

FAMILY LAW PROPERTY Interim Where there are many issues of disputed fact which are yet to be tested Where the parties entered into a financial agreement pursuant to s 90C of the Family Law Act 1975 Where the wife seeks to set aside the financial agreement on the basis of fraud by reason of non-disclosure by the husband of a material matter Where neither spouse party can invoke the jurisdiction under Part VIII of the Act unless and until the financial agreement is set aside under s 90K Where there needs to be a determination under s 90K as to whether the financial agreement is set aside before it could be determined that proceedings under Part VIII s 79 of the Act could proceed

Where there are proceedings on foot in the Administrative Appeals Tribunal concerning similar issues in these proceedings which have yet to be determined

FAMILY LAW PRACTICE AND

PROCEDURE Where the Commissioner of Taxation seeks leave to intervene in these proceedings pursuant to s 92 of the Act Where it is premature for the Commissioner to be granted

leave to intervene to protect the Commissioner's position as a creditor in s 79 proceedings when it remained to be seen whether the financial agreement will be set aside to allow such proceedings to

be advanced Family Law Act 1975 (Cth) Income Tax Assessment Act 1936 (Cth) Taxation Administration Act 1953 (Cth) Family Law Rules 2004 (Cth) Commissioner of Taxation & Darling and Anor (2014) FLC 93-583 Darling v Commissioner of Taxation and Anor [2014] HCA Trans 178

APPLICANT: Ms Acker FIRST RESPONDENT: Mr Acker SECOND RESPONDENT: B Pty Ltd atf Acker Investment Trust THIRD RESPONDENT: F Pty Ltd atf Acker Family Trust FOURTH

RESPONDENT: B Pty Ltd atf C Trust FIFTH RESPONDENT: D Ltd atf D Trust SIXTH

RESPONDENT: P Ltd SEVENTH RESPONDENT: E Pty Ltd EIGHTH RESPONDENT: T Pty Ltd

NINTH RESPONDENT: Ms G Acker TENTH RESPONDENT Ms Stager ELEVENTH

RESPONDENT Ms J Acker FILE NUMBER: BRC 8080 of 2014 DATE DELIVERED: 22 October

2014 PLACE DELIVERED: Brisbane PLACE HEARD: Brisbane JUDGMENT OF: Kent J HEARING

DATE: 26 September 2014 REPRESENTATION COUNSEL FOR THE APPLICANT: Mr Simon

White SC SOLICITOR FOR THE APPLICANT: Rice Naughton COUNSEL FOR THE FIRST

RESPONDENT: Ms Catherine Carew QC SOLICITOR FOR THE FIRST RESPONDENT: Robert

Bax & Associates COUNSEL FOR THE FIFTH, SIXTH, NINTH AND TENTH RESPONDENTS: Mr

David de Jersey SOLICITOR FOR THE FIFTH, SIXTH, NINTH AND TENTH RESPONDENTS:
Russells ITIS NOTED that publication of this judgment by this Court under the pseudonymAcker & Acker and Ors has been approved by the Chief Justice pursuantto s 121(9)(g) of the Family Law Act 1975 (Cth). FAMILY COURT OF AUSTRALIA AT BRISBANE FILE NUMBER:BRC 8080 of 2014 Ms Acker Applicant And Mr Acker First Respondent And B Pty Ltd atf Acker InvestmentTrust Second Respondent And F Pty Ltd atf Acker FamilyTrust Third Respondent And B Pty Ltd atf CTrust Fourth Respondent And D Ltd atf DTrust Fifth Respondent And P Ltd SixthRespondent And E Pty Ltd SeventhRespondent And T Pty Ltd EighthRespondent And Ms G Acker NinthRespondent And Ms Stager TenthRespondent And Ms J Acker Eleventh Respondent REASONS FOR JUDGMENT On26 September 2014, apart from making certain orders by consent upon undertakingsof each of the applicant and first respondentand reserving costs and makingother directions, I ordered that the Application in a Case filed by theCommissioner of Taxation on19 September 2014 seeking leave to intervene inthese proceedings pursuant to s 92 of the Family Law Act 1975 (Cth)(the Act); and further procedural orders asdescribed in the application; be adjourned to a dateto be fixed. I furtherrefused to entertain an oral application made at the hearing by the Commissionerfor mareva injunctions. These are the reasons for those determinations. Thefollowing is by way of overview or background drawn from the material filed todote by or on behalf of one or other of the twelveparties to these proceedings.I am mindful that there are many issues of disputed fact in these proceedingswhich are yet to be tested. At least some parties are yet to respond to mattersof fact advanced by or on behalf of others. I therefore do not purport toexpressconcluded findings of fact but rather to provide some broad context,some of which may ultimately prove to be at variance from factsdetermined at afurther hearing or trial. Subject relationship and marriage MrAcker (the husband) and Ms Acker (the wife)commenced a relationship in June 2005; began cohabitationin June 2007; marriedin March 2010 and separated in June 2014. Their marriage produced two children,a girl born in August 2010who is currently 4 years of age and a girl born inNovember 2012 who will soon turn 2 years of age. On3 August 2010 and thus during their marriage the parties made a writtenagreement pursuant to, and within the meaning of, s 90C of the Act. Thatagreement

