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Extract of article originally published in International Company and Commercial Law Review, ICCLR 2010, 21(2), 54-62.

CYPRUS: Freezing orders, ship arrest warrants, anti-suit injunctions, disclosure orders and *Norwich Pharmacal* relief in aid of court or arbitration proceedings in Cyprus and overseas

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The global financial crisis and the frequent use of Cyprus companies in world-wide holding structures and tax planning has resulted in a steady increase of applications before courts in Cyprus for asset protection pending the determination of the main legal proceedings irrespective of whether these are in the form of arbitration or a court action, in Cyprus or abroad.

1. INTERIM ORDERS IN GENERAL

The power of the courts to grant interim orders to protect assets that may be at risk of alienation or in order to preserve a particular status quo pending the final determination of an action is well established in the Cyprus legal system.

In a leading Supreme Court decision it was stated that:

> *"INTERLOCUTORY INJUNCTION:*
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> *Section 32 of the Courts of Justice Law — 14/60; confers power on the court to grant an injunction "in all cases in which it appears to the court just or convenient so to do". However, the justice and convenience of the case is not the sole consideration to which the court should pay heed in the case of an interlocutory injunction, and no such injunction should be granted, unless the following conditions are satisfied:-*
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> ***(a) a serious question arises to be tried at the hearing;***
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> ***(b) there appears to be "a probability" that the plaintiff is entitled to relief and, lastly,***
>
> ***(c) unless it shall be difficult or impossible to do complete justice at a later stage without granting an interlocutory injunction."***

It is possible to apply to the court for interim measures without notice to the respondent by an ex-parte application. The courts will consider an ex-parte interim application only if there is an element of extreme urgency.

The Supreme Court has clarified through its case-law what the applicant must demonstrate to the court in terms of the risk of alienation of assets:

> *"We cannot agree that it surfaces as a necessity to file evidence of a real intention of the defendant to alienate or charge. That which is considered is the possible impact of the alienation or charge, if they occur, to the satisfaction of the court decision that may be issued. In other words, the risk that the court decision will remain unsatisfied if the assets are transferred or charged..."*

Moreover, the applicant must fully and frankly disclose all material facts to the court. What is material is a matter for the court to decide.

Finally, for the court to grant an ex-parte order it must be satisfied that on the balance of convenience, it is in the interest of justice to do so.

The following English case-law extract is useful and self explanatory in determining the most appropriate jurisdiction for requesting interim orders:

> *[15] Where a defendant and his assets are located outside the jurisdiction of the court seised of the substantive proceedings, it is in my opinion most appropriate that protective measures should be granted by those courts best able to make their orders effective.* ***In relation to orders taking direct effect against the assets, this means the courts of the state where the assets are located; and in relation to orders in personam, including orders for disclosure, this means the courts of the state where the person enjoined resides.***

1.1. WORLD-WIDE INTERIM ORDERS IN CYPRUS

It was decided by the Supreme Court of Cyprus in 2007 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 which grants the courts wide powers in exercise of their civil jurisdiction to issue interim orders and based on what has been stated in the case of Kıtalides (above) regarding the reconstruction of the frame of courts' power so that the interim orders be issued in a way that is effective until the determination of the dispute and also what has been noticed, in general, the modern ways people make their transactions, the court of first instance had the right, in this case, interim orders that also freeze assets of the appellants outside of the jurisdiction.*
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> *With the breadth of Section 32 of Law 14/60, as interpreted in the case of Kıtalides (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…"*

It should be noted that the power of the Cyprus courts is not limited to freezing orders. Where justice requires, they may issue interim specific performance orders or mandatory injunctions to the effect of instructing a person to take active steps or they may even appoint a receiver or take any steps that justice may require.

