

Nightingale v Nightingale [2014] EWHC 77 (Fam)

No. FDo8D-00504

Neutral Citation Number: [2014] EWHC 77 (Fam)

IN THE HIGH COURT OF JUSTICE

FAMILY DIVISION

Royal Courts of Justice

Friday, 17th January 2014

Before:

MR JUSTICE HOLMAN

(Sitting in Public)

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B E T W E E N :

SALLY NIGHTINGALE Applicant

- and -

CHRISTOPHER NIGHTINGALE Respondent

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MR P. CHAMBERLAYNE, QC (instructed by Sears Tooth Solicitors) appeared on behalf of the Applicant.

THE RESPONDENT was not present and was not represented.

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J U D G M E N T MR JUSTICE HOLMAN:

1. This is the return date of an application by a petitioning wife for a freezing order against the respondent husband. She resides in Westmoreland. He resides in Singapore.
2. The underlying divorce proceedings were commenced as relatively long ago as 2008, as appears from the number of these proceedings. In paragraph 17 of his statement made on 15th

January 2014, which I have read, the respondent husband describes this case as being a "complicated matter". It certainly is. The essence for today's purposes is that as long ago as November 2009 a consent order was made by Mr Justice Moylan resolving financial matters between these parties. Pursuant to that order a further potentially substantial sum remained due to the wife upon the sale by the husband of certain shares.

3. In April 2013 the husband sent an e-mail to the wife's bank manager in England, but copied also to the wife herself, in which he said,

"We have now successfully signed an agreement for the sale of [the relevant shares] for a gross consideration (to our company Real Capital International Ltd.) of €8 million."

Pursuant to the consent order the wife was entitled to one-quarter of that sum.

4. Consistent with that, the husband himself sent a further e-mail to the wife in July 2013 in which he wrote,

"Sally, I confirm that I will pay to you your portion of the net data centre proceeds in excess of €2 million as soon as it is released."

5. To any reader of those two e-mails, the husband was clearly telling the wife last summer that he would soon be paying to her "in excess of €2 million". In fact, between then and now he has paid her nothing representative of those proceeds, although he says - and it may be the case - that he has made some relatively small payments to, or for, her.

6. It is thus a matter of some surprise and, indeed, astonishment that in paragraph 11 of his statement made two days ago the husband now says that the entire amount receivable by him as a result of the sale of the shares in question, far from being of the order of €8 million, is a mere €400. He thus says that the amount due to the wife, far from being "in excess of €2 million", would "amount to not more than €100". It is obvious that so vast a divergence between what the husband was saying as recently as July 2013 and what he is saying now requires not only very particular explanation, but also production of clear documentary evidence which fully accounts for the sale of the shares in question and any net amount truthfully received or receivable by, or on behalf of, the husband.

7. On 19th December 2013 the wife applied for, and obtained from Mr Justice Baker a freezing order. Paragraph 1 of that order provided that the husband "must not, whether by himself or by causing or permitting any other, in any way dispose of or deal with, or diminish the value of the proceeds of sale of" the shares in question. Paragraph 2, which I will not lengthen this judgment by reading out in full, required the husband within twenty-one days to inform the solicitors for

the wife of, and verify by affidavit, all details surrounding the proposed or actual sale of the shares and to produce a quantity of very obvious required documentation in relation to the transaction and the destination of the proceeds. That order was promptly served upon the husband in Singapore. The husband has not supplied one single document in obedience to it. Instead, he made the statement dated 15th January 2014 to which I have referred and which I have read. Separately, he obtained a statement from an advocate and solicitor in Singapore called Jonathan Foong, also dated 15th January 2014. The statement of Jonathan Foong says, amongst other matters,

"My client, Christopher Nightingale, produced to me documentation ... I confirm that pursuant to the said documentation and agreement produced to me it appears that the consideration payable by Securus to RCI for the purchase of its shares in Citadel is the sum of €400."

8. In his own statement, at paragraphs 9 and 11, the husband makes reference to the concept of submitting to the jurisdiction of this court and says,

"Without having the benefit of legal advice, or submitting myself to the jurisdiction of the courts, I am unwilling to make further disclosure which may prejudice me or my own position in respect of the applicant. I believe I have the right to withhold documents on this basis, which right is confirmed in the order itself".

