have discussed is to pose the question as to what would have happened if the Respondent had left the money in his SIPP for a further five years. If he had withdrawn it at that later stage, one assumes his income would have been either higher or lower. Could it then fairly have been said that the Petitioner caused the additional tax liability if in fact it had been higher? We think that demonstrates that it was the Respondent's decision as to when he took out the money which created the additional tax liability, and not the Petitioner's delay in transferring the assets to that scheme; not least because, if the Respondent's income had diminished, there might have been no tax due at all. 47. It is true that the Respondent was not under any obligation to minimise his tax liability, but it is equally true that the Act of Court contemplates that the parties would pick up their respective tax liabilities on the distribution of the pension monies, whatever those liabilities might be. 48. On 28 th October, a draft of this judgment was sent to the parties' counsel for comment on factual errors etc. in the usual way. On behalf of the Respondent, Advocate Sinel has submitted that paragraph 43 above contains a factual error when it is said that that "in fact the payment was made to a self-invested personal pension..." . It is said to us that the payment was never made to the SIPP and the Respondent's evidence does not state anywhere that it was. It is said that the delay in finalising the hearing of this claim is the responsibility of the Petitioner and it would be inequitable to hold against the Respondent the suggestion that there is insufficient evidence of him actually paying the tax simply because at the day Smith & Williamson gave their report, the additional tax liability could not be firmly quantified because the additional liability would not have fallen due for payment. It is said that on enquiry by the Court during the hearing on 13 th October 2021 Advocate Sinel confirmed that the Respondent had paid the tax in question. We do not recall that enquiry or response and a check on the recording of the hearing does not suggest that this exchange took place, although it is hard to be sure without transcribing or at least listening to the whole hearing. We have not engaged in that exercise because the outcome either way would not affect our decision on this part of the claim. 49. The material points in this respect seem to us to be these. It is true that the Respondent did not testify in any of his

affidavits that the monies had been paid to his SIPP. He did not say in his evidence where the monies were paid. However, the order of the Court of 24 th May 2019 expressly directed that NatWest International Bank (the "Bank"), joined as a party cited to the proceedings, "shall transfer the sum of £274,130 from account no [Redacted] in the name of the Trustees of the T RBS Pension Scheme directly to the Respondent's Self Invested Personal Pension with Hargreaves Lansdown, the account details of which the Respondent will inform the Bank forthwith or to such other account as the Respondent shall nominate." This Court had assumed from the absence of any evidence to the contrary that this transfer had occurred in accordance with its direction. From what is now said in the most recent email exchange, it appears that the Respondent may have directed the Bank to transfer the monies in question to another account i.e. not his SIPP, although we have no evidence as such that this is so. Nonetheless, the email exchanges in March and April 2019 demonstrate that the Respondent was prepared to receive the payment of his pension into a SIPP and if that had happened, there would have been no tax liability until he had withdrawn the monies from it; and there would have been no continued argument between the parties as to what deductions the Trustees of the Scheme were entitled to make, either to ensure the tax was paid or to keep as security to protect themselves against their own liability for that tax. Given the technical arguments which could be run by the Trustees as to their entitlement to an indemnity against any liability they might have on the payment being made, and the security they might reasonably claim as a result, it appears to us that the Respondent's approach then taken was sensible and from the order of the Court of 24 th May 2019, it appears the Court probably took the same view, notwithstanding the direct order made against the Bank. In our view, the Respondent could have received the monies in question free of tax into his SIPP and if he chose not to do so, then it cannot be said that the Bank or the Petitioner caused the additional tax loss he says he sustained. Furthermore, it remains the case that there was no evidence before us as to the actual additional tax asserted to have been paid, only an assessment of what the extra tax would be, depending on his likely income for the year in question. It was his claim, and the Respondent was responsible for meeting the evidential framework to support it. 50. Having regard to all the circumstances, we disallow this claim and consider that the additional tax liability which the Respondent contends he has suffered, if he has, is his responsibility. Interest 51. The last head of damage is that claim for interest. It is interest which is not due as a result of any contractual agreement between the parties, but it is interest which can only be asserted to be due pursuant to the Interest on Debts and Damages (Jersey) Law 1996 (the "1996 Law"), and therefore falls to be awarded at the discretion of the Court. The 1996 Law draws a distinction between the period prior to judgment and the period after judgment - from the giving of judgment, every judgment debt carries simple interest at such rate as the Court thinks fit from the judgment date until the judgment is satisfied, unless the Court orders otherwise. 52. Under Article 2(1) of the 1996 Law, interest can be awarded in respect of any damages or debt for the whole or any part of the period between the date on which the cause of action arose and the date on which judgment is given. We note in passing that there is no claim that this is a matter of contract between the parties pursuant to which interest arises. 53. In the case of damage to Property

