

ENGLAND AND WALES / JUDGMENT

AT v NT

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[2025] EWFC 456 IN THE FAMILY COURT Case No: 1755-7739-1353-0439 Royal Courts of Justice
Strand, London, WC2A 2LL Date: 19/12/2025 Before : MR JUSTICE PEEL

- ----- Between : AT

- and - NT Applicant Respondent

- -----

- ----- Lily Mottahedan (instructed by Mishcon de Reya) for the Applicant
Hearing date: 3 October 2025

- ----- Approved Judgment MR JUSTICE PEEL This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the parties and their children must be strictly preserved. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court. MR JUSTICE PEEL Approved Judgment Mr Justice Peel : 1. On 21 August 2025, the Wife (“W”) applied: Double-click to enter the short title i) ii) Under s13 of Part III of the Matrimonial and Family Proceedings Act 1994 (“the 1984 Act”) for leave to apply for an order for financial relief after an overseas divorce; and For an order under s46 of the Land Registration Act 2002 that a restriction be entered against the title of the property in London occupied by W but owned by H. Prior thereto, on 6 August 2025, W’s solicitors had sent a letter, with the draft application attached, to the Central Family Court. W also sought allocation to High Court level because the assets in the case were said to be over £50 million. The draft application enclosed a supporting witness statement by W consisting of 24 narrative pages and 446 pages of exhibits. The covering letter to the court from W’s solicitors said that “The application is being made without notice to the Respondent”. The reason for applying without notice was said to be a fear that “if the application is made on notice, she will be evicted by the Respondent from the property where she is currently living together with her son.” The application was referred to me the next day, on 7 August 2025, by HHJ Hess, the Lead Judge for the London Financial Remedies Court. I approved allocation to High Court level, and the application was listed for hearing on 26 September 2025. In approving allocation, I caused a message to be passed to W’s solicitors that “It is a matter for

the judge to determine whether a without notice application is appropriate". It was not possible to list sooner because of the vacation, and W did not indicate that the application was so urgent as to require an earlier hearing date. Due to listing issues, the hearing had to be adjourned for a few days to 3 October 2025. I had misgivings about listing this matter in this way. The Husband ("H") was completely excluded from these communications. I had in mind that the seminal case of *Potanina v Potanin* [2024] UKSC 3 remade the procedural landscape for Part III applications. However, I decided it was necessary to hear the application as sought on a without notice basis. 2. 3. 4. 5. 6. The relevant procedural rules 7. In respect of Part III claims, FPR 2010 rule 8.25 provides:

- (1) The application [for leave to apply for an order for financial relief] must be made without notice to the respondent.
- (2) Subject to paragraph (3), the court must determine the application without notice.
- (3) The court may direct that the application be determined on notice to the respondent if the court considers that to be appropriate. MR JUSTICE PEEL Approved Judgment Double-click to enter the short title 8. 9. 10. 11. 12. It has been common practice for judges to make, or refuse, leave applications on a without notice basis. Unlike just about any other part of the canon of family law (including the most serious of case involving children or domestic abuse), the without notice procedure for leave under the 1984 Act does not require any degree of urgency to justify the relief sought. It has been common, when leave is granted, for the respondent to apply to set aside the order. FPR 2010 18.11 provides: "(1) A person who was not served with a copy of the application notice before an order was made under rule 18.10 may apply to have the order set aside or varied. (2) An application under this rule must be made within 7 days beginning with the date on which the order was served on the person making the application." The latter rule has for many years been interpreted so as to require the respondent to the application to establish that there is a "knockout blow" to set aside an order granting leave, requiring a compelling reason which in practice was only where a decisive authority had been overlooked or the court had been misled. The genesis of this approach has its origins in the dicta of Lord Collins in *Agbaje v Agbaje* [2010] UKSC 13, specifically at paragraph 33 thereof. That approach did not find favour in *Potanina*, in which Lord Leggatt (with whom the majority agreed) described what he termed a series of procedural missteps in the development and interpretation of these rules. He pointed out that Lord Collins' words were uttered before rule 8.25, cited above, was brought into force in 2017, and that the rules do not make provision for a so called "knockout blow" on the set aside application. 13. Lord Leggatt said this at paragraph 85 of *Potanina*: "...this case is one where there has been an error of law, as the practice currently being followed in dealing with applications to set aside leave granted without notice is unlawful, being contrary to the applicable rules of court and to a fundamental principle of procedural justice. It is a matter of general public importance that courts at all levels should respect this fundamental principle and that this court should intervene to end a practice that conspicuously fails to do so." 14. At paragraph 98 he said: "For the reasons given, the test applied by the Court of

