

36 GROUP



36 FAMILY



Should I join?

36 FAMILY

“It’s more fun to watch without joining in.”

Lionel Blue

“I respectfully decline the invitation to join your hallucination.”

Scott Adams

“I refuse to join any club that would have me as a member.”

Groucho Marx









“I have a mind to join a club and beat you over the head with it.”

Groucho Marx

36 GROUP

Outline

36 FAMILY


-  General Principles.
-  Who carries the duty to join?
-  Competing proceedings and the international dimension.
-  Jointly owned property.
-  Creditors and disputed liabilities.
-  Bankruptcy and charging orders.
-  Businesses.
-  Trusts.

36 GROUP

General Principles – back to basics


 S.25(2)(a) “*property and financial resources*”.

 I.e. Is joinder necessary for computation?

 What are the relevant orders being sought and is joinder necessary to obtain them?

○ S.23 “financial provision” i.e. PPs or lump sum.

○ S.24 “property adjustment”.

 Is there a collateral reason for joinder (e.g. disclosure, enforcement or “tactical”)?



General Principles – The Family Court’s Jurisdiction

36 FAMILY

Tebbutt v Haynes [1981] 2 ALL ER 238, CA: Issue as to ownership raised and third party properly joined and allowed to participate in the proceedings then the issue is “*treated as being finally and conclusively decided against him*”.

BUT these are not TLATA proceedings and so there is a question as to the Family Court’s power to make wider TLATA orders (including partition, equitable accounting etc) beyond simple declarations or beneficial ownership. Similar question as to ancillary orders in the context of trusts (e.g. replacement of trustees) or businesses (orders under Companies Acts or Partnership Act)?

Does **MFPA 1984 s.31E** “Family court has High Court and county court powers” come to the rescue?

If in doubt: issue separate proceedings and join with family proceedings (at High Court level or in combined Family Court / County Court centre).

36 GROUP



FPR 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.





General Principles - Procedure

36 FAMILY

 Rossi v Rossi [2007] 1 FLR 790 at [35]-[38] and TL v ML [2006] 1 FLR 1264:

- Join third party at earliest opportunity.
- Directions for proper pleading by points of claim and points of defence.
- Separate witness statements on the dispute.
- Dispute to be heard as a preliminary issue before the FDR.

 But this is not meant to be prescriptive (see Fisher Meredith LLP case).

 It will often be sensible to have an FDR or pFDR on the issue before the costs of a final hearing.

 Preliminary hearing or rolled up hearing?

36 GROUP



General principles – who carries the duty to join?

Fisher Meredith LLP v JH and PH [2012] 2 FLR 536:

- *“there is a clear distinction to be drawn between the state of affairs where a claimant is saying that a property held in the name of a third party is the property of the respondent; and the situation (as here) where the respondent says that property to which he has legal title is beneficially owned by a third party.”* [42]
- Former situation = computation = duty on party asserting different ownership to join the third party. [43]
- Latter situation *“by no means so clear cut”* and *“the duty to bring the claim of the non-legal-owner third party before the court lies primarily and equally on the respondent to the application and on the non-legal-owner, and not on the claimant”*. [49]
- If no direct order sought against the disputed asset, it may suffice to rely on Stack v Dowden presumption and invite the third party to intervene, but not join.



General principles – joinder to aid enforcement?

- **Fisher Meredith LLP v JH & PH** at [52]: *“The claimant may very well decide that it would be wise to apply to join the uncle into the original proceedings in order to ensure effective enforcement or at least in order to avoid mess and chaos in later enforcement proceedings. But in my judgment she is under no obligation to do so.”* [52]
- **Behbehani v Behbehani [2019] EWCA 2301** at [69]: *“If a spouse is seeking the transfer of a particular asset from the other spouse and it is asserted that the asset is the property of a third party, then it would usually be appropriate to join third party for that issue to be determined at or before the financial remedies hearing.....As a glance of the law reports shows, it frequently happens, particularly in so-called big-money cases, that the court is faced with a number of issues as to the ownership of assets with a variety of third parties identified as the beneficial owners. It would be wholly disproportionate to insist that, even where the wife is not seeking the transfer of the assets, all such persons should be joined to the proceedings and the issue of ownership determined before any financial remedies order can be made. There may be cases where joinder is appropriate in those circumstances, but it should certainly not be the rule.”*



General principles – joinder to aid enforcement?

- Behbehani v Behbehani [2019] EWCA 2301 at [80]: *“Where a judge has found that assets, the legal title to which is held by a third party, are beneficially owned by a party to matrimonial financial remedies proceedings, the other party to the proceedings is not precluded from seeking to enforce a lump sum order made in the proceedings against the assets merely because the third party was not joined to the proceedings before the order was made. Unless and until it is established that the basis on which the court awarded the lump sum to the wife ...was incorrect, the court is entitled, indeed obliged, to do what it fairly can to assist the wife to enforce the order, provided the rights of third parties not bound by the order are respected. In order to be respected, however, those rights must be established. A third party cannot expect to receive the protection of the court if not prepared for those rights to be scrutinised.”*
- This is really useful: it forces the third party to submit to the jurisdiction and join the proceedings if they want to protect the asset.



