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Injunctions Bulletin

Spring 2006

Dawn McCambley & Nick Parfitt

Chancellor, Masters and Scholars of the University of Oxford and others v Broughton and others
[2004] EWHC 2543 (QB), [2004] All ER (D) 155 (Nov): 10/11/04

Where an injunction to prevent harassment is granted in favour of 'protected persons', it is not necessary for the potential individuals to be named.

The First Claimant was involved in the construction of a research laboratory, where experimentation on live animals was to be undertaken. In protest, the Defendants organised demonstrations and used threatening behaviour and acts of criminal damage in an attempt to stop the construction work. An injunction was granted in favour of 'protected persons', who were not named. It was argued by the Defendants that as a result there was a risk of accidental infringement, which would be a potential breach of their right to a fair trial under Article 6(1) of the ECHR.[1] The Claimant applied for a continuation of the injunction.

Grigson J stated that by its very nature, a civil injunction is prospective and in the present case, its purpose was to prevent the occurrence of harassment. It would therefore be counter-intuitive if an applicant had to wait for the restrained act to happen before any action could be taken. Accordingly, it was not necessary for the 'protected persons' to be limited to a 'close knit' group; the broad definition was appropriate as they were sufficiently connected by their desire to avoid being

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1 In determination of his civil rights and obligations or of any criminal charge against him everyone is entitled to a fair hearing within a reasonable time by an independent and impartial tribunal established by law.

the subject of harassment.

Moreover, the anonymity of the protected persons did not prevent the defendants from complying with the order. It was evident that the defendants could identify those individuals who could be targeted for harassment with ease. As such, these were equally the same individuals who should be afforded protection by the injunction. Accordingly, Grigson J believed that there had been no infringement of the defendants' right to a fair trial.

On consideration of the evidence, the Court held that (1) unless the injunction was continued the defendants would persist with the harassment; and (2) the Claimant was likely to succeed if the matter went to trial. The continuation of the injunction was therefore just and convenient and the restrictions imposed were deemed to be proportionate. The application was granted.

Through Transport Mutual Association (Eurasia) Ltd (Respondent) v New India Assurance Co Ltd (Appellant) *[2004] EWCA Civ 1598, (2005) 1 Lloyd's Rep 67: 02/12/04*

As arbitration falls outside the scope of the Council Regulation 44/2001, it does not preclude the Courts of a contracting state from granting an injunction to restrain proceedings which would be in breach of an arbitration clause.

Goods which had been insured by the appellants, and were being shipped via Finland under transport bills of lading, were lost in transit. A claim was settled between the appellant and the shipper of the goods. The appellants subsequently claimed against the respondent, as the carrier had become insolvent, by bringing proceedings in Finland. In turn, the respondent had sought a declaration that, given the arbitration clause in its contract, the appellants must pursue any claim in arbitration. This was upheld at first instance and an injunction restraining the proceedings in Finland was also granted. The appellant contended that the claim in Finland existed independently of the contract of insurance and as such, was not caught by the arbitration clause.

Upon appeal, LJ Clarke held that the English Court was not bound to stay the proceedings under **Article 27** of the **Council Regulation 44/2001 [Judgments Regulation]**[2] pending a decision by the Finnish Court as the court first seised, on whether the proceedings fell within the arbitration exception in **Article 1(2)(d)**[3]. Although the English Court was the court second-seised, it was still in a position to determine if the arbitration exception applied [*Marc Rich & Co. AG v. Societa Italiana PA (The Atlantic Emperor)*, 1992 1 Lloyd's Rep. 342].[4] Accordingly, the

2 (1) Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

(2) Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.

3 The Regulation shall not apply to Arbitration.

4 The position concerning the court first seised was also raised in the case of *Speed Investments Ltd and another v Formula One Holdings Ltd and others* [2005] 1 BCLC 455, wherein Murray Rosen QC and Nick Parfitt acted for the appellant. The Court held inter alia that where the

claim that the Finnish proceedings were in breach of the arbitration agreement and should be restrained by injunction, came within the exception and as such, fell outside the scope of the Regulation.

