

FAMILY LAW ORDERS ENFORCEMENT OF ORDERS Warrant for seizure and sale of property  
Application by wife for enforcement of orders where husband has failed to comply with final orders  
FAMILY LAW PRACTICE AND PROCEDURE STAY APPLICATION Application by husband for a  
stay of orders pending appeal against substantive orders Stay granted in part Family Law Act 1975  
(Cth) s 112AA Jackson & Balen [2009] FamCAFC 131 APPLICANT: Ms Masoud RESPONDENT: Mr  
Masoud FILENUMBER: SYC 2198 of 2012 DATE DELIVERED: 28 October 2014 PLACE  
DELIVERED: Hobart PLACE HEARD: Sydney JUDGMENT OF: Benjamin J HEARING DATE: 4  
September 2014 REPRESENTATION COUNSEL FOR THE APPLICANT: Mr Gould SOLICITOR  
FOR THE APPLICANT: Michael Todd of Watts McCray Lawyers COUNSEL FOR THE  
RESPONDENT: Mr Lloyd SC SOLICITOR FOR THE RESPONDENT: Paul Doolan and Shannon  
Rogers of Barkus Doolan ORDERS The enforcement warrant sought by the wife (as amended in the  
form of order tendered by the wife on 4 September 2014 Exhibit W3) and the review in respect of the  
determination made by Registrar Cameron on 10 July 2014 be stood over for directions hearing on  
Monday 13 July 2015 at 11.30am before a registrar of the Family Court, Sydney or for such longer or  
shorter period as is determined by a judge exercising jurisdiction under the Family Law Act 1975 (Cth)  
before July 2015. The parties be given liberty to apply to Benjamin J or if he is not  
reasonably available another judge of the Court on the giving of seven (7) days notice to the other  
party and to the Court in relation to the enforcement warrant, such leave to apply until 31 July 2015.  
The operation of order 45 made by the Honourable Justice Fowler on 4 October 2013 be stayed  
pending the determination of the appeal commenced by the husband in November 2013.  
Conditional upon:- the husband paying to the wife the sum of \$2,666 per month by way of  
partial compliance with the Spousal Maintenance Order (order 53); and such partial payment to  
operate in respect of the husband's spousal maintenance liability pursuant to that Order for the  
payments due on and after 4 August 2014, until the appeal has been determined; and the partial  
payments due on 4 August 2014 and 4 September 2014 are to be paid to the wife on or before 4  
October 2014; and the partial payments due on the 4th of each month thereafter are to be paid to the  
wife on that day, including the October 2015 partial payment due on 4 October 2014, and the

remainder of the operation of order 53 (as has not already been wholly or partially complied with) made by the Honourable Justice Fowler on 4 October 2013 be stayed pending the determination of the husband's appeal. The application of the husband to stay order 54 (Child Support) of the orders made by the Honourable Justice Fowler on 4 October 2013 is dismissed. The stay orders are further conditional upon the husband paying the sum of \$10,000 to School A within fourteen (14) days from the date of this order. The costs of both parties are reserved and leave is given to either party to apply on seven (7) days notice to the other party and to the Court for the listing of the costs applications; such leave to operate until twenty eight (28) days after the determination of the appeal in respect of the substantive Orders made 4 October 2013. IT IS DIRECTED that if the husband continues to assert that this Court at first instance has jurisdiction and power to make Orders restraining the wife by injunction from denigrating the husband or his healthcare practice, EPractice, to any professional or doctor that is currently or has in the past been a referrer to the husband or his healthcare practice EPractice and seeks to pursue that application then he file and serve any such initiating application within fourteen (14) days from the date of this order. IT IS CERTIFIED Pursuant to Rule 19.50 of the Family Law Rules 2004 (Cth) it was reasonable to engage senior counsel and counsel to attend. IT IS NOTED that publication of this judgment by this Court under the pseudonym Masoud & Masoud (Stay Application) has been approved by the Chief Justice pursuant to s 121(9)(g) of the Family Law Act 1975 (Cth). FAMILY COURT OF AUSTRALIA AT SYDNEY FILE NUMBER: SYC 2198 of 2012 Ms Masoud Applicant And Mr Masoud Respondent REASONS FOR JUDGMENT Introduction Ms Masoud (the wife) and Mr Masoud (the husband) are engaged in parenting and property litigation in the Family Court under the provisions of the Family Law Act 1975 (Cth) (the Act). The proceedings between the husband and wife were heard at first instance by Fowler J over seven days in July 2013. Reasons were delivered and orders were made on 4 October 2013 (in these reasons they will be referred to as the Orders). Fowler J said of the parties and their litigation: - [1] Marriage breakdown and defended litigation rarely, it is said, brings out the best in people. This case is not a rare exception. The proceedings are ones in which some of the disclosed conduct of each of the parents at the time of and subsequent to their separation brings little

