IN THE HIGH COURT OF SOUTH AFRICA

(TRANSVAAL PROVINCIAL DIVISION)

CASE NO.: 14786/2001
Date: 7/1/2005

not reportable

In the matter between:

DAVISON, BARRY ERSKINE **PLAINTIFF**

and

DAVISON, SALLY DOROTHY (Born MACKAY) **DEFENDANT**

JUDGMENT

BOTHA, J:

This is the second round of a divorce action. An order of divorce was granted on 16 November 2001. In terms of Rule 33(4) the other issues were separated and postponed *sine die.* They are the issues of maintenance for the defendant and the issue of whether the plaintiff should be ordered

to make a transfer of assets to the defendant in terms of section 7(3) of the Divorce Act, 1970 (Act 70 of 1979).

The parties were married out of community of property on 7 February 1970. In terms of their ante nuptial contract community of property and the sharing of profit and loss were excluded.

In his particulars of claim the plaintiff tendered an amount of R7 million to the defendant in settlement of her claim for maintenance and any claim she may have in terms of section 7(3) of Act 70 of 1979.

It is common cause that that amount has been paid to the defendant.

The parties agreed that the defendant could accept the amount of R7 million without prejudicing her counterclaim.

The defendant accepted the duty to begin at the commencement of the trial.

The defendant, after some amendments, claims maintenance in an amount of R70 685-10 per month.

In addition she asks that the plaintiff remains liable for her medical expenses. She also, in terms of section 7(3) of Act 70 of 1979, asks that the plaintiff transfer to her 50% of his net assets, which assets should include the assets of the Barry Davison Family Trust. It was common cause

during the trial that the assets of the family trust should be considered as assets of the plaintiff for the purposes of an order in terms of section 7(3) of Act 70 of 1979. In the alternative she claims a transfer of such percentage of the plaintiff's assets as the court may consider to be just. Furthermore, in the alternative she claims payment of a capital amount which will yield to her R70 685-10 per month net after tax.

The defendant relied on the following circumstances for the claims for maintenance and a transfer of assets: the age of the parties, their standard of living during the marriage, their existing and prospective needs, their respective earning capacities and the reasons for the breakdown of the marriage. The most serious misconduct alleged on the part of the plaintiff is two extra marital relationships, psychological abuse and emotional neglect and the fact that the plaintiff led his own life without regard to the defendant and the two children. During the trial an amendment was effected introducing a reliance on the following factors as a justification for the transfer of assets: the age of the parties, the standard of living enjoyed by them during the marriage, their existing and prospective means and needs, their respective earning capacities and the reasons that gave rise to the breakdown of the marriage.

The trial commenced on 13 October 2003. On 17 October 2003, at the conclusion of the defendant's evidence, it was postponed to 19 April 2004. During March 2004 there appeared an article in a publication called Noseweek. It referred to the case. That prompted the plaintiff to amend the particulars of his claim by the inclusion of a prayer that the defendant be committed for contempt of court and that her conduct relating the publication of the article be taken into

consideration for the purposes of section 7(2) and 7(3) of the Divorce Act, 1979 (Act 70 of 1979).

The plaintiff was born on 13 June 1945. The defendant was born on 6 August 1944. The defendant matriculated in 1961. After a one year secretarial course she started working as a secretary. In 1967, whilst she was working in London, she met the plaintiff. They became engaged on 5 August 1969 and they were married on 7 February 1970.

At the time of their marriage they each had an old car. They lived in a flat in Sandton. Both were working, she as a secretary and the plaintiff as an investment analyst with Johannesburg Consolidated Investments (JCI). In March 1979 they moved to the Cape, where the plaintiff started a business. In the mean time the plaintiff had stopped working as a result of expecting their first child, Robert. Robert was born on 7 July 1971. The plaintiff's business venture in Cape Town was a failure and in 1973 he was back in Johannesburg with JCI as the personal assistant to the manager. They lived frugally in a duplex flat in Sandown, the plaintiff paying off the debts of his failed business. On 4 June 1974 their daughter Lisa was born. At the end of 1974 they moved to a house the plaintiff had bought in Parkmore. They were to live there for 12 years. In 1978 the plaintiff was appointed a manager of JCI. The defendant worked for about 7 years during the 1970's.

In 1986 the plaintiff became a director of JCI. In 1988 he became managing director of Rustenburg Platinum Mines (Rustenburg Plats), the platinum division of JCI. With the takeover of the platinum interest of JCI by Anglo American he became managing director of Anglo

American Platinum Corporation (Amplats). Eventually he became a director of the Anglo American Corporation and of Nedcor.

It is obvious that the rise of the plaintiff in the business world had very much to do with the boom in the platinum mining industry. In the end, through his rising income, directorships and the exercise of share options, he became a very wealthy man, so that at the moment his estate is valued over R65 million.

In 1986 the parties moved to a house on Atholl. The defendant still lives there and the property is registered in her name.

In July 1994 the plaintiff moved out of the common home. Although he never moved back there were attempts at reconciliation and the parties did intermittently spend time together at functions and on holidays. Amongst others, during that period, the defendant spent some time with the plaintiff in the Cape where she decorated his house in the Steenberg Estate.

In her evidence the defendant's main complaints against the plaintiff's conduct during the marriage were directed at the following:

(a) that he made her feel inferior

(b) his affairs with Avril Bailey and Manda Scheepers

(c) that he neglected the children

(d) that he afforded himself luxuries like expensive clothes, sport equipment and sporting excursions whilst keeping her on a tight budget.

In motivating her claim to have contributed to the growth of the plaintiff's estate the defendant referred to the following:

(a) the supportive role she played by running the household and her involvement in his career

(b) the fact that she spent whatever she earned in the household

(c) the extent to which she played the role of hostess to the plaintiff's business associates

(d) the fact that she spent money obtained by a power of attorney given by her mother on household expenses.

The particulars of defendant's expenses are contained in annexure SDD1.

Annexure SDD1 comprises 45 items. I shall confine myself to those items that remained in dispute at the end of the case.

Item 8, R 600,00 per month, is for medical aid for the gardener and the female domestic worker. When the defendant gave her evidence, the domestic worker, mrs Lena Ramafoka, was still alive. The defendant testified that mrs Ramafoka had gout and that she suffered from a heart condition. Mrs Ramafoka was taken to the family doctor. Her medical costs amounted to R 216, 98 per month. She considered mrs Ramafoka as a member of the family and found it intolerable that she should stand in queues at public health facilities.

Item 10.1, R 36, 16 per month, is for the AA subscription.

Item 10.5, R 750, 00, is for petrol. The amount was required for three tanks of petrol per month. The defendant used a Petrocard.

Items 10.6, 10.7, 10.8 and 10.9 relate to defendant=s old BMW, which she wishes to keep as a second car. The items cover insurance, the licence, maintenance and tyre replacement. They add up to R 690, 00 per month. According to the defendant she needs the car for refuse removal and as a stand by when her first car is being serviced.

Item 15, R 2001, 00, is for full cover in terms of the Discovery Health Plan. What was in issue was whether the defendant should be enabled to upgrade her insurance to provide for full cover for chronic medication. The defendant testified that she was on two chronic drugs.

Item 16, R 500, 00, is for medical and dental expenses not covered by Discovery Health. It included non prescription items bought over the counter and also expenses relating to Lisa.

Item 21, under the heading holidays, comprises three components : an overseas trip every two years, a three week annual holiday in the Cape, and two weekends away per year. The total claim amounts to R 12 733, 53 per month. The evidence of the defendant was that during the marriage she accompanied the plaintiff on visits to England; that they flew first class; that they stayed in five star hotels; that the family had a holiday home in Plettenberg Bay which they visited every year for a long holiday; that she later accompanied the plaintiff to his home in the Steenberg Estate and that she also accompanied him on short excursions over weekends. She

considered these trips as part of her lifestyle and wanted to be able to continue them in equal style.

Item 22, R 6 500, 00, is in respect of food and what can be termed groceries. She testified that this amount was established by adding together her household expenses over a period of months and dividing the total by the number of months. The individual amounts were garnered from her documentation.

Item 23, R 500, 00, is in respect of liquor. It was stated in annexure SDD1 to be an estimate, but defendant testified that it was determined in the same way as the amount claimed in respect of item 22.

Item 24, R 4 699, 00, is in respect of clothing. She referred to statements of Stuttaford's and said that at the moment she was not able to buy clothes from boutiques. She could not afford to buy shoes at specialist shops. She would like to be able to buy two suits and two jackets per season and three to four pairs of shoes per season.

Item 25, R 1 975, 00, is for cosmetics, including perfume, shampoos, hair treatment and bath oils. The defendant testified that she used Clinique products. She took the Clinique price list, exhibit B277, and added the amounts up. She then divided the total by three because the products normally last three months. Then she allowed for lipstick and eye colour refills. The rest of the amount is for body lotions, deodorants, and bath foam. According to her she was used to the use of these items.

Item 26, R 1 218, 00, is for hairdressing. The defendant testified that it represented her actual cost. She had added her expenses for a year and divided the total by twelve.

Item 27, R 855, 00, is for personal grooming, including beautician, manicure, pedicure, massage and waxing. She referred to documents setting out the prices of the various items, exhibit B281-283. She confirmed that she had been accustomed to such treatment during the course of the marriage. The amount of R 855, 00 was determined by adding the expenses over a period and dividing the total by the number of months.

Item 28, R 4 420, 25, is for entertainment. The defendant testified that this item includes going to the cinema once a week, going to the theatre once a month, buying gifts, having luncheons at restaurants three to four times a month, having dinner at a restaurant occasionally, renting and buying videos and DVD=s, buying books and magazines, and going to a gym, including having a personal trainer. She also referred to French lessons. She mentioned that she would like to play golf, but that it was too expensive. The amount of R 4 420, 25 was determined by adding the amounts on her chits and dividing the total by the number of months.

Item 29, R 1 276, 00, is for golf, including membership fees, green fees, caddy fees, golf balls and the replacement of golf equipment.

The defendant testified that she wanted to play golf twice a week. Green fees and caddy fees amounted to R 200, 00 a round. She also needed R 100, 00 per month for the replacement of her woods.

Item 30, R 350, 00, is for the replacement of sporting equipment.

Defendant testified that this amount was needed for golf balls, new tennis rackets, the replacement of sport shoes, gym shoes and tennis shoes, and the upgrading of her golf clubs.

Item 31, R 1 666, 66, is for garden maintenance, including compost.

When the defendant testified, the amount of the claim appeared to have been R 1 500, 00. She testified that she had taken the amounts paid by her twice a year for spring planting and summer planting, added them up, and divided the total by twelve. She also mentioned that she had procured the services of Greengro Garden Services to spray her roses. Later on she also said that her claim, under this head, also included fertilizer, the cutting of trees, cutting back, compost etc.

Item 32, R 450, 00, is for the replacement of garden equipment.

When defendant gave evidence, the amount of the claim was R 2 000, 00. She testified that it should have been R 200, 00. She mentioned the replacement of the lawnmower and paying the refuse man who came every Monday.

Item 34, R 350, 00, is for veterinary services, dog food and dog grooming.

The defendant testified that this claim was based on the estimated cost, as supplied by her vet, of keeping five pets, two dogs and three cats, at a cost of R 500, 00 per pet per annum.

Item 35, R 512, 50, is for swimming pool maintenance and repairs. Defendant testified that she did not have a pool service, but that she would like to have one.

Item 36, R 1 500, 00, is for the replacement of household items. In argument the defendant accepted the amount of R 1 334, 81 accepted by the plaintiff in exhibit G10 and in cross-examination.

Item 37, R 1 985, 00, relates to home maintenance and repairs.

According to defendant the item is for repairs by electricians, plumbers and handymen. The amount was calculated by dividing the total amount of expenditure by the number of months.

She added that the property needed repairs. There are cracks in the walls and the roof is leaking.

Item 38, R 144, 00, is for the cleaning of carpets and furniture twice a year.

It was put to defendant in cross-examination that this item had been admitted and she confirmed it. It is stated in annexure SDD1 that the amount is based on two cleanings of R 850, 00 each.

Item 39, R 520, 00, is for flowers at home.

Defendant testified that she buys flowers once a week at R 130, 00 to R 150, 00 a time. She used to do it during the marriage.

Item 41, R 250, 00, relates to the dry cleaning of curtains once per year.

The defendant testified that she had calculated the amount by adding her bills and dividing the total by twelve.

Item 42, R 75, 00, relates to dry cleaning of clothing.

Once again defendant testified that this amount had been determined by adding up expenses over a period and dividing the total by the number of months involved.

Item 43, R 300, 00, relates to parking and tips.

Defendant testified that this was for a R 2, 00 tip given to parking attendants and for parking at parking garages where an hourly rate of R 2, 00 was charged.

Item 44, R 250, 00, is the estimated cost of replacing towels, linen and crockery.

Defendant testified that she had in the past bought a dinner service and that she had looked at the prices of towels and sheets. She would like to replace her linen, which she had not done for 15 years, but it was not essential.

In cross-examination she acknowledged that the achievements of the plaintiff in his career were extra-ordinary and that they were the results of hard work, charisma, leadership qualities and an

exceptional brain. She confirmed the outline of his career as set out in exhibit C 1. She agreed that the investment decisions regarding the plaintiff's own estate were made by himself.

She described the life style of the family as comfortable but not luxurious. The plaintiff afforded himself luxuries.

Her diaries for the years 1994, 1997 and 2002 were discussed with her. She agreed that they gave a typical picture of her life. They showed regular appointments for bridge, tennis, hairdressing and French lessons and very few relating to golf and even less to the theatre.

She agreed that the plaintiff, between 1984 to 1994, was absent an average of 60 days per year on trips that, on an average, took 5 to 7 days.

The instances of entertainment listed in her further particulars were debated with her and she agreed that some 40 occasions were of a social nature, and that of the instances listed after the plaintiff had left her, only two were related to business.

She agreed that the plaintiff increased her allowance to the same extent that he received increases. She only once complained about the inadequacy of her allowance. She did not discuss shortfalls because she did not want to elicit a confrontation. She had no recollection that the 2000 Amplats shares were given to her to provide her with a means of meeting shortfalls. She merely thought it was a gift. She used her mother's funds, to which she had access by virtue of a power

of attorney, to supplement deficits. She had her mother's blessing. She made no notes of such drawings.

She agreed that her claim for maintenance was important to her case. When asked why she only claimed R22 000 per month in her Rule 43 application, she pointed out that at that stage the plaintiff was still paying expenses like rates and taxes, the cell phone and insurance. It was pointed out that the same amount was claimed after the plaintiff had ceased to make those payments and that the claim was only increased on 10 October 2003. She could not explain that.

She invested the amount of R7 million with her portfolio managers with the instruction that they should pay her R30 000 per month and leave the capital intact. At the moment the capital was less than R 7 million.

