

Disclosure orders against judgment debtors

In a recent case, *Jomair and others v Hourigan and others* [2011] JRC 042, the Jersey court again confirmed the fundamental principle that it is in the interests of justice for a judgment creditor to obtain disclosure of the debtor's assets in order to aid enforcement of the judgment.

The plaintiffs obtained judgment against the defendant in the Second Judicial District Court of Davis County in the State of Utah, United States in the sum of US\$874,676.30 on 31 December 2002 ("the Utah Judgment"). Despite numerous efforts to enforce the same, however, the Utah Judgment remained unsatisfied.

In 2010, the plaintiffs discovered that the defendant held bank accounts with a Jersey bank, Abbey National International Limited ("Abbey"). The plaintiffs therefore applied to the Royal Court of Jersey seeking judgment pursuant to the Utah Judgment together with interest. The order of justice also sought *ex parte* relief by way of a freezing injunction against the defendant and the party cited, Abbey, and disclosure orders against the defendant and the party cited in relation to the assets of the defendant.

The Deputy Bailiff granted a freezing injunction but only ordered disclosure as against the defendant, and declined to make any orders for disclosure on an *ex parte* basis as against Abbey, ruling that any such application must be made *inter partes* on notice to both the defendant and Abbey.

Following the *ex parte* application, the matter returned to the Royal Court on 28 January 2011, when the plaintiffs succeeded in obtaining judgment in default as against the defendant.

Having obtained judgment in default, the plaintiffs then applied *inter partes* for disclosure as against Abbey. Abbey rested on the wisdom of the Court; the defendant, who was served with the papers in relation to the application, did not enter any appearance.

The decision of the Royal Court re-affirmed the principles set out in *Gridrxsime Shipping Co limited v Tantomar – Transport Maritimos LDA* [1994] WLR 299. In the *Gridrxsime* case Coleman J stated at 310 that "the jurisdiction to make a disclosure order arises both as a power ancillary to and in support of the injunction and independently of the injunction". Coleman J went on to confirm that it was just and convenient that the creditor have the information necessary to enforce his judgment and that a lower test applies when considering whether to order disclosure post-judgment than it does before judgment has been obtained. The Court in *Jomair* noted that the weight to be given to a foreign judgment will vary according to whether it appears that the plaintiff is entitled to enforce the judgment without reinvestigation of the merits or whether it is a case where he will have to start afresh.

When considering whether to order disclosure from the Party Cited, the Court considered the fact that the Utah Judgment had been unsatisfied for over 8 years and that the Jersey court had itself granted judgment. The Court therefore concluded that it was in the interests of justice for the information to be disclosed.

The Court further stated that the fact the disclosure was sought from Abbey as Party Cited rather than the defendant did not affect the position: "The essential principle remains that the court can make disclosure orders whether against a defendant or third party in order to aid in the execution of a judgment or award and the interests of justice would usually point in favour of ordering such disclosure" (paragraph 12 of the judgment).

The Court ordered Abbey as party cited to disclose to the plaintiffs all bank statements in respect of the three accounts from the date of the Utah Judgment until the date of the judgment, together with full details and documentation in relation to such transfers into or out of the accounts as may be specified by the plaintiffs' Advocates following inspection of the bank statements. The Court also ordered the defendant to pay the costs of the plaintiffs on the indemnity basis.

Advocate James Gleeson appeared for the successful plaintiffs in the action.

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