Neutral Citation Number: [2019] EWCA Civ 397

Case No: A2/2017/3458 & A2/2018/2915

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE QUEENS BENCH DIVISION
Mr Justice Phillips
8 December 2017
HQ15X02350

ON APPEAL FROM THE QUEENS BENCH DIVISION
Mr Justice Males
13 November 2018
[2018] EWHC 3796 (QB)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/03/2019

Before :

LORD JUSTICE UNDERHILL
(Vice President of the Court of Appeal Civil Division)
and
LORD JUSTICE HAMBLEN

- -

Between :

PAUL CHARLES MARKHAM	**Appellant**
- and -	
MOIRA O'HARA	**Respondent**
(formerly MOIRA KARSTEN)	

- -
- -

Mr Michael Hartman (instructed by **Direct Access**) for the **Appellant**
Ms Brie Stevens-Hoare QC and Ms Daisy Brown (instructed by **WGS Solicitors**) for the **Respondent**

Hearing date : 4 March 2019

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Approved Judgment

Lord Justice Hamblen:

Introduction

1. There are two matters before the Court.

2. First, an appeal by Mr Markham against the decision of Phillips J of 8 December 2017 to order partial and conditional discharge of a Freezing Order of 17 December 2009 obtained by the Respondent, Ms O'Hara, against Mr Markham. It is contended that there should have been a complete and unconditional discharge of the Freezing Order.

3. Secondly, an application for permission to appeal by Mr Markham against the decision of Males J of 13 November 2018 whereby he dismissed an application made by Mr Markham for an inquiry into and account of assets which he asserts belong to him and which are allegedly held by Ms O'Hara and of credits allegedly due to him in respect of a judgment she had obtained against him. Males J struck out the application as an abuse of process and also held that he would in any event have dismissed it on the merits.

Factual and procedural background

4. Ms O'Hara, a practising litigation solicitor, met Mr Markham in February 1999 when she was working as a volunteer at a Citizens Advice Bureau. From October 1999 until August 2005 they had an intimate relationship and cohabited from March 2003 to August 2005. Over the six year period from September 1999 she made payments amounting to approximately £1.16 million to him, or to others at his request, which she says were clearly understood and agreed to be loans.

5. After Ms O'Hara and Mr Markham had separated she brought proceedings against him seeking the net sum of £860,000 allegedly due by way of repayment of the loans and a declaration that since October 2000 Mr Markham had held 2, Codrington Mews, London W11 ("the Property") on trust for her.

6. In defence of the claim, Mr Markham admitted that he had received over £600,000 from Ms O'Hara but neither admitted nor denied the balance. His case was that these payments were made in return for services which he rendered to her, that no loans were ever made to him and that no money was owed to her. He denied signing a Trust Deed relied upon by Ms O'Hara but, if it was found that he did sign it, he alleged that it was procured by undue influence. He further alleged that the Property, his Paris flat and various chattels had since 18 April 1997 belonged to a Mr Kingsbury, who held them in trust for Mr Markham's sons under the terms of the "Kingsbury Trust".

7. There was a two week trial of Ms O'Hara's claim before HHJ Raynor QC ("the trial judge") sitting as a judge of the High Court in November/December 2009. In a judgment handed down on 17 December 2009 the judge upheld Ms O'Hara's claims. He found as follows:

> "7. ….on the totality of the evidence before me, I am quite satisfied that the Defendant's evidence as to the nature of the payments and the execution of the documents relied on by the

> Claimant is not only incredible but is simply untrue. Such is the unreliability of the Defendant as a witness that I would not be prepared to accept his evidence on any matter in dispute without incontrovertible corroborative evidence, and where his evidence conflicts with the Claimant's, as will appear, I have generally accepted hers, not because as Mr Markham has suggested, she is a solicitor but because I am satisfied that she is a truthful and generally reliable witness whereas he regrettably is not."

8. The adverse findings made by the trial judge in relation to Mr Markham included the following:

   (1) Mr Markham was an effective and convincing "confidence trickster" [125].
   (2) Mr Markham's evidence about updating the Kingsbury Trust was "a tissue of lies" [129].
   (3) The Kingsbury Trust Deed and supporting inventories were fabrications and created long after their purported dates [139].
   (4) Mr Markham lied about signing a blank Trust Deed relating to the Property [128].

9. The trial judge held that the total indebtedness due to Ms O'Hara was £1.125m, deducted from which would be the agreed value of the Property at the time the trust arose (£600,000) less the estimated value of the mortgage (£195,000) and the Trustee in Bankruptcy's fees. The amount outstanding on the loan was therefore £860,000 together with interest of £297,709.59 continuing at the rate of 8%.

