

JERSEY / JUDGMENT

Jensen -v- Jensen [2016] JRC 212 (18 November 2016)

[2016] JRC 212

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judgment

the commissioner: 1. On 16 th September, 2016, the Deputy Bailiff signed an order of justice at the instance of the Plaintiff ("the wife") containing a freezing injunction against, inter alia, the First Defendant ("the husband") and the Third Defendant ("the Company"). The order of justice was brought in support of divorce proceedings between the wife and the husband which are taking place in the Superior Court of California, County of El Dorado ("the California court"). 2. By this present application, the husband and the Company apply to discharge the freezing injunction, failing which they apply for a variation so as to permit certain payments to be made to the husband. 3. At the conclusion of the hearing on 26 th October, the Court dismissed the application to discharge the injunction but agreed to the requested variations subject to certain conditions. What follows constitutes the Court's reasons for its decision.

Background

4. The background as put forward in the order of justice and supplemented by the supporting affidavit, can be summarised briefly as follows. 5. The husband and the wife were married in 2004 in the Czech Republic. The wife was born in Poland and the husband was born in Jersey. They subsequently lived together in the United States and both are now U. S. citizens. There are no children of the marriage. 6. A business was purchased in 2007 and sold in November 2011 for a profit of approximately \$2 million. The sale proceeds were invested and thereafter the parties lived on the returns from those investments. 7. In November 2013, a property was purchased in Greenwood, California for \$1,050,000. \$500,000 from the proceeds of sale of the business was used to purchase the property with the remainder being obtained by way of mortgage. It would seem that both the business and the property were acquired in the husband's sole name. 8. According to the wife, the relationship between the parties deteriorated during the course of 2014 and in January 2015 the husband told the wife that the parties should get divorced and that the wife would "not get a dime from [him]". In April 2015 the husband told the wife that he was moving to Europe. He left on about 13 th May, 2015. She states that she discovered that the property, where she was still living with the husband's 18 year old daughter, had actually been sold already with completion on 1 st May. The sales proceeds (after paying off the mortgage) of \$649,175 had

been paid to the husband. 9. The wife asserts that during the course of May 2015, she discovered that the husband had been making large transfers, without her knowledge or consent, out of the parties' joint E Trade account into accounts in his sole name. The order of justice refers to ten such payments between 1 st April and 20 th May, 2015, with most of these sums being just below the \$100,000 amount. According to the wife payments in excess of \$100,000 would require authorisation of both joint owners of the account, rather than just one. The order of justice also specifies four payments totalling \$1.9M between 8 th May and 3 rd June, 2015, from the husband's accounts in the U. S. to offshore accounts, almost entirely with the First Party Cited ("Barclays") in Jersey. 10. The wife instituted divorce proceedings in the California court on 22 nd May, 2015. The order of justice refers also to the fact that on 1 st June, 2015, within a week of being served with the divorce proceedings, the husband transferred \$1,291,289 to the account of his mother (the Second Defendant) with the Second Party Cited in Jersey. The Second Defendant lives in Jersey. 11. The order of justice asserts that at the time of the separation, the total matrimonial assets comprised some \$2.7m in cash in various accounts, pure bred Arabian horses and commercial amounts of horse/barn products worth \$1m, and approximately \$20,000 in miscellaneous personal property. The wife contended that, given the circumstances, there was a real risk that the husband might seek to frustrate any ultimate order of the California court in the divorce proceedings by dissipating matrimonial assets and accordingly sought a freezing injunction in the sum of \$1,350,000 as representing a proportionate sum having regard to her potential claim in the divorce proceedings and the rules of California law as to community of property. 12. The order of justice was due to come before the Royal Court for tabling on 30 th September. However, on 29 th September, the Commissioner sat to hear an urgent application by the husband for the release of funds to enable him to pay liabilities. 13. The freezing injunction contained the usual disclosure provisions requiring the husband to state his worldwide assets. It also contained a provision requiring him to disclose any payments or transfer of assets in excess of \$20,000 since April 2015. At the time of the hearing before the Commissioner, the husband had not complied with this disclosure order. Advocate Ingram explained on instructions that, because the husband banked online with Barclays, the effect of the freezing injunction was that he could no longer get access to his bank statements etc. Advocate Ingram also disclosed on instructions that the husband's main assets were an investment portfolio in London and a property in France. 14. The Commissioner held that there was no reason for the husband not to have disclosed these and any other assets as required by the injunction, even if he could not at this stage disclose details of payments over \$20,000. He refused to vary the injunction so as to permit payments out of the account until the husband had made proper disclosure, but extended the period for such disclosure to be made. The present application 15. The husband has now sworn two affidavits. Neither of them had been sworn at the time of the hearing but we were informed by Advocate Ingram that they had been sworn prior to the departure of the husband from the island. We should add that the husband was present for the morning session on 26 th October but we were informed by Advocate Ingram after the luncheon adjournment that he had had to leave urgently because one of the horses in France was unwell. He was therefore