However, everything depends on the facts. The following passage from ***Halsbury's Laws of England*** is of relevance as regards specific performance***:***

> ***"Circumstances in which injunction granted.*** *Pending proceedings for specific performance, the court will grant an injunction to restrain a vendor from dealing with property if there is a clear and undisputed contract, but if this is open to doubt, the question becomes one of comparative convenience and an injunction will be granted or refused according to the side to which the balance of convenience inclines."*

1.2. *"CHABRA"* TYPE ORDERS IN CYPRUS:

In a very recent case the authors of this article successfully argued before the Cyprus Supreme Court the power of courts in Cyprus to issue what is known as "Chabra type orders". The Supreme Court

judge extensively quoted extracts from English cases which are reproduced below:

> *"37. It is now settled law that, although the court has no jurisdiction to grant an interlocutory Mareva injunction in favour of a plaintiff who has no good arguable cause of action against a sole defendant,* ***it has power to grant such an injunction against a co-defendant against whom no direct cause of action lies, provided that the claim for the injunction is ancillary and incidental to the plaintiff's cause of action against that co-defendant****: see TSB v. Chabra (above), a case in which it appeared that assets which beneficially belonged to Mr. Chabra were vested in a limited company of which he appeared to be the alter ego. Mr Justice Mummery stated at [1992] 1 WLR. at p 240* : …
>
> *44. Although it is plain that the court's* ***Chabra -type of jurisdiction*** *will only be exercised where there are grounds to believe that a co-defendant is in possession or control of assets to which the principal defendant is beneficially entitled, it does not seem to me that the jurisdiction is limited to cases where such assets can be specifically identified in the hands of the co-defendant. Once the court is satisfied that there are such assets in the possession or control of the co-defendant, the jurisdiction exists to make a freezing order as ancillary and incidental to the claim against the principal defendant, although there is no direct cause of action against the co-defendant. Since the purpose of granting such an injunction against the co-defendant is to preserve the assets of the principal defendant so as to be available to meet a judgment against him, the form of order made against the co-defendant should be as specific as the circumstances permit in respect of the principal defendant's assets of which he has possession or control…."*

As a consequence, the Supreme Court of Cyprus upheld the interim freezing orders granted by the district court at first instance against a company and each of its subsidiaries.

1.3. THE "*ASSETS*" CONSTITUTING THE SUBJECT-MATTER

Section 32 of the Courts of Justice Law gives courts in Cyprus wide interpretative powers. The following English case-law extracts provide useful guidance as to the nature and extent of the assets that can constitute the subject matter of a provisional court order.

> *"57.* ***…It seems to me that, once it is accepted that "assets" includes "choses in action" there is no reason to limit them to particular types of chose in action.*** *There may be some other reason for limiting the operation of section 44(3) but* ***I do not see any reason why a contractual right should not be an "asset" within the meaning of the subsection****. Further, given the fact that the purpose of section 44(3) is to permit orders for the preservation of assets, and given the limitations on the operation of the subsection,* ***namely that it can only be invoked (a) when "the case is one of urgency" and (b) when the judge thinks that it is "necessary" to make the order, it seems to me that in this context there is no good reason for construing the meaning of "assets" narrowly.***
>
> *58. …However, as the Vice-Chancellor observed in argument, if his car was stolen or allegedly stolen by the defendant, there is no reason why an order should not be made for the purpose of preserving the car pending the resolution of the issues between the parties. That appears to me to be a powerful point.* ***I can see no reason why "assets" should be limited to the defendant's assets****.* ***…***
>
> *65. However, I recognise that all depends on the circumstances. …* ***but in my opinion, if the court thought that it was necessary so to order in order to preserve the value of the fish, which would otherwise be diminished or lost by putrefaction, the court could properly conclude that the order was necessary for the purpose of preserving assets. The asset would be the value of the fish rather than the fish itself."***

1.4. **DISCLOSURE ORDERS AND *NORWICH PHARMACAL* RELIEF IN CYPRUS**

The following extracts are a small sample of English cases which illustrate the court's power to order a respondent or defendant to disclose the location and value of its assets:

(i) *"In the present case it is the disclosure order which is the most valuable part of the relief granted by the judge. Without it CSFT would be unable to apply to the local courts for effective orders against assets abroad. Mr Cuoghi makes much of the fact that the order extends to assets in Switzerland, and submits that this is an unwarranted interference with the jurisdiction of the court trying the substantive dispute. The short answer to this is that the terms of the order will not allow it to be directly enforced in Switzerland without an order of the Swiss courts"….*

