

# Injunctive Relief - Post Judgment or Pre-Judgment?

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In the recent case of **Africa Edge S.a.r.l –v- Incat Equipment Rental Limited and Others** [2008] JRC 175, the court considered an *ex parte* application to obtain a worldwide freezing injunction with accompanying worldwide disclosure requirements.

The case was interesting in that it reaffirmed the Jersey court’s approach to applications for injunctive relief pursued post judgment (in order to aid enforcement) or pre-judgment (in circumstances where a plaintiff is merely asserting a claim). It also considered the court’s jurisdiction to order worldwide disclosure in aid of execution even if the court is not minded to grant a worldwide freezing order.

In July 2008, the Plaintiff issued an Order of Justice essentially to enforce a Belgian Judgment (taken in 2002) against two Jersey Defendants. The First Defendant was a Jersey registered company and the Second a Jersey resident. The original Order of Justice also sought injunctions and disclosure orders limited to Jersey assets.

Despite a significant period of time having elapsed since the Belgian Judgment substantial sums remained owing to the Plaintiff.

## **SUBSTANTIAL SUMS OWING**

The Plaintiff, keen to protect its position, applied to the court for a worldwide injunction both in terms of a freezing order and a disclosure order. The application was made on an *ex parte* basis but on notice.

The court considered firstly whether it was right on the particular facts in issue to grant a worldwide freezing injunction on an *ex parte* basis. It acknowledged that a worldwide injunction is a “*drastic remedy*” and that the court must clearly be satisfied that it is “*essential*”.

As in the UK, freezing injunctions made in Jersey do not generally extend to assets outside the jurisdiction and one having extraterritorial effect will be granted only in exceptional circumstances.

## SUFFICIENT URGENCY

As the Belgian Judgment had been taken in 2002, the Deputy Bailiff was not convinced that there was sufficient urgency to lead him to grant the injunctive relief sought on an *ex parte* basis. This he said should be dealt with *inter partes* and after both sides had been given an opportunity to set out their respective positions. The Deputy Bailiff did however conclude that it was proper, on an *ex parte* basis, to widen the current injunction in place “in order to protect the position in Jersey”.

## PROTECT THE POSITION IN JERSEY

The Deputy Bailiff considered both Jersey and English case law on point and concluded that, when considering an application for worldwide disclosure, the approach the court should take is “rather different post-judgment to pre-judgment”.

On the facts of this particular case, the Deputy Bailiff considered that although no judgment in Jersey had been given as yet, the case was akin to a post-judgment case in that it was founded on a Belgian Judgment which should be capable of enforcement in Jersey without a re-examination of the merits.

Accordingly, the Deputy Bailiff held that the principles described by Coleman J in **Gidrxsime Shipping Co Limited –v- Tantomar-Transportes Maritimos Lda** (1994) 4 All ER 507 (which was approved and applied in this jurisdiction in the case of **Goldtron Limited –v- Most Investment Limited** (2002/148)) should be applied to the facts in issue. The Deputy Bailiff quoted the words of Coleman J in consideration of the position:-

*“Where, by contrast, one has a position that a judgment has already been obtained or an award made and where a Mareva injunction in aid of execution is justified, the jurisdiction to make a disclosure order arises both as a power ancillary to and in support of the injunction and, independently of the injunction, as a power in support of execution of the judgment or award. It follows that whereas it may on the facts of the case in question be inappropriate to extend the Mareva injunction to assets outside the jurisdiction - and it is clear from the two*

*authorities cited that such extensions are likely to be rarely justified – very different considerations may apply to disclosure orders in aid of execution. That being so, there is in my judgment, a very firm jurisdictional basis for an order, made post-judgment or post award which includes both a Mareva injunction confined to assets within the jurisdiction and a disclosure in respect of worldwide assets ..... it is just and convenient that the judgment or award creditor should normally have all the information he needs to execute the judgment or award anywhere in the world.”*

Applying this post judgment position to the case before the court, the Deputy Bailiff held that given that the Belgian Judgment had been outstanding for a significant period of time and that the Defendants had initially given inadequate disclosure, it was quite proper in the circumstances of this particular case to require the Defendants to give disclosure of their worldwide assets. This was even though a decision had not yet been made on whether a worldwide freezing order should be granted.

## WORLDWIDE FREEZING ORDER

The court stated however that the pre trial position was quite different and although not considered in detail in this judgment, the Deputy Bailiff considered the matter in the **Goldtron** case to which the **Gidrxsime** principles were approved and applied. In **Goldtron** the Deputy Bailiff stated that in a pre-trial case, a plaintiff merely asserts a claim and the court, at that stage, is not in a position to determine whether the claim being pursued is well founded. The Deputy Bailiff stated in **Goldtron** that the threshold for obtaining a Mareva injunction will be much higher than in a case where the court has already held that the amount in question is due and it is then simply a matter of enforcement.

The rationale behind this decision is clear. It aims to achieve a balance. The court in this case has sought to protect the Plaintiff’s enforcement of a foreign judgment by:

- (i) freezing assets within our own jurisdiction to prevent dissipation; and

(ii) ordering a worldwide disclosure of assets to ensure that the Plaintiff is given sufficient information to, in due course, ensure that the judgment ultimately given is not rendered nugatory and that the Plaintiff, in the words of Coleman J has “*...all the information he needs to execute the judgment or award anywhere in the world.*”

(This judgment has recently been upheld in the Court of Appeal [2008] JCA 205).

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