



Neutral Citation Number: [2020] EWHC 2546 (Fam)

Case No: FD07P02269

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 25/09/2020

**Before :**

**MR JUSTICE MOSTYN**

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**Between :**

**The Insolvency Service**

**Applicant**

**- and -**

**Boris Franz Becker**

**1<sup>st</sup> Respondent**

**- and -**

**Angela Ermakova**

**2<sup>nd</sup> Respondent**

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**Olivia Magennis** (instructed by **Insolvency Service**) for the **Applicant**  
**Jonathan Caplan QC** (instructed by **Withers**) for the **1<sup>st</sup> Respondent**  
**2<sup>nd</sup> Respondent in person**

Hearing date: 18 September 2020

**Approved Judgment**

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**MR JUSTICE MOSTYN**

This judgment was delivered in private on 25 September 2020. The judge prohibited its publication while the criminal proceedings against Mr Becker were pending. Verdicts having been given in those criminal proceedings on 8 April 2022 the judge gave leave on 10 April 2022 – if leave be required — for this judgment to be published.

**Mr Justice Mostyn:**

1. The Insolvency Service has brought criminal proceedings against Boris Becker. It alleges that, following his bankruptcy on 21 June 2017, Mr Becker gave a false account of the scale of his assets to his trustees in bankruptcy. There are 19 separate charges in all. Some of the charges are extremely serious. It is said that the scale of his non-disclosure, assessed conservatively, is around £6 million.
2. I am concerned with Charge 12. This says:

**Statement of Offence**

Bankrupt failing to disclose estate, contrary to Sections 353(1)(a) and 350(6) of the Insolvency Act 1986.

**Particulars of Offence**

Boris Franz Becker, between the 21<sup>st</sup> June 2017 and the 3<sup>rd</sup> October 2017, being a bankrupt did not, to the best of his knowledge and belief, disclose all property comprised in his estate to the Joint Trustees of his estate, in that he failed to disclose his reversionary (*sic, recto* reversionary) interest in Flat [redacted], Chelsea, London.

3. That reversionary interest was created by a deed of trust executed by Mr Becker and Angela Ermakova on 17 December 2001. That deed created a trust over Flat [redacted] the object of which was to provide accommodation for their daughter until she completed her tertiary education. At that point 99% of the value of the flat will revert to Mr Becker. The trust was named “the BB Property Settlement”.
4. The trust was approved by Mr Justice Johnson on 21 January 2002 in proceedings under Schedule 1 of the Children Act 1989 and was appended to, and formed part of, his order of that date. In that order Mr Justice Johnson also provided for child maintenance.
5. Following his bankruptcy Mr Becker was required to complete, under penalty of perjury, a questionnaire about his assets. On 6 July 2017 the completed questionnaire was sent to the Official Receiver. It was not, however, signed. Nobody has suggested that the absence of a signature makes any difference. On page 10 Mr Becker filled in section 2.1(n) as follows:

	Details	Approximate amount or value £
(n) Any property or sums either due to you or which will become due to you under any will or trust	THE BB PROPERTY SETTLEMENT (SETTLED ON 17 DECEMBER 2001)	THE POSITION REGARDING MY DAUGHTER'S TRUST IS BEING CONSIDERED

6. Thus, Mr Becker clearly disclosed the settlement; the date on which it was executed; and its purpose namely that it was a trust to benefit his daughter.

