Neutral Citation Number: [2013] EWHC 1735 (Fam)

Case No: FD13D00606

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/06/2013

Before :

MR JUSTICE MOSTYN

- -

Between :

UL	**Applicant**
- and -	
BK	**Respondent**

- -
- -

Philip Marshall QC and Peter Newman
(instructed by **Jones Nickolds**) for the **Applicant**

Deborah Bangay QC and Dakis Hagen
(instructed by **HowardKennedyFsi LLp**) for the **Respondent**

Hearing dates: 16 May 2013

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

MR JUSTICE MOSTYN

This judgment is being handed down in private on 24 June 2013. It consists of 80 paragraphs and has been signed and dated by the judge. The judge hereby gives leave for it to be reported in this anonymised form as *UL v BK (Freezing Orders: Safeguards: Standard Examples)*

The judgment is being distributed on the strict understanding that in any report no person other than the advocates or the solicitors instructing them (and other persons identified by

name in the judgment itself) may be identified by name or location and that in particular the anonymity of the children and the adult members of their family must be strictly preserved.

Mr Justice Mostyn :

1. In this judgment I will refer to the applicant as the wife and to the respondent as the husband.

2. This is my judgment on the application by the wife for the continuation of an ex parte freezing order granted by this court on 21 February 2013. On that day a second order was made which provided that certain documents which belonged to the husband should be handed over to her solicitors and retained in sealed files until further order. The initial return date was set for 18 March 2013 but was re-fixed for 16 May 2013 by agreement.

3. The freezing order –

   i) prevented the husband from dealing with a property in Marbella said to be worth £10m and froze further assets "presently registered in his sole name" up to a combined value of £20m; and

   ii) required the husband to file and serve a sworn statement providing details of all assets held worldwide in his sole name and details of any trust/settlement of which he is a beneficiary and to nominate which assets (up to £20m) should be frozen.

4. The freezing order did not –

   i) clearly state on its face whether it is a worldwide freezing injunction or limited to England and Wales;

   ii) state on its face why no notice, not even short informal notice, had been given to the husband;

   iii) contain an exception which allowed for a specified amount to be spent by the husband on weekly living expenses and legal advice and for the disposal of assets in the ordinary and proper course of business;

   iv) contain an undertaking by the wife to pay damages to the husband or any third party caused loss by the order which the court may be of the opinion ought to be paid;

   v) contain an undertaking by the wife to pay the reasonable costs of anyone other than the husband which have been incurred as a result of compliance with the order;

vi) contain an undertaking by the wife not, without the permission of the court, to use any information obtained as a result of the order for the purpose of any civil or criminal proceedings, other than the present claim, either in England and Wales, or in any other jurisdiction;

vii) contain an undertaking by the wife, without the permission of the court, not to seek to enforce the order in any country outside of England and Wales; or

viii) contain a statement of the right of the husband to apply, within 7 days, to set the order aside. This requirement is prescribed by FPR 2010 rules 18.10 and 18.11. The right to apply afforded to any affected party by those rules does not prescribe any minimum period of notice. Here an order was made which granted the husband the right to apply to set aside or vary the order but only on giving 48 hours notice. Nothing in the order or the note of the hearing explains why the husband's rights under rules 18.10 and 18.11 were cut down.

5. The order freezing further assets "presently registered in his sole name" up to a combined value of £20m was made notwithstanding that in para 13 of her affidavit made in support of the application the wife stated *"other than the Spanish Property, I am not aware of any other property in [the husband's] sole name; in fact, I fear that this may be the only asset in his sole name"*.

6. This sparse initial summary reveals either that this must either be a wholly exceptional case or that things must have gone seriously wrong. It is remarkable for this freezing order to have omitted every single standard safeguard and to have frozen, in addition to the Marbella property, other assets up to £20m held in the husband's sole name when the wife had positively deposed to a belief that he did not actually have any.

7. This is not a wholly exceptional case. Things have gone seriously wrong. It is therefore necessary for me to set out once again the elementary principles, derived from legion authorities, in the hope that the approach adopted here never again recurs.

8. The husband's position is that the wife has violated almost every known principle governing a freezing application and that therefore, without more, the order should be discharged. However, entirely without prejudice (a) to that contention and (b) his claim that he in fact has no legal or beneficial interest in the Marbella property, and in a spirit of pragmatism, he offers an undertaking that he will take no steps to dispose of charge or otherwise deal with it, nor will he encourage the company that owns it to do so.

The power to grant freezing injunctions

9. In their careful written submissions for the husband at para 44 Miss Bangay QC and Mr Hagen argue that it is likely to be a solecism to refer to the general power of the High Court to grant a freezing order as arising only under the "inherent jurisdiction of the court". Rather, they argue that the jurisdictional foundation arises under s37 of the Senior Courts Act 1981. Although the power is undoubted, and the genesis of the power is therefore largely only of academic, as opposed to practical, significance, I am doubtful that it is strictly correct to suggest that the origins of the jurisdiction were solely statutory. There is however one important aspect to this issue to which I refer at para 14 below.

10. An injunction is an equitable remedy which originally could only be granted by the Court of Chancery or the Court of Exchequer in equity. (The equity jurisdiction of the latter court was abolished by the Court of Chancery Act 1841.) By section LXXXII of the Common Law Procedure Act 1854 the common law courts were given a wide jurisdiction, where it "shall seem reasonable and just", to grant injunctions in cases of breach of contract and other like wrongs; so wide, in fact, that Baggalay LJ observed in *Quartz Hill Consolidated Gold Mining Company v Beall* (1882) 20 Ch D 501 at 509 that the common law courts had a more extensive jurisdiction regarding the grant of injunctions than the Court of Chancery itself. Therefore, at that point, the power to grant injunctions was, so far as the Court of Chancery was concerned, both inherent and historic, while for the common law courts it was a brand new statutory power.

11. The 1870s saw the implementation of the great project to unite and consolidate the various separate courts and their separate systems of law into one Supreme Court of Judicature. The principal statute was the Supreme Court of Judicature Act 1873. As is well known by s24 law and equity were to be concurrently administered, and by s25(11) the rules of equity were to prevail where they were in conflict with the rules of common law.

12. The power to grant injunctions was expressly addressed. By s25 (entitled "rules of law on certain points") it was provided:

> "And whereas it is expedient to take occasion of the union of the several Courts whose jurisdiction is hereby transferred to the said High Court of Justice **to amend and declare** the Law to be hereafter administered in England as to the matters next herein-after mentioned: Be it enacted as follows: … (8) A mandamus or an injunction may be granted or a receiver appointed by an interlocutory Order of the Court in all cases in which it shall appear to the Court to be just or convenient that such Order should be made; and any such Order may be made either unconditionally or upon such terms and conditions as the Court shall think just …" (emphasis added)

13. That power was re-enacted in almost identical terms in s45(1) and (2) of the Supreme Court of Judicature (Consolidation) Act 1925, although the statement that it "amended and declared" the existing law was omitted. It was again replicated in section 37 of

the Supreme Court Act 1981, now renamed the Senior Courts Act 1981, which provides that:

> "(1) The High Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the court to be just and convenient to do so.
>
> (2) Any such order may be made either unconditionally or on such terms and conditions as the court thinks just."

14. It can therefore be seen that the power to grant an injunction, while placed on a statutory footing by s37, does not derive solely from the legislature. Rather, it is a hybrid creation of the old equitable power and 19th century statutory intervention. Therefore, I do not consider that it is a solecism to refer to the power deriving from the inherent jurisdiction of the court. That said, the power is clearly defined and regulated by s37 of the 1981 Act alone, and therefore its exercise can only be effected under that section and the authorities decided under it. There is no scope for the use of some other wider protean inherent power (even if such exists, which I doubt) whether in the Family Division or the other Divisions. And the principles concerning the exercise of the power must be identical in whichever Division the relief is sought.

15. I now turn to the question whether there is a difference in the test to be applied when ruling on an application for a freezing injunction depending on whether the application is made under s37 Supreme Court Act 1981 or s37 Matrimonial Causes Act 1973. In my decision of *ND v KP* [2011] 2 FLR 662 after a fairly cursory examination of the civil authorities I concluded that there was in fact no difference between the two tests; and that, indeed, it would be very strange if there were. My decision was considered by the Court of Appeal in *Edgerton v Edgerton* [2012] 2 FLR 273 in a constitution presided over by Lord Neuberger MR and it was approved (although it is fair to say that this particular aspect was not discussed).

16. However, in this case Mr Marshall QC for the wife argues that my view that the two tests are congruent "does not accord with the test within the inherent jurisdiction (balance of convenience)" and is contrary to earlier authorities. The authorities are *Roche v Roche* (1981) Fam Law 243, *Shipman v Shipman* [1991] 1 FLR 250 and the speech of Lord Mustill in *Harrow LBC v Johnstone* [1997] 1 FLR 887.

17. Before I examine those authorities it is convenient to return to the principles which govern a freezing application made under s37 of the 1981 Act. I attempted to set them out in *ND v KP*. Put shortly, those principles, as summarised in the White Book, require an applicant to put forward an appropriately strong case, supported by evidence of objective facts (rather than mere expressions of suspicion or anxiety), that the respondent owned or had an interest in specified assets and that there was a real risk of their dissipation.

