



Mareva and Anton Piller Orders: Freezing and Search Orders

Reviewed by Auckland Barrister Chris Patterson

ANY legal text that calls its first chapter "The Law's Nuclear Weapons" sets a scene for the seriousness of the subject matter that follows. Peter Briscoe QC is a Sydney silk with a reputation of being articulate, thorough and meticulous. His book *Mareva and Anton Piller Orders* fairly reflects his reputation and is a valuable addition to the limited resources available on this subject.

It has now been over 30 years since the English Chancery Division created the first *ex parte* Mareva and Anton Piller orders, which are more conveniently called freezing and search orders in England and Australia.

The book's introduction traces their history and provides an excellent overview of the nature and effect of freezing and search orders. It also covers the importance of striking a fair balance - always a fundamental consideration for counsel seeking such orders and the judicial body granting them.

This text also goes into the important area of ancillary orders that can accompany freezing or search orders. The nature and types of ancillary orders are set out in detail and there is excellent guidance for practitioners as to some key considerations. One ancillary order given special attention is the Norwich order, which does not appear to have been extensively sought here in New Zealand.

An entire chapter is given to the issues relating to third parties. As they are more often affected by freezing orders, Briscoe's attention to that aspect is not surprising but, unfortunately, he does not give any attention to the direct or indirect implications of search orders on third parties.

A chapter on transnational freezing orders provides valuable insight into what is becoming an increasing consideration with the continued growth in globalisation of commercial transactions. The chapter on the conduct of freezing order proceedings is comprehensive but needs to be read in the context of our High Court Rules.

While only one chapter is devoted to Anton Piller search orders, it is comprehensive and by far the best available discussion on the subject. The chapter provides a careful and thorough analysis of the usual preconditions and safeguards that accompany search orders. It also covers the role of the supervising lawyer and the duty of disclosure, and provides a helpful warning about the risks applicants and their legal advisers face. This chapter also deals with searching premises abroad and John Doe search orders, which have been extensively used in Canada though only once here in New Zealand.

The book finishes with chapters on the privilege against self-incrimination and sanctions for disobedience. Both are compulsory reading for anyone asked to advise any respondent affected by a disclosure or search order. Owning or having readily available access to this book will put any litigator, at least, back on both feet, given that a request for such advice is likely to come without any warning and under extreme time pressure constraints.

Having an Australian author, it is not surprising that this book's context is

focused on Australian state and federal jurisprudence. However, it does give due consideration to the English position and includes a copy of the English practice direction in respect of search orders. The appendices provide very helpful draft orders which can be modified for the New Zealand context.

I do not expect many commercial litigators would have a regular use for this book, given that they are unlikely to have ever been counsel in a Mareva or Anton Piller order. However, like a nuclear weapon strike, there is no guarantee that one will never take place and certainly no guarantee that any advanced warning will be provided. Knowing that this book exists and where you can get your hands on a copy is an advantage.

Mareva and Anton Piller Orders: Freezing and Search Orders, by Peter Briscoe QC. Hardback, 378 pp. Published by LexisNexis Butterworths Australia, 2005. ISBN 0409321907. May be ordered through LexisNexis NZ for \$176 + \$50 freight + GST, tel 0800 800 986.

LAW FIRM NEWS

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Miles Agmen-Smith, formerly a partner of Shieff Angland, has opened a new practice in Auckland called **ASCO Lawyers**, specialising in corporate/commercial law and franchising. Lizandra Bailey (associate), Karla Hamilton (solicitor) and Jody Norris (legal executive), all also formerly of Shieff Angland, have joined him. The firm's contact details are 4th Floor, AFFCO House, 12-26 Swanson Street, PO Box 3695, Auckland, tel

(09) 308 8070, fax (09) 379 3244, email asco@ascolegal.co.nz, www.ascolegal.co.nz.

Two lawyers have moved offices in Christchurch: **Tim McGinn** is now at Level 5, 106 Gloucester Street, with other contact details remaining the same; and **Richardson & Co** has moved to Level 6, Amuri Courts, 293 Durham Street, tel (03) 379 0106, fax (06) 379 0108, email richardson.co.law@xtra.co.nz. 