Neutral Citation Number: [2013] EWCA Civ 41

Case No: B6/2012/0342

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
FAMILY DIVISION
Mr. Justice Mostyn
[2012] EWHC 45 (Fam)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 5 February 2013

Before :

THE CHANCELLOR OF THE HIGH COURT
LORD JUSTICE THORPE
and
LORD JUSTICE MOORE-BICK

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Between :

JANNA KREMEN	**Claimant/ Respondent**
- and -	
BORIS AGREST	**Defendant**
- and -	
GEORGY CHESNOKOV	**Intervener/ Appellant**

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Mr. Frank Feehan Q.C. (instructed by **Horne Engall & Freeman Llp**) for the **appellant**
Mr. Christopher Stirling and **Mr. John Hamilton** (instructed by **Richardson Smith Solicitors**) for the **respondent**

Hearing date : 12th December 2012

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Approved Judgment

Lord Justice Moore-Bick :

1. This is an appeal against an order made by Mostyn J. in the course of a long-running battle between the respondent, Janna Kremen, and her former husband, Boris Agrest. It concerns a property in Walton-on-Thames called South Lodge which is beneficially owned by Mr. Agrest and represents the only asset available to him in this jurisdiction that might be used to satisfy an order made by the judge on 15th February 2012 for the payment to Ms Kremen of the sum of £12.5 million following their divorce.

2. The legal owner of South Lodge is Everclear Ltd, a company incorporated in the British Virgin Islands, which was used by Mr. Agrest as a vehicle to minimise his liability for tax. In September 2007 Mr. Agrest transferred the single share in Everclear to a Mr. Kinigopolou, who in turn entered into an agreement in August 2008 to sell it to the appellant, Mr. Chesnokov. In 2010 Ms Kremen applied under section 23(2)(b) of the Matrimonial and Family Proceedings Act 1984 ("the Act") to set aside those transactions on the grounds that the first was a sham and that both had been entered into with the intention of defeating her claim for financial relief. In a judgment delivered on 3rd December 2010 [2010] EWHC 3091 (Fam) and reported at [2011] 2 FLR 490 the judge found that the disposition by Mr. Agrest to Mr. Kinigopolou was indeed a sham and that the agreement with Mr. Chesnokov was to be treated as having been made by Mr. Agrest with the intention of defeating Ms. Kremen's claim to financial relief.

3. The essential features of the agreement for the sale of Everclear nominally made between Mr. Kinigopolou and Mr. Chesnokov and the circumstances surrounding it are of some importance for the purposes of the appeal and it is therefore necessary to describe them briefly. The judge found that on 27th August 2008 Mr. Kinigopolou had entered into a contract with Mr. Chesnokov to sell him the single share in Everclear for the sum of US$4 million. On the face if it the contract was unconditional, but Mr. Chesnokov maintained, and the judge accepted, that it was agreed to be conditional on his obtaining a mortgage on South Lodge in order to provide part of the purchase price. The arrangements for the mortgage were not completed until 3rd March 2009 when the bank was in a position to make the necessary funds available. In those circumstances the judge held that the effective date of the transaction between Mr. Chesnokov and Mr. Kinigopolou was 3rd March 2009.

4. In the meantime, in February 2009, Ms. Kremen had learnt that Mr. Agrest had, or might have, disposed of South Lodge. She immediately applied for an injunction to prevent Everclear and Mr. Agrest from dealing with the property and informed Mr. Chesnokov's wife at once that the application had been made. The application was successful and that information was also relayed to Mr. Chesnokov by his wife. The next day, 13th February 2009, Mr. Chesnokov told the solicitors acting for him in connection with the mortgage that an order had been obtained which affected the sale and they asked to see it as soon as possible. His response was that there was no order yet, but that it would probably be available within a few days. Nonetheless, Mr. Chesnokov decided to proceed with the transaction on the basis that the injunction prohibited a disposition by Everclear or Mr. Agrest but did not affect the sale to him by Mr. Kinigopolou of Everclear. However, since Mr. Chesnokov was buying Everclear rather than South Lodge itself, it is not easy to understand how he can have thought that the order did not affect the proposed mortgage. On 20th February 2009 Ms Kremen sent Mr. Chesnokov a copy of the order, which by that time had been

drawn up. The judge found that Mr. Chesnokov was aware from that date at the latest that a dispute existed between Mr. Agrest and Ms Kremen concerning the ownership of South Lodge and that Ms Kremen was seeking to prevent Mr. Agrest from disposing of it to her disadvantage.