(ii) *"As … observed, an ordinary freezing injunction almost always includes orders of a mandatory nature by ordering the defendant to provide detailed information about his assets, which may be very onerous indeed."* **.**

(iii) "*Freezing orders generally require that within a short period after service of the order the defendant must provide the claimant with information as to the value, location and details of assets over a minimum value*."**.**

On the basis of the above, in a number of instances judges of the Cyprus District Courts have simultaneously imposed freezing orders and required the respondent to disclose the value and location of his assets.

Furthermore, by applying equitable principles the courts in Cyprus may in certain circumstances grant an order for the discovery of documents or information against a third party who is not a party to the proceedings. This form of relief derives from the classic statement of Lord Reid in the leading English House of Lords decision of ***Norwich Pharmacal Co –v- Customs and Excise Commissioners [1974] AC 133***, *p.175*:

> *"[The authorities] seem to me to point to a very reasonable principle that if through no fault of his own a person gets mixed up in the tortious acts of others so as to facilitate their wrong-doing he may incur no personal liability <u>but he comes under a duty to assist the person who has been wronged by giving him full information and disclosing the identity of the wrongdoers</u>. I do not think that it matters whether he became so mixed up by voluntary action on his part or because it was his duty to do what he did... <u>But justice requires that he should co-operate in righting the wrong if he unwittingly facilitated its perpetration…</u>".*

The scope of *Norwich Pharmacal* relief (as it has become known) has been greatly extended and advanced by the English courts in subsequent cases**.**

There has been only one reported case where the *Norwich Pharmacal* principle has been recognised by the Supreme Court of Cyprus**.** In this case, an ex-parte order was issued at first instance for the discovery and inspection of documents in the context of an application to set aside or stay the proceedings on the alleged grounds that the Cyprus courts were not the appropriate forum to hear the action (*forum non conveniens* doctrine). The Supreme Court of Cyprus upheld the granting of the order stating that: *"…Cypriot case-law does not shed light on this issue. Nevertheless, we have located English case-law that has clarified the issue…taking a positive stance on this issue"*. The Supreme Court based its decision on the following factors:

(i) The courts can make use of the discovery of documents procedure in appropriate cases (including applications concerning the setting aside of the writ of summons);

(ii) The appellants' complaint that the discovery assisted the defendants was unfounded since this is one of the objectives of this relief;

(iii) Given that the appellants had already referred to the relevant documents in the affidavit they submitted, their allegation that the other party was "fishing for evidence" could not be accepted; and

(iv) The relevance and necessity of the disclosure of the requested documents derived from the affidavit that the defendants had filed in support of their application to set aside of the writ of summons.

This case demonstrates that the Cyprus courts are prepared to grant *Norwich Pharmacal* orders when the judge is satisfied that it would be reasonable to make order and that doing so will serve the interests of justice. It also explains some of the issues that the court should take into consideration when exercising its discretion.

The availability of *Norwich Pharmacal* orders always depends upon the facts of each particular case. Their possible applicability is wide, ranging from simple disclosure to asset tracing, and can affect a wide variety of entities including banks, trustees, corporations and their servants. There are instances where *Norwich Pharmacal* relief may not be granted – for example when the information is protected by law as confidential information or when a witness will testify as to the information during the trial (and the documents are not necessary at the pre-trial stage).

In the absence of reaffirming case-law of the Supreme Court of Cyprus, all these matters are subject to some uncertainty.

2. INTERIM ORDERS IN AID OF INTERNATIONAL ARBITRATION PROCEEDINGS:

Section 9 of the International Commercial Arbitration Law, Law 101/87 ("the ICA Law") constitutes the legal basis upon which Cyprus courts may grant interim orders in aid of international commercial arbitration.

