4PB, 6th Floor,
St Martin's Court,
10 Paternoster Row,
London, EC4M 7HP
T: 0207 427 5200
E: clerks@4pb.com
W: 4pb.com

AAZ v BBZ & Ors

[2016] EWHC 3234 (Fam)

15/12/2016

Barristers
Henry Clayton

Court
Family Division

Practice Areas
Financial Remedies
Substantive judgment of Mr Justice Haddon-Cave in financial remedy proceedings awarding over £453m to a wife, including an art collection worth £90m. It addresses issues of pre-marital accrual, special contribution, computation, service out of the jurisdiction and enforcement under the Lugano Convention 2007.

Introduction
H was born in the Caucasus and was 61. W grew up in Russia and was 44. They met in 1989 when W was a student. They married in 1993 and moved to London, then Surrey in 1996. H had a child from a previous marriage, for whom W helped to care. They also had two children themselves.

H worked in oil and gas. He had shares in a Russian company which he sold in November 2012 for $1.375 billion. W was a 'hands-on' mother throughout the marriage.

There was a dispute between the parties as to the date of separation. W said the marriage broke down in October 2013 when she issued her divorce petition and only ended after a failed reconciliation in late 2014. H said the marriage ended in 1999 or, latest, 2004. On the facts – in the absence of any documentary evidence to support H's case and in the face of considerable evidence to the contrary – the judge found in favour of W [§38 to 50]. This was, therefore, a long marriage of over 20 years.

Proceedings
W issued her divorce petition in October 2013. H sought to stay this in favour of a Moscow petition. He submitted to this jurisdiction in June 2015.

There were two other respondents to the proceedings:

(i) C Ltd, a Cypriot company for which H was the sole director. C Ltd was the trustee of a 'discretionary' trust in Bermuda ('the trust');

(ii) P Ltd, a Panamanian company which H said was within the trust. P Ltd was said by H to hold the bulk

of the wealth.

H was represented by solicitors and leading counsel until they came off record on 15 November 2016, with the trial listed on 28 November 2016. H never attended a hearing in person, in breach of several orders. He did not attend the trial and was not represented. The same went for the other respondents (they never acknowledged the proceedings). H was in breach of other disclosure orders of Holman J and Moor J [§8].

W's case was that all the assets, which totalled over £1 billion net, were matrimonial in character and should be subject to the sharing principle [§17]. Given the absence of H at trial, W's counsel and the court had to identify the points which might have been made on behalf of H at trial [§18 to 19]. The judge dealt with these each in turn.

Before doing so the judge directed himself as to the relevant law. There was nothing new in this summary for practitioners, but it provided a helpful summary of the applicable principles:

(i) The court's discretionary powers under the MCA 1973 [§21 to 24];

(ii) General principles of computation: Charman v Charman [2006] 1 WLR 1053, Whaley v Whaley [2011] EWCA Civ 617 [§25 to 26];

(iii) General principles of distribution: White v White [2000] 2 FLR 981, Miller;McFarlane [2006] 2 WLR. 1283 etc. [§27 to 29];

(iv) Special contribution arguments [§30 to 32]. Practitioners will note that this judgment pre-dates the Court of Appeal decision in Gray v Work [2017] EWCA Civ. 270 and so is of little practical use in this regard;

(v) 'Needs' as a flexible concept [§33]; and

(vi) Drawing appropriate inferences from silence: Prest v Petrodel Resources Ltd [2013] 2 FLR 732 at para.45 [§35].

Conclusion on the issues
The judge identified the list of issues at [§20]. He drew the following conclusions.

Reasons to depart from equality?
(1) H's bare assertion that he was wealthy before the marriage in 1993 was not supported by any documentary or independent evidence. Further he had not even provided a schedule of his asserted pre-marital assets. To the extent that he had purchased the first matrimonial home for £700,000 in 1993, the matrimonial home occupied a unique position in a long marriage. [§36 to 37]

(2) As above, the judge found that the parties separated in late 2014 after a long marriage of over 20 years. [§38 to 50]

(3) H's special contribution argument failed. Apart from explaining the difficulties of doing business in Russia, there were no suggestions of stellar contribution. The judge was uncertain whether H would have run these arguments at trial. [§51 to 56]

Computation
(4) There was clear evidence from W of the value of assets and there were no problems with liquidity: the

assets were cash, or easy to convert into cash [§58 to 61].

