

# Continuing freestanding freezers – further jurisprudence on section 11A of the Grand Court Law

UPDATE

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In *Harvey River Estate Pty Ltd and others v Foster and others*, Mangatal J was asked to continue a freestanding freezing injunction relating to assets located in the Cayman Islands in the context of section 11A of the Grand Court Law (2015 Revision), which codified the jurisdiction of the Cayman court to grant interim relief in aid of foreign proceedings.

On the facts, Mangatal J found that the elements necessary to satisfy the section 11A test had clearly been met. Proceedings had been commenced in Australia which, if successful, would result in a judgment enforceable in the Cayman Islands, and it was just in all the circumstances for the terms of the order to remain in place. She also found that the American Cyanamid requirements were met, and that the Respondents failed to make out any ground that would justify depriving the Applicants of the continuation of equitable relief.

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Mangatal J also heard an application by the Respondents to vary the order so that funds could be released to pay their legal fees.

The Applicants were a group of investors who invested in an entity known as the Sports Trading Club in Australia (the **STC**). They claimed they were victims of a fraud perpetrated by the Respondents, including the STC and Peter Foster, a convicted fraudster. Freezing orders are currently in place in relation to STC assets in the Cayman Islands, Hong Kong and Vanuatu. The substantive claim for breach of contract, restitution and other relief is ongoing in the Supreme Court of New South Wales.

In considering whether to continue the injunction, Mangatal J noted she must first decide whether the Applicants had met the criteria set out in section 11A. If so, she could then go on to consider the well-known principles for deciding whether to grant injunctions in *American Cyanamid v Ethicon Ltd*.<sup>1</sup>

In relation to section 11A, she adopted the principles set out by Smellie CJ in *Classroom Investments Inc v China Hospitals Inc et al*<sup>2</sup> and *Johnson and Johnson v Medford et al*<sup>3</sup> namely:

- when assets are located outside the jurisdiction of the court hearing the substantive proceedings, the court of the jurisdiction where they are located should grant or continue injunctive relief where appropriate;
- the question is whether it is just and convenient to grant the orders sought; it is sufficient if it is in the interests of justice to do so; and

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<sup>1</sup> [1975] AC 396.

<sup>2</sup> Please refer to our legal update [‘Injunctive and disclosure orders in aid of foreign proceedings: Classroom Investments Inc.’](#) for more information on the Classroom decision.

<sup>3</sup> Unreported, 29 June 2015.

- the court, whilst remaining cautious in exercising its discretion to grant a freestanding freezing injunction, should do so where there is a good arguable case and there is a real risk of dissipation of assets which could frustrate the substantive claim.

In particular, the court must consider whether it would grant injunctive relief if asked to rule on the substantive proceedings, and must decide whether the fact that such proceedings are based overseas renders the grant of relief inexpedient, unjust or inconvenient.

On the facts of the present case, Mangatal J found that the elements necessary to satisfy the section 11A test had clearly been met. Proceedings had been commenced in Australia which, if successful, would result in a judgment enforceable in the Cayman Islands, and it was just in all the circumstances for the terms of the order to remain in place. She also found that the American Cyanamid requirements were met, and that the Respondents failed to make out any ground that would justify depriving the Applicants of the continuation of equitable relief.

Ultimately, Mangatal J took the view that the course of action least likely to cause irreparable injustice to one party or the other was continuing the status quo. The fact that the order had been granted in the first place and there had been no material change in circumstances weighed in favour of continuing the freezing order. Her decision solidifies the approach the Cayman courts will take when determining applications pursuant to section 11A.

## Contacts

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