Austin Kemp

# 2024 High Value Divorce Report

A review of high value divorce cases in 2024..

# Introduction

Whilst there were no hugely significant developments in the area of high value divorce in 2023, there was no shortage of interesting and instructive cases. Here we give five examples, typical of the sort of issues faced by family court judges during the year.

# Departure from a prenup

## HD v WB

**As is now well known, whilst the court in this country is not bound by the terms of a pre-nuptial agreement, it should give effect to an agreement that is freely entered into by each party with a full appreciation of its implications, unless in the circumstances prevailing it would not be fair to hold the parties to the agreement (see Radmacher v Granatino).**

The case HD v WB, decided by Mr Justice Peel, was a classic example of that latter point: the court finding that it would not be fair to the husband to give effect to an agreement, as it did not meet the husband's needs.

*As we will see, however, the agreement did still have a bearing upon the outcome of the case.*

The case concerned the final hearing of a financial remedies application where the realisable assets, which were almost entirely in the wife's name, exceeded £43 million.

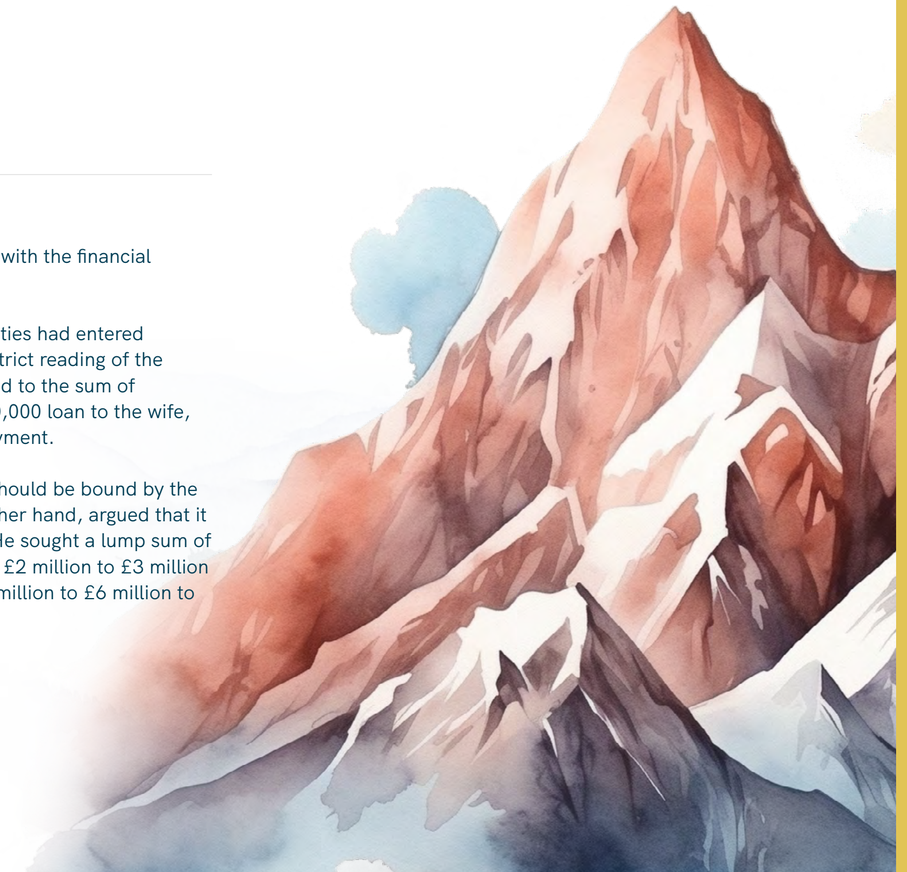
The parties originally lived together for three years in the 1990s, before their relationship broke down. In 2001/2002 the relationship was rekindled, and they began living together again. In 2003 the wife accepted the husband's marriage proposal, although the wedding did not take place until 2014.

The parties separated in December 2020, so that the period of continuous cohabitation and marriage was some 18 or 19 years, with a further 3 years living together between 1996 and 1999. The husband left the family home and moved into rented accommodation.

Divorce proceedings ensued, along with the financial remedies application.

