



# Anti-suit injunctions and the status of English authority in the Cayman Islands

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In a recent Abraaj-related decision, the Cayman Islands Court of Appeal provided valuable guidance on the availability of anti-suit injunctions in the jurisdiction and the extent of the Cayman Islands courts' regard to English legal authorities.

In *IGCF SPV 21 Limited v Al Jomaih Power Limited and Denham Investment Ltd* (Unreported, 2 July 2024, Smellie JA, Field JA, Martin JA), the Cayman Islands Court of Appeal (**CICA**) heard an appeal against an anti-suit injunction granted by the Grand Court. The anti-suit injunction restrained the Appellants from pursuing certain legal actions in Pakistan against the Respondent, which were deemed to be in breach of an exclusive jurisdiction clause under a shareholders' agreement.

In dismissing the appeal, CICA diverged from an earlier decision of the English Court of Appeal as to whether applying for a stay in a foreign jurisdiction may amount to a submission to jurisdiction. Additionally, CICA confirmed that the Cayman Islands courts will depart from English authorities if there are good reasons for doing so.

## Background

The Appellants and the Respondent were shareholders in KES Power Limited (**KESP**), which in turn held the majority shareholding in a valuable electricity supplier in Pakistan, K-Electric Limited (**KEL**).

The Respondent had been incorporated in the Cayman Islands by the Abraaj Group for the purposes of acquiring the main interest in KESP. Abraaj Investment Management Limited (in official liquidation) was the registered holder of the sole voting share in the Respondent. The Abraaj Group was once the largest private equity firm in the Middle East, said to have assets under management of US\$14 billion at its peak. Amid allegations of fraud and mismanagement of funds, Abraaj collapsed in June 2018. For more information on Abraaj and its long-running litigation, [read our article collection](#).

KESP, the Appellants and the Respondent entered into a shareholders agreement governing the parties' conduct in relation to both KESP and KEL, including the appointment of the Board of Directors

of both entities. The shareholders agreement was governed by English law and designated the English or Cayman Islands' courts as having exclusive jurisdiction.

In October 2022, the Respondent took steps to cause KESP to appoint two new directors to the board of KEL. The Appellants subsequently commenced litigation in Pakistan, obtaining an interim injunction in Pakistan to prohibit any changes to the board of KEL, which the Respondent sought to stay.

The Respondent obtained an anti-suit injunction in the Cayman Islands to prevent the Appellants from continuing the bulk of their legal actions in Pakistan, on the basis that they fell afoul of the exclusive jurisdiction clause of the shareholders agreement. The Appellants challenged the injunction's grant on several grounds, including that the Respondent had submitted to the jurisdiction of the Pakistan Court by applying for a stay of those proceedings.

## Anti-suit injunctions

Anti-suit injunctions can be used to restrain proceedings that are brought in breach of jurisdiction clauses. The Court does not have to grant an injunction in such circumstances, although it needs strong reasons not to do so. One such reason might be to avoid multiple actions and inconsistent outcomes. The Court may also decline to grant an anti-suit injunction, even where there has been a breach of a jurisdiction clause, if there has already been a submission to the jurisdiction of the foreign court.

All these issues were raised, and in some instances, modified or abandoned as the case passed through the Grand Court to CICA. The Appellants eventually conceded that the Pakistan proceedings had been brought in breach of the shareholders agreement to litigate in England or the Cayman Islands. However, they also argued that the anti-suit injunction should not have been granted in the Cayman Islands. Why? Because the Respondent had already submitted to the jurisdiction of the Pakistan Court by applying for a stay and contesting the jurisdiction of the Pakistan Court.

The Appellants submitted that the Cayman Court was bound to hold this action as submitting to the jurisdiction in accordance with a historic English Court of Appeal decision. In *Henry v Geoprosco* [1976] 1 QB 726 (CA), the English Court of Appeal found that an application for a stay was, ipso facto, a basis for a finding of voluntary submission to a foreign court. CICA was consequently forced to grapple with whether *Henry v Geoprosco* represented the law of the Cayman Islands on the issue of submission to the jurisdiction of a foreign court.

*Henry v Geoprosco* has since been superseded by statute in England (section 33 of the Civil Jurisdiction and Judgments Act 1982), however, CICA went on to consider whether it still represented the common law of the Cayman Islands.

CICA rejected the Appellants' submission that the English Court in *Strategic Technologies Pte Ltd v Procurement of the Republic of China Ministry of Defence* [2020] 1 WLR 3388 had already found that *Henry v Geoprosco* represented the common law of the Cayman Islands. Instead, CICA considered

that judge's following statement "as an entirely acceptable proposition and suitable for endorsement by this Court":

"In light of the evidence I have heard [expert evidence as to Cayman Islands law], I find that **Cayman law requires the court to look objectively at all the circumstances in the round to determine whether there has been a submission to the jurisdiction of the foreign court.**

Such a submission can take place without a full contest on the merits." (Paragraph 109)

CICA consequently declined to follow *Henry v Geoprosco* and held that it should not be regarded as representing the law of the Cayman Islands on submission to a foreign court for the purposes of considering the grant of an anti-suit injunction. The Respondent was accordingly not found to have submitted to the jurisdiction of the Pakistan Court by merely applying for a stay and the appeal against the grant of an anti-suit injunction was dismissed.

## Status of English authorities in the Cayman Islands

In refusing to apply *Henry v Geoprosco*, CICA departed from the usual approach in the Cayman Islands of following decisions of the English higher courts. While English authorities are highly persuasive in the Cayman Islands, they are not binding and will be departed from where there is good reason to do so. CICA held, among numerous other reasons, that since the rule in *Henry v Geoprosco* was no longer part of the laws of England and had been "negated" by Parliament's statutory reform, its policy must have been regarded as unsound and should not be followed in the Cayman Islands. Further, *Henry v Geoprosco* had been sharply criticised by judges, textbook writers, and academics alike.

CICA found that when considering the adoption of non-binding, but potentially persuasive English case law, it is open to the Cayman courts to consider if that case law has been doubted, whether by having been nullified or superseded by legislation in England, or otherwise.

This approach is consistent with the recent Grand Court judgment in *In the Matter of HQP Corporation Limited (in Official Liquidation)* (Unreported, Doyle J, 7 July 2023). As highlighted in a recent [Ogier article](#), the Grand Court declined to follow a decision of the English Court in *Houldsworth v City of Glasgow Bank* (1880) 5 App Cas. 317 (H.L. (Sc.)), and asked itself (somewhat rhetorically) "...should this Court reasonably be expected to follow a[n English] House of Lords decision from 1880 which has been much criticised, abandoned by the UK Parliament and not followed by the High Court of Australia or by the Supreme Court of the Bahamas at first instance?" (Paragraph 74)

## Comment

This judgment provides valuable CICA guidance on the circumstances in which an anti-suit injunction will be granted in the Cayman Islands. This form of relief is an important safeguard against parties who may seek to litigate matters in foreign courts in breach of jurisdiction clauses. By not allowing an

application for a stay to be a barrier to anti-suit relief, CICA has provided greater protection to litigants in the Cayman Islands.

The judgment also serves as a helpful reminder that while English case law remains highly persuasive in the Cayman Islands, it is not binding and will not be followed when there is a good reason to depart.

## **Read more on Abraaj**

If you would like to know more about the Abraaj case, including Ogier's involvement, the below articles may also be of interest.

[Abraaj multi-million dollar fraud claim trial ends](#)

[Cayman Court grants security for costs in Abraaj related case](#)

[Recent Cayman litigation emanating from the Middle East](#)

[The Cayman Grand Court's approach to discovery protocols](#)

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