London International Disputes Week 2025

Injunctive Relief for Foreign Lawyers and Insolvency Practitioners: The Power of the English Courts in Cross-Border Disputes

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James Pickering KC, Counsel

James specialises in all areas of commercial litigation with a particular emphasis on commercial fraud, insolvency, and professional negligence.

Highlights include representing the liquidators in the well-known “Hyde Park Hotels” fraud, the administrator in the high profile A1 Grand Prix insolvency, the financiers behind a Hollywood movie, provisional liquidators in one of the first crypto-currency insolvencies, the creator of breakthrough gambling software in a multi-million pound commercial IT trial, several well-known football clubs, the shareholders in a leading celebrity chef-owned London restaurant, a lender in a professional liability claim arising out of Channel 4’s Brookside housing estate, and a Swiss banker trustee in a Liechtenstein trust fraud trial. As well as the above, James has appeared in numerous well known and reported cases and is highly regarded within the Chancery and Commercial Bar.

James is a regular speaker at events both domestic and overseas. Recent highlights include speaking in New Delhi, Istanbul, Gibraltar and the Isle of Man. James also has a particular interest in CIS and middle eastern work.

In February 2016 James was appointed as a Deputy Master of the High Court and in September 2018 he was appointed as a Deputy High Court Judge. In March 2019 he was elected as Head of Chambers and in March 2020 he was appointed silk.

Jeremy Boyle, Managing Partner

- Jeremy qualified as a Solicitor of the Senior Court in 1993 and is the founding partner of Summit Law LLP. He specialises in multi-jurisdictional asset tracing, dispute resolution, fraud and insolvency law and is the Head of Summit Law's Asset Tracing and Insolvency team.
- Jeremy is frequently invited to lecture for professional training organisations and clients within the insolvency field, and he regularly contributes to legal and insolvency related publications.
- Recent cases Jeremy has worked on include:
- Obtained judgement on behalf of a liquidator for £50 million against fraudulent directors of an international property company.
- Secured a judgement for several million pounds on a wrongful trading action against several directors;
- Acted for a Formula 1 World Champion involving a multi-jurisdictional liquidation;
- Successfully defended a claim by a multi-national car manufacturer brought against a World Rally Champion in relation to a claim involving an alleged breach of contract, and successfully resisted an application for an injunction.
- Jeremy has been interviewed by the media most recently by German and Austrian TV on the world-famous tennis player Boris Becker's bankruptcy, which was a delight for Jeremy who is an enthusiastic but often defeated amateur tennis player himself!
- Jeremy speaks fluent Spanish, which assists with his cross-border litigation and insolvency work.

Bridget Williamson, Counsel

Enterprise CHAMBERS

Bridget specialises in commercial Chancery litigation with an emphasis on all aspects of company disputes (including share and/or business sale agreements, shareholder disputes, unfair prejudice petitions, joint ventures, directors' duties) and insolvency (personal or corporate, contested administrations, officeholder claims) but also extending to professional negligence and property-related disputes. Although her primary focus is on commercial Chancery matters, Bridget regularly advises and represents clients in cases involving property and trust-related elements.

Bridget is former joint editor of the insolvency chapter of the Landlord and Tenant Factbook and gives seminars in her fields of practice. She has been a contributor to Practical Law's Restructuring and Insolvency "Questions for Counsel".

Alice Lithgow, Partner

Alice is a Partner and supervisor of the Commercial Litigation team. She has extensive experience of resolving commercial and insolvency related disputes and she has a particular interest in cases with an international element.

Areas of expertise include:- company litigation, cross-border insolvency, insurance and reinsurance, contract disputes and financial disputes including crypto-currency.

Case highlights include:-

- Advising US law firm on service and recognition of foreign judgment issues in relation to a number of Defendants facing preference claims by Litigation Administrator of a New York crypto business
- Acting for the Joint Provisional Liquidators of two life insurance companies in Provisional Liquidation in the Caribbean and advising on potential £multi million claims and asset recoveries in England and Wales.
- Acting for the Joint Provisional Liquidators of a captive insurance company in liquidation in Bermuda to obtain a Recognition Order in the London Courts. Advising on potential insurance and reinsurance claims, international sanctions issues and arrange subsequent s 236 interviews to obtain further information about potential claims.
- Representing a Defendant in a 16 week trial in the Commercial Court in a claim brought by 500 Claimants against the providers of investment schemes for (amongst other matters) dishonest assistance and breach of trust.

