Private Client ~ September 2023

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**Big Money Divorcees Pay £8.4 Million Price for Their 'Culture of Conflict'**

Judges frequently impress on divorcing couples that it is in their own best interests to put conflict behind them and focus on achieving a sensible resolution. However, as a case in which a couple spent £8.4 million fighting over money and their children's future showed, such blandishments all too often fall on deaf ears.

The very wealthy couple enjoyed an exceptionally lavish international lifestyle during their long marriage, which yielded four children. The marriage came to an end when the husband unilaterally divorced the wife in a foreign land where she would have been entitled to no financial provision from him.

However, given her connections to the UK – amongst other things, she was born and had spent her formative years in this country, and was currently based here – the High Court accepted jurisdiction to consider her claim for financial relief under Part III of the Matrimonial and Family Proceedings Act 1984.

Ruling on the matter, the Court found that financial resources available to them and readily accessible in the UK were worth at least £70 million. Given her contribution to the marriage as mother and carer, the Court effected a clean break by awarding her a lump sum of £27,415,000. That, the Court found, would be sufficient to meet her income, property and other needs.

The Court observed that the culture of conflict that had grown up between them had been thoroughly unhelpful in resolving the matter. At every opportunity, the Court had urged them to take a more constructive and less combative approach, but to little or no appreciable effect. They had both expressed horror at having run up £4 million in legal bills. In addition, they had spent £4.4 million on proceedings concerning the children.

If you are divorcing, a number of issues may arise on which sound legal advice is essential. We can talk you through alternative dispute resolution options, to help mitigate the need for expensive and drawn-out court proceedings.

**Partner Note**

*AZ v AG [2023] EWHC 2014 (Fam)*

**Can Planning Objections Amount to Harassment? Guideline High Court Ruling**

Landowners intent on developing their properties can find it intensely annoying when neighbours resist their plans. However, as a High Court ruling made plain, the right to object to planning applications is one of the benefits of living in a democratic country where freedom of expression is taken seriously.

The case concerned a property set in an area of outstanding natural beauty, which had become the focus of acrimonious and intractable dispute. Over the years, its owner had made over 50 separate planning applications, many of which drew objections from other property owners in the area.

The owner, together with her husband, launched proceedings against four members of the local residents' association, accusing them of harassment and claiming more than £1.3 million in damages. She contended, amongst other things, that their conduct was oppressive and unreasonable and that they were using the planning system as a device to upset her. Many of their planning objections were, she asserted, spurious, unmeritorious and improperly motivated.

For their part, the members vehemently denied those allegations and argued that the owner's case represented an unwarranted intrusion into their human right to express themselves freely and an attempt to impede their entitlement lawfully to object to planning applications through the proper legal channels.

In refusing the owner's application for a pre-trial injunction, the Court observed that, where spurious planning objections are spitefully and maliciously made with intent to cause distress, there may be a potential basis for judicial intervention. It emphasised, however, that the law should be slow indeed to impinge on precious freedom of expression rights and the entitlement to make genuine and meritorious objections to planning applications.

The owner was perfectly entitled to seek to develop her property and might be upset, frustrated or even angry at the opposition she had encountered. However, the Court could see no sensible or credible basis on which it could be maintained that the members' objections were vindictive or devised to cause distress or otherwise inflict harm on the owner and her husband. There was no realistic prospect of establishing at trial that the members' actions, whether individually or cumulatively, represented a course of conduct amounting to harassment.

The Court noted that, in a democratic society, the members were entitled to differ from the owner on the merits of her planning applications. If anything, the evidence clearly pointed to them having deeply held, sincere and genuine reservations about the nature and extent of her development proposals. It was the very purpose of the planning system to adjudicate such disputes in a regulated manner.

For expert guidance relating to planning disputes, contact **<<CONTACT DETAILS>>**.

**Partner Note**

*Dyer and Another v Webb and Others [2023] EWHC 1917 (KB)*

**England the Right Forum for Internationally Connected Couple's Divorce**

The breakdown of relationships between couples with international connections can give rise to disputes about where they should be divorced. In a case on point, the High Court found that England, not Nigeria, was the most convenient place for a couple's marriage to be brought to an end.

