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Injunctions – An Overview

An injunction is an order of the Court that requires a person to refrain from doing, or compelling them to do, a particular act. The aim of an injunction is to preserve the status quo between the parties between the time of the granting of the injunction and the full hearing of the issues in dispute between the parties.

Criteria Considered in Granting an Injunction

The decision of *American Cyanamid Co. –v- Ethicon Limited* [1975] 1AER504 first established the test in the English courts in deciding if an injunction should be granted. This test was followed in Ireland in the case of *Campus Oil v-v the Minister for Energy* [1983] 1 IR 88.

The test has three elements:

1. there must be a serious/fair issue to be tried,
2. damages are not an adequate remedy, and
3. the balance of convenience lies in favour of granting or refusing the application.

An injunction is an equitable remedy, meaning that the judge hearing the application has a discretion in making a decision on whether or not to grant the application. A judge must consider if it is fair and equitable to grant the injunction, taking all of the relevant facts into consideration.

Undertaking as to Damages

In most injunction applications the plaintiff will be required to provide an undertaking as to damages to the Court. This undertaking means that the plaintiff agrees to compensate the defendant for losses suffered due to the injunction being granted, if the case is determined against the plaintiff at the full trial of the matter. This has the effect of offering a measure of equal protection to the parties.

For further information on any of the issues discussed in this article please contact:



Kieran Cowhey
DD: + 353 (0)1 673 1783
kieran.cowhey@dilloneustace.ie



John O'Riordan
DD:+ 353 (0)1 673 1792
john.oriordan@dilloneustace.ie

Types of Injunction

Mareva Injunctions

This is used in extreme cases to freeze the assets of a defendant. It is a court order which prevents the defendant from removing or disposing of his assets until a further court order or until the trial.

To be granted a Mareva Injunction the plaintiff must show to the court that they have:

1. a substantive right capable of being enforced against the defendant,
2. a good arguable case,
3. there must be a risk that the defendant will remove his assets from the jurisdiction or otherwise dispose of them with the intention of defeating his obligations to the plaintiff,
4. the defendant must have assets which are capable of being frozen, and
5. the balance of convenience lies in favour of granting the injunction.

The plaintiff must also prove to the Court that it is the "*intention of the Defendant*" to remove his assets with a view to evading his obligation.

It is also possible in certain circumstances to obtain a worldwide Mareva injunction for example in the case of *Bennett Enterprises Inc Et Al –v- Lipton Et Al [1998] 2 IR 221* the plaintiff was granted a worldwide Mareva Injunction because the defendants business involved international trade.

Anton Pillar Orders

This is a mandatory injunction requiring the defendant to permit the plaintiff or his agents to enter their premises, inspect documents or other articles and remove those documents or articles. Its objective is to preserve vital evidence in a case pending trial which the plaintiff believes would be destroyed.

Anton Pillar Orders are normally granted *ex-parte* subject to certain pre-conditions: -

1. the plaintiff must have a very strong case,
2. there must be the possibility of very serious damage to the plaintiff,
3. there must be clear evidence that there are in fact such documents on the defendant's premises and there is a risk that they will be destroyed or removed.
4. the inspection must not do any harm to the defendant or his case, and
5. the plaintiff must undertake to preserve the property pending the trial and notify the defendant at the time of the inspection of his right to apply to the Court to vary or discharge the Order.

Quia Timet Injunctions

The objective of a Quia Timet injunction is to prevent anticipated infringement of a legal right occurring. In order for it to be granted the Plaintiff must be able to establish a sufficiently strong case of threatened loss.

The test as set out in *AGV Rathmines and Pembroke Joint Hospital Board* states that the Plaintiff must have a well grounded apprehension of injury, “almost amounting to a moral certainty”.

Bayer Injunctions

This is an extremely rare form of injunction and its purpose is to restrain a Defendant from leaving the jurisdiction and/or requiring him to deliver up his passport. This will only be granted in exceptional circumstances, and in particular to facilitate compliance with a Court Order.

Interim Injunctions

In cases where there is extreme urgency, an application can be made for an interim injunction. This application is made *ex-parte* and an order will be made when a Court considers that if the Defendant proceeds with a particular action then the Plaintiff will suffer irreparable damage.

DILLON EUSTACE

Dublin

33 Sir John Rogerson's Quay, Dublin 2, Ireland. Tel: +353 1 667 0022 Fax: +353 1 667 0042.

Cayman Islands

Landmark Square, West Bay Road, PO Box 775, Grand Cayman KY1-9006, Cayman Islands. Tel: +1 345 949 0022 Fax: +1 345 945 0042.

Hong Kong

604 6F Printing House, 6 Duddell Street, Central, Hong Kong. Tel: +852 352 10352.

New York

245 Park Avenue, 39th Floor, New York, NY 10167, U.S.A. Tel: +1 212 792 4166 Fax: +1 212 792 4167.

Tokyo

12th Floor, Yurakucho Itocia Building, 2-7-1 Yurakucho, Chiyoda-ku, Tokyo 100-0006, Japan. Tel: +813 6860 4885 Fax: +813 6860 4501.

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