Consideration was thereby undertaken inter alia as to whether the anti-suit injunction should have been granted. There was nothing in the Regulation to prevent the courts of a contracting state from granting an injunction to restrain a claimant from beginning proceedings in a contracting state, which would be in breach of an arbitration clause.

LJ Clarke applied the principles in *Maritima SA v Pagnan SpA (The Angelic Grace)* [1995] 1 LLR 87, whereby the Court could see no difference between the grant of an injunction to restrain proceedings in breach of an exclusive jurisdiction clause, and an injunction to restrain proceedings in a foreign Court in breach of an arbitration clause governed by English law. The applicant would still be deprived of its contractual rights in a situation where damages would not be an adequate remedy.

However, given the circumstances of the present case in that the Respondent was not a party to the insurance contract, it was therefore not in breach of contract in pursuing the proceedings in Finland. As such, the judge erred in his decision to grant the injunction and the appeal was therefore allowed in this respect.

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second-seised court had exclusive jurisdiction under Article 16 of the Lugano Convention, it need not stay its proceedings and decline jurisdiction under Article 21 (which reflects the provisions in Article 27 of the Judgments Regulation above) in favour of the court first seised with non-exclusive jurisdiction.

Dadourian Group International Inc and others v Simms and others [2005] 2 All ER 65: 16/02/05

Where a party has previously established that a worldwide Freezing injunction should be granted, a different threshold exists to permit enforcement in a foreign jurisdiction. It is only necessary to demonstrate that there are assets in the country where the enforcement is sought.

This is an interim application arising out of extensive litigation concerning the Dadourian family. The original claim concerned a breach of contract action and a counterclaim for fraudulent misrepresentation. The Claimants had obtained a worldwide Freezing order from Lindsay J, on the basis that they would not seek to enforce the order outside the UK without permission. This order was continued by Lewison J. A subsequent application to enforce the Freezing injunction in Switzerland was granted by Lewison J on an ex parte basis. The defendants applied to have this set aside as there was insufficient evidence that assets existed in that jurisdiction.

In refusing to set aside, Laddie J reiterated that the strong requirements underlying the initial grant of the Freezing injunction had already been satisfied. He asserted that when applying to enforce this abroad, a different threshold should therefore exist. As such, the applicant need only demonstrate a 'real prospect' that the assets were in the country where enforcement was sought. However, this was qualified by the need for a careful analysis of the evidence, given that the application was ex parte.

Laddie J also summarised some of the factors relevant to enforcing a worldwide Freezing order in a foreign court. Namely:

(1) Where such an order is made by an English court, it is for that court to determine whether and to what extent the claimant should be allowed to seek enforcement through foreign courts;

(2) A party applying for a worldwide Freezing order should therefore offer an undertaking to seek permission from the English court before applying to enforce abroad;

(3) Such applications should normally, but not inevitably, be made inter partes;

(4) In deciding whether to give permission, the English court must bear in mind that a proliferation of foreign proceedings may well be oppressive to the defendant; and

(5) It must also be informed of the relevant law and practice in the foreign court so that it can satisfy itself that the satellite relief obtained in the foreign court will not go further than that secured by such orders in this country.

Maxine Carr v News Group Newspapers Ltd & Ors [2005] EWHC 971 QB: 24/02/05

An injunction contra mundum will be granted, in recognition of the right of

the applicant to the protection of Article 2 of the European Convention on Human Rights[5], if the restriction of freedom of expression is deemed to be both necessary and proportionate.

The applicant in this case sought to continue the injunction ***contra mundum*** in order to protect her new identity and to restrict information about her present and future whereabouts reaching the public domain. Unusually, her application was unopposed.

