Prof. Dr. Dres. h.c. Burkhard Hess

Kolloquium im SPB 8a, WS 2019/2020

Fall Nr. 4: *Mandy Gray v. Hamish Hurley* [2019] EWCA Civ 2222

Auszug aus den Gründen des Urteils des Berufungsgerichts:

Ms Gray was until 2014 a United States citizen. In 1995, she married a successful investment manager. After periods of living in Hongkong and Japan, they moved to London in 2008. In 2015, they divorced; Ms Gray emerged with half of the matrimonial assets, her share amounting to more than 100 million US Dollars.

Mr Hurley is a New Zealand citizen who was born and educated in New Zealand. He came to live and work in England in 2002. In 2009, Ms Gray met Mr Hurley in London, where he worked as a physical therapist. In March 2013, they began a romantic relationship that lasted until January 2019.

During the relationship, the couple pursued a lavish international lifestyle funded entirely by Ms Gray. They spent more time abroad than in the UK and they each acquired Maltese citizenship in February 2017. The following assets (and others not the subject of legal proceedings) were acquired using Ms Gray's money but were held either in joint names or in Mr Hurley's sole name or in corporate names. A property in Italy costing 9.5 million Euros upon which a further 9 million Euros was spent on restoration and renovation; a farm in New Zealand costing 25 million NZ Dollars; four sports cars in Switzerland costing over 11 million Euros; deposits on two further cars at between 0.5 million Euros and 1 million Euros for the first and 30,000 CHF for the second; business investments totalling 9.1 million US Dollars. In January 2019, Ms Gray ended the relationship. She changed her will, cancelled Mr Hurley's credit cards, and closed their joint accounts.

On 25 March 2019, Mr Hurley began proceedings in New Zealand seeking an order under the Property (Relationships) Act 1976 which applies to qualifying co-habiting couples following the end of a relationship. It distinguishes between 'relationship property' and

‘separate property’. It provides for the division of ‘relationship property’, with a presumption of a half share.

On 26 March, Ms Gray issued proceedings in the High Court in England seeking a declaration that she was entitled absolutely to the listed assets, or that they were held on resulting trust, or for restitution by reason of undue influence. There followed a welter of applications by both parties, among which Ms Gray’s request for an anti-suit injunction restraining Mr Hurley from pursuing the New Zealand proceedings.

In an order of 29 July the Judge dismissed Ms Gray’s anti-suit application. He granted permission to appeal on two grounds: Whether he was wrong that Article 4(1) of the Brussels I *bis* Regulation did not require the grant of an anti-suit injunction, and whether he was wrong that Article 4(1) of the Regulation was not a significant factor in the exercise of discretion as to whether to grant an anti-suit injunction.

Fallfragen:

1. Der Court of Appeal hat das Verfahren ausgesetzt und die Frage, ob eine „anti-suit injunction“ auf Art. 4 I Brüssel Ia VO gestützt werden kann, dem EuGH nach Art. 267 AEUV vorgelegt. Ist das Vorabentscheidungsersuchen zulässig?

2. Kann eine „anti-suit injunction“ auf Art. 4 I EuGVO gestützt werden?