

No 18 Chambers

Financial Remedies Update

Third party assets and procedural fairness

John Franklin



Introduction

- Looking at 2 recent cases
- Principles arising from these cases:
 - ⑩ Strike out/summary judgment
 - ⑩ Third party property disputes
 - ⑩ Debarring
 - ⑩ Setting aside dispositions
 - ⑩ Adverse inferences

MF v NF and Others

- [2026] EWFC 243, MacDonald J
- Wife: assets of £7.23m
- Husband: deficit of £2.16m
- Spanish property, company proceeds and trust loans
- Strike out and no summary judgment under FPR

Ownership and resources

- Third party rights require a property law analysis which is the same across all divisions of the High Court (A v A [2007] 2 FLR 467)
- An available resource is a separate s25 question
- The preliminary trial to establish the extent of the matrimonial assets which determines the claims and rights of third parties, the proceedings remain between W and H to obtain discretionary relief (Goldstone v Goldstone)

Third party pleadings

- Points of Claim and Defence define the dispute “essential in every instance where such [property] dispute arise that directions are given for the issues to be fully pleaded (TL v ML, A v A Goldstone v Goldstone etc)
- Not appropriate to import CPR (Goldstone v Goldstone)
- Material facts must support each legal route
- Sham and dishonesty need proper particulars

Strike out

- FPR 4.4 has defined grounds for strike out
 - ⑩ No reasonable grounds for bringing or defending the application (i.e. statement in support of the application per Wyatt v Vince);
 - ⑩ Abuse of process, failure to comply or (in matrimonial etc and answers) by consent
- PD4A 2.1 “whether application is legally recognisable” (permissible ground for strike out if not)
- Wyatt v Vince excludes a merits assessment
- A merits assessment belongs at the proper hearing
- FPR 4.1 cannot create summary judgment – no reference in FPR to “reasonable prospects of success”

The result in MF

- Appeal allowed and strike-out orders set aside
- KN restored as a party
- Ownership and sham remained unresolved
- The status of Points of Claim under FPR 4.4 remained open

TH v AR and KK

- [2026] EWFC 262, Nicholas Allen KC
- A 24-year marriage and visible net assets of £47.5m
- Wife's father held disputed assets
- Company CD lost its underlying Russian assets during proceedings

Debarment and section 25

- Debarring orders limit the case a party may advance
- They do not entitle the opponent to the order sought (para 60)
- Quasi-inquisitorial exercise remains – “court has to tread a narrow path..” Re Z
- XX and submissions may not advance a +ve case
- Debarment does not mean Form E etc cannot be considered (para 61) and objectively verifiable circumstances can be considered
- The judge must conduct the statutory assessment

Debarment and Property

- Effect of debarment more significant in relation to property dispute – “a dispute with a third party must be approached on exactly the same basis as if it were being determined in the Chancery Division” (TL v ML and Ors [2006] 1 FLR 1263 per Mostyn)
- Claim still has to be made out by evidence and not pleadings
- Statutory s. 25 exercise not required

Adverse inferences

- An inference needs an evidential foundation
- Disclosure failures can strengthen a supported case
- The court can assess resources robustly
- Moher v Moher [2020] 1 FLR 225 prohibit pure speculation

Sham and nominees

- Law on sham (Kremen v Agrest [2011] 2 FLR 478 at [12] and [13]):
 - ⑩ Allegation is a serious
 - ⑩ Strong presumption parties intended to be bound
 - ⑩ Degree of dishonesty
 - ⑩ Strong presumption against holding a provision or a document a sham
 - ⑩ Standard of proof not elevated but more serious allegations require greater for evidential clarity
- A gift or tax motive alone proves little

Section 37 and transfers

- Section 37 targets dispositions intended to defeat relief.
Where more than one intention for a disposition, the intention to defeat does not have to be the sole or even dominant reason (*Le Foe v Le Foe* [2001] 2 FLR 970)
- Consideration and the recipient's good faith matter

Overseas assets and orders

- Personal orders can address overseas assets
- Property adjustment orders are unlikely to be made absent clear evidence that such orders would be implemented....where the order would represent an exorbitant act of extra-territoriality and would also be futile (*Goyal v Goyal* (No. 2) [2017] 2 FL:R 236)
- Declarations as to beneficial ownership can be made because it can then be treated as a resource available to a party
- A trust may be created, exist and be enforceable in respect of assets located in a jurisdiction, the law of which does not recognise trusts in any form (*Akers and ors v Samba Financial Group* [2017] UKSC 6).

Wells sharing and risk

- “Wells sharing” can allocate an uncertain valued asset in specie (*Wells v Wells* [2002] 2 FLR 97)
- There is no automatic minority-only restriction
- Caution and the clean break duty remain central (*Versteegh v Versteegh* [2018] 2 FLR King LJ)
- COA in *Culligan v Rosemin-Culligan* [2026] EWCA Civ 948 rejected a fixed “last resort” rule
- Caution required given the statutory duty to consider whether it is appropriate to order a clean break pursuant to s. 25A

Adjourned capital claims

- TH preserved the husband's lump sum claim
- The purpose was protection against implementation failure
- Restoration required an application by 11 September 2027
- This was an exceptional response, not a general safety net

Any Questions?

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