

Litigation - Cyprus

Power of the courts to appoint a receiver

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A receiver may be appointed by a court order, which may be made before or any time after the commencement of proceedings, including after the judgment, to receive and, if authorised by the court, to manage specified assets and to deal with them as authorised under the order.⁽¹⁾ The receiver is an officer of the court and is not an agent of either party.

The power of the civil courts to appoint a receiver under Section 32(1) of the Courts of Justice Law (Law 14/1960) is well established, having been affirmed by both the district courts and the Supreme Court. According to prevailing case law, although it is an unusual remedy, the court may order the appointment of a receiver when it is "just and convenient" to do so.

Since the courts' power to appoint a receiver derives from Section 32(1) of the Courts of Justice Law, in essence the appointment of a receiver is an interim order and the conditions set out in Section 32(1) must be satisfied before an order can be granted.

Section 32(1) reads as follows:

"Subject to any Rules of Court, every court in the exercise of its civil jurisdiction, may, by order, grant an injunction (interlocutory, perpetual or mandatory) or appoint a receiver in all cases in which it appears to the court just or convenient so to do, notwithstanding that no compensation or relief is claimed or granted together therewith:

Provided that an interlocutory injunction shall not be granted unless the court is satisfied that there is a serious question to be tried at the hearing, that there is a probability that the plaintiff is entitled to relief and that unless an interlocutory injunction is granted it shall be difficult or impossible to do complete justice at a later stage."⁽²⁾

Cyprus law is closely modelled on English law. On this issue, the corresponding English law provision is Section 37(1) of the Supreme Court Act 1981, which provides that "the High Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the court to be just and convenient to do so".⁽³⁾ The similarity between the relevant provisions was acknowledged by the Supreme Court in *ABP Holdings Ltd v Kitalidi (no 2)*,⁽⁴⁾ and the Cyprus courts have cited and followed English cases on the issue.

In *Kitalidi* Judge Artemides emphasised the wide discretion that Section 32(1) gives the court. A receiver may be appointed "where this is deemed just and convenient in the circumstances" and there is no restriction as to the type of property for which a court exercising civil jurisdiction may appoint a receiver.⁽⁵⁾

It has been argued that the appointment of a receiver is an intrusive and drastic remedy, and case law shows that the Cyprus courts have been cautious (perhaps even over-cautious) when called on to appoint a receiver. According to Gee:

"an order to appoint a receiver may, in cases of extreme urgency (eg when assets are in imminent jeopardy), be made on an application made without notice. Ordinarily, however, the court will appoint a receiver only upon a hearing of an application made on notice."⁽⁶⁾

Nevertheless, English case law indicates that in cases of extreme urgency, an order for the appointment of a receiver can be made on an application without notice.⁽⁷⁾ In recent years, the Cyprus courts have had to deal with international fraud increasingly frequently, and such orders are often the only way to provide adequate protection to the claimant. Obviously each case must be decided on its own facts. However, there is a strong argument that the current era of globalisation, involving transactions between complex corporate structures from different jurisdictions, calls for a more flexible and bolder approach on the part of the judiciary in order to accommodate the new ways of conducting international business transactions and to provide appropriate and adequate protection to those who need it.

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Endnotes

- ⁽¹⁾ *Commercial Injunctions*, Steven Gee, fifth edition, page 457.
- ⁽²⁾ See *Poltava Petroleum Co v Mexana Oil (Consolidation) Ltd*, (2001) 1 CLR 1980.
- ⁽³⁾ See *JSC BTA Bank v Ablyazov*, [2010] EWCA Civ 1141.
- ⁽⁴⁾ (1994) 1 CLR 694.
- ⁽⁵⁾ *Jayee PVC Pipes PVT Ltd v Intertrust Shipping Corporations*, (1988) 1 CLR 783.
- ⁽⁶⁾ *Commercial Injunctions*, supra.
- ⁽⁷⁾ *Don King Productions Inc v Warren*, [1999] 2 Lloyd's Rep 392.

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