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IN THE HIGH COURT OF JUSTICE  
FAMILY DIVISION  
[2019] EWHC 2975 (Fam)



ZC16D00212

Royal Courts of Justice  
Strand  
London, WC2A 2LL

Thursday, 19 September 2019

Before:

MR JUSTICE COHEN

B E T W E E N :

MS ROYA SHOKROLLAH-BABAE

Applicant

- and -

MR KAMBIZ SHOKROLLAH-BABAE

Respondent

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MR J. RAINER (instructed by Payne Hicks Beach) appeared on behalf of the Applicant

MS F. HAY (instructed by Penningtons Manches Cooper LLP) appeared on behalf of the Respondent

J U D G M E N T

MR JUSTICE COHEN:

- 1 In early 2018, there was a hearing which lasted some eleven days, and which took place before Baker J, as he then was, to determine financial remedy applications, following the breakdown of a long marriage between the husband and the wife. In the course of a very long judgment, dated 4 September 2018, the judge was very critical of the husband's disclosure, and he found part of the husband's case to be a fiction, and that he had concealed from the court the extent of his business activities and resources.
- 2 That said, the judge accepted that the husband's development projects in London and the French Riviera had run into difficulties, which affected their profitability. He also found that the husband had spent money on himself in a cavalier fashion, and was well able to afford the orders for maintenance pending suit and legal services, which had been made at an earlier stage of the proceedings, in a total sum of £40,000 a month, and which had been largely ignored by the husband.
- 3 The outcome of the hearing is distilled at paragraph 192 of the judgment, which provides as follows, in summary:

- (1) The matrimonial home was to be sold, and the net proceeds, together with a balance of collateral accounts, paid to the wife.
- (2) The holiday home in France was to be sold, and the net proceeds, together with the balance of the collateral accounts, paid to the wife.

And, said the judge, the effect of those two orders should leave her with about £950,000, which would have been insufficient to meet her liabilities.

- (3) The other two French properties were to be transferred into the husband's name, provided that he secured the wife's release of liabilities, in terms that I will revert to. The judge recorded that both those properties needed to be renovated in order to maximise their potential value.
- (4) Provision was made about chattels, that I need not go into.
- (5) The judge made an order for the payment to the wife of a lump sum of £2 million on or before 1 September 2021.
- (6) The judge made orders for maintenance pending payment of the lump sum in the sum of £3,000 per month for one child, that is a son, and periodical payments to the wife at a rate of £10,000 per month.

- 4 A supplemental judgment dealing with issues about the terms of the order, and costs, was delivered on 16 January 2019, which led to an order dated 8 March 2019. The husband sought to appeal the substantive judgment, but permission to appeal was refused by Moylan LJ.

- 5 The summonses before me are as follows, and there are seven of them:

- (1) The wife's judgment summons, dated 28 May of this year.
- (2) The husband's summons to vary the periodical payments order of £10,000 per month, that summons dated the 3rd July.

On the 17th July a raft of four summonses were issued by the parties:

- (3) The wife's for delivery up of what is described as "goods", but meaning art, cars, and number plates; and for the provision of evidence of payment of the utility bills.
- (4) The wife's for orders that the court sign sale documents relating to the three French properties if the husband did not.
- (5) The wife's for the delivery up of the husband's passport.
- (6) The husband's application to extend time for him to secure the release of the wife from her liabilities under mortgages of the two French development properties.
- (7) And the seventh summons, which was dated 13 September, that is last Friday only, was the husband's application to take over the sale of the Former Matrimonial Home, and for the wife to give an account of the proceeds of sale of various chattels.

6 Summonses (2) to (7) were added after the two-day time estimate had been given for the judgment summons. The parties had made no attempt to adjust the time estimate, and for that I do censure them. It is with difficulty that I have managed to complete this case within three days, but it should plainly have been obvious to the parties that the two-day time estimate for these seven summonses was inadequate.

7 In addition to the summonses, the parties have sought to open up a range of matters which are irrelevant to the outcome of the summonses. For much of the time, the wife has been unrepresented by lawyers, which may give her some excuse for the procedural difficulties. The husband has been represented throughout by solicitors, albeit I suspect that they were not fully funded for much of the time.