in the way of credit to either of them and, at times, demonstrates parenting skills and general empathy and sensitivity which at best were infantile and at worst of a level that one would ordinarily expect of a house brick. His Honour seemingly used irony and insult to goad the parties to moderate their behaviour, that approach did not work. The proceedings before me initially arose out of an endeavour by the wife to have the husband comply with an undertaking referred to in the Orders at notation 58. The undertaking was thought to impose a liability upon the husband to pay private school tuition fees for the younger two children of the parties marriage. The wife claims that the husband has an actionable liability and as such she was entitled to recover an amount of \$20,461.96.[2] The costs disclosure letter on behalf of the wife[3] discloses that she had expended or incurred legal costs in this interlocutory proceeding to the extent of some \$47,679. The costs letter provided by the husband[4] shows his costs on the hearing before me on 4 September 2014 (excluding preparation of affidavits, preparation etc, just for the day) at about \$12,000. The husband has incurred or paid legal costs and disbursements to date in these proceedings of about \$690,000. The husband is not content with some aspects of the Orders and has lodged an appeal. That appeal has yet to be heard. The grounds of appeal are expanding and a copy of further amended grounds of appeal were put in evidence before me.[5] The amount of legal costs involved in the skirmish before me is likely to have met the whole of the children's school fees for the current year. These interlocutory proceedings have expanded and eaten the funds that the parties may have otherwise spent on their children's education. It may be that Fowler J did not miss the mark with his comments about the parties' appetite for conflict with each other. The proceedings before me are in the nature of the wife's enforcement of part of the Orders, enforcement of an undertaking as an order and review of a decision made by a Registrar of this Court. The husband opposes the orders sought by the wife. He now requests for a stay of some of the Orders made by Fowler J and seeks orders to enjoin the wife. Both parties seek orders for legal costs against the other. Fowler J is now happily ensconced in the quiet comfort of his retirement and as such cannot hear the stay application, that task fell to be determined by me. Logically, the husband's stay application needs to be determined before the wife's enforcement application (which itself is a review of a decision by a Registrar of this Court). In addition, and as I

earlier said, the husband in his response sought order to enjoin the wife from denigrating him or his named healthcare practice to any professional or doctor that has been a referrer to the healthcare practice and further the husband sought orders to enjoin the wife from discussing with their children matters arising from and relating to the payment of their school fees. Curiously, this application is made in circumstances where there is evidence (albeit untested) from the school that the subject children are or were to be expelled for non-payment of their school fees. This is also where the husband claims, in his alleged current circumstances, that he is unable to meet the financial obligations implicit from the face of the Orders or undertaking. If the injunction was granted (and given an exchange between the Bench and senior counsel for the husband, that will not occur at this time) and if the evidence from the school is sound, one wonders what was to be said by the wife to the children as they were removed from their erstwhile school. All of these interlocutory issues are occurring in the shadow of the Orders of Fowler J and the appeals against them. This includes the newly minted further amended grounds of appeal produced to the wife during the hearing of this application. There is also an issue as to whether the undertaking recorded as a notation in the Orders is or is not an undertaking. There may be an issue of law as to whether this undertaking is deemed an order under the Act in terms of enforcement. I am to consider a stay of part of the Orders and, if I determine not to grant the stay I am to determine whether to release the husband from the undertaking (that he will argue to the Full Court was not an undertaking) and then I may need to consider if I should enforce the orders and/or the undertaking (if it is an undertaking and if it can be treated as an order). Easy peasy. In thinking through the various machinations involved in the proceeding before me, I drifted into a state of wonder as to whether I have fallen down that apocryphal rabbit hole and emerged in the fantasy world created by Lewis Carroll in his story of Alice's Adventures in Wonderland. Not only was I in that world, but curiously, I believed I understood that world of wonder, but I digress. Whether they have previously done so or not, the legal practitioners representing the husband and the wife need to step forward and offer non-confrontational solutions to their respective clients. The parties themselves should stop, take a deep breath, look around, think and find better ways to vent the anger, bitterness and aggression they may have for each other and