18. It seems to me that prima facie proof of a risk of dissipation requires, at least in general and broad terms, proof of an intention to dissipate – dissipation in this context

surely means a deliberate or reckless dealing with assets rather than some random event unconnected to the motives of the respondent. I acknowledge that in *Alternative Investment Solutions (General) Ltd v Valle de Uco Resort and Spa SA* [2013] EWHC 333 (QB) at para 8 Cranston J stated: "There is no need for a claimant to show an intention to dissipate assets, nor dishonesty or fraud. Where there is a good arguable case of dishonesty or fraud the risk of dissipation may speak for itself. The conduct giving rise to a real risk of dissipation must not be capable of justification". This would suggest that proof of a nefarious intent is not needed, but that proof of unjustified conduct will suffice. I consider that there is no real difference between the two. It may be that Cranston J was drawing a distinction between express and inferred intentions. In my opinion if someone is doing something unjustified with his assets then it surely follows as night follows day that he must (in a non-innocent way) be intending to do so.

19. In my judgment it is therefore a fallacy to suggest that under s37 of the 1973 Act proof of intention is required whereas under s37 of the 1981 Act it is not. Under both procedures an unjustified dealing with assets will likely supply prima facie proof of an intention to dissipate. And, of course, under s37(5)(b) Matrimonial Causes Act 1973 the intention to defeat the applicant's claim is presumed in the case of an immediately prospectant transaction. This would suggest that, if anything, it is in fact easier to obtain the injunction under s37 Matrimonial Causes Act 1973 than under the 1981 counterpart because under the former all the applicant has to show is that a transaction is about to happen which would have the effect, if not restrained, of defeating her claim, while under the former there has to be shown by her some unjustified dealing by the respondent with assets giving rise to a risk of dissipation. But I repeat that I do not believe that there is in fact any real difference between the two tests.

20. Counsel have set out in their written arguments an impressive array of cases where these principles have been reiterated time and again. Thus in *Thane Investments Ltd v Tomlinson* [2003] EWCA Civ 1272 Peter Gibson LJ stated at para 21 that "it is important that there be solid evidence adduced to the court of the likelihood of dissipation". Likewise, in *Ninemia Maritime Corporation v Trave Schiffahrtsgesellschaft GmbH (The Niedersachsen)* [1983] 2 Lloyd's Rep. 600 at 606-607 Mustill J referred to "solid evidence" of risks. Similarly, in *Alternative Investment Solutions* Cranston J stated "for a freezing injunction to be justified there must be a real risk of the dissipation of assets such that there is a real risk of a judgment in the claimant's favour going unsatisfied if the injunction is not granted". To like effect the Court of Appeal of Ontario in *Chitel v Robart* [1982] 39 OR (2d) 513, 532–3 stated:

> "The applicant must persuade the court by his material that the defendant is removing or there is a real risk that he is about to remove his assets from the jurisdiction to avoid the possibility of judgment, or that the defendant is otherwise dissipating or disposing of its assets, in a manner clearly distinct from his usual or ordinary course of business or living, so as to render the possibility of future tracing of the assets remote, if not impossible in fact or in law".

This was cited with approval in *TTMI Ltd v ASM Shipping Ltd* [2006] 1 Ll Rep 401 at para 26.

21. The applicant must depose to objective facts and not to mere expressions of anxiety or suspicion. In *Third Chandris Shipping Corporation v Unimarine SA* [1979] QB 645 at 672 Lawton LJ stated: "affidavits asserting belief in, or the fear of, likely default have no probative value unless the sources and grounds thereof are set out…". To like effect in *CEF Holdings Ltd & Anor v City Electrical Factors Ltd & Ors* [2012] EWHC 1524 (QB) Silber J stated para 255(d) "Any application for an injunction must be based on facts and as Tugendhat J said in the *Caterpillar* case [2011] EWHC QB 3154 'mere suspicion is not enough'."

22. It is often forgotten that by virtue of FPR PD 22A para 4.3(b) an affidavit or witness statement must "indicate the source for any matters of information and belief". This replicates the old rule in RSC Order 41 rule 5(2), which itself had an ancient pedigree. This requirement is vitally important where the affidavit or statement is being used to support a freezing application, and especially so where the application is made ex parte.

23. I have mentioned that there must, at least, be evidence of an unjustified dealing with assets by the respondent. Holding assets in off-shore structures will not <u>of itself</u> amount to such unjustified conduct. In *Wade v Wade* [2003] EWHC 773 (QB) at paras 27-29 the court held:

> ".... The fact that the defendant placed his shares in offshore trusts does not give rise to a suspicion. The claimant's own evidence is that this has been done to minimise his tax liability. There is no evidence or suggestion that the defendant has ever failed to pay a debt due from him. ... Given the lack of any evidence of past impropriety on the part of the defendant, I would hold that the evidence does not establish a sufficient risk of dissipation of assets to justify interim relief."

24. Having stated these general principles I return to *Roche v Roche* (1981) Fam Law 243, *Shipman v Shipman* [1991] 1 FLR 250 and to the speech of Lord Mustill in *Harrow LBC v Johnstone* [1997] 1 FLR 887. *Roche* was a short ex tempore judgment by the Court of Appeal in a case where only the appellant had appeared. It concerned an application by a wife to freeze a large sum of damages for personal injury which the husband was likely to receive. In his judgment Ormrod LJ (with whom Sir Stanley Rees agreed) stated:

> "Apart from Section 37 and its predecessors the court has jurisdiction to preserve specific assets which are the subject matter of proceedings pending the determination of the issues involved for example, an injunction restraining the other party from removing out of the jurisdiction liquid assets pending a hearing – for the obvious reasons that he or she could put the assets somewhere where they cannot be reached. Another

> example is in the Married Womens' Property Act proceedings, where an interest is claimed in a house or chattels. It is common form to apply to the court for an order to preserve chattels or preserve the matrimonial home pending the hearing of proceedings.
>
> With respect to the learned judge, I think he was wrong in thinking that this was an application under Section 37 . It seems to me that it was an application – not under the general powers of the court to preserve specific assets which are the subject matter of proceedings pending the determination of those proceedings. *Smith v. Smith* was also such a case.
>
> This is clearly a case where no hardship will be caused whatever to the husband by restraining him from disposing of part of the sum of damages, when he recovers them, provided the proceedings for ancillary relief are dealt with quickly. This court will take steps to see that that is done. I can see no reason why the court should not make such an order and the more the husband protests and refuses to give any assurance that he intends to leave some of this money in a liquid form, the more anxious the court is bound to be. One wonders why all this fuss is being made about such an order".

25. In my decision of *ND v KP* I ventured the view that we do not have a system here of saisie conservatoire where assets are automatically frozen pending the disposal of a divorce or any other kind of claim. On the contrary, the freezing jurisdiction is subject to very strict principles and contains important safeguards (to which I will come in due course). None of these are referred to in *Roche*, and I have struggled to identify the "general powers of the court to preserve specific assets which are the subject matter of proceedings pending the determination of those proceedings."

26. It is certainly true that there has always existed a power to preserve in family proceedings the subject matter of the proceedings where they relate to tangible property as opposed to the chose in action that is money. That power is now reflected in FPR 2010 rule 20.1(c)(i) which empowers the court to make an order for the detention, custody or preservation of relevant property. (Such an order preserving a thing in specie can equally be made under s37(2)(a) Matrimonial Causes Act 1973.) But that power is generally used only to preserve things like chattels (it being usually unnecessary to invoke it in relation to land where the unilateral notice procedure under the Land Registration Act 1925 is available). For an illuminating discussion of this type of order and its differences to a freezing order see *Re MCA; HM Customs and Excise Commissioners and Long v A and A; A v A (Long Intervening)* [2002] EWHC 611 (Admin/Fam), [2002] 2 FLR 274, paras 99-102 per Munby J (as he then was). Plainly this general power is not the subject of the principles and safeguards applicable to freezing orders. An order preserving a picture or a car or a field does not cause the economic paralysis that is the case where an order is made which freezes unspecified assets including money up to a certain figure. If a bank receives an order which freezes (as here) £20m of assets then even if there are exceptions relating to

living expenses, legal costs, and trading in the normal course of business, it will normally freeze all the accounts for the simple reason that it will not know if these exceptions are being met from another account with another bank. Where there are a number of banks it normally takes many days dealing with the various legal departments to put the exceptions into operation by which time great damage both economically, and reputationally, may have been caused. Problems of this kind just do not arise where the order merely freezes a particular tangible asset in specie. But it is open to the court to apply the principles and safeguards if the facts justify this.

27. It is noteworthy that in *Roche* none of the Mareva jurisprudence was referred to by the Court of Appeal in its judgments. With some trepidation I conclude that the judgment was per incuriam the many principles governing Mareva injunctions, which even by then had been developed.

28. In *Shipman v Shipman* [1991] 1 FLR 250 the wife sought an order under s37 Matrimonial Causes Act 1973 restraining the husband in divorce proceedings from disposing of or dealing with $300,000, or one half of his severance pay, whichever was the greater, pending determination of the ancillary relief proceedings. Lincoln J held that the terms of s37 had not been satisfied. But he went on hold, expressly relying on *Roche*, that it was wrong to believe that "there is no longer any inherent jurisdiction to freeze assets which may be put beyond the reach of the applicant." He further went on to hold that:

> "Counsel for the husband urges me to have regard to the many restrictions and safeguards surrounding the use of worldwide Mareva injunctions, and to assimilate the use of, and procedure for, injunctions in the Family Division to those in commercial Law. In my view the matrimonial field calls for a different approach. To my mind the circumstances here call for the injunction to continue. If it were discharged, the husband could well change his intentions, however genuine and well-disposed to the wife his present state of mind may be. Both he and the assets are out of the jurisdiction. Left without a job, and with new responsibilities, he will be faced with a temptation to eat into the whole of the fund."

