

**IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION**

CL:

BETWEEN:

JANNA SAMALOVA

Claimant

-and-

CUSTOS GROUP LIMITED

Defendant

PARTICULARS OF CLAIM

1. Where a document is referred to in these Particulars of Claim, the Claimant will rely on it for its full terms, effect and construction.

The Parties

2. The Claimant is Janna Samalova, a Romanian national born on 18 June 1977 currently residing in the United Kingdom.
3. The Defendant is a company incorporated under the laws of England and Wales. The Defendant was at all material times represented by Mr Christen Ager-Hassen (“CAH”) and Mr Henrik Casper Ager-Hassen, the only directors of the Defendant. The Defendant at all material times, through its directors, held itself up to be a litigation/claims management service provider.

The Contract

4. In early December 2021, when the Claimant met CAH, she was married to Mr Kirill Nikolaevich Shamalov (“Mr Shamalov”) and had been since 2 June 2018.

5. Prior to their marriage, on 29 May 2018, Mr Shamalov and the Claimant had entered into a Prenuptial Contract. The Prenuptial Contract provided, *inter alia*, that should the marriage dissolve, the Claimant would be entitled to the equivalent sum of USD 60,000,000.00 within 6 months of the date of dissolution of the marriage.
6. In June 2021, Mr Shamalov and the Claimant permanently separated. Immediately following the separation, the Claimant moved to London. The Claimant wished to launch divorce proceedings to dissolve the marriage and achieve performance of the Prenuptial Contract. The Claimant was aware that Mr Shamalov was seeking to issue proceedings in Russia to declare the marriage as invalid and/or a sham, with the apparent aim of avoiding making any payments to the Claimant under the Prenuptial Contract (the “**Sham Marriage Proceedings**”).
7. CAH, on behalf of the Defendant, advised the Claimant that the Defendant would be able to assist her in issuing divorce proceedings and claiming the payment under the Prenuptial Contract. The Defendant provided a draft agreement for that purpose.
8. On 21 December 2021, the Parties entered into an agreement entitled “*Agreement relating to Strategic Conflict Management and Litigation Strategy Advice*” (the “**Agreement**”) (Annex 1 hereto). The Agreement is governed by English law. The Agreement governed the Defendant’s scope of work relating to the Claimant’s divorce proceedings from Mr Shamalov and the enforcing, or contesting, of the terms of the Prenuptial Contract between the Claimant and Mr Shamalov. The Agreement stated that the Defendant would provide strategic conflict management and litigation advice services, including:
 - a. ensuring that the Claimant’s divorce petition to Mr Shamalov would be filed in the courts of England and Wales (the “**UK Divorce Proceedings**”) before 24 December 2021 (Clause 3.1.1);

- b. analysis and tracking the Europeans assets and property of Mr Shamalov, including accounts held offshore, and assets and property held directly or indirectly through trusts (Clause 3.1.3);
 - c. advising on and “handling” the enforcement of the Prenuptial Contract (Clause 3.1.5);
 - d. appointing, at the Claimant’s expense, appropriate legal counsel (Clause 3.1.7);
 - e. advising and assisting the Claimant in respect of any negotiations with Mr Shamalov and his legal counsel in relation to divorce proceedings and the Prenuptial Contract (Clause 3.1.8);
 - f. providing any such services in connection with the Claimant’s divorce from Mr Shamalov, as the Claimant and Defendant would agree (Clause 3.1.10).
9. In return for the services provided by the Defendant, as set out in paragraph 4 above, the Claimant would pay to the Defendant, no later than 5 days after signing the agreement:
- a. a fixed retainer of GBP 500,000.00 plus VAT, totalling GBP 600,000.00 in advance (Clause 4.1.1 and 4.3.1);
 - b. GBP 500,000.00 inclusive of VAT, on account in respect of legal costs, fees and disbursements (Clause 4.2 and 4.3.2).
 - c. The Defendant would be entitled to an amount equal to 20%, inclusive of VAT, of any amount awarded (including the value of any property awarded) to the Claimant arising out of any settlement, judgment or order of court obtained pertaining to the Prenuptial Contract (Clause 4.1.2).
10. On 23 December 2021, and in compliance with her obligations in terms of the Agreement, the Claimant transferred to the Defendant’s elected account, GBP 1,100,000.00.

