

30th December, 1986

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MATRIMONIAL CAUSES DIVISION

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DEPUTY BAILIFF: I first deal with the question of the burden because there is a dispute about that. The case of Johnson Matthey Bankers Limited -v- Arya Holdings Limited, 22nd November, 1985, as yet unreported, makes it quite clear that the burden where an application is made for the lifting of an injunction is on the applicant. The Court there said:

"We are not satisfied that the burden, and it is on the applicant, has been discharged".

Now, secondly, with regard to the raising of the injunctions, on the 5th August, 1982, the Court sat to consider applications by Barry Shelton and Anthony Shelton for an order raising certain Interim Injunctions in force by virtue of the service on them of one Order of Justice at the instance of the Viscount and of one Order of Justice at the instance of John Henry Appleby. The injunctions restrained the defendants from disposing of assets, transferring title, or charging or otherwise impairing the value of assets.

In other words, a very similar situation. The Deputy Bailiff delivered the Court's judgement and, inter alia, said this:

"When an Order of Justice is presented to the Bailiff or myself seeking an injunction of this nature, which is really a "saisie conservatoire", which is well-known to the Court, it is customary in some cases, but not in all, depending on the circumstances, to require the allegations in the Order of Justice to be substantiated by affidavits".

(In this case in fact there were affidavits).

"Obviously, in the case of the Viscount we do not do so as he is a senior official of this Court. In the case of individual litigants again, that entirely depends on what is alleged in the Order of Justice. But when two Defendants against whom an Order of Justice has been served come to this Court to lift the injunctions then it is essential - and I cannot stress it too strongly - that those applications be supported by sworn affidavits. Otherwise it is imposing on Counsel a very difficult burden. He has to submit to the Court what his instructions are, as his client tells them to him, but that client himself has not deposed to them. We think that it is an unsatisfactory state of affairs. Therefore, as a practice direction the Court is going to rule that it will not consider in future applications to lift injunctions unless those applications are supported by affidavits".

Therefore, in this case the respondent is not entitled, on the information now before us, to a raising of the injunctions, or even a variation. However, as a concession, having regard to the commitment for school fees, we release the Lloyds Bank account from the injunctions. Since the other bank accounts are in debit they are not affected. Accordingly, the injunctions will remain as to the real property and the stocks and shares only. Neither must be disposed of, or charged in any way without prior agreement of both parties, or the further order of this Court.

We cannot and we do not even attempt to decide the question of contempt because full evidence would need to be heard. We agree with Mr Backhurst that the petitioner has a right to be heard. By consent of the parties the issue of contempt is adjourned sine die, subject to reciprocal

undertakings to appear on twenty-four hours notice. We express the hope that negotiations to be conducted whilst both parties are in Jersey will make this unnecessary.

There being no decision on the issue of contempt we cannot go on to decide the question whether the petitioner has forfeited her entitlement to the benefit of the injunctions. We impose an Order on both parties not to harass, engage in verbal violence or abuse, or attempt to exercise undue influence the one over the other.

The Court notes the petitioner's undertaking to return the child to the jurisdiction tomorrow, subject to arrangements for accommodation and payment of the air tickets, and notes reciprocal undertakings of both parties that the child, P, will not be again removed from the jurisdiction without further order of this Court. We make no order about accommodation because the Court is not possessed of sufficient information. But we note that the petitioner will be accommodated at *a specified address* or if necessary, in a hotel at the cost of the respondent.

And, finally, we order that the respondent will pay the petitioner's taxed costs of and incidental to the present proceedings.