29. I have to say, with great respect, that inasmuch as this decision follows *Roche* it too was per incuriam. Further, I do not shrink from saying that to the extent that it suggests that the restrictions and safeguards developed in the Mareva jurisprudence do not apply in family proceedings then the decision is wrong.

30. *Harrow LBC v Johnstone* [1997] 1 FLR 887 concerned a possession action. The wife had left the parties' council flat with the children. The husband had obtained an order that prohibited the wife from excluding or attempting to exclude him from the flat. The wife gave notice to the council terminating the tenancy so that she could be granted a new one. The husband argued that it was ineffective as the wife was acting in breach of the order; that by bringing the proceedings when it was aware of the

injunction the council had aided and abetted the wife in that breach and was itself in contempt of court; and that the proceedings were an abuse of the process of the court. The judge accepted this submission and dismissed the claim. The Court of Appeal dismissed the council's appeal. The House of Lords allowed the council's appeal and held that notice to terminate given by one joint tenant alone was sufficient to end the joint tenancy. The wife's notice to the council was effective to allow the joint tenancy to terminate upon the expiration of the notice.

31. In his speech Lord Mustill stated:

> "As background, it is useful to consider what powers might have been available to the judge when he ordered the wife not to 'exclude' the husband from the house. The following were mentioned in the course of argument. …
>
> …
>
> (6) It has been held that the court has jurisdiction under its general statutory powers of granting injunctive relief to make orders protecting financial and proprietary remedies which may be awarded in the future even if s37 of the Matrimonial Causes Act 1973 is not available because the prescribed conditions are not satisfied: *Shipman v Shipman* [1991] 1 FLR 250, and see also *Roche v Roche* (1981) Fam Law 243."

32. Lord Mustill then proceeded to demonstrate that the order in question had not been made under item (6) in the list but rather under item (5) namely under s1 of the Domestic Violence and Matrimonial Proceedings Act 1976, and that "as such it was concerned with the exercise of rights under the tenancy and not with the continued existence of the rights themselves."

33. It can be seen that there was no discussion at all as to the scope of the "general statutory powers of granting injunctive relief to make orders protecting financial and proprietary remedies which may be awarded in the future", and that the decision in question was held not to have been made under them. It can also be seen that Lord Mustill expressed no view as to the correctness or otherwise of *Shipman v Shipman* [1991] 1 FLR 250, and *Roche v Roche* (1981) Fam Law 243, and indeed it was unnecessary for him to do so given that he was perfectly satisfied that the order in question had been made under the powers contained in the Domestic Violence and Matrimonial Proceedings Act 1976.

34. I do not regard this decision as affirming the correctness of *Shipman v Shipman* [1991] 1 FLR 250 and *Roche v Roche* (1981) Fam Law 243 inasmuch as they suggest that there exist general powers of the court to preserve specific assets (other than tangible assets such as chattels) which are the subject matter of proceedings pending the determination of those proceedings, which powers may be exercised in disregard of the principles and safeguards governing freezing order applications. As Lord

Neuberger MR stated in *Tchenguiz & Ors v Imerman* [2011] Fam 116 at para 129 "the applicable principles, and the requirements which a claimant has to satisfy, where the court is invited to grant [freezing or search] relief are no different in the Family Division from those in the other two Divisions of the High Court, although, of course, in all three Divisions, the application of the principles has to be made to the facts and features of the particular case before the court."

Ex parte applications

35. Thus far I have been discussing the general principles which govern the adjudication of a freezing application if it were heard with the respondent present. But freezing and search orders are almost invariably made ex parte and, as such, are a violation of the elementary rule of natural justice *audi alteram partem*. In *National Commercial Bank Jamaica Ltd v Olint Corp Ltd (Jamaica)* [2009] UKPC 16, [2009] 1 WLR 1405, PC Lord Hoffmann stated at [16]:

> "First, there appears to have been no reason why the application for an injunction should have been made ex parte, or at any rate, without some notice to the bank. Although the matter is in the end one for the discretion of the judge, *audi alterem partem* is a salutary and important principle. Their Lordships therefore consider that a judge should not entertain an application of which no notice has been given unless either giving notice would enable the defendant to take steps to defeat the purpose of the injunction (as in the case of a Mareva or Anton Piller order) or there has been literally no time to give notice before the injunction is required to prevent the threatened wrongful act. These two alternative conditions are reflected in rule 17.4(4) of the Civil Procedure Rules 2002. Their Lordships would expect cases in the latter category to be rare, because even in cases in which there was no time to give the period of notice required by the rules, there will usually be no reason why the applicant should not have given shorter notice or even made a telephone call. Any notice is better than none."

36. The requirement of exceptional urgency is expressly stipulated in para 5.1 of FPR 2010 PD 18A. This provides that an application may be made without notice only where there is exceptional urgency; or where the overriding objective is best furthered by doing so; or by consent of all parties; or with the permission of the court; or where paragraph 4.9 applies; or where a court order, rule or practice direction permits. Para 4.9 deals with the situation where a date for a hearing has been fixed, and a party who wishes to make an application at that hearing but does not have sufficient time to file an application notice.

37. In *ND v KP* I stated at para 10:

> "As a matter of principle no order should be made in civil proceedings without notice to the other side unless there is very good reason for departing from the general rule that notice must be given, for example, where to give notice might defeat the ends of justice. To grant an interim remedy in the form of an injunction without notice "is to grant an exceptional remedy": the authority for that is *Moat Housing Group-South Limited v. Harris* [2006] QB 606. "

38. And I cited my earlier decision of *FZ v SZ and others* [2011] 1 FLR 64 where I stated at para 32:

> "It is worth my expressing the view that in the short term that I have been sitting as a full time judge I have been shocked at the volume of spurious ex parte applications that are made in the urgent applications list. It is an absolutely elementary tenet of English law that save in an emergency a court should hear both sides before giving a ruling. The only recognised exception to this rule (apart from those instances where an ex parte procedure is specifically authorised by statute) is where there is a well founded belief that the giving of notice would lead to irretrievable prejudice being caused to the applicant for relief. I have the distinct impression that a sort of lazy, laissez-faire practice or syndrome has grown up which says that provided the return date is soon, and provided that the court is satisfied that no material prejudice will be caused to the respondent, then there is no harm in making the order ex parte. In my opinion this is absolutely wrong and turns principle on its head."

39. These decisions do no more than reflect long-standing decisions to like effect in the civil sphere.

Short notice

40. An extremely important provision, reflecting the final sentence of the quotation from Lord Hoffmann set out above, is FPR 2010 PD 20A para 4.3(c) which requires that "except in cases where it is essential that the respondent must not be aware of the application, the applicant should take steps to notify the respondent informally of the application." The corresponding provision in the CPR is PD 25A, para 4.3(3), the force of which has been strongly emphasised by Tugendhat J in two cases. In *O'Farrell v O'Farrell* [2012] EWHC 123 (QB) at paras 66 and 67 he stated:

> "Like Mostyn J, I too have been shocked at the volume of spurious ex-parte applications that are made in the Queens Bench Division. The number of occasions on which CPR Part 25.2 and CPR 15.3(1) and (3) and PD 25A para 4(3) are flouted is a matter of real concern. In these days of mobile phones and

> emails it is almost always possible to give at least informal notice of an application. And it is equally almost always possible for the Judge hearing such an application to communicate with the intended defendant or respondent, either in a three way telephone call, or by a series of calls, or exchanges of e-mail. Judges do this routinely, including when on out of hours duty. Cases where no notice is required for reasons given in PD 25A para 4.3(3) ['where secrecy is essential'] are very rare indeed. ... The giving of informal notice of an urgent application is not only an elementary requirement of justice. It may also result in a saving of costs. The parties may agree an order, thereby rendering unnecessary a second hearing on a return date."

41. And in *AB v Barristers Benevolent Association Ltd* [2011] EWHC 3413 (QB) at para 28 he stated:

> "I have prepared this judgment in accordance with what is now the usual practice in such case. It may also serve the purpose of reminding practitioners of the importance of giving notice, however late, of any application by telephone to the Judge on duty out of hours. In these days of mobile phones and emails it is almost always possible to do this. And it is equally almost always possible for the Judge to communicate with the intended defendant or respondent, either in a three way telephone call, or by a series of calls, or exchanges of e-mail. Cases where no notice is required for reasons given in PD 25A para 4.3(3) are very rare indeed."

42. In this case in counsel's note for the ex parte application it was stated at para 19 "if the court has concerns as to whether to make a without notice order, W invites the court to abridge time for service of W application to one clear day so that there can be an urgent inter partes hearing." However, no explanation was given to the court either in the wife's affidavit, or in counsel's note, why not even short notice could be given to the respondent, and no reference was made to FPR 2010 PD 20A, para 4.3(c).

Safeguards

43. On account of the severity, and potential unfairness, of a freezing order important safeguards have been built into the standard form. In *Fourie v Le Roux and others* [2007] 1 WLR 320, HL at para 3 Lord Bingham stated at para 3:

> "In recognition of the severe effect which such an injunction may have on a defendant, the procedure for seeking and making *Mareva* injunctions has over the last three decades become closely regulated. I regard that regulation as beneficial

> and would not wish to weaken it in any way. The procedure incorporates important safeguards for the defendant."

