Securing assets during a claim in EU countries

Kipras

1 What are the different types of measures?

A. Each court, in exercising its civil jurisdiction, may grant an (interlocutory, permanent or mandatory) injunction or appoint a receiver in all cases in which it appears just or convenient to the court to do so, even if no damages or other remedies are sought or granted. An interlocutory injunction is not granted unless the court is satisfied that there is a serious matter to be settled during the public hearing, that there is a possibility that the plaintiff is entitled to relief and that, unless an interlocutory injunction is granted, it will be difficult or impossible to do complete justice at a later stage (Article 32(1) of the Courts Act 14 /1960, as amended).

B. The court may, at any time while there is a pending civil action lodged before it, grant an injunction for sequestration, preservation, custody, sale, detention or inspection of the property that is the object of the action or an injunction for preventing loss or damage or an adverse effect which, unless the injunction is granted, will be incurred by a person or property pending a final court judgment on a matter affecting that person or property or pending enforcement of the court judgment (Article 4(1) of the Civil Procedure Act, Chapter 6). The purpose of the injunction granted under this provision is to protect (by granting the specific injunctions referred to) the property that is the object of the action while the action is pending or until the judgment is enforced.

C. Each court before which there is a pending civil action for debts or damages may, at any time after the action is lodged, order that the defendant be prevented from alienating as much of the immovable property that it registered in his/her name or for which he/she has the right to register as owner as, at the discretion of the court, is sufficient for satisfying the plaintiff's claim and the costs of the action. The injunction is not granted unless the court feels that the basis for the plaintiff's action is solid and that, following sale or transfer of the property to a third party, the plaintiff may be prevented from enforcing the court judgment which may be rendered (Article 5(1) and (2), Chapter 6). This article applies to actions for debts or damages and authorises the granting of injunctions relating to immovable property that is registered in the defendant's name or for which the defendant has the right to register as owner. It aims to freeze immovable property until a future judgment is rendered in favour of the plaintiff.

The court's power described in paragraph A above is clearly broader than that described in paragraphs B and C and sets out the courts' general jurisdiction parameters to grant interlocutory restrictive injunctions. Paragraphs B and C indicate the specific types of injunctions that courts may grant.

Based on the case law of the Supreme Court, the general power referred to in paragraph A (Article 32 of the Courts Act) is broad and allows for granting an interim injunction against property which is not the object of the main action. According to the case law, the courts of Cyprus have the power, under Article 32 of the Courts Act, to grant interlocutory Mareva injunctions [injunctions to freeze assets (monies or movable assets) that are within the court's jurisdiction, to prevent them from being moved outside the jurisdiction or spent].

2 What are the conditions under which such measures may be granted?

2.1 The procedure

Applications for an interim injunction can be filed at any stage of the proceedings for which there is a pending civil action. The proceedings for filing the application are governed by the Procedural Regulations on Civil Procedure. Any delay on the part of the plaintiff in claiming interim measures is a factor that should be taken into account by the court.

Under Cypriot law, it is possible to grant an interim injunction without notice given to the other party (*ex parte,* see Article 9 of the Civil Procedure Law, Chapter 6). Such proceedings are an exceptional measure and, in that case, the urgency of the matter is a procedural condition that must be met for the court to exercise its discretion without hearing the other party. The courts apply this particular principle with stringency. The consequences of the claimant's failure to disclose material facts are also severe in a unilateral (*ex parte*) application for granting an interim injunction.

An interim injunction granted unilaterally is effective immediately upon service to the defendant, but it may be returned to the court as soon as possible after service thereof to allow the defendant to state whether he/she objects to it being granted. Any third party that is directly affected by the injunction may also request the court to hear his/her view on the matter. If the respondent objects to the injunction, the court will hold a hearing to decide whether the injunction will stand or will be cancelled or modified. If rejected, the claimant has the right to address the court again, on condition that the material circumstances of the case have changed. It should also be noted that in all cases where an interim injunction is granted based on a unilateral (*ex parte*) application, the court orders the claimant, based on an explicit legal provision, to provide security to such amount as set by the court as guarantee for any losses that may be incurred by the respondent. In accordance with case law, the court does not have the power to grant the injunction unless the claimant himself/herself provides the security.

It is possible, of course, to secure the granting of an interim injunction based on an application with notice (that is, by giving notice to the other party). In that case, however, the factor of urgency is not considered by the court.

2.2 The main conditions

The granting of an interlocutory restrictive injunction is left to the discretion of the court. There are three key conditions that must be met before the court decides to exercise its discretion, based on the balance of convenience, whether or not to grant the requested injunction:

there is a serious matter to be heard (disclosure of a debatable assumption based on the case will suffice);

there appears to be a probability of success (obvious possibility of success/obvious prospect that the plaintiff is entitled to relief);

it will be difficult or impossible to do complete justice at a later stage without granting the injunction (whether the award of damages to the plaintiff at the final stage is insufficient to secure his/her rights).

As stated above, the issue of whether or not to grant an interim injunction is left entirely to the discretion of the court. An injunction is not granted automatically where the above three conditions are met. The court is called upon to weigh up whether it is just and convenient to grant the requested injunction in the light of all the facts and circumstances.

3 Object and nature of such measures

3.1 What types of assets can be subject to such measures?

Case law has demonstrated that the nature/type of the assets is not a factor that can restrict the power exercised by the court. The nature of the assets, however, can be a relevant factor in the court's assessment of the balance of convenience in exercising its discretion to grant an injunction. It is easier for the complainant to prove the risk of losing money from a bank account than the risk of alienation of immovable property.

3.2 What are the effects of such measures?

Upon granting the injunction, any party for which the injunction is intended is subject to the legal obligation to comply therewith. Disobeying the injunction constitutes contempt of court and is punishable by law. Moreover, any person inciting or facilitating disobedience of an injunction granted by the court may be guilty of contempt of court (Article 42 of the Courts Act 14/1960, as amended).

3.3 What is the validity of such measures?

An injunction granted by the court includes a specific clause setting out its effective period. It 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. While a final judgment is being rendered for the main action, the court may include a specific clause in the judgment to keep the injunction in effect for a specific period of time following the rendering of the judgment, to facilitate enforcement of that judgment.

4 Is there a possibility of appeal against the measure?

A court judgment by which an interim injunction is granted is subject to appeal before the Supreme Court. A court judgment rejecting an application for an interim injunction is also subject to appeal.

In trying the case, the Supreme Court has broad powers. It may grant an injunction that was refused by the first instance court or may cancel or modify an injunction that was granted by the lower court. It should be noted, though, that the appeal proceedings do not constitute a new hearing of the case. The first instance court judgment will not be reversed just because the Supreme Court would have exercised its discretion differently. The Supreme Court will intervene only when it decides that the first instance court has exercised its discretion *erroneously*.

Last update: 07/12/2023

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