

ROYAL COURT
(Samedi Division)

81.

29th April, 1997

Before: F.C. Hamon, Esq., Deputy Bailiff, and
Jurats Vibert and Jones.

Between: Ewa Ann-Kristin Karlsson Plaintiff
And: Rolf Christer Karlsson Defendant
And: Barclays Bank PLC Party Cited

Application by the Defendant to vary the injunctions
contained in the Plaintiff's Order of Justice, dated
29th November, 1996.

Advocate J.A. Clyde-Smith for the Plaintiff.
Advocate J.C. Young for the Defendant.

The Party Cited was not represented and did not appear.

JUDGMENT

5 THE DEPUTY BAILIFF: On 29th November, 1996, Mrs. Ewa Ann-Kristin
Karlsson obtained an Order of Justice against her husband, Rolf
Christer Karlsson. Barclays Bank PLC was the Party Cited. The
Plaintiff's claim concerned what she described as a proprietary
10 interest in relation to a bank account in the Defendant's sole
name in Jersey. The Order of Justice was accompanied by an
affidavit in which Mrs. Karlsson deposed that the Defendant had
come to Jersey with the proceeds from the sale of their florist's
shop in Stenungsund, Sweden, sometime in 1989. She had
15 subsequently learned that the Defendant had not opened the account
as she had anticipated in their joint names, but in his name
alone. It was admitted that some of the money was the Defendant's
as he had worked in the shop with the Plaintiff, but according to
her affidavit she had the knowledge and the main responsibility
for the business.

20 Leave was given to serve the Defendant, by way of substituted
service, on his Jersey lawyer and two addresses were given, one in
North Carolina, United States of America, where he lived on a
yacht; the other at Stenungsund. There was some £135,000 in the
account.

The case was called before the Court on 13th December, 1996, and adjourned *sine die* and then adjourned generally on 21st February, 1997.

5 There is now an application by the Defendant to vary the injunction to allow £5,000 to be paid to his advocates towards his legal costs and £1,500 to be paid monthly for the same purposes "until the conclusion of this case".

10 We have an affidavit from Mr. Karlsson and a second affidavit from Mrs. Karlsson.

15 Matters in Sweden have moved on apace and we have had an opportunity to read part of the Swedish Marriage Code (the Aktenskapsbalken) of 1987 as amended in 1984.

20 The parties were divorced in Sweden on 16th January, 1997, and an Executor, Mr. Christer Eiserman of Göteborg was appointed by the Court. He is what is termed under the Marriage Code, a Property Division Executor. We were told that he will normally divide the property on the basis of "the property division on the day when proceedings for divorce were commenced". Apparently, when the assets have been properly located, deductions are made to cover debts and then the net value is divided equally between the spouses. That is, of course, a simple gloss on the Swedish Code and this Court yields to no man in its ignorance of Swedish Matrimonial Law. There is, however, common ground between counsel that there is no problem foreseen in the Executor eventually dividing the assets, although in this case, because of allegations being made by each side, his final decision may not be immediate.

30 Mr. Karlsson, in his affidavit, says that some of the money frozen in Jersey must be his as of right, and that without legal advice his rights in the divorce proceedings and the ancillary matters, as well as in the present proceedings, will be prejudiced. Furthermore, he says, that by freezing the funds in the account and delaying the division of funds in Sweden the Plaintiff is seeking to force him to agree to conditions which are against his interests. He goes on to say that the Plaintiff has substantial accounts in Liechtenstein, a matter that in her later affidavit she vehemently denies.

45 The Defendant swore his affidavit in Florida on 28th February, 1997. Since then his life-style has apparently changed. The boat on which he was living is now sold and he himself is living in Sweden. We heard of much amendment to the figures sworn in his affidavit. That cannot be satisfactory. Evidence is heard in Jersey, either by agreement of the parties, or by written evidence sworn to by affidavit, or by oral evidence.

50 In our view counsel can comment on matters already in evidence but he must not give evidence himself. We do not say

5 this to criticise Advocate Young because both counsel have behaved with great courtesy before the Court and Advocate Clyde-Smith is similarly and as mildly criticised. It is a statement of the way that matters should have proceeded. If the situation had changed we should have received an amended affidavit from Mr. Karlsson, even if it meant an adjournment. We have not, of course, penalised him for this aberration.

10 We are, as a matter of fact, in quite a different situation to the facts of the cases that Mr. Young very helpfully placed in his bundle and with which we are very familiar. We will not refer to them - with one exception - further in this judgment.

15 Although this is an application for living expenses, four of the six headings are now inappropriate as the yacht has been sold (for example item 1 is headed "marina fee for yacht" and item six is headed "marina costs (fuel, electricity, water)").

20 Mr. Karlsson, as we have said, is now in Sweden and there may well have been monies received by him as well as altered outgoings. There are, in fact, proposals being made and as late as 25th April, 1997, Advocate Clyde-Smith proposed as an alternative proposition to Advocate Young *"as our clients are now divorced and in accordance with Swedish Law, matrimonial property is divided equally between the parties, we would agree to an equal division of the funds held on the account in question in order to resolve the matter. Failing your client's agreement to this proposal, we suggest that your client's application should be referred to be dealt with by the Swedish Executor and we agree to be bound by his decision in this regard"*.

35 It is clear from Iraqi Ministry of Defence -v- Arcepey Shipping Co SA [1980] 1 All ER 480 that a Mareva injunction is not conceived as punishing or penalising. It is also clear, as we have said, that the cases to which we were referred in the bundle can be distinguished. It seems to us that the Swedish Executor is seized of the problem. He is appointed by the Swedish Court. He will understand the amount of the matrimonial assets that are available for distribution. We have a clear undertaking from Advocate Clyde-Smith that whatever the Swedish Executor shall agree his client will not attempt to obstruct that amount being paid and if Mr. Karlsson is in urgent need then he can apply for immediate relief.

45 This Court would not be minded to allow a solemn affidavit to be altered on what Advocate Young told us were telephoned instructions from his client. We would, in any event, require an amending affidavit. As it is it seems to us that it will be better to obtain an interim order from the Swedish Court which this Court will allow to be enforced without argument.

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Authorities

PCW (Underwriting Agencies) Ltd -v- Dixon & Anor [1983] 2 All ER 158.

AC Mauger & Son (Sunwin) Ltd -v- Victor Hugo Management Ltd [1989] JLR 295.

Barclays Bank -v- Thorpe & Ors (1995) JLR 184; (13th June, 1995) Jersey Unreported.

Baptiste Builders Supply Ltd -v- Smith (1995) JLR N.16; (1st August, 1995) Jersey Unreported.

Iraqi Ministry of Defence -v- Arcepey Shipping Co. SA [1980] 1 All ER 480.

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