IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Family Division

2024/FAM/div/00116

B E T W E E N

KLD

Petitioner

AND

PJD

Respondent

Before: The Honourable Madam Justice C.V. Hope Strachan, Justice of The Supreme Court of the Commonwealth of the Bahamas

Appearances: Bradley Cooper for the Petitioner
Michel Barnett-Ellis for the Respondent

Hearing date: 15th May, 2025

DECISION

The Misuse of the Computer Act, The Question of Authority to Intercept/Access Information of Another from A Computer Device, Application for Strike Out, Relevance of Documents Obtained, An Individual's Right to Confidentiality and Privacy; Full and Frank Disclosure; Freezing Orders, Legal Professional Privilege

C.V.H. STRACHAN, J

BACKGROUND FACTS

[1.] This case involves high-net-worth individuals and the alleged reluctance of the Respondent ("the husband") to make full and frank disclosure of his assets to the court in order to avoid or diminish maintenance payments to the Petitioner ("the wife"). The genesis of the wife's allegations against the husband emerged from an affidavit he filed in the proceedings purporting that the contents were a representation of his financial standing. The wife disagreed and thereafter obtained various computer-generated photographs, emails, and copies of documents ("the documents") which she exhibited in an affidavit with claims that the documents belie the husband's averments about his financial position. The husband has applied to have these documents struck out from the affidavit so that they will not form part of the evidence which the court should regard in assessing the case.

[2.] The husband's objection to the inclusion of the documents in the wife's affidavits is grounded in the Computer Misuse Act, Chapter 107A, whereby intercepting and/or using information obtained from a computer (in this case the husband's iPad and laptop) (hereafter referred to as "device(s)"), without authority, creates a criminal offence with criminal penalties. The wife insists that she had the authority to obtain those emails and that they should not be struck out. Her rationale is that they expose the husband's failure to give full and frank disclosure to the court about his assets in his attempt to mislead the court to his financial advantage and her disadvantage.

[3.] Most relevant to the context of the proceedings is that the wife's view of the financial position of the parties is that the husband is an extremely wealthy man, from a wealthy family, who did not require her to work even from the days that they dated, did not encourage her to be employed and accustomed her to a lavish lifestyle which included parties, expensive travel, expensive homes, credit cards and paid expenses among other luxuries. She avers that this was maintained for the duration of their courtship and their marriage until its breakdown. Things have changed, and the present position is as she describes;

> *"I have no savings. I have no pension. I remain entirely dependent on (the husband) for my livelihood. I am presently supported by the use of a credit card paid for by (the husband). I believe he was only prepared to continue to use the credit card, whilst I was prepared to negotiate a settlement and consider separation. I believe that as a result of filing the Petition, the cruelty and abuse will extend to his cutting me off from financial support. I am therefore including in my Petition an application for maintenance pending suit. My allowance over the last 24 months has been between $10-20,000.00 BSD per month. I therefore seek the amount of*

$15,000.00 per calendar month pending suit. A copy of some of my credit card statements from the last two years is on pages 27-30."

[4.] The husband has a completely different perception of his/their financial position. Aside from alluding to the fact that the wife has certain skills that render her employable and that he always supported and encouraged her to employ these skills, which she failed to do, he said.

> *"We do not have the considerable assets or access to money that she seems to think that we do. We are currently heavily in debt, and I was recently advised by my lender that I have breached the terms of the loan."*

[5.] The Application for Maintenance Pending Suit (MPS) was overtaken by the wife having obtained a Decree Nisi on an uncontested basis on 22nd January, 2025, on the grounds of the husband's cruelty to her. The hearing of ancillary matters nonetheless involves the wife's application for maintenance pursuant to the prayer in the Amended Petition that "the court hears The Petitioner on applications for ancillary relief and make the appropriate financial provision orders at that time."

The Husband's disclosure of the family's assets

[6.] In giving an account of the couple's financial means, the husband did acknowledge the sale of their matrimonial home in Canada and the purchase of their home here in Sandy Port for 1.45 Million Dollars, which they renovated for $303,470.00. He also acknowledged that he has leased the home to his father and has received rent for $130,000.00, money which the wife has benefited from.

[7.] The husband also declared that the family's (he and the wife's) assets sit at $2,307,937.67 and liabilities at $2,651,812.30, asserting that both were jointly owned by the parties. He itemized shareholdings including: 2475110 Alberta Ltd. (loan agreement); Twenty First Financial Inc. (a Canadian company) with 300,000 F Preferred Shares and 7,450 Common A Shares; Twenty First Financial Group Inc. (a Bahamian company with no operations to date); and MySolar Group Inc. (a Canadian company) with 125,300 Class A Shares representing a 50% holding. He emphasized that both Twenty First Financial Inc. and MySolar Group Inc. are currently operating at a loss, exhibiting a promissory note and financial statements in support.

[8.] The ancillary hearing was scheduled for 15th May 2025. In preparation, both parties filed additional affidavits on 9th May 2025, with the wife submitting a further affidavit on 13th May 2025.

THE WIFE'S ALLEGATIONS ABOUT THE FAMILY'S ASSETS

[9.] In her affidavit of 9th May 2025, the wife alleged that the husband's expenditures on the family during the marriage totaled approximately $1,530,480.00. She further stated that, although she requested monthly maintenance of $15,000 for herself, her husband has paid only $4,000. She reported outstanding bills of $26,000 and explained that her affidavit was intended to demonstrate the standard of care and level of expenses she experienced throughout the marriage.

