

ESSEX COURT CHAMBERS

BARRISTERS



SEARCH, SEIZE, FREEZE & ENFORCE:
The latest word on the pre-emptive and post enforcement
relief available to support claims in fraud



Iain Quirk QC



David Davies QC



Ruth den Besten

Search, Seize, Freeze & Enforce: The latest word on the pre-emptive and post enforcement relief available to support claims in fraud

In this talk Iain Quirk QC, David Davies QC and Ruth den Besten consider key issues arising in relation to the nuclear injunctive orders typically sought at the outset of substantial fraud proceedings.

David Davies QC considers some of the issues that often arise in the frantic period between service of a freezing order and the initial return date such as attempts to limit who can see the defendant's asset disclosure, fortification of the cross-undertaking in damages, living expenses, including having regard to the decision of the Court of Appeal in *VPB v. Bedzhamov* [2019] EWCA Civ 1992, and security for costs.

Iain Quirk QC considers the risks relating to a solicitor's receipt of funds from a defendant client where a claimant makes a proprietary claim to the proceeds of fraud, and specifically when a proprietary / unconscionable receipt claim will arise against a solicitor, the extent of a solicitor's knowledge required to found liability, and what investigations a solicitor is required to make: *Carl Zeiss Stiftung v Herbert Smith* (No. 2) [1969] 2 Ch 276. Iain also considers whether, where there are no clean funds (whether from the defendant or a third party), a solicitor can continue acting and whether, in this circumstance, a court application is appropriate: *United Mizrahi v Doherty* [1998] 1 WLR 435

For her part, Ruth den Besten looks at the search order jurisdiction, including how best to give effect to the protections contained in the search order: *Arcelormittal USA LLC v Essar Steel Limited & Ors* [2019] 2 All ER (Comm) 414, and whether an imaging order is to be preferred to a broader search following the recent guidance of the Court of Appeal in *TBD (Owen Holland) Ltd v Simons and others* [2020] EWCA Civ 1182.

ESSEX COURT CHAMBERS
BARRISTERS

24 Lincoln's Inn Fields
London WC2A 3EG, UK

Tel +44 (0)20 7813 8000
Fax +44 (0)20 7813 8080
clerksroom@essexcourt.com

essexcourt.com