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Worldwide Freezing Orders: Court tightens its control over wilfully evasive judgment debtors

Until the Court of Appeal's recent decision in *Michael Wilson & Partners Ltd v Emmott* [2019] EWCA Civ 219 a commonplace feature of worldwide freezing orders has been the exemption permitting the respondent whose assets are otherwise frozen to continue making payments in the ordinary course of business. This exception is known as the "Angel Bell" exception.

However, *Michael Wilson & Partners Ltd v Emmott,* which concerned the terms of a post-judgment worldwide freezing order, confirms that payments in the ordinary course of business will no longer be regarded as payments automatically exempt from the constraints of a worldwide freezing order and whether or not that restriction should be included will be at the court's discretion turning on the particular facts of each case.

All three 3 Court of Appeal judges in this case exercised their discretion in favour of removing the Angel Bell exemption from the freezing order. In doing so, Gross LJ cited eight reasons for his decision. These reasons were:

1. The decision to remove the exception was a discretionary decision and there had been no challenge to the jurisdiction of the lower court judge in arriving at the decision to not apply the exception. It therefore follows that the Court of Appeal will not interfere unless some error of law or principle in the judgment is established.

2. There was no challenge to the factual conclusions set out in the judgment, and those conclusions comprised "a devastating indictment of the [respondent's] conduct".

3. A risk of dissipation remained and that had also not been challenged.

4. This was not a case of "can't pay"; this was a clear case of "won't pay". The respondent was regarded as determined not to pay the judgment, regardless of its ability to do so.

5. Every effort had been made to resist enforcement and make it more difficult.

6. Removal of the exception is not a matter of last resort. Therefore, remedies available in other jurisdictions resulting in a similar outcome as the removal of the restriction do not have to have already been exhausted.

7. The injunction was limited to a maximum sum and there was no suggestion of insolvency. Therefore, whilst the Court would not take lightly the risk of the respondent's business closing down in the event that the exception remained removed, the remedy for that risk was in the respondent's own control who could, if it wished, pay the judgment sum into Court as security.

8. Whether or not the removal of the exception will prove to aid execution, the complaint in the grounds of appeal that its removal was *in terrorem* (that is, not sought for the legitimate purpose of aiding enforcement but to halt the respondent's business unless and until payment was made) was unsustainable.

This decision has practical implications for practitioners preparing an application for a freezing injunction over the assets of a respondent in business and will be welcome news for creditors seeking to "hold the ring" between the judgment and execution stages of enforcement proceedings.

If you have any questions relating to this article or its implications, please contact Sally Bowler on sally@broadhurstllc.com.

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