WESTGATE
CHAMBERS

Fabricated Documents: Myth or Reality?

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X v Y [2022] EWFC 95

https://caselaw.nationalarchives.gov.uk/ewfc/2022/95

4. I have not been able to reach the conclusion that he has made a full and frank presentation of his financial circumstances and said further as follows:

16.iii. In giving evidence on 7th April 2022, and again on 18th July 2022, the husband maintained that the bank statement and the sale contract he had presented to the wife in 2014, were certainly genuine; but (as a result of direct disclosure from the bank) I have seen a genuine bank statement for the same account for the same period and a number of transactions, including the £8,000,000 payment in, simply do not appear. The husband has sought to suggest that the monies were later returned to Company X., and thus they would legitimately cease to appear on the bank statements, but I reject that explanation – they would still show on the statements. On a balance of probabilities I am satisfied that the husband dishonestly and falsely manufactured the presented 2014 bank statement to mislead the wife into moving to London. I find that there never was a payment of £8,000,000. Because I have reached this conclusion I regard with suspicion the £80,000,000 Company X sale contract. In view of the late disclosure of the genuine bank statements there has been insufficient time to pursue the issue of whether the Company X sale contract was itself a falsely produced document and I can make no definite finding on this.

18.iii. The husband has produced documentation purporting to come from his native tax authorities in which they apparently assert this debt. In view of the conclusions reached above about the bank statement, I have real doubts about whether this asserted tax liability can be genuine.

16.iv. Further, when presented with evidence obtained by the wife from the internet (for example pictures of the husband on his Instagram or Facebook account recently enjoying apparently expensive activities) the husband told me that he had deliberately photo-shopped the images and that they were fake, suggesting that he thought everybody did this sort of thing on the internet.

18.v. The internet posts do show the husband apparently engaged in expensive activities – an office in South America, a bar in the Ritz, flying in a private plane, a night out in Paris with his girlfriend, a trip 10 to the Monaco Grand Prix. The husband told me that many of these images were not genuine but were photo-shopped to create a false image of wealth and that I should not read much into them. The wife is unsurprisingly sceptical; but none of these pieces of information very convincingly establishes great capital wealth.

19 (i) It is the normal practice in a financial remedies case for the court to make a decision at a final hearing on a balance of probabilities as to the computation of assets (even if there are uncertainties and this involves the drawing of adverse inferences) and then make a once and for all division of capital, whatever that might be on the merits of the case. This practice reflects the established policy of the courts as, for example, articulated by the House of Lords by Lord Scarman in Minton v Minton [1979] AC 593 when he said: "An object of the modern law is to encourage [the parties] to put the past behind them and to begin a new life which is not overshadowed by the relationship which has broken down."

(ii) Mr Barnett-Thoung-Holland's suggestion of an adjournment of capital claims runs counter to this general policy; but he argues that the facts of this case make it an exception to the normal practice. He has helpfully drawn my attention to a number of authorities which, in his submission, justify this departure.

(iii) The earlier cases suggest that an adjournment of capital claims should only be granted where there was a real possibility of capital from a specific source becoming available in the near future (see the very detailed analysis of Bracewell J in MT v MT [1992] 1 FLR 362).

(iv) Some more recent authorities (see, for example, Roberts J in AW v AH [2020] EWFC 22, Mostyn J in Quan v Bray & Others [2018] EWHC 3558 and Sir Peter Singer in Joy v Joy-Marancho and Others (No 3) [2015] EWHC 2507) are in my view of assistance in illustrating the justification of a departure from normal practice in slightly wider circumstances which do not necessarily include a real possibility of capital from a specific source becoming available in the near future. The justification is based on the proposition that while, generally, capital claims should not be left indeterminately unresolved, there were hard cases where fairness and justice must prevail over the normal desirability of the finality of litigation. Mostyn J's decision in Quan v Bray & Others [2018] EWHC 3558 (Fam), for example, was much more based on the injustice which might result in making a decision after a hearing at which the husband's disclosure had been very unsatisfactory, indeed Mostyn J categorised it as "brazen nondisclosure, coupled with an arrogant and contemptuous attitude".

(v) The emerging principle from these cases might be summarised as follows: If a litigant engages in conduct, which may include full or partial nondisclosure, which causes the court to conclude that a once-off division of capital now is likely to cause unfairness and injustice to the other party then the court, in exception to the normal practice, has a discretion to decide that the normal desirability of finality in litigation should be overridden to preserve the possibility of a fair outcome for the parties.

20. So does the present case meet this test? My view is that it does – if I dismissed the wife's claims now because she has been unable to establish the existence of assets which, if the husband had given proper disclosure might very well have been established, and which leaves the wife in considerable debt and in a country to which she was tricked by the husband into moving, then I might well be doing the wife a considerable injustice. In reaching this conclusion I bear in mind the "financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future", in particular the wife's need to house and look after herself and the two children for the time being, and Z possibly in the longer term as well, also to have a

way of meeting her own substantial debts. If the husband's presentation turns out to be accurate, and he is in fact hopelessly insolvent, then leaving the capital claims open does not, in my view, do any great injustice to him as the claims may never again be re-launched.

POST-SCRIPT

28. One reason for my wishing to have this judgment published is that I wish to draw wider attention to the ability of dishonest parties to manufacture bank statements (and other documents) which, for all practical purposes, look genuine, but which are in reality not in that category. This has occurred in the present case and the wife has significantly suffered as a result of it and it is important for litigants, practitioners and judges to be aware of the issue. May I draw the reader's attention to an article in the Financial Remedies Journal: Dodgy Digital Documents: Where are we now? Where are we going? by Helen Brander [2022] 2 FRJ 139 which gives a full description of the existence of this issue.

The link to Helen Brander's article:
https://financialremediesjournal.com/download/3f3eda867d8e4849a1a65dad459bf74d

Artificial Intelligence (AI) – Judicial Guidance
https://www.judiciary.uk/wp-content/uploads/2023/12/AI-Judicial-Guidance.pdf

Baker v Baker [2022] EWFC 15

https://www.bailii.org/ew/cases/EWFC/HCJ/2022/15.html

4. Mr Bishop argues that this principle occupies centre stage in this case, and I have to say that I do agree that the disclosure made by the husband in his Form E, and through his later solicitor's correspondence, has been lamentable. The husband has some serious questions to answer. It is bizarre that so many irreconcilable statements and other pieces of contradictory evidence have been given in such a short period of time, with incorrect representations being followed hard on the heels by false statements. It is for this reason that I will order that the husband's reply to questionnaire is to be exhibited to an affidavit and sworn to be true. In this way the husband will know that if it is subsequently shown that he has deliberately given false answers, then he will potentially face a charge of perjury for which the maximum sanction is seven years' imprisonment, in contrast to the maximum sanction for making a false declaration of truth on an answer to a questionnaire, which is a mere two years' imprisonment for contempt of court.