The issue of the medical treatment of her domestic, Lena Ramafoka, was debated with her. According to her she had always been treated by the family doctor. It was only after the plaintiff had left that she developed a heart problem.

Mr Pat Retief gave evidence about the plaintiff's rise in JCI. He seemed to confirm the concessions made by the defendant relating to the plaintiff's qualities, although he steered away from the words "extraordinary" and "charisma".

According to him the qualities the plaintiff had were those required for the job. He confirmed that the defendant was a competent and supportive corporate wife. He could not remember embarrassing scenes caused by defendant reacting to the plaintiff's treatment of her.

He confirmed that plaintiff took a leading part in strategic discussions that afterwards proved to be very appropriate.

When referred to words attributed to him in the Noseweek article, he admitted the gist of what was printed but added that some journalistic licence was applied.

After mr Retief had given evidence mr Kuper SC, who, with ms Rosenberg SC, appeared for the plaintiff, raised an objection against certain evidence which the defendant intended to lead, as appeared from expert notices recently served. The basis of the objection was that the evidence went outside the pleadings. The objection was sustained. My reasons appear from a judgment given at the time.

Mrs Denovan is a beautician who owns the Salon Aesthete of which the defendant is a client. She confirmed her price list, exhibit B283. She testified that the defendant always paid with her credit card. She agreed that the credit card vouchers for January 2004 (R255 in total) and March 2004 (R323 in total) are a reliable sample of the defendant's expenses. See exhibit C6.

Mrs Susan Bands testified that she became friendly with the defendant not long before the plaintiff left the defendant. They became close friends. They moved in the same social circles, which she described as advantaged.

She was referred to the spectrum of beauty treatments to which the defendant had testified and considered all of it as necessary. She regarded the defendant's wardrobe as limited in a range and quality.

The defendant was always immaculately turned out. She lent the defendant outfits on occasions, amongst others when she was giving evidence. She attended a gymnasium at a cost of R100-00 per month. One must have a personal trainer for whom one must pay R170-00 per one hour session.

According to her the defendant was upset after the plaintiff had left her. She wanted to re-unite her family. She stayed with the defendant at Steenberg on one occasion. The defendant threw herself into the job of decorating the plaintiff's house, hoping that she would please him by doing it.

Ms Madelyne Coburn was called as an expert witness with regard to the cost of replacing a BMW motor vehicle. She confirmed her report with the exception of paragraph 7. According to the report the trade-in value of the defendant's BMW 318 i was R124 000. A new model would cost R228 000. That price would include a motor plan for 5 years or 100 000 kilometres. If the defendant traded her vehicle in on a new model the finance charges in respect of the balance

would amount to R2 800-00 per month. The time for a trade-in would be after 5 years or 100 000 kilometres. One could extend a motor plan to 7 years or 200 000 kilometres. The amount of R2 800-00 per month was calculated on the basis of a trade-in after five years.

Mr G S Teschkow testified that tyres for a BMW had to be replaced after 60 000 kilometres at a cost of R1 700-00 per tyre.

Mrs E Steyn is a landscape gardener. She confirmed paragraph 4 of her expert report in which she stated that the defendant's garden had to be maintained every six months at a cost of R10 000-00 per session. The monthly cost of removing refuse would be R450-00.

Her report was based on what she considered an appropriate standard for the area.

When it was put to her that Thorough Good Gardens would render the same service for R10 300-00 per year, she said that she had never heard of them. When it was put to her that R150-00 per month would be sufficient for refuse removal she pointed out that there was a huge dump of refuse next to the tennis court. She doubted whether R150-00 per month would be sufficient even if the backlog had been worked down.

Mr W I Boyle is a service executive at Discovery Health Service. He testified that the defendant's total contributions to her health insurance amounted to R1 244-00 per month. To upgrade her insurance would cost R472-00 per month.

She could also subscribe to the Health Protection Plan. The premiums for that would cost another R130-00 to R180-00 per month.

He also referred to schemes available for domestic staff, one at R295-00 per month and a Plus Plan at R425-00 per month.

He confirmed that the defendant, in her application form, indicated that she did not require any special dental treatment. For that type of treatment she had cover of R12 500-00 per year. In the form she also stated that she had no dental disorder like overbite.

The defendant's tax certificate for the 2003 – 2004 year showed that her contributions were R14 916-00 and that the benefits not covered amounted to R588-01.

On the defendant's claims history he could not say that the level of her cover was inappropriate.

He agreed that part of the benefit of the Health Protection Plan is cover for the eventuality of the member losing his earning capacity so as not being able to pay premiums.

He confirmed that the defendant's Vitality benefit of making use of a gymnasium was cancelled as a result of under-utilisation.

He was referred to the range of discounts available to members of the scheme according to their standing. Defendant was in the lowest category, called blue. She could fly tot Cape Town with

British Air for R1 075-00, stay in Southern Sun hotels for R364-00 per night, get advantageous car rental tariffs form Avis and even get discounts on the purchase of motor cars.

Mr B H H Bolton is an appraiser and valuator from Johannesburg who went to Cape Town to value the plaintiff's property in the Steenberg Estate. He could not gain entry to the house, but obtained information from Mr Marais, the local agent. In the end the value of the property was admitted to be R6 million and the court was asked to note that mr Marais was present at court to give evidence.

On 23 April 2004 the parties also agreed on a schedule of costs and values relating to various items that figure as expenses or projected expenses in the defendant's evidence. I do not intend to enumerate them. They will be referred to later, where necessary. The schedule was later numbered exhibit G25.

Mr Richard Willis, of Melville Douglas Investment (Pty) Ltd, a subsidiary of Standard Bank Ltd, gave evidence of the management of the defendant's portfolio and the fees charged for it. The fee has two components, a basic fee which is a percentage of the amount invested, and an incentive fee (also called participation fee), which amounts to a share in capital growth.

He referred to billing summaries which showed what fees were debited to defendant's account. Billings are done every six months. At the end of August 2002, when there was no growth, the total fee, inclusive of VAT, amounted to R17 915-36. At the end of February 2004, when capital growth amounted to R800 292-00, the capital fee was R46 502-80.

He confirmed that the opening balance of the portfolio was R7 781 374-00. It consisted of a single amount of R7 002 895-89 and the value of 1 700 shares in Amplats at a value of R759 560-07. The Amplats shares were sold in three batches.

He confirmed that the defendant drew R30 000-00 per month. There were additional drawings of an amount of R40 000-00 in January 2004 and a transfer of R8 000-00 to R J Davison on December 2003.

He confirmed regular drawings of R745 000-00 and special drawings of R83 500-00. R1 200 000-00 was paid out to defendant's attorneys. Total drawings, including management expenses and other expenses, amounted to R2 125 234-00.

The total appreciation of the portfolio was R1 589 666-00.

The present level of the investment was R7 166 029-00. It has shrunk by R535 568-00. He agreed that if R1 200 000-00 had not been used for legal expenses, an extra R26 000-00 per month could have been drawn.

Melville Douglas supplied the necessary information needed for the purposes of the capital gains tax.

He gave a breakdown of the defendant's income for the last three years, showing what portion represented tax free dividends and what portion interest.

Prof H Wainer confirmed his analysis of plaintiff's assets, in exhibit A pp 4 – 9.

He also confirmed his summary of plaintiff's income in exhibit C 9.

He compared the increases in plaintiff's income, with and without share options, with the increases of defendant's household allowances, and concluded that the latter did not rise commensurately with the former.

He conceded that most of his evidence was of a factual nature and that only the selection of the appropriate exchange rate and the valuation of fringe benefits required an expert opinion.

That concluded the evidence for the defendant.

The first witness for the plaintiff was ms Sue van Heerden, a travel agent in the employ of American Express. She confirmed the agreed rates set out in paragraph 1.4 of the schedule of agreed costs and values.

She testified about the availability of discounts and so-called specials in the tourist industry. She gave particulars of the Thistle Kensington in London and the Clarion St James in Paris, both four star hotels.

She confirmed that she had been handling the plaintiff's travelling, both business and private, for the last four to five years. If he travelled officially, he hired C or D category cars. If he travelled

privately, he hired category B vehicles, such as Corolla's and Polo's. For private travel he used economy class. His present wife uses economy class if he pays.

She conceded that four star hotels in the United Kingdom were not on a par with four star hotels in Europe. She seemed to agree that one could easily spend R2 000-00 per day in London.

She agreed that the high season coincides with better weather, but pointed out that the departure date was decisive of one's entitlement to lower tariffs.

She agreed that air fares were subject to increases twice a year, on an average amounting to between 6% and10% per year.

Mr Marthinus Botha from Telkom was subpoenaed to produce particulars of calls made between telephone numbers of the defendant and her attorney on the other hand and Noseweek on the other. The documents containing the particulars were later handed in as exhibit G4. A summary of the calls on which the plaintiff relied, in tabular form, was handed in as exhibit G3.

Ms Karen Sanderson, the deputy editor, Pictures, of the Star newspapers, testified about a wedding photograph of the plaintiff and defendant that appeared in the March 2004 edition of Noseweek, and which, according to the byline, had been obtained from the Star. She testified that she could find no record of a request to publish such a photograph, no proof of payment for its use, and no negative.

She conceded that she did not conduct a research to establish whether the photograph had appeared in the Star. If it had appeared in the Star, the photograph in Noseweek could have been reproduced from a copy of the newspaper.

Mrs Michelle Leon, the Library Manager of the Sunday Times gave evidence about three sets of photographs appearing in the said Noseweek article. The photograph of plaintiff on p 9 was supplied by the Sunday Times, but not acknowledged in a byline. The photograph of the plaintiff and the defendant on p 10 and the photographs of messrs Retief and McKay have bylines acknowledging their provenance from the Sunday Times. However, there is no record that they were supplied by the Sunday Times. If they had been supplied by the Sunday Times, there would have been a record of it. In cross-examination she conceded that it happens frequently that photographs are used in publications without any acknowledgment. She also conceded that the photographs of mr McKay and mr Retief on p 12 were supplied by mrs Van Waart of the Cape Town office of the Sunday Times.

In respect of the photograph of the plaintiff and defendant on p 10, she was referred to a publication called Newslink which contained the same paragraph. See exhibit G1.

The plaintiff, mr Davison, began his evidence by explaining how he calculated his tender of R7 million. He worked on the information supplied by the defendant in her Rule 43 application. He took into account the expenses paid by him and the shortfall of R8 000-00 per month alleged by her. He added R2 000-00 per month for medical insurance, arriving at a total of R32 000-00 per

month after tax. That amount was given to an actuary to calculate the capital amount required to produce such an income. His calculation was R6 018 730-00. He then topped it up to R7 million.

He explained how exhibit D, an analysis of defendant's expenses was produced. In view of defendant's inability to deal with it in evidence her attorneys were asked, after the first round of evidence, what their attitude to exhibit D was. The response, as stated in a letter dated 15 April 2004, exhibit 54, was that the empirical information was correct but that it did not reflect the defendant's reasonable needs.

He explained how exhibit D was updated with reference to the categories of expenses in the defendant's list of expenses. Exhibit E represented the reworked exhibit D.

He then went through the various items in the list of defendant's expenses (SDD 1) in its latest form after the amendment on 15 April 2004.

Items 1, 2 and three were admitted.

Item 4 was admitted with the qualification that ms Lena Ramafoka has since died.

Items 5, 6, 7, 9, 10.1, 10.3, 10.4, 10.10, 11, 12, 13, 14, 17, 18, 19, 33 and 40 were accepted as correct.

He expressed the view that although he recognised the defendant's wish to remain in the house, it was large and difficult to maintain for a single person. Although their daughter was still living with the defendant, she might move into her own dwelling, especially if he gave her the same assistance that he had to their son. The possibility of a subdivision existed. He pointed out that it appeared from discovered documentation that the defendant might have explored that possibility. Later on he produced reports relating to the subdivision of the defendant's property and a cluster house development, all obtained under subpoena. See exhibit F 10 and F 11.

He then dealt with items in defendant's list that he disputed.

He disputed item 8 and denied that there was any basis to provide private medical care for the gardener or the replacement of ms Ramafoka.

In respect of items 10.6, 10.7, 10.8 and 10.9 which relate to the old BMW, he contended that there was no need to keep a second car to remove refuse or to have a substitute when the new BMW was being serviced.

The following items were also challenged: 10.5, 10.2, 15, 16, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 24, 35, 36, 37, 38, 39, 41, 42, 43, 44 and 45.

I do not propose to deal with the details of each disputed item now. It is enough to say for the moment that the challenge was based on a comparison of the amounts claimed with the actual expenses, mostly over 31 months, as extracted from defendant's documentation, and reduced to a

monthly average. He also testified that in the case of some items, where no justification for the amounts claimed could be found, the defendant was asked to make further discovery. Defendant's response was that she had discovered all the documentation in her possession.

He explained that an extra item was created in exhibit E, item 46. It related to cash and covered all drawings of cash that exceeded the amounts for which such drawings were stated to have been made. Surplus cash drawings amounted to an average of R2 152-61 per month.

He assumed that items like parking and tips (item 43) could be accommodated under the item of cash.

The following monthly averages were established for the following items:

Item 26	hairdresser	R 531-94
Item 10.5	petrol	R 320-90
Item 34	veterinary services, dog food and grooming	R 208-33
Item 38	carpet cleaning	R 24-77
Item 31	garden maintenance	R 425-25
Item 32	replacement of garden Equipment, refuse removal	R 95-68
Item 36	replacement of furniture, household effects and decorating expenses	R1 334-81

Item 37	home maintenance and repairs	R 727-93
Item 44	replacement of towels, linen and crockery	R 265-68

He rejected the need for tyre replacement in view of the fact that the defendant could never, if she bought a new car every four years, reach the 60 000 kilometres that would necessitate a change of tyres.

In the case of item 28, entertainment, for which R4 420-25 per month was claimed, he found a lot of duplication. He referred to gifts. The monthly average of this item was R1 864-67.

In respect of clothing, where the claim was R4 699-00, the monthly average was R554-96. Here he found a decline in spending. An amount of R1 500-00 would be more in keeping with what defendant was spending on clothing whilst they were living together.

In respect of item 22 an amount of R6 500-00 per month was claimed. The total purchases at the three main suppliers, Pick ‘n Pay, Woolworth’s and Thrupps revealed an average monthly expense of R5 409-55. Those purchases included purchases of wine, cigarettes, newspapers, magazines and pool equipment that fell outside the ambit of item 22.

In the case of the Melville Douglas account, item 20, he testified that the opening balance of defendant’s investment was R7 781 374-00. Until March 2004 there was appreciation of R1 651

453-00. Total drawings amounted to R2 266 798-00. If legal fees had not been deducted, the defendant would have been able to draw an extra R36 732-75 per month. After tax it could have been R32 000-00.

He denied that he was liable for Melville Douglas' basic fee. The performance fee was self funding and only became due when there was appreciation.

In respect of item 15, Discovery Health, he pointed out that it was not necessary to insure the defendant against a loss of earning capacity.