not present for the afternoon session. 16. His first affidavit is made pursuant to the obligation to disclose his assets in accordance with the injunction. He states in the affidavit that he is a minority shareholder in the Company although he does not state his percentage ownership or the identity of the other shareholder, apparently on the grounds that he believes this information is known to the wife in any event. The affidavit states that the Company established an investment portfolio with IG Group in London in June 2015 which had a balance as at 6 th October, 2016, of £234,115.71 and \$64,013.60. The affidavit does not give any further details and no documents in support (such as valuations etc.) were exhibited. The affidavit states that the investment income from the portfolio is transferred to the Company's account with Barclays on approximately a monthly basis. 17. The affidavit disclosed that the husband has a similar portfolio with IG Group in his own name which holds £69,847.44 and \$22,684.04. Again the investment income is transferred to his Barclays account on a regular basis. We should add that we were informed - although it is not mentioned in the affidavit - that, following service on him of the injunction, the husband instructed IG Group no longer to pay the income across to the Barclays accounts and the income has been retained in the portfolio since then. 18. The other main asset disclosed in the affidavit is a minority shareholding (again there is no reference as to the level of shareholding or the identity of any other shareholder) in a French company called Euro Equine SARL. This was set up in June 2015. He states that the remainder of the monies (outside those invested with IG Group) were used to purchase and subsequently renovate a property in France, namely L'Hermitage, 61250 Saint Nicholas du Bois. He says that a total of some 850,000 euros is invested in the company and the property, comprising a purchase price of 750,000 euros together with renovation costs etc. in the approximate sum of 100,000 euros. The latter sum is said to be outstanding. Apart from a copy of the accounts of the company (which are not easy to follow) no other documentary evidence is exhibited. 19. The second affidavit was produced in support of the present application. We shall refer to some of it in more detail later in this judgment, but in essence, the husband asserts that the freezing of the Barclays accounts prevents him from meeting his liabilities as they fall due. He has no income and some of his utilities in France have been cut off as a direct result, leaving him without a telephone, television and other necessary services. He says that he is unable to pay his legal fees both in Jersey and in the United States and that the freezing of the Jersey bank accounts has led him to a life of enforced poverty. He also needs money to pay for his daughter's living expenses at university. Some of the mares are pregnant and he is unable to provide the essential vet care etc. without access to his accounts. However, he has not listed or quantified these expenses in any way nor produced any documentary evidence in support of the alleged liabilities. 20. In these circumstances, as previously stated, the husband and the Company apply first to discharge the injunction altogether, failing which the husband applies for a variation to permit him to meet various liabilities. Application to discharge the Injunction (i) The law 21. As the Court of Appeal held in *Matthews v Matthews and Others*

[2001] JLR 671, an injunction in support of matrimonial proceedings is to be distinguished from a Mareva injunction. Tugendhat JA explained the difference at paragraph 30 as follows:-

