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Can Freezing Orders catch
disposals or dealings by third
party trustees?

Is it all a matter of drafting?

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Disclaimer!

- This talk is only about English freezing orders!
- Nothing that I say is intended to express any view about whether any other jurisdictions will grant equivalent relief!



The Example Terms

“For the purpose of this order the Respondent’s assets include any asset which he has the power, directly or indirectly, to dispose of or deal with as if it were his own. The Respondent is to be regarded as having such power if a third party holds or controls the asset in accordance with his direct or indirect instructions.”



The Power to Grant an Injunction

Section 37 of the Senior Courts Act 1981

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.



What is (not) the test

“The fact that the potential judgment debtor (the CAD) has substantial control over assets which are held by a party against whom no cause of action is alleged (the NCAD)—say, because the NCAD can be expected to act in accordance with the wishes or directions of the CAD (whether or not it could be compelled to do so)—is likely to be of critical importance in relation to the question whether there is a real risk that the assets will be dissipated or otherwise put beyond the reach of the claimant.”

(per Sir John Chadwick in *Algozaibi v Saad*)

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What is the test?

“It is necessary that the court be satisfied that there is good reason to suppose either (a) that the CAD can be compelled (through some process of enforcement) to cause the assets held by the NCAD to be used for that purpose; or (b) that there is some other process of enforcement by which the claimant can obtain recourse to the assets held by the NCAD.”

(per Sir John Chadwick in *Algozaibi v Saad*)

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Alternative formulation (Part 1)

(i) The third party holds, is using, or has exercised or is exercising a power of disposition over, or is otherwise in possession of, assets, including “claims and expectancies”, of the judgment debtor or potential judgment debtor; or



Alternative formulation (Part 2)

(ii) some process, ultimately enforceable by the courts, is or may be available to the judgment creditor as a consequence of a judgment against that actual or potential judgment debtor, pursuant to which, whether by appointment of a liquidator, trustee in bankruptcy, receiver or otherwise, the third party may be obliged to disgorge property or otherwise contribute to the funds or property of the judgment debtor to help satisfy the judgment against the judgment debtor.

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