

Urgent Injunctions – Best Practice and Pitfalls

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Urgent Injunctions – Best Practice and Pitfalls

- Detailed notes in the seminar packs
- Aim of this short slot to highlight recent developments and aspects which might not otherwise be obvious
- Based on a seminar HSQC and RA first gave in 2008

Freezing Injunctions

Requirements:

- Existence of legal or equitable right in support of which the injunction is sought
- Good arguable case for the relief claimed
- Existence of assets (within or without the jurisdiction)
- Risk of dissipation of assets (other than in the ordinary course of business)
- Cross undertaking as to damages

Freezing Injunctions

Injunction must be based on pending or proposed claim:

*BCS Corporate Acceptances Ltd v Terry and
anr* [2016] EWHC 533 (QB)

Freezing Injunctions

Risk of dissipation of assets:

- Two senses:
Congentra AG v Sixteen Thirteen Marine SA [2008] 2 Lloyd's Rep 602
- Not necessary to show judgment would be completely defeated:
Metropolitan Housing Trust Ltd v Taylor [2015] EWHC 2897 (Ch)
- Solid evidence of risk of dissipation required: *Thane Investments Ltd v Tomlinson & ors* [2003] EWCA Civ 1272 at [21] per Peter Gibson LJ

Freezing Injunctions: risk of dissipation

- General evidence of dishonesty insufficient: *Thane* at [28]
- Any dishonesty relied upon should be sufficiently proximate to applicant's claim: *UCB Home Loans Corporation v Grace* [2011] EWHC 851 (Ch)
- Dishonesty at hear of applicant's underlying claim may justify an inference of the relevant risk: *VTB Capital plc v Nutritek International Corp* [2012] 2 Lloyds Rep 313; [2012] 2 BCLC 437
- Objective assessment: *Metropolitan Housing Trust* at [30]

Freezing Injunctions: assets caught

Goodwill of a respondent's business (so that a seamless transfer to a different entity is a breach):

Templeton Insurance Ltd v Thomas [2013] EWCA Civ 35

Sloan House Ltd v Fleury (unrep, 04.07.14, Turner J)

Freezing Injunctions: assets caught

Contractual rights and other choses in action:

JSC BTS Bank v Ablyazov [2015]UKSC 64;
[2015] 1 WLR 4754

Proprietary claims

Standard form exception to freezing injunction permitting expenditure in ordinary course of business may not apply:

Halifax v Chandler [2001] EWCA Civ 1750

BDW Trading Ltd v Fitzpatrick and ors [2015] EWHC 3490 (Ch)

Proprietary claims

Where acting for claimant with proprietary claims, consider preservation order (CPR 25.1(1)(c)) as alternative to freezing injunction as no need to show risk of dissipation:

Madoff Securities International Ltd and anr v Raven and anr [2011] EWHC 3102 (Comm); [2012] 2 All ER (Comm) 634

Cross-undertaking in damages

Limited cross-undertakings by insolvency office holders:

DPR Futures Ltd [1989] 1 WLR 778

RBG (Resources) plc v Rastogi (2002)

JSC Mezhdunarodiny Promyshlenniy Bank and anr v Pugachev [2015] EWCA Civ 139; [2016] 1 WLR 160

Cross-undertaking in damages

Inquiry as to damages:

Astrazenca AB and anr v KRKA DD Novo Mesto and anr [2015] EWCA Civ 484; (2015) 145 BMLR 188 (£27m +)

Costs

General rule where application for interim injunction succeeds is that costs are reserved:

Desquenne Et Giral UK Ltd v Richardson [2001] FSR 1

Picnic At Ascot Inc v Derigs & Ors [2001] FSR 2

But sometimes respondent may be ordered to pay:

Albon v Naza Motor Trading Sdn Bhd [2007] EWCA Civ 1124; [2008] 1 Lloyds Rep 1

Hospital Metalcraft Ltd v Optimus British Hospital Metalcraft Ltd and ors [2015] EWHC 3093 (Ch)

Costs

A successful respondent who sees off application for interim relief is generally treated more favourably