



Neutral Citation Number: [2022] EWFC 2

Case No: FD13D05561

IN THE FAMILY COURT
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27 January 2022

Before:

Mr Justice Mostyn

Between :

GLORIA MARIA LOGGIE

- and -

MICHAEL DAVID LOGGIE

The Applicant appeared in person

The Respondent appeared in person

Hearing date: 18 January 2022

Approved Judgment

.....

MR JUSTICE MOSTYN

The judge gives leave for this version of the judgment to be published

Mr Justice Mostyn :

1.

This is my judgment on the applicant’s application in Form D11 dated 4 December 2021 that the respondent do indemnify her in respect of £65,603.60 she owes to her former solicitors, Vardags (“**the indemnity application**”).

2.

The debt of £65,603.60 has arisen because Vardags, on behalf of the applicant, paid the same sum to Saffrey Champness in or around August 2021 in satisfaction of outstanding fees in the same sum incurred by Mr Jason Lane of Saffrey Champness pursuant to his instruction as a single joint expert in the financial remedy proceedings.

3.

I will refer to the applicant as “the wife” and to the respondent as “the husband”.

4.

This is a very unfortunate case. The parties are now in their ninth year of litigation in connection with the breakdown of their marriage. The divorce petition was issued in 2013. The wife issued financial remedy proceedings which were fully contested. I heard the final hearing of the wife’s application in 2017.

The relevant procedural background

5.

On 6 June 2014, I granted permission for the parties to instruct Mr Lane of Saffrey Champness on a single joint expert basis to prepare a report on the husband’s business interests. On that occasion I ordered that Mr Lane’s costs be met equally by the parties in the first instance.

6.

That order did not limit the amount that could be paid by way of fees and expenses to Mr Lane. I could, however, have directed that there be such a limit pursuant to FPR r. 25(12)(5). The absence of such a limit was not abnormal. The consequence of the absence of such a limit is that Mr Lane was entitled to be remunerated on a quantum meruit basis and not be limited by any estimate.

7.

Before Mr Lane commenced work, the parties were provided with a quotation for the preparation of the report in the sum of £60,000 plus VAT (i.e. £72,000 inclusive of VAT).

8.

Mr Lane ultimately raised an invoice of almost twice the amount the parties had anticipated. His invoice dated 30 September 2015 in respect of the preparation of the report totalled £126,000. I understand that figure is inclusive of VAT.

9.

The quantum of the 30 September 2015 invoice has now been in issue for more than six years.

10.

The parties, through their now former solicitors, challenged the quantum of the invoice following its receipt. I have also been provided with a large amount of correspondence in relation to this issue (principally going between the husband and those acting on behalf of Saffrey Champness).

11.

The husband told me during the hearing he had considered instituting a claim against Saffrey Champness in respect of what he says was an overcharge on an agreed fee. Neither the husband nor, for the avoidance of doubt, the wife has instituted such a claim in respect of an alleged overcharge. In any event, if such a claim were now to be instituted, I anticipate there would be limitation problems.

12.

I revert to the financial remedy proceedings. On 25 July 2016 I ordered that payment of the fees of Saffrey Champness should be suspended until the conclusion of the final hearing of the wife's application for financial remedies.

13.

The final order in the financial remedy proceedings is dated 1 February 2017 ("**the Final Order**"). The Final Order provided at paragraph 4 that there be an order for sale of four properties and that the proceeds thereof be used inter alia to pay any unpaid fees of Mr Lane (plus any interest due and payable thereon).

14.

That order was not complied with. I do not know when these properties were sold but it is clear that the unpaid fees of Mr Lane were not discharged.

15.

The wife issued enforcement proceedings in respect of the final order. The parties compromised that enforcement application on the basis of there being various agreed variations to the Final Order. The agreement was reduced to writing by the parties and lodged with the court on 13 March 2019 ("**the Agreement**").

16.

