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Appointment of receiver over a Cyprus company



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Litigation, Cyprus

🕒 Facts

🕒 Decision

A recent judgment of the Nicosia District Court reaffirmed the approach of the Cyprus courts to applications to appoint a receiver over the assets of a Cypriot company – namely, that such an intrusive remedy will be ordered only where the court is persuaded that it is absolutely necessary in order to protect those assets and an injunction prohibiting the alienation of the assets would be insufficient.

Facts

Earlier this year the Cyprus courts dealt with what was arguably the most contested set of cases in their history. The matter involved numerous well-known Russian businessmen and leading Russian banks involved in a dispute regarding a Cypriot company which acted as a holding company for shares in other companies in various jurisdictions around the world. The value of the whole structure was estimated at several billions of dollars.

In the context of this litigation, one of the Cypriot company's creditors applied to the court to appoint a receiver and manager over the company's assets. Initially, the application was opposed by the company and by other creditors (mainly Russian banks). However, between the filing of the application and the date on which it was heard, the applicant creditor gained control over the company and replaced the board of directors. As a result the company and its board no longer opposed the appointment of a receiver.

Following the company's change of stance, two minority shareholders intervened to oppose the application to appoint a receiver. By the time the hearing took place, the creditor that had made the application (which was now also the majority shareholder) and the company itself sought the appointment, while other creditors and the minority shareholders opposed it.

Decision

The judge, applying principles established by relevant case law, including the recent English judgment in *JSC BTA Bank v Ablyazov*, rejected the application. She considered it inappropriate that the applicants should pursue an application that was not merely intended to preserve the assets, but in fact gave the proposed receiver powers far in excess of those necessary for that purpose – including managerial powers, despite the fact that there was a duly functioning board in place which the applicants controlled. In her decision the judge also pointed out that the applicants had already obtained freezing injunctions against the assets of the company and that it was paradoxical for the applicants, which effectively controlled the assets since they controlled the board of the company, to pursue an application for a receiver to be appointed.

The judge went on to state that:

- each case is decided on its own facts;
- such remedies are rarely granted; and
- the court must consider the likely consequences of granting such a remedy before doing so.

In this particular case, the applicants' intention in appointing the receiver was to take control of the company's subsidiaries – particularly one specific entity which operated in the telecommunications sector. She further stressed that in the circumstances it would be very difficult – if not impossible – for the court to control the receiver, since the receiver would not simply be taking control of certain assets in order to preserve them, but would be managing a substantial group of companies with huge financial interests and activities all over the world.

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