purported to operate, upon the parties separation, insubstitution for any rights either party might otherwise have under Part VIII of the Act. That is, by operation of s 71A, Part VIII of the Act does not apply to financial matters or financial resources to which a financial agreement that is binding on the parties applies and by the terms of the subject agreement it is expressed to have that application. In summary the financial agreement provides for each party to retain, to the exclusion of the other, all assets and financial resources in that party's name or control as at the date of the agreement and thereafter; and any future income or property derived from that source as existing at the date of the agreement. Mechanisms are included for the division of any jointly acquired property, acquired jointly after the date of the agreement. Each spouse party to the agreement acknowledged, by its express terms, an obligation to make full and frank disclosure of their then existing financial circumstances and annexed to the agreement are schedules purporting to be that disclosure by each party respectively. It bears some emphasis in the context of the Commissioner's application that the subject financial agreement here does not operate as a mechanism whereby one spouse transfers to the other any then existing legal or equitable interest in any property or financial resource then held by that party, a matter which might excite the interest of a creditor. To the contrary, the subject financial agreement is directed to preserving to each party respectively the property and financial resources of that party held by that party at the time of the agreement together with derivations in future from that original source. It also bears some emphasis that it was apparently not in issue as between the spouse parties given the terms of the financial agreement that: neither spouse party can invoke the jurisdiction under Part VIII of the Act unless and until the financial agreement is set aside under s 90K of the Act; and there would need to be a determination under s 90K as to whether or not the financial agreement is set aside before it could be determined that proceedings under Part VIII specifically pursuant to s 79 of the Act could legitimately proceed. Having regard to the main purpose of the Family Law Rules 2004 (Cth) (the Rules) as expressed in r 1.04; the way the main purpose is to be promoted in accordance with r 1.06; and the way that is achieved as expressed in r 1.07; this is an obvious case for an order to be made pursuant to r 10.14 for the wife's application to set aside the financial agreement pursuant to s 90K to be heard and determined as a discrete issue, rather than

that being heard with any s 79 proceeding, the legitimacy of which may depend upon the outcome of the discrete determination. Taken from the written submissions on behalf of the wife filed in advance of the hearing on 26 September 2014, her challenge under s 90K will include a challenge that the agreement was obtained by fraud by reason of non-disclosure by the husband of a material matter. In summary, whilst the husband disclosed what were described as beneficiary interests in wholly discretionary trusts the wife foreshadows that she will contend that at all material times the property of the trusts was actually in the whole or at least partial ownership of the husband. As will be further discussed this issue or similar issues are before the Administrative Appeals Tribunal by reason of an objection taken by the husband to an assessment made by the Australian Taxation Office. That objection is to be heard in April 2015. As at the conclusion of the lengthy negotiations undertaken on 26 September 2014 after the matter was mentioned it appeared to be a common position as between the husband and wife that, other than interim orders they were able to agree upon, the substantive issues (other than parenting matters) could only be properly heard and determined by this Court when the final outcome of the proceedings currently before the Administrative Appeals Tribunal was known.

