Neutral Citation Number: [2024] EWFC 185

Case No: FD14F00348

IN THE FAMILY COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15 July 2024

Before :

MR JUSTICE PEEL

- -

Between :

NATALIA NIKOLAEVA ROTENBERG

Applicant

-and-

ARKADY ROMANOVICH ROTENBERG

First Respondent

-and-

RAVENDARK HOLDINGS LIMITED

Second Respondent

-and-

LUCASNEL SA

Third Respondent

-and-

ROTEX GMBH

Fourth Respondent

-and-

PALMOTO HOLDINGS LIMITED

Fifth Respondent

-and-

SOCIETE CIVILE IMMOBILIERE VILLA SHOSHANA

Sixth Respondent

-and-

OLPON INVESTMENTS LTD

Seventh Respondent

- -

- -

The Applicant did not attend and was not represented
Deborah Bangay KC (instructed by **Levison Meltzer Pigott LLP**) for the **First Respondent**
Jonathan Seitler KC (instructed by F**arrer and Co LLP**) for the **Second Respondent**
Richard Wilson KC (instructed by **Peters May LLP**) for the **Seventh Respondent**

Hearing date: 10 July 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on 15 July 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Justice Peel :

1. This is the latest chapter in financial remedy proceedings which have been ongoing since 2013. Central to the dispute is a property in Surrey known as Upper Ribsden ("the property"). I shall refer to the long since divorced husband and wife as "H" and "W".

2. The manner in which the property was acquired is as follows:

   i) It was bought on 26 April 2012 by Ravendark Holdings Ltd ("Ravendark"), a special purchase vehicle registered in the BVI, for £27.5m plus purchase costs.

   ii) A declaration of trust was entered into prior to purchase on 21 March 2012 under which the shares of Ravendark are held by corporate nominees on behalf of Mr Dmitry Kalantryskiy.

   iii) The purchase monies were provided to Ravendark by Olpon Investments Ltd. ("Olpon"), a company owned and controlled by H, under a commercial interest-bearing loan facility agreement dated 20 March 2012.

3. On 20 November 2023, I made an Unless Order against W. In summary, I provided that unless she complied with an order to file a narrative statement and certain specific disclosure by 12 February 2024, her claims for (i) a declaration that H is the beneficial owner of the property and (ii) assignment to her of the loan made by Olpon to Ravendark, would be struck out.

4. She did not comply with my Unless Order, nor has she applied for relief from sanctions under FPR 2010 r4.5. The matter has been brought back for confirmation of the Unless Order and consequential orders which are sought to bring all matters to a close.

5. W did not attend this hearing and has not participated in the litigation since the middle of 2022. I am quite satisfied that she has been properly served with all relevant material and is aware of the hearing. In particular, she has been notified of the specific relief sought today by formal applications made by H, Ravendark and Olpon. H, Ravendark and Olpon were all represented before me.

Background

6. I draw on (i) judgments of Moor J dated 20 July 2016 and 21 August 2019, (ii) a Court of Appeal judgment dated 10 November 2021 and (iii) the procedural developments thereafter before Moor J and myself. There have been a plethora of applications and orders over the past eleven years or so. I shall refer only to those which seem to me to be most relevant to the matters before me.

7. As for the general background, H is 73, W is 43. Both are Russian nationals. H is well known as a close associate of President Putin. They married in 2005. They have two children aged 19 and 17. W and the children moved to England and took up residence in the property in May 2012 under a rental agreement with Ravendark.

8. On 19 June 2012, H and W entered into a post nuptial agreement in Russia.

9. On 8 March 2013, W made an application under s27 of the Matrimonial Causes Act 1973 which was subsequently withdrawn. In May 2013, she made an application under Schedule 1 of the Children Act 1989 which was also later withdrawn.

10. On 18 March 2013, H issued divorce proceedings in Russia, and decree of dissolution was pronounced on 29 April 2013.

11. On 6 May 2013, W applied for financial provision in Russia. On 10 September 2013, the Russian court upheld the post nuptial agreement which provided for W to receive only £100,000 by way of capital, notwithstanding H's fabulous wealth which at the time of the post nuptial agreement was said to be £3.3bn.

