

Litigation - Cyprus

Minimising risks of contempt of interim orders by financial institutions

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Introduction

Contempt of court

Third parties

Variation of court orders

Introduction

Courts in Cyprus have the discretionary 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. Finally, the court must be satisfied that, on the balance of convenience, it is in the interest of justice to issue the requested order.

Contempt of court

In *JSC BTA Bank Kazakhstan v Paul Kithreotis*⁽¹⁾ the respondent was found guilty of contempt of both:

- an Anton Piller order obliging him to permit the persons named in the order to come into his house and office to inspect documents; and
- a Norwich Pharmacal order instructing him to disclose certain information by means of an affidavit.

When deciding on the sentencing, the court took into consideration all relevant circumstances, including the fact that the respondent had also been found in contempt of a court order in England, where the Court of Appeal had imposed a 21-month prison sentence.⁽²⁾ The court noted that following the English contempt proceedings, a new interim order had been issued in Cyprus and the respondent once more acted in contempt. It nonetheless made clear that the sentence it would impose would relate only to the contempt of the order of the Cyprus court.

The court referred to *Krashias Shoes v Adidas*,⁽³⁾ in which it was stated that compliance with a court order is a fundamental pillar of law. Furthermore, based on *Safarino v Sun Shoes*,⁽⁴⁾ a court order is equal to an order by virtue of a law (or statute), but is even more precise, since it specifies exactly what should or should not be done.

The Civil Procedure Rules provide for the possibility of issuance of a writ of attachment and a writ of sequestration in instances of contempt of court. The court also has the discretionary power to order the payment of a fine instead of a prison sentence. Nonetheless, based on the case law, the normal punishment is imprisonment.

Third parties

There may be instances where innocent third parties (eg, banks or others that have a relationship with a defendant against which an interim order has been issued in Cyprus) may inadvertently be affected by the

terms of an order issued by a court, or where the order does not adequately protect or take account of the rights of innocent third parties (possibly because the court making the order may have been unaware of the existence of such third parties and their rights).

Pursuant to the Administration of Justice Law and the relevant case law, courts in Cyprus have the power to punish a third party (even though it is not a party to the proceedings) that has knowledge of an interlocutory injunction and "knowingly and wilfully encourages or collaborates in the disobedience of the order". The considerations to be observed have been summarised as follows:

"although persons are under a duty to comply strictly with the terms of an injunction, the Courts will only punish a person for contempt upon adequate proof of the following points. First, it must be established that the terms of the injunction are clear and unambiguous; secondly it must be shown that the defendant has had proper notice of such terms; and thirdly, there must be clear proof that the terms have been broken by the defendant."⁽⁵⁾

Variation of court orders

Based on the case law, whenever a third party considers that an interlocutory injunction affects its rights, that third party may apply to the court for the order to be modified, and to bring all the relevant considerations to the attention of the court. The Civil Procedure Rules provide the necessary mechanisms for a third party to seek permission to appear in the interim order proceedings to oppose its continuation or seek its variation. The discretionary power of the court to issue, vary or cancel an interim order is exercised on the basis of the facts of each case.

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Endnotes

- (1) Application 42/2001, dated August 10 2012.
- (2) *JSC BTA Bank v Roman Vladimirovich Solodchenko*, [2011] EWCA Civ 1241.
- (3) (1989) 1 CLR (E) 750.
- (4) (1984) 1 CLR 738.
- (5) *The Law of Contempt*, Borris and Lowe, second edition, page 395.

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