

Dispute Resolution  
Case Law Update  
Rosling King LLP



The Queen's Bench Division of the High Court recently held that a freezing injunction (preventing the disposal of assets) is not proprietary relief and there was no basis for a freezing injunction over a second respondent not party to the proceedings.

### Background

In May 2015, the Court awarded to the Applicant the sums of £1,686,874.92 and £578,701 against the first Respondent, Mr Terry. There was no order made against the second Respondent, Ms Drewett (Mr Terry's wife), however a freezing injunction was obtained against both Respondents. The High Court hearing was to decide whether the freezing injunction against both Respondents would remain in place.

### Case Summary

The Judge, in making his decision, decided on a number of points:-

1. Whether the Applicant, at the original without notice hearing held in December 2015, should have disclosed that Mr Taylor (of the Applicant) was under investigation for fraud in France and that the fraud matter was proceeding to trial? The Judge (May J) accepted the Applicants' point that given this was another jurisdiction, it was not relevant. The Judge further commented that when analysing the practical risk of assets being dissipated, the credibility of the party in question was not a relevant consideration.
2. Whether there was real risk that Mr Terry would dissipate his assets in the absence of an order and whether, as a consequence, it was just and convenient to continue the freezing injunction against Mr Terry? The Judge ruled that there was a risk, citing Mr Terry's residency in Geneva, his recent asset transfer to his wife and the fact that despite his high salary, the debt in question had remained substantially unpaid. As such it was considered just and convenient to continue the freezing injunction against Mr Terry.
3. Whether the freezing injunction against Ms Drewett was proper given that she was not party to the original proceedings. Furthermore, is there a risk of dissipation, in light of which the injunction should be continued? The Judge ruled that the order against Ms Drewett be discharged and stated that there was no apparent risk of her dissipating the assets she held which are subject to the proceedings.

The Judge further commented that the Applicants' mistakenly 'targeted particular assets in a proprietary way' and that the purpose of a freezing order is not to obtain security over an asset. Its purpose is to prevent the dissipation of the assets, which in Ms Drewett's case the Judge decided there was no apparent risk of. May J also stated that it was not appropriate to freeze the entirety of Ms Drewett's assets, particularly as some of these were acquired prior to her marriage to Mr Terry.

### Commentary

This case is a reminder of the essential purpose of a freezing injunction and a caution that it



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does not grant security in the way that a legal charge does over real estate. Parties applying for a freezing injunction must be sure to clearly demonstrate how the assets in question are linked to the proceedings, and that there is a demonstrable risk of those assets being dissipated. Furthermore, parties must show that if the individual over whose assets they are claiming the freezing injunction are not party to the proceedings, they are nevertheless linked to the proceedings and that it would be just to make a freezing order against them.

For further information, please contact [Georgina Squire](#) or the Partner with whom you usually deal.