(5) The complexity came in H's assertion that the wealth was held in the discretionary trust structure, including P Ltd (which held a yacht, plane, helicopter, the £90m art collection and cash) [§63]. The judge made these findings, in line with W's argument in response.

(a) Whatever, the corporate organisation of the 'trust' assets, they were 'resources' readily available to H to meet any award.

(i) The assets had been purchased in H's name. He had then assigned his interest in them to 3 separate offshore companies. In March 2015, 4 days before he signed a witness statement in proceedings, he assigned his entire interest in those offshore companies to the trust. [§66 to 69]

(ii) H had settled the trust in October 2013. The trust deed named H as the settlor, principal beneficiary and protector. Further, the trustee was C Ltd, of which H was the sole director. The trustees had absolute discretion to pay out to the principal beneficiary (i.e. H). This was a "dear me" trust for H for his lifetime [§70 to 72]

(iii) H had free and unrestricted access to the trust funds. Indeed, H had made no secret of that.

(b) P Ltd was H's nominee and held all of its assets absolutely for H on a 'bare' trust [§77 to 84]. The judgment has a helpful summary of the law on 'bare trusts' [§85 to 91]. Applying the law to the facts:

(i) H personally received the $1.375 billion for his Russian company shares in November 2012. He somehow transferred the money into P Ltd but received no consideration. There was no evidence as to how this happened. The presumption of resulting trust applied and it was for H to rebut.

(ii) P Ltd funded H's lifestyle like an open cheque book.

(iii) There was no evidence that P Ltd existed within the Trust structure as asserted by H. It was not even 1 of the 3 offshore companies assigned to the trust in March 2015.

(c) The March 2015 transfers by way of the Deed of Trust should be set aside pursuant to s. 37 MCA 1973 [§96 to 99] or s.423 of the Insolvency Act 1986. [§100 to 105]. It was a transparent attempt to put the assets out of (legal) reach of the proceedings. It was also a transfer at an undervalue, being for nil consideration.

Distribution
(6) The entire wealth was matrimonial in character, built-up over a long marriage. The parties' contributions were equal. There was no reason to depart from equal division. W was not bound by an earlier offer of £350m (33% of the assets). The judge granted her open offer at trial: £350m, plus £2.5m chattels, a car and the Modern Art Collection. [§106 to 111]

Ancillary issues
(7) Service. The judge needed to be satisfied the respondents had been properly served. They had. First, H had been represented by solicitors and leading counsel up to the pre-trial review. W's case was served on H before his solicitors came off record [§112 to 115]. Second, P Ltd and C Ltd had been served and had actual/constructive notice of all orders, documents and proceedings served on H [§116 to 118]. Third, the judge addressed the rules on service out of the jurisdiction and declared the steps taken to bring the proceedings to the companies' attention constituted good service by an alternative method. [§119 to 127]

(8) W wanted to ensure that any order was enforceable against P Ltd in Switzerland under the Lugano Convention 2007. That Convention was, though, only concerned with “maintenance” and not the “property consequences” of divorce [§129 to 130]. Therefore, the judge undertook the exercise of separating out from the award those elements comprising ‘maintenance’. That figure was calculated at £224.5m [§131 to 133].

After the trial
After the trial, H’s long-standing solicitor, S, was called to give evidence by witness summons. There was a short separate decision as to whether legal professional privilege attached to some of the issues about which S was questioned. That is reported as AAZ –v- BBZ and others [2016] EWHC 3349 (Fam) and summarised separately.

S gave evidence that shortly before the trial H had moved the modern art collection and $600m out of P Ltd and into a new company and trust structure. Therefore, the judge gave another short judgment, in which he found that the new entities holding those assets were no more than ciphers and the alter ego of H. He found those assets to be vested in H. He ordered that those transactions be set aside. The judgment is reported as AAZ –v- BBZ and others [2016] EWHC 3361 (Fam).

Permission