

## Cayman Injunctions in aid of Foreign Proceedings

Insights - 05/08/2020

Where a potential judgment debtor in "onshore" proceedings threatens to dissipate its assets, the plaintiff may face a Pyrrhic victory with no assets against which to enforce its judgment. Where the defendant is a Cayman company or has assets in Cayman, the Cayman Court has a statutory jurisdiction to grant a freezing injunction in aid of those foreign proceedings, which can extend to the worldwide assets of the defendant.

An application may be made *ex parte* on short notice to the defendant or, in exceptional cases, with no notice. The Cayman Court also has the jurisdiction to appoint receivers in support of the injunction where there is a need to ensure the proper management, preservation or exploitation of the defendant's assets.

The plaintiff must establish that:

- it has a good arguable case for damages on the merits, but not necessarily one with a better than 50% chance of success;
- the judgment will be capable of being enforced in the Cayman Islands;
- there is a real risk that the defendant will engage in activities outside of the usual and ordinary course of its business that will dissipate its assets, making it more likely that a judgment in favour of the plaintiff would go unsatisfied;
- the plaintiff would not be protected adequately by an award of damages (e.g. because the defendant would be unlikely to meet it) and that the defendant would be compensable by an award of damages if the injunction is improperly granted;
- unless the defendant is a Cayman company, there are assets, or a high probability of assets, within the Cayman Islands; and
- on the balance of convenience, the injunction should be granted so as to preserve the *status quo*.

In order to seek the ancillary appointment of a receiver, the plaintiff must also show that:

- the assets cannot satisfactorily be preserved by an injunction, such that there is an imminent peril of substantial irreparable damage if an appointment is not made; and
- it is just and convenient for the Court to appoint receivers.

The appointment of receivers is a more intrusive remedy, more expensive and less reversible than the granting of an injunction. The receivers are not the agents of the plaintiff, but agents of the Court with a duty to act independently to preserve assets. Similarly, the freezing injunction does not create any security right for the plaintiff, nor rewrite insolvency laws to give the plaintiff priority over other creditors.

However, it does provide the plaintiff with access to information as to the status of the assets and the best prospect that they will remain in place until the plaintiff can enforce its judgment.

Ogier has acted on numerous injunctions in support of both foreign and domestic proceedings. For further information please reach out to your usual Ogier contact.

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