Neutral Citation Number: [2020] EWHC 885 (Fam)

Case No: TN99D00733

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date of judgment: 16 April 2020

Before:

MR JUSTICE MOSTYN

- -

Between:

Viki Natasha Maughan	**Applicant/Wife**
- and -	
Richard Michael Edmund Wilmot	**Respondent/Husband**

- -
- -

Jonathan Swift (instructed by Thomson Snell & Passmore**)** for the applicant/wife
Stephen Meachem, (solicitor-advocate of Law Tribe) for the respondent/husband
Vernon Dennis (of Howard Kennedy LLP) for the receiver

Hearing date: 8 April 2020
the hearing was conducted remotely by Zoom

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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This judgment was delivered in private. The judge has given leave for this version of the judgment to be published.

Mr Justice Mostyn:

1. On 22 October 2019 I gave a judgment which I hoped would end this extremely long-running matter ("my October 2019 judgment") [1]. That was a forlorn hope. The orders reflecting my costs decision have never been made. Substantial costs have been incurred since then. Investigations have revealed that the factual footings on which I gave judgment were faulty. I have had to conduct another hearing, by Zoom on 8 April 2020, to try to get to the bottom of matters. As a result, in this judgment I must revise the disposition made in my October 2019 judgment.

2. The reason for this is that on 22 October 2019 I was misled by the husband about the true scale of his unencumbered liquid funds over which the freezing order would range. I granted a freezing order in the sum of £100,000 – see paragraph 23 of my October 2019 judgment. I did not specify over which assets the freezing order should range but I intended that it would be directed first and foremost to the funds held by Aegon. This was based on a representation and assurance given to me by Mr Meachem, the solicitor-advocate representing the husband. The assurance was that the pension funds held in both Curtis Banks Limited and Aegon/Hargreaves Lansdown were worth in excess of £350,000 and that the orders therefore needed only to be directed to Aegon, or its replacement Hargreaves Lansdown, and to Curtis Banks Ltd. It was implicit in the assurance that there were substantial funds in both places.

3. This may have been literally true, but it was not the whole truth. Subsequent investigations have revealed that while there were funds in Aegon/Hargreaves Lansdown worth about £370,000, these were not in any sense easily realisable. Only £25,369 could be easily extracted. The special nature of the product meant that the balance could not be accessed unless it was transferred to a flexible drawdown product offered by another provider. This would require the consent and cooperation of the husband, which, plainly, would not be given. The funds in Curtis Banks would have been easily accessible but these had fallen to a mere £93.

4. It is therefore clear that I was misled about the scale and liquidity of the funds held by both Aegon/Hargreaves Lansdown and Curtis Banks. Had I known the truth I would have made a freezing order in a materially larger amount to allow for the inevitable costs in achieving access to the remaining funds held in Aegon/Hargreaves Lansdown.

5. I make no finding that Mr Meachem knew the true facts when he made the representation/assurance to me on 22 October 2019. However, he should have been instructed by the husband what the true position was, and that should have been made clear to me.

6. The initial freezing order was made by Mr Justice Bodey on 5 December 2013. It froze the sum of £400,000, unencumbered, and extended to the funds held at Aegon. Paragraph 20 of the order provides:

> "If the total value free of charges or other securities (unencumbered value) of the Respondent's assets restrained by the preceding paragraph exceeds £400,000, the Respondent may dispose of or deal with those assets so long as the total

[1] https://www.bailii.org/ew/cases/EWHC/Fam/2019/2765.html

> unencumbered value of his assets restrained by the preceding paragraph whether in or outside England and Wales, remains above £400,000."

It was obviously implicit in that order that if the husband made a disposition of his assets, he would have to give notice of that fact and explain how his remaining unencumbered assets exceeded £400,000. The figure of £400,000 was later reduced by me to £300,000.

