

Form 13

Para 108(1)(a)

Order to Allow Entry and Search of Premises

[Title as in cause or matter]

BEFORE THE HONOURABLE JUSTICE _____ IN CHAMBERS

ORDER TO ALLOW ENTRY AND SEARCH OF PREMISES

IMPORTANT:- NOTICE TO THE DEFENDANT

- (a) This order orders you to allow the persons mentioned below to enter the premises described in the order and to search for, examine and remove or copy the articles specified in the order. This part of the order is subject to restrictions. The order also requires you to hand over any of the articles which are under your control and to provide information to the plaintiff's counsel. You are also prohibited from doing certain acts. You should read all the terms of the order very carefully. You are advised to consult a lawyer as soon as possible.**
- (b) Before you the defendant or the person appearing to be in control of the premises allow anybody onto the premises to carry out this order, you are entitled to have the counsel who serves you with this order explain to you what it means in everyday language.**
- (c) You are entitled to insist that there is nobody [or nobody except (name)] present who could gain commercially from anything he might read or see on your premises.**
- (d) You are entitled to refuse to permit entry before 9.00 a.m. or after 5.00 p.m. or at all on Saturdays, Sundays and public holidays.**

(e) You are entitled to seek legal advice, and to ask the Court to vary or discharge this order, provided you do so at once, and provided that meanwhile you permit [the supervising counsel (who is an officer of the Court acting independently of the plaintiff) and] α the plaintiff’s counsel to enter, but not start to search. See paragraph 3 below.

(f) If you, [] (the defendant), disobey this order, you will be guilty of contempt of Court and may be sent to prison or fined. β

THE ORDER

An application was made today [date] by counsel for the plaintiff, [] to Justice [] by way of Ex-parte Summons No. [] of []. Justice [] heard the application and read the affidavit(s) of [name] filed on [date].

As a result of the application IT IS ORDERED by Justice [] that:

Entry and search of premises and vehicles on the premises

1. (a) The defendant must allow [name] (“the supervising counsel”), together with [name] the plaintiff’s counsel and up to [] other persons being [their capacity] accompanying [him/them/as appropriate] to enter the premises mentioned or described in Schedule 1 to this order and any vehicles on the premises so that they can search for, inspect, photograph or photocopy, and deliver into the safekeeping of the plaintiff’s counsel all the documents and articles which are listed or described in Schedule 2 to this order (“the listed items”) or which [name] believes to be listed items. The defendant must allow those persons to remain on the premises until the search is complete, and if necessary to re-enter the premises on the same or the following day in order to complete the search.
- (b) This order must be complied with either by the defendant himself or by a responsible employee of the defendant or by the person appearing to be in control of the premises.

- (c) This order requires the defendant or his employee or the person appearing to be in control of the premises to permit entry to the premises immediately when the order is served upon him, except as stated in paragraph 3 below.

] Relevant information to be inserted. α Where a supervising counsel is ordered. β This Notice is not a substitute for the endorsement of a penal notice.

Restrictions on the service and carrying out of paragraph 1 of this order

2. Paragraph 1 of this order is subject to the following restrictions:

- (a) This order may only be served between 9.00 a.m. and 5.00 p.m. on a weekday which is not a public holiday.
- (b) This order may not be carried out at the same time as any search warrant.
- (c) [This order must be served by the supervising counsel, and paragraph 1 of the order must be carried out in his presence and under his supervision.]^α [At least 1 of the persons accompanying him as provided by paragraph 1 of this order shall be a woman.]^χ [At least 1 of the persons carrying out the order shall be a woman.]^δ
- (d) This order does not require the person served with the order to allow anyone [or anyone except (name)] who could gain commercially from anything he might read or see on the premises if the person served with the order objects.
- (e) No item may be removed from the premises until a list of the items to be removed has been prepared, and a copy of the list has been supplied to the person served with the order, and he has been given a reasonable opportunity to check the list.
- (f) The premises must not be searched, and items must not be removed from them, except in the presence of the defendant or a person appearing to be a responsible employee of the defendant.

[(g) If the supervising counsel is satisfied that full compliance with subparagraphs (e) or (f) above is impracticable, he may permit the search to proceed and items to be removed without compliance with the impracticable requirements.]^α

_____ ^α Where a supervising counsel is ordered. ^χ These words are to be included in a case where the premises are likely to be occupied by an unaccompanied woman and the supervising counsel is a man. ^δ These words are to be included in a case where the premises are likely to be occupied by an unaccompanied woman.

Obtaining legal advice and applying to the Court

- 3. Before permitting entry to the premises by any person other than [the supervising counsel and]^α the plaintiff's counsel, the defendant or other person appearing to be in control of the premises may seek legal advice, and apply to the Court to vary or

discharge this order, provided he does so at once. While this is being done, he may refuse entry to the premises by any other person, and may refuse to permit the search to begin, for a short time [not to exceed 2 hours, unless (the supervising counsel or)α the plaintiff's counsel agrees to a longer period].

Delivery of listed items and computer print-outs

4. (a) The defendant must immediately hand over to the plaintiff's counsel any of the listed items which are in his possession or under his control.
- (b) If any of the listed items exists only in computer readable form, the defendant must immediately give the plaintiff's counsel effective access to the computers, with all necessary passwords, to enable them to be searched, and cause the listed items to be printed out. A print-out of the items must be given to the plaintiff's counsel or displayed on the computer screen so that they can be read and copied. All reasonable steps shall be taken by the plaintiff to ensure that no damage is done to any computer or data. The plaintiff and his representatives may not themselves search the defendant's computers unless they have sufficient expertise to do so without damaging the defendant's system.