The case concerned a middle-aged couple with links to both countries whose lengthy marriage yielded three children. Although they had been through a religious form of divorce, they remained legally married under English law. The husband petitioned for divorce in Nigeria six days before the wife did the same in England. He applied to halt the English proceedings on the basis that the divorce should take place in Nigeria. The wife, however, powerfully disagreed.

Dismissing the husband's application, the Court had no doubt that it had jurisdiction to hear the wife's petition. It was clear that, when she issued it, both she and the husband had for some years been habitually resident in England. She was also domiciled in this country, having spent most of her life here. Both their lives centred on England, which they considered their home.

The Court also had no difficulty in finding that the case could more conveniently be heard by an English court than a Nigerian one. Amongst other things, the wife could not easily travel to Nigeria, the former matrimonial home was in England and it was undisputed that the English courts had exclusive jurisdiction in respect of the children, all of whom were born in this country. Overall, it was clear that the case was substantially more connected to England than to Nigeria.

The Court declined to treat the fact that the husband had issued his petition first in time as a material consideration. The wife had delayed issuing her petition at his behest and he had taken the opportunity to surreptitiously issue proceedings in Nigeria. Given his behaviour, the Court also attached little weight to the fact that the Nigerian proceedings were well advanced.

Prior to the couple's religious divorce, the wife had, without legal advice, signed an agreement which, if enforced, would deprive her of her financial entitlements and restrain her freedom to remarry for an indefinite period. It also provided that, in the event of her remarriage and departure from the matrimonial home, custody of the children would automatically vest in the husband.

The Court noted, however, that the agreement's only real relevance was as evidence of the husband's controlling behaviour. The terms that it sought to impose on the wife were disreputable and no English court would enforce them. The ruling opened the way for the wife to pursue her petition, and to seek appropriate financial provision from the husband, in England.

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**Partner Note**

*J v A [2023] EWFC 132*

**High Court Authorises Withdrawal of Young Father's Life-Sustaining Treatment**

Many families whose loved ones are in hospital on life support understandably cling to the hope that they will in time recover. As a High Court ruling showed, however, where such hopes run contrary to the weight of expert medical evidence, judges have the unenviable task of deciding where a patient's best interests lie.

The case concerned a young father-of-two who sustained catastrophic brain and spinal injuries when a car in which he was travelling hit a tree. He had since been tended to round-the-clock in a hospital intensive care unit where he was entirely dependent on artificial ventilation, nutrition and hydration.

Speaking with one voice, medical professionals involved in his care were convinced that he was in a persistent vegetative state and that prolonging his treatment would merely result in the continuation of a life of which he had no awareness. Their views prompted the relevant NHS trust to seek the Court's authorisation to cease his life-sustaining treatment.

Members of his family, however, took a different view. They had observed what they believed to be signs of awareness in the form of him opening his eyes and moving his head in response to requests. They felt strongly that he would have wanted his life to be sustained and that he should be given more time to recover. The Official Solicitor, who represented his interests in court, described it as a finely balanced case.

Ruling on the matter, the Court praised members of the family, who had conducted themselves with enormous dignity in a desperately sad case. There was a strong legal presumption in favour of life being sustained; his condition was in some respects relatively stable and his survival to date had defied medical predictions. There was no direct evidence that he was experiencing any pain.

His apparent responses to stimuli had understandably given his family hope. In the light of the unanimous medical evidence, however, the Court found that they were spontaneous and reflexive movements which were consistent with a persistent vegetative state and did not indicate any level of consciousness.

In granting the trust's application with profound regret, the Court found that, in the light of his lack of awareness and bleak medical prognosis, prolonging life-sustaining treatment would bring him no benefit. Withdrawal of such treatment was, therefore, in his best interests.

We have experience of dealing with sensitive matters such as these. Contact our expert team for advice.

**Partner Note**

*King's College Hospital NHS Foundation Trust v X and Another [2023] EWCOP 34*

**High-Interest Loans Can Be Vulnerable to Challenge – High Court Ruling**

Borrowers who take out loans at high rates of interest with their eyes wide open may have only themselves to blame. As a High Court case showed, however, such loans may be vulnerable to arguments that they amount to a penalty or are the product of an unfair relationship between a commercial lender and a less sophisticated or vulnerable borrower.