5. Mr. Chesnokov opposed Ms. Kremen's application to set aside the transfer of Everclear to him, relying on section 23(6) of the Act, which excludes from the operation of section 26 a disposition made for valuable consideration to a person who, at the time of the disposition, acted in relation to it in good faith and without notice of any intention on the part of the other party to defeat the applicant's claim for financial relief. Although the judge considered that the transaction had suspicious aspects, he was not prepared to hold that it was a sham. He found that full valuable consideration had been contracted for and that there was insufficient evidence to support a finding that in August 2008, when Mr. Chesnokov had entered into the agreement, he had been acting in bad faith or had actual or constructive knowledge that Mr. Agrest was at that time, and by that transaction, seeking to defeat Ms. Kremen's legitimate claims. However, he found that by 3rd March 2009 the position had changed, because by then Mr. Chesnokov had known about the existence and nature of the dispute between Ms. Kremen and Mr. Agrest. He therefore held that the third element of the defence had not been made out.

6. The judge then had to decide whether to exercise his discretion in favour of setting aside the transaction. He decided that he should, because the equity in South Lodge (then thought to be about £600,000 - £800,000) would make a significant difference to Ms Kremen's claim to financial relief and because he was confident that Mr. Chesnokov would be able to recover certain bonds that he had transferred to Mr. Kinigopolou in part-payment of the purchase price. (As a consequence of setting aside the agreement for the sale of Everclear the judge also set aside the transfer of the bonds to Mr. Kinigopolou.) The judge thought that Mr. Chesnokov would suffer very little detriment if the transaction were set aside, but in order to protect his position he ordered Mr. Agrest to indemnify Mr. Chesnokov against all the expenses and costs he had incurred in connection with the transaction itself and the subsequent litigation, including any order for costs made against him in favour of Ms Kremen.

7. Mostyn J. delivered his judgment on 10th December 2011. Mr. Chesnokov appealed against the judge's order, but on 9th March 2011 his appeal was dismissed and an application for permission to appeal to the Supreme Court was also dismissed on 27th June 2011. On 5th July 2011 Mr. Chesnokov began proceedings against Mr. Agrest under the indemnity claiming £1,197,774 and interest of £262,526. That claim reflected the value of the bonds which, it appears, he had failed to recover after the transfer was set aside. On 26th August 2011 he obtained judgment in default of defence and on 19th September 2011 an interim charging order over South Lodge was made in his favour.

8. Mr. Chesnokov's application for a charging order absolute was referred to the judge for decision to enable it to be considered in conjunction with Ms. Kremen's claim for financial relief. The judge dismissed the application in robust terms. He said that Mr. Chesnokov was seeking to undo his judgment of 3rd December 2010, despite that the fact that his appeal had been dismissed. He then said:

> "88. In my judgment where a transaction has been avoided under s37 Matrimonial Causes Act 1973 or s23 Matrimonial and Family Proceedings Act 1984 and the disponee then comes along seeking to reverse that very order by these means then the court is clearly in an exceptional situation quite outwith the situation where a bona fide creditor is seeking to recover his judgment debt.
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> 89. Mr Feehan QC argues that no stain has been cast on GC's integrity by my judgment of 3 December 2010. I do not agree with that. I found that GC had not given me truthful evidence and that he was complicit in H's machinations (see paras 17, 23 – 26, 28 – 32, and 36). Moreover I found that GC would have no difficulty in recovering the Kyrgyzstani bonds from H (see para 39). That finding was challenged in the Court of Appeal and was dismissed by Wall P (see paras 24 – 26 of his judgment). Indeed, there is no evidence that GC has even asked H for the bonds back or otherwise to indemnify him for his losses. Mr Feehan QC stated that this was because GC did not know where H was but this is obvious nonsense as in August 2011 his solicitors were in detailed email correspondence with H concerning the negotiation of a consent order which provided for the sale of South Lodge.
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> 90. In my judgment Mr Stirling is right to characterise this application as an abuse of the process. In his judgment Wall P quotes Sedley LJ as having said of GC's purchase of South Lodge "he bought a pig in a poke". His attempts to prevent a reversal of the transaction all failed, and this latest attempt must be dealt with in the same way. In any event I am satisfied that the equity of South Lodge is urgently needed to meet the needs of W and the children. Just as the considerable means of GC were relevant to the exercise of my discretion last time round, so they are this time. In para 13 of my judgment of 3 December 2010 I recorded him as having means of £16.5m. It would be a travesty if in the exercise of my discretion I were to make the charging order final immediately or even on a deferred *Mesher* basis."

