

FRAUD AND WORLDWIDE FREEZING INJUNCTIONS



IN CYPRUS

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As it has turned out the situation to be during any periods of worldwide crises, the current Covid-19 crisis which unfortunately and inevitably leads to the next global financial crisis has contributed to the significantly increased number of civil fraud disputes in Cyprus, as a result of which the wrongdoing of fraud has made it to the top of the list concerning the most common types of litigation disputes before the Cyprus Courts.

Cyprus, being a common law jurisdiction, draws guidance from the English legal system which admittedly set the pillars and launched the global practice engaged in 'fraud' and 'asset recovery' arenas by developing powerful orders for relief, such as the *Mareva* injunctions.

Although the Mareva injunctions have been proven to be saviors on many instances of complicated fraudulent schemes, a smoke screen

is hovering in Cyprus as to their worldwide application and implementation mainly due to the lack of any legislation or regulation or any concrete criteria identified by case law explicitly determining their exact scope and extent.

More particularly, Cyprus section 32 of the Courts Law of 1960 which provides for the jurisdiction of the Cyprus Courts to issue interim injunctions limits itself solely to the basic criteria of issuing such injunctions namely that (i) there is a serious issue to be tried, (ii) there is a possibility for the plaintiff to succeed with its claim and (iii) it will be hard or impossible for justice to be awarded at a later stage if the interlocutory injunction is not issued, thus giving plenty of room

to different interpretations and large uncertainty as to the scope and extent of such injunctions, encouraging the instigation of numerous legal arguments on the matter, especially considering the nowadays claims which involve frauds of a large international scale.

Despite the aforesaid uncertainty caused by the general and vague wording of section 32 of the Courts Law of 1960, the Cyprus Courts recognised their jurisdiction to issue freezing injunctions with worldwide effect in 2007 in the landmark decision of *Seamark Consultancy Services Ltd and others v. Joseph P. Lasala and others* (2007) 1 CLR 162. In that case, the Supreme Court clarified that such an injunction may be issued only against a person who falls within the jurisdiction of the Cypriot Courts since such an injunction constitutes a personal relief (*in personam*) and in case of contempt penalties may be imposed to the person who disobeys the injunction only if such person is located/resides within the jurisdiction of the Court that issued the injunction.

Nevertheless, and regardless of the aforesaid judgment of the Supreme Court, in the relatively recent case of *Shishkarev v. Lanuria Limited*, Civil Appeal no. I385/2016, dated 07.06.2018 the Supreme Court unanimously decided to maintain in force a worldwide freezing injunction issued against a non-Cypriot defendant residing in Ukraine, but without specifying (as it was expected) any special grounds that have to be shown for the issue of a worldwide injunction against parties not domiciled, resident or present in Cyprus. As a result, the aforesaid judgment has created confusion and further uncertainty as to the scope and effective policing of freezing injunctions, instead of giving light to specific criteria for such freezing injunctions to be granted on a worldwide basis.

Although disagreeing with the conclusion of the Supreme Court in *Shishkarev v. Lanuria Limited* (above) in view of both the absence of any regulatory framework permitting the extension of the scope of worldwide freezing injunctions to persons/entities not residing or located in Cyprus as well as the lack of imposition of any additional factors/special grounds for the granting of such a worldwide relief, we do believe that such an extension of freezing injunctions to parties not resident/located within the jurisdiction of Cyprus Courts is necessary as it will operate as a deterrent to the implementation of fraudulent schemes and will in any event prevent the injustice of a fraudster's assets or even the proceeds of the fraud itself being dissipated, especially considering the international nature of the nowadays fraudulent schemes, thus depriving any victims of fraud of the fruits of any judgment that may be obtained. As to how such injunctions would be effectively policed, and thus successfully implemented, remains uncertain.

Of course, in our view, for the avoidance of any abusive or vexatious applications for worldwide freezing injunctions against persons not domiciled/present in Cyprus, special factors should be identified – either by the legislatures or the Courts – and be imposed on any applicant for the issue of such orders. For example, the applicants must present evidence showing that there are insufficient (or not at all) assets within the Cyprus jurisdiction or that the respondent maintains the ability to transfer large sums of money around several jurisdictions swiftly. Furthermore, our Courts need to consider the inclusion of special provisions, in the context of the worldwide freezing orders issued, for the protection of any foreign – based third parties outside the Cypriot jurisdiction who are not bound by the terms of the worldwide freezing orders and may become unsure whether they should comply with the injunction or with their contractual obligations, similar to the Babanaft proviso which has now been incorporated into the standard wording for a worldwide injunction issued in England and Wales.

To conclude, taking into account the increased number of civil fraud disputes in Cyprus involving an international element and the necessity of a clear framework leading to more efficient mechanisms of confronting fraudulent actions and schemes as well as protecting the victims of fraud, the need to reform the Cyprus legislation concerning the issue of interim injunctions is now imperative and must be seriously concerned right away.

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