In his judgment, Mr Justice Eady was concerned with the continuing threat of serious physical and psychological harm towards the applicant, given the tragic nature of the events she had been involved in.[6] It was stated that caution must be adopted when determining whether to grant an injunction, which would potentially restrict the rights of the media. However, the lack of opposition was viewed as an indication that there had not been a significant inhibition of the exercise of the media's rights under Article 10 of the Convention.[7] Mr Justice Eady believed the restriction on freedom of expression was proportionate and therefore granted the injunction to protect the applicant's physical and psychological health.

Such injunctions are rarely granted as they amount to a considerable restraint of freedom of speech. In general, given this restriction, they are strongly opposed.

5 (1) Everyone's right to life shall be protected by law.

6 Article 8(1): Everyone has the right to respect for his private and family life, his home and his correspondence.

7 (1) Everyone has the right to freedom of expression.

Phonographic Performance Ltd v Stephen Russell Reader [2005] EWHC 416 (Ch), (2005) EMLR 26: 22/03/2005

Where a defendant is in breach of an injunction a remedy may exist both for contempt of court and for breach of contract. In such circumstances, an award for additional damages may be awarded.

For a period of two years the defendant failed to renew a licence which entitled him to play copyright recordings in public premises, co-owned by the defendant. Nonetheless, he continued to play the recordings and an order was subsequently made restraining such conduct. Substantial expenses had been incurred in an attempt to police the defendant's activities thus an application was brought by the claimant for additional damages for the admitted copyright infringement.

Pumfrey J acknowledged the principle outlined in *Midland Marts Ltd v Hobday* (1989) 1 WLR 1143, whereby an inquiry into damages may be ordered in circumstances where a defendant is the subject of a successful application for breach of an undertaking, which also constitutes a breach of contract. In reference to the facts of the present case, in breaching the terms of the injunction preventing copyright infringement, the defendant had effectively infringed the protected copyright. As such, an award for additional damages pursuant to section 97(2) CDPA 1988 would be permitted.

Daltel Europe Ltd (In liquidation) and others v Makki and others [2005] EWHC 749 (Ch): 03/05/05

Although a wilful intention to breach the Court's Order is not necessary for contempt to be established, where a defendant acts in breach in a deliberate and continual manner, such behaviour will be viewed as a persistent and determined attempt to frustrate the Order.

The Applicants were three telecommunications companies in compulsory liquidation, of which the First Respondent had been the de facto controlling director. The Applicants alleged fraudulent or wrongful trading and breach of fiduciary duty. Freezing Orders and Search Order were granted against the Respondents. However, it was subsequently asserted that the First Respondent had breached both the Search and Freezing orders, on a number of occasions. It was also contended that defences filed by the First Respondent contained false statements, which were verified without honest belief. Two applications were made for the committal of the First Respondent for purported contempt of court, in each respect.

Regarding the breach of the Freezing and Search Orders; although the proceedings were civil, in order to demonstrate whether there had been contempt, the criminal standard of proof was invoked. The burden therefore lay with the Applicants to establish beyond reasonable doubt that the requisite facts existed to satisfy the court that the First Respondent had acted in contempt.

Furthermore, David Richards J adopted the approach highlighted in *Gulf Azov Shipping Co Ltd v Idis* [2001] EWCA Civ 21, whereby the court must be certain of any circumstantial factors which would lead the allegation of contempt to be viewed in a more serious manner. In the present case, the court considered the purported attempts collectively rather than on an individual basis.

David Richards J endorsed the principle in *Heatons Transport (St Helens) Ltd v Transport and General Workers' Union* [1973] AC 15, wherein it was not necessary for a defendant to exhibit a wilful intention to breach an injunction to be in contempt. In the present case however the Court considered that a committal to prison for contempt would almost certainly require a knowing and deliberate breach of the order. On the basis of all the evidence, David Richards J was satisfied that the requisite standard had been satisfied in that the First Respondent had deliberately breached his requirements under both the Search and Freezing orders. Even if each breach was taken in isolation this would be deemed sufficiently serious, however, when viewed together, the First Respondent's behaviour demonstrated a propensity to thwart the Search and Freezing Orders in a deliberate and continuous manner. The First Respondent was held to be in contempt.

