

Vneshprombank v Bedzhamov: freezing orders, lavish lifestyles and the “ordinary living expenses” exception

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[In *Vneshprombank LLC v Georgy Bedzhamov and ors* \[2019\] EWCA Civ 1992 the Court of Appeal reaffirmed the approach to ascertaining the “ordinary living expenses” of a respondent to a freezing injunction.](#)

Freezing injunctions (along with search orders) are the most disruptive weapon available to Claimants in the English Court’s arsenal of injunctive relief. Whilst judges take great care to ensure that freezing injunctions do not operate oppressively, it is inevitable that the Defendant will face some form of disruption in their day-to-day activities.

One of the ways in which the Court attempts to minimise disruption (alongside the cross-undertaking in damages and *Angel Bell* exception¹) is through a carve-out allowing a Defendant to spend a specified sum per week on their “ordinary living expenses” in addition to a reasonable sum on legal advice and representation.² In assessing what constitutes “ordinary living expenses” the Court regularly has to strike a balance between scrutinising a Defendant’s often-inflated claims of weekly expenditure, whilst respecting that the case against them usually remains to be proved on the balance of probabilities.

Vneshprombank v Bedzhamov reaffirms the historic position that a Defendant’s pre-injunction lifestyle should be maintained irrespective of its extravagance. Further, in circumstances where a Defendant has limited sums available to the extent that they cannot maintain their pre-injunction level of ordinary living expenditure, it is not matter for the Court to intervene.

Background

The Appellant and first Defendant, Mr Bedzhamov, is a Russian businessman who held, up until December 2015, valuable investments in a number of industries. The Claimant and Respondent, Vneshprombank LLC (“VPB”), is a Russian Bank now in liquidation. VPB accuses Mr Bedzhamov of participating in a fraudulent scheme which caused the bank losses of £1.34 billion.

VPB obtained a High Court freezing injunction against Mr Bedzhamov to the sum of £1.34 billion in March 2019 (the “**Injunction**”). Pursuant to the Injunction, Mr Bedzhamov was permitted to spend £35,000 per week on rent (which was subsequently reduced to £14,750) and £10,000 per week on other living expenses.

¹ The so called *Angel Bell* exception allows a Defendant to deal with assets in the ordinary and proper course of business (*Iraqi Ministry of Defence v Arcepey Shipping Co Ltd (The Angel Bell)* [1981] 1 QB 650 and paragraph 11(2) of the Commercial Court Standard Form Freezing Order, Appendix 11 of the Commercial Court Guide).

² Paragraph 11(1) of the Commercial Court Standard Form Freezing Order.

After a number of variations to the Injunction, Mr Bedzhamov applied to the Court to increase his ordinary living expenses spending limit to over £165,000 plus an additional €165,000 per month. Mr Bedzhamov's access to funds had been severely restricted by the proceedings and he was living on the proceeds of a sale of shares in a property holding company (totalling €17.4 million), which were held in his English solicitor's client account.

First Instance Decision

At first instance, HHJ Jarman QC held (and the Court of Appeal subsequently agreed) that "it is unjust for persons to have to reduce their lifestyle because of a freezing order in a non-proprietary claim ... [t]here is no indication in the authorities that such a principle should be applied differently where the lifestyle is lavish rather than modest".³

However, in reaching his decision, he took into account how Mr Bedzhamov's change in circumstances had (or should have) affected his monthly expenditure, granting him the sum of £80,000 per month, which was insufficient to cover (amongst other things) the rent on Mr Bedzhamov's London and Monégasque homes. This was the subject of the appeal.

Court of Appeal Judgment

Principles

Lord Justice Males, in his leading judgment, summarised the following principles from the well-established case law on this topic:⁴

- (1) The purpose of a freezing injunction is to prevent a Defendant from taking steps outside the ordinary course which would render a judgment unenforceable. Its purpose is not to provide the claimant with security. The Court should not therefore prevent a Defendant from maintaining pre-injunction levels of ordinary living expenditure.
- (2) A Defendant with limited funds available, such that they cannot maintain their pre-injunction levels of expenditure, will have to make hard financial decisions, but this is not a matter for the Court.
- (3) It is important to ensure a freezing injunction does not operate oppressively. Preventing a Defendant from maintaining their pre-injunction level of ordinary living expenditure "*creates a particularly acute danger of oppression*".
- (4) The Court should nevertheless be alert to the risk of the Defendant making inflated assertions about their pre-injunction level of expenditure in an attempt to maximise the sums available under the injunction.
- (5) This can be addressed through the Court adopting a healthy scepticism towards the Defendant's claims of pre-injunction expenditure, and requiring convincing support for such assertions. Greater scrutiny is required where the Defendant's asset disclosure or credibility is in doubt.
- (6) Significant items of expenditure should be "ring fenced" where appropriate so that they can only be spent on a specific purpose, such as mortgage payments.

Decision

Applying these principles, the Court held (with Sir Geoffrey Vos dissenting in part on the facts) that the first instance judge had erred in taking into account how Mr Bedzhamov's change in circumstances should have affected his expenditure. The first instance decision meant that Mr Bedzhamov could no longer afford to continue living in his properties in London and Monaco – this was wrong in principle.

Accordingly, the Injunction was varied to allow Mr Bedzhamov to spend *inter alia* (1) £18,000 rent per week on a London property; (2) the equivalent of €70,000 rent per month on a Monaco apartment; (3) private security

³ §39 of the Judgment.

⁴ §68 of the Judgment.

for himself and his family up to £24,000 per month in London and €29,000 per month in Monaco; (4) private school fees; (5) uninsured medical costs; and (6) £40,000 per month on other living expenses.

Notably, items (1) to (5) were ring fenced and the burden was placed on Mr Bedzhamov's solicitors to ensure that the amounts would be spent for the purpose specified in the Injunction. The Court remarked that – while it was not a matter for its own intervention – Mr Bedzhamov could of course chose not to spend this money, and he would be wise to do so given that he likely faced bankruptcy if he did not curtail his expenditure.

Comment

Vneshprombank v Bedzhamov will be welcome guidance for individuals facing the threat of a freezing injunction, and practitioners representing them. The “ordinary living expenses” exception should enable them to maintain their pre-injunction lifestyle, assuming they can properly evidence that so-called “ordinary” lifestyle. The effect of this Judgment may be to widen the scope of the “ordinary living expenses” exception, and lead to Defendants increasingly attempting to fit other forms of expenditure into the carve-out. Lord Mance's comments in paragraph 68(5) of the Judgment should, however, be heeded – the more extravagant the expenditure claimed, the more sceptical the court is entitled to be, and the more convincing the evidence will need to be to support the assertions.

Claimants will be less receptive to the Judgment, particularly in circumstances where a Defendant is hurtling towards bankruptcy and the sums earmarked for ordinary living expenditure offer the only hope of recovery. This pain will be particularly acute where the Defendant's opulent lifestyle was only possible because of the fraudulent appropriation of the claimant's assets.

If you have any queries about this client alert or freezing injunctions more generally, please contact a member of White & Case London's commercial disputes team.

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