Neutral Citation Number: [2020] EWHC 2236 (Ch)

Case No: C31BS010

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN BRISTOL
PROPERTY, TRUSTS AND PROBATE LIST (ChD)

Bristol Civil Justice Centre
2 Redcliff Street, Bristol, BS1 6GR

Date: 14/08/2020

Before :

HHJ PAUL MATTHEWS
(sitting as a Judge of the High Court)

- -

Between :

(1) Goran Vucicevic	**Claimants**
(2) Stephen Anthony Richards Bond	
- and -	
(1) Stanko Aleksic	**Defendants**
(2) Vladika Amilofije	
(3) The Serbian Orthodox Church (Montenegro Branch)	
(4) The Serbian Orthodox Church (Head Office in Serbia)	
(5) The Serbian Orthodox Church Sveti Sava (London)	
(6) Vladan Aleksic	
(7) The Attorney General	
(8) Alex Dubljevic	

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Savic & Co Solicitors for the **First Claimant**

Application dealt with on paper

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to BAILII on the date shown at 2 pm.

HHJ Paul Matthews :

1. This is my judgment on an application made on paper without notice by the first claimant for an order under CPR rule 40.12 "to correct an accidental slip or omission" in the order made in this claim under CPR Part 8 dated as long ago as 31 July 2017, as amended on 16 November 2017. I heard this Part 8 claim on 24 July 2017. I announced my decision immediately afterwards, but stated that I would put my reasons in writing. I handed down those reasons, with one small emendation of my decision as announced, on 20 September 2017 (under neutral citation [2017] EWHC 2335 (Ch)). Subsequently, on 10 October 2017, I handed down a supplementary judgment (under neutral citation [2017] EWHC 2519 (Ch)), dealing with the consequences of an error in my first order, dated 31 July 2017.

2. One of the matters dealt with in that claim concerned the gift in the will of the late Veljko Aleksic of a property in Montenegro which he had himself built. In the will this was described as "House in Djenovice". For the reasons given in my judgments, I held that this property (together with others in the UK) was settled on trust "for the benefit of people in need in Kosovo particularly the children" and that it could not be sold until the year 2040. So far as relevant, my order of 31 July 2017 provided:

> "IT IS DECLARED THAT
>
> 1. Pursuant to the Deceased's last will and testament the Deceased settled the three named properties and his residuary estate on trust for the Serbian Orthodox Church to be used for the benefit of people in need in Kosovo particularly the children."

3. And, again so far as relevant, my order of 16 November 2017 provided that:

> "IT IS ORDERED THAT
>
> 1. Paragraph 1 of the order dated 31 July 2017 shall be varied to include the words 'in London' and shall therefore read 'Pursuant to the Deceased's last will and testament the Deceased settled the three named properties and his residuary estate on trust for the Serbian Orthodox Church in London to be used for the benefit of people in need in Kosovo, particularly the children'."

4. On 7 January 2019 claimants' then solicitors, Alletsons, wrote to the court to say that the court in Montenegro was not sufficiently satisfied by the orders made by the High Court, and required them to be cast in a different form before it would enforce them. A follow-up letter was sent to the court on 4 February 2019. On 8 March 2019, after I had had an opportunity of reading the file and considering the matter, I sent a reply.

5. The substance of the reply was as follows:

> "The draft recast order is divided into three parts. The first part is the title of the proceedings, and is not in substance different from those in the English orders, except that it does not make clear who were claimants and who were defendants, and nor does it distinguish between the defendnats themselves. The second part is

headed "INHERITANCE DECISION", and consists of a number of recitals, some of which correspond to holdings in the written reasons for judgment which I gave in this matter, though not necessarily to provisions in the orders made by the court. The third part is headed "DECLARED" and appears to make a number of declarations, some of which correspond to matters dealt with in the orders themselves, and some to matters in the judgment. But in some cases they deal with matters which were not before the court and were not decided by the court. Lastly, one of the declarations appears to be simply a certificate by the English court that the order is final and enforceable in accordance with the law of the United Kingdom.

Reading between the lines, it seems to me that what the Montenegrin court wants is a certificate of what the English court decided, and also to know that that decision is final and enforceable in accordance with our law. Provision is made for such a certificate under legislation in force in the UK, concerned with the enforcement of judgements, including the Administration of Justice Act 1920, section 10, the Foreign Judgements (Reciprocal Enforcement) Act 1933, section 10, the Civil Jurisdiction and Judgements Act 1982, section 12, the EU Judgments Regulation, article 53, and the Lugano Convention, article 54. So far as I am aware, Montenegro is not covered by any of these provisions, but I am sure that Alletsons will correct me if I am wrong about this. I am also not aware of any international convention between the United Kingdom and Montenegro (or its predecessors) which deals with the provision of such certificates, but again I am sure I will be corrected if I am wrong.