44. The vital importance of these safeguards was vividly described by Laddie J in *The Bank v A Ltd & Ors* [2000] EWHC J0517-13 (2000) LLR 271 where he stated:

> "31. …Even so, Anton Piller and Mareva orders have rightly been described as the nuclear weapons in the court's armoury and as being at the very extremity of the court's powers. To reduce the risk of abuse, stringent safeguards have been put in place to protect, as far as possible, the interests of the absent respondent. It is worth remembering what some of those safeguards are. First, an order will not be made unless the applicant produces evidence which shows that he has a very strong case. Second, the evidence must be served on the respondent with the order. Third, the order always includes a cross-undertaking in damages. Fourth, the order includes an express right to the respondent to apply to discharge on short notice. Fifth, the order must included a return date so that the issue can be brought back for review inter partes as soon as possible. Sixth, in Mareva orders there is an explicit provision allowing the respondent access to sufficient of his funds to pay his reasonable legal expenses—a provision which ensures that he has the financial resources available to fight for the discharge or modification of the order. All of these are intended to offer some, albeit imperfect, protection to the respondent.
>
> 31. Not one of these safeguards was expressly included in this freezing order. The responsibility for putting in place, in an ex parte order, sufficient safeguards for the absent respondent lies predominantly with the applicant. Here the Bank has not discharged that responsibility. Miss Andrews says that the order should be looked at as an interpleader rather than a freezing order, but it does not matter what the order is called. It is draconian and designed to prevent the defendants from accessing their own property. It appears to me that no regard was paid at all to the interests of the defendants nor to the possibility—which is now conceded to be the fact—that the defendants might not be shown to have done anything wrong. It may be that this failure itself would justify setting the order aside, but it is not necessary to the case on this basis."

45. The requirement to give an undertaking in damages is an express prescription in FPR PD 20A, para 5.1(a) of which provides that any order for an injunction, unless the court orders otherwise, must contain an undertaking by the applicant to the court to pay any damages which the respondent sustains which the court considers the applicant should pay. In contrast, by para 5.2 the court is merely obliged to 'consider' whether to require an undertaking by the applicant to pay any damages sustained by a person other than the respondent, including another party to the proceedings or any

other person who may suffer loss as a consequence of the order. In *Re W (Family Division: without notice orders)* [2000] 2 FLR 927 Munby J (as he then was) held that an undertaking in damages was not necessarily required as between spouses, but would almost invariably be required as between an applicant spouse and a third party. The terms of para 5.1(a) now mandate an undertaking in damages as between the spouses. Having regard to Munby J's reasoning I am of the opinion that when the court considers requiring an undertaking in favour of a third party under para 5.2 it should almost invariably conclude that it should so require.

46. The present standard examples of freezing and search orders applicable in the civil sphere are found appended to CPR PD25A. Para 6.1 states:

> "This example may be modified as appropriate in any particular case. In particular, the court may, if it considers it appropriate, require the applicant's solicitors, as well as the applicant, to give undertakings"

47. For reasons which I cannot understand no similar examples are to be found appended to FPR 2010 PD20A, which is otherwise in virtually identical terms to its CPR counterpart.

48. I agree with the comment in the White Book at para 25.1.25.6 that "any departure from the standard wording must be drawn to the attention of the judge hearing the without notice application". In this case there was wholesale departure from the standard safeguards but no explanation was offered to the judge.

Standard examples

49. In order to avoid equivalent defaults and errors for the future I append to this judgment standard examples of freezing and search orders. These have been considered by the President who has authorised me to promulgate them for general use. He has also seen this judgment in draft and has approved the guidance, summarised in para 51 below, given in it. The example for the freezing order should be used whether the application is made under s37 of the 1981 Act to a High Court Judge or to a District Judge under s37 of the Matrimonial Causes Act 1973. It will be seen that each example order requires that the reason for giving no, or short, notice is expressly stated on its face. If this, or any other standard term, is not proposed to be included in an order then the departure or omission must be drawn to the judge's attention and must be clearly justified.

The duty of candour

50. I emphasise the high duty of candour with which an applicant for a freezing order made either ex parte or on short notice is fixed. In *ND v KP* at para 13 I cited the masterly judgment of Mr. Alan Boyle QC in *Arena Corporation v. Schroeder* [2003]

EWHC 1089 (Ch) where at para 213 he set out all the relevant principles, and I do not repeat those here. I would only wish to add that the duty of candour is not watered down in any way if short notice is given: see *CEF Holdings Ltd & Anor v City Electrical Factors Ltd & Ors* [2012] EWHC 1524 (QB) per Silber J at para 182.

Summary of the principles and safeguards

51. The relevant principles and safeguards may be summarised as follows:

i) The court has a general power to preserve specific tangible assets in specie where they are the subject matter of the claim. Such an order does not necessarily require application of all the freezing order principles and safeguards, although it is open to the court to impose them.

ii) For a freezing order in a sum of money which is capable of embracing all of the respondent's assets up to the specified figure it is essential that all the principles and safeguards are scrupulously applied.

iii) Whether the application is made under the 1981 Act or the 1973 Act the applicant must show, by reference to clear evidence, an unjustified dealing with assets (which would include threats) by the respondent giving rise to the conclusion that there is a solid risk of dissipation of assets to the applicant's prejudice. Such an unjustified dealing will normally give rise to the inference that it is done with the intention to defeat the applicant's claim (and such an intention is presumed in the case of an application under the 1973 Act).

iv) The evidence in support of the application must depose to clear facts. The sources of information and belief must be clearly set out.

v) Where the application for a freezing order is made ex parte the applicant has to show that the matter is one of exceptional urgency. Short informal notice must be given to the respondent unless it is essential that he is not made aware of the application. No notice at all would only be justified where there is powerful evidence that the giving of any notice would likely lead the respondent to take steps to defeat the purpose of the injunction, or where there is literally no time to give any notice before the order is required to prevent the threatened wrongful act. Cases where no notice at all can be justified are very rare indeed. The order of the court should record on its face the reason why it was satisfied that no or short notice was given.

vi) Where no notice, or short informal notice, is given the applicant is fixed with a high duty of candour. Breach of that duty will likely lead to a discharge of the order. The applicable principles on the re-grant of the order after discharge are set out in *Arena Corporation v Schroeder* at para 213.

vii) Where no notice, or short informal notice, is given the safeguards assume critical importance. The safeguards are set out in the standard examples for freezing and search orders. If an applicant seeks to dis-apply any safeguard the court must be made unambiguously aware of this and the departure must be clearly justified. The giving of an undertaking in damages, whether to the respondent or to an affected third party, is an almost invariable requirement; release of this must be clearly justified.

A warning

52. Finally, I draw attention to the great concern of myself and other judges at the continued widespread abuse of the principles governing ex parte applications not only for freezing orders but also more generally. It is worth remembering not only that the ex parte procedure is intrinsically unfair but also, and very importantly, that a case which begins with an ex parte order is usually poisoned from that point onwards. The unilateral step taken at the beginning of case echoes down its history. Often the respondent is enraged by the step taken against him and looks to take counter-offensive measures. Every single subsequent step is coloured by that fateful first step. Costs tend to mount exponentially. And even after the lawyers close their files and render their final bills the personal relations of the spouses will likely remain forever soured. A nuclear winter often ensues. This is not to say that sometimes, but very rarely, an ex parte application is necessary. Insistence on the imposition of the stringent conditions and detailed safeguards might have the side-effect of mitigating the unhappy consequences to which I have referred. In *B v A* [2012] EWHC 3127 (Fam) Charles J dealt with an (alleged) child abduction case, where there had been flagrant disregard of the established principles. In para 110 he stated:

> "It seems to me that if such failures are to be avoided in the future there is a need for judges:
>
> (i) to refuse to make without notice orders if the established principles and procedures are not applied (I and some other judges do this), and
>
> (ii) to treat such failures as negligent and thus as a foundation for the exercise of discretion to make a wasted costs order."

53. In that case a wasted costs order in the sum of £18,000 was made against the applicant's solicitors. It must be expected that future abuse of the principles may lead to similar orders being made in the future.

Illegitimately obtained documents

54. In this case the wife had copied a number of documents belonging to the husband. Her knowledge of those documents plainly was a driver to her seeking advice about whether she should apply for a freezing injunction. I will return to the specific facts of the case below.

55. *Tchenguiz & Ors v Imerman* [2011] Fam 116 establishes a number of very important principles about the obtainment and use of documents of this nature. I refer in particular to para 118 of the judgment of Lord Neuberger MR where he stated:

> "So far as concerns the special role of the court in ancillary relief cases, we accept that the jurisdiction is inquisitorial and not purely adversarial, so that the well-known observations of Lawton LJ in *Hytrac Conveyors Ltd v Conveyors International Ltd* [1983] 1 WLR 44, page 47, must be read in the Family Division with this important caveat in mind. But this cannot be a justification for riding roughshod over established legal rights nor for permitting a litigant without sanction to evade by lawless recourse to self-help the safeguards of the *Anton Piller* (search order) jurisprudence (discussed in paragraphs [127]-[136] below), which are not merely enshrined in our domestic law but are indeed essential if there is to be proper compliance with the Convention: see *Chappell v United Kingdom* (1989) 12 EHRR 1."

