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# Frozen Solid: Thin Defences, Vanishing Cash and a £2.14m Problem

## *High Tech Construction Ltd v WLP Trading and Marketing Ltd* [2025] EWHC 3209 (TCC)

**Date**: 8 December 2025

**Judge**: Mr Justice Constable

***Key Words:***

*Freezing Order, Adjudication Enforcement, Risk of Dissipation, Full and Frank Disclosure, Personal Service, Defendant Conduct, Construction Dispute, WLP, High Tech Construction, Mr Justice Constable*

**Summary**

This judgment concerns HTC's application to continue a Freezing Order against WLP pending enforcement of an adjudicator's decision in HTC's favour [1, 2]. The Freezing Order was originally granted to preserve WLP's assets pending enforcement [1]. WLP sought discharge or variation, arguing there was no real risk of dissipation and that HTC failed in its duty of full and frank disclosure on the without-notice application [2].

Mr Justice Constable held that HTC had established a real risk of dissipation based on cumulative factors, including WLP's conduct, lack of transparency over a substantial recent loan drawdown, and non-compliance with disclosure obligations under the Freezing Order [77–78]. Alleged disclosure failures by HTC were not material [93]. The Freezing Order was renewed [94].

***Key Themes:***

1. ***Enforcement of Adjudication Decisions and Freezing Orders****: The purpose of the Freezing Order was to ensure any judgment enforcing the Adjudicator's Decision would be satisfied [1, 48-49].*
2. ***The Test for Risk of Dissipation****: A claimant must provide "solid evidence" of a real risk that judgment will go unsatisfied due to unjustified disposal or concealment of assets [51].*
3. ***Defendant's Conduct and Dishonesty****: Persistent defaults, implausible excuses, thin defences, evasiveness, or non-compliance with court orders may cumulatively establish a risk of dissipation [52, 54, 56-57, 75-76].*
4. ***Personal Service of Injunctions****: Injunctions must be personally served for enforceability under CPR 81.4(2)(c), not merely "ordinarily" served under CPR 6.9 (CPR 6.9) [31, 34-36].*

5. ***Compliance with Disclosure Obligations****: Defendants must provide full and accurate disclosure of assets; vague, contradictory, or incomplete disclosure weighs in favour of dissipation [39, 46-47, 75-76].*
6. ***Duty of Full and Frank Disclosure in Ex Parte Applications****: Failures on without-notice applications must be material before justifying discharge of an order [81-82, 93].*

**Background**

The dispute arose from a construction project at 162 Willesden Lane, London NW6 7PQ ("**the Site**" or "**the Property**"), owned by WLP [1, 4]. HTC, a construction company, claimed to have entered into a signed Sub-Contract with WLP in January 2023 to carry out groundworks and substructure works for a 4-storey building comprising 22 flats, with a sum of £2,392,623.35 (excluding VAT) [4].

HTC commenced work in February 2023, subsequently demobilised due to drainage damage, and recommenced in November 2023, completing and demobilising again on 28 July 2024 [5]. HTC had only received an initial payment of £250,000 [5].

The Claimant sought further payment, submitting Application for Payment No.3 (**AFP03**) for the balance of the contract sum, £2,142,623.35 [9-10]. Dr Essa (WLP's controller) responded by claiming the application was fabricated and unsupported, citing defects that needed addressing [9-10]. Text messages presented showed **Dr Essa repeatedly making excuses and promising payment, which never materialised** [7].

HTC referred the payment dispute to adjudication [11-12]. Dr Essa challenged the Adjudicator's jurisdiction, asserting the contract relied upon by HTC was fraudulent [13-14]. The well-known Adjudicator (Mr Mathew Molloy) nonetheless found that a contract was concluded and issued a decision ("**the Decision**") finding **HTC was entitled to £2,142,623.35** [19].

Following the Decision, HTC applied for and obtained a Freezing Order on 7 November 2025 to preserve WLP’s assets pending enforcement [1].

