Civil litigation

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The modern concept of standalone injunctions

It is well established that the courts have jurisdiction to grant injunctions under section 37 of the Supreme Court Act 1981 (SCA). For many years, Lord Diplock's judgment in *Siskina (Owners of cargo lately laden on board) v Distos Cia Naviera SA* [1979] AC 210, where he said 'a right to obtain an interlocutory injunction is not a cause of action. It cannot stand on its own' (page 256), was considered to be one of the foundations of the jurisdiction to grant injunctive relief. Since *Broad Idea International Ltd v Convoy Collateral Ltd* [2021] UKPC 24, the law and practice of the granting of injunctions has evolved to recognise that injunctions need not be ancillary to a cause of action.

The Privy Council in *Broad Idea* decided by a majority that 'where the court has personal jurisdiction over a party, the court has power – and there is no principle or practice which prevents the exercise of the power – to grant a freezing injunction (or other interim injunction) against that party to assist enforcement through the court's process of a prospective (or existing) foreign judgment' (see paragraph 121). 'What in principle matters,' Lord Leggatt said in paragraph 92, 'is that the applicant has a good arguable case for being granted substantive relief in the form of a judgment that will be enforceable by the court from which a freezing injunction is sought.'

Referring to Diplock's endorsement in *Siskina* at paragraph 256 of the principle that 'the High Court has no power to grant an interlocutory injunction except in protection or assertion of some legal or equitable right which it has jurisdiction to enforce by final judgment', Lord Leggatt said in paragraph 52: 'There can be no objection to this proposition in so far as it signifies the need to identify an interest of the claimant which merits protection and a legal or equitable principle which justifies exercising the power to grant an injunction to protect that interest by ordering the defendant to do or refrain from doing something.'

Considering that the essential purpose of a freezing injunction is to facilitate the enforcement of a judgment or other order to pay money, it is then clear that there is no reason in principle to link the granting of an injunction to the existence of a cause of action.

Injunctive relief is one of the key tools in combating fraud and ensuring there are assets remaining at the end of the case to enforce against. Although not binding on the English courts, *Broad Idea* has been cited and applied in standalone injunction applications sought without proceedings for substantive relief. These include the following cases.

Re G (*Court of Protection: Injunction*) [2022] EWCA Civ 1312

The Court of Appeal considered that it should follow the majority decision in *Broad Idea* unless persuaded otherwise. It regarded 'Lord Leggatt's analysis as compelling and unanswerable'. *Broad Idea* therefore represented the law of England and Wales as to the circumstances in which the court may grant an injunction and was therefore to be followed.

The Court of Appeal held *Broad Idea* to have established that the grant of an injunction under section 37(1) of the SCA depends on two requirements being met, namely: '(i) an interest of the claimant which merits protection and (ii) a legal or equitable principle which justifies exercising the power to order the defendant to do or not do something', and there is a 'general principle that a court may grant ancillary orders, including injunctive orders, to ensure that its orders are effective' – see paragraphs 55-61, 69 and 71.

Bacci v Green [2022] EWCA Civ 1393

A judgment creditor was seeking to satisfy a judgment from pension rights to which the bankrupt debtor was entitled. The judgment arose out his deceit and dishonesty and so in the circumstances, the debt had persisted beyond the debtor's discharge from bankruptcy. The court granted an injunction to creditors seeking to enforce a judgment debt over a discharged bankrupt's pension commencement lump sum and lifetime allowance excess lump sum which would have involved the power to revoke 'enhanced protection' to the pension rights. This was held to be a legitimate right which merited protection. The court considered that it was possible and said that 'it [was] plain from *Broad Idea* that the power to grant injunctions… can be developed incrementally' (paragraph 25).

Kaye v Lees [2023] EWHC 758 (KB)

The court did not consider the judgment creditor to have a sufficient legitimate right which merited protection from restraining the judgment debtor from making an application in accordance with their statutory rights to a debt advisor for a mental health moratorium.

Applying the test set out above from *Re G*, the court found that the creditor did

not have a legitimate right to proceed with enforcement of a judgment without having to face the risk that the debtor would seek and may be granted a moratorium under the Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020. Such an order would seek to constrain the rights of the debtor as given to him or her by parliament under the regulations in a way that is not permitted by the regulations. As such, there was no interest which merits protection.

***Hunt v Ubhi* [2023] EWCA Civ 417**

The provisional liquidator of an allegedly insolvent partnership had obtained a freezing order against one of the alleged partners to prevent him from dissipating assets so as to frustrate a future call on those assets by the liquidator of the partnership. Neither the provisional liquidator nor the alleged partnership had any cause of action against the alleged partner which would support a freezing injunction. It was argued by the provisional liquidator that this did not matter in light of *Broad Idea* and *Re G*, but Snowden LJ said that the issues in the case raise important questions relating to freezing injunctions and insolvency law and practice which needed more detailed consideration. The injunction in this case had been set aside on other grounds so no further consideration was given.

