[2009] NZLJ 73

STUDENT COMPANION

COMPANY LAW

Jessica Palmer

Elders New Zealand Ltd v PGG Wrightson Ltd
[2008] NZSC 104

Amalgamation of companies under either Part 13 or Part 15 of the Companies Act 1993 takes effect as if the new company has succeeded to the property of the amalgamating companies without any distinct transfer or other disposition of property required. The new company is in law a continuation of the amalgamating companies. In so holding, the Supreme Court affirmed *Carter Holt Harvey Ltd v McKernan* [1998] 3 NZLR 403 (CA) and rejected the pre-1993 understanding of the effect of amalgamation as espoused in *Nokes v Doncaster Amalgamated Collieries Ltd* [1940] 3 All ER 549 (HL).

The case arose upon the amalgamation of Wrightson Ltd and Pyne Gould Guiness Ltd into PGG Wrightson in 2005. Prior to the merger, Wrightson was joint owner of several stockyards with Elders NZ Ltd, under arrangements that gave each a right of pre-emption if the other wished to "transfer, sell, lease or otherwise dispose of" its interest. The appellant claimed that the amalgamation necessarily involved a disposition of Wrightson's interests in the stockyards to PGG Wrightson and thus triggered its pre-emption rights. The issue that concerned the Supreme Court was therefore the precise legal effect of the amalgamation.

The amalgamation was achieved by a scheme approved by the High Court under Part 15. The Companies Act provides two procedures for amalgamation. Part 13 requires a special resolution of at least 75 per cent of the shareholders of each of the amalgamating companies following disclosure of relevant information. Under this procedure, s 219 provides for the statutory concepts of continuance and fusion; that is, the amalgamated company stands in the same position as each of the amalgamating companies in respect of their rights and obligations and is not to be treated as a different or new entity in relation to burdens and benefits enjoyed by the prior companies. Had the amalgamation been carried out using this procedure, the pre-emption rights would clearly not have been triggered. Under Part 15, amalgamation is effected by approval of the court, a process which avoids the more prescriptive procedural and voting requirements of Part 13.

Unlike in Part 13, there is no express provision mandating the concept of continuance, or indeed any other possible effect of amalgamation, in Part 15. In the absence of any statutory indication otherwise, the House of Lords had previously held, under the equivalent UK legislation, that amalgamation does not automatically result in an assignment of contractual rights to the amalgamated company (*Nokes v Doncaster Amalgamated Collieries*). Such assignment requires approval from the grantor of the rights in order to uphold contractual freedom.

Although past judicial interpretation of the effect of court-approved amalgamations and the statute's silence may have suggested that a Part 15 amalgamation does not automatically pass the old company's rights and liabilities to the new company, the Supreme Court nevertheless held that it does and thus that the appellant's pre-emption rights never arose. Giving judgment for the Court, McGrath J relied on several principles of statutory interpretation to determine the meaning of "amalgamation" in Part 15:

- the underlying purpose of the statute to reduce administrative complexity and to provide convenient machinery for mergers. The concept of continuance in Part 13 "is an important feature of the facilitative purpose of the 1993 Act" and it would be inconsistent with legislative purpose were the same concept not to apply to Part 15 amalgamations;
- the high likelihood that the drafter used the word amalgamation consistently throughout the Act;
- the similar structures of Parts 13, 14 and 15 indicated that they were to be read and interpreted consistently with each other. Part 13 begins with an explanation of "amalgamations", Part 14 with "compromises", and Part 15, which deals with "Approval of arrangements, amalgamations and compromises by the Court", begins with a definition of "arrangements". It can be implied that the meanings of amalgamations and compromises in Part 15 are to be taken from the earlier Parts;
- s 238 provides that the Part 15 process can be used even though the amalgamation could be effected under Part 13. McGrath J concluded that this was further evidence that the meaning and thus the effect of amalgamation is the same for both procedures.

The appellant also submitted that third parties' rights were threatened because they did not have a chance to appear before the Court. McGrath J rejected this argument pointing out: first, that the Part 15 procedure gives courts the power to require notification to third parties, enabling them to object; and, secondly, and in any event, ex parte applications, if made correctly, will reveal any need for notification to interested third parties which the court can then require before proceeding.

