FREEZING ORDERS: KEY PRINCIPLES AND CASES IN THE ENGLISH COURTS SINCE JANUARY 2015

EXECUTIVE SUMMARY

This is a Note on decisions of the English courts concerning the granting, operation and discharging of freezing order relief since January 2015.

Freezing orders are an important part of commercial dispute resolution and the English jurisdiction, with its ability to grant worldwide relief, is properly regarded as a popular forum in which to seek such relief.

Freezing orders can be sought before substantive proceedings are commenced in England or anywhere in the world, in support of those proceedings to prevent dissipation of assets against which future recovery may be sought.

Freezing orders are a very powerful element available before the English courts, and as such, they are subject to very strict requirements and safeguards.

As regards the decisions in this Note, whilst many of the decisions emanate from matters in the Commercial Court and the Chancery Division, important judgments are also given by the Queen's Bench Division and the Administrative Court.

Many of the judgments are concerned with English litigation, although there are several important judgments on the important topic of injunctive relief granted in support of foreign / multi-jurisdictional proceedings involving jurisdictions such as Russia (*Pugachev*, *Ablyazov* and other litigation), Israel (*Yossifoff v Donnerstein*) and Georgia and the UAE (*Ras Al Khaimah Investment Authority v Bestfort Development LLP*).

Freezing orders, in addition to performing their primary function of restraining identifiable assets to protect the enforceability of a judgment or award, have other benefits for an applicant, including focusing the mind of the respondent on the attractiveness of settlement, requiring a respondent to give disclosure of their assets, and forcing a recalcitrant defendant to engage with proceedings once the threat of a jail sentence for contempt of court is introduced. However, any applicant for a freezing order must be aware and properly advised of the inherent risks of what could happen if a freezing order is subsequently found to have been erroneously granted, or if they fail in their duties of full and frank disclosure where they have sought and obtained a freezing order on a without notice basis.

Lengthy and detailed guidance on aspects of freezing order relief in England is given in the White Book, Volume 2, Section 15 (Interim Remedies), Sub-section B (Freezing Injunctions).

The Note examines decisions in the following areas:

(A) Risk of Dissipation
(B) Evidence of Assets
(C) Good Arguable Case
(D) Scope of Freezing Order
(E) Disclosure Obligations of Defendant
(F) Trusts / Corporate Veil
(G) Full and Frank Disclosure / Non-Disclosure
(H) Undertaking in Damages
(I) Form of Order
(J) Registration of Foreign Freezing Order Relief

By way of summary, each section ends with a list of 'Key Points'. A schedule with summaries of all cases referred to in the Note is found in the Annex.

Please note that the information contained in this note is not intended as and does not constitute legal advice and should not be acted on as such.

Contents

A) RISK OF DISSIPATION

SPL Private Finance (PF1) IC Ltd v Arch Financial Products LLP [2015] EWHC 1124 (Comm) (16 January 2015)

Issue(s)

Whether there was a real risk of dissipation of assets

Whether there was a need for specific disclosure (for which see Section E below)

Whether there was a need for further protective injunctive relief in a different jurisdiction (for which see Section D below)

Submissions

The applicant pointed to several factors indicating real risk of dissipation:

(a) at trial, there had been very strong findings of dishonesty, including a finding that the respondent had dishonestly assisted breaches of fiduciary duty;
(b) at trial, the respondent's evidence had been subject to adverse credibility findings;
(c) in 2009, the respondent had transferred 50% of the relevant company's shares for no consideration;
(d) the respondent had placed his principal residence into a trust which was held 3% by the respondent and 97% by the respondent's wife;
(e) in 2009, the respondent had established a family settlement trust in favour of his children; and
(f) the respondent was very financially sophisticated.

The respondent submitted that:

(a) where a stay of execution of the trial judgment had been granted and an application for permission to appeal was pending, it would be unjust and without purpose to continue the freezing order;
(b) the share transfers concerned were for proper tax efficiency purposes;
(c) the applicant had delayed in seeking the continuation of the freezing order;
(d) as the respondent had few assets, it was unlikely he would dissipate them;

(e) the freezing order's legitimacy was questionable since it was granted without notice.

Decision

The applicant's applications for (1) continuation of the freezing order (2) specific disclosure (3) permission to seek a freezing order in Guernsey and (4) to use documents already disclosed for collateral purposes in proceedings under Section 423 of the Insolvency Act 1986 were granted.

- A decision to continue or set aside a freezing order required a particular consideration of whether there was a real risk of dissipation. There must be solid evidence (as opposed to mere suspicions) of a likelihood of dissipation. In this respect, the mere identification of a finding of dishonesty was insufficient; there still had to be consideration of whether the dishonesty justifies an inference that there is a real risk of dissipation. However, the fact that there had been very strong dishonesty findings at trial and adverse credibility findings in respect of the respondent's evidence at trial provided a strong basis for an inference of real risk of dissipation.
- The fact that there had been granted a stay of execution did not provide an overarching reason why a freezing order should be set aside. There was still a need (post-judgment) to preserve remaining assets despite the fact that the execution process had been halted.
- Any delay on the part of the applicant was not such that would impact on consideration of the issue of real risk of dissipation to any significant extent.

Interactive Technology Corp Ltd v Ferster [2015] EWHC 393 (Ch) (16 February 2015)

Issues

Whether an ex parte freezing order (and other orders) should be continued, in circumstances where 'good arguable case' had been conceded by the defendants but 'real risk of dissipation' had not.

Submissions

The applicants submitted that there was a strong case of real risk of asset dissipation where:

(1) there was a very strong case that the managing director of the underlying company had:
    a. dishonestly sought to misappropriate the company's business and assets and to pay himself excessive remuneration and

b. had conducted himself improperly through:
    i. producing false documents;
    ii. signing account statements which he now admitted were false; and
    iii. giving representations to the company auditors which he now admitted were false;

(2) in the light of such strong evidence, the court can make an inference of real risk of dissipation.

Decision

The application for continuation of the freezing order (and the other orders) was granted.

- In relation to the freezing order, there was a prima facie case of dishonest or fraudulent conduct. It was proper to infer from that conduct and the available evidence that there was a real risk of asset dissipation. The balance of convenience favoured the continuation of the freezing order until trial.

Allen v White Eagle Modern Building Solutions Ltd [2015] EWHC 2359 (QB) (7 July 2015)

Issues

Whether, on an application for the continuation of a freezing order, the claimant could establish a 'good arguable case' (for which see Section C below) and 'real risk of dissipation'.

Submissions

The applicant argued that, pursuant to the *American Cyanamid* requirements:

(a) there was a serious issue to be tried;
(b) that damages would be an inadequate remedy; and
(c) that the balance of convenience favoured the granting of a freezing order.

Decision

The applicant's application for continuation of the freezing order was granted.

- There was evidence that the respondent had, on several occasions during the contract term, asked the applicant to alter the payment arrangements so as to make some staged payments to its employees rather than to the respondent's own bank account. Furthermore, the respondent had abruptly left the underlying building site without warning having been paid for work that it had not completed. These facts were indicative of a risk of dissipation.
- The respondent's bank accounts showed evidence that it had assets within the jurisdiction against which a freezing order would be effective. The balance of convenience favoured the continuation of the freezing order.

Ikon International (HK) Holdings Public Co Ltd v Ikon Finance Ltd [2015] EWHC 3088 (Comm) (21 October 2015)

Issues

Whether the applicant could establish a 'good arguable case' (for which see Section C below).

Whether the applicant's evidence was sufficient to cross the threshold of 'real risk of dissipation'

Decision

The application for a freezing order was granted. The application for interim relief under Section 44 of the Arbitration Act 1996 failed.

- As regards 'real risk of dissipation', the applicant had adduced evidence suggesting D1's impropriety involving very large amounts of investors' money. This included: (i) an e-mail to the Financial Conduct Authority's "whistleblower team" which attached a complaint regarding D1. In that exchange of emails, the FCA sought and was given consent to circulate the relevant information within the FCA and to the police authorities; (ii) bank statements which showed that the respondents were lying in their contention that the trading profits continued to be held by D4, which gave credence to the contention that the trading profits may have been dissipated.
- Although some of the misconduct allegations against the defendants lacked cogency in the manner in which they had been put forward, in the court's opinion there was just enough evidence to cross the threshold for establishing a 'good arguable case' and 'real risk of dissipation'.

Ahadi v Ahadi [2015] EWHC 3912 (Ch) (21 December 2015)

Issues

Whether there was a 'good arguable case' (for which see Section C below) for granting a freezing order to prevent the respondent from dissipating assets in a deceased's estate

Submissions

The applicants submitted that:

(1) whilst they had not yet commenced proceedings against the respondent they intended to on the basis that they were entitled to a share of the deceased's estate (as his wife and four sons);
(2) that under Afghani law / Shariah law (neither of which was the subject of expert evidence on this application) they had a good arguable case to be beneficiaries of the intestate estate;
(3) that they had a good arguable case in respect of £520,000 which stood to the credit of the deceased's Jersey accounts;
(4) that they had a good arguable case in respect of £700,000 that were the proceeds of the sale of a factory in Afghanistan;
(5) that there was a real risk that the respondent would take steps to put assets beyond the reach of the applicants unless restrained

Decision

The application for a freezing order was granted in part.

- In relation to 'real risk of dissipation', there was no direct evidence to suggest that the respondent was in the habit of frustrating legal proceedings against him.
- However, from the manner in which he had reacted to the applicants' correspondence (including casting doubts over the legitimacy of the marriage between the wife and the husband), it was appropriate to draw an inference that there was a risk of steps being taken to place the relevant monies beyond the reach of the applicants. It was just and convenient to grant the freezing order to prevent dissipation.

Lord Chancellor v Blavo [2016] EWHC 126 (QB) (28 January 2016)

Issues

Whether a freezing order should continue on the basis that there was still a real risk of dissipation (the defendant solicitor denied overall liability but conceded 'good arguable case')

Submissions

The Lord Chancellor submitted that:

(a) the circumstances of the alleged breach of contract suggested that the defendants (the solicitor and his firm) had acted dishonestly;
(b) the solicitor had led an extravagant lifestyle; and
(c) the solicitor had previously failed to disclose assets and had made transfers of property to his wife.

Decision

The Lord Chancellor's application to continue the freezing order was granted.

- The claim centred on dishonesty allegations and these were relevant to the risk of dissipation. There was evidence suggesting that the respondents had made dishonest claims for payments from the Legal Aid Authority on a large scale. It was a short step to the conclusion that there was a real risk that the respondents would dissipate assets in order to avoid the consequences of an adverse judgment. The fact that the firm and the solicitor had been unable to produce the overwhelming majority of the documents requested by the Lord Chancellor in the course of an investigation gave credence to the dishonesty allegations. There were therefore real grounds to suspect that the respondents had acted dishonestly and that was a factor to be taken into account in considering real risk of dissipation.
- Evidence of past purchases of expensive items were not relevant to real risk of dissipation in the future. On the evidence available, the court could not reach conclusions as to whether the solicitor's extravagant expenditure was relevant to the fraud argument.
- The solicitor's explanation of the inaccuracies within his affidavit of assets was wholly unconvincing. As a solicitor he was expected to be scrupulous when completing an affidavit to ascertain the truthful position. Doubts (if any) in respect of any asset should be explained

fully in the affidavit. In these circumstances, transfers of property to his wife suggested an attempt to put assets beyond the reach of the applicant.

Kanev-Lipinski v Lipinski [2016] EWHC 475 (QB) (1 March 2016)

Issues

Whether there was a real risk of dissipation such that a WFO (and an assets preservation order) should be continued (albeit in a differently-worded form) against a husband in support of proceedings in the Israeli family courts

Whether there had been material non-disclosure on the original application for a freezing order (for which see Section G below)

Submissions

The applicant argued that there was a real risk of dissipation sufficient to satisfy the courts to grant relief pursuant to Section 25 of the Civil Judgments and Jurisdiction Act 1982:

(a) the parties were involved in a hostile and vituperative divorce battle with no successful attempts to get them to co-operative peacefully;
(b) the husband was the sole director and shareholder of the relevant companies and thus had total control of their assets;
(c) there had been dividend payments made from the sale of properties held by the relevant companies into loan accounts held by the husband as a director;
(d) (a last minute argument) that there was a spike of payments made from the company to the husband;
(e) the husband had gone on a spending spree of acquiring properties and expensive cars through the companies in 2015.

The respondent argued:

(a) that there were deliberate and material non-disclosures made at the time of obtaining the WFO which were so egregious as to warrant the discharge of the WFO and to preclude the granting of further relief;
(b) there is no merit in the underlying claim in the face of the evidence now before the court.

Decision

The applications were refused.

- The risks of dissipation of assets as presented to the court were mere suspicions that were not grounded in fact or evidence.

Dinglis Properties Ltd v Dinglis Management Ltd [2016] EWHC 818 (Ch) (14 April 2016)

Issues

Whether a defendant's acceptance of 'good arguable case' on the merits of a claim for breaches of directors' duties (which were not put on the basis of a plea of dishonesty) was sufficient to allow the court to infer that there was a 'real risk of dissipation'

Submissions

The claimants argued that the defendants' acceptance of 'good arguable case' on the allegations should also be taken as their acceptance that the allegations provided the necessary evidence of a 'real risk of dissipation' for the purposes of the freezing order.

Decision

The defendants' application for the discharge of the freezing order was granted. There was insufficient evidence of a propensity to dissipate assets on the part of the defendants.

- If the court was in a position to draw the proper inference just from the facts as pleaded that the defendants' breaches of duty were dishonest, then that inference was capable without more of providing evidence of 'real risk of dissipation'. The pleaded facts thus did a double duty in showing both 'good arguable case' and 'real risk of dissipation'.
- However, if, as in the instant case, the facts as pleaded were consistent with breaches of duty which were capable of being either innocent or dishonest, then the claimants had to adduce further evidence to show that there was a 'real risk of dissipation'.
- Even in circumstances where the pleaded facts supported an inference of dishonesty, the court would still look at any other relevant evidence adduced in rebuttal.
- The claimants still had to establish that the defendants' assets were the kind of assets which were capable of being dissipated.

