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IN THE FAMILY COURT

[2022] EWFC 45



No. ZZ20D65691

Royal Courts of Justice
Strand
London, WC2A 2LL

Tuesday, 26 April 2022

Before:

MR JUSTICE MOSTYN

(In Private)

B E T W E E N :

MICHAEL FUCHS

Applicant

- and -

ALVINA COLLARDEAU-FUCHS

Respondent

MR N. WILKINSON (instructed by Stewarts Law) appeared on behalf of the Applicant.

MISS E. JONES (instructed by Payne Hicks Beach LLP) appeared on behalf of the Respondent.

A P P R O V E D J U D G M E N T

(via Hybrid Hearing)

MR JUSTICE MOSTYN:

- 1 This is my judgment on the application made by the wife, as I will call her, to enforce my order for maintenance pending suit made on 21 February 2022, in certain respects, and to vary that same order.
- 2 I want to make one thing absolutely clear at the start. My order of the maintenance pending suit of 21 February 2022 is fully effective. It is, perhaps, to use the language of another sphere, a “living instrument”, and it does not need to be repeated in the order I make today, or any of its terms in any other respect replicated in the order that I make today.
- 3 So, in the draft order I have been provided with today, I see, for example, paragraph 8, which is the warning that appears in my previous maintenance pending suit order. There is no need at all for that warning to be replicated in the order I make today. It lives and breathes in the previous order. So the decision I make today will be strictly confined to explicating and varying, in so far as it is necessary, and enforcing, so far as it is necessary, my previous order. It is not going to disturb in any respects the architecture of the previous order.
- 4 The background to the decision that I make is well-known to both parties and does not need to be repeated here. I am satisfied that the husband, as I will call him, has been negligent as to whether the expenses of the property in Antibes have been met. Specifically, I am satisfied that he has been negligent as to whether the salaries of the staff in Antibes have been met. The consequence of the non-payment of the salaries of the staff has been that those members of staff have complained to the wife, who is in fact the party with whom

they have made their contracts of employment, and their complaints to the wife have been very stressful for her indeed.

5 A view could be taken that the conduct of the husband in not paying the salaries of the staff in Antibes was a form of coercive control. That view could be taken, but I do not go as far as to make that finding today. I want to make it clear, however, that if there are any further defaults, the time will surely soon come when the court will reach a conclusion that the husband is not, as Mr Wilkinson says, having to deal with complex financial arrangements which are part and parcel of the activities of a very rich man, but rather that there is a form of abuse taking place. And so, I issue, in this judgment, this final warning to the husband so that he understands exactly where the court stands.

6 So, having made those preliminary remarks, and in the context that I am satisfied that there has been completely unnecessary negligence in relation to the payment of the staff salaries, I make the following decisions.

7 First, in relation to unpaid invoices, the terms of my previous order are, in my opinion, abundantly clear. Paragraph 14(b)(i) of that order provides that the husband will pay all of the utilities, insurance, repair or maintenance of the “other properties”, which includes the properties in Paris and Antibes. He is obliged under the terms of that order, by para.14(b), to pay those expenses within fourteen days of the uploading to the portal by the wife of an invoice or particulars of an incurred expense relating to the same.

8 Now, when I turn to the schedule at p.156 of the bundle, I see that, on 15 November 2021 - so let us reflect on that; that is the better part of five months ago - there was uploaded to the portal four invoices from Azure Services in relation to the property in Paris. Those four invoices totalling €18,029, related to paintwork in the kitchen, entrance and bathroom,

structural work, masonry, partition and so on, electrical work and painting of the guest house. Those are invoices clearly falling within the terms of paragraph 14 of the order, which were uploaded a considerable period ago, which the husband is liable, under the terms of the order, to pay. And so my first decision is that the husband must, by 4.00 p.m. on 29 April 2022, discharge those invoices totalling €18,029.

9 His obligation under the order is - and I repeat - to pay those expenses, and that obligation will be discharged by him or his agents approaching Azure Services and making the necessary payment to them of those outstanding invoices. The proposal that the wife made in the draft order provided to me, was that he had to make the payment into the parties' main bank account and that the invoices would be paid from that bank account; but that is not an explicit term of my order. His obligation would be satisfied by him making direct payment of those invoices.