Other parties The second to eighth respondents are various companies and trusts which comprise what may conveniently be referred to as the Acker Group in which one or more of the wife, the husband, his two sisters and his mother (Ms H) have an interest. The fifth respondent, D Ltd is a company incorporated in the British Virgin Islands. It is said to act as trustee of the D Trust, a discretionary trust settled in the British Virgin Islands. A copy of the company incorporation documents and the trust deed are attached to the affidavit of the ninth respondent filed on 25 September 2014. The directors of the trustee company are the husband, the ninth and tenth respondents and the husband's mother. The ninth respondent is the sole shareholder of D Ltd and she is a joint protector of the D Trust with the tenth Respondent. The sixth respondent, P Ltd is a company incorporated in the British Virgin Islands in August 2010. The tenth respondent is the director of P Ltd and its sole shareholder is the D Trust. P Ltd is a foreign company registered in Australia for the purpose of, inter alia, share trading. The fifth respondent, D Ltd, provides loans to P Ltd to carry out the share trading and the husband is employed by P Ltd to undertake the share trading on its behalf for which P

Ltd pays the husband a salary. The seventh respondent is a company incorporated in Australia in April 2010 in which the husband is the sole director and secretary and in which D Ltd is the sole shareholder. This company is said to provide administrative services to P Ltd and D Ltd and is paid by those entities for those services. The eighth respondent, T Pty Ltd, is a company incorporated in Australia in November 2006 in which the husband is the sole director, secretary and shareholder. The ninth respondent, Ms G Acker and the eleventh respondent, Ms J Acker, are the husbands two sisters who both have an interest in the Acker group. The tenth respondent Ms Stager is a professional trustee who resides in Switzerland and is paid for her services as a protector of the D Trust and her role as a director of D Ltd. Husbands taxation dispute The Commissioner relied upon the affidavit of its employee Mr K filed 19 September 2014 and, other than an affidavit of service, this was the extent of the evidence relied upon by the Commissioner. Mr K deposes that on or about 19 March 2009, the Commissioner commenced a review of the financial affairs of [the husband], and an audit was commenced on or about 5 October 2010 in respect of the years of income 30 June 2003 to 30 June 2010. Mr K further deposes that on 24 August 2012 the Commissioner: made an assessment that \$1,190,188.85 was the amount of tax payable by the husband for the income year ended 30 June 2008; served the husband with notice of that amended assessment; made an assessment of administrative penalties in respect of the shortfall in tax paid by the husband for the 2008 income year of \$895,770.65 and served notice of that assessment on the husband; served notice upon the husband of a shortfall interest charge in respect of the additional tax assessed in the amount of \$322,612.44. Mr K deposes that a certificate issued pursuant to the relevant provisions of the Taxation Administration Act 1953 (Cth) on 18 September 2014 certifying that the amount of \$2,939,660.24 is, as at the date of the certificate, a debt due and payable by the husband to the Commonwealth in respect of income tax, penalties and interest; the certificate is annexed to his affidavit. In note in passing that there is no explanation in Mr K's affidavit and thus no evidence provided by the Commissioner in support of the application, as to the following: the basis or bases of the Commissioner's assessment of the husband's taxation for the 2008 financial year being in the amount of \$1,190,188.85; in circumstances where the relevant assessments and notices referred

to issued as long ago as 24 August 2012, the detail of any steps taken by the Commissioner to pursue recovery of the debt or any reasons for no steps being taken, if that be the position; the fact that the husband is pursuing an application for review in the Administrative Appeals Tribunal of the Commissioner's disallowance of the husband's objection to the assessments issued to him for the year ended 30 June 2008. As to (a) above, other material before the Court indicates that, in essence, the basis for the 2008 assessment is a conclusion by the Commissioner that what is purported to be a loan the husband received from his sister, the ninth respondent via the Acker Group in the 2008 year, is not in truth a loan but is in fact a distribution of profit to the husband earned on funds invested on his behalf from 2002 onwards. As to (c) above, it is clear that the husband is challenging, via his application for review in the Administrative Appeals Tribunal, the subject assessment of primary tax in the 2008 year (and thus the consequent penalties and interest) and that challenge is reported to be proceeding to a hearing in April 2015. Commissioner's Application Against the above background the Commissioner filed an Application in a Case on 19 September 2014 seeking these orders: 1. Leave be granted to the Commissioner of Taxation (the Commissioner) to: (a) intervene in the proceeding pursuant to section 92 of the Family Law Act 1975 (Cth); and (b) inspect and copy all court documents filed in the proceeding and any documents produced by the parties or any third parties pursuant to subpoenas or similar court process. 2. As part of any final property settlement or orders between [the husband] and [the wife], this Honourable Court- (a) take into account the taxation liabilities of [the husband]; (b) make provision for the payment of the taxation liabilities of [the husband] to the Commissioner of Taxation. 3. That the costs of the Commissioner of Taxation be paid by [the husband] and [the wife], or either of them. 4. Such further or other orders as this Honourable Court deems fit to make. As is obvious, none of the orders sought in the application included any orders in the nature of interlocutory injunctions; nor did the orders sought address in any way the question of the subject financial agreement. Mr K's affidavit in support of the application likewise does not address either of these issues. Thus it is that none of the other parties were on notice that the Commissioner proposed to seek any injunctive relief; and the orders sought by the Commissioner were plainly directed to protecting the Commissioner's position as a creditor in

