

Litigation - Cyprus

Freezing orders against non-cause of action defendants

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Introduction

The Courts of Justice Law 1960 gives the courts in Cyprus discretion to issue a wide variety of provisional measures. These include the power to issue interim orders, provided that all of the following conditions are satisfied:

- A serious question has arisen to be tried at the main hearing;
- There appears to be a probability that the applicant is entitled to relief; and
- It would be difficult or impossible to obtain justice at a later stage without granting an interlocutory injunction.

It is possible to apply for interim measures without notice to the respondent through an *ex parte* application. The court will consider the application only if there is an element of extreme urgency. Furthermore, the applicant must make full and frank disclosure of all material facts, and the court must be satisfied that, on the balance of convenience, it is in the interest of justice to issue the requested order.

Interim measures

Cyprus courts may make interim orders that have worldwide effect. In 2007 the Supreme Court of Cyprus decided that:

"It is apparent that by virtue of Section 32 of Law 14/60... having regard to the modern changes people make to their transactions, the court at first instance had the opportunity to grant the interim orders in question pursuant to which the assets of the appellants outside of the jurisdiction were frozen.

It is therefore obvious that by virtue of section 32 of Law 14/60... the court of first instance had the right, in this case, to make interim orders that also freeze assets of the appellants outside of the jurisdiction.

With the breadth of Section 32 of Law 14/60, as interpreted in the case of Kitalides (above), we decide that there was no obstacle whatsoever for the court of first instance to extend the Mareva type order that it issued to assets outside of the jurisdiction. We note that in Section 32 there is no restriction whatsoever, apart from the three preconditions."⁽¹⁾

In addition to Mareva injunctions (ie, asset freezing orders), it is also possible to obtain:

- Norwich Pharmacal disclosure orders;
- search orders to obtain and prevent the destruction of evidence;
- gagging orders;
- anti-suit injunctions;
- orders for the appointment of a receiver; and
- orders for specific performance.

Chabra orders

In a 2010 decision the Supreme Court recognised the power of Cyprus courts to make so-called 'Chabra orders'. Based on the English case of *TSB Private Bank International v Chabra*,⁽²⁾ a Chabra injunction is essentially a freezing order directed to a party against which the claimant does not have a substantive cause of action, made in order to enforce a judgment (or an anticipated judgment) against a party against which the claimant does have a substantive cause of action.

The rationale for such orders is that since the principal defendant controls a third party, it indirectly controls the assets of that third party. Consequently, such assets can be considered as the principal defendant's assets and are therefore also subject to freezing orders.

The recent English case of *JSC VTB Bank v Pavel Valerjevich Skurikhin*,⁽³⁾ further confirmed the principle that a freezing order may be obtained against the assets of a non-cause of action defendant once it has been established that such defendant is controlled directly or indirectly by the principal defendant. The ultimate purpose of such an order would be to obtain access to the assets of the non-cause of action defendant in order to satisfy any judgment issued in favour of the claimant against the principal defendant. However, in order for such a freezing order to be made, the claimant must also satisfy the court that there is a way for the judgment to be enforced over the assets held by the non-cause of action defendant.

Comment

Since Cyprus is frequently used for the incorporation of legal entities that belong to, or are connected to, international groups of companies, it is almost inevitable that similar cases will come before the Cyprus courts. Having recognised the Chabra principles in 2010, it is likely that the Cyprus courts will adopt the same reasoning in future cases.

For further information on this topic please contact **Marina Joud** at **Andreas Neocleous & Co LLC** by telephone (+357 25 110 000), fax (+357 25 110 001) or email (marina.joud@neocleous.com).

Endnotes

⁽¹⁾ *Lasala and Zeidman as Co-Trustees of the AremisSoft Corporation Liquidating Trust v Lycourgos Kyprianou*.

⁽²⁾ [1992] 1 WLR 231.

⁽³⁾ [2012] EWHC 3116.

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