



IP ITeaser 040:

Does Hacking Pay? What happens where a party seeks to rely on hacked evidence?

The latest development in the long running dispute between the Ras Al Khaimah Investment Authority and Mr Farhad Azima again focuses attention on the English court's approach to the use of unlawfully obtained evidence.

It is well established that in English civil law, evidence is admissible even if obtained by unlawful means, but the court has a discretion to exclude it under CPR 32.1. In exercising its discretion, the court will weigh up the importance of establishing the truth against the importance of discouraging parties from resorting to unlawful means. Nowadays, unlawful means are increasingly likely to involve the use of technology and specialist "consultants" to hack and steal data.

RAKIA, the state investment authority of the Emirate of Ras Al Khaimah, paid Mr Azima the sum of US\$ 2.6 million in settlement of a dispute, and also paid him further sums by way of commission for procuring the sale of a hotel. Later, RAKIA brought proceedings in England alleging that the payments had been procured by fraud. Much of RAKIA's case relied on confidential emails obtained by hacking Mr Azima's email account, although RAKIA denied responsibility for the hacking. Mr Azima counterclaimed, arguing that RAKIA's claim should be struck out as an abuse of process because it had orchestrated the hacking, using a team of experienced hackers.