

Litigation - Cyprus

Overview (May 2010)

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This Overview provides a brief outline of the primary characteristics that litigants may encounter in civil actions initiated before courts in Cyprus. Although arbitration is becoming more popular - particularly in disputes relating to construction, insurance, shipping and trade - it is still in its infancy and litigation is the predominant method for resolving disputes.

Sources of law and court procedure

In Cyprus, the following sources of law exist:

- European legislation;
- the Constitution;
- House of Representatives legislation;
- subsidiary legislation; and
- English enactments adopted when Cyprus became independent.

Moreover, under the common law doctrine of *stare decisis*, Supreme Court judicial precedents are binding on subordinate courts.

Commercial civil proceedings are generally filed in the various district courts and conducted on the basis of the applicable Civil Procedure Rules. For example, admiralty claims are filed with the admiralty division of the Supreme Court and are procedurally conducted in accordance with the rules of the Admiralty Jurisdiction Order 1893.

Limitation periods

The Limitation of Actions Law (Cap 15) sets out the following limitation periods:

- For bonds in a customary form or any mortgage, the limitation period is 15 years from the date on which the cause of action arose;
- For any judgment, the limitation period is 15 years from the date on which the judgment became enforceable;
- For any book debt due to or from a bank, the limitation period is six years from the date on which the cause of action accrued;
- For goods sold and delivered, bills, work done and wages, the limitation period is two years from the date on which the cause of action accrued;
- For property irrevocably earmarked for Muslim, religious or charitable purposes (known as *Evkaf* or *Vakf* property), the limitation period is 15 years from the date on which the cause of action accrued. Where the action concerns the corpus of any such property, the limitation period is 36 years; and
- For other causes of action not expressly provided for by the law or not expressly exempted, the limitation period is six years from the date on which the cause of action accrued.

The Limitation of Actions Law is suspended until November 30 2010 and limitation periods will continue to be suspended in relation to any immovable or movable property situated in areas now occupied by Turkish troops (or property which was situated there at the time of the Turkish invasion).

In relation to torts, Section 68 of the Civil Wrongs Law (Cap 148) provides that generally, no action can be brought in respect of any civil wrong unless it commences within three years of the act, omission or default at the centre of the complaint. If the civil wrong causes fresh damage that continues day to day, the action must commence no later than three years after the cessation of such damage.

Where the cause of action does not arise directly from the act or omission, but rather from damage resulting from such act or omission, the action must commence no later than three years after the claimant suffered the damage.

If the defendant has fraudulently concealed the civil wrong, any action must be commenced within three years of its discovery by the claimant, or within three years of the time when the claimant would have discovered it had it exercised reasonable care and diligence.

Pre-trial

Civil proceedings commence with the issuance of a writ of summons or an originating summons stating the nature of the claim and the relief claimed.

The writ of summons may be endorsed specially, which means that it contains the full statement of claim, or generally, which means that only the claimed relief is endorsed.

Every defendant must be served in the manner provided in the Civil Procedure Rules or, in instances of defendants residing in another EU member state, in conformity with EU Regulation 1348/2000 on the service in member states of judicial and extrajudicial documents in civil or commercial matters.

Unless the court has ordered otherwise, a defendant must enter its appearance in the court register within 10 days of the date on which the writ of summons was served, in the form provided by the Civil Procedure Rules. The appearance may be entered by the defendant in person or by its lawyer.

Pleadings

Where the writ is generally endorsed, the plaintiff in a civil action must file a statement of claim, containing the relief or remedy to which it claims to be entitled, within 10 days of the defendant filing an appearance to the generally endorsed writ of summons. The defendant must file its statement of defence within 14 days of filing of the statement of claim.

Where the writ is specially endorsed, the defendant must file its statement of defence within 14 days of filing an appearance.

If the defendant wishes to counterclaim against the plaintiff, it may add to its defence a counterclaim outlining its allegations, as well as the relief or remedy to which it claims to be entitled.

The plaintiff is entitled to file a reply to the defence and, where applicable, a defence to any counterclaim of the defendant.

All pleadings must state the material facts in a summary form and not the evidence by which those facts are to be proved. If a party claims misrepresentation, fraud, breach of trust, wilful default or undue influence, full particulars must be provided in the relevant pleading.