12. On 16 May 2014, W applied under Part III of the MFPA 1984 for leave to bring a financial claim in this jurisdiction. Leave was granted by Moor J on 19 June 2014. An application by H to set aside the grant of leave was dismissed by Bodey J on 7 November 2014. On 16 April 2015, Moor J provided that W's Part III claim was to be limited to her needs, generously assessed.

13. In February 2016, the parties entered into negotiations, which resulted in agreement being reached on 10 March 2016.

14. On 20 July 2016, a contested hearing took place before Moor J. Although settlement had been reached a matter of only a few months before, H sought to resile from it and W had issued a Notice to Show Cause why it should not be made into a court order. The following extracts from the judgment set out the nature of the issue:

> "3. I granted permission on 19th June 2014. Mr. Rotenberg applied to set that aside. In the alternative, he applied for terms to be incorporated into it. I granted his application for terms on 16th April 2015. I made two conditions, namely that the application was to be limited to the court's assessment of Mrs. Rotenberg's needs and that there was to be no further investigation of a postnuptial agreement that the parties signed in Russia on 19th June 2012.
>
> 4. I am quite clear in my own mind that I gave permission to Mrs. Rotenberg to bring her application because she was resident here with the children and it was intended that that would remain the case. That was the whole and only justification for it.
>
> 7. Thereafter, it appears that there was an extremely unfortunate telephone conversation between the parties. I have not heard oral evidence. Indeed, I do not have evidence directly from the two parties, but the allegation made on Mr. Rotenberg's behalf is that, in the course of that telephone conversation, Mrs. Rotenberg required Mr. Rotenberg to provide her with a loan to enable her to invest in property. It is alleged that he declined and she, therefore, said, "If you are not prepared to do that, I am going to go back to Russia with the children". I have indicated that I have not heard oral evidence and I merely repeat that that is what is alleged.
>
> 8. Mr. Amlot who has filed two statements on behalf of his client, Mrs Rotenberg, says the following at para.7(c) of his first statement:
>
> > "*The applicant confirms to me that she has absolutely no intention of returning the children to Russia. The children are well settled in their English schools and the applicant has no intention whatsoever of upsetting these arrangements".*

9. Mr. Pocock QC, who appears on her behalf has confirmed to me today that this is the position and that I can incorporate it as a recital to this order. Mr. Pointer QC who appears on behalf of Mr. Rotenberg submits to me that there has been a fundamental breach of this order. He argues that Mrs. Rotenberg has repudiated its terms and that, therefore, the agreement is no more.

11. I am clear that I need to deal with this case today. I am absolutely clear, indeed it is not contested, that an agreement was reached in this particular matter. Mr. Pointer's submission to me all hinges on his submission that Mrs. Rotenberg has repudiated this agreement. I do not accept that she has done so. Putting it at its highest, there was an unfortunate conversation between them in which I suspect things were said that both parties later regretted. Mrs. Rotenberg's position to me is crystal clear. She has not repudiated this agreement and, as Mr Amlot says:

"The applicant confirms to me that she has absolutely no intention of returning with the children to Russia. The children are well settled in their English schools and the applicant has no intention whatsoever of upsetting these arrangements".

12. I make a number of matters quite clear for the future. I am making my order on the basis of Mr Amlot's paragraph 7(c). I gave permission to Mrs. Rotenberg to apply for Part III relief on the basis that she and the children were, indeed, resident permanently in this jurisdiction. That was the basis on which she was entitled to apply and that was the basis on which the terms of this agreement were reached. I accept Mr. Pocock's point that the provision includes outright provision for her. I further accept that the term that she was to remain here is only to apply until 2024 but it is clear that they agreed that she would be here until 2024. On that basis, I am quite clear that I should make this agreement into an order of this court. I have done so on the basis that she will be remaining here. Indeed, I note that she would require the permission of a judge if she wished the children to relocate permanently outside the jurisdiction of this court.

13. Mr. Pointer's submission to me was that she has misled his client. If, at some future stage, he is able to satisfy me that it was not true when she said that she has absolutely no intention of returning with the children to Russia, she would be at risk of this order being overturned."

15. It is said by H that (i) the agreement and court order were made on the basis of a fundamental condition, namely that W and the children would continue to be habitually resident in this country until December 2024 by when both children would have reached 18, and (ii) W breached that condition by leaving the country in 2018. It seems to me, from everything I have read and heard, that the course of all the contentious, expensive litigation since then has been H's determination to ensure that W should not benefit from an order which, on his case, was predicated on her and the children remaining in this country for that specified duration.