"30. Since the jurisdiction here in question relates to the subject-matter of these matrimonial proceedings and it is not known what the ultimate determination of the rights of the parties will be, the parties in these proceedings stand on a much more equal footing than the parties to a claim for debt or damages for breach of contract, so far as interim relief is concerned. In a contract claim, where a freezing order is granted, it interferes with property of the defendant in which the claimant claims no rights. It is no concern of the claimant how the judgment he obtains is eventually satisfied, so long as it is satisfied. The court will not readily interfere with undisputed property rights, unless the risk of dissipation is proportionate to such an invasive measure. In a matrimonial case, the court is often preserving assets which, if the claim succeeds, will be awarded to the claimant. There is therefore much less concern at the possibility of a wrongful interference with the defendant's property rights. The risk is symmetrical. If the order ought to be made but is not, it is the claimant's property rights that will have been interfered with. 31. It follows that in matrimonial cases the threshold test for the risk of dissipation or loss of the assets sought to be frozen can justifiably be lower than would be the case in the Mareva cases." 22. Tugendhat JA went on at paragraph 32 to say that the court may make a freezing order if it appears that there is a risk which is real (and not fanciful) that the assets may not be preserved until the final determination of the rights of the parties. (ii) The contentions of the parties 23. Advocate Ingram on behalf of the husband, argues that there is insufficient evidence of any risk of dissipation by the husband in the present case to justify an injunction. Accordingly we turn to consider that aspect. 24. The wife, either in the order of justice or as submitted by Advocate Leeuwenburg on her behalf, relies upon the following matters to support her assertion that there is indeed such a risk. (i) After reaching a tentative agreement directly with the husband on 26 th May, 2015, to settle the divorce proceedings, the husband inserted additional wording which would effectively have deprived her of \$600,000. (ii) Her signature was forged on the document entitled "Escrow Instructions" which was shown to her during an ex-parte hearing in front of the judge in the California court. She does not give any further details of which document this was or when the hearing took place. (iii) She had understood that the real property referred to earlier would be bought in joint names. She states that, at the time of completion for the purchase of the property, the husband told her that they needed to go to the notary to sign the papers so that she could be added to the title. She states that the notary simply turned the pages and asked the wife to sign the bottom of each page. She has subsequently learned that what she signed effectively took her off title of the property. She says that she would not have signed this had she not been deceived by the husband as to what she was signing. (iv) The husband sold the property without her knowledge while she was still there. This is expanded in one of the statements she made before the California court which is exhibited to her affidavit. From this it appears that she knew that the property was under contract and completion was due to take place on 30th July 2015, but she was never told that completion had

occurred on 1 st May, 2015. She did not learn that until 15 th May. (v) The husband has throughout the marriage deprived her of control or an accurate understanding of the nature and extent of the matrimonial assets. (vi) Despite orders restraining him from making any such transfers without her knowledge and consent, the husband moved significant sums of money, if not the majority of the matrimonial assets, from joint names into accounts in his sole name. (vii) In the weeks after the commencement of the divorce proceedings on 22 nd May, the husband transferred \$1,291,357 to his mother as described above at paragraph 10. Different explanations had been given for the payment. (viii) In the weeks after the commencement of the divorce proceedings, the husband transferred \$500,000 to the Company, of which the majority of shares are held by his daughter. (ix) The husband now lives in France where he will require funds in order to discharge everyday living expenses. There is therefore a risk that he will transfer assets in Jersey to France and beyond the jurisdiction of the Royal Court. (x) He has refused to provide financial documentation relating to assets held outside the U. S. (xi) He has refused or failed to comply with the order of the California court to deposit at least \$300,000 into a special security account and to pay \$20,000 in attorney's fees. The Court was informed by Advocate Leeuwenburg that the first order for payment of \$300,000 was made on 16 th June with payment being required by 21 st July, although the Court has not been shown the relevant order. When payment was not made as directed the wife sought a further order and on 1 st September the California court ordered that the sum be paid "immediately". The Court has seen this latter order which refers to the California court having previously made an order on 16 th June requiring the husband to pay the sum. The sum had still not been paid by the time the wife instituted the present proceedings in this jurisdiction. 25. In response, the husband denies any intention of dissipating assets or not complying with any order which the California court may make. He accepts that he transferred approximately \$1.9m from his personal accounts in the U. S. to the accounts in Jersey but asserts that this was before the separation rather than after and was made entirely out of his sole non-community property. As to the specific matters referred to above, he asserts as follows:- (i) He denies that the agreement was only a tentative one as asserted by the wife. He also denies any suggestion that he has amended it. There is to be a special hearing on 11 th December, 2016, before the California court to determine if the agreement in question is binding upon both parties. If it is, it will resolve the matter and mean that the wife is not entitled to anything approaching \$1.3m. (ii) He denies strongly having forged the wife's signature. He exhibits what he says are the purchase instructions in respect of the property and notes that his wife's signature is attested to by a Californian notary. (iii) He denies any form of deception in connection with the documents at the time of the purchase of the property, although his affidavits are a little difficult to follow because he attributes to the wife the suggestion that he forged her signature to deprive her of joint title to the property. What she actually says is that she was deceived into signing them; she does not say that the signature on that document was forged. (iv) He denies selling the property without his wife's knowledge and points out that the original contract for sale is dated October 2014, so that he was under contract some eight months before the