consider the devastating impact that these proceedings may be having on their children and the devastating impact on the parties economic circumstances. On 4 July 2014 the wife had requested the issue of an enforcement warrant which application was then supported by her affidavit, filed the same day. A Registrar of the Family Court made enquiries of the solicitor of the wife by email dated 7 July 2014<sup>[6]</sup> and a response was provided to that request. In her enforcement warrant the wife sought the sale of motor bikes, furniture and furnishings owned by the husband. On 10 July 2014 a Registrar of the Family Court made chambers orders declining to issue the enforcement warrant. The wife pursues the enforcement of the undertaking, arrears of child support and spouse maintenance. The wife now says that she claims an enforcement warrant for an increased sum of \$65,826.77.<sup>[7]</sup> The review of the Registrars decision and the amended orders are contained, in general form, in her application in a case filed 19 July 2014. In her application, the wife, by way of alternative, sought relief in the form of an application for an order to be made by the Court in terms of the husbands undertaking (that part of the application is probably *ultra vires* the power of this First Instance Court the substantive proceedings having been finally determined by the Orders). Finally, the wife sought the provision of information from the husband and costs. The husband filed a response on 22 August 2014 seeking orders for the dismissal of the wifes applications, release from the undertaking (which he claimed was not an enforceable undertaking), a stay of a number of the Orders and that the wifes interlocutory application be dismissed. In the alternative the husband sought to be released from the undertaking. In addition he sought orders by way of injunction against the wife, as set out earlier and orders for costs. The orders and notations in issue. In the Orders there are a number of orders and an undertaking to which I have been specifically referred. The husband seeks an order for stay of order 45 of the Orders. Given the discussion set out in these reasons, that application was successful. Order 45 provides:- Following compliance by the wife with Orders 42 and 43 above, the husband shall pay to the wife the sum of \$798,370, with such sum to be paid in instalments and pursuant to the following timeframe: \$266,124 is to be paid exactly 12 months from the date of the later of the two transfers referred to in Orders 42 and 43 above \$266,123 is to be paid exactly 12 months from the date of the payment made pursuant to Order 45(a) above and

\$266,123 is to be paid exactly 12 months from the date of the payment made pursuant to Order 45(b) above. The husband seeks an order for stay of orders 53 and 54 relating to spouse maintenance and child support, respectively. Given the discussion set out in these reasons the application for a stay of the maintenance order was partly successful and conditions were imposed and the application for a stay in relation to the departure order was unsuccessful. Orders 53 and 54 provide:- The husband shall pay to the wife by way of spouse maintenance the sum of \$4,333 per month paid monthly in advance, with the first payment to be made within seven days from the date of these Orders. Each payment thereafter is to be made on the same calendar day in each month for a period of 24 months following the first payment. By way of child support departure and pursuant to section 117 of the Child Support (Assessment) Act 1989 (Cth) (the Assessment Act), the husband shall pay to the wife periodic child support for the children [D] and [G] in the sum of \$1,300 per week in total until the happening of a terminating event in accordance with section 12 of the Assessment Act or until further order of the Court. There are mechanical orders in relation to orders 54 being for CPI increases and starting dates. Given that I have declined to stay the departure order, there is no need to stay orders 55, 56 and 57 of the Orders. In item 58 of the Orders the Court noted what it described as an undertaking (the undertaking) of the husband. The husband asserted that the alleged offer of the undertaking was conditional and therefore it was not open for the First Instance Court to assert that he was bound by it. The undertaking is noted as:- The Court notes the undertaking of the husband to pay to the wife, in addition to periodic child support with respect to [D] and [G], the following expenses with respect to [D], [G] and [J]: (a) as and when they fall due, the tuition fees associated with the children's schooling (with respect to [D] and [G], such schooling is presently at [School A] and with respect to [J], such schooling is at [School Y]), including all school fees and associated costs (excluding any optional excursion overseas or costing more than \$100, unless agreed by the husband in writing) (b) all instalments necessary to maintain private health insurance for the children at the current level of cover (c) the costs of all agreed orthodontic treatment, agreed hospital, agreed optical, agreed physiotherapy, agreed podiatry or agreed other medical specialist fees or expenses in respect of the children not able to be recovered from private health insurance and (d) the costs of the

