

Freezing injunctions over ships: Crowther v Crowther & ors [2020] EWCA Civ 762

James Watthey appeared in this rare re-marriage (or perhaps collision) of the Divorce and Admiralty jurisdictions in the Court of Appeal. Mr and Mrs Crowther formerly ran a business which specialised in chartering out offshore support vessels but they are now in the process of heavily contested divorced proceedings. Mrs Crowther alleges that the couple are the beneficial owners of 4 vessels, which were until recently bareboat chartered on Barecon 89 form to the Crowthers' operating LLP. The registered vessel owners are SPVs, which are controlled via various Gibraltar entities. Suffice to say the arguments over beneficial interest are complex and are the subject of an Admiralty Claim *In Rem* in which James is also acting. In the matrimonial proceedings, Mrs Crowther obtained a freezing injunction in December 2019 from Lieven J to prevent the sale or other disposal or mortgaging of the vessels. The Gibraltar entities successfully applied to discharge the injunction in March 2020 before Holman J, but this was overturned on appeal due to the problematic way in which the hearing unfolded: in particular the Learned Judge had not been given sufficient time to read the evidence or consider all of the options available to him; so despite his Lordship's very best endeavours, it was held that the exercise of his discretion could not stand.

Unusually, instead of remitting the decision to a High Court Judge, the Court of Appeal substituted its own order. This was done because of the "extremely urgent" circumstances of the case, including the service the day before the hearing of MCA Prohibition Notices as a result of the Gibraltar entities being unable to fund insurance premiums in addition to other running costs.

After a remote hearing via Skype for Business, Males LJ (with whom Moylan and Phillips LJJ agreed) reviewed the principles for granting freezing injunctions and gave particular consideration to the words of Haddon-Cave LJ in *in Lakatamia Shipping Company Limited v Morimoto* [2019] EWCA Civ 2203 where the tests for granting freezing injunctions were helpful re-stated. As well as a reminder that "*the claimant must show a real risk, judged objectively, that a future judgment would not be met because of an unjustified dissipation of assets*" it was emphasised that freezing injunctions were not intended to give security or prevent the legitimate operation of the respondent's business affairs. Importantly for the shipowning community, Haddon-Cave LJ stated explicitly that there was nothing about the use of offshore ownership structures that in itself equated to a risk of dissipation.

Taking those principles into account, the freezing injunction was re-imposed but with the proviso that one vessel could be sold or the fleet could be mortgaged up to the value of the most valuable vessel. Thus the Court of Appeal's aim, doing the best it could to navigate between the competing interests, was to preserve the assets while allowing the fleet to trade and to be maintained and indeed improved and upgraded by releasing liquidity.

James Watthey appeared as Junior Counsel in the Court of Appeal with a team of matrimonial finance barristers from 4PB, and was instructed by Preston Turnbull.

The Court of Appeal's judgments can be found at <https://www.bailii.org/ew/cases/EWCA/Civ/2020/762.pdf> and the judgment of Holman J at <https://www.bailii.org/ew/cases/EWHC/Fam/2020/1037.pdf>