The arbitration proceedings must derive from a written arbitration agreement. Section 1 of the ICA Law contains a very wide definition of what is deemed to be "commercial" for the purposes of the ICA Law. The requirement that the arbitration must be "international" is satisfied when the parties are located in different countries but an arbitration may also be considered as international if a substantial part of the obligation that constitutes the subject matter of the dispute was to be performed in a different country or if the parties have expressly agreed that the subject matter of their dispute is related to more than one country.

In *"**A practical Approach to Arbitration Law", by Andrew Tweeddale and Karen Tweeddale, 1999 Blackstone Press Limited***, page 153, paragraph 10.2 under the heading "*Court's Power to Preserve Assets and Evidence"* it is stated:

> *"The court's powers to intervene and make orders under s.44(3) of the AA 1996 are limited to orders for the purpose of preserving evidence or assets. Article 9 of the UNCITRAL Model Law is **drafted in wider terms and does not restrict the type of interim measure** a court may make. **Article 9 of the UNCITRAL Model Law** simply states as follows:*
>
> > *It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure."*

It should be noted that there is a striking similarity between the text of Article 9 of the UNCITRAL Model Law and the text of Article 9 of the ICA Law, L.101/87.

3. INTERIM ORDERS IN AID OF LEGAL ACTIONS AND ARBITRATION PROCEEDINGS IN EU MEMBER STATES:

EC Regulation 44/2001 on the jurisdiction and enforcement of judgements is directly applicable in Cyprus.

Article 31 of the Regulation reads as follows:

> *Provisional, including protective, measures*
>
> *Article 31*
>
> *Application may be made to the courts of a Member State for such provisional, including protective, measures as may be available under the law of that State, even if, under this Regulation, the courts of another Member State have jurisdiction as to the substance of the matter.*

The European Court of Justice decided that provisional measures can be ordered on the basis of Article 31 of EC Regulation 44/2001 irrespective of whether the main proceedings in the other member state are in the form of arbitration or a court action. The European Court of Justice also decided that there must be a real connecting link between the subject-matter of the measures sought under Article 24 of the Brussels Convention (whose text is essentially identical to Article 31 of Council Regulation 44/2001) and the territorial jurisdiction of the Contracting State of the court before which those measures are sought. To be more precise the European Court of Justice held:

> *"28 It must first be borne in mind here that Article 24 of the Convention applies even if a court of another Contracting State has jurisdiction as to the substance of the case, provided that the subject-matter of the dispute falls within the scope ratione materiae of the Convention, which covers civil and commercial matters.*
>
> **…**
>
> *33 However, it must be noted in that regard that provisional measures are not in principle ancillary to arbitration proceedings but are ordered in parallel to such proceedings and are intended as measures of support. They concern not arbitration as such but the protection of a wide variety of rights. Their place in the scope of the Convention is thus determined not by their own nature but by the nature of the rights which they serve to protect.*
>
> *34 It must therefore be concluded that where, as in the case in the main proceedings, the subject-matter of an application for provisional measures relates to a question falling within the scope ratione materiae of the Convention, the Convention is applicable and Article 24 thereof may confer jurisdiction on the court hearing that application even where proceedings have already been, or may be, commenced on the substance of the case and even where those proceedings are to be conducted before arbitrators. …*
>
> *40 It follows that the granting of provisional or protective measures on the basis of Article 24 is conditional on, inter alia, the existence of a real connecting link between the subject-matter of the measures sought and the territorial jurisdiction of the Contracting State of the court before which those measures are sought."*

In further support of these principles, reference is made to ***Commercial Injunctions by Steven Gee QC, fourth edition,*** page 164, paragraph 6.041 headed ***"Article 24 of the Brussels and Lugano Conventions and Article 31 of Council Regulation 44/2001"*** :

> *"Article 24 of the Convention and Art.31 of Regulation 44/2001 authorises provisional measures… However, where the subject-matter of the substantive rights does come within the scope of the Convention or Regulation, then the fact that it is to be resolved in arbitration does not have the consequence that these articles do not apply…For Art.24 (and Art.31 of the Regulation) to apply there must be a real connecting link between the provisional measures and the territorial jurisdiction*

of the national court".