A property owner obtained a six-month bridging loan secured by second mortgages over three buy-to-let flats. The £355,000 loan was subject to interest at a rate of 2.5 per cent per month, an annual rate of 30 per cent. Interest of £37,500 was rolled up in the loan, together with substantial facility, brokerage and other fees.

In default of repayment of the entirety of the loan at the end of the six-month term, the rate of interest charged on any outstanding sum increased to 12 per cent per month, compounded (the default interest rate). That equated to an annual rate of 289.6 per cent.

After the borrower defaulted, the lender sought possession of the flats and a money judgment. By the time the case was heard, the outstanding contract debt had, with interest, grown to a sum of about £13.3 million. However, the lender voluntarily agreed to cap its monetary claim at £850,000.

The borrower contended that the default interest rate amounted to a penalty and was thus void. He further argued that his debt should be reduced or discharged on the basis that his relationship with the lender was unfair within the meaning of the Consumer Credit Act 1974. He was in poor health and asserted that he had no opportunity to read through the loan documents before signing them whilst sitting in his wheelchair in the street.

In upholding the lender's claim, however, a judge found that the borrower was fully cognisant of what he was signing and had entered into the loan agreement voluntarily and under no form of pressure. Whilst £13.3 million might seem an astonishing sum of money to someone who did not understand the situation, it represented the contractual rate of interest to which he had agreed as a borrower for business purposes. The lender was, in any event, only seeking a fraction of that sum.

Allowing the borrower's appeal against that outcome, the Court noted that he had difficulty presenting his case due to his health problems. It was for the lender to show that the relationship was a fair one and the judge had erred in law in finding that, in the absence of expert evidence, the borrower's challenge to the default interest rate could not succeed. The arithmetical consequence of that interest rate itself constituted evidence in the case. The Court directed a retrial of the lender's claim before a different judge.

If you are seeking finance relating to property or for any other purpose, we can advise you.

**Partner Note**

*Seculink Limited v Salih [2023] EWHC 1706 (KB)*

**Let Down by Your Builders? A Good Lawyer Will See You Right**

Many householders are familiar with the often traumatic experience of falling out with builders. However, as a High Court case showed, if their work is not up to scratch or left unfinished, lawyers will bend every sinew to ensure that fair compensation is paid.

A homeowner engaged builders to perform major construction works on her property, including the erection of a kitchen extension and bathroom refurbishment. She also commissioned the manufacture and installation of triple-glazed windows, bi-fold doors and other glazing works.

After she launched proceedings, it was common ground that the works carried out were defective and left incomplete. Following a trial, the builder who bore responsibility for the construction works was ordered to pay her £34,711 in damages. She was also awarded £9,778 against his company in respect of the glazing works.

The judge rejected defence arguments that the homeowner was responsible for all that went wrong with the project because she permitted a friend to act as de facto project manager, a task for which she was said to lack the necessary experience, and failed to consult an architect or engineer when required. He found that the defective construction works arose from the builder's own shortcomings.

The builder's contention that she had contracted solely with his company, which had since ceased to trade, also fell on fallow ground. The judge found that, in dealing directly with the homeowner, he was not acting on his company's behalf. He thus bore personal contractual responsibility for the construction works.

The homeowner further succeeded in arguments that, as the builder was not registered for VAT, the construction works were not subject to the 20 per cent levy. Save in respect of the bathroom refurbishment, the judge also found that the quoted contract price included both labour and materials.

In refusing to grant the builder and his company permission to appeal against that outcome, the Court found that any such appeal would stand no real prospect of success. The judge's factual conclusions on the various issues in the case were amply justified. An award to the homeowner of £70,000 in interim legal costs was also confirmed.

If you have been let down and negatively impacted by a dishonest tradesperson, we can help you to pursue justice. Contact **<<CONTACT DETAILS>>** for advice.