Venture Investment Placement Ltd v Hall
[2005] EWHC 1227 (Ch): 16/05/2005

The court will grant an injunction to prevent further repetition of allegations made during mediation, in order to avoid a future breach of the associated confidentiality agreement.

The claimant company and the defendant had been involved in unsuccessful mediation concerning unrelated proceedings. It was subsequently asserted that the defendant had made allegations to others, arising from discussions which had taken place during the mediation. As such, it was contended that the defendant had breached confidentiality provisions contained in the mediation

agreement. The claimant thereby sought an injunction to prevent further repetition of the allegations.

It was held by Judge Reid QC that there was a real likelihood the defendant would reiterate the allegations and accordingly, the balance of justice would be best served by granting the interlocutory relief.

Comment

All parties who are involved in either mediations or arbitrations are subject to obligations of confidentiality. **The Arbitration Act 1996** does not include any express provisions in this respect however there is an implicit duty of confidentiality and privacy, which is governed by common law.

OT Africa Line Ltd v Magic Sportswear Corporation and others
[2005] EWCA Civ 710: 13/06/05

The grant of an anti-suit injunction is not an interference with foreign courts or legislation; it should be viewed as a method of restraining a party to a contract from doing something he has promised not to do.

This appeal arose out of a decision not to stay English proceedings, which had been brought by the Claimant ship-owners against the shippers and receivers of its cargo, who had alleged short delivery. An exclusive English jurisdiction clause had been present in the bill of lading and at first instance the Court permitted an anti-suit injunction against the Defendant insurers. This thereby prevented them

from pursuing proceedings in Canada pursuant to the Canadian Marine Liability Act 2001, for short delivery. The continuance of this injunction was also appealed.

Upon appeal, the Court upheld the decision of Langley J and refused to order a stay of the English proceedings. It therefore remained to be decided whether this should be supported by the continuance of the anti-suit injunction, in relation to the proceedings in Canada.

Longmore LJ considered that where the parties have agreed for a particular foreign court to have sole jurisdiction over a dispute, the role of international comity is to ensure that any such agreement is respected. Comity will therefore be due to whichever foreign court the assurance has been given. Accordingly, the Court would be acting within its jurisdiction by granting an injunction to restrain foreign proceedings in circumstances where the Respondent had promised not to bring them. Although the Canadian Court undeniably had jurisdiction, it would only become involved when the Respondents sought to do so, contrary to their original assurance.

If the injunction was not granted, duplicity of proceedings would occur wherein the risk of different outcomes was uncommercial and undesirable. The Marine Liability Act was not a sufficient reason for preventing the jurisdiction of the Court to grant the injunction. The grant of the anti-suit injunction was not therefore an attack on the Canadian Courts or legislature nor was it an attempt to undermine the doctrine of comity and as such, it was continued.

Dadourian Group International Inc and others v Azuri Ltd [2005] EWHC 1768 (Ch): 13/07/05

The court has the jurisdiction to grant a Freezing injunction against a third party by way of ancillary relief where there is good reason to suppose that although assets had been placed in a discretionary trust, the injuncted defendant exercised control over the assets in the trust.

This application flows from the decision by Laddie J, previously discussed above. In an attempt to evade payment under the worldwide Freezing order, the defendants had placed considerable assets in a discretionary trust, which they contended did not provide them with any legal entitlement to the assets.