7. In June 2015 £740,980 was moved by the husband from Aegon to Curtis Banks which offered a flexible drawdown facility. This was not notified by the husband to the wife at the time. The funds that were left behind were largely inaccessible for the reasons I have stated above.

8. On 29 September 2015 there was a hearing before me. No order has ever been drawn up reflecting my decision, as its terms could not be agreed between Mr Swift and Mr Bowen QC who was then representing the husband. Inexplicably, the matter was not referred back to me for resolution. However, on that occasion I was informed by Mr Bowen QC that the husband had moved £700,000 from Aegon to Curtis Banks.

9. On 22 October 2015 the husband wrote to an official at Curtis Banks and stated:

> "Just to confirm, we established at court on September 29th that the monies transferred to Curtis Banks are not subject to any freezing order or attachment. Please contact Mr Bowen to confirm."

There is no transcript of what was said to me on 29 September 2015. However, Mr Swift has located his draft of the proposed order for that day. This provides:

> "12. The freezing order dated 5 December 2013 (as varied on 12 December 2013 and 15 April 2014) and extended on 19 March 2015 relates to a total unencumbered sum of £300,000 and is not to be reduced whether for legal and /or living costs and paragraph 25 of the said freezing order is discharged."

Mr Swift argues that this must reflect the decision I made on that day, and that must be right. The inaccessible funds left at Aegon would not qualify as "unencumbered". They may not have been subject to formal charges, but they were literally encumbered by their inaccessibility. Therefore, it was not true to say that the monies transferred to Curtis Banks were not subject to the freezing order.

10. On the basis of the representation made by the husband on 22 October 2015 substantial sums were withdrawn from Curtis Banks in the husband's favour as explained in the receiver's witness statement dated 6 April 2020 at paragraph 19. This states:

> "In particular, I would draw to the Court's attention the following:
>
> 19.1 the benefit request form signed by the Respondent on 14 July 2015 (the "Benefit Request Form") (pages 38-43);

> 19.2 the payment of f71,394.20 to [Isle of Man] account number 12871621 [in the name of the husband] on 30 September 2015 shown on the Curtis Banks Transaction Log (the "September 2015 Drawdown Payment") (page 15);
>
> 19.3 the monthly payments [of £3,500] to account number 12871621 from November 2015 to January 2019 shown on the Curtis Banks Transaction Log (the "Monthly Drawdown Payments") (pages 15-18);
>
> 19.4 the payment of £40,000.00 to account number 12871621 on 06 August 2016 shown on the Curtis Banks Transaction Log (the 'August 2016 Drawdown Payment") (page 16);
>
> 19.5 the payment of £15,300.00 to account number 12871621 on 19 July 2017 shown on the Curtis Banks Transaction Log (the "July 2017 Drawdown Payment") (page 17)."

11. None of this was known either to the wife or to the receiver. Pursuant to an order made by me on 23 March 2016 the receiver drew down £291,929 on 25 August 2016 and £196,668 on 7 March 2018. As far as the receiver was concerned these were the only removals that had been made from Curtis Banks. He was not aware that any other sums had been taken by the husband. My order of 23 March 2016 provided at paragraph 10 that:

> "Curtis Banks Limited shall not pay any amount of funds received from Scottish Equitable plc to the Respondent or any other party save in accordance with the terms of this order or further order."

12. It is clear to me that these sums removed from Curtis Banks by the husband, reducing its balance effectively to nil, were in breach of the original freezing order inasmuch as he had not demonstrated that he had left unencumbered the sum frozen. The removals after 23 March 2016 were, additionally, in breach of the order of that date.

13. In my October 2019 judgment, at paragraphs 20 and 21, I made the following orders as to costs:

    i) in favour of the wife £42,098 (inclusive of VAT) in respect of incurred costs and £2,040 in respect of future implementation costs; and

    ii) in favour of the receiver's incurred costs £4,613 (with credit for £1,443 held on client account, giving a net award of £3,170) together with £21,000 for future implementation costs.

