

Freezing Injunction

A freezing injunction is a powerful tool that in certain circumstances can be used against a defendant in proposed or active proceedings.

WHAT IS A FREEZING INJUNCTION?

A freezing injunction is a court order which prevents a party from disposing of, or dealing with, its assets without permission of the Court or the agreement of the party that has obtained the freezing injunction.

WHEN AND AGAINST WHOM SHOULD A FREEZING INJUNCTION BE MADE?

An application for a freezing injunction is often made prior to court proceedings being issued without the proposed defendant being made aware of the application. This can protect a party from a defendant seeking to dissipate (i.e. place out of reach) their assets before judgment. A freezing injunction does not create security over assets that are frozen to be used to enforce against those assets, its purpose is to stop the dissipation of assets by a defendant. A freezing injunction can also be sought once proceedings have been issued or after a judgment has been obtained.

A freezing injunction will take effect personally against the party it is made against. It can be made against a potential defendant or a third-party, holding assets on their behalf.

It is vital that the applicant acts quickly when bringing an application for a freezing injunction. Any delay may make it more difficult to convince the court that the injunction is necessary.

RELEVANT GROUNDS

The court has discretion to grant a freezing injunction, however it will only do so when it considers that it is just and convenient. The following conditions must be satisfied:

- The English court must have jurisdiction over the underlying dispute;
- The applicant must have a cause of action;
- The applicant must demonstrate to the court that it has a good arguable case, however the applicant does not need to show the case will definitely succeed;

- There should not have been undue delay in making of the application;
- There must be a real risk of the disposal or use of the assets not in the ordinary course of business; and
- The applicant must provide an undertaking to the court to pay any damages to the other party if it is later shown that the injunction should not have been granted (see below).

In addition to the above, the court will also apply the “balance of convenience” test. The court will take into account and weigh up the damage caused to the subject of the intended freezing injunction, against the benefit it will provide the other party. It will also look at the behaviour of the applicant to see if it has been reasonable and diligent.

CROSS UNDERTAKING IN DAMAGES

A condition of making an application for a freezing order is that the applicant must undertake to the court to pay any damages that the respondent will sustain if it later turns out that the order should not have been granted. The court may require the applicant to provide security or details of its assets in support of its undertaking.

ASSETS AFFECTED BY A FREEZING INJUNCTION

A freezing injunction can only freeze those assets over which a judgment can be attached (e.g. land or money in a bank account).

If a freezing injunction is obtained, it can not only freeze assets within England and Wales, but also assets outside these countries. This is known as a worldwide freezing injunction.

Normally the respondent to a freezing injunction will have to disclose the value, location and details of all its assets exceeding a minimum value. If a respondent is dependent on funds to pay living expenses, legal fees, paying debts or carrying out ordinary business transactions, the court will allow such expenditure.

PROCEDURE

An application for a freezing injunction must be supported by evidence in the form of an affidavit sworn by the applicant. It must address all of the conditions for obtaining a freezing injunction (as above), be accurate and give full and frank disclosure. The affidavit must also explain the reasons for the urgency of the application, the risk of dissipation together with details of the assets that need to be frozen and evidence of the applicant’s ability to meet any cross-undertaking in damages.

A freezing injunction application will often be made “*without notice*” to the other party, this being that the respondent is not present or aware of the hearing. Any “*without notice*” freezing injunction that is granted will be made on an interim basis and will last until the date set for a further hearing at which time the respondent will attend and make representations.

SERVING A FREEZING INJUNCTION

The freezing injunction must be served promptly after the hearing and served personally on the respondent to make sure that it is acknowledged and if necessary, enforced. The respondent must be served with the application, supporting evidence and a note of any “*without notice*” hearing.

Where the assets are held by a third party, the order may be served on them before the respondent. This may be applicable in cases where a bank holds funds on behalf of the respondent so they can be frozen before the opportunity arises for them to be transferred.

BREACHING A FREEZING INJUNCTION

Any deliberate breach of the order will be ruled as a serious contempt of court. This could result in imprisonment, a fine or the respondent having their assets frozen.

BENEFITS OF A FREEZING INJUNCTION

- The respondent’s assets are preserved for enforcement purposes;
- An injunction may lead to a swift resolution of the dispute without the need of a costly trial; and
- Can be a powerful weapon to promote settlement of a claim.

NEGATIVES OF A FREEZING INJUNCTION

- Injunctions are expensive;
- The applicant bears the risk of having to meet future costs as a result of providing a cross undertaking; and
- It does not provide the applicant with any security of the assets that have been frozen or priority ahead of other creditors.

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