

Bank notified of a freezing injunction does not owe a duty of care to applicant

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The Hong Kong Court has confirmed that a bank notified of a freezing injunction does not owe a duty of care to the party in whose favour the injunction is granted.

The Hong Kong Court followed a leading 2007 decision by the UK House of Lords, definitively rejecting the existence of such an alleged duty of care.

A bank notified of a freezing injunction owes its duty to the Court, not to the party with the freezing injunction. A breach of the injunction order would be a contempt of court but would not result in liability for damages.

Background

The current issue was raised in the context of striking out proceedings in *Grasberg Capital Asia Limited v Bank of Communications Limited*, where the defendant bank applied to strike out the proceedings on the grounds that it discloses no reasonable cause of action or is otherwise frivolous or vexatious.

The freezing, or *Mareva*, injunctions under consideration were in the Hong Kong standard form, including the standard penal warning.

Rejecting the plaintiff's arguments that the considerations of fairness, justice and reasonableness may impose a duty of care, the Court applied the UK House of Lords decision in *Customs and Excise Commissioners v Barclays Bank plc*, confirming for the first time in Hong Kong the Law Lords' express conclusion that it was not fair, just or reasonable to impose such duty on the bank.

Contempt for breach of a freezing order?

While contempt proceedings against banks and other third parties served with freezing orders are rare, and banks are unlikely to deliberately flout such an order, negligence or carelessness might sometimes justify a punitive order.

Banks are expected to have appropriate systems for freezing accounts when they are notified of an order, and to take care when operating these systems. Notice of a freezing order overrides the bank's contractual obligations to its customer.

Banks and third parties notified of a freezing order should carefully review the terms of the order and in particular, the scope of the assets covered. If the order does not specify the particular account, the bank must take steps to locate the relevant funds. Reasonable expenses of complying with the order may be recovered from the applicant. If any clarification is required, legal advice or directions from the court should be sought promptly.

For more on freezing orders, see our note [Loophole in freezing order closed off](#).

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