**Legal Issues and Analysis**

The Court considered several core legal issues:

*I. Service and Compliance with the Freezing Order*

The timing of compliance with the disclosure requirements hinged on whether the Freezing Order required ordinary service (as HTC argued, potentially 10 November 2025) or personal service (as WLP argued, 14 November 2025) [29-30].

Drawing on *MBR Acres Ltd v Maher*, the Court held that personal service of an injunction order is still required by CPR 81.4(2)(c), meaning the obligation to comply generally commences only once personal service is effected [31, 34-35]. The Judge concluded that Dr Essa was entitled to require personal service before being under an obligation to comply with the Order, which occurred on 14 November 2025 [35-36].

However, the Court noted that **Dr Essa failed to comply satisfactorily with the Information Requirements** even after personal service [75-76]. The information provided was vague and contradictory, particularly concerning a recent **£700,000 Cohort Capital loan drawdown** [39, 46-47]. The judge found that the quality of the information reflected an approach that Dr Essa consciously adopted, not a lack of time [40-42, 48-49]. This non-compliance was cited as a factor weighing in favour of a real risk of dissipation [75-76].

*II. Risk of Dissipation of Assets*

The test requires a "**real risk**" of judgment going unsatisfied due to an **unjustified dissipation** (concealment or transfer) established by solid evidence [51].

The Court found that several factors, taken cumulatively, established this risk [51, 77-78]:

1. **Dr Essa's Conduct and Thin Defences**: Dr Essa's history of promises, persistent defaults, and implausible excuses, alongside raising thin defences (e.g., unparticularized defects) against a virtually unanswerable entitlement to payment, pointed strongly toward a risk of dissipation [54, 56-57, 59-60].
2. **Unexplained Loan Drawdown**: WLP recently encumbered the Property with a charge to Cohort Capital and drew down a significant sum (approximately £600,000-£700,000) [55(4)-(7), 66-67]. The explanation for how this money was spent was vague, changed during the proceedings, and lacked supporting documentation [46-47]. This suggested the funds might have been funnelled into another one of Dr Essa's company or personal accounts, and the inference that the funds were used for purposes unrelated to WLP or the Property was strong [46-47].
3. **New Company and Potential Asset Transfer**: The formation of Cavendish & Rowe Holding Limited ("CRHL") after the dispute arose, coupled with WLP providing a draft rental agreement listing the landlord as "TBC," heightened the risk of transfer of ownership or control of the Property to one of Dr Essa's related entities[62-65].
4. **External Ties**: Dr Essa has wider international links, including banking facilities in Cyprus, which suggests WLP could easily and swiftly place funds beyond the jurisdiction if assets were realised [75-76].

*III. Full and Frank Disclosure*

WLP alleged several failures by HTC in its *ex parte* application [83-84]. The Court confirmed that if important information was not disclosed, the order might be set aside, but failures must be material [81-82]. The Judge found that the only valid criticism was the **"over-simplistic" description of Dr Essa's country of residence as 'China'** [86-87, 93]. Given that the evidence presented to the Deputy Judge pointed in different directions regarding residency, this isolated point was not considered material enough to discharge the Freezing Order [93].

**Conclusion**

Based on the cumulative evidence, including the Defendant's unsatisfactory conduct in the underlying dispute and its lack of frank and complete compliance with the Freezing Order, the Court found that HTC had met the burden of proof in establishing a **real risk of dissipation** [77-78].

The argument that renewing the Freezing Order would cause disproportionate disruption and reputational harm to WLP was rejected, as these risks did not outweigh the importance of preserving the assets needed to enforce the expected judgment [80]. Furthermore, the lack of intention or realistic likelihood of WLP selling the Property to an arms-length third party in the short term did not dispel the risk of an internal transfer of assets or further drawdowns [73-74].

The Defendant's application to discharge the Freezing Order was dismissed, and **the Freezing Order was renewed** [94].

