

BETWEEN:

JANNA SAMALOVA

-and-

CUSTOS GROUP LIMITED

DEFENCE

1. The Parties as described in Paragraphs 2 and 3 of the Particulars of Claim are agreed.
2. Insofar as the Claimant provided the instructions and information to the Defendant, the contents of Paragraphs 4, 5 and 6 of the Particulars of Claim are further agreed.
3. The contents of Paragraph 7 of the Particulars of Claim are not agreed. The Claimant is mischaracterizing the exact remit of the assistance for the Claimant. In essence, the Defendant was doing no more than using its skills and expertise in “*promoting....[her] legal interests*” The Agreement between the Parties makes clear that this was to be achieved by providing “*intelligence, information collection, analysis and operational skills*”.
4. The Defendant will rely upon the terms of the Agreement for the exact scope of its remit, effect and the construction thereof.
5. The Defendant accepts that the terms set out in the Agreement are reproduced in Paragraphs 8 of the Particulars of Claim. As to the extent that the work of the Defendant as set out therein reflected anything more than the service to facilitate a satisfactory outcome for the Claimant, as opposed to conducting any legal services is a matter of

fact and construction. It is to be particularly noted that appropriate legal Counsel was to be appointed to conduct any actual litigious activity.

6. The terms of the Agreement as set out in Paragraph 9 of the Particulars of Claim are agreed.
7. The contents of Paragraph 10 of the Particulars of Claim are agreed.

The Legal Argument as it relates to the Agreement and Appurtenant Facts

8. It is denied that the Agreement comes within the meaning of Section 58AA of the Courts and legal Services Act 1990 (as amended).
9. On its face the Agreement appears to relate to the Claimant's matrimonial conflict but the same was intended to be and was in fact an agreement as to Strategic Management and Strategy Advice only. It is further clear that all steps in the conduct of the actual litigation services in respect of the matrimonial conflict between the Claimant and her former husband were to be carried out by properly appointed legally qualified personnel, whether solicitors and/or barristers, to whom actual fees would be paid by the Claimant.
10. It was clearly understood by the Claimant that a law firm was required urgently to be appointed to act on behalf of the Claimant and to this end the firm of Harbottle and Lewis LLP were retained with almost immediate effect. Indeed, the said firm issued a letter of engagement to the Claimant dated 22nd December 2021 which provided, amongst other things, that the firm had been approached to advise the Claimant and act for her "*in connection with matrimonial issues arising from the breakdown of [your] marriage*". The letter of engagement went on to specify that the firm would simply be liaising with the Defendant but that all matters of a matrimonial nature would be supervised by the author of the letter, Catherine Bedford, who further identified the other members of the team who would be involved. The letter set out the fee structure that would apply to the case and requested an 'upfront' retainer 'on account' of £10,000.00.
11. The Agreement specifically provided for fees to be paid for the litigation services contemplated by the Act and not by any contingency as per paragraph 4.2 of the

Agreement and the letter of engagement referred to in paragraph 10 above confirms that this was the purport and essence of the Agreement; namely that all matters matrimonial were to be handled by a legal team to be paid fees and all matters that required strategic investigation would be handled by the Defendant, mainly in respect of discovering the whereabouts of the former husband's assets so that the legal steps could be taken to enforce the pre-nuptial agreement with effect.

12. A damages based agreement (“**DBA**”) specifies that the financial benefit deriving from recovery is to be paid by the litigant to the person providing advocacy services; litigation services or claims management services in lieu of fee payment. In the instant case the Defendant was providing strategic advice and strategic management services as an adjunct to actual legal services in conducting the litigation. Moreover, a damages based agreement is an agreement that provides for fees being payable only in the event of recovery whereby the legal parties to the agreement (whether solicitors, barristers or a claims management service) will be paid from the recovery proceeds. It is clear that this Agreement provides that no legal party was to be paid on any contingency basis in respect of the handling of the litigation, if any, were to be pursued.
13. It is thus denied that this Agreement was an effective funding agreement which allowed for percentage recovery (and which will be subject to new legislation to ensure their validity to overcome recent rulings by the Supreme Court). This Agreement was a straightforward fee agreement whereby the Claimant was required to pay specified sums to fund any litigation or advocacy pursuant to her claims and would be required to pay a defined percentage as an additional fee for the advice services provided by the Defendant. The contingency was not in lieu of fees as contemplated by any DBA; it was part of the fee agreement that the Claimant knew she would be required to pay to the Defendant in addition to the legal fees, disbursements and costs arising from any litigation.
14. The Defendant denies that the Agreement falls foul of the statutory prohibition and thus denies that the same is unenforceable as alleged or at all.
15. Further and in the alternative, if (which is denied) the Agreement provided for a partial contingent recovery which could be deemed unenforceable, the Claimant is not entitled to the return of any monies that have been paid pursuant to the Agreement. If it proves

that the contingent payment is unenforceable, the Defendant has not sought and is not seeking its enforcement and thus the claim relying as it does on an arguable unenforceable clause is misconceived.