In his judgment, Edward Bartley Jones QC reiterated the 'Chabra' jurisdiction, whereby the court can grant a Freezing order against a third party where assets have been held on a bare trust for a defendant (*TSB Private Bank International SA v Chabra* [1992] 2 All ER 245, [1992] 1 WLR 231). However, he asserted that it was not necessary to limit this relief to situations involving a strict trust law analysis only. Rather, the court should consider where the substantive reality of control of the assets rested. The court must determine whether the defendant has some rights in respect of, or control over, or had other rights of access to the assets. It was stated that any other interpretation would enable individuals to manipulate the courts' orders, by utilising shadowy offshore trusts and companies, thereby defeating the courts' ability to take drastic action. Bartley Jones QC further held that there was 'good reason to suppose' that the assets in the present case were under the control of the defendants. Accordingly, the injunction was to continue

and Azuri were to be added as a defendant.

Smithkline Beecham plc and others v Apotex Europe Ltd and others [2005] EWHC 1655 (Ch), [2005] All ER (D) 372 (Jul): 26/07/05

Although the court is entitled to correct an inadvertent omission of an undertaking in damages, an application will be dismissed where it is evident that the parties failed to even consider the availability of such relief.

Interim injunctions for patent infringement had been obtained against the defendants, subject to a limited cross-undertaking in damages. Following a successful appeal, the defendants sought to enforce the cross-undertaking. Three applications were made, which included an application to amend the cross-undertaking in damages. This was in reliance upon the slip rule, which is embodied within **CPR rule 40.12**.

It was accepted by Lewison J that the slip rule permitted the court to correct an accidental omission or error. However, in this case the claimant had deliberately drafted a limited cross-undertaking and it had not occurred to anyone that extended relief was available.

Lewison J held that it was not inherent in the claimant's application for an interim injunction, that an undertaking in the form required by Practice Direction 25 was being offered. Moreover, the imposition of an express undertaking would inevitably negate any suggestion otherwise. To permit the amendment would seek to impose on the claimant an undertaking which it could not have been compelled to give originally. Taken in conjunction with the circumstances in which the omission occurred, it would be inappropriate to permit the slip rule to be utilised. The defendant's application was therefore dismissed.

Softwarecore Ltd v Pathan and others [2005] EWHC 1845 (Ch): 01/08/05

A Freezing order will not be discharged where the evidence demonstrates at least a triable issue against the defendant, regarding a claim for dishonest assistance in breach of trust and of fiduciary duty.

This was an application by the sixth and seventh defendants, a company and its sole director respectively, to discharge or vary Freezing orders made against them. The applicants were alleged to have been involved in a number of dishonest transactions, performed by way of acquisition frauds, namely for the purpose of VAT avoidance.

Pumfrey J believed the evidence was such that there existed at least a triable issue as to whether the applicants had acted dishonestly. In particular, no formal written terms of business appeared to exist for the trades. His Lordship also observed that no investigations were performed on any of the potential suppliers to determine their creditworthiness. As it was not the function of the court to conduct a trial of such matters at this stage, Pumfrey J declined to consider the allegations further. However, he believed that the judge ultimately hearing the case could draw an inference of dishonesty based upon the pattern of trading.

The application was therefore dismissed and the Freezing order continued.

Trafigura Beheer BV v Kookmin Bank Co
[2005] All ER (D) 35 (Aug): 05/08/05

Where the Claimant in a foreign Court has no real cause of action or there exists a clear defence to the claim, the English Court can intervene to restrain the foreign proceedings.

The Claimant was a Dutch exporter and the Defendant was a bank domiciled in Korea. Under the terms of the contract any disputes would be subject to an English exclusive jurisdiction clause, pursuant to a letter of credit (L/C). This L/C incorporated the prescribed terms of a letter of indemnity (LOI), to which the Defendant was not a party. A dispute subsequently arose and the Defendant issued proceedings in Korea. The Claimant applied for an interim anti-suit injunction in reliance upon the exclusive jurisdiction clause, thereby restraining the Defendant from continuing with proceedings in Korea. The Defendant sought a declaration that the English Court had no jurisdiction over it in the present action.