The judgment ought to be pleasantly received by company law practitioners. It brings further clarity to Part 15 amalgamations – something which has been called for in the past (*Suspended Ceilings (Wellington) Ltd v CIR* (1997) 8 NZCLC 261,318; *Morison's Company and Securities Law*, para 48.3). The reasons for the inclusion of Part 15 in the Act are not publicly documented and its broadly worded provisions have left its scope and application somewhat uncertain. Without any better direction from Parliament as to the intended purpose of Part 15, the Court has been wise to resolve any ambiguities arising from it consistently with the alternative amalgamation procedure in Part 13 and with the overall purpose of the statute.

EQUITY

Jessica Palmer

Re Carrington
(HC, Auckland CIV 2008-404-302, 22 December 2008, Allan J)

This testamentary trust case raised issues of fundamental trust principles, in particular whether the rule against a trustee's self-dealing is an absolute prohibition. The orthodox approach was affirmed by Allan J, rejecting the discretionary approach of the English Court of Appeal in *Holder v Holder* [1968] 1 Ch 353 and limiting the effect of comments appearing to accept it made by Williamson J in *Re McDonald* (HC, Invercargill CP 49/86, 19 October 1992).

The testator had appointed his widow and a solicitor as executors and trustees of his estate. He gave his widow a life interest in his half share of the Auckland house they owned together as tenants in common and the residuary interest was to be divided equally between any of his surviving children (or their issue). Under the will, the trustees were given power, at the request of the widow, to sell the house and purchase another and to invest any surplus proceeds of sale, the income to be paid to the widow.

Not long after his death, this power was exercised to sell the Auckland property and purchase another in Tauranga. The widow then wished to renovate the property but wanted to ensure she would receive the benefit from any subsequent increase in value. It was agreed between the trustees that the trust's half share in the house should be sold

to the widow, financed by an interest-free mortgage back to the trust. Some ten or so years later, the residuary beneficiaries inquired about the trust and were informed about the sale to the widow. They lodged a caveat on the title, claiming beneficial interest in a half share of the property arguing that the trustees were wrong to exchange appreciating real property for an investment that made no capital growth. Negotiations between the parties followed but to no avail and eventually an application was brought by the solicitor trustee for a declaration as to whether the sale was lawful.

The residuary beneficiaries submitted simply that the sale by the trustees to one of their own was voidable because it is a breach of the rule that trustees must not purchase (or otherwise acquire) trust property in his or her personal capacity. Several well-known authorities to this effect were cited by Allan J including *Ex p Lacey* (1802) 6 Ves 625, *Ex p James* (1803) 8 Ves 337; 32 ER 385, and *Tito v Waddell (No 2)* [1977] Ch 106. The solicitor trustee concurred with this claim.

The widow raised three arguments in defence. First, it was claimed that the trustee's application was an inappropriate procedure by which to give the residuary beneficiaries any relief because it had not been brought by them personally. Allan J rejected this; it would have required unnecessary additional proceedings that would ultimately have been consolidated with the trustee's application.

Second, the widow submitted that the mortgage arrangement was expressly permitted by the will on the basis that power was conferred to invest any surplus funds with the subsequent income to be given to the widow in accordance with her life interest. The will provided:

> My trustees shall have power at the request of [my widow] to sell [the original house] and use the proceeds of sale belonging to my Estate in the purchase or building of another residence to be held upon the same trusts including sale and repurchase and any portion of the proceeds of sale belonging to my Estate that is not so used shall be invested and the income paid to [my widow] until her life interest in the real estate terminates.

This was a question of construction of what is likely to be a fairly standard clause in wills. His Honour found from a plain reading of the words that the subclause granting trustees power to invest any surplus and distribute the income to the life tenant could only be exercised following a request from the life tenant for the purchase of an alternative residence by the trustees. Given that, in relation to the impugned transaction in this case, the widow had made no request for the purchase of an alternative house, the sale proceeds arising from selling the estate's half share in the Tauranga house to her had to be invested in a way consistent with a trustee's normal investment duties and, absent any express direction in the will, any income arising forms part of the residue of the estate. Thus the trustees' mortgage advance to the widow was not authorised by the will.