[10.] In his supplemental affidavit filed on 9th May 2025, the husband admitted to paying the wife $1,000 per week in cash, asserting that she refused to open a bank account. He alleged that the wife invested in a project in the Dominican Republic without his knowledge, purchased art and furniture stored at her mother's residence, and deposited a cheque made payable to her boyfriend into his account. He further claimed that the wife had been saving money without his knowledge and stated that he had paid her $32,000.00 since October 2024. The husband maintained that she does not require additional maintenance and, in any event, he cannot afford to provide it.

THE WIFE'S SUMMONS FOR A FREEZING ORDER

[11.] It is also material that the wife filed a Summons on **9th May 2025** seeking the following reliefs:

> "i. The respondent, his servants, or agents be restrained from transferring any monies out of the jurisdiction of the Commonwealth of the Bahamas.
>
> ii. The Respondent gives a true and accurate accounting of all financial assets, transactions, and monies held in all banks within the Dominion of Canada and within the Commonwealth of the Bahamas, and the United States of America under the Rules of the Supreme Court.
>
> iii. The Respondent disclose to the Petitioner and to this Honourable Court all pertinent information in respect to his finances including his financial interest as well as his shareholdings in the following Companies: (a) Charthouse Capital Inc., (b) 247511 Alberta Ltd.,(c) 1412371 Alberta Ltd., (d) 2110996 Alberta Ltd., (e) Modern ModernLeaf Group Inc., (f) Twenty First Financial Inc.(a Canadian company), (g) Financial Inc., (a Bahamian company, (h) MySolar Group (a Canadian company), (i) MySolar Group (a Bahamian Company,(j) The "D" (anonymized) Family Trust.

iv. The Respondent discloses to the Petitioner and this Honourable Court Statements for Seven (7) years for the following Companies: -

(a) Charthouse Capital Inc., (b) 247511 Alberta Ltd., (c) 1412371 Alberta Ltd., (d) 2110996 Alberta Ltd., (e) Modern ModernLeaf Group Inc., (f) Twenty First Financial Inc. (a Canadian company), (g) Financial Inc. (a Bahamian company, (h) MySolar Group (a Canadian company), (i) MySolar Group (a Bahamian Company, (j) The "D" Family Trust.

v. That the costs of this Application be borne by the Respondent herein."

THE WIFE'S ALLEGATIONS THAT THE HUSBAND IS MISLEADING THE COURT

[12.] In her affidavit of 13th May 2025, the wife alleged that the husband had provided misleading accounts of his assets and asserted that, unless compelled by the court, he would continue engaging in conduct detrimental to her interests. She outlined several key points in support of this position.

[13.] First, she stated that, following her marriage and resignation from design school to assist in the husband's business, the husband's father, GD, promised to pay her CAD $1,000,000 annually for her involvement in the "Friday Harbour Development," a Canadian real estate project. An initial CAD $1,500,000.00 payment was made, apparently to the husband, but she claimed she received none of it.

[14.] She further alleged that the husband is a beneficiary of the "D" Family Trust, a Bahamian entity managed by Charthouse Capital Inc., which she described as controlling billions of dollars in assets for the "D" family. According to the wife, Charthouse holds significant interests in major corporations, including Direct Energy Marketing Limited, Centrica PLC, Baytex Energy Corporation, Crew Energy Incorporated, Comaplex Minerals Corporation, Bonterra Energy Corporation, Universal Energy Group, and the Arizona Coyotes Hockey Team. She asserted that the husband and his father control Charthouse through their attorney, Geoff Walker, and she exhibited documents purporting to illustrate the company's considerable wealth.

[15.] The wife claimed that the husband and his father relocated to the Bahamas to take advantage of tax-free benefits, selling the Canadian matrimonial home for $2,710,639.25, with the husband retaining all proceeds. She stated that the couple subsequently purchased and renovated a home in the Sandy Port Development, where they continued to live a lavish lifestyle. She further alleged that family trusts and business matters were openly discussed in her presence, during which the husband claimed ownership of funds from various loans and investments, which she described as obligations that were never repaid.

[16.] According to the wife, the husband's personal wealth exceeds Four Hundred Million USD ($400,000,000.00), citing communications concerning tax status, business ventures, and corporate dealings. She identified his ownership in entities such as 2110996 Alberta Limited and Twenty First Financial Inc. as further evidence of his substantial means.

[17.] The wife recounted that, in April 2022, shortly after relocating to the Bahamas, the husband informed her by text message that he wanted a divorce. In response, she sought to determine their financial position, gaining access to the family computer and documents. She claimed to have discovered evidence of false documentation, including a lease arrangement involving the matrimonial home, records indicating the husband owned One Hundred and Twenty-Three Million USD (USD $123,000,000.00), and resolutions distributing this sum as a dividend rather than a loan. She alleged that such documents reflected attempts by the husband, his attorney, and accountants to mislead the court regarding the companies' financial condition. She contrasted this with his representations of hardship and reduced spending, noting that she was forced to cancel medical operations and other expenses, while his personal expenditures remained unchanged.

