



WORKING PARTY PAPERS

Business to Business Fraud

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Steven is a leading authority on fraud. Over the last 20 years his firm has been retained by national and international organisations all of whom have been victims of fraud. The firm has an extensive international network of experienced lawyers and investigators - which has proved an invaluable asset to the fight against the increasingly sophisticated fraudster. The firm was identified in the 2000 edition of The Legal 500 as a leading fraud litigation practice in the UK.

Steven has been invited to speak regularly to international corporations and institutions as well as to other lawyers. He has recently given papers at the International Bar Association, the International Chamber of Commerce and to a UK Government Department.

He is asked for comment regularly by the media and has been interviewed on the BBC, Sky Television and CNBC. He is also invited to write articles for newspapers and specialist law publications. In addition he is co-editor of the UK Manual of the Association of Certified Fraud Examiners and is an active member of the association. He is a member of the E-Fraud working party of the Fraud Advisory Panel.

Steven obtained Honours in the Law Society qualifying examinations, prior to becoming a solicitor in 1972. He moved quickly to become the litigation partner of a substantial

Central London practice prior to starting his own firm in 1979.

Retail organisations are constantly faced with a dilemma of how best to deal with fraudulent activities. The most common scenarios are:-

SCENARIO 1

A limited company is set up and establishes good credit rating, by registering false accounts with Companies House. The company fraudulently obtains £40k of goods from the Group for which no payment is forthcoming. The matter is reported to the police, but at best the fraud is added to a larger investigation that will take several years to reach completion in the criminal courts. We want our money back.

SCENARIO 2

A senior manager apparently steals £50k from the Group by some manipulation of the accounting system. We want our money back. What happens if we have sufficient evidence to dismiss them, on the balance of probabilities, but insufficient evidence to support a criminal action? What if the Police do pursue a criminal prosecution on our behalf, but it is going to take a long time.

The following is a summary as to how civil proceedings can assist:-

1 Advantages of Civil Proceedings

- 1.1 Speed - time is very much of the essence because by the very nature of the act i.e. fraud, it is likely that once the fraudster knows that action will be taken against him, he will take steps to put his assets out of reach.
- 1.2 Lower burden of proof - to obtain the Orders mentioned below, it is only necessary to demonstrate a good arguable case as opposed to establishing the claim beyond doubt. At trial, a claim will succeed "on a balance of probability".
- 1.3 Control - the Claimant will, having regard to the various factors including commercial realities, have control of what steps can be taken and when to take them.
- 1.4 Ability to disclose evidence to criminal authorities - at any time you may make an application may be made to the civil courts for leave to disclose to the criminal authorities the evidence obtained in the civil proceedings.

Information relating to the fraud and the fraudster needs to be obtained by way of internal investigation and enquiries at various public registries including Companies House, HM Land Registry, possibly the register of disqualified directors and the Register of Individual Voluntary Arrangements held at the Department of Trade & Industry. Once that is to hand, the following matters should be considered:

2 What additional information can you obtain:-

- 2.1 The Court will grant Orders enabling you to obtain from third parties information that may assist you in prosecuting your claim. For instance, if you have been able to trace a bank account, you may be able to require the bank to disclose information relating to that account.
- 2.2 Information can also be obtained by employing monitoring and investigation methods. Particular attention should be drawn to compliance with the Data Protection Act 1998 as well as the Regulation of Investigatory Powers Act 2000.

3 Should you pursue?

- 3.1 What are you likely to recover?

It is important to bear in mind that the assets disclosed by the Defendant may well be insufficient to cover your claim making further proceedings commercially unviable.

3.2 Against whom?

A fraudster may not be the only person who is liable to you. There may be other people involved in committing the crime who would be equally liable and it may be more realistic and cost effective to pursue them.

3.3 Is it worthwhile?

You have now discovered all the information and you can therefore make an informed decision as to whether to make claims and if so, for what and against whom.

4 Orders that can be obtained

4.1 Freezing Order - this Order would enable you to “freeze” the Defendant’s assets such as the bank account, as well as preventing him from dealing with assets such as his house. It is usually for a fixed amount i.e. your debt plus costs but if you suspect that he may have stolen more from you, it can be for an unlimited amount.

4.2 Search Orders - this Order would enable you to attend at the Defendant’s premises for the purpose of locating relevant documents, either as to your claim or as to the Defendant’s assets which you have satisfied the Court he would destroy if such an Order had not been obtained.

4.3 Other Orders may also be obtained including:

- a) Requiring the Defendant to surrender his passport until such time as he has made full disclosure.
- b) Enabling you to seize items upon which Judgment may be enforced in the event that you can satisfy the Court that either first, they are your items or alternatively, these items are likely to have been bought with the proceeds of the crime against you.

4.4 Summary Judgment - within a few months of starting proceedings, you will be entitled to obtain summary judgment on the basis that there is no arguable defence to the claim. If the Judgment is granted, it can be enforced on the assets you have “frozen”.