**Partner Note**

*Akram v Academy Doors and Windows Ltd and Another [2023] EWHC 1653 (KB)*

**Placing an Asset in Someone Else's Name Can Be Risky – Cautionary Tale**

People may have any number of reasons, good or bad, for placing assets they have paid for in others' names. However, as a High Court ruling underlined, without appropriate legal protections such arrangements are anything but risk free.

A householder with previous experience of renovating properties paid £230,000 for a building plot at the end of his garden. He had a good relationship with a builder who agreed to contribute his labour in developing the plot. Any profit generated by the joint venture was to be split equally between the householder on the one hand, and the builder and his wife on the other.

The plot was, however, bought in the sole name of the builder's wife. The purchase monies provided by the householder were described as a loan. Those arrangements were entered into in the hope that the wife would be considered a first-time buyer, thereby achieving a modest saving in Stamp Duty Land Tax (SDLT). In the event, no such saving was sought and SDLT due on the transaction was paid in full.

After relationships soured, the development did not proceed. The householder later launched proceedings with a view to having the plot transferred to him and re-registered in his name. The couple resisted his claim but it was upheld by a judge who found that he was the plot's sole legal and beneficial owner.

Ruling on the couple's challenge to that outcome, the Court emphasised the risks involved in the transaction. In the absence of a professionally drafted deed of trust, the owner's position as beneficial owner was unrecorded and unprotected. Although there was, in the event, no attempt to mislead HM Land Registry or to avoid paying about £2,000 in SDLT, any such attempt would have been fraudulent.

Dismissing the appeal, the Court ruled that the householder was the plot's true purchaser. The money he had provided was not a loan, although it was labelled and dressed up to appear as such. As he had paid the entirety of the purchase price, the builder's wife held legal title to the plot under a resulting trust for his benefit and was thus obliged to transfer it into his name for nil consideration.

The result of the case was consistent with the mutual understanding of all involved in the transaction and the spirit of the intended joint venture. Any other outcome, the Court found, would be disproportionate and work a palpable injustice on the householder.

It is vital to seek expert advice before entering into any kind of joint venture such as this. Contact **<<CONTACT DETAILS>>** for guidance.

**Partner Note**

*Karpavicius and Another v Waites [2023] EWHC 2051 (Ch)*

**Wealthy Divorcee Hit Hard in the Pocket for 'Delinquent' Litigation Conduct**

Those who attempt to lie their way to a favourable result in divorce proceedings are more than likely to be found out and hit hard in the pocket. That was certainly so in the case of an elderly entrepreneur who treated his ex-wife's financial claims as if they were nothing more than an impertinence.

The English man and his American ex-wife, both in their 70s, were married for almost 30 years before they entered into a separation agreement in New York. The wife subsequently petitioned for divorce in England. Their divorce had yet to be finalised, but they had to date incurred about £1.8 million in legal costs.

Ruling on the matter, the High Court noted that the wheelchair-dependent husband was in poor mental and physical health. There was medical evidence that, although he was able to give oral evidence, his mental capacity to conduct his own case was compromised. That, however, did not deter the Court from describing his litigation conduct as abysmal.

He had treated the entire litigation as if it were an impertinence and a joke. His initial disclosure of his assets was deliberately false and he persisted in misrepresentation and lies to the very end. Given his persistent delinquency, the wife had not acted unreasonably in conducting a detailed forensic investigation of his finances.

The wife's case that he had squirrelled away at least £27.4 million in hidden assets was not, the Court found, established on the evidence. The wealth to be distributed between them was thus confined to visible assets worth about £11.4 million. The Court noted, however, that it would be a travesty of justice were the husband not penalised financially for his delinquent litigation conduct. To mark the Court's very strong condemnation of such conduct, he was ordered to contribute £200,000 towards the wife's legal costs.

Taking into account the capital provisions of the New York separation agreement, the Court found it fair, just and reasonable that the wife should receive 65 per cent of the available assets and the husband 35 per cent. In order to achieve that division and a clean break between them, he was ordered to pay her a lump sum in excess of £1.6 million. The Court noted that the overall result of the titanic litigation was to reduce the husband's net worth by more than £2 million.

If you are dealing with divorce proceedings, we can ensure you are expertly advised and represented.

**Partner Note**

*Baker v Baker [2023] EWFC 136*

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