

JERSEY / JUDGMENT

PS v HF [2008] JRC 070 (29 April 2008)

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judgment

the commissioner: 1. The respondent applies for an order that the petitioner provide full and proper answers to certain questions set out in the questionnaire served on him and set out in the schedule attached to the summons. 2. By way of background, the respondent is applying to set aside a full and final consent order made on 22 nd February 2005. The grounds upon which the application is made are currently set out in the respondent's affidavit of 31 st August 2007 (at paragraph 106) namely that:- (i) the petitioner is guilty of non-disclosure of the true level of his assets and income; and/or (ii) that the consent order is one which should not have been made and was only entered into by the respondent based on inadequate legal advice; and/or (iii) that the subsequent events concerning the valuation of the petitioner's dental practice and NHS pension have invalidated the grounds on which the consent order was made; and/or (iv) because, given developments in relation to the sale of the petitioner's practice and the NHS pension, the consent order is no longer applicable in that it was an order which no reasonable court would have made on a true consideration of the parties' finances; and/or (v) that the consent order was varied on 1 st May 2007 to release the petitioner from his obligation to sell the practice. 3. With a view to saving costs, the Court has directed that there should be one trial of the issues being:- (i) Can the consent order be set aside in whole or in part? and if so, (ii) Should the consent order be set aside in whole or in part? and if so, (iii) What relief should the Court order? 4. The trial is due to commence on 2 nd June 2008 and directions had been given for the exchange of evidence and filing of skeleton arguments and authorities under a programme due to commence on 12 th May 2008. 5. The respondent has engaged the services of an accountant, Mr Clive Tones, to advise, inter alia, on whether the disclosure made by the petitioner has been adequate and complete. With his advice, a questionnaire comprising some 103 questions has been served on the petitioner and it is some of those questions which the respondent argues have not been answered properly. 6. Before I deal with the individual questions, I wish to make a number of initial observations:- (i) In discussions at the hearing of the summons, I characterised the suspicions of the respondent as equating to allegations of fraud but it is clear from *Unlocking Matrimonial Assets on Divorce* by Sugar and Bojarski that such an approach, although attractive from a jurisprudential point of view, is inappropriate in ancillary relief proceedings. Quoting from paragraph 2.31:- "Thus, an allegation of non-disclosure of assets is not an allegation of fraud, even though a party putting forward his or her Form E, having omitted to disclose significant assets, is knowingly misleading the court and the other party by implicitly representing that the

Form E contains full and frank disclosure". (ii) In considering each of the questions I have had regard to the "Overriding Objectives" set out in Rule 47 of the Matrimonial Causes Rules 2005 , noting in particular that this is not a "big money" case. To date, the respondent has incurred fees of at least some £70,000 and the petitioner some £30,000. Those costs are only going to escalate and ultimately will have to be borne out of the parties' own pool of assets, a pool which on the evidence so far filed is modest. (iii) The trial has already been delayed on two occasions and on the last occasion the Court made it clear that any further allegations that the petitioner had failed properly to answer the questions put to him would not be permitted to delay the final trial dates. This is not to encourage non cooperation on the part of the petitioner. Any failure to obey orders of the Court is a serious matter but in family matters such conduct is, in general, dealt with by cost orders given at the end of the trial or by the Court drawing adverse inferences against the non-disclosing party. This is not to say that further specific orders for disclosure cannot be made before or at the trial but the point has already been reached when the trial must proceed on the dates fixed. It is also relevant to point out that the serving of a questionnaire is only part of the process by which a case is built and that the respondent will be able to cross-examine the petitioner and any witnesses called by him at the trial (see paragraph 2.26 of Unlocking Matrimonial Assets on Divorce). A number of the questions which I address below are properly the subject of cross-examination. 7. In view of the time constraints, I am not going to set out in this judgment the questions asked and (in every case) the responses given so far. Taking the questions still in issue in turn:- (i) Question 10

- This relates to quarterly interest on a loan from RBSI which does not appear to have been charged. I accept that no other information can reasonably be provided by the petitioner. (ii) Question
- In relation to the payments received into the petitioner's personal account directly from patients of his practice, it would not be difficult for the practice receptionist, who has responsibility for payments received from patients, to confirm the source of these payments, namely that they did originate from the patients named, and why they were made directly to the petitioner's account. Accordingly, I order that this information be provided by the petitioner. (iii) Question -relates to deposits of £500 or more paid in to the petitioner's bank account, all but three of which have been dealt with. In my view, the petitioner has substantially discharged his obligations in relation to this question and no further order is justified. (iv) Question
- This relates to explaining cheque withdrawals from the petitioner's account going back to 2002. The petitioner is able to explain the two large payments in 2005 and the payments of £8,239.05 and £3,184.76 in 2004 and I order that these explanations should be provided. I otherwise find that the question has been sufficiently answered. (v) Question