Moreover, the following English case-law extract is an extremely useful reference tool when used in conjunction with the wide interpretation granted by section 32 of the Courts of Justice Law (Law 14/60) in the case-law developed by the Supreme Court of Cyprus:

> *"16. The principle which underlies Article 24 is that each contracting state should be willing to assist the courts of another contracting state by providing such interim relief as would be available if its own courts were seised of the substantive proceedings."*

It should be noted that there are as yet no procedural rules concerning the application of Article 31 of EC Regulation 44/2001 and section 9 of the ICA Law. However, in a case that concerned the recognition and enforcement of a foreign judgement, the Supreme Court of Cyprus stated that: "…*In Cyprus no special rules were adopted in so far as the application of the Convention. This does not mean that there cannot be reliance upon the rights it affords. It simply means, so far as the access to the court, that the known legal procedures are used provided that the rights of all parties are safeguarded…*"

Finally, Article 20 of EC Regulation 2201/2003 may constitute the legal basis for the issuance of urgent provisional orders in aid of divorce proceedings in another member State.

4. INTERIM ORDERS IN AID OF LEGAL PROCEEDINGS IN COUNTRIES OUTSIDE THE EUROPEAN UNION:

English courts have further stated that**:**

> *"[17] In other areas of law, such as cross-border insolvency, commercial necessity has encouraged national courts to provide assistance to each other without waiting for such co-operation to be sanctioned by international convention. International fraud requires a similar response. It is becoming widely accepted that comity between the courts of different countries requires mutual respect for the territorial integrity of each other's jurisdiction, but that this should not inhibit a court in one jurisdiction from rendering whatever assistance it properly can to a court in another in respect of assets located or persons resident within the territory of the former."*

There are no specific legal bases similar to section 9 of the ICA Law or Article 31 of EC Regulation 44/2001 upon which interim orders in aid of legal actions in countries outside the European Union may be requested.

As a consequence, there is a question-mark over the ability of courts in Cyprus to issue interim orders in aid of court actions filed in a country outside the European Union. This should not necessarily be interpreted as meaning that the courts will not devise a way to exercise their discretionary powers to issue such interim orders when justice requires it. Nevertheless this has not been affirmed so far by the Supreme Court of Cyprus.

5. INTERIM ORDERS PROHIBITING THE ALIENATION OF VESSELS REGISTERED IN CYPRUS:

Section 30 of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law ("the Merchant Shipping Law") provides that:

> ***30.*** *The* ***Supreme Court*** *may, if it thinks fit (without prejudice to the exercise of any other power of the Court),* ***on the application of any interested person*** *make* ***an order prohibiting for a time specified any dealing with a ship*** *or any share therein, and the Court may make the order on any terms or conditions it may think just, or may refuse to make the order, or may discharge the order when made, with or without costs, and generally may act in the case as the justice of the case requires; and the Registrar, without being made a party of the proceedings, shall on being served with an official copy thereof obey the same.*

The following have been stated by a leading Cyprus judge:

> *"...Mareva Injunctions were granted as regards goods as well as money within the jurisdiction, and the jurisdiction was also applied to assets such as an aircraft as in the case of Allen v. Iambo Holdings Ltd., [1980] 1 Weekly Law Reports, 1252 and also where the defendant's assets included a ship within the jurisdiction as in the case of Clipper Maritime Company of Monrovia v. Mineralimportexport (The "Marie Leonhardt") [1981] 2 Lloyds Law Reports p. 458.*
>
> *I have not, however, been able to trace any authority to the effect that a ship not within the jurisdiction but registered and owned by a company registered within the jurisdiction can be the subject of a Mareva injunction, under a provision corresponding to section 32 of our Courts of Justice Law 1:960. By their very nature ships sailing from port to port naturally incur liabilities that may render them the subject of arrest, appraisement and sale and other encumbrances in other jurisdiction. In such circumstances an injunction may not be of any effect vis a vis such claimants with different priorities. Bearing in mind that the jurisdiction of a court in granting such remedies should not be exercised in vain; I have come to the conclusion that even if the registration and ownership of a ship could be the subject of an injunction under section 32 of the Law, I would not be prepared to exercise my discretion if I had one, in granting same. I would therefore refuse the present application to the extent that is based on the said section."*

Even though a previously mentioned case of 2007 constitutes a precedent pursuant to which the power of the courts under section 32 of the Administration of Justice Law is extended to cover the issuance of worldwide orders, there may be a question mark whether such power should be regarded as extending to matters directly regulated by section 30 of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law.