Disclosure of information by the defendant

5. (a) The defendant must immediately inform the plaintiff's counsel:
 - (i) where all the listed items are; and
 - (ii) so far as he is aware:
 - (A) the name and address of everyone who has supplied him, or offered to supply him, with listed items;
 - (B) the name and address of everyone to whom he has supplied, or offered to supply, listed items; and
 - (C) the full details of the dates and quantities of every such supply and offer.
- (b) Within [] days after being served with this order, the defendant must prepare and swear an affidavit confirming the above information.
- (c) Nothing in this order shall abrogate the defendant's right against self incrimination.

α

Where a supervising counsel is ordered.

Prohibited acts

6. (a) Except for the purpose of obtaining legal advice [or advising his banker], the defendant must not directly or indirectly inform anyone of these proceedings or of the contents of this order, or warn anyone that proceedings have been or may be brought against him by the plaintiff until [].
- (b) [Insert any negative injunctions.]

EFFECT OF THIS ORDER

7. (a) A defendant who is an individual who is ordered not to do something must not do it himself or in any other way. He must not do it through others acting on his behalf or on his instructions or with his encouragement.
- (b) A defendant which is a corporation and which is ordered not to do something must not do it itself or by its directors, officers, employees or agents or in any other way.

UNDERTAKINGS

8. The plaintiff, [the supervising counsel and]α the plaintiff's counsel give to the Court the undertakings contained in Schedules 3, 4 and 5 respectively to this order.

DURATION OF THIS ORDER

9. Paragraph 6(b) of this order shall remain in force until the trial or further order.

VARIATION OR DISCHARGE OF THIS ORDER

10. The defendant (or anyone notified of this order) may apply to the Court at any time to vary or discharge this order (or so much of it as affects that person), but anyone wishing to do so must inform the plaintiff's counsel.

NAME AND ADDRESS OF PLAINTIFF'S COUNSEL

11. The plaintiff's counsel are:
[Name of lawyer(s) having conduct of action or charge of matter.]
[Registered Foreign Lawyer No. (if applicable)]
[Name of law firm.]
[Address of law firm.]
Tel : [Telephone number.]
Fax : [Facsimile number.]
Email: [Email address(es)]
Ref : [File reference of law firm.]

[INTERPRETATION OF THIS ORDER

12. (a) In this order references to “he”, “him”, or “his” include “she” or “her” and “it” or “its”.
- (b) Where there are 2 or more defendants then (unless the context indicates differently):
- (i) References to “the defendants” mean both or all of them;
 - (ii) An order requiring “the defendants” to do or not to do anything requires each defendant to do or not to do the specified thing;
 - (iii) A requirement relating to service of this order, or of any legal proceedings, on “the defendants” means service on each of them; and
 - (iv) Any other requirement that something shall be done to or in the presence of “the defendants” means to or in the presence of one of them.]

Dated this [] day of [], [].

Registrar.

SCHEDULE 1

The premises

SCHEDULE 2

The listed items

SCHEDULE 3

Undertakings given by the plaintiff

1. If the Court later finds that this order or the carrying out of it has caused loss to the defendant, and decides that the defendant should be compensated for that loss, the plaintiff shall comply with any order the Court may make.

- [2. As soon as practicable the plaintiff shall issue a writ of summons [in the form of the draft writ produced to the Court] [claiming appropriate relief].]
3. The plaintiff shall [swear and file an affidavit] [cause an affidavit to be sworn and filed] [substantially in the terms of the draft produced to the Court] [confirming the substance of what was said to the Court by the plaintiff's counsel.]
4. The plaintiff shall serve on the defendant at the same time as this order is served on him, the writ and copies of the affidavits and exhibits containing the evidence relied on by the plaintiff. [Copies of the confidential exhibits (specify) need not be served, but they must be made available for inspection by or on behalf of the defendant in the presence of the plaintiff's counsel while the order is carried out. Afterwards they must be provided to the counsel representing the defendant who gives a written undertaking not to permit the defendant to see them or make copies of them except in his presence and not to permit the defendant to make or take away any note or record of the exhibits.]
- [5. The plaintiff shall serve on the defendant a copy of the supervising counsel's report on the carrying out of this order as soon as it is received and to produce a copy of the report to the Court.]^α
6. The plaintiff shall not without the leave of the Court inform anyone else of this order or the carrying out of this order or to use any information or documents obtained as a result of carrying out this order except for the purposes of these proceedings or to inform anyone else of these proceedings until the trial or further order.
7. [The plaintiff shall insure the items removed from these premises.]^ε

^α Where a supervising counsel is ordered. ^ε
In appropriate cases.

SCHEDULE 4

Undertakings given by the plaintiff's counsel

1. To answer at once to the best of their ability any question as to whether a particular item is a listed item.
2. To return the originals of all documents obtained as a result of this order (except original documents which belong to the plaintiff) as soon as possible and in any event within 2 working days of their removal.
3. While ownership of any item obtained as a result of this order is in dispute, to deliver the article into the keeping of counsel acting for the defendant within 2 working days from receiving a written undertaking by them to retain the article in safekeeping and to produce it to the Court when required.

4. To retain in their own safekeeping all other items obtained as a result of this order until the Court directs otherwise.
5. To execute this order calmly and orderly and in a manner respectful of the defendant's business.
6. Not, without the leave of the Court, to inform anyone else of this order or the carrying out of this order or to use any information or documents obtained as a result of the carrying out of this order except for the purposes of these proceedings or to inform anyone else of these proceedings until the trial or further order.

[SCHEDULE 5

Undertakings given by the supervising counsel

1. To offer to explain to the person served with the order its meaning and effect fairly and in everyday language, and to inform him of his right to seek legal advice and apply to vary or discharge the order as mentioned in paragraph 3 of the order.
2. To make and provide the plaintiff's counsel a written report on the carrying out of the order.]α

α Where a supervising counsel is ordered