



Gamblers Beware: A Salutory Tale

28 February 2020

The Payne Hicks Beach Family Department acted in the recent case of *MB v EB (No 2) [2019] EWHC 3676 (Fam)*.

This recent decision is a clear warning to ambitious applicants who have historically used their 'needs' as a shield when gambling on an opportunistic, high-risk financial remedy claim, that they will no longer be protected from costs ramifications if their wager fails.

With the introduction of the (relatively) new paragraph 4.4 to Practice Direction 28A, Family Procedure Rules 2010, parties who fail to litigate reasonably and engage in negotiations openly are likely to find themselves on the wrong side of an order for costs, notwithstanding their needs-based claim.

This final instalment in the husband's financial remedy claim follows the decision of Mr Justice Cohen at a preliminary issues hearing in June 2019, where the Judge determined three issues predominantly in favour of the wife; namely: - (1) the length of the marriage; (2) the impact of a separation agreement entered into in 2011; and (3) whether there was any marital acquest.

In his judgment, Cohen J concluded that it was manifestly unfair for the wife (who, relying on the "millionaire's defence", accepted that she had resources available to her of not less than £50 million) to be expected to "bankroll" the litigation for the husband (self-described as a struggling artist and part time model), in circumstances where he found that the husband had litigated unreasonably and had failed to engage openly in settlement discussions designed to bring an end to the proceedings.

Whilst the husband was ultimately successful in beating the wife's open offer, Cohen J found that had he engaged in negotiations in any meaningful sense (or had responded to the wife's offers at all) then it was likely that this would have led to an overall resolution, thus saving the parties significant outlay on their combined legal costs. Accordingly, he disallowed over 75% of the husband's costs, leaving him with a significant debt to his solicitors.

The decision of Cohen J is a salutory tale for a needs based applicant (and their legal advisors) intent on pursuing a speculative financial remedy claim in the mistaken belief that the nature of their claim is an effective insulation against litigation risk.

Philip McGuirk, Partner and Co-Head of the Family Department and Emily Foy, Senior Associate, represented the successful wife.

For further information, please contact by email either Philip McGuirk or Emily Foy or alternatively

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