

Re C (Costs: Enforcement of Foreign Contact Order) (2007)

[2008] 1 FLR 619; [2007] EWHC 1993 (Fam)

02/08/2007

Barristers

Teertha Gupta KC

Court

Family Division

Summary

Regulation 2201/2003 art.41 provided for automatic enforcement of a foreign order without the need for elaborate process or even for a declaration of enforceability. Accordingly, unless and until some defence was articulated by the defendant, an application based upon art.41 should proceed with the minimum documentation and should not generate unreasonable costs.

Facts

The applicant father (F) applied for an order against the respondent mother (M) for costs, in the context of his application for enforcement of a foreign contact order pursuant to Regulation 2201/2003 art.41. F was granted a contact order by an Italian court. Before the court had issued the necessary certificate, F applied for the enforcement of the foreign order in the United Kingdom with an originating summons explicitly and exclusively founded upon art.41 of the Regulation. In support of his case, F filed substantial material, running to something of the order of 300 pages, and incurred costs of £18,260.08, including £3,660.66 for translation costs. On the basis of legal advice, M subsequently conceded that she did not have any effective answer to the proceedings and indicated her willingness to consent to an order on the day before the hearing. F argued that M should pay the whole of his costs because of her delay in expressing her consent. M asserted that she had consented as soon as the certificate had been delivered to her legal representatives.

Held

HELD: (1) Although there was a dispute as to when precisely the certificate had been delivered to M's legal representatives, this was a case in which both sides were very well aware from the outset that the Regulation was almost bound to be in play, and where, whether or not the certificate actually existed, M and her representatives could only sensibly have been proceeding on the basis that the certificate would be produced in time for the hearing. (2) It was disturbing, in an application under art.41, an article which provided for automatic enforcement of a foreign order without the need for elaborate process, that vast bundles should be generated when all that was required in support of the originating summons was a very brief formal affidavit, deposing to the fact of and exhibiting the relevant orders of the foreign court and the relevant certificate. Unless and until such time as it emerged that the respondent in his or her

own evidence, or otherwise, was able to articulate some basis of defence requiring the submission by the applicant of more substantial material, a case based upon art.41 should proceed with the maximum of despatch and the minimum of delay and, as part of those necessary objectives, the minimum of documentation. (3) In the absence of any authority or practice regulating the incidence of costs in Brussels Regulation cases, having regard simply to the facts and circumstances of the case, it was appropriate to make M pay a modest contribution to F's costs. M's stance, if not doomed to inevitable failure, was one which she had scant prospects of establishing. As against that, there was no reason why she should have to bear costs which had in very significant measure been generated by the preparation of a bundle containing much more material than was probably necessary in the circumstances. Accordingly, M should pay by way of contribution to F's costs the sum of £1,750.00.

Costs determined

Permission

Lawtel 