

Mareva and Anton Piller Orders: freezing and search orders

By Peter M Biscoe

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Anyone who has encountered Biscoe QC in practice would be well aware that he is at once articulate, thorough and meticulous. These three characteristics are also evident in his recently published book on Mareva and Anton Piller orders, remedies which Sir John Donaldson once described as 'the law's two nuclear weapons'. This is a book which will be indispensable for the profession.

As is observed in the preface, 30 years have passed since the English courts created Mareva and Anton Piller orders. A number of monographs on the subject were published relatively early in that period, both in England and Australia, notably Augh & Flenley *The Mareva injunction and Anton Piller order* (2nd ed. 1993) and Hetherington (ed) *Mareva injunctions*, Law Book Company, 1983. The subject matter is, of course, treated in more general equity texts including *Meagher, Gummow and Lehane, Spry, Parkinson and dal Pont & Chalmers*. In none of those texts, however, will one find the detail and explication evident in Biscoe's new work. Nor will one necessarily find the strong practitioner-orientated perspective which Biscoe brings to the subject.

Following an excellent introduction and overview of the development of these two forms of relief, the next four chapters are devoted to what have traditionally been known as Mareva injunctions however, following *Cardile v LED Buildings Pty Ltd* (1999) 199 CLR 380, Biscoe in general opts for the description 'freezing order'. These chapters are respectively entitled 'Ancillary orders' (which deals, inter alia, with orders for the disclosure of assets, cross-examination, delivery up, bank direction, restoration or payment of monies into a designated account, orders restraining departure from the jurisdiction and the Norwich order); 'Third parties'; 'Transnational freezing orders' and a chapter entitled 'The conduct of freezing order proceedings'.

The chapter on 'transnational freezing orders' is particularly illuminating. Difficult questions of jurisdiction will often arise in this area and, with an increasing global economy and the ease of international funds' transfer, such relief will often be a necessary adjunct to transnational commercial litigation, especially in fraud cases. The chapter concerned with 'The conduct of freezing order proceedings' which runs to almost 60 pages reviews not only the mechanics of an application for Mareva relief but deals in a thorough manner with such important topics as the undertaking as to damages, other undertakings and the obligation of full disclosure of all material facts on an *ex parte* application.

There is also a lengthy and systematic discussion in chapter seven on the subject of Anton Piller orders. The text is rounded out by chapters on the privilege against self-incrimination and sanctions for disobedience including the possibility of being debarred from defending proceedings or not being heard through to the traditional sanction of contempt of court.

The focus is principally upon Australian and English decisions but there is also regular reference to Australian and English statutory material and practice directions which have been evolved by the courts over time in relation to both Mareva and Anton Piller orders. This material is usefully reproduced in appendices to the book which also include precedent orders.

Peter Biscoe is to be congratulated on his achievement. To publish any book, let alone one of this quality, is a fine achievement. To do so whilst simultaneously conducting a busy silk's practice is even more impressive. The book will become the standard specialist text in the area in Australia. It has already been cited in a number of decisions in the Supreme and Federal courts.

Reviewed by Andrew Bell

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