There is nothing surprising about this in light of the clear and unambiguous wording of the clauses. However, his Honour did acknowledge the possibility that, while the meaning was clear, it may not have been the effect intended by the testator. The Court's concern is nevertheless with construing the objective intention of the testator as manifested by the will and the case serves as a reminder to drafters of wills to take special care in ensuring that all eventualities which a testator wishes to provide for are expressly and carefully accounted for in the deed.

The third and most significant defence was that the rule against trustees self-dealing with trust property, which had prima facie been breached, was not an absolute rule and that the Court has discretion to refuse relief. Fundamental to the trust relationship is the trustee's fiduciary obligation to act in the best interests of the beneficiaries. This has been developed in to several more specific duties which includes that a trustee cannot himself purchase trust assets without express authorisation because to do so could amount to a conflict between his own interests and the interests of the beneficiaries. It was submitted in this case that the transaction ought to be upheld because there could have been no objection to it if, at the outset, the trustees had opted to finance the widow's purchase of the Tauranga house pursuant to the power conferred on them.

Reliance was placed on *Holder v Holder* [1968] 1 Ch 353, in which the English Court of Appeal excused an executor for purchasing trust property where he had only performed certain trivial tasks of executorship and had placed the highest bids for the properties. Their Lordships there held that the rule is subject to the Judge's discretion. While this approach could be commended for its practical outcome of ignoring the rule where the trustee's self-serving behaviour does no actual harm to the interests of the beneficiaries, it is not consistent with the traditional prophylactic understanding of fiduciary duties that they prevent not only actual conflicts but also possible conflicts. Accordingly, after citing various case law and texts in support of the strict approach, Allan J rejected *Holder v Holder* noting that apparent support for it by Williamson J in *Re McDonald* did not extend to accepting that the Court had a discretion in every case of self-dealing.

Again, there is nothing surprising about the Court's application of principle on this point. To avoid the wrath of fiduciary law, it is generally believed that it is not enough to say that no actual harm to the beneficiaries' interests was caused. The self-dealing rule is a strict one intended to avoid any possibility or appearance of the trustee's own interest conflicting with that of the beneficiaries, no matter how honest, fair or practical the breaching trustee may have been and no matter whether the same result could have been legitimately achieved by employing slight differences. A mere risk of divided loyalties must be prevented otherwise the future viability of the trust relationship is thrown into doubt.

This case serves to illustrate that consistency of principle is more important than achieving individual justice on the facts because consistency of principle across multiple cases gives our law greater credence thereby achieving justice in the round.

FAMILY LAW

John Caldwell

Fairfax v Ireton
(HC, Auckland CIV 2008-404-4279, 24 November 2008, Priestley and Cooper JJ)

Following a mother's removal of the parties' son from New Zealand to Queensland without the father's knowledge or consent, the Australian Central Authority sought a declaration, under art 15 of the Hague Convention on the Civil Aspects of Child Abduction 1980, as to whether the father had "custody rights" in terms of the Convention under New Zealand law. The Full Court of the High Court determined that a further request for a ruling on a factual question, of whether the parties were living together as de facto partners at the time of the child's birth, was to be resolved by the Family Court of Australia. If that Court were to rule that the parties were not living together as partners at the relevant time, it was clear and agreed that the mother would be sole guardian.

The critical question examined by the High Court in this case, therefore, was whether, in the event that he was not the child's guardian, the father would enjoy any "inchoate" rights of custody. On this question of law, the Judges acknowledged there appeared to be some divergence between New Zealand law and overseas jurisprudence, with some New Zealand courts seemingly favouring the notion of such rights. While the High Court recognised that with recent legal changes in both New Zealand and overseas jurisdictions the legal disadvantages to fathers were diminishing, the Judges held, that under the New Zealand law prevailing at the relevant time, a distinction needed to be drawn between actual and statutory rights of guardianship and potential, inchoate rights. For a number of identified reasons, the Judges believed that the Court of Appeal decision of *Christie v Dellabarca* [1999] 2 NZLR 548; [1999] NZFLR 97 was neither binding nor highly persuasive authority for the proposition of law that a non-guardian's inchoate rights afforded a father "rights of custody" for the purposes of arts 3 and 5(a) of the Convention and s 97 of the Care of Children Act 2004. Their Honours therefore concluded that if the mother was in fact the sole guardian of the child then the child's removal to Australia would be regrettable but not legally

wrongful. This ruling, yet to be confirmed by the Court of Appeal, brings New Zealand courts that much closer to the approach adopted by their English and other overseas counterparts on a crucial Hague Convention jurisdictional question.