Aquarius Holding Ltd v Barber, Unreported (30 June 2016)

Issues

Whether, in the context of a claim by a yacht owner against a former captain and manager for poor handling of the yacht and subsequent sale at an undervalue, there was a real risk of dissipation of assets

Whether there had been material non-disclosure at the time that the freezing order was obtained (for which see Section G below)

Submissions

The defendants argued that the mere fact that there were claims of dishonesty did not entitle the court to make an inference of real risk of dissipation of assets for the purposes of granting a freezing order

Decision

The defendants' application to discharge or vary the freezing order was rejected. An inference of real risk of dissipation had been made by the court, but it was not based solely on the mere fact of the presence of dishonesty allegations. Rather, it was an appropriate inference in circumstances where there were clear allegations of breach of fiduciary duties and where the defendants had demonstrated a pattern of concealment, including:

- Giving disclosure in a piecemeal fashion and only when compelled to do so rather than in a voluntary or proactive manner;
- Concealing (and later being forced to admit) the fact that they had an interest in companies involved in building a replacement yacht
- Offering to make a repayment to the claimant and then failing to make good on that offer

KEY POINTS:

- There must be solid evidence (as opposed to mere suspicions) of a likelihood of dissipation. Dishonesty/adverse credibility findings against the respondent provided a strong basis for an inference of real risk of dissipation (*SPL Private Finance (PF1) IC Ltd v Arch Financial Products LLP* [2015] EWHC 1124 (Comm))

- Facts demonstrating the respondent's past evasive conduct may be indicative of 'real risk of dissipation' (*Allen v White Eagle Modern Building Solutions Ltd* [2015] EWHC 2359 (QB))

- If dishonesty can be properly inferred from the pleaded facts, that inference by itself is capable of evidencing 'real risk of dissipation' (*Dinglis Properties Ltd v Dinglis Management Ltd* [2016] EWHC 818 (Ch))

B) EVIDENCE OF ASSETS

Thevarajah v Riordan [2015] EWHC 1949 (Ch) (10 June 2015)

Issues

Whether the terms of a freezing order should be varied to take into account an element for costs

Whether the terms of a freezing order should be varied to require the respondents to provide specified information before dealing with or disposing of any of their interests in real property which formed part of their assets

Whether the terms of a freezing order should be varied to require them to provide a further affidavit of assets and liabilities (for which see Section I below)

Submissions

The applicant argued that the freezing order should be varied because:

(1) the applicant was now in the position of a judgment creditor for a sum exceeding £2.7 million plus accruing interest;
(2) the respondents had made only minimal payments towards the judgment debt, thus giving rise to concerns that the judgment debt would continue to grow;
(3) the applicant would most likely be entitled to further sums as regards unassessed costs;
(4) the applicant expected to incur further costs in resisting an appeal to the Supreme Court from the respondent, and in enforcing and policing the freezing order.

Decision

The applications for variation were granted.

- It was well-established that an element for costs should be taken into account when determining the sum to be frozen.

- The standard form "ordinary and proper course of business exception" was varied. The information sought by the applicant was information reasonably required in order to police the freezing order effectively. The provision of the information would not be onerous and would represent a proportionate response to the applicant's need for information given the fact that the respondent had consistently failed to satisfy the substantial outstanding liabilities.
- The respondents were to provide an affidavit of assets and liabilities as set out in the draft order, save for the deletion of para.5(c) in the draft order which would require an explanation as to how and why the market value of certain of the underlying real property had changed as compared with any previous evidence of such value.

JSC BTA Bank v Solodchenko [2015] EWHC 3680 (Comm) (20 November 2015)

Issues

Whether D3, a judgment debtor, subject to a freezing order was (1) the beneficial owner of shares in BVI companies which were the registered proprietors of two properties and (2) the beneficial owner of the properties themselves

Submissions

The applicant produced evidence to show that:

(1) D3 had failed to disclose an interest in the properties;
(2) A certain Mr Popov (a longstanding associate of D1 and D3 who had been used as a nominee owner of numerous assets established to belong to the defendants) came forward through solicitors to claim that he was the true beneficial owner;
(3) Mr Popov subsequently signed a declaration confirming that, in fact, he did not own either of the properties.

Decision

A declaration was granted that D3 was the beneficial owner of the shares in the BVI companies and of the properties.

- It was clear on the evidence that the purpose and timing of the purchase of the properties and the adoption of the ownership structure in question was to obscure the fact that D3 was the owner of the properties in circumstances where he was the subject of a freezing order.

Ras Al Khaimah Investment Authority v Bestfort Development LLP [2015] EWHC 3383 (Ch) (24 November 2015)

Issues

Whether a freezing order should be granted to the claimants in foreign proceedings against the defendant limited liability partnerships

Decision

The application for a freezing order in support of foreign proceedings was refused.

- Notwithstanding that the foreign claims clearly raised arguable issues against the defendants, and notwithstanding that (although the evidence was rather thin in relation to some of the partnerships) there was a sufficiently arguable case that all the partnerships were beneficially owned by the defendant director, it was still necessary for the claimants to establish that there were sufficient grounds for believing that the defendants had assets which would be caught by the order.
- On the issue of evidence of assets, the claimants' case was very weak:
    - there was an absence of any real evidence that any of the partnerships had any assets at all, let alone assets on which the order could bite;
    - although there was some evidence that some of the partnerships had at some point had money in bank accounts in Latvia, the Latvian courts would not recognise an English court order freezing Latvian assets in support of substantive proceedings that had not been brought in England;
    - the Latvian bank would not regard an English freezing order as sufficient to justify freezing the money or providing information about the bank account;
    - the appointment of receivers would not give the court confidence that a Latvian bank would comply with a freezing order because the concept of receivership was not recognised in Latvian law and the Latvian courts would not recognise an English court order appointing receivers;
    - in light of all of the above, the English court was not satisfied that any English court order would be effective against any assets that the partnerships might have.

OJSC Bank of Moscow v Chernyakov, Unreported (20 May 2016)

Issues

Whether an order to cross-examine the subject of a freezing order should be granted

Submissions

The applicant bank argued:

(1) in the course of the defendant's inadequate and delayed answers to questions posed by the bank's forensic accounting expert, there was a lack of satisfactory explanation as to the list of end recipients of proceeds from the sales of aircrafts and a yacht;
(2) in addition to the lack of explanation regarding the list of end recipients, there was a further lack of explanation regarding:
    a. a loan to the defendant's wife;
    b. large amounts of living expenses;
    c. a personal account mentioned in a disclosure of bank statements produced the day before the instant hearing;
(3) regardless of eleventh hour disclosure, the only way forward was for the defendant to be cross-examined.

Decision

The application to cross-examine the defendant was granted.

- Whilst the defendant had provided some limited answers to the bank's questions and had revealed a beneficial interest in some of the end recipient companies, that explanation ought to have been given much earlier. The defendant still had not sufficiently answered questions about his assets five months after a court order compelling him to do so. Further correspondence would clearly be ineffective, inefficient and useless.
- It was plain that there had been attempts to dissipate assets. It would be just and proportionate for the court to order cross-examination in aid of asset disclosure.

KEY POINTS:

- The court may granted declarations on issues of who is the proper beneficial owner of property for the purposes of identifying property to be targeted by a freezing order (*JSC BTA Bank v Solodchenko* [2015] EWHC 3680 (Comm))

- The applicant for a freezing order must demonstrate that there are identifiable assets against which the freezing order will be effective. If these assets are situated in overseas jurisdiction, foreign law must be examined in order to uncover any potential legal issues that might restrict the effectiveness of an English freezing order (*Ras Al Khaimah Investment Authority v Bestfort Development LLP* [2015] EWHC 3383 (Ch))

- Where a defendant's response to his disclosure obligations related to his assets is unsatisfactory, it may be just and proportionate for the court to order cross-examination in aid of asset disclosure (*OJSC Bank of Moscow v Chernyakov*, Unreported (20 May 2016))

C) GOOD ARGUABLE CASE

Alliance Bank JSC v Baglan Abdullayevich Zhunus (formerly Baglan Abdullayevich Zhunusov) [2015] EWHC 714 (Comm) (18 March 2015)

Issues

Whether there was a 'good arguable case' or 'serious issue to be tried' in circumstances where the underlying claims might be time-barred under the applicable law

Whether there had been material non-disclosures at the without notice hearing at which the freezing order (and an order for service out of the jurisdiction) (for which see Section G below)

Decision

The court orders for a freezing order and for service out of the jurisdiction were set aside on the defendant's application.

- Under the applicable law (which was the law of Kazakhstan) the underlying action was subject to a 3-year limitation period. The court made findings as to when the claimant had constructive knowledge that it had suffered unlawful harm. The claims were time-barred and thus had no prospect of success.
- As regards material non-disclosure, the test of materiality of a non-disclosed matter was whether it would have been relevant to the exercise of the court's discretion. If a fact would have influenced the judge when deciding whether to grant the freezing order, then it was material and it should have been disclosed at the time. In the instant case, the bank had failed to disclose matters which were relevant not only to the merits but also to facts which affected conclusions regarding limitation under Kazakh law. Failure to disclose these highly material points was sufficient to justify setting aside the freezing order (and the order for service out of the jurisdiction).

Allen v White Eagle Modern Building Solutions Ltd [2015] EWHC 2359 (QB) (7 July 2015)

Issues

Whether, on an application for the continuation of a freezing order, the claimant could establish a 'good arguable case' and 'real risk of dissipation' (for which see Section A above).

Submissions

[See Section A above]

Decision

The applicant's application for continuation of the freezing order was granted.

- *American Cyanamid* was not the appropriate test for freezing order application. It was open to the court to discharge the freezing order on the basis that it had been granted on the wrong legal principles. However, that would be inappropriate if the applicant could, in fact, satisfy the correct legal principles for a freezing order.
- The applicant was able to show real prospects of success. An applicant showing real prospects of success was likely to satisfy the requirement of 'good arguable case' for a freezing order.

Wood v Baker [2015] EWHC 2536 (Ch) (31 July 2015)

Issues

Whether there was a 'good arguable case' that a bankrupt was in control of companies and was using them to hide assets

Whether the court could pierce the corporate veil so as to identify the companies' activities as those of the bankrupt (for which see Section F below)

Whether certain limits should be imposed on an undertaking in damages (for which see Section H below)

Submissions

The applicant trustees in bankruptcy submitted:

(1) Following the bankruptcy order in 2005, the bankrupt had been convicted of passport fraud in 2007 and was sentenced to 6-years' imprisonment for invoice fraud in 2009;
(2) In July 2015, two of the bankrupt's associates were arrested on suspicion of money laundering and tax fraud;
(3) one of the associates had admitted setting up several bank accounts for the bankrupt and had passed company paperwork to him;
(4) both associates stated that the bankrupt was in control of the relevant companies;
(5) Revenue and Customs had provided information that money was being moved out of the company bank accounts;
(6) the seventh respondent company paid for the bankrupt and his wife to have a lavish holiday;
(7) sums had been paid to their daughter's account and large sums had been moved out of various company bank accounts;
(8) on this basis there was strong evidence that at least some of the company bank accounts were being used by the bankrupt personally

Decision

The without notice application for preservation of the business and assets of the respondent companies was granted.

- The bankrupt had a long history of concealing his assets and of evading his bankruptcy obligations.
- There was a 'good arguable case' that the bankrupt was using the companies to shelter assets.
- The piercing the corporate veil remedy is a remedy of last resort but was probably the most compelling analysis of the legal basis for the applicant's application. However, in light of the finding that there was a 'good arguable case', considerations of the legal basis of the application did not fall to be determined.
- The extent of any cross-undertaking in damages was a matter of discretion for the first instance court. The essential test was one of fairness. Fairness (as opposed to the likelihood of loss) was the relevant factor that would lead to a requirement for a cross-undertaking. The competing interests of the trustees (who had been represented at the hearing) and the respondents (who were not represented) had to be balanced.
- In the instant case, it was appropriate to limit any cross-undertaking to the amount of money and net realisable value of assets taken into the trustees' control. At the return hearing, the issue of whether the bankruptcy costs and expenses ought to be deducted from that value would be considered.

Ikon International (HK) Holdings Public Co Ltd v Ikon Finance Ltd [2015] EWHC 3088 (Comm) (21 October 2015)

Issues

Whether the applicant could establish a 'good arguable case'

Whether the applicant's evidence was sufficient to cross the threshold of 'real risk of dissipation' (for which see Section A above)

Decision

The application for a freezing order was granted. The application for interim relief under Section 44 of the Arbitration Act 1996 failed.

- As regards the freezing order, there was a good arguable case as regards a claim for $16.4 million by way of trading profits from 1 April 2014–30 June 2015 as certified by Hong Kong accountants. However, there was no good arguable case as regards the claim for interest because it had not been shown that required contractual notice had been given to the defendants (and, in any event, there was an argument that the interest provision was penal and void).
- Although some of the misconduct allegations against the defendants lacked cogency in the manner in which they had been put forward, in the court's opinion there was just enough evidence to cross the threshold for establishing a 'good arguable case' and 'real risk of dissipation'.

Ahadi v Ahadi [2015] EWHC 3912 (Ch) (21 December 2015)

Issues

Whether there was a 'good arguable case' for granting a freezing order to prevent the respondent from dissipating assets in a deceased's estate

Submissions

[See Section A above]

Decision

The application for a freezing order was granted in part.

- In relation to 'good arguable case':
  - the applicants had established a good arguable case as regards their entitlement to a share of the £500,000;
  - however, their case that the wife would be a disappointed donee of £500,000 had no prospects of success;
  - further, the applicants did not have a good arguable case in relation to the claim for £700,000 arising out of the proceeds of sale of the factory for which there was no evidence before the court.

KEY POINTS:

- In the context of an application for a freezing order in support of foreign proceedings, the applicant must show 'good arguable case' under the applicable foreign law (*Alliance Bank JSC v Baglan Abdullayevich Zhunus (formerly Baglan Abdullayevich Zhunusov)* [2015] EWHC 714 (Comm))

- Freezing orders are not subject to the criteria for ordinary injunctions as set out in *American Cyanamid*. However, a mistake on that front will not necessarily lead to the discharge of the freezing order if the correct legal criteria can be satisfied (*Allen v White Eagle Modern Building Solutions Ltd* [2015] EWHC 2359 (QB))

- It is necessary for the applicant to consider whether 'good arguable case' can be established in respect of <u>all</u> claims or only some of them (*Ikon International (HK) Holdings Public Co Ltd v Ikon Finance Ltd* [2015] EWHC 3088 (Comm)) (*Ahadi v Ahadi* [2015] EWHC 3912 (Ch))

D) SCOPE OF FREEZING ORDER

SPL Private Finance (PF1) IC Ltd v Arch Financial Products LLP [2015] EWHC 1124 (Comm) (16 January 2015)

Issues

Whether there was a real risk of dissipation of assets (for which see Section A above)

Whether there was a need for specific disclosure (for which see Section E below)

Whether there was a need for further protective injunctive relief in a different jurisdiction

Submissions

[See Section A above]

Decision

- As it currently stood, the freezing order was not binding on an underlying Guernsey company nor on its managing agents. In order to give efficacy to the applicant's recovery, permission was granted for the applicant to seek further protection through the Guernsey courts.

