

Human trafficking survivors settle claims after successful freezing injunction application

ATLEU has recently settled High Court claims on behalf of two survivors of trafficking following a successful application for a freezing injunction over the defendant and third-party companies' assets. The case demonstrates how freezing injunctions can be used to secure compensation for victims where defendants are likely to or have dissipated their assets to avoid liability.

Background

The claimants, Mr Magyar and Mr Toth, both Hungarian nationals, were victims of a large scale conspiracy to traffic human beings from Hungary to the UK for the purposes of forced labour in 2011 - 2013. The majority of victims of that conspiracy were forced to work in a mattress factory called Kozeesleep – see *AK v Hick Lane Bedding* [2020] EWHC 3288 (QB). However, both claimants were put to work in smaller businesses including metalpowdercoating.co.uk (MPC), a business in Batley, West Yorkshire.

They were forced by their traffickers to work at the factory for little pay, housed in appalling conditions, harassed and threatened. They alleged that staff and management at the factory were aware of their situation and paid their traffickers directly in order to profit from cheap labour. In 2014 the Hungarian traffickers were convicted of human trafficking offences, and in 2016 the managing director of the mattress company was also convicted of conspiracy to traffic human beings.

The claimants brought High Court claims for psychiatric injury, breach of contract, and intentional torts including harassment and unlawful means conspiracy against the Defendant, metalpowdercoating.co.uk. When proceedings were issued in 2018, MPC was a solvent company with substantial assets. However, it later became clear from Companies House documents that the company's assets were diminishing. By 2020, MPC was balance sheet insolvent. Following investigations and pro bono assistance from Simmons & Simmons LLP, ATLEU was able to demonstrate that, following issue of the claims, the directors of MPC had set up other companies which operated from the same premises as MPC which carried out the same work. MPC had sold property to these companies, several of which now had substantial assets, while MPC had none. The other companies, however, were not parties to the claim.

At the same time it became apparent that the sole Managing Director of MPC, Mohamedali Foolat, had been prosecuted by the CPS for human trafficking offences

in relation the claimants in 2015, but the matter had been dropped on a legal technicality. Further, just 12 days after service of proceedings on MPC in 2018, he had transferred ownership of his private home to family members.

With a trial in the first claim only six weeks away, the claimants applied ex parte for a freezing injunction and to add Foolat as a defendant. To obtain a freezing order the applicants had to establish:

1. A good arguable case
2. The existence of assets belonging to the Respondent
3. A real risk that the respondent will dissipate his assets if the order is not given
4. That the order is just and convenient.

The freezing injunction

At an urgent without notice hearing on 5 March 2021, Mr Justice Johnson granted a freezing order up to a value of £500,000 against MPC, Foolat personally, and all other companies managed by Foolat (seven respondents in total). There were several features of the application which will be of particular note to practitioners:

- It was made close to trial
- The application was brought by legally aided claimants
- The court accepted that it was appropriate to make the order against the non-defendant companies. Although the claimants' causes of action were against MPC, only the injunction was granted ancillary to and in support of that claim. A freezing injunction may be made against a third party where the relevant assets may be reached by one legal route or another for the purposes of satisfying judgment. In *Cardile v LED Builders Pty Ltd* (1999) 198 CLR 380 the High Court of Australia held that in order for a freezing injunction against a non-party, against whom there is no cause of action to be granted, it was not necessary to show that the non-party held assets to which the defendant was entitled. The High Court held [405-406] that such an order may be appropriate where:

- (i) the third party holds, is using, or has exercised or is exercising a power of disposition over, or is otherwise in possession of, assets, including 'claims and expectancies', of the judgment debtor or potential judgment debtor; or
- (ii) some process, ultimately enforceable by the courts, is or may be available to the judgment creditor as a consequence of a judgment against the actual or potential judgment debtor, pursuant to which, whether by appointment of a liquidator, trustee in bankruptcy, receiver

or otherwise, the third party may be obliged to disgorge property or otherwise contribute to the funds or property of the judgment debtor to help satisfy the judgment against the judgment debtor. The claimants argued that Foolat and the other companies were likely to be judgment debtors in due course. Where assets have been moved out of a company for the purposes of avoiding having to pay creditors, those assets can be pursued for the purposes of satisfying the judgment. Further, section 423 of the Insolvency Act allows the court to set aside a transaction entered into at an undervalue (for instance, selling a property to your own company at a price below market value) in order to defraud a person making a claim against him or her.

Indeed, if the third-party companies or their directors had been found to have conducted themselves in this way, they could have committed the criminal offence of Fraudulent Trading under s993 Companies Act 2006. That offence is made out where any business or company is carried on with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose.

- Unusually, the Court did not require the applicants to give an undertaking in damages. The applicants successfully argued that the court has a discretion not to require the standard undertaking and as impecunious trafficking victims, they should not be prevented from the benefit of a freezing injunction by reason of their inability to pay damages. See *Gould v Kay* [2020] 7 W.L.U.K. 22 and *Allen v Jambo* [1980] 1 W.L.R. 1252, where Lord Denning MR stated: “I do not see why a poor plaintiff should be denied a Mareva injunction just because he is poor, whereas a rich plaintiff would get it.”

After the freezing injunction was granted, but prior to the hearing of the claimants’ application to add Foolat as a defendant, the claimants were able to negotiate a favourable settlement with the defendant. That included up-front cash payments of money which the defendant had previously maintained it did not have **and** did not have access to. It also included security for the claimants’ costs in the form of charging orders on properties owned by the third party companies.

Wider implications

The Explanatory Report to the Council of European Convention on Action against Trafficking Human Beings states in relation to Article 15, the right to compensation and legal redress, that:

Even though it is the trafficker who is liable to compensate the victim, by order of a civil court or –in some countries –a criminal court, or under a judicial or extrajudicial transaction between the victim and the trafficker, in practice there is rarely full compensation whether because the trafficker has not been found, has disappeared or has declared himself bankrupt. [§197]

These cases demonstrate the potential for using freezing injunctions and applying the powers of the High Court to secure compensation for survivors where defendants and traffickers have dissipated assets in order to avoid paying compensation. They are a powerful tool in the armoury of lawyers seeking redress and vindication for victims.