Unenforceability of the Agreement

11. The Agreement is an agreement by which the Defendant agreed to provide litigation services and/or claims management services, the terms of which (particularised above) provide that the Defendant would receive a payment to be determined by reference to the amount of financial benefit obtained in the divorce proceedings. Accordingly, the Agreement is a damages-based agreement within the meaning of section 58AA of the Courts and Legal Services Act 1990 (as amended).
12. As the Agreement relates to divorce proceedings, it is a damages based agreement in family proceedings. Family proceedings may not be the subject of a damages based agreement; accordingly the Agreement is void and/or unenforceable and falls to be rescinded or otherwise set aside.
13. The Defendant is liable to return the retainer and disbursements, totalling GBP 1,100,000.00 as *restitutio in integrum* following the rescission of the Agreement.
14. Further or alternatively:
 - a. The Claimant paid the retainer and disbursements operating under a mistake of law that the Agreement was valid and enforceable; and
 - b. The Defendant has been unjustly enriched at the Claimant's expense and is liable to return the retainer and disbursements totalling GBP 1,100,000.00.

The Defendant's Breach

15. Alternatively, if and to the extent that the Agreement was valid and enforceable, the Defendant failed to perform its obligations thereunder.
16. In December 2021, the Claimant, under the advice of the Defendant, and in terms of Clause 3.1.7:
 - a. instructed Harbottle and Lewis LLP to formally serve the UK Divorce Proceedings against Mr Shamalov in Russia;

- b. gave the Defendant authority to deal with and instruct Harbottle and Lewis LLP on the Claimant's behalf.

17. The Defendant made the following representations by CAH to the Claimant through her private banker, Tatiana Griffiths (“**Miss Griffiths**”) to the effect that the divorce proceedings were progressing:

- a. by WhatsApp that “*Kirill [Mr Shamalov] have (sic.) been sent the divorce petition from HM Court & Tribunal Service. Formally it will take up to a year for them to get divorced*”.

- b. by letter dated 13 May 2022 that:

- i. The Claimant had applied for a divorce on 30 December 2021 (enclosing the petition);
- ii. the Court issued the divorced proceedings on that date (enclosing the Notice of Proceedings);
- iii. although the proceedings are in the administrative process of being formally served on Mr Shamalov in Russia, he has been personally notified of the proceedings; and
- iv. in the Defendant's opinion, the divorce proceedings would be uncontested by Mr Shamalov and that the divorce will be finalised in England by the end of 2022.

18. On 31 October 2022 the Defendant wrote to the Claimant informing her that “*delay in the divorce proceedings is purely down to Mr Shamalov's tactic of refusing to cooperate with the English courts in order to cause maximum hurt to Ms Volkova [the Claimant]*”.

19. The Claimant became increasingly concerned by the lack of progress in the divorce proceedings and made her own enquiries. On 18 November 2022, Harbottle and Lewis

LLP emailed the Claimant and informed her that, contrary to the representations made by the Defendant, no progress at all had been made with the divorce proceedings:

- a. they had been instructed to pause all work shortly after the divorce proceedings were issued in December 2021; and
- b. their retainer had been terminated by the Defendant in April 2022.

20. On 12 December 2022 the Claimant, independently and without any assistance of the Defendant, became divorced from Mr Samalov after he instituted divorce proceedings which she did not oppose.

21. Accordingly, the Defendant failed to:

- a. provide any services to our client as set out in paragraph 8 above and is liable to return the GBP 500,000.00 plus VAT payment made in advance;
- b. engage any external legal counsel meaningfully and accordingly the GBP 500,000.00 for future legal fees must be returned to our Client;
- c. recover any assets in terms of the Prenuptial Contract.

22. The Claimant accepted the Defendant's repudiatory breaches of the Agreement:

- a. by email on 7 December 2022 from Miss Griffiths; and/or
- b. by text messages on 14 and 21 December 2022 from the Claimant to CAH on behalf of the Defendant;
- c. alternatively, at the latest by her letter before claim dated 24 November 2023, and accordingly, the Agreement is terminated.

23. On 26 February 2023, at a meeting at the Connaught Hotel, the Defendant, through CAH, accepted that the Agreement had been terminated and agreed to return all of the Claimant's advanced payments made on 23 December 2021.

24. Despite that, the Defendant has not return all or any part of the GBP 1,100,000.00 paid by the Claimant.

Interest

25. The Claimant claims, and is entitled to, interest, whether or not compounded on all sums found to be due to her at such rates as the Court thinks fit pursuant to the Court's equitable jurisdiction and/or section 35A of the Senior Courts Act 1981.

Pre-Action Conduct

26. The Claimant has complied with the requirements of the Practice Direction – Pre-Action Conduct.

And the Claimant therefore claims:

- (1) A declaration that the Agreement, is unenforceable, alternatively, has been validly cancelled.
- (2) The sum of GBP 1,100,000.00;
- (3) Interest as aforesaid;
- (4) Further and/or alternative relief;
- (5) Costs

SOPHIA HURST

STATEMENT OF TRUTH

The Claimant believes that the facts stated in these Particulars of Claim are true. The Claimant understands that proceedings for contempt of court may be brought against anyone who makes or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Full name: Janna Samalova

Signed:



Dated:

02/01/24