Latchworth Ltd v Elston Germain Davidson Services (UK) Ltd [2015] EWHC 1323 (Ch) (24 March 2015)

Issues

Whether a freezing order should be varied to allow the subject to make repayments to third parties

Submissions

The respondent argued that the third party payments were not related to the subject matter of the main proceedings and that it was required to make the repayments because a bank guarantee had not been obtained

Decision

It was held that the freezing order should not be varied

- There were elements of the underlying transactions were sufficiently questionable that continuation of the freezing order was required. The defendant was not to be allowed to make the third party repayments.
- However, the third parties or the defendant were not to be prohibited from requesting the court to consider the matter independently from the main action.

JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev [2015] EWHC 2623 (Ch) (27 August 2015)

Issues

Whether it was necessary to re-word an asset disclosure order which had been construed too narrowly with the result that inadequate disclosures had been made

Whether D10 should be ordered to make additional disclosure (for which see Section E below)

Decision

The applications for further disclosure and re-wording of the asset disclosure order were granted.

- D10 had previously asserted that it did not have any other assets exceeding £10,000 – which might conceivably be explained by a poor construction of certain parts of the order which on one interpretation limited the scope of the disclosure requirements.
- The deletion of the relevant words in the order was required to ensure the freezing order's effectiveness.

JSC BTA Bank v Ablyazov [2015] UKSC 64 (21 October 2015)

Issues

Whether the respondent's right to drawn down under loan agreements constituted an "asset" within the meaning of the standard form freezing order contained in the Commercial Court Guide and, if so, whether the exercise of that right by directing the lender to pay the sum to a third party constituted "disposing of", "dealing with" or "diminishing the value of an asset"

Whether the proceeds of the loan agreements were "assets" within the meaning of the extended definition in the freezing order

Decision

The bank's appeal against a decision that the respondent's contractual rights to draw down under certain loan facilities were not "assets" for the purposes of a freezing order was allowed.

- As regards the extended description of "assets" which was used in the instant case, the proceeds of the loan agreements were "assets".
- The lenders were contractually obliged to provide the respondent with funds and the respondent retained the power to direct the lender what to do with the funds. The proceeds of the loan facility were thus to be used at the sole discretion of the respondent.
- Therefore an instruction from the respondent to the lender to pay the money to a third party constituted dealing with the lender's assets as if they were the respondent's own assets. Notwithstanding the fact that the lender had the right to deliver a notice of written cancellation to the respondent, the respondent had rights as a borrower under the loan agreement.

BCS Corporate Acceptances Ltd v Terry [2016] EWHC 533 (QB) (11 March 2016)

Issues

Whether, in all the circumstances, it was appropriate to include within the scope of a freezing order the non-party wife of the defendant

Submissions

Arguing against an application to continue the freezing order against them, the respondent husband and wife argued:

(1) there had been material non-disclosure on the part of the applicant companies and their director, in particular of the fact that the director had been under investigation for fraud by the French authorities since 2011;
(2) that there was no real risk of dissipation justifying any order;
(3) that it was not just and or convenient to continue the order;
(4) that there was no proper basis for continuing the order against the wife.

Decision

The freezing order was continued as against the husband but discharged as against the wife.

- None of the arguments advanced in respect of the husband did anything to assuage the considerations that had been reached in the course of the decision to grant the freezing order originally – in particular there was still a considerable risk of dissipation.
- However, there was no possible legal basis for a freezing order against the wife:
    - there were no legal proceedings against her;
    - the most that the applicants or the court could have done was to identify in the original freezing order against the husband particular assets which prima facie belonged to the husband but were apparently held by the wife;
    - it then would have been open to the wife (as a third party affected by the freezing order) to apply to unfreeze some or all of the assets in her name.
- In the circumstances, it was not appropriate to make the wife subject to the freezing order for the full amount of the judgment debt against the husband or to require her to disclose her assets as an ancillary to the freezing order for the purpose of policing it.

KEY POINTS:

- Where a freezing order does not bind a party or its assets in another jurisdiction, the court may grant permission for the applicant to seek relief in that jurisdiction if it will aid recovery and will not be a disproportionate burden on the respondent (*SPL Private Finance (PF1) IC Ltd v Arch Financial Products LLP* [2015] EWHC 1124 (Comm))

- Where a freezing order contained wording capable of different interpretations, the court may order a re-wording in the interests of enhancing the effectiveness of the freezing order (*JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev* [2015] EWHC 2623 (Ch))

- Rights under a loan agreement came within the extended definition of "assets" where a lender was contractually obliged to follow a defendant's instructions regarding the loan facility (*JSC BTA Bank v Ablyazov* [2015] UKSC 64)

- It may be disproportionate to make non-parties the subject of a post-judgment freezing order for the full sum of the judgment debt. A more proportionate approach is to identify which of the defendant's assets are purportedly held by the non-party and then deal subsequently with any application to unfreeze those specified assets (*BCS Corporate Acceptances Ltd v Terry* [2016] EWHC 533 (QB))

E) DISCLOSURE OBLIGATIONS OF DEFENDANT

SPL Private Finance (PF1) IC Ltd v Arch Financial Products LLP [2015] EWHC 1124 (Comm) (16 January 2015)

Issue(s)

Whether there was a need for specific disclosure

Whether there was a real risk of dissipation of assets (for which see Section A above)

Whether there was a need for further protective injunctive relief in a different jurisdiction (for which see Section D above)

Submissions

[See Section A above]

Decision

- The applicant had established that there were sufficient grounds to order limited further disclosure.
- The further specific disclosure sought was relevant to assist the WFO.
- There was no suggestion that the respondent would suffer any particular prejudice or difficulty in dealing with the further requests.
- The further disclosure ordered was aimed at details of assets, in particular the respondent's family settlement trust, and would require an explanation from the respondent of how his assets had ended up being very dramatically reduced.

JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev [2015] EWHC 2623 (Ch) (27 August 2015)

Issues

Whether it was necessary to re-word an asset disclosure order which had been construed too narrowly with the result that inadequate disclosures had been made (for which see Section D above)

Whether D10 should be ordered to make additional disclosure

Decision

The applications for further disclosure and re-wording of the asset disclosure order were granted.

- The defendant could not serve whatever he liked in purported compliance with the disclosure order and then expect to see the travel restrictions fall away.
- However, notwithstanding that the disclosure was inadequate, it would not be appropriate to make an order to continue the restrictions indefinitely purely on the grounds that the claimants had expressed strong dissatisfaction. In such a case, the burden would be inappropriately shifted to the defendant to show compliance.
- The defendant's expenditure in respect of a euro account had changed significantly. In light of the fact that the defendant had shown a poor attitude to compliance with other court orders, the appropriate order to make was to order D10 (in the interests of making the freezing order effective) to disclose bank statements for the euro account and to provide verified affidavit information for all payments from that bank account exceeding the euro equivalent of £10,000.

Tidewater Marine International Inc v Phoenixtide Offshore Nigeria Ltd [2015] EWHC 2748 (Comm) (6 October 2015)

Issues

Whether the defendants' application for an order compelling the claimants to join an application to the Swiss courts to unfreeze money should be granted

Submissions

Resisting the defendants' application, the claimant submitted:

(1) that the defendants had failed to show to the necessary standard that there were no alternative sources of available funds;
(2) that to make the order sought by the defendants would be unfair in circumstances where the defendants continued to be in contempt of a mandatory court order (and where one of the defendants was a fugitive from justice).

Decision

The defendants' application was refused.

- The defendants had not discharged the burden of demonstrating that they had no access to alternative sources of funds.
- Previously, the defendants had shown themselves prepared to give false evidence for the purposes of frustrating the claimant's attempts to obtain payments, which the court had already held that the claimant was entitled to. This led to the conclusion that the defendants' unsupported assertions regarding lack of funds could be considered sceptically.
- Even if there was credible evidence that there were no other sources of funds, the overall interests of justice would still require the dismissal of the application.

Power v Hodges [2015] EWHC 2931 (Ch) (16 October 2015)

Issues

Whether two company directions in contempt of court in respect of the disclosure obligations under a freezing order ought to have a coercive element included in their sentence

Decision

The liquidators application for committal of R1, R2, R3 and R4 was granted.

- R1 and R2 were the main cause of the contempts. In particular, it had been agreed (since R1 and R2 had used their personal email addresses for some business purposes) that an expert would be appointed to undertake targeted searches of the email servers. However, the expert had never been appointed.
- The breaches by R1 and R2 were deliberate and revealed conscious disregard of court orders. Both had been legally represented at the time and thus there was no evidence that they had been unaware either of their disclosure obligations under the freezing orders or of the general financial position.

BDW Trading Ltd v Fitzpatrick [2015] EWHC 3490 (Ch) (3 December 2015)

Issues

Whether a freezing order against an employee should be continued and modified so as to include bank statements for a 5-year period to enable the applicant employer to discover the extent of a dishonest scheme and to take immediate steps to begin the process of tracing dissipated assets

Decision

The application for further disclosure was granted.

- Contrary to the respondents' argument, the request for the bank statements was not a "fishing exercise", in light of the fact that there was a strong prima facie case that the respondents had been a part of a dishonest scheme to receive secret profits from the employer's sub-contractors.
- Bank statements disclosed already revealed unexplained payments exceeding £1 million. The further bank statements requested were plainly relevant and were immediately disclosable because the employer had no other realistic way of discovering the full extent of the dishonest scheme. Thus, the court ordered the respondents to disclose the bank statements requested.
- The order sought for the disclosure of assets could be justified based on the equitable jurisdiction discussed in *Murphy v Murphy* [1999] 1 WLR 282. As the employer had a proprietary remedy in respect of any bribes, there was a potential tracing remedy available which ought to be implemented as soon as possible.
- The statements were readily available and thus the order sought was therefore proportionate.

JSC BTA Bank v Ablyazov [2016] EWHC 289 (Comm) (20 January 2016)

Issues

Whether the defendant was required to disclose assets pursuant to a WFO notwithstanding his fears and arguments that his doing so would expose him to the risk of criminal prosecution in overseas jurisdiction

Submissions

The defendant submitted:

(1) that if he was to give disclosure pursuant to the WFO this would be likely to incriminate him in foreign jurisdictions;
(2) that the confidentiality provisions contained in the WFO did not sufficiently obviate the risk of self-incrimination because the material concerned could come into the possession or control of prosecuting authorities in other jurisdictions (there were already ongoing proceedings against the defendant in the USA, Kazakhstan and Switzerland);
(3) the defendant relied on the expert evidence from foreign lawyers in those jurisdictions that there were procedures by which the prosecuting authorities could obtain the material from the claimant's lawyers.

The claimant submitted that the risks perceived by the defendant were purely fanciful in light of the WFO confidentiality provisions.

Decision

The claimant's application requiring the defendant to disclose his assets was granted.

- Since the claimant bank had itself alleged a wide range of serious criminal offences against the defendants, it was accepted that there was a risk of prosecution in those jurisdictions and it was certainly not fanciful that the disclosure of assets would increase the risk of criminal charges being brought against the main defendant.
- In previous litigation between the parties there had been no problems as regards the operation of a confidentiality club. Furthermore, the claimant had already given an undertaking not to use the disclosed information in any proceedings other than the instant one. There was essentially no real risk that documents would be disclosed beyond the claimant's lawyers and experts.

Lord Chancellor v Blavo [2016] EWHC 126 (QB) (28 January 2016)

Issues

Whether a freezing order should continue on the basis that there was still a real risk of dissipation (the defendant solicitor denied overall liability but conceded 'good arguable case')

Submissions

[See Section A above]

Decision

The Lord Chancellor's application to continue the freezing order was granted.

- The solicitor's explanation of the inaccuracies within his affidavit of assets was wholly unconvincing. As a solicitor he was expected to be scrupulous when completing an affidavit to ascertain the truthful position.
- Doubts (if any) in respect of any asset should be explained fully in the affidavit. In these circumstances, transfers of property to his wife suggested an attempt to put assets beyond the reach of the applicant.

JSC BTA Bank v Ablyazov, Unreported (26 May 2016)

Issue(s)

Whether D2's cross-examination on asset disclosure obligations should be adjourned or whether he should be allowed to give evidence by videolink from Switzerland on the basis that there was a risk of arrest and extradition if he came to the United Kingdom

Submissions

D2 (who was suspected of sheltering misappropriated assets on behalf of D1) argued:

(1) if he travelled to the United Kingdom to appear before the English courts there was a real risk of his being arrested and/or extradited to either Kazakhstan (where criminal proceedings against him were on foot), Russia or Ukraine;
(2) he could be effectively cross-examined by video link from Switzerland in accordance with Swiss law and the relevant Swiss Guidelines for International Judicial Assistance in Civil Matters.

Decision

D2's application was refused.

- There was no real risk of extradition to Kazakhstan because there was no extradition treaty between the UK and Kazakhstan. Neither were there any relevant criminal proceedings in Russia or Ukraine which D2 could point to. There was also no real risk of arrest if he attended his cross-examination hearing.
- Cross-examination by videolink in Switzerland would be illegal under Swiss law absent the authorisation of the Swiss authorities. Furthermore, it would not satisfy the cross-examination required by the English court order. Further still, for the English court to supervise the videolink process and require D2 to answer would be a breach a Swiss law and a breach of comity.

KEY POINTS:

- An applicant for further specific disclosure must show that the specific disclosure sought is relevant to assisting the freezing order (*SPL Private Finance (PF1) IC Ltd v Arch Financial Products LLP* [2015] EWHC 1124 (Comm))

- Where a defendant has shown a poor attitude to complying with court orders, an order for specific disclosure may be the preferred approach, as opposed to continuing the existing orders indefinitely. To do that might have shift the burden inappropriately onto the defendant (*JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev* [2015] EWHC 2623 (Ch))

- Deliberate breaches of the disclosure obligations under a freezing order may lead to committal for contempt of court (*Power v Hodges* [2015] EWHC 2931 (Ch))

- Where the disclosure sought by the applicant would enable it to take advantage of a potential available tracing remedy, disclosure ought to be given (*BDW Trading Ltd v Fitzpatrick* [2015] EWHC 3490 (Ch))

- Fanciful fears that disclosure under a freezing order would lead to self-incrimination as regards criminal proceedings must not be fanciful. Such fears are likely to be assuaged adequately by a strong confidentiality club (*JSC BTA Bank v Ablyazov* [2016] EWHC 289 (Comm))

- Any doubts as regards the true position of any assets must be clearly set out in the defendant's affidavit evidence (*Lord Chancellor v Blavo* [2016] EWHC 126 (QB))

F) TRUSTS / CORPORATE VEIL

Alliance Bank JSC v Zhunus, Unreported (30 January 2015)

Issues

Whether a without notice freezing order over trust assets ought to be discharged and set aside on the basis that the trust was a sham

Submissions

The applicant bank submitted:

(1) that an irrevocable discretionary family trust was a sham;
(2) that, in reality, its assets were held for D2 as beneficiary;
(3) that where funds were paid out to D4, it had not been intended that there be an outright distribution but rather it had been intended that D2 would retain a beneficial interest;
(4) accordingly, there was a good arguable case that funds held in a Swiss bank account were legally owned by D4 but were held on trust for D2 (D4's husband);
(5) that there were serious doubts that D2 had intended to divest himself of beneficial interests in the sale of company shares; and
(6) that the trust appeared to be an attempt to make the proceeds of the sale of the company shares judgment-proof.