The Court rejected the Defendant's application and refused to set aside the order for permission for the Claimant to serve proceedings outside the jurisdiction. In considering whether or not to grant the anti-suit injunction, Mr Justice Cooke highlighted the principle whereby an English Court can intervene to restrain foreign proceedings which have no real substance and could be viewed as purely vexatious [*SIPC v Coral Oil Co Ltd* [1999] 2 LLR 606]. The Court in the present case concluded that, upon proper construction of the L/C and LOI, most of the claims brought by the Defendant were bound to fail. As such, the English Court had a strong interest in protecting its own proceedings. However, as regards the principles of comity, there was a need for caution. Mr Justice Cooke could not state with certainty that the tortious element of the Defendant's claim under Article 750 of the Korean Civil Code was doomed to fail and would therefore be unconscionable. The Court refused to grant an injunction to restrain the proceedings in Korea.

Gate Gourmet London Ltd v Transport and General Workers Union & others
[2005] EWHC 1889 (QB): 21/08/05

Where a trade union does not repudiate unlawful activities undertaken by its members at a picket, the court has the authority to grant an interlocutory injunction against it to prohibit such behaviour and ensure the compliance of its members.

This application arose as a result of strike action at Heathrow Airport undertaken by employees of Gate Gourmet, the company that supplies the in-flight catering to airlines. The respondent trade union was aware that certain picketing activities involved intimidation and threatening behaviour towards those employees not on strike. However, rather than repudiating the unlawful activity, the union appeared to support such behaviour.

The court held that there was a serious question to be tried in relation to the unlawful activity. Further, there was a clear arguable case that the union fully

appreciated and understood the true nature of such activity. As such, Fulford J believed that the balance of convenience lay decisively in favour of prohibiting any behaviour which extended beyond peaceful approaches to current employees.

In general, before a mandatory injunction is granted, the Court should consider whether it will be capable of enforcement. In the present case, the Court felt it was appropriate that the interim injunction should be granted and that it should be directed at the trade union.

Bromley London Borough Council v Maughan: South Cambridgeshire District Council v Gammell [2005] All ER (D) 373: 31/10/05

The principle whereby the Court must consider the personal circumstances of a named defendant in deciding whether to grant an injunction, is not required for the proposed joinder of a defendant, who is in breach of an injunction previously granted against persons unknown.

The appellants in the two linked appeals had been held in contempt of court for breach of injunctions which prohibited the use of mobile homes or caravans on two particular sites. At fist instance, the judge had failed to adopt the principle in *South Buckinghamshire DC v Porter* (2004) UKHL 33, wherein the personal circumstances of named defendants must be considered, as part of the balancing exercise, in determining whether or not to grant an injunction.

Upon appeal, Sir Anthony Clarke MR upheld this decision. In the present case, the appellants were unnamed individuals who had not been in occupation of the land when the original injunctions were granted. Thus, the Court would not have been in a position to have been aware of their personal circumstances at the time the injunction was considered. The balancing exercise, as regards the competing interests between the parties in this respect was therefore not necessary.

Moreover, the principle could not be applied by way of analogy as it would not be appropriate to add the appellants as defendants to the action. *Mid Bedfordshire DC v Brown* [2005] 1 WLR 1460 was distinguished for, contrary to that case, the Appellants simply became defendants when they knowingly acted in a manner which was in breach of the injunctions and as such, in contempt of court.