- This relates to a transfer in 2004 of £2,450 to an account at Barclays which has not been identified. The concern of the respondent is that this might be to an undisclosed account of the petitioner. The petitioner cannot remember what this payment was for but thinks it may have been to his daughter who has asked for confirmation from her bank. The petitioner should use his reasonable endeavours to procure a response to this inquiry from his daughter's bank and I so order. (vi) Question
- This relates to a monthly debit of £70 to a C Blommerstein made over a period of five years. The petitioner thinks these payments are linked to his computer and is obtaining a letter to confirm this. I would regard the question as disproportionate but as the petitioner has already taken steps to provide a letter I order that it should be provided. (vii) Question
- This relates to another monthly debit of £131.52 in favour of Blaff Ltd for the period to 17 th June 2003 which the petitioner thinks is linked to his computer. Again I would regard this question as disproportionate but as the petitioner has agreed to provide the information I order him to do so. (viii) Question
- The amounts paid into the practice in 2004 exceed the turnover set out in the draft accounts by some £40,000 and the respondent seeks an explanation. The petitioner says he cannot explain this and that it is a matter for his accountant to advise on, although apparently it was not discussed between the parties' accountants when they met at the request of the Court. In my view, an explanation should be provided and I order that the petitioner procures an explanation from his accountant. (ix) Question
- This is a request for support for each year's dental takings covering a period of eight years, including details of the company's standard charges, any time charges, the time spent by those persons by whom charges are made, any dental charges daybook, booking sheets, appointment books etc. In effect, this is a request for all of the underlying documentation to enable Mr Tomes to carry out an audit of the accounts over a period of eight years. The practice is conducted by a company which is jointly owned by the parties and they are the only two directors. Perhaps not surprisingly, the directors have not met to sign and approve the annual accounts, which is of concern to Mr Tomes, but even so, I have no doubt that this request is far too widely drawn, has material cost implications, is unjustified and in all is disproportionate. (x) Question
- In his affidavit of means the petitioner allowed the sum of £250 per month as a provision for holidays. By analysing his credit cards, it appears that the petitioner has made 8 to 10 trips a year which the respondent says is inconsistent with such a low provision. Accordingly, the request is for details and support for each of the trips and how they were paid for going back to 2002. The petitioner has given details of the trips from February 2005 but Mrs Colley submitted cannot reasonably be expected to produce such information. I agree. (xi) Question

- This raised the possibility of there being an account with the Halifax. The petitioner has now found documentation showing that there was a joint account, now closed, and will provide that information, and I so order. (xii) Question
- This relates to the estate of the petitioner's father and seeks confirmation of the full amount by which he benefited. It was unclear at the hearing whether the estate accounts had been provided but in any event, this is a reasonable request and I order the petitioner to disclose the full amount by which he benefited from the estate of his father. (xiii) Questions 91 and 92
- These questions relate to transactions entered into in 1997 and seek details of how the proceeds were dealt with. I agree that expecting the petitioner to reconstruct what took place over 10 years ago with the aid of his then lawyers, accountants and bankers is unreasonable and disproportionate. (xiv) Question
- In his affidavit the petitioner made reference to sending and continuing to send both children on holidays and trips. The question put to the petitioner was that he should provide full details of these holidays and trips and the costs incurred and to explain and provide support for any funds received from the children (adult) for the holidays and trips. The petitioner was further asked to provide support for his funding for those holidays and trips. Leaving aside the difficulty I suspect most people would have been providing such information in relation to private holidays. I agree that this question is unreasonable and disproportionate. (xv) Question
- The petitioner is asked to provide details and copies of all correspondence for all of his personal business financial and other dealings with Mr Mare, the person to whom he sold the matrimonial home allegedly at an undervalue. I agree that this question is too widely drawn but the respondent has made a specific allegation in relation to the sale of the matrimonial home in 2001 and in my view it is appropriate for the petitioner to disclose any letters or e-mails between him and Mr Mare or other documents evidencing communications between them in relation to that transaction and I so order. (xvi) Question
- The petitioner has agreed to use his best endeavours to provide up-to-date valuations of all pension schemes and insurance investments held by him and I so order but I exclude from that the NHS pension which was valued as of October 2007. 8.

Orders

that I have made as above must be complied with before 12 th May 2008 and there shall be liberty to apply. Authorities Unlocking Matrimonial Assets on Divorce, Sugar and Bojarski. Matrimonial Causes Rules 2005. Page Last Updated: 15 Mar 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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