

A worldwide freezing injunction sails towards the Cayman Courts - what to expect and what it means

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In an action brought in Florida in January 2017, Eike Batista, once the seventh richest man in the world, is alleged to have overstated the value of a formerly publically traded oil company owned and operated by him and dissipated the proceeds of that fraud through companies registered in offshore jurisdictions including the Cayman Islands.

In support of the Florida action, the Cayman Islands Court imposed a freestanding worldwide freezing injunction and disclosure order on Mr. Batista (and various Cayman Islands companies) before the Florida action was commenced and has recently refused an application by Mr. Batista to extend the timetable to comply with the disclosure order pending Mr. Batista's challenge to the freezing injunction.

There are two interesting aspects to the injunctions granted by the Cayman Islands Court.

Firstly, the Court imposed a freestanding injunction. This is an injunction granted in support of foreign proceedings (either already commenced or about to be commenced) despite no action being brought in the Cayman Islands. The jurisdiction to make a freestanding injunction was given to the Cayman Islands Court in late 2014 and is mostly frequently used where there are insufficient assets in the jurisdiction in which the claim is brought (in this case the US) but the defendant has (or is suspected to have) assets in the Cayman Islands or where injunctive relief is not available in the jurisdiction.

Secondly, the Court granted a worldwide freezing injunction which, as opposed to only freezing assets in the jurisdiction, operates against assets held worldwide.

The Cayman Islands Court will always be required to balance the oppression suffered by the Defendant in granting worldwide injunctive relief with the desire to freeze assets that can be used to satisfy a claim for fraud. In Mr. Batista's case the Court held that the applicants had a good arguable case for fraud and that there was a real risk that assets would be dissipated if the injunction were not granted; not least because the Florida Court could not order a worldwide

freezing order as a pre-judgment remedy and a Brazilian freezing order already in existence only operated against assets in Brazil. In the words of Mrs Justice Mangatal, "no other civil court is in a better position to freeze and police the freezing of the assets of Batista pending the determination of the Florida Claim."

The Court also ordered the Defendants and other Cayman Islands service providers and banks (that were innocently mixed up in the fraud) to disclose the existence of Mr. Batista's assets. It was acknowledged that disclosure orders are arguably the most valuable part of injunctive relief because they allow the applicants to police the freezing injunction. A recent attempt by Mr. Batista to extend the time for complying with the disclosure order to a date after he had challenged the worldwide freezing injunction was refused given that, although Mr. Batista would be prejudiced by providing disclosure to the applicants, especially if he ultimately succeeded in overturning the injunctions, the applicants prejudice would arguably be greater if, having already established a good arguable case for fraud, important information was kept from them.

The worldwide freezing injunction was granted on an ex parte basis, that is, Mr. Batista was not present at the hearing to argue against the granting of the injunction. It is likely that Mr. Batista will challenge the worldwide freezing injunction in the not too distant future and it will undoubtedly be interesting to hear the arguments raised at that hearing.

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