Nevertheless, even though this case does not fall within any of the cases in which the court *must* give a certificate, the English court would like to help if it can. I can see nothing to prevent the court providing a certificate of its judgment if it otherwise thinks appropriate to do so. For example, the English court could if it wished provide a document certifying the orders already made and also that they are final and enforceable in accordance with applicable English law. However, that is not all that the Montenegrin court appears to require in the present case.

[…]

So far as concerns the first part of the draft recast order (the title), I cannot see what is wrong with the original form. No good reason has been given for requiring the change from claimants and defendants to the form presented in the draft recast order. That form does not represent what the English court does or has done in this case. Moreover, it is necessary for some purposes of the orders to be able to identify the particular defendants. The recast version fails to do so. Until some good reason is given for changing it, therefore, I cannot see why it should be done.

So far as concerns the second part of the draft recast order ("INHERITANCE DECISION"), recitals 1, 2, 4 and 7 also appear in a different form in the third part of the recast order ("DECLARED"). They should not appear twice. To my mind they should appear in the second part only. Recitals 3 and 5 contain two of the decisions of the court, found in the order of 24 July 2017 at paragraphs 3 and 5. They should appear in the second part of the recast order but not also in the first. However, recital 5 needs to be corrected. It refers simply to "the defendants"

> instead of to the "third to fifth defendants" as paragraph 5 of the court's order makes clear. Recital 6 is not a decision of the court, and is not found in any of the court's orders. It is included in a *recital* to the order of 24 July 2017, but that is not in the order itself. It therefore cannot appear in this certificate as a matter which has been decided by the court.
>
> Turning to the third part of the draft recast order ("DECLARED"), the paragraphs at the first, fourth and sixth bullet points are problematic. The first bullet point gives details about the deceased and his estate. None of this was in issue before the court, and none of it was decided by the court, or formed part of its order. Similarly with the fourth bullet point, which gives details of the legacies provided by the will, and the sixth bullet point dealing with the pecuniary legacy of €10,000 to "Brit. Cancer Research". Accordingly, the recast draft order cannot certify that the English court decided these matters. It did not. The matters at the second, third, fifth and eighth bullet points are matters contained in the English court's orders and can properly be certified in this part of the recast order. The seventh bullet point contains the certificate that the orders are final and enforceable under English law, and there is no problem about that.
>
> It is clear therefore that there are a number of problems about the presentation of the recast order which must be addressed. But in addition there are some problems of substance. The court cannot advise the parties as to how these might be addressed. The court in Montenegro needs to understand that the English court decided only the questions which were put before it by the parties, and its orders (and not the recitals to the orders, or the written reasons for judgment) are the only provisions which can be enforced according to English law."

6. More than a year later, on 25 March 2020, the first claimant's present solicitors, Savic & Co, wrote to the court, referring to the email from the court dated 8 March 2019, and attached a further draft order which it was hoped dealt with the concerns raised in that email in respect of the earlier draft from Alletsons. This further email was referred to me. I looked again at the file, and asked court staff to respond as follows:

> "I do not understand the draft order that has been submitted. The court has already made a number of orders (31 July 2017, 22 September 2017, 16 November 2017). I cannot remake those orders in another form, at least not without formal application is supported by evidence and served on the other parties to the litigation. Even then, I am not sure the court has jurisdiction to make orders on matters which were not the subject of decision in the original litigation. The matters which *were* decided are those set out in the orders.
>
> As I said in my email in March 2019, I am willing to certify what the court decided in 2017 concerning the Djenovic property, but I do not at present see how at present at least I can make a new order."

7. This reply was sent out by court staff originally on 3 April 2020, but there was a typing error in the email address and the solicitors did not receive it. It was re-sent to them on 14 April 2020. On 4 May 2020 the first claimant's solicitors replied, saying that they were waiting for confirmation from lawyers in Montenegro as to whether the three orders of the High Court, combined with the evidence of the property owned by the deceased would be sufficient to effect the transfer pursuant to the procedure for

recognition for foreign court decisions under the private international law of Montenegro, and whether it would be necessary for the judge to certify what the court decided concerning the property in 2017.

