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Use of Anti-suit Injunctions

Contributed by **Soteris Pittas**

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A Cypriot first-instance court has recently issued an anti-suit injunction preventing a Cypriot company from continuing a legal action filed against a foreign company before the Kazakhstan courts.

The Cypriot court granted the anti-suit injunction in order to enforce a forum selection agreement made between the parties. The agreement provided that the 'issuing court' (ie, the Cypriot court) was the competent and exclusive forum for the adjudication of any disputes arising from and/or in connection with the agreement.

There is no case law from the Supreme Court of Cyprus on this issue; therefore, the first-instance court followed English common law principles on anti-suit injunctions.

The English courts have long exercised jurisdiction to restrain a party from instituting proceedings in a foreign court. This jurisdiction is grounded "not upon any pretension to the exercise of judicial... rights abroad", but on the fact that the party to which the order is directed is subject to the specific jurisdiction of the court.

Although the injunction operates only against the party to the foreign litigation, the remedy indirectly interferes with the process of the foreign court and this jurisdiction must be exercised with caution. In addition, since the jurisdiction is exercised against personal rights, the court must have jurisdiction over the defendant or one of the defendants.

The underlying principle is that jurisdiction is exercised where "it is appropriate to avoid injustice" or "the foreign proceedings are contrary to equity and good conscience".

Following the English principles, the Cypriot courts may stop proceedings that have been brought abroad in breach of a contract:

- not to sue;
- to be bound by the result of Cypriot proceedings; or
- to sue only in Cyprus.

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The Cypriot courts will also act to stop proceedings that interfere with the due process of the court. Thus, the court will enjoin proceedings started abroad to recover foreign assets if the party bringing the proceedings will obtain an unfair advantage over other claimants in a Cypriot administration of an estate or in the case of bankruptcy or winding-up. The court may also stop foreign proceedings that are "oppressive or vexatious".

It is not necessary for a plaintiff that seeks an injunction to stop foreign proceedings to seek any relief in Cyprus on the substance of the dispute.

Cyprus became a member of the European Union on May 1 2004. Consequently, all decisions of the European Court of Justice (ECJ) are binding on the Cypriot courts. In *Turner v Grovit* (2004) the ECJ left no doubt regarding the incompatibility of anti-suit injunctions with the Brussels Regulation. The ECJ stated that the regulation is based on a system of mutual trust and equality between the national courts; therefore, there is no provision under the regulation for a review by one court of the jurisdiction claimed by another court, with the exception of only very limited circumstances.

The ECJ has left no room for the anti-suit injunction within the EU judicial arena. Therefore, it appears that anti-suit injunctions may be used only against non-EU member states.

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