[18.] The wife also referred to a settlement letter outlining the husband's accounts and assets. Although the letter was marked "without prejudice," she asserted that it contained misrepresentations. She maintained that Twenty First Financial Inc. and MySolar Group Inc. are successful and expanding, and alleged that substantial funds, including a purported Five Million Dollar ($5,000,000.00) loan from Twenty First Financial Inc. to MySolar demonstrated the husband's financial capacity. Similarly, she questioned a Three Million Five Hundred Thousand Dollar ($3,500,000.00) transaction from Charthouse Capital Inc., which the husband personally guaranteed, suggesting it was not a genuine debt. She claimed the husband failed to disclose the true value of 2475110 Alberta Ltd., which had reportedly declared CAD $528,000 in dividends and held a $1,000,000.00 credit facility.

[19.] Further, she alleged nondisclosure of additional corporate entities, including 1412371 Alberta Ltd., 2110996 Alberta Ltd., Modern Leaf Group Inc., and MySolar Caribbean Ltd., as well as the proceeds from the Canadian matrimonial home sale, funds from the Friday Harbour Project, income from the family trust, and proceeds from other loans and Bahamian ventures. She expressed the belief that the husband was actively misleading the court regarding his assets.

[20.] The wife stated that she presented a counteroffer of Fifty Million Dollars ($50,000,000.00) USD in settlement of the divorce ancillaries, but received no response. She further expressed concern that the husband was likely to dissipate assets, and alleged that he had already taken steps to do so.

THE HUSBAND'S OBJECTIONS

[21.] The husband opposed the use of the information, documents, and emails relied upon by the wife in her 13th May 2025 affidavit for the purposes of the ancillary proceedings. By Summons filed on 14th May 2025, he applied, among other relief, to have the images and documents exhibited to the wife's affidavit struck out.......... "on the hearing of an application by the Respondent (Husband) to strike from the affidavit of (KLD) filed 13th May, 2025 the documents exhibited to Tabs 4, 5, 7, 11, 12,14, 15, 16, 17, 19, 20, 21, 22, and 23 on the grounds that the images/documents contained therein were intercepted/unlawfully accessed from the Respondent's personal or business email addresses in contravention of the Computer Misuse Act and are not relevant and/or are contrary to the interests of justice and that the Petitioner pay the costs of this application. The husband filed an Affidavit in support of his strike-out application on 4th June, 2025.

[22.] In summary, the husband's affidavit indicates that he is the sole owner of the Apple iPad and the Laptop from which the wife intercepted and unlawfully accessed the documents. He sets out his work email address and his personal email address. He particularized the exhibits extracted and to which he takes issue as follows:

> Tab 4 (referenced in paragraph 14) of the wife's May 13th affidavit – Photocopies of documents unlawfully taken from my Laptop.
> Tab 5 – (Referenced in paragraph 15) of the wife's affidavit - Photocopies of documents unlawfully taken from my iPad.
> Tab 7 – (Referenced in paragraph 21) of the wife's May 13th Affidavit contains privileged communication between my Canadian attorney and I.
> Tab 11 – (Referenced in Paragraph 34) of the wife's May 13th affidavit – contains photocopies of email correspondence from my iPad regarding my father's assets, which I have no beneficial interest in.

The following Tabs of the Petitioner's May 13th Affidavit also contain photocopies of documents and or email correspondence unlawfully taken from my iPad:

(a) Tab 12 (referenced 35);
(b) Tabs 14, 15, 16, 17 (all referenced in paragraph 43);
(c) Tab 19 (referenced in paragraph 59);
(d) Tab 20, referenced in paragraph 62);
(e) Tab 21, referenced in paragraph 65);
(f) Tab 22, referenced in paragraph 66);
(g) Tab 23, referenced in paragraph 67).

[23.] The document at Tab 18, the husband says, should be struck out because it contains without prejudice information. He goes on further to say that he believes that the documents at Tabs 5, 11, 12, 14, 15, 16, 17, 21, 22, and 23 are photographs unlawfully taken by the wife off of the screen of his iPad displaying his private correspondence and documents. That he is of the view that the wife knew her behavior was wrong and that she took the photographs of the email correspondence and documents rather than forward the same and leave an evidential trail that she accessed and transmitted the documents to someone else.

[24.] The husband further argued that, in her own 13th May 2025 affidavit, the wife admitted to copying documents from his laptop and iPad "to secure her position." He contended that all of the referenced documents and emails are irrelevant to the ancillary proceedings and should not be admitted into evidence

[25.] The husband maintained that he never granted the wife permission to access his email, iPad, laptop, or any other device, nor did he authorize her to retrieve financial documents from them. He stated that any such access occurred without his knowledge. He further asserted that he had consistently taken reasonable steps to maintain the security and privacy of his devices and the information stored on them through the use of passcodes and other authentication measures.

[26.] Upon reviewing the wife's 13th May 2025 affidavit, the husband claimed he immediately notified his attorney that the wife had illegally obtained the documents from his devices. He further stated that, following the filing of his Strike-Out Application, his attorneys at GT advised him that a letter exhibited at Tab 18 formed part of privileged correspondence and ought not to have been placed before the court.

THE WIFE'S RESPONSE TO THE HUSBAND'S OBJECTIONS

[27.] In the wife's affidavit filed on 30th June 2025, she reiterated that the husband's affidavit of 5th May 2025 failed to disclose the true extent of his assets. While she acknowledged that the emails referenced were the husband's, she maintained that their contents were accurate.