16. The judge went on to make a final order dated 20 July 2016 which provided, inter alia, as follows:

i) By paragraph 32: H "will procure the transfer of [the property] into the sole name of [W]…." to W by 9 September 2016.

ii) By paragraphs 35, 36 and 37, H to transfer to W (as to 40%) and the oldest child (as to 60%) a property in France, to transfer to the youngest child a

property in Germany and to transfer to both children in equal shares a property in Italy.

iii) H to pay W a lump sum of £8.65m by 1 May 2016.

iv) H to pay W spousal periodical payments of £360,000pa until 14 December 224.

17. Relevant preambles to the order included:

i) In a recital (para 10), W "confirms that she has absolutely no intention of returning with the children to Russia before 14 December 2024".

ii) Recital 11 to the order says: "The court indicating that the intention of this order is that the children will remain resident at the Surrey property as their main home during their respective minorities".

iii) H agreed (para 15a) with W to pay costs of running the property at £360,000pa until 14 December 2024.

iv) H undertook and agreed with W (para 19a) to "acquire [the property] and/or the shares in [Ravendark] or to take such steps as may be necessary so as to carry into effect the transfer provided for by paragraph 32 below".

v) H undertook and agreed with W (para 23) to pay £3.24m into an escrow account to secure the periodical payments and the running costs of the property.

18. The £8.65m had in fact been paid before the order, and W used the sum to buy a London flat. Other than that, H has not complied with the capital terms of the order outlined above. Ravendark refused to facilitate the transfer of the property to W. Moor J found (para 62 of his judgment delivered in 2019) that: "I am, however, quite satisfied that, almost before the ink on the agreement was dry, he decided to renege on it and do everything in his power to frustrate it……In short, he has been deliberately obstructive as to every part of this order over which he has control". He went on to say at para 79 that: "It is clear to me that the Husband then changed his mind about each end every term he had agreed…. I find that he directed Mr Kalantryskiy to refuse to cooperate with the property transfer".

19. On 28 November 2016, W applied for a declaration that Ravendark was a bare trustee of the property on behalf of H who, she asserted, is the beneficial owner.

20. On 13 December 2016, W applied for enforcement of the orders for transfer of the French, German and Italian properties.

21. On 20 December 2016, Ravendark was joined to the proceedings.

22. On 5 April 2017 H applied, inter alia:

i) To suspend/stay/defer the order in respect of the property;

ii) To vary the orders in respect of the properties in Italy, France and Germany.

These applications were on the basis of his assertion that W would not remain in the UK in anticipatory breach of what H termed the fundamental condition of the order.

23. In July 2018, W and the children left this jurisdiction and travelled to Moscow. They did not return. Since then, W has remarried an Armenian citizen and herself obtained Armenian citizenship. She is permanently resident there and runs a business in the capital. The oldest child of H and W is at school in Switzerland and stays with H in the holidays. The younger child lives with H in Moscow, where he is at school.

24. On 28 September 2018, H applied to be released from his undertaking contained at paragraph 19 of the order of 20 July 2016 to "take such steps as may be necessary so as to procure or carry into effect the [property] transfer…". The ground for the application was an asserted significant change in W's circumstances, namely that W had ceased to live in this country. This seems to me to be in similar terms, certainly as to intended outcome, as the application made on 5 April 2017.

25. On 1 July 2019, W applied for assignment of the Olpon Ltd loan to W as an alternative remedy i.e in the event that the court was not satisfied that H is the beneficial owner of the property.

26. The final hearing in respect of ownership of the property took place in July 2019. Judgment was handed down on 19 August 2019. Moor J found that the property was beneficially owned by H under a resulting trust. He dismissed H's application for variation/release from his undertakings in respect of the property (I assume this to be by reference to the applications made on 5 April 2017 and 28 September 2018). He did so expressly on the basis that, accepting W's evidence (as set out at paras 55 of the judgment), W intended to return to this country to take up residence at the property. An order dated 30 July 2019 recorded his conclusions. He also released H from his escrow fund obligation because W had remarried, and the maintenance provision had ended.

