

# Knock Out Blows? – Injunctions in Commercial Litigation

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Seeking the emergency remedy of an injunction can provide you with a significant tactical advantage and have a considerable bearing upon the final outcome of your litigation. In particular, we have obtained and enforced for clients such as Dyson the two “nuclear weapons” of the law, being a Mareva injunction, which freezes the assets of the Defendant and an Anton Pillar Order which enables a representative of the Plaintiff and a supervising Solicitor to enter the Defendant’s premises to remove specified articles, or documents.

Injunctions are primarily used to preserve assets, evidence and the status quo between the parties pending the outcome of a full hearing, for example, by preventing the publication of an article in the press, or the broadcast of a television programme, or stopping one of your former employees disposing of commercial secrets, your money or your goods. In our experience, an injunction also places immense pressure upon a Defendant to settle up early.

Given the potentially disastrous effect which an injunction can have upon a Defendant’s business, the Courts do not grant this relief lightly. You must lay all of your cards on the table and this could well mean providing information to the Defendant which is prejudicial to your overall case. An injunction application is also extremely expensive and you will probably have to bear those legal costs “up front” as it is unusual for the Court to award costs until the conclusion of the case, which can take up to 12 or 18 months.

Timing is key. For example, if you stand idly by whilst someone unlawfully erects a hotel on your land, the Court may be reluctant to grant an injunction requiring the developer to pull it down. An injunction is an equitable remedy granted at the discretion of the Court, so you must come before the Court with “clean hands”. This means that your conduct in relation to the subject matter of the dispute will be scrutinised by the Court, which may decide to reject your application if it considers that you have acted in an inappropriate manner.

Laddie J in the case of *Series 5 Software v Clarke*, drew the following conclusions from the authorities:-

- “1. *The grant of an injunction is a matter of discretion and depends on all facts of the case.*
2. *There are no fixed rules as to when an injunction should or should not be granted. The relief must be kept flexible.*
3. *Because of the practice adopted on the hearing of the application for interim relief, the Court should rarely attempt to resolve complex issues of fact or law.*
4. *Major factors the Court can bear in mind are (a) the extent to which damages are likely to be an adequate remedy for each party and the ability of each party to pay, (b) the balance of convenience, (c) the maintenance of the status quo and (d) any clear view the Court may reach as to the relative strengths of the parties’ cases”.*

An unsuccessful, or premature application for an injunction can have equally grave consequences for the Plaintiff, including a severe costs penalty if it is overturned and the award of damages to the Defendant if the Court later decides that the injunction should not have been granted. As you can imagine, if the Defendant ceased trading because of the injunction there could be a very considerable claim for loss of profits.

*Please note: The content of this article is for information purposes only and further advice should be sought from a professional advisor before any action is taken.*

Nevertheless, particularly in this troubled economic climate, launching an injunction application may be the only way to protect your business and your assets and potentially land a knock out blow on the Defendant. The litigation team at Cleaver Fulton Rankin has vast experience of pursuing and defending such applications and should you have any queries about how we can be of assistance, please telephone to one of our team.

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