[28.] The wife stated that since their marriage on 1st July 2011, she had been authorized to access the husband's email as part of her involvement in his business activities. She claimed that her husband would provide her with his passwords when he needed information retrieved and that she routinely assisted him in this way.

[29.] She further explained that, following their relocation to the Bahamas in January 2022, both she and her husband had access to an Apple iPad used to control household appliances, smart televisions, and security systems. The iPad, she said, was openly available in the home and regularly used by both spouses and their guests. According to her, the husband knew and accepted that his email could be accessed through the iPad without additional security or passwords. She maintained that she was never warned, restricted, or prohibited from using the device.

[30.] The wife alleged that, on many occasions, the husband expressly asked her to retrieve information from his email when he was away. She emphasized that her use of the iPad and access to his email were lawful and consistent with their married life. She claimed that after the divorce petition was filed, the husband took the iPad to Canada in November 2024 and did not return it. On 7th April 2025, her attorney wrote to the husband's counsel, noting that he had placed restrictions on the iPad, preventing her from accessing the home's cameras and appliances.

[31.] The wife also stated that she became aware of additional evidence through postal correspondence delivered to the marital home. She expressed surprise at the husband's claim that her access had been unauthorized, reiterating that throughout the marriage she was permitted to use the iPad and email. She concluded that all information presented in her affidavit was obtained lawfully and with authority.

[32.] Without addressing the veracity of the wife's assertions concerning the various entities and the husband's ownership or involvement in them, it appears from the respective affidavits that the wife has provided a far more detailed and comprehensive account of the husband's assets and or involvement in several entities which was not disclosed in his Affidavits.

THE ISSUES FOR THE COURT'S DECISION

[33.] The issues addressed in this ruling are;

i. Whether the documents exhibited to the wife's affidavit at Tabs 4, 5, 7, 11, 12, 14, 15, 16, 17, 19, 21, 22, and 23 were intercepted or unlawfully accessed from the husband's iPad, and/or laptop, and from the husband's personal and business email.

ii. Whether the interception or unlawful access is in breach of the Computer Misuse Act.

iii. Whether the documents are relevant and/or contrary to the interests of justice?

iv. Whether, if the documents are deemed to have been unlawfully obtained, they should be struck out of the wife's affidavit.

v. Whether the wife should pay the costs of the application.

THE RELEVANT STATUTE LAW

[34.] Obtaining information from a computer without authority is subject to the provisions of the Computer Misuse Act Chapter 107 A (CMA). Therefore, if the wife's actions satisfy the definition of the offence, certain ramifications may flow in criminal as well as civil law. s. 3 (1) CMA provides the definition for unauthorized access to computer material as:

> "3. (1) Subject to subsection (2), any person who, without authority, knowingly causes a computer to perform any function for the purpose of securing access to any program or data held in any computer shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment and, in the case of a second or subsequent conviction, to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment. (2) If any damage is caused as a result of an offence under this section, a person convicted of the offence shall be

liable to a fine not exceeding twenty thousand dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment. (3) For the purposes of this section, it is immaterial that the act in question is not directed at — (a) any particular program or data; (b) a program or data of any kind; or (c) a program or data held in any particular computer.

[35.] S. 2 (2) For the purposes of this Act, a person "secures access" to any program or data held in a computer if he causes a computer to perform any function in relation to such program or data, that — (a) alters or erases it; (b) copies or moves it to any storage medium other than that in which it is held or to a different location in the storage medium in which it is held; (c) uses it; or (d) causes it to be output from the computer in which it is held (whether by having it displayed or in any other manner), and references in this Act to securing access or to an intent to secure such access shall be construed accordingly.

[36.] S. 2 (5) For the purposes of this Act, access of any kind by any person to any program or data held in a computer is "unauthorized" if — (a) he is not himself entitled to control access of the kind in question to the program or data; and (b) he does not have consent to such access from any person who is so entitled.

ANALYSIS AND DISPOSITION

[37.] Knowingly performing a function to secure access to a computer is not, in itself, a criminal act. The offence occurs only where a computer is used, or data is produced, without authority (see s. 2(2)). It is undisputed that the wife obtained information and documents from one or more of the devices, which she printed or copied and included in her affidavit. The central dispute concerns whether she was authorized to do so.

[38.] The term *"authority"* was considered in the context of the Computer Misuse Act (CMA), where it is treated as synonymous with power, right, or permission. Under section 2(5) of the CMA, lack of authority or acting without authorization is defined as a person not being entitled to control access to the computer and/or not having the consent of the person who is entitled to control access.

[39.] Section 3 of the CMA establishes a criminal offence with penalties including fines and imprisonment. The husband contended that the wife's actions constituted such an offence and that the information she obtained through those actions should be excluded, even though the proceedings are civil in nature. He clarified that he was not seeking the imposition of criminal penalties but rather an order striking out the impugned material. The central issue, therefore, is whether the wife had authority to access and use the information extracted from the husband's laptop or iPad. Some guidance can be obtained from **R v Bow Street Metropolitan Stipendiary Magistrate and another, ex Parte Government of the United States of America** [1999] 4 All ER 1.