8 I will try and deal with the summonses in the order in which they have been issued, and so, I start with the judgment summons. First, procedurally: The parties have adopted before me the same stance as they adopted at the abortive hearing before Holman J in July 2019, when he found halfway through the case that he had to recuse himself because of a previous involvement. I made it clear to the husband at the outset of the case that he need not answer any questions that might incriminate him, or indeed that he could choose not to give evidence at all on the judgment summons. He has chosen to give evidence on all matters, and to answer without any reservation all questions put to him.

9 I bear very much in mind that this is an application for a committal order, and that at all times the burden to prove non-compliance rests upon the wife. She must prove to the criminal standard of proof that (1) the husband had the means to pay the sums due under the order, and (2) that he has refused or neglected to pay them.

10 The second test is in fact admitted by the husband, because he accepts that since 4 September 2018, the date from which he was due to make the monthly payments of £10,000 per month in advance, he paid nothing until June 2019, after the summons was issued. It is common ground, as it has to be, that he should have paid thirteen payments of £10,000, that is £130,000, and in fact has paid a total of £12,500. That is £2,500 in June, £5,000 in August, and £5,000 in September. And therefore, he is £117,500 in arrears.

- 11 The issue is whether I am satisfied so that I am sure that he has had the means to pay the sum due. Although, as I will set out, there are other money payment orders which he is in breach of, the statement that the wife provided pursuant to the order of Williams J specifies only the arrears in respect of maintenance. I say "only"; that is putting to one side a complaint about a very small costs order, which it is unnecessary for me to go into. And she says correctly in that statement that the husband at that time was in arrears to the tune of £107,500, and he is now in arrears to the tune of a further £10,000.
- 12 Although many complaints have been made during this hearing about other breaches of the order of 4 September 2018 by the husband, in my judgment it is not open in the context of judgment summons proceedings to go beyond the arrears of periodical payments as set out in the wife's statement. And says Ms Hay, on behalf of the husband, if the court confines itself to that issue, the husband takes no procedural points (if there are any to be taken) in respect of the judgment summons proceedings.
- 13 I have not been asked to adjourn the judgment summons until after the hearing of the application to vary, but even if that course had been pressed on me, I would not have acceded to it. The husband's application to vary is unsupported by any evidence. It was issued just four months after the order of Baker J was approved, in circumstances when, on his own case, he had income which he did not have before (albeit not very much more), and with no argument put to me that there has been any change in his circumstances for the worse. It would in the circumstances of this case be a serious injustice to the wife if I was to adjourn or stay her application for a judgment summons.
- 14 The husband has sought to defend the judgment summons on two grounds. The first is that he says he should be given credit for £81,000 from what he says is his share of the proceeds of sale of a painting that was sold in November 2017. In my judgment that is a hopeless argument. Baker J was fully aware of the issues surrounding the sale of the painting and its proceeds, which of course arose before he even commenced the financial remedy trial. He declined to adjust his award to reflect that. I cannot see how the application of the monies which the parties received following the sale of a painting in November 2017 can possibly affect the husband's liability to make payments under an order of September 2018. He says he was advised by lawyers that he could claim credit for that. I simply say that no properly informed lawyer could have given that advice.
- 15 His second argument is that he could not afford to pay. I am satisfied so that I am sure that is not the case. True as always, his income has been limited. He is at the stage of development of two properties with completion variously in 2020 and 2021, and with a third now on the market for sale. A property developer's income is never constant, and indeed sometimes not actually received at all. Baker J found, on a civil standard, that the husband had the ability to pay £10,000 per month, and of course since then his income has improved. But that does not absolve me from examining the issue to a criminal standard.
- 16 There are two approaches that I need to look at. First, I look at what he has actually and obviously had available in the time in issue, that is since September 2018. He says he received something in the region of £100,000 from the sale of watches. He says that he has received rather over £40,000 from his share of the development of a property in Holland Park, and about the same sum again by way of consultancy income. He has also received financial assistance from a gentleman referred to in the judgment as "Mr X" to meet obligations in respect of the French properties, but in my judgment that particular source of income takes matters no further, because of the particular circumstances relating to it. But there are resources that he had which would have permitted him to pay in full, albeit leaving relatively little for himself *if*, and I stress the word "if", those were his only resources.

