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# Interim injunctions: submission of 'recognisance' by lawyer on client's behalf



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Litigation, Cyprus

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## Introduction

In a first-instance judgment, **(1)** the Supreme Court of Cyprus examined the meaning of 'recognisance' under the Civil Procedure Law (Section 9(2) of Cap 6). Pursuant to this provision, before making an interim order on an *ex parte* basis, the court requires that the person applying for it enters into a recognisance (translated in Greek as a 'personal undertaking'), with or without a surety (or sureties) as the court thinks fit, as security for being answerable in damages to the person against whom the order is sought. The Supreme Court was called to examine this question in the context of an application filed by the respondents against whom the *ex parte* interim order was issued, seeking a leave of the court to apply for a prerogative writ aiming to cancel the first-instance order.

## Facts

The first-instance court's issuance of the interim order had been based on the condition that the claimant's lawyer – on the claimant's behalf – should have submitted a personal undertaking and that this should have been replaced by a bank guarantee within 30 days from the date of the issuance of the interim order. The claimant's lawyers submitted a personal undertaking to cover damages that might arise due to the issuance of the interim order.

The first-instance court's decision formed the basis of the respondents' application for leave to apply for a prerogative writ. The respondents' main argument was that the first-instance court had erroneously interpreted the definition of 'recognisance'. In particular,

the respondents disagreed with the court's instructions that the claimant's lawyer could proceed with the submission of an undertaking on the claimant's behalf. The respondents' argument was mainly based on the Greek wording of Section 9(2) of Cap 6, which provides that the court should require the issuance of a personal undertaking by the applicant. In this respect, the respondents suggested that the first-instance court had erroneously accepted that the claimant's lawyer had been authorised to submit the undertaking on the claimant's behalf.

### **Decision**

Despite the fact that the Supreme Court dismissed the application as the conditions for the issuance of a leave to file a prerogative order application had not been met, it proceeded with the examination of the respondents' argument regarding the submission of the recognisance, as well as the relevant case law, which has not yet been crystallised. In particular, a reference was made to *KM Technologies (Overseas) LTD ao*,<sup>(2)</sup> where the court found that there had been a *prima facie* breach of the law in light of the fact that the first-instance court had accepted the undertaking signed by the applicant's lawyer. The Supreme Court also referred to *Bank of Cyprus Public Company ao*,<sup>(3)</sup> where 'recognisance' was interpreted as a personal undertaking. On the other hand, the court also considered *Seamark Consultancy services limited v Lasala ao*,<sup>(4)</sup> where the court had accepted that the submission of a bank guarantee constitutes a form of security for the purposes of issuing an *ex parte* interim order. Further, the court referred to *Erin Resources SA*,<sup>(5)</sup> where the Supreme Court had accepted the recognisance that had been entered into by the law firm that represented the plaintiffs. The court stated that in *Seamark* it was decided that the alternative guarantee that was granted (ie, the bank guarantee) had been an acceptable form of security by the court, indicating that the first-instance court has the discretion to choose alternative forms of guarantees.

In light of the above, the Supreme Court disagreed with the respondents' position, emphasising that, indeed, the recognisance was personal because it had been given on the claimant's behalf. Thus, it was the claimant who undertook the obligation to pay any damages that the respondents may suffer due to the issuance of the injunctive relief.

The Supreme Court took a more liberal approach on the interpretation of 'recognisance', stating that a party that lives abroad and seeks the issuance of an injunctive relief on an urgent basis does not always have the possibility to visit Cyprus and wait for the injunctive relief to be issued in order to sign the undertaking personally. The Supreme Court adopted a wide interpretation on the matter, explaining that 'personally' may include the lawyer of the person who seeks the injunctive relief and who is authorised to sign the undertaking on the client's behalf. Further, the Supreme Court noted that, in the modern world where most commercial transactions have an international aspect, 'recognisance' should not be interpreted as it had been in the past, when transactions were more or less confined to Cyprus. In addition, the Supreme Court noted that the undertaking must adequately cover any reasonable damages and that this undertaking is given to satisfy the court in this respect and not the respondent, in light of the fact that the respondent has always had the right to request reasonable damages pursuant to Section 32 of Law 14/1960.

## **Comment**

The purpose of the legislation in those cases is to secure the right of a person against whom an injunctive relief was issued to request damages for any loss it may suffer. This judgment indicates that the Supreme Court has the tendency to follow both a more liberal approach reflecting the needs of modern commercial transactions and a teleological interpretation by focusing on the purpose of the legislation instead of the ordinary meaning of the words.

It could be argued that a more solid approach to the Civil Procedure Law (Section 9(2) of Cap 6) would be for the legislature to proceed with its amendment. This would result in all aspects of modern transactions being addressed in a more scientific and coherent manner.

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## **Endnotes**

(1) *Re the application of GROUP DF HOLDINGS LTD ao*, Civil Application 4/2019, 31 January 2019.

(2) (2008) 1 CLR 117.

(3) (2005) 1 CLR 1178.

(4) (2007) 1 CLR 162.

(5) (2013) 1 CLR 391.

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