

WEEK ONE – INTRODUCTION TO REMEDIES AND RESCISSION	2
WEEK TWO – FREEZING AND SEARCH ORDERS; DECLARATIONS	7
WEEK THREE / FOUR – DAMAGES FOR BREACH OF CONTRACT	15
WEEK FIVE / SIX – DAMAGES IN TORTS.....	32
WEEK SEVEN – EQUITABLE COMPENSATION AND DAMAGES	39
WEEK EIGHT – SPECIFIC PERFORMANCE	45
WEEK NINE – INJUNCTIONS.....	54
WEEK TEN – EQUITABLE DEFENCES.....	62
WEEK ELEVEN / TWELVE – RESTITUTION	72

WEEK TWO – FREEZING AND SEARCH ORDERS; DECLARATIONS

- 1) **FREEZING ORDERS** - freezes respondent's assets pending hearing and determination of applicant's cause of action against respondent - *Newcastle City Council v Caverstock Group Pty Ltd*
 - a. **Purpose** – to prevent abuse or frustration of court's process in relation to matters coming within its jurisdiction - *Jackson v Sterling Industries Ltd*
 - b. A freezing order does not give the applicant any proprietary/security interest in the respondent's assets; all that changes is the **respondent's right to deal with their assets** - *Customs and Excise Commissioners v Barclays Bank plc*
 - c. **Breaches** – constitute *contempt of court* and potential imprisonment where a particularly serious breach - *CC Containers Pty Ltd v Lee (No 10)*
 - d. **Jurisdiction** to grant freezing orders stems from court's *inherent* jurisdiction + *Supreme Court Act 1970 (NSW) s 23* (re SC having jurisdiction necessary for administration of justice) + court rules - *Jackson v Sterling Industries Ltd*
 - e. **Cardile v LED Builders Pty Ltd** – freezing order can be made against **third parties** where (i) the party holds *power* of disposition over assets of potential judgment debtor, or (ii) when some process enforceable by the courts may be available to judgment creditor, pursuant to which the third party may be obliged to contribute funds to help satisfy the judgment debt (eg a guarantor)
 - i. Court held that freezing order could be made against Cardiles re *dividends* received from Eagles Homes, but *not* over remaining assets
 - ii. Freezing order can be granted against a **third party (such as a bank)** if that person is in possession of or in control of the respondent's property – although jurisdiction to grant such order to be exercised with great caution
 - f. **Three requirements** before court will **grant freezing order** - *Glenwood Management Group Pty Ltd v Mayo*:
 - i. **Risk of dissipation or secretion of assets**, to render any judgment which the applicant may obtain nugatory - *Barclay-Johnson v Yuill*;
 1. Must be a 'real risk, judged objectively, that a future judgment would not be met because of unjustifiable dissipation of assets' - *Holyoake*

v Candy

2. Mere assertion that defendant will put assets beyond plaintiff's reach is inadequate - *Clifton v Wuxi Suntech Power Co Ltd*
 - a. Plaintiff must demonstrate risk that assets will be dissipated by *solid evidence* - *Ninemia Maritime Corporation v Trave Schiffahrtsgesellschaft mbH & Co KG*
 - b. See **relevant factors** in establishing risk of dissipation

ii. Applicant has a **good arguable case**;

1. Freezing order must be *ancillary* to some pre-existing cause of action (including a statutory right), although applicant need not have commenced proceedings before obtaining a freezing order - *Siskina v Distos Compania Naviera SA*
2. Applicant must establish he has a *sufficiently strong cause of action* against the respondent, described as a **good arguable case** - *Glenwood Management Group Pty Ltd v Mayo*
 - a. Good arguable case = one 'which is more than barely capable of serious argument, and yet not necessarily one which the Judge believes would have a better than 50% chance of success' - *Ninemia Maritime Corporation v Trave Schiffahrtsgesellschaft mbH & Co KG*

iii. **Balance of convenience** favours granting of freezing order

1. Whilst exercising its discretion, court weighs up strength of applicant's cause of action against factors including *delay*, and whether there has been a *full and frank disclosure* by the applicant
2. See relevant factors – *Cardile v LED Builders*

g. **Other important considerations** re the granting of a freezing order:

- i. **Delay** in prosecuting the cause of action may result in order being discharged;
- ii. **Rights of third parties** cannot be affected by the granting of a freezing order – assets cannot be frozen if respondent prevented from meeting normal

debt obligation owed to third parties – *Jackson v Sterling Industries*;

- iii. Freezing order will not extend to assets to meet the respondent's **ordinary living expenses** (*Jackson v Sterling Industries*) or **reasonable legal expenses** (*DCT v Bollands*)
 - iv. Most common **asset** re freezing order = bank account. In appropriate case, also over land (*Praznovsky v Sablyack*) or proceeds from sale of land (*Kazacos v Shaungling International Development Pty Ltd*)
 - v. Order can extend to assets **outside jurisdiction**, if insufficient assets within jurisdiction - *Derby & Co Ltd v Weldon (No 2)*
- h. **Applicant's duty of disclosure** – as freezing order is on an *ex parte* basis, the applicant has a duty to *disclose all material facts known* to him, should he have made proper inquiries - *Siporex Trade v Comdel* ; *Brink's-Mat Ltd v Elcombe*
- i. Failure to comply with disclosure requirements usually results in discharge of freezing order - *Garrard v Email Furniture Ltd*, unless non-disclosure was innocent, and the order would have been granted had the disclosure been made at the time of *ex parte* application
 - ii. Main court consideration in exercising its discretion to discharge: 'what is in the interests of justice' - *U & M Mining Zambia Ltd v Konkola Copper Mines Plc*
- i. **Undertaking as to damages** – applicant to give undertaking as to damages, to *compensate* the respondent/any third party that is *adversely affected* by the grant of freezing order, in the event that applicant does not succeed in cause of action against respondent - *Cardile v LED Builders Pty Ltd*
- i. Courts can *dispense* with requirement, where litigation is not between private parties for private purposes (eg where ACCC is a party)
 - ii. Court rules stipulate that undertaking to be accompanied by appropriate bank guarantee – *Heartwood Architectural Timber & Joinery Pty Ltd v Ors & Redchip Lawyers*

2) **SEARCH ORDERS** – prevents respondent from destroying evidence relating to applicant's case and frustrating administration of justice

- a. Applicant given access to respondent's premises to inspect, copy and collect material necessary for it so successfully bring its case, which it fears will be