***Key Takeaway:***

*The key takeaway of the judgment is that in applications to continue a freezing injunction sought for*

*the enforcement of an adjudication decision, a defendant's conduct—including* ***raising thin or unmeritorious defences, repeatedly failing to honour payment promises, and demonstrating a lack of transparency regarding large, recent financial transactions (like loan drawdowns)—will be critically assessed and may cumulatively establish the "solid evidence" required to prove a real risk of asset dissipation*** *[51, 56-57, 68]. Furthermore, while personal service is necessary for the enforceability of an injunction, subsequent non-compliance with the order's disclosure requirements is itself a decisive factor supporting the continuation of the Freezing Order [36, 75-76].*

***Parting Thoughts***

*This was not a case about one developer being unjustly constrained by an overzealous court. It concerned a company holding a £2.14 million adjudication liability, leveraging its principal asset, drawing down large sums at speed, and then offering explanations that changed shape depending on the day of the week.*

*Mr Justice Constable's judgment is careful, forensic, and quietly devastating. Taken individually, each strand of evidence might have appeared innocuous: a late-raised defects defence with no particulars, a newly incorporated company mid-dispute, a recent bridging loan, vague asset disclosure, and shifting narratives about where the money went. Taken together, they formed precisely what the authorities require: solid evidence of a real risk that enforcement would otherwise become an exercise in chasing shadows.*

*The Court was unimpressed by the suggestion that reputational discomfort or commercial inconvenience should outweigh the need to preserve assets pending enforcement. A freezing order is not a punishment; it is a seatbelt. If it feels restrictive, that is usually because the vehicle was being driven rather enthusiastically.*

*Equally instructive is the Court's treatment of service and disclosure. Yes, personal service still matters. But once served, half-answers, moving explanations, and missing bank trails do not buy indulgence. Non-compliance with a freezing order is not a neutral fact; it is itself evidence pointing in the wrong direction.*

*Finally, the judgment reinforces a message that construction lawyers know instinctively but defendants sometimes forget: adjudication enforcement is a short road with very few exits. When the underlying entitlement is "virtually unanswerable", attempts to outrun it—whether by thin defences, creative structuring, or unexplained cash movements—are more likely to tighten the grip than loosen it.*

*The order was renewed. The freezer stays on. And the lesson is simple: if you intend to argue that assets are perfectly safe, it helps if they can still be found.*

***Authorities***

***Case Law:***

***Dissipation of Assets and the Freezing Order Test***

1. ***Mex Group Worldwide Limited v Stewart Owen For & Ors*** **[2024] EWCA Civ 959**: *Cited as the authority setting out the requirements for a Freezing Order, specifically endorsing the guidance on the risk of dissipation, and later endorsing the principles concerning the duty of full and frank disclosure.*
2. ***Fundo Soberano de Angola v dos Santos*** **[2018] EWHC 2199 (Comm)****:** *Provides the*

*useful summary of key principles applicable to the question of risk of dissipation, including that the risk must be established by solid evidence and judged objectively, that dissipation means concealment or transfer, that the risk must be established separately against each respondent, and that all relevant factors must be looked at cumulatively.*

3. ***Lakatamia Shipping Co Ltd v Morimoto*** **[2019] EWCA Civ 2203, [2020] 2 All ER (Comm) 359:** *Explains the basic legal principles for the grant of a worldwide freezing order (WFO) and clarifies that where the court accepts there is a good arguable case of relevant wrongdoing, this will point powerfully in favour of a risk of dissipation.*
4. ***Thane Investments Ltd v Tomlinson (No 1)*** **[2003] EWCA Civ 1272:** *Summarises the three requirements that the court must be satisfied of before making a WFO: a good arguable case, a real risk that judgment would go unsatisfied by reason of asset disposal unless restrained, and that it would be just and convenient to grant the order.*
5. ***AH Balwin & Sons Ltd v Sheikj Saud Bin Mohammed Bin Ali Al-Thani*** **[2012] EWHC 3156 (QB):** Approved the proposition that the necessary risk of the judgment going unsatisfied may be inferred from the behaviour of the defendant, such as persistently defaulting on promises to honour a payment with implausible excuses, or raising extremely thin defences once litigation begins.