9. Mr. Chesnokov's case is simple. He says he is not seeking to undo the earlier judgment, the effect of which was simply to increase the assets available to Mr. Agrest to satisfy his various liabilities; he is a judgment creditor and as such is entitled to enforce his debt against any of Mr. Agrest's assets that he can lay his hands on. Ms Kremen is no doubt entitled to fair financial provision out of Mr. Agrest's assets, but her claims should not take precedence over his rights. Ms. Kremen's case is equally simple. She says that the judge awarded her £12.5 million, but that the only assets of Mr. Agrest within the jurisdiction that are available to satisfy that award, in addition to a sum of about £600,000 currently standing in court,

is the equity remaining in South Lodge, currently thought to be only about £400,000. She has two minor children to support and if she is to receive even a small part of the money to which she is entitled she must receive the whole of the equity in South Lodge.

10. It is common ground that the judge had a discretion whether to make a charging order absolute in favour of Mr. Chesnokov and that in reaching his decision he was obliged to consider all the circumstances of the case. Section 1(5) of the Charging Orders Act 1979 provides:

> "In deciding whether to make a charging order the court shall consider all the circumstances of the case and, in particular, any evidence before it as to—
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> (a) the personal circumstances of the debtor, and
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> (b) whether any other creditor of the debtor would be likely to be unduly prejudiced by the making of the order."

11. In cases where the available assets are insufficient to satisfy both the financial claims of one former spouse (usually the wife) and the debts of the other (usually the husband) a conflict arises between the interests of the claimant and those of the creditors. The conflict is all the more acute when a creditor has obtained a judgment which, in the ordinary way, he could expect to enforce by means of a charging order. This question was considered at some length in *Harman v Glencross* [1986] Fam. 81, on which Mr. Feehan Q.C. placed a good deal of reliance. In that case the sole asset available to satisfy the claims of the wife and those of the judgment creditor was the former matrimonial home. Without a charging order the judgment creditor was unlikely to recover anything, but if a charging order were made in his favour, the remaining assets would be insufficient to provide a home for the wife and children. The court held that in such cases it was necessary to strike a balance between the normal expectation of a judgment creditor that an order would be made to enforce his judgment and the hardship that such an order would entail to the wife and children. In a passage at page 97, to which Mr. Feehan particularly drew our attention, Balcombe L.J. said:

> " . . . unless the transfer of the husband's share in the house to the wife is necessary to give her adequate protection so that she may have a home for herself and the children, it is difficult to see why the judgment creditor's undoubted rights should not take preference to the wife's claim to a transfer of property order."

12. Later, at page 99 he said:

> "When considering the circumstances, the approach of the court should be to recall the statement of Sir Denys Buckley in the *Hegerty* case [1985] Q.B. 850, 866, that a judgment creditor is justified in expecting that a charging order over the husband's beneficial interest in the matrimonial home will be made in his favour. The court should first consider whether the

> value of the equity in the house is sufficient to enable the charging order to be made absolute and realised at once, as in *Llewellin v. Llewellin* (unreported), even though that may result in the wife and children being housed at a lower standard than they might reasonably have expected had only the husband's interests been taken into account against them. Failing that, the court should make only such order as may be necessary to protect the wife's right to occupy (with the children where appropriate) the matrimonial home. The normal course should then be to postpone the sale of the house for such period only as may be requisite to protect the right of occupation - a *Mesher* type of order - again bearing in mind that the court is holding the balance, not between the wife and the husband, but between the wife and the judgment creditor. If the judgment creditor asks, even in the alternative to his claim to an immediate order, for a *Mesher* type of order, then it seems to me that it would require exceptional circumstances before the court should make an order for the outright transfer of the husband's share in the house to the wife, thereby leaving nothing on which the judgment creditor's charging order can bite, even in the future."

13. These passages support the conclusion that when striking a balance between the interests of the judgment creditor and those of the wife, the interests of the judgment creditor should be respected, save to the extent that it is necessary to override them in order to make appropriate provision for the wife and any minor children. In some cases that can be achieved by an order postponing the sale of the property (usually known as a *Mesher* order - see *Mesher v Mesher and Hall* [1980] 1 All E.R. 126), or in a more extreme case by withholding a charging order altogether and transferring the husband's interest to the wife free of any encumbrance. However, each case depends on its own facts. As Waite J. observed in *Austin-Fell v Austin-Fell* [1990] Fam. 172, there can never be automatic predominance for any claim; each case depends upon striking a fair balance between the normal expectations of the judgment creditor and the hardship to the wife and children if a charging order is made. In some cases justice to the creditor will demand that the wife accept a degree of provision that in other circumstances would have been regarded as inadequate.

