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Wealth Structures And Divorce - A \$586 Million Case

Oscar Smith, David Webster and Fiona Read, 10 September 2018



This article examines the recent divorce battle and whether the outcome makes it easier to attack structures that shelter asset that could fall into a marital pot.

Issues around divorce continue to be a regular topic in these pages because of how all the savviest wealth accumulation in the world can be destroyed in an acrimonious breakup. And a

recent case involving England's largest-ever divorce award surely underscores this point. The following article is by Oscar Smith, who is an associate, and David Webster and Fiona Read, partners at law firm Russell-Cooke. The views of the contributors aren't necessarily shared by the editors of this news service but we are pleased to share these ideas and invite responses. Email tom.burroughes@wealthbriefing.com

When divorcing, couples are under a duty to disclose all worldwide assets in which they have an interest to create a marital pot for division. Holding assets in complex corporate structures or offshore trusts as an attempt to protect them from a claim from a spouse in a high net worth divorce is an increasingly common tactic. Doing so not only makes it difficult to identify the true beneficial owner of such assets, and so the extent to which they can be included in the marital pot for division, but also adds complexity to enforcing an English court order against entities in foreign jurisdictions.

A case from December 2016 that well demonstrates these difficulties involves England's biggest ever divorce award. In the English High Court, Tatiana Akhmedova was ordered to receive assets worth over £453 million (\$585.8 million) from her billionaire husband, Farkhad Akhmedov, which included a lump sum payment of £350 million. The original order set aside transactions disposing assets into Bermudan Trusts by Mr Akhmedov in order to avoid his wife's claims against them. His wife also obtained a worldwide freezing order in England, Liechtenstein and the Isle of Man to prevent further dispositions.

Mr Akhmedov was defiant despite the order. He set about moving assets into further complex corporate entities and trusts, based across the globe. In breach of the freezing orders, he transferred his prize asset, Luna, a £350 million superyacht formerly owned by Roman Abramovich, several times, including into a Liechtenstein Anstalt organisation ("Straight") and sailed her from Turkey to Port Rashid, Dubai, in an attempt to defeat enforcement of the order against him.

Indeed, Ms Akhmedova attempts to enforce the judgment were frustrated in various jurisdictions, and proceedings in the Isle of Man, Switzerland, Liechtenstein and Dubai ensued. However, importantly, a freezing injunction obtained in the Dubai International Finance Centre (DIFC) court effectively impounded Luna in Port Rashid.

Upon discovering Straight's recent ownership of Luna, Ms Akhmedova sought further sanctions from the English High Court, including the transfer of Luna to her, to satisfy the £350 million lump sum debt owed. In order to do so, she asked the court to pierce the corporate veil so that Straight's assets could be treated as her husband's. She argued that not only was he the sole beneficial owner of Straight (and therefore its only asset, Luna) but that he had set up Straight for the sole purpose of defeating her ability to enforce the original order against him.

The court agreed with Ms Akhmedova and took the rare step of piercing the corporate veil, making Straight jointly and severally liable for Mr Akhmedov's debt to his wife. This was possible due to Mr Akhmedov's conduct. The timing of the various transfers of Luna between corporate entities (such as shortly after it was clear the marriage was at an end and, again, two days into the trial), and the creation of the entities themselves for the sole purpose of moving the asset, was evidence that he was deliberately attempting to place Luna beyond the reach of the court. The judge described this as an "elaborate and contumacious campaign to evade and frustrate the enforcement of the judgement debt against him". Straight's *raison d'être* was to evade judgment.

Not to be deterred, Mr Akhmedov appealed to the Dubai's Joint Judicial Commission that the jurisdiction of the freezing injunction ordered by the DIFC court should be set aside. He successfully argued that the DIFC court should have no jurisdiction because this is a matrimonial matter and not a financial matter and so should be heard in the Dubai Courts under Sharia Law. Ms Akhmedova was concerned that under Sharia Law, the court would not be in her favour. However, at the hearing before the Dubai Courts in mid-August 2018, the injunction was upheld. The decision was met with widespread approval from international courts at the collaboration in fashioning the fullest possible remedy to combat dishonest and evasive conduct in multiple jurisdictions. Ms Akhmedova now has the task of completing the transfer of ownership of Luna and ultimately selling it to release her money.

This case is a rare example of the court's power to pierce the corporate veil to enable trusts or corporations to be liable for a judgment against an individual. Particularly in recent years there has been a tension between family courts looking to achieve the most realistic allocation and identification of assets within the marital pot, and commercial courts looking to uphold core principles of company law (and commercial practice) around the separate legal personality of companies.

The recent Prest case seemed to send a clear signal that the latter considerations should take precedence, but never completely dismissed the idea that a court might be willing to look behind the separate legal personality of a company and attribute its assets to an individual (or make it liable for an individual's personal liabilities). It is perhaps better viewed as emphasising that this discretion should only be used in exceptional circumstances, rather than treated as a general power of the family courts.

In this case it was clearly felt that Mr Akhmedov's conduct was sufficiently serious for this to apply, and certainly the type of acts involved here were more in line with the limited cases in which the courts have pierced the corporate veil previously.

What is also of note, is that Ms Akhmedova was praised for confining her application to pierce the corporate veil against Straight, and not in respect of a Panamanian company holding assets including her husband's private jet and helicopter in the Isle of Man. This was because there were other remedies available including the more conventional third party debt orders that were enforceable against this company which could not be used against Straight. This emphasises that this type of application should not be made lightly and should apply only to what is strictly necessary.

This case also highlights the complexity of the enforcement of English court orders in foreign jurisdictions and the lengths to which an individual will go to avoid payment. The English High Court praised the Dubai Courts and the DIFC's handling of the matter to uphold justice despite Mr Akhmedov's attempts to avoid it. It is hoped that the cooperation between courts of multiple jurisdictions to uphold foreign judgments evident in this case may foster a more joined up approach in courts enforcing foreign orders going forward, particularly when faced with such defiance by a party.

However, how wide-ranging the impact of this decision will be on wealth and business structuring remains to be seen. It would be going too far to suggest it could definitively be used as a weapon to attack any structure which shelters assets which might otherwise have fallen within the marital pot within a corporate or trust structure. As long as those structures are properly maintained and reflect the reality and substance of the arrangement, then even if put in place for purposes such as tax avoidance, it is likely that the courts will continue to uphold their effectiveness. Equally, it is anticipated that the Adkhmedov case will be used in negotiation and argument in complicated marital cases over the coming months. It may be that in slightly recalibrating the nature of those discussions, the case has a bigger impact than as a legal precedent.

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