7. On 13 September 2017 Mr Becker attended a meeting with the trustees in bankruptcy and explained that the property was put into trust for his daughter's benefit until she finished her education. When asked what would happen at that point Mr Becker replied, "it belongs to a trust; I cannot give you any more details about that, so basically, I do not know".
8. At the meeting, however, Mr Becker handed over a copy of the deed of settlement. This covers 20 pages and sets out in specific detail, in the usual form, the terms of the trust. It provided chapter and verse about Mr Becker's reversionary interest. There was nothing else to be known about it. To establish the value of Mr Becker's reversionary interest all that was needed was a professional valuation of the flat which would be suitably discounted to reflect the tenure of the daughter for the next six years or so. But that was not Mr Becker's to give.
9. I am therefore somewhat at a loss to understand Charge 12. Mr Becker clearly referred to the existence of the trust in his answer to the questionnaire and provided nine weeks later the fullest possible details of it by supplying an actual copy of the deed. If I understood Ms Magennis correctly the complaint is that Mr Becker did not in his answer to the questionnaire spell out in sufficient detail the terms of the trust, but only did so nine weeks later. In comparison to the other charges this complaint seems trivial.
10. By 2015 Mr Becker had fallen into arrears of child maintenance. He claimed that he had run out of money. Enforcement proceedings came before Sir James Munby P on 22 April 2015. In his order of that day the President ordered Mr Becker to file and serve a statement, made on oath, by 21 May 2015 which gave a detailed explanation for his failures since 1 January 2015 to comply with his maintenance obligations; and either (i) confirmation that he will be able to meet those obligations in the future, or (ii) full particulars of his case as to why he could not to include full details of his income, assets, and other financial resources which he has or may have in the reasonably foreseeable future anywhere in the world and howsoever held. While it is true that this order was not endorsed with a penal notice it is clear that the statement in question would be extracted from Mr Becker by compulsion. If there were any doubt about that it was resolved on 22 January 2016 when the President reiterated the order, but with a compliance date of 4 February 2016. This time the order was endorsed with a penal notice.
11. The statement eventually emerged on 29 February 2016. There can be no doubt that it was extracted from Mr Becker under compulsion. As such, its contents would be inadmissible in any subsequent criminal proceedings: see *R v K* [2010] QB 343. Had Mr Becker sought to argue that he should not be required to make the statement because he might incriminate himself he would have been told that *R v K* decides that the privilege was not available to him but that the quid pro quo was that the statement would not be admissible in any criminal proceedings. A statutory analogy in public law children proceedings is section 98 of the Children Act 1989.
12. In relation to Flat [redacted] Mr Becker said in his statement: "Of course, I have a residuary interest in it pursuant to the BB Property Settlement dated 17 December 2001".
13. Following Mr Becker's bankruptcy his trustees contacted one of the trustees of the BB Property Settlement ("the property trustee"). In a letter dated 9 October 2017 the

property trustee sent to Mr Becker's trustees orders made in the Schedule 1 proceedings on 21 January 2002, 13 February 2009, 19 April 2012, 23 February 2015, 22 January 2016, 14 March 2016 and 9 June 2016. Curiously, the property trustee did not send the important order of 22 April 2015 notwithstanding that on 31 July 2017 Sir James Munby had made an order expressly permitting disclosure of that order to Mr Becker's trustees.

14. The property trustee also sent a copy of Mr Becker's sworn statement dated 29 February 2016.
15. The Insolvency Service now applies to me for permission to introduce those orders, and that statement, into the criminal proceedings.
16. The application is stated to be made pursuant to FPR r 12.73(1)(b) which provides that:

“For the purposes of the law relating to contempt of court, information relating to proceedings held in private (whether or not contained in a document filed with the court) may be communicated ... where the court gives permission.”
17. In relation to the orders permission is said to be needed because PD12G para 2.1 (which stipulates the disclosures that may be made without permission) only permits communication of all or part of a judgment to the CPS. It is said that an order is not a judgment, therefore permission is needed.
18. The reason that PD12G para 2.1 does not stipulate the free communication of orders is because section 12(2) of the Administration of Justice Act 1960 provides that the publication of the text or a summary of the whole or part of an order made by a court sitting in private shall not of itself be contempt of court except where the court (having power to do so) expressly prohibits the publication. This is a strangely neglected provision which should receive far greater prominence. No order prohibiting publication of the orders has been made in this case.
19. Therefore, I can quite accept that the property trustee was free to send the orders to Mr Becker's trustees on 9 October 2017. Further the effect of section 12(2) is that the Insolvency Service is free to use those orders in the criminal proceedings as they see fit. This extends to the order of 22 April 2015, which the property trustee provided on 17 September 2020, the day before the hearing before me. Mr Caplan QC does not resist a declaration being made to that effect.
20. I do not know on what basis the property trustee felt able to send to Mr Becker's trustees the statement of 29 February 2016. Section 12(1)(a)(iii) of the Administration of Justice Act 1960 states that:

“...the publication of information relating to proceedings before any court sitting in private shall not of itself be contempt of court except [where] ... the proceedings ... relate wholly or mainly to the maintenance or upbringing of a minor”.
21. The proceedings in 2015 and 2016 related wholly to the maintenance of a minor.