On the date of the marriage the parties had entered into a prenuptial agreement. On a strict reading of the agreement, the husband was entitled to the sum of £112,000, the repayment of a £250,000 loan to the wife, and a further modest lump sum payment.

The wife argued that the husband should be bound by the agreement. The husband, on the other hand, argued that it should effectively be disregarded. He sought a lump sum of £8 million, arguing that he required £2 million to £3 million to meet his housing needs, and £5 million to £6 million to meet his income needs.



Mr Justice Peel found that the agreement should not be given full effect, for two reasons. Firstly, circumstances had changed, in that the wife had received £55 million gross from the sale of a family business a matter of 2 years after the marriage. Secondly, and most significantly, the agreement did not address the husband's needs fairly.

On the sums he would receive under the agreement he could not reasonably be expected to meet his housing needs, or income needs, in a way which bore at least some relation to the marital lifestyle enjoyed over some 20 years.

Accordingly, Mr Justice Peel awarded the husband a total of about £1.9 million, plus £2.5 million to purchase a property that he could occupy for life, whereupon it would revert to the wife.

This may not appear particularly generous, given the wife's wealth. However, as Mr Justice Peel pointed out, if the parties had not entered into the agreement then the husband may have been awarded significantly more. His decision, he said, reflected a proper recognition of the limiting consequences of the agreement.

# Special contribution and post-separation endeavour

## DR v UG

**It is obviously often the case in high value divorces that one party was primarily responsible for amassing most of the family's fortune. And it is inevitable that that party will often seek to argue that they should retain the lion's share of that fortune.**

In the case DR v UG we saw two quite common arguments raised by the husband as to why he should retain the majority of the fortune he had amassed: special contribution and post-separation endeavour.

The judgment concerned the final hearing of the wife's financial remedies application. The assets over which the parties were arguing amounted to some £284 million, almost all of which were amassed by the husband, as a result of his business endeavours.

The wife sought an equal division of the assets. The husband, on the other hand, proposed that the wife should only receive 30% of the assets, in view of his special contribution, and the fact that a significant proportion of the assets was accrued by him after the parties separated, which meant that they were not 'matrimonial assets', and therefore should not be shared.

*Hearing the case, Mr Justice Moor rejected both arguments.*

As to special contribution, this argument can only succeed if (amongst other things) the contribution is of a wholly exceptional nature such that it would very obviously be unfair to ignore it.

Here, Mr Justice Moor did not consider that the husband's contribution was so exceptional as to entitle the husband to a greater share – he was undoubtedly a very good businessman, but his success in business did not take the case into the realms of special contribution.

As to post-separation endeavour, the husband pointed out that at the time the parties separated in 2019 his interest in his business was worth only £33 million, whereas when it was sold in 2022, it was worth over £250 million. He claimed that this increase was down to his creating an entirely new venture following the breakdown of the marriage.

Mr Justice Moor did not accept this argument, finding that there had actually been no new venture. The business that was sold in 2022 was the same business that had been created during the marriage.

Accordingly, there was no reason to depart from an equal sharing of the assets.

# Conduct and litigation misconduct

## Tsvetkov v Khayrova

**Another quite common argument raised by a party in support of a claim for a greater share of the assets is conduct, i.e. that the misconduct of the other party is such that they should be penalised by receiving a smaller share.**

The conduct argument usually takes one of two forms: conduct outside of the court proceedings, and bad conduct in the course of the proceedings, known as 'litigation misconduct'.

In the case Dmitry Tsvetkov v Elsina Khayrova both types of conduct were alleged, albeit that any distinction between conduct outside of the court proceedings and litigation conduct was somewhat blurred.

The case concerned the final hearing of financial remedy proceedings, involving assets of about £48 million.

The husband made a number of conduct allegations against the wife, including that she was in possession of items of jewellery that she had failed to mention in her financial statement to the court. The items, including a number of investment grade diamonds, and a Patek Philippe watch, were worth some £7 million. They had been held in a Harrods Safety Deposit Box, to which the husband held the keys. On the 21st of October 2020, unbeknown to the husband, the wife persuaded Harrods that the keys had been lost, obtained a set of keys for herself, and removed the items.

