**IN THE HIGH COURT OF JUSTICE**
**KING'S BENCH DIVISION**

Ref. KB-2024-002894
Neutral Citation Number: [2024] EWHC 3027 (KB)

Royal Courts of Justice
Strand
Lond

**Before**

**THE HONOURABLE MR JUSTICE LINDEN**

**IN THE MATTER OF**

**SPYRIDOULA-MARIA ARMENIAKOU (Claimant)**

**- v -**

**JAMES ALEXANDER SCOTT THOMSON (Defendant)**

**MR A TOMSON, instructed by Stokoe Partnership Solicitors, appeared on behalf of the Claimant**

**MR G SHIRAZI, instructed by Cooke, Young & Keidan LLP, appeared on behalf of the Defendant**

**JUDGMENT**
**9th SEPTEMBER 2024**

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MR JUSTICE LINDEN:

1. This is the defendant's application to vary an interim order which was made against him by HHJ Pelling KC, sitting in the Commercial Court on 12 August 2024. Judge Pelling ordered that the proceedings be transferred to the general King's Bench Division and that there be a return date on the first available date between 10 and 13 September 2024. That hearing is listed for a day, on Friday 13 September - that is, at the end of this week. I understand that the defendant will argue that the order should be set aside, and Mr Shirazi has asserted that there is a high likelihood that he will succeed. I am not in a position to take any view on whether he is right, and nor do I need to.

2. The background, in very broad summary, is that the judge was told that the claimant intended to bring proceedings against the defendant in the Greek courts in relation to a mediation agreement which was entered into between the parties following the breakdown of their marriage. The application was for a worldwide freezing order in support of those proceedings, which have since been issued. The judge made an order freezing the defendant's assets in England and Wales only, up to the value of £11 million. However, at paragraphs 9 and 10 of his Order, he also required the defendant, within five working days of service of the Order, to the best of his ability, to inform the claimant's solicitors of all of his assets worldwide exceeding £5,000 and, within 10 working days of service, to serve an affidavit setting out that information.

3. The defendant was served with a copy of the Order on 13 August 2024, although he argues that this did not constitute service for the purposes of triggering paragraphs 9 and 10 of Judge Pelling's Order. I do not need to resolve that issue today either. He accepts that paragraphs 9 and 10 have since been triggered and that he has not complied with them, whether within the timescale indicated, even on his own argument, or at all.

4. On 15 August 2024, the defendant wrote to the claimant's solicitors, accepting that the she would have a legitimate wish to police the freezing order, and information would be required for this purpose, but proposing that measures be put in place to ensure that the claimant did not become aware of information which it subsequently transpired she was not entitled to. The suggestion made at this stage was that the information should be disclosed into a confidentiality club whose members on the claimant's side comprised a ringfenced part of her legal team.

5. By his application notice dated 19 August 2024, the defendant then sought a variation of paragraphs 9 and 10 of Judge Pelling's order so that the deadline for compliance would fall two working days after judgment is handed down following the Return Date.

6. However, the issue between the parties, as reflected in the draft order which I have been shown and the arguments before me, has since narrowed. Both parties agree that a workable solution lies in the disclosure of the information into a confidentiality club. However, the defendant's position is that, pending the Return Date, the members of the confidentiality club on the claimant's side should be a lawyer or lawyers who are independent of those who currently represent the claimant. Moreover the information disclosed should not include information about the defendant's assets other than in England and Wales, given that the freezing order was made only in respect of assets in England and Wales.

7. The claimant's position since 28 August 2024, reiterated on 5 September 2024, is that the whole of the information ordered by Judge Pelling to be disclosed should be disclosed forthwith and that the members of the confidentiality club should be include the claimant's English solicitors and counsel team.

8. In support of the defendant's position, Mr Shirazi advances various arguments that if the information is disclosed to the claimant herself, she cannot unknow it and she is likely to misuse it. He advances similar arguments in relation to the claimant's lawyers who, he says, through disclosure of the information, would become aware of matters which might subsequently lead to conflicts later on in the litigation.

9. Mr Shirazi also asserts, as I have noted, that there is a high likelihood that Judge Pelling's order will be set aside. He asserts that this is a clear case in which there was breach of the duty of full and frank disclosure and fair presentation before Judge Pelling, as well as making other submissions on the evidence as to the appropriateness or otherwise of any freezing order in this case. Mr Shirazi argues that there could be no justification for a worldwide asset disclosure order, given that the freezing order only applied to England and Wales. Moreover, he says that this point was not sufficiently fully drawn to the attention of Judge Pelling at the hearing, when it should have been.

10. As far as membership of the proposed confidentiality club is concerned, Mr Shirazi argues that including the claimant's lawyers - whether that be the solicitors or counsel - would give rise to a significant risk of inadvertent disclosure. As he puts it in his skeleton argument:

> "Emails get sent by accident all the time. People make mistakes. The claimant's existing English legal team appear to be in constant contact with the Greek lawyers".

11. In his oral submissions, Mr Shirazi confirmed that he was not suggesting that there was any risk of deliberate disclosure on the claimant's side; the concern was with inadvertent disclosure and the risk of mistakes. He also confirmed that he was not able to point to any evidence of a heightened risk of such error in the present case. His essential position was that this was an exceptional case in which the order ought never to have been made because of blatant breaches of the duty of full and frank disclosure. The standard which should be applied is not to ask whether there is a risk of negligence on the part of the claimant's solicitors but to ask whether there is any risk of inadvertent disclosure, which in his contention inevitably there was.