Decision

D4's application to discharge and set aside the without notice freezing order was granted.

- The court was satisfied that there was no real evidence to support the inferences that the claimant had invited the court to make in order to establish its case for the freezing order.
- Thus it was not established that the court could or should properly assume that the trust was a sham.
- Furthermore, the bank also needed to show that not only D2 but also professional trustees were a party to dishonest arrangements. It did not follow that, because the settlor had been allegedly dishonest, that the trustees to were a party to dishonesty.

JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev [2015] EWCA Civ 139 (27 February 2015)

Issues

Whether the court had jurisdiction to order disclosure relating to discretionary trusts against one of the discretionary beneficiaries (subject to a freezing order) in order to identify the true extent of his control of assets held within the trust structures

Whether the order for fortification of the cross-undertaking of damages should have been ordered (for which see Section H below)

Decision

The appeals of the defendant and the trustees against orders for further disclosure were dismissed. The appeal of the claimant against the fortification of the cross-undertaking in damages was allowed in part.

- The defendant's interest as one of the class of beneficiaries under the discretionary trusts was within the scope of the freezing order as drafted, despite the fact that those interests could not be the subject of execution, and thus it was required to be disclosed.
- The court had jurisdiction, both pursuant to CPR 25.1(1)(g) and pursuant to its inherent powers to make whatever ancillary orders were necessary to make a freezing order effective, to direct a party to disclose information about assets which were or might be the subject of a freezing order application, even in circumstances where the threshold conditions for a freezing order in respect of those assets were not yet satisfied.
- The court had jurisdiction to order further disclosure in respect of the trust assets in order to test the claimants' assertion that the defendant was the beneficial owner of those assets.

Wood v Baker [2015] EWHC 2536 (Ch) (31 July 2015)

Issues

Whether there was a 'good arguable case' that a bankrupt was in control of companies and was using them to hide assets (for which see Section C above)

Whether the court could pierce the corporate veil so as to identify the companies' activities as those of the bankrupt

Whether certain limits should be imposed on an undertaking in damages (for which see Section H below)

Submissions

[See Section C above]

Decision

The without notice application for preservation of the business and assets of the respondent companies was granted.

- The piercing the corporate veil remedy is a remedy of last resort but was probably the most compelling analysis of the legal basis for the applicant's application.
- (However, in light of the finding that there was a 'good arguable case', considerations of the legal basis of the application did not fall to be determined)

JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev [2015] EWCA Civ 906 (14 August 2015)

Issues

Whether the decision to refuse to extend a WFO to cover trusts under which a defendant had discretionary interests and to cover the new trustees of those trusts was wrong.

Decision

The claimant bank's appeal against the decision was allowed.

- There was a 'good arguable case' that the trust assets were, in reality, assets that were under the control of the first respondent.
- Furthermore, there was 'a good arguable case' that the first respondent been actively trying to prevent the English court from reaching his assets.

- There had been a change of trustees very shortly after the first respondent had fled England. That fact, along with other apparent breaches of the freezing order, gave clear support to an inference that the change of trustees was brought about with the intention to ensure that there were trustees in place who would comply with the first respondent's wishes. This increased the risk of dissipation.
- In the circumstances the appropriate decision was to extend the WFO to cover the trusts and the new trustees.

Yossifoff v Donnerstein [2015] EWHC 3357 (Ch) (20 November 2015)

Issues

Whether a freezing order (and a proprietary injunction) should be granted in support of foreign proceedings where the claimant's only relief sought was the provision of an account and information relating to the defendant's dealings with certain shares and the business and affairs of a company and its subsidiary

Decision

The claimant's application for a freezing order was refused.

- In light of the fact that freezing orders are capable of causing significant damage to a defendant, a claimant would generally need to identify a prospective judgment that the defendant would try to frustrate – a monetary value of assets to be restrained needed to be given. In the instant case the assets were held by the defendant as trustee for others. The defendant was not himself a beneficiary. However, the claimant had made no breach of trust claim in the foreign proceedings (besides alleging a failure to provide an account of how he had dealt with the trust assets). Thus, the main proceedings did not contain a claim capable of giving rise to any monetary judgment against the defendant.
- Any assets targeted by a freezing order needed to belong beneficially to the defendant, in the interests of being able to satisfy any judgment obtained. Assets held by the defendant on trust for others would not (absent an express extension in the order) be caught by the order.

JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev [2016] EWHC 248 (Ch) (12 February 2016)

Issues

Whether, on an application by newly appointed trustees for the discharge of a freezing order against the defendant (who was a beneficiary), the defendant possessed significant control powers in relation to the trusts

Whether the freezing order should be discharged for non-disclosure (for which see Section G below)

Submissions

The new trustees submitted:

(1) at the freezing order hearing, the claimant bank had made only a glancing reference to the fact that certain properties owned by one of the trusts could not have been sold or transferred without notice to the claimant (as a result of restrictions that were duly registered with HM Land Registry);
(2) that there was an insufficient 'real risk of dissipation' because the defendant did not control the trust assets.

Decision

The new trustees' application for the discharge of the freezing order was refused.

- The defendant was a protector within the trust structure. As protector, the defendant had full powers to appoint and dismiss trustees (the court had already found, on another occasion, that the defendant had appointed and dismissed trustees according to his needs to obscure the true nature of the trust assets).
- The defendant was able to make strong representations to the trustees regarding what they should do. The defendant was able to dismiss them in the event that the trustees did not comply with his instructions.
- The circumstances in which the trustees had been changed and what the new trustees had done since being appointed suggested that the defendant had de facto control. There was still, therefore, a real risk of dissipation.

KEY POINTS:

- In demonstrating that a trust was a sham, it did not follow that, just because a settlor was alleged to have been dishonest, the trustees were also party to dishonesty (*Alliance Bank JSC v Zhunus*, Unreported (30 January 2015))

- The court had jurisdiction to direct a party to disclose information about assets which were or might be the subject of a freezing order application, even where the threshold conditions for a freezing order in respect of those assets were not yet satisfied (e.g. because they were held in a trust structure) (*JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev* [2015] EWCA Civ 139)

- Whilst the remedy of piercing the corporate veil is a last resort remedy, it may still be deployed as a legal basis for a freezing order application (*Wood v Baker* [2015] EWHC 2536 (Ch))

- A change of trustees in order to put in place trustees who would do the defendant beneficiary's bidding demonstrated an increased 'real risk of dissipation' (*JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev* [2015] EWCA Civ 906) (*JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev* [2016] EWHC 248 (Ch))

- Assets held by the defendant on trust for others would not be caught by a freezing order in the absence of an express provision in the freezing order itself (*Yossifoff v Donnerstein* [2015] EWHC 3357 (Ch))

G) FULL AND FRANK DISCLOSURE / NON-DISCLOSURE

Alliance Bank JSC v Baglan Abdullayevich Zhunus (formerly Baglan Abdullayevich Zhunusov) [2015] EWHC 714 (Comm) (18 March 2015)

Issues

Whether there was a 'good arguable case' or 'serious issue to be tried' in circumstances where the underlying claims might be time-barred under the applicable law (for which see Section C above)

Whether there had been material non-disclosures at the without notice hearing at which the freezing order (and an order for service out of the jurisdiction)

Decision

The court orders for a freezing order and for service out of the jurisdiction were set aside on the defendant's application.

- As regards material non-disclosure, the test of materiality of a non-disclosed matter was whether it would have been relevant to the exercise of the court's discretion. If a fact would have influenced the judge when deciding whether to grant the freezing order, then it was material and it should have been disclosed at the time.
- In the instant case, the bank had failed to disclose matters which were relevant not only to the merits but also to facts which affected conclusions regarding limitation under Kazakh law. Failure to disclose these highly material points was sufficient to justify setting aside the freezing order (and the order for service out of the jurisdiction).

Boreh v Djibouti [2015] EWHC 769 (Comm) (23 March 2015)

Issues

Whether a freezing order should be discharged on the basis of a failure to fulfil the duty of full and frank disclosure in circumstances where the court had granted a freezing order on the basis of an extradition request for the defendant which itself contained incorrect transcript dates concerning a terrorist incident

Decision

The defendant's application to discharge the freezing order was granted.

- The claimant's solicitor had failed to act with professional integrity. In particular, he was aware that the dating error was a potential disaster but, rather than carefully checking whether the correct dates still supported his case, he had 'fudged' the error. Further, on several occasions (including during court hearings), he should have taken immediate steps to rectify the fact that the case was proceeding on an incorrect basis, but he did not. On the evidence before the court, it was apparent that he had deliberately misled the court.
- The same duty of full and frank disclosure applied at the inter partes stage of litigation as it applied at the ex parte stage.

Breckons v Powerscourt Services Ltd [2015] EWHC 1330 (Ch) (8 April 2015)

Issues

Whether a freezing order should be set aside on the basis that there had been serious and material non-disclosures at the original without notice hearing – where the court had been shown, inter alia, brochures containing misrepresentations which, it was alleged, the defendant was responsible for distributing.

Decision

The claimant investors' application for the continuation of the freezing order was refused. The defendant agent's application for strike out of the claims was granted.

- At the without notice hearing for the freezing order there had been, at best, serious non-disclosure. However, in truth, the claimants had seriously misrepresented the true position. The court had been told by the claimants that the defendant agent had circulated the relevant brochures and had also stated that there had been direct contact between the agent, or its agents, and the claimants. However, in fact this was fundamentally untrue and material had been put before the court in a highly misleading fashion.
- This amounted to substantial non-disclosure of highly material facts that justified setting aside the freezing order and a refusal of further relief.

Bataillon v Shone, Unreported (18 June 2015)

Issues

Whether a freezing order should be set aside or continued against a non-party wife (to whom the defendant husband had transferred substantial assets) where the wife alleged there had been material non-disclosure by the claimants

Submissions

The wife submitted:

(1) that the claimants had been in possession of a series of over 50 emails which revealed that the marriage was in difficulty, that the husband was having an affair and that the husband had moved away from the wife and their daughter;
(2) that these emails should have been disclosed by the claimants at the freezing order hearing because they ran counter to the contention that she was a nominee;
(3) that the emails should have been disclosed because they were relevant to questions of whether the transfers to her were likely to be undone pursuant to Section 423 of the Insolvency Act 1986;
(4) that the failure to disclose the emails constituted material non-disclosure justifying the discharge of the freezing order.

The claimants submitted that it would have been disproportionate to burden the court with all the emails.

Decision

The court gave judgment in favour of the claimants.

- It was not disputed that the wife had received assets from the husband. The wife therefore was not an entirely passive party. On the evidence it seemed that many of the transactions had been conducted on the wife's initiative.
- The emails themselves did not throw any significant light on any of the transfers.
- There was therefore no material non-disclosure on the part of the claimants.

Arcadia Petroleum Ltd v Bosworth [2015] EWHC 3700 (Comm) (15 December 2015)

Issues

Whether an application for permission to take steps to enforce an English freezing order in two foreign jurisdictions was premature in circumstances where the freezing order might conceivably be set aside for material non-disclosure at a pending hearing in the English courts

Decision

The claimants' application for permission to take enforcement steps in foreign jurisdictions was granted.

- There was very little in the defendants' prematurity point. There had already been a reasoned decision on the court's jurisdiction which could conceivably go beyond the Court of Appeal. Notwithstanding that the freezing order might be set aside at a later date, it was still in force now.
- However, the position might have been different had the defendants been able to establish that the overseas enforcement would lead to irremediable harm.
- Overall, the balance of convenience favoured the claimants, because the defendants would suffer no real harm by allowing permission for the enforcement steps. Safeguards would be put in place to make sure that the overseas enforcement operated in a fair and proportionate way. The claimants were made to give an undertaking that they would undo any steps taken if the freezing order was set aside in England.

National Crime Agency v Simkus [2016] EWHC 255 (Admin) (12 February 2016)

Issues

Whether, in circumstances where the prosecution authorities had already decided that it could not prove to the criminal standard any further unlawful criminal conduct against the applicant, and that fact had not been disclosed to the judge on an application for a proprietary freezing injunction, that injunction should be set aside for material non-disclosure.

Decision

The applicant's application for the discharge of the freezing injunction was refused.

- The decision taken by the prosecution authorities that any further unlawful criminal conduct by the applicant could not be proved to the criminal standard could well have been a factor that was relevant to the judge's decision on the proprietary freezing order application because it may have been relevant to the issue of whether the National Crime Agency could meet the civil standard of proof. The underlying decision was relevant and material and should have been disclosed.
- However, whilst there had been non-disclosure of a material fact, it was not so grave as to justify the discharge of the freezing order. There was a significant public interest in favour of continuing the freezing order.

JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev [2016] EWHC 248 (Ch) (12 February 2016)

Issues

Whether, on an application by newly appointed trustees for the discharge of a freezing order against the defendant (who was a beneficiary), the defendant possessed significant control powers in relation to the trusts (for which see Section F above)

Whether the freezing order should be discharged for non-disclosure

Submissions

[See Section F above]

Decision

The new trustees' application for the discharge of the freezing order was refused.

- The fact that there were restrictions over relevant and material assets inhibiting the disposal of those assets was a matter that was relevant to the court's consideration of whether to grant a freezing order. As a general point, the obligation to disclose material facts on a without notice application was not met when the material facts were buried in large amounts of documents and other material.

- In the instant case, the claimant's solicitor had made reference to the restrictions in affidavit evidence. In circumstances where the court's main focus had been on the related issue of the illiquidity of the trust assets, it happened that this sufficient to meet the disclosure obligations.

Kanev-Lipinski v Lipinski [2016] EWHC 475 (QB) (1 March 2016)

Issues

Whether there was a real risk of dissipation such that a WFO (and an assets preservation order) should be continued (albeit in a differently-worded form) against a husband in support of proceedings in the Israeli family courts (for which see Section A above)

Whether there had been material non-disclosure on the original application for a freezing order

Submissions

[See Section A above]

Decision

The applications were refused.

