

Chabra – developments and practical implications

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27 February 2025

White Paper Conference, The Caledonian Club

Overview

1. Principles
2. Recent application
3. Comparisons
4. Practical thoughts



1. Principles (i) - scenario.

Identified Defendant rogue and fraud – have cause of action, serious issue, risk of dissipation

Want freezing injunction against rogue but also to bind company(ies) into which monies have been transferred

You want to freeze assets of the rogue's "moneybox" companies – even if no cause of action against them

Principles (ii) – “enforcement”

...the essential purpose of a freezing injunction is to facilitate the enforcement of a judgment or order for the payment of a sum of money by preventing assets against which such a judgment could potentially be enforced from being dealt with in such a way that insufficient assets are available to meet the judgment

Broad Idea International v Convoy Collateral Ltd [2021] UKPC 24 at [88]

Principles (iii) – the NCAD

The enforcement principle also explains the basis and scope of the jurisdiction to grant a freezing injunction against a third party against whom no claim for substantive relief lies (ie a “non-cause of action defendant”).

The ordinary prerequisite for granting such an injunction (before taking account of discretionary factors) is that the third party is in possession or control of an asset against which a judgment could be executed.

Broad Idea International v Convoy Collateral Ltd [2021] UKPC 24 at [88]

Principles (iv) – risk of dissipation

Expect to see a WFO against CAD, on basis of (i) serious issue to be tried; (ii) risk of dissipation; (iii) just and convenient

Establish risk of dissipation against each respondent – including the NCAD

citing *Chabra: Chu v Je* [2024] EWHC 90 (Ch) at [59]-66]

Principles (v) – types of asset

Good reason to suppose that the asset is beneficially owned by a defendant against whom the claimant has obtained or has a right to obtain a judgment:

TSB Private International Bank SA v Chabra [1992] 1 WLR 231

Where the defendant would have a right of indemnity against the third party which could be enforced by a receiver:

C Inc plc v L [2001] 2 All ER (Comm) 446

Where a transaction by which the defendant transferred an asset to the third party might be avoided under section 423 of the Insolvency Act 1986:

Lemos v Lemos [2016] EWCA Civ 1181

Where enforcement of a judgment against the defendant might lead to its liquidation whereupon the liquidator would be able to pursue a claim against the third party:

Revenue and Customs Comrs v Egleton [2006] EWHC 2313 (Ch)

Principles (v) – types of asset

Where the third party may have some liability to the defendant or owe a debt

Where there is a means by which assets may become through some compulsory process available for satisfying the claim or a judgment founded upon it

NB injunction can be granted temporarily while a provisional liquidator is appointed and can take steps to safeguard assets held by the third parties

Not necessary that there are proceedings seeking a monetary judgment against a defendant

Gee on Commercial Injunctions at 13-016

Principles (vi) – that one thing

Key question: whether the assets are or would be available to satisfy a judgment through some process of enforcement

Shorthand: “money-box”

... if a claimant wishes to freeze company assets of a non-defendant, he must either be prepared to make a sufficient case that the company concerned is just the money-box of the defendant and holds assets to which the defendant is beneficially entitled, and/or it has to make that company a defendant itself ...

Lakatamia Shipping Co Ltd v Su [2014] EWCA Civ 636 at [42]

2. Current approach

When a freezing order or ancillary relief is sought against an NCAD, the applicant must provide an evidential basis for the allegation that the NCAD is holding assets against which the judgment sought against the cause of action defendant (the "CAD") can be enforced

Commercial Bank of Dubai v Al Sari [2024] EWHC 3304 (Comm) at [233]

Practical points – standard?

The jurisdiction has been described as “exceptional” and is exercised cautiously

PJSC Vseukrainskyi v Maksimov [2013] EWHC 422 at [7]

What’s the evidential threshold re assets in NCAD hands?

No useful distinction between good arguable case/ good reason to suppose

- Maximise evidence of links to CAD issues and the assets
- Relevant to sum frozen by the injunction

Practical points – assets?

In this case – court asked what assets owned by NCAD are subject to CAD's control?

Order should be as specific as possible re the principle defendant's assets which he controls in the NCAD's hands.

(i) Shares in a company; assets in a company

TSB Private Bank International SA v Chabra [1992] 1 WLR 231

(ii) Specific payment transfers

But there is flexibility – fraud of course, and C can't know everything. If assets are mixed (e.g. to make D judgment proof) then Court will make order against general assets

Yukong Line Ltd v Rendsburg [2001] 2 Lloyds Rep 114

Practical points – assets?

(iii) NCAD owned award debtor (CAD 1) and was subsidiary of jmt debtor (CAD 2).

Evidence suggesting substantial intra-group transfers to render CAD 1 judgment-proof

Sum frozen by reference to specific transfers from CAD to NCAD

Parbulk II AS v PT Humpuss Intermoda [2011] EWHC 3143 (Comm)

Practical points – relief?

Restrain dealings in corporate assets, including company shares – standard form WFO apply to CAD

The practical purpose of granting a freezing injunction against the company ... was to restrain the third party to whom its shares had been transferred from procuring the disposal of the company's assets and thereby diminishing the value of its shares (against which a future judgment could potentially be executed).