27. In his judgment he drew adverse inferences against H's refusal to give evidence, and found Mr Kalantryskiy's evidence to be "thoroughly unsatisfactory". Nor was W an unblemished witness. In her evidence she denied that she had remarried, until she was presented with irrefutable proof obtained by H in the form of a marriage certificate.

28. Ravendark appealed against the beneficial interest finding. Permission to appeal was granted on 20 December 2019.

29. On 25 August 2020, H applied purportedly under the Thwaite jurisdiction for "a stay preventing the execution of, and permanently suspending the implementation of the order of Mr Justice Moor dated 20 July 2016". The wording seems to me to be curious as it envisages leaving the order in a permanent state of limbo. The stated ground was a significant change in circumstances, namely that the order had been made "on the basis that [W] would live in this jurisdiction with the parties' two children, and they would be educated here" whereas they had left England permanently. This was very similar to the applications previously made on 5 April 2017 and 28 September 2018, but of course Moor J had dismissed the previously constituted applications. Curiously, H's statement dated 23 February 2021 in support of the application says in the first paragraph that the application is to "set aside" the order, which is rather different. I have to say that I regard the drafting of this

application, and the relief sought, as very odd (it was done long before H's present lawyers were involved in this case).

30. On 8 January 2021, W applied for various forms of relief, including strike out of the Thwaite application made by H.

31. On 10 November 2021, after a 2-day hearing in May 2021, the Court of Appeal allowed the appeal and determined that there was not, and could not have been, a resulting trust, because there had been a legitimate loan agreement which funded the purchase. W advanced at the appeal an alternative ground that the property was held beneficially under a constructive trust. The constructive trust argument had not been advanced at trial, and the Court of Appeal accordingly remitted for rehearing. It is not, I think, unfair to say that the Court of Appeal clearly thought there was prima facie merit in the constructive trust argument; Moylan LJ described it as "certainly arguable" at para 48 of the judgment.

32. On 12 November 2021, Moor J gave directions for the future progress of the case. Moor J recorded at para 6 of the order that: "The Court of Appeal allowed the appeal…and have remitted the case for a fresh determination as to the beneficial ownership of [the property]". At para 12a, he ordered W to file and serve Points of Claim by 31 January 2022.

33. On the same date, Olpon was joined to the proceedings.

34. The case was thereafter re-allocated to me.

35. On 11 February 2022, W's solicitors came off the record and W acted in person.

36. W did not comply with any of the directions made on 12 November 2021, and did not engage with the other parties or the court.

37. Further applications were made as follows:

    i) H applied on 30 May 2022 for:

        a) A strike out of W's assignment of loan application;

        b) A strike out of W's Thwaite strike out application;

        c) A declaration that Ravendark is the beneficial owner of the property;

        d) Release from his undertakings contained at paras 19 to 22 in the order of 20 July 2016 in respect of the property and the properties in Germany, France and Italy, and discharge of paras 31 to 37 in respect of transfer of the same.

    ii) Ravendark on 31 May 2022 applied:

        a) To strike out W's application for assignment of loan; and

        b) For a declaration that the property is beneficially held by Ravendark.

38. On 8 June 2022, a case management hearing took place before me. W appeared in person. She had not complied with the order of Moor J to file Points of Claim by 31 January 2022. I was invited by H and the other respondents to strike out W's application in respect of beneficial ownership of the property. I declined to do so. It seemed to me that I should give her a further opportunity to state her case.

39. I ordered that unless she filed her Points of Claim by 4pm on 6 July 2022 and paid the costs thrown away on 8 June 2022 (which I assessed summarily); (i) her application for assignment of the loan facility would be dismissed and (ii) her application for declaration of beneficial interest in respect of the property would be struck out.

40. W re-instructed lawyers. On 6 July 2022, she filed her Points of Claim and complied with the costs orders. Points of Defence from the other parties followed. It follows that the consequences of potential non-compliance with the Unless Order did not come into effect.

41. However, since July 2022 there has been no engagement by W or by lawyers in this country on her behalf. I am confident this was not due to lack of resources, not least because she received £8.65m from H in 2016. I am told that she is in dispute with former solicitors in this country. In the course of those proceedings, she has not attended court, has breached numerous orders and has had a 21-day sentence of imprisonment imposed on her for contempt of court, which is yet to be enforced.