9. If I may say so, that proposition by the respondent husband is completely misconceived. The freezing order is made in proceedings no. FDo8Doo504. Those are the original and still subsisting divorce proceedings between himself and his former wife which commenced, as I have said, in 2008. The proceedings are still subsisting because, pursuant to the order for financial provision made in 2009, significant amounts are still owing by the husband to the wife, and unless and until that order is satisfied in full, the proceedings subsist. Patently, the respondent husband submitted himself to the jurisdiction of the court in 2008 or 2009, for an order could not otherwise have been made by consent. Having so submitted himself, it is frankly nonsense to insert some caveat now about submitting himself to the jurisdiction of the court. The "right" which was confirmed by paragraph 2 of the order itself had nothing to do with submission to the jurisdiction, but was a quite different right, namely, that he is entitled to refuse to provide information "on the grounds that it may incriminate him". Nothing at all has been said in the statement of the respondent husband to indicate that there may be some basis for supposing that he might incriminate himself by supplying the documents and material referred to in paragraph 2 of the freezing order of 19th December 2013.

10. The husband says also in his statement that he has some difficulties with legal representation due to the fact that the firm who was previously advising him - namely, Dawsons - has apparently ceased to exist and has merged with, or been absorbed by, another firm, Penningtons, with whom, he says, he is currently in dispute. If those facts are all true, then of course I do accept and appreciate that it may take a little time for this respondent husband, who appears to live and be based in Singapore, to obtain and instruct suitable alternative representation in England and Wales.

11. However that may be, it is quite clear to me, first, that there has been an abject failure by the respondent husband to comply with the disclosure requirements of paragraph 2 of the order made on 19th December 2013; second, that there remains a totally unexplained, vast divergence between the contents of his e-mails last summer, which I have quoted, which indicated the wife receiving something of the order of, if not in excess of, €2 million, and the proposition that her entitlement is now limited to a mere not more than €100. Since that gaping divergence has not yet been adequately explained or evidenced, it is, to my mind, patent that good grounds exist for renewing or extending the freezing order which was made on 19th December.

12. Since then it has emerged that there are, or may be, funds held on behalf of the respondent husband in a client account by a firm of solicitors, Memery Crystal. Also, the point has been made that the library which exists at the former matrimonial home, Appleby Castle, remains in the ownership of the husband and is apparently of quite considerable value.

13. Accordingly, since there has been such a lack of compliance by the respondent husband with the disclosure requirements of paragraph 2 of the order made on 19th December 2013, I will add provisions to the injunctive part of that order to the effect that the respondent husband must not in any way dispose of or deal with any of the funds held on his behalf by Memery Crystal or the library at Appleby Castle. In order to give some teeth and substance to the order in relation to the funds at Memery Crystal, I will further require that firm to disclose the amounts, if any, actually held by them on behalf of the respondent husband in a solicitors' client account. There is a text message from the respondent husband to the wife dated 9th October 2013 which makes some reference to funding Memery Crystal. So I will require them to supply information as to the state of the account on that date and now, and any movements in between. I stress, as will be made express on the face of the order itself, that Memery Crystal are not required to state the payer, payee or destination of any movements into or out of the relevant solicitors' client account. They are only required to disclose the actual amounts standing in the account at any

particular time and the amounts of any payments in or payments out. Provisionally, it does not appear to me that an order limited in that way in any way offends against legal professional privilege. However, there will, in any event, be a liberty to Memery Crystal to apply to vary or discharge that part of the order.

14. Patently there needs to be some resolution of this "complicated matter". I will accordingly fix a date for final determination of what sums are owed by the husband to the wife pursuant to the consent order. In order to produce appropriate evidence for that hearing I repeat paragraph 2 of the order that was made on 19th December 2013 with regard to disclosure, and I emphasise that the respondent husband must comply with it. He may, of course, also put in any other information, documents, or material which he may wish in relation to the exercise of calculating what further amounts are due from him to the wife. She, of course, must have an opportunity to reply thereto. The husband needs firmly to appreciate that in the absence of convincing documentary material and explanations from him, there is a likelihood, to put it no higher, that the court will place significant reliance on what he himself had told the wife as recently as last July she might expect to receive.

15. For those reasons, notwithstanding the request by the husband in his document headed "Application in respect of ex parte order", I will in fact renew it and make the other orders to which I have referred.