- 17 But perhaps a better guide is to be gained from looking at his expenditure over the period. He has expended £8,100 a month on the rental of a flat in prime central London. That flat was one that he chose to rent, and unnecessarily retained, even though he has now given notice, when he already owned a flat, albeit a small one, nearby, which was available to him through the period, albeit it is now in receivership. Secondly, he has chosen to provide for his children at a level significantly in excess of what was ordered. He was ordered to pay £3,000 per month for the youngest child of the family, the son to whom I have already referred, but in addition to whatever he has been paying him, he has been paying without any order requiring payment a very substantial sum to the daughter of the parties. He paid £30,000 to his solicitors in the period. He paid €46,000 towards the expenses of the French properties, albeit with borrowed money. He goes away for the Easter weekend, at a cost of £3,000, and buys his girlfriend a £700 jacket. And there are many other indications of significant expenditure.
- 18 The truth is that the wife has always been at the bottom of the list of priorities, and only when she issued a judgment summons has he thought it appropriate to start paying anything. So, I am satisfied so that I am sure that he could have paid the £10,000 a month if he wanted to. In my judgment, it is not material whether he would have done so from capital or income, and I reject Ms Hay's submission that it is only the income that I should be looking at. What I must look at is wider than that, and is all his available resources.
- 19 He is therefore in contempt of court. I have thought carefully about where I should go from there, and I have come to the conclusion that I should adjourn consideration of what punishment, if any, I should impose until a further hearing in November or December.
- 20 The husband asks that I should allow him further time to arrange for the removal of the wife from the liabilities in respect of the two development properties. That is a matter that I am going to consider at another hearing. He may find that I am more amenable to that proposal if the arrears are being tackled. And so, I intend to adjourn disposal to the next hearing.
- 21 It is right in the context of the other applications that I should look more widely at the payments that the husband is due to pay for the wife's benefit over and above the issue of periodical payments. He is under a liability to pay the mortgage on the matrimonial home. The equity in the home is being eroded at the rate of £47,000 a quarter because the husband has paid nothing towards the mortgage. The result is that since March 2018, when the hearing took place, the equity has been reduced by reason of the non-payment of the mortgage by something in the region of £300,000. At trial, the husband put the equity in the matrimonial home at £487,000. The result of his non-payment and an unhelpful property market is that after sale there will be no equity in the matrimonial home, and the loser of course is the wife.
- 22 Secondly, there are costs orders made against him. The sum of £500,000 was due, on account of his liability of costs in the financial remedy proceedings, to be paid by 15 April 2019 (and the order is wrongly drafted when it says 2018, and that will be corrected). He has two other costs orders against him in very much smaller sums which are outstanding. He is meant to be paying all the expenses of the matrimonial home, but he is in significant arrears with council tax and water. Those are matters of background, which are important when I consider the other applications that are before me.
- 23 It is also significant at this stage that I should mention the French holiday home. That is a family apartment, which has been enjoyed by the wife and the children. It is charged, I am told, to the extent, net of collateral, to about €900,000, and it has been valued at about

€1 million. Baker J estimated that the equity of the matrimonial home and that holiday home in France would provide the wife with about £950,000, which he commented would be insufficient to meet her liabilities. On the figure as they now appear to be, she will get nothing of that £950,000 to put towards her liabilities.

- 24 The second summons that was issued was the husband's application to vary the periodical payments order, issued, as I have said, just four months after the order of Baker J was finalised. I have detected no change of circumstances for the worse since the time of that order. This application is, at the moment, unsupported by any evidence from him other than the oral evidence that he gave in the witness box this week. He is entitled to have his application heard, and to put in evidence, but he should be warned that unless he can show a change of circumstances since the date of the order, he may find that his application would be unlikely to succeed, with costs consequences.
- 25 I intend to take the same approach to the application as Singer J did in *Joy-Morancho* [2017] EWHC 2086, namely an abbreviated approach. I want the husband to reflect whether he thinks it is wise to pursue the application, particularly in circumstances when he is seeking the court's indulgence in relation to the French properties. But if he does wish to proceed with it, and it is his decision, I shall, with one or two small changes, adopt the approach that Singer J took in *Joy-Morancho*.
- 26 The direction that I shall make is that:
- (i) The husband shall file a document limited to three sides summarising all significant changes that he asserts since September 2018 in his income and capital position.
  - (ii) The husband must file a concise statement, limited to ten sides, but I am open to discussion if people wish to make other suggestions, to cover:
    - (a) the asserted change of circumstances;
    - (b) explaining exactly what has changed and why; and
    - (c) providing documentary evidence demonstrating the asserted specific change.