14. Since the exercise of the discretion to set aside the transaction between Mr. Chesnokov and Mr. Kinigopolou turned on the need to strike a fair balance between the interests of Ms. Kremen and those of Mr. Chesnokov, I can understand why the judge regarded the application for a charging order as an attempt to undo his earlier judgment. The equity in South Lodge was insufficient to satisfy the judgment debt and if the application were successful its effect for practical purposes would be the same as the transfer to him of Everclear, which owned South Lodge subject to the mortgage. Nonetheless, his characterisation of the application was in my view unduly harsh because, rather than being simply a transferee of Everclear with notice of Ms. Kremen's claim, Mr. Chesnokov had become a judgment creditor and as such he was entitled to expect the court to enable him to enforce his rights. Although his application called once again for a balance to be struck between his interests and those of Ms Kremen, his interests as a judgment creditor were now different. For the same reason I also think that the judge was wrong in paragraph 90 of his judgment to

describe Mr. Chesnokov's application as an abuse of the process. Of course, to the extent that it succeeded it would reduce the assets available to Ms. Kremen, but that would only be the result of his holding a judgment against Mr. Agrest that was enforceable against his property. It was not suggested that Mr. Chesnokov had obtained that judgment by collusion and in those circumstances he was entitled to enlist the assistance of the court in his attempt to enforce it. Accordingly, one starts from the position that Mr. Chesnokov as a bona fide judgment creditor is entitled to have his interests as such taken fully into account.

15. In weighing up all the circumstances in this case it is important to identify the essential needs of Ms. Kremen and her children. Mr. Feehan submitted, as he had to the judge, that the court should be concerned only with the need for reasonable accommodation, and not necessarily accommodation of the standard to which they had previously been accustomed. The argument was based on a passage in the judgment of Balcombe L.J. in *Harman v Glencross* at page 99 where he said:

> "There will, of course, be cases (such as *Llewellin v. Llewellin* (unreported), 30th October 1985, Court of Appeal (Civil Division) Transcript No. 640 of 1985, which we heard immediately after this appeal) where the figures are such that even if the charging order is made absolute, and then the charge is realised by a sale of the house, the resultant proceeds of sale (including any balance of the husband's share after the judgment debt has been paid) will be clearly sufficient to provide adequate alternative accommodation for the wife and children."

Mr. Feehan submitted that the court should be concerned only with the provision of accommodation and not with wider financial needs. He argued that Ms. Kremen did not require the whole of the equity in South Lodge in addition to the sum in court in order to obtain adequate accommodation, even if that accommodation was of a standard lower than that to which they had been accustomed.

16. The judge did not accept that submission and neither do I. The issue raised by Mr. Feehan was not directly before the court in *Harman v Glencross*. It was not necessary for Balcombe L.J. to deal with it and there is nothing to suggest that he intended to do so. In any event, once it is accepted, as it was, that the court must have regard to all the circumstances of the case when exercising its discretion, it is difficult to see how it could properly ignore the wider financial needs of the wife and children, or, as the judge put it, the need to pay for their daily bread. For similar reasons I would reject Mr. Feehan's submission that the wife is entitled to protection only in relation to her occupation of the former matrimonial home and that since South Lodge was never the matrimonial home (having been bought by Mr. Agrest as an investment) the approach adopted in *Harman v Glencross* had no application in this case.

17. Although the judge's attention was drawn to the relevant authorities, in particular *Harman v Glencross*, in the end his decision appears to have been based almost entirely on the view he took of Mr. Chesnokov's conduct in pursuing an application which he regarded as an abuse of the process. Thus, when he came to give his decision he said:

> "88. In my judgment where a transaction has been avoided under s37 Matrimonial Causes Act 1973 or s23 Matrimonial and Family Proceedings Act 1984 and the disponee then comes along seeking to reverse that very order by these means then the court is clearly in an exceptional situation quite outwith the situation where a bona fide creditor is seeking to recover his judgment debt.
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> 89. Mr Feehan QC argues that no stain has been cast on GC's integrity by my judgment of 3 December 2010. I do not agree with that. I found that GC had not given me truthful evidence and that he was complicit in H's machinations (see paras 17, 23–26, 28–32, and 36). Moreover I found that GC would have no difficulty in recovering the Kyrgyzstani bonds from H (see para 39). That finding was challenged in the Court of Appeal and was dismissed by Wall P (see paras 24–26 of his judgment). Indeed, there is no evidence that GC has even asked H for the bonds back or otherwise to indemnify him for his losses."