children's extra-curricular activities where the children's participation is agreed by the husband in writing prior to the children commencing the activity. That undertaking provided that the husband pays the School A fees which if binding would include those fees due in or about June 2014 totalling \$20,461.96.[8] The Evidence and background The wife relied upon her:- application in a case filed 17 July 2014; affidavit of wife filed 4 July 2014; affidavit of wife filed 19 August 2014; affidavit of wife filed 1 September 2014; and Financial Statement of the Wife sworn 1 September 2014. Part of the evidence contained in the wife's second affidavit, was a copy of an email dated 15 August 2014. The wife said the email was sent to her from School A, warning her that unless the school fees were paid the enrolment of and the entitlement of D and G to attend school would be terminated. The wife made arrangements to pay that sum herself.[9] The wife tendered in evidence a series of documents:- Exhibit W1 - Letters from School A of July and September 2014 Exhibit W2 - Letters from Watts McCray as to costs Exhibit W3 - Form of orders The husband relied upon his:- response filed 22 August 2014 financial statement of husband filed 22 August 2014; affidavit of husband filed 22 August 2014; Notice to Costs Exhibit H1; Exhibit H2 - further amended Notice of Appeal; and Exhibit H3 - summary of argument for the appeal and list of authorities by Michael Kearny SC. In terms of the issue about the undertaking each of the parties referred me to various parts of the reason, the wife to paragraphs 345 to 349 and the husband to the same provision but in the context of the nature of the undertaking relied upon by Fowler J. The offer to give an undertaking was apparently contained in the husband's case outline and which the husband said was an offer to give an undertaking in the context of the husband's case regarding child support and spouse maintenance. In the further amended notice of appeal the only reference to the undertaking is on page 11 where it is asserted:- Child Support ... That His Honour erred in noting an undertaking of the husband in paragraph 58 of the Orders in circumstance where no undertaking was proffered by or on behalf of the [husband]. There was no submission on this point in the summary of argument for the appeal and list of authorities. I had regard to the Orders and the reasons. In the Reasons Fowler J observed in respect of non-periodic child support:- Each of the parties seeks an order that the husband, in addition to periodic child support, pays other expenses with respect to the children. The

additional expenses covered by the proposed orders are ones which are already being met by the husband. They relate to school fees and tuition costs, private health insurance, other health and medical costs and extracurricular activities. No formal application was made by either party invoking Part 7 Division 5 of the Assessment Act, which deals with orders for child support paid to a carer otherwise than in the form of periodic amounts. Ordinarily, an application for non-periodic child support would be governed by the provisions of sections 122, 123 and 124 of the Assessment Act. In this case, however, the Court was not addressed on those provisions and neither party seeks that an order be made under those provisions. The husband however by his proposed order provides a clear undertaking to make the payments. Notwithstanding the parties agreement as to the range of expenses that the husband should pay in addition to periodic child support, the wife submits that the husband has littered his order with a requirement that his agreement be sought in writing before he is required to pay for certain expenses. She submits that in this case such an order would be unworkable. The Court does not agree with that submission. The Court intends to include a notation in the orders that the husband has made an undertaking to continue to meet the additional expenses referred to above. Should he fail to do so, the wife will have liberty to bring an application before the Court seeking compliance with his undertaking or sanctions for its breach. Senior counsel for the husband submitted that the undertaking relied upon by Fowler J was contained in the husband's case outline for the trial commencing on 1 July 2013 and the husband's case outline for this proceeding said that he would rely upon the transcript of the proceedings before the Honourable Justice Fowler from 1-5 July 2014 and 8 and 9 July 2014. Those documents were not put formally before me. The less contentious matters indicated to the parties that I would not be dealing with their respective costs applications at this stage. I said that I would deal with those once both the interlocutory aspects were resolved and the appeal was resolved. Accordingly, I will be making an order reserving the costs of both parties. In terms of the husband's application for an injunction; there are no substantive proceedings on foot. As such I am not satisfied that I have the power to deal with the orders sought by the husband in items 5 and 6 of his response to the wife's application in a case. I raised this with senior counsel for the husband and indicated I would not be dealing with these matters at this time.