sale was completed. He says that the wife had full knowledge of the proposed sale. However, he does not focus on her assertion, which was not that she had no knowledge of the sale, but that she understood completion was going to be in July and was not aware of completion in April. (v) He denies that he deprived her of control or an accurate understanding of the nature and extent of the matrimonial assets. He says it is not uncommon to have separate finances inside a marriage. He did not necessarily know her assets and, although she may not have known of his forensically, she had an understanding as she was an intelligent woman. (vi) As to (vi) of paragraph 24, he says that he was not aware of any orders restraining him from transferring assets in his name outside of and away from California. He then goes on to question how, if there was a freezing order, the wife managed to obtain money from one of the E Trade accounts. (vii) As to the payment to his mother, he accepts that he made the payment in question. He asserts that he transferred the monies to her simply because she had a bank account in Jersey and it was in a dollar denomination. The ultimate destination of the funds was always going to be France in part, but he did not want to suffer two exchange rate penalties by transferring dollars to his sterling account and then to a new euro account. Some of the monies transferred to his mother had gone to establish the company in France and other monies had been used to fund the investment portfolio in London. (viii) As to the allegation in connection with the Company at paragraph 24 (viii), he asserts that he does not understand it but will assist the Court if the allegation can be explained to him. (ix) As to the allegation at (x) and (xi) of paragraph 24 he denies having flouted any orders of the California court. He accepts that there was delay in his complying with orders for discovery but says that this was not significant and was merely a consequence of the fact that he lives overseas. As to the failure to provide the sum of \$300,000 in security as ordered, it was asserted on his behalf that he only became aware of the order of 1 st September on 15 th September (when it was emailed by his lawyer) and the order of justice freezing the accounts was signed on 16 th September, so that he was thereafter unable to comply. He gives no explanation as to why he did not comply with the order of 16 th June. 26. More generally, the husband asserts that there are exceptions to the community of property rules of California, as set out in the affidavit from his lawyer in California, Daniel Kaminsky. The business was funded by a property which he owned before the marriage, the business was in his sole name, the matrimonial property was subsequently bought in his sole name, and accordingly the assets which he transferred to Jersey were not assets which would be subject to the community of property rules. Furthermore, the parties had settled the divorce proceedings by the agreement referred to at paragraph 25(i) above. There was therefore, he submitted, no prospect of anything approaching \$1.35m being awarded to the wife by the California court. Furthermore, no application for a freezing order had been made to the California court and it was therefore wrong for the wife to seek for the first time to freeze assets in a foreign court. 27. The husband also submitted that there had been a failure by the wife of her obligation to make full and frank disclosure. However, when analysed, that consisted essentially of an assertion that what she had relied upon in support of her contention that there was a risk

