



Interlocutory injunctions as a post-judgment tool



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Litigation, Cyprus

- 🔗 Introduction
- 🔗 Case law
- 🔗 Comment

Introduction

"An Injunction has been, historically, one of the principal weapons of equity to suppress conduct that should not be countenanced by a court of equity".⁽¹⁾ An interim or interlocutory injunction is a court order effectively ordering a party to carry out or refrain from carrying out an action for a certain period. Section 32 of the Courts of Justice Law (14/60) gives the Cypriot courts broad powers to exercise their civil jurisdiction to issue an injunction "in all cases in which it appears to the Court just or convenient to do so".

The general rule is that an injunction usually remains effective until a final judgment is rendered for the main action or until it is cancelled or modified by a subsequent court injunction. Nonetheless, and despite the above rule, in certain instances, the Cypriot courts have decided to uphold such injunctions in effect, even after the issuance of a judgment in the main proceedings, to facilitate execution.

Case law

In *Linmare Shopping v Boustani*,⁽²⁾ after ruling on the main action, the Supreme Court issued an order upholding a Mareva injunction that was in force in aid of execution. In support of its decision, the court argued that the non-issuance of an order upholding the injunction in aid of execution would defeat the purpose for which the injunction was granted in the first place. This would constitute an abuse of court process. This approach was supported by extensive reference to Lord Goff in *Stewart Chartering v C & O Managements*,⁽³⁾ who stated as follows:

The purpose of a Mareva injunction is to prevent a defendant from removing

his assets from the jurisdiction so as to prevent the plaintiff from obtaining the fruits of his judgment; from this it follows that the policy underlying the Mareva injunction can only be given effect to if the Court has the power to continue the Mareva injunction after judgment, in aid of execution.

Subsequently, in *Ioannou v Manoli*,⁽⁴⁾ the Supreme Court held that, since said case concerned an interlocutory injunction, it had been in force up to the date of issuance of the final judgment in the main action. The purpose and effect of the order were merely to maintain the status quo until that point. Further, with reference to *Leney & Sons Ltd v Callingham and Thompson*,⁽⁵⁾ *Jones v Pacaya Rubber and Produce Co Ltd*⁽⁶⁾ and the textbook *Kerr on Injunctions*⁽⁷⁾ the court ruled that in cases where such injunctions are meant to remain in force following the rendering of a judgment, this should be explicitly stated.

The same approach has been followed by the first-instance courts in cases of recognition and enforcement of foreign judgments. For example, in *RCB Bank Ltd v Igor Mikchailovich Bakay*,⁽⁸⁾ the Limassol District Court decided that it was necessary to maintain the injunction in effect after the issuance of a judgment in the main application to facilitate the enforcement of the foreign arbitral award in question. The court highlighted that unless said injunction remained in effect, it would be impossible for the applicant to execute the arbitral award in Cyprus.

In *Efthivoulou kai Theophanous Kataskeves Alouminiou Ltd v Lazarou Evripide*,⁽⁹⁾ the Paphos District Court accepted that the Cypriot courts may have jurisdiction to issue interlocutory injunctions between the issuance of a judgment and its execution and dismissed the plaintiff's application on the basis that it was not advanced in aid of execution, but instead supported his application for a garnishee order. The court held that in this case, the issuance of an order keeping the injunction in effect would be neither fair nor appropriate. On the contrary, it would be unfair, unlawful and would constitute a violation of the plaintiff's right to prevent the defendant from collecting the money to which he was entitled by law. The purpose for which said injunction was sought did not fall within the scope of Section 32 of Law 14/60, which is to secure that plaintiffs will be able to execute judgments that might or already have been issued in their favour.

Comment

Interlocutory injunctions are temporary and aim to preserve the status quo until they are cancelled or modified by a subsequent court injunction. While the general rule is that a judgment in the main action will cause an interlocutory injunction to be annulled, in various instances, the courts have decided to include a special clause in the main judgment (on the applicant's request) to keep the injunction in effect for a specific period following the rendering of the judgment in aid of execution.

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Endnotes

- (1) *Odysseos v Pieris Estates* (1982) 1 CLR 557.
- (2) *Linmare Shipping v Boustani* (1981) 1 CLR 386.
- (3) *Stewart Chartering v C&O Managements* [1980] 1 All ER 718.
- (4) *Ioannou v Manoli* (1998) 1 CLR 1423.
- (5) *Leney & Sons Ltd v Callingham and Thompson* [1908] 1 KB 79, 84.
- (6) *Jones v Pacaya Rubber and Produce Co Ltd* [1911] 1 KB 455, 457.
- (7) *Kerr on Injunctions*, 6th ed., p664.
- (8) *RCB Bank Ltd v Igor Mikchailovich Bakay*, Foreign Application 6/16, 31 October 2017.
- (9) *Efthivoulou kai Theophanous Kataskeves Alouminiou Ltd v Lazarou Evripide*, Action 971/06, 4 October 2007.

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