The wife will then have the opportunity to reply to that document in a page-limited manner, and I will hear that matter on a one-day time estimate, which I will come back to later.

- 27 The third summons before me was the wife's summons for the delivery up of art and car number plates. I understand that that has now been agreed between the parties, and I therefore will say no more about that. The wife also seeks evidence of payment to the utility bills, and plainly that must be provided, and is uncontentious. It is set out in the order exactly what the husband must provide and when.
- 28 It is convenient to take together the two summonses, that is the wife's number (4), and the husband's number (6), in relation to the French properties. I need say no more about the French vacation property. No issue arises in relation to it at this hearing, or at least not any longer. If there is a problem about the signing of documents, I will deal with that, I hope, on paper.
- 29 I turn next to the two plots of land, semi-derelict, on the French Riviera. Their value at the time of trial suggested that there was minimal or no equity. At paragraph 127 of the judgment, it is recorded that on the wife's part, it is put that one of the two properties had a negative equity, in the sum of £123,000, and the other a positive equity of £15,000. And at paragraph 128 of the judgment, it is recorded that the husband said that each had a negative

equity of £146,000. As I read those figures, the equities are net of the collateral that was provided, as enumerated in the judgment, as the collateral appeared to be mentioned nowhere else. The judge dealt with them at paragraph 192(iv) where he said, as I have already summarised:

"The two other French properties shall be transferred into the husband's name. Both properties need to be renovated in order to maximise their potential value. The best prospect of achieving that is if they are left in the hands of the husband to develop, using the resources which I find he has available, but not fully disclosed."

- 30 That translated into paragraphs 24, 25 and 26 of the order at A7, A8 and A9. The judge directed that the husband should procure the release of the wife from liability under the mortgages of the two properties, and indemnify her against any liability. But in the event that it was not possible to secure her release, the properties should be sold in accordance with the provisions of paragraphs 24 and 25. Those two paragraphs provide that if he was unable to obtain by 1 June 2019 her release, the properties were to be sold, and that she should have sole conduct of the sale, and the proceeds of sale were to be used, along with the collateral, to discharge the mortgages and costs of sale, then to pay the wife all sums then outstanding to her, and then, only if there was a balance, to the husband.
- 31 The husband has not been able to obtain her release from the liabilities, so as the order now stands, they are to be sold, with the wife having conduct. The amount outstanding on the mortgages, net of the surplus on the collateral accounts, is on number 5, €885,000, and on number 7, €941,000. Thus, on the figure that the parties were advocating for at trial, namely that the properties between them were worth about €1.5 million, a sale would produce nothing for either party, as the proceeds would be swallowed up by the mortgages.
- 32 As ever in this case, the parties' positions have fluctuated. The wife has obtained, without the court's permission, an estate agent's appraisal, valuing the two properties on an "as is" basis, at €1.8 million and €1.6 million respectively. That is of course massively more than the sum that was contended for at trial in accordance with the advice of the single joint expert.
- 33 The husband has produced a proposal that would see him borrow €5.65 million, inclusive of refinancing and the cost of renovation, in the hope, he says, of selling for up to €9 million. It is not easy to follow the maths of what I have been provided, and he asked me to extend the time for him to secure the removal of the wife's liability.
- 34 As things stand, if the husband does not get an extended time to secure the wife's release, he will get nothing, or next to nothing, even if the wife's appraisal is right, and the properties do sell for €3.4 million rather than €1.5 million, and that is because he owes the wife more than the equity that will be produced, that is over £100,000 by arrears of periodical payments; over £500,000 by way of costs; and several hundred thousand pounds in respect of mortgage arrears. Of course, if the wife's appraisal is right, there is a sum to be gained for her.
- 35 Baker J had in mind, and it is not a matter that I should overlook, that the husband should have the opportunity to develop those properties to attain the best price, but the problem that presents itself is that if I do allow him the extra time, and the properties are then transferred to him under the terms of the order as now drafted, she will get nothing from the sale proceeds following redevelopment, and there is no provision in the order for her to benefit from the sale. A further disadvantage of the route that the husband proposes is that the development, if it takes the term of the proposed loan, will be some five years, and of course

