

Guernsey injunctions in aid of foreign proceedings

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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 Guernsey company or has assets in Guernsey, the Royal Court of Guernsey has a statutory jurisdiction to grant an injunction in aid of those foreign proceedings including freezing injunctions to prevent defendants dealing with the relevant assets in Guernsey.

The relevant statutory provision indicates that injunctions in aid of foreign proceedings may be granted in "exceptional circumstances" which the Court of Appeal has considered simply means that the court should exercise caution before granting any such injunction.

The Royal Court will apply *American Cyanamid* principles. Accordingly, the plaintiff must provide full and frank disclosure to the court and 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;
- there is a real risk that the defendant will dissipate assets making it likely that a judgment in favour of the plaintiff would go unsatisfied;
- the foreign judgment will be capable of being enforced in Guernsey;
- the plaintiff would not be protected adequately by an award of damages
- on the balance of convenience, the injunction should be granted so as to preserve the status quo
- that the Plaintiff will provide a cross undertaking in damages, usually by way of a payment into court to compensate the defendant if the injunction is improperly granted;

An application may be made ex parte on short notice to the defendant or, in exceptional cases,

with no notice. A defendant who breaches the order will be in contempt of court.

Ancillary disclosure orders are also available e.g. to provide sworn evidence of assets within the jurisdiction.

Ogier has acted on numerous injunctions in support of both foreign and domestic proceedings.

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