IN THE HIGH COURT OF JUSTICE - FAMILY DIVISION
NEUTRAL CITATION NUMBER: [2019] ewhc 1272 (Fam).

Case No: UB13D00058

Courtroom No. 50

1st Mezzanine
Queen's Building
The Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday, 16th April 2019

Before:
THE HONOURABLE MR JUSTICE MOSTYN

B E T W E E N:

ANEELA CHAUDHRI (SHAFI)

and

ARIF SHAFI
SHAPOUR SHAHABI
CHAPUR TOURISM & INVESTMENT LIMITED

THE APPLICANT appeared in person
MS LONGHURST-WOODS appeared on behalf of the Second Respondent

JUDGMENT
(Approved)

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of any children must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

MR JUSTICE MOSTYN:

1. On 8 April 2019, Cobb J made an order headed, '**In the High Court of Justice, Family Division**', which was expressed to be a freezing order in respect of a property at 9 Adelphi Court, High Road, London N2 8HD. The order provided that it would be reconsidered today, and the matter has been listed before me.
2. The applicant, Aneela Chaudhri, made the application in circumstances where there had been default in payment of a lump sum order made in her favour by District Judge Banks, sitting in the Family Court at Uxbridge as long ago as 12 February 2016, in the sum of £686,000. The reason that the applicant had applied to the High Court Applications Judge for a freezing order in respect of this property was that she had previously, on 16 September 2016, approached the High Court Applications Judge, on that occasion Holman J, for a worldwide freezing order in circumstances where the respondent, Arif Shafi, had failed to comply with the lump sum order which I have mentioned. That freezing order was made in the High Court and was confirmed on 27 September 2016 and remains in force. I will have something to say later in this judgment about the inaptness of a litigant in the position of the applicant approaching the High Court Applications Judge for relief of this nature where there has been non-compliance with an order made by a District Judge in the Family Court.
3. The witness statement made by the applicant in support of her application to Cobb J, which was signed by her on 7 April 2019, stated in paragraph 12 that 9 Adelphi Road, High Road, London N2, is "a property owned by Arif Shafi but is held in the name of the second respondent, Mr Shapour Shahabi. Mr Shafi has full power to dispose of, or deal with, it as if it were his own". Additionally, at paragraph 13 she stated, "It was the first respondent and I who funded the purchase of 9 Adelphi Court, London N2 8HD and who are the beneficial owners. During the financial proceedings, I made a claim for the property but later did not pursue it due to stress and ill-health. Please see the judgment where District Judge Banks confirmed the same".
4. It is certainly true that the case was initially listed for five days in September 2014. It is also true that at that time the applicant was suffering from ill-health and she has produced evidence from her GP, dated 5 September 2014, confirming that she was, "acutely unwell and awaiting emergency assessment by our community assessment and treatment team". She has further produced a letter from the Hertfordshire Partnership University NHS Foundation Trust dated 12 September 2014 which states, "Mrs Shafi is currently an in-patient at Albany Lodge Mental Health Unit. She is not fit at present to attend court".
5. It was on account of her illness that the case, listed for final disposal for five days in September 2014, was adjourned. In a judgment given on 12 February 2016 District Judge Banks said at paragraph 8:

> "It is not in anyone's interest that the case has taken so long for a final hearing. It had been listed for five days in September 2014 but, in the event, Mrs Shafi was apparently not well enough to attend and it had to be adjourned. I directed that the case be re-listed at the West London Family Court, with a view to it coming on more quickly than if it were retained in the Family Court at Uxbridge. In those circumstances the case was re-listed to be heard on 9, 10 and 11 November 2015'.

However, at all times the applicant was legally represented, she having the benefit of a Legal Aid Certificate.

6. Notwithstanding that the applicant was an in-patient, as described in the letter of 12 September 2014, it is clear that she was not incapacitated and was in a position to give instructions to her solicitor. The relevance of this is that on 11 September 2014, a letter was written by counsel for Shapour Shahabi,, Ms Longhurst-Woods, to Helen Clyne of Hodge,

Jones and Allen, the solicitor instructed by the applicant, in these terms:

> "Dear Madam
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> I have just been instructed by the second intervener in this matter. It is quite clear to me that your client's claim re Adelphi Court has no substance and should be struck out. I appreciate that at the moment that you have no Legal Aid cover. I appreciate your difficulties but are you able to inform me as to whether or not your client will oppose any application for that claim to be struck out in the light of the evidence served by Mr Shahabi?"