- There was no non-disclosure of material facts. The material alleged not to have been disclosed was either material about which the applicant had no more knowledge than the respondent had and, in any event, sufficient material had been disclosed to the judge.

Apollo Ventures Co Ltd v Manchanda [2016] EWHC 1416 (Comm) (15 June 2016)

Issues

Whether, in the context of a cross-border dispute, non-disclosure of evidence adduced in foreign proceedings on a without notice application for a freezing order in England justified the discharge of such relief

Submissions

The defendants, applying to set aside an order for service out of the jurisdiction and for a WFO, argued that the claimant Thai company had failed to disclose to the English court: (1) that three individuals driving the claimant's claim had themselves received some of the monies allegedly improperly received and misappropriated; and (2) evidence adduced by the claimant in related criminal/civil proceedings in Thailand that was capable of supporting the defendants' case.

Decision

The applications were refused.

- The issue of whether the three individuals in question was itself a highly contested issue which, on the evidence placed before it, the English court was not able to decide
- Whilst there had been non-disclosure of evidence adduced in the Thai proceedings that might be capable of supporting the defendants' case, such non-disclosure was not, in the circumstances, material and was not so serious as to justify discharging the without notice WFO.

Aquarius Holding Ltd v Barber, Unreported (30 June 2016)

Issues

Whether, in the context of a claim by a yacht owner against a former captain and manager for poor handling of the yacht and subsequent sale at an undervalue, there was a real risk of dissipation of assets (for which see A above)

Whether there had been material non-disclosure at the time that the freezing order was obtained

Submissions

The defendants argued, in relation to material non-disclosure, that the claimant, when obtaining the freezing order, had failed to particularise the steps that the defendants should have taken in the course of the maintenance of the yacht

Decision

The defendants' application to vary or discharge the freezing order was rejected. In relation to material non-disclosure, the court held that, in a context where there was clearly a good arguable case (indeed, "fully arguable" claims) on the causes of action alleged (including conspiracy), the submission that the claimants had to set out in detail what the defendants ought to have done in the maintenance of the yacht at the freezing order stage was "unreal".

KEY POINTS:

- As regards material non-disclosure, the test of materiality of a non-disclosed matter was whether it would have been relevant to the exercise of the court's discretion. If a fact would have influenced the judge when deciding whether to grant the freezing order, then it was material and it should have been disclosed at the time (*Alliance Bank JSC v Baglan Abdullayevich Zhunus (formerly Baglan Abdullayevich Zhunusov)* [2015] EWHC 714 (Comm))

- The same duty of full and frank disclosure applied at the *inter partes* stage of litigation as it applied at the *ex parte* stage (*Boreh v Djibouti* [2015] EWHC 769 (Comm))

- The fact that there was a pending defendant's application to set aside a freezing order on the basis of material non-disclosure did not make a claimant's application for permission to take enforcement steps overseas premature (although it might if the overseas enforcement would cause irremediable harm) (*Arcadia Petroleum Ltd v Bosworth* [2015] EWHC 3700 (Comm))

- A decision by prosecution authorities that further unlawful criminal conduct could not be proved to the criminal standard was a material fact that should have been disclosed on a freezing order application (*National Crime Agency v Simkus* [2016] EWHC 255 (Admin))

- As a general rule, the obligation to disclose material facts on a without notice application was not met when the material facts were buried in large amounts of documents and other material (*JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev* [2016] EWHC 248 (Ch))

H) UNDERTAKING IN DAMAGES

JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev [2015] EWCA Civ 139 (27 February 2015)

Issues

Whether the court had jurisdiction to order disclosure relating to discretionary trusts against one of the discretionary beneficiaries (subject to a freezing order) in order to identify the true extent of his control of assets held within the trust structures (for which see Section F above)

Whether the order for fortification of the cross-undertaking of damages should have been ordered

Decision

The appeals of the defendant and the trustees against orders for further disclosure were dismissed. The appeal of the claimant against the fortification of the cross-undertaking in damages was allowed in part.

- The extent of a cross-undertaking was a matter for the discretion of the first instance judge. That discretion was to be interfered with only on the usual principles for an appellate court for interfering with a judicial discretion.
- The burden was on an applicant to show that a cross-undertaking should be limited. The mere fact that the claimant was the liquidator of an insolvent company was insufficient. It was not necessary that the defendant had to show that he would be likely to suffer loss before a cross-undertaking would be ordered. The fact that there was a possibility of external funds being available for the applicant to back the cross-undertaking was a relevant factor.
- In the circumstances, however, the first instance judge had had no evidential basis for concluding that the defendant was likely to suffer loss. As a result the order for fortification of the cross-undertaking was to be quashed.

Wood v Baker [2015] EWHC 2536 (Ch) (31 July 2015)

Issues

Whether there was a 'good arguable case' that a bankrupt was in control of companies and was using them to hide assets (for which see Section C above)

Whether the court could pierce the corporate veil so as to identify the companies' activities as those of the bankrupt (for which see Section F above)

Whether certain limits should be imposed on an undertaking in damages

Submissions

[See Section C above]

Decision

The without notice application for preservation of the business and assets of the respondent companies was granted.

- The extent of any cross-undertaking in damages was a matter of discretion for the first instance court. The essential test was one of fairness. Fairness (as opposed to the likelihood of loss) was the relevant factor that would lead to a requirement for a cross-undertaking. The competing interests of the trustees (who had been represented at the hearing) and the respondents (who were not represented) had to be balanced.
- In the instant case, it was appropriate to limit any cross-undertaking to the amount of money and net realisable value of assets taken into the trustees' control. At the return hearing, the issue of whether the bankruptcy costs and expenses ought to be deducted from that value would be considered.

Ikon International (HK) Holdings Public Co Ltd v Ikon Finance Ltd [2015] EWHC 3088 (Comm) (21 October 2015)

Issues

[See Section A above]

Decision

The application for a freezing order was granted. The application for interim relief under Section 44 of the Arbitration Act 1996 failed.

- Notwithstanding the shortcomings of the applicant's pleaded case and the lack of cogency therein, the balance of convenience favoured the granting of a freezing order against a number of the respondents provided that a suitably secured cross-undertaking in damages was given.

KEY POINTS:

- The extent of a cross-undertaking in damages was discretionary matter for the first instance judge (*JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev* [2015] EWCA Civ 139)

- The essential test for the first instance judge was one of fairness. Fairness (as opposed to the likelihood of loss) was the relevant factor that would lead to a requirement for a cross-undertaking. The competing interests of the trustees (who had been represented at the hearing) and the respondents (who were not represented) had to be balanced (*Wood v Baker* [2015] EWHC 2536 (Ch))

- The burden was on the applicant to show that a cross-undertaking should not be unlimited. The mere fact that the claimant was the liquidator of an insolvent company was insufficient (*JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev* [2015] EWCA Civ 139)

- It was not necessary that the defendant had to show that he would be likely to suffer loss before a cross-undertaking would be ordered. The fact that there was a possibility of external funds being available for the applicant to back the cross-undertaking was a relevant factor (*JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev* [2015] EWCA Civ 139)

- Where the first instance judge had had no evidential basis for concluding that the defendant was likely to suffer loss, an order for fortification of the cross-undertaking was to be quashed (*JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev* [2015] EWCA Civ 139)

I) FORM OF ORDER

Thevarajah v Riordan [2015] EWHC 1949 (Ch) (10 June 2015)

Issues

Whether the terms of a freezing order should be varied to take into account an element for costs

Whether the terms of a freezing order should be varied to require the respondents to provide specified information before dealing with or disposing of any of their interests in real property which formed part of their assets (for which see Section B above)

Submissions

[See Section B above]

Decision

The applications for variation were granted.

- It was well established that an element of costs would be taken into account when determining the sum of a freezing order
- The respondents were to provide an affidavit of assets and liabilities as set out in the draft order, save for the deletion of para.5(c) in the draft order which would require an explanation as to how and why the market value of certain of the underlying real property had changed as compared with any previous evidence of such value.

KEY POINTS:

- An element of costs should be taken into account when the court is determining the amount to be frozen (*Thevarajah v Riordan* [2015] EWHC 1949 (Ch))

J) REGISTRATION OF FOREIGN FREEZING ORDER RELIEF

Cyprus Popular Bank Public Co Ltd (acting by its special administrator from Nicosia) v Vgenopoulos [2016] EWHC 1442 (QB) (22 June 2016)

Issues

Whether a freezing order granted in a foreign jurisdiction (in this case Cyprus) becomes effective and fully enforceable in England: (a) immediately upon a Registration Order being obtained from the English courts to register such a foreign freezing order as a judgment of the English court; (b) only if no appeal against that Registration Order is brought within the relevant time period for appealing; or (c) if an appeal is brought within the relevant time period, only after the determination of that appeal.

Submissions

The defendants argued:

(1) that Article 47(3) of Council Regulation (EC) No 44/2001 had the effect that the Cypriot freezing order did not become enforceable immediately upon the granting of the Registration Order;
(2) that, when the claimant bank had given notice to third parties (other banks) of the freezing order, this constituted a "measure of enforcement" which was prohibited during the two-month time period for an appeal which was provided for both expressly in the Registration Order itself and in Council Regulation (EC) No 44/2001. Since the defendants had brought an appeal that prohibition was now extended until the determination of that appeal;
(3) in the circumstances, the claimant bank was using the European legislation as an alternative to directly seeking freezing order relief in the English jurisdiction.

The claimant bank argued that, by virtue of the Registration Order, the Cypriot freezing order had been "declared enforceable" in an EU Member State, which was the relevant requirement in the instant case. Therefore, the freezing order became enforceable immediately upon the Registration Order being granted.

Decision

Judgment was given in favour of the defendants.

- The claimant bank's attempt to draw a distinction between an 'enforceable judgment' and a judgment in respect of which 'measures of enforcement' could be taken was an entirely artificial one. The purpose of Article 47 of Council Regulation (EC) No 44/2001 was to put in place an absolute prohibition on enforcement measures being taken during the specified time limits for appeal. Thus the claimant bank was not at liberty to take any 'measures of enforcement' (which included serving notice of the Cypriot freezing order and Registration Order upon third party banks). This was the case notwithstanding the fact that the claimant bank had obtained a 'declaration of enforceability' from the courts.
- The European legislation was effectively being relied upon in order to get around the need for obtaining an English freezing order. This was contrary to both English procedure and the European legislation.
- Thus, the freezing order did not become fully enforceable immediately upon the making of the Registration Order. Instead, as was expressly provided for in the Registration Order itself and in the European legislation, in circumstances where an appeal had been brought within the specified time frame, it would only become fully enforceable once the defendants' appeal against the Registration Order had been determined.

ANNEX

Schedule of Freezing Order Cases in the English Courts since January 2015

Case Name / Date	Summary
Novoship (UK) Ltd v Mikhaylyuk [2015] EWHC 123 (Comm) (14 January 2015)	Where a defendant had had insufficient time (due to the Christmas period and the pressing need to deal with other aspects of litigation) to decide whether to challenge a worldwide freezing order (which had been obtained on the basis of the claimant's allegations of fraud), the Commercial Court (Leggatt J) decided to continue the WFO with the defendant at liberty to apply to have the WFO set aside or varied.
SPL Private Finance (PF1) IC Ltd v Arch Financial Products LLP [2015] EWHC 1124 (Comm) (16 January 2015)	The Commercial Court (Hamblen J) granted an application to continue a post-judgment interim WFO because the applicants had demonstrated solid evidence of a real risk of asset dissipation.
Alliance Bank JSC v Zhunus, Unreported (30 January 2015)	The Commercial Court (Leggatt J) discharged and set aside an ex parte freezing order over trust assets of an irrevocable discretionary family trust that had been distributed. There was no evidence that the trust had been a sham.
Vitol SA v Morley [2015] EWHC 613 (QB) (6 February 2015)	The Queen's Bench Division (Teare J) refused an application for an order that a defendant who was subject to a WFO bring into the jurisdiction £1.3 million and pay it into court. The defendant had had been given an opportunity to respond to serious dishonesty allegations.
Interactive Technology Corp Ltd v Ferster [2015] EWHC 393 (Ch) (16	The claimant company applied to continue search, freezing and property preservation orders which it had obtained without notice against the defendants (who were the claimant's managing director and companies owned or directed by him). The Chancery Division (Asplin J) held, in relation to the freezing order, that it was appropriate to continue because a proper inference could be drawn on the

February 2015)	evidence that there was a real risk of dissipation of assets if the order was not continued. There was a prima facie case of dishonest or fraudulent conduct by the managing director. Objections raised on the basis of a breach of full and frank disclosure were rejected. N.B. An interlocutory appeal was brought against this decision which rested only on the basis that Asplin J's factual assessment that there had been no failure of full and frank disclosure was wrong. The Court of Appeal (Tomlinson LJ giving judgment) dismissed the appeal in *Interactive Technology Corp Ltd v Ferster* [2016] EWCA Civ 614.
JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev [2015] EWCA Civ 139 (27 February 2015)	The claimants brought proceedings in Russia against the defendant seeking to recover sums in excess of US$2 billion. In the English courts: • In support of the Russian proceedings, Henderson J granted a freezing order in respect of the defendant's assets. The freezing order expressly included "any interest under any trust". The defendant disclosed that he was one of a class of discretionary beneficiaries of five trusts. Henderson J granted a further order requiring further information about those trusts, including identities of the trustees, beneficiaries and trust assets. • Subsequently, Rose J ordered that freezing order's continuation should be made conditional on the claimants' provision of an unlimited cross-undertaking in damages fortified by payment of US$25m. • David Richards J rejected an application by the trustees to discharge Henderson J's further disclosure order for further disclosure, holding that Henderson J had had jurisdiction to make that order so as to ascertain the extent of the defendant's control of trust assets. The defendant appealed against Henderson J's further disclosure order The trustees appealed against David Richards J's order The claimants appealed against Rose J's order The Court of Appeal (Lewison LJ giving judgment) held as follows: (1) the defendant's appeal and the trustees' appeal were rejected. The court had jurisdiction under CPR 25.1(1)(g) and its inherent power to make ancillary orders necessary to give effectiveness to a freezing order to direct the defendant to provide information about assets which were (or might be) within the scope of a freezing order. This was the case even where the threshold conditions for subjecting those assets to the freezing order were not currently satisfied.

