

Countering Dissipation

How do you force a defendant to call in liquid assets before and after judgment and how do you overcome the risks associated with these actions?

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The Court's Power

No surprises: Section 37 of the Senior Courts Act 1981!

(1) The High Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the court to be just and convenient to do so.

(2) Any such order may be made either unconditionally or on such terms and conditions as the court thinks just.

The Freezing Order

5 Until the return date or further order of the court, the Respondent must not—

(1) remove from England and Wales any of his assets which are in England and Wales up to the value of £PPP,000,000; or

(2) in any way dispose of, deal with or diminish the value of any of his assets whether they are in or outside England and Wales up to the same value.

The Fundamental Purpose of the Order

What is the purpose of the Order?

What is the Court protecting?

Does the cause of action make any difference?

Protecting the Purpose

How is the Court able to help the Claimant so as to protect the purpose of the Order?

How can Claimants help themselves?



Compelled Provision of Information

9. (1) Unless paragraph (2) applies, the Respondent must [immediately] [within hours of service of this order] and to the best of his ability inform the Applicant's solicitors of all his assets [in England and Wales] [worldwide] [exceeding £ in value] whether in his own name or not and whether solely or jointly owned, giving the value, location and details of all such assets.

The Freezing Order Exception

11(1) This order does not prohibit the Respondent from spending £XXXX a week towards his ordinary living expenses and also £YYY [or a reasonable sum] on legal advice and representation. [But before spending any money the Respondent must tell the Applicant's legal representatives where the money is to come from.]

11(2) This order does not prohibit the Respondent from dealing with or disposing of any of his assets in the ordinary and proper course of business.

The Risk Exposure pre-Judgment

If the court later finds that this order has caused loss to the Respondent, and decides that the Respondent should be compensated for that loss, the Applicant will comply with any order the court may make

Post Judgment

Cross-undertaking??

Michael Wilson & Partners Ltd v John Forster Emmott [2019] EWCA Civ 219

Best Strategy?

Or has something gone wrong?

THE END!

Any Questions?