10. A world-wide freezing injunction ("the Freezing Order") was granted by the trial judge following hand down of the judgment on 17 December 2009. This provided that Mr Markham must not remove from England and Wales or in any way dispose or diminish the value of his assets up to a value of £1.5m. Mr Markham failed to provide information about his assets and Ms O'Hara issued a committal application. Following several hearings, Ms O'Hara discontinued the application in October 2010, having made it clear that she had no desire that Mr Markham be committed to prison. Mr Markham was ordered to pay £5,891.25 in costs, which remains unpaid.

11. Following the judgment, Ms O'Hara obtained a writ of control in relation to chattels belonging to Mr Markham in her possession. The High Court Enforcement Office ("HCEO") found it difficult to sell the chattels. Some went to an auction house which could not sell them and so disposed of them. The HCEO then applied for an order permitting sale of the other items to Ms O'Hara. The items were sold by the HCEO to Ms O'Hara following a valuation and raised £6,000. The items sold are listed in an order made by Master Bowles on 31 January 2012 ("the Bowles Order"). The HCEO confirmed that the net proceeds would be transferred to Mr Markham's Trustee in Bankruptcy on the basis that he claimed the items had been purchased in 1997, prior to his bankruptcy in October 1998.

12. Ms O'Hara also obtained in the Paris High Court a writ of seizure in respect of a flat owned by Mr Markham at 6 Rue St Louis, Paris ("the Paris Flat") and its contents. The sale of the Paris Flat took place through the French court and was defended by Mr Markham who was legally represented. Mr Markham was given three months to find a buyer but failed to do so and the flat was sold under a judicial sale in March 2014. Ms

O'Hara received net proceeds in the sum of £663,890.98 on 11 September 2014. Mr Markham removed valuable art work and furniture from the Paris Flat ("the French chattels") prior to their sale for which he was prosecuted and convicted in France, sentenced to a term of imprisonment and fined. He was also ordered to pay Ms O'Hara €190,000 in damages and €1090 in costs, which he has not paid.

13. The current sum outstanding on the judgment debt is said to be over £1m with interest accruing at an annual rate of about £60,000 per annum.

14. On 30 November 2017, Mr Markham applied to discharge the Freezing Order on the grounds that it was no longer just and convenient for it to be continued, seven years after the committal proceedings were discontinued and three years after the last enforcement steps.

15. On 8 December 2017, Phillips J made an order discharging the Freezing Order, save in respect of the French chattels. He made the discharge conditional on Mr Markham providing his residential address. He did not accept Mr Markham's assertion that he was homeless and had no fixed address.

16. On 1 May 2018 Lewison LJ gave permission to appeal against the decision of Phillips J.

17. On 29 August 2018 Mr Markham issued an application notice seeking an inquiry and an account. That application, and Ms O'Hara's cross application, were heard before Males J on 13 November 2018. He struck out Mr Markham's application on the grounds that it was an abuse of process, but also held that he would have dismissed it in any event on the merits. Mr Markham seeks permission to appeal from that decision.

The permission application

18. The claim with which the Court is presently concerned is one for an inquiry and account of various chattels ("the chattels") Mr Markham claims he left in Ms O'Hara's home and at the Property which she is alleged to have refused to return.

19. The grounds upon which Males J reached his decision on abuse of process may be summarised as follows:

    (1) The subject matter of the application had already been litigated during 2007-2009 and had been the subject of two failed claims by Mr Markham in 2012 and 2014;

    (2) Mr Markham was now running a case diametrically opposed to the one he ran in previous litigation;

    (3) The application was part of a course of conduct intended to harass Ms O'Hara.

20. The grounds upon which Males J reached his decision on the merits may be summarised as follows:

    (1) There was no basis for an "account" and no fiduciary duty owed by Ms O'Hara;

    (2) There was no valuation of the chattels other than the valuation put forward by Mr Markham and by his friend, Mr Andrew Webb, who had never seen the items;

(3) Mr Markham has been found in litigation between these same parties to be a dishonest confidence trickster, whose evidence would not be accepted unless it was independently verified;

(4) Ms O'Hara had purchased various items belonging to Mr Markham through a writ of control. There was no clear evidence that Ms O'Hara was holding any other item belonging to Mr Markham;

(5) Mr Markham's counsel had conceded that unless the chattels could be retrospectively valued at a sum in excess of the judgment debt, the application was pointless, but the valuation relied upon was "entirely fanciful";

(6) It was too late to attempt satisfactorily to determine what chattels were supposed to have been in Ms O'Hara's possession at any time;

(7) Mr Markham did not come to equity with clean hands, having been dishonest in previous litigation, created a fraudulent trust deed and removed the contents of his Paris Flat in breach of a seizure order to frustrate enforcement of the judgment debt.