Injunctive Relief for Foreign Lawyers and Insolvency Practitioners: The Power of the English Courts in Cross-Border Disputes

1. **Jeremy Boyle** - An Introduction to Injunctions in English Law

2. **Bridget Williamson** - Norwich Pharmacal orders and Provisional Liquidators

3. **Alice Lithgow** - Injunctions in International Disputes

4. **James Pickering** - The Marex Injunction – a tale of (at least) two fraudsters

An Introduction to Injunctions in English Law

Jeremy Boyle

What is an Injunction?

- **Definition:** A court order requiring a party to do or refrain from doing a specific act.

- **Purpose:** To preserve rights, prevent harm, or maintain the status quo.

Types of Injunctions

- Interim (Interlocutory) Injunctions
- Final (Permanent) Injunctions
- Prohibitory vs. Mandatory Injunctions
- Freezing Injunctions (Mareva)
- Search Orders (Anton Piller)
- Anti-suit and Anti-enforcement Injunctions

Legal Basis

- Section 37 of the Senior Courts Act 1981
- Equitable remedy: Discretionary and based on fairness
- Recent evolution post-Broad Idea v Convoy Collateral [2021] UKPC 24

Key Principles for Granting Injunctions

- American Cyanamid Co v Ethicon Ltd [1975] AC 396
- Serious issue to be tried
- Balance of convenience
- Adequacy of damages
- Clean hands doctrine
- No delay or acquiescence

Freezing Injunctions

- Purpose: Prevent asset dissipation
- Mareva Compania Naviera SA v International Bulkcarriers SA [1975] 2 Lloyd's Rep 509 (CA)
- Requirements:
    - Good arguable case
    - Risk of dissipation
    - Assets within jurisdiction
- Not necessarily tied to a cause of action (post-Broad Idea)
- **Convoy Collateral Ltd v Broad Idea International Ltd & Cho Kwai Chee [2021] UKPC 24**
  (Judgment delivered by the **Privy Council**, primarily by **Lord Leggatt**.)

Anti-suit and Anti-enforcement Injunctions

- Anti-suit: Prevents proceedings in foreign courts
- Anti-enforcement: Prevents enforcement of foreign judgments
- Increasing relevance in cross-border disputes

Practical Considerations

- Urgency and without notice applications
- Full and frank disclosure
- Undertaking in damages
- Enforcement and contempt of court

Case Study

- War story.
- Key takeaways Practical Advice for Lawyers – Injunctions in English Law

1. Act Quickly
2. Present Strong, Clear Evidence
3. Offer an Undertaking in Damages
4. Assess the Balance of Convenience
5. Anticipate Key Defences
6. Consider Jurisdiction and Cross-Border Issues
7. Avoid Overreach
8. Prepare Thoroughly for the Return Date
9. Manage Client Expectations and Responsibilities
10. Remember Injunctions Are Discretionary

Common Pitfalls

- Inadequate evidence of urgency or dissipation
- Failure to disclose material facts
- Overly broad or vague orders

Summary

- Injunctions are powerful but discretionary tools
- Courts require strong justification and procedural compliance
- Evolving landscape—especially in international and standalone contexts

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Norwich Pharmacal orders

An exceptional form of pre-action disclosure

Bridget Williamson

What are they?

- Orders requiring a person innocently caught up in another's person wrongdoing to disclose the identity of, or other information relating to, the wrongdoer so that proceedings may be brought against the wrongdoer.

When may a Norwich Pharmacal order be granted?

The three conditions to be satisfied:

(1) The applicant must show that he has at least a good arguable case that a wrong has been carried out

(2) The order must be *necessary* to enable the applicant to bring proceedings against the wrongdoer

(3) The person against whom the order is sought must be (a) mixed up in the wrongdoing, and (b) able or likely to be able to provide the information

Ramilos Trading Limited v Buyanovsky [2016] EWHC 3175 (Comm)

What is a good arguable case?

Good arguable case means “*more than barely arguable yet not necessarily one that the judge considers to have a better than 50 percent prospect of success*”

Will an order always be granted?