In respect of medical expenses not recovered, he referred to Discovery Health's tax certificate for 2004, according to which the benefits not covered amounted to R49-00 per month. Items bought without prescription amounted, on an average, to R152-22 per month.

Item 29, golf and related expenses, showed an average monthly expense during 2002 of R275-00 and R317-50 for 2003. That represented the subscription fee of the Johannesburg Country Club. Green fees are R81-00 per round.

Item 30 is a claim of R350-00 for the replacement of sporting equipment. He could only trace one expense of R110-00.

In item 23 R500-00 per month is claimed for liquor. This item in exhibit E shows the total of liquor purchases at all stores as well as at Woolworth's and Pick 'n Pay.

In respect of item 35, swimming pool maintenance and repairs, he reacted to a quotation to which the defendant had referred. He found it unacceptable that a separate provision be made where chemicals are already contained in item 22 and where there was a full time gardener.

The expenses in respect of flowers, item 39, were R71-16 per month in 2001, R51-50 per month in 2002 and R135-28 per month in 2003.

Expenses in respect of cigarettes were R295-79 over 19 months. In 2003 they were R304-57 per month.

He then gave a description of the patterns of holidays and weekends away. Before 1994 the family spent occasional weekends in Plettenberg Bay. Defendant also accompanied him to the trout farm, Finsbury, near Lydenburg on about 4 occasions. After 1994 she accompanied him to his farm in Ficksburg on two occasions and also to the house in the Steenberg Estate.

In respect of item 21.3.1 he denied that a car rental of R675-00 per day was appropriate. When he travels he uses B group vehicles.

He also challenged the appropriateness of business class travel in item 21.3.2. For private flights he uses economy class and so does his present wife. He later handed in a summary of aeroplane bookings, exhibit F 10 and F 11 (a second set of exhibits F 10 and F 10), as corroboration of his evidence in this regard.

The amount claimed for accommodation in item 21.3.3 he considered to be excessive.

He likewise challenged the amounts claimed in item 21.2: the business class air fare, the daily rate of accommodation and the spending money.

In respect of overseas vacations he pointed out that the family never went on an overseas holiday. He did at a certain level become entitled to the perk that he could take his wife on an overseas trip once a year. That normally coincided with the Platinum Week in May. He would take a week or so of private holiday on to that and spend the time with friends.

He denied that there was any historical basis for the claim in item 21.1.3 for spending money of R2 000-00 per day.

Dealing with his estate he attributed its growth to his property investments and the share options he exercised. He explained how he bought his various properties and interests in property, always mindful of the potential of appreciation. Only in respect of the selection of the stand in Plettenberg Bay did he acknowledge an input by the defendant.

In the case of share options he explained that the latest trend was to tie the entitlement to such options to performance criteria. If the criteria are not met after four years, the options do not vest. During the current month (April 2004) he was informed that only 45% of certain options awarded to him in 2001 would vest.

He handed in exhibit F8, a reconstruction of his assets and liabilities in 1994. The net value of his estate was R11 207 740-00

With regard to the Noseweek article he testified how he had a forewarning of its publication and how it affected him. He thought it was aimed at pressurizing him into a disadvantageous settlement. He concluded that the defendant was involved in the production of the article. He went through the article in detail and identified facts which could have emanated from her. He conceded that the same information could have been obtained from other persons, but then it would have been necessary to obtain it from a large number of people.

He read the summary of the telephone calls, exhibit G 3. They show that between 6 February 2004 and 1 March 2004 there were some 12 telephone calls between defendant and Noseweek and same six calls between defendant's attorney and Noseweek.

He handed in exhibits F 12 to F 21 being documents prepared by his auditor to set out his share options. It appears from exhibit F 15 that for the 2000 year prof Wainer has incorrectly included an amount of R8 657 169-00 representing share options, as salary.

Confirming exhibit C 1, he gave an extensive account of his career, how he became involved with mining and eventually with platinum mining and how he rose to the top of the mining industry. He recounted how he became involved in negotiations with organised labour, how he re-negotiated marketing contracts, how he pushed through a vast expansion of his company's

capacity and how he adopted open cast mining in platinum mining. He expanded on the strategic decisions he took and the risks attendant on them.

Whilst acknowledging that the defendant was a good wife and mother, he denied that she had any share in the business decisions made by him. He also denied that she was in any way a factor in his advance to the top. After he had left her his progress was not impeded.

He rejected the evidence that he was not a good father. He admitted that he was absent to the tune of 60 days a year on travel and that he might have been too strict. He did attend many school meetings.

He gave his own version of the marriage. He started travelling frequently from 1978 through his involvement with Consolidated Metallurgical Industries. When he attended an advanced executive course at Unisa in 1979 – 1980 he had to work very long hours. Thereafter his working pattern returned to normal. He was absent about 60 days a year. The marriage relationship became fractious from 1988 onwards. Defendant who had given up smoking, put on a lot of weight and seemed to have suffered a loss of self esteem. She became obsessively jealous and criticised him in public and private for having wrong priorities. By July 1994 he had decided that cohabitation was not acceptable. Friends had started not inviting them to avoid the risk of verbal conflagrations. He left because he did not want to stay with the defendant any more.

Some months before July 1994 he had become enamoured of Avril Bailey. After he left the home their relationship developed into an affair.

In the mean time his relationship with the defendant remained cordial. He regularly visited the house in Forest Road and for a short period he had his laundry done there.

He and defendant went for counselling. As a result of what a counsellor said he became convinced that a resumption of cohabitation would not work.

He and defendant continued to live separate lives and they were happier so.

In 1998 the defendant approached him and suggested that he return. He told her that he would consider it seriously. They spent more time together. She accompanied him to corporate functions, he took her overseas and they spent the odd weekend away. When the defendant suggested alterations to the house he agreed to pay for it. Whether he were to return home or not, it would add value to the house. He was still assessing the situation. He never told defendant that he was going to return.

During June 2000 he met his present wife in a social context. A relationship developed and he eventually decided that she was the woman with whom he wanted to share his life with. On 2 November 2000 he told the defendant that he wanted a divorce.

He denied that his relationship with his present wife had started in 1997.

In cross examination he conceded that the defendant devoted the most productive years of her life to their marriage.

He agreed that he was the breadwinner and she the home maker. He accepted that she made a substantial contribution to the family, *inter alia* as a child carer. He agreed that they started life together with no assets. He accepted that his estate as at the time of divorce had been amassed during the marriage. He also agreed that his estate was large enough to satisfy the needs of the defendant as well as his own,

He would retire in 2006 and would be available for directorships. He agreed that his estate would continue to grow.

He accepted that the defendant had spent her inheritance and the proceeds of her shares but maintained that she had the potential of capital growth in her house and her portfolio.

When it was pointed out that in paragraph 4.1 of his plea he denied that the defendant had contributed to the maintenance and growth of his estate, he eventually explained that her contributions were not meaningful.

He conceded that his tender was only in respect of maintenance.

According to him it was not required of the defendant to entertain and to attend corporate functions. She assumed those functions, because she enjoyed it. It was also not necessary for her to stop working in order to assume those functions.

He agreed that the defendant was a supportive wife although in the late 1980's the support became less evident.

He agreed that the defendant did nothing to impede his career.

There was an occasion when he made an investment in a restaurant with which the defendant was not happy. She refused to play a role in the business when his manager was not available.
He started his working day at 6:30 when he took the children to school. After work he went to gym. After supper he spent an hour or two in his study. On weekends he also worked, mostly on Sundays.

He agreed that the defendant did not obstruct him in his career. He was referred to paragraph 2.2.1 of his plea, where it was alleged that defendant had obstructed and harried him.

He was also referred to paragraph 18.1 of his affidavit in the Rule 43 application, where he said that the defendant was unsupportive.

With regard to the remark to mr Pat Retief, that he would get his secretary to do what defendant did for him if she was not there, he acknowledged that it was an unkind remark. He said that he afterwards apologised to defendant for it.

The denial in paragraph 6.2.4 of his plea that defendant accompanied him to functions, he described as an error.

He acknowledged that he was proud of his home and felt free to invite business associates to his home, even after July 1994.

He denied that defendant spent all her income on the household. He listed items like clothing for herself, the children and gifts.

He denied that the defendant subsidized the household with money from her mother's bank account to the extent that she claimed. According to him he reimbursed her if there was a shortfall in her budget.

He acknowledged that the defendant ran a good household.

He was cross examined extensively about his relationship with the children. He said that he did discipline the children and did occasionally spank them. He denied an alleged assault on Robert. He denied writing a letter of apology to him. He accepted that defendant bore the brunt of nurturing the children. She collected them after school, ferried them around to extra mural activities and helped them with homework.

The allegation of the defendant that the children were deprived and damaged as a result of his neglect he found preposterous.

He agreed that defendant helped him to decorate the Steenberg house. He denied that at that time the parties had resumed conjugal relations. They did, however, share the same room.

He denied that he told defendant in July 1994 that he had to honour his commitment to Avril Bailey.

He had no affair before the one with Avril Bailey. He took Avril Bailey overseas. She probably flew first class on air time.

In respect of air travel he explained that at his level of seniority he flew first class and that he could take his wife on a business trip once a year flying first class. Locally they flew first class if they accompanied official visitors.

His relationship with Avril Bailey lasted 3 years. In 1999 – 2002 he bought her a Mercedes Benz which she refused to accept.

He denied defendant's evidence that after 1994 he was confused and that he told defendant that he missed the fabric of his family.

In 1998 he received a letter from Werksmans concerning an alleged affair with Gail Stubbs. He told the defendant that that was no reason for a divorce. Gail Stubbs was merely a friend.

He denied that he was having the best of both worlds, leading the life of a philanderer and keeping his options open with defendant.

He admitted that he had other affairs above the one with Avril Bailey, but added that he was discreet. He could not give numbers.

In respect of a foreign exchange loan or R750 000 his attitude was that the defendant had to repay it.

The tender was based on calculations made by his actuary. The added amount was to cater for longevity and unforeseen events.

He agreed that the defendant was not wasteful. She was, however, very generous with gifts.

He made a list of payments received by defendant from her mother's account, G8. It covered the years 1990 -1999 and added up to R13 210-30.

He admitted that he had borrowed R2 500-00 from the defendant's mother to start his business in Cape Town. It was never paid back because his mother in law had forgiven it.

He argued that the defendant assisted him with the alterations to the Parkmore house.

He had difficulty in remembering that Robert had attended on a psychiatrist when in nursing school.

He argued that he and defendant shared the same bed in Steenberg.

He admitted that he bought Avril Bailey a townhouse for R230 000-00. That was in 1995. In a previous will he also bequeathed a cluster unit in Cherton Place to her. He had bought it for R800 000-00 and is presently letting it for R16 000-00 per month.

He conceded that in the particulars extracted from defendant's diary it appeared that she entertained about once per month over a three year period.

In respect of the weekend he wanted to stay in London when there was a strike at the mine he denied the allegation that defendant would have arranged a return ticket for him.

He denied that the R750 000-00 of the foreign exchange loan would have to be deducted from his tender. The amount of R750 000-00, or its present value, is still intact as a deposit.

His analysis of the history of defendant's portfolio was debated with him. It was put to him that the additional amount that he calculated would have been available if defendant had not paid R1 350 000-00 to her attorney, should he calculated over 28 months and not 20 months. He pointed out that if that were so it would still mean that she would have had R26 237-68 per month in addition to her drawings of R30 000-00 per month.

He accepted that defendant had a tax liability of R24 000-00 for the 2003 – 2004 tax year.

He accepted that the tender was based on an annuity that would eventually deplete the capital amount. He referred questions relating to the inflation rate and the real interest rate to his actuary, mr Jacobson.

He produced exhibit G9, a list if entries showing that defendant was familiar with the use of the term “rekeninge” to describe adjustments to her allowance.

In respect of professor Wainer’s evidence he explained that he had two objections: first the fact that the encashment of share options was not a recurring item and secondly his method of using a simple interest calculation.

He agreed that he talked the defendant out of using her inheritance to buy a townhouse for the children. He did it because he thought that it was for him, and not for her, to assist the children with housing. He did assist Robert with housing. He assisted Lisa by paying her tax assessment of R12 000-00 twice.

He agreed that cheques drawn in favour of suppliers on the account of his mother in law would not be reflected in exhibit G8.

He agreed that defendant was house proud. The neglect of her house he attributed to the fact that she had applied for a rezoning.

He agreed that defendant's allowance was supposed to cover home expenses, staff, food, the garden, maintenance, entertainment, petrol, chemicals, gym, tennis, golf, the children etc. He paid rates and taxes, water and lights, home maintenance, motor car insurance, the cars themselves, country club fees etc.

According to him the increases in defendant's allowance only equalled his salary increases up to a certain point.

In respect if exhibit D he agreed that the best indication of defendant's expenses would be expenses during the last 6 months in 2003.

He agreed that exhibit D reflected actual expenses.

He was asked to confirm what items on SDD1 were not in dispute. They were items 1, 2, 3, 5, 6, 7, 9, 10.1, 10.3, 10.4, 10.10, 11, 12, 13, 14, 17, 18, 19, 33 and 40. He would check whether they added up to R15 516-94 per month.

He was then asked to distinguish between items where he challenged the amount alone and those in which he challenged the need and the amount.

He agreed that there were claims in SDD1 which were not made in the Rule 43 application.

He submitted a list of expenditure as exhibit G 10. It amounted to R16 106-63 per month.

In respect of defendant's drawings, he explained that though she drew an average of R25 862-07 per month, her drawings eventually settled on a figure of R30 000-00 per month.

The various disputed items were debated with him.

With regard to item 8, he agreed that Lena Ramafoka was, while he was still there, on rare occasions referred to the family doctor. He did not agree that there was any justification for her to have private treatment for the chronic condition that she developed later. He pointed out that no gardener ever enjoyed the benefit of private treatment.

In respect of claim 8, tyre replacement, he pointed out that it would take the defendant 8 years to reach the mileage that would justify a replacement. He also referred to defendant's actual petrol expenses. When it was put to him that in the Rule 43 application he estimated her monthly expenses for petrol at R1 000-00, he replied that he had taken defendant's figure of R1 200-00 at face value and that he had not yet analysed her expenditure.

Items 10.6, 10.9, 10.8 and 10.9 relate to the Jeep which has been replaced by the old BMW. He contested the need for a second vehicle for the rare occasions that the first BMW went for a service. He denied that the old car was needed to remove refuse in view of the services of the refuse man.

Item 10.11, membership's of Club MCC, he admitted in view of the imminent lapse of the AA membership.

After a debate of the amount claimed in respect of Discovery Health (item 15) he conceded an expense of R1 244-00 per month. He excluded the claim for an upgrade which was contrary to the advice of mr Boyle and he contested the need for disability insurance.

In respect of item 16 (excess medical expenses) he was prepared to accept an amount of R500-00 per month.

He refused liability for the Melville Douglas fee on the basis that it was self financing.

