



## Litigation

Thadani v Thadani - Indemnity costs awarded in Jersey for unreasonable behaviour in English proceedings

July 2010



## Thadani v Thadani 2010 JRC 139 Commissioner Clyde-Smith, Jurats Clapham and Fisher 27 July 2010

### Background

Mr and Mrs Thadani were involved in matrimonial and ancillary relief proceedings in the High Court of England. During the course of these proceedings, Mrs Thadani became aware of a Jersey bank account in the name of Blarsmy Marketing Limited ("**BML**"), which company was believed to be beneficially owned and controlled by Mr Thadani.

Mr Thadani, however, denied being the beneficial owner of BML. Mrs Thadani subsequently obtained a freezing order against Mr Thadani in the English High Court and in March 2006 she obtained a mirror injunction in Jersey freezing Mr Thadani's Jersey assets, including BML's Jersey bank account.

In October 2006, following a five day hearing before the English High Court it was determined that Mr Thadani was in fact the beneficial owner of BML and that he had been untruthful, obstructive and unhelpful in the English proceedings. It was noted that on the day that the English freezing order was granted to Mrs Thadani, Mr Thadani had unsuccessfully tried to pay away \$1M from BML's bank account. Ironically, the bank refused to honour Mr Thadani's instruction by reason of his denial that he was the beneficial owner of BML, which denial conflicted with the bank's own records.

Mrs Thadani was successful in the ancillary relief proceedings in England and was awarded her costs on the indemnity basis. Payments were made from BML's bank account by consent in satisfaction of Mr Thadani's liability to Mrs Thadani. However, the High Court held that it had no jurisdiction to make an award in respect of Mrs Thadani's costs of obtaining the injunction in Jersey.

It was later discovered that Mr Thadani had concealed certain further assets of his and in April 2010 the High Court made a further award to Mrs Thadani. Mr Thadani was ordered to pay the costs of these subsequent proceedings on an indemnity basis as the High Court found that he had shown "*a determination to hide behind denial and evasion*". A committal order was also made against Mr Thadani for default in payment to Mrs Thadani; he avoided committal by belatedly paying sums then due.

In June 2010, as the ancillary relief proceedings in England were winding down, Mr Thadani brought an application for release of the Jersey injunction. Mrs Thadani agreed to reduce the amount secured by the Jersey injunction to £60,000, which was to remain frozen to ensure that funds were available to pay Mrs Thadani's costs, should a costs order be made in her favour.

In July 2010, the Royal Court heard, among other things, Mrs Thadani's application for her costs of the Jersey proceedings on the indemnity basis. A key submission for Mrs Thadani was that until June 2010 he had not litigated in Jersey and therefore his conduct in Jersey was exemplary.

### Decision:

The Royal Court held that to make an award of indemnity costs in Jersey proceedings requires that the case include something to take it out of the ordinary, but that the range of potentially relevant considerations is wide:

*"...the test, in a word, is unreasonableness; the purpose of such an award is to achieve a fairer result for the party in whose favour it is made than would be the case if he were only able to recover costs on the standard basis; in the end, it is a question of what would be fair and reasonable in all the circumstances."*

The Royal Court held that as the Jersey proceedings were ancillary to the proceedings in the English High Court, the Royal Court should give "*considerable weight to the findings of the High Court in those proceedings*". The Court also took note of the unreasonable and personally offensive correspondence which Mr Thadani had directed against Mrs Thadani's English solicitor.

The Royal Court held that Mrs Thadani was "*fully justified in obtaining and thereafter maintaining the injunctions*" over the Jersey assets and that conduct such as displayed by Mr Thadani "*could only be met with an order for indemnity costs, consistent with the costs order made by the High Court.*" The Royal Court noted that matrimonial proceedings were inherently stressful for the parties involved, but that it became immeasurably more so when one party tried to evade and obfuscate as Mr Thadani had done.

### Comment:

This decision is significant because the Royal Court, in determining the level of costs to be awarded in Jersey, was willing to take into account the conduct of the parties in the English proceedings to which the Jersey injunction was ancillary. In the present case, the preponderance of the defendant's conduct warranting the award of indemnity costs had occurred in the course of the English proceedings. This approach is a logical and welcome consequence of the Royal Court's willingness to grant *mareva* injunctions in support of foreign proceedings where no substantive cause of action exists in Jersey.

Mrs Thadani was represented by Advocate Lewis Buckley and Andreas Kistler of Carey Olsen, with assistance from Judy Marais.

Please note that this briefing is only intended to provide a very general overview of the matters to which it relates. It is not intended as legal advice and should not be relied on as such.

© Carey Olsen 2010



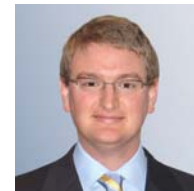
---

Lewis Buckley, Senior Associate

[lewis.buckley@careyolsen.com](mailto:lewis.buckley@careyolsen.com)

Telephone: +44 (0)1534 822362

---



---

Andreas Kistler, Senior Associate

[andreas.kistler@careyolsen.com](mailto:andreas.kistler@careyolsen.com)

Telephone: +44 (0)20 7614 5623

---



---

Judy Marais, Legal Assistant

[judy.marais@careyolsen.com](mailto:judy.marais@careyolsen.com)

Telephone: +44 (0)1534 822241

---

# Contact us

For further information or professional advice please contact our lawyers below.

47 Esplanade St Helier Jersey JE1 0BD  
Tel: +44 (0)1534 888900 Fax: +44 (0)1534 887744



---

William Grace, Partner  
[william.grace@careyolsen.com](mailto:william.grace@careyolsen.com)  
Telephone: +44 (0)1534 822361

---



---

Lewis Buckley, Senior Associate  
[lewis.buckley@careyolsen.com](mailto:lewis.buckley@careyolsen.com)  
Telephone: +44 (0)1534 822362

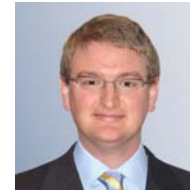
---



---

Nicolas Journeaux, Partner  
[nicolas.journeaux@careyolsen.com](mailto:nicolas.journeaux@careyolsen.com)  
Telephone: +44 (0)1534 822477

---



---

Andreas Kistler, Senior Associate  
[andreas.kistler@careyolsen.com](mailto:andreas.kistler@careyolsen.com)  
Telephone: +44 (0)20 7614 5623

---



---

John Kelleher, Partner  
[john.kelleher@careyolsen.com](mailto:john.kelleher@careyolsen.com)  
Telephone: +44 (0)1534 822320

---



---

Judy Marais, Legal Assistant  
[judy.marais@careyolsen.com](mailto:judy.marais@careyolsen.com)  
Telephone: +44 (0)1534 822241

---



---

Robert MacRae, Partner  
[robert.macrae@careyolsen.com](mailto:robert.macrae@careyolsen.com)  
Telephone: +44 (0)1534 822334

---