

M

maitland  
CHAMBERS

# ‘Interim Relief’ in Fraud Claims involving Foreign Defendants and Foreign Assets

Watson Pringle

[wpringle@maitlandchambers.com](mailto:wpringle@maitlandchambers.com)



# Norwich Pharmacal

- Free-standing (Part 8)
- Pre-action
- Third Party – won't be a defendant
- Without Notice (full and frank disclosure required)
- Dealt with as “file work”: Chancery Guide 2016, paras. 7.4-7.6, 15.4, 17.68
- Alternative Avenues (including abroad?)

maitland

CHAMBERS



# Brussels Regulation Recast

## Article 4(1):

“Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.”



# Brussels Regulation Recast

## Article 35

“Application may be made to the courts of a Member State for such provisional, including protective, measures as may be available under the law of that Member State, even if the courts of another Member State have jurisdiction as to the substance of the matter.”



# Recent Authority

*AB Bank Ltd v Abu Dhabi Commercial Bank PJSC* [2016] EWHC 2082 (Comm);  
[2016] C.P. Rep. 47 (Teare J.)



# Injunction

“(2) A claim is made for an injunction ordering the defendant to do or refrain from doing an act within the jurisdiction.”

*Bacon v Automattic*

[2011] EWHC 1072



# Necessary and Proper Party

“(3) A claim is made against a person (“the defendant”) ... 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 necessary or proper party to that claim.”

*Lockton v Google* [2009] EWHC 3423



# Section 25, CJJA 1982

“(5) A claim is made for an interim remedy under section 25(1) of the Civil Jurisdiction and Judgments Act 1982”



# Property within the Jurisdiction?

“(11) The whole subject matter of a claim relates to property located within the jurisdiction.”

*Ashton Investments Ltd v Rusal* [2006] EWHC 2545 (Comm); [2007] 1 Lloyds Rep 311



# Subject Matter Jurisdiction

*“It does not follow from the fact that a person is within the jurisdiction and liable to be served with process that there is no territorial limit to the matters upon which the court may properly apply its own rules or the things which it can order such a person to do”.*

*Mackinnon v Donaldson & ors*  
[1986] Ch. 482 per Hoffman J.



# The MacKinnon Principle

*“The content of the....order [sought] is to require the production by a non-party of documents outside the jurisdiction concerning business which it has transacted outside the jurisdiction. In principle and on authority it seems to me that the court should not, save in exceptional circumstances, impose such a requirement on a foreigner and, in particular, upon a foreign bank” (Hoffmann J at p.493)*



## MacKinnon (cont.)

*“orders concerned with documents outside the jurisdiction are so unusual that they should ordinarily be made on notice to the bank so as to give the bank full opportunity to investigate the position in the foreign jurisdiction.”*

(Hoffmann J at p.497)



# *Rusal v HSBC* [2011] EWHC 404 (QB)



- Exceptional circumstances – (fraud)
- Realistic prospect of compliance in UK
- C will not pursue committal
- Rather C will seek to enforce in Italy –  
Brussels I Art. 25
- No time limits in order

M

# Conclusion

maitland  
CHAMBERS