

Anti-anti-suit injunctions in Guernsey

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Introduction

An anti-anti suit injunction is a form of anti-suit injunctive relief granted by a particular court to stop a party pursuing an application for an anti-suit injunction in another court. As one might expect, this is a relatively rare occurrence.

The Guernsey Court of Appeal case of Carlyle Capital Corporation (in liquidation) ("CCC") and others v Conway and others handed down on 27 April 2012, sets out the Guernsey position on anti-anti suit injunctions. In this case, the Court of Appeal stated that the basis of the principles governing the granting of an anti-anti-suit injunction were the same principles as applied in respect of anti-suit injunctions, and emphasised that, whilst caution is required in granting an anti-suit injunction, "*particular caution*" should be applied in granting an anti-anti-suit injunction. The reason for particular caution is that the effect of an anti-anti suit injunction may be to prevent a party from approaching the court that the parties have agreed will have exclusive jurisdiction over a dispute (or an aspect of a dispute) to complain that they are being sued elsewhere in breach of contract.

Here, the liquidators were successful in obtaining an anti-anti-suit injunction restraining the Eighth, Ninth and Tenth Defendants (the "**Defendants**") from seeking anti-suit relief in relation to Guernsey proceedings in the Delaware Chancery Court.

The anti-suit proceedings

To put this case into context, the liquidators brought common law and statutory claims against the former directors and managers of CCC alleging, *inter alia*, that the Defendants had breached their contractual and fiduciary obligations in relation to the management CCC. In July 2010, the liquidators issued proceedings in Guernsey, Delaware, Washington D.C. and the State of New York and subsequently withdrew their claims in Delaware. From December 2010, the proceedings concerned the issues as to the appropriate forum to hear these claims. Some of the liquidators' non-statutory claims arose from alleged breaches of an investment management agreement (the "**IMA**") between CCC and the Eighth Defendant. As the IMA contained an exclusive jurisdiction clause in favour of

Delaware, the Defendants issued an application for an anti-suit injunction in Delaware to prevent the liquidators from pursuing their claims anywhere other than Delaware. The anti-suit injunction was pursued on an inter partes basis.

In tandem with this, the Defendants challenged the jurisdiction of the Guernsey Court to determine the claims. At first instance the Defendants were successful on the basis that the Delaware Court was the most appropriate forum for determination of the proceedings. The Plaintiffs appealed to the Guernsey Court of Appeal.

The anti-anti-suit proceedings

In October 2011, the liquidators obtained an ex parte anti-anti suit injunction in Guernsey against the Defendants. This prevented the Defendants from pursuing their anti-suit injunction in Delaware. The Defendants' were unsuccessful in their application to have that injunction set aside, and so appealed to the Court of Appeal.

In March 2012, the Guernsey Court of Appeal allowed the liquidators' appeal against the jurisdictional findings against them, permitting, in effect, that all their claims should be heard in Guernsey.

In the parallel Court of Appeal proceedings challenging the anti-anti suit injunction, the liquidators argued that the Defendants were seeking to subvert the effect of the Court of Appeal's March 2012 judgment by seeking in Delaware that which they had already failed to obtain in Guernsey.

In dismissing the appeal and upholding the anti-anti-suit injunction, the Court of Appeal set out the objectives and rationales underpinning the policy, which included (as set out by Lord Goff in Société Nationale Industrielle Aerospatiale v Lee Kui Jak [1987] 1 AC 871):

- i. The jurisdiction is to be exercised when the "ends of justice" require it;
- ii. The avoidance of wasting party and judicial resources and costs; and
- i. The restraint of the pursuit of foreign proceedings on the grounds of vexation or oppression, and vexation and oppression is a flexible concept which varies with the circumstances of each case.

In dismissing the appeal, the Court of Appeal held that "*there is a strong public policy in Guernsey against multiplicity of litigation and the fragmentation of proceedings that can and should be determined in a single action.*" The rationale behind that policy was the saving of costs and the avoidance of delay, uncertainty, inconsistent decisions and potential injustice. The Court of Appeal went on to say that the fundamental principle of the interests of justice were best served "*by the submission of the whole of the dispute to a single tribunal which is best fitted to give comprehensive judgment on all matters in issue in accordance with its own law which governs the vast majority of the claims.*" In March 2012, the Court of Appeal had already found that the Guernsey court was the only court in which all the liquidators' causes of action could be pursued.

The Court of Appeal further held that exclusive jurisdiction clauses could be overridden in appropriate circumstances, for example to avoid a multiplicity of proceedings or inconsistent judgments, to give effect to a statutory right in one forum, or to protect a court's legitimately conferred jurisdiction. The Court of Appeal considered that some of the liquidators' statutory claims were justiciable only in Guernsey and were inextricably linked with their non-statutory claims governed by Guernsey law for breach of fiduciary duty and gross negligence against each of the defendants.

Therefore, the Court of Appeal held that the interests of justice were best served by the submission of the whole dispute to the Guernsey court for determination.

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