Appeal in determining whether the judge was entitled to set aside his order made at the without notice hearing was wrong in law. The true position is that on an application, such as the husband made here, under FPR rule 18.11 to set aside an order made without notice, the court is required to decide afresh, after hearing argument from both sides, whether the order should be made or not. There is no requirement for a party applying under FPR rule 18.11 to set aside leave to demonstrate a “knock-out blow”, or a compelling reason why the court should exercise the power to set aside, or that the court was materially misled. The onus remains on the applicant for leave to satisfy the court that there is substantial ground for the making of an application for financial relief under Part III. It follows that the Court of Appeal was wrong to set aside the order made by MR JUSTICE PEEL Approved Judgment Double-click to enter the short title Cohen J on 8 November 2019 following the inter partes hearing on the ground that it did.” 15. The consequence of the decision of the Supreme Court is that, where leave is granted on a without notice basis, any set aside application shall be considered afresh on the merits; in effect, a rehearing, with the onus remaining on the applicant to justify leave, rather than on the respondent to justify setting aside leave. 16. Lord Leggatt said this about the without notice process at paragraphs 31-33: “31. First and foremost, to deny the party adversely affected by an order any opportunity to say why the order should not be made is patently unfair. It is contrary to what I referred to at the start of this judgment as rule one for judges.

32. Second, as well as being patently unfair, such a procedure is also foolish. For obvious reasons, judges make better decisions if they hear argument from both sides rather than from one side only. This is one of the main benefits of an adversarial process.
33. Third, a procedure which, while otherwise preventing a party from objecting to an order, allows that party to do so if he can show that the court was materially misled at a hearing held in his absence achieves the worst of both worlds. It encourages the party who will otherwise be denied a hearing to make allegations that the other party misrepresented or failed to make full and frank disclosure to the court of material facts. Such allegations are calculated to raise the temperature even higher in litigation of a kind in which there is typically no love lost between the parties and to lead, as happened here, to court time which could have been used to hear argument about whether the order should be made being occupied instead by argument about what was or should have been said at the earlier without notice hearing. Given the high burden of demonstrating that the judge was not only misled but was misled on matters which were “sufficiently material to the issues informing the grant of leave” (the test applied by the Court of Appeal), such a proceeding is almost bound to be an expensive waste of time and money, as it was here. It would be difficult to devise a worse system than this for dealing with leave applications.” I acknowledge that dissenting judgments took the view that procedure is a matter best left to the Rule Committee. But Lord Leggatt was in the majority, and it seems to me that his comments about the without notice procedure hitherto adopted in these cases resonate. The Family Procedure Rule Committee has been asked to consider the relevant rules in the light of Potanina. Meanwhile, in my capacity as National Lead Judge of the Financial Remedies

Court, I have encouraged judges and Court Offices to list Part III leave applications on notice to the Respondent in accordance with FPR 2010 8.25(3). It seems logical, consistent with fairness, and in accordance with the spirit of Potanina to require the permission stage to be heard at an inter partes hearing. Of course, the parties may reach agreement before, or even at the on notice hearing. But if they do not, the court will decide the application on the merits, having heard argument in the usual way. To adopt this approach will avoid two hearings (the without notice hearing, followed by the set aside hearing) which traverse the same 17. 18. MR JUSTICE PEEL Approved Judgment Double-click to enter the short title arguments that can be decided at one hearing and are an unnecessary duplication of court resources. 19. An added benefit of adopting a streamlined, on notice procedure will be to avoid the potentially detrimental impact on the parties referred to by Lord Leggatt at para 33 of Potanina (cited above) and articulated in trenchant terms by Mostyn J in *UL v BK*

- [2013] EWHC 1735 (Fam) where, in the context of without notice freezing injunctions, he said this: “The unilateral step taken at the beginning of case echoes down its history. Often the respondent is enraged by the step taken against him and looks to take counteroffensive measures. Every single subsequent step is coloured by that fateful first step. Costs tend to mount exponentially. And even after the lawyers close their files and render their final bills the personal relations of the spouses will likely remain forever soured. A nuclear winter often ensues.” 20. I struggle to envisage many cases where there would be now, post Potanina, a compelling justification for a leave application to be heard without notice. Two examples are suggested in Potanina at paragraph 66. One is where the judge, on considering the application on paper, decides that it is so unmeritorious that it can be dismissed without notice so as to avoid the Respondent being put to trouble and expense. The other is where it is difficult or impracticable to give notice to the Respondent (e.g. where his/her whereabouts are unknown) and it is thought preferable to consider the application and then attempt to serve. But such examples are likely to be few and far between. 21. In order to try and encourage a unified and coherent approach to these cases, in my view the leave application should be listed on notice absent some exceptional reason meriting a without notice determination. The threshold test 22. Putting to one side the procedural rules, there are two hurdles for an applicant seeking leave to overcome: i) ii) That he/she satisfies the jurisdictional requirements (broadly, proof of domicile of either party in this country, or habitual residence, or the presence of a matrimonial home); and That he/she has a substantial (also referred to as solid) ground for making a Part III claim. 23. These requirements are set out and explained comprehensively by Cobb LJ in the Court of Appeal in the same case of *Potanina v Potanin* (No 2) [2025] EWCA Civ 1136. This was the Court of Appeal’s decision on the substantive merits of the leave application (rather than the procedural intricacies). The law on avoidance of transactions intended to prevent or reduce financial relief 24. How then to deal with an application for leave where there is a simultaneous application for some form of injunctive or protective order to preserve assets pending determination of the Part III claim? In this case, for example, W suggests that there is MR JUSTICE PEEL Approved Judgment Double-click to enter the short