56. The principles are these:

i) Whatever the historic practice (and however alluring the arguments for pragmatism and practicality) it is simply and categorically unlawful for a wife (for it usually is she) to breach her husband's privacy by furtively copying his documents whether they exist in hard copy or electronically. There may be factual issues about whether the documents are actually in the husband's private domain; but if they are (and they almost always are) then it is wholly impermissible for the wife to access and copy them.

ii) If a wife does access such private documents she is not only in jeopardy of criminal penalties but also risks being civilly sued by the husband for breach of confidence and misuse of his private material.

iii) If a wife supplies such documents to her solicitor then the solicitor must not read them but must immediately seek to obtain all of them from the wife and must return them, and all copies (both hard and soft), to the husband's solicitor (if he has one). The husband's solicitor, who owes a high duty to the court, will read them and disclose those of them that are both admissible and relevant to the wife's claim, pursuant to the husband's duty of full and frank disclosure. If before that exercise has taken place the husband's solicitor is dis-instructed the solicitor must retain those documents pending a further order of the court.

iv) If the husband does not have a solicitor the wife's solicitor must retain the documents, unread, and in sealed files, and must approach the court for directions. Those directions will likely be to the effect that the wife shall pay for an independent lawyer to be instructed to determine which of those

documents are admissible and relevant to the wife's claim. Copies can then be provided to the wife's solicitor before the files of documents are returned to the husband.

v) The wife is permitted to rely on her knowledge of the documents to challenge the veracity of the husband's disclosure in the proceedings. Her knowledge is admissible evidence. For this purpose she can express her recollection to her solicitor, and the solicitor can advise on it. However, if the expression of that recollection involves the revelation of clearly privileged matters then the solicitor must stop the conversation immediately. If things have gone too far the solicitor will have to consider carefully whether (s)he can continue acting for the wife. It is open to the husband to apply to the court, in the interests of justice, for an order barring the wife from relying on her knowledge in this way.

vi) By the same token, if the wife's recollection is that the documents clearly show that the husband is unjustifiably dealing with his assets and that there is therefore a clear risk of dissipation to her prejudice then she can inform her solicitor of this. Subject to the point about privilege mentioned above, the solicitor is entitled to give advice on her recollection and can draft an affidavit in support of a freezing application. But if the wife elects to go down this route she is bound in that affidavit candidly to reveal that her knowledge derives from illegitimately obtained documents, and must explain how she got them. She must do this even if this leads to a civil suit or criminal proceedings. That is the price that she will (potentially) have to pay for making an application based on illegitimately obtained knowledge. Of course, there is no question of the wife being forced to incriminate herself as she has a free choice whether to go down this route.

This case

57. The wife is 57; the husband is 52. They married in France in July 1986. Just before the marriage they entered into a standard French separation of property agreement. They have a son, E, now aged 26, who is studying in London. In 1990 the Marbella property was purchased for about £800,000. In 2000 the family came here to live and high quality accommodation was rented in London. The husband alleges that at that time the wife began an adulterous relationship which continues; this is not denied by the wife. By 2005 the husband commenced an adulterous relationship; in early 2009 his partner fell pregnant and gave birth to their son in October 2009. By 2010 the parties were estranged, if not actually separated, and in that year the husband consulted solicitors about a divorce, but took no further steps. It is not known when the wife first sought advice about a divorce.

58. The wife issued her divorce petition on 7 February 2013 and, as I have mentioned, on 21 February 2013 obtained the ex parte freezing order, following which the petition was served.

59. In her affidavit in support the wife stated:

> "Between 2000 and about early 2010 I obtained copies of various documents which [the husband] either left lying around at our home in London and the Spanish property or which he had ripped up and placed in the rubbish bin at our home in London and the Spanish property. I accept that I removed copies of a limited number of [the husband's] documents from the briefcase or from a filing cabinet at our home in London."

60. That was not the whole truth. As I will explain, the husband later sued the wife in the Queen's Bench Division for breach of confidence and misuse of private information. Just before the hearing before me the wife made an affidavit in those proceedings in which she admitted that she had accessed the husband's safe. In that affidavit she stated:

> "I have accessed the safe the claimant refers to on one occasion. Until a certain point, I estimate around 3 to 5 years ago, the claimant and I shared the safe in the hallway between the claimant's bedroom and office. I kept my jewellery in it. The safe could be accessed in two ways, by a code (which I did not know), and by a key which the claimant retained. This was increasingly problematic for me as each time I wanted to wear an item of jewellery I had to liaise with the claimant so that the safe could be opened. Consequently I asked the claimant to install a further safe for my personal use. After this date he alone used the joint safe. Although I cannot remember precisely, I believe that on the occasion the claimant has referred to, my personal safe had not yet been installed. I cannot remember the precise date I accessed the safe, but suspect that it was around 2009. ... On the occasion in question, the claimant was out playing golf. He always kept the key to the safe in his bag. I went into the office, removed the key and opened the safe. The only items within it of my husband's were various bills for the Marbella property. At the time the claimant and my relationship was difficult. Given his secrecy about financial issues I wished to obtain as much information as possible as I suspected that we would divorce at some stage."

61. The failure by the wife to state in her affidavit in support of her freezing application that some of the documents derived from her accessing the husband's safe was a serious breach of her duty of candour. The act itself was very serious misconduct. It should not be thought, however, that her taking of documents from the husband's briefcase and filing cabinet was any less serious conduct, for, as Lord Neuberger MR stated in *Tchenguiz v Imerman*, at para 79, "confidentiality is not dependent upon locks and keys or their electronic equivalents."

62. These documents were part of the documents which the wife handed to her solicitors and which were later handed back to the husband's solicitors in accordance with the now established practice. By the time of the hearing before me those documents had not been read by the husband's solicitors but Miss Bangay QC indicated that they amounted to a pile three feet high.

63. A striking feature of the wife's affidavit is its failure to explain what was the "exceptional urgency" which must be shown before an ex parte order can be made. In truth there was no urgency at all. Rather, it would appear that in a careful and prolonged way the wife had planned her strategy, and that strategy had as its cornerstone a pre-emptive strike on the husband at a time that best suited her.

64. The wife's case was summarised in counsel's note for the hearing. This stated:

> "4 Although at this stage W's knowledge of H's financial affairs in incomplete, it is her belief that he may be worth many hundred of millions of pounds. He has been described in the press as a 'billionaire' and the family enjoyed all the trappings of vast wealth: an international lifestyle with real property in different countries, antique furniture, fine art, fully staffed households, private jets, boats and yachts. W did not work during the marriage, and any funds she had were provided by way an allowance from H or by using credit cards. W and E have lived in London since 2000, her previous home costing £10,000 per month. The rented properly in which she has lived since 2004 costs £5,600 per week (or £291,000 per annum), paid for by H.
>
> 5. The property in Spain which forms part of the assets sought to be frozen in W's application was valued at €l0million in 2007, subject to two charges totalling €2.4million. As at Friday last week (15.2.13) the property was still held in H's sole name.
>
> 6. Although currently unclear, H's business dealings and financial affairs are structured in a complex manner. He is involved in various international companies and offshore trusts. He was a key investor in V SA (the large French mass media company) and appears to be a significant financial player in other corporate transactions.
>
> 7. Pending the Supreme Court's decision in *Petrodel Resources Ltd and Ors v Prest* [2012] EWCA Civ 1395, it may prove more difficult for W to enforce any award against assets held by or within corporate structures. W is concerned that much of H's wealth is held in this way.
>
> …

13. Accordingly it is accepted that an applicant must satisfy the court that there is a risk of a reaction, and that such reaction might 'defeat the ends of justice'. It is submitted the court will therefore seek to identify the following factors:

a. Assets that are substantial, complex and entirely within the control of one party;

b. Assets that are overseas, making registration of orders more complicated;

c. Potential difficulty in reviewing dispositions where assets are located in foreign jurisdictions;

d. Assets that can be easily and instantly disposed of or manipulated to take them out of the court's reach;

e. Actual prior attempts to dispose of or manipulate assets;

f. Threats to dispose or manipulate assets;

g. Reduction or withholding of financial provision either during or since separation;

h. Other evidence of intention or threats to defeat a claim;

14. W's statement (at paras.17-26) sets out details as to the basis of her concern that H will arrange his financial affairs in such a way as to frustrate her claim irretrievably. For example and in summary:

a. H has told W that he will disappear and/or she will 'get nothing' if she divorces him;

b. H has, over the last four years, systematically reduced W's financial resources and access to the trappings of family wealth, directly in reaction to the end of their marriage;

c. H has always been possessive and controlling with his financial resources;

d. H has never allowed W to own property in her name, preferring instead to purchase via corporate structures and/or in his sole name;

e. The majority of H's considerable wealth appears to be held in corporate and/or offshore structures that are ripe for manipulation and might in any event be out of W's reach following the recent authority of *Petrodel v Prest*;

> f. The identifiable assets in H's sole name (the Spanish Property) could be easily and simply disposed of or transferred into H's pre-existing complex corporate structures;
>
> g. So far as W is aware, H's identifiable assets are almost entirely held in other jurisdictions, making it considerably more difficult for the courts of this jurisdiction to review any disposition of those assets;
>
> h. H has limited ties to the UK, or indeed to any other country;
>
> i. H has made it clear to W that he is able and willing to move between jurisdictions as and when it suits him;
>
> j. Although H is unaware of W's petition, it is mutually accepted by the parties that their marriage ended some time ago and that a divorce is imminent/likely;
>
> …
>
> 18. In paragraph 25 of W's statement, W indicates that in the last 20 years, the property in Spain has only been used by H as a holiday home. Freezing that asset will cause no financial or personal hardship. Moreover, in the context of H's overall vast wealth, freezing other assets up to £20 million will similarly not cause him any prejudice."

65. I have to say that I do not regard any of the matters in paragraph 14, with the exception of (a), as coming anywhere close to supplying the necessary solid evidence of an unjustified dealing by the husband with his assets which gives rise to a serious risk of dissipation to her prejudice. Evidence of threats to leave the wife destitute do however potentially provide the necessary evidence. This is what the wife said of these threats in her affidavit:

> "Since our marriage fell into difficulties, [the respondent] has, over the years, repeatedly said to me that if I divorce him, he will disappear and I will "get nothing". I am very worried that he means every word of these repeated threats and that he will do what he can to prevent me getting anything. He has told me that "there is no one in the world who can tell him what to give me"."