14. These sums totalled £68,307. In order to allow some headroom for inevitable future litigation I froze the sum of £100,000 (see paragraph 23).

15. There then began a negotiation to seek to agree the terms of the various orders which I had made. However, on 19 December 2019 Mr Meachem advised Mr Swift that there was only "about £98 in Curtis Banks". This was later confirmed to be £93. There then began an investigation by both the wife and the receiver to try to establish the true facts. In the course of that investigation substantial sums of costs have been incurred. Since 17 October 2019 the wife has incurred costs of £43,529. The husband has incurred costs of £9,737. The receiver has incurred costs of £27,944 (but had £1,443 on client account) and estimates that a further sum of £25,620 will be incurred in implementing the costs orders against the Aegon funds on the basis, which must be anticipated, that the husband refuses to cooperate in their transfer to a flexible drawdown product.

16. Therefore, a total of £95,648 has been incurred, or is likely to be incurred, in costs as a direct result of the misrepresentations made to me on 22 October 2019.

17. In my judgment, the costs incurred by the wife and the receiver since October 2019 have all been reasonably incurred and should be paid by the husband. Therefore, I order as follows:

    i) the husband will pay the wife's costs of £42,098 pursuant to my October 2019 judgment;

    ii) The husband will pay the wife's costs of £43,529 incurred since my October 2019 judgment;

    iii) the husband will pay the receiver's costs of £26,499 which have been incurred (the sum of £3,170 referred to above is subsumed within this figure); and

    iv) the sum of £25,620 will be set aside in respect of the future costs of the receiver. If this sum is not fully spent the residue will be returned to the husband.

    These sums total £137,746. The receiver's costs referred to above are those of his solicitors as specified in the schedule which has been filed. They do not include the cost of the receiver's own work which he is entitled to charge, and recover, under the terms of the receivership order.

18. It is necessary to allow a further sum by way of headroom in anticipation of yet more vexatious litigation misconduct by the husband. I therefore freeze a total sum of £200,000. This order will be primarily directed at Aegon. Again, if the headroom sum is not fully spent the residue will be returned to the husband.

19. At 09:23 on the morning of the hearing, a mere 37 minutes before the hearing was scheduled to begin by Zoom, Mr Meachem produced a witness statement made by him. This document was in the nature of a written argument. It did not adduce any new evidence.

20. The witness statement seeks to argue that the husband was not in breach of the original freezing order because at all times his total "unencumbered" funds remained above the capped limit. It seeks to argue that because the freezing order did not distinguish between liquid and illiquid assets the existence of the inaccessible Aegon funds satisfied the terms of the freezing orders.

21. I reject these arguments for the reasons set out above. It is clear to me that the husband has been in breach not only of the original freezing order but also, complicitly, of my order of 23 March 2016. Mr Meachem did not address the breach of that latter order in his witness statement because, so he told me, he had not noticed it.

22. Mr Meachem seeks to argue that the court does not have power to make a mandatory order to require draw-down of pension funds or, still less, to require a transfer of funds to a flexible access product. In fact, such an order could be made: see *Tasarruf Mevduati Sigorta Fonu v Merrill Lynch Bank and Trust Company (Cayman) Limited* [2011] UKPC 17, *Blight v Brewster* [2012] 1 WLR 2841, *Goyal v Goyal* [2016] EWFC 50, [2017] 2 FLR 236, [2016] 4 WLR 170, [2017] 1 FCR 188 at [44].

23. But I am not being asked to make such an order. If the husband does not cooperate with the implementation of the costs orders I have made, then the receiver will need to take steps in Scotland against the frozen Aegon funds.

24. On behalf of the husband Mr Meachem then goes on to make three claims for positive relief. First, he seeks to raise a complaint about an alleged breach of an undertaking given by the wife's solicitor many years ago. Second, he seeks provision of documents from the wife, which he could in fact easily obtain from the court file. Third, he alleges that the wife has failed to satisfy an order for costs made in his favour in the Court of Appeal in July 2017.