In this respect it should be noted that section 30 of the Merchant Shipping Law is a specialised section and expressly reserves jurisdiction to the admiralty division of the Supreme Court of Cyprus. Moreover, the Merchant Shipping Law was enacted after the Courts of Justice Law.

In another case in Cyprus it was said that

> *"...the decision of the first instance court that in the application of section 30 of the Law 45/63 the same criteria apply as those that the case-law determined to apply to section 32 of Law 14/60 is incorrect" and was also decided that "interested party" within the meaning of section 30 of the Merchant Shipping Law is limited and in support of this notion and with reference to older case-law, the following was reproduced: "With respect, I cannot agree either with the proposition that the meaning and effect of s. 30 is because of its wording self-evident or that the expression 'interested person' necessarily embraces every creditor. In Ladup Ltd v. Williams and Glyn's Bank, Warner, J., remarked that the word (interest) is a word of a notoriously elastic meaning. The same is borne out by the definition of the word 'interest' in Black's Law Dictionary, denoting a right of claim or legal share falling short of absolute ownership. The work 'interest' and variations of it encountered in a legal framework, are, it seems to me, apt to derive their precise meaning from the context in which they appear. The expression 'interested person' is to my comprehension in no way synonymous with a 'plaintiff', a 'petitioner' or 'litigant' in a judicial cause or matter."*

Having said the above, it is crystal clear that the Supreme Court has been expressly granted the power to prohibit dealings over Cyprus-flag vessels.

6. SHIP ARREST WARRANTS AGAINST VESSELS WITHIN THE JURISDICTION OF THE REPUBLIC OF CYPRUS:

The Supreme Court of Cyprus in its admiralty jurisdiction has an inherent power to deal with matters relating to the arrest of property by virtue of rule 50 of the Cypriot Admiralty Jurisdiction Order which reads as follows:

In an action in rem, any party may at the time of, or at any time after, the issue of the writ of summons apply to the court or a judge for the issue of a warrant for the arrest of property.

The party applying for the arrest of property should, before making his application, file with the court an affidavit setting out the nature of the claim and stating that the claim remains unsatisfied and that the aid of the court is therefore required. It has been held that, in deciding whether an Admiralty court will issue a warrant of arrest, it is not necessary at that stage to go into the merits of the action and decide whether the plaintiff's factual or legal contentions are right or wrong. It was also held that rule 50 gives an absolute right for the arrest of property once the Admiralty court is satisfied that:

- There are issues which must be tried between the parties;
- The plaintiff has a right to have those issues tried;
- It is abundantly clear that the plaintiff has a right to have the issues raised by the oral evidence tried; and
- The plaintiff was entitled to have the vessel arrested.

In effect the Admiralty court must be satisfied that there is a serious question to be tried at the hearing and that on the facts before it there is a probability that the plaintiff is entitled to relief. Should an application for the arrest of a vessel be successful, the Admiralty court may require the plaintiff to:

- Lodge with the court a deposit for the expenses which may be incurred by the marshal in connection with the custody and supervision of the vessel whilst under arrest;
- Lodge any other amount of money required by the Registrar for the expenses of the arrest; and
- File a security bond in respect of damages that the defendant vessel might suffer if the arrest proved to be wrongful.

Failure to comply with the above requirements will automatically result in the release of the vessel. The order of arrest must also state the exact amount of security that the defendant may file for the release of the vessel.

In respect of an application for the arrest of a vessel in relation to wages, the supporting affidavit must also state the nationality of the vessel and that notice of the action has been served on a consular officer of the state to which the vessel belongs, if there is one resident in Cyprus. In respect of an action for necessaries or for building, equipping or repairing any vessel, the supporting affidavit must state the nationality of the vessel and that, to the best of the deponent's belief, no owner or part owner of the vessel was domiciled in Cyprus at the time when the necessaries were supplied or the work was done.