66. I note that the wife gives no contextual particulars of any of these threats. She does not say when they took place, or where. She does not state in what context or circumstances the statements were made. She does not state if they were made in the presence of any other person. She does not state if the husband was calm and calculating, or angry and florid.

67. If unparticularised and essentially un-described threats of this nature are alone sufficient to obtain the Draconian measure that is a freezing order then a vast hole is blown through the established principles. In the nature of things on a half-day return date the court would be unable to judge whether the allegations were or were not true. It is therefore my opinion that if evidence of this nature is to be relied on in support of an ex parte freezing application then it must be fully particularised, placed in context, and painted in full colour.

68. I consider that the wife's true agenda here is revealed by paragraph 18 of her counsel's note, cited above, where reference is made to the absence of any prejudice that would be caused to the husband were the freezing order to be made, and by the submissions of counsel recorded in the note of the hearing. It was submitted by counsel that *"by fixing the additional sum to be frozen at £20 million I do not accede (sic) that this is an appropriate level for the wife's claim, it is simply an appropriate sum to be secured at this stage".*

69. It is obvious to me that the case which was presented, and which the judge, by virtue of not being referred to all the relevant principles and safeguards, was persuaded to accept, was that it was just and reasonable in this case to impose a form of saisie conservatoire on some of the assets simply to provide security for the wife's claim. But as the cases have repeatedly shown (with the exception of the decisions of *Roche* and *Shipman*) this is to turn principle on its head and is absolutely wrong.

70. The freezing of £20 million of assets in the husband's sole name is a perplexing aspect of this application and order. I have already explained how the wife positively deposed to her belief, which no doubt derived from the illegitimately obtained documents, that the husband had no such assets. The order froze a sum plucked out of the air in relation to assets which the wife had deposed the husband did not have.

71. Concentrating therefore on the application for the ex parte freezing order I conclude that it was fatally flawed in numerous respects and must be discharged. My reasons in summary are as follows:

    i) The wife seriously breached her duty of candour in not mentioning that she had accessed the husband's safe illegitimately.

    ii) The wife failed to provide any sufficient evidence of an unjustified dealing by the husband with his assets which gave rise to a serious risk of dissipation to her prejudice.

    iii) The order froze personal assets of the husband in a vast sum in the face of specific evidence from the wife that he had no such assets.

iv) There was no explanation to the court why this was a case of exceptional urgency justifying no (not even short) notice.

v) There was no explanation to the court why the key standard safeguards were not being applied in this case, in particular the right of the husband to have money on which to live, to pay his costs, and to conduct his business.

vi) There was a failure to offer undertakings in damages notwithstanding that they are required by the rules.

72. I turn to the question of whether the injunction should be re-granted now that the husband has filed an affidavit giving certain information about his means. The affidavit can have come as no surprise to the wife for it revealed that indeed all his assets were held in offshore corporate structures including, as I suspect the wife must have known from the illegitimately obtained documents, a Liechtenstein foundation. Even the Marbella property has been the subject of an implausible convoluted circular arrangement which means that he can present himself as having no legal or beneficial interest in it. Mr Marshall QC argues that the turbidity of the husband's affairs as presented in his affidavit warrants a re-grant of the injunction. He goes further and argues in his skeleton argument that it "may require modification". He suggests that the court "may wish" to expand the injunction substantially to:

> "(a) prevent H from transferring assets registered in his sole name (particularly the Marbella properties) into the name of another individual or corporation body;
>
> (b) oblige H to inform W immediately of any intention of any corporate body in which [the Foundation] has a beneficial interest to sell, gift, dispose, charge, transfer or otherwise deal with assets owned by that corporate body;
>
> (c) oblige H to inform W immediately of any changes to the structure, Board members, assets, or constitution of [the Foundation] and to obtain from the Foundation confirmation that the intentions referred to in (b) above will be communicated to him immediately.
>
> (d) prohibit H from exercising any power vested in him in relation to [the Foundation] or procuring or encouraging any person to exercise any power in such a way as to dissipate or deal with assets of or controlled by [the] Foundation, including (but not exclusively) the companies referred to in this document ..."

73. Although the husband's affidavit was served on 22 April 2013, more than three weeks before the hearing before me, the first inkling the husband had of an intention by the wife to seek (possibly) a vast expansion of the injunction was when counsel's skeleton arguments were exchanged the day before the hearing before me. I do

acknowledge the pressure of professional commitments but it is inapt for what is in effect a completely new application to be prefigured in this way. If the wife wanted a new injunction she should have applied under the Part 18 procedure and supported it by specific evidence.

74. In *Arena Corporation v. Schroeder* [2003] EWHC 1089 (Ch) at para 213 Mr. Alan Boyle QC set out all the relevant principles, derived from numerous earlier high authorities, on the question of the exercise of the discretion to re-grant an injunction where a breach of the duty of candour has been demonstrated. He stated:

> "(1) If the court finds that there have been breaches of the duty of full and fair disclosure on the ex parte application, the general rule is that it should discharge the order obtained in breach and refuse to renew the order until trial.
>
> (2) Notwithstanding that general rule, the court has jurisdiction to continue or re-grant the order.
>
> (3) That jurisdiction should be exercised sparingly, and should take account of the need to protect the administration of justice and uphold the public interest in requiring full and fair disclosure.
>
> (4) The court should assess the degree and extent of the culpability with regard to non-disclosure. It is relevant that the breach was innocent, but there is no general rule that an innocent breach will not attract the sanction of discharge of the order. Equally, there is no general rule that a deliberate breach will attract that sanction.
>
> (5) The court should assess the importance and significance to the outcome of the application for an injunction of the matters which were not disclosed to the court. In making this assessment, the fact that the judge might have made the order anyway is of little if any importance.
>
> (6) The court can weigh the merits of the plaintiff's claim, but should not conduct a simple balancing exercise in which the strength of the plaintiff's case is allowed to undermine the policy objective of the principle.
>
> (7) The application of the principle should not be carried to extreme lengths or be allowed to become the instrument of injustice.
>
> (8) The jurisdiction is penal in nature and the court should therefore have regard to the proportionality between the punishment and the offence.

> (9) There are no hard and fast rules as to whether the discretion to continue or re-grant the order should be exercised, and the court should take into account all relevant circumstance"

75. The wife's defaults here were not confined to a breach of the duty of candour, as I have explained. Weighing up all of her conduct I have no hesitation in concluding that she has forfeited the right to the exercise of the court's discretion to re-grant an injunction. Further, I do not accept the arguments that the husband's presentation supplies the evidence of a present unjustified dealing by him with his assets giving rise to a risk of dissipation to the wife's prejudice. After all, all the arrangements mentioned in the husband's affidavit were done long ago as part of his desire to keep his business and other activities as secret as possible. I have no doubts that the wife has at all times been well aware of this.

76. I therefore decline to re-grant the injunction. I will accept the husband's undertaking which he offers ex gratia. Had he not done so I would not have imposed a freezing/preservation order over the Marbella property, given the wife's misconduct. However, it is important that I recognise that the unparticularised evidence of the husband's threats, coupled with the turbidity of his financial arrangements, do give rise to suspicions and cause for concern. The husband should not have the slightest doubt that the highly pertinent questions raised in Mr Marshall QC's skeleton argument will all need to be investigated in depth by the questionnaire process. Had the wife given a fully explained account of the circumstances and context of the threats; fulfilled her duty of candour; and complied with the applicable principles and safeguards, it is distinctly possible that a freezing/preservation order over (at least) the Marbella property would have been justified.

77. Finally, I revert to the question of the illegitimately obtained documents. As I have mentioned the husband has now sued the wife for breach of confidence and misuse of private information in the Queen's Bench Division. The matter came before Slade J on 15 May 2013, the day before the hearing before me. An order was made which reflected a similar arrangement made in these proceedings whereby the documents would be handed back to the husband's solicitors on the basis outlined in *Tchenguiz v Imerman.*

78. In *Edgerton v Edgerton and another* [2012] 1 FCR 421 Lord Neuberger MR stated at para 52:

> "While there will, of course, be cases where the Family Court judge will direct that a preliminary issue as to ownership of assets, involving a third party, be heard in another Division as a preliminary issue, the better course is normally for the Family Court to determine the issue – see *TL v ML* [2005] EWHC 2860 (Fam), [2006] 1 FLR 1263, paras 33-36, *A v A* [2007] EWHC 99 (Fam), [2007] 2 FLR 467, and *Goldstone v Goldstone* [2011] EWCA Civ 39, [2011] 1 FLR 1926, CA. Continuity of judicial involvement is desirable both for efficiency and for

> consistency of decision-making. There will be cases where it may be appropriate to hive off some issues and send them to another Division of the High Court, but it should only be when relatively technical issues, outside the familiar family law territory, are likely to be raised and to play an important part."

79. Slade J declined to transfer the husband's civil claims against the wife to this Division to be heard together with her claim for a financial remedy notwithstanding this guidance (which reflects the terms of s49(2) of the Senior Courts Act 1981). On the facts of this case I agree with that decision. A claim for breach of confidence and misuse of private information arguably raises "technical issues, outside the familiar family law territory". There is a respectable argument that even though there is only one High Court in which all general jurisdiction is vested in all of its judges (see sections 4(3), 5(5) and 19(4) Senior Courts Act 1981 and *Re Hastings (No. 3)* [1959] Ch 368, per Vaisey J at 377-378), a technical claim such as this should be first heard by a specialist judge provided that the main dispute between the spouses is not delayed. I was told by Miss Bangay QC that the Queen's Bench Division can offer a three-day fixture in eight months time (i.e. by January 2014). Given that the First Appointment in this case will not be heard until 4 September 2013 it is improbable that the FDR could be heard before January 2014. The Queen's Bench hearing will therefore not, in this case, likely cause any material delay to these proceedings.