8. On 15 June 2020, the first claimant's solicitors wrote again, attaching a letter for my attention. This sought to make the application the subject of this judgment, under CPR rule 40.12, the so-called "slip rule". The letter explained that

> "the application was to correct an accidental slip or omission in a Court Order by way of the court providing a Certificate, a draft of which is attached. This application is made under part 40.12 because the claimant does not seek to alter the substance of the Court Order dated 31 July 2017, as amended on 16 November 2017, namely:
>
> (1) Pursuant to the Deceased's last will and testament the Deceased settled the three named properties and his residuary estate on trust for the Serbian Orthodox Church in London to be used for the benefit of people in need in Kosovo, particularly the children; and,
>
> (2) The condition attaching to the property in Djenovici forming part of the said trust is valid and as such the property may not be sold until 1 January 2040.
>
> An accidental slip or omission has arisen because, as indicated in the legal note prepared by Messrs Radonjic & Associates dated 6 May 2020, attached […], the Court did not have before it sufficient information about the requirements for the process of recognition before the competent Montenegrin Court and consequently, the Order of the Court dated 31 July 2017, as amended on 16 November 2017, as it relates to the property owned by the Deceased in Djenovici, cannot be recognised by the competent Montenegrin Court and therefore cannot be enforced by way of registration of transfer of title with the Montenegrin Real Estate Register because it does not contain the mandatory requirements for recognition and enforcement, namely, the Order does not contain sufficient detail about the:
>
> (i) Late owner;
>
> (ii) Property title; and
>
> (iii) Beneficiary/successor.
>
> These details are accidentally omitted from the Order of the Court because the claimant, the Administrator of the Estate, was not made aware of the requirements at the time the Orders were made and has since obtained full details of the property title and terms of ownership. The attached witness statement of [the first claimant] and exhibit 'GV 1-3' refer."

9. The witness statement of the first claimant referred to is dated 8 June 2020. In it (at [3]), he states that he has read the legal note from the Montenegrin lawyers dated 6 May 2020,

> "which sets out the requirements for recognition and enforcement of a foreign Court Order, namely, that 'a foreign court order shall contain all data that are necessary for enforcement with the Real Estate Register, such as full details about owner of the specific property, i.e. the late Veljko Aleksic, as well as full details data concerning specific real estate property, i.e. the number of property title deed, municipality, cadastral parcel number etc'.
>
> 4. I therefore also make this statement to explain steps I took to establish the precise details of the property owned by the Deceased in Djenovici in support of the application that this information be included in the Certificate.
>
> […]
>
> 6. On 13 January 2020, I instructed a local lawyer … to conduct a search of the Montenegrin property register in respect of property in Djenovici owned by the Deceased. On 14 January 2020 I received the attached documents … From the said lawyer and on 16 January 2020 I obtained a certified translation of the same … I can therefore confirm that the property detailed in my exhibits is the only property owned by the deceased in Djenovici, Montenegro."

10. The draft certificate sought by this application provides as follows:

> "UPON considering the statement of the claimant … and exhibits referred to therein, it is CERTIFIED that:
>
> By Judgments of the Court … Dated 20 September 2017 and 10 October 2017 and orders of the court made on 31 July 2017 and 16 November 2017, the High Court of Justice in England and Wales DECIDED:
>
> Pursuant to the last will and testament of the late Veljko Aleksic (father Radovan and mother Gospava), a British citizen, born on 19 March 1923 in Pocekovici, Montenegro, who died on 24 October 2014:
>
> > 1. The Serbian Orthodox Church, Saint Sava, London, address: 88-91, Lancaster Road, Notting Hill, London W11 1QQ, a Charity registered in England and Wales [Registration No 249616], is the sole and exclusive testamentary successor of the property owned by the Deceased in Montenegro, inscribed in Title deed No 3, Cadastral municipality Djenovici, cadastral parcel number of parcel 318/1, as follows:
> >
> > > i. Co-ownership right over the cadastral parcel 318/1, total area 617 m², with the scope of right of 1/3, constituted of the land under the building in the area of 70 m², the land under the building in the area of 134 m² as well as the yard in the area of 413 m²; and
> > >
> > > ii. Co-ownership right over the building and special parts thereof with the scope of right of ½ inscribed in the same Title deed No 3 above, constructed on the cadastral parcel 318/1: (i) building No 2, non-residential space PD1 SU, basement of 25 m², (ii) building No 2, non-residential space PD2 SU, basement 24 m², (iii) No 2 residential space

> PD3, P1 101 m², (iv) building No 2 residential space PD4, P1 101 m².
>
> 2. The said property is not to be sold before 2040 and is to be held on trust for the benefit of people in Kosovo, particularly the children.
>
> 3. The Orders made by the Court referred to herein are final and enforceable in the United Kingdom."

