

BRITISH NIGERIAN LAW FORUM (BNLF)

THEME: ENFORCEMENT OF FOREIGN JUDGEMENTS & REGULATING FIDUCIARY SERVICES IN NIGERIA

FACILITATOR: Mr. Babatunde Akinyanju

CHAIRPERSON: Mrs. Mariam Uwais

SPEAKER: Tim Daniel

TOPIC: FINANCIAL SERVICES REGULATION IN THE UK

It was reported that he was unable to make the conference as he was ill, so a slide show put together by his trainee Ajital Shah was shown to the plenary where the following financial regulatory bodies were listed as well as their objectives and functions.

Some bodies that represent the Financial Services Regulation in the UK are:

- The Bank of England
- Financial Services Authority
- Law Society in England, Wales, Scotland and Northern Ireland
- Association of Chattered Certified Accountants in England & Wales
- Bar Standards Board

Note: From April 2010, the above would all be under the umbrella of the Legal Services Board.

- Institute of Actuaries
- Financial Ombudsman Service
- Office of Fair Trading
- Competition Commission
- Serious Services Authority
- Her Majesty's Treasury

Some of Financial Services and their objectives:

The Financial Services Authority is a creature of State, its objectives are to create market confidence, public awareness and prevention of commercial crime.

The Bank of England's objectives are to maintain monetary and financial stability and also to encourage economic growth.

Her Majesty's Treasury designs the overall structure for regulation, proposed amendments to financial services regulations and takes financial problems to parliament.

2nd SPEAKER: PAUL I. K. ONIFADE

TOPIC: RECIPROCAL ENFORCEMENT OF FOREIGN JUDGEMENTS IN ENGLAND

This paper began with the important question 'have you ever obtained judgement that has been unenforceable?'. It was a paper explaining the reasons why we (Nigerians) take our cases and matters to English courts for the execution of judgement gotten here in Nigeria. Some highlights in this paper are Asset Tracing, How to enforce judgement in an English court and when a case can be taken to an English court for enforcement of judgment.

The lawyer plays a major role in the society, his role includes upholding the rule of law, the administration of justice and resolutely supporting the client in attaining his goal(which is execution of judgement). By carrying out these roles we expect that the lawyer would help the client in the recovery of cost and financial awards from any judgement.

This question then arises 'what if the other party has no money and his assets have been dissipated?' or "a debtor has no money", the only solution to this is that these people should be made to bring their international assets for liquidation so as to pay the debt owed.

Foskett v. Mckewin (2000) WLR 1299 is a case that defines asset tracing, a process that can be used to recover money from a person who owns property outside the country.

Agric Credit Organisation of Saakatchewan v. Pettyjohn (1991) 79 DLR

What kind of assets can be traced?

- Real Property
- Personal property
- Business property
- Cash
- Shares
- Bonds

This process tries to see behind the ownership of property, and bring it in as a source for the execution against a judgment debtor.

Why do people use the English courts to trace such property?

They do because it's a benefit to them due to its common Law and Language with Nigeria as a country, historical, trade and business links and also because the debtor may have greater assets in the UK as is common with many Nigerians. The UK has searchable and transparent ownership records, which lifts the veil on the true owner of property and assets and enables the property be identified to offset a debt.

THE PROCESS

- An Ex-parte application must be made with supporting evidence
- The Nigerian judgment must be registered within 7 days
- A notice must be served on the defendant

The defendant in the suit must be resident or have a registered office in the United Kingdom/ country of judgment. The claimant must have submitted to foreign jurisdiction as default judgement is not appropriate in this matter as the other party must be present.

It should be noted that if advising a bank to use the method of asset tracing, it must be a case where criminal findings must not arise, if they do the Crown will confiscate all assets under the provisions of POCA 2002 (Process of Crimes Act 2002)

3rd SPEAKER: PHILIP ALIKER

TOPIC: SOVEREIGN AND STATE IMMUNITY

This is a very wide topic but he specifically zoned in on the aspect of Sovereign and State Immunity in relation to asset tracing.

A lot of people including governments are involving themselves in business opportunities available in today's markets. And as such when a breach of contract occurs and the defendant is a State, what kind of immunity do they have or better still do they have immunity against asset tracing.

A state can be divided into 3 major parts

- The Sovereign Head
- The Government
- The Government Departments

There are quite a number of cases where States have been involved in the process of asset tracing some of these are:

Pocket Kings Ltd. v. Safenames Ltd

Pocket Kings Ltd. v. Commonwealth of Kentucky (2009) EWHC 2529

Alamasiegha v. Crown Prosecution Service

IMPLEMENTATION

In any situation where a State is involved, there is an assumption of immunity whether or not it applies. Therefore when a State submits to jurisdiction of a court, or is claimant in a matter the issue of immunity does not arise. There are exceptions to the enforcement of this rule, an example of this is:

ARBITRATION

Svenska Petroleum AB v. Government of Lithuania (2006) EWCA civ. 1529

Execution in various States is different as the French Courts say a State that has submitted to arbitration is subject to execution of the panel's judgement. Most courts i.e. the English Courts say there is State Prohibition on execution of judgement when it deals with debt, which is unfair as a claimant who receives judgment can't execute it against a State.

The question session was brief with two important questions asked and explained:

1. What are 3rd Party Debt Orders
2. How does one locate runaway Debtors (i.e. debtor who have fled from the country)