With regard to item 21.1 (overseas travel) he conceded that the defendant was exposed to overseas travel and that she enjoyed it. He maintained, however, that such travel was a perquisite of his job. He conceded that the defendant travelled first class to overseas destination but pointed out that that went with his status as a director. He admitted that they stayed in superior hotels, but pointed out that that was on business trips. On two occasions they extended their stay in the same hotel at his own expense. Otherwise, they mostly stayed with friends. They took their full currency allowance overseas, but what was not spent reverted to him. What defendant spent was a gift, but it was never significant. He contested the defendant's entitlement to stay in superior hotels.

He confirmed that the overseas visit of defendant in 1998 was bought with air miles.

In respect of item 21.2 (local holidays) he did not dispute the defendant's right to what he called a change of scene. He contested the standard of accommodation claimed as well as the claim for

first class air travel and the use of expensive rented cars. He pointed out that he did not travel like that privately and suggested bed and breakfast establishments for accommodation.

In respect of item 21.3 (weekends away) he agreed that the claim of 2 weekends away was modest. He disagreed with the level of expense.

The claim in respect of food (item 22) was debated with him at length. He accepted that the amounts shown in his analysis, exhibit E 2, were in fact spent. He contended, however, that they included items claimed under other heads, like liquor, pets' food, cigarettes, flowers, gifts etc. He did not allege a duplication of actual expenses.

If the liquor included in item was added to the expense for liquor claimed under item 23, it would mean that defendant, as a single person, spent R1 300-00 per month on liquor, which he found unacceptable. By accepting 4 bottles of whisky per month as a yardstick, he was prepared to accept that R500-00 per month for liquor was reasonable. That would mean that R800-00 per month would have to be deducted from the amount claimed in respect of item 22.

Where he accepted the R435-00 in respect of cigarettes claimed under item 25, it would mean that R305-00 had to be deducted from the amount claimed under item 22.

Similarly R150-00 had to be deducted in respect of pets' food.

He also had a problem with the amount claimed on pool maintenance in view of the fact that chemicals were bought at the supermarket and the fact that there was a full time gardener who could be trained to maintain the pool.

He pointed out that R520-00 was claimed for flowers under item 39, whereas only R78-00 was spent on flowers during the first seven months of 2001. If R520-00 was acceptable for flowers, it means that R520-00 less R78-00 (R442-00) had to be deducted from item 22.

The amount of R1 000-00 per month for gifts (items 33) he considered to be reasonable.

The claim for the replacement of furniture (item 36) for R1 500-00 per month he considered to be inflated in comparison to the actual average of R1 335-81 per month.

It was pointed out to him that there were sharp annual increases in the spending under item 22. He pointed out that the increases exceeded the inflation rate. He accepts that the 2003 figures would be the best measure of current expenditure.

One reason for the inflation of the expenditure on food, as he saw it, was the fact that Robert and his girl friend at a time spent their weekends with defendant and that Lisa stayed with her. He stated that he was disturbed about the situation of Lisa who seemed to prefer to be dependant on defendant rather than to live in her own. He was quite prepared to assist Lisa to put up her own house and to assist her.

In respect of clothing (item 24) he refused to believe that the defendant had borrowed clothes. If she spent less and less on clothes he thought it was by choice. He could not believe that she would do without clothes and yet be able to afford a computer worth R15 000-00 for her son. He considered R1 500-00 as a reasonable amount for clothes.

Item 25, cosmetics, he considered high in comparison to the average of R531-94 per month. He went through the chits and found references to all the services on which the claim is based. When he was confronted with two receipts dated 13 September 2003, he raised the question of whether they had been discovered.

Item 27 is for an amount of R855-00 in respect of personal grooming. His attitude was that he was not prepared to accept a price list above actual expenditure, which, on average, amounted to R346-77. He denied that the defendant spent that much during the marriage.

The amount claimed in respect of entertainment, R4 420-25 (item 28), he contrasted with the actual expenditure of R1 864-67. He did not dispute the entitlement to entertain. When he was referred to defendant’s evidence, he pointed out that gifts could not also be included under entertainment.

If the expenses relating to theatre and cinema were not included, they would fall under cash, and so be added to the claim.

In respect of golf, item 29, he was only prepared to accept the cost of club membership. He in fact doubted whether defendant, on her history, was a dedicated golfer. He was prepared to allow R317-99.

With regard to the replacement of sport equipment, item 30, he found hardly any evidence of actual expenditure.

The amount claimed for garden maintenance, item 31, he found out of line with the historic pattern. He admitted that the defendant enjoyed a good garden. She had a full time gardener. He could not explain the deterioration of the garden.

Item 32 relates to the replacement of garden equipment. The only item replaced was the lawn mower, but the price was not itemised separately. In his view there was no evidence to substantiate this claim.

Further on in his cross examination he was reminded, in respect of item 15, that the premium for the medical savings account was R147-00 per month, and not R132-00. He seemed to accept it.

In respect of golf, he conceded that defendant would need coaching if she were to resume her efforts to play golf, which he doubted.

Under item 28 he disputed the need for gym separate from the facilities offered by Virgin Active and the Johannesburg Country Club. As far as a personal trainer was concerned, he did not have one. He confirmed that his analysis did refer to French classes.

In respect of his item 46, cash, he explained that it did not include the wages of domestic staff, which he assumed was paid in cash.

With regard to item 34 he did not accept the postulate that there were to additional dogs.
There was some debate about items belonging to him that have been removed from defendant's house and were to be removed. A corner cupboard inherited from his mother was removed. Before it was placed there, the corner had been empty.

He admitted that the historic average in respect of the replacement of furniture (item 36) R1 334-00 per month, was reasonable.

In respect of home maintenance and repairs he remarked that the expenses did not follow a regular pattern. For that reason one had to work with an average.

In respect of item 38 he conceded the need.

As far as flowers are concerned (item 39), he acknowledged that defendant was accustomed to have flowers in the home on a regular bases. In view of the flowers bought under item 22, he

contended that the amount of R520-00 be retained and that the purchases be deducted from item 22.

He had a problem with item 43, parking and tips. Such items were paid in cash and exhibit SDD 1 had no item for cash. If such items are accepted individually, then there should be no allowance for cash.

He conceded the need for the replacement of towels, linen and crockery, item 44.

He had no problem with the amount claimed for cigarettes (item 45), provided that the full amount be deducted from item 22.

In respect of item 32, (replacement of garden equipment) he was prepared to allow R200-00 per month. He assumed that the lawn mower cost R3 000-00 and that it would cost R63-20 per month to replace it every 4 years.

In respect of the second Noseweek article he was not prepared to say that it had been inspired by the defendant, but he reserved his position pending an investigation that he had commissioned.

He was extensively questioned about the first Nose week article. He became aware of the impending publication of the article on 18 February 2004. He denied that the retaliated and that he denigrated mr Gundelfinger in public.

He was cross-examined in respect of the contents of the first Noseweek article in order to establish that aspects thereof could have been known to other parties or could have been conveyed by defendant to such friends as in whom she confided. The aspects included his riding a Harley Davidson motor cycle at Steenberg, his predilection for Cohiba cigars, his interest in the Ficksburg property, his purchase of a flat in London, the remark he made to mr Pat Retief which rankled so much with defendant, and the Trojan case. In most, if not all cases, he admitted that there were people who knew the facts.

He had to concede that he had not originally testified that the original of the photograph of him and defendant in Edwardian dress, had been taken home by him.

Then he was questioned about details of his Nedbank banking accounts, local and offshore. He maintained that he had made a full disclosure but refused to grant defendant access to his accounts. He provided a letter from mr Boardman, the chief executive officer of Nedcor, stating what accounts he had, and what the balances were, as at 11 August 2004. He was given a number of account numbers which did not correspond with the numbers mentioned in mr Boardman's letter. He explained that account numbers do change, but that the continuity of the accounts will appear from the discovered documents.

With reference to the list of his assets and liabilities, A4, he confirmed that the bond on the London property had been paid.

He acknowledged that he had applied for an amnesty with the Revenue Service. He refused to disclose his application on the basis that it was irrelevant.

He explained that the security guard provided by Anglo American plc was removed from the home at Forest road after his divorce. The guard was provided for him as a director.

He accepted that defendant could live on in the house in Forest road if she so chose.

At the end of his cross examination he corrected a concession he made in respect of item 16 of SDD1. He explained that he had inadvertently thought that defendant's expenses under this item were monthly expenses. He was prepared to accept R200-00 per month under this head.

An application was made on 24 September 2004 that the plaintiff produce the amnesty application he had made to the South African Revenue Service and documents relating to bank accounts he had with Nedbank in London. The application was dismissed for reasons furnished at the time.

Thereafter he was re-examined.

He gave a list of items on which defendant spent her inheritance money. It added up to R510 197-00. The main items were legal fees, kitchen renovation and Lisa.

He explained again what his objection against allowing the Melville Douglas fee was. The basic fee, on R7 million, would amount to R21 000-00 per annum at an average rate of 0.03%. It was tax deductible. The incentive fee was only payable in respect of growth and it was self financing.

In respect of various items that overlapped with item 22 he suggested how they be treated, either by leaving item 22 intact and reducing or deleting those items, or by reducing item 22.

In respect of item 32 he was prepared to accept defendant's concession in cross- examination that R200-00 would be sufficient.

He confirmed that he could found no proof that Lisa was charged anything for board.

Mr M J Botha of Telkom testified once again, handing in exhibit G13 which contains particulars relating to certain telephone numbers.

Mrs Annette Leonard of Sneller Verbatim testified that copies of the record of the proceedings were only supplied to defendant's attorney and to the court.

Mrs A M Allen, a witness of defendant in rebuttal, was accommodated out of time. She testified that she was a long standing friend of the defendant and that she had also known the plaintiff for a long time.

She was referred to the first Noseweek article, exhibit G5, and confirmed that she had knowledge of many allegations such as the amount of plaintiff's tender, the alleged value of his estate, his Porsche, his Harley Davidson, his trips to Russia, his fishing trips, the amount of his salary, his cigar smoking, the Steenberg estate, the involvement of mr Graham McKay, the plaintiff's houses in Morningside and the River Club, his business travels, his relationship with Avril Bailey, the failure of plaintiff to return at the time of the strike, the incident in which mr Retief was involved, etc.

According to her she derived her knowledge from defendant and from discussions among friends, amongst others at bridge tables.

She admitted that she was of the view that the plaintiff should pay the defendant more money and that she was prepared to work towards that end.

She denied that she thought that the Noseweek article was a good way to bring pressure to bear on the plaintiff. She thought it should not have been published whilst the case was still going on.

She knew of the impending publication of the article through the defendant, who was upset and did not want it to be published. Defendant told her that she was telephoned by Noseweek or mr Welz. She could not remember which. She was not sure about whether there were more calls.

She also knew about the second article the day before its publication.

She denied that that the first article could have been understood as a means to exert pressure on plaintiff. In a sense it could go rather against the defendant because people might think that she had inspired it, which she knew to be untrue.

The plaintiff's actuary, mr G W Jacobson then gave evidence. He referred to his latest report dated 31 March 2004 (exhibit I10).

He explained that defendant's life expectancy was estimated at 22.5 years according to the PA 90 tables, which are used by pension funds. According to the South African Life Tables (SALT), based on 1984 – 1986 figures, it would be 20,4 years. If one took into account that she was a smoker, it would be lower and so also if one assumed that she took four drinks a day.

He assumed a net yield of 3% per year, that is 3% above the inflation rate.

He made no provision for contingencies.

He referred to two studies, exhibit G16 and G17, (later absorbed into exhibit I). The first one is titled **Factors Affecting Retirement Mortality**. The second one, titled **Spending by Older Consumers, 1980 and 1990 Compared**, makes the point that after the age of 75 consumption drops by 30%.

Bearing in mind the above he compiled a schedule, exhibit G15 (also incorporated into exhibit I) showing the capital amount needed to provide annuities ranging from R32 000-00 to R70 000-

00 per month on various bases: PA 90 mortality, SALT 1984 – 1986 mortality, mortality loaded by 100%, 300% and 400%, and maintenance subject to reduction.

He also testified that the amount needed to produce R1 000-00 per month would be R189 089-00 in his basis I, R175 602-00 in his basis II and so forth.

According to him the opening balance of the defendant's portfolio was R7 701 596-00 and the capital appreciation, dividends and interest amounted to R1 589 669-00 after the deduction of expenses.

Over the period the gross yield was 9.27%, which exceeded the Consumer Price Index by 3.69%.

Actual returns can fluctuate wildly.

He confirmed that his calculations were based on the supposition that the defendant would exhaust her fund at the end of her projected life span.

He did not cater for large withdrawals of capital. He worked on drawings of R30 000-00 pr month increased according to the inflation rate.

If the capital were to be kept intact at R7 million, an additional 40% would be required.

When he was referred to the high rates of inflation experienced in recent decades, he pointed out that interest rates and inflation tend to work in tandem.

What is important is the gaps between the yield and the inflation rate. The portfolio has done well by achieving a gap of 3.5% during a time when there was no real boom.

He conceded that genetics can not taken into account in mortality estimates. One would be more accurate if one had a medical examination of a subject.

In respect of withdrawals for capital requirements he suggested that the monthly expenses should make provision for such expenditure.

When it was put to him that it would require an increase of 56% to keep the capital sum of R7 million intact he said that it may be correct .

He was referred to his various reports and asked about the inflation rate. He explained that it was a nominal rate and that he could have worked with different rates provided that the gap of 3% was maintained.

His second report was done with a lifespan that was increased by 5 years. The capital amount required was R6 908 523,00 .

If a reduction of 25% in expenses was applied after the age of 75, it would reduce the capital amount required by R 476 000,00.

He replied that he did not apply contingencies and that he had taken account of taxation in arriving at his return of 9.27%.

He confirmed that the plaintiff ‘s calculation of the additional income that would have been available if legal fees had not been paid, was correct.

Mr. Felix Calitz was called as an expert witness. His evidence was that the wedding photograph in the Star could not have been the source of the wedding photograph in the in the Noseweek article, exhibit 65 and that it was identical to the photograph in the wedding album. He also testified that the Edwardian photograph in the Newslink article, exhibit G1,was not the source of the similar photograph on page 10 of exhibit G5. He demonstrated, amongst others, how the Noseweek wedding photograph had more image than The Star photograph and how the Noseweek Edwardian photograph had more image than the Newslink one.

His evidence was not challenged.

Mrs P G Heyneke of Vodacom was called to produce records of cell phone calls of the cell phone of Mr. M Welz with number 082 575 9579 between 1 February 2004 and 5 March 2004. She handed in a Schedule as Exhibit G21.

Mr Welz, who happened to be in Court under subpoena, objected against her evidence on various grounds, amongst others, that it invaded his privacy. He indicated that he wished to pursue his objection after having obtained legal advice. It was arranged that the evidence of the witness would stand down in order to enable Mr. Welz to obtain legal representation or legal advice and that he would be advised of the date on which the case will be resumed after the postponement that would inevitably follow on 30 September 2004.

