

Litigation - Cyprus

First instance court summarises preconditions for interlocutory relief

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Introduction

The power of Cyprus courts to grant interlocutory relief pending determination of the main trial is well established within Cyprus law.

In its recent decision in *Lukoil Cyprus Ltd v F Miltiadous*⁽¹⁾ the Larnaca District Court had the opportunity to summarise the preconditions that must exist for Cyprus courts to issue interim orders which constitute discretionary remedies. The primary legal basis for orders of this nature is Section 32 of the Courts of Justice Law (14/1960).

On the basis of an application filed by Lukoil Cyprus Ltd, the district court issued interim orders that, among other things, prohibited the defendant from interfering in any way "on the plot of land and/or within the plot of land and/or through the plot of land and/or underneath the plot of land" which was described in the relevant application and which Lukoil "possesses and/or uses and/or develops on the basis of a leasing agreement".

Facts

Lukoil leased 1,875 square metres of land under a lease agreement with Koinonia Byzantium Enterprises Limited. The lease authorised Lukoil to build and operate a petrol station, provided that it obtained the required licences. The defendant had possession of part of the same property based on a permit that was issued by a relevant authority in 1977. It was alleged that the defendant was obstructing the contractor employed by Lukoil for the development of the petrol station on the plot of land, and that this was causing damages to Lukoil, which would become irreparable if the defendant did not discontinue its actions.

Case and law analysis

The district court judge had the opportunity to reconfirm the discretionary power of Cyprus courts to issue interim orders where it is considered just to do so, provided that the following preconditions are satisfied:

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

With regard to the first precondition - namely, the existence of a serious question to be determined at the main trial of the action - the judge stated that "it has been interpreted as not including anything further than demonstrating an arguable case based on the pleadings that were submitted".

Turning to the second precondition (which, to an extent, overlaps with the first) - namely, that there appears to be a probability that the plaintiff is entitled to relief - the judge stated that:

"it has been explained as referring to the existence of something more than a simple possibility of success, but something less than the 'balance of probabilities' which is the measure and/or degree of proof that is required in civil cases."

The third precondition - namely, that it would be difficult or impossible to award justice at a later stage without the issuance of the requested order or orders - is a question of whether the award of damages at the end of the trial would be a sufficient remedy on the basis of the facts of the case.

Assuming that the three preconditions are satisfied, the court must go on to consider whether, on the balance of convenience, it is fair and just to issue or maintain the interlocutory injunction. In the words of Justice Hoffman in the English case *Films Rover International Limited v Cannon Film Sales Limited*:⁽²⁾

"The principal dilemma about the grant of interlocutory injunctions, whether prohibitory or mandatory, is that there is by definition a risk that the court may make the 'wrong' decision in the sense of granting an injunction to a party who fails to establish his right at the trial (or would fail if there was a trial), or alternatively in failing to grant an injunction to a party who succeeds (or would succeed) at trial. A fundamental principle is therefore that the court should take whichever course appears to carry the lower risk of injustice should it turn out to have been 'wrong' in the sense I have described. The guidelines for the grant of both kinds of interlocutory injunctions are derived from this principle."

Applying these principles, the district court issued a series of interim orders, pursuant to which the defendant was prohibited from interfering in the plot of land leased by Lukoil or otherwise obstructing the construction and operation of the petrol station pending determination of the action. In doing so, the court considered that on the facts of the case, Lukoil satisfied the first and second preconditions on the basis of the alleged torts of trespass to land and private nuisance. Furthermore, it considered that the third precondition was also satisfied given that despite the written notices issued by Lukoil, the defendant continued to trespass and interfere with construction activities, and that the contractor employed by Lukoil could not perform its contractual obligations of building the petrol station.

With reference to Supreme Court case law, the court noted that "the concept of justice is not strictly connected with the notion of material damage, but with the wider protection of the rights of the person requesting a remedy".

Ancillary legal aspects

In recent years, the Supreme Court, with regard to the way in which business is undertaken in today's world, has confirmed the power of Cyprus courts to issue interim orders with extraterritorial (worldwide) effect, as well as to issue interim orders against parties against whom no direct cause of action exists.

Further to the above, there is an ever-increasing number of instances where Norwich Pharmacal relief is granted by district courts in Cyprus. The granting of Norwich Pharmacal orders always depends on the facts of each particular case. Their possible applicability is wide, ranging from simple disclosure to asset tracing, and they can affect a variety of entities, including banks, trustees, corporations and their servants.⁽³⁾

In addition, direct legal bases exist under Cyprus law that enable the issuance of Cyprus interim orders in support of international arbitration proceedings.⁽⁴⁾

Comment

At a time of significant activity in the Cyprus energy sector⁽⁵⁾ and overall frequent use of Cyprus-registered companies in international tax planning and corporate group structures, the existence of interlocutory injunctions is an important weapon in the arsenal of Cyprus justice. Moreover, courts in Cyprus have demonstrated over the years that they are not reluctant to issue such orders where they consider that, based on the facts, this is what justice requires.

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Endnotes

(1) January 2010, unreported.

(2) (1987) 1 WLR 670).

(3) See P Neocleous, "Norwich Pharmacal Relief in Cyprus", published in the *2007 Guide to the World's Leading Litigation Lawyers* by Euromoney Institutional Investor Plc.

(4) See Costas Stamatiou and Panayiotis Neocleous, "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", *International Company and Commercial Law Review* 2010, 21(2).

(5) For example, construction of solar energy and wind power parks within the frame of shifting to renewable energy sources as per EU law requirements; expansion of use of natural gas; and efforts to explore and exploit possible hydrocarbons reserves in the seabed off Cyprus. See Costas Stamatiou, "Establishing the Boundaries: Cyprus offshore oil, gas and shipping industries", published in *Lloyd's List Cyprus*, September 2005; Costas Stamatiou and Panayiotis Neocleous, "Ready, Steady, Drill: the legislation governing the race for Cyprus's offshore hydrocarbons reserves", *International Company and Commercial Law Review* 2007, 18 (12).

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