I approved the Agreement and on 14 March 2019 made various technical variations to the Final Order to give effect to the Agreement ("**the March 2019 Order**"). I will return to the relevance of the March 2019 Order later in this judgment.

17.

The parties were last before me on 22 September 2021. At that hearing, I made various case management directions for this hearing. The parties have both filed and served statements in advance of this hearing in accordance with my directions.

The factual background to the indemnity application

18.

The total sums invoiced by Saffrey Champness were £212,407.20. £65,603.60 of that sum remained outstanding until Vardags paid the same on behalf of the wife in or around August 2021.

19.

The husband told me he has paid approximately £147,700 towards the total of £212,407.20. That would leave a balance owing of £64,707.20. Within the papers served by the husband there is an email from Saffrey Champness with a set of handwritten annotations. I assume those handwritten annotations were made by the husband. Those handwritten annotations suggest that the husband has paid £146,803.60 towards the total of £212,407.20. That would leave a balance owing of £65,603.60. I will work on the basis that the latter set of figures are correct but, if I am wrong about that, I do not consider that anything turns on this modest discrepancy.

20.

The wife set out in her statement and told me during the hearing that prior to August 2021 she had been chased by both Vardags and Saffrey Champness for payment of the outstanding sum owing of £65,603.60. She told me that ultimately, in or around August 2021, Vardags paid that sum to Saffrey Champness. Both parties accept that that sum has been paid by Vardags to Saffrey Champness. It

does not matter for the purpose of this judgment precisely when the £65,603.60 was paid by Vardags to Saffrey Champness.

21.

Vardags now look to the wife to repay them that sum of £65,603.60.

22.

The husband alleged in his statement that the wife had improperly interfered with his negotiations with Saffrey Champness by which he intended to reduce, if not extinguish, the amount of £65,603.60 said to be owing. He further said that she was involved in “a ring of deceit” and “avindictive alliance” to “create” this debt with Vardags and those instructed on behalf of Saffrey Champness. There is no evidence before me that could begin to support such outlandish allegations.

23.

The wife told me during the hearing that, in effect, Vardags had been able to negotiate a reduction of some £10,000 off the sum being sought by Saffrey Champness. That amount is presumably the interest which had accrued on the outstanding balance prior to its payment by Vardags.

24.

Finally, I note that the wife sold a car, a Ferrari California T, in November 2021 realising £85,000. She told me that she has retained that money pending the determination of this application so that if she is required personally to pay Vardags the sum of £65,603.60, then she will have the funds to do so.

Disposal of the indemnity application

25.

I am satisfied that there is jurisdiction for the indemnity sought to be ordered for the same reasons I gave in CH v WH (Power to Order Indemnity)[2018] 1 FLR 495.

26.

The only question is therefore whether I should exercise my powers so as to order the indemnity sought by the wife.

27.

Inter alia, the Agreement provided for there to be variations to the timing of the payment of the lump sums contained in the final order. That variation was obviously of benefit to the husband as it provided him with much more time to pay the sums due. I also note that some of the agreed variations were of benefit to the wife. For example, the quantum of the spousal periodical payments the husband was to pay was increased from £90,000 per annum to £144,000 per annum.

28.

The final page of the agreement crucially provided for the following:

Saffrey Champness - Jason Lane

[The husband] to take full responsibility for the outstanding amount payable to Jason Lane of Saffrey Champness and shall agree to fully indemnify [the wife] against it.

29.

Whilst paragraph 6 of the March 2019 Order records that I approved the Agreement, the body of the order does not contain an explicit indemnity in favour of the wife in the terms contained in the

Agreement. I consider that this was an oversight by me when I formulated the March 2019 Order which gave effect to the Agreement.

30.