21. Mr Markham seeks permission to appeal on the following grounds:

Abuse of process

(1) The judge erred as a matter of law and/or fact by failing to apply the correct test to determine that the application constituted an abuse of process in that the judge wrongly determined that the present application was brought for the unwarranted collateral purposes including that of harassment of the Ms O'Hara.

Merits

(1) The judge erred as a matter of law and/or fact by wrongly holding that for purposes of making an order for directions under PD40A Mr Markham bore the burden of proving the identity of all and each of the chattels listed in the 2009 inventory as belonging to him.

(2) The judge erred as a matter of law by wrongly holding that, in the circumstances, such chattels as were retained by Ms O'Hara did not give rise to a "quasi fiduciary duty and/or common law duty" and that Ms O'Hara could not be held to be in breach of such duty and so be ordered to provide an account.

(3) The judge failed to provide adequate reasons and/or failed to take properly into consideration the evidence and submissions of Mr Markham when making findings that any such chattels as were held by Ms O'Hara were held under the terms of an ordinary bailment and could not be the subject of a fiduciary duty.

(4) The judge erred as a matter of law and/or fact by wrongly making determinations and findings that Ms O'Hara was entitled to receive and retain the benefit of:

(i) The net rent on the Property from 2003;
(ii) The actual sum paid to redeem the mortgage on the Property;
(iii) The actual sum paid to redeem the Trustee in Bankruptcy's fees;
(iv) The sum of £6000 received by the HCEO.

Abuse of process

22. Before the judge counsel for Ms O'Hara, Ms Brown, relied on *Henderson v Henderson* abuse of process. Both counsel were in agreement that the test for an abuse of process was as set out in *Johnson v Gore-Wood* [2002] 2 AC 1 and that it was fact sensitive. As Lord Bingham stated in that case at p31:

> *"…Henderson v Henderson* abuse of process, as now understood, although separate and distinct from cause of action estoppel and issue estoppel, has much in common with them. The underlying public interest is the same: that there should be finality in litigation and that a party should not be twice vexed in the same matter. This public interest is reinforced by the current emphasis on efficiency and economy in the conduct of litigation, in the interests of the parties and the public as a whole. The bringing of a claim or the raising of a defence in later proceedings may, without more, amount to abuse if the court is satisfied (the onus being on the party alleging abuse) that the claim or defence should have been raised in the earlier proceedings if it was to be raised at all. I would not accept that it is necessary, before abuse may be found, to identify any additional element such as a collateral attack on a previous decision or some dishonesty, but where those elements are present the later proceedings will be much more obviously abusive, and there will rarely be a finding of abuse unless the later proceeding involves what the court regards as unjust harassment of a party".

23. The chattels had been property allegedly held under the Kingsbury Trust. Mr Kingsbury had brought proceedings in respect of the chattels and the Property but that claim had been dismissed for failure to provide security for costs. Mr Markham's case at trial was that the chattels were not his but were held under the Kingsbury Trust, a trust held by the trial judge to be a sham based on fabricated documents. The factual basis of Mr Markham's application was therefore diametrically opposed to that advanced by him as his case and evidence at trial.

24. Mr Markham could, however, have adopted an alternative case at trial that if the chattels were not held under the Kingsbury Trust then they were his property for which account or credit had to be given against the sums being claimed. He did not do so.

25. Mr Markham's alleged ownership of the chattels appears to have been relied upon in support of an application made by him on 9 January 2012 to vary or suspend the judgment. This application was made without notice to Ms O'Hara and was dismissed by Floyd J by order dated 17 January 2012 which provided that:

> "1. The application appears to be without merit, as it appears to be seeking to raise a counterclaim or set off not raised at the trial, which was over two years ago.
>
> 2. If the application is to be pursued, it must be made on proper notice to the Claimant and dealt with at a hearing when the normal costs rules will apply."

26. On 12 March 2014 Mr Markham issued Particulars of Claim claiming damages for malicious prosecution.

27. On 28 April 2015 Mr Markham was given permission to issue and serve a Claim Form claiming among other things that Ms O'Hara had failed to account for the chattels. On the same day he signed accompanying Particulars of Claim setting out this claim in further detail, including the alleged value of the chattels as part of his particulars of loss.