If the plaintiff fails to deliver the statement of claim within the timeframe prescribed in the Civil Procedure Rules, the defendant may, on the expiration of that timeframe, apply by summons to the court to dismiss the action with costs for want of prosecution. Similarly, if the defendant does not deliver a defence within the timeframe allowed, the plaintiff may apply for judgment for the amount claimed with costs. The court has the power to extend the timeframe allowed for delivery of a pleading.

A party may apply to the court for permission to amend its pleadings. If the court accedes and grants an order, it will also direct when the amended pleading should be filed.

Any party may raise any point of law by its pleadings and any point so raised may be disposed of by the court at any stage that it considers appropriate.

Interlocutory applications

Applications to strike out

At any stage of the proceedings a party may apply to the court for an order to strike out any matter in any endorsement or pleading which may be unnecessary or scandalous, or which may tend to prejudice,

embarrass or delay the fair trial of the action. The court may order any pleading to be struck out on the grounds that it discloses no reasonable cause of action or answer. In any such case, or if it is shown that the action or defence is frivolous or vexatious, the court may order the action to be stayed or dismissed, or judgment to be entered accordingly.

Further and better particulars

A party may apply to the court for an order requiring the other party to provide further and better particulars of any matter stated in any pleading. Before applying for an order for particulars, a party may apply for them by letter addressed to the lawyer representing the other side in the proceedings.

Discovery and inspection of documents

Any party may apply to the court for an order of discovery on oath or for inspection of documents which are or have been in the other party's possession or power relating to any matter in question in the proceedings. If a party ordered to make discovery of documents fails to do so, it may not subsequently put forward as evidence on its behalf in the action any document that it failed to discover or to allow to be inspected, unless the court is satisfied that it had sufficient excuse for so failing. If the documents in respect of which discovery is requested are confidential, tend to self-incriminate or are privileged in some other way, a claim for privilege may be raised.

Third parties

A defendant in any action may claim against any person not already a party to the action that:

- it is entitled to a contribution or indemnity;
- it is entitled to any relief or remedy relating to or connected with the original subject matter of the action and substantially the same as some relief or remedy claimed by the plaintiff; or
- any question or issue relating to or connected with the subject matter is substantially the same as a question or issue arising between the plaintiff and the defendant and should properly be determined not only as between the plaintiff and the defendant, but as between the plaintiff, the defendant and the third party, or between any or either of them.

Summary judgments

Where the plaintiff files a specially endorsed writ of summons and believes that the defendant has no prospects of successfully defending the action, it may apply by summons for the court to issue an order for summary judgment for the amount so endorsed with interest, or for the delivery of a specific chattel, as the case may be, and costs. An application for summary judgment should be accompanied by an affidavit sworn by any person that can swear positively to the facts, verify the cause of action and the amount claimed, and state that in its belief there is no defence to the action.

Interim relief

An application for obtaining interlocutory relief may be made *ex parte* if there are issues of extreme urgency, or by summons in all other cases. An application for interlocutory relief, whether *ex parte* or *inter partes*, should be filed after filing of the writ of summons and be accompanied by a supporting affidavit.

Interim relief may take the form of freezing orders against assets, disclosure orders and Norwich Pharmacal relief and, in the case of admiralty claims, ship arrest warrants. These are discretionary remedies, dependent on the particular facts.

The frequent use of Cyprus companies as holding companies or investment vehicles in corporate structures and the power of the courts to issue interim orders with worldwide effect make this form of remedy an important tool for the purposes of preserving the existing *status quo*, prohibiting the alienation of assets and tracing assets already alienated. However, the applicant is under a duty to make a full and frank disclosure of all material facts to the court.

Further to the power of the Cyprus courts to issue orders with worldwide effect, pursuant to Article 31 of EU Regulation 44/2001, an application may be made to the courts of an EU member state for such provisional measures as may be applicable under the laws of that state, even if under the regulation the courts of a different member state have jurisdiction to determine the substance of the dispute. Nevertheless, a real link must exist between the territory in which the request is made and the subject matter of the measures requested. As regards the possibility of applying to the courts of countries outside the European Union for the purpose of obtaining interim orders in aid of Cyprus proceedings, this is a matter to be determined under the laws of the foreign country concerned.