THE QUESTION OF AUTHORITY

[40.] **R v Bow Street Metropolitan Stipendiary Magistrate and another, ex Parte Government of the United States of America** [1999] 4 All ER 1 provides that;

> *"The authorization must be authority to secure access of the kind in question. As a part of this refinement, the subsection lays down two cumulative requirements of a lack of authority. The first is the requirement that the relevant person be not the person entitled to control the relevant kind of access. The word "control" in this context clearly means to authorize and forbid. If the relevant person is so entitled, then it would be unrealistic to treat his access as being unauthorized. The second is that the relevant person does not have the consent to secure the relevant kind of access from a person entitled to control, i.e., authorize that access. It does not introduce any concept that authority to access one piece of data should be treated as authority to access other pieces of data of the same kind, notwithstanding that the relevant person did not in fact have authority to access that piece of data."* **[Emphasis mine]**

It stands to reason that the wife's claim of having access to the husband's business information for the purpose of relaying that information to him when he requested it entitles her to access that information and use it to exhibit in her affidavit before the court for the purpose of proving the husband's assets that he failed to disclose. Under the rules established in **Hildebrand v Hildebrand** [1992] 1 FLR 244, the wife's actions would have been subject to being excused. However, that is no longer the case, and that is demonstrated in **Imerman v Tchenguiz and others; Imerman v Imerman [2011] 1 ALL ER 555.**

[41.] **Imerman** is a case relied upon by Counsel Barnett-Ellis on behalf of the husband and Counsel Cooper on behalf of the wife. The husband relies on the case in support of his application to strike out the impugned documents, while the wife argues that Imerman is distinguishable from her case on the facts and principles. Given the reliance placed on the case by both parties, it is necessary to set out the facts of the case as I have extracted them.

> *A husband and wife were married in 2001. The husband shared the office premises of his two brothers-in-law as a bare licensee and used their computer system. The husband had his own password-protected computer and his own e-mail account. The wife petitioned for divorce in December 2008 and on about nine occasions between January and February 2009 (after which they evicted the husband from the office), his brothers-in-law accessed the computer server and made electronic copies of documents stored by the husband on his computer, as the brothers were concerned, in their sister's interests, that the husband's assets would be concealed in any ancillary relief proceedings. The brothers' solicitor passed the electronic copies to forensic accountants. Relevant material in hard copy was examined by counsel, and any documents in respect of which counsel considered that the husband could claim privilege were removed. The seven remaining files of documents (the seven files) were copied and passed to the solicitors acting for the wife, who had already given notice of the initiation of ancillary relief proceedings. Shortly thereafter, the wife's solicitors sent copies of the seven files to the husband's solicitors. The husband brought proceedings in the Queen's Bench Division of the High Court against the*

brothers (and their solicitor and two information technology managers in a company owned by one of the brothers). In June 2009 the judge acceded to the husband's application for orders precluding each of the defendants from communicating or disclosing to third parties, including the wife and her solicitors, any information contained in the documents, restraining them from copying or using any of the documents or the information contained in them, and requiring the defendants to hand over all copies of the documents to the husband. In the Family Division, the husband applied for the return of the seven files from the wife's solicitors and any copies made, and for an order enjoining the wife and her solicitors from using any of the information obtained. In December 2009, the judge in the Family Division ruled that the seven files should be handed back to the husband to allow him to remove any material for which he claimed privilege, but that the husband would then have to return the remainder of the seven files to the wife for use by her in connection with the matrimonial proceedings. In so doing the judge applied the 'Hildebrand rules' (see Hildebrand v Hildebrand [1992] 1 FLR 244) relating to the access of documents belonging to the other spouse in matrimonial proceedings, which had been summarized as: 'The family courts will not penalize the taking, copying and immediate return of documents but do not sanction the use of any force to obtain the documents, or the interception of documents or the retention of documents nor ... the removal of any hard disk recording documents electronically. The evidence contained in the documents, even those wrongfully taken, will be admitted in evidence because there is an overarching duty on the parties to give full and frank disclosure. The wrongful taking of documents may lead to findings of litigation misconduct or orders for costs. The Family Proceedings Rules 1991 required the full, frank, clear, and accurate disclosure of financial and other relevant circumstances at the appropriate point in ancillary relief proceedings, but that point had not yet been reached in the proceedings between the husband and the wife. The defendants appealed to the Court of Appeal from the decision of the judge in the Queen's Bench Division, and the husband appealed from the decision of the judge in the Family Division. **[Emphasis Mine]**

Clearly, the result of the wife's taking of the documents, if deemed wrongful, is no longer easily excusable and may lead to findings of litigation misconduct or orders for costs. The case also demonstrates that the wife's actions may also not be excusable if the appropriate point in the ancillary relief proceedings has not been reached. That point is when full and frank, and accurate disclosure of financial and other relevant information has arrived. The question to be answered is whether that time has arrived in these proceedings, the answer to which unfolds as we further the analysis and discussion of the established principles hereunder.

CAN THE HUSBAND RELY ON HIS RIGHT TO CONFIDENTIALITY AND PRIVACY?

[42.] The case of **Imerman** establishes that an individual retains a right to privacy and confidentiality over personal and financial documents, even within the context of marriage. In **Imerman,** the court held that, notwithstanding that the information had been obtained by a wife with the expectation it would be used in divorce ancillary proceedings, a husband still possessed a reasonable expectation of privacy which the court would recognize and protect. As noted by *Lord Neuberger* at paragraph 82, this principle is central to the balancing exercise before the court.

