

AKHMEDOVA V AKHMEDOV AND ORS [2020] EWHC 1526 (FAM)



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The value and importance of litigation funding, described by the Court of Appeal as “an accepted and judicially sanctioned activity perceived to be in the public interest”, has received a further endorsement by the recent judgment of the Family Division of the High Court in *Akhmedova v Akhmedov and ors* [2020] EWHC 1526 (Fam). It also represents a clear signal that speculative challenges to legitimate funding arrangements will not be entertained. Whilst the judgment is plainly relevant to family proceedings, it also has wider application to litigation financing across the board.

The latest judgment in these proceedings arises out of Ms Akhmedova’s ongoing attempts to enforce a financial award of over £450 million against her ex-husband, Farkhad Akhmedov (“FA”), awarded to her by Mr Justice Haddon-Cave (as he then was) in December 2016. It is well known by now that FA has refused to pay a penny of the award voluntarily, and that he has been engaged in “an elaborate and contumacious campaign to evade and frustrate the enforcement of the judgment debt”. Ms Akhmedova’s enforcement proceedings now include claims against the couple’s son, Temur Akhmedov (“TA”), in which she says that he received substantial assets from FA, as part of FA’s schemes to put those assets beyond her reach.

In response to the proceedings now brought against him, TA filed a counterclaim for an injunction seeking to restrain Ms Akhmedova from instructing any solicitors funded by her agreement with Burford Capital. TA argued that the funding agreement was unlawful on the grounds that:

- i. such agreements were contrary to public policy against the champertous maintenance of litigation; and
- ii. he had also raised a novel and important issue of public policy in the conduct of family proceedings, where third parties should not “traffic” in the outcome of the spoils of matrimonial litigation.

Ms Akhmedov applied to strike out that counterclaim and, following a 4-day hearing in May, Mrs Justice Knowles granted Ms Akhmedov’s application. The court found that Temur had no standing to bring the claim and no grounds in fact and law for asserting that the arrangements were unlawful or contrary to public policy.



The judgment contains a useful summary of principles for litigation funding, including:

- **Compliance with Code of Conduct:** The judgment represents a significant endorsement of the Code of Conduct produced by the Association of Litigation Funders (“ALF”, of which Ms Akhmedov’s funder Burford are founding members). The Code of

Conduct has already received the endorsement of the Civil Justice Council, and the Court of Appeal in *Excalibur Ventures LLC v Texas Keystone Inc* [2016] EWCA Civ 1144). Mrs Justice Knowles concluded: “It is thus difficult to envisage how litigation funding conducted by a responsible funder adhering to the Code of Conduct could be construed to be illegal and offensive champerty or might be held to corrupt justice.”

- **No exception for family proceedings:** Family proceedings are not inherently different to other proceedings. The judgment referred to other first instance decisions in the Family Division, recognising that funding can be a “necessary and invaluable service in the right case”. TA invited the court to draw an analogy between litigation funding and conditional fee agreements (which are expressly not permitted in family proceedings by statute) but Mrs Justice Knowles refused to do so on the basis that such argument was “misplaced”.
- **Rights of control:** A funder of litigation is not forbidden from having rights of control, and public policy would only intervene to prohibit a funder from exercising rights of control in a manner which would be likely to undermine or corrupt the process of justice, such as if (as stated in *Davey v Money*) that control would allow the funder “to suppress evidence, influence witnesses, or procure an improper settlement”. In fact, it promoted the administration of justice for

responsible funders to be involved in rigorous analysis and review of the litigation which they fund.

- **Settlement:** This is particularly the case in relation to settlement. Even if Mrs Akhmedova were required to obtain Burford's consent before settling her case, that would appear to be a perfectly proper protection for Burford as funder and would not tend to corrupt justice.
- **Value irrelevant:** The fact there is a significant value of the financial investment, or any profit obtained from it, has no bearing on whether a funding arrangement is champertous.

The judgment also contains useful guidance that those wishing to challenge litigation funding agreements should heed:

- Knowles J stated that it was necessary for TA "to show some prejudice or injustice to him arising from those funding arrangements or that the funding arrangement may be champertous". However, given he had failed to do so, and in the context of a litigation funder adhering the ALF's Code of Conduct, "[i]n my view, he cannot sensibly maintain, in the light of the Court of Appeal decision

in *Excalibur*, that the litigation funding in this case is prima facie champertous."

- It is well-established that the court will not stay a bona fide action even if it were to be supported by a champertous funding agreement. In circumstances where TA had pleaded no cause of action, and had also failed in oral argument to demonstrate that there were any legally recognisable grounds to challenge the legality of those arrangements, TA had no standing to seek relief in any event.
- Without such good reason, a party cannot be granted disclosure of the terms of the funding agreement, in

order to investigate whether it is in fact champertous: "Ignorance as to the precise terms of the Wife's funding arrangements does not, of itself, justify further enquiry or disclose reasonable grounds for bringing the application particularly in circumstances where the Wife's litigation funder adheres to the ALF's Code of Conduct."

Finally, the judgment recognised that champerty was "increasingly recondite area of law", and "is not a developing area of jurisprudence which requires detailed consideration by this court". Unsurprisingly, however, in this heavily fought litigation TA is seeking permission to appeal from the Court of Appeal.