Further, I directed that if the husband wished to make an application he ought to file a substantive application within a short period of time and that could be dealt with in the normal course as a substantive application which may or may not have interim aspects to it. Each of the parties referred me to the Reasons which contained a background in paragraph 7 through to 27. They include that the husband was now aged about 47 and the wife 45. They have three children aged 17, 14 and 12. The elder lives with the father and the younger two live with the wife. The husband is a healthcare professional and the wife now works as a casual health science worker. She was not in paid employment in October 2013. The husband was born in 1967 and is presently 46 years of age. He is a [healthcare] professional who practices full-time in his specialist field. Within that field the husband has two sub-specialties. The wife was born in 1969 and is presently 44 years of age. She is a qualified [health science professional] but has not worked in that field for some time, although there is now a recent change. The wife is in the process of retraining to enable this return by her to paid employment as a [health science professional].<sup>[10]</sup> The husband and wife married and commenced cohabitation in 1995. Their final separation occurred in April 2012. Proceedings commenced in April 2012 in the then Federal Magistrates Court of Australia. Interim orders were made and eventually the proceedings found their way to the Family Court. The final hearing was conducted over seven days from 1 July to 9 July 2013 and the Orders were made and reasons published on 4 October 2013. An appeal was lodged on 1 November 2013<sup>[11]</sup>, an amended appeal on 23 May 2014 and a further amended in late August or early September 2014. There is no evidence that the appeal is progressing other than normally through the processes of the Full Court. In these reasons any statement of fact is to be regarded as a finding of fact unless the contrary is clear from the context surrounding that fact. It was not put that the monies allegedly due under the undertaking, the arrears of spouse maintenance and child support were not payable. The issues were:- Whether there should be a stay of the spouse maintenance and child support orders pending the appeal and if so what conditions, if any, should apply to that stay; and Whether the undertaking given by the husband should be enforced as an order, or the application for the issue of the warrant dismissed or adjourned until after the determination of the appeal. The law applicable to a stay

application is set out by the Full Court in Jackson & Balen [2009] Fam CA FC131 where the Full Court said at paragraph 28:- The principles to be applied in hearing a stay application pending an appeal are well settled (see Federal Commissioner of Taxation v Myer Emporium Ltd [No.1] [1986] HCA 13; (1986) 160 CLR 220 at 222; Alexander v Cambridge Credit Corporation Ltd (1985) 2 NSWLR 685; Jennings Construction Ltd v Burgundy Royale Investments Pty Ltd [1986] HCA 84; (1986) 161 CLR 681). Those authorities stress the discretionary nature of the application which should be determined on its merits. Principles relevant to this matter include the following: the onus to establish a proper basis for the stay is on the applicant for the stay. However it is not necessary for the applicant to demonstrate any special or exceptional circumstances; a person who has obtained a judgment is entitled to the benefit of that judgment; a person who has obtained a judgment is entitled to presume the judgment is correct; the mere filing of an appeal is insufficient to grant a stay; the application must be bona fides; a stay may be granted on terms that are fair to all parties - this may involve a court weighing the balance of convenience and the competing rights of the parties; a weighing of the risk that an appeal may be rendered nugatory if a stay is not granted this will be a substantial factor in determining whether it will be appropriate to grant a stay; some preliminary assessment of the strength of the proposed appeal whether the appellant has an arguable case. Child Support Departure As to the stay sought in respect of the Child Support Departure Order (order 54), given the material before me, I am not proposing to accede to the husband's application. The onus is on the husband as the applicant to establish a proper basis for the stay. He has not done so and given the delay in the determination as to the veracity of the undertaking the wife is entitled to the benefit of that departure order, which is presumed to be correct. There is no issue that the husband's appeal appears, on the surface, to be bona fides. There is no risk of the appeal may be rendered nugatory if that stay is not granted and each party has available assets to tide them over during the appeal process. The appeal as to the departure order is arguable, given the submissions. The reason for this is that the husband indicated in the trial that he was agreeable to paying the school fees of the younger children totalling about \$60,000 plus either \$220 per week or \$440 per week child support for the children, plus other expenses such as