*Some of the items were subsequently recovered, but others were not.*

The case was again heard by Mr Justice Peel. As he explained, for conduct to be taken into account it must be such that it would in the opinion of the court be inequitable to disregard it.

He found that the wife did hold assets which she had failed to disclose. However, rather than reflecting this conduct by awarding the wife less than half of the assets, he simply added back the value of the assets on the wife's side. Thus, the wife's 50% share of the assets included the value of the undisclosed items.

But that was not the end of the matter for the wife. Mr Justice Peel also found that the wife had been guilty of litigation misconduct "of the utmost gravity", including repeated lies to the court. In the circumstances he ordered that she should pay 50% of the husband's costs, in the sum of £748,632.

# Wife's claim failed despite husband being found to be an "inveterate liar"

**One might imagine that a judicial finding that a party was an "inveterate liar" might make it inevitable that the judge would believe the other party in any dispute over facts.**

But the case Baker v Baker demonstrated that that is not necessarily so.

The judgment concerned the final hearing of the wife's financial remedies claim, in which the main issue was whether the husband should be held to the terms of a separation agreement that the parties had entered into in New York in 2015.

The wife calculated that she was entitled to the sum of £9.34 million under the terms of the separation agreement. The husband's stance was that the parties' mutual claims should all be dismissed.

The judgment was the last handed down by Mr Justice Mostyn, who sadly had to take early retirement due to ill health. He found that the husband's net assets were some £5.6 million, and the wife's net assets were about £5.8 million.

*This would obviously mean that if the wife were to receive £9.34 million that would leave the husband insolvent to the tune of £3.8 million.*

However, the wife claimed that the husband had secreted away assets of £27.4 million. The total assets were therefore £39 million, and the award of £9.34 million to the wife would leave her with £15.2 million, or 39% of the total, which the wife's counsel argued would be a fair result.

Mr Justice Mostyn found the husband's evidence to be appalling. He said that the husband was an inveterate liar, who had lied systematically to the court.

However, he said, he had to examine the actual evidence and, in order to avoid the formation of bias, put his irritation, indeed affront, at the shocking, grossly offensive way in which the husband gave his evidence to one side.

And on assessing the evidence, he was not satisfied that the husband had got hidden funds.

Accordingly, the wife's claim failed.

Mr Justice Mostyn did, however, find that the terms of the separation agreement required the husband to pay the sum of £1.4 million to the wife, which left her with 65% of the assets.

In addition, Mr Justice Mostyn ordered the husband to pay £200,000 towards the wife's costs, in part to reflect the court's condemnation of the husband's conduct during the proceedings.

# The relevance of non-matrimonial assets

## HO v TL

**We saw reference to the term 'matrimonial assets' in relation to the case DR v UG, above.**

The relevance of the term is that in most financial remedy cases the only assets to be divided between the parties are those that can be described as 'matrimonial', i.e. those assets that were acquired during the marriage, through the joint efforts of the parties to the marriage. Thus assets owned prior to the marriage, assets acquired after the parties separate and assets not acquired through the joint efforts of the parties, such as inheritances and gifts, are not 'matrimonial' and will not therefore be shared between the parties on divorce (save if they are required to meets the needs of the parties).

And we saw this demonstrated clearly in the case HO v TL, decided by Mr Justice Peel in December.

The case concerned the division of assets worth a total of £22,466,765. The wife sought an award of £10.9 million, and the husband proposed that the wife receive £5.9 million.

Mr Justice Peel found that over £10 million of the assets were non-matrimonial on the husband's side, comprising (amongst other things) the husband's pre-marital wealth and an inheritance that he received from his mother.

In the light of this and his other findings Mr Justice Peel awarded the wife £7.75 million, which was about 50% of the matrimonial assets, and amounted to about 34.5% of the total assets.

# Conclusion

**These five cases contain two common threads, which between them cover the vast majority of high net worth cases going before the Family Court.**

The first is the increasing importance of prenuptial agreements, and the corresponding attempts by parties to depart from their terms, continuing the trend begun in 2010 by the landmark decision of the Supreme Court in Radmacher v Granatino.

The other thread is of course the continuing struggle to persuade the court that it should depart from equal sharing of the assets, via arguments such as special contribution, post-separation endeavour and conduct. No doubt we will see more of the same in 2024.

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