



Commercial Fraud  
Lawyers Association

# Freezing Third Party Assets

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# Jurisdiction

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- *The Siskina*: Mareva injunction must be ancillary to pre-existing cause of action
- *SCF Finance v. Masri* (1985) CA

## The *Masri* Principles

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- “Good reason to suppose” that assets are those of the defendant
- Court not obliged to take TP’s word for it
- Balance of convenience
- Court may order issue to be tried (and grant injunction in the interim)
- See also *Lakatamia Shipping Co Ltd v. Su* (2015); *Group Seven v. Allied Investment* (2014); *JSC BTA Bank v. Ablyazov (No 11)* (2015)

## The *Chabra* Jurisdiction (1)

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- *TSB v. Chabra* (1992): “good arguable case” that assets beneficially owned by D
- CA: caution and restraint – *Mercantile Group v. Aiyela* (1994)
- “Good arguable case” vs “good reason to suppose”: *Lemos v. Lemos* (2016); *PJSC v. Maksimov* (2013)
- Is third party a dissipation risk? *JSC Mezhdun v. Pugachev (No. 2)* (2015)

## The *Chabra* Jurisdiction (2)

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- *Yukong v. Rendsburg* (2001)
- *JSC Mezhdun v. Pugachev (No. 1)* (2015)
- *Ras al Khaimah v. Bestfort* [2018] 1 WLR 1099

## Chabra Expanded

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- Assets likely indirectly to be amenable to enforcement, via liquidator or receiver
- *C Inc v. L* (2001)
- *HMRC v. Clayton Egleton* (2006): no need for causative link between C's claim against D and D's claim against TP
- Recent authorities establishing the *C Inc* jurisdiction: *Parbulk II v. PT Humpuss* (2011); *PJSC v. Maksimov* (2013); *Pugachev (No. 1)* (2015)

## Limits to *Chabra*

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- Necessary to establish good arguable case that (i) D's assets in TP's hands, or (ii) D has claim against TP that C will be able to enforce
- *Dadourian Group v. Azuri* (2005)
- *Algozaibi v. Saad Investment Co* (CICA 1 of 2010)

## The *Maksimov* Principles

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- *PJSC Vseukrainskyi Aktsionernyi Bank v. Maksimov* (2013)
  - Good reason to suppose that assets held by NCAD amenable to enforcement
  - Good reason to suppose/good arguable case – more than barely capable of serious argument, but not necessarily > 50%
  - Jurisdiction to be exercised with caution
  - Paradigm case is where assets in the hands of the NCAD are arguably the assets of D
  - Substantial control is relevant but not necessarily enough

Finding a route through:  
Section 423 of the Insolvency Act 1986

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## Section 423 of the Insolvency Act 1986

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- An important weapon in the armoury of any fraud litigator
- Often useful when seeking to identify a route for enforcement against a third party
- Whilst on its face it provides a cause of action against the third party, in practice at the injunction stage they will often not be a defendant to the action, because the main claim against the wrongdoer is yet to be established

## Section 423: Statutory Requirements

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- Claimant must be a “victim” (or office-holder appointed over wrongdoer if insolvent) – typically a creditor of the wrongdoer of some kind, but can be broader than this
- Gift or transaction for no consideration or at undervalue
- Section 423 (3):
  - “*For the purpose of:*
    - (a) *putting assets beyond the reach of a person who is making, or may at some time make, a claim against him; or*
    - (b) *of otherwise prejudicing the interests of such a person in relation to the claim which he is making or may make*”

## Section 423: Case Law

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- It is the purpose of the transferor that matters: *Moon v Franklin* [1996] BPIR 196
- Need not be transferor's purpose to prejudice the particular claimant in question – so long as purpose was to prejudice any person meeting the statutory description: *Fortress Value Recovery Fund v Blue Skye Opportunities Fund* [2013] EWHC 14 (Comm)
- Purpose need not be the sole / primary / dominant / substantial purpose, so long as it is “a purpose” and not a consequence or by product: *Inland Revenue v Hashmi* [2002] EWCA Civ 981 and very recently *JSC BTA Bank v Ablyazov* [2018] EWCA Civ 1176
- No need for dishonesty on transferor's part: *Arbuthnot Leasing v Havelet Leasing (No.2)* [1990] BCC 636
- Court has a very wide discretion in relation to relief. See for example *Bataillon v Shone* [2016] EWHC 1174 (QB)

# Chabra and Arbitrations

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## Section 44 of the Arbitration Act

### ***“Court powers exercisable in support of arbitral proceedings***

*(1) Unless otherwise agreed by the parties, the court has for the purposes of and in relation to arbitral proceedings the same power of making orders about the matters listed below as it has for the purposes of and in relation to legal proceedings.*

*(2) Those matters are—*

*(a) the taking of the evidence of witnesses;*

*(b) the preservation of evidence;*

*(c) making orders relating to property which is the subject of the proceedings or as to which any question arises in the proceedings—*

*(i) for the inspection, photographing, preservation, custody or detention of the property, or*

*(ii) ordering that samples be taken from, or any observation be made of or experiment conducted upon, the property;*

*and for that purpose authorising any person to enter any premises in the possession or control of a party to the arbitration;*

*(d) the sale of any goods the subject of the proceedings;*

*(e) the granting of an interim injunction or the appointment of a receiver.”*

## Section 44 & Chabra: challenging established wisdom

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- Cruz City 1 Mauritius Holdings v Unitech [2014] EWHC 3704
- DTEK Trading v Morozov [2017] EWHC 94 (Comm)
- A v B (2017) (having regard to UST-Kamenogorsk Hydropower v AES [2013] UKSC 35)



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