

Tracing and freezing large-scale stolen bank funds when the perpetrators are unknown (CMOC v Persons Unknown)

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Dispute Resolution analysis: Following a sophisticated cyber-attack, an illegitimate multi-million-pound transfer was made to accounts at 35 international bank accounts. Jon Felce, partner at PCB Litigation, comments on the ensuing applications for disclosure orders and worldwide freezing injunctions where the defendants were unknown.

CMOC v Persons Unknown [\[2017\] EWHC 3599 \(Comm\)](#), [\[2017\] All ER \(D\) 180 \(Oct\)](#)

What was the background?

The case concerned a cyber-attack in which unknown fraudsters hacked into the email account of one of the claimant's senior management, and then sent payment instructions purporting to come from the claimant to the claimant's bank in London. This resulted in the illegitimate transfer of several million pounds to several bank accounts in a number of banks across multiple jurisdictions.

The claimant wanted to trace and secure the stolen monies from these unknown individuals and therefore applied for a worldwide freezing injunction against 'persons unknown'. The claimant also sought disclosure from 35 international banks to or through which the proceeds of the fraud had been diverted.

What did the court decide?

The court granted both the worldwide freezing injunction, notwithstanding that there was no named defendant, and the disclosure orders against the banks.

What are the practical implications of this case?

There are a number of interesting practical implications from the case. In my experience, at the outset of many fraud cases victims understandably not only want to recover their losses, but pursue those responsible. While the two can go hand-in-hand, this case emphasises that there are means and ways to seek to secure and recover the proceeds of the fraud without necessarily ever identifying the perpetrators for the purpose of serving them and freezing their assets.

In the modern world, when sophisticated fraud (and especially online fraud) is all too common, fraudsters will often look to conceal their identity, either by adopting the persona of actual or fictional individuals, or, in cases such as these, with anonymity. This decision therefore presents a potentially powerful weapon among others that are available to the fraud practitioner.

The case is also a reminder that freezing injunctions can be used as a springboard for seeking ancillary relief in relation to third parties, for example, in permitting banks to freeze the proceeds of fraud and to disclose crucial information which might assist in identifying the perpetrators and indeed trace the movement of the stolen monies.

A further practical point concerns the mechanics of service. I understand that the claimant obtained alternative service orders which entitled it to serve documents through a variety of methods, including Facebook and a combination of notification by email and online data room document delivery. The latter in particular has generated substantial interest among practitioners as a potentially time and cost-effective way of effecting service on multiple parties in multiple jurisdictions.

This is a common issue in modern large-scale international commercial litigation, and particularly for fraud cases. These often move at breakneck speed at the early stages of the proceedings while parties and assets are identified, and information and documentation gathered. This frequently results in hearings taking place in close proximity, at short notice, and involving substantial volumes of documentation. Any efficient means of addressing the administrative difficulties of effecting service in such cases (and indeed more widely in commercial litigation) is to be welcomed, and emphasises that practitioners should always bear in mind that the more traditional methods of service are not the only ones that might be available in the appropriate case.

Interviewed by Nicola Laver.

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