



Neutral Citation Number: [2021] EWHC 137 (Comm)

Case No: QB-2028-003939

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice, Rolls Building,
Fetter Lane, London, EC4A 1NL

Date: 19 January 2021

Before :

MARGARET OBI
(sitting as a Deputy High Court Judge)

Between :

Kingsley Napley LLP
- and -
(1) Steven Harris
(2) Danriss Group Holdings Limited

Claimant

Defendants

David Halpern QC and William Harman (instructed by Mayfair Rise Solicitors) for the
Defendants

Scott Allen and Melody Ihuoma (instructed by RPC) for the Claimant

Hearing date: 19 January 2021

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

Margaret Obi :

1. These proceedings arise out of a claim by Kingsley Napley LLP against Mr Steven Harris and Danriss Group Holdings Limited for significant unpaid fees. After the fee claim, Mr Harris has pursued a counterclaim which raises allegations of professional negligence in relation to three retainers known as the “Matrimonial Matter”, the “Possession Matter” and the “IWG Matter” respectively. This is the trial of that counterclaim.
2. The trial commenced yesterday afternoon. A preliminary application was made by Mr Halpern QC, on behalf of Mr Harris, for the Matrimonial Matter and the Possession Matter to be heard in private. The application itself was made in public.
3. Mr Halpern submitted that the matrimonial matters should be heard in private. He drew the Court’s attention to the jurisdiction which permits hearings to be heard in private and the provisions relating to the subsequent disclosure of documents. He submitted that there are three reasons why this case should be partly heard in private: (i) it accords with the relevant provisions in the Family Procedure Rules; (ii) the court should exercise its discretion under the Civil Procedure Rules because the case involves confidential information; and (iii) Mrs Harris, a third party for the purposes of these proceedings, gave permission for documents from the matrimonial proceedings to be released to Kingsley Napley on the understanding that the trial of the relevant issues would be in private. Mr Halpern further submitted that there is an evidential overlap between the Matrimonial Matter and the Possession Matter. Although those acting for Mr Harris thought that redacting the relevant documents may get around this difficulty, that was not the view taken by those acting for Kingsley Napley.
4. Mr Allen, on behalf of Kingsley Napley, adopted a neutral stance; he neither opposed nor supported the application. However, he did submit that the Matrimonial Matter and the Possession Matter were inextricably linked when Kingsley Napley was initially instructed. Furthermore, it is important that the email correspondence is seen in its full context and that redactions would prevent that from happening.
5. Yesterday I announced in public that the application for a partly private hearing was granted and that I would provide a judgment with full reasons this morning. As a consequence of my decision, the remainder of Mr Halpern's opening in relation to matrimonial law will continue in public. Thereafter, Mr Halpern intends to outline the facts in relation to the Matrimonial Matter and the Possession Matter. This will be in private in accordance with my direction. However, the IWG matter will be opened in public.
6. The reasons for my decision are as follows.
7. The starting point is the fundamental principle of open justice. The principal purposes of the open justice principle are twofold: (i) to hold courts and judges to account; (ii) to enable the public to understand how the justice system works and why decisions have been made. It can be difficult for non-parties to follow the proceedings, particularly as much of the arguments and evidence is reduced to writing.

8. The default position is that the public should be allowed access, not only to the parties' submissions and arguments, but also to documents which have been placed before the court and referred to during the hearing.
9. The general rule is set out in Civil Procedure Rule 39.2(1). It states that a hearing is to be heard in public. However, the courts have the power to conduct a hearing, or part of a hearing, in private if it is satisfied that one or more of the criteria in (a) to (g) of the Civil Procedure Rules 39.2(3) apply. The relevant criteria in this case are:
 - (c) *it involves confidential information (including information relating to personal financial matters) and publicity would damage that confidentiality; ... and*
 - (g) *the court for any other reason considers this to be necessary to secure the proper administration of justice. ...*
10. In relation to the subsequent use of confidential information, the relevant part of Civil Procedure Rule 31.22(1) states:

