



## Freezing injunctions and enforcement: Jersey Royal Court rules on post-judgment asset disclosure orders

Service area / [Dispute Resolution and Litigation](#)

Location / [Jersey](#)

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A recent unreported decision (*ENRC NV v Zamin Ferrous Limited [2015] JRC 217*) has demonstrated the Jersey Royal Court's willingness to make disclosure orders not only to police post-judgment freezing orders but also to ensure that judgment creditors have all the information they need to enforce their judgments worldwide.

### Background

In ongoing litigation in the English Commercial Court, ENRC NV ("ENRC") obtained summary judgment against Zamin Ferrous Limited ("Zamin", a Jersey company) on a counterclaim in June 2015 in the amount of US\$65 million plus interest. ENRC then applied to the Royal Court of Jersey *ex parte* for an order freezing Zamin's assets and requiring Zamin to answer a number of questions about its assets and assets held by its subsidiaries. Zamin provided answers to those questions which revealed that two agreements had been entered into pursuant to which certain assets held by its subsidiaries were to be transferred to third parties.

This, combined with existing concerns about Zamin's conduct, cast doubts upon the effectiveness of the freezing order and ENRC's ability to enforce its judgment. Consequently, by an *inter partes* application, ENRC sought disclosure of the agreements, and related information. Zamin opposed the application on a number of grounds, including the following:

- Zamin had applied for permission to appeal the summary judgment order and for a stay of execution pending determination of the appeal;

- the value of its ongoing claim against ENRC, due to be tried in February 2016, was significantly higher than the value of ENRC's judgment against Zamin, and ENRC's defence to that claim was said to be weak;
- the disclosure application amounted to a fishing expedition for commercially sensitive documents, and ENRC could not be trusted to treat such documents in confidence.

### Decision

The Jersey Court was satisfied that the applicant was entitled to further disclosure. It held<sup>1</sup> that the extant application for leave to appeal and for a stay was no basis to refuse to grant the relief sought. It refused to engage in the merits of the parties' respective cases in the English proceedings, nor would it make findings as to the respective parties' conduct in what was clearly "hard-fought litigation", save to acknowledge that there was evidence of apparent dissipation of assets by Zamin. It was also satisfied that the two agreements were *prima facie* required by ENRC in order properly to police the freezing order, and to enable it to enforce its judgment, although as described below it reached a pragmatic view as to how to deal with Zamin's arguments that the disclosure of the agreements would cause damage to Zamin's commercial interests.

<sup>1</sup> Applying the English Court of Appeal decision in *Grupo Torras SA v Al Sabah [2014] 2 C.L.C. 636*

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## Jurisdiction to order further disclosure

The Royal Court emphasised that the court has a “wide discretion” to order further disclosure, not only for the purposes of policing freezing orders but also to ensure “that the judgment creditor has all the information he needs to execute the judgment anywhere in the world”.

The key principle is that disclosure orders in support of post-judgment freezing orders will be granted more readily than in interim cases. The reasons for this are two-fold: first, in post-judgment cases the liability of the judgment creditor will already have been established – the proceedings have gone beyond the point where the plaintiff is merely asserting a claim; secondly, once a judgment has been obtained, the Court has a free-standing jurisdiction, independent of the freezing order jurisdiction, to order disclosure in aid of enforcement. Where the Jersey Court has in personam jurisdiction over the judgment debtor, such disclosure orders could be granted in respect of a judgment debtor’s worldwide assets, even if only assets within the jurisdiction had been frozen<sup>2</sup>. As such, this freestanding jurisdiction to order disclosure in aid of enforcement is similar to the disclosure regime for judgment debtors under the English CPR Part 71, and does not necessarily require evidence of dissipation of assets.

## Scope of the order – assets owned and controlled by subsidiaries of the judgment debtor

Another important aspect dealt with in the judgment concerned the extent to which disclosure should be made in relation to the assets of Zamin’s subsidiaries. The Court cited the recent English Court of Appeal decision in *The Lakatamia*<sup>3</sup>, confirming that the subsidiaries’ assets were not caught by the worldwide freezing order, but that the effect of the order was to prevent Zamin from procuring that those subsidiaries make a disposition likely to result in a diminution of the value of their shares. Although those assets were not specifically caught by the freezing order, the Court was satisfied that it would not be possible to police Zamin’s obligations under the freezing order unless information as to the assets held by the subsidiaries was disclosed, concluding that “it must be information as to assets within a corporate structure beneath a judgment debtor that a judgment creditor needs in order to execute the judgment anywhere in the world”.

## Disclosure of commercially sensitive information

The Court was satisfied that the disclosure of the two agreements was required in order to police the freezing order, but ordered that Zamin could make separate submissions as to why the disclosure of the agreements could be commercially damaging, before having to disclose the agreements themselves to ENRC. The Court initially ruled that Zamin could make those submissions to the Court in a hearing in camera from which ENRC’s counsel would be excluded, but subsequently accepted that this could infringe ENRC’s Article 6 rights. The compromise settled upon by the Court and agreed by counsel for ENRC was that the hearing of Zamin’s submissions would be inter partes, but only the court and Zamin would have access at that stage to copies of the agreements themselves. The Court also ruled that if an order for disclosure of the agreements was subsequently made, it was minded to restrict the use that could be made of the documents, including by restricting access to ENRC’s legal team, and not providing copies to certain identified senior officers of ENRC itself.

## Comment

In reaching this decision, the Jersey Royal Court has demonstrated not only that it will take an innovative and pragmatic approach to ensure that freezing orders are effectively policed, but also that it will assist foreign courts in the enforcement of judgments by ordering judgment debtors within its jurisdiction to make disclosure of their worldwide assets.

<sup>2</sup> The Court referred to a number of previous decisions of the Jersey Royal Court and the English Court including *Goldtron Limited v Most Investment Limited* [2002] JLR 424; *Africa Edge Sarl v Incat* [2008] JRC 175 and *Dalemont Limited v Senatorov* [2-12] 1 JLR 168 and the English decision of *Coleman* in *Gidrxsime Shipping Co Ltd v Tantomar-Transportes Maritimos Lda* [1994] 4 All ER 507.

<sup>3</sup> [2014] EWCA Civ 636

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