80. Effectively, therefore, this civil claim will be decided by a specialist judge as a preliminary issue. Once it is decided its impact, both in its findings and, if liability is proved, in its award of damages, will be able to be weighed in the wife's financial remedy claim at the FDR, and if the case does not settle, at trial.

In the [*name of court*] **No:**

The Matrimonial Causes Act 1973

The Civil Partnership Act 2004

The Matrimonial and Family Proceedings Act 1984

The Senior Courts Act 1981

(delete as appropriate)

The Marriage/Civil Partnership of XX and YY

After hearing *[name the advocates(s) who appeared]*….
After reading the statements and hearing the witnesses specified in the recitals below

FREEZING ORDER MADE BY [NAME OF JUDGE] ON [DATE] SITTING IN PRIVATE

TO [YY] OF [address]

WARNING: IF YOU YY DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE YOUR ASSETS SEIZED

ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS YY TO BREACH THE TERMS OF THIS ORDER MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED

The Parties

1. The applicant is XX
   The respondent is YY
   [The second respondent is ZZ]
   [specify if any party acts by a litigation friend]

2. Unless otherwise stated, a reference in this order to 'the respondent' means all of the respondents.

3. This order is effective against any respondent on whom it is served or who is given notice of it.

Definitions and interpretation

4. A respondent who is an individual who is ordered not to do something must not do it himself or in any other way. He must not do it through others acting on his behalf or on his instructions or with his encouragement.

5. A respondent which is not an individual which is ordered not to do something must not do it itself or by its directors, officers, partners, employees or agents or in any other way.

Recitals

6. This is a freezing injunction made against the respondent YY on [date] by [name of judge] on the application of the applicant XX.

7. The Judge read the following affidavits/witness statements [*set out*] and heard oral testimony from [*name*].

8. This order was made at a hearing [without notice]/[on short informal notice] to the respondent. The reason why the order was made [without notice]/[on short informal notice] to the respondent was [*set out*]. The respondent has the right to apply to the court to vary or discharge the order – see "**The right to seek variation or discharge of this order"** below.

9. There will be a further hearing in respect of this order on [ ] ('the return date').

Undertakings given to the court by the applicant XX

10. If the court later finds that this order has caused loss to the respondent [and to a third party] and decides that the respondent [and the third party] should be compensated for that loss, the applicant shall comply with any order the court may make.

11. By [time and date] the applicant shall issue and serve an application notice [in the form of the draft produced to the court] [claiming the appropriate relief].

12. The applicant shall [swear and file an affidavit] [cause an affidavit to be sworn and filed] [substantially in the terms of the draft affidavit produced to the court] [confirming the substance of what was said to the court by the applicant's counsel/solicitors].

13. The applicant shall serve upon the respondent [together with this order] by [time and date]:

    (a) copies of the affidavits and exhibits containing the evidence relied upon by the applicant, and any other documents provided to the court on the making of the application; and

    (b) the application.

    (c) a note [prepared by [his]/[her] solicitor] recording the substance of the dialogue with the court at the hearing and the reasons given by the court for making the order, which note shall include (but not be limited to) any allegation of fact made orally to the court where such allegation is not contained in the affidavits or draft affidavits read by the judge.

14. Anyone notified of this order shall be given a copy of it by the applicant's legal representatives.

15. The applicant shall pay the reasonable costs of anyone other than the respondent which have been incurred as a result of this order including the costs of finding out whether that person holds any of the respondent's assets and if the court later finds that this order has caused such person loss, and decides that such person should be compensated for that loss, the applicant shall comply with any order the court may make.

16. If this order ceases to have effect (for example, if the respondent provides security) the applicant shall immediately take all reasonable steps to inform in writing anyone to whom he has given notice of this order, or who he has reasonable grounds for supposing may act upon this order, that it has ceased to have effect.

17. The applicant shall not without the permission of the court use any information obtained as a result of this order for the purpose of any civil or criminal proceedings, either in England and Wales or in any other jurisdiction, other than this claim.

18. [The applicant shall not without the permission of the court seek to enforce this order in any country outside England and Wales [or seek an order of a similar nature including orders conferring a charge or other security against the respondent or the respondent's assets].]

IT IS ORDERED THAT:

[For injunction limited to assets in England and Wales]

19. Until the return date or further order of the court, the respondent must not remove from England and Wales or in any way dispose of, deal with or diminish the value of the following assets which are in England and Wales, namely:- *[specify in detail]*

20. If the total value free of charges or other securities ('unencumbered value') of the respondent's assets in England and Wales restrained by the preceding paragraph exceeds £ , the respondent may remove any of those assets from England and Wales or may dispose of or deal with them so long as the total unencumbered value of the assets restrained by the preceding paragraph remains above £ .

[For worldwide injunction]

21. Until the return date or further order of the court, the respondent must not in any way dispose of, deal with or diminish the value of the following assets whether they are in or outside England and Wales, namely:- *[set out]*

22. If the total value free of charges or other securities ('unencumbered value') of the respondent's assets restrained by the preceding paragraph exceeds £ , the respondent may dispose of or deal with those assets so long as the total unencumbered value of all his assets restrained by the preceding paragraph whether in or outside England and Wales remains above £ .

[For either form of injunction]

23. This order applies to assets (whether or not specifically listed) which are in the respondent's own name and whether they are solely or jointly owned. For the purpose of this order the respondent's assets include any asset which he has the power, directly or indirectly, to dispose of or deal with as if it were his own. The respondent is to be regarded as having such power if a third party holds or controls the asset in accordance with his direct or indirect instructions.

Provision of Information

24. Unless the following paragraph applies, the respondent shall within 7 days of service of this order and to the best of his ability inform the applicant's solicitors of all his assets [in England and Wales] [worldwide] [exceeding £ in value] whether in his own name or not and whether solely or jointly owned, giving the value, location and details of all such assets.

25. If the provision of any of this information is likely to incriminate the respondent, he may be entitled to refuse to provide it, but is recommended to take legal advice before refusing to provide the information. Wrongful refusal to provide the information is contempt of court and may render the respondent liable to be imprisoned, fined or have his assets seized.

26. Within 14 days of being served with this order, the respondent shall make and serve on the applicant's solicitors an [affidavit]/[witness statement] setting out the above information.

Exceptions to this Order

27. This order does not prohibit the respondent from spending £ a week towards his ordinary living expenses and also £ [or a reasonable sum] on legal advice and representation. The respondent may agree with the applicant's legal representatives that the above spending limits should be increased or that this order should be varied in any other respect, but any agreement must be in writing.

28. [This order does not prohibit the respondent from dealing with or disposing of any of his assets in the ordinary and proper course of business.]

Provision of security

29 The order will cease to have effect if the respondent –

(a) provides security by paying the sum of £ into court, to be held to the order of the court; or

(b) makes provision for security in that sum by another method agreed with the applicant's legal representatives.

Costs

30. The costs of this application are reserved to the judge hearing the application on the return date.

The right to seek variation or discharge of this order

31. Anyone served with or notified of this order may apply to the court at any time to vary or discharge this order (or so much of it as affects that person), but they must first inform the applicant's solicitors. If any evidence is to be relied upon in support of

the application, the substance of it must be communicated in writing to the applicant's solicitors in advance.

Parties other than the applicant and respondent

32. *Effect of this order*
It is a contempt of court for any person notified of this order knowingly to assist in or permit a breach of this order. Any person doing so may be imprisoned, fined or have their assets seized.

33. *Set off by banks*
This injunction does not prevent any bank from exercising any right of set off it may have in respect of any facility which it gave to the respondent before it was notified of this order.

34. *Withdrawals by the respondent*
No bank need enquire as to the application or proposed application of any money withdrawn by the respondent if the withdrawal appears to be permitted by this order.

[For worldwide injunction]

Persons outside England and Wales

35. Except as provided in the following paragraph, the terms of this order do not affect or concern anyone outside the jurisdiction of this court.

36. The terms of this order will affect the following persons in a country or state outside the jurisdiction of this court –
    (a) the respondent or his officer or agent appointed by power of attorney;
    (b) any person who –
        (i) is subject to the jurisdiction of this court;
        (ii) has been given written notice of this order at his residence or place of business within the jurisdiction of this court; and
        (iii) is able to prevent acts or omissions outside the jurisdiction of this court which constitute or assist in a breach of the terms of this order; and
    (c) any other person, only to the extent that this order is declared enforceable by or is enforced by a court in that country or state.

[For worldwide injunction]

Assets located outside England and Wales

37. Nothing in this order shall, in respect of assets located outside England and Wales, prevent any third party from complying with –
    (a) what it reasonably believes to be its obligations, contractual or otherwise, under the laws and obligations of the country or state in which those assets are situated or under the proper law of any contract between itself and the respondent; and
    (b) any orders of the courts of that country or state, provided that reasonable notice of any application for such an order is given to the applicant's solicitors.