respect of any orders this Court might ultimately make in exercise of the jurisdiction under s 79 of the Act. As earlier discussed, that jurisdiction will not arise unless and until the financial agreement is set aside. In Mr Ks affidavit in support of the application, apart from confirming that the wife is not indebted to the Commissioner in respect of any tax liabilities (but apparently ought nevertheless be responsible for the Commissioner's costs of intervening given the orders sought to that effect) it is disclosed that the Commissioner commenced a further audit of the husband's financial affairs in respect of the years of income 30 June 2003 to 30 June 2010, and that such audit, is continuing. No details are provided as to the likely time frame of that process. What appears to be the basis for the Commissioner seeking to intervene is expressed in [17] of Mr Ks affidavit in these terms: Any order made in the proceedings between [the husband] and [the wife], having the effect of altering the property of [the husband] so as to reduce it, may result in the Commissioner not being able to recover the tax liabilities presently owing by [the husband] to the Commonwealth of Australia and payable to the Commissioner. Plainly that is a reference to any order under s 79 and it bears repeating that no such order can be considered or made unless and until the subject financial agreement is set aside. Counsel for the husband submitted, correctly in my view, that in these circumstances it was premature for the Commissioner to be granted leave to intervene to protect the Commissioner's position as a creditor in s 79 proceedings when it remained to be seen whether the financial agreement will be set aside to allow such proceedings to be advanced. On 26 September 2014 much of the time allocated for hearing of the matter was taken up by negotiations primarily between the husband and wife, as a result of which those parties reached agreement on interim orders to be made, including the form of undertakings to be given, in support of those interim orders. However, counsel for the Commissioner ultimately advanced submissions on behalf of the Commissioner which significantly departed from the orders sought in the Commissioner's Application in a Case and thereby foreshadowed to the other parties in advance of the hearing. Dealing firstly with the written submissions handed up at the hearing on behalf of the Commissioner, the following was stated to be the reliefs sought: 1. The Intervener wishes to intervene in the proceedings. 2. If the Intervener is successful in that regard the Intervener seeks: a. In the interim,

leave to inspect the Court file; and On a final basis, Orders that will ensure that the debt owed by the husband to the Intervener is paid. The Intervener intends to better particularise the relief that is sought after the Court file has been inspected. Again, there is nothing in the written submissions to suggest that the basis for the Commissioner seeking to intervene was anything other than the Commissioner protecting his position as a creditor in respect of final orders under s 79, if that jurisdiction was to be exercised. However, at the point when proposed interim orders were tendered on behalf of the husband and wife on their respective undertakings, in oral submissions counsel for the Commissioner asserted that in respect of the financial agreement the Commissioner would, if given leave to intervene, actively seek to have the financial agreement set aside. Further, counsel for the Commissioner sought to advance an oral application for injunctions (in some unparticularised form) on a contention to the effect that the interim orders and undertakings as agreed between the husband and wife from their negotiations were insufficient for the Commissioner's purposes. Counsel for the husband and counsel for the fifth, sixth, ninth and tenth respondents each objected to the Commissioner by his counsel purporting to advance an oral application during the course of the hearing, without advance notice, seeking some form of interlocutory injunctions. Counsel for the fifth, sixth, ninth and tenth respondents submitted that those respondents would seek to have an opportunity to consider and address by evidence any particularised form of interlocutory injunctions sought by the Commissioner; and that those respondents would be prejudiced if not given a reasonable opportunity to do so. Likewise, counsel for the husband objected on his behalf to the Commissioner advancing an oral application without notice in advance of the orders to be sought. I accept these submissions.

