



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 the parties, their children and members of their family 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.

Neutral Citation Number: [2022] EWFC 133

Case No: 1663002728172935

IN THE FAMILY COURT
Sitting at the Royal Courts of Justice

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 09/11/2022

Before :

MR JUSTICE PEEL

Between :

J

Applicant

- and -

H

Respondent

Ken Collins (instructed by **DMH Stallard LLP**) for the **Applicant**
Michael Glaser KC (instructed by **Lawrence Stephens Ltd.**) for the **Respondent**

Hearing date: 25 October 2022

Approved Judgment

.....
MR JUSTICE PEEL

Mr Justice Peel :

1. I shall refer to the Applicant Husband as “H” and to the Respondent Wife as “W”.
2. On 12 October 2022, H, through the parties’ solicitors, gave 1 hour’s notice that he intended to apply to the Urgent Applications Judge, sitting at the Royal Courts of Justice, for a freezing injunction. The application was framed in that way, rather than pursuant to s37 of the Matrimonial Causes Act 1973, because it sought to restrain W from dealing with, inter alia, her overseas assets. The application, supported by a narrative statement from H, came before Morgan J that afternoon, who refused to make the immediate order sought. Instead, she gave directions and relisted the application on 19 October 2022 before, as it turned out, me. Pursuant to her directions, H filed a supplemental statement, and W filed a statement in reply. As it was once again in the Urgent Applications list, and there was insufficient time for me to deal with it substantively, I adjourned to 25 October 2022 before me for determination. I made one specific direction, for an exchange of letters setting out concisely each party’s financial position. By the time of this hearing, H had modified his position such that he sought orders in respect of W’s assets in this jurisdiction only. W resists the application. This is my judgment, which I reserved for a short time after hearing submissions.

Legal principles

3. The locus classicus for freezing orders remains the judgment of Mostyn J in **UL v BK (Freezing Orders: Safeguards: Standard Examples) [2013] EWHC 1735**:

“51. The relevant principles and safeguards may be summarised as follows:

 - i) The court has a general power to preserve specific tangible assets in specie where they are the subject matter of the claim. Such an order does not necessarily require application of all the freezing order principles and safeguards, although it is open to the court to impose them.
 - ii) For a freezing order in a sum of money which is capable of embracing all of the respondent's assets up to the specified figure it is essential that all the principles and safeguards are scrupulously applied.
 - iii) Whether the application is made under the 1981 Act or the 1973 Act the applicant must show, by reference to clear evidence, an unjustified dealing with assets (which would include threats) by the respondent giving rise to the conclusion that there is a solid risk of dissipation of assets to the applicant's prejudice. Such an unjustified dealing will normally give rise to the inference that it is done with the intention to defeat the applicant's claim (and such an intention is presumed in the case of an application under the 1973 Act).
 - iv) The evidence in support of the application must depose to clear facts. The sources of information and belief must be clearly set out.
 - v) Where the application for a freezing order is made ex parte the applicant has to show that the matter is one of exceptional urgency. Short informal notice must be given to the respondent unless it is essential that he is not made aware of the application. No notice at all would only be justified where there is powerful evidence that the giving of any notice would likely lead the respondent to take steps to defeat the purpose of the injunction, or where there is literally no time to give any notice before the order is required to prevent the threatened wrongful act. Cases where no

notice at all can be justified are very rare indeed. The order of the court should record on its face the reason why it was satisfied that no or short notice was given.

vi) Where no notice, or short informal notice, is given the applicant is fixed with a high duty of candour. Breach of that duty will likely lead to a discharge of the order. The applicable principles on the re-grant of the order after discharge are set out in *Arena Corporation v Schroeder* at para 213.

vii) Where no notice, or short informal notice, is given the safeguards assume critical importance. The safeguards are set out in the standard examples for freezing and search orders. If an applicant seeks to dis-apply any safeguard the court must be made unambiguously aware of this and the departure must be clearly justified. The giving of an undertaking in damages, whether to the respondent or to an affected third party, is an almost invariable requirement; release of this must be clearly justified.”