The Court retains a residual discretion – such orders are exceptional and will be granted only where it is necessary and proportionate in all the circumstances to make the order

When will a *Norwich Pharmacal* order NOT be made?

- No “fishing expeditions”
- When the information is sought in relation to foreign civil proceedings – in those cases, the applicant should rely on the Evidence (Proceedings in Other Jurisdictions) Act 1975
- Where the party against whom it is sought is a “mere witness”
- Where the information sought can be obtained some other way, e.g., pursuant to Rules 31.16 or 31.17 of the Civil Procedure Rules 1998

Similar relief – *Bankers Trust Co v Shapira* orders

- Over-riding banker/customer confidentiality where there is clear evidence of wrongdoing

What about costs?

- The usual rule - applicant pays the respondent’s costs, including costs of complying with the order

Provisional Liquidators

When can a provisional liquidator be appointed?

At any time after the presentation of a winding-up petition: section

135(1), Insolvency Act 1986

BUT

Only in a clear case of insolvency or with the company’s consent

Why appoint a provisional liquidator?

- To prevent the loss of the company's assets in the period between presentation and hearing of the petition
- Upholding the *pari passu* principle

What about section 127, Insolvency Act 1986?

"(1) In a winding up by the court, any disposition of the company's property … made after the commencement of the winding up is, unless the court orders otherwise, void."

- Section 127 may not be enough to prevent dissipation of the company's assets or continued trading at a loss

Potential relevance to foreign companies

Where there is uncertainty whether the criteria for making a winding-up order under section 221, Insolvency Act 1986 against a foreign company, a provisional liquidator may be appointed to investigate:

- Whether there is a sufficient connection between the company and this jurisdiction
- Whether the company is engaged in wrongful or fraudulent trading
- Whether a winding up order made in this jurisdiction would be of sufficient benefit to creditors

  - ***Stocznia Gdanska S.A. v Latreefers Inc [2001] BCC 174***

What powers does the provisional liquidator have?

A provisional liquidator has all the statutory powers given to liquidators generally BUT both his functions and his powers may be limited by the order appointing him: section 135, Insolvency Act 1986:

"(4) The provisional liquidator shall carry out such functions as the court may confer on him.

(5) When a liquidator is provisionally appointed by the court, his powers may be limited by the order appointing him."

Who may apply for the appointment of a provisional liquidator?

IR7.33(1) of the Insolvency (England and Wales) Rules 2016 sets out the list of eligible persons, which includes the petitioning creditor or other creditors

Who may be appointed?

The Official Receiver or a licensed insolvency practitioner

Costs and liabilities of appointing a provisional liquidator

- A deposit payable to the official receiver to secure the OR's remuneration and expenses in an amount determined by the court: IR7.34, or
- An indemnity payable to the officeholder if an insolvency practitioner is appointed
- A cross undertaking in damages to make good the company's losses if it transpires that a provisional liquidator should not have been appointed

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Injunctions in International Disputes

Alice Lithgow

Injunctions in International Disputes

- Proceedings in the Courts of England & Wales
- Proceedings in other jurisdictions
- Anti-suit injunctions
- Restraining the enforcement of a foreign judgment abroad
- Injunctions and arbitration proceedings

Proceedings in the Courts of England & Wales

Section 37 of Senior Courts Act 1981 gives power to the Court:

S 37(1) - The High Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the Cout to be just and convenient to do so;

S 37(3) – The power of the High Court under subsection (1) to grant an interlocutory injunction restraining a party to any proceedings from removing from the jurisdiction of the High Court, or otherwise dealing with, assets located within that jurisdiction shall be exercisable in all cases where that party is, as well as cases where he is not, domiciled, resident or present within that jurisdiction.

Substantive proceedings in the Courts of England & Wales

Interim application and proceedings will be issued and then served out of the jurisdiction:-

- No permission required to serve out of the jurisdiction for Scotland and Northern Ireland;
- Permission to serve out of the jurisdiction may be necessary for other countries (including countries in the EU post-Brexit);
- Jurisdiction/enforcement questions should be considered at the outset.
- NB The Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial matters (Hague Judgments Convention) enters into force 1st July 2025

Injunctions in support of foreign proceedings

- Interim relief can be granted in foreign proceedings – s25 Civil Jurisdiction and Judgments Act 1982 (as extended by article 2 of the Civil Jurisdiction and Judgments Act 1982 (Interim Relief) Order 1997 and as amended by regulation 33, Civil Jurisdiction and Judgments (Amendment) (EU Exit) Regulations 2019 (SI 2019/479)
- Most forms of interim relief in England and Wales are available, for example a freezing order may be obtained to prevent the dissipation of assets in England and Wales if a foreign judgment or Arbitration Award has been obtained.