Gilfanov v Polyakov (BVIHCMAP 2016/0009) (unreported) 3 February 2017



3V

Practical points: Jurisdiction

What gateway applies under CPR PD6B para 3.1?

Is there a substantive claim against CAD in England?

Claim to enforce a foreign judgment or arbitration award?

2. Practical points: Jurisdiction

Focus on 3.1(3): NPP

(3) A claim is made against a person (“the defendant”) on whom the claim form has been or will be served (otherwise than in reliance on this paragraph) and—

(a) there is between the claimant and the defendant a real issue which it is reasonable for the court to try; and

(b) the claimant wishes to serve the claim form on another person who is a necessary or proper party to that claim.

Practical points: Jurisdiction

If there is a substantive claim against the CAD in England and NCAD is a necessary and proper party to such relief, then gateway 3 can be used

Commercial Bank of Dubai at [269(vi)]

BUT for the gateway to apply, there must be some common factual enquiry or determination involving the anchor defendant and the party to be joined ... is not enough that obtaining information from the NCAD may assist the enforcement of the judgment obtained against the CAD

ibid at [274]

Practical points: Jurisdiction

Para 3.1(20)? Foxton J suggestion it provides a service out gateway for claims brought “under any enactment which allows proceedings to be brought”?

3. BVI

Enforcement principle applies



Possible to obtain *Chabra* relief in BVI law – *Broad Idea International*

See also 2020 decision enforcing HK jmt in BVI where
Chabra orders granted on basis CAD was 100% s/h and
sole director of two NCAD companies

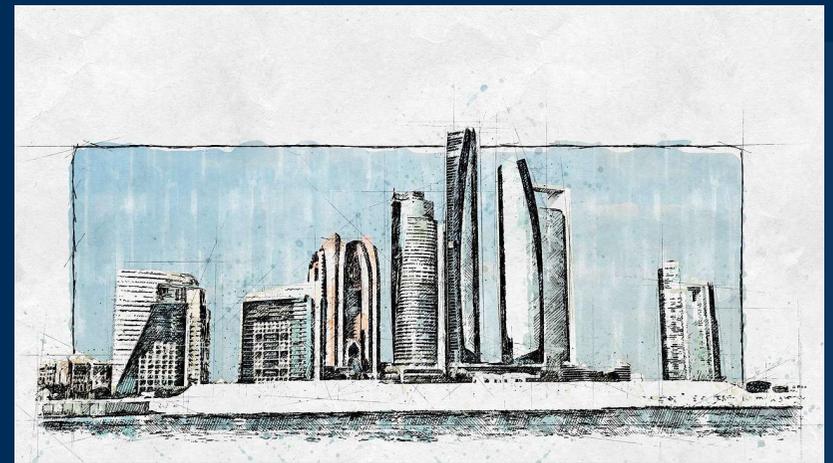
Great Panorama Intl v Qin Hui [2020] (BVIHC(COM)2019/0180, 13 Aug 2020)

Cayman



Similar principles applied – commonly cited case is *Algosaibi v Saad Investments Co Ltd* [2011 (1) CILR 178] – Chadwick P’s jmt

Cited in BVI in *Great Panorama and Parles AS & Daniel Perner v Winsley Finance Limited* (BVIHCM2022/0123, 29 March 2023).



ADGM

“grounds for belief” (per Longmore LJ in *Ras Al Khaimah Investment Authority v Bestford Development LLP* ...) or “good reason to suppose” (the *Maksimov* case, *loc cit*, para 7) that the respondent has assets that will be covered by the order.

No real importance which formulation is preferred: both have been said to be little different from the criterion of “good arguable case”, and so it is not necessary for the applicant to show that the chances are better than even.

good reason to suppose that the respondent has assets that would be amenable to some process, ultimately enforceable by the courts, by which the asset would be available to satisfy a judgment against the person against whom the applicant asserts a substantive case. The applicant does not have to identify specific assets in the hands of the respondents that would be available: *Yukong Line Ltd v Rendsburg Investments Corp...*

a real risk that a judgment in the applicant’s favour would go unsatisfied by reason of the respondent disposing of assets unless restrained by the Court from doing so.

Abu Dhabi Commercial Bank PJSC v Bavaguthu Raghuram Shetty & Others [2021] ADGMCFI 0004 at [33]



DIFC

The ...test that the Court must apply is whether or not there is good reason to suppose that the asset in the hands of a third party is beneficially owned by a defendant against whom the claimant has obtained judgement or whether the asset is or would be available to satisfy a judgement by some process of enforcement that is available. ...

In each case the key question is whether the assets are or would be available to satisfy a judgement through some process of enforcement” that might be available.

GTC Trading v Rashed 28 Sept 24 CFI 046/2023 ENF 022/2023 ENF 023/2023 at [5]

4. Final thoughts

Evidence the links and control between CAD and NCAD assets

Show you have tailored relief appropriately

Risk of dissipation

Jurisdiction: NPP a likely starting point but it depends on where the substantive claim is; see *Mumford and Grant* at 28-169-171

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