

Accessing social media accounts to enforce a judgment.

Court orders defendant to provide access to his social media accounts.

In a world where it is now common place for people to communicate via social media platforms, social media accounts have the potential to be vital sources of information for claimants that are seeking to enforce judgments against uncooperative defendants.

On 8 April 2020, the English Commercial Court made an order, in the case of *Lakatamia Shipping Co Ltd v Su* [2020] EWHC 865 (Comm), requiring the defendant to sign a mandate authorising his social media and email providers to disclose the details of his accounts to the claimant and to a court-appointed independent lawyer.

Summary of background.

- Long running proceedings whereby the claimant sought to enforce a judgment against the defendant of more than US \$50m.
- Claimant had obtained a worldwide freezing order and other disclosure orders against the defendant requiring him to disclose his assets (but the Court found that there was a good arguable case he had never satisfactorily complied with the orders).
- Court had ordered the defendant to provide the details required to access his social media and email accounts.
- Defendant claimed that he had lost the passwords.
- Claimant applied for an order requiring the defendant to sign mandates to each of his social media and email providers authorising them to disclose the details of the accounts to a court-appointed independent lawyer who would then review the contents and disclose any relevant documents to the claimant.
- It was anticipated that the social media accounts and email accounts would support the claimant's belief that the defendant still controlled substantial levels of undisclosed assets by highlighting the location and movement of those assets. For example, the court already had material before it from which it could be inferred that the defendant had sold villas in Monaco resulting in proceeds of \$27m which appeared to have been channelled through his mother to a company in Dubai which he controlled.

Court's jurisdiction.

The English Court found that it had jurisdiction (1) under section 37(1) of the Senior Courts Act 1981 (the "1981 Act") (power to grant an injunction) to require the defendant to provide access to his accounts (including by signing mandates) on the basis that such an order was just and convenient and a necessary adjunct to the orders already made; and (2) under the Court's inherent jurisdiction to ensure compliance with its own orders.

The Court found that it had such jurisdiction on the basis that it had powers intended to procure compliance by non-conforming defendants, for example:-

1. Under section 39 of the 1981 Act, where a party is obliged to sign certain documents, the Court can order an official of the Court to perform the obligation instead of the non-conforming party.
2. The Court's Anton *Piller*, or search order, jurisdiction (permitting parties to search premises and seize documents and assets) can be seen as a mechanism for doing things which a defendant could be required to do himself in circumstances where there are good grounds to anticipate that he will not

The Court further held that there was no difference between requiring a defendant to sign a mandate requiring his social media providers to disclose information and requiring him to sign a mandate directing his banks to disclose information for which there was existing authority.

Test for making the order.

Having held that it had jurisdiction to make the order, the Court considered the test to be applied. The Court noted that it is generally easier once a judgment has been issued to obtain orders under section 37(1) of the 1981 Act. However, and whilst the claimant had obtained judgment, the claimant agreed to the Court nevertheless approaching the application on the basis of the more stringent test applicable to obtaining search order relief in a pre-judgment context. The Court found that all four conditions of that test were satisfied:

1. There was an extremely strong prima facie case against the defendant, as judgment had already been obtained.
2. The damage or potential damage to the claimant was serious. Where there was already a finding that the defendant's conduct over a long period had left the claimant "very, very, very much out of pocket", the claimant would be prevented from obtaining satisfaction of its long-standing judgment and the defendant was causing the claimant to incur ongoing legal costs in an attempt to obtain satisfaction.
3. There was clear evidence that the defendant had in his possession (in the social media and email accounts) incriminating documents and there was a real possibility that he might destroy such documents, based on the history of the proceedings and the defendant's conduct to date.
4. The harm caused to the defendant (interference with his right of privacy in his communications) was not disproportionate to the legitimate object of the order. It was only necessary because the defendant had failed to comply previously with orders.

The Court found that safeguards should be imposed to protect the defendant's right to privacy to the fullest extent consistent with the order achieving its intended purpose. Accordingly, it ordered that the independent lawyer was not permitted to disclose to the claimant non-privileged documents which were obviously irrelevant to the identification of assets; and the claimant was only permitted to use the documents for the purpose of enforcing its judgments (save with the permission of the Court).

Isle of Man.

There are provisions under Isle of Man law that are equivalent to the statutory provisions in the 1981 Act as relied upon by the English Court:-

1. Section 33A of the High Court Act 1991 (the "1991 Act") permits the Isle of Man Courts to make Anton Piller (search) orders that provide for the preservation of evidence or property. The Court can also permit persons to enter premises to search for documents or assets.
2. Section 42 of 1991 Act provides the Court with the power to grant injunctions both on an interlocutory and final basis.
3. Section 45 of the 1991 Act permits the Court to order that a document required to be signed by a person shall be signed instead by a person nominated by the Court where the original signor does not comply.

Rule 7.16 of the Rules of the High Court of Justice 2009 also provides for various orders that a Court can make by way of remedies that can assist claimants in ensuring the identification and preservation of assets against which judgments can eventually be enforced.

Whilst the case of *Lakatamia* is not binding on the Isle of Man Courts, the decision is likely to be persuasive authority where it was decided upon similar legislation and common law to that of the Isle of Man. It is to be anticipated that the Isle of Man court will look to extend the application of its procedures and Manx law to keep pace with technology and the increasing number of ways people utilise social media.

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