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Freezing Orders on divorce: Frozen in time or a case of suspended animation?

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The case of billionaire Sergei Pugachev has highlighted the issue of freezing orders on divorce. Amanda Melton, family lawyer, IBB Solicitors discusses the problem.

Mr Pugachev's assets were recently frozen by court order, reminding us that freezing orders are alive and kicking. So, are you likely to find yourself in receipt of a freezing order? What is the effect and how might you be able to extricate yourself from it?

The starting point for freezing orders is the refusal to disclose or lack of disclosure to the other party. Spouses used to collate a bundle of documents obtained by any means - sometimes breaking into a personal filing cabinet and copying them in the dead of night. It was cloak and dagger, but acceptable to the family courts.

The case of Imerman in 2010 changed that. From that point any documentation obtained in such a manner could not be used. If a wife had no idea about the family wealth, any chance of obtaining that information had just been removed. When the judiciary were confronted about the unfairness of it, their suggestion was greater use of the search and freezing order. There is no better way to find out about someone's financial affairs than having the time to investigate them - and if they are frozen that becomes achievable.

Post-Imerman, many expected to see more freezing orders obtained in family courts but this has not been the case. Why not?

Over time, there had been a gradual chipping away at the family courts' discretion in granting such orders and eventually, in 2013, Mr Justice Mostyn made clear that there was to be no more over-utilisation of the family court's discretion - the criteria must be the same whether in a civil or family matter.

The effects of a freezing order can be devastating, preventing you from moving any money from your bank accounts or parting with any business or personal assets.
The judiciary say there must be "solid evidence" and a real risk of assets being moved - rather than a mere suspicion. So do you need to worry?

1. The court expects the other side to be notified, unless there is strong evidence to suggest that that would result in irretrievable prejudice to the party claiming - historically we would arrive at court without notice, set out our suspicions and walk away with an order. This is a change reflective of the modern world of instant communication. However, it is now just as easy to transfer money out of the jurisdiction minutes before a hearing!

2. There must be a good case supported by evidence of objective facts. But where do those facts come from, bearing in mind the obstacles following the case of Imerman?

3. The facts put before the Judge must be true and complete. Everything - good or bad - within the applicant's knowledge must be made available to the Judge.

4. The applicant needs to give an undertaking that he/she will be responsible in damages to the respondent and any third party affected by the order.

5. There is the risk of wasted costs orders. Having to establish a case in such detail is costly. This cost, coupled with the risk set out at 4 above, is a step too far for many.

Freezing orders remain a consideration and a risk. However, for many, they are frozen in time because of the financial risks they carry. Obtaining these orders is so strict that the unwary can fall foul, perhaps missing a minor point. A quick respondent will seize upon that point and, in all likelihood, the application will be set aside.