Injunctions in support of foreign proceedings

In Refco Inc v Eastern Trading Co [1999] 1 Lloyd's Rep 159), the Court considered two factors:-

- "*First if the facts would warrant the relief sought if the substantive proceedings were brought in England*.
- *"If the answer to that question is in the affirmative then the second question arises, whether, in terms of s25(2), the fact that the Court has no jurisdiction apart from the section makes it inexpedient to grant the interim relief sought".*

- In practice, the Court will apply the American Cyanamid guidelines for the first limb
- In considering the second limb, it may be necessary to obtain evidence of foreign law and procedure – Fourie –v- Le Roux [2005] held that "the foreign claim must be such that the relief sought in England can be identified as interim relief in relation to the final order sought abroad in the proceedings relied upon"

Anti-suit Injunctions

An Anti-suit injunction is a discretionary remedy used to restrain a party from commencing or continuing with foreign proceedings.

Relief must be sought promptly and these are usually granted in two types of cases:-

- breach of an exclusive jurisdiction clause
- where foreign proceedings are “unconscionable”.

Airbus Industries GIE –v- Patel [1999] 1AC 119 – there must be a sufficient connection with the jurisdiction in England and Wales to justify interference with a foreign Court.

Anti-anti-suit injunctions also available (although rare) – to prevent an anti-enforcement injunction obtained overseas

Anti-suit injunctions – breach of exclusive jurisdiction clause

Principles set out in Catlin Syndicate –v- Amec Foster Wheeler [202] EWHC 2530 (Comm):-

- Touchstone is what the ends of justice require
- Caution must be exercised as any order will affect a foreign country
- The Court will usually grant relief in the absence of strong reasons not to do so

Court may also (rarely) grant an anti-enforcement injunction to prevent the enforcement of any judgment or potential judgment overseas.

Anti-suit injunctions – breach of non-exclusive jurisdiction clauses

Non-exclusive jurisdiction clause enables a party to bring proceedings either in a jurisdiction of their choice or any Court where they may have the right to do so.

Sabah Shipyard (Pakistan) Ltd v Islamic Republic of Pakistan [2002] EWCA Civ 650 - the Courts will not interfere unless the foreign proceedings are vexatious or oppressive.

Courts will also consider:-

- Whether the English Court would be the natural forum; and
- If the anti-suit injunction would be in the interests of justice.

Restraining the enforcement of a foreign judgment abroad

- English Courts have power to grant an injunction preventing the enforcement of overseas judgments abroad.
- Such injunctions are rare.
- Ellerman Lines –v- Read [1928] 2KB 144 (CA) – an injunction granted restraining enforcement where an overseas judgment was obtained by breach of contract or fraud. The English Court took the view that the person seeking to enforce the judgment was in conscience debarred from attempting to do so (and did not therefore seek to assert jurisdiction over the foreign Court).

Injunctions and Arbitration proceedings

- Interim and final injunctive relief is available in arbitration proceedings further to s. 44 Arbitration Act 1996
- S. 44 Arbitration Act 1996 can be excluded or modified by the parties.
- An Arbitrator has the power to grant final relief
- The Court can grant interim relief although these are limited by conditions in the Arbitration Act 1996:-
  - Permission of the arbitral tribunal or the other party must be obtained in non-urgent cases
  - Urgent relief only available for preservation of evidence or assets
  - Court will effectively only step in if the arbitral tribunal is unable to do so.
- NB the Court also has the power to grant an anti-suit injunction where proceedings have been issued/are to be issued in breach of arbitration agreement.

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The *Marex* Injunction – a tale of (at least) two fraudsters

James Pickering KC

The Hyde Park hotels litigation – a tale of (at least) two fraudsters

- ***HPII v Ruhan & Stevens* [2023] EWCA 1120**
  - Equitable compensation against a dishonest assister – how equitable is it?
- ***HPII v Marlborough Developments Ltd* [2024] EWHC 3075**
  - The ***Marex*** injunction – what is it?

