



14 October 2015

PRESS SUMMARY

Sharland (Appellant) v Sharland (Respondent) [2015] UKSC 60 *On appeal from [2014] EWCA Civ 95*

JUSTICES: Lord Neuberger (President), Lady Hale (Deputy President), Lord Clarke, Lord Wilson, Lord Sumption, Lord Reed, Lord Hodge

BACKGROUND TO THE APPEAL

This appeal considers the impact of fraudulent non-disclosure on a financial settlement agreed between a husband and wife on divorce, especially one embodied in a court order.

The parties were married in 1993 and separated in 2010. They have three children, one of whom has severe autism and will require care from Mrs Sharland throughout his life. Mr Sharland is an entrepreneur who has a substantial shareholding in a software business, AppSense Holdings Ltd, which he developed. In the financial proceedings between the parties the value and manner of distribution of this shareholding was the principal matter in dispute. Both parties instructed valuers, who produced valuations on the basis that there were no plans for an Initial Public Offering (IPO) of the company.

In the course of the trial in the High Court in July 2012, after Mr Sharland gave evidence confirming that there was no IPO ‘on the cards today’, the parties reached a settlement by which Mrs Sharland agreed to receive 30% of the net proceeds of sale of the AppSense shares whenever that took place, together with other assets. The judge approved the agreement and a draft consent order was drawn up. Before it was sealed, however, Mrs Sharland became aware that AppSense was being actively prepared for an IPO which was expected to value the company at a figure far in excess of the valuations prepared for the hearing.

Mrs Sharland immediately invited the judge not to seal the consent order and applied for the hearing to be resumed. At the hearing of her application in April 2013 the judge found that Mr Sharland’s earlier evidence had been dishonest and, had he disclosed the IPO plans, the court would have adjourned the financial proceedings to establish whether it was going ahead. However, by the time of the hearing, the IPO had not taken place and an IPO was not now in prospect. The judge declined to set aside the consent order on the ground that he would not have made a substantially different order in the financial proceedings, applying the decision of the House of Lords in *Livesey (formerly Jenkins) v Jenkins* [1985] AC 424.

The Court of Appeal upheld the judge’s order (Briggs LJ dissenting) and Mrs Sharland appealed to the Supreme Court.

JUDGMENT

The Supreme Court unanimously allows Mrs Sharland’s appeal. The consent order will not be sealed and Mrs Sharland’s application for financial relief will return to the Family Division of the High Court for further directions. Lady Hale gives the only judgment.

REASONS FOR THE JUDGMENT

It is in the interests of all members of a family that matrimonial claims should be settled by agreement rather than adversarial battles in court [17]. Such an agreement cannot oust the power of the court to make orders for financial arrangements [18] and does not give rise to a contract enforceable in law [19], but the court will make an order in the terms agreed unless it has reason to think there are circumstances into which it ought to inquire [20]. Allied to this responsibility of the court is the parties' duty to make full and frank disclosure of all relevant information to one another and to the court [21].

Family proceedings differ from ordinary civil proceedings in two respects: a consent order derives its authority from the court and not from the consent of the parties and the duty of full and frank disclosure always arises [27]. The consent of the parties must be valid. If there is a reason which vitiates a party's consent there may also be good reason for the court to set aside a consent order. Whether the court is bound to do so is the question arising on the appeal [29].

It is not necessary to decide in this case whether the greater flexibility which the court now has in cases of innocent or negligent misrepresentation in contract law, restricting a victim's right to rescind the agreement, should also apply to such misrepresentations or non-disclosure in consent orders in civil or family cases. The present case is one of fraud. It would be extraordinary if the victim of a fraudulent misrepresentation in a matrimonial case was in a worse position than the victim of a fraudulent misrepresentation in an ordinary contract case, including a contract to settle a civil claim. Briggs LJ in the Court of Appeal was correct to apply the general principle that 'fraud unravels all' and should lead to the setting aside of a consent order procured by fraud [32]. The only exception is where the court is satisfied that, at the time when it made the consent order, the fraud would not have influenced a reasonable person to agree to it, nor, had it known then what it knows now, would the court have made a significantly different order, whether or not the parties had agreed to it. The burden of establishing this must lie with the perpetrator of the fraud [33].

On the facts of this case it is clear that the judge would not have made the order he did, when he did, in the absence of Mr Sharland's fraud, and the consent order should have been set aside. The judge had misinterpreted *Livesey*, which had drawn a distinction between triviality and materiality at the date of the order and not at some later date [34]. He had also been wrong to deprive Mrs Sharland of a full and fair hearing of her claims by re-making his decision at the hearing of the application on the basis of the evidence then before him [35]. The consent order should not be sealed and the matter should return to the Family Division for further directions [36].

The final part of the judgment discusses the procedure to be followed by parties seeking to challenge the final order of a court in family proceedings. The court retains jurisdiction over a marriage even after it has been dissolved and s 31F(6) Matrimonial and Family Proceedings Act 1984 gives the family court power to vary, suspend, rescind or revive any order by it. It is open to the parties either to make a fresh application or to appeal against the consent order. Lady Hale endorses the observations of Lord Wilson in the judgment in *Gobil v Gobil* [2015] UKSC 61 on the question of how such applications should be made, while emphasising that the renewed financial remedy proceedings need not start from scratch and the court may be able to isolate the issues to which the misrepresentation or non-disclosure relates [37-43].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

<http://supremecourt.uk/decided-cases/index.html>