28. On 23 December 2014 Ms O'Hara made a witness statement in which she said that she had now finally obtained the Particulars of Claim and that it should be struck out for abuse of process. An Application Notice of the same date was apparently issued.

29. On 30 April 2015 Master McCloud, following a hearing, made an order on Ms O'Hara's application dated 23 December 2015 [*sic*] and struck out Mr Markham's claim, ordering that:

> "The Claimant's claim, the particulars of claim [in case HQ14X00238] is an abuse of the court's process and is struck out in its entirety."

That order was not appealed.

30. Although the Court has not been provided with all the relevant documentation relating to the application and the underlying proceedings, it is reasonably clear that this order relates to the April 2015 Particulars of Claim. Mr Markham's claim for an account in relation to the chattels has therefore already been struck out as an abuse of process. It is plainly an abuse of process for Mr Markham to seek to raise the same underlying claim yet again.

31. For this reason alone, I consider that Mr Markham's appeal against Males J's decision on abuse of process has no real prospect of success, and therefore that his appeal has no real prospect of succeeding.

Merits

32. In the light of my conclusion on abuse of process this can be addressed briefly.

33. First, in agreement with Males J, no proper basis for making a claim for an account has arguably been made out. As is stated in *Snell's Equity* (33rd edition) at paragraph 20-015 under the heading "The right to an account":

> "Before a party can be ordered to account, liability to account must be established. This liability arises immediately out of the defendant's receipt of property in an accountable capacity. The basis of the duty to account is the fiduciary relationship. The claimant has the onus of proving that the defendant has received property into their control in circumstances sufficient to import an equitable obligation to handle a property for the benefit of another. The liability to account does not depend on the defendant having mishandled the property or otherwise breached their trust."

34. I agree with the judge that there is no basis for a finding in this case of a fiduciary relationship between Mr Markham and Ms O'Hara.

35. In theory, Mr Markham might have a claim in bailment, but that is not how his claim is put and the common law duty in bailment does not give rise to any equitable duty to account.

36. Secondly, I agree with the judge that there is no satisfactory evidence that Ms O'Hara is in possession of chattels other than those included in the Bowles Order. In considering this issue, Mr Hartman realistically accepted that the evidence of Mr Markham had to be approached on the basis, as found by the trial judge, that nothing he says on a disputed matter can be accepted unless there is independent corroborative evidence.

37. Mr Hartman submitted that there was independent corroborative evidence in respect of at least some of the chattels in the form of 2018 estate agents' photographs of the contents of the Property, and of another property belonging to Ms O'Hara. These were said to show chattels which were not included in the Bowles Order. For this purpose, Mr Hartman produced a Schedule setting out what it was asserted was shown in the photographs and what it was asserted was apparent from inventories and the Bowles Order. For many items, there are, however, obvious difficulties in seeking to make clear identifications from website photographs. Further, many of the items listed in the Bowles Order are generically described and therefore cannot be clearly compared. The inventories can be of little evidential value given the findings of fabrication made by the trial judge and internal inconsistencies. This exercise was gone through in some detail before Males J who concluded that:

> "…there is, in my judgment, no clear evidence that the items shown in the photographs are items which were not included within the order for sale made by the High Court. Although there is some scope for speculation and argument about that, the position is not sufficiently clear to justify the ordering of an account in circumstances such as those which I have described."

38. On the basis of the evidence which the Court has been shown, I do not consider that there is a real prospect of that conclusion being overturned on appeal. Nor does any issue arise in relation to the burden of proof. In the first instance it is for Mr Markham to establish what items have been entrusted and/or bailed to Ms O'Hara, and the evidence does not enable him to do so.

39. For completeness, I should add that in his oral submissions Mr Hartman did not press the grounds relating to items of credit other than the chattels. This was realistic. There is no arguable basis for challenging the conclusions reached by Males J on these matters, for the reasons given by him.

40. On the merits, I therefore also consider that there is no real prospect of an appeal succeeding.

41. There is no other compelling reason for an appeal.

42. In these circumstances, permission to appeal must accordingly be refused.

43. Given the history of this matter, as outlined above, the fact that the application seeks to revive a claim which had already been struck out as an abuse of process, and that the application fails on both the abuse and the merits grounds, I consider that it is appropriate to certify the application to this Court as being totally without merit.