> *"The notion that a husband cannot enjoy rights of confidence as against his wife in respect of information which would otherwise be confidential as against her if they were not married seems to us to be simply unsustainable. The idea that a husband and a wife*

should be regarded as a single unit in law was a fiction which the law has been abandoning for a long time."

This was further criticism of the rule established in **Hildebrand** cited above, from which the Court of Appeal departed in Imerman, and it was restated in the following terms;

> *"The 'Hildebrand rules' were not good law. The courts ought not to condone the illegality of self-help consisting of breach of confidence or tort, because it was feared that the other side would itself behave unlawfully and conceal that which should be disclosed."*

[43.] The relationship between the parties is often a critical factor in determining whether there has been a breach of confidence. Timing is also a relevant factor. In **Imerman**, the marital relationship and the state of the marriage at the time the information was accessed and passed to the wife were central to the court's reasoning. The judgment emphasized that these relational dynamics significantly influenced the assessment of whether confidentiality had been breached.

> *"although the fact that a claimant and defendant in confidence proceedings were married at the time of the alleged breach of confidence, would often be a relevant factor on the issue of whether the information was confidential as between the two parties, the question would depend on the facts of the particular case (see [77], [79]–[85], [87]–[89], below); dicta of **Lord Nicholls** in **Miller v Miller, McFarlane v McFarlane** [2006] 3 All ER 1 at [16], [20] distinguished.*

This indicates that the court has the ability to consider all the facts and circumstances of the case and, in the exercise of its discretion, determine whether the impugned documents should be admitted or struck out. The discretion is guided not only by the statutory framework and principles of confidentiality, but also by the realities of the marital relationship, the conduct of the parties, and the overarching duty of the court to ensure fairness in the ancillary proceedings.

[44.] Harkening back to the relevant facts of the case, of note is the husband's contention that he never granted the wife permission to access his email, laptop, or iPad and that he never authorizes her to retrieve financial documents. He further contended that any such access occurred without his knowledge and that he took all reasonable steps to maintain the security and privacy of his devices.

[45.] Contemplating the wife's assertions, in contrast she said, that she and the husband both accessed the iPad because their household appliances, including their smart TV and security, was tied to the iPad. The iPad was regularly available in the home used by them both and their guests. She said the husband never warned her, restricted or prohibited her from use of the iPad. The laptop was open to her use to assist him in doing business when he was out of town and needed information.

[46.] I am inclined to believe the wife's account of the devices. The husband did not controvert the wife's assertions that once she filed the divorce proceeding, he removed the iPad from the home and took it away from her having access to it. This suggests to me an awareness on the husband's part that the information contained on the iPad was valuable to the wife in the divorce proceedings. The letter written by the wife's attorney serves to corroborate the wife's assertions of the husband's actions.

[47.] I prefer the wife's more detailed account of the couples' arrangements concerning the husband requiring her to retrieve information from the laptop on occasion. I noted that, while the husband generalized about not granting permission or authority to the wife to access his emails, or to retrieve his financial documents and that it occurred without his knowledge, he never responded to the wife's assertions about the household devices being tied to the iPad. Neither did he specifically address the wife's allegations concerning her accessing the computer to assist him. Moreover, to baldy claim that at all times he took reasonable steps to maintain security and privacy of the devices by use of passcodes and other authentication measures does not answer the question of whether he gave her the passcode and/or the authority to access said device(s) by use of that passcode.

[48.] The exercise of discretion further calls into focus certain other particular facts of the present case, namely the wife's admission that she accessed the husband's iPad and laptop after receiving his text message indicating his intention to divorce her. She explained that she copied the documents in order to secure her position. The question, therefore, arises whether the timing of her actions, occurring immediately after the husband announced his intention to divorce her, renders her access to the devices and the copying of documents unlawful.

[49.] In **Imerman,** the Court of Appeal drew a clear distinction between situations where third parties surreptitiously provided a spouse with confidential information from the other spouse's computer prior to the commencement of ancillary relief proceedings. The court held that such information and documents remained subject to confidentiality and privacy, and accordingly, should be returned to the husband. At that stage, the wife's entitlement to full and frank disclosure had not yet arisen.

Again, extracting the relevant quote from **Imerman**, the Court explained the importance of context in determining whether access to documents amounted to a breach of confidence:

> *"The wife had not been entitled to the confidential information at the stage she had obtained it. She should not be allowed to obtain an advantage over her husband, who might have been honest when the time came for him to be honest, namely at the time when the Family Proceedings Rules required him to disclose his assets."*

[50.] The circumstances in this case differ substantially, a point which the wife's counsel was careful to emphasize. Unlike in **Imerman**, where the wife obtained the husband's private information through the intervention of third parties and without any suggestion of prior authorization, the wife here maintains that she had longstanding, routine, and authorized access to the husband's iPad and email accounts throughout the marriage. She asserts that such access was both express and implied, given the use of the devices within the matrimonial home and at the husband's own request when he required information. On her account, her actions were therefore not clandestine, but consistent with a pattern of conduct well known and acquiesced to by the husband.

