

## **Moutreuil v Andreewitch (Contempt: No.2) [2020] EWHC 1301 (Fam)**

Y1KBW Newsletter | 24.06.2020 | [Victoria Halsall](#)

Decision of The Honourable Mr Justice Cobb that the respondent had deliberately breached the terms of a freezing order by using a company bank account for his personal expenditure including his legal fees.

The parties had five children but never married, separating in 2018. There are three sets of substantive proceedings: welfare proceedings under the Children Act 1989, Schedule 1 proceedings and ownership proceedings in relation to shares in the company Pier (whose main asset is the former family home).

The application made by MM (the mother) before the court was for any sanction the court may think fit for alleged multiple breaches of an order made on 22 March 2019 which froze the income and assets of the second respondent company Pier, of which PA (the father) was the director.

In November 2019 an order was made requiring PA to disclose company bank accounts which showed that he had used the company accounts to make payments of over £25,000 in respect of his personal living expenses and legal fees, including £18,000 which post-dated the making of the freezing order.

The previous application for sanction where findings were made against PA was subject to appeal and was set aside by the Court of Appeal on the basis that “as an unrepresented litigant he gave evidence without having been informed of his right to silence”.

Cobb J set out various procedural issues relating to the hearing, including that he would not deal with PA’s application to vary the freezing order, and would not deal with sanctions in the event that he made findings in respect of PA’s actions. He reminded PA he was not bound to answer questions which may tend to incriminate him.

MM's case was that PA had used the bank account as his 'personal piggy bank' which included 563 withdrawals, including supermarket purchase within three days of the freezing order. Although some payments had been returned (e.g. legal fees) the account was still depleted by the sum of £13,015.94, which was accepted by both parties.

PA indicated that these payments were made in respect of company liabilities (namely, his salary of £8,500), in repaying loans to himself which had previously loaned to the company and £12,580 in discharging the company's liability for legal fees. He stated any breach of the freezing order had been inadvertent.

The judge found that PA's narrative was implausible, contrived and disingenuous, and that he had at all times deliberately removed sums intending to use these for his own benefit. The judge stated it was obvious the sums had been used for his own ends.

On the director's salary, the judge stated:

- There was no legally recognised obligation or contractual basis for the salary;
- There was no evidence how the amount was set;
- No reference was made in the 2019 accounts to a director's salary;
- PA did not raise the existence of a salary until December 2019;
- PA knew from his defence document he was not permitted to draw down a salary whilst the freezing order was in place.

On the repayment of the loan, the judge stated he conjured up the obligation to repay the loan.

- There was no loan agreement or evidence to verify the existence of the loan;
- This loan was not mentioned by PA until January 2020, some 14 months after the filing of his Form E;
- There was no clear evidence in the company accounts of the purported loan;
- He stated he "had no need to" disclose it earlier because he felt it was a "zero sum

game”;

- At one point in evidence

On the legal costs allegedly owed by the company:

- PA was in no doubt he could not use the account for his own personal legal costs, if not clear from the order then clear from a letter from MM’s solicitors on 20 May 2019;
- PA averred to repaying his partner £2,020 but there is no separate statement of this additional liability and is not corroborated in the bank statements;
- In the application for variation/clarification (January 2020) he wished to allow Pier to defend itself but this was long after he had withdrawn sums from the account to pay legal costs;
- Solicitors invoices were addressed to PA personally;
- One solicitors letter makes clear that the vast majority of the work related to the welfare proceedings which had nothing to do with Pier;
- One invoice was marked in relation to “*professional charges in relation to your personal family affairs and the ToLATA/bare trust and schedule 1 claim*” (emphasis by underlining added).
- No client care letters were produced to confirm the identity of the client - PA stated he did not produce them because they were “so long” despite the swathes of evidence he has produced for proceedings;
- There was no reason why Pier should incur, or have incurred, any legal costs in the substantive proceedings in any event given the company would like take a neutral stance;
- There is no evidence that the company sought any preliminary advice even to establish this position, and/or the potential conflict of interest with PA;
- On PA’s case there was likely a conflict of interest for solicitors acting from him and Pier;
- Two sets of solicitors from their correspondence appeared to be embarrassed to discover invoices had been settled from frozen accounts.

In conclusion, despite there being a 750 page bundle there was no single document evidencing any obligation to pay the director's salary, the existence of the loans or the bona fide legal costs.

Mr Justice Cobb found that, to the required standard:

- i) PA breached the 'freezing order' of 22 March 2019 by making/procuring the transfers/payments set out in MM's amended Application Notice (27 April 2020);
- ii) Such breaches were deliberate - PA made/procured the payments knowing that they were in breach of the freezing order.

The question of sanction was adjourned to a date to be fixed however indicated it should be listed soon, not least because this court has made orders premised upon Pier having sufficient funds to pay for expert tax advice in order to quantify Pier's liabilities (for the purpose of the Schedule 1 Proceedings), and family therapy (relevant to the Welfare Proceedings).



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