of dissipation was incorrect in the respects dealt with at paragraph 25 above. Where there is a conflict of evidence between the husband and the wife (e.g. as to whether he had deceived her when she signed documents in connection with the purchase of the property, or whether he had informed her the completion of the sale was to take place on 1 st April) it is not for this Court to resolve the dispute at this stage and indeed we are not in a position to do so. 28. The order of justice has a section dealing with full and frank disclosure and in that section, the wife makes it clear that no court has yet determined that the husband has in fact behaved dishonestly or deceitfully, the California court has only ordered the sum of \$300,000 in security, there has been no determination yet as to what the total matrimonial assets are and how they should be divided between the parties, that the facts relied upon as showing a risk of dissipation are all historic and it cannot therefore be said with certainty that there is any immediate risk of further dissipation, and finally that it would be open to the California court to find that, contrary the wife's assertion, the assets which were transferred to his sole name or to the mother or to the Company are indeed the separate property of the husband and not matrimonial assets. 29. Having considered the papers and submissions before us, we are unable to identify any conceivable failure to make full and frank disclosure other than the statements in support of the risk of dissipation which are alleged by the husband to be false or erroneous. It seems to us therefore that the husband's application stands or falls on the view we take as to whether, as the wife asserts, there is indeed sufficient risk of dissipation to justify the granting an injunction. (iii) Discussion 30. In our judgment, on the material before us, there is sufficient risk of dissipation to justify the maintenance of the freezing injunction. To apply the wording in Matthews , there is a real (and not fanciful) risk that the assets may not be preserved until the final determination of the rights of the parties in the California court. 31. Without dealing with all the various points raised by the parties, we would summarise the key reasons for our conclusion as follows:- (i) The wife asserts that the sum of \$489,000 was transferred from the parties' joint account to a business account and then from the business account to the husband's personal account, with the first transfer being on 24 th November, 2014, and the second on 27 th May, 2015. The husband has not denied these transfers. (ii) In addition, and most significantly, the wife asserts that the husband made ten transfers totalling \$853,000 from a joint account to his personal account between 1 st April and 20 th May, 2015. The vast majority of these were for a sum just under \$100,000 and indeed on two occasions, there were two such transfers on the same day. The wife asserts that it is only payments over \$100,000 which require the signature of both joint account holders and that was not disputed by the husband. It is therefore on its face very surprising to find these monies transferred in such an unusual manner in the period leading up to and immediately after the separation. It is particularly surprising to see that on two occasions, there were two such payments on a single day. Thus, on 24 th April, 2015, there was one payment of \$99,000 and another of \$98,000 and on 6 th May, there was one payment of \$99,000 and another of \$98,000. No explanation has been put forward as to why two such payments were made rather than one single payment (although the latter would apparently have required the wife's consent). Indeed the

husband has given no explanation about these transfers at all other than the general one that he regarded all the assets as his personal assets. (iii) The total of the ten payments together with the payment via the business account is \$1,342,000. In our judgment, the manner and timing of these payments give real grounds for believing that the payments were made to remove assets from the wife and place them under the husband's sole control. (iv) Between 8 th May and 3 rd June, 2015, the husband then transferred a total of \$1.9m out of the US, for the most part to the Barclays accounts in Jersey. According to the wife - again the husband did not dispute this - one of the payments was on 8 th May (i.e. after the separation but before the divorce proceedings were instituted) but the remaining three transfers were after the divorce proceedings were instituted on 22 nd May. (v) The husband accepts that on 1 st June, 2015, which was after the institution of the divorce proceedings, he transferred the sum of \$1,291,289 to his mother's account in Jersey. The husband has given differing explanations for this payment. On the payment instruction, it was referred to as repayment of a loan; in an interrogatory which the husband answered before the Californian court, it was described as repayment of his mother's investment; and in his affidavit for the present proceedings, the husband asserted that the monies were transferred to his mother simply because she had a dollar denominated bank account in Jersey and he did not wish to suffer two exchange rate penalties. This latter explanation does not appear to be entirely satisfactory. The wife exhibits to her affidavit the payment instructions and the debit advice in relation to the payment. It appears that the amount was debited from the husband's account with Barclays in Jersey. It is not entirely clear whether that account was a dollar account or a sterling account. If the former, it is hard to see how a transfer via his mother's dollar account for future conversion to euros would be any more efficient than a transfer into euros directly from the husband's account. If the husband's account was a sterling account, then there would have been a transfer into dollars for the mother's account followed, presumably, by conversion to euros when the monies were passed on to France. We appreciate that we have not heard evidence directly from the husband on this point but it is not clear in his affidavit and it certainly gives rise to questions as to the real purpose of the transfer. (vi) The husband has not been forthcoming on disclosure. On his own admission he was slow to comply with the discovery requirements of the California court. In relation to the order for disclosure contained in the order of justice, he failed to comply with it within the required time limit. Whilst, as the Commissioner accepted at the hearing on 29 th September, there were reasonable grounds for his not being able to comply with the requirement to disclose transfers over \$20,000 because of his lack of access to his bank accounts with Barclays, there was no good reason for his failure to disclose proper details of his key assets such as the IG portfolio in London and the property in France. It was only following the Commissioner's ruling that he made such disclosure. (vii) Even then, his affidavit of disclosure can best be described as sparse. Apart from a snapshot as of October it gives very little information about the IG portfolios or the French property and provides no supporting documentation. Furthermore, as Advocate Leeuwenburg submitted, it fails to disclose certain assets as follows:- (a) We were told during the hearing that there was a