42. On 20 November 2023, a further case management hearing took place before me. W did not attend, although I was satisfied she had knowledge of the hearing.

43. I directed that a final hearing be listed. After considerable delay, it was fixed to start on 12 May 2025. I defined the issues for the hearing as:

> "i. the beneficial ownership of the Surrey property and the 1 July 2019 application;
>
> ii. the August 2020 application [H's Thwaite application for a stay/suspension of the order of 20 July 2016];
>
> iii. the January 2021 application [W's application to strike out the Thwaite application];"

44. I made an Unless Order requiring W to (i) file her witness statement by 12 February 2024 and (ii) file specified disclosure by 12 February 2024. In default of compliance:

> "(c) the 1 July 2019 application in so far as the applicant sought assignment to her of a loan facility between seventh respondent and the second respondent is dismissed.
>
> (d) The applicant's claim as framed by the November 2016 enforcement applications and as set out in paragraphs 7 and 8 of the November 2021 Order by which she seeks a declaration that the first respondent is the beneficial owner of the Surrey property, is struck out.

(e) The second respondent is discharged as a party to these proceedings save to the extent necessary for any terms of this order to be enforced and to deal with any application for costs.

(f) The obligation on the first, second and seventh respondents to file statements…is discharged.

(g) The final hearing and PTR hearing…..are vacated."

45. I made provision for service by email, Instagram, text and to her former solicitors. I am satisfied she was served and had full notice of my order.

46. In fact, W did not file the documents as required by 12 February 2024. I am satisfied that she breached para 13 of my order and, accordingly, the automatic default provisions applied on that date.

47. In February 2024, H's solicitors were contacted by lawyers in France on behalf of W. Subsequently, I received an email from the French lawyers dated 12 February 2024 (the last date for compliance) saying:

"Dear Mr Justice Peel,

We are acting (jointly with M. HUYGHE (French Notary) cc) on behalf of Ms. Natalia Nikolaeva Rotenberg. I am a French duly qualified French lawyer.

We refer to the attached order (Case No FD14F00348) dated 20 November 2023.

We act officially on behalf of Ms. Natalia Nikolaeva Rotenberg's interests since Thursday 8 February 2024.

We understand that by virtue of paragraph 13 of the order our client has until 4.00pm (London time) on Monday, 12 February 2024 to:

(a) [paragraph 13] serve a statement as explained, and
(b) [paragraph 20] provide all the information set out in paragraph 20 (a) to (h)

Our client has informed us that she has not received the above-mentioned order.

This order has been provided to us by Mr. Arkady Rotenberg's lawyer on Friday 9 February 2024 – 5 pm. Given the complexity of the case, we would have needed some time to read the entire file and carry out the necessary investigations.

Consequently (given the date of our appointment and the date we have received the order), we did not have sufficient time to be able to serve a statement and provide the requested information/documents. Indeed, we need a few more days to gather the documents and draft the statement.

We would be grateful it you could grant us additional time to be able to respond appropriately on behalf of the Applicant.

I remain at your disposal."

Best regards,

48. I do not accept that, as the email suggests, W did not receive my order dated 20 November 2023. I replied by email to all the parties on 14 February 2024:

"It seems to me that as the Applicant has not complied with my order by the due date, by paragraph 13 thereof her applications are either dismissed or struck out. It is therefore for her to make a properly constituted application under the FPR for relief from sanctions which would be heard on notice".

49. Neither W nor her lawyers replied, and no application for relief from sanctions was made.

50. It follows that, pursuant to my Unless Order of 20 November 2023, the sanctions referred to at para 44 above took effect automatically.

51. On 14 March 2024, Ravendark applied for a "declaration to confirm ownership" of the property.

52. On 27 March 2024, H applied for orders that:

i) W's claims in relation to enforcement be dismissed;

ii) Undertakings 19-22, and orders 31-37 contained in the order of Moor J dated 20 July 2016 (which contain the provisions about the property and the Continental properties) be respectively discharged and set aside;

iii) W's application of 8 January 2021 be struck out.

This application was framed rather differently than the application dated 25 August 2020, but it has, in my judgment, been clear for a long time that H has sought relief of this nature.