4. Neither party has suggested any reason to depart from these well established principles.

The background

5. The parties are in their late 30s. They are both Pakistani citizens. They met in Dubai, married in 2014 and thereafter lived in the Middle East. H worked in banking. W is from a wealthy family, and worked in the family business. They have a daughter. In late 2021, they moved to England when H obtained employment in London. Their flat in Dubai was rented out. The rental income was paid into a joint account in Dubai, from which W would then transfer the monies into an account in her sole name so as to meet family expenses. All of this took place with H’s knowledge.
6. To assist in the move to London, W secured an Investor Visa, supported by £2m deposited in an investment portfolio, the value of which has reduced to circa £1.75m due to market downturn, rather than as a result of any disposal of underlying assets. The family moved into expensive rented accommodation.
7. H, so it seems from his own witness evidence, was reasonably well informed during the marriage about W’s wealth, not least because of joint visa applications made in multiple jurisdictions. W does not seem to have been secretive about her financial circumstances which were shared openly with H. In his first witness statement, H estimated W’s wealth at about \$15m, held in the UK and overseas, identifying specific properties, companies in which W has an interest, and financial instruments. Pursuant to my direction, W set out her wealth in correspondence which she puts at about £5m; a further £2m of assets held under legal title in her name is, so she asserts, beneficially owned by her father. It is not in dispute that her wealth results from gifts made to her by her family; it seems likely to me that the bulk of her assets will be treated by the court as non-marital in the substantive financial remedy proceedings. In contrast with W’s wealth, H’s total assets appear to be under £10,000.
8. In March and April 2022, W withdrew, via 4 separate transfers, £32,000 from a joint HSBC account into her sole account. H was fully aware of the withdrawals which W informed him were to enable her to meet family expenses. This was not the first time W had accessed the joint account in this way; she had done so previously without demur from H. H says in his witness evidence that “At the time I had no issue with it”.

9. In September 2022, W told H that she wished to separate. She invited H to issue a divorce petition; I am told she anticipated this would take place in Pakistan. H did indeed issue a petition, albeit in England rather than Pakistan, on 14 September 2022, followed by a Form A on 27 September 2022. W moved out of the jointly rented property with the parties' daughter, into a property, which has been owned by her mother since 2010 but is in the process of being transferred into W's name by way of gift. At about the same time, W sent to H a draft separation agreement which provided that neither would pursue a financial claim against the other, albeit the document was prepared by reference to Sharia law at a time when W was contemplating resisting the jurisdiction of the English court. She has since confirmed that she accepts the jurisdiction of this court.

The freezing order proceedings

10. On 30 September 2022, H's solicitors wrote to W saying "We are aware that you hold multiple assets in your sole name both here in the UK and abroad....We would ask that you provide an undertaking to the court that until matters are settled as between you and my client with a final order, or until agreement in writing, you will not dispose of any assets currently held in your name... We would ask for this undertaking by close of business on 3 October 2022". Attached to the letter was a formal draft undertaking, which H required W to sign, whereupon it would be lodged at court. No justification was given for this request, nor, it seems to me, was there any such justification. H had received no intimation of any step which had been taken, or was intended to be taken, by W to defeat his claims. The undertaking sought encompassed the entirety of W's wealth, in such a way as to negate her ability to exercise any financial autonomy. And so began a chain of events leading to these proceedings, considerable legal costs, and, no doubt, heightened family tensions.
11. On 4 October 2022, W removed \$18,000, from the parties' joint Dubai account. The monies were transferred to her father. As a result, H's solicitors wrote to W's solicitors on 6 October 2022, repeating the request for a non-disposal undertaking, seeking a return of the monies into the joint account, and stating that absent compliance with those requests, an application to court would be made.
12. W's solicitors replied on 10 October 2022, but, unwisely in my view, did not address the removal of the \$18,000 from the joint Dubai account, although their letter did explain that W used the £32,000 removed from the joint HSBC account in April 2022 for family expenses. H replied on 11 October 2022, again seeking undertakings which continued to extended, so far as I can discern, to the entirety of W's worldwide wealth, thereby potentially causing her economic paralysis.
13. Later that day (i.e 11 October 2022), W replied through solicitors that the monies removed from the Dubai account belonged beneficially to her father (which H does not accept) but would in any event be returned forthwith. Her solicitors add: "[W] does not intend to take any action to deal with or dispose of her assets other than for personal and business purposes and if you have any evidence to the contrary please provide such evidence by return".
14. Dissatisfied with W's response, H applied for a freezing injunction. The justification for the application, as set out in his statement in support, amounted to this:

