

Divorce ruling set to transform 'big money' cases

By Jane Croft, Law Courts Correspondent

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Estranged wives in "big money" divorce cases will be barred from using secretly obtained documents in an attempt to prove their husbands are hiding assets that could be included in a divorce settlement, the Court of Appeal has ruled.

On Thursday, family lawyers said the judgment would revolutionise high-profile divorce cases, giving wealthy men freedom to hide assets from their spouses and causing women to fight dirtier to stop their husbands concealing money.

The husband-friendly ruling will also temper Britain's reputation as a friendly jurisdiction for women seeking to extract the best possible deal from their super-rich ex-partners.

The case centered on Lisa Tchenguiz Imerman who filed for divorce from her husband Vivian, a former owner of Del Monte foods, in late 2008. At its heart were confidential documents belonging to Mr. Imerman, downloaded by her brother, Robert Tchenguiz, possibly with help from others, from a computer in the Mayfair office he shared with Mr. Tchenguiz.

Ruling on the case, Lord Neuberger found that the concern felt by Mr. Tchenguiz and his brother Vincent stemmed from "threats which Mr. Imerman had, on the Tchenguiz brothers' evidence, made to Mrs. Imerman and to her brothers", that his assets "would be concealed in any ancillary relief proceedings".

Mr. Imerman's lawyers said he had complied with all rules in relation to disclosure throughout the divorce proceedings. Lord Neuberger found: "At the time the information was taken unlawfully, Mr. Imerman was under no obligation whatever to disclose his assets, still less to disclose private documents relating to those assets."

However, London has earned a reputation as the "divorce capital of the world" because of its generous divorce settlements for ex-wives, leaving many husbands with an incentive to conceal their assets.

Sandra Davis, head of family law at Mishcon de Reya, said: "In a large number of cases there is a question of non-disclosure. Today's judgment will mean more court time and more legal costs will be spent arguing about whether the disclosed assets are all of the family's assets... The pendulum has swung again, this time in favour of husbands."

Until now under a widely-used practice, known as Hildebrand after a case in 1992, any document left lying around a couple's home was able to be copied and used in divorce proceedings. Documents obtained by force, such as by breaking into a filing cabinet, were never admissible.

But on Thursday Lord Neuberger, the master of the rolls, ruled there was “no legal basis for the so-called Hildebrand rules”.

He went on: “It follows that nothing in the [rules] can be relied upon in justification of, or as providing a defence to, conduct which would otherwise be criminal or actionable.”

The ruling means that spouses who take documents by stealth could face legal action or even criminal proceedings. Instead, they face having to apply for expensive court orders to search and freeze assets.

Sarosh Zaiwalla, senior partner of Zaiwalla & Co, who acted for the Tchenguiz brothers, said: “Unfortunately, this judgment will not make it easy for a spouse who does not have funds to obtain court orders to freeze assets and obtain documents.”

Lawyers say that clarification of the Hildebrand rules had become inevitable given rapid changes in technology, particularly in downloading information or e-mails from computer servers belonging to a spouse.

Ms Tchenguiz Imerman can still make an application to see the documents if the court considers it appropriate.

Jeffrey Nedas, a forensic accountant who has advised on divorce cases, said the ruling meant that financial documents and data would have to be obtained correctly through proper and legal processes.

“People may try to hide their wealth, but there is always a trail an experienced accountant can follow,” he said.

In the past 20 years, many high-profile cases have relied on documents or information obtained under Hildebrand rules.

The Court of Appeal ruled last year that Marco Pierre White, the former Michelin-starred chef, could sue his estranged wife’s solicitors because she had allegedly intercepted personal papers.

Michelle Young, estranged wife of property entrepreneur Scot Young, claimed she had evidence he was still worth millions. The couple have been embroiled in a three-year court battle over his fortune. Mr. Young was declared bankrupt this year.

Divorce ruling outlaws secretly gained data

By Jane Croft

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Estranged couples in “big money” divorce cases will no longer be able to use secretly obtained documents in divorce proceedings, the Court of Appeal has ruled.

In a groundbreaking judgment, the court ruled that property entrepreneurs Robert and Vincent Tchenguiz were unable to use information about the financial affairs of their sister’s husband at her divorce hearing.

The confidential documents belonging to Vivian Imerman, the former owner of Del Monte foods, were downloaded from a computer in the office he had shared with the two brothers. They must now be handed back to him.

Divorce lawyers said the ruling would revolutionise the disclosure of documents in future high profile divorce cases – particularly those in which wealthy husbands attempt to hide their assets to prevent them being included in any divorce settlement.

For at least 20 years the so-called Hildebrand rules laid down by the family courts have allowed spouses secretly to obtain and use financial documents lying around the marital home in divorce proceedings – provided they are not obtained by force.

However, Lord Neuberger, the Master of the Rolls, ruled in the Tchenguiz case that there was “no legal basis for the so-called Hildebrand rules”.

He also ruled that Mrs Imerman “should not be entitled to benefit in any way from the wholesale, wrongful and possibly criminal, accessing and copying of Mr Imerman’s confidential documents”.

Lord Neuberger added: “It follows that nothing in the so-called Hildebrand rules can be relied upon in justification of, or as providing a defence to, conduct which would otherwise be criminal or actionable.”

In future, lawyers say that spouses who take documents secretly from the marital home could face lawsuits for damages or even criminal proceedings.

Wives who suspect their husbands are concealing assets will instead have to apply for a “search and seizure” court order costing tens of thousands of pounds.