

Johnson v Takieddine & Anor

[2016] EWHC 1895 (Fam)

02/06/2016

Barristers

Charles Hale KC
Henry Clayton

Court

Family Division

Practice Areas

Financial Remedies

The applicant wife and respondent husband were married and had lived in France between 1985 and 2006. They divorced in France and the wife was awarded maintenance of €5,000 a month for herself, and €1,000 per month for each child. Under the community of property regime, the parties were likely to be entitled to an equal share of the marital wealth. However, neither party had yet applied in France for a judicially determined liquidation of the marital assets.

The husband's wealth was substantial and complex. Warwick House, the property in which the wife resided and which she sought transferred to her, was owned by Warwick Estates Ltd, a British Virgin Island company, which in turn was owned by two Panamanian companies. Warwick Estates Ltd was joined as a respondent to this litigation but His Lordship stated that it had filed no evidence nor had it complied with case management orders including in relation to disclosure.

The wife sought that Warwick House be transferred to her. The husband argued that the wife's application should be dismissed. The principal issues for the Court were whether there was jurisdiction to make a financial order under Part III MFPA 1984; if so, whether it was appropriate for an order to be made in England given the connection with France; and whether the husband was the beneficial owner of Warwick House.

Mr Justice Moylan heard extensive evidence from the parties and expert evidence on the jurisdiction of the French Court in light of previous proceedings there. The wife argued that England and Wales was the appropriate jurisdiction and effectively sought interim implementation of the French court's determination that the parties are equally entitled to the marital wealth. The husband asserted that the Part III application was an abuse of process and could not properly be used in circumstances where the French court was fully seised.

Mr Justice Moylan found that the French court was not as yet seised as neither party had yet made an application for judicial determination of the marital assets. His Lordship reviewed the analysis of Lord

Sumption in *Prest v Petrodel* [2013] UKSC 34. and held that the husband was the beneficial owner of Warwick House. Mr Justice Moylan analysed sections 16, 17 and 18 of MFPA 1984 and found that there was nothing which prevented him from having jurisdiction to make an order under Part III. However, he did not wish to engage in s.25(2) MCA 1973 arguments as this could result in an “improper conflict” with issues that would later be the subject of determination in France [para 177]. As such, to avoid an improper conflict, His Lordship awarded the husband and wife a notional half share in the equity of Warwick House, and allowed the wife to enforce against the husband’s notional half share, the costs orders obtained against him in this jurisdiction.

Permission

 Family Law Week