Conclusions

53. First and foremost, W's application for (i) assignment of the loan facility dated 1 July 2019 and (ii) a declaration that H is the beneficial owner of the property are automatically dismissed as a result of the Unless Order made by me. I see no reason to make any alternative order. I am satisfied that W was served with my order of 12 November 2023 and notice of this hearing. She has not applied for relief from sanctions. She has not engaged either with the court or the other parties since mid-2022 save for a brief email from French lawyers from which nothing ensued.

54. W's enforcement application dated 13 December 2016 in respect of the French, German and Italian properties shall be dismissed. She has not taken any steps to progress the application since 2019 and in any event, I will discharge the operative provisions of the original order pursuant to H's Thwaite application. There will therefore no longer be any provisions to enforce.

55. Turning to H's Thwaite application, I do not propose to traverse the Thwaite jurisdiction which has been set out comprehensively by leading counsel for H. Although doubt has been expressed by Mostyn J as to the existence of the Thwaite

jurisdiction in **SR v HR [2018] EWHC 606 (Fam)**, I have not heard argument on the point and am inclined to accept, for the purposes of this case, that the jurisdiction does indeed exist, although it should be used sparingly. The essence of the jurisdiction is that the court may adjust an executory order (i.e before it has been complied with) if it would be inequitable not to do so, most commonly where there has been a significant and necessarily relevant change of circumstances since the order was made.

56. I have read H's evidence and that of various supporting witnesses. I have not heard oral evidence. Given that W did not attend, I did not consider there was any need to do so. Given W's non-participation, it seems to me to be reasonable to take the evidence at face value; there are no compelling reasons not to do so.

57. In my judgment, H's application should be granted and the relevant paragraphs of the 20 July 2016 relating to the property and the Continental properties should be discharged. In reaching these conclusions, I have an oversight of the entire course of the case, including events since Moor J's last substantive involvement in 2019. My reasons for so concluding are:

    i) I am satisfied that it was a fundamental condition of the order dated 20 July 2016 that W and the children would live in England until December 2024. I do not repeat Moor J's dicta to this effect set out above which are clear on the point. Moor J clearly anticipated that an application of this sort would be made to the court if W reneged on her commitment.

    ii) H's first attempt to set aside/vary the order in 2019 failed because Moor J accepted that W intended to return to England. In fact, she has not done so, and nor have the children. They have not been here since 2018. W is permanently settled in Armenia, with new citizenship there, a job and a husband. The children are based in Moscow with H. Contrary to W's case to Moor J in 2019, and as is now clear on information which has come to light since then (incorporated in the written statements before me of H and four additional witnesses):

        a) W had been in the UK on an Entrepreneur Visa which she allowed to lapse on 4 July 2018.

        b) W made no meaningful attempts to secure appropriate visas to return. Although she applied for a tourist visa, she withdrew that application on 21 September 2018.

    iii) It seems to me that Moor J was prima facie misled in 2019. Even if he was not, there has been a material change of circumstances since the 2016 and 2019 orders in that W and the children have not in fact continued to live in England save for the period from 2016 to 2018. That undermines the essential basis upon which the order was made, as recorded in the recitals and referred to in Moor J's judgment.

    iv) W has not engaged with H's application since July 2022. H's own statement in support of the Thwaite application dated 25 August 2020 was filed on 23 February 2021. Four witness statements from additional supporting witnesses were filed pursuant to my order of 20 November 2023. W has had ample time

to respond with her own witness statement and has not done so. As already noted, she did not comply with my order requiring her to do so by 12 February 2024. I further ordered her to produce specified disclosure on this issue by the same date, which she did not do. In short, she has had ample opportunity to rebut H's prima facie evidence, but has not done so.

v) Ultimately, Moor J had determined that W's substantive claims (brought, it must be recalled, under the MFPA 1984) were to be determined by needs. Those needs depended on W and the children remaining in the UK until December 2024 by when the youngest child would be 18. In fact, within two years, W and the children had left England, and the children took up residence with H while W set up a new life with a new husband in Armenia. In those circumstances, in my judgment, the landscape on the ground was very different from that which was envisaged at the time of the order made on 20 July 2016. The facts of this case are exceptional, and justify the order being reframed.