as things stand, she will throughout that period be dependent on the husband for maintenance unless "his boat comes in", if I can put it colloquially, in respect of the London development properties.

- 36 In the light of the lack of support that she has received so far, it is not surprising that the wife has little confidence in the husband's willingness or ability to support her over the future in terms of providing a sufficient sum of money to meet her living expenses and housing costs.
- 37 I would in general terms be minded to go along with the husband's proposal for an extended time, only because that is what Baker J had in mind. But it seems to me that the husband needs to consider his position in relation to this development. The husband has got to be able to ensure that the sums that are owed to the wife will be paid from the sale proceeds, and that means that she must take priority to at least some of his debtors, including "Mr X", and Y Limited who have underwritten his legal fees. She will need a prior charge to them, and a proper proposal to meet that, needs to be formulated.
- 38 So, he needs to provide a proper proposal that gives confidence to the wife that what is due to her will be paid. Secondly, I want to have more confidence than the husband has been able to give me in the time available in his figures. He says that he hopes to be able to sell for €9 million, but I do not know where that figure comes from. And I want him also to obtain a valuation of the French properties from a single joint expert as to their current "as is" value, and their value when developed. I am prepared for these purposes to work on his assumption that it will cost €2 million to develop the properties, and I do not require him to go to the expense of proving that figure.
- 39 Therefore, what I intend to do is to adjourn the husband's application for an extension of time to obtain the release of the wife from the charges, but order him to obtain from a jointly instructed single joint expert a valuation of the properties in the terms that I have described. In the meantime, I will stay the sale of those two properties. In other words, I am preserving the position in relation to them.
- 40 The fifth summons is the wife's for delivery up of the husband's passport, and she has rightly, in closing submissions, abandoned that application, which will be dismissed.
- 41 The final summons is the husband's summons, issued only last Friday, to take over the sale of the matrimonial home. He too sensibly has abandoned the summons, which I will dismiss, but I should say something about it. The husband's initial proposal was that the wife should move out, notwithstanding her evidence that she would have nowhere to go. He says that he wants to see the property renovated and work done on what he regards as an improved marketing strategy. His case that he would achieve a far higher price than the wife could achieve is substantially undermined by the fact that his case before Baker J was that the property should be treated as worth no more than £4.8 million, which in fact is slightly less than the price at which the wife is marketing it.
- 42 He says that the lenders are greatly troubled at the fact that this is not being marketed much higher, because they fear they will be out of pocket. The husband says that he is willing to try and help to calm the nerves of the bankers, and also asks that expert advice be taken as to whether spending some money on the property might reap a dividend in terms of the sale price.
- 43 It would obviously be sensible for steps to be taken to try and calm the nerves of the lenders, and to see if a greater sum can be achieved for the property. That will demand a sense of

trust and good behaviour by the parties to each other that so far has been lacking. I hope that they will consider a more cooperative approach in the future.

44 I think that covers all the matters that are before me, and therefore I adjourn:

- (1) the question of punishment for the breach of the order for periodical payments;
- (2) the husband's application to vary periodical payments; and
- (3) his application for an extension of time in relation to the two French properties.

The matter will be listed before me for a one-day hearing in November or December, and the order will be made for the valuation of the French properties in the terms that I have discussed.

45 I am not prepared for the next hearing to be derailed in the way that the parties have sought to derail this hearing. If any party seeks to add any further items to the agenda, my clerk must be informed, and an enlarged time estimate will have to be considered, which may mean an adjournment of the application. Unless there is anything else, the final matter that I shall order is a transcript of this judgment shall be obtained at the expense of the parties.

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**CERTIFICATE**

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This transcript has been approved by the Judge