

Making financial claims in the English Court after an overseas divorce - the door is not always open

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The Court of Appeal recently handed down judgment in the case of *Zimina v Zimin* [2017]. The case concerned Russian nationals who divorced in Russia and reached a financial agreement which was endorsed by the Russian Court in 2009, and subsequently implemented by the parties. The family had moved to England in 2004 and in 2012, the wife sought orders under Part III Matrimonial and Family Proceedings Act 1984 ('Part III'), which gives the English Court the power to make financial orders following foreign divorce proceedings.

Under the Russian court order, the wife had received a total award of \$10m out of total assets of \$13m. In the English Part III proceedings, which culminated in an order in 2014, the first instance judge held that notwithstanding the lengthy delay in pursuing her claims the wife should be awarded a further lump sum of £1.14m, in order to meet her financial needs and those of the children.

The Court of Appeal set aside this order and held that it was inappropriate for any order at all to have been made by the English Court.

The case is helpful for those couples involved in divorces which have an international dimension. The Part III provisions can assist families who have sufficient connection with England in alleviating the adverse consequences which flow from no, or no adequate, financial award having been made by the foreign court.

The procedure is somewhat convoluted: permission is required from the court before an application can be made. If permission is granted, the court must consider whether, in all the circumstances, it is appropriate for an order to be made and whether England is an appropriate venue. The statute may not be used to 'top up' foreign provision in order to make it equate to an English award, but there are no pre-conditions of exceptionality or hardship. If appropriate to make an award, then the English court has a broad discretion and gives first consideration to the needs of any children. However, the English Court must be careful not to make an award which gives a claimant more than they would have received had all of the proceedings taken place in England.

In *Zimina v Zimin*, the Court of Appeal provided further guidance for these claimants.

- First, it clarified that when looking at the financial benefit already received by a spouse, this includes any benefit which derives from an agreement, or from the operation of law, or from any foreign order and not just the order made by the overseas court.
- Second, when looking at the adequacy of that financial benefit, the court will normally consider its value at the time of the original order, but in rare cases, where there has been significant delay between the divorce and the Part III proceedings, this may include an examination of a party's finances at the date of the Part III trial.
- Third, if the original provision is fair (in so far as it flows from an agreement which is ratified by the foreign court), ie it was freely entered into by each party with a full appreciation of its implications, then regard should be given to the principle that formal agreements, properly and fairly arrived at with competent legal advice, should not be displaced unless there are good and substantial grounds for concluding that an injustice will be done by holding the parties to the terms.

The Court of Appeal held that the financial benefit provided by the husband in 2009 was adequate and remained adequate at the time of the Part III application. Consequently, it allowed the appeal and the earlier order for the ex-husband to pay the additional lump sum of £1.14m to his ex-wife was set aside.

The case serves as a reminder that there can be no 'second bite of the cherry' in these cases and that the convoluted filter mechanisms built into

the Part III procedure will be rigorously applied by the English Court.

This article forms part of our Autumn 2017 family newsletter, alongside the other articles found in the Insight section below.

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