Beazley v McBarron
(HC, Whangarei CIV 2008-488-851, 12 February 2009, Priestley J)

This case also involved a request from the Australian Central Authority under art 15 of the Hague Convention. In an unusual set of facts, the appellant mother had obtained leave from the Court to relocate her child from New Zealand to Australia, and had then returned to New Zealand. Having obtained legal advice, she and the child then left for Australia for a second time, and the question on which the Australian Central Authority sought a declaration was whether she needed to seek further leave to depart. The Family Court ruled that the child had been wrongfully removed on the second occasion. The appellant mother abandoned her appeal to the High Court, and voluntarily returned to New Zealand in January 2009.

Priestley J declined the respondent father's applications for costs against the appellant. His Honour accepted that upon the abandonment of an appeal, there was normally a prima facie entitlement to costs, but the Judge here noted some additional features in the case which gave cause for concern. First, the Judge found it surprising that the Central Authority itself had not sought the art 15 declaration but had rather relied upon the father to do so. Priestley J held that any view that the Authority's role was limited to facilitating rather than initiating proceedings was "misconceived"; and he further pronounced that the father's legal costs in this case should have been met by the Central Authority. There was no difference, his Honour stated, between the international obligation lying on the Authority to meet the costs of counsel it appoints to secure the return of a child wrongfully taken from Australia and the costs of counsel incurred to obtain, at the request of the Australian Central Authority, an art 15 declaration. In his Honour's brief judgment there is a detectable implication that the New Zealand Central Authority may need to reconsider more generally the extent of its Convention obligations.

EMPLOYMENT LAW

Graham Rossiter

Mitchell v Blue Star Print Group (NZ) Ltd
(EC, Wellington WC 21/08, WRC 19/06, 23 December 2008, Judge Shaw)

Compensation in personal grievance proceedings is open to be awarded in cases in which a termination of employment has occurred arising from a personal injury covered by the Injury Prevention, Rehabilitation, and Compensation Act 2001 but only for matters disjunctive of the personal injury.

This was a claim of unjustified constructive dismissal by Mitchell who said he was forced to resign from his position with the defendant (as a guillotine operator) after he suffered physical and psychological harm arising from his working conditions. It was contended that the employer failed to take steps to both prevent the harm claimed from occurring to him and to assist his recovery. Accordingly, he said he had no alternative but to resign. The Employment Relations Authority determined that the employer had acted fairly and reasonably in its relative dealings with the plaintiff, there was no breach of duty by the employer, his constructive dismissal claim could not therefore succeed and, in any event, as his claims arose directly out of a personal injury, he was barred from receiving compensation. From that determination, Mitchell brought a de novo challenge in the Employment Court. At the heart of the facts were contentions by Mitchell that his heavy workload over a sustained period of time meant that, amongst other things, he took few, if any breaks. It was alleged that there was pressure from his immediate managers to keep working and not take breaks. As a result, he sustained an injury in respect of which ACC refused cover but that decision was reversed following review. These events were accompanied by complaints to the employer regarding the working conditions and their consequences. There had also been an involvement by OSH who made recommendations to the employer for changes to the workplace which the defendant claimed to have acted on. Mitchell nevertheless resigned and in his resignation letter said he had been constructively dismissed.

The Court reviewed the medical evidence and found that it was "beyond doubt" that the plaintiff's physical problems were caused by his workplace. The consequences of those physical problems included clinical depression and post-traumatic stress symptoms. With respect to the constructive dismissal claim, Judge Shaw referred to and found that there had been breaches of the employer's duty of trust and confidence and the statutory obligation under the Health and Safety in Employment Act 1992 to take all practicable steps to ensure a safe workplace. It was found that there had been no investigation of any depth regarding Mitchell's problems or any attempt to regulate his flow of work. It was concluded that the employer did not manage the risks with respect to the plaintiff and take all "reasonable and practicable steps from the time that it knew of his injury". The Court went on to find that that Mitchell clearly did resign because of the failures of his employer to take steps to alleviate his workplace difficulties and that the communications with the company on his behalf had put the employer on notice. Accordingly, the resignation was reasonably foreseeable.