Mrs. H Du Plessis of MTN gave evidence relating to calls made and received by the defendant's cell phone with number 083 308 5635. She handed in Exhibit G22, in which the particulars of calls between 27 January 2004 and 6 March 2004 are set out.

The Plaintiff then closed his case subject to the possible recall of the witness Jacobson and Heyneke.

The defendant then called Mr. Welz in rebuttal.

He explained his financial interest in Noseweek which according to him specializes in investigative journalism. He became aware of the Davison divorce in social circles in Cape Town and it aroused his interest from a public interest point of view. When he became aware of the relevance of **Katz and Katz** which he considered to be outdated, as far as gender equality was concerned. Issues like business conduct, legal practice and the character of the plaintiff also interested him. The story developed and eventually he became bent on publishing it.

With reference to the process of production he explained that the article which he wrote had been completed by 11 February 2004.

The outline of the story be obtained from his sources who must have been very close to the parties.

He briefed his Johannesburg correspondent, Mr. London, to verify the story. Mr. London obtained Amplats reports and collected various cuttings. He asked him to obtain a picture of the defendant and to interview her.

He telephoned defendant himself and told her that he was doing the story in any case. She expressed reluctance and asked whether it was a good idea and whether it was not a private matter. He told her that he could not cancel publication.

What happened further was that Mr. London went to see the defendant, but he could not obtain photographs. He telephoned the defendant again and she referred him to Mr. Gundelfinger. After a number of calls he reached Mr. Gundelfinger who appeared bemused and horrified. He sought his views on **Katz v Katz**. Mr. Gundelfinger did not think that the article was a good idea and raised the issue of the Divorce Act. That did not trouble him because he had a report of the South African Law Commission which considered section 12 invalid. Mr. Gundelfinger said he would come back to him about the amount of the claim and **Katz v Katz**. He never did.

Then the defendant called him. She was agitated and wanted him to hold the story over until the case was over. He did not say to her that he would not run the story. He refrained from telling her when it was to be published.

In the first week of February 2004 he received a visit from a close friend of plaintiff who tried to persuade him not to publish the story.

The contents of the story were then canvassed with him and he was asked about his sources. The value of the estate was established by Mr. London's researches in archives and his own conversation with a merchant banker.

The Harley Davidson he obtained from a printed source. Its use in Cape Town from his Cape Town sources. The Cohiba cigars came from a former lady friend of plaintiff. The trips to Russia, Alaska and the Seychelles came from Mr. London. Items like the various properties of the plaintiff came from his Cape Town sources. The same applied to the particulars of the trial except the court event date which he obtained from a source in legal circles.

All the other particulars he obtained from his Cape Town sources. He also telephoned Mr. Pat Retief.

The wedding photograph he obtained by informal means from the Star. He was not prepared to disclose his source. The photograph on p. 9 he obtained from Times Media or the Star. The Edwardian photograph he obtained from a source that he was not prepared to disclose. The

photograph on p. 11 was obtained by Mr. London. He did not receive any photographs from defendant or Mr. Gundelfinger.

He confirmed that he was not going to disclose his sources, even if ordered to do so. He accepted that, that may have the effect that the truth of his allegations could not be tested.

He confirmed that it was the practice of Noseweek to advertise its articles in the media.

He did make notes for the Noseweek articles, but has destroyed them.

When asked to comment on an exposition of the law on the sub judice rule he invoked his right not to incriminate himself. As far as the Divorce Act was concerned he was of the view that section 12 was unconstitutional.

At the resumption of his cross-examination on 30 September 2004 the witness indicated that he wanted to renew his application. He referred to other issues as well, such as the possibility of further subpoena's and the follow up of telephone numbers that appear on the list of calls made by him. The court ruled that his cross-examination be continued.

When asked about whether he was aware of the fact that it could amount to contempt of court to criticize a party in a pending case, he replied that he had given the matter consideration but thought that publication was justified. He conceded that he knew that he might not be entitled to publicise court proceedings.

He never had a transcript of the record before the publication of the first article. Before the publication of the second article he had seen part of the transcript.

He was not a willing witness. He had to be subpoenaed, but he had consented to consultations.

He would give a party affected by an article an opportunity to comment, but it was not his practice to submit a copy of the intended article. He could probably have put the adverse material to the plaintiff.

He was sure that the plaintiff had received his message because he was subsequently approached by plaintiff's friend, Mr Kuyper.

With reference to p 12 of the article he conceded that the statement that plaintiff had put the phone down on mr London was wrong. It was his present wife. He described his circle of uniformers in Cape Town as a group of 3 to 5 to 7 people. He would not give any further particulars that might lead to their identification. Some of his interviews with them lasted as much as 2 hours. He accepted that the motive of some if his sources might have been to force the plaintiff to increase his offer. He admitted that the reference to the plaintiff's wife as the Poison Dwarf was abusive. It was the abuse of the circle.

The information that the cross-examination of the defendant had lasted 23 hours was obtained from someone he asked to examine the record. He undertook not to reveal the name of that person.

The wedding photograph he used was an original, not cut out from a newspaper. He did not obtain it through official channels. His experience was that Noseweek did not enjoy priority at the Star. He had made a request to the Star. The reason why there was no record, is that a formal request is only made when it appears that a photograph is available.

The Edwardian photograph he obtained from a source in Johnic. No permission was asked.

He confirmed that his cell phone number was 0825750574. He obtained defendant's cell phone number from his sources. During the first conversation he got the defendant to agree to see mr London. He accepted that his second conversation with defendant could have taken place on 10 February 2004. He gave the defendant some indication of the drift of his story. He tried to persuade her to give him a photograph of her.

He did not tell the defendant that he had obtained the story from her friends. That was not his practice. He did not get the idea that she disagreed with his version.

When it was put to him that the records show that mr Gundelfinger first phoned him, he accepted it as possible.

He kept going back to defendant. He was anxious to get a photograph from her. He believed that the story would be favourable to her.

He conceded that he could not remember all the details of telephone conversations. The drift of it was reflected in the article.

The allegations about the London flat and its value he obtained from his original sources. It was confirmed by someone at Angloplats.

The information about the share in Finsbury he obtained from his Cape sources. He did not confirm it.

The value of the estate as being beyond R100 million he calculated after a merchant banker friend of his had given him a value of the plaintiff's share options. In the documentation at his disposal those options were said to be worth R7.5 million. He could not remember how he valued the balance of plaintiff's estate.

When he was asked about the allegation that some people suggested that plaintiff's estate was worth more than R100 million, he conceded that the reference to some people was an unfortunate choice of words.

The information about the Trojan case he obtained from someone at Webber Wentzel.

He had gone there to get a photograph of plaintiff's present wife. He only became aware of the mistaken reference to mr Martin Brink after he had become interested in the Trojan case. He did

not check the allegation that Manda Scheepers had acted for Trojan. If it was not true, he would feel the need to apologize.

He was referred to exhibit G23, documents produced by mr Jack London under subpoena. He could not say which of these documents he had seen before writing the Noseweek article.

The handwriting on G23 I, relating to alleged blackmail, looked like that of mr London. The words A ex Sue Band A might mean that Sue Bands was the source. He did not speak to her.

He conceded that after the hearing in September 2004 he gave an interview to Radio 702 about this case. He believed that the case was of current interest. He agreed that exhibit G24 was a transcript of the interview.

Exhibit GII, a newspaper article, was also part of mr London's documents. He was referred to a sentence to the effect that Vansa was a Barlow's subsidiary. He said that it was news to him. He agreed that if it was true, the second Noseweek article would be largely misplaced. He did qualify his concession by adding that he would like to know who owned the other 49% in Vansa.

He also made enquiries with friends of the plaintiff who did not share his views on the case, but who did not want that to stand in the way of their friendship.

The person who examined the court records on his behalf was an acquaintance of long standing who was not associated with the defendant's attorney.

He tried to speak to mr Gundelfinger because the defendant referred him to him. When he telephoned the defendant he wanted to obtain confirmation of hearsay information from her. He did not succeed.

The person mentioned in the handwritten notes on G23 I was a senior journalist who was persuaded by threats not to publish an article. Noseweek specialized in publishing articles which mainstream publications feared to publish.

At the end of his evidence he volunteered an explanation to the effect that two items of information had been supplied innocently to mr London by defendant. They were the fact that she had worked in England and the fact that she had worked for the Rand Daily Mail.

On 2 and 3 December 2004 an objection by mr Welz against the production of his cell phone and telephone record was argued. Mr Welz was represented by mr Kirk-Cohen SC. On 2 December 2004 the objection was dismissed for reasons given at the time.

The defendant then gave evidence about her knowledge of the first Noseweek article.

She confirmed that she received a call from mr Welz on 6 February 2004. She had been a reader of Noseweek at the time. Mr Welz told her that he had written an article and that he would like

her comments on it. He also wanted to take a photograph of her. She said that she was not prepared to co-operate. He asked her what she was claiming. She answered that it was private. He wanted to know how the case was fought. She referred him to mr Gundelfinger. Mr Welz did not give her details of the contents of the article.

The next communication was a call from mr Jack London. He said that he wanted to take a photograph of her and clarify certain matters. She told him that she had spoken to mr Welz and had refused to co-operate with him. Mr London said that he could come to the house and take a photograph of her at the gate, as it were catching her unawares. She asked him about the contents of the article, but he denied any knowledge of the contents. She was curious about the contents and thought that she might be able to find out more in a face to face encounter. They agreed on an appointment at her house. She did not agree that a photograph be taken of her.

On the Saturday she invited mr London in. Whilst she was making tea, he wandered around in the garden. He had a camera slung around his neck. She again tried to get information about the contents of the article out of him. His response was that he could not tell her. For the rest they merely exchanged niceties. She did say to him that she felt fine and that she now could dance on a table.

On Sunday 8 February 2004 she received a call from mr London who asked her to reconsider her position. Her answer remained no. Mr London repeated that he had no knowledge of the contents of the article.

She did not immediately inform her attorney of these approaches. When she established contact with mr Gundelfinger on 11 February 2004, he was furious. He advised her to prevail on Noseweek not to print the article.

There were some calls between her and mr Welz. They were all in the same vein. She was upset and he tried to pacify her. She had a feeling that the article might be withdrawn. At a stage mr Welz said that he would look for something to fill the gap.

She denied that she provided the wedding photograph to Noseweek. Her mother had given copies to friends and relatives. The Edwardian photograph she had only seen in Newslink. She never had a copy of the photograph at home. She did not know what had happened to the copy of Newslink by January-February 2004.

The valuation of plaintiff's estate in the letter of attorney Krawitz was based on enquiries made by her, the result of which was that plaintiff's estate was worth something between R 100 million and R 300 million.

She explained how various details mentioned in the Noseweek article were known to a number of people : his Porsche, his Harley Davidson, the Cohiba cigars, the hunting and fishing trips, the value of the Steenberg property, the Sanlameer property, the London flat, the Ficksburg property etc.

She had told her friends about the tender. Several of her close friends knew about her early life in Swaziland. The incident in which mr Pat Retief had been involved, was widely discussed.

The plaintiff told her about the Trojan case. She told her friends about it.

The photograph of the house in Noseweek was taken without her consent.

She denied that she had orchestrated the publication of the article in Noseweek.

A friend subsequently admitted to having been a source of the article.

In cross- examination she could not say when she received a transcript of her evidence in chief.

She was not in Cape Town in December 2003 to January 2004. She had not been there before mr Welz telephoned her. She went to Cape Town in November 2003 to fetch her old car.

None of her friends had raised the Noseweek article before its publication. She did not know why any of her friends, if they had been involved in the publication, would not have raised it with her.

Mr Gundelfinger was upset because she had seen mr London.

When asked why she did not immediately inform mr Gundelfinger about the approaches of Noseweek, she answered that she was not rational on the Saturday because it was her wedding anniversary. She discussed the matter with her French teacher, who advised her to inform her attorney.

She was referred to several passages of the transcript of her evidence and they were compared with passages in the first Noseweek article. She agreed that there were similarities in regard to word usage and the sequence of presentation. She could not explain the similarities. They related to the incident in which mr Retief was involved, the fact that plaintiff was in love with mrs Bailey, the use of a marriage counsellor, the fact that mrs Bailey was thrown out of her house, the fact that the plaintiff rented a flat in Orley and then moved to a house in Morningside, the fact that the plaintiff had said that he wanted to come home, the Trojan case, the fact that mr Retief had let her down, the fact that the plaintiff was looking for a flat in London at the end of 1997, the plaintiff's reaction to the strike, the letter from the Four Seasons hotel etc.

When it was pointed out that she had been mistaken about Manda Scheepers appearing for Trojan and that the same mistake also appeared in the Noseweek article, she said that she had no comment. She obtained her information about the Trojan case from the plaintiff and if her evidence was wrong, she must have misunderstood him.

She had a wedding photograph in her wedding album. She accepted that the photograph in Noseweek had the same image as her wedding photograph.

She denied that the Newslink photograph was ever brought home.

The various telephone calls were discussed with her. She denied that mr Welz had told her during the first telephone conversation that mr London would come and see her. Mr Welz did not tell her during the first telephone conversation that the article would be favourable to her.

The meeting with mr London lasted about half an hour. Mr London asked her whether she had appeared in the social pages of the press. The suggestion that she go to the gate and be photographed was made on the basis that it would then appear that she was not co-operating.

During all the telephone conversations the same topics were discussed.

She could not remember what was said during the 20 minutes and 56 seconds conversation she had with mr Welz on Tuesday 10 February 2004. It was on the same lines as before. She asked mr Welz about details of the contents and he did not tell her.

When it was put to her that mr Welz had been seeking confirmation for his article, she said that she could not comment.

When she phoned mr Gundelfinger the Wednesday, she told him that she had been in contact with mr Welz. Mr Gundelfinger was furious. She told him that she had told mr Welz nothing and that she had refused to supply a photograph. Mr Gundelfinger was upset about the publicity. He referred to section 12.

She thought that she was entitled to discuss the case with her friends.

Mr Gundelfinger reported to her after his conversations with mr Welz. She could not remember what was discussed in the 4 minutes and 58 seconds conversation between her and Noseweek after she had spoken to mr Gundelfinger on the Wednesday.

She could not remember the details of the 8 minutes and 55 seconds call made by her to mr Gundelfinger on 12 February 2004. The call she made to mr Welz on 13 February 2004, lasting 9 minutes and 36 seconds, was in the same vein, trying to persuade him to stop publication.

She did not ask her friends whether they had been supplying information . Sue Bands did not tell her that she had been in contact with Noseweek.

She could not remember what was discussed in the calls between her and mr Welz on Friday 13 February 2004.

She had received no copies of any letters written by her attorney to set out her position.