	(2) The claimants' appeal was allowed in part. The question of the extent of a cross-undertaking in damages was a discretionary matter for the first instance judge. An appellate court would not lightly interfere with the discretion of a first instance judge. The starting point was that a freezing order applicant would be required to give an unlimited cross-undertaking. If the applicant wished for the cross-undertaking to be limited then the burden was on the applicant to demonstrate why (the fact that the proceedings were brought by a liquidator of an insolvent company was insufficient to discharge that burden). It was not necessary for the defendant to prove that a freezing order was likely to cause losses before an unlimited cross-undertaking was required. The fact that there was a possibility of external funds being available to back up the cross-undertaking was a relevant factor. However, Rose J's conclusion that the defendant was likely to suffer loss as a consequence of the freezing order had no basis in the evidence, and thus the fortification order was quashed.
Alliance Bank JSC v Baglan Abdullayevich Zhunus (formerly Baglan Abdullayevich Zhunusov) [2015] EWHC 714 (Comm) (18 March 2015)	The claimant bank brought proceedings in the English courts alleging that the defendants had infringed Article 917 of the Kazakhstan Civil Code by devising and executing a scheme to acquire for their own benefit shares and assets of two Russian oil companies and in so doing deprived those companies of the benefits of their assets as security for bank loans in the region of US$316 million. At a without notice hearing, Flaux J granted an application for permission to serve a Claim Form and Particulars of Claim on D2 out of the jurisdiction and granted a WFO against D2 in respect of assets up to £206 million. On an application to set aside both orders, Cooke J considered that, as a matter of Kazakh law, the claims were subject to a three-year limitation period accruing from when the claimant learned or should have learned that it had suffered harm from an unlawful violation of its rights. The claims were now time-barred and thus the claimant had no prospect of success. Therefore, both orders had to be set aside. Further, the defendants alleged that there had been material non-disclosure before Flaux J. Cooke J held that the test of materiality for non-disclosed matters was whether, on an objective assessment, that matter would have been relevant to the exercising of the judge's discretion. Aspects of the bank's due diligence and credit approval processes, two important internal audit and internal investigation reports, and documents relating to a police investigation in 2010, were relevant both to the limitation issues and to merits-based issues. There had been material non-disclosure before Flaux J.
Boreh v Djibouti [2015] EWHC 769 (Comm) (23 March 2015)	The Commercial Court (Flaux J) set aside a freezing order made against a defendant in circumstances where the claimants' solicitor had deliberately misled the court by failing to disclose that the information which was used to secure the defendant's conviction in Djibouti for a terrorism offence had been used on a false basis. The claimants' failure to come to court with clean hands led to the

	refusal of fresh freezing order relief. However, a proprietary injunction was not set aside because the claimants' solicitor's failings did not impact upon the proprietary nature of that relief.
Latchworth Ltd v Elston Germain Davidson Services (UK) Ltd [2015] EWHC 1323 (Ch) (24 March 2015)	A defendant to breach of trust proceedings applied for permission to make third party payments out of frozen funds. The Chancery Division (Judge Barker QC) held that it was open to the defendant (and, indeed, the third parties) to ask the court to examine the matter independently from the main action. However, aspects of the underlying transactions were questionable and suspicious to the extent that it was necessary to continue the freezing order and not to allow third party payments to be made.
Otkritie International Investment Management Ltd v Gersamia [2015] EWHC 821 (Comm) (25 March 2015)	The Commercial Court (Eder J) committed two of the respondents (G and J) to prison for contempt of court. G admitted the contempts while J declined to participate in the hearing. G had been fully advised about the effect of the freezing order. Some of his breaches of the freezing order occurred immediately after the order was made. Other breaches involved the dissipation of substantial sums over a prolonged period. G had used third parties to disguise the funds' true origin and had given false evidence in court on that point. G had also filed incomplete or outright false information amounting to breach of the disclosure obligations under the freezing order. G was sentenced to 12 months' imprisonment which was suspended on terms that G repay his share of the proceeds of the underlying fraud within 120 days. The claimants had adduced evidence which established beyond reasonable doubt that J had been in persistent and contumacious contempt of the court's orders, including refusal to comply with the disclosure obligations of a freezing order. J was sentenced to 20 months' imprisonment.
Breckons v Powerscourt Services Ltd [2015] EWHC 1330 (Ch) (8 April 2015)	Whilst the claimants' pleadings alleging deceit, misrepresentation and breach of contract against the defendant agent, who allegedly promoted an investment, would be struck out on the basis that they were inadequately pleaded, the Chancery Division (Judge Purle QC) decided that summary judgment against the claimants would not be granted and the claimants would be given the opportunity to amend. However, the claimants' without notice freezing order against the defendant would be set aside on account of the claimants' serious non-disclosure. In the circumstances where the judge had been shown material in a highly misleading fashion, the claimants' non-disclosure possibly amounted to misrepresentation. It was serious enough on its own to justify the setting aside of the freezing order

	and a refusal to grant further relief.
BG International v Umali [2015] EWHC 1702 (QB) (24 April 2015)	Having been made subject to a freezing order with disclosure requirements, a company director who failed to comply with his obligations under the freezing order, failed to appear in court on the return date, failed to observe an order continuing the injunction and compelling him to appear in court on the return date (the consequence of which was that he would be debarred from defending the claim), failed to attend a hearing to be cross-examined, further failed to comply with the freezing order after judgment in default was entered against him, and failed to co-operate with enforcement attempts, was finally committed for contempt of court and sentenced to 9 months' imprisonment by Spencer J.
Djibouti v Boreh [2015] EWHC 1338 (Comm) (6 May 2015)	In circumstances where the claimants' solicitor had seriously and deliberately misled the court as regards information used to obtain a freezing order against D1 (*Boreh v Djibouti* [2015] EWHC 769 (Comm)), the Commercial Court (Flaux J) refused the claimants permission to seek freezing order relief in the Singapore courts. The attempt to gain freezing order relief in Singapore was an attempt to obtain relief through the back door after the English court had found that the claimants' unclean hands prevented further injunctive relief.
Thevarajah v Riordan [2015] EWHC 1949 (Ch) (10 June 2015)	The claimant had obtained judgment against the defendant for £2.7 million, and sought to vary the terms of the pre-judgment freezing order to increase the sum frozen from £2.7 million to £3.2 million. In circumstances where the claimant was now a judgment creditor with interest accruing, where the respondent had made only minimal payments towards the judgment debt, where the claimant would probably be entitled to further payment because costs were yet to be assessed, and where further costs were likely to be incurred in resisting an appeal and pursuing enforcement, the Chancery Division (Jeremy Cousins QC) granted the application to vary the freezing order. The respondents were also required to provide specified information before they dealt with or disposed of their interests in real property. A further affidavit of assets and liabilities was required from the respondents.
Bataillon v Shone, Unreported (18 June 2015)	In the context of a claim against D1 for breach of contract, the claimants were granted a WFO against the defendant's wife who was not a party to the underlying claim as D1 had transferred significant assets to her. The Mercantile Court (HHJ Waksman QC) decided to continue the WFO against the wife. Evidence showed that the wife had in fact taken the initiative in relation to the transactions herself. The court rejected the wife's allegations that the claimants had committed material non-disclosure when it had obtained the freezing order.

Ras Al Khaimah Investment Authority v Bestfort Development LLP [2015] EWHC 1955 (Ch) (3 July 2015)	The Chancery Division was asked to determine certain aspects relating to interim relief. Sitting as a Deputy High Court Judge, Richard Spearman QC made the following findings: (1) CPR Part 25 is concerned with interim remedies only as regards claims in England & Wales. It is not concerned with claims in foreign jurisdictions. (2) However, foreign proceedings should be considered by the English court when granting relief in support of foreign proceedings under Section 25 of the Civil Jurisdiction and Judgments Act 1982. Such proceedings should be dealt with by an undertaking that a claim would be commenced in the relevant foreign jurisdiction.
Allen v White Eagle Modern Building Solutions Ltd [2015] EWHC 2359 (QB) (7 July 2015)	A claimant had obtained a freezing order on the basis of the *American Cyanamid* principles. This was incorrect and, in other circumstances, would be sufficient to justify setting aside the freezing order (since the judge had not been directed to the appropriate legal issues). However, in the circumstances, the Queen's Bench Division (HHJ Bird) held that the claimant had a real prospect of success. Further, in the past, the defendant had asked the claimant to make some staged payments to one of its employees rather than to its own bank account. This was behaviour indicative of a real risk of dissipation. There was evidence from the defendant's bank accounts that showed assets within the jurisdiction against which a freezing order would be effective. It was thus appropriate to continue the freezing order.
ADM Rice Inc v Corporacion Comercializadora de Granos Basicos SA [2015] EWHC 2474 (Admlty) (21 July 2015	The claimant obtained six arbitral awards against D1 – a company which had participate fully in the arbitral proceedings but ceased to communicate with the claimant after the awards were issued. D1 was made subject to a freezing order which required asset disclosure by way of affidavit. D2 and D3 were also served with the freezing order because they were directors and/or officers of D1. D1 failed to comply and all three defendants were served with committal proceedings. On the basis that it was the responsibility of the directors to ensure D1's compliance with the freezing order and that their failure to do so had been wilful, the Admiralty Court (Phillips J) committed each of D2 and D3 to 18 months' imprisonment.
Wood v Baker [2015]	Joint trustees in bankruptcy of the first respondent bankrupt applied without notice for an order preserving the business and assets of

EWHC 2536 (Ch) (31 July 2015)	the second to eleventh respondent companies. The first respondent had been convicted of passport fraud and invoice fraud. Some of the companies were under investigation by Revenue and Customs. Two of the first respondent's associates had been arrested on suspicion of money laundering and tax fraud. The Chancery Division (Judge Hodge QC) held that the applicants had established a good arguable case that the first respondent was in control of the companies, was treating at least some of the company bank accounts as his own and was using them to hide after-acquired assets from the trustees in bankruptcy. The trustees in bankruptcy were required to give a cross-undertaking in damages limited to the value of assets that had come under their control.
Steeles Professional Cleaning Services Ltd v Holder or holders of an account with Metro Bank plc, Unreported (31 July 2015)	The respondents had attempted to defraud the claimant company. The claimant had obtained a freezing order on bank accounts which had been used in the attempted fraud. The respondents had not communicated with the claimant and had not put forward a defence. In the circumstances, the Queen's Bench Division (Judge Seymour QC) considered it appropriate to continue the freezing order in order to enable the claimant to attempt to recover its costs incurred in investigating the fraud.
JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev [2015] EWCA Civ 906 (14 August 2015)	[For the facts of the *Pugachev* litigation see *JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev* [2015] EWCA Civ 139] The claimants applied to Rose J without notice to extend the freezing order against Mr Pugachev to include the second to tenth respondents (four original trustee companies, four new trustee companies and one other company). Rose J refused this application on the basis that (1) the claimants had not adopted the correct procedure for bringing the issue of the true ownership of trust assets before the court; (2) the claimants had unduly delayed in making their application to extend the freezing order; (3) there was no evidence of a risk of dissipation which would not already have taken place, nor that the new trust companies were likely to act irresponsibly; (4) it was not expedient to grant relief because the New Zealand courts were already seised of an application for directions; (5) the injunction was unnecessary as against the last company because Barclays Bank had already agreed to freeze the relevant accounts. The Court of Appeal (Bean LJ giving judgment) held that Rose J was wrong on all five points. There was a good arguable case that the defendant's trust assets belonged to the defendant. There was also a real risk of dissipation. Delay in applying for the freezing order extension was not in itself a bar to obtaining relief.
JSC Mezhdunarodniy	[Following the Court of Appeal's reversal of Rose J's refusal to extend the WFO, the claimants applied for further disclosure from Mr

Promyshlenniy Bank v Pugachev [2015] EWHC 2623 (Ch) (27 August 2015)	Pugachev] The Chancery Division (Snowden J) held that it was necessary to re-word the order for asset disclosure. That order had been construed in a manner which was too narrow, which had resulted in the provision of inadequate disclosures about the bulk of the monies under inquiry.
Tidewater Marine International Inc v Phoenixtide Offshore Nigeria Ltd [2015] EWHC 2748 (Comm) (6 October 2015)	The High Court granted the claimant a WFO against the defendants and one of the defendants' two accounts was frozen in Geneva by the Swiss courts. The defendant used the other account to fund their defence until the account was exhausted. The Swiss courts would require a joint application by both claimant and defendants to vary the freezing order to allow the defendants to use the funds in the frozen account. The defendants thus sought an order from the English court to direct the claimant to join the application to the Swiss court. The Commercial Court (Males J) held that the defendants had been prepared in the past to produce false evidence in order to frustrate the claimant and had failed to satisfy the court that it did not have alternative funds available. It was the defendants' own contempts of court which had made the action necessary. It was not in the overall interests of justice to require the claimant to join the Swiss application. In fact, such an order would, in the circumstances, be "grotesquely unfair".
Renoir Global (Private) Ltd v Watteau Holdings (PVT) Ltd [2015] EWHC 3371 (Ch) (14 October 2015)	The claimant company (C) made an application to continue a freezing order against D1 (a Pakistani company), D2 (C's CEO) and D3 (D2's son and employee of C). D2 and D3 were alleged to have misappropriated company funds. The defendants resisted on the basis, inter alia, that the company's proceedings were unauthorised – the decision to bring a claim required a board resolution which itself would have required the CEO's approval (i.e. in other words, he had not given permission for the company to sue him). On the basis of an expert Pakistani lawyer, the Chancery Division (HHJ Walden-Smith) held that it was likely that the Pakistani courts would find that the board had ratified the decision to commence proceedings. Having dealt with the defendants' other objections, the court decided to continue the freezing order.
Emmott v Michael Wilson and Partners Ltd [2015] EWCA Civ 1028 (14	Following the issuing of an arbitral award, a freezing order had been obtained against the appellant which prohibited the appellant from dealing with or disposing of any of its assets other than those that were in the ordinary and proper course of business. The appellant company made two payments to another company and its subsidiary. The Queen's Bench Division subsequently found that

October 2015)	those two payments had not been within the ordinary course of business and thus were in breach of the freezing order. The Court of Appeal (Lewison LJ giving the main judgment) held that the first payment was repayment of a pre-existing liability (a secured loan) as it fell due. The second payment was for monthly rent. The judge had focused unduly on the amounts of money involved rather than on what the payments were for – which was an important issue to examine when considering whether payments were in the ordinary course of a business. The appeal was allowed. It was not necessary to give a description of what might amount to payments in the ordinary course of business. That, as Gloster LJ added, was a highly fact-sensitive question.
Power v Hodges [2015] EWHC 2931 (Ch) (16 October 2015)	Liquidators of a company had brought proceedings against the first to fourth respondent company directors and had obtained freezing orders over their assets. It was agreed that R1 and R2 would fund an expert to perform targeted searches for relevant documents in pursuance of the disclosure obligations under the freezing orders. The expert was never instructed and disclosure was not provided. The liquidators applied for committal. The directors admitted their contempt. The Chancery Division (Judge Simon Baker QC) held that R1 and R2 had committed serious breaches of the freezing order that merited sentences of imprisonment. R3 and R4 were essentially in breach of the order because of the conduct of others and thus their sentences were less severe.
Metropolitan Housing Trust Ltd v Taylor [2015] EWHC 2897 (Ch) (19 October 2015)	The claimant housing association obtained an interim freezing order for £850,000 in proceedings against a former employee on the basis that it had been dishonestly overcharged by the third defendant in respect of IT projects that had never been delivered. On an application for the interim freezing order to be discharged, the defendants argued that there was no good arguable case, no real risk of dissipation, that the order was not just and convenient and that the claimant's case had not been properly presented at the ex parte hearing. The Chancery Division (Warren J) held that a good arguable case of dishonesty was only established in respect of some claims amounting to £50,000. There may be an innocent explanation. Given that the defendants had family and businesses within the jurisdiction, there was no risk that the defendants or their assets would be removed from the jurisdiction avoid a judgment. Furthermore, the continuation of a freezing order was disproportionate to the amounts in dispute. There had also been material non-disclosure which would have influenced the exercise of the judge's discretion.