11. The letter also referred me to the decision of Snowden J in *Priness Folaremi Ajongbola Santos-Albert v Ochi* [2018] EWHC 1277 (Ch), where the judge considered the scope of CPR rule 40.12. The facts of that case were far removed from the facts of this, but the district judge had made a final charging order on 15 June 2016, and then, following a letter from the claimant's solicitors to the court, amended it under the slip rule without notice to the defendant. The amendment added more than £40,000 to the debt secured by the charging order. The amended final charging order was sent to the parties on 12 July 2016.

12. On 12 May 2017 the claimant issued a Part 8 claim form seeking an order for the sale of the property concerned under the charging order. The defendant indicated an intention to contest the claim for an order for sale, but also issued an application on 12 July 2017 seeking an order that the amendments made under the slip rule to the original final charging order should be set aside. That application came before the district judge on 14 November 2017, when she dismissed it, refusing to vary or discharge the amended final charging order. In her judgment she said this:

> "With regard to the variation of the order, the order as amended under the slip rule reflects correctly the order made. Any variation at this stage would have to be by way of appeal."

13. The defendant sought to appeal the district judge's order on three grounds, including that she "wrongly held that the [defendant's] application to vary the terms of the charging order can only be made by way of appeal". On 27 February 2018, Norris J gave permission to appeal in relation to this ground and in relation to one another. The judge considered that it was

> "arguable that there was a sufficient alteration in the scope of the original order of 15 June 2016 that it should not have been made under the slip rule, and that the district judge was accordingly wrong to refuse to set the amended order aside".

14. On the appeal, Snowden J said this:

> "23. The Court's jurisdiction to amend an order under the slip rule derives from CPR 40.12 which states as follows,
>
> '1. The court may at any time correct an accidental slip or omission in a judgment or order.
>
> 2. A party may apply for a correction without notice.'

24. In *Bristol-Myers Squibb v Baker Norton Pharmaceuticals (No.2)* [2001] RPC 45 at paragraph 25, the Court of Appeal stated, after consideration of a number of earlier authorities,

> 'Those cases establish that the slip rule cannot enable the court to have second or additional thoughts. Once the order is drawn up any mistakes must be corrected by an appellate court. However it is possible under the slip rule to amend an order to give effect to the intention of the court.'

25. Mr. Nicol also contended that the slip rule could not be used to make substantial amendments. By that I understood him to mean that it could not be used to make an amendment to an order the effect of which was very large. He based that contention on a sentence in paragraph 40.12.1 of the White Book which states,

> 'Although not limited to errors by the court or court officers, the rule is limited to genuine slips *and cannot be used to correct an error of substance* nor in an attempt to get the court to add to its original order (e.g. to add a money judgment where none was sought, and none given at the trial).'
>
> (my emphasis)

No specific authority is cited in the White Book for that sentence, albeit that there is then a lengthy analysis of the authorities more generally.

26. The reason Mr. Nicol made that submission was that he complained that the effect (or at least the effect contended for by the Claimant) of the District Judge's amendment to the order of 15 June 2016 had been to add the £42,717.86 to the amounts secured by the Original Final Charging Order.

27. I do not accept Mr Nicol's submission as to the meaning of CPR 40.12. Although CPR 40.12 uses the word 'slip', its real purpose is to ensure that the order conforms with what the court intended, even if the error which has originally been made in drawing up the order is substantial. So, for example, if the court intended to order payment of £1,000,000 but in error the order drawn up by the court required payment of only £1,000, I do not doubt that the order could be amended under the slip rule, even though the financial difference between the order as drawn and the court's true intention would be very great. In my view, as stated in *Bristol-Myers Squibb*, the key requirement in every case is simply that the order should reflect the actual intention of the court. The limitation discussed in the authorities, and which I think is what is meant by the sentence in the White Book, is that there should genuinely have been an accidental error or omission: the slip rule should not be used to permit the court to have second or additional thoughts or to add a provision having substantive effect which was not in the contemplation of the parties or the court at the hearing."

15. In their letter to the court making the application for the certificate by way of correcting an accidental slip or omission, the first claimant's solicitors said:

> "the court's attention is specifically drawn to [27] as to the purpose of rule 40.12, namely to give effect to the intention of the Court. Here the intention of the Court cannot be given effect before the competent Montenegrin Court, without a Certificate being provided on terms set out in the draft, which I understand from [the Montenegrin lawyers], would be recognised by the competent Montenegrin Court.
>
> In an effort not to incur additional costs, I would be grateful if the Certificate is provided without a formal application being made in a form N161 and without the requirement of service on all parties to the litigation because there is no change to the substance of the Orders made".

