

Article

Convoy Collateral Ltd v Broad Idea

A judgment handed down by the Privy Council in the case of *Convoy Collateral Ltd v Broad Idea*¹ earlier this week concerning the jurisdiction of the Courts of the British Virgin Islands' ("BVI") to grant freezing orders in support of foreign proceedings has significant implications for the civil fraud practitioner and claimant parties seeking to preserve assets in the BVI or elsewhere against non-cause of action (commonly known as "Chabra") defendants.

The judgment followed an appeal of the decision of the Court of Appeal of the Eastern Caribbean Supreme Court which had overturned the judgment in *Black Swan Investment ISA v Harvest View Ltd*² and concluded that the BVI court had no power to grant a freezing order unless there were also domestic proceedings claiming substantive relief.

Although the Privy Council dismissed the appeal based on the facts it considered the extent to which the BVI court has jurisdiction and/or power to grant a freezing order against a non-cause of action defendant where no substantive proceedings are pursued, in the BVI or elsewhere.

In a split decision (4:3), an enlarged seven-member Board of the Privy Council overturned or distinguished a number of previous Privy Council, House of Lords and English Court of Appeal decisions to hold that the granting of an injunction is not contingent on a pre-existing cause of action before a local court. As Lord Leggatt observed at [82]:

There is no principle or practice which prevents an injunction from being granted in appropriate circumstances against an entirely innocent party even when no substantive proceedings against anyone are taking place elsewhere.

Following a review of the applicable case law, at [101] Lord Leggatt summarised that a court with the power to grant injunctions can do so against a party that owns or controls assets available for enforcement over whom the court has personal jurisdiction provided that:

- i) *the applicant has already been granted or has a good arguable case for being granted a judgment or order for the payment of a sum of money that is or will be enforceable through the process of the court;*
- ii) *the respondent holds assets...against which such a judgment could be enforced; and*

¹ [2021] UKPC 24.

² (BVIHCV 2009/399) (unreported) 23 March 2010.

- iii) *there is a real risk that, unless the injunction is granted, the respondent will deal with such assets...other than in the ordinary course of business with the result that the availability or value of the assets is impaired and the judgment is left unsatisfied.*

He further explained that there is no requirement that the judgment should be a judgment of the domestic court.

The decision confirms the BVI court has jurisdiction to grant a freezing order against a party over which it has personal jurisdiction and where no cause of action or other substantive proceedings are pursued against that party in the BVI or abroad.

It will be welcomed by claimant parties seeking to preserve the assets of a party based in the BVI and other jurisdictions bound by the Privy Council decision in support of proceedings commenced and judgment obtained elsewhere, such as the English High Court.

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