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ND v KP (Asset freezing) [2011]

[2011] 2 FLR 662 : [2011] Fam Law 677 : (2011) 161 NLJ 702 :[2011] EWHC 457 (Fam)

10/02/2011

Barristers
Rhiannon Lloyd

Court
Family Division

Practice Areas
Financial Remedies

Summary
Application by the wife for the extension of an ex parte freezing order against the husband's assets. Cross-application by the husband for, amongst other matters, a discharge of the order. The order was discharged. Wife also ordered to obtain a discharge of a mirror order made in Switzerland.

Facts
On 21st December 2010, pursuant to the inherent jurisdiction of the High Court, the wife sought an ex parte freezing order in respect of the husband's bank accounts in Switzerland. The matter came before Roderic Wood J, sitting as the urgent applications judge. He granted the application and made further freezing orders in respect of property. The order was to last until 9th February 2011 or further order. On 29th December 2010, the wife also obtained a mirror order from the court in Geneva blocking the accounts.

Held
On 10th February 2011, the matter came before Mostyn J. The husband sought, inter alia, to discharge the orders obtained and for an order in personam to discharge the Swiss order.

In his judgment, Mostyn J analysed the relevant case law and sets out the three principles in relation to freezing orders. Firstly, in order for a freeing order to be made, there must be a good case put before the court, supported by objective facts, that there is a likelihood of the movement, dissipation, spiriting away, salting away, squirreling away, making of a disposition or transfer of assets, with the intention of defeating a claim. This is the same whether the application is pursuant to the MCA 1973 or the inherent jurisdiction.

Secondly, insofar as an ex parte application is concerned, reference was made to paragraph 25.3.5 of the White Book. This paragraph sets out that as a matter of principle, no order should be made in civil proceedings without notice to the other side unless there is a very good reason for departing from the

general rule that notice must be given. To grant an interim remedy in the form of an injunction without notice “is to grant an exceptional remedy”; see Moat Housing Group-South Limited v Harris [2006] QB 606.

After referring to FZ v SZ and others [2011] 1 FLR 64, Mostyn J sets out that an application for ex parte relief should only be made where there is positive evidence that the giving of notice would lead to irretrievable prejudice being caused to the applicant.

Thirdly, if an applicant seeks to move the court ex parte, then there is a high duty of candour. The jurisprudence of the candour required is analysed and summarised in Arena Corporation v Schroeder [2003] EWHC 1089 (Ch) and is set out by Mostyn J at paragraph 13 of his judgment.

Following examination of the evidence, Mostyn J discharged the order made by Roderic Wood J, concluding that on the material put before the court, there was nothing that brought the case anywhere near the threshold needed to obtain freezing relief. He found that the real motive behind the wife’s application was to obtain a freeze over the husband’s assets because it would be desirable to keep them preserved until trial. The judge was satisfied that the wife did not comply with her duty of candour to explain everything that should have been explained to the court at the ex parte hearing.

Furthermore, Mostyn J was satisfied that the obtainment and continued existence of the Swiss mirror order was oppressive and vexatious and as such ordered the wife to have it discharged.