

Anti-Suit Injunctions: A Jurisdiction Which Must be Exercised with Caution

"An anti-suit injunction is an extreme remedy that is rarely granted and the discretion to grant such an order must be based on the facts of the case and be exercised with caution."

By its recent decision in *Emmerson International Corporation and Anor v Viktor Vekselberg* BVIHCMAP2020/011, the Eastern Caribbean Court of Appeal has clarified the test applicable to anti-suit injunctions and the circumstances in which such orders should and, importantly, should not be made.

The overarching considerations for the grant of an anti-suit injunction are: (i) whether the foreign proceedings are vexatious or oppressive; (ii) interfere with the court's process; or (iii) are otherwise unconscionable. When assessing those considerations, the court will be guided by the following principles:

1. There is no presumption that a multiplicity of proceedings is vexatious. This underscores the principle that persons are free to bring claims in any jurisdiction that they think is most appropriate, subject always to the laws and procedures of the foreign justice system.
2. The jurisdiction to grant an anti-suit injunction 'must be exercised with caution'.
3. *"Considerations of comity and the need for caution are critical to this evaluative stage" and "the jurisdiction must be exercised with*

caution as it is inhibited by principles of comity and restraint in interfering with the conduct of foreigners abroad".

4. English (and British Virgin Islands ("BVI")) law attach high importance to international comity and the principle of non-interference with the jurisdiction of the foreign court.
5. The merits of the claim in the foreign proceedings should only be considered if the claim is completely lacking in merits or is bogus.

The court, following an earlier decision of the English Court of Appeal, found that *"the particular facts of the case are critical to the exercise of the discretion"*.

This form of order might typically be sought (and granted) where, for example, the parties have contracted that the BVI court has exclusive jurisdiction over any dispute arising from said contract, or that such disputes must be resolved by arbitration. In all other cases, however, the court will not *"inhibit a person's right to bring proceedings overseas"* unless one or more of the above principles applies.

The Appellants submitted that the correct legal test for a worldwide anti-suit injunction was different, and instead should see the court consider whether there was a 'real risk' that the respondent would commence further parallel proceedings overseas.

Dismissing the appeal, the Panel disagreed and instead held that it is the above principles that would apply with 'even greater force' when the court is considering the grant of a worldwide anti-suit injunction. In these circumstances, the court is asked to make an extreme form of order, the effect of which would be to direct a litigant over whom it has jurisdiction not to commence or continue a claim dealing with a specified issue(s) in any court or tribunal in any part of the world except in the BVI. On that basis, it was held that a heightened level of scrutiny, caution and, ultimately, application must be exercised.

Further Information

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