She established afterwards that her friend Vera Hully, since deceased, had supplied mr Welz with information. Her attorney wanted to obtain a dying declaration from her, but she refused to have mrs Hully harassed in that way during her illness.

She confirmed that no letter was written on her behalf to ask Noseweek not to publish the article.

She was in Cape Town for a week at the end of November 2003.

In re-examination she said that mr London had said to her that he would wait outside her gate to take a photograph of her. That upset her.

When mr Welz suggested that he might withdraw the article, she understood that it had been written, not printed.

Besides the telephone calls with mr Gundelfinger, she also met him at his office during regular consultations.

She was referred to various passages in the Noseweek article and confirmed that the facts were well known amongst her friends. With regard to the reference to mr Brink, she said that she knew of him as Martin Brink, and not Michael Brink.

When plaintiff phoned her from Heathrow at the time of the strike, she was in the company of mrs Hully and another couple. She told them what the plaintiff's reaction was.

That concluded the defendant's evidence in rebuttal.

On defendant's side the argument relating to the law and its application to the facts was presented by mr Farber. The argument regarding the quantification of her claim for maintenance was presented by ms Foulkes-Jones.

Mr Farber stressed the fact that sections 7 (3) to (7) of the Divorce Act, 1979 (Act 70 of 1979 (the Act) was social legislation aimed at redressing imbalances. He submitted that fairness was a dynamic concept and subject to evolving moral attitudes. Then there were constitutional values like equality and non discrimination on the basis of gender to which effect had to be given. He accepted that in view of cases like **Beaumont v Beaumont 1987 (1) SA 967 AD at 991 E-H** that there was no starting point in a given percentage for the purposes of a redistribution order. With reference to **Beaumont v Beaumont supra at 996 A - 997H** and **Katz v Katz 1989 (3) SA 1 AD at 14 A-H** he submitted that domestic services constituted a contribution to the other party's estate and that there need not be a correlation between such services and the growth of the other party's estate. He distinguished between two situations : where a contribution was commensurable and where it was not. In the latter case a transfer must be ordered according to what is equitable and just.

Where it is sought to achieve a clean break, he submitted that the amount awarded should at least provide for maintenance. It need not, however, be confined to capitalized maintenance. In this regard he referred to **White v White (2000) FLR (House of Lords) 981 at 992 F-H; 993 F - 994 C** and **Lambert v Lambert (2003) 1 FLR 139 at 156**.

He submitted that the real issue in the case was to what extent the defendant should share in the surplus of the combined estates, that is the surplus beyond the needs of the parties.

He referred to the various ways in which the defendant contributed to the growth of the plaintiff's estate : her own earnings and a resultant saving of expenses, her contributions to household expenditure out of her salary, dividends and the sale of shares, funding from her mother's account by means of a power of attorney, her inheritance, her assumption of the duties of a corporate wife, and her duties as a parent and a homemaker.

He disavowed any reliance on matrimonial misconduct on the part of the plaintiff as a determinant.

He submitted that the defendant's contribution was incommensurable and that it should not on that account be undervalued.

With reference to plaintiff's tender he submitted that it only provided for a roof over defendant's head and maintenance. He submitted that the growth of the two estates was disproportionate and that a substantial redistribution should be ordered. He suggested that at least one third of the combined value of the two estates should be awarded to the defendant.

Ms Foulkes - Jones pointed out that the plaintiff's duty to maintain the defendant was not in issue. She referred to cases like **Kroon v Kroon 1986 (4) SA 616 EDC** and **Grasso v Grasso 1987 (1) SA 48 CPD**.

In respect of plaintiff's reconstruction of defendant's expenses she submitted that it was not relevant because it related to the past and to a period when defendant had to restrain her expenses. To the extent that expenses separately claimed under other headings had been included in item 22, food, she submitted that the correct approach would be to leave the separate items intact, but to make a suitable deduction in item 22. She also submitted that to the extent that historic expenses could be used as a yardstick, it would be more appropriate to use the most recent data, that is those of the last seven months.

She submitted a list of reasonable monthly expenses that amounts to R 56 059, 54. According to mr Jacobson's tables, on his basis I, that would justify a capital amount of R 10, 5 million.

On behalf of the plaintiff mr Kuper presented the argument in respect of the principles to be applied in determining the contribution and the issue of the Noseweek article. Ms Rosenberg addressed the court on the issue of the quantification of the defendant's maintenance.

Mr Kuper submitted that a contribution incapable of monetary assessment does not become more valuable because of that fact. He submitted that the value of the defendant's contributions were inconsequential and certainly not in excess of the plaintiff's contributions to the growth of her

estate. On the strength of **Katz v Katz supra** he argued that the contributions of defendant's mother, including those made by means of the power of attorney, had to be disregarded. He submitted that the real growth in the plaintiff's estate resulted from the utilisation of share options and property investments in which the defendant had no share.

In respect of the tender, he pointed out that it was a payment made in advance of the order of court and that allowance should be made for interest received on it after a deduction has been made for maintenance at the rate of R 30 000, 00 per month.

With regard to the actuarial evidence, he submitted that the appropriate discount rate was 4% and that defendant's life span should be assessed according to mr Jacobson's basis III. Furthermore allowance should be made for a reduction of expenses after 75.

In respect of the Noseweek article, he submitted that it amounted to contempt of court and that the defendant had been an active collaborator. He submitted that the wealth of information in the article must have emanated from the defendant and that the author must have had access to the court record. He submitted that the telephone and cell phone calls were incompatible with conversations such as described by mr Welz and defendant. He criticized the evidence of mr Welz and pointed out that he had made it impossible to test his evidence by refusing to disclose his sources. He submitted that the failure to call messrs London and Gundelfinger warranted adverse inferences. Then he pointed out that the evidence of the plaintiff's expert that the

photographs could not have been copied from the Star and Newslink had not been disputed. On the probabilities, he submitted, it was the defendant who had supplied the photographs.

With reference to **Trakman NO v Livshitz and Others 1995 (1) SA 282 AD at 288 F - H**, he submitted that this case must be distinguished because the conduct of the defendant constituted an interference with the integrity of legal proceedings and because the defendant was not enforcing a right, but asking the court to exercise a discretion in her favour. He asked that the conduct of the defendant be taken into account as a factor in the determination of whether a redistribution should be made or in the determination of the extent of the redistribution. He also submitted that defendant's conduct warranted a punitive order for costs.

Ms Rosenberg dealt with all the disputed items of maintenance in detail. I do not intend to summarize her submissions at this stage. In the end her submission was that the monthly need of the defendant was R 35 448, 07. In general she submitted the defendant had suffered no deprivation and that if she had gone without anything, it was because it did not rank as one of her priorities. She referred to the history of the claim for maintenance and its various amendments and submitted that it was inflated to beat the plaintiff's tender.

Mr Farber dealt with the Noseweek article in reply. He submitted that the article could not have been conceived between 6 and 11 February 2004. He referred to certain inaccuracies in the article that could not have emanated from the defendant, like the spelling of mr Kuper's name, the duration of her cross-examination and the first name of mr Brink. At the worst for the

defendant she might have confirmed some of the facts. He reminded the court that a suspicion was not enough. He submitted that the evidence of the defendant had not been controverted. In respect of mr London, he submitted that he was equally available to the plaintiff and that no inference could be drawn from the failure to call him as a witness.

The first issue that I want to address is that of whether the redistribution order should be confined to maintenance.

It was common cause that this was a case where a clean break was feasible and desirable. The plaintiff's tender was manifestly devised to satisfy any claim for maintenance. The amount of the annuity was topped up, as it were, but that does not represent a serious attempt to effect a redistribution going beyond capitalized maintenance.

It is so that maintenance is normally paid periodically and that where it is paid by way of a capitalized sum, in order to achieve a clean break, the vehicle that is used is that of a redistribution order in terms of section 7 (3) of the Act. See **Beaumont v Beaumont supra at 993 C**.

The question is whether the defendant should in this case be confined to a redistribution order that will only satisfy her need for maintenance.

That is what mr Kuper contended. He submitted that her contribution in the various forms on which she relied was minimal and that it never approached the R 3 million to which her estate had increased , if the payment of R 7 million is ignored.

In my view there is no requirement that the contribution of a less advantaged party, in this case the homemaker, should be quantified and that the redistribution order cannot exceed the quantum so established. What is required is that there should have been a contribution, whatever its extent. Then the court should exercise its discretion and make a redistribution order according to what is equitable and just. That, in my view, is the import of what was said in **Katz v Katz supra at 15 B - F**.

The court has a wide discretion and it should not be fettered by any so-called starting points. In the recent case of **Bezuidenhout v Bezuidenhout, case number 364/2003**, in a judgment delivered on 23 September 2004, the Supreme Court of Appeal has effectively rejected a starting point of equality. See paragraphs 21 to 26 of the judgment in that case. That was accepted by mr Farber.

It was common cause that the defendant in various ways had made a contribution to the maintenance and increase of the plaintiff's estate. In some cases there was a dispute about the extent of the contribution, but I do not consider it material.

She was a devoted wife and mother. She was a competent hostess and a presentable corporate wife. In the early years she work intermittently and spent her earnings on the household. As a

result of the plaintiff's commitment to his career and his frequent absences from home it was inevitable that she had to bear the brunt of parenting. All this happened during a marriage of 31 years. Even after the parties had ceased to live together the defendant continued her support of the plaintiff.

It goes without saying that in all these circumstances there is no question that the defendant is entitled to maintenance in full.

In my view she is entitled to more. On the facts of this case it would not be fair to the defendant to confine her to a redistribution order that only caters for maintenance. If the estate of the plaintiff had been smaller, the only way of achieving a clean break may have been to confine her to an annuity. In this case the estate of the plaintiff is large, and the disparity in the increase of the two estates is enormous. Section 7 (3) was intended to redress such an imbalance and in this case it can be done.

The logic of the Duxbury principle is unassailable. To live according to it, however, would require nerves of steel, not to speak of good timing. In practice any prudent recipient of a Duxbury annuity would be well advised to reduce his living standard in order to guard against unforseen longevity. If I could help it I would not like to place the defendant in such a situation.

Without redressment by way of an additional transfer of assets there would be an unfair imbalance between the plaintiff and the defendant. She has no earning capacity. His earning

capacity is intact and it will survive his retirement. He has assets that he can make work for him. Her main asset is her house in which she must live.

I certainly do not agree that the growth of the defendant's estate to R 3 million exceeds the value of her contribution to the growth of the plaintiff's estate. The value of her house represents the major part of her estate as it was before the payment of the R 7 million. The registration of the house in her name in 1986 must be considered to have been a belated compliance with the ante nuptial contract. Otherwise the house is tied up with her maintenance because it saves her the expense of renting accommodation.

For all these reasons I am of the view that the defendant is entitled to a redistribution order that is not confined to the amount required to provide her with an annuity.

I have already mentioned the fact that the defendant did not seek to invoke the plaintiff's conduct as a factor justifying a redistribution order or the extent thereof. I agree that the concession was correctly made.

The plaintiff has, however, contended that the defendant's conduct in connection with the publication of the article in the March 2004 edition of Noseweek should be taken into consideration in terms of section 7 (5) (d) of the Act as a factor in determining whether a redistribution order should be made or in determining the extent thereof.

It is common cause that the defendant had been precognized of the publication of the article. The question is whether she had assisted mr Welz in publishing the article. That was denied by the defendant and mr Welz. In order to prove such assistance the plaintiff relied on circumstantial evidence, notably the evidence relating to telephone and cell phone calls between the defendant and Noseweek and the evidence relating to the wedding photograph and the so-called Edwardian photograph.

It must be accepted that at the time of the first contact between mr Welz and the defendant the article had already been written. It must also be accepted that mr Welz had conceived of the idea of the article as a result of information he had obtained in Cape Town.

Mr Kuper contended that the transcript of the defendant's evidence had been used as a basis for the article. In my view there are many factors that militate against that theory. Although incidents that are mentioned in the evidence are also recounted in the article, they are invariably described in different terms. It was argued that in respect of a number of these items the same sequence had been used. That is so only to a limited extent. The incident in which mr Retief figured features in the beginning of the sequence in the article. In defendant's evidence it appears later.

There is a wealth of material in the article that does not appear in the evidence of the defendant. A lot of it could not have come from the defendant.

If one has regard to the total time of all the telephone and cell phone conversations between the defendant and mr Welz, I find it improbable that the defendant could have been the source of the article. The article is extensive. The total duration of the calls between defendant and Noseweek did not exceed one hour.

What has to be considered seriously is whether the defendant had assisted mr Welz by confirming facts and supplying photographs.

It is necessary to consider the evidence of mr Welz and the defendant.

Mr Welz is a highly intelligent and motivated journalist. He seems, on his own admission, to be able to use irregular tactics to obtain information. The fact that he refused to disclose his sources makes it difficult to test his evidence. He seems to be driven by his own ethos and it is unlikely that, if the defendant had assisted him, he would disclose it.

Even though he seems to be resourceful, it seems too coincidental that he has a secret source everywhere, one at Webber Wentzel, one at Johnic, one at the Star, and one at Angloplats.

It is strange that the value of the plaintiff's London flat, as stated in the article, coincided with the value agreed in this case. The value of the plaintiff's estate, as stated in the article, also happens to coincide with a value used at a time by the defendant. The way in which he says that he arrived at the value of R 100 million makes little sense.

As far as the defendant is concerned, it is strange that, if she did not want to co-operate, she was prepared to receive mr London at all. It is also strange that she was curious to know the details of the article if she was against its publication and did not want to co-operate.

It is incomprehensible how the defendant and mr Welz could have remained at cross purposes if she wanted details of the contents of the article and he wanted confirmation of some of its details. The probabilities are that in the process there would have been an exchange of details. It is important to bear in mind that mr Welz's evidence was that he had given the defendant the drift of the story.

It is improbable that the number of calls, bearing in mind the duration of some, could only have been devoted to an attempt by mr Welz to get information and an attempt by the defendant to stop publication.

Mr Welz never testified, as defendant did, that he had given out the hope that he would look for something else to fill the gap if the article was withdrawn. On his version he would not have said anything like that.

When it was put to the defendant that mr Welz had been seeking confirmation of his article, she could not comment. If mr Welz had been seeking confirmation, he could only have done so by pertinently saying so and by furnishing details of the contents.

The defendant did not say that mr Welz had persuaded her to agree to receive mr London. She did not say that mr Welz had given her the drift of the article. In these respect her evidence differed from that of mr Welz.

There is no doubt that the photograph in the Star could not have been the source of the wedding photograph in Noseweek. The Edwardian photograph in the article could not have come from the photograph in Newslink. It also did not come from the Sunday Times, as the byline suggested. The plaintiff had a wedding photograph in her wedding album. Plaintiff gave evidence that the Edwardian photograph was taken home. It is not improbable and that evidence was not effectively challenged. Mr London visited the defendant at her home. It is improbable that mr Welz would have known of the existence of the Edwardian photograph so as to be able to unearth it by means of independent research. If all the facts are considered, I am of the view that the defendant was the obvious source of the photographs, particularly the wedding photograph, and that it was probably she who supplied them to Noseweek.