In a nutshell

- Fraudster A commits a fraud
- Fraudster B defrauds Fraudster A
- Fraudster A defrauds Fraudster B
- Fraudster A and Fraudster B teams up to defraud everyone else

Fraudster A – Dr Gerald Smith

The Hyde Park Hotels

Lancaster Gate

Kensington Park

Kensington Palace

Dr Smith's acquisition of the Hyde Park Hotels

- **Purchase Date:** April 2002
- **Acquiring Entity:** Hotel Portfolio II UK Ltd ("**HPII**")
- **Purchase Price:** £599 million
- **Loan from Morgan Stanley:** £500 million +
- **Deferred Consideration from Thistle:** £45 million

The Izodia Theft

- November 2002 – Dr Smith steals £34.8 million from Izodia
- December 2002 – SFO begin investigations
- Pressure from Morgan Stanley/Thistle for Dr Smith to sell

Fraudster B – Andy Ruhan

Mr Ruhan's acquisition of the Hyde Park Hotels

Purchase Date: May 2003

Acquiring Method: Acquisition of shares in HPII – appointed director

Purchase Price: £47 million

Plus (maybe): The secret oral agreement – for 40% of gains made from the development of the Hyde Park Hotels

The HPII restructuring

- Various applications for planning permission

BUT…

- Pressure from Morgan Stanley and Thistle
- Restructuring of HPII:
  - Morgan Stanley and Thistle each take 33.3% of HPII
  - Mr Ruhan left with only 33.3%

The sale of the Hyde Park Hotels to Cambulo

- **Purchase Date:** March 2005
- **Purchase Price:** £127 million (probably a fair market value)
- **Purchasing Entity:** Cambulo Madeira
- **Legal owner of Cambulo Madeira:** Anthony Stevens
- **Position of HPII:** Sufficient to repay most of secured debt – but no profit

Dr Smith goes to prison

- **April 2006:** Dr Smith convicted of 10 counts of theft and false accounting
- **September 2006:** Sentenced to 8 years' imprisonment
- **November 2006:** Confiscation order for £41 million

The development and on-sale of the Hyde Park Hotels

- Hotels now owned by Cambulo (Anthony Stevens)

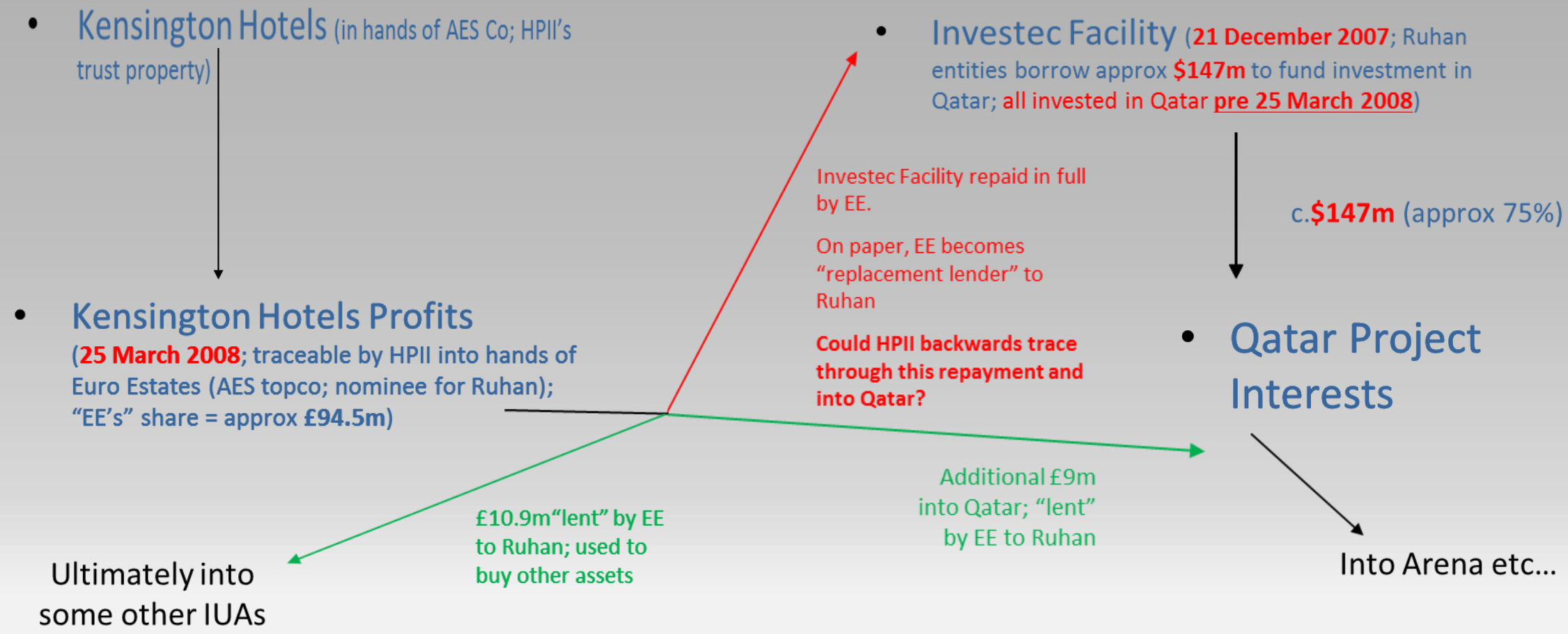
- **Lancaster Gate**
  - Cambulo develops
  - August 2006 - Cambulo sells to 3rd party for £67.5 million
  - Cambulo profit: £7.76 million

