



## Court of Appeal Decision re Disclosure on Divorce

On 29 July 2010, the Court of Appeal decided a case which has far reaching implications for spouses (usually wives) who fear that their husbands will be economical with the truth when it comes to disclosing their assets on divorce.

A practice had grown up in divorce cases whereby spouses were encouraged to (or at least not discouraged from) obtaining and copying documents relating to their other half's finances.

Basically, anything that could be obtained without the use of force (so no breaking open locked doors or cupboards) was fair game.

Subject to the fact that you had to tell the other side that you had got the documents (and so could not use them to set traps) you were then free to use the documents, or information, in the finance dispute in Court.

Aggrieved spouses (who will always say they were going to disclose everything anyway) who have suffered from this sort of tactic include the celebrity chef, Marco Pierre White, who sent shock waves through the profession by suing not only his wife, but also her solicitors.

Now the Court of Appeal has condemned any such tactics. The case was an extreme one (and, as is usual in cases that hit the headlines) involved extremely wealthy people. Briefly, the husband was in business with the wife's brothers, who provided office facilities and a computer system. With technical assistance the brothers downloaded a huge volume of documents concerning the husband's financial affairs. The data was the equivalent of between 250,000 and 2,500,000 pages. They took the precaution of delivering the documentation straight to a solicitor, who immediately instructed a barrister to sort out anything that might be legally privileged. The remainder (some 7 lever arches of paperwork considered relevant) was then sent to the wife's solicitors.

The husband applied for an Injunction for the return of all copies of the documents.

The Injunction was granted, except that the wife was allowed to retain the 7 lever arches of paperwork on the basis that these would have had to have been disclosed anyway, and could legitimately be used by her in the financial proceedings. The wife and her brother were ordered to pay costs.

The husband appealed this decision and the Court of Appeal agreed that all documents should be returned. The basis of the decision was breach of the husband's right to confidentiality in respect of his personal documents, the possibility that criminal offences

under the Criminal Offences under the Data Protection Act and the Computer Mis-use Act 1990 and also breach of the husband's property rights.

Although it was argued that the rules that had grown up were sensible and practical and necessary to avoid the regrettable tendency of some parties to divorce proceedings to be less than candid, the Court of Appeal were having none of this.

The Judges pointed out that it would of course have been possible for the wife, provided she had sufficient evidence of the likelihood of the husband disposing of assets, to apply to the Court for a Search and Seizure Order. Whilst this is probably perfectly correct in the case the Court of Appeal were concerned with, the practicality of going through a hugely expensive legal procedure, costing very many thousands of pounds, is not of any realistic practical assistance to the more run of the mill divorce cases where a bank account, or insurance policy worth £15 - £20,000 may be nonetheless very important, in achieving a fair distribution of assets between the parties.

Whilst this decision will certainly lead to an increase in the use of applications for Search and Seize Orders will be of limited assistance to the average participant in a financial dispute in divorce in Nottingham.

The only hope may be that Injunctions are always a discretionary remedy and may not always be granted or, alternatively, it may be possible in certain circumstances to show that any confidentiality had effectively been waived (for example by leaving documents lying around where they are likely to be seen).

The real outcome however is likely to be that a very useful and practical way of exposing a husband, who may be likely to be dishonest and devious in his disclosure, has been very emphatically removed by the Court.

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