

Dispute Resolution

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In this issue

SOUTH AFRICA

Robin Hood and the
anti-dissipation interdict



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Robin Hood and the anti-dissipation interdict

The legend goes that once upon a time and in a land far, far away, Robin Hood and his merry band spent their time stealing from the rich and giving to the poor. With Little John, Friar Tuck, Maid Marian and others, Robin would rob wealthy nobles as they passed through Sherwood Forest and then distribute the valuables to needy common folk. Prince John and his barons, vexed by the actions of the outlaws, instructed the Sheriff of Nottingham to find the valuables and lock them in the castle before they were given away to the poor and lost forever.

Although the legend of Robin Hood dates back as far as the 13th century, the need to intervene urgently in a situation to secure assets before they are dissipated remains very relevant. While we know from the legend that the Sheriff of Nottingham wouldn't have bothered to follow a legal process, times have changed and when a similar situation arises now, the aggrieved party must approach our courts for an anti-dissipation interdict. The recent case of *KSL v AL* (356/2023) [2024] ZASCA 96 (13 June 2024) has confirmed the requirements for such an interdict.

Prior to the existence of the anti-dissipation remedy, the right to freeze a third party's assets to prevent their disposal or their removal from the court's jurisdiction was restricted to divorce proceedings and the Admiralty Court's power of arrest over ships and cargoes. In the 1996 decision in *Knox D'Arcy Ltd and Others v Jamieson and Others* (283/95) [1996] ZASCA 58 the court confirmed that the applicant for an anti-dissipation interdict must show:

- that the applicant, on the face of it, is legally entitled to the assets in question;
- a well-grounded apprehension of irreparable loss if the interdict is not granted;
- that the balance of convenience favours the applicant;
- there must be no other satisfactory remedy available; and
- that the respondent is likely to flee and intentionally dispose of the assets, or ensure that by the time a judgment is obtained, there will be no assets in the court's jurisdiction to satisfy the judgment.

After the *Knox D'Arcy* decision, some subsequent decisions caused uncertainty around what an applicant is required to prove, and the Supreme Court of Appeal decision in *KSL v AL* has now brought clarity.

In this case, KSL issued summons for divorce against AL and before the divorce was finalised, he sold his house. AL then brought an application for an anti-dissipation interdict asking the Pretoria High Court to order the conveyancing attorney to hold the proceeds of the sale until the accrual claim in the divorce had been decided.

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The High Court granted the interdict choosing not to apply the requirements set out in *Knox D'Arcy*, only considering the effect of the sale by KSL of his house but not his intention. KSL appealed to the Supreme Court of Appeal which found that the requirements set out in *Knox D'Arcy* are correct and that an applicant for an anti-dissipation interdict must show that the respondent is acting with the intention to frustrate an anticipated judgment. As it was not clear that KSL was acting with that intention, the appeal was successful, and the interdict was refused.

Contrast that with the Sheriff of Nottingham. Had he approached the High Court for an anti-dissipation interdict, he would have been able to show a clear intention by Robin Hood and his merry band, backed up by a pattern of previous conduct, to quickly spread their loot around the poor folk. More than that, if the interdict was not granted and the valuables were distributed amongst the poor, any judgment that the Sheriff might get from the court eventually would be hollow. The decision of the Supreme Court of Appeal in *KSL v AL* brings welcome clarity even if seeing the Sheriff of Nottingham enjoy a court victory over Robin Hood offends the child in all of us.

Tim Fletcher, Claudia Grobler and Luke Kleinsmidt

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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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