

BULLETIN

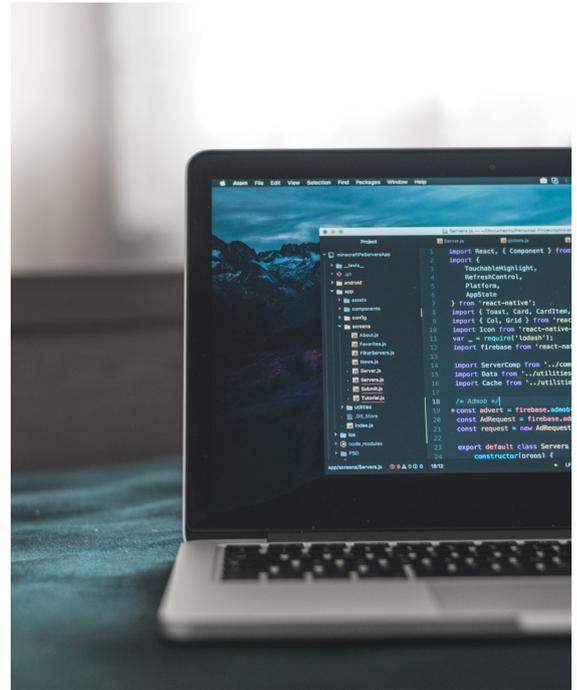
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Disruptive Developments @20EssexStreet

Breaking new ground in fraud recovery claims: turning the tables on cyber fraudsters

Paul Lowenstein QC, Harris Bor and Matthew McGhee

Paul Lowenstein QC (of 20 Essex Street), instructed by Cooke, Young & Keidan LLP, led a team of juniors including Harris Bor and Matthew McGhee (of 20 Essex Street) and Philip Hinks in a series of public hearings in London in November and December 2017, when the Commercial Court confirmed a suite of earlier interim orders to assist a global commodities company to trace and secure money that had been stolen from its bank accounts following a sophisticated payments fraud by unknown 'ghost' perpetrators.



The fraud investigation and claim are ongoing, but the facts at present appear to be that in a cyber-attack, unknown perpetrators caused several million dollars of the Claimant's funds to be transferred from its bank accounts in London to and through multiple bank accounts at many banks in a large number of jurisdictions.

There are three innovative features of the orders granted by the Commercial Court:

1. WFO against 'Persons Unknown'

In what is believed to be the first case of its kind, the worldwide freezing order (WFO) was initially granted against a specified class of 'Person(s) Unknown' on the basis that the class could be defined with sufficient precision and that it was known where the perpetrators had channelled the money.

There is no report of the Court having

previously fused its jurisdiction to make injunctions against persons unknown with the jurisdiction to make freezing orders. Following the initial grant of the WFO and early investigations, some named individuals have been added as alleged fraudsters, but the general order against Person(s) Unknown remains. Permission has been obtained to enforce the WFO - including against the Persons Unknown defendants - in all jurisdictions worldwide.

2. Internationally enforceable disclosure orders against banks

Ancillary to the WFO against the fraudsters, the Commercial Court has confirmed a disclosure order against 35 international banks to or through which the proceeds of the fraud have been diverted. This order is to assist with the tracing and securing of the misappropriated money and with the identification of the ghost fraudsters.

Specific measures are built into the order to allow it to be enforced in the banks local jurisdictions while ensuring that foreign banking secrecy and client confidentiality laws are not disturbed. Permission has also been obtained to enforce the disclosure order against banks in all jurisdictions worldwide.

3. Alternative service provisions

Finally, the Court has made groundbreaking orders for service of documents by alternative methods including (1) against two of the alleged fraudsters for whom it was difficult to find reliable contact details, by Facebook and (2) on the alleged fraudsters and on the banks by a combination of email notification and online data room document delivery.

The online data room has been compartmentalised for confidentiality and allows the claimant to properly notify international banks of new accounts and persons involved in the

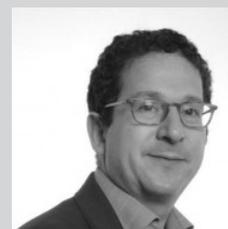
fraud as the investigation continues and the number of court orders expands, but without having to affect repeated service through conventional means (e.g. couriers large volumes of files around the world) which would otherwise involve exorbitant expense and delay the asset-tracing and recovery exercise.

If you require advice on any of the topics discussed in this briefing from Paul, Harris, Matthew, or any member of 20 Essex Street please contact: clerks@20essexst.com



Paul Lowenstein QC

Paul has an established and vibrant practice of high-profile, landmark civil fraud litigation with a track record of instructions in many of the leading Russian and Kazakh banking fraud cases before the Commercial Court and Chancery Division in the last decade. He has particular expertise in obtaining innovative interim relief, being regularly instructed to seek and resist applications for freezing, search, imaging, third party disclosure (including *Norwich Pharmacal*), committal and other interim remedies. He is renowned for his expertise in asset-tracing and the relationship between deceit and contract/negligence claims against professionals. He is ranked in *Chambers and Partners UK Bar 2018* for his Commercial Litigation, Civil Fraud, Professional Negligence and Information Technology practices. Paul is also ranked as a Leading Silk in *The Legal 500 2017* for Commercial Litigation, Fraud: Civil, IT & Telecoms and Professional Negligence.



Harris Bor

Harris' practice covers all areas of international arbitration, and commercial and company litigation, with a particular emphasis on corporate, joint venture, trade, banking and financial services, civil fraud, professional negligence, and project and insurance disputes, as well as those involving the licensing and exploitation of IP.



Matthew McGhee

Matthew is regularly instructed to advise or act in national and international arbitrations across chambers' practice areas, both as sole counsel and as a junior. He has often appeared on an urgent basis to obtain freezing orders and other similar interim relief.

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