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Limiting disclosure under  
freezing orders – or:  
Help! Don't let the b\*st\*\*ds  
know about my assets!

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# How did we get here?



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## Tracing: the principle outlined in A v C (1)

“I take first the proprietary claim. In such cases, there is good authority that the court may make orders with the purpose of ascertaining the whereabouts of the missing trust fund.”

Goff J [1981] QB 956



## Tracing: the principle outlined in *A v C* (2)

“A court of equity has never hesitated to use the strongest powers to protect and preserve a trust fund in interlocutory proceedings on the basis that, if the trust fund disappears by the time the action comes to trial, equity will have been invoked in vain.”

Goff J [1981] QB 956 citing Templeman LJ in *Mediterrania Raffineria v Mabanaf*

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## Tracing: the principle outlined in A v C (3)

“Now these cases provide ample authority that, in an action in which the plaintiff seeks to trace property which in equity belongs to him, the court not only has jurisdiction to grant an injunction restraining the disposal of that property; it may in addition, at the interlocutory stages of the action, make orders designed to ascertain the whereabouts of that property.”

Goff J [1981] QB 956 citing Templeman LJ in *Mediterrania Raffineria v Mabanafit*



## The Start of the Requirement for Asset Disclosure

“I turn next to the *Mareva* jurisdiction. Here, I have not the benefit of authority to guide me, no doubt because the jurisdiction is still in its infancy, though it is (in the Commercial Court at least) very much a thriving infant.”

Goff J [1981] QB 956



# The Start of the Requirement for Asset Disclosure

“There is no doubt that this jurisdiction is in a process of development; and that it is still in the course of throwing up problems which have yet to be solved.”

Goff J [1981] QB 956



# The Start of the Requirement for Asset Disclosure

“Considerations such as these point, in my judgment, to the conclusion that the court should, where necessary, exercise its powers to order discovery or interrogatories in order to ensure that the *Mareva* jurisdiction is properly exercised and thereby to secure its objective which is, as I have described, the prevention of abuse.”

Goff J [1981] QB 956

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# The effect of that First Strike



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## Comm. Court Form para.9

Unless paragraph (2) applies, the Respondent must [within [] hours/days] of service of this order and to the best of his ability inform the Applicant's solicitors of all its, her or his assets [in England and Wales] [worldwide] [exceeding £ in value] whether in its, her or his own name or not and whether solely or jointly owned, giving the value, location and details of all such assets.



## Comm. Court Form para.6

For the purpose of this order the Respondent's assets include any asset which it, she or he has the power, directly or indirectly, to dispose of or deal with as if it were its, her or his own. The Respondent is to be regarded as having such power if a third party holds or controls the asset in accordance with its, her or his direct or indirect instructions.



## Comm. Court Form para.10

Within [ ] working days after being served with this order, the Respondent must swear and serve on the Applicant's solicitors an affidavit setting out the above information.



# What's the Claimant's strategy?



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# The Jurisdiction

“The High Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the court to be just and convenient to do so.”

s.37(1) Senior Courts Act 1981

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# The tug of war



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# What's your strategy?



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## What do you need to do? (1)

If you are going to try to restrict the flow of information, it can only be on the basis that you have either offered security or are applying/have applied to discharge (or vary) the order!



## What do you need to do? (2)

You also either have to agree a variation with the Claimant (somewhat unlikely) or apply to stay or vary the disclosure obligations within the time for compliance!

*Fundo Soberano de Angola –v- Dos Santos*, 25 June 2018, Phillips J



# What arguments can you use?

Are there identifiable assets in amenable jurisdictions sufficient to satisfy the claim?



## What arguments can you use?

Can you show that the Claimant has no urgent need for the information and that you can propose a satisfactory alternative regime (eg evidence in an envelope held by solicitors or court)?

Is *Motorola –v- Uzan* [2002] 2 All E.R. (Comm) 945 your friend or your foe?

See also *VTB –v- Malofeev* [2011] EWCA Civ 1252

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# What arguments can you use?



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# What arguments can you use?

In an extreme case, are you prepared to advance a radically different regime?



## What arguments can you use?

Do you need to deny any access to the information, or would it be sufficient just to limit the scope of the disclosure (identified individuals, identified geographical locations)?

*BTA –v- Ablyazov* [2009] EWCA Civ 1125



## What arguments can you use?

Can you vary or “clarify” the terms to limit the amount of information that needs to be disclosed, either by value or by breadth of requirement?

*FM Capital Partners –v- Marino* [2018] EWHC 2889 (Comm)



# Conclusion

Any Questions?