JSC BTA Bank v Ablyazov [2015] UKSC 64 (21 October 2015)	The claimant bank had brought a number of claims against the defendant. In support of those proceedings, the Commercial Court had granted a WFO in the standard Commercial Court form set out in Appendix 5 of the Admiralty and Commercial Courts Guide: • Paragraph 4 of the freezing order obliged the defendant not to in any way "dispose of, deal with or diminish the value of his assets" to a particular value. • Paragraph 5 provided for the scope of the order, which included any asset which the defendant had the power, directly or indirectly, "to dispose of, or deal with as if it were his own". • Paragraph 9 provided that paragraph 4 did not prohibit the defendant from spending up to a specified amount on living expenses and a reasonable amount on legal advice and representation. Subsequently, the defendant entered into unsecured loan agreements, enabling large sums to be made available to him. Under the agreements (which were non-assignable without the lender's consent) any undrawn funds could be cancelled by the lender. The defendant directed the lenders to pay the entire sum to third parties, maintaining that the money was to fund his (and others') legal expenses and his living expenses. On the claimant's application for a declaration that the loan agreements were to be exercised only in accordance with paragraph 9 of the freezing order, the Commercial Court (Christopher Clarke J) held that the rights under the loan agreements were not "assets" for the purpose of a freezing order and that the defendant's directions to the lender did not constitute disposing of or dealing with an asset. The Court of Appeal (Rimer, Beatson and Floyd LJJ) dismissed the claimant's appeal. The Supreme Court (Lord Clarke giving judgment) allowed the claimant's appeal: (1) the context of a freezing order was of particular importance to its interpretation; (2) a cautious approach needed to be adopted to the standard terms of freezing order when interpreted in their context; (3) there was a settled understanding that borrowings were not covered by the standard form of freezing order (4) thus, the right to draw down on the loan agreements was not an 'asset' within the meaning of paragraph 4 of the freezing order; (5) however, paragraph 5 of the freezing order extended the term "assets" to catch assets which were not owned legally or beneficially by the defendant but over which he had control; (6) since the loan agreements contractually obliged the lender to make funds available to the defendant and to deal with them according to the defendant's directions, including making payments to third parties. Thus, the defendant, despite not owning the relevant funds, had the power directly or indirectly to dispose of or deal with them as if they were his own; (7) accordingly, the proceeds of the loan agreements were "assets" within the extended definition in paragraph 5 of the standard

	form of freezing order.
Ikon International (HK) Holdings Public Co Ltd v Ikon Finance Ltd [2015] EWHC 3088 (Comm) (21 October 2015)	The claimant Hong Kong joint venture company applied ex parte for a WFO in support of LCIA arbitration proceedings. The Commercial Court (Andrew Smith J) held that there was a good arguable case in respect of a claim for US$16.4 million. However, there was no good claim for interest as it was likely that such a claim would fail for lack of contractually required notice and it was also likely that the contractual interest provision was penal and void. The applicant was required to show real risk that a judgment would go unsatisfied if a freezing order was not made and that the order would act to mitigate that risk. Whilst some of the allegations of misconduct against the defendants were not cogent, the applicant nevertheless had adduced sufficient evidence to justify the freezing order.
Metropolitan Housing Trust Ltd v Taylor, Unreported (23 October 2015)	In circumstances where a claimant had lost at first instance the claimant was required to show the court that any appeal had a real prospect of success in order to persuade the court to continue a freezing order. Where the court had refused permission to appeal there could be no real prospect of a successful appeal. The claimant was required to make any further applications to the Court of Appeal which had jurisdiction to grant an interim injunction pending an appeal. The Chancery Division (Warren J) held that the court was nevertheless able to grant a freezing order for a short period in order to allow the claimant to make an application to the Court of Appeal for a freezing order. At the time of publication, there is an outstanding appeal against this decision.
Abena UK Ltd v Zackaria [2015] EWHC 3416 (QB) (13 November 2015)	In circumstances where one of the defendants had admitted fraud and the other defendants were not complying with the disclosure obligations of a WFO, the Queen's Bench Division (Simler J) granted the claimant's application for an unless order, on the basis that it was the only effective way to ensure the defendants would comply. Noting that without the order the claimant's recovery was likely to be limited, an unless order was granted – the defendants would be debarred from defending the claim unless they complied.
BDW Trading Ltd v Fitzpatrick [2015] EWHC 3409 (Ch) (19 November 2015)	The Chancery Division (Judge Behrens) held that, in circumstances where a former employee admitted that there was a good arguable case against him and the employer had adduced good evidence that there was a real risk of dissipation, the employee's claims of failure to provide full and frank disclosure and delay were insufficient to cause the court to conclude that the freezing order should not be continued. The delay had been caused by the employer's investigation which had been necessarily covert.

Yossifoff v Donnerstein [2015] EWHC 3357 (Ch) (20 November 2015)	The English court had to consider whether to grant interim relief under Section 25(1) of the Civil Jurisdiction and Judgments Act 1982 to the claimant in Israeli proceedings. The Chancery Division (Snowden J) held that the English court should first consider whether the facts would warrant the relief sought if the underlying proceedings had been brought in the English courts. If the answer to that issue was affirmative, then the English court had to consider whether, in the terms of Section 25(2) of the Civil Jurisdiction and Judgments Act 1982, the fact that it had no jurisdiction apart from under that provision made it inexpedient to grant the interim relief sought. In the instant case, there was no claim in the main proceedings which could give rise to any monetary judgment in favour of the claimant and therefore there was no basis for the freezing order. Furthermore, the assets targeted were not beneficially owned by the defendant but were held by him as trustee.
JSC BTA Bank v Solodchenko [2015] EWHC 3680 (Comm) (20 November 2015)	The Commercial Court (Phillips J) gave declarations that a judgment debtor subject to a freezing order was the beneficial owner of shares in British Virgin Islands companies which were the registered proprietors of two properties, and also the beneficial owner of the properties themselves. The judgment debtor had previously failed to disclose his interest in the properties. The court held that the purchase of the properties through the BVI companies was for the purpose of disguising the judgment debtor's ownership and was designed in circumstances where he was facing substantial claims.
Ras Al Khaimah Investment Authority v Bestfort Development LLP [2015] EWHC 3383 (Ch) (24 November 2015)	The underlying proceedings were brought by those responsible for investing Ras Al Khaimah's sovereign wealth in projects in Georgia and they were brought against one of their directors whom they considered had defrauded them. The underlying proceedings were brought in Georgia and in the United Arab Emirates against the director and four partnerships beneficially owned by him. The claimants applied under Section 25 of the Civil Jurisdiction and Judgments Act 1982 for freezing orders against those four partnerships and 10 others connected with the director. The Chancery Division (Rose J) held that the English court should first consider whether the facts would warrant the relief sought if the underlying proceedings had been brought in the English courts. Then the English court had to consider whether, in the terms of Section 25(2) of the Civil Jurisdiction and Judgments Act 1982, the fact that it had no jurisdiction apart from under that provision made it inexpedient to grant the interim relief sought. Although there was thin evidence in respect of some of the claims, there was generally an arguable case. However, the claimants' case on establishing that the defendants had assets which would be caught by the order was very weak. It

	would be inexpedient to grant the freezing order.
A v B, Unreported (27 November 2015)	A dispute arose out of two sale contracts concerning sale of soya beans. One clause purported to incorporate the terms and conditions of the FOSFA 23 standard form contract. The contracts contained an English law governing law clause and a London arbitration clause. Further, the contracts contained a clause that neither party could bring any action or other legal proceedings against the other in respect of any dispute until such dispute had first been determined through arbitration. This was referred to as a "*Scott v Avery* provision". The claimant successfully applied for a freezing order against the defendant. When the defendant applied for the freezing order to be set aside, arguing that the *Scott v Avery* provision had the effect of ousting the jurisdiction that the court would otherwise have under Section 44 of the Arbitration Act 1996, the claimant responded that the parties' true intention had been to exclude the FOSFA 23 arbitration clause. The Commercial Court (Cooke J) held that, if that had been the parties' true intention, then the court would have expected the parties to say as such in clear contractual terms. Since this was not the case, there was no difficulty in assimilating the terms of the contractual arbitration clause to that of the standard form FOSFA 23 arbitration clause. Thus the *Scott v Avery* provision must have been intended to take effect. Accordingly, the court had not had jurisdiction to grant a freezing order, and that order must now be set aside.
BDW Trading Ltd v Fitzpatrick [2015] EWHC 3490 (Ch) (3 December 2015)	[Following the decision in *BDW Trading Ltd v Fitzpatrick* [2015] EWHC 3409 (Ch)] Pursuant to the disclosure obligations of the freezing order, the former employee disclosed interests in properties jointly owned with his wife and bank statements. The employers sought specific disclosure relating to bank statements for the 5-year period immediately preceding the period covered by the earlier order. The employee resisted on the grounds that this was a 'fishing exercise' conducted for the purpose of seeing whether the employers could expand its claims or to bring proceedings against other employees/sub-contractors. The Chancery Division (Judge Behrens) held that, in light of the fact that it was not disputed that there was a good arguable case, and there was clear evidence of past dissipation of assets, the request for the bank statements could not properly be characterised as a 'fishing exercise'. The court allowed the application for specific disclosure on the basis that it was necessary to give effectiveness to the freezing order and to enable the employers to begin to take immediate steps to begin asset tracing processes.

Arcadia Petroleum Ltd v Bosworth [2015] EWHC 3700 (Comm) (15 December 2015)	In the context of a fraud claim, the claimants obtained without notice a WFO against the defendants which was continued at the return date hearing. The defendants applied for the WFO to be set aside on the grounds of material non-disclosure. Under the terms of the original order the claimants required the court's permission to commence enforcement proceedings outside the English jurisdiction. Since D1 and D2 had property and bank accounts in Switzerland and shares in companies in Lebanon, and documents subject to an order for preservation were situated in Lebanon, the claimants sought permission to commence enforcement proceedings in both Switzerland and Lebanon. The Commercial Court (Males J) held that, notwithstanding that there was an appeal pending in England on jurisdictional issues, as matters stood the court had jurisdiction to grant and continue the freezing order. The foreign law evidence showed that enforcement would be easy and, further, that local orders could easily be set aside if the freezing order was subsequently set aside itself. The fact that the defendants had complied to date was immaterial since the claimants would be unprotected in the future if the defendants decided not to comply. The balance of convenience strongly favoured the claimants' application.
Asia Islamic Trade Finance Fund Ltd v Drum Risk Management Ltd [2015] EWHC 3748 (Comm) (17 December 2015)	In the context of contempt proceedings, the Commercial Court (Popplewell J) held that a breach of a freezing injunction was an attack on the administration of justice which would usually merit immediate imprisonment with a substantial sentence. Where the breach was continuing, the court should consider the two-year maximum sentence to encourage future co-operation.
Ahadi v Ahadi [2015] EWHC 3912 (Ch) (21 December 2015)	A man died intestate in Afghanistan. The wife and her four sons applied for an injunction against the deceased's son from a previous marriage. The respondent had closed two bank accounts in the deceased's name which were shown to contain upwards of £500,000. The respondent disputed the authenticity of the wife's marriage to his father. The applicants also sought to show that the deceased's estate (and therefore them) was entitled to £700,000 from the proceeds of the sale of a factory in Afghanistan. On the issue of good arguable case, the Chancery Division (Snowden J) held that there was a good arguable case in respect of the £500,000 bank accounts. However, there was no good arguable case in respect of the £700,000. The respondent's attitude to the wife's correspondence indicated that there might be a risk of dissipation. It was just and convenient to grant a freezing order in the sum of £300,000 conditional on undertakings from the applicants in respect of issuing a claim and completing witness statements.