Sir Anthony Clarke MR outlined various scenarios, for example:

(1) where a defendant discovered he was subject to an injunction and therefore applied to have it varied or discharged, the Court should apply the principles in *Porter*, even if the defendant had inadvertently acted in breach;

(2) where a person knowingly takes action in breach of an injunction, he can apply to vary the injunction for the future wherein the breach and the reasons for his actions should be admitted to the Court. The Court will consider all the circumstances in deciding whether to vary the injunction and what penalty to impose for contempt and the principles in *Porter* should be applied;

(3) where an injunction is granted at an ***ex parte*** hearing, a defendant can make an application to set aside as well as vary the injunction in the future. Where the defendant had knowledge of the injunction however, he would remain in breach for the period prior to a successful application to have it set aside; and

(4) the ratio in Porter was irrelevant as regards the issue of whether or not a defendant was in contempt of court through breach of an injunction, as the sole question to be considered was the contempt.

In the present case, the correct course of action should have been to apply to the court to have the injunction varied or discharged. The appellants had not done so and were therefore held to be in contempt of court.

Taylor v Rive Droite Music Ltd
[2005] EWCA Civ 1300, [2005] All ER (D) 72 (Nov): 4/11/05

An injunction should not be granted if it would serve no proper purpose as this would be contrary to the objectives underpinning the equitable jurisdiction of injunctions.

This was an appeal and cross appeal against a decision by Lewison J regarding disputes arising from production and publishing agreements between the parties. In particular, at an adjourned hearing, and in light of the judgment in favour of Taylor, the respondent, Lewison J refused to grant an injunction to refrain further breaches of copyright by the respondent.

On appeal Chadwick LJ confirmed this decision, namely that the injunction had been sought in order to better the appellant's negotiation position with respect to publishing credits, rather than to actually prevent future publication by the respondent. If the appellant had truly wished to prohibit exploitation of the songs, it could have done so simply by withholding its own consent. In the exercise of equitable jurisdiction to grant an injunction, the realities of an injunction must always be considered. Chadwick LJ therefore held that the defendant was not entitled to an injunction against the claimant to prevent copyright infringement, as this would serve no proper purpose.

Nora Ilse Schmidt v Simon Wong
[2005] EWCA Civ 1506: 07/12/06

A judge in the County Court has no jurisdiction to make a freezing order. Where the primary cause of action should be brought in the County Court, a Judge is not under any obligation to transfer it, as free-standing proceedings, to the High Court.

The appellant had commenced a claim for negligence in the County Court. A freezing injunction had also been sought against the Respondent. Upon consideration of the **County Court Remedies Regulations 1991 [the Remedies Regulations]**, Judge Harris held that a County Court Judge did not have the jurisdiction to make a freezing order. Neither as a deputy judge of the High Court could he could exercise the powers of the High Court although sitting in the County Court.

It was conceded that the County Court lacked the jurisdiction to grant a freezing

injunction and Buxton LJ upheld the decision of the learned judge in this respect. New grounds of appeal were therefore relied upon by the appellants however as none of these had been raised before Judge Harris, they were bound to fail.

Nonetheless, the Court attempted to clarify (***obiter***) the position regarding the inter-relationship between the County Court and High Court as regards Freezing injunctions. **Section 42** of the **County Courts Act 1984** was considered, wherein the Court has the power to transfer proceedings to the High Court. Buxton LJ held that:

(1) as a Freezing order must be in support of a cause of action and does not exist independently it is therefore an 'incidental remedy'. As such, it was the negligence action, which constituted as the 'proceedings' for the purpose of **section 42**. The Freezing injunction could not be viewed as free-standing 'proceedings' therefore the Judge was under no obligation to transfer it to the High Court;

(2) the application for the Freezing injunction should have been made in the High Court under **paragraph 3** of the **Jurisdiction Order**;

(3) there was no need to initiate originating proceedings in the High Court in order for an application for a Freezing order to be made in the High Court; and

(4) the increased cost associated with bringing an application in the High Court emphasises that caution should be taken when seeking a Freezing order in conjunction with a modest claim, which is to be heard in the County Court. The appeal was dismissed accordingly.

