

Injunctive proceedings in England & Wales in support of US proceedings

The English Court may grant injunctions in support of US proceedings under section 25 of the Civil Jurisdiction and Judgments Act 1982 (extended by the Civil Jurisdiction and Judgments Act 1982 (Interim Relief) Order 1997) (the "Act"). This jurisdiction is in addition to the other ways in which the English Court can support proceedings in the US including by obtaining evidence and enforcing judgments.

The advantage of applying for injunctive relief under this provision is that substantive proceedings are not required in England, only a stand-alone application.

The Court must, however, be satisfied that: (1) the Claimant would have obtained relief if the substantive proceedings had been issued in England; and (2) the fact that it only has jurisdiction to grant the injunction under section 25 of the Act does not make it inexpedient to grant injunctive relief.

Relief

Four types of injunctive relief are available:

- > **Prohibitory injunction:** to prevent the Defendant from taking identified steps
- > **Mandatory injunction:** to compel the Defendant to act in a certain way
- > **Freezing injunction:** to restrain the Defendant from removing assets outside of England and Wales and/or to restrain the Defendant from dealing with such assets pending the determination of a damages claim. A trust order is also available to preserve identified proceeds of a breach of trust.
- > **Search order:** to require the Claimant to be permitted to enter and search the Defendant's premises for property belonging to the Claimant or to search for evidence that the Defendant has been harming the Claimant and to seize such property/evidence.

The test

The court will consider the following questions in deciding whether or not to grant injunctive relief:

- > Does the Claimant have a good arguable case?
- > Can the Claimant provide an effective cross undertaking in damages to compensate the Defendant for any harm caused by the injunction if it is discharged at a later date?
- > Does the balance of convenience lie in favour of granting or refusing the injunction?
- > Are there any other relevant factors?

> Are there any factors relating to the proceedings in the US of relevance? The following will be assessed:

- will the order interfere with the management of the case in the US?
- has the US court previously refused to grant an order for injunctive relief or has no order been granted when the Court had the power to do so?
- is there any danger that the order will result in conflicting, inconsistent or overlapping orders with those made in the US?
- is there any potential conflict relating to jurisdiction?
- would the court be making an order which it could not enforce?
- are there any factors connecting the claim with England? For example, is the Defendant domiciled in England? Are there particular assets in England which are to be the subject of injunctive relief?

There are some other requirements specific to a particular type of injunction sought, such as in the case of a freezing injunction, the Claimant must demonstrate a clear risk that the assets will be dissipated if they are not frozen; and in other cases, that damages would not be an adequate remedy.

Procedure and evidence

Applications are made either on notice or without notice to the other side depending on the type of relief sought. The Claimant must file a claim form and an application notice with the court attaching a draft of the order sought and giving reasons for the order. Evidence is required in the form of witness statements or affidavits. Good reasons must be given when an application is made without notice (commonly, urgency and secrecy) and there is a duty on the Claimant to give full and frank disclosure of all material issues.

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[Legal 500 and Chambers reviews]

Information sheets for US attorneys and clients presently include

- > Comparison check list of major European jurisdictions
- > Obtaining evidence in England for US proceedings
- > English injunctions to support US proceedings
- > Enforcing a US judgment in Europe
- > Legal professional privilege in England.

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