

Litigation - Cyprus

Interim orders regarding disputed share pledges

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Pledges of shares are frequently encountered in Cyprus holding and finance structures. The recent case of *Symeou v VTB Bank (Open Joint-Stock Company)*⁽¹⁾ concerned a dispute regarding the enforcement of such a pledge.

Requirements for a valid pledge

The Contract Law (Cap 149) provides that, in order to be valid and enforceable, a contract of pledge of share certificates in a company as security for the payment of a debt or performance of a promise must be:

- expressed in writing;
- signed at the end by the pledgor; and
- made in the presence of at least two witnesses who themselves are competent to contract, and subscribed by them with their names as witnesses.

In addition, a pledge of share certificates for shares in a company transferable other than by delivery will not be valid and enforceable unless, in addition to the above:

- notice of the pledge, together with a certified copy of the contract of pledge, has been given by the pledgee to the company;
- the company has made a memorandum of the pledge in the register of shareholders against the shares concerned; and
- the company has given the pledgee a certificate that a memorandum of the pledge has been made in the register of shareholders.

In addition, entry into the share pledge must conform with the articles of association of the relevant company.

Facts

In the case at hand, all the shares and share certificates of a Cyprus company were pledged as security in favour of a bank. In addition, the bank was given supplementary documents, including undated instruments of transfer of shares, an undated resolution of the board of directors approving the transfer of shares and undated resignation letters of the directors.

The bank later enforced the pledge and used the supplementary documents in order to obtain control of the company whose shares were pledged.

The directors tried to resist their removal and the change of control in the company and applied to the district court for an interim order prohibiting the pledgee bank from registering the changes it had effected by using the supplementary documents with the registrar of companies.

The pledgee bank made a counter-application to the district court for an interim order prohibiting the former directors from continuing to present themselves as the directors of the company. Both orders were initially applied for and obtained on an *ex parte* basis.

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. The leading Supreme Court decision of *Odysseos v Pieris Estates*⁽²⁾ succinctly sets out the guiding principles as follows:

"INTERLOCUTORY INJUNCTION:

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 all the following conditions are satisfied:

- a serious question arises to be tried at the hearing;
- there appears to be 'a probability' that the plaintiff is entitled to relief and, lastly,
- unless it shall be difficult or impossible to do complete justice at a later stage without granting an interlocutory injunction."

As in the case at hand, 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. Furthermore, 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.

Decision

Having considered the facts of the case, the district court dismissed the *ex parte* order that had been initially obtained by the directors. Later, the district court also dismissed the *ex parte* order that had been obtained by the pledgee bank. The dismissal was partly on technical grounds, but also (more importantly) because it considered that the bank's *ex parte* application effectively constituted "interference and variation" of the first order that was obtained by the directors, and that the bank's application for a contradictory order was not an appropriate mechanism to oppose the initial order.

The cancellation of both *ex parte* orders meant that the pledgee was able to proceed with the enforcement pending the determination of the dispute at a full trial to be held at a later stage.

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Endnotes

⁽¹⁾ Action 3497/2013.

⁽²⁾ (1982) 1 CLR 557.

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