



“Free Standing” Injunctions – Cyprus law matters

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Cyprus Courts have jurisdiction to issue stand-alone injunctions in aid of Court proceedings, pending before Courts of Member States of EU (except Denmark) pursuant to Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters without the filing of substantive proceedings in Cyprus (*“free standing injunctions”*). The same jurisdictional power arrives under Section 9 of the Cyprus International Commercial Arbitration Law of 1987, L. 101/1987 (which incorporates into the domestic legal order the UNCITRAL Model Law), for the issue of interim protective measures in aid of international commercial arbitration cases.

The request for issue of interim injunction cannot be considered as a substantive claim under Cyprus Civil Procedure Rules. It is therefore widely perceived that Cyprus Courts do not have jurisdiction to issue free standing injunctions in aid of foreign proceedings unless they fall within the ambit of the provisions of the above mentioned legal framework. On the contrary other common law jurisdictions (BVI, Jersey, Isle of Man and Cayman Islands) adopted and followed the minority dicta of Lord Nicholls in the Privy Council case Mercedes Benz AG v Leiduck (PC) [1996] AC 284 (*“Mercedes Benz”*) supporting the existence of such jurisdiction in order to do justice.



In Black Swan Investment ISA v Harvest View Limited (BVI HCV (Com) 2009/399) in 2009 (*“Black Swan”*), Bannister J, having considered

Lord Nicholls' dissenting Judgment in the Privy Council decision of *Mercedes Benz*, found that the question as to whether the BVI Court could make an order for a freezing injunction in support of foreign court proceedings without the applicant having first issued substantive proceedings in the BVI was “open” and that on the state of the authorities there was a lacuna in the law. The Judge went on to distinguish the decision in Siskina and Others v. Distos Compania Naviera S.A. (1977) 3 W.L.R. 818 (*“the Siskina”*) by finding that, unlike the defendants in *The Siskina*, which were not subject to the English Court's *in personam* jurisdiction, the defendants in *Black Swan*, being BVI companies, were subject to the BVI court's *in personam* jurisdiction.

It is supported that in the proper case, the Cyprus Courts will recognize the existence of such jurisdiction and they will follow and adopt the decisions issued in the above common law jurisdictions. The view is strongly suggested along the line of Justice Bannister dicta in *Black Swan*:

“ ... quite apart from the jurisdictional analysis of Lord Nicholls which I have respectfully adopted, there are sound policy reasons why important offshore financial centres, such as Jersey and the BVI, should be in a position to grant such orders in aid where necessary. The business of companies registered within such jurisdictions is invariably transacted abroad and disputes between parties who own them and others are often resolved aboard. It seems to me that when a party to such a dispute, is seeking a money judgment against someone with assets within this jurisdiction, it would be highly detrimental to its



reputation, if potential foreign judgment creditors were to be told that they could not, if successful, have resort to such assets, unless they were to commence substantive proceedings here, in circumstances where, in all probability, they would be unable to obtain permission to serve them abroad - thus presenting them with an effective brick wall or double bind of the sort so deplored by Lord Nicholls in Mercedes Benz ..."

However in a recent case the District Court of Nicosia declined to issue freezing orders and Norwich Pharmacal type orders in aid of Russian proceedings. The ruling of the Court is based not surprisingly on the lack of the necessary legal framework providing such jurisdictional power to Cyprus Courts. The Cyprus Court considered that The Siskina and **Credit Suisse Fides Trust SA v. Cuoghi** (1997) 3 All E.R. 724 provide safe guidance. In the Siskina it was held per Lord Diplock that:

"A right to obtain an interlocutory injunction is not a cause of action. It cannot stand on its own. It is dependent upon there being a pre-existing cause of action against the defendant arising out of an invasion, actual or threatened by him, of a legal or equitable right of the plaintiff for the enforcement of which the defendant is amenable to the jurisdiction of the court. The right to obtain an interlocutory injunction is merely ancillary and incidental to the pre-existing cause of action. It is granted to preserve the status quo pending the ascertainment by the court of the rights of the parties and the grant to the plaintiff of the relief to which his cause of action entitles him, which may or may not include a final injunction."

What is important is that before 1982 the English courts could not grant interlocutory relief when the substantive proceedings were taking place abroad. To prevent these limitations frustrating the operation of the Judgments Regulation, s.25(1) of the Civil Jurisdiction and Judgments Act 1982 (the "1982 Act") specifically conferred upon the High Court of England and Wales power to grant interim relief in respect of actual or potential proceedings in a Brussels or Lugano convention contracting state so long as such proceedings fell within the scope of the Brussels Convention.

In the absence of similar provision in the Cyprus law conferring power on the Cyprus Court to grant interim relief when substantive proceedings are pending outside an EU member state the position remains strong that unless such power is extended by law the Cyprus Courts lack the power to issue free standing injunctions and/or to grant interim relief in aid of substantive proceedings elsewhere of whatever kind and wherever taking place.

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Whether the position has now been reached for the Cyprus Court to develop the law so as to grant interim relief in aid of substantive proceedings elsewhere is once again put in question in a current litigation in the context of which our law firm represents one of the defendants. The Plaintiffs have initiated substantive proceedings in the BVI and sought worldwide freezing injunction and Norwich Pharmacal order in aid of the foreign proceedings and we have moved to strike out the proceedings on the lack of jurisdictional power reasoning.



On a different reading the legal issue to its heart reveals the tension resulting from the mixed character of the Cyprus legal system. The duality built of common law and civil law materials. Written law provides the Cyprus legal system with its foundations and at the same time case law is of paramount importance for the structure. Still case law does not rule Cyprus law in its entirety and certainly not the case law of other off-shore jurisdictions. The time may well come when the law on this point may be changed but that is not yet the Law.

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