Dated

Notice pursuant to PD 33A para 1.4

You XX, the applicant, may be sent to prison for contempt of court if you break the promises that have been given to the court

Statement pursuant to PD 33A para 1.5

I understand the undertakings that I have given, and that if I break any of my promises to the court I may be sent to prison for contempt of court
Signed
……
XX [date]

Communications with the court
All communications to the court about this order should be sent to –
[Insert the address and telephone number of the appropriate Court Office]
If the order is made at the Royal Courts of Justice, communications should be addressed as follows:
The Clerk of the Rules, Queen's Building, Royal Courts of Justice, Strand, London WC2A 2LL quoting the case number. The telephone number is 020 7947 6543.
The offices are open between 10 a.m. and 4.30 p.m. Monday to Friday.

Name and address of applicant's legal representatives
The applicant's legal representatives are –
[Name, address, reference, fax and telephone numbers both in and out of office hours and e-mail]

In the [*name of court*] **No:**

The Matrimonial Causes Act 1973

The Civil Partnership Act 2004

The Matrimonial and Family Proceedings Act 1984

The Senior Courts Act 1981

(delete as appropriate)

The Marriage/Civil Partnership of XX and YY

After hearing *[name the advocates(s) who appeared]*….
After reading the statements and hearing the witnesses specified in the recitals below

SEARCH ORDER MADE BY [NAME OF JUDGE] ON [DATE] SITTING IN PRIVATE

TO [YY] OF [address]

WARNING: IF YOU YY DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE YOUR ASSETS SEIZED

ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS YY TO BREACH THE TERMS OF THIS ORDER MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED

The Parties and other relevant persons

1. The applicant is XX
   The respondent is YY
   [The second respondent is ZZ]
   [specify if any party acts by a litigation friend]
   The applicant's solicitor is GG
   The supervising solicitor is JJ
2. Unless otherwise stated, a reference in this order to 'the respondent' means all of the respondents.

3. This order is effective against any respondent on whom it is served or who is given notice of it.

Definitions and interpretation

4. A respondent who is an individual who is ordered not to do something must not do it himself or in any other way. He must not do it through others acting on his behalf or on his instructions or with his encouragement.

5. A respondent which is not an individual which is ordered not to do something must not do it itself or by its directors, officers, partners, employees or agents or in any other way.

Recitals

6. This is a search order made against the respondent XX on [date] by [*name of judge*] on the application of the applicant YY.

7. The Judge read the following affidavits/witness statements [*set out*] and heard oral testimony from [*name*].

8. This order was made at a hearing [without notice]/[on short informal notice] to the respondent. The reason why the order was made [without notice]/[on short informal notice] to the respondent was [*set out*]. The respondent has the right to apply to the court to vary or discharge the order – see "**The right to seek variation or discharge of this order"** below.

9. There will be a further hearing in respect of this order on [ ] ('the return date').

Undertakings given to the court by the applicant XX

10. If the court later finds that this order or carrying it out has caused loss to the respondent [or to any third party], and decides that the respondent [or the third party] should be compensated for that loss, the applicant will comply with any order the court may make. Further, if the carrying out of this order has been in breach of the terms of this order or otherwise in a manner inconsistent with the applicant's solicitors' duties as officers of the court, the applicant will comply with any order for damages the court may make

11. By [time and date] the applicant shall issue and serve an application notice [in the form of the draft produced to the court] [claiming the appropriate relief].

12. The applicant shall [swear and file an affidavit] [cause an affidavit to be sworn and filed] [substantially in the terms of the draft affidavit produced to the court] [confirming the substance of what was said to the court by the applicant's counsel/solicitors].

13. The applicant will not, without the permission of the court, use any information or documents obtained as a result of carrying out this order nor inform anyone else of these proceedings except for the purposes of these proceedings (including adding further Respondents) or commencing civil proceedings in relation to the same or related subject matter to these proceedings until after the return date.

14. [The applicant will maintain pending further order the sum of £ [ ] in an account

controlled by the applicant's solicitors.]

15. [The applicant will insure the items removed from the premises.]

Undertakings given to the court by the applicant's solicitor GG

16. The applicant's solicitor will provide to the supervising solicitor for service on the respondent –

    (a) a service copy of this order;

    (b) the application notice or, if not issued, the draft produced to the court;

    (c) an application for hearing on the return date;

    (d) copies of the affidavits [or draft affidavits] and exhibits capable of being copied containing the evidence relied upon by the applicant;

    (e) a note recording the substance of the dialogue with the court at the hearing and the reasons given by the court for making the order, which note shall include (but not be limited to) any allegation of fact made orally to the court where such allegation is not contained in the affidavits or draft affidavits read by the judge; and

    (f) a copy of the skeleton argument produced to the court by the applicant's [counsel/solicitors].

17. The applicants' solicitor will answer at once to the best of his ability any question whether a particular item is a listed item.

18. Subject as provided below the applicant's solicitor will retain in his own safe keeping all items obtained as a result of this order until the court directs otherwise.

19. The applicant's solicitor will return the originals of all documents obtained as a result of this order (except original documents which belong to the applicant) as soon as possible and in any event within [two] working days of their removal.

Undertakings given to the court by the supervising solicitor KK

20. The supervising solicitor will use his best endeavours to serve this order upon the respondent and at the same time to serve upon the respondent the other documents required to be served and referred to under "**Undertakings given to the court by the applicant's solicitor GG"** above.

21. The supervising solicitor will offer to explain to the person served with the order its meaning and effect fairly and in everyday language, and to inform him of his right to take legal advice (including an explanation that the respondent may be entitled to avail himself of the privilege against self-incrimination and legal professional privilege) and to apply to vary or discharge this order as mentioned under "**The right to seek variation or discharge of this order"** below.

22. The supervising solicitor will retain in the safe keeping of his firm all items retained by him as a result of this order until the court directs otherwise.

23. Unless and until the court otherwise orders, or unless otherwise necessary to comply with any duty to the court pursuant to this order, the supervising solicitor shall not disclose to any person any information relating to those items, and shall keep the existence of such items confidential.

24. Within [48] hours of completion of the search the supervising solicitor will make and provide to the applicant's solicitors, the respondent or his solicitors and to the judge who made this order (for the purposes of the court file) a written report on the carrying out of the order.

IT IS ORDERED THAT:

The Search

25. The respondent must permit the following persons –
    (a) the supervising solicitor KK;
    (b) the applicant's solicitor GG; and
    (c) up to [ ] other persons being [their identity or capacity] accompanying them, (together 'the search party'), to enter the premises known as [specify] and any other premises of the respondent disclosed under "**Provision of Information"** below and any vehicles under the respondent's control on or around the premises ('the premises') so that they can search for, inspect, photograph or photocopy, and deliver into the safekeeping of the applicant's solicitors all the documents and articles which are listed in the following paragraph.

26. The listed items are:- *specify in detail*

27. Having permitted the search party to enter the premises, the respondent must allow the search party to remain on the premises until the search is complete. In the event that it becomes necessary for any of those persons to leave the premises before the search is complete, the respondent must allow them to re-enter the premises immediately upon their seeking re-entry on the same or the following day in order to complete the search.

Provision of Information

28. The respondent must immediately inform the applicant's solicitors (in the presence of the supervising solicitor) so far as he is aware –

    (a) where all the listed items are;

    (b) the name and address of everyone who has supplied him, or offered to supply him, with listed items;

    (c) the name and address of everyone to whom he has supplied, or offered to supply, listed items; and

    (d) full details of the dates and quantities of every such supply and offer.

29. By [time] on [date] the respondent must make and serve an [affidavit]/[witness statement] setting out the above information.

Prohibited Acts

30. Except for the purpose of obtaining legal advice, the respondent must not directly or indirectly inform anyone of these proceedings or of the contents of this order, or warn anyone that proceedings have been or may be brought against him by the applicant until 16:30 on the return date or further order of the court.

31. Until 16:30 on the return date the respondent must not destroy, tamper with, cancel or part with possession, power, custody or control of the listed items otherwise than in accordance with the terms of this order.

32. [Insert any prohibitory injunctions.]

33. [Insert any further order]

Costs

34. The costs of this application are reserved to the judge hearing the application on the return date.

Restrictions on Service

35. This order may only be served between [ ] and [ ] [and on a weekday].

36. This order must be served by the supervising solicitor, and the paragraphs above under **"The Search"** must be carried out in his presence and under his supervision.

The right to seek variation or discharge of this order

37. Anyone served with or notified of this order may apply to the court at any time to vary or discharge this order (or so much of it as affects that person), but they must first inform the applicant's solicitors. If any evidence is to be relied upon in support of the application, the substance of it must be communicated in writing to the applicant's solicitors in advance

Dated

Notice pursuant to PD 33A para 1.4

You XX, GG and JJ may be sent to prison for contempt of court if you break the promises that have been given to the court

Statements pursuant to PD 33A para 1.5

I understand the undertakings that I have given, and that if I break any of my promises to the court I may be sent to prison for contempt of court
Signed
……
XX [date]

I understand the undertakings that I have given, and that if I break any of my promises to the court I may be sent to prison for contempt of court
Signed
……
GG [date]

I understand the undertakings that I have given, and that if I break any of my promises to the court I may be sent to prison for contempt of court
Signed
……
JJ [date]

Communications with the court
All communications to the court about this order should be sent to –
[Insert the address and telephone number of the appropriate Court Office]
If the order is made at the Royal Courts of Justice, communications should be addressed as follows:
The Clerk of the Rules, Queen's Building, Royal Courts of Justice, Strand, London WC2A 2LL quoting the case number. The telephone number is 020 7947 6543.
The offices are open between 10 a.m. and 4.30 p.m. Monday to Friday.

Name and address of applicant's legal representatives
The applicant's legal representatives are –
[Name, address, reference, fax and telephone numbers both in and out of office hours and e-mail]