



Neutral Citation Number: [2022] EWFC 46

Case No: TA20J00001

**IN THE FAMILY COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 17 May 2022

**Before :**

**MR JUSTICE PEEL**

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**Between :**

**VV**

**Applicant**

**- and -**

**VV**

**Respondent**

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**Brent Molyneux QC and Petra Teacher** (instructed by Sears Tooth Solicitors) for the  
Applicant  
**Justin Warshaw QC and Kyra Cornwall** (instructed by Michelmores LLP) for the  
Respondent

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**Approved Judgment**

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MR JUSTICE PEEL

**Mr Justice Peel :**

1. H seeks a costs order against W in the sum of £450,000.
2. By my judgment I ordered H to pay W £750,000 of which £237,000 was to clear her net liabilities, mainly comprising unpaid legal costs. H had already paid £400,000 of W's costs. The net effect of my judgment, therefore, is that H will be responsible for all of W's costs in the sum of £619,000 unless any costs order is made to disturb that outcome. I made clear in my judgment that I intended to proceed on a needs based analysis for W, and consider costs subsequent to my judgment. I canvassed that approach with leading counsel for the parties during the hearing, and both agreed.
3. As is well known, the starting point for costs in financial remedy proceedings is that each party should bear their own costs. By FPR 2010 28.3(6) the court may depart from the starting point and make a costs order against one, or other, or both parties. Factors to be taken into account are listed at 28.3(7) and include:
  - “(b) any open offer to settle made by a party;
  - (c) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;
  - (d) the manner in which a party has pursued or responded to the application or a particular allegation or issue;
  - (e) any other aspect of a party's conduct in relation to proceedings which the court considers relevant; and
  - (f) the financial effect on the parties of any costs order.”
4. Rule 4.4 of Practice Direction 28A states that:

“The court will take a broad view of conduct for the purposes of this rule and will generally conclude that to refuse openly to negotiate reasonably and responsibly will amount to conduct in respect of which the court will consider making an order for costs. This includes in a ‘needs’ case where the applicant litigates unreasonably resulting in the costs incurred by each party becoming disproportionate to the award made by the court”.
5. In **Rothschild v de Souza [2020] EWCA 1215** the Court of Appeal held it was not unfair for the party who is guilty of misconduct to receive ultimately a sum less than his/her needs would otherwise demand. Examples of first instance decisions where the judge made a costs order notwithstanding that such order would cause the payee to dip into (and thereby reduce) the needs based award include Sir Jonathan Cohen in **Traherne v Limb [2022] EWFC 27** and Francis J in **WG v HG [2018] EWFC 70**.
6. Sensible attempts to settle the case, or unreasonable failure to make such attempts, will ordinarily be a powerful factor one way or the other when considering costs. As Mostyn J said in **OG v AG [2020] EWFC 52**; “if, once the financial landscape is clear, you do not openly negotiate reasonably, then you will likely suffer a penalty in costs”.

7. In this case, H's maximum offer made to W was £400,000 by the time of trial, having first offered £30,000. It can legitimately be said on W's behalf that she has exceeded that sum, by £350,000, and accordingly H's offer was too low. I accept also W's submission that H's various increased proposals up to his final offer of £400,000 were worth less as they presupposed a deduction for monies paid by H for W's legal fees funding. Indeed, the final offer of £400,000 was in fact worth nil once legal fees were taken into account.
8. On the other hand, W in her proposal sought a sum in excess of £6m, and fell short of that sum by over £5m.
9. I accept the point made on W's behalf that H failed to disclose to her or the court his pre-sales of units in AB Company from February to May 2021, right in the middle of the litigation. In the course of my judgment, I was highly critical of H's failure to comply with his obligation to give full and frank disclosure, describing it as "deplorable". When W learned of the pre sales in July 2021, she was entitled (i) to be highly suspicious of H's presentation and (ii) to pursue disclosure vigorously, and in much more forensic detail than would otherwise have been required. I also take the view that H's finances were generally complex and, even if he had been fully transparent, would have required a considerable degree of inquiry. Furthermore, H's failure to disclose the pre-sales meant that during at least the period from February 2021 to July 2021 any negotiations (including H's open offer dated 9 April 2021) took place on a false premise in that H had not openly attributed any value to the units. It seems to me that a significant proportion of the costs incurred related to disclosure issues, for which H must bear considerable responsibility. W's estimate is that it accounted for 60% of her costs. These matters point in W's favour on the costs dispute.
10. On the other hand, W failed on two critical evidential issues which lay at the heart of the case before me. First, she did not succeed in establishing a significant period of pre-marital cohabitation, such as to entitle her to a sharing claim against H's units. Second, H established to my satisfaction that W was guilty of misconduct in that she caused him financial losses, probably running into tens of millions of dollars, by reason of having prevented H from selling part of his units following AB Company listing. Had those issues not been so hotly contested, the case would have been a relatively straightforward needs based claim, and the costs on both sides would have been vastly reduced. The fact of those disputes probably rendered the case impossible to settle.
11. It seems to me to be unfair for H to bear the burden of all his costs as well as all of W's costs which, absent any costs order, will be the effect of my judgment. Their combined costs are over £1.2m, yet at the end of it all W achieved an award of £750,000, far below her open proposal, and having failed on either the cohabitation or the conduct issues.
12. I am satisfied that it is appropriate for W to make a contribution towards H's costs. It does not seem to me to be unfair to invade her needs based award to an extent. She should not be entirely protected from costs consequences. Weighing up all the factors, I will make a costs order against W of £100,000, which shall be set off against the lump sum payment of £750,000. How she trims her needs to take account of this costs order will be a matter for her. She will still have total assets of about £1m and, for example, her income fund of £450,000 (£150,000pa for 3 years) might be reduced to £350,000.

That is a consequence of her litigation conduct. The figure for costs might well have been higher had it not been for H's litigation misconduct.