health insurance and the like. The requirement, if it exists, for the husband to comply with the undertaking is not being enforced at this stage, however, the wife should in the meantime receive the child support which is approximately equal to the amount of the school fees pending the outcome of the appeal. I will leave that determination to the Full Court. Further, in relation to child support the husband claims that his financial circumstances have deteriorated since last year. His choices in regard to that alleged change are to pursue his options through the appeal process (which he is doing) and/or to make a fresh application if he chooses to do so for departure from that order, either through the administrative processes via the Child Support (Assessment) Act or if he is successful on the appeal, he can seek a departure in the context of a re-hearing. It is not prudent for me to second-guess a considered determination of a judge of this Court in the context of this stay application, particularly in the context of these parties' complex financial arrangements. A stay may be granted on terms that are fair to all parties - this may involve a court weighing the balance of convenience and the competing rights of the parties. What is left is the husband's application to stay order 45 of the Orders (as to the property issues) and a stay as to order 54 (spouse maintenance). Spousal Maintenance: I accept the onus is on the husband to establish the basis for the stay. I also accept that the wife is entitled to the benefit of the judgment. In terms of the spouse maintenance order, the order was based upon a finding that the wife was not in receipt of an income. The wife is now in receipt of an income of some \$385 per week. Given that change in the wife's income and given the husband's assertion that his financial circumstances have deteriorated since the first instance hearing and the making of the Orders by Fowler J, I am satisfied that it would be appropriate to stay part of that order to the extent that the wife earns her income of \$385 per week. Accordingly, I will stay part of Fowler J's maintenance order and I will leave the husband responsible for paying the balance of maintenance. The property order: As to the property order, it appears that the first payment of \$266,124 is to be made sometime in the first part of 2015. This is part of the instalment property which totals \$798,370 (the instalment property order). The amount of the instalment property order and the impact of that payment on the husband's financial circumstances is that he claims he was left with property primarily in the form of his superannuation fund, and which the husband says is

a significant part of his appeal. I propose to stay that order, but make it clear that if that order survives the appeal, and subject to any determination of the Full Court, interest should accrue on those sums due under the instalment property order in accordance with the Rules of the Court and as from the date that the payments would otherwise be due. In relation to the applications together and individually I make the following comments. The stay applications made by the husband were lodged quite late. The appeal was lodged in November 2013 and the stay has only come to the Court in many ways as a reaction by the husband to the wife seeking, as it were, to enforce the undertaking. However, the husband has asserted a significant change in his financial circumstances and the wife is now employed, at least on a part time basis. The husband appears to have promptly prosecuted his appeal. I accept that the application for stay is, on the surface at least, bona fide. The appeal is likely to be heard in the relatively near future as much of the work has been done. It is clear to me that a transcript had been obtained and that the parties have turned their minds to the submissions in relation to the appeal. In making these determinations, I have considered the further amended grounds of appeal<sup>[12]</sup> and the husband's summary of argument which were prepared by senior counsel. There is an arguable case in relation to the orders including the property order, the spousal maintenance order and the child support order. The wife has significant property and she has the benefit of a number of properties and other assets. Given all of these circumstances I have determined that the stay in relation to the property and spouse maintenance orders ought to be made on condition of the matters I have referred to earlier. In terms of the child support departure order, determination, I dismiss the husband's application for a stay in that regard. The Undertaking The undertaking is clear and unambiguous in terms of the provision of the notation contained at paragraph 58 of the Reasons. The husband's contentions in relation to the undertaking was that it was not given in the terms of an undertaking by the husband to the Court other than on the condition that he would pay the same if the child support for each of the two younger children was limited to \$220 per week. I am not sure whether that should be each or for both children as it is unclear on the documents from the husband as to whether it is the \$220 per week or \$440. It is not for me to determine whether the undertaking is a valid exercise of the power of the Court or not, that is a

