

TRUST LAW

Uncovering assets from litigants who conceal them

The path bypasses the Mr Bs of this world and goes straight to the banks, requiring them to disclose all the financial records that are being withheld

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The case of *Broederlow v B & others* [2023] NZHC 2019 (1 August 2023) involved a former husband who did his best to conceal matrimonial assets from his former wife.

The assets were related to three known trusts and, it seems, other entities. To avoid disclosing them, the man “had continuously changed bank accounts” [22]. He had also reneged on commitments to make disclosure. This had gone on for four years.

In frustration, his former wife persuaded a Family Court judge to make an order that would be served on seven New Zealand banks. With one change (to address a criticism that the High Court judge said could be made of the order), the husband was directed to sign the following order:

“To [the seven named banks] I, the undersigned [former husband] authorise you to provide such information as may be requested to you by [his former wife’s lawyer] in respect of any accounts held by me in my

name or to my benefit including but not limited to [three named trusts, three named companies and a business] and any other company in which I have a controlling interest, and corresponding bank statements from the period 2019 to the present along with associated credit card statements for the relevant period. I waive all privileges and/or all confidentiality, for you to discuss my matters freely with [the wife’s lawyer]...”

The court directed that if the husband didn’t sign the order in 14 days, the court would make a non-party discovery order against the seven banks “on the same terms and conditions as the authority” [25].

Tahana J held that there was authority under rules 141 and 143 of the Family Court rules and ss 44B, 44D and 44E of the Property (Relationships) Act to make the order [45].

She held that “it was necessary to make such an order in circumstances where the history of the proceedings and the evidence ... indicated that Mr B may have taken steps to hide relationship property

income” [43].

It appears that the order was successful. It was served on the banks on 22 December 2022 and they disclosed documents in response to the order in January 2023.

In approving the order, Tahana J referred to the overriding principle in family law litigation, that Family Court proceedings should be dealt with “as fairly, inexpensively, simply and speedily as is consistent with justice; to avoid unnecessary formality; and work in harmony with the purpose and spirit of the Act ...” [49].

There will likely always be litigants who act as obstructively as Mr B. When faced with such obstructions, the case of *Broederlow* identifies a path by which the court can reduce delays created by wasteful correspondence and interlocutory applications. The path bypasses the Mr Bs of this world and goes straight to the banks, requiring them to disclose all the financial records that are being withheld. ■

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