THE APPROPRIATE TIME FOR FULL AND FRANK DISCLOSURE;

[51.] When the husband filed his affidavit, which omitted reference to many of the companies and entities identified by the wife, the ancillary proceedings were already well underway. Unlike in **Imerman**, where disclosure obligations had not yet crystallized, the husband's affidavit was filed specifically for the purposes of the ancillary proceedings. This was the point at which full and frank disclosure was required. On this basis, I accept Counsel Cooper's submission that **Imerman** can be distinguished from the present case. Any lesser disclosure could properly be construed, as the wife contends, is an attempt to mislead the Court.

Where a party to divorce ancillary proceedings fails to give full and frank disclosure, the Court is entitled to treat such conduct as an attempt to "salt away" assets. Family law provides definable remedies for this type of non-disclosure, ranging from drawing adverse inferences to setting aside dispositions. **Imerman** itself puts the principle in this manner:

> *"The remedy for a spouse where there was evidence of an intention to salt away assets so as to deceive the court was the court's power to grant search and seize, freezing, preservation, and other similar orders, to ensure that assets were not wrongly concealed or dissipated, and that evidence was not wrongly destroyed or concealed. There was no reason why such orders, normally without notice, should not be sought or granted in the Family Division in ancillary relief cases where one spouse had evidence that the other was threatening to conceal or dissipate assets or to conceal or destroy relevant documents (see [41], [106], [107], [109], [117]–[121], [123]–[125], [127]–[129], [134], [136], below); dicta of Ward LJ in* **White v Withers LLP** *[2009] 3 FCR 435 at [54]–[63] approved;* **Araghchinchi v Araghchinchi** *[1997] 3 FCR 567, and* **Mahon v Mahon** *[2008] EWCA Civ. 901 at [6] applied."*

[52.] I noted previously that it was material to this case that the wife, during the early stages of the proceedings, filed a Summons and Affidavit seeking a freezing order over all of the husband's assets. As matters unfolded, however, this summons was overtaken in priority by the present strike-out application, which was scheduled for hearing first. Nevertheless, the mere fact that the freezing application remains pending and awaiting a hearing date underscores the reality that the ancillary proceedings are moving steadily towards finalization. The corollary is that the stage at which the parties are required to provide full and frank disclosure has, if not already passed, at the very least fully arrived.

[53.] This Court, engaged as it is in the hearing of ancillary matters, is entitled to draw adverse inferences from the conduct and behaviour of the parties. **Imerman** illustrates the breadth of the Court's discretion in ensuring that it has before it the relevant information necessary to do justice between the parties. That discretion extends not only to evaluating the adequacy of disclosure but also to determining whether attempts have been made to conceal or obscure assets, thereby frustrating the Court's ability to reach a fair determination.

> *"However, the readiness of the family court in drawing appropriately severe adverse inferences where a spouse had failed to give full and frank disclosure was established, and freezing and search orders were available in the Family Division just as in the other court."*

APPLICATIONS FOR FREEZING ORDERS APPROPRIATE IN CERTAIN CIRCUMSTANCES

[54.] The Court in **Imerman** observed that "the wife should have sought a freezing injunction and/or a search order" in order to secure the assets and information she feared might be withheld. Because she had instead relied upon information obtained prematurely and unlawfully through the intervention of her brothers, her husband prevailed in his application. The wife was accordingly ordered to deliver up the copies containing the information she had obtained, and she was precluded from relying upon them in the proceedings.

[55.] The Court further noted an exception to the general rule: unlawfully obtained information or documents may not be required to be returned or delivered up where the recipient is a purchaser for value without notice. That exception, however, has no application here. Neither the wife in **Imerman** nor the wife in the present case falls within that category.

> *"Furthermore, in the absence of good reason to the contrary, as the wife had not received the seven files as a bona fide purchaser without notice, the wife could reasonably expect similar orders against herself and her solicitors in respect of the documents and information in the seven files."*

[56.] A determination that the information and/or documents were not unlawfully obtained or "intercepted" as Counsel Barnett-Ellis described it does not of itself oblige the Court to admit them into evidence. As expressed in **Imerman**, even where documents come into a party's possession, the Court retains a discretion as to their admissibility, balancing considerations of fairness, confidentiality, and the overriding objective of doing justice between the parties.

> *"But it did not follow that the court was obliged to admit it. ………. What was necessary for disposing fairly of the application for ancillary relief or for saving costs and would take into account the importance of the evidence, the conduct of the parties, and any other relevant factors, including norm*al *case management aspects* (see [170], [172], [175], [177], below).

[57.] In the final analysis and to answer both the Husband's and the wife's reliance on **Imerman**, it all comes down to the exercise of the court's discretion applying those principles.