22. It therefore seems to me that it was a contempt for that statement to have been disclosed. It seems to me equally clear that the recipients were complicit in the contempt by retaining the statement, by reading it and by relying on it.
23. I do not think that the permission that is sought to introduce Mr Becker's statement into the criminal proceedings is correctly formulated under FPR r 12.73(1)(b). FPR Part 12 does not apply to Schedule 1 proceedings; they are financial remedy proceedings governed by Part 9. Therefore, the application is to be considered under FPR r 22.20. This provides that in financial remedy proceedings under Part 9 a witness statement may be used only for the purpose of the proceedings in which it is served save where the court gives permission for some other use.
24. The counterpart to this rule is CPR 31.22. The decided cases under that rule state that some good reason has to be shown for permitting another use, but this does not mean that the grant of permission is rare or exceptional if a proper purpose is shown. The court must be satisfied there is no injustice to the party compelled to give disclosure: *Gilani v Saddiq* [2018] EWHC 3084 (Ch) at [21].
25. An application by a prosecuting authority to use a witness statement in criminal proceedings brought in the public interest may well be a proper purpose. On such an application the court will consider first, the considerable public importance in facilitating the effective prosecution of serious crimes; second, that the prosecutor had a duty to lay before the criminal court all the evidence relevant to the offences charged, and would be hindered in so doing if evidence that would otherwise be relevant was withheld by the court; and third that where no privilege against self-incrimination had been asserted in the civil proceedings, it was for the Crown Court to determine this issue, if it later arose: *Gilani v Saddiq*. These principles were applied in *Official Receiver v Skeene* [2020] EWHC 1252 (Ch) where disclosure by the Official Receiver to the SFO of an affidavit not filed under compulsion was authorised. It is implicit in the reasoning in that case that had the affidavit been filed under compulsion permission would not have been granted.
26. Where the original proceedings were held in private and were cloaked by confidentiality that consideration would weigh heavily in the discretionary exercise: *Emmott v Michael Wilson & Partners Ltd* [2008] EWCA Civ 184 where it was held at [107] that the court does not have a general discretion to lift the obligation of confidentiality, in that case attaching to arbitration proceedings.
27. In this case I decline to exercise the discretion to allow Mr Becker's statement of 29 2016 to be introduced into the criminal proceedings for the following reasons:
  - i) for the reasons explained above Charge 12 appears to me to be exceptionally weak, even trivial;
  - ii) the statement, requiring the utmost candour, was produced under compulsion and therefore would be inadmissible in the criminal proceedings. There is therefore little point in authorising its use in those proceedings;
  - iii) the statement having been produced under compulsion was given with the implicit assurance that it would not be used in any criminal proceedings against Mr Becker. On that basis he was deprived of the privilege against self-

incrimination. That is an important factor which should be taken into account by this court. To this extent I disagree with *Gilani v Saddiq*;

- iv) the statement was given in proceedings that are quintessentially private and where unauthorised disclosure of it would amount to a contempt of court. There is no good reason for that confidentiality to be breached;
- v) the statement was produced to the Insolvency Service in circumstances which appear to amount to a contempt of court; and
- vi) the admission in the statement does not add anything to the proof of Mr Becker's relevant knowledge between July and September 2017. Plainly, as the deed itself, the various orders, and his answer to the questionnaire demonstrate, Mr Becker was fully aware at all times of the nature and extent of his reversionary interest in the flat.

28. The lessons to be learned from this case are:

- i) Materials covered by section 12(1) of the Administration of Justice Act 1960, which are not excepted by PD 12G para 2.1, must not ever be disclosed without the court's authorisation.
- ii) Where a statement has been generated in financial remedy proceedings under compulsion, and is therefore inadmissible in criminal proceedings, it is very difficult to visualise circumstances where the court would exercise its discretion for the use of that statement in such proceedings. I suppose it might be possible for disclosure to be sought of the statement in order to make derivative use of it – to establish lines of enquiry, for example. However, I heard no argument about this possibility and so I shall not express any definitive opinion on it.

29. I direct that the Insolvency Service, and counsel instructed by it, must now destroy all hard and soft copies that they retain of Mr Becker's statement of 29 February 2016 and no further mention must be made of it in the criminal proceedings.

30. That is my judgment.

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