French bank account but there is no reference to that in the affidavit. (b) There is no reference to the Barclays accounts. We accept that their existence was already known to the wife and that she had obtained disclosure from Barclays pursuant to the injunction, but the injunction required the husband to disclose all his assets and he failed to do so by not including the Barclays accounts. (c) It is clear that he has a number of valuable horses, either in his own name or owned by the French company. Indeed, we were told that he had to leave the hearing because one of them was unwell. Yet these are not disclosed in his affidavit. (d) The information concerning the French property is vague and unsatisfactory. Although the purchase price is referred to as 750,000 euros, it is not clear whether he has actually paid the 100,000 euros of liability that is referred to. Nor does he explain the difference between that amount and the amount transferred to his mother. (e) We accept that the wife has not applied for a freezing order from the Californian court but has come straight to Jersey. However, contrary to the husband's submission, we do not see this as any reason for denying relief. The fact is that the husband has failed to comply with the order made on 16 th June for payment of \$300,000, with that order being renewed as being payable 'immediately' on 1 st September. Given that the wife was aware that all the assets were now in Jersey, we think it not unreasonable that she came straight to Jersey rather than incurring the time and expense of applying first to the Californian court before coming to this court. (f) We also acknowledge the point which Advocate Ingram makes concerning the fact that the California court has only ordered security of \$300,000 and the report of the Referee appointed to assist the Californian court recommended this amount rather than the security of \$600,000 sought by the wife. It is quite possible that the amount eventually awarded by the Californian court will be less than that claimed by the wife of \$1.35m. However, she asserts that the total matrimonial assets immediately prior to the separation included \$2.68m in cash and \$1m worth of horses. Unless this is shown at this stage to be clearly wrong, and given the background of community property, an order for the time being freezing a maximum sum of \$1.35m is not unreasonable. In any event, the application of the husband is to discharge the injunction altogether rather than reduce the amount frozen. (viii) The husband and the Company are still in breach of the disclosure order in the injunction in that they have failed to disclose transfers or payments of sums greater than \$20,000. Whilst there may be an excuse in relation to the Barclay's accounts until they have their bank statements, we can see no reason why they have not complied in request of the IG portfolios. If they do not have the valuations etc. which show such transfers, they could easily have obtained the relevant information from IG. 32. Putting all these matters together, we are quite satisfied that there is a real, as opposed to fanciful, risk of the husband dissipating the assets and we reject the application to discharge the injunction altogether. In our judgment, it is perfectly fair and reasonable that this Court attempts to maintain assets so that they are available to meet any order which the California court may make in due course. Application for variation 33. If the application for discharge fails, the husband applies for a variation so as to permit payment of his liabilities. No figure is given in the application or supporting affidavit but at the hearing, Advocate Ingram indicated that the husband was seeking payment of £25,000 as a

