

A significant expansion in the DIFC Court's jurisdictional ambit for freezing injunctions

(1) *William Allan Jones* (2) *Coffee Planet LLC* (3) *Coffee Planet Roastery FZE v Robert Anthony Jones* [2022] DIFC CFI 043

When discussing freezing injunctions, modern lawyers of a historical bent occasionally refer to the English High Court's "nuclear weapon" by reference to the *Mareva*, a merchant vessel chartered by International Bulkcarriers SA in May 1975. Various payments were missed, and the claimant feared that money in the Defendant's London bank accounts would be withdrawn. Lord Denning MR made the following, simple, finding: "*If it appears that the debt is due and owing, and there is a danger that the debtor may dispose of his assets so as to defeat it before judgment, the court has jurisdiction in a proper case to grant an interlocutory judgment so as to prevent him disposing of those assets.*"

The *Mareva* case was, at root, a relatively straightforward debt claim. But injunctions can be properly traced back to interdicts in the Roman era. A Praetor (a chief judicial magistrate of Rome) would issue a statement constituting a command or prohibition of something to be done during disputes of possession.

The jurisdiction to grant freezing injunctions now looks to be moving again within the DIFC, this time pursuant to facts in a case that feels closer in spirit to its Romanesque forebears than a 1970s debt claim.

In (1) *William Allan Jones* (2) *Coffee Planet LLC* (3) *Coffee Planet Roastery FZE v Robert Anthony Jones*[1], there is a battle between father and son as to who is the proper owner of a villa and five luxury cars.

The claimant father commenced a claim against the defendant son seeking title to the assets. He applied for a freezing injunction from the DIFC. Typically, freezing injunctions are sought in support of ongoing litigation within the same court, or to support an arbitration seated in the court's jurisdiction. However, in *Jones* the father accepted that none of the DIFC's orthodox jurisdictional gateways were open to him and none of the assets were located within the DIFC. Nonetheless, he argued that the court should still exercise its jurisdiction simply for the purpose of supporting ongoing proceedings in onshore Dubai.

The claim

The son's primary argument in support of his application to set aside the ex parte freezing order was that the DIFC Courts had no authority to issue interim injunctions in support of proceedings elsewhere where there were no assets within the DIFC. Such injunctions have, for some time, been issued in support of foreign judgments and judgments of the Dubai Courts, but this was pursuant to express powers in Article 24 of the Courts Law No.10 of 2004 and Article 7 of the Judicial Authority Law No.12 of 2004 ("JAL").

During the original application, the father had relied upon Article 5(A)(1)(e) of the JAL. This provides that the Court of First Instance (the "CFI") shall have exclusive jurisdiction to hear and determine "*any claim or action over which the Courts have jurisdiction in accordance with DIFC Laws and DIFC Regulations*".[2] The father accepted that none of the gateways in Article 5(A)(1)(a)-(d) were satisfied.[3]

Justice Sir Jeremy Cooke accepted that Article 5(A)(1)(e) is sufficiently wide to permit interim injunctions even where there is no underlying reason to issue a claim before the DIFC Courts. In reaching his conclusion he introduced into the

DIFC the so-called “enforcement principle”, which had been utilised by Lord Leggatt in the Privy Council decision in *Broad Idea International Ltd v Convoy Collateral Ltd*.^[4]

The “Enforcement Principle”

Justice Sir Jeremy Cooke considered the judgment in *Oxana Childescu v Andrei-Bogdan Gheorgui* which, whilst reaching a narrower view about the DIFC Courts’ jurisdiction, was in turn based on two earlier DIFC decisions.^[5] Those earlier cases, *Next* and *Lateef v Liela*, had themselves drawn heavily on the notion of the “Enforcement Principle” as articulated by Lord Leggatt in *Broad Idea v Convoy*.^[6] That principle was the following:

“the first and primary principle is that the purpose of a freezing order is to stop the injunctioned defendant dissipating or disposing of property which could be the subject of enforcement if the claimant goes on to win the case it has brought.”^[7]

This principle corroborated the jurisdictional ambit to grant a freezing injunction despite the absence of an underlying claim for substantive relief in the jurisdiction. In this context, once the purpose was recognised, there was no reason to associate the grant of injunctions the existence of a cause of action. Justice Sir Jeremy Cooke held that this principle could be freely applied in the DIFC. He was satisfied that any common law court (including the DIFC Court) has an unfettered freestanding jurisdiction to grant injunctions, without any reference to jurisdictional gateways. As such, the gateway in Article 5(A)(1)(e), which simply refers to DIFC Laws and Regulations, is sufficiently wide to encompass this principle. Justice Sir Jeremy Cooke went so far as to state the following:

“I do not see the need myself to describe this as a freestanding power and it is not arbitrary, since its exercise will be limited by the other principles referable to the grant of interim injunctions of this kind and interim injunctions generally.”^[8]

What is more, Justice Sir Jeremy Cooke did not agree that the decision in *Akhmedova v Akhmedov*^[9] stood in the way, as it predated *Next* and did not consider the established position flowing from *Broad Idea v Convoy*^[10]. More importantly, contrary to the contention of the Defendant, the Judge concluded that the DIFC Courts’ use of this power did not “seek to usurp the powers of the Dubai Court, nor to compete with it, but to assist it by freezing assets against which its judgements might be enforced and which might otherwise be dissipated with the result of rendering the judgement ineffective.”^[11] He concluded that the substantive jurisdiction to resolve the dispute rested with the Dubai Court.

Concluding remark

It is clear that the decision expressly expands the DIFC Courts’ jurisdictional ambit for freezing injunctions in line with the decision in *Broad Idea v Convoy*. Jones heralds an invitation by the DIFC Courts to parties to consider making use of the Court’s freezing injunction powers wherever the substantive proceedings are due to be resolved, and wherever the respondent’s assets may lie. Just as the *Mareva* case provided a powerful solution to ensure that a debtor did not dispose of their assets so as to defeat the claim, this case has, similarly, secured such a position once more by opening the DIFC Courts’ gates to hearing a wider array of future injunctions.

Laurence Page

[1] [2022] DIFC CFI 043 (Order of 14 September 2022).

[2] Ibid, para 3

[3] n 2, para 3.

[4] [2021] UKPC 24 (“Broad Idea v Convoy”).

[5] [2022] DIFC CFI 003.

[6] n 9.

[7] n 2, para 15.

[8] n 2, para 18.

[9] [2018] CA 003.

[10] n 9.

[11] n 2, para 20.