title a real risk of H taking prejudicial steps in respect of the property she occupies in London. 25. S23(2) of the Matrimonial and Family Proceedings Act 1984 provides as follows: 26. 27. 28. “Where leave is granted under section 13 above for the making by a party to a marriage of an application for an order for financial relief under section 17 above, the court may, on an application by that party—

- (a) if it is satisfied that the other party to the marriage is, with the intention of defeating the claim for financial relief, about to make any disposition or to transfer out of the jurisdiction or otherwise deal with any property, make such order as it thinks fit for restraining the other party from so doing or otherwise for protecting the claim;
- (b) if it is satisfied that the other party has, with that intention, made a reviewable disposition and that if the disposition were set aside financial relief or different financial relief would be granted to the applicant, make an order setting aside the disposition.” This provision is almost identical to s37 of the Matrimonial Causes Act 1973 which applies to mainstream financial remedy proceedings. There is, however, one important distinction. Under the 1984 Act, such an order can only be made “where leave is granted”. By contrast, an application under s37 of the 1973 Act may be made “where proceedings for financial relief are brought by one person against the other” which enables the court to make the order at the point of issue. If, therefore, under the 1984 Act, there is delay between the application for leave, and the grant of leave, the court has no power to make an order under s23 of the Act preventing the respondent from dissipating assets. However, in my judgment, an applicant concerned about preservation of assets can apply for other forms of financial protection upon issue of the leave application, and does not need to await the granting of leave. Steps that can be taken can include the following: i) ii) First, as Mostyn J explained in *Tobias v Tobias* [2017] EWFC 46, an application for a freezing injunction, brought under s37 of the Senior Courts Act 1981, can be made to the Family Court, and can be determined by judges of the Family Court, including those below High Court level. The test for a freezing order is the same as the test under s37 of the Matrimonial Causes Act 1973, and its equivalent under s23 of the Matrimonial and Family Proceedings Act 1984; a real risk of dissipation which would have the effect of defeating, in whole or in part, the applicant’s claims for financial remedies. Second, where the application relates to tangible property, the court can make an order under rule FPR 2010 20.2(1)(c)(ii) for preservation of tangible property. As Mostyn J pointed out in *UL v BK* (supra) at para 26, an application made in respect of tangible property under this rule is not subject to the principles applicable to freezing injunctions, or s37 of the Matrimonial Causes Act 1973. An application under FPR 2010 20.2(1)(c)(ii) is likely to be MR JUSTICE PEEL Approved Judgment Double-click to enter the short title considered under the principles of balance of convenience stated in *American Cyanamid Co v Ethicon Ltd* [1975] UKHL 1, rather than requiring evidence of a real risk of dissipation. iii) Third, the court has the power to order a restriction over a property under s46(1) of the Land Registration Act 2002 which provides that: “If it appears to the court that it is necessary or desirable to do so for the purpose of protecting a right or claim in relation to a registered estate or charge, it may make an order requiring the registrar to enter a restriction in the register.” It seems to

