THE BEAUTY OF ANTON PILLER APPLICATIONS

Category: Commercial Law
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This right, like all other fundamental rights, is not absolute for various reasons which are in the greater interest of the general public. Section 36 of the Constitution stipulates the grounds, which I will not go into here, upon which rights can be limited. Anton Piller applications are one method through which our right to privacy can be limited.

An Anton Piller application is an application brought about in secret. This means that it is brought without notifying the party who will be affected by this kind of application and the order which might be made as a result of the application. Even the hearing of this application in court is done without the knowledge of the other party ("**the respondent**").

The reason why the respondent should not be notified of this application is that if notified, the purpose of the application will be defeated. The purpose of the application is to protect the person applying ("**the applicant**") from losing evidence, whether tangible or intangible, which the respondent is in possession of and could destroy should he or she hear of the application.

The applicant must, when applying for an Anton Piller order ("**the order**"), prove the following:

1. That there is an extremely strong prima facie case against the defendant;

2. That the potential or actual damage is serious; and

3. That the respondent is in possession of incriminating material which he could destroy should he become aware of the application.

The applicant must set out his argument in an affidavit which will be used in court at the secret hearing. Once granted, the order gives the applicant the right to search the premises of the respondent without warning.

The applicant does not have a right to gain forcible entry. Should the respondent refuse the applicant entry, this would amount to contempt of court. The Anton Piller order also gives the applicant the right to seize the items mentioned in the order.

Once the order is granted, the Court will appoint a sheriff and an independent attorney to enter and search the premises of the respondent and seize the items mentioned in the order. The items will then be preserved at the sheriff's office to enable the applicant access should he need them to prove his case.

An Anton Piller application is an extreme remedy, but can prove essential in instances where retaining evidence either makes or breaks a case.