The warrant for the arrest of the vessel must be served by the marshal or his officer in the manner prescribed by the Admiralty Jurisdiction Order 1893 for the service of a writ of summons in an action *in rem* and thereupon the property will be deemed to be arrested.

Any person desiring to prevent the arrest of a vessel, the release of a vessel under arrest or the payment out of any monies in court may cause a caveat against the issue of any warrant of arrest or any order of release or for payment out of moneys in court to be entered by the Registrar in a book to be kept by him for that purpose and called the Caveat Book.

7. ANTI-SUIT INJUNCTIONS

Cyprus case-law is non-existent with respect to the possibility of granting anti-suit injunctions, under which a person is ordered to withdraw or stay an action he initiated in a jurisdiction other than Cyprus which

cannot be considered as the natural forum to decide the subject matter of the dispute.

The most obvious scenario is where an action is initiated in a court other than the one that the parties may have contractually agreed or imposed by mandatory legislation.

Having said this, the European Court of Justice has made it clear that in disputes within the European Union, there is no room for anti-suit injunctions where EC Regulation 44/2001 is applicable.

Therefore anti-suit injunctions may in principle be available only when the question of "natural forum" arises in instances where EC Regulation 44/2001 does not apply. This may be the case, for example, where it is clear on the basis of the facts that the Cyprus courts are the natural forum to determine the dispute in question but one of the parties has nevertheless initiated legal proceedings in a country outside the European Union, in an oppressive and frivolous manner.

In a leading Privy Council decision it was held that anti-suit injunctions should not be granted upon the same principles as those applied when granting a stay of proceedings on the ground of *forum non conveniens* and more significantly it was further clarified and held that:

> *"In the opinion of their Lordships, in a case such as the present where a remedy for a particular wrong is available both in the English or, as here, the Brunei [or say Cyprus] court and in a foreign court, the English or Brunei [or say Cyprus] court will, generally speaking, only restrain the plaintiff from pursuing proceedings in the foreign court if such pursuit would be vexatious or oppressive. This presupposes that, as a general rule, the English or Brunei [or say Cyprus] court must conclude that it provides the natural forum for the trial of the action; and further, since the court is concerned with the ends of justice, that account must be taken not only of injustice to the defendant if the plaintiff is allowed to pursue the foreign proceedings, but also of injustice to the plaintiff if he is not allowed to do so. So the court will not grant an injunction if, by doing so, it will deprive the plaintiff of advantages in the foreign forum of which it would be unjust to deprive him. Fortunately, however, as the present case shows, that problem can often be overcome by appropriate undertakings given by the defendant, or by granting an injunction upon appropriate terms; just as, in cases of stay of proceedings, the parallel problem of advantages to the plaintiff in the domestic forum which is, prima facie, inappropriate, can likewise often be solved by granting a stay upon terms."*

Moreover it was subsequently clarified that as a general rule it is contrary to the doctrine of comity for an English court to grant an anti-suit injunction unless the English forum had a sufficient interest or connection with the subject-matter to justify such interference. However, it is stressed that there is no precedent of the Cyprus Supreme Court on the issuance of anti-suit injunctions.

8. CONCLUSIONS

Courts in Cyprus have wide powers to issue interim orders in aid of arbitration or court proceedings. More importantly, they are not reluctant to issue such orders when they consider on the facts that it is in the interest of justice to do so. Even though certain grey areas remain, recent cases such have added much needed clarity to the jurisdiction and extent of the powers of the courts.

In order to further simplify the procedures, specific rules should be introduced to regulate the issuance of interim orders in aid of foreign proceedings. Such rules may take a format similar to section 25 as amended of the Civil Jurisdiction and Judgments Act 1982 which is titled "*Interim orders in England and Wales and Northern Ireland in the absence of substantive proceedings*".

Having said the above, the law is in a continuous state of development.