

THE  TIMES

Judges rule divorcing wives can no longer turn detective on spouse's finances

Lisa Tchenguiz with husband Vivian Imerman in happier times

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DIY detective work by divorcing wives to expose their husband's hidden assets is set to end after senior appeal judges ruled today that the practice was unlawful.

Wives will no longer be able secretly to seize papers or documents they find lying around or access e-mails after the Court of Appeal held that this could breach a person's rights of confidence and also be a crime.

Divorce lawyers immediately condemned the Court of Appeal ruling and warned that it was a "cheat's charter" that would give husbands carte blanche to conceal their true financial worth in divorce cases — leaving wives out of pocket.

It would, they said, turn back the clock decades, reversing the principle that wives are entitled to an equal share when a marriage breaks up.

It would also fuel the costs and acrimony of divorce proceedings as wives would be obliged to resort to expensive legal proceedings to obtain orders that would force husbands to disclose their assets.

The ruling came in a divorce battle between Vivian Imerman, 53, the business tycoon and former owner of Del Monte Foods, and Lisa Tchenguiz, 43, his estranged wife.

Last November she won the right to use 20,000 documents removed from his computer by Robert and Vincent Tchenguiz, her brothers and former business partners of Mr Imerman in her battle for a slice of his £300 million fortune.

Although the judge, Mr Justice Moylan, castigated the brothers over their behaviour, he said the documents could be used. "I regard the conduct which resulted in [Mr Imerman's] information being obtained irregularly and the volume of that information which was obtained as being at the extreme end of the range of behaviour which I have seen during the course of the last 30 years," he said.

But today Lord Neuberger of Abbotsbury, the Master of the Rolls, sitting with Lords Justices Moses and Munby, disagreed and ordered the return of the material still held.

If she was allowed to keep it, this "would give her access to material which was confidential to Mr Imerman and had been unlawfully taken from him by her brothers and supplied to her in circumstances where it is not the court or Mr Imerman but her brothers who selected the documents".

They said that there was "no real doubt" that Mr Imerman's rights of confidence had been breached on most of the data accessed on nine occasions in 2009.

They ordered that seven files of documents and all copies currently held by Mrs Imerman's solicitors be handed over to Mr Imerman's solicitors.

Mr Imerman was also entitled to an order restraining Mrs Imerman, for the time being, or her lawyers, "from using any of the information they have obtained through reading the seven files", the appeal judges said.

The judges said that the case was over whether the "unlawful measures... (described, in an attempt to disarm, as self-help)" were justified where a spouse feared dishonesty on the part of the husband.

Diana Parker of Withers LLP, solicitor for Ms Tchenguiz, said: "How can there be protection of confidentiality over those very facts that the duty of disclosure requires to be revealed on divorce?"

“Lisa Tchenguiz is prohibited from saying what her husband claims he is worth, compared with what is in the public domain as to the wealth he created during their marriage — but she is not gagged from saying that she finds the Court of Appeal decision ‘a cheat’s charter’.

“She is horrified that the Court of Appeal thinks it proper to make it so much easier for money to remain hidden — and to remain hidden from women, their solicitors and even the judges who are supposed to assess what the total assets are and divide them fairly. How can this be fair?”

Mr Zaiwalla, who acted for Robert and Vincent Tchenguiz, said: “A law that has worked well for 20 years has been overturned.

For almost 20 years, the ‘Hildebrand Rules’ [named after a case of that name, that allow spouses to take documents] have symbolised the English Courts’ recognition that, in the breakdown of marriages, the divorce courts need to have a really practical and inexpensive solution to redress the imbalance between financial inexperienced wives and spouses who are trying to conceal their assets or who have quietly divested themselves of them before the divorce proceedings .

The rules “solved the problem because they were a set of simple and easily understood rules enabling the wives to access the information which the husbands seek to keep hidden from them, so long as they did not use any improper force or resort to theft and the like.”

“But in future a spouse who fears she — or he — is being cheated will have to resort to devices such as a ‘search and seizure’ order. These cost tens of thousands of pounds — putting them out of reach of most people in a divorce case.”

The brothers would consider an appeal to the Supreme Court, he added.

The case is being seen as a test action over the practice of seizing documents which is widely employed by divorce lawyers and their clients and then used in divorce proceedings.

Spouses can take documents they find lying around when they believe that their husbands or wives are concealing financial information. But there is widespread confusion about how far they may go.

Macro Pierre White, the former Michelin-starred chef and television presenter, is also pursuing his estranged wife’s lawyers over the seizure of his personal papers..

The battle between Mr Imerman and Ms Tchenguiz, has already run up an estimated £5.5 million in costs over 13 hearings. The couple married in 2001 and have one child but she petitioned for divorce in 2008.



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