7. On the following day, 12 September 2014, Ms Longhurst-Woods wrote a further email in these terms:

> "Dear Ms Clyne,
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> I am instructed by the second intervener, under the public access rules. I have just received a call from one of your assistants notifying me that a trial bundle will be couriered to me this afternoon. I gather its contents had not been agreed. I am instructed to make an application to have the case concerning Adelphi Court and Mr Shahabi, the second intervener struck out. I note that since May 2014, you had had possession of irrebuttable evidence from Mr Shahabi that the applicant and the respondent had no interest in this property. It would be helpful if you would now indicate whether you will be opposing this application or not".

8. Five hours later, at 7.53pm in the evening, Helen Clyne wrote back to Ms Longhurst-Woods, in these terms:

> "I apologise for the delay in responding to your email. As you are aware, our client's Legal Aid Certificate has been suspended and the notice to show cause was only lifted this morning. Until then, we were not permitted to do any work under the Certificate. It had also been our understanding that the final hearing had been adjourned until we were told otherwise on Wednesday, 10 September. You should have received a copy of the court bundles this afternoon. There was not time for the contents to be agreed with the other parties because of the shortness of time because of the above. I can confirm that my client will not resist your application to strike out my client's claim concerning Adelphi Court. However, she will seek permission to amend the particulars of claim in respect of the transfers of sums of money from Mr Arif Shafi to your client. It is quite clear that your client has engineered his evidence retrospectively in order to make the figures add up".

9. In fact, for the reasons I have given, the hearing was ultimately adjourned, and not relisted until November 2015.

10. Although at the time that this letter was written the applicant was an in-patient in hospital, it is clear that unequivocal instructions had been given to Helen Clyne of Hodge Jones and Allen. On the basis of those instructions (where nobody is suggesting that the applicant was incapacitated) a very clear statement was made that she would not resist the application to

strike out the claim in respect of Adelphi Court. Although no order was made when the matter came back before the court in November 2015 it is abundantly clear that the applicant did not pursue any kind of claim in respect of 9 Adelphi Court. This is put beyond doubt by the terms of paragraph 62 of the Judgment of District Judge Banks given on 12 February 2016 where he said:

> "9 Adelphi Court, 299 High Road, Finchley.
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> > This property was registered in the name of Mr Shahabi. It was initially Mrs Shafi's case that money deriving from the re-mortgage of 17b Argyle Road, funded the purchase and that as a consequence, Mr Shafi had a beneficial interest in it. This is denied in evidence from both Mr Shafi and Mr Shahabi and in the end Mrs Shafi did not pursue it".

11. Having indicated in 2014 that she would not resist a strike-out of the claim in relation to this property, it is clear that when in court in 2015, actively litigating in relation to a host of other assets, mainly situated in Northern Cyprus, she made the positive decision that she would not pursue any claim in respect of it. The financial remedies order made by District Judge Banks on 12 February 2016 makes no reference to the property which is now said to have been in the beneficial ownership of the applicant and the respondent. Had the court been aware of the issue in relation that property, it would have dealt with it in judgment and in its order; but it did not because the applicant did not pursue her claim in respect of it.
12. It has been suggested by counsel for the second respondent that it would be an abuse for the applicant now to be allowed to pursue a claim in relation to this property. In the well-known decision of *Henderson v Henderson* [1843] 3 Hare 100 at 114, Sir James Wigram, the Vice-Chancellor, said this:

> "In trying this question I believe I state the rule of the Court correctly when I say that, where a given matter becomes the subject of litigation in, and of adjudication by, a court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time".

13. In the well-known case of *Johnson v Gore Wood & Company* [2002] 2 AC 1, Lord Bingham, sitting in the House of Lords, affirmed the reasoning of Wigram V-C in *Henderson v Henderson* and stated, at paragraph 31:

> "The underlying public interest is the same: that there should be finality in litigation and that a party should not be twice vexed in the same matter. This public interest is reinforced by the current

> emphasis on efficiency and economy in the conduct of litigation, in the interests of the parties and the public as a whole. The bringing of a claim or the raising of a defence in later proceedings may, without more, amount to abuse if the court is satisfied (the onus being on the party alleging abuse) that the claim or defence should have been raised in the earlier proceedings if it was to be raised at all".