Trial

Public hearings are the norm, except in special cases such as those involving the protection of minors. Third parties do not have access to court files and the documents therein, unless specifically authorized by the court. Common law rules of evidence as amended by various statutes apply. Until 2004, hearsay evidence was not admissible, but Law 132(I)/2004 changed the law by providing that hearsay evidence should not be excluded from any procedure before the court merely because it is hearsay.

At the end of the trial it is usual for judgment to be reserved for delivery at a later date in order to allow the judge time to consider all the evidence and witnesses in light of the pleadings and draft his or her judgment.

Judgments set out the reasoning by which the court arrived at its findings of facts and conclusions, as well as the principles of law on which the court relied and their application to the particular case.

Remedies

A party may apply for most of the remedies available under common law and equitable principles. The remedy most commonly requested and awarded is damages to provide compensation for losses suffered. In addition, the courts may order specific performance of a contract. However, the remedies of specific performance and interim injunctive relief are discretionary. Punitive damages have been awarded, but infrequently.

Injunctive relief in support of foreign proceedings

Where a foreign court or arbitration tribunal is the proper forum to determine the substance of a dispute pursuant to a relevant jurisdiction clause or as otherwise provided by any applicable laws, an application may be filed with the Cyprus courts for interim relief pending determination of the substantive proceedings.

Among the legal bases available for such proceedings is Article 31 of EU Regulation 44/2001.

Costs

The court has full discretion in awarding the costs of proceedings. The costs of the litigation are generally awarded to the successful party. The costs order will stipulate whether the costs will be assessed or taxed by the registrar of the court in which the proceedings have taken place.

Pre-trial offers to settle have no effect on cost orders, unless they are in the form of payment into court.

Contingency fee arrangements are not permitted in Cyprus.

Security for costs

A claimant that is domiciled outside the European Union and does not have sufficient assets within the jurisdiction to satisfy any order that may be made against it to pay the defendant's costs may be required to provide security for costs, in order to ensure that the defendant, if successful, will be able to recover its costs. Security for costs may also be required in respect of a foreign defendant's counterclaim.

If an order for security for costs is not satisfied within the timeframe directed by the court, the action may be dismissed. The amount of security that may be ordered is the amount of costs expected to be incurred defending the action.

Appeals

A litigant that is dissatisfied with the judgment of the court or any part thereof may apply to the Supreme Court for reconsideration of the judgment. The grounds for appeal may be any disputed, legal or factual interpretation in the first instance judgment, but the Supreme Court rarely interferes in matters in which the judge at first instance exercised his or her discretion.

A notice of appeal, setting out the grounds for appeal and the reasons relied on in full, must be filed within: (i) six weeks of the date of a judgment on the merits of the case (unless an extension is granted by the court); or (ii) 14 days of the date of an interim judgment.

Following this, the appeal is scheduled for directions, where the Supreme Court usually gives instructions as to the filing of written submissions by the parties within a specified timeframe. Following filing of the written submissions, ordinarily a hearing date is set for any clarifications that the court may require and then the matter is decided. Generally, judgment is reserved.

Comment

The Cyprus legal system is independent and robust, and the courts provide a fair and reliable avenue for dispute resolution. The principal criticism of the system is its slowness: procedural requirements may be exploited to delay final resolution of disputes for several years and this has led to a backlog of cases. Steps are in place to address this issue through the introduction of alternative dispute resolution modes.

However, the Cyprus courts have shown themselves willing to grant effective interim measures to ensure that participants' interests are protected pending final resolution of disputes.

Likely developments

The EU Mediation Directive (2008/52/EC) has been adopted at EU level. Article 5.1 of the directive provides

that a court before which an action is brought can, when appropriate and having regard to all circumstances of the case, invite the parties to use mediation to settle the dispute. The court can also invite the parties to attend an information session on the use of mediation. EU member states, including Cyprus, are required to bring into force the necessary legislation to comply with the EU Mediation Directive by May 21 2011, with the exception of Article 10 (Information on competent courts and authorities), for which the date of compliance is November 21 2010. In the near future Cyprus is likely to appoint a financial ombudsman and put in place an alternative system for resolving disputes.

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