The appeal

44. Phillips J concluded that the general Freezing Order should be discharged because its utility had been served, but that it should be continued in relation to the French chattels. He pointed out that Ms O'Hara continued to maintain that Mr Markham had these in his possession or control, that he was hiding them from her and that if she knew where Mr Markham resided, and he still had the chattels, she would enforce against them.

45. In these circumstances the judge concluded at [9] that:

> "I consider it just and convenient that the identified furniture should continue to be frozen, such that Mr Markham cannot deal with it. If he does have it in his possession, he should not be entitled to dissipate it. If it is not in his possession, then the injunction can do him no harm."

46. His reasons for making this partial discharge order conditional were as follows:

> "11. There is one further aspect of the matter. Mr Markham describes himself as being of no fixed address and yet he comes before the court today seeking relief. In my judgment in order to obtain such relief he must provide his address. I do not accept the suggestion that he is effectively homeless. He has today instructed counsel to attend, and is paying counsel's fees for so doing. Mr Hartman is not able to tell the court how that money has been sourced, notwithstanding the obligation to provide that information under the freezing injunction.
>
> 12. In my judgment, the appropriate course is that the partial discharge of the freezing injunction should be conditional upon Mr Markham providing the address where he is residing to Ms O'Hara, and unless he does that the current order will remain in force. If and when he provides his current residential address, the order will be varied as I have indicated."

47. Mr Markham's grounds of appeal are:

(1) The judge erred in law and/or fact and/or was outside the proper exercise of his discretion in ordering that the Freezing Order would be discharged except in relation to the French chattels – the partial discharge issue.

(2) The judge erred in law and/or fact and/or was outside the proper exercise of his discretion in requiring Mr Markham to provide a residential address before the partial discharge could take effect – the condition issue.

48. In relation to the partial discharge issue, Mr Hartman submitted that, having correctly held that the time had come when the general freezing injunction over Mr Markham's assets should be discharged, and that it was not right that Mr Markham should continue to be subject to an injunction which restricted him dealing with his assets, save for £300 a week, the judge failed to follow that reasoning through to its logical conclusion, namely complete discharge of the Freezing Order.

49. Mr Hartman emphasised that, at the time of the judgment. it was eight years since the Freezing Order was made, over seven years since the discontinuance of the committal proceedings and over three years since the conclusion of the French court proceedings. The purpose of the Freezing Order, as an aid to enforcement, was effectively spent.

50. He also pointed out that the issue of the removal of the French chattels had been dealt with by the French court and that, if any committal proceedings were now sought to be brought relating to them, they would be met by a plea of 'double jeopardy' or issue estoppel. If, for these or related reasons, the Freezing Order could not be enforced, then there was no justification for continuing it in relation to the French chattels.

51. In all the circumstances, Mr Hartman submitted that it was no longer just and convenient for the Freezing Order to be continued and, indeed, that it was oppressive to do so. The judge should accordingly have discharged it.

52. As Ms Stevens-Hoare QC for Ms O'Hara pointed out, this was a discretionary decision made by the judge. As such, it is necessary to show that he erred in principle or reached a decision outside the generous range of reasonable decisions open to him.

53. The judge took account of the relevant legal principles. In particular, he had express regard to the need not to maintain an injunction that had no further utility and to the case of *Republic of Haiti v Duvalier* [1990] 1 QB 202.

54. In the light of the passage of time, and the lack of recent active steps by way of enforcement, the judge decided that the Freezing Order should be discharged, save in relation to the French chattels. In my judgment, he was entitled to conclude that it was appropriate to treat the French chattels differently for the following reasons in particular:

    (1) The context was continuation of an existing order, not the making of a fresh order. The requirements for the making of the Freezing Order remained in place, including the real risk of dissipation by Mr Markham of any assets held by him, someone who had been found to have been a liar and a fraud, who had failed to comply with orders made by the English and French courts, and who had done all he could to resist enforcement of the judgment debt.

    (2) The judge was entitled to conclude on the evidence that Mr Markham owned the French chattels and retained them or was able to exercise control over them.

    (3) It was clear that the French chattels existed, were valuable and had been properly available for the purposes of execution proceedings until unlawfully removed.

(4) The judge was entitled to consider that Mr Markham knew more than he had chosen to include in his evidence about what had happened to the French chattels.

(5) The French chattels had not seemingly come on the open market for sale, it would be reasonable to infer that the Freezing Order was inhibiting their disposal and that it therefore continued to have a legitimate, real purpose.