25. I refused to hear any argument in respect of these claims for positive relief reminding Mr Meachem that his client was the subject of a Civil Restraint Order and needed permission to make any application to the court. If he wishes to pursue these matters, then the necessary application for permission will have to be made to me pursuant to the terms of FPR PD 4B paras 4.2 and 4.4 - 4.6.

26. Following the distribution of this judgment in draft form I have received an email from Mr Meachem challenging the quantum of costs claimed by the wife and the receiver. The hearing took place on Wednesday 8 April 2020. As explained above, Mr Meachem supplied a "witness statement" 37 minutes before the hearing was due to commence. That witness statement did not challenge the costs claimed by the wife and the receiver. The costs schedules, respectively dated 6 and 8 April 2020, were in the e-Bundle used for the hearing at pages A24 - A33. Mr Meacham did not challenge the costs claimed during his submissions. At the conclusion of the hearing I allowed Mr Swift to file a supplemental note clarifying an ambiguity in relation to the costs claimed. Mr Meachem was permitted to file a response. Mr Swift's note was sent at 10:19 the following day. Nothing was received from Mr Meachem. The draft judgment was sent to Mr Swift and Mr Meacham, as well as to the receiver, at 10:20 on 13 April 2020. It sought typographical corrections (only) by 10:00 on Wednesday 15 April. Mr Meachem's email challenging the costs claimed was not sent until 16:39 on 14 April 2020. His email did not address any typographical corrections.

27. This is not an acceptable way of conducting litigation. Although I would be well justified in refusing to read Mr Meachem's email I will address his various points on their merits.

    i) I do not accept that Mrs Judd's hourly rate of £340 is excessive. She is a senior solicitor and the work that had to be done was of a complex nature.

ii) I do not accept that the work done by Mrs Judd from 17 October 2019 does not justify the cost claimed by her. On the contrary, I am satisfied that the work that she did was necessary and proportionate to the task in hand.

iii) The claim for 3.7 hours at court including drafting orders with counsel is well justified. Drafting orders is almost invariably a collaborative exercise between solicitors and counsel.

iv) I am satisfied that the claim for 236 units in respect of work on documents is well justified given the complex nature of the problem that had arisen.

v) I am satisfied that Mr Swift's fees are reasonable and proportionate. They reflect the complexity of the task in hand.

vi) I am satisfied that it would have been necessary for Mr Swift to have given advice both by telephone and in conference given the complex nature of the problem that had arisen.

vii) I do not accept that it would have been reasonable for Mrs Judd to have hived off part of the work to a more junior member of staff. Mrs Judd has been in control of this case throughout and it would have been a false economy to have tried to get a more junior member of staff familiar with the issues.

viii) In my judgment Mrs Judd has sufficiently detailed the correspondence and telephone calls that she undertook. On the facts of this case it was not necessary for her to break down such correspondence and calls by correspondent.

ix) In my judgment the schedule produced by the receiver provided ample specificity. No complaint was made about it during the hearing.

x) Again, in my judgment the receiver sufficiently detailed the correspondence and telephone calls that he undertook.

28. For these reasons the challenge to the quantum of costs is rejected. Given the misconduct of the husband any assessment of costs must be on the indemnity basis. On a summary assessment this means that any doubts as to any sum claimed should be resolved in favour of the payee. I have not, in fact, entertained any such doubts, but had I done so these would have been resolved in favour of the wife and receiver.

29. Mr Meachem asks how any application for permission to appeal should be made. As the husband is subject to a civil restraint order, which will endure (subject to further extension) until 15 October 2021 he will have to apply for permission to seek permission to appeal whether from me or the Court of Appeal. His application should be made to me in writing in the normal way pursuant to FPR PD 4B paras 4.2 and 4.4 - 4.6.

30. That concludes this judgment.
