



Interim Relief

5 November 2010

"Clyde & Co LLP has a first-class track record for commercial litigation"

Legal 500, 2009

Prior to trial, a party to English civil proceedings might need to apply to court for measures to maintain the status quo or to otherwise protect its position. Listed below are the more common types of remedies which a court might order (a full list of potential orders is listed under CPR r25):

Interim Injunctions

Most commonly, these prevent someone from causing harm (a prohibitory injunction), or force a party to perform an act (a mandatory injunction) e.g. delivery of goods. It is harder to obtain a mandatory injunction from the courts than a prohibitory injunction.

The case of *American Cyanamid Co v Ethicon Ltd* (No.1) laid down criteria for obtaining an interim injunction: (a) there must be a serious question to be tried (b) damages would not be an adequate remedy (c) the applicant must provide a cross-undertaking (see further below) and (d) an injunction should be granted on the balance of convenience.

Special features of Interim Relief Applications

Since applications for interim relief are usually made ex parte and without notice, the respondent having had no opportunity to put his case yet, there are certain features of interim relief applications which seek to redress the balance between the parties:

- (1) The applicant must make full and frank disclosure to the court of all material facts. This should include points which the applicant does not think are relevant, but which the respondent would, and points which go against the applicant's case. If something is buried in a bundle, it must be expressly drawn to the courts attention (either by the advocate or in the body of the affidavit), otherwise it will not be treated as having been disclosed.
- (2) The client will have to provide a cross-undertaking in damages and may be required to lodge security or money into court, unless the client is a company of sufficient financial standing. If it is later shown that the freezing injunction was not justified, the defendant can ask the court to order an inquiry as to damages.
- (3) Applications must be made promptly and any delay will have to be explained to the court.
- (4) The applicant must keep the fact that an order has been obtained confidential.
- (5) The draft order, prepared by the applicant's legal team, must include a penal notice explaining to the respondent what the consequences of failure to comply with the order will be.



"Making real moves in international arbitration"

Chambers UK, 2010

Further information

If you would like further information on any issue raised in this update please contact:

Paul Friedman

Partner, Litigation and Arbitration
paul.friedman@clydeco.com



Clyde & Co
51 Eastcheap
London EC3M 1JP

Tel: +44 (0) 20 7623 1244
Fax: +44 (0) 20 7623 5427

Further advice should be taken before relying on the contents of this summary. Clyde & Co LLP accepts no responsibility for loss occasioned to any person acting or refraining from acting as a result of material contained in this summary.

No part of this summary may be used, reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, reading or otherwise without the prior permission of Clyde & Co LLP.

Clyde & Co LLP is a limited liability partnership registered in England and Wales. Regulated by the Solicitors Regulation Authority.

© Clyde & Co LLP 2010

- (6) A full note of the hearing must be taken and provided to the party who will be affected by the order as soon as possible. Failure to do this can result in an award of indemnity costs.

Freezing Injunctions

This is a sub-species of injunctions, preventing a respondent (and sometimes third parties) from disposing of or "dealing with" his assets to avoid paying any current or future judgment against him. The injunction might cover assets located in England or (in the case of a worldwide freezing order) assets located elsewhere. Note that the injunction does not give the applicant priority over the assets in question (as against other creditors) and the order will invariably provide that the respondent is entitled to use some of his money for living expenses and ordinary business transactions, as well as for legal expenses defending any action against him.

The applicant must show: (a) that he has a good arguable case (b) the respondent has assets in the jurisdiction (c) there is a real risk of dissipation of assets and (d) the order would be just and convenient in all the circumstances.

Search Orders

A search order allows the applicant entry onto the respondent's premises to search for and preserve evidence or property. A team will have to be assembled for the search. This team will include a supervising solicitor - an independent solicitor appointed by the court who will explain the order to the respondent and who will subsequently report back to the court.

The applicant must show: (a) a strong prima facie case on the merits (b) the respondent has incriminating evidence in his possession and there is a real possibility that he will dispose of this prior to a hearing (c) the applicant would suffer serious potential or actual damage as a result of that evidence being removed or destroyed and (d) the order is necessary in the interests of justice.

Norwich Pharmacal Order

Such an order requires a respondent who has become "mixed up" in the wrongdoing of others (whether innocently or not), so as to facilitate that wrongdoing, to provide full information on the alleged wrongful act. The jurisdiction is not as wide as for standard disclosure - the information sought must be specific to the aims of the order. This is generally an order of last resort, since it is commonly made against third parties such as banks, telephone companies or solicitors. An application will usually be made on notice and the applicant will often have to indemnify the respondent in respect of his costs of the application and order (unless he has acted unreasonably).

The applicant must prove (a) that there is wrongdoing (this can include, for example, a breach of contract) (b) that the order is needed to enable a claim (or some other action) to be brought against the wrongdoer (c) that the respondent is mixed up in the wrongdoing, so as to facilitate it and is able to provide relevant information relating to the wrongdoing and (d) that the order is necessary and proportionate in all the circumstances.

Note that the breach of an interim relief order will generally be punishable as a contempt of court and can lead to a fine or in some circumstances imprisonment.

Clyde & Co LLP offices and associated* offices:

Abu Dhabi Bangalore* Belgrade* Caracas Dar es Salaam* Doha Dubai Guildford Hong Kong London Moscow Mumbai* Nantes New Delhi* New Jersey New York Paris Piraeus Rio de Janeiro Riyadh* San Francisco Shanghai Singapore St Petersburg*