Day v Refulgent Ltd [2016] EWHC 7 (Ch) (7 January 2016)	In the context of a bankruptcy petition filed following non-compliance with a freezing order, the Chancery Division (Judge Behrens) held that a freezing order was not akin to a charge or other security and did not create charges over the defendant's assets.
JSC BTA Bank v Ablyazov [2016] EWHC 289 (Comm) (20 January 2016)	[For the background see *JSC BTA Bank v Ablyazov* [2015] UKSC 64] Mr Ablyazov resisted the obligation to disclose assets pursuant to a WFO on the basis that his doing so would expose him to the risk of criminal prosecution in other jurisdictions. Proceedings had already been commenced against him in the USA, Kazakhstan and Switzerland. The claimant bank had already agreed that information disclosed would only be provided to a limited confidentiality circle comprising the bank's solicitors and counsel. The bank applied for an order that Mr Ablyazov disclose his assets. The Commercial Court (Phillips J) held that the risk of self-incrimination was fanciful given the confidentiality provisions already in place. Furthermore, a confidentiality club which had been implemented in previous litigation between the parties had been seen to work effectively.
Lord Chancellor v Blavo [2016] EWHC 126 (QB) (28 January 2016)	In the context of the Lord Chancellor's pursuance of a solicitor whose firm was accused of taking legal aid money to which it was not entitled, the solicitor conceded that there was a good arguable case against him and the firm. The Queen's Bench Division (Garnham J) concluded that there was a real risk of dissipation. In particular, the Lord Chancellor (with whom the solicitor was obliged to cooperate) had requested copies of over 23,000 files. The solicitor had provided only 4 files. This reflected on the solicitor accused of dishonesty.
VIS Trading Co Ltd v Nazarov [2016] EWHC 245 (QB) (5 February 2016)	The defendant subject to a freezing order, who had been dishonest, had failed to comply with the freezing order and, notwithstanding some modest compliance, remained in significant and continuing breach, was committed for contempt of court and received a sentence of 21 months' imprisonment. Since the defendant was outside of the jurisdiction (and had appeared by videolink in the contempt proceedings) the sentence was to take effect and be served once the defendant returned to the jurisdiction. However, the Queen's Bench Division (Whipple J) held that it was open to the defendant to apply to the court for remission of the sentence after he produced

	the outstanding documents required under the terms of the freezing order.
JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev [2016] EWHC 192 (Ch) (8 February 2016)	Notwithstanding that he was subject to a passport order granted by the English courts, Mr Pugachev feared for his life and fled to France. Subsequently, as a result of his breach of the passport order as well as his continuing breaches of the freezing order given against him in support of proceedings in Russia, the Chancery Division (Rose J) found Mr Pugachev to be in contempt of court.
National Crime Agency v Simkus [2016] EWHC 255 (Admin) (12 February 2016)	The Administrative Court (Edis J) held, on an application by the defendants to discharge ex parte freezing orders obtained against them, that it was open to the judge to consider the freezing order application in chambers and only on the papers. However, there was a burden on the National Crime Agency to seek a proper hearing where the case had presented real difficulties in disclosure and in cases involving complex documentation. Further, the NCA should give notice to the judge if there was no immediate real risk of asset dissipation. In the circumstances, there had been non-disclosure of a material fact before the judge but it was not so grave as to require the freezing order to be discharged. There was a substantial public interest in the continuation of the freezing order.
JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev [2016] EWHC 248 (Ch) (12 February 2016)	The trustees of trusts to which Mr Pugachev was one of the beneficiaries applied for the WFO against Mr Pugachev to be discharged. The Chancery Division (Mann J) refused on the basis that there was a real risk of dissipation of the trust assets. Mr Pugachev was the first and main protector and had full powers to appoint and dismiss trustees. Whilst new trustees had been appointed, it was open to the court to infer that they had been appointed in order to do Mr Pugachev's bidding. Mr Pugachev was therefore still in a position (despite these changes) to exert control over the trust assets in order to put them beyond the reach of his creditors.
JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev [2016] EWHC 258 (Ch) (12 February 2016)	The Chancery Division (Rose J) had previously found Mr Pugachev to be in contempt of court (see *JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev* [2016] EWHC 192 (Ch)). At a hearing to consider sentence, Rose J considered Mr Pugachev's breaches to be sufficiently serious to warrant the maximum sentence of 2 years' imprisonment. Mr Pugachev was also ordered to pay 75% of the bank's costs of the application for committal on the indemnity basis.

Ikon International (HK) Holdings Public Co Ltd v Ikon Finance Ltd [2016] EWHC 318 (Comm) (17 February 2016)	Having obtained a without notice freezing order for the sum of US$14 million, the claimants applied 2 months later for permission to enforce the freezing order in Hong Kong and Turkey. The Commercial Court (Phillips J) held that it would be oppressive to subject the defendants to proceedings in other jurisdictions where issues of asset dissipation would be raised before the return date of the English freezing order. In the circumstances, there was no real urgency or prejudice to the claimants. It was appropriate to grant the defendants' application for the claimants' applications to be adjourned until after the return date hearing.
Kanev-Lipinski v Lipinski [2016] EWHC 475 (QB) (1 March 2016)	In the context of a WFO and an asset preservation order obtained in support of divorce proceedings in Israel, the Queen's Bench Division (May J) refused to continue the orders on the basis that, whilst there was a good arguable case that the claimant would get judgment in Israel, there was no real risk of asset dissipation. The claimant's own witness statement responding to the defendant's evidence had effectively accepted that that was the case. Accordingly, relief under Section 25 of the Civil Jurisdiction and Judgments Act 1982 was refused and the orders were discharged.
BCS Corporate Acceptances Ltd v Terry [2016] EWHC 533 (QB) (11 March 2016)	Default judgment was obtained, and a freezing order was granted against the defendant and the defendant's wife. The Queen's Bench Division (May J) held that it was just and convenient to continue the freezing order against the defendant because there was a real risk of dissipation and evidence showed that he was capable of setting up schemes designed to obscure his ownership of property. However, it was not appropriate to continue the freezing order against the wife. No proceedings had been brought or were contemplated against her. The proper course would have been to identify assets which belonged to the husband but were allegedly owned by the wife in the freezing order. It then would have been open to the wife to apply for her assets to be unfrozen.
Touton Far East Ltd v Shivnath Rai Harnarain (India) Ltd, Unreported (18 March 2016)	In circumstances where a judgment debtor to a 6-year old judgment debt resulting from two arbitral awards was choosing not to pay (despite having the means to pay) and seeking to rely on Indian public policy to have the awards set aside, the Commercial Court (Males J) granted permission to continue a freezing order of indefinite duration. The respondent had massive assets in India but none outside of India; the respondent's counsel had admitted that the respondent was in contempt of the English court.
Ritz Hotel Casino Ltd v Al-Geabury, Unreported (7 April 2016)	A Swiss businessman who had given a dishonoured cheque for gambling chips at a casino was subsequently ordered to pay £2.3 million to the casino. He had been made subject to a freezing order on the grounds of real risk of dissipation of assets. Shortly before he was due to attend a hearing for cross-examination, the defendant submitted a witness statement stating that he was in poor health and had no assets (including denial of ownership of assets that he had previously claimed he owned). In light of serious and deliberate

	contempt of court, the Queen's Bench Division (Spencer J) committed the defendant and sentenced him to 10 months' imprisonment.
National Crime Agency v Dong, Unreported (14 April 2016)	The defendant had a written fixed fee cap agreement with counsel for £250,000 for representation in the instant proceedings and other proceedings. The claimant had obtained summary judgment but had not taken any enforcement steps beyond serving a statutory demand. The defendant was also subject to a freezing order. The defendant applied for a variation to the freezing order to permit the sale of a property which would raise funds for legal fees. The Chancery Division (Richard Millett QC) held that the principle of access of justice required that the defendant have access to funds to fuel the appeal against summary judgment.
Khawaja v Popat [2016] EWCA Civ 362 (14 April 2016)	In circumstances where a company director had procured the company's breach of a freezing order obligation not to deal with assets and failing to provide information under the freezing order's terms, the director was in breach of the freezing order. Dismissing the appeal, the Court of Appeal (McCombe LJ giving judgment) held that his claims that he did not intend to breach the freezing order were irrelevant to the judge's determination of whether the director had committed a contempt of court.
Dinglis Properties Ltd v Dinglis Management Ltd [2016] EWHC 818 (Ch) (14 April 2016)	In the context of proceedings including allegations of dishonesty, the claimants obtained a freezing order without notice against the defendants. The defendants accepted that there was a good arguable case on the merits but denied that there was a real risk of dissipation. The Chancery Division (David Halpern QC) held that if it could be inferred from the pleaded facts alone that the defendants had been dishonest then that inference was by itself capable of providing evidence of propensity to dissipate assets (i.e. the pleaded facts could do a double duty). However, in the instant matter, the pleaded facts were consistent with a breach of duty which was capable of being either innocent or dishonest. Thus the claimants needed to adduce further evidence in order to establish real risk of dissipation. In the circumstances there was insufficient evidence and thus the freezing order was discharged.
Kazakhstan Kagazy plc v Zhunus [2016] EWHC 1048 (Comm) (6 May	D2 applied for a worldwide freezing order against D1 (who himself had reached a settlement with the claimants) at the same time that D2 and D3 sought permission to serve a contribution notice on D1.

2016)	The Commercial Court (Leggatt J) refused permission to serve the contribution notice and also refused to grant the freezing order relief. In respect of the freezing order, the court held that it could not grant a freezing order unless the applicant had an accrued cause of action. The cause of action would have accrued if the court had given permission to serve the contribution notice. But since that permission was refused, and D2 could not point to any proceedings which had been or were about to be brought by D2 against D1 there was no prospective judgment for D1 to thwart.
OJSC Bank of Moscow v Chernyakov, Unreported (20 May 2016)	The claimant Russian bank obtained judgment in the Russian courts against the defendant and sought to enforce it against assets in the United Kingdom. A freezing order was obtained. Following the Russian judgment, the defendant had disposed of two aircraft and a yacht. From those sales, around €8 million of the proceeds could not be accounted for. Additionally, the defendant had made a €6 million loan to his wife. The court ordered the defendant to answer questions from the bank's forensic accounting expert regarding a list of end recipients for these monies. Five months later, the defendant gave answers which the Commercial Court (Burton J) held (1) could have been given sooner; and (2) were (in certain parts) unsatisfactory. The defendant's objections concerning the unenforceability of the Russian judgment through the English courts were not relevant to the issue of whether there were undisclosed assets or undisclosed recipient entities who were subject to the defendant's control. Burton J found that the defendant had attempted to dissipate assets and ordered that the defendant be cross-examined in aid of asset disclosure.
JSC BTA Bank v Ablyazov, Unreported (26 May 2016)	The claimant Kazakh bank, in the course of its attempts to enforce substantial judgments against D1, obtained an order for D2 (who was suspected of sheltering misappropriated assets on behalf of D1) to be cross-examined before the English courts on his asset disclosure obligations. D2 failed to attend and subsequently sought an adjournment and/or permission to be cross-examined via videolink from Switzerland. The Commercial Court (Phillips J) refused D2's applications on the grounds that what he sought would not be in accordance with the requirements of the English court and, furthermore, would involve breaches of Swiss law and principles of comity.
AS Latvijas Krajbanka (in liquidation) v Antonov [2016] EWHC 1262 (Comm) (27 May 2016)	The claimant Latvian bank was majority owned by a Lithuanian bank of which the defendant was the majority shareholder and majority beneficial owner. The claimant bank alleged that the defendant, acting dishonestly and in breach of his duties, had caused the bank to enter into transactions contrary to its interests. The claimant sought to recover £65 million from the defendant. The defendant did not dispute the English court's jurisdiction and filed defences when served with two sets of proceedings. The defendant was made subject to a WFO up to the sum of £70 million and was ordered to disclose information about his assets. The

	defendant failed to comply with the disclosure order. Andrew Smith J ordered the defendant to provide further information regarding his assets and prohibiting him from leaving the jurisdiction until he had complied. The defendant's affidavits in response were not accepted as complete and a search order was granted to the claimant. On the claimant's application, the defendant was cross-examined on his affidavits. Andrew Smith J made unless orders threatening to debar the defendant from defending the claims and gave directions for trial. Following further non-compliance, the defendant was served with committal proceedings. The defendant left the country and was sentenced by Burton J to 12 months' imprisonment. The defendant remains at large. Following a 3-day trial in which the defendant did not appear, the Commercial Court (Leggatt J) found that the defendant was liable for the Bank's losses pursuant to Articles 168 of the Latvian Commercial Law and Article 1779 of the Latvian Civil Code.
Apollo Ventures Co Ltd v Manchanda [2016] EWHC 1416 (Comm) (15 June 2016)	D1 was the founder and majority shareholder of the claimant Thai company. D1 allegedly procured, by the use of forged documents and without the knowledge of other company officers/shareholders, the claimant to enter into two loans and had subsequently paid most of the loan monies to the other defendants, some of which were domiciled in England. Civil and criminal proceedings were on foot in Thailand against D1. The claimant sought to bring proceedings in England and obtained, on an ex parte basis, permission to serve the proceedings out of the jurisdiction on the foreign defendants along with a WFO. The English defendants gave notice that they intended to apply to stay the English proceedings and argued that there had been material non-disclosure in the obtaining of the WFO. In particular, the defendants argued that the claimant had failed to disclose to the court that some of the drivers of the claimant's claim had themselves received some of D1's loan monies and there had been an omission of certain evidence adduced by the claimant in the Thai proceedings that was in fact disadvantageous to the claimant's application for a freezing order from the English courts. The Commercial Court (David Foxton QC) refused the defendants' applications. The issue regarding who had received the loan monies was a strongly contested issue that the English court could not decide on the evidence placed before it. There had been non-disclosure of evidence potentially supporting the defendants' case but it was not so serious as to constitute material non-disclosure justifying the discharging of the WFO relief.
Cyprus Popular Bank Public Co Ltd (acting by its special administrator from Nicosia) v Vgenopoulos [2016] EWHC 1442 (QB)	The claimant bank applied to have a Cypriot freezing order registered as a judgment of the English High Court pursuant to Article 38 of Council Regulation (EC) No 44/2001and obtained a Registration Order in February 2015, which itself allowed a two-month time limit for the defendants to appeal. Article 47(3) of Council Regulation (EC) No 44/2001 provided that no "measures of enforcement" could be taken until the determination of any appeal. After another bank complied with the freezing order whilst the defendants' appeal was still pending, the defendants invited the English court to find that such compliance with the freezing order constituted a measure of

(22 June 2016)	enforcement during the time period where such measures were prohibited. The central question on the issue of freezing orders was therefore: at what point does a foreign freezing order registered in England become enforceable? The Queen's Bench Division (Picken J) held that the prohibition on taking "measures of enforcement" during the specified time period was absolute, notwithstanding that the claimant had obtained a declaration of enforceability. Article 38 was not intended to be used as a shortcut route to obtaining, effectively, freezing order relief in the English jurisdiction. Thus, the Cypriot freezing order did not become enforceable upon the English registration order, but instead, because an appeal had been brought within the specified time period, it would become enforceable only on determination of that appeal. Had an appeal not been brought within the specified time period, then the Cypriot freezing order would have become enforceable once the specified time period had elapsed.
Aquarius Holding Ltd v Barber, Unreported (30 June 2016)	The claimant company through which a US billionaire owned a superyacht retained D1 as the captain of the yacht and D2 (D1's service company). The agreement expressly obliged D1 to carry out his duties faithfully and diligently, including efficient running of the yacht. The yacht was on the market for some time at a price of US$46 million and the yacht was surveyed. The survey report contained 32 pages of defects. The yacht was sold for US$42 million. The owner brought a breach of fiduciary duties claim against D1 for the price reduction and fraudulent misrepresentation a claim on the grounds that D1 had told the owner that the yacht was in good condition. Subsequently, the owner discovered D1 and D4 had interests in D3 and D5 (two companies involved in building of a replacement yacht). D1 denied any financial interest but later was forced to admit it. Further alleged breaches of fiduciary duty were discovered in an investigation after D1's dismissal. The claimant obtained a freezing injunction in the sum of US$2.9 million. The defendants applied for the discharging or variation of the freezing order on the basis of material non-disclosure, no good arguable case and no real risk of dissipation of assets. The Commercial Court (Flaux J) held that there had been no material non-disclosure. There was a good arguable case that the injunction should be maintained. In light of the serious allegations combined with D1's pattern of concealing information, it was right to infer a risk of dissipation.