



PUMP COURT
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Adding Parties & Interveners

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Early consideration: FPR 1.4

- (1) The court must further the overriding objective by actively managing cases
- (2) Active case management includes –
 - (a) encouraging the parties to co-operate with each other in the conduct of the proceedings
 - (b) identifying at an early stage –
 - (i) the issues; and
 - **(ii) who should be a party to the proceedings**
 - (c) deciding promptly –
 - (i) which issues need full investigation and hearing and which do not; and
 - (ii) the procedure to be followed in the case;
 - (d) deciding the order in which issues are to be resolved...



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FPR 2010, r.9.26B(1):

The court *may* direct that a person or body be added as a party to proceedings for a financial remedy if -

(a) it is desirable to add the new party so that the court can resolve all the matters in dispute in the proceedings; or

(b) there is an issue involving the new party and an existing party which is connected to the matters in dispute in the proceedings, and it is desirable to add the new party so that the court can resolve that issue.

Wide discretion.



- What steps need to be taken?
- Application under Part 18 procedure
- Supported by evidence

- Alternatively.
- FPR 9.26B(4)
- The court may add a party of its own motion



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- Who should apply?
- Mostyn J in Fisher Meredith v JH and PH [2012] EWHC 408 (Fam):
- (a) If assets stand in the name of the respondent, but he claims they are beneficially owned by a third party, it is his responsibility to join that party so that the matter can be tested.



- Conversely, para 49 (Mostyn J):
Where the asset in dispute is held in the sole name of the respondent it is my opinion that the duty to bring the claim of the non-legal-owner third party lies primarily on the respondent to the application and on the non-legal-owner, and not on the claimant.
- NB – it is still open to any party to make the application for joinder if the 9.26B criteria are met



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Para [50] example:

Undisputed assets worth £500,000 in the joint names of the parties.

A further disputed £500,000 of assets in the name of H but which he says are TP's.

W might not join TP, but will argue that the £500k in dispute is H's.

If TP does not exercise his right to intervene, the court is obliged to decide: which assets belong to H?

It may decide (giving due weight to the starting point, that the disputed £500k belongs to H alone) to award all of the undisputed £500k to W – applying the sharing principle.

The finding that the disputed £500k belongs to H does not bind TP, but it does bind H.

W can collect her full award without any difficulties involving TP.

Should the application be made?

- Consider costs: not subject to the usual Part 28 rule that there is no order as to costs.

Should the application be opposed?

- Be objective.
- NB – the fact that a successful claim by a third party may not be helpful to your client's case is not a good reason to oppose joining TP!



- What if the third party is outside of the jurisdiction (eg, offshore trustee) and joinder cannot be enforced?
- Invite the trustee to join
- Include a warning that any unreasonable failure may lead to adverse inferences being drawn



Is service and an invitation enough?

- *Per* Lord Denning MR in *Tebbutt v Haynes* [1981] 2 All ER 238
- A determination is not binding on a third party unless they have been joined to the proceedings.
- Consider enforcement.
- Risk of further proceedings and costs.



- In addition to be invited to intervene, trustees may be invited to disclose any documents that are required and to say what their approach in principle would be to a request for a capital payment / income stream.
- If they refuse, they may need to be joined.
- DR v GR [2013] 2 FLR 1534: concluded that joinder of the trustees was not required in order for the variation of the trust to be effective.



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What happens once the party is added?

FPR 9.26B(3)

- Directions re service
- Directions re case management



TL v ML [2005] EWHC 2860 (Fam): in every case where a dispute arises about the ownership of property between a spouse and a third party:

- (i) The third party should be joined at the earliest opportunity;
- (ii) Directions should be given for the issue to be fully pleaded by points of claim and defence;
- (iii) Separate witness statements should be directed in relation to the dispute; and
- (iv) The dispute should be heard separately as a preliminary issue, before the FDR



Shield v Shield [2014] 2 FLR 1422

- Nicholas Francis QC (sitting as a High Court Judge) said:
- “...consideration should at least be given to the possibility of an FDR prior to the hearing of a preliminary issue.”

Goldstone v Goldstone [2011] 1 FLR 1926

Though matters are determined by civil law,
they are still family proceedings:

“Pleadings” are “statements of case”

“Questionnaires” are not “Part 18 requests”

Costs are in the “clean sheet” category



Disclosure:

- The third party is only entitled to the disclosure which relates to the issue over their asset.

Practical considerations:

- Separate bundles may be needed.
- Distinct questionnaires and statements may be required.