In my judgment there is no good reason why I should not make any order other than one which gives effect to that provision in the Agreement. The parties reached a compromise of the enforcement application brought by the wife. One term of that compromise was to ensure that the wife was indemnified against the outstanding fees of Saffrey Champness. That term was approved by me. The accidental omission from the March 2019 Order of a formal clause containing an explicit indemnity cannot mean the husband can now seek escape responsibility to indemnify the wife. That is what he freely agreed to do, and he should be held to his agreement.

31.

In effect, what I am being asked to do is to correct the March 2019 Order under the slip rule in FPR r 29.16. Even major errors can be corrected under this rule: *IC v RC (Slip Rule)* [2020] EWHC 2997 (Fam). The absence of a formal clause in the March 2019 Order containing an explicit indemnity was an obvious error given that I had approved the Agreement which contained just such an indemnity.

32.

The power under FPR r 29.16(1) is discretionary. It provides: "The court **may** at any time correct an accidental slip or omission in a judgment or order". To avoid the discretion being exercised against him the husband needs to identify a cogent reason why he should not be held to his bargain. He has failed to do so. I am unpersuaded by his vague assertions that the Covid-19 pandemic and the changes in the oil market have had a material negative impact on his financial circumstances. If he wished to argue that there had been a material change in his financial circumstances such that he was unable to indemnify the wife in respect of the sum of £65,603.60, then he should have put in proper evidence in support of any such claim.

33.

I therefore grant the indemnity application and order the following:

i)

the husband shall indemnify the wife in respect of the £65,603.60 owing by her to Vardags. The husband must pay that sum to the wife by 4.00 pm on 28 January 2022. Upon receipt of those funds, I expect the wife to make a payment in the same sum to Vardags forthwith to satisfy the debt owing to them. If she fails to do so with the consequence that the debt owing to Vardags increases, then she shall be responsible for meeting the difference between the sum of £65,603.60 and any increased figure owing; and

ii)

the husband shall also indemnify the wife in respect of any outstanding amount payable to Saffrey Champness. I consider it right that I make an order in these terms to ensure that if Saffrey Champness do pursue either of the parties for any unpaid interest on the sum of £65,603.60 then the husband must pay the same. The prospect of this happening does, however, appear to be remote. I accept that an order in these terms represents a slight expansion of the relief sought by the wife in her application in Form D11 dated 4 December 2021, but I consider that this expansion is required to ensure that the wife is protected in the way envisaged in the Agreement.

34.

I will consider any application for costs, if made, on paper.

35.

The moral of this unhappy tale is that the parties must ensure that the court is asked, **prior to the instruction of a SJE**, to place a cap on the expert's costs pursuant to FPR r. 25(12)(5). Prior to the court making an order for the instruction of an SJE, there will have been preliminary enquiries raised with the proposed expert and responses given thereto. By virtue of PD 25D para 3.4, incorporating PD 25B para 8.1(e), the expert will have stated his/her costs, including hourly or other charging rates, and the likely hours to be spent conducting interviews, writing the report and attending court. The court will thereby be fully equipped to be in a position fairly to consider these figures and to impose a cap on the expert's costs. Of course, should circumstances unexpectedly change causing far more work to be done by the expert, then it will be open for the expert to apply for the order imposing the cap to be varied under FPR r 4.1(6).

The wife's request for a further variation to the March 2019 order

36.

In her statement filed and served in advance of this hearing, the wife also sought that the March 2019 Order be varied to provide that £500,000 of the £6,421,605 due to be paid between 1 January 2024 but by no later than 31 December 2025 be paid to her now.

37.

The wife has not made a formal application in Form A seeking that variation to the March 2019 Order.

38.

I explained to the parties during the hearing that I would not deal with this element of the relief sought by the wife. If she wishes to pursue this relief, she must make a properly constituted application in Form A and pay the requisite issuing fee.

39.

I also explained to the parties that I intended to make case management directions in like terms to those that I made on 22 September 2021 to prepare the wife's indemnity application for determination in relation to the wife's prospective variation application. The order arising from this hearing contains directions in those terms.

40.

That is my judgment.