- **Kensington Park & Kensington Palace**
  - Cambulo enters into JV with the Candy brothers
  - JV develops
  - March 2008 - JV sells to third party for profit of £320 million
  - Cambulo profit: of £115.2 million

And what did Cambulo (Mr Stevens) do with all the money?

(You can ignore the next slide…)

What Cambulo (Mr Stevens) did with all the money



The Pearl, Qatar

Remember HPII?

- Back in 2005 HPII had sold to Cambulo at a price sufficient to repay most of secured debt – but no profit – April 2008 goes into CVL

- Deficiency to creditors: £50 million +

So:

- Poor old HPII/Mr Ruhan

- Well done, Cambulo Madeira/Mr Stevens

Dr Smith comes out of prison

- June 2010: Dr Smith comes out of prison (not happy with Mr Ruhan)
- Dr Smith brings High Court claim:
  - alleges Stevens merely a nominee – and that Ruhan true beneficial owner of Cambulo (and had made all the profits)
  - alleges secret oral agreement with Ruhan - and an entitlement to 40% share of hotel profits
  - alleges Ruhan invested hotel profits – a few hundred million £ - invested in Isle of Man trust – and asserts proprietary claim to those monies

Dr Smith comes out of prison

- June 2010: Dr Smith comes out of prison (not happy with Mr Ruhan)

- Dr Smith brings High Court claim:

    - Dr Smith alleges Stevens merely a nominee – and that Ruhan true beneficial owner of Cambulo (and had made all the profits)
    - Ruhan's Defence: No, I am not (and no I did not)

    - Dr Smith alleges secret oral agreement with Ruhan - and an entitlement to 40% of hotel profits
    - Ruhan's Defence: No, there was not

    - Dr Smith alleges Ruhan invested hotel profits – a few hundred million £ - invested in Isle of Man trust – and asserts proprietary claim to those monies
    - Ruhan's Defence: That money is **not** mine – belongs to my two solicitor friends, Simon Cooper and Simon McNally

The Isle of Man Settlement

- Not content with the High Court proceedings, Dr Smith resorts to other means
- Puts together a dossier on Cooper and McNally
- Through combination of blackmail and bribery, Dr Smith persuades Cooper and McNally to transfer all wealth in Isle of Man trust to entities controlled by him
- Some £350 million (despite the fact that Dr Smith's maximum claim was about £50 million)

Mr Ruhan finds out

- Baker Street office – Mr R discovers everything has gone

- Mr R's application to amend:

  - Dr Smith alleges Stevens merely a nominee – and that Ruhan true beneficial owner of Cambulo (and had made all the profits)
  - Ruhan's Defence: No, I am not (and no I did not) – That bit's still true

  - Dr Smith alleges secret oral agreement with Ruhan - and an entitlement to 40% share of hotel profits
  - Ruhan's Defence: No, there was not - That bit's still true

  - Dr Smith alleges Ruhan invested hotel profits – a few hundred million £ - invested in Isle of Man trust – and asserts proprietary claim to those monies
  - Ruhan's Defence: That money is **not** mine – belongs to my two solicitor friends, Simon Cooper and Simon McNally - That bit wasn't true – it was my money after all – and please can I have it back?