10 Beyond that, I am not prepared to go. I am not prepared to go further because either the expenses that are claimed by the wife do not relate to invoices or other incurred expenses, but rather relate to a quote for works which have yet to be done; alternatively, they relate to invoices which have been uploaded to the portal on 19 or 20 April and in respect of which the fourteen-day period has not expired. I am not prepared to cover those items, although the husband should understand that if there is a further default, there will inevitably be further enforcement proceedings which, quite apart from the expense which is involved (which I suppose for a man of Mr Fuchs' means is not a particularly relevant consideration), does involve him sitting for a couple of hours of his valuable time listening to these endless enforcement applications. He has heard it clearly said that there will be further enforcement proceedings if he does not comply with his obligations under paragraph 14 of my order in respect of invoices which have been uploaded to the portal but in respect of which the fourteen-day period has not expired.

- 1 1** So that is my decision on the enforcement application: the husband must discharge the invoices totalling €18,029 by 29 April 2022.
- 1 2** The wife has applied for a modest variation of the maintenance pending suit order so as to provide that there should be a float, or a minimum balance, maintained in the principal account with Banque Transatlantique of €100,000. The husband accepts the principle that there should be a minimum balance maintained in those accounts, but he says the figure should be €20,000.
- 1 3** From that account, substantial payments are made each month in respect of the mortgage and if there were any kind of history of default of those mortgage repayments, the court would not hesitate to ensure that the fund maintained in the account would be sufficient to pay those mortgages, because default in relation to any instalment of a mortgage can have a serious economic or financial consequence. However, I am not prepared to find that there is an appreciable risk of default in relation to mortgage repayments such that I have to cater for that in mandating a minimum balance on the account. I am not satisfied that the wife has demonstrated that there is any real risk that the husband will default in making those mortgage repayments between now and the conclusion of these proceedings.
- 1 4** One is therefore looking at maintaining sufficient in the account to meet the staff salaries, which I regard as absolutely essential, together with other expenses, principally utilities, and in my judgment the correct figure to ensure that there is a sufficient insurance fund to meet all of those expenses from that account is €50,000. So the husband will be ordered, by way of variation of my previous maintenance pending suit order, to maintain, in the primary Banque Transatlantique account ending 01, at all times, a minimum balance of €50,000. I need not refer to those aspects of the order which are no longer being pursued.

1 5 Finally, I deal with the wife's application for further time in which to provide her statement in relation to the husband's show cause application, and I grant her application in the terms in which it is phrased, which is that it is extended to 24 May 2022 at 4.00 p.m.

1 6 That concludes this judgment.

LATER

1 7 The wife applies for costs. It might be thought somewhat counterintuitive that she should be applying for costs in circumstances where the husband has agreed to pay all her costs. However, the husband's agreement is qualified, which is that he reserves the right to seek a recoupment of all or part of the costs that he has paid at the end of the case should he succeed in his notice to show cause application. The wife therefore applies for the costs on an indemnity basis in order to forestall any possibility of the husband being able to recoup the costs of the hearing before me today should the wife be defeated in her resistance of the show cause application and the husband otherwise have a valid recoupment application against her.

1 8 That is, in my judgment, a good reason for applying for costs, provided it is well understood, the order having been made, there is no question of any value passing under that order, but it would only be used, to use that weary expression, as a shield and not as a sword at a later date.

1 9 So, in my judgment, the wife, having brought the application for enforcement, and having brought the application for variation, has succeeded. She has not succeeded wholly, but she has succeeded partially on both applications.

2 0 I have made, for the purposes of the judgment that I have given, a finding against the husband that he has been guilty of negligence and, in my judgment, that finding of negligence takes the case out of the norm. In my judgment, the wife should recover an order for costs, and it should be to be assessed on an indemnity basis because, for the reasons I have given, the conduct of the husband has taken the case out of the norm.

CERTIFICATE

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