General principles – which rules?

36 FAMILY

- Joinder to Family Court financial remedy proceedings – FPR apply and not CPR.
- Disclosure obligations – duty of full and frank disclosure applies to H and W but not to third party - apply the CPR by way of specific directions for standard disclosure (or bespoke disclosure) by lists etc.
- Costs – r.28.3 “*general rule*” does not apply – “clean sheet” approach to costs and “*the fact that one party has been unsuccessful, and must therefore usually be regarded as responsible for the generation of the successful party’s costs, will often properly count as the decisive factor in the exercise of the judge’s discretion.*” Baker v Rowe [2010] 1 FLR 761 at [25].

36 GROUP



Competing proceedings and the international dimension.

Competing civil proceedings in England - options:

1. Proceed with FR proceedings if civil proceedings will have no material effect on the outcome.
2. If close connection between the two sets of proceedings, case management and hearing of the civil proceedings alongside or as part of the FR proceedings.
3. Stay of the civil proceedings for FR proceedings to be determined first. Likely to be rare and limited to those cases where the third party has already been joined to the FR proceedings to determine the same issue.
4. Contingent orders dependant on the outcome of the civil proceedings (e.g. funds held in escrow, reverse contingent lump sum order etc).
5. Adjourn FR proceedings and await outcome of the civil proceedings.

Competing proceedings outside England. Options 1, 3, 4 and 5 may also apply. In **Gourisaria v Gourisaria [2011] 1 FLR 262** the court was not bound to stay/adjourn English divorce proceedings to await the outcome of litigation between H and his brother in India. See also **Goldstone v Goldstone [2011] 1 FLR 1926**.



Not so fast! Trying to beat a competing claim.

36 FAMILY

Bogolyubova v Bogolyubov [2023] EWCA Civ 547

Court of Appeal approved Peel J's decision to refuse to approve a consent order which left the husband in that case unable to satisfy a claim brought against him: *"it would have been wrong for the judge to have approved the proposed order in circumstances where it is accepted by all concerned that there is a good arguable case against the husband in the proceedings in another Division which, if proved, will wipe out the entirety of his asset base."* [76].

36 GROUP

Jointly owned property

Spouse is joint owner with a third party (no dispute as to ownership shares)

- Can court make a property adjustment order without co-owner's agreement?
- Would you want to do that?

Sale of a jointly owned property

- S.24A(6) “opportunity to make representations”
- Factors to take into account: [A v N \[2025\] EWFC 371\(B\)](#) (Recorder Stirling)
- **FRJ Blog** on 1 December 2025 (Adam Clay-Croome): [Interested Third Parties Opposing an Order for Sale](#)





Creditors and disputed liabilities



36 FAMILY

- Principles: P v Q [2022] EWFC B9 (HHJ Hess).
- Joinder of creditor or witness evidence?
 - Allegation of sham / fundamental validity – formal pleading and joinder more likely.
 - Allegation of “soft” loan or wider “resource” arguments – joinder less likely.
- Judgment in creditor’s favour in separate civil proceedings:
 - If H and W were both parties to the other proceedings the judgment will act as an issue estoppel in the Family Court unless it is set aside: Edgerton v Edgerton & Shaikh [2012] 2 FLR 273.
 - If necessary a spouse affected by order made in civil proceedings can apply in those proceedings to have it set aside: CPR 40.9 and Latif v Imaan Inc [2007] EWHC 3179 (Ch).
 - Even if the civil judgment stands, the Family Court may still determine that the loan is soft because the judgment will not really be enforced by creditor while the spouse has unmet needs: WH v HB & RF [2024] EWFC 295.




Bankruptcy and charging orders

-  Charging order by creditor obtained over property in relation to which other spouse seeks a property adjustment order:
 - The proper practice is for the charging order application / application for sale to be heard at the same time as the family proceedings: **Harman v Glencross [1986] Fam 81.**
-  Upon making of bankruptcy order the assets of the bankrupt spouse vest in the TiB and Family Court may not make orders against them. Options for the other spouse likely to lie in the bankruptcy court:
 - Assert beneficial interest in the family home / other assets.
 - Exceptionally, apply to set aside the bankruptcy order (e.g. **F v F (Divorce: Insolvency: Annulment of Bankruptcy Order) [1994] 1 FLR 359, Couvaras v Woolf [2002] 2 FLR 107.**

Businesses - partnerships

-  Where H and W are the only members of a partnership the court will not usually need to determine their strict partnership interests (see *White v White*).
-  If there is a third party partner the issues will be more nuanced. If the court is to make orders which affect the ownership or use of partnership assets joinder of the other partner may be justified or necessary – but not always (e.g. **Harwood v Harwood [1991] 2 FLR 274** – no joinder of third party partner before determination of ownership of assets by the partnership - H's partnership share could be transferred to W pursuant to s.24).

