

AAZ v BBZ & Ors (2016)

[2016] EWHC 3349 (Fam)

20/12/2016

Barristers

Henry Clayton

Court

Family Division

Practice Areas

Financial Remedies

Judgment of Mr Justice Haddon-Cave, supplemental to AAZ v BBZ [2016] EWHC 3234 (Fam), concerning the principles of Legal Professional Privilege.

This summary should be read in conjunction with the summary of the substantive judgment in AAZ -v- BBZ [2016] EWHC 3234 (Fam). The facts will not be repeated.

During the final hearing of W's application for financial relief, W gave evidence as to the role played by H's long-standing London solicitor, S, in arranging insurance for the Modern Art Collection and his involvement in H's finances. In December 2016, after the trial, the judge granted a witness summons for S to give evidence.

S's counsel objected to questions in cross-examination from W's counsel concerning his involvement in H's financial affairs, arguing that such invaded legal professional privilege ("LPP"). The judge ruled against that contention and S gave evidence which revealed H had moved the Modern Art Collection to a new repository shortly before the final hearing. He also revealed that H had moved \$600m from a company, P Ltd, into a new trust vehicle in another name.

The law and its application to these facts

The judge set out the law on LPP, as contained in the well-settled authorities: *Three Rivers District Council v. Governor of the Bank of England (No.6)* [2004] UKHL 48, *Ventouris v. Mountain* [1991] 1 WLR 607 etc. [§10 to 14].

(1) LPP was an absolute and permanent privilege arising out of a relationship of confidence between lawyer and client.

(2) LPP attached to legal advice given by a lawyer to his/her client. "Legal advice" extended to advice as to what should prudently and sensibly be done in a "relevant legal context" [§13]. If a solicitor became a client's "man of business", advising the client on investment matters, finance policy and other business matters, the advice may lack a "relevant legal context".

In this case, the judge concluded there was no 'relevant legal context'. In relation to the art collection, S was simply arranging insurance, which did not amount to advice, or attract privilege. As regards P Ltd, it was clearly advice given as a 'man of business' as opposed to qua solicitor [§15 to 16].

(3) There was, in any event, an exception for fraud [§14]. Where legal advice was sought or given for the purpose of effecting fraud or 'iniquity' it was not privileged.

Looking to the findings made in the substantive trial, especially those relating to s.37 MCA 1973 and s.423 IA 1986, the judge concluded that the 'fraud' or 'iniquity' exception applied to this case. H's conduct had been seriously iniquitous. The specific arguments raised on behalf of S as to the authorities were rejected [§23 to 26].

Permission

 **Family Law Week**