18. The nub of Mr. Feehan's complaint is that it is clear from these paragraphs of the judgment that the judge failed to carry out the balancing exercise required by the authorities because he regarded Mr. Chesnokov as a dishonest opportunist who had been complicit in (by which I think he meant had actively assisted) Mr. Agrest's machinations and not as a bona fide judgment creditor.

19. It is quite true that the judge had made a number of findings to Mr. Chesnokov's discredit, in particular, that in his witness statement he had made some statements that were false and that he had been involved in a fraud on the bank which was providing the mortgage funds for South Lodge. The judge had also found that there was some form of complicity between Mr. Chesnokov and Mr. Agrest, because Mr. Agrest's alter ego, Jolima Ltd, had effectively paid the interest on the mortgage. However, the judge had expressly recognised that Mr. Chesnokov had a right to be indemnified by Mr. Agrest against any losses incurred in connection with the transaction and had included an express indemnity in his order for that purpose. Moreover, in paragraph 36 of his earlier judgment he had expressed himself unable to find that the transfer by Mr. Kinigopolou to Mr. Chesnokov was a sham or that it was unsupported by valuable consideration. Therefore, although many of the judge's findings were certainly to the discredit of Mr. Chesnokov, they do not support the conclusion that he was actively involved in Mr. Agrest's attempt to frustrate Ms. Kremen's claim for financial relief and it is to be noted that in his judgment on the appeal Sir Nicholas Wall P. was careful not to make any imputations against Mr. Chesnokov's integrity. Nor is there any evidence to suggest that the default judgment, on the basis of which the charging order was being sought, had been obtained through connivance with Mr. Agrest. If there had been, I think that the judge's reaction would have been appropriate, but as it was he should in my view have considered the circumstances in the round before reaching his conclusion. In those circumstances I think it falls to this court to do so.

20. From Ms. Kremen's point of view the equity in South Lodge has to be viewed in the context of the funds already in court. Together they amount to about £1 million. Mr.

Feehan submitted that Ms. Kremen does not need the whole of that sum in order to provide adequate accommodation for herself and her children, but if one accepts, as I do, that some allowance should also be made for living expenses, a substantial part of it will be required for those purposes on any view. The fact that the court has awarded her a much larger sum may be of little relevance when it comes to balancing her claim to the equity in South Lodge against that of Mr. Chesnokov, but it is appropriate to take into account the fact that there is little prospect of her recovering any other amount from Mr. Agrest in the near future, if indeed at all. The amount at her disposal can therefore be expected to decline inexorably over the course of time.

21. Mr. Chesnokov, on the other hand, holds a judgment for £1.46 million against Mr. Agrest which may prove worthless if he is unable to execute on the equity in South Lodge. However, as the judge found, he is a wealthy man in his own right and since Mr. Agrest still holds, or has had the benefit of, the bonds transferred in part-payment of the price, and given the judge's findings about the relationship between him and Mr. Chesnokov, I am not prepared to assume that there is no prospect of the debt's being repaid in some form or another in due course. That is one factor that counts against him, but there are also other, more powerful, factors. I agree with the judge that this is an exceptional case, not because Mr. Chesnokov is seeking to assert a claim against what is once again Mr. Agrest's property, but because of the circumstances in which the debt which he seeks to recover was incurred. The contract to purchase Everclear, and by that means South Lodge, was not binding on Mr. Chesnokov until he had obtained mortgage finance and before that had happened he had become aware of Ms. Kremen's claim and of the order prohibiting Everclear or Mr. Agrest from disposing of any interest in the property. Nonetheless, he proceeded with the purchase in circumstances where he must have been aware that there was at least a risk that the transaction would be challenged and might be held to have been ineffective. He was, therefore, the author of his own misfortune and in my view that undermines to a very significant extent any expectation he might otherwise have had as a judgment creditor that the court would make an order to enable him to recover the losses incurred as a result. That is all the more so in circumstances where Ms. Kremen and her children would be likely to suffer a degree of hardship if a charging were made in his favour. Given the amount involved, I do not think that it would be appropriate to make a *Mesher* order in this case. The reality is that the equity in South Lodge is likely to be exhausted within a relatively short time, but in any event, for the reasons I have given, I do not think that the interests of justice would be served by making a charging order absolute over the property on any terms in favour of Mr. Chesnokov.