Businesses - companies

-  The separate corporate personality of the company must be recognised and respected (including the interests of third-party creditors): **Petrodel v Prest**.
-  If H and W are the only shareholders the Family Court is likely to resolve issues arising as between them as regards the company: **Poon v Poon [1994] 2 FLR 857**.
-  If there are shareholders other than H and W the position is more complicated. More likely that issues arising over the management of the company will properly be dealt with by the Companies Court. Transfer both proceedings to High Court judge?

 Trustees Different approaches to trusts:

- **Allegation that the trust is a sham:** joinder of trustees likely to be required: **A v A [2008] 1 FLR 1428** at [69]-[74].
- **The trust as a resource available to one spouse.**
 - Joinder of trustees not necessary: **A v A.**
 - Improper to join trustees simply to permit disclosure orders to be made against them: **Re T [1990] 1 FLR 1.**
 - But joinder was justified in a case where H exerted significant control over the trust and joinder may assist enforcement of orders: **T v T [1996] 2 FLR 357** (but see **Wodehouse v Wodehouse [2018] EWCA Civ 3009** - the court cannot use any of the MCA 1983 Act powers to require a third party to make a payment to one of the parties unless there were a strict legal right to it).

Trustees

Different approaches to trusts:

○ **Variation of trust as a nuptial settlement:**

- DR v GR [2013] EWHC 1196 (Fam): Mostyn J said no joinder required.
 - TM v AH [2016] EWHC 572 (Fam): Moor J said joinder required.
- But if trustees are offshore will they submit to the jurisdiction – or will their home court permit them to comply with English court orders?



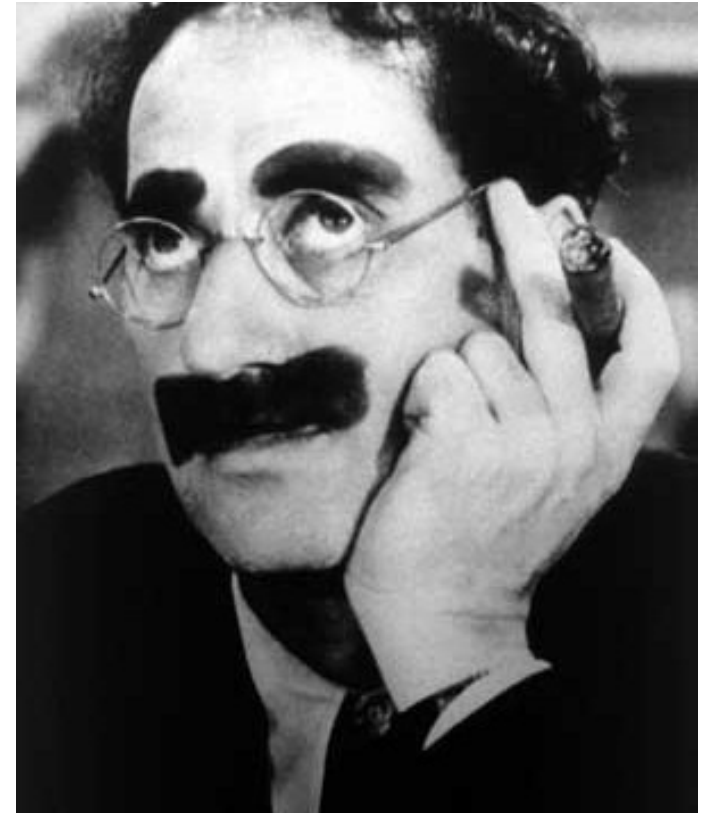
Marx on Marriage.

“I was married by a judge. I should have asked for a jury.”

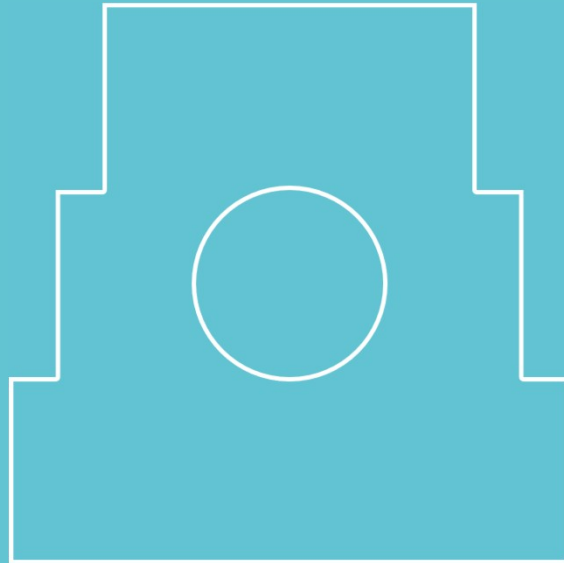
“Marriage is a wonderful institution, but who wants to live in an institution.”

“Some people claim that marriage interferes with romance. There’s no doubt about it. Anytime you have a romance, your wife is bound to interfere.”

“Alimony is like buying hay for a dead horse.”



36 FAMILY



The 36 Group
4 Field Court
London
WC1R 5EF

DX 360 LDE

T 020 7421 8000

F 020 7421 8035

E clerks@36family.co.uk

W 36group.co.uk



WINNER
UK BAR AWARDS 2025

Highly Commended

**FAMILY LAW
AWARDS 2025**

From  LexisNexis