

Dodgy Documents in Divorce

Many a divorcing spouse has resorted to “self-help sleuthing” in obtaining documents belonging to their husband or wife, in the belief that the other is likely to hide assets from the magnifying glass of the divorce courts. People photocopy documents belonging to the other party, download computer files, print off emails – breaking into offices, filing cabinets and safes is not unheard of!

The Court of Appeal has just ruled that a husband or wife (and their divorce lawyer) who secretly obtains documents or information about their spouse’s assets may have no defence against injunction or breach of confidentiality proceedings. The court may not admit the improperly-obtained documents into evidence.

The principle of full disclosure in divorce proceedings means that each party is required on oath to provide a truthful picture of their finances, with supporting documentary evidence. Human nature being what it is, those going through divorce may have grave suspicions that their spouse will be less than truthful.

Until now, someone resorting to self-help could present the documents/downloads they had located to their lawyer and rely upon the Hildebrand principle which in essence says that the information can be taken into account by the court when deciding the outcome of the case, even though it may have been obtained improperly.

The Court of Appeal has now said, in **Tchenguz & Ors v Imerman** that someone obtaining information improperly (and their lawyer) would not be able to rely on the Hildebrand principle if an injunction or claim for breach of privacy were brought by the offended spouse.

It seems that the sleuth’s right to try and get a fair trial (which is, after all, enshrined in the European Convention on Human Rights) is not as valid as the other spouse’s right to privacy/confidentiality.

The court retains discretion as to whether it will admit the documents into evidence but suggests a separate application is brought by the lawyers to review the rights and wrongs of that.

Further, it does appear that the sleuth (or people put up to sleuthing by him or her) and their lawyer could face not only injunction proceedings for the return of the papers but also a claim for damages for breach of privacy. Divorce lawyers will certainly be cautious about the origins of papers belonging to the other spouse in future.