“A party to whom a document has been disclosed may use the document only for the purpose of the proceedings in which it is disclosed, except where –

the document has been read to or by the court, or referred to, at a hearing which has been held in public: ...”
11. Civil Procedure Rule 31.22(2) states:

“The court may make an order restricting or prohibiting the use of a document which has been disclosed, even where the document has been read to or by the court, or referred to, at a hearing which has been held in public.”
12. I will now turn to the reasons for granting the application:
 - (i) First, I accept that the ancillary relief proceedings were conducted in private which is the norm. Rule 27.10(1) of the Family Procedure Rules (FPR) 2010 provides that proceedings to which the FPR apply will be heard in private except:
 - (a) *where the FPR or any other enactment provides otherwise, or*
 - (b) *subject to any enactment where the court directs otherwise.*

There is no dispute that the FPR applied to the ancillary relief proceedings of Mr and Mrs Harris. Furthermore, the family court made no orders which override the rule that ordinarily, family proceedings are heard in private. To the contrary, the procedural orders clearly state that the hearings have been heard in private, and a judgment following the final hearing of ancillary relief expressly stated that it had been heard in private. I am satisfied that a public hearing would undermine the privacy protection provided to the parties in the family proceedings. Therefore, it is necessary for the

Matrimonial Matter to be heard in private to ensure that the private ancillary relief proceedings remain private.

- (ii) Secondly, the Court has a discretion under Civil Procedure Rule 39.2(3)(c) to permit a hearing or part of a hearing to be heard in private if it involves confidential information and publicity would damage that confidentiality. There is no dispute that the documents produced as a consequence of the ancillary relief proceedings are confidential, as they include reference to Mrs Harris' finances and health. Mrs Harris is a third party in these proceedings and has a right to a private life. In balancing Mrs Harris' rights against the open justice principle, I am satisfied that her interests outweigh the public interest in this regard. As much of this hearing should be heard in public as possible, but that does not extend to putting matters relating to Mrs Harris' finance and health in the public domain.
 - (iii) Thirdly, the family court and Mrs Harris gave permission for the document from the ancillary relief proceedings to be disclosed to Kingsley Napley, on the basis that the trial of the relevant issues in those proceedings would be in private. I am satisfied that there is no good reason why that assurance should not be honoured, given the highly sensitive nature of the material contained within those documents.
13. It is for these interrelated reasons that I ordered that the Matrimonial Matter should be heard in private.
14. That brings me to the Possession Matter.
15. Given that conducting proceedings in private is the exception rather than the norm, I did consider whether it would be feasible to conduct the possession matter in public with appropriate redactions of the relevant documents, on the basis that this would be a proportionate measure. However I am persuaded that the Matrimonial Matter and Possession Matter are inextricably linked. This is because for the relevant period of the retainer, there was only one file; the Possession Matter had not been separated at that stage. Furthermore, I accept that cross-examination of Mr Harris in relation to the Possession Matter will be based on documents from the family proceedings.
16. For these reasons, it is ordered that the Matrimonial Matter and the Possession Matters will be heard in private. Any person who is not a party to these proceedings may not apply for a copy of the following from the court records pursuant to Civil Procedure Rule 5.4(c) and/or pursuant to the court's inherent jurisdiction, save on 21 days' written notice to the first defendant. The documents are as follows: (a) first witness statement of Jane Keir dated 1 October 2020; (b) exhibit JK1; (c) first witness statement of Richard Foss dated 1 October 2020; (d) exhibit RF1; (e) second witness statement of Jane Keir dated 30 September 2020; (f) exhibit JK2; (g) first witness statement of Debra Harris dated 29 September 2020; (h) second witness statement of Steven Harris dated 29 September 2020; (i) exhibit SMH2; (j) Bundle B insofar as it contains the items set out above of the trial bundle; (k) Bundle C of the Trial Bundle; (l), Bundles E to I inclusive of the Trial Bundle. Collectively these are referred to as the "confidential documents".

17. Pursuant to Civil Procedure Rule 31.22(2), without further order of the court, the confidential documents shall not be used other than for the purpose of these proceedings, whether or not any parts of these documents or bundles have been read to or by the court or referred to during the public parts of this trial.
18. That concludes my judgment.