16. In the present case, the intention of the court in making the orders in 2017 was to resolve the uncertainty that arose from the terms of the will of the deceased. Although it was clear from the terms of the will that the deceased had a house at Djenovici in Montenegro, the details of that property were not in evidence before the court, and were not subject to any decision by the court. The court was not asked to decide, and did not decide, what were the exact details of the property for land registration purposes, because they were not in issue between the parties. It is clear from the statement of the first claimant made for the purposes of the present application that nobody thought of acquiring these details at the time, and it was not until this year that he engaged a local lawyer to do this. The court cannot certify the registration details of the property as having been decided in 2017, because no such decision was made. For the court to make a certificate in the form now sought, would be for the court to have "additional thoughts", as Snowden J said in paragraph 27 of his judgment. Moreover, even if this kind of amendment *were* within the scope of the slip rule, the court would be doing this behind the backs of all the other parties to the litigation, and on the basis of new evidence not seen by anyone else. I appreciate the desire of the first claimant not to spend money unnecessarily and so deplete the funds available for the fulfilment of the worthy causes chosen by the deceased. But if justice is to be done, there are minimum standards to be attained. And minimum standards do involve some expense.

17. The problem arises here because the way in which common law and civil law legal systems deal with the property consequences of death are fundamentally different. In civil law countries (including, I assume Montenegro) the formalities of succession on death are dealt with by a notary (or sometimes by way of an officially issued certificate of inheritance), who takes care to identify precisely the heirs and the assets (and sometimes liabilities) of the deceased. The heirs are few, and are clearly specified in the law (or in a will). Moreover, there are no trusts to complicate matters. The transmission of rights (and liabilities) is instantaneous on death, from the deceased to the heirs, without the interposition of anyone like a personal representative. The heirs will pay the debts of the deceased. Moreover, this takes place in the context of a precise registration system both of persons (using concepts such as the French *état civil*) and of property (often cadastral, as it apparently is in this case). The notarial act or (or certificate of inheritance) will be tailored exactly to the needs of the registration systems.

18. In England and Wales, however, there is no instantaneous transmission from deceased to those who inherit, no *état civil*, and no cadastral property system in the civil law sense. Instead, there is interposed between the deceased and the beneficiaries of his

estate a personal representative, whose function is to collect in assets and pay debts, before passing any remaining positive balance to those entitled to inherit. There is no notary involved, and no official inheritance certificate. This means that in practice succession on death is dependent upon the due performance of the duties of a (private-sector) personal representative, who need not rely on any official information. Here the personal representative could (and no doubt, if the Montenegrin property were situated in England, would) use such extrinsic evidential tools as were available to him or her to identify the property in question. Since the deceased owned only one property in Montenegro, that would present no problem. However, in a civil law system with a cadastral registration scheme, such a pragmatic, "flying-by-the-seat-of-your-pants" approach is unlikely to be acceptable, as indeed the Montenegrin court has confirmed.

19. It is one thing to recognise the cause of the problem. It is another to propose a solution to it. Undoubtedly, the parties did not at the time of the litigation think forward to the problems that might arise with the enforcement of any order made. The lawyers concerned cannot be blamed for this. Their expertise lies in the law of their own countries, and not that of different ones (that is, on the one hand, civil law countries like Montenegro, or, on the other, common law countries like England and Wales). The court is asked to make an order under the slip rule in CPR 40.12. For the reasons given, it cannot do this. There was no accidental slip or omission. The court decided what it was asked to decide. A certificate of that decision cannot change that. I must therefore dismiss this application.

20. Although it is not a matter for me, I add the following comments on the possible way forward. It is clear that the court has power (but to be exercised sparingly, and in exceptional circumstances) to permit amendments to a statement of case *after* judgment, but *before* any order is made: see *Stewart v Engel* [2000] 1 WLR 2268, CA. But here the order has long since been made. There is no suggestion made that the decision itself was wrong on the material then before the court, and an appeal on that basis could not therefore succeed. Nor is it easy to see how an appeal could be made coupled with an application to admit fresh evidence on the appeal (*ie* as to the details of the property in Montenegro): see CPR rule 52.21(2), and *cf Ladd v Marshall* [1954] 1 WLR 1489, CA; *Terluk v Berezovsky* [2011] EWCA Civ 1534, [31]-[32]. This may suggest that the only remaining possibility is to bring a fresh claim under CPR Part 8 for a declaration as to the necessary identification details of the Montenegrin property. If none of the defendants has any objection to it, it could be obtained quite quickly. But it may be prudent, before embarking upon this course, to check that the Montenegrin authorities would give effect to any order that was thereby produced.