

The Panama (divorce) Papers

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Family analysis: Georgina Hamblin, director at Vardags, considers how the recent Panama Papers leak may impact on divorce proceedings.

Original news

Cross-government Panama Papers taskforce launched, LNB News 11/04/2016 70

A cross-government taskforce has been launched to deal with issues arising from the Panama Papers leak, HM Treasury and Prime Minister, David Cameron, have announced. The taskforce, which will be jointly led by HMRC and the National Crime Agency (NCA), is expected to report its progress to the Chancellor and Home Secretary later in 2016. HMRC is reportedly already investigating 700 current leads they have with a link to Panama.

For more information on the Panama Papers, see: Panama Papers—what are the implications for UK taxpayers? and Wholesale criticism of offshore financial centres is unfair.

What are the potential implications of information in the Panama Papers where it relates to a party currently, or previously, involved in divorce proceedings?

I have absolutely no doubt that many individuals involved, or previously involved, in divorce proceedings who feel that they were short changed and failed to find their pot of gold will be watching the Panama Papers scandal unfold with great interest.

In cases where one spouse has reason to expect that their partner or ex-partner has hidden the true extent of their wealth in a divorce settlement, the names revealed in the Panama Papers may shine a light on such dishonesty. We expect to see a wave of high profile non-disclosure cases coming through the divorce courts as a result.

This will be intensified by the possibility under English law of re-opening concluded financial orders in the event of material non-disclosure. In cases where non-disclosure is shown to be deliberate, the consequences are likely to be even more serious. The courts have firmed up their grip on non-disclosers in recent months, particularly in the landmark Supreme Court cases of *Sharland v Sharland* [2015] UKSC 60, [2015] All ER (D) 108 (Oct) and *Gohil v Gohil* [2015] UKSC 61, [2015] All ER (D) 100 (Oct), in which both women were granted the ability to apply for new settlements after it was found that their ex-spouses had lied about the extent of their wealth. As such, the Panama Papers could very well be the motivation that many have been waiting for to restart their hunt for hidden wealth that they believe to be out there.

What are the obstacles to locating assets where a party is suspected of failure to provide disclosure?

As the Panama Papers reveal, those who are truly determined to hide their wealth, and can afford to pay people to help them do so, have (particularly in recent years) done so.

They may do this by distancing themselves from the ownership of assets—designing complex offshore structures in ‘difficult’ jurisdictions for the English legal system to penetrate, or even by claiming bankruptcy, all in an effort to deceive the court and their former spouses.

I am not talking about careful tax planning or dynastic inheritance planning through trusts here—rather deliberate attempts to hide money from former spouses in contemplation of divorce. This, contrary to the former, is against the law.

These attempts (many of which are wholly unsuccessful) can lead to a difficult and protracted game of cat and mouse, in which avoidance techniques become more and more sophisticated. In the trickier of these cases, no sooner are assets tracked down than they are swept off again to another jurisdiction and the hunt begins again. However, the English courts have had enough of all of this. They are therefore cracking down hard on all those who attempt to play such games.

What remedies are available to a spouse who believes their former spouse has hidden assets, and how effective are they?

The English courts have tremendous powers to undo transactions designed to defeat matrimonial claims, add assets back to the asset schedule (even if they have been spent), and ultimately, send people to prison for non-disclosure and deceiving the court. We are seeing more and more of these orders being made.

A combination of these powers being exercised and these schemes being undermined at the root should hopefully be enough of a deterrent to stop these non-disclosers in their tracks.

However, difficulties do still arise when one party in divorce proceedings suspects that there is more at stake than their former partner claims, but doesn't know where assets are hidden. In these instances, we are still forced to rely on the powers of the courts to force full and frank disclosure (which are getting stronger by the day), and to turn to clever asset tracking and forensic accountancy exercises. Financial forensics is a highly sophisticated corporate and financial discipline and can be extremely successful in tracking assets and redressing the balance of justice. Specialist divorce firms are becoming far more sophisticated in tracking assets down and seeing through these kinds of webs of lies. At Vardags, we've had an in-house financial forensic team working tirelessly on precisely these types of cases, with huge success, for many years.

However, these exercises do still require the person looking for the assets to do all of the hard work and incur the cost in the first instance before seeking to recover it from the wrongdoer. While this does still seem unfair, without proving at least some level of non-disclosure, that pot of gold will not get any closer to recovery.

In your experience, how often is the cost of using the remedies available proportionate to the value of any assets secured or revealed?

The kinds of cases which involve very significant and potentially high value non-disclosure are exactly those that warrant extensive financial research, forensic work and enforcement applications. I have seen cases turned on their heads by this kind of successful research and digging into the truth.

In fact, in those kinds of cases it may prove disproportionate—even potentially negligent—not to try to find what is out there.

The costs of this kind of labour-intensive work are not small, but neither are the risks of not looking—particularly when it is expected that many millions are at stake.

Interviewed by Alex Heshmaty.

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