IN THE FAMILY COURT
[2019] EWFC 31

No. TA09D00552

Royal Courts of Justice
Strand
London, WC2A 2LL

Wednesday, 1 May 2019

Before:

MR JUSTICE MOSTYN

(**In Private)**

B E T W E E N :

DOMINIC JAMES PURVIS — Applicant

- and -

SHARON LOUISE PURVIS — Respondent

MR H. MERRY appeared on behalf of the Applicant.

THE RESPONDENT was not present and was not represented.

J U D G M E N T

MR JUSTICE MOSTYN:

1 By an application notice dated 22 March 2018, the applicant, Dominic Purvis, applies for an order under FPR 24.12 for an order that a letter of request be issued to the authorities of the United States of America for the respondent, Sharon Purvis, to be examined in Florida and that she produce the documents as specified in the annexe to that application.

2 The annexe to the application contains the proposed letter of request, as well as the schedule of documents sought. It states that the claim by the applicant is for financial relief pursuant to divorce; for ascertainment of the matrimonial assets and a fair distribution of the same. It asserts:

> "The parties owned a house at 214 Greeley Loop, Davenport, Florida, and a business called 'Summerlake Inc.' when the applicant left America to return to England in December 2005. The applicant claims the house is worth $250,000 and the business was profitable, with a turnover of $750,000. The house was foreclosed in November 2008 and the company ceased to be registered in 2013. The respondent was in sole control of these assets from December 2005 and has failed to provide sufficient documentation or explanation as to what became of those assets. The respondent was in America pursuant to an E2 visa and her returns to the visa authorities are likely to claim a different level of resource and income than that she presents to the English court."

3 In order to put that statement in context, I refer to the chronology prepared on the applicant's behalf, which is in the court bundle. It recites that, from 1992, the parties maintained a relationship and that they lived in this country, specifically in Taunton, in 2004. However, in 2001, they purchased the property which is referred to in the application notice at 214 Greeley Loop, and they married on 31 January 2004. The chronology recites that which is in the application notice about the establishment of the business, Summerlake Incorporated, which was a café later renamed Summerlake Café, which was acquired in July 2004.

4 Consistently with what is stated in the application notice, in December 2005, the applicant returned to the United Kingdom and the parties were then separated, although, at the time of the applicant's return to this country, the respondent had fallen pregnant and their son was born in August 2006.

5 It is tolerably clear that the relationship was over from December 2005 and, indeed, in 2009, the respondent sought to divorce the applicant in the USA, but that suit failed for want of jurisdiction. It was in October 2009 that the applicant filed a petition for divorce in England and Wales. That did not proceed to the grant of a decree nisi until April 2018. That decree nisi has still, even now, not been made absolute.

6 The dates that I have recounted do not by any means tell the full story. The applicant, Dominic Purvis, is a dangerous sex offender. Reports on the internet reveal that, in 2006, he was convicted at Bristol Crown Court of possessing indecent images of children, sentenced to imprisonment and placed on the sex offenders register. It is reasonable to suppose that those offences took place during the currency of his marriage to the respondent. I am not told when he was released from prison. He would have been released by the latter part of the first decade of this century, I suppose. However, he continued with his aberrant offending and, in 2015, he was convicted, at Exeter Crown Court, of three offences of distributing, and two of making, indecent images of children, of two offences of failing to comply with the sex offenders register and of eight offences of sexual assault against three

children. He was sentenced to fourteen years in prison, with an extended licence of four further years, and he is presently in prison and will remain there for many further years.

7 His claim for financial remedies must be seen in that context, and when the matter proceeds to trial, not only will its staleness be relevant but, also, I imagine the court will want to consider the question of his conduct.

8 The procedure adopted by the application notice, namely to seek the issue of a letter of request for the examination of the respondent in Florida made, as I have said, pursuant to FDR 24.12, is almost invariably deployed against a non-party. In my experience, which is extensive in this field of law, I have not encountered this procedure being invoked against a party to the proceedings, although there is nothing on a literal reading of the rule to prevent that process from being so deployed. However, there is no reason to suppose that the same principles should not apply on an application for a letter of request where the object of the letter is a party as opposed to a non-party or third party.

9 The principles on an application for a letter of request are set out in a number of well-known cases which were summarised by the Court of Appeal in *Charman v Charman* [2006] 2 FLR 422. In that case, at para.32, Wilson LJ referred to the well-known decision of the Court of Appeal in *re State of Norway's Application* [1987] QB 433, where the Court of Appeal, by a majority, set aside an incoming request for examination of a witness on the ground of "fishing". In his judgment, Kerr LJ said, at p.482:

> "Although 'fishing' has become a term of art for the purposes of many of our procedural rules, dealing with applications for particulars of pleadings, interrogatories and discovery, illustrations of the concept are more easily recognised than defined. It arises in cases where what is sought is not evidence as such, but information which may lead to a line of inquiry which would disclose evidence. It is the search for material in the hope of being able to raise allegations of fact, as opposed to the elicitation of evidence to support allegations of fact …"

10 The Court of Appeal in *Charman* further referred to the decision of the Chief Justice of Gibraltar, Schofield CJ, in the case of *Zakay v Zakay* [1998] 3 FCR 35, where the Chief Justice stated:

> "The documents requested for production in this case are narrowly confined to the single issue they are aimed to support. The documents are more than likely in the possession of the applicant and are readily identifiable. Of course, it is impossible for the petitioner to know the specific identity of individual documents. But the applicant is being asked a specific question and is being asked to produce the documents to prove his answers. That is not a fishing expedition in the sense of casting a line in the hope that something will be caught: the fish has been identified and the court is endeavouring to spear it."

And, therefore, at para.37(a), Wilson LJ concluded that a letter of request cannot lawfully be issued if it amounts to an attempt to go "fishing".

11 In my judgment, the request in this case is manifestly an attempt to go fishing. The forensic scope of the inquiry is entirely conjectural. I revert to the terms of the application notice where the applicant has stated, as I have already quoted, that the respondent has failed to provide sufficient documentation or explanation as to what became of the assets and that her

visa returns are likely to claim a different level of resource. It can be seen, therefore, that the applicant has no concrete lead as to the existence of any of the residue of these assets following their liquidation. He can point, rightly, to the foreclosure of the property and the no-doubt disposal of it at firesale values, and to the liquidation of the business. He has not produced any public records, which would surely be obtainable in Florida from the equivalent of the Land Registry, as to the value of the property, nor has he produced any records from the equivalent of Companies House in Florida as to the value that was obtained on the liquidation of the company.

12 It is my judgment, in circumstances where this claim is highly speculative both as to staleness and having regard to the applicant's conduct, and in circumstances where he produces no *prima facie* evidence that such assets actually exist, that it would be disproportionate and, indeed, unlawful were this application to be granted.

13 I have mentioned to Mr Merry, the facility that will no doubt be available to the applicant should he pursue his claim to rely on the doctrine of adverse inference in circumstances where the respondent is not engaging in the proceedings. He frankly admitted that that was an argument which had been advanced before, but that the District Judge in Southampton considered that concrete disclosure was necessary. That may be true in a routine sense, but it does not follow from that, that I should authorise a fishing expedition which, in my judgment, would be unlawful. The application is therefore refused.

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