contribution towards outstanding and immediately forthcoming liabilities. 34. The freezing injunction is in conventional terms and restrains the husband and the Company from removing from Jersey or in any way disposing of or dealing with or diminishing the value of any of their assets in Jersey up to an aggregate value of \$1,350,000. 35. There are however permitted exceptions. In particular, paragraph 3(1) of the prayer of the order of justice provides as follows:- "Paragraph 1 of this order does not prohibit the Defendants from each spending £3,000 (or its foreign currency equivalent) a week towards their ordinary living expenses (including payment of the Plaintiff's maintenance, living expenses, or sums under other court orders in favour of the Plaintiff or her lawyers or attorneys) and also a reasonable sum on legal advice and representation and the First Defendant from spending a reasonable sum towards his ordinary and proper business expenses. Before spending any money in excess of £10,000 (or its foreign currency equivalent) the Defendants must tell the Plaintiff's Advocate the amount concerned and where the money is to come from." 36. We were informed that there was only some £12,000 (or foreign currency equivalent) currently in the accounts with Barclays. These are therefore the only sums presently caught by the injunction. It was explained by Advocate Ingram on instructions that the Jersey accounts were simply used to receive distributions of income from the IG portfolios in London with the sums received then being disbursed to meet the husband's ordinary ongoing expenditure. As already stated, on notification of the existence of the injunction, the husband instructed IG to cease such distributions. The profits are therefore being retained in the portfolios in London. 37. Advocate Ingram was also instructed to assert that it was not possible for the husband to arrange for the income to be paid directly from the London portfolios to accounts in other jurisdictions. It is apparently the case that, for reasons which we did not fully understand, the profits have to be paid to the Barclays accounts. 38. If the requested variation were to be permitted, the husband was willing to undertake to resume the transfer of funds to the Barclays accounts and to ensure that there was never a default position whereby there were insufficient monies to satisfy the weekly amounts permitted under the exception. 39. The husband's application and supporting affidavit gave no detail as to the liabilities which he asserted needed to be settled. That was unacceptable. A person whose funds have been enjoined who seeks release of funds for a particular purpose must of course provide satisfactory detail to the Court to explain and justify the release of funds. Accordingly the Court was not willing without more ado to agree the requested variation. 40. However, the Court accepted the likelihood that, given the existence of the injunctions and the fact that the payments permitted under the exception had not in fact been made, it was likely that the husband had incurred liabilities. Accordingly the Court indicated that in principle it would be willing to agree to the release of £25,000 subject to the husband complying with the following two conditions:- (i) An affidavit being sworn explaining in detail the liabilities in a sum not less than £25,000 which have been incurred and which he needs to settle and exhibiting appropriate documentary evidence to support the existence of these liabilities to the Court's satisfaction. (ii) The husband undertaking to the Court in terms acceptable to the Court that he would not remove funds from either of the IG portfolios in London

other than to procure and authorise the resumed distribution of the payment of profits or income to the Barclays accounts in Jersey and that he would authorise IG to give details of the portfolios and of all transactions in connection therewith to Advocate Ingram for forwarding to Advocate Leeuwenburg on behalf of the wife. The exact terms of the undertaking were to be discussed between counsel and put before the Court for its consideration. 41. The Court accepts that, when granting injunctions in matrimonial cases, a fair balance must be struck and in particular, the party injuncted must normally be able to continue to pay his or her ordinary living expenses. However, on the face of it, that is adequately addressed by the current injunction which permits each defendant to draw £3,000 per week i.e. £150,000 per annum.

Conclusion

42. In summary, we reject the application to discharge the injunction, but we agree to vary the injunction so as to permit £25,000 to be paid to the husband subject to the Court being satisfied that he has complied with the two conditions described in paragraph 40 above. Furthermore, the husband and the Company must comply with the injunction concerning the disclosure of the details of any payment or transfer of assets over \$20,000 since April 2015. *Authorities Matthews v Matthews and Others*

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