The primary legal issue addressed by the Court arose out of the company's arguments that even if there was a sustainable personal grievance, remedies were barred by virtue of the cover arising from the ACC legislation.

In particular, ss 317 and 318 of the IPRC Act prevents proceedings for damages "arising directly or indirectly" out of personal injury. Judge Shaw concluded that the ACC bar would not necessarily exclude compensation under the personal grievance provisions of the Employment Relations Act 2000. The purpose of the ACC bar "is to prevent double recovery but it is not designed to preclude recovery of any other compensation. To hold otherwise would offend against the fundamental principle that citizens should not be denied access to the courts, save in rare and appropriate circumstances". Reference was made to *Bint v Capital Decorative Concrete Ltd* [1999] 1 ERNZ 809 in which it was noted that the fact that the plaintiff could not recover any compensation for his physical injuries did not prevent an action for damages for wrongful dismissal. These findings were approved by the Court of Appeal in *Attorney-General v B* [2002] NZAR 809. The Court there said that "in a case like *Bint* the method of dismissal of an injured employee may cause damage for which compensation under the accident compensation legislation is not available by reason of its cause being entirely disjunctive of the injury". Her Honour therefore concluded that it was, in the circumstances, open to her to award compensation for hurt and humiliation under s 123(1)(c)(i) of the ERA 2000. "However, any compensation awarded must be unconnected to the personal injury suffered." Compensation under this heading was ordered in the sum of $10,000.

INTERNATIONAL LAW

Myra Williamson

International Commission of Jurists, Report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights

The Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights is a panel of eight distinguished judges, lawyers and academics from around the world which was commissioned by the International Commission of Jurists to report on the global impact of terrorism on human rights. Specifically, the Panel was mandated to examine the compatibility of laws, policies and practices adopted to counter terrorism with basic principles of the rule of law, international human rights law and, where applicable, with international humanitarian law. The Panel released on 16 February 2009 a 213-page report entitled "Assessing Damage, Urging Action: Report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights"

(http://www.icj.org). The report is based on 16 hearings covering more than 40 countries, most of which had experienced a significant terrorist threat either in the past or in the present (Australia is included, New Zealand is not). The report illustrates the consequences of notorious counter-terrorism practices such as torture, disappearances, arbitrary and secret detention, unfair trials and persistent impunity for gross human rights violations in various parts of the world. The report states that "[S]even years after 9/11, it is time to take stock, take remedial action and begin anew".

One of the many intriguing aspects of the report is the brief discussion at pp 7–8 pertaining to the definition of terrorism in international law. The Panel acknowledges that there is still no global consensus on the term, despite the ongoing and currently stalled process towards adopting an international comprehensive convention on terrorism. Although it does not offer any new definition, the Panel cites with approval the wording used in the International Convention for the Suppression of the Financing of Terrorism and in Security Council Resolution 1566 (2004) which describes "terrorism" as: "criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organisation to do or abstain from doing any act". The Panel's statement that it is important to focus on the act and not the actor carries weight: these eminent jurists put forward their view that terrorism can be carried out by state as well as non-state actors, something which remains a controversial issue in the ongoing negotiations for a comprehensive convention.

The final chapter of the report contains its conclusions and recommendations, all of which make interesting reading. One of the Panel's findings is that "many current counter-terrorist measures are illegal and even counter-productive". Another is that criminal law is the primary vehicle to be used to address terrorism, and another is that "the erosion of international law principles is being led by some … liberal democratic states that in the past have loudly proclaimed the importance of human rights". The report contains a warning that all states must take on a leadership role and they must restore their commitment to human rights, otherwise "the damage to international law risks becoming permanent". It is a comprehensive and thought-provoking report which all students and academics interested in the area of terrorism and/or human rights ought to familiarise themselves with.

CONFLICTS

Tony Angelo

International child abduction cases continue to occupy the courts, eg *C v L* [2008] NZFLR 960 (HC) (innocent applicant held liable for child support even during the period of wrongful removal); *T v H* (HC, Wanganui CIV 2008-483-297, 31 October 2008, Miller J) (overseas parent the subject of a restraining order and did not have or exercise rights of custody); *Fairfax v Ireton* (HC, Auckland CIV 2008-404-4279, 24 November 2008, Priestley and Cooper JJ); *T v W* (HC, Auckland CIV 2008-404-4916, 7 October 2008, Wylie J). All provide examples on specific facts.

