

THE COMMERCIAL BAR ASSOCIATION

North American Meeting

Thursday 30 May 2019

SESSION 2: Interlocutory relief

- Scope and general trends in interlocutory relief, eg:
 - What is “interlocutory” – includes post-judgment
 - Post-judgment freezing orders **Michael Wilson & Partners v Emmott** [2019] EWCA Civ 219 – removal of **Angel Bell** exception (expenses in the ordinary course of business)
 - Application for interim payment at trial – see below
 - Novel applications – no exhaustive list
 - Injunction to force shareholder to make interest-free loans to company to preserve share value pending trial. Whether mandatory nature relevant to jurisdiction or discretion **UTB llc v Sheffield United Ltd** [2018] EWHC 1663 (Ch)
 - Parties and privacy
 - Applications contra mundum – possible but less likely in commercial cases
 - Applications against unknown defendants – **Boyd v Ineos** [2019] EWCA Civ 515 “*inherent caution*”
 - Futility
 - **PJS v News Group Newspapers** [2016] UKSCV 26. Protected information was in the public domain (websites overseas). If purpose was to preserve a secret, would be futile but could still prevent harassment & intrusion
 - Fortifying of undertakings after discharge (see below)

- Proportionality and overriding objective
 - “*shameful waste of time and money caused by their private dispute, which has now continued for 13 years and left their reputations in tatters*” Jackson LJ in **Wilson v Emmott** (supra)
 - Courts resistant to “*game-playing or pointless obduracy on one or both sides*” Fancourt J in **UTB LLC v Sheffield United** [2018] EWHC 1663 (Ch)

- Undertakings/cross-undertakings
 - No jurisdiction to force undertaking – simply price of injunction
 - Release from undertakings –
 - good grounds required before D can apply to discharge or vary
 - general position – not entitled to appeal
 - Fortification after discharge - **Napp Pharmaceutical Holdings Limited v Dr Reddy's Laboratories (UK) Limited, Sandoz LI, Hexal AG, Salutas Pharma GmbH, Sandoz AG** [2019] EWHC 1009 (Pat), 15 April 2019
 - Question of whether C can be forced to seek interim injunction when significant exposure in cross undertakings
 - Cf admiralty jurisdiction – whether ship should be released from arrest unless arresting lender provided cross-undertaking – **Stallion Eight Shipping Co SA v NatWest Markets Ltd (formerly Royal Bank of Scotland Plc) Alkyon, The** [2018] EWCA Civ 2760

- Early determination of claim:
 - Summary judgment – see elsewhere
 - Applications for interim payments
 - CPR Rule 25.7(1)(e)

(e) in a claim in which there are two or more defendants and the order is sought against any one or more of those defendants, the following conditions are satisfied –

(i) the court is satisfied that, if the claim went to trial, the claimant would obtain judgment for a substantial amount of money (other than costs) against at least one of the defendants (but the court cannot determine which); and

(ii) all the defendants are either [insured/public body]
 - Cf (1)(c) if court is satisfied that claimant would obtain judgment against respondent to application whether or not only defendant

- Enforcement of award of damages/costs:
 - Preservation of assets – see elsewhere on freezing orders – purpose is not to provide security but to restrain D from evading justice
 - Discharge can be partial (utility been served) and conditional (providing residential address) - **Markham v O’Hara** [2019] EWCA Civ 397
 - Application for security of costs
 - **Pipia v Bgeo** [2019] EWHC 325 (Comm) 22 Feb 2019
 - Questions of jurisdiction and discretion
 - Dispute as to enforcement of English decisions in Georgia
 - Real risk as to ability to enforce costs order: just to order security

- Applications to restrain other proceedings
 - court will not grant anti-suit injunctions to restrain court proceedings brought in breach of arbitration clauses in other EU member states - **Nori Holdings Ltd v Public Joint-Stock Co** [2018] EWHC 1343 (Comm)

- (in passing only) Applications in relation to documents:
 - applications for disclosure,
 - assertions of privilege (litigation, legal advice or without prejudice)
 - Big questions:
 - Who is the “client” in big organisations for the purposes of legal advice privilege **SFO v Eurasian Natural Resources** [2018] EWCA Civ 2006
 - Scope of the iniquity principle - advice sought or given for the purpose of effecting iniquity or “in furtherance of iniquity” is not privileged **X v Y Ltd** UKEAT/0261/17/JOJ
 - Can reference be made to WP negotiations when the allegations against professional advisors concern their handling of WP negotiations **Briggs v Clay** [2019] EWHC 102 (Ch)
 - New pilot driven by reasonableness and proportionality

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