On the probabilities I am also satisfied that she assisted mr Welz in confirming details, even supplying some details, like the erroneous bit that Manda Scheepers had appeared for Trojan, an error that recurs in her evidence.

Whether such assistance was given by her with the intention to pressurize the plaintiff to settle the case on terms more favourable to her, as alleged in the amended plea to the counterclaim, is not clear to me. It seems equally probable that defendant merely succumbed to mr Welz′s

persistence, mr Welz having presented her with the fait accompli that he was bent on publishing the article for reasons of his own.

Whatever the case may be, I do not think that the assistance that the defendant gave mr Welz is a factor that I should take into account in terms of section 7 (5) (d). It did not relate to the marriage as such and its patrimonial implications. At best it relates to this litigation and only to the extent that section 12 may have been breached. The only relevance of the conduct of the defendant, as I see it, may be in respect of the issue of costs. In this regard what was said in **Trakman NO v Livshitz and Others supra at 288 E - H** is, by analogy, applicable. This issue may be raised again when the issue of costs is debated.

To the extent that the plaintiff alleged a contempt of court against the defendant, I was not asked to impose any sanction.

Before returning to the issue of the redistribution order I must go through the laborious exercise of quantifying defendant's claim for maintenance. The maintenance must be established in a monthly sum and then be converted into a capitalized amount.

Maintenance needs cannot be determined with objective certainty. Needs vary from time to time. Items of expense can lapse and new expenses can arise. Some expenses are actual monthly expenses. Some have only been converted into monthly values. A detailed budget like annexure SDD1 is at best a check list to assist one at arriving at the monetary value of the need for maintenance. Ultimately the court has to make the best of the evidence before it. It does not

mean that the court is bound by the *ipse dixit* of any of the parties. The court must make a value judgment as to the reasonableness of expenses and alleged needs.

It is obvious that the defendant has no earning capacity. The plaintiff can obviously afford to pay any amount of maintenance that was the subject of debate in this case, even on a capitalized basis.

The real question was what was reasonable in the circumstances.

A very important consideration is what the standard of living of the parties was. The defendant described it as comfortable, but not lavish.

It is obvious to me that their household regime was never one of limitless spending and ostentatious luxury. They maintained a high standard of living, but not without limits. The defendant worked on an allowance and a budget. The evidence of the plaintiff about periodic adjustments by way of "rekeninge" must be accepted. There is corroboration for it in defendant's annotations. The plaintiff had been keeping a cash book since 1971. One can also see in the documentation of the defendant how the frugal habit of household accounting had been inculcated into her. To the extent that she testified that she had resorted to extraneous sources to eke out her allowance, she, in a way, confirmed the fact that the household was run within constraints.

I do not suggest that the plaintiff was mean and parsimonious. It is clear on defendant's own version that the joint household was run on a high level of comfort and that that style continued after 1994. The point is simply that household expenses were always subject to financial discipline.

There is no doubt that although the parties started their marriage without anything and were constrained to live frugally, they gradually increased their standard of living as the prospects of the plaintiff improved. The life style eventually attained in the Atholl home is essentially the life style which the defendant is entitled to maintain. There was no real debate about it.

In **Kroon v Kroon supra at 634 I** Baker J said the following :

> **"Wants and needs are two different things. People usually want more than they need".**

I fear that is also true of the defendant. The fluctuations of her alleged expenses show it.

In respect of many items the defendant testified that her monthly need had been established by adding her expenses over a period and then dividing the total by the number of months in the period. The plaintiff has, in a massive exercise, based on the defendant's own documentation, showed that her statements were incorrect and that her documentation revealed lower levels of expenditure. It is not an answer to the plaintiff's criticism to say that expenses had been forgone

or that they may have been paid in cash. Defendant's original thesis was emphatically that she had added up actual expenses of which there was extant proof.

The point has been reached where the various items in annexure SDD1 should be considered. I know that the plaintiff has somewhat rearranged them and that he has created a new item called cash. There is much to be said for his approach, especially for an allowance for a cash item, which is a catch all of everything that may have been left out. It may also be fair to the defendant, because there must have been many expenses which she simply paid in cash without necessarily retaining chits or invoices. I shall, however, adhere to the scheme of annexure SDD1. It is, after all, the way defendant's counterclaim is structured. At the end of the exercise I shall allow an item for cash. I shall also during the course of the exercise bear in mind the fact that expenses may have been paid in cash.

The first seven items in annexure SDD1 were admitted.

Item 8, medical aid for the domestic worker and the gardener, was disputed.

Plaintiff's argument was that allowing mrs Ramafoka private medical care was not the norm when the parties were living together. He also pointed out that the domestic staff was entitled to public health care, something to which he contributed by way of taxation.

In my view this expense should be disallowed. It does not arise from a contractual obligation. To the extent that it was incurred, it was incurred in respect of mrs Ramafoka, and then mainly at the end of her life when she had acquired a special standing in the household. It never applied to the gardener.

Item 9, staff uniforms, was admitted.

The AA subscription, item 10.1, was disputed by plaintiff on the basis that the BMW package provided for the assistance for which AA membership is required. I could not find any corroboration for that contention in the evidence or report of ms Coburn. In any event I think that AA membership has a wider range of benefits and should be considered to be reasonable.

Item 10.2, tyre replacement, for the new BMW, was abandoned.

Items 10.3 and 10.4, insurance and licence fees for the new BMW, were admitted.

Item 10.5, petrol for the new BMW, was disputed. The claim is based on the supposition that it would be necessary to fill up the tank three times per month. Plaintiff disputed the amount claimed on the basis of the average of actual expenses - R 337, 00 - and the average kilometers travelled per month - 729, 73 kilometers per month according to exhibit B68.

Defendant testified that she fills up three times a month. Each time it costs between R 230, 00 and R 250, 00. When asked to explain the absence of petrol card slips, she answered that

sometimes when she was in a hurry, she would fill up for R 100, 00, paid in cash. When confronted with her low mileage, she suggested that her car might be heavy on petrol.

It is possible that part of the discrepancy can be attributed to cash purchases, but on the basis suggested by the defendant it would imply that she did not each time fill up to the brim.

In my view her evidence that she needed three tanks per month is too vague. The low mileage is not explained satisfactorily. It is also not likely that more than half of her petrol is bought with cash if she has a petrol card.

Accepting that she may occasionally pay in cash, I shall allow R 500, 00 in respect of this item.

The expenses relating to the old BMW as a second car were disputed on the basis that there was no need for such a car. I agree. To the extent that the second car is used for refuse removal, it is unnecessary because the services of a refuse man are used on a regular basis. To keep such a car for the odd day when the first car is being serviced, cannot be justified.

Accordingly items 10.6, 10.7, 10.8 and 10.9 must be disallowed.

Item 10.10, the replacement of the new BMW, was admitted.

Item 10.11 fell away.

Item 11, household insurance, was admitted.

Items 12, 13 and 14 were admitted.

In respect of item 15, medical insurance, the dispute was whether defendant needed to upgrade her insurance so as to allow for full cover for chronic medication.

The evidence of mr Boyle was that the defendant was adequately covered. Her existing cover allowed for chronic medication, but to a limit. He referred to her claims history. It appeared that for the 2003 - 2004 year so - called benefits not covered amounted to R 588, 01.

In the circumstances the defendant has not proved that she needs additional cover at a cost of R 472, 00 per month. It must be remembered that there is a separate item for expenses not covered by Discovery Health. An amount of R 1 244, 00 must be allowed in respect of this item.

Item 16 is in respect of medical and dental expenses not covered by Discovery Health. It includes items purchased over the counter and includes expenses relating to Lisa.

Plaintiff contrasted the claim with actual expenses averaging R 152, 22 per month and suggested an amount of R 200, 00 per month.

To the extent that the item covers expenses relating to Lisa, I want to deal with the issue now. I do not think it is fair to deny the defendant the right to assist Lisa. It is one of her privileges as a

parent. The question is not whether it is good for Lisa. The question is simply whether it is unreasonable for the defendant to assist Lisa. The plaintiff has a different view, for which there is much to be said, but I would not deny the defendant the means to assist Lisa, at least not on the scale that she doing.

There must be medical expenses not covered by Discovery Health and, by the nature of things, those expenses would be of the kind that is paid in cash.

Assuming that there has been payments in cash and that the actual expenses traced by the plaintiff do not give the complete picture, I shall allow R 300, 00 in respect of this item.

Items 17, 18 and 19 were admitted.

Item 20 was abandoned.

Item 21 raises the issue of holidays and travel.

In argument ms Foulkes - Jones contended for the following monthly allowance :

(a) R 4 614, 20 to allow for a 21 day overseas holiday every second year.

(b) R 6 001, 00 to allow for an annual three week holiday in the Cape.

(c) R 2 118, 33 to allow for two weekends away in South Africa annually.

One only has to look at the total amount of R 12 733, 53, to realize that the claim is extravagant.

It is predicated on business class travel, luxurious, top of the range accommodation, and a lavish spending allowance.

The reasonableness of overseas holidays was disputed. It was pointed out that the family as a unit never went on such holidays. Then it was pointed out that the overseas holidays enjoyed by the defendant, and especially the style of travel and accommodation, were a perquisite of the plaintiff's job. It was pointed out that the holidays tagged on to such business trips were of short duration and that the parties then mostly stayed with friends. Only on a few occasions did they stay on, at their expense, in the accommodation reserved by the plaintiff's employer.

I agree that the standard of travel and accommodation that went with the plaintiff's status as a business executive is not appropriate to the type of private travel envisaged by the defendant. The fact is, however, that the defendant was exposed to overseas travel and that for her those trips were mostly a holiday. In principle she should be enabled to undertake such trips, but not on the scale afforded to the wife of the chief executive of a large corporation.

It is so that the trips undertaken by the defendant were of short duration, but, in my view, it makes no sense for a private individual to go on an overseas holiday for a week or 10 days. If, however, a three weeks overseas holiday every two years is reasonable, it can never be reasonable to have another expensive three week holiday in the same year in Cape Town or Plettenberg Bay.

I shall allow the defendant a three week holiday every year, one year in South Africa and one year overseas.

As far as overseas holidays are concerned, I may add that I can hardly visualize the defendant going on her own. I can also not visualize her going overseas every second year for the rest of her life. There was evidence of all sorts of packages and specials that are available in the market, some of them off season. I do not think that the defendant, in her social class, is bound to resort to budget travel of that kind. Where defendant is not employed and not bound by school and university holidays there is obviously no necessity for her to have her holidays, especially in Europe, in high season.

For the overseas holiday I shall allow the defendant economy class travel at a round figure of R 6 000, 00. I may add that the reasons normally invoked to justify business class travel do not apply to the defendant as a private tourist.

The rate of accommodation claimed, £226, 33, I regard as extravagant. I shall accept the rate of £159, 00 given as the lowest rate of the Hilton Park Lane. At the present exchange rate it amounts to R 36 729, 00 for 21 days.

The amount of £200, 00 per day for spending money I also regard as extravagant. One must bear in mind that the defendant will have a portion of her allowance for food, gifts, liquor, entertainment and clothing at her disposal, only to be spent in a different location. I would allow

her, £100, 00 per day. At the present rate of exchange it would amount to R 23 100, 00 for 21 days.

In total these three items amount to R 65 829, 00, or R 2 742, 87 per month.

The three week holiday in the Cape involves airfare, accommodation, car hire and spending money

The evidence of the defendant is not based on the actual cost of any given holiday. She expressed the wish to be able to have a house. When the family used to go to Plettenberg Bay for their annual holiday they stayed in the family holiday home. The defendant also enjoyed the comfort of a holiday home in the Steenberg Estate. Yet it seems to me impractical to allow her the luxury of a home on her own. It seems inevitable that the defendant should be allowed the expense of a hotel. I shall accept the rates of the Peninsular hotel at R 965, 00 as reasonable. That gives R 20 265, 00 for 21 days.

The price of an air ticket in the economy class is given as R 1 057, 00 in the quotation of Travel Services. I may add that for domestic travel, which is of a relatively short duration, there is even less justification for business class travel.

For extra spending money I am of the view that R 500, 00 per day should be reasonable. That gives R 10 500, 00.

Car hire of a B group motor vehicle at R 308, 00 per day would amount to R 6 468, 00.

The total expenditure under this head would amount to R 38 290, 00 or R 1 595, 41 per month.

For the two weekends away I would, in keeping with the standard I have applied so far, allow the following:

(a) air fares : R 1 057 x 2 = R 2 114, 00.

(b) accommodation at R 965, 00 per day for six nights : R 5 790, 00.

(c) car hire for six days at R 308, 00 per day : R 1 848, 00.

The total, for one year, is R 9 752, 00 and monthly it amounts to R 812, 66.

The monthly allowance for the three holiday items is therefore :

(a) overseas holiday	R 2 742, 87
(b) local holiday	R 1 595, 41
(c) weekends away	R 812. 66
	R 5 150, 94

This item is the least representative of actuality. The amount allowed for it is still high, but it reflects, in my view, what is reasonably necessary to enable defendant to keep on enjoying amenities to which she had been used. I must stress that the calculations do not reflect reality, only what may be reasonably required to satisfy reasonable needs. If it is so important to defendant to travel and to stay in luxury, she can still do so by cutting down on the length of her holidays and her spending money. I have no doubt that with the allowance of R5 150,94 she will be able to visit holiday destinations to which she has become accustomed.

Item 22, food and groceries, is for R 6 500, 00. Ms Foulkes - Jones accepted, as shown by plaintiff's analysis, that the item contains extraneous expenses. She accepted that those items be deducted and suggested that the amount of the deduction should be R 1 255, 55, as set out in plaintiff's annexure G10. She argued, however, that the starting amount should be R 6 879, 85, which is the average of food and groceries expenses for the first seven months of 2003. On that basis she arrived at a figure of R 5 479, 55 per month.

Ms Rosenberg also used the average for 2003 as a departure point. That figure, according to exhibit E2 is R 6 602, 00. From that she suggested that R 1 827, 00 be deducted, being R 800, 00 for liquor, R 150, 00 for gifts, R 442, 00 for flowers, and R 435, 00 for cigarettes, all items which have a separate provision. In addition she argued that an amount of R 1 500, 00 be deducted in respect of items presumably consumed by Lisa. The total amount suggested by her is R 3 275, 00.

I agree with the starting figure of R 6 602, 00. Exhibit E is the most refined analysis of the defendant's expenditure. In my view deductions should be made for liquor, cigarettes, cats' food and gifts, which all fall under separate items. I added expenses relating to those items in exhibit E2 for the year 2003 and found the following totals : liquor : R 834, 00, cigarettes : R 2132. 00, cats' food : R 1 631, 00, and gifts : R 1 353, 00. Altogether they give a monthly average of R 1 564, 00 which should be deducted from R 6 602. 00 , giving a total of R 5 038, 00. I could not pick up any significant duplication in respect of flowers in 2003. As far as Lisa is concerned, I abide by what I have said previously.