Moldauer v Constellation Brands Inc
(HC, Auckland CIV 2007-404-5589, 16 December 2008, Rodney Hansen J)

The plaintiff in an employment dispute with a Delaware company issued proceedings in the District Court and without leave served process out of New Zealand to the defendants in the US. The issues considered were whether jurisdiction under r 242 of the District Courts Rules was satisfied and if so whether New Zealand was the convenient forum. The Court responded negatively on both issues.

Shepherd v Shepherd
(HC, Auckland CIV 2008-404-2213, 23 October 2008, Asher J)

This was a relationship property case where during the marriage the husband acquired an interest in an Australian farm. At the time of the couple's separation and at the filing for the division of relationship assets, the farm was immovable foreign property (s 7(1), Property (Relationships) Act 1976). Subsequently the farm was sold and the proceeds of sale were transferred into the husband's New Zealand bank account. By the time of the Family Court hearing for division of property, the funds had been removed by the husband from that account. The Court decided that s 7 applies to relationship property as at the date of the hearing. Section 7 was described as addressing jurisdiction issues. Of interest is the fact that the Court considered *Birch v Birch* [2001] 3 NZLR 413; [2001] NZFLR 653 where it was stated that s 7 was a choice of law provision. Similarly in *Walker v Walker* [1983] NZLR 560 Richardson J stated that s 7 was a "blunt and limited choice of law provision". This raises an interesting question over whether s 7 is a jurisdictional or choice of law rule. It probably is both. The contradiction in the cases appears to relate more to the focus of the judge in the particular case. Section 7 asserts jurisdiction over immovable property in New Zealand and over movable property provided one of the parties is domiciled in New Zealand at one of the times identified in s 7(2). That jurisdictional hurdle surmounted, s 7 provides that the Act will apply to the assets within the jurisdiction. In *Shepherd* the Court chose the date of hearing as the date for classification of the property as movable or immovable property.

Puttick v Tenon Ltd
[2008] HCA 54

This case is of interest because of its discussion by the High Court of Australia of forum conveniens rules in relation to trial either in Victoria or in New Zealand. The lower courts had held that a determination of the lex causae was an important issue on deciding the appropriate forum. The High Court concluded that the facts showed New Zealand as an appropriate forum but Victoria was an inappropriate forum. The proceedings involved no abuse of process and the fact that New Zealand law might have been the lex causae was insufficient reason for the Australian court to decline to exercise jurisdiction. The High Court also held that the New Zealand–Australia relationship also supported the view that the forum lex causae was not a sufficient base for a decision that the Australian court was an inappropriate forum. The Australian precedent of *Voth v Manildra Flour Mills* (1990) 171 CLR 538 was maintained.

Bujak v Solicitor General
[2008] NZSC 95

The saga of *Bujak* continues. In *Bujak v District Court at Christchurch* (HC, Christchurch CIV 2008-409-785, 8 October 2008, Simon France J) the extradition order was confirmed. On the question of registration of the Polish restraining order the Supreme Court has granted leave to appeal the decision of the Court of Appeal [2009] 1 NZLR 185.

Judicature (High Court Rules) Amendment Act 2008: came into force on 1 February 2009. This Act provides a new Sch 2 to the Judicature Act 1908. The High Court Rules of 1986 are therefore replaced by High Court Rules of 2009. Many of the Rules relate to conflict of laws matters. They are by and large consistent with the principles in the 1986 Rules but are simplified and more accessible in form. Care will need to be taken in the application of previous precedents to the new Rules.

Rule 1.22 under the subpart "International Co-operation" deals with communication with foreign courts. It formalises an important facility to enable New Zealand and foreign courts to cooperate in the application of the procedural rules. Any such communication requires the consent of the parties.

Service matters formerly dealt with in rr 219–225 are now dealt with in rr 6.27–6.35; evidence is dealt with in the 2009 Rules Part 9 subparts 2, 8, and 9; the enforcement of foreign judgments is dealt with in the new rules in Part 23. New rules relating to the application of the Insolvency (Cross-Border) Act 2006 are rr 24.55–24.59. The rules relating to Mareva injunctions are now in rr 32.1–32.10 (freezing orders). ❐