- i) That W had removed £32,000 from the joint HSBC account in April 2022, although it seems to me that (a) the withdrawals took place 6 months before any intimation of marriage breakdown, (b) similar withdrawals had historically taken place as part of the domestic economy, (c) H was fully aware of the removal of the funds, W making no attempt to keep them concealed from him, (d) H, as he said himself in written evidence, had no issue with it at the time, and (e), W has produced bank statements to demonstrate that monies were, as she says, utilised for family expenses.
 - ii) That W removed \$18,000 from the joint Dubai account and did not immediately explain the removal in correspondence. However, she swiftly remedied that failing by giving an explanation and, although H does not accept that the monies in question belong to W's father, they were immediately repaid into the account.
15. It also seems to me that the monies removed by W were trifling in the scheme of W's overall wealth. Beyond the £32,000 and \$18,000, neither of which in my view justified the application, H has not been able to point to any malign, or even suspicious, disposal of assets, or improper dealing with assets which are, on W's case, £5m, and on H's case possibly substantially more. Had she truly been intending to defeat H's claims, whether in collusion with her family or not, far greater sums would surely have been withdrawn, or transferred beyond H's reach.
16. H also contends that the transfer of W's mother's property into W's name is highly suspicious and indicative of improper dealing. This did not form a significant part of the original application, but was fleshed out in H's second statement. As I have already indicated, the property was bought by W's mother in 2010. In late 2021, at a time when the parties were planning to relocate to this country, W's mother decided to gift the property to W. A TR1 was signed in January 2022. The registration of title in W's name for some reason has not proceeded. According to an attendance note of a conversation between H and a person at HM Land Registry on 17 October 2022, H was told that W's conveyancing solicitor cancelled the registration in September 2022. On the face of it, that appears suspicious given the timing. However, (i) there is no evidence that W gave direct instructions to her conveyancing solicitor to cancel the transfer, (ii) according to the attendance note, the cancellation was requested due to problems with the requisitions on the title, (iii) W says that she believes she owns the property beneficially as a result of the signing of the TR1, (iv) W expressly includes the property within her list of assets, (v) H seemed unconcerned about the delay in registration in his first statement, of which he was well aware (admittedly before he became aware of the cancellation by the conveyancing solicitor), and (v) there is no evidence that this step was taken to defeat H's claims. W confirmed to me through counsel that she fully intends and expects that the registration will be completed.
17. Further, H has the comfort of (i) the £1.75m in the Investor Visa portfolio which cannot readily be withdrawn by W due to the attached conditions, and (ii) W's mother's property in estimated at £1m. Thus, some £2.75m is capable of being realised to meet his claims out of, on W's case, about £5m, or, on H's case, somewhat more. This must be seen in the context of a financial remedy dispute which, at first blush, is likely to be confined to H's needs, given that W's wealth emanated from her family. There is a further bank account in this country in W's name holding £400,000, but in my judgment that falls into a separate category as W uses it for general

financial purposes, unlike the Investor Visa portfolio and the property, neither of which need to be realised.