Comment

Under **section 38(3)(b)** of the **1984 Act**, the County Court does not have the power to 'make any order of a prescribed kind', which is defined in **Regulation 2** of the **Remedies Regulations** and includes Freezing and Search Orders. There are certain circumstances however where a County Court may grant such injunctions, as set out in Regulation 3, including:

(1) where a patents County Court is acting within the 'special jurisdiction' conferred on it by **section 287 of the CDPA 1988**;

(2) where proceedings have been commenced in the Central London County Court Business List under the **Arbitration Act 1996**, the Court has the power to grant Freezing but not Search Orders;

(3) Freezing relief may be granted in aid of the enforcement of a County Court judgment or order, when exercising jurisdiction under **Part V of the Matrimonial and Family Proceedings Act 1984**; and

(4) for the purpose of making an order for the preservation, custody or detention of property forming the subject-matter of the proceedings.

Cinpres Gas Injection Ltd v Melea Ltd

[2005] All ER (D) 209: 14/12/05

The more serious the nature of the injunction which has been sought, the more significant it is for the respondent to be provided with adequate notice.

An interim injunction had been granted previously to restrain the applicant (Melea Ltd) from interfering with witnesses in proceedings involving both the parties. The applicant sought to have the injunction set aside on the basis that it had not been provided with any notice of the original application.

Although it was accepted that there was a need for the Court to protect its own proceedings from interference, the grant of an injunction was a grave matter and failure to give notice was not acceptable. Where no notice was given, the applicant must justify its reasons for this to the Court. Pumfrey J reiterated the importance of providing notice to a respondent, particularly where the nature of the injunction sought was serious. The application was allowed.

Comment

The general rule is that the applicant must serve a copy of the application notice on each respondent [**CPR 23.4(1)**]. There are certain circumstances however where it will be necessary for an application for an injunction to be made without notice, if it appears to the Court that there are goods reasons for doing so [**CPR 25.3**]. This position should only be reserved for the most serious cases, where it is necessary due to the urgency of the situation or to prevent the purpose of the

order being frustrated. If the claim form has been issued, the Court will generally require that informal notice is given to the respondent, unless secrecy is essential. Additional requirements exist where an application is made before the issue of the claim. [8]

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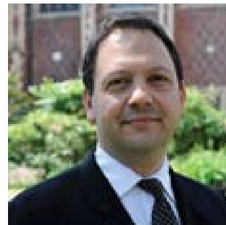
8 CPR 25 PD

Dawn McCambley specialises in commercial/chancery litigation and advisory work, with particular emphasis on company and insolvency law. She regularly appears on commercial matters in the High Court and County Courts. Regarding insolvency matters, Dawn has a wide range of experience of both corporate and personal insolvency and she undertakes work for private individuals and office holders. Dawn has also recently been appointed Junior Counsel to the BERR (formerly the DTI) for Directors' Disqualification Directions hearings. Together with other members of Chambers' Insolvency team Dawn contributes monthly case law updates to Corporate Rescue and Insolvency, published by Lexis Nexis. Dawn was awarded first place in the Lincoln's Inn Gluckstein Advocacy Competition and was the winner of the ICSL Mooting Competition. She has also been awarded the Denning, Sunley and Hardwicke Scholarships from Lincoln's Inn.

Nick Parfitt's practice is a mixture of commercial litigation and advisory work, particularly fraud, media & entertainment and sports law. His commercial experience encompasses sale of goods, conflicts, software and licensing agreements, commercial fraud & asset tracing and contractual & property disputes including music, sport and media. Nick is a member of the FA Premier League disciplinary panel. His cases often include an international dimension, for example injunctions supporting proceedings in other jurisdictions or cases in which



mediation takes place outside this jurisdiction. He has acted as both junior and sole counsel for clients ranging from international organisations, governing bodies and private individuals. He accepts public access work and sits on the board of Carers UK, a charity representing the interests of the unpaid caring community. Nick has been recommended as a leading barrister in the area of fraud in Chambers & Partners for the past 3 years.

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