58. W's application for a declaration that H is the beneficial owner of the property has automatically been struck out since 12 February 2024. H and Ravendark, however, go further. They invite me to make a declaration that Ravendark is the sole legal and beneficial owner of the Surrey property, as advertised in applications made on 30 and 31 May 2022. I decline to do so:

i) Although I am striking out W's application, made as part of an enforcement application, for a declaration that H is the beneficial owner of the property, I do so because of W's failure to prosecute her claim and comply with court orders, and the unfairness to the respondents of allowing the application to proceed.

ii) I am not making an adjudication on the merits as to the beneficial ownership of the property, which would require careful analysis of evidence and law. To make the declaration sought would be inappropriate. The Court of Appeal have indicated that there would have been at the very least an arguable case to the contrary. For me to make such an order might be thought by others, in a different context, to be an established finding of ownership which it is not. H and Ravendark can no doubt point to the settled jurisprudence (which I accept) that as a starting point equity follows the law, and accordingly the beneficial interest follows the legal title, but it is not necessary or appropriate for me to so record in an order.

iii) Ravendark say that they seek the declaration to assist in selling the property. That is not a matter for me. I am only determining an issue between W and H, and I have determined it by striking out W's application for a declaration that H is the beneficial owner.

iv) Further, it seems to me that as W's enforcement claim against the property has been struck out, and the provisions relating to the property in the order of 20 July 2016 are being discharged by me pursuant to the Thwaite application, there is nothing left by way of dispute between W and H in respect of the property which justifies adjudication.

59. W's application dated 8 January 2021 for a strike out of H's Thwaite application dated 25 August 2020 shall itself be struck out.

60. A freezing order contained at para 19 of Moor J's order dated 19 August 2019 shall be discharged. It was there to protect W's claims in respect of the property which are now extinguished.

Costs

61. There remains the question of costs. The respondents agree that in respect of costs between each of them and W, there is no starting point either that costs follow the event or that there should be no order as to costs. A clean sheet of paper applies. None of the respondents seeks costs orders against the other.

62. H seeks costs from 13 September 2022 onwards, when his new solicitors were instructed. In that time W has not engaged at all and has not complied with court orders. She is the applicant, yet has not pursued her applications against H. It seems to me, notwithstanding the criticisms of H made in the past, and the Court of Appeal's comments on the potential merit of the constructive trust claim, that H is entitled to his costs from 13 September 2022 on the indemnity basis. W's approach to the litigation in that period (or, rather, non-approach) is of such a degree of unreasonableness as to warrant the higher basis of assessment. His costs are £167,878 which I will summarily assess at £150,000 (just under 90%).

63. Olpon was joined to the proceedings in November 2021 as a result of W's application for an assignment of the loan. Since that date W has not engaged at all, other than a brief period in mid-2022. Olpon had no alternative but to participate. I consider that W should pay Olpon's costs on the indemnity basis; again, it is W's non-participation in the proceedings which justifies the higher basis of assessment. The sum sought is £147,255 which I will assess summarily at £130,000 (just under 90%).

64. Ravendark seeks an order for costs from 20 December 2016, to be subject to detailed assessment. It is submitted that W pursued a resulting trust enforcement application which ultimately was set aside in the Court of Appeal, and her constructive trust application has now fallen away. Further, W has not engaged at all since the Court of Appeal proceedings save for the brief period in mid-2022. Against that, I cannot ignore the findings made by Moor J about the failure of H to give evidence on the beneficial interest point at the July 2019 hearing, nor the judge's criticism of Mr Kalantryskiy who claimed he was the ultimate beneficial owner, and whose evidence was not accepted by the judge. Nor can I ignore the Court of Appeal's comments on the potential of a constructive trust claim. In short, it seems to me that far greater criticisms can legitimately be laid at W's door in respect of her conduct of the litigation since the Court of Appeal decision, than in respect of the period prior thereto. I shall order that W pays 50% of Ravendark's costs, to be subject to detailed assessment on the standard basis. I will not make an order for an interim payment on account.

65. Save (i) as provided for in this judgment and (ii) as may have been ordered at earlier hearings, there shall be no order for costs (including costs reserved) in respect of all the litigation from 2013 onwards.

Other

66. The Court of Appeal heard the case in open court and, in the usual way, published an unanonymised judgment. Given that the facts and matters referred to in this judgment are largely in the public domain anyway, it seems to me, applying the **Re S** balancing exercise, there should be no anonymity in this judgment.