The Geneva Settlement

- Geneva Settlement – Dr Smith and Mr Ruhan reach deal (split the assets)
- High Court proceedings stayed
- Dr S and Mr R go their separate ways – no love lost…

Remember HPII (again)?

- Back to July 2012 – Dr Smith was out of prison and about to launch High Court claim
- Dr Smith's basic allegation was that Stevens was just a nominee – and that Cambulo was in fact owned and controlled by Ruhan
- If correct, prima facie Ruhan in breach of various fiduciary and statutory duties owed to HPII
- But HPII dissolved – former liquidators unaware of Dr Smith's proposed claim

July 2012 – *The Sunday Times* article

THE SUNDAY TIMES

Tycoon dragged into the spotlight

Andy Ruhan is the most successful property tycoon you have never heard o
Now a court case could expose his business interests

Oliver Shah Published 22 July 2012

Andy Ruhan, inset, has an appetite for risk, as a racer, and for the party life at Nikki Beach

conference call at his office in the old Marks & Spencer headquarters in Baker Street. He sent a

Remember HPII (again)?

- If correct, prima facie Ruhan in breach of various fiduciary and statutory duties owed to HPII
- HPII restored – liquidator reappointed
- Investigations into Ruhan
- April 2018 – HPII brings proceedings against Ruhan and Stevens

HPII v Ruhan & Stevens – The Trial

- Late 2021-early 2022 – 3 week trial – Foxton J
- Ruhan & Stevens denied nominee arrangement – maintained that Stevens was true owner of Cambulo - and that Ruhan not connected
- Numerous legal defences (including limitation)

The judgment - *HPII v Ruhan & Stevens* [2022] EWHC 383

- February 2022 – judgment – Foxton J
- Ruhan and Stevens found to have both lied
- Ruhan found to be true owner of Cambulo and in fraudulent breach of fiduciary duty
- Stevens found to be liable for dishonest assistance
- June 2022 – 2 day consequentials hearing - £185 million

Quantum – Mr Ruhan

- Fraudulent breach of fiduciary duty
- Remedy: account of profits (his gain) or equitable compensation (our loss)
- Mr Ruhan had made a profit of £185 million
- So quantum against Mr Ruhan: £185 million

Quantum – Mr Stevens

- Dishonest assistance
- Remedy: account of profits (his gain) or equitable compensation (our loss)
- Account of profits? While R had made a profit of £185 million – S's profits had been just the bribes (about £5 million to £10 million)
- Equitable compensation BUT…

Quantum – Mr Stevens

- Equitable compensation - but what loss had HPII suffered?
- Application of “but for” test
- There was no suggestion that “but for” R’s breaches, HPII would have been able to develop and on-sell the hotels themselves
  - If R had not acted as he had, the hotels either would not have been developed, or would have been developed by a genuinely independent developer
  - And, in either event, HPII would have gained no profit

Quantum – Mr Stevens

- So HPII's case was that R's conduct could be properly analysed as **TWO** distinct breaches (both of which had been assisted by S):

  (1) R's acquisition of the hotels (through Cambulo) in breach of the no self-dealing rule

  - No loss suffered at this stage

  (2) Ruhan's failure to account to HPII for the profits made from the on-sale of the hotels (via Qatar etc)

  - Loss of the entire profit suffered at this stage

Quantum – Foxton J

- On reviewing the authorities, Foxton J held that:

- Mr Ruhan's conduct could be analysed as 2 distinct breaches

- It was not necessary to consider the full counter-factual as a whole - instead, it was possible to look at one breach in isolation

- There was a sufficient causal link:

    - "As the individual in whose name and under whose nominal control the profit was held, and who applied that profit for Mr Ruhan's purposes on Mr Ruhan's instructions, I am satisfied that Mr Stevens played a sufficient role in relation to the acquisition, retention and disposal of those profits to meet the causal requirements of the equitable wrong of dishonest assistance at that stage…"