Discussion There is nothing particularly contentious in a creditor of a party being entitled to intervene in, or become a party to, s 79 proceedings where an application is made for an order under s 79 which, if made, may have the effect of the creditor not being able to recover the subject debt. Section 79(10) of the Act expressly provides for that and r 6.06 of the Family Law Rules 2004 (the Rules) contemplates intervention as of right of such a creditor in respect of s 79 proceedings in these proceedings. However, in this case and at this stage of the proceedings it remains to be seen, unless and until the financial agreement is set aside under s 90K of the Act,

whether the jurisdiction under s 79 will fall to be exercised. The Commissioner, as a creditor of the husband, has no relevant interest to protect (as referred to in s 79(10)) unless and until a s 79 order is in contemplation which, if made, may have the effect of the Commissioner being unable to recover the subject debt. As to the contention that the Commissioner would seek to have the financial agreement set aside, it is not presently apparent how, in the circumstances of this case, the Commissioner would have standing to mount that application. Paragraph (eab) of the definition of matrimonial cause in subsection 4(1) of the Act provides: (eab) third party proceedings (as defined in section 4A) to set aside a financial agreement; ... Section 4A(1) of the Act provides: (1) For the purposes of paragraph (eab) of the definition of matrimonial cause in subsection 4(1), third party proceedings means proceedings between: (a) any combination of: (i) the parties to a financial agreement; and ... (b) any of the following: (i) a creditor; ... being proceedings for the setting aside of the financial agreement on the ground specified in paragraph 90K(1)(aa). The ground specified in paragraph s 90K(1)(aa) is expressed as: (1) A court may make an order setting aside a financial agreement or a termination agreement if, and only if, the court is satisfied that: ... (aa) a party to the agreement entered into the agreement: (i) for the purpose, or for purposes that included the purpose, of defrauding or defeating a creditor or creditors of the party; or (ii) with reckless disregard of the interests of a creditor or creditors of a party; or ... Leaving aside any argument to the effect that as at the time the financial agreement was entered into by the parties to the marriage the Commissioner was not a creditor of the husband; nothing in the limited evidence currently advanced by the Commissioner, or indeed in the material before the Court more generally, supports even an arguable, let alone prima facie case that, given the terms of the financial agreement as earlier outlined, it could be said to have been entered into by the husband for the purpose expressed in (aa)(i) of s 90K(1) or with the reckless disregard referred to in subparagraph (aa)(ii) of that section. The clear and obvious intent of these provisions is that a creditor of a party has a right of redress, as a matrimonial cause within the Courts jurisdiction, when a financial agreement is entered into by a spouse party for the purpose of defrauding or defeating a creditor or with reckless disregard of a creditors interests. In this case the wife seeks to have the financial agreement set aside for

the obvious reason that this will, or may, expose the husband's property interests and financial resources (whatever these are ultimately found to consist of) to relief by way of adjustment orders under s 79. Self-evidently by this means the wife anticipates a more favourable outcome to her than if the financial agreement governs her rights and precludes her from seeking relief under s 79. Conversely, the husband obviously resists the setting aside of the financial agreement which, by its terms, essentially quarantines the property interests and financial resources in his name to the husband. In these circumstances it has not been made apparent on the Commissioner's application as to how the Commissioner has an interest, as a creditor solely of the husband, in having the financial agreement set aside; submitted to be the Commissioner's position if leave is granted for intervention. Put another way, it might be accepted that the Commissioner, as a creditor of the husband, would have a relevant interest in preserving to the husband the benefits of the financial agreement, given its intended effect of preserving property and financial resources to the husband. However, the Commissioner's stated position is to seek to have the financial agreement set aside, not to uphold it. In these circumstances I am not satisfied, on the current state of the evidence: that the Commissioner's participation as a party is necessary for the Court to determine the issue as to whether or not the financial agreement ought to be set aside (within the meaning of r 6.02(1)); that the Commissioner is entitled to become a party to the proceedings pursuant to r 6.06 and s 79(10) of the Act, unless and until the financial agreement is set aside. That is, unless and until the financial agreement is set aside it cannot be said that there is an application for an order under that section within the meaning of, and having the potential effect described in, s 79(10); that where the Commissioner would, if given leave to intervene, seek to have the financial agreement set aside; it would offend any principle of natural justice to refuse that leave given that the proceedings between the parties, as they concern the setting aside of the financial agreement, involves no claim or charge or order against the Commissioner; being the primary purpose of s 92 (Harris and Harris: *Re Banaco Pty Ltd & Ors* (1980) FLC90-906). As to the Commissioner seeking by counsel to mount an oral application for some form of injunctions not particularised, I accept the contentions of behalf of the respondents that no notice was given of such an application given that no such application

