4PB, 6th Floor,
St Martin's Court,
10 Paternoster Row,
London, EC4M 7HP
T: 0207 427 5200
E: clerks@4pb.com
W: 4pb.com

Christopher Hames KC and Pippa Sanger successfully opposed an application to strike out a claim for financial remedies on public policy grounds, representing the client on a pro bono basis.

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This was a pre-emptive application by the husband to strike out the wife's claim for financial remedies pursuant to public policy principles on the basis of the wife's alleged bigamy following a 20-year marriage, characterised by abuse and for which there were two children now living with the wife. The husband relied on the Court of Appeal authority of *Whiston v Whiston* [1995] Fam 198.

Both parties were of Bangladeshi origin. The wife's first marriage had been a forced marriage in Bangladesh when she was a teenager. She then underwent a second marriage in Bangladesh with the husband in December 2001 at a time when her first marriage had not yet been finalised in the English courts. The parties separated in 2020. A petition for nullity followed on the basis that the wife was lawfully married to another at the time and so the marriage was *void ab initio*.

The factual background was almost entirely in dispute.

It was husband's case that he had believed the wife to be divorced on first meeting her, she had organised the marriage and deceived him for 20 years. He said this conduct was so egregious that she should be debarred from pursuing any claim for financial remedies. He sought strike out under FPR 2010 4.4(1)(b) as an abuse of process.

It was the wife's primary case that the principle in *Whiston* has not survived the Supreme Court's decision in *Vince v Wyatt* [2015] 2 All ER 755, and the court does not have the power to strike out a claim on the grounds of bigamy. Otherwise, it was her case that she had understood that she was divorced at the time but in any event the husband knew of the divorce proceedings and had organised their marriage so as to avoid any future claims in the event of separation.

The judge set out the 3 key issues for the court to determine:

(i) The facts: what each party knew about the status of the wife's first marriage, and how it came about that they married at a time when the wife was still married to someone else;

(ii) Does the power to debar a bigamous applicant from pursuing a claim for a financial remedy order still exist? – and, if so,

(iii) Should it be exercised in this case, according to the facts as found?

The Law

In *Whiston* the Court of Appeal held that, as a matter of public policy, a spouse who had committed bigamy should not be entitled to a financial award. The "wife" in that case had married the "husband" despite knowing that she was already married (and that her first husband was alive and well) and had concealed that fact.

This argument was revisited a few years later in the Court of Appeal in *Rampal v Rampal (No 2)* [2002] Fam 85. In that case the facts were different from those in Whiston because the respondent "wife" had been aware of the respondent "husband's" bigamy at the time of their marriage. The key issue for the Court in *Rampal* was whether the decision in *Whiston* operated as an absolute bar to a bigamist's claims for financial provision. The Court of Appeal held that it did not.

The judge considered that the reason that the claim was allowed to proceed in *Rampal* was that the applicant's culpability, on the facts, was less than that of the "wife" in *Whiston*.

The judge went on to consider the court's powers to strike out, and the dicta of Lord Wilson in *Vince v Wyatt*, in particular that the rule did not permit an assessment of the merits of the underlying application but the touchstone for strike out is whether there is a legally recognisable claim.

The judge concluded that the court has jurisdiction to strike out a claim, or "debar" a person from pursuing it, where it contravenes a rule of public policy to such an extent that to permit it to proceed would be an abuse of process.

The Facts

The judge found that neither party was a reliable witness but accepted more of the wife's narrative overall, as supported by two witnesses that were considered honest. The judge further relied upon the original divorce file (1999-2002) that had been obtained from the archives. She referred to the limited findings of DDJ Vokes in Family Law Act proceedings that stated the husband had demonstrated controlling behaviour. Her findings on the facts were as follows:

(i) the parties had been in romantic, cohabiting relationship and moved into the FMH in January 2000;

(ii) the husband told his family that the wife was his wife;

(iii) the husband was aware of the developments in the wife's divorce proceedings from 1999, and this was the only reason they did not marry sooner;

(iv) both parties were fully aware that the wife was not divorced as at December 2001;

(v) the husband had organised the ceremony in Bangladesh and the wife was unaware until shortly before the ceremony began;

(vi) the parties gave very little thought to the timings of their marriage and the wife's divorce over the ensuing years until their separation.

The Decision

The judge considered that the facts of this case were much closer to those of *Rampal* than to *Whiston*. Given both parties appeared to have worked during the marriage, cared for their children, and pooled assets and resources, it was difficult to characterise the applicant's claim as an attempt by a bigamist to enrich herself in a way that would not have been possible in the absence of a fraudulent or criminal act. Thus the judge concluded that the application was not an abuse of process but on the contrary, there were clear public policy arguments in favour of recognising the partnership and ensuring a fair division of its assets.

The husband's application was dismissed.

To read the full judgment, click here.