***Service and Enforceability of Injunctions***

1. ***MBR Acres Ltd v Maher*** **[2023] QB 186:** *Confirmed that personal service of an injunction order is still required by CPR 81.4(2)(c), meaning that service upon a legal representative who is on the record is not good service, and that this requirement must be read into CPR 6.22(1) governing documents required to be served personally.*
2. ***Tugushev v Orlov*** **[2019] EWHC 2031 (Comm):** *Summarised the principles relating to full and frank disclosure in freezing injunctions, stressing that if a subsequent court finds that important information was not disclosed, it may set the order aside, but the failures must be material and the assessment must be proportionate, guided ultimately by the interests of justice.*

***Legislation:***

***Service and Enforceability of Injunctions***

***Civil Procedure Rules (CPR) 81.4(2)(c)****: This rule is relied upon to confirm that* ***personal service of an injunction order is still required*** *unless the Court permits alternative service or dispenses with service, reflecting the substantive law of contempt. If an order is not personally served, the recipient generally cannot be held in contempt of court.*

***Civil Procedure Rules (CPR) 6.22(1)****: This rule states that a document must be served personally where required by another Part, any other enactment, a practice direction or a court order. The decision confirmed that the requirement for personal service of an injunction order (from CPR 81.4(2)(c) and the substantive law of contempt) must be* ***read into CPR 6.22(1)****.*

***Civil Procedure Rules (CPR) Part 81****: This refers to the procedural regime governing contempt of court. The judgment notes that the new Part 81, introduced in October 2020, omitted an express rule governing the service of an injunction order, unlike the old Part 81 (CPR 81.6).*

***Civil Procedure Rules (CPR) 6.9****: This rule governs "ordinary" service, which the Claimant attempted to rely upon. The Court found that service pursuant to CPR 6.9 was insufficient for a Freezing Order, as such orders require personal service under CPR 6.22(1).*

***Civil Procedure Rules (CPR) 6.26**: This rule sets the cut-off time for deeming service on a particular day. The Claimant accepted that the service attempted on 7 November 2025 at 17.30pm was insufficient because it was after 4.30pm (as per CPR 6.26).*

***Civil Procedure Rules (CPR) 6.22(2)**: This sub-section deals with 'other cases' where a document may be served personally. The decision clarifies that an injunction order falls within CPR 6.22(1), not 6.22(2).*

***Civil Procedure Rules (CPR) 6.15 & 6.27**: These rules refer to the power of the Court to permit alternative service or dispense with service entirely.*

***Civil Procedure Rules (CPR) 81.6**: This was the rule contained in the old Part 81 which expressly required personal service of an injunction order.*

***Legal Texts & Commentary:***

***Gee on Commercial Injunctions (7th Edition)**: The text is cited regarding matters that may constitute "solid evidence" for the risk of dissipation. It suggests that a claimant having a virtually unanswerable claim may be a powerful factor. It also notes that the necessary risk of the judgment going unsatisfied may be inferred from the behaviour of the defendant, such as persistently defaulting on promises to honour a payment with implausible excuses or raising extremely thin defences once litigation begins. Additionally, the text identifies a pattern of evasiveness, promises to pay followed by persistent defaults, or failure to give proper disclosure of assets under a court order as indicative of risk.*

***#FreezingOrder #AdjudicationEnforcement #TCC #TechnologyAndConstructionCourt #RiskOfDissipation #FullAndFrankDisclosure #WLPTrading #HighTechConstruction #PersonalService #CPR81 #ConstructionLaw #JudgmentEnforcement #DrEssaConduct #AssetPreservation #EWHC3209 #constructionlaw #adjudication #ukconstruction#freezingorder#tcc#disputeresolution#enforcement#commerciallitigation# DDALegal***

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