The result is that I would allow an amount of R 5 038, 00 in respect of this item.

In respect item 23, liquor, there was no dispute about the reasonableness of an amount of R500,00 per month. It will be allowed.

Item 24, clothing, is for R 4 699, 00.

The amount is large, if not enormous, and out of keeping with any historical data, as analysed in exhibit E.

Plaintiff conceded that there was an inexplicable decline in defendant's spending on clothing and suggested an allocation of R 1 500, 00 per month.

Defendant testified that she wanted to buy clothes and shoes from boutiques and she stated her need to buy, amongst others, two jackets and two suits per season and three to four pairs of shoes per season. Unfortunately she gave no particulars of what those items would cost and what portion of her budget they would represent. To the extent that the defendant now wants to buy more expensive clothes than she had bee used to, one might say that she wants to raise her normal standard. I would not altogether begrudge her that.

With very little to go on, I am prepared to allow her R 2 500, 00 under this head.

Items 25, 26 and 27 can be taken together. They amount to R 4 048, 00 per month. They are in respect of cosmetics, hairdressing and personal grooming. The total appears to be extravagant.

The cosmetics, item 25, was calculated on a price list. The hairdressing, item 26, was said to represent actual cost. The personal grooming was based on price lists of items to which the defendant said she had been used to during the marriage.

There is a vast discrepancy between the amounts claimed and historical expenses, as reflected in exhibit E3. The averages of these items for 2003 add up to R 1 239, 00. The possibility exists that some of these expenses were paid in cash. That would explain the decline in expenditure for item 27, personal grooming, during the first seven months of 2003.

In respect of cosmetics, item 25, the defendant said that she used Clinique products. She took the price list, added up the prices of all the items she used, and determined the average with reference to the time the products would last. The point is that the defendant did not claim to have forgone any cosmetics for lack of money. If one looks at the pattern of her expenses, one can see that the amounts vary significantly, some months showing no purchases. That is in conformity with a practice where she bought products which lasted some time, and not necessarily in tandem. It would seem, however, that the defendant was somewhat liberal in her estimates of the duration of the products.

Taking into account that the defendant may have paid some of these expenses in cash, I would allow R 1 600, 00 for items 25, 26 and 27 together.

Item 28 is for entertainment. R 4 420, 25 is claimed.

According to the defendant this item is based on actual expenditure. The average expenditure, as analysed in exhibit E3, amounted to R 1 865, 00 over a period of 31 months. It appears, however, that there was a decline in expenditure since 2001. It may be that some expenses were paid in cash.

Ms Foulkes - Jones argued that allowance should be made for bridge lessons at R 140, 00 per week, French lessons at R 440, 00 per month, tennis coaching at R 500, 00 per month and, possibly, a personal trainer at R 600, 00 per month. The personal trainer seems to me to be a pure wish list item. There is no historical basis for it, only peer pressure from mrs Bands. The bridge lessons, tennis lessons and French lessons have a historical basis, but they are recorded in the documentation on which exhibit E is based. There is no suggestion that these lessons ever amounted to the R 1 500, 00 per month that is now being claimed.

Bearing in mind the possibility of cash payments in view of the decline in recorded expenditure, I shall allocate R 2 000, 00 for this item.

Item 29 is for golf and it included membership fees of the Johannesburg Country Club.

The whole debate was about whether the defendant can seriously be considered to be a dedicated golfer. She has golf clubs and she has dabbled around at golf, but the evidence of the plaintiff that her efforts to master the game have come to naught, must be accepted. If one looks at her

diaries one finds the following references : 9 April 1994 : a golf lesson, 10 April 1994: golf practice, 14 April 1994 : golf lesson, 17 July 1994 : golf, probably 9 holes, 3 August 1999 : golf lesson, 5 August 1999 : golf, probably 18 holes, 6 August 1999 : golf lesson, 13 August 1999 : golf, probably 18 holes, 27 August 1999 : golf lesson, 5 October 1999 : golf lesson, 8 September 2000 : golf practice, 27 September 2000 : golf, probably 18 holes, 3 December 2000 : golf, probably 18 holes. This is in contradistinction to entries relating to tennis, bridge and French lessons which abound.

The claim is predicated on the defendant playing golf twice per week. Her track record shows a desultory and sporadic interest in the game. It can never justify the claim formulated by her.

I shall allow the defendant her Country Club membership, which amounts to R 317,50. It appears that she plays bridge at the club.

Under item 30 R 350, 00 is claimed for the replacement of sport equipment.

Exhibit E shows no significant expenses under this head. Defendant has golf clubs. In view of what I have said above, I do not visualize her needing a replacement. She has a serviceable tennis racket, but she may have to replace it. She testified about the need to replace tennis shoes and the like.

Although the defendant has not really given figures, I recognize some need and I shall allocate R 150, 00 for it.

Garden maintenance, item 31, was originally R 1 500, 00, but it was amended to R 1 666, 66 as a result of mrs Steyn's quotation.

It must be remembered that the item was initially based on actual expenditure. The actual expenditure shows an average of R 425, 25 over 31 months.

There is evidence that the garden has been allowed to run to seed.

The plaintiff's attitude is that the defendant now has a full time gardener as opposed to the three days a week gardener that he used to have. He is of the view that the expense of garden services on the basis of mrs Steyn's quotation is not justified.

I agree with this view. If the garden has deteriorated, the expense to restore it will be a one off expense. The defendant used to be an enthusiastic gardener. With the help of a full time gardener she should be able to run the garden as before.

In view of the fact that the garden has deteriorated, I must accept that the amount actually spent on it was less than was required.

I shall allow an amount of R 750, 00 for this item.

To the extent that the restoration of the garden might be expensive, the defendant will be able to pay for it out of the capital amount that I shall award her in addition to capitalized maintenance.

Item 32 is for the replacement of garden equipment, compost and refuse removal. The amount claimed is R 450, 00.

The defendant, in cross - examination, conceded that an amount of R 200, 00 should be allocated.

That is the amount that I shall allow.

Item 33, gifts, was conceded. The amount is R 1 000, 00.

Item 34, veterinary services, dog food and dog grooming, amounts to R 450, 00.

Based on exhibit E ms Rosenberg argued that R 107,.00 should be allowed for this item. In view of the fact that I have deducted R 233, 00 in respect of cats' food under item 22, that amount should be added. I shall allow R 340, 00 in respect of this item.

In respect of item 35, swimming pool maintenance and repairs, R 520, 00 is claimed.

The claim is based on what swimming pool companies charge for pool maintenance. See exhibit G25, paragraph 1.6.

The plaintiff's attitude is that such a service is not necessary with a full time gardener.

Defendant has never had such a service. The parties never had such a service when they lived together. I agree that with a full time gardener there is no need for such a service.

Pool chemicals are purchased together with groceries and need not be considered separately.

Accordingly no amount is allocated in respect of this item.

In respect of item 36, replacement of furniture, household effects, and decorating expenses, R 1 500, 00 was claimed.

Plaintiff initially suggested an amount of R 1 344, 81 which defendant accepted. Plaintiff then sought to retract R 100, 00 as being the amortised cost of replacing the lawn mower, which was included in item 32. I shall hold plaintiff to his initial offer. In respect of item 32 the defendant conceded an amount of R 200, 00, which I consider to be conservative.

R 1 344, 81 shall be allocated in respect of this item.

Item 37, home maintenance and repairs, is for R 1 085, 00.

The defendant testified that the item was based on actual expenses. Actual expenses averaged R 727, 93. The defendant referred to defects like cracks and leaks that needed attention.

In my view the allocation should be done on existing data. R 727, 00 should be allowed.

Items 38, 41 and 42 can be considered together. They refer to cleaning or dry cleaning in one or other form : of carpets and furniture in the case of item 38, of curtains in the case of item 41, and of clothing in the case of item 42. In total R 469, 00 is claimed for the three items.

In the case of items 41 and 42 the defendant testified that the claim is based on actual figures. In the case of item 38 it is stated in annexure SDD1 that it is based on two cleanings at R 850, 00 per year. There is no evidence to substantiate it.

According to annexure E4 the expenditure in relation the these items averaged R 24, 77, which is the amount offered by the plaintiff.

It seems to me improbable that so little could have spent on cleaning and dry cleaning. The probabilities are that some of the payments were made in cash.

I shall allocate R 100, 00 for these three items.

Item 39, R 520, 00, is in respect of flowers for the home.

The amount was not in dispute, but it was suggested that the expenses were absorbed into item 22. I have already stated that I could find no significant traces of flowers being accommodated under item 22 during 2003.

I shall allow the amount of R 520, 00.

Item 40 is in respect of a book club. It concerns an amount of R 50, 00. No argument was advanced on behalf of defendant. According to plaintiff it has been accommodated under the item for entertainment.

Accordingly no allocation is made for this item.

Item 43, R 300, 00, relates to parking and tips relating to parking.

Plaintiff seems to have no objection against the amount, but suggests that it be accommodated under the cash item. I shall do so.

Item 44, replacement of towels, linen and crockery, is for R 250, 00.

The defendant's evidence in respect of this item is very vague. Plaintiff acknowledges actual expenses of an average over 31 months of R 201, 00. I shall allocate that amount.

There was no dispute about item 45, cigarettes. The amount is R 435, 00.

I shall also make an allocation for cash as a separate item. It is a form of safety net to cover for expenses that may have been underestimated or not foreseen. In view of the fact that I have

throughout assumed that certain expenses may have been higher as a result of payments in cash, I can obviously not allow an amount of the order of plaintiff's item 46. I shall allow R 750, 00.

The total at which I have arrived is R 40 874, 68, which I shall round up to R 41 000, 00. Looking back at the exercise, I am satisfied that an amount of R 41 000, 00 reflects what is reasonably necessary to enable the defendant to maintain herself in a way condign of what she had been used to and of what her social standing requires. I may have erred in certain respects, but the probabilities are that such errors have been counterbalanced by errors in the contrary direction. Then, of course, there is the further safety net in the form of the additional amount that I shall award to the defendant by way of a redistribution order.

Mr Kuper contended for a real interest rate of 4%. In my view it should be 3%. That was the rate with which mr Jacobson worked. Although he testified that the yield of the defendant's portfolio was in excess of 3%, he did not say that it reached 4%. He also did not testify that the gap between interest and inflation was consistently at least 4% or that it would remain so. It may be that at this stage a rate of 3% is generous to the defendant, but these are early days. As I see it I have a choice between 3% and 4%. There is no convincing reason why I should opt for 4%.

There is no reason why the PA (90) tables, which are used by pension funds, should not be used to establish the defendant's mortality. It is slightly more advantageous to the defendant than the tables based on census statistics.

I was asked to make a deduction on account of the fact that the defendant is a smoker. The evidence of mr Jacobson is not that in general such a deduction is applied in the industry. I have read the article of Robert L Brown and Joanne McDaid to which he referred. In that article it is suggested that a number of factors, one of them smoking, be taken into account to refine mortality estimates so that more finely tuned products could be marketed by the insurance industry. The article never states what, in terms of percentage, the effect of smoking is on mortality.

On the evidence I see no reason to make any allowance for smoking. I do not think that smoking is irrelevant to mortality. There is simply no hard evidence of how to quantify it.

The same applies to the article of Pamela B Hitschler comparing the spending of older consumers in 1980 to that in 1990. See exhibit G17. The point of the article is not that there is a drop in expenditure after 75. There is a table on p7 showing expenditure of various age groups. The group between 65 and 74 spent $20 386,00 per year. The group over 75 spent $ 15 082, 00. It is not explained what the reason for this difference is. It was not the point of the article to explain it. It may be because the older group had a lower average income.

I shall therefore not assume a decrease in expenditure after 75. It is possible that the needs of the defendant may be less after 75. For one she may not then wish to go overseas any more. She may decide to give up her house. She may be disqualified from driving. But, at the same time there may be a concomitant increase in expenses : a chauffeur, an old age home, nursing, increased medical costs etc.

Mr Kuper argued that an allowance should be made for the fact that the defendant already received the benefit of the amount of R 7 million at the end of November 2001. That payment should be seen in its context. It was done after a final order of divorce had been given. The amount of R 7 million was received as a prepayment of the bare minimum of what the court would ultimately award. In the circumstances, as far as that amount is concerned, the situation must be judged as if it had been paid pursuant to a redistribution order. It was paid as an annuity. It is of the nature of an annuity that in the first years the income will exceed drawings. I can therefore not see how the plaintiff can claim any benefit from the excess income. The defendant must save it to increase the capital, firstly so that the income can keep pace with inflation, and, secondly, so that the capital will be enough to last until her death.

Accordingly, with reference to mr Jacobson's table I, I find that a capital amount of R 752 649, 00 is required as capitalized maintenance.

That brings me back to the amount that should, by way of a transfer of assets, be paid to the defendant in addition to the amount of R 7 752 649, 00 that would be required to provide for her maintenance.

Considering all the circumstances of the case, I am of the view that the plaintiff should be ordered to transfer a further R 4 million to the defendant. Bearing in mind the R 7 million that he has already paid, he should therefore now be ordered to pay her an amount of R 4 752 649, 00. That would make her truly independent. It would free her from the fearful logic of the Duxbury formula. It would give her leeway in the planning of her financial affairs.

I do not think that a larger additional transfer would be fair to the plaintiff. It remains a fact that the bulk of the increase of his estate was the result of his exercise of his career options, his acumen, his investment decisions and rewards bestowed on him. The contribution of the defendant must, for the greater part, be seen as an indirect, intangible, contribution. She created the environment in which the plaintiff could allow his talents to flourish. All along her contribution was ancillary to the plaintiff's own contribution to the growth of his estate.

I shall therefore order the plaintiff to transfer an additional R 4 752 649, 00 to the defendant. I was not asked to defer any transfer that I may be inclined to order. Accordingly I assume that the plaintiff can effect immediate payment. In any event, as I see it, the plaintiff may still, in terms of section 7 (6), apply for a deferment of payment which can be granted upon such conditions as the court may impose.

I was asked by mr Kuper to refer the record of the case to the National Director of Public Prosecutions for the consideration of possible criminal proceedings in relation to the publication of the article in the March 2004 edition of Noseweek. I do not think

it would be helpful to unload the record of these proceedings on the National Director. Not even this judgment. In my view the proper procedure would be for the plaintiff, if he so wishes, to lay a charge by means of an affidavit focused on that issue.

As far as costs are concerned, the parties were in agreement that they should be argued after the order has been made.

In the result the following order is made :

1. The plaintiff is ordered in terms of section 7 (3) of Act 70 of 1979 to transfer an additional amount of R 4 752 649, 00 to the defendant.

2. Costs are reserved.

C BOTHA
JUDGE OF THE HIGH COURT