THE MATTER OF PRIVILEGE

[58.] The first letter objected to by the husband for striking out, exhibited to the wife's affidavit at Tab 7, is addressed to the husband and originates from Lisa S. Laredo, B.A., L.L.B., Barrister and Solicitor, 477 Mount Pleasant Road, Suite 110, Toronto, Ontario, M4S 2L9. The second letter, exhibited at Tab 18, is addressed to Mr. C.R. Matthew Paton, Counsel & Attorney-at-Law of 5 Stone Buildings Caribbean Chambers, 5 Pineapple Grove, Lyford Cay, Nassau, N.P., Bahamas, and is captioned in the parties' names. The contents of this second letter pertain directly to issues under discussion in the divorce proceedings and are expressly headed *"WITHOUT PREJUDICE."*

[59.] Reliance by the husband is placed on the principle articulated in **R v Derby Magistrates' Court, ex parte B** [1996] AC 487, where the House of Lords emphasized:

> *"The principle which runs through all these cases, and the many other cases which were cited, is that a man must be able to consult his lawyer in confidence, since otherwise he might hold back half the truth. The client must be sure that what he tells his lawyer in confidence will never be revealed without his consent. Legal professional privilege is thus much more than an ordinary rule of evidence."*

[60.] One of the overarching tenets of the legal relationship between clients and their legal advisors is the fundamental principle of privilege. Its objective is to ensure the client's assurance that any communications with his attorney, acting in that professional capacity, are prohibited from disclosure to any third party. Counsel for the husband submits that privilege is recognized in two respects: (i) legal advice privilege, and (ii) litigation privilege.

[61.] Legal advice privilege arises where legal advice is sought by the client and is given by the attorney. The rule is said to be absolute, an ethical safeguard, and inviolable; it cannot be overridden by competing interests of fairness in litigation: **R v Derby Magistrates' Court** (supra). The only exception arises in circumstances where the communication is made for some fraudulent or illegal purpose.

[62.] So stated, the principle appears to conflict with the long-established rule that a document protected by privilege continues to enjoy that protection unless and until the privilege is expressly waived by the client. In other words, once privileged, always privileged. This enduring protection underscores the fundamental nature of legal professional privilege, which attaches to the communication itself rather than the circumstances of a particular proceeding.

[63.] The Bahamas Bar Code of Professional Ethics, Rule IV on confidentiality, makes it plain that;

> *1. The attorney cannot render effective professional service unless there is full and unreserved communication between him and his client. At the same time, the client must feel completely secure, and he is entitled to proceed on the basis that, without any express request or stipulation on his part, matters disclosed to or discussed with his attorney will be held secret and confidential.*

[64.] **The Bahamas Bar Code** and **R v Derby Magistrates** emphasize the necessity for confidentiality in the lawyer/client relationship. To this end, it could not be denied that the husband would have expected that the communications between him and his attorneys would be private and confidential and therefore privileged. The obvious question that arises is whether the wife, as a third party not involved in the communications between her husband and his Canadian attorney, is nonetheless bound by that privilege. The answer, authoritatively, is yes. Legal professional privilege attaches to the communication itself, not merely to the parties who originated or received it, and therefore extends to prevent disclosure to any third party. The same reasoning applies with equal force to the without prejudice communication between the husband and his Bahamian attorney.

CONCLUSION AND DISPOSITION

[1.] Considering all the circumstances of the case, and in exercise of the Courts' discretion, in fairness to both parties, and taking into account the findings of this Court as it relates to confidentiality, the statute law, the case authorities, and counsel's submissions, I find that the wife's obtaining of the information from the iPad and laptop of the husband was not "unlawful".

[2.] That the wife's interception or securing access to the information from the husband's iPad, laptop, or computer was not in breach of the Computer Misuse Act.

[3.] The information exhibited to the wife's affidavit at Tab 4, which the husband said came from his laptop, I deem to be relevant to the proceedings and to the interest of justice.

[4.] The information exhibited to the wife's affidavit at Tab 5, which the husband said came from his iPad, I deem to be relevant to the proceedings and to the interest of justice.

[5.] The Emails Exhibited to the wife's affidavit at tabs 12, 14, 15, 16, 17, 19, 20, 21, 22, and 23, obtained from the husband's iPad and/or laptop, I deem to be relevant in the interests of justice.

[6.] The information and documents quoted at K.L.D. Tab 11 a-m of paragraph 34 of the wife's affidavit, said to be regarding the father's assets, I deem to be relevant to the ancillary proceedings and are necessary for disposing fairly of the application for ancillary relief.

[7.] The information and documents in the Tabs 4, 5, 11, 12, 14, 15, 16, 17, 19, 20, 21, 22, and 23 at this stage of the proceedings are important to the proceedings and will save costs as they obviate the need for the wife to launch interrogatories and seek discovery.

[8.] I regard the husband's conduct in failing to include information as is included in the documents at Tabs 4, 5, 11, 12, 14, 15, 16, 17, 19, 20, 21, 22, and 23 as a failure to give full and frank disclosure to the court in an attempt to hide evidence from the court and to mislead the court.

[9.] Delays in deciding these issues are not only subject to the vagaries of the court's calendar but when deliberate actions are taken to pervert the course of justice not only is it time consuming but it affects the court's ability to manage its' calendar that is fair to all litigants and to adhere to the overriding objective to manage matters in a timely fashion and to do justice between the parties. The maxim Justice must not only be done but must also be seen to be done is appropriate in the circumstances.

[10.] In all the circumstances of the case, the application to strike out the Exhibits at Tabs 4, 5, 11, 12, 14, 15, 16, 17, 19, 20, 21, 22, and 23 is denied.

[11.] The letters at Tabs 7 and 18 of the wife's affidavit are struck out as documents subject to privilege, which the wife was not entitled to disclose in her affidavit.

[12.] The wife shall have her costs of the application discounted by thirty percent (30%) due to the husband prevailing on the issue of privilege.

Dated the 20th **day of October, 2025**

The Honorable Justice C.V. Hope Strachan