Services Provided

16. The Defendant specifically denies that it was in breach of the terms of the Agreement.
17. The Defendant agrees that the firm of Harbottle and Lewis LLP was instructed to deal with the litigation side of the Claimant's divorce. The Defendant denies that the proceedings were paused or held up by any act or default on the part of the Defendant.
18. Contrary to the allegation that the Defendant failed to act in accordance with their Agreement with the Claimant, the Defendant spent many hundreds of hours carrying out the necessary work to ensure that the Claimant was in a position for her lawyers to achieve the result that she wanted in relation to her due, pursuant to the pre-nuptial agreement. The Defendant, however, was required to act swiftly to ensure that the Claimant's jurisdictional position before the English courts was established before embarking upon the work required to trace the assets of the Claimant's former husband, Kirill Shamalov ("**Mr Shamalov**"). The deadline for filing the divorce was 24th December 2021. To this end the Defendant was required to:
 - (i) Bring 'on board' a law firm immediately;
 - (ii) Co-ordinate with Harbottle & Lewis LLP when the firm prepared their engagement letter for the Claimant;
 - (iii) Hold multiple meetings with the Claimant to obtain information and discuss strategy in respect of the necessary asset searches;
 - (iv) Analyse the files held by the Claimant to understand the complications of the relationships and how the Russian authorities could be approached to effect the finding and obtaining of the assets of Mr Shamalov;
 - (v) Conduct interviews with the Claimant for first-hand information and her insights;

- (vi) Engage with the solicitors, including the employed barrister/associate at the firm, to provide them with necessary information so that they might be effective in taking the necessary legal steps to obtain the just result for the Claimant;
- (vii) Organize all relevant paperwork for the legal advisors in preparation for the court.

19. Once the divorce itself had been filed on 23 December 2021 the Defendant had to set about the identification and analysis of Mr Shamalov's assets. This was a difficult and delicate task, given that although Mr Shamalov had been divorced from President Putin's daughter, he and the President of Russia were closely associated and on good terms.

20. To effect the aims set out above, detailed and careful research was required comprising the review of financial records, investigations into holdings in Russia and offshore comprising trust structures, both on and offshore done. The Defendant worked with specialists, including forensic accountants, to establish the whereabouts and nature of the assets of Mr Shamalov.

21. The Defendant compiled a great deal of the required information to be passed to the lawyers whilst having to work with great care in view of Mr Shamalov's connections and within the boundaries of the fact that he was a sanctioned individual.

22. In the early months of 2022, the Defendant diligently amassed valuable material for the lawyers and carried out extensive work, all of which is documented and can be disclosed in due course. When war started between Russia and the Ukraine, this created difficulties for the Defendant as the entire area was unstable and difficult to penetrate for any information.

23. Despite the instability in the region, throughout 2022, the Defendant diligently continued with its efforts to establish the whereabouts of the necessary funds and adjusted its strategy whenever circumstances required. The Defendant continued to provide information and strategic support to the lawyers and emotional and moral support to the Claimant.

24. It is averred, and the Claimant well knew, that the said firm of solicitors, from about the middle of 2022, became increasingly reluctant to continue and ultimately refused to act for the Claimant due to the identity of Mr Shamalov and his ties with the Russian President. The Defendant persuaded Harbottle & Lewis LLP to stay on the record as long as possible despite its determination to conclude its retainer with the Claimant. With this development from the legal team, when Mr Shamalov took the initiative to commence divorce proceedings in Russia, the Claimant agreed that it was beneficial for her to take advantage of such action and have the divorce effected in Russia.
25. The Defendant involved a leading KC to deal with the Claimant's ongoing child custody issues despite this falling outside the terms of the Agreement. The Claimant remains liable to pay those fees as and when a fee note is rendered as the £500,000 paid by the Claimant on account of disbursements has been spent by the Defendant who can and will account for all disbursements paid on behalf of the Claimant.
26. The balance of £600,000.00 (which figure includes VAT) was a non-refundable deposit and was fully earned by the Defendant in the discharge of the work done on behalf of the Claimant.
27. It is averred that, far from there being a failure of consideration as alleged or at all, the Defendant has costs and fees for the hours expended and the work done in excess of the £1.1million paid to it pursuant to the contract.
28. The Defendant denies that it was in repudiatory breach of the Agreement or that the Claimant is or was legally entitled to 'accept' any such breach and it is denied that she has done so.
29. Moreover, the claim herein is demonstrative of the Claimant's blatant breach of the Agreement whereby she willingly signed the same, received and accepted the services and now seeks to renege upon the same despite having received good and valuable consideration for the payments made by her.
30. The Defendant specifically denies the allegations made in respect of the alleged meeting at the Connaught Hotel on the 26 February 2023 as set out in paragraph 23 of the Particulars of Claim. It is admitted that the Parties did meet but it is averred that any

such agreement that was arrived at amounted to an effective ‘*drop hands*’. The Claimant would not seek to recover monies paid over to the Defendant and in turn, the Defendant would refrain from seeking any or all of the percentage entitlement of 20% in respect of the Claimant’s recovery.

31. These proceedings are a breach by the Claimant of the compromise agreement that was reached by the Parties on the said date.

32. In all the circumstances the Claimant is not entitled to the return of all or any part of the monies had and received by the Defendant pursuant to the Agreement nor is she entitled to the interest claimed or any other relief.

Jacqueline Perry KC

Statement of Truth

The Defendant believes that the facts stated in this Defence are true. The Defendant 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.

Christen Ager-Hanssen
Christen Ager-Hanssen (May 17, 2024 16:46 GMT+2)

Christen Ager-Hanssen

Position: Director

17 May 2024