The future

English courts have been granting standalone injunctions for quite some time including post-judgment freezing orders and Chabra injunctions. Since *Broad Idea* and *Re G*, it is still necessary to have a right which requires protection so the existence of a substantive cause of action will still be relevant in most instances. Clearly, the courts have been willing to move on from *Siskina* and focus more on the rights to be protected rather than the underlying causes of action. Certainly, this is a positive step from the perspective of enforcement and, as the cases have shown, in relation to the categories of rights which the courts are willing to protect.

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Decisions

Decisions filed recently with the Law Society (which may be subject to appeal)

Samantha Anne Lee and Henry Charles Adrian Syms

Application 12500-2023

Hearing 28 September 2023

Reasons 18 October 2023

The Solicitors Disciplinary Tribunal ordered that the first respondent, admitted in 1995, should be struck off the roll.

While in practice as a director of Lee Syms Ltd the first respondent had, upon receiving a statutory monthly payment (SMP) from the Legal Aid Agency on settled cases, failed to ensure that unpaid professional disbursements were paid, or the equivalent sum transferred to client account within 28 days and had instead allowed the monies to be used for the running of the firm, thereby breaching rules 6.1 and 19.2 of the SRA Accounts Rules 2011, rule 8.5(e) of the SRA Authorisation Rules 2011, and principles 2, 6, 8 and 10 of the SRA Principles 2011. She had acted recklessly.

She had failed to remedy breaches of the Accounts Rules as identified in qualified accountant's reports, thereby breaching rules 6.1, 7.1 and 7.2 of the Accounts Rules, rule 8.5(e) of the Authorisation Rules, and principles 8 and 10.

Upon receiving an SMP from the Legal Aid Agency on settled cases, she had failed to ensure that unpaid professional disbursements were paid and had instead allowed the monies received to be used for the running of the firm, thereby breaching principles 2 and 5 of the SRA Principles 2019. She had acted recklessly.

The parties had invited the SDT to deal with the allegations against the first respondent in accordance with a statement of agreed facts and proposed outcome.

The first respondent had caused significant harm to both the reputation of the profession and to the third-party suppliers. At the date of the firm's administration the third-party suppliers had been owed over £647,000.

The first respondent's conduct had been reckless in the extreme. It had continued over a five-year period and had led to shortages on the client account. The conduct was aggravated by her admitted recklessness.

In view of the serious nature of the misconduct, in that it involved the improper use of a significant amount of client money, the only appropriate and proportionate sanction was to strike the first respondent off the roll.

The first respondent was ordered to pay costs of £6,583.

The SDT ordered that the second respondent, admitted in 1996, should be struck off the roll.

While in practice as a director of Lee Syms Ltd the second respondent had, upon receiving a statutory monthly payment (SMP) from the Legal Aid Agency on settled cases, failed to ensure that unpaid professional disbursements were paid, or the equivalent sum transferred to client account within 28 days and had instead allowed the monies to be used for the running of the firm, thereby breaching rules 6.1 and 19.2 of the SRA Accounts Rules 2011, rule 8.5(e) of the SRA Authorisation Rules 2011, and principles 2, 6, 8 and 10 of the SRA Principles 2011. He had acted recklessly.

He had failed to remedy breaches of the Accounts Rules as identified in qualified accountant's reports, thereby breaching rules 6.1, 7.1 and 7.2 of the Accounts Rules, rule 8.5(e) of the Authorisation Rules, and principles 8 and 10.

Upon receiving an SMP from the Legal Aid Agency on settled cases, he had failed to ensure that unpaid professional disbursements were paid and had instead allowed the monies received to be used for the running of the firm, thereby breaching principles 2 and 5 of the SRA Principles 2019. He had acted recklessly.

The parties had invited the SDT to deal with the allegations against the second respondent in accordance with a statement of agreed facts and proposed outcome.

The second respondent had caused significant harm to both the reputation of the profession and to the third-party suppliers. At the date of the firm's administration the third-party suppliers had been owed over £647,000.

The second respondent's conduct had been reckless in the extreme. It had continued over a five-year period and had led to shortages on the client account. The conduct was aggravated by his admitted recklessness.

In view of the serious nature of the misconduct, in that it involved the improper use of a significant amount of client money, the only appropriate and proportionate sanction was to strike the second respondent off the roll.

The second respondent was ordered to pay costs of £6,583.