14. In my judgment, the second respondent through his counsel has convincingly discharged the burden placed on him and has demonstrated that it would be abusive were the applicant to be allowed to proceed to make a claim to the beneficial ownership of the property in question. This is because on 12 September 2014 her solicitor confirmed that she would not resist an application to strike out the claim and where the following year, when giving evidence, she abandoned her claim in respect of the property. Not once, but twice, has the applicant failed to pursue her claim in relation to this property. Three years have now passed since the decision of District Judge Banks and, in my judgment, it would be a manifest abuse were a claim now to be allowed to be mounted and protected by a freezing injunction. Therefore, for these reasons, the order made by Cobb J is discharged.

15. I want to conclude by saying something about the procedure in this case where, twice, the applicant has approached the High Court for freezing relief in circumstances where the order was made by the Family Court sitting in Uxbridge. I asked the applicant what she was doing approaching the High Court Applications Judge for freezing relief, and she told me that she had been advised by the Family Court in Uxbridge that a District Judge did not have jurisdiction to make a freezing order in relation to property, but it could only be made by a Circuit Judge or a High Court Judge. I think that this advice may have its root in a myth that derives from the old rules of the Supreme Court which provided that a Registrar, as the District Judge used to be called, could not make an injunction except by consent. That limitation was, in the civil sphere, abrogated by Civil Procedure Rules 1998, Practice Direction 25A, paragraph 1.1, which states that, 'High Court Judges and any other Judge duly authorised may grant search orders and freezing injunctions'. Moreover, in paragraph 1.2, it says:

> "In a case in the High Court, Masters and District Judges have the power to grant injunctions:
> (1) by consent,
> (2) in connection with charging orders and appointments of receivers,
> (3) in aid of execution of judgments".

16. It may be that, as a result, when the words "freezing injunction" were mentioned by the applicant to the court office at Uxbridge, there was a view formed, based on the history that I have mentioned, that a District Judge could not grant a freezing injunction in respect of property, even if it was in aid of an execution of judgment. Therefore, on that basis, without I imagine examining the competence of the Family Court to grant the same relief, Holman J made his order and it was, no doubt, on that basis that the applicant approached Cobb J, recently, for freezing relief.

17. However, it is as well that I spell out, again, why this approach is misconceived. In the family sphere, a freezing injunction may be granted under Section 37 of the Matrimonial Causes Act 1973 or Section 37 of the Senior Courts Act 1981. Section 37(6) of the Senior Courts Act 1981 gives the Family Court power to grant an injunction under that Act. Schedule 2 of the Family Court (Composition and Distribution of Business) Rules 2014, SI

2014 No. 840, gives a District Judge, sitting in the Family Court, power to deal with any freezing order application, whether it is made under Section 37 of the 1973 Act or Section 37 of the 1981 Act. That is confirmed by paragraph 24 of the President's Guidance of 28 February 2018 which states:

> "When a freezing order is sought, the application should always be heard in the Family Court, normally at District Judge level, but may be allocated to a Judge of High Court level by reference to the criteria in the efficiency statement applied by analogy: *See Tobias v Tobias* [2017] EWFC 46".

18. Therefore, if there were any doubt as to whether the District Judge was authorised to grant a freezing order within the terms of CPR Practice Direction 25A, paragraph 1.1, that authorisation as given by the terms of Schedule 2 of the Family Court (Composition and Distribution of Business) Rules 2014. There can be no doubt that the order that was made by Holman J, in 2016, and was made by Cobb J, on 8 April, could equally have been made by a District Judge sitting at the Family Court in Uxbridge. In such circumstances, paragraph 24 of the President's Guidance, which I have mentioned, requires that the freezing order application should have been heard in the Family Court by a District Judge and that the resources of the High Court, whether in 2016 or on 8 April 2019, should not have been used to grant this relief.

19. Therefore, my order will provide that the freezing order, which remains in force, made by Holman J in September 2016 is transferred to the Family Court at Uxbridge. It will also provide that any further applications for freezing relief in this case shall be made to the Family Court sitting at Uxbridge and shall only be allocated to be heard at High Court judge level by virtue of a specific order made to that effect by a District Judge of the Family Court in Uxbridge.

End of Judgment

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This transcript has been approved by the judge.