

## Litigation - Cyprus

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### Mareva injunctions and freezing orders pending determination of derivative action

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**Derivative action**  
**Mareva injunctions**  
**Issue of urgency**

A case in progress in the Limassol District Court gives useful guidance on the issue of urgency as it affects the courts' readiness to issue interim orders on an *ex parte* basis, without giving notice to the respondents.

#### **Derivative action**

In the action taking place, the plaintiff is seeking:

- a declaration that a transfer from the first defendant company to the second defendant company of the entire share capital of a third company (Company A) is void;
- the cancellation of the novation of a relevant loan; and
- damages in favour of the first defendant company.

The action is based on alleged conspiracy, fraud and breach of fiduciary duties and duties of good faith, as well as the fact that the relevant transfer and novation occurred subsequent to the presentation of a winding-up petition with no validation by the court. Essentially, this is a derivative action filed by a minority shareholder on behalf of the first defendant, which is under the control of the alleged wrongdoers.

In November 2010 the plaintiff applied on an *ex parte* basis for interim orders prohibiting the second defendant company from:

- alienating or charging shares held in Company A;
- alienating a loan which was novated to it by the first defendant company;
- enabling Company A to change its shareholding structure; or
- alienating or charging the assets of Company A.

#### **Mareva injunctions**

The courts in Cyprus have the power to issue interim orders when they consider it just and equitable to do so, provided that:

- a serious question arises to be determined at the main trial of the action;
- it appears probable that the plaintiff is entitled to relief; and
- it would be difficult or impossible to render complete justice at a later stage without granting the requested interlocutory injunction.

The applicant must make full and frank disclosure of all material facts so that the court may consider whether the balance of convenience is in favour of granting the requested order. In instances of extreme urgency the application may be made *ex parte*.

#### **Issue of urgency**

When the respondent was notified of the interim orders, it challenged them - among other grounds - on the basis that the application for the orders was made more than a month after the applicant had become aware of the disputed transactions, and that the necessary element of urgency to justify the

making of orders on an *ex parte* basis was absent. The applicant explained the reasons for the time delay before the filing of the *ex parte* application. Accepting the applicant's explanations, the judge stated as follows:

*"In this instance, the extreme urgency factor is connected not so much with the time of request of the remedy, but with the necessity that the remedy is granted without notice to the other side. The issue was not whether the application could be postponed for a few days so that the defendants are notified, but rather that they [the defendants] should not be notified prior to claimant securing the issuance of the relevant orders. It was necessary that the orders be issued without notice to the other side which would be notified as to the issuance of the orders upon their service."*

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