12. Mr Shirazi also argued that I should also exclude the claimant's current counsel, Mr Tomson, and his junior, from the confidentiality club. The question, he submitted, was why they should be party to the information, rather than whether any harm would be done by their being party to such information.

13. He developed submissions that their client was a person who had a history of acting in bad faith, of breaches of information security, and of other malpractice. I do not at this stage accept or reject any such contentions, as they will be for consideration in due course. What I fail to see is how these submissions had any bearing on the question whether there was a risk of inadvertent disclosure by the claimant's current counsel. When I put that point to Mr Shirazi, his essential point was that the greater number of people who are in possession of the information, necessarily the greater the risk of inadvertent disclosure. But, of course, I bear in mind that the question here is whether two individuals should be added to the confidentiality club.

14. Mr Shirazi relied on *Bolkiah v KPMG* [1999] 2 AC 222, 238, where Lord Millett emphasised the importance of measures such as information barriers to preserve confidentiality and avoid conflicts of interest where confidential information is disclosed.

15. Mr Tomson, for the claimant, points out that the defendant is in breach of Judge Pelling's order and submits that he is in contempt of court. He tells me that an application to commit is likely to be before me at the end of the week, which I will of course consider on its merits. Mr Tomson contended that if the defendant did not intend to comply with the Order, it was incumbent on him to seek an urgent hearing of his application, and he has not done so. Mr Tomson also submits that the defendant is deliberately seeking to delay the provision of the information and that this should be a matter of serious concern. Again, a number of those

arguments are not points which I need to adjudicate for the purposes of reaching a conclusion at this particular hearing.

16. However, rightly in my view, Mr Tomson focuses on the defendant's purported objections to the claimant's English legal team being members of a confidentiality club. Mr Tomson submits that there is no evidence of any heightened risk of inadvertent disclosure by the claimant's English legal team. He tells me, and I accept, that they will comply with their professional duties and the court should not proceed on the basis that there is any likelihood that they will be negligent or will inadvertently disclose information provided to them pursuant to paragraphs 9 and 10 of Judge Pelling's order.

17. Mr Tomson also points out that the logic of the defendant's argument would suggest that, in the case of all confidentiality clubs, the legal team for the party which is to receive the information should be excluded, because of the risk that they may accidentally breach the terms of the agreement. Mr Tomson points out the context in which Lord Millett's remarks are made in the *Bolkiah* case. He does not suggest that it is unimportant to take steps to preserve the confidentiality of information disclosed, whether by order or otherwise, but he points out that the context of the remarks made by Lord Millett was that the same firm and forensic accounting advisors were acting for both sides and there were to be large numbers of individuals who would be party to the relevant information.

18. Mr Tomson adds that there would be considerable practical difficulties and additional cost associated with a requirement that disclosure be to a second independent legal team. For example, in the event that there were concerns about compliance the question would arise as to whether a claimant's existing legal team could be notified in any detail of the views of the independent team or whether any process of conferring could take place and/or whether it would be the independent team that made any application to the court and, if so, what the role of the claimant's existing team would be in relation to such an application. This was particularly given that the claimant's existing team has conduct of the case for the purposes of the Return Day.

19. Having considered the matter, I agree with Mr Tomson's arguments on membership of the confidentiality club. There is not, as he points out, any evidence of a heightened risk of inadvertent disclosure, which is all that this issue is concerned with. I am quite satisfied that the claimant's legal representatives - both solicitors and counsel - will be careful to take appropriate steps to preserve the confidentiality of the information disclosed. And I have no doubt at all that they will comply with their legal and professional obligations in relation to such information. I accept Mr Tomson's analysis of the *Bolkiah* case and I also accept that

there would be significant practical difficulties caused by Mr Shirazi's proposed approach. So, for all of those reasons, I accept Mr Tomson's arguments that the claimant's current legal team which, as I understand it, is defined by reference to a relatively small number of specific individuals, should be parties to the confidentiality club.

20. As far as the scope of the information to be disclosed is concerned, the confidentiality club will, in my judgment, provide adequate protection for all of the information disclosed. I also accept Mr Tomson's point that it may be of assistance for the information as to worldwide assets to be available to the court on Friday and so for that information to be disclosed before the Return Day, so that any appropriate applications arising out of that information can be made.

21. As to Mr Shirazi's allegation that there was a failure of full and frank disclosure in relation to this particular issue - that is, whether worldwide information should be disclosed in the context of a freezing order limited to England and Wales - I do not foreclose on those arguments being advanced on Friday. But I note that the point was specifically in the mind of Judge Pelling, a very experienced judge. At the hearing, Judge Pelling's initial position appears to have been that it would not be normally appropriate to order worldwide information but, ultimately, he decided that, having heard from Mr Tomson in the course of the hearing and in a specific exchange on the matter, he would make the order that he made.

22. In those circumstances, bearing in mind that in my judgment there is no material prejudice to the defendant in the worldwide information being disclosed, I have concluded that the appropriate course is for Judge Pelling's order to stand pending the Return Day on Friday. That is: to stand in respect of the scope of the information to be disclosed.

23. Clearly, the consequence of that is that there has been, at this stage, a failure to comply with the order. The proposal, as I understand it, is that the information will be disclosed within the next 24 hours, and I am content with that course.

24. As far as costs are concerned, I am told that it is agreed that the order will be costs reserved. Indeed, my provisional view also had been that that would be appropriate.

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