(6) The only reason the French chattels were not sold with the proceeds going to Ms O'Hara was because, in breach of the express terms of Freezing Order and the French court order, they were unlawfully removed from the Paris Flat. Court orders are there to be respected and complied with and the court should be astute not to allow a party to benefit from their own unlawful act.

55. The only criticism made by Mr Hartman of the judge's reasoning that I consider to be justified is his reliance on the fact that if the French chattels were no longer in Mr Markham's possession or control then the Freezing Order could do him no harm. I agree that this negative consideration cannot justify continuation of the Freezing Order, but it is apparent that this was an observation which was not in any way critical to his conclusion.

56. Mr Hartman's reliance on the French court orders as some form of bar to continuation of the Freezing Order is misplaced. Had Mr Markham complied with the orders made then that might well be a relevant consideration, but in circumstances where he has flouted those orders, their existence can be of no assistance to him.

57. I accordingly conclude that the judge made no error in principle and reached a discretionary decision that was open to him. I would dismiss the appeal on this ground.

58. In relation to the condition issue, Mr Hartman submitted in particular that:

(1) There is no rule that requires a defendant to provide a residential address.

(2) If Mr Markham had a residential address, that does not justify continuation of the Freezing Order, in the absence of some evidence that assets would be there.

(3) If Mr Markham did not have a residential address, there would be no likelihood of assets being wherever he was staying. Further, it would mean that the condition was impossible to comply with.

(4) There was, in any event, no or no sufficient evidence that Mr Markham had a residential address and it was inappropriate to impose the condition unless there was such evidence, and, moreover, evidence that the continuation of the Freezing Order would preserve assets there.

59. In relation to the Rules, under CPR 6.23(2) an individual who has no solicitor acting for him is required to give his residential address. It is only if he has no residential address that he is entitled to give an address for service, as Mr Markham did in this case.

60. In my judgment, the judge was entitled to refuse to accept that Mr Markham had no residential address given, in particular, the absence of any explanation of where and

how he had been living, and the fact that such an address would generally be required to instruct direct access counsel and also to open a bank account, as Mr Markham stated he wished to do. The essential issue, however, is whether it was just and proportionate to continue the Freezing Order in full if Mr Markham failed to provide that address. The judge had concluded that the general freezing injunction should be discharged and, in those circumstances, one would expect there to be compelling reasons for imposing a condition which might result in its continuation.

61. In the present case I am persuaded that there were sufficiently compelling reasons for imposing such a condition. In particular:

(1) Mr Markham's failure to provide the residential address, which the judge justifiably considered him to have, was not merely a breach of the rules, but was part of a pattern of non-compliance with court rules/orders in order to resist enforcement of the judgment debt.

(2) The provision of a residential address is an important aid to enforcement, particularly when faced with a dishonest judgment defaulter. Not only may it provide the location for assets, including in this case known assets such as the French chattels, but it also identifies where the defaulter is and, once that is known, steps can be taken to investigate his actions and dealings. An address is also often a pre-requisite for the making of inquiries, for example in relation to employment or business activities.

(3) In the present case there is a link between the fact that Mr Markham's residence has been unknown since the Paris Flat was sold and the lack of further enforcement steps. As the judge accepted, Ms O'Hara remains keen to enforce in so far as she can do so, and the provision of his residential address may enable enforcement steps to be resumed.

(4) The provision of his residential address is particularly relevant to the French chattels since that they are designed and suited for a residence. In order to make the continuing Freezing Order as effective as possible, it was important that such an address be provided and, given Mr Markham's defaulting history, that the sanction for non-provision of the address be a salutary one.

62. In my judgment the judge was accordingly entitled to impose the condition which he did. On any view, it was within the range of discretionary decisions open to him. My only reservation relates to the precise terms of the condition. Although the judge was entitled to conclude that Mr Markham did have a residential address, if in fact, as Mr Markham claims, he does not do so then the condition is one which it is impossible to comply with. That in my judgment is potentially disproportionate and unfair.

63. I would accordingly vary the condition so that it allows for the possibility for Mr Markham, if he has no residential address, to set out with full particularity in a witness statement why he has no such address, where he has been living for the last twelve months, where he is currently living and where he expects to be living for the next twelve months.

64. I would invite counsel to agree the precise terms of such a condition, and also of the continuation of the Freezing Order if it is partially discharged.

Conclusion

65. For the reasons outlined above I would refuse Mr Markham's application for permission to appeal and his appeal, subject to variation of the terms of the condition imposed. I should add that Mr Hartman said all that could possibly be said in support of Mr Markham's appeal and application.

Lord Justice Underhill:

66. I agree.