Neutral Citation Number: [2019] EWFC 16

IN THE FAMILY COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 1 March 2019

Before :

Mr Justice Moor

- -

Between :

CM

Applicant

- and -

CM

Respondent

- -

- -

- -

JUDGMENT

MR JUSTICE MOOR

1. I have received the two cross-applications dated 15 and 20 February 2019 with dismay.

2. I heard the First Appointment on 14 January 2019. It was a long hearing. An equally long and detailed order followed.

3. The order set out the exact issues on which Mr Mark Bezant of FTI Consulting was to report, namely:-

    i. the current value of the Companies;
    ii. the current value of the parties' individual shareholdings (whether held

directly or through another entity) in the Companies;

iii. *the financial benefits that the Respondent has derived from the Companies since the accounting year ending 2014;*

iv. *the likely income that the Respondent may derive from the Companies in the foreseeable future;*

v. *the liquidity within the Companies and the extent to which it could reasonably be made available to the parties;*

vi. *the tax arising on the sale, disposal or transfer of shares in the Companies by the parties (or either of them) and the mitigation of any such tax;*

4. The Respondent's solicitors were to draft the letter of instruction by 4pm on 25 January 2019. This was done. The Applicant's solicitors were to agree (or, by implication, secure amendment to) the document by 5 February 2019. This did not happen. The Applicant's solicitors were chased by the Respondent's solicitors on 7 February 2019 and 12 February 2019. A response was finally received on 14 February 2019. The excuse given, namely that there was delay in the drafting of the order, has no merit given that the draft letter of instruction was completed in time by the Respondent's solicitors.

5. The draft was amended significantly by the Applicant's solicitors. The Respondent alleges a shadow accountant made the amendments, but this is irrelevant to my determination. The specific order that I had made as to the issues Mr Bezant must determine was amended to a very considerable extent. The six questions in my order became ten. The twelve lines in my order became twenty-eight. A number of new issues were raised. Amendments were made to all but two of the original questions.

6. I am quite clear that none of this is appropriate. I had determined the questions to be asked and that is what should have been in the letter of instruction.

7. There are a number of other amendments, the most significant of which is as follows:-

> *"Mrs CM must be present at any such meetings with her legal and/or other professional advisor(s) should she so choose."*

8. This was not raised at the hearing before me. I consider it thoroughly inappropriate for Mrs CM to be present. I equally consider it inappropriate for a shadow accountant to be present. Mr Bezant is a very experienced accountant, who is fully aware of his duties to the court. I do, however, recognise that the Applicant seems to have no trust in the process. I am therefore prepared to permit her to have a member of her solicitors' team present, but this is merely observer status so that she can be assured the process is fair.

9. The letter of instructions will therefore go in exactly the form drafted by the Respondent's solicitors, save that the Applicant is permitted to have a representative of her solicitors' firm present to observe.

10. High Court Judges are exceptionally busy. They do not have time to draft letters of instruction or even to determine disputes as to the wording of such letters. On this occasion, there was no legitimate dispute as I had already made an order that set out the issues Mr Bezant had to consider. If, however, in a future case, there is a genuine issue as to drafting, I consider it would be exactly the sort of matter that should be referred to an arbitrator who is accredited by the Institute of Family Law Arbitrators.

11. I realise that there is a presumption of no order as to costs, but I take the view that responsibility for these cross-applications lies entirely with the Applicant. It follows that I make an order that the Applicant do pay the Respondent's costs of the cross-applications on the standard basis. It is not appropriate for it to be on the indemnity basis.

12. I have decided to put an anonymised version of this judgment on Bailii to highlight Paragraph 10 above. Specific issue arbitration is perfectly proper and appropriate even in cases that are proceeding through the court system.

Mr Justice Moor
1 March 2019