me that these words do not require the applicant to meet the threshold applicable in freezing injunctions where there is said to be a real risk of dissipation of assets which might defeat a financial remedies claim. The test is, as the words of the statute say, whether it is “necessary or desirable” to make an order. 29. All of the above can be made to secure the applicant’s position before the on notice leave application has been considered. They must, of course, be justified on the facts of the case. 30. I turn then to this case. The background 31. 32. 33. Both H and W are 50 years old. They are both Russian nationals. They married in Russia in 2003. They have two sons, one aged 22 (who lives and works in Russia) and one aged 17 (who lives with W in England). In 2007 they moved to England, where they lived until separation in 2018. In the last years of marriage, the family home was a property in central London which was bought in 2013. Since separation W has lived in that property until she received an eviction notice in May 2025. She therefore had to leave the property and moved into a flat in London owned by H. H has travelled between Russia and London. The parties on or about 2 October 2018 reached a financial agreement in England, and divorced in Russia (on W’s case, H persuaded her to allow his petition in Russia to go ahead, and her petition in England would not proceed). They agreed that under the Russian proceedings, only property in Russia would be dealt with. All other assets were dealt with by their agreement. W’s petition in England was dismissed by consent on 5 February 2019. There was a dispute between them about how much land and property was owned in Russia. In the event, the Russian court, after contested proceedings, on 28 February 2019 ordered H to transfer to W a property in Moscow which had been used by the family in holidays, and some adjacent land. Other property in a village in Russia was transferred to H. W was ordered to pay H a balancing lump sum to ensure that they each retained 50% of the value of the Russian assets. 34. The essential terms of the financial agreement were: MR JUSTICE PEEL Approved Judgment Double-click to enter the short title i) ii) Sale of the central London property and for W to receive £2m or 40% of the sale proceeds. H to pay the outgoings of any property bought by W until the children were 21. iii) W to retain the Moscow family property. iv) H to pay W maintenance (supplemented by a family trust if H fell short on the payments) to a total of £17,000 per month until her remarriage, plus child maintenance, education costs and property outgoings. v) H to pay W a lump sum of \$1m. vi) W to receive 20% of all trust assets which was anticipated to provide her with between \$8m and \$20m. vii) Other ancillary provisions. 35. 36. The agreement also provided for W to be the children’s primary carer, and for them to spend substantial time with H during the school holidays The agreement has been frustrated by years of litigation brought to recover trust assets allegedly misappropriated by the trustee of an offshore family settlement. The trust was established in 2008. H, W and the children were beneficiaries, but H was removed as a beneficiary in 2010. The trust held assets via corporate structures in Russia, Cyprus and London. It also held a BVI company which owned the central London property. It seems, on W’s account, that the trustee, without the knowledge of either H or W, restructured the ownership of the central London property to enable it to be pledged as security for a risky venture. The trust defaulted on the loan, the central London property was repossessed in May 2025 and W was evicted on 12 June

2025. It appears that H actively tried to avoid the risk of W and the children being evicted, including by making an offer (which was not accepted) to the mortgagees of £3.5m to stave off the repossession.
37. W says that the trustee was arrested for fraud. He has now been convicted and is serving a sentence of imprisonment. An attempt to recoup the losses via insurance failed. 38. 39. Separately from the fraudulent activities of the trustee, W says that in 2019 H transferred Russian and Cyprus assets out of the trust into his own structure. The consequence of these matters is that W has not received her entitlement to a share of the trust assets, nor 40% of the central London property. Other than \$50,000, she has not received the \$1m. The £17,000 pm maintenance is no longer being paid. She has moved to another property owned by H having been evicted from the central London property, and has limited financial security.
40. W last year sold a property in Moscow for about €1.3m, but says that most of the money is being held by her sister who lives in a different jurisdiction and cannot be accessed because of local financial regulations. She is, on her case, all but penniless. By contrast, according to W, H continues to live extravagantly; she says he employs MR JUSTICE PEEL Approved Judgment Double-click to enter the short title an array of staff, owns multiple houses in Russia and goes on fabulous holidays. He has a valuable hunting concession, worth perhaps \$10m. His business owns a 40% stake in various business enterprises, all of which she believes to be worth \$50m, of which H's share would be 40%. His only asset in England that W is aware of is the London property in which W lives. 41. The essence of her case is that an order should be made under Part III which replicates the financial agreement.

Conclusion

42. 43. 44. I am unpersuaded that I should grant W leave to make a Part III application without having an on notice hearing. To do so would be contrary to the spirit of Potanina. On the face of it, W has a credible case for leave to be granted. However, I only have W's version of events before me, both in her evidence and in submissions. I am not satisfied that the appropriate course is to grant her leave and then hear any application by H to set my order aside. To adopt this course is illogical. Far better to see and hear the evidence from both sides. I will adjourn W's leave application to an on notice hearing. I consider it appropriate to make an order under s46 of the Land Registration Act 2002 to preserve the property where she lives in the interim until matters are resolved by agreement, or by the court. Given the lack of available assets in this country, W's financial insecurity, and the history (on her case) of assets being misappropriated or misapplied, including in particular the central London property which had its equity stripped out, it seems appropriate to me to afford W a measure of protection which will be in place when H receives notice of the application. Recap on procedure 45. To recap: i) ii) iii) Applications for leave should be listed on notice unless there is an exceptional reason for applying without notice. An application for an injunction under s23 of the 1984 Act (which is equivalent to s37 of the 1973 Act) can only be made if and when leave is granted. If an applicant considers that a protective order needs to be sought

between the on notice application for leave being made, and leave being granted, he/she must seek relief other than under s23; potential routes are suggested above. Such an application may exceptionally be brought without notice provided that it complies with the usual safeguards and requirements set out in UL v BK (supra).

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