22. For those reasons I would dismiss the appeal.

Lord Justice Thorpe:

23. I agree that this appeal should be dismissed although arriving at that conclusion by a different route to that taken by my Lord, Moore-Bick LJ. I gratefully adopt his careful review of the facts.

24. On the 19th January 2012 the judge's primary task was to make a discretionary award to the respondent wife to determine her various claims to financial provision.

25. In the event he awarded her £12.5 million of which £8.3 million was specifically allocated to meet her needs. Within that figure of £8.3 million he allocated the sum of £656,000 solely for the maintenance and education of the two children of the family: explained in paragraphs 78-80 of his judgment of 19th January.

26. Having so decided it remained for him to rule on the appellant's application for the charging order nisi to be made absolute. He addressed and decided that issue in paragraphs 82-90 of that same judgment.

27. S.1 (5) of the Charging Orders Act 1979 provides:

> "(5) In deciding whether to make a charging order the court shall consider all the circumstances of the case and, in particular, any evidence before it as to-
>
> (a) the personal circumstances of the debtor, and
>
> (b) whether any other creditor of the debtor would be likely to be unduly prejudiced by the making of the order."

28. Clearly the affect of that sub-section is to confer upon the judge a general discretion neither governed nor limited by any statutory language. However, the decision of this court in the case of *Harman v Glencross* [1986] Fam 81, provided judicial guidance as to how the discretion should be exercised.

29. This court there addressed the typical situation in which a judgment creditor sought to enforce a judgment obtained against the husband by a charging order designed to result in an order for sale against the wife remaining in occupation of the matrimonial home.

30. In such a paradigm case this court naturally stressed the strength of the entitlement of a bona fide creditor without other involvement in the marital dispute.

31. Mr Feehan QC submits that the judgments of Balcombe LJ and Fox LJ establish the principal that the just entitlement of the creditor is not to be denied save and in so far as some element of that entitlement has to be allocated to provide a roof for the wife to a minimum standard.

32. There is no clear statement to that effect within the judgments. I can see no rational reason to distinguish between the wife's bare needs whether for housing, lump sum or maintenance; particularly maintenance for children, for in assessing what is fair the court has to have first regard to the welfare of the children.

33. Now, in having due regard to all the circumstances of this case, the judge was bound to give considerable weight to the fact that the appellant sought a charging order over a property which the husband had purchased in the name of a company for his own occupation. The assets against which the wife might hope to enforce her substantial award were confined to her home, with an equity of approximately £640,000, and the property subject to the interim charge, with an equity of approximately £400,000. Together they put the enforceable value of the wife's award at about £1 million, approximately 8% of her due.

34. The dealings by which the husband's ownership of South Lodge had passed to the appellant were shadowy to say the least. Although Mostyn J was deeply suspicious, he had found in his judgment of 3 December 2010 that the hard evidence did not permit the conclusion that the appellant had acted in collusion with the husband with the intention of defeating or diminishing the wife's financial claims.

35. However, in that earlier judgment Mostyn J had found that:-

    i) the appellant had in his hands a copy of the order of Mr Jonathon Cohen QC at a time when he was not contractually bound to purchase South Lodge.

    ii) the appellant elected to convert the conditional contract into a binding contract with full knowledge of the wife's claim and the order which she had obtained.

    iii) the appellant had presented a false case, claiming that he had no notice of the wife's claims or the relevant order until after he had enlarged the conditional contract to purchase into a binding contract.

36. Additionally the comparative needs of the appellant and the wife were hardly commensurate. Whilst the wife needed every penny that she could get to meet her needs and the needs of the children the appellant is a significantly rich man seeking to extricate himself from a bad deal which he had chosen to strike with full knowledge of the risks that he ran and without any additional consideration to justify the risks.

37. All these cases are facts specific and in all the circumstances of this case the judge was, in my opinion, fully entitled to exercise his discretion as he did. Indeed I would go so far as to say that there was no other discretionary conclusion that he could reasonably have reached.

The Chancellor:

38. I agree with paragraphs [13] and [14] of the judgment of Lord Justice Moore Bick as to the approach to be taken in this type of case and in the present case in particular. Although, for the reasons given by Lord Justice Moore-Bick, it is possible to take issue with some aspects of the way in which the Judge carried out the necessary balancing exercise, the Judge was, as Lord Justice Thorpe has said, fully entitled to reach the conclusion which he did. I agree, therefore, that this appeal should be dismissed.