C, the expenses incurred by the Respondent were so incurred at different times during 2019. Some were incurred relatively late - thus for example the electrical account of Y was rendered L on 12 th January 2020 in the sum of £930.00. The bill of Thompson Carpets Ltd was rendered on 8 th July 2019. The bill from Emess Lighting (C. I.) Limited in relation to the replacement of wall lights was rendered on 28 th May 2019. Having regard to the different times during which expenses were incurred, painting with a broad brush, we will award interest on the sum of £15,000 at the Court rate for the period from 1 st July 2019 to the date of payment. 54. As to the garage bills in the sum of £10,315.76, the Respondent contends in his affidavit dated 2 nd May 2019, that he settled the invoices on 14 th March 2019.

Accordingly, we award interest at the Court rate on that sum from 14 th March 2019 until the date of payment. 55. As to the late payment of pension monies, we note that the Scheme had to be wound up "forthwith" pursuant to the Order of 23 rd January 2019. We think we should treat that Order as requiring distribution of those monies by 12 th February 2019.

Accordingly we grant interest at the Court rate on this sum for the period from 12 th February 2019 to 24 th May 2019 when the payment was made. 56. The final claim for interest is in respect of the late payment of £3m. This was due to be paid by 12 th February 2019. In our view, the Respondent should have interest on this sum at the Court rate from 12 th February 2019 until th May 2019, when the Petitioner's share of the Scheme in the sum of £418,967.68 was paid to the Respondent on account, and on £2,581,032.32 from 25 th May 2019 until the date of payment which was made on 5 th June 2019. 57. Advocate Sinel and Advocate Mistry helpfully agreed a Schedule of Interest for arithmetical purposes, but that Schedule does not appear to cover the right periods during which interest is awarded.

Accordingly, we leave it to the parties to recalculate and agree the interest figure, failing which the Greffier is authorised to arbitrate. 58. For these reasons, the Court gives judgment in favour of the Respondent as follows:- (i) For damage to Property C in the sum of £15,000.00; (ii) For garage bills in respect of the Lamborghini in the sum of £10,315.76; (iii) For interest calculated on the basis set out above. 59. On handing down the judgment the Commissioner will hear any applications consequent on the judgment, whether as to costs or otherwise. It may be helpful to the parties if the indication is given that, subject to any submissions which might be made by the parties at a later date, and to a review, if applicable, of any Calderbank offers, the Commissioner's initial view is that each party should bear their own costs. That view is reached having regard to these factors: (i) The Respondent has been partially successful and the Petitioner's conduct in leaving the property at Property C as she did is deplorable. (ii) On the other hand, the degree of the Respondent's success on the summons is limited. A number of issues were raised which have been found not to be justified and which have undoubtedly caused expense, especially to the Respondent, and for which the Petitioner ought to carry no responsibility. (iii) In the circumstances the initial view is that an order that each party pays their own costs would seem to be fair and equitable. Authorities S v T (Matrimonial) JRC 008. Interest on Debts and Damages (Jersey) Law 1996. th May 2021 [judgment- unpublished] Page Last Updated: 24 Jan 2022 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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