

# Welcome news for liquidators and creditors as the Full Federal Court takes an expansive view of freezing orders power over discretionary trust property

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## Background

Prior to entering liquidation, Keystone Asset Management (Keystone) was the responsible entity of a registered managed investment scheme, the Shield Master Fund (SMG), and the trustee of the Australian Diversified Property Fund (ADPF).

Between 2022 and 2024, Keystone, as trustee of the ADPF, made payments totalling AU\$305 million to Chiodo Corporation, of which Paul Chiodo was a director, for proposed property developments on behalf of the ADPF.

It is alleged that Chiodo Corporation subsequently made payments totalling at least AU\$158 million to a Mr. Fillipini and his company, City Built, for purported construction and development works that it is now alleged never occurred. Keystone's liquidators sued each of Mr Fillipini, City Built, Paul Chiodo and Chiodo Corporation for knowing receipt of trust property.

Keystone's liquidators sought and obtained freezing orders over a wide range of assets of Mr. Fillipini to prevent the dissipation or disposal of those assets pending a judgment. The appeal to the Full Federal Court in *Fillipini v Keystone Asset Management (in liquidation)* [2026] FCAFC 71 related to freezing orders made in respect of specific assets that were held on trust, being two properties in Melbourne, three Lamborghinis and a Maserati.

## The Trusts

Both properties are held by discretionary trusts with Mr. Fillipini as the appointer, and his wife, Mrs Fillipini, as the trustee. The cars are held by a separate discretionary trust, the trustee of which is corporate entity for which Mr. Fillipini is the sole shareholder. The only director is an accountant whom the evidence demonstrated may have acted at the direction of Mr. Fillipini.

For each of the discretionary trusts, Mr. Fillipini is a beneficiary and, as appointer, has power to remove and appoint the trustee. It was also common ground between the parties that Mr. Fillipini can otherwise appoint himself trustee, distribute all income or capital to himself and accelerate the vesting date.

Mr. and Mrs. Fillipini and the corporate trustee entity (the Fillipini Parties) appealed the freezing orders over the Melbourne properties and the cars on the basis that, under orthodox trust law, a beneficiary of a discretionary trust does not have a proprietary interest in any particular asset of the trust fund. On that basis, it was argued, insofar as the Federal Court Rules permitted the court to make freezing orders against a third party "that holds ... a power of disposition in respect of the assets (including claims and expectancies) of ... a prospective judgment debtor", Mr. Fillipini has no proprietary or beneficial interest in the trust assets, and so they are not assets "of" a prospective judgment debtor.

## The Full Federal Court decision

First, the Full Federal Court (Beach, Button and Younan JJ) noted High Court authority to the effect that the power to make freezing orders must be exercised according to the exigencies of the case and that "the schemes which a debtor may devise for divesting himself of assets being legion, novelty of form is no objection to the validity of such an order."

The Full Court then noted that the language of the relevant provision, which includes "assets (including claims and expectancies)", is inconsistent with the proposition that a prospective judgment debtor must have a legal or beneficial interest in the asset in order for the preservation of that asset to constitute a proper exercise of the court's power.

In this respect, just because Mr. Fillipini's rights as a beneficiary under a discretionary trust were no more than an "expectancy", this did not preclude the power to make freezing orders over the trust assets, particularly where the third party may be amenable to some compulsive process requiring it to disgorge the assets to satisfy a judgment debt. Freezing orders are appropriate in cases in which they are directed to a third party, like a trustee, to prevent the third party from dealing with property where that expectancy is worth preserving.

The Full Court noted that, in the case of a discretionary trust in respect of which a prospective judgment debtor was merely a beneficiary, it is doubtful that the circumstances could ever warrant a freezing order being made. However, it is different where the beneficiary, like Mr. Fillipini, is able to exercise control and influence over what the trust does with its income and assets.

While Mr. Fillipini was a beneficiary of the three trusts, his expectancy is not of the same character as other mere beneficiaries, because he held extensive powers under the trust deeds to control each trust, appoint himself as trustee, and direct the distribution of the income and assets. According to the Full Court, this put him in a very different category. In that context, Mr Fillipini's expectancy under the trusts was one worth preserving to avert the prospect of a prospective judgment debt subsequently going unsatisfied.

The Fillipini Parties raised an argument that the freezing orders should only be granted where it could be demonstrated that there was a clear "enforcement pathway" by which the trust assets could ultimately be accessed in enforcement action following judgment. It was argued that no such enforcement pathway had been identified by Keystone, and it was unclear on the facts what that pathway would be.

This argument was rejected by the Full Court. It was inconsistent with the text of the relevant provision that the identification and enforcement pathway was a precondition to enlivening the power to make freezing orders. All that is required is a "reasonably arguable" case for an enforcement pathway, noting that a case with a potential avenue to enforcement that follows a well understood legal path but is subject to factual uncertainties will be treated differently to a case with pathways that involve greater legal uncertainty.

Referring to the relief granted in another case, Mr. Fillipini also offered to be restrained from exercising his powers under the trust deeds as a possible solution to avoid the freezing orders. The Full Court rejected that solution on the basis that, unlike the circumstances in the example relied upon, a restraint against Mr. Fillipini alone would not protect the assets because Mrs. Fillipini and the corporate entity were the trustees.

## Key Takeaways

The decision provides significant clarity in respect of the ambit of the court's power to make freezing orders against the assets of discretionary trusts and has real practical implications for liquidators, creditors and trustees. In particular:

- A prospective judgement debtor does not need to have a proprietary or beneficial interest in trust assets for a freezing order to be made against those assets.
- The touchstone is control. In circumstances in which a prospective judgment debtor can exercise significant control over the discretionary trust, freezing orders may be appropriate.
- It is not a precondition to the freezing orders that the party seeking the order must identify a clear "enforcement pathway" by which the trust assets could ultimately be accessed in enforcement action following judgment.
- All that is required is a "reasonably arguable" case for an enforcement pathway.
- The uncertainty in relation to the ambit of freezing orders to third-party trustees that was created by a series of previous decisions is now removed.

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