appeared in the Application in a Case filed by the Commissioner. I am satisfied that there is a risk of prejudice to the respondents in having to meet such an application without such particularisation and without any evidence advanced in support of claims for injunctions. Moreover, this aspect is not addressed in any way in the current evidence relied upon by the Commissioner, the affidavit of Mr K. I have already noted that beyond establishing the issue of assessments and notices on 24 August 2012, more than two years ago, the affidavit does not address any steps taken by the Commissioner. Of particular significance is that there is no evidence whatsoever advanced to support any accepted bases for the grant of injunctive relief. For example, evidence of any steps taken by the husband over the more than two years that have elapsed since 24 August 2012 to divest himself of assets. As to the Commissioner seeking to inspect the Court file, and apparently seeking leave to intervene in the proceedings for that purpose, it is plain that intervention in the proceedings as a party is not the sole means available to the Commissioner to perform the Commissioner's functions. As recently referred to by the Full Court in Commissioner of Taxation & Darling and Anor (2014) FLC 93-583 (Darling's Case) delivered on 4 April 2014 sections 263 and 264 of the Income Tax Assessment Act 1936 (Cth) provides statutory powers to the Commissioner, unlike other creditors, to exercise compulsive or coercive rights of inspection. However, those statutory powers do not confer unrestricted rights and do not displace the rights of the citizens in conducting their affairs. As referred to at [124] of Darling's Case by reference to authority, it has been held that legal professional privilege restricts the scope of those powers; as does public interest immunity; and the provisions do not permit an exercise of powers that will constitute a contempt of court. It therefore does not seem to me that leave to intervene as a party in these proceedings is necessary to enable the Commissioner to perform its statutory functions insofar as intervention might give the Commissioner access to documents on the Court file. Indeed it is the case here, as advanced on behalf of the husband, that privilege would be claimed by him with respect to certain documents already on the file and whilst counsel for the Commissioner suggested that certain documents might be excluded from the Commissioner's access if leave to intervene were granted, counsel for the husband submitted that there may well be other documents or aspects of evidence currently before the Court in respect of which the husband

would have a valid claim of objection. Indeed that may be the case for other respondents. In my judgment the Commissioner does not currently establish a legitimate or proper basis for leave being granted to intervene in the proceedings and it was on that basis that at the hearing I adjourned the Commissioner's Application for leave to intervene and to deny the oral application for injunctive relief. Further evidence the Commissioner might advance and providing advance notice to the other parties of any injunctions to be sought if leave to intervene were granted might alter the position. It should be noted that in Darlings Case the Full Court of this Court proceeded on the basis that the implied obligation articulated by the High Court in the following way in *Hearne v Street* [2008] HCA 36; (2008) 235 CLR 125 at [96] required the Commissioner to obtain leave to use documents obtained from a court file: Where one party to litigation is compelled, either by reason of a rule of court, or by reason of a specific order of the court, or otherwise, to disclose documents or information, the party obtaining the disclosure cannot, without the leave of the court, use it for any purpose other than that for which it was given unless it is received into evidence. In Darlings Case the Full Court released the Commissioner of Taxation from the implied obligation referred to. It is a matter of record that on an application for special leave to appeal that decision to the High Court of Australia was heard on 15 August 2014. The transcript of the hearing of the application for special leave reveals that in refusing leave the members of the High Court (Hayne and Kiefel JJ) expressed doubts as to the application of the implied obligation where the Commissioner exercises powers under s 263 of the Income Tax Assessment Act 1936 (Cth). Hayne J observed on behalf of their Honours: The conclusions reached by the Full Court of the Family Court of Australia proceeded from a premise which was not disputed by the parties to the application or appeal in that court, namely that the Commissioner of Taxation required release from an implied obligation limiting the use which the Commissioner could make of documents the Commissioner had obtained from the registry of the Family Court by exercise of power under s 263 of the Income Tax Assessment Act 1936 (Cth). The application for special leave requires acceptance of that premise. The premise is to be doubted. No point suitable to a grant of special leave is identified. The application for special leave must be refused. I refer to this in case it be suggested by or on behalf of the Commissioner that the compulsive or coercive powers conferred

by the taxation legislation would limit the Commissioner's use of material obtained by that means in some manner more restrictive than if the Commissioner were granted leave to intervene in these proceedings as a party. It would seem to me, at least as a preliminary view, that the converse is probably true, that is, that the Commissioner may make use of material obtained from the exercise of its coercive powers under s263 without requiring the Court's leave but would be subject to the implied obligation if the Commissioner obtained material as a party to the proceedings before the Court. However, for present purposes I need not express any concluded view as to this issue. I certify that the preceding sixty-one (61) paragraphs are a true copy of the reasons for judgment of the Honourable Justice Kent delivered on 22 October 2014. Associate: Date: 22 October 2014

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