- But…

The Court of Appeal - *HPII v Ruhan & Stevens* [2023] EWCA 1120

- Permission to appeal granted
- Court of Appeal – Newey, Males, Birss LJJ
- Held - artificial to consider in 2 stages
- ***HPII v Ruhan & Stevens* [2023] EWCA 1120**
- But…

The Supreme Court

- Permission to appeal granted by UK Supreme Court
- Hearing: February 2025
- Lord Reed, Lord Briggs, Lord Burrows, Lord David Richards, Lord Hamblen
- Judgment reserved…

Not the end of the story…

The MDL Judgment Debt

- February 2022 – judgment for HPII against Mr Ruhan - for £185 million
- June 2022 – judgment for a company called Marlborough Developments Ltd against Mr Ruhan – for £900 million
- January 2023 – HPII discover MDL judgment
- MDL? Who are they?
- Investigations…

The MDL Judgment Debt

- Full LBA
- Fully drafted Particulars of Claim
- Fully drafted suite of compromise documents
- Transfers by Mr Ruhan to MDL of assets
- But…

The MDL Judgment Debt

- Evidence suggested MDL was a company linked to Dr Smith
- On close analysis, Particulars of Claim did not disclose proper case
- Evidence of parallel chain of correspondence between Mr Ruhan and Dr Smith
- Evidence suggested Mr Ruhan had paid £10,000 issue fee

The MDL Proceedings

- HPII issues:
- Application against MDL under IA 1986, section 423
- Application against Mr Ruhan to set aside MDL Judgment Debt (on basis of fraud and abuse of process)
- Application against Dr Smith for a Marex Injunction

“The unholiest of unholy alliances…”

- 3 day trial – Bryan J

- “The unholiest of unholy alliances…”

HPII v Marlborough Developments Ltd [2024] EWHC 3075

- HPII won!
- MDL judgment debt set aside
- Transfers all reversed under section 423
- “The unholiest of unholy alliances…”
- As for the Marex injunction…

HPII v Marlborough Developments Ltd [2024] EWHC 3075

“B.3 The Marex Tort

Introduction

73. HPII claims that Dr Smith, and (through their control by Dr Smith and Mr Ruhan and participation in the scheme) MDL and Ozturk, have each committed the " *Marex* tort" (addressed by me in *Lakatamia Shipping Co Ltd v Su [2021] EWHC 1907 (Comm) ("Lakatamia")* , following recognition by Robin Knowles J in interlocutory proceedings in *Marex Financial Ltd v Sevilleja [2017] 4 WLR 105 ("Marex")*).

74. The *Marex* tort has been recognised, and applied, in subsequent cases, including *Lakatamia v Tseng Yu[2023] EWHC 3024 (Comm) (Foxton J)* (where the claim succeeded on the facts) and *Lakatamia v Su,Chang and Zabaldano [2024] EWHC 1749 (Comm)* (Simon Colton KC sitting as a Deputy Judge of the High Court) (where the claim failed on the facts). The *Marex* tort is also identified in leading works including *Clerk & Lindsell* on Torts 24th Ed. at 23-09 and *Civil Fraud* 1st Ed. at 3-022 (Supplement)...”

HPII v Marlborough Developments Ltd [2024] EWHC 3075

“Marex Tort Liability

75. In *Lakatamia I* addressed the origins and elements of the *Marex* tort at [116] to [131]. At [120] I stated that:- "120. The Marex tort finds a close, and I consider compelling, analogy with the tort of inducing a breach of contract. There would seem to be no compelling reason why, in circumstances where the law protects against intentional interference by third parties with contractual rights it should not equally protect against intentional interference with rights established by judgments.”

76. I identified the essential elements of the *Marex* tort at [126] as:-

"(1) The entry of a judgment in the claimant's favour,

(2) Breach of the rights existing under that judgment,

(3) The procurement or inducement of that breach by the defendant,

(4) Knowledge of the judgment on the part of the defendant, and

(5) Realisation on the part of the defendant that the conduct being induced or procured would breach the rights owed under the judgment.”…”

HPII – Key Takeaways

- **The *Marex* Tort**

- If you have a judgment and a third party is interfering, consider applying for injunctive relief (both interim and final)

- **Dishonest assistance**

- As to quantum, watch this space…

A tale of (at least) two fraudsters…

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