



Worldwide Freezing Orders: Recent Developments

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Worldwide Freezing Orders: Recent Developments

- (1) The duty of full and frank disclosure
- (2) The “Angel Bell” exception
- (3) Post-judgment freezing orders



WWFOs: General requirements

“one of the law’s two “nuclear weapons””

- (1) A cause of action justiciable in the jurisdiction
- (2) A good arguable case on the merits
- (3) Insufficient assets within the jurisdiction to meet any potential judgment (for WWFO)
- (4) A real risk of dissipation of assets
- (5) Just and convenient to grant the order (*i.e.* an equitable discretion – usually including a cross-undertaking in damages)



WWFOs: The duty of full and frank disclosure

Cornish and Lowe v Brelade Bay Limited [2019] JR091

“... In Memory Corporation PLC v Sindhu [2000] 1 WLR 1443, CA, Mummery LJ said at page 1459 that it was a “high duty” and required the applicant to make full, fair and accurate disclosure of all material information, and to draw the Court’s attention to significant factual, legal and procedural aspects of the case. The applicant must show the utmost good faith and disclose his case fully and fairly. He must, for the protection and information of the defendant, in the evidence in support of the application, summarise his case and the evidence on which it is based. He must identify the crucial points for and against the application and not rely on general statements and the mere exhibiting of numerous documents...” (¶23)



WWFOs: The duty of full and frank disclosure

Fundo Soberano [2018] EWHC 2199 (Comm)

“[T]he ultimate touchstone is whether the presentation of the application itself is fair in all material respects... The evidence and argument must be presented and summarised in a way which, taken as a whole, is not misleading or unfairly one-sided. In a complex case, with a large volume of documents, it is not enough if disclosure is made in some part of the material, even if amongst that which the judge is invited to read, if that aspect of the evidence and its significance is obscured by an unfair summary or presentation of the case...” (¶152)



WWFOs: The duty of full and frank disclosure

Fundo Soberano [2018] EWHC 2199 (Comm)

“It is the duty of the legal team to ensure that the lay client is aware of the duty of full and frank disclosure and what it means in practice for the purposes of the application in question; and to exercise a degree of supervision in ensuring that the duty is discharged. No doubt in some cases this is a difficult task... But it is important ... because often it will be the client who is aware of everything which is material. The responsibility of the applicant’s lawyers in this respect is a heavy one... It may be likened to the duties of solicitors in relation to disclosure of documents.” (¶153)



WWFOs: The duty of full and frank disclosure

See also:

PJSC Commercial Bank [2018] EWHC 3308 (Ch) --- and [2019] EWCA Civ 1708

Libyan Investment Authority v JP Morgan & Al-Giahmi [2019] EWHC 1452, esp. at ¶109.



WWFOs: The Angel Bell Exception

“This Order does not prohibit the Defendant from dealing with or disposing of any of his assets in the ordinary and proper course of business” (Practice Direction Royal Court 15/04 (Jersey) – and see similar wording in the Commercial Court Guide (E&W))

Koza v Akcil [2019] EWCA Civ 891



WWFOs: The Angel Bell Exception

Koza v Akcil [2019] EWCA Civ 891

- “(i) The question of whether a transaction is in the ordinary and proper course of a company’s business is a mixed question of fact and law;*
- (ii) “Ordinary” and “proper” are separate, cumulative requirements;*
- (iii) The test is an objective one, making it necessary to consider the question against accepted commercial standards and practices for the running of a business;*
- (iv) The question is not whether the transaction is ordinary or proper, but whether it is carried out in the ordinary and proper course of the company’s business;*
- (v) The questions are to be answered in the specific factual context in which they arise.”*

Cf. Sheyko v Consolidated Minerals Limited [2018] JR 236



WWFOs: Post-judgment freezing orders

MWP v Emmott (2019) EWCA Civ 219 – see esp. at ¶¶55-57 (whether the Angel Bell exception should be included).

Markham v O’Hara (2019) EWCA Civ 397 – not forever, but discharge can be partial and/or conditional.

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Maria O'Hara outside the Royal Courts of Justice (Newspix)