matter for the Full Court which will be determined in due course. However, given the submissions contained in the summary of argument on behalf of the husband [13] it is clear that that aspect is, at least, arguable. There is no provision for this Court to stay the undertaking as it is not an order of the Court. However, given the submissions made on behalf of the husband and having regard to the submissions and affidavit material of the wife I am satisfied, on balance, that at this stage, the enforcement of that undertaking should not proceed pending the determination of the appeal. This view is predicated upon the finances which the wife has been able to apply towards legal costs, the payment of rent to her parents in a significant sum in advance and finally the offer of the husband to pay \$10,000 forthwith towards the current outstanding school fees. If the husband does not pay that \$10,000 within fourteen days of the date of the publication of these reasons and the making of the orders, it is open for the wife to come back to the Court in relation to the enforcement of the undertaking which, for the purpose of these proceedings, I have treated as an undertaking which is enforceable under the Family Law Act 1975 (Cth) (the Act). Part XII of the Act, s 112AA provides:- order under this Act, in relation to a court means: (c) an undertaking given to, and accepted by, the court in proceedings under this Act other than proceedings that relate wholly or partly to, or the making of, a parenting order; or ... It seems clear that the legislature empowers and enables the court to enforce a valid undertaking made to it. In his submissions counsel for the wife said I ought to take note of the material attached to her affidavit of 1 September 2014. I am troubled by this approach. To look at finances in the absence of a broad context and understanding can lead to error. The parenting and property issues were argued before Fowler J over some seven days. I had limited evidence before me as to the precise nature of the parties' circumstances. An example of this was the argument as to whether the husband had an entitlement to the assets of a trust. There was evidence of the payment of money into and out of the husband's account in relation to his father's estate for legal fees. However, it was not clear to me whether these were his funds or funds relating to the Estate. A significant part of the property owned by the husband, according to him, was contained in his superannuation fund. Given the husband's age it is clear that he could not access those funds. One of the cars referred to by the wife was available for the enforcement summons but apparently is being

used by the parties' elder child. I do not know whether the husband has both a legal and equitable interest in that property or merely legal interest in it. The wife referred to an asset in the husband's company in the form of franking credits. I generally accept the submissions of senior counsel on behalf of the husband and combined with the husband's promise to pay \$10,000 towards the school fees borrowed from a member of his family, the enforcement will not be considered at this time. For the reasons set out herein I am satisfied, exercising the broad discretion that I have in respect of the issue of a warrant that it ought not to be issued at this time. I have determined that the wife's application for the issue of a warrant should stand over for a period of time to enable the appeal to be determined and then the application for enforcement and including the review of the decision of the Registrar could then occur. Thus, the wife's claimed entitlement to have a warrant issued is preserved. If the undertaking is one to which the Act applies and if that undertaking is not impeached in the appeal process, then it is open for the wife to return to this Court and seek the issue of the warrant. In the meantime I have determined, having regard to the broad discretion that I have in respect of the question of the warrant, not to do so for the time being. I have adjourned the warrant proceedings and the review of the Registrar's decision to a date in mid-2015. I have also given leave for the parties to have the matter restored before me in the event the appeal is determined earlier, the conditions relating to the stay are not complied with, or there needs to be further extension of time. I certify that the preceding eighty two (82) paragraphs are a true copy of the reasons for judgment of the Honourable Justice Benjamin delivered on 28 October 2014. Associate:

Date: 28 October 2014 [1] Reasons for Judgment, delivered by Fowler J on 4 October 2013 (the Reasons). [2] Affidavit of wife filed 4 July 2014. [3] Exhibit W2. [4] Exhibit H1. [5] Exhibit H2. [6] Annexure AA to affidavit of wife filed 19 August 2014. [7] Affidavit of wife filed 19 August 2014 paragraph 11 and paragraph 4(b) of the enforcement warrant attached to the form of order lodged by wife as Exhibit H3. [8] Annexure C to affidavit of wife filed 4 July 2014. [9] Annexure B to affidavit of the wife filed 19 August 2014. [10] At paragraphs 8 and 9 of the Reasons for Judgment delivered by Fowler J on 4 October 2013. [11] Affidavit of husband filed 22 August 2014. [12] Exhibit H2. [13] Exhibit H3.

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