18. I consider also that W in her statement has been transparent about her financial circumstances. I do not detect any obfuscation on her part.
19. Put simply, I am of the view that the evidential justification for H's application is thin. There is little in terms of objective evidence to indicate a solid risk of dissipation of assets. Mere suspicion, or anxiety, on H's part is not sufficient. I am not satisfied that there is any basis upon which to assert that W by her actions was and is seeking to defeat H's financial claims.
20. At para 52 of **UL v BK**, Mostyn J said this:

“Finally, I draw attention to the great concern of myself and other judges at the continued widespread abuse of the principles governing ex parte applications not only for freezing orders but also more generally. It is worth remembering not only that the ex parte procedure is intrinsically unfair but also, and very importantly, that a case which begins with an ex parte order is usually poisoned from that point onwards. The unilateral step taken at the beginning of case echoes down its history. Often the respondent is enraged by the step taken against him and looks to take counter-offensive measures. Every single subsequent step is coloured by that fateful first step. Costs tend to mount exponentially. And even after the lawyers close their files and render their final bills the personal relations of the spouses will likely remain forever soured”.
21. Those words continue to ring true. True, the application was not made without notice, but with only 1 hour's notice to W it was to all intents and purposes a unilateral step. There is no novel point of law in this case, nor are the facts themselves particularly notable, although the wealth is far beyond that of most people. But this case is a salutary reminder to practitioners, if reminder is needed, that the legal and procedural pre-requisites of a freezing order application, or s37 application, as set out in **UL v BK** must be complied with before the court will be willing to entertain granting such an order.
22. I also take the view that the application was defective in two particular respects, although ultimately this has not influenced my decision on the substantive merits:
 - i) The application was supported by a witness statement, yet PD20A para 3.1 of the Family Procedure Rules 2020 mandates that “Applications for search orders and freezing injunctions must be supported by **affidavit evidence** (emphasis added)”, in contra distinction to other forms of interim injunctions which must be supported by either a witness statement or the application notice provided it is verified by a statement of truth; and
 - ii) The draft order put before Morgan J made no provision for W's costs of living, the school fees for the parties' child (which W had always paid) and W's legal fees, all of which should have been included as standard exceptions to the full rigours of the proposed freezing order.

23. The application is dismissed. Morgan J was, in my view, entirely correct to refuse to make the order at the first hearing, and the unsustainability of the application became even clearer when W subsequently produced her evidence. W has offered a form of wording to be incorporated by way of recital which (with some amendments by me) I reproduce as:
- i) “W states that she has no intention to withdraw funds from her Investment portfolio.”
 - ii) “W states that she no intention to sell, mortgage, charge, or otherwise deal with the property.”
 - iii) “W agrees to give H 7 days notice in writing of any intention to (a) withdraw funds from her Investment portfolio AND/OR (b) sell, mortgage, charge, or otherwise deal with the property.”
 - iv) “W considers that as a matter of law she is beneficially entitled to 100% of the property, and in any event expects and intends that the transfer of legal title into her sole name shall be registered as soon as practicable”.

I consider that her agreement to include these clauses in the preamble to my order is constructive and pragmatic.

Costs

24. I invited counsel to make provisional submissions on costs at the hearing, on the alternative basis of either (i) a decision to grant H’s application for a freezing order or (ii) a refusal to do so. Both counsel invited me to determine costs in this written judgment. In the event, I have refused H’s application. The “clean sheet” principle applies to a freezing application; that is to say there is neither a starting point of no order as to costs, nor a starting point that costs follow the event. I bear in mind CPR 44.2, save for sub paragraphs (2) and (3) which are disapplied by Rule 28.2(1) of the Family Procedure Rules 2010. I consider that H should pay W’s costs on the standard basis. Although I have found against him, in my view the threshold for making an indemnity costs order against him is not made out. I will assess those costs summarily. W’s Form N260 puts her total costs of the application and three hearings at £39,027. Looking at the statement of costs in the round, I propose to take a 30% deduction to reflect the likely outcome of a detailed assessment. H shall therefore contribute £27,318 to W’s costs. That sum shall not be enforced until the conclusion of the financial remedy proceedings. To make him liable now for the costs order would not be fair given that he does not have assets to pay the sum due. I anticipate that this debt to W will be deducted from his final award.