

Requirements for granting mandatory injunctions on interim applications



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Litigation, Cyprus

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A recent Larnaca District Court judgment examined the requirements for granting mandatory injunctions on interim applications. **(1)**

Facts

The applicant became the owner of a building in which the respondent had been leasing and trading from premises for three months prior to the building's change of ownership. During the negotiations between the applicant and the previous owner regarding the sale of the building, the applicant was made aware of the fact that the building was occupied by several commercial tenants.

After taking ownership, the applicant filed an action against the respondent to have him evicted from the leased premises on the grounds that the lease agreement was invalid.

The applicant also filed an application for an interim order seeking a 'mandatory injunction' for immediate eviction against the respondent (ie, an injunction which orders a party to perform an affirmative act or mandates a specified course of action). The court refused to consider the application on an *ex parte* basis and ordered that the application should be served on the respondent in order to give him the opportunity to oppose it.

Applicant's argument

The applicant argued that:

- the lease agreement was between the respondent and a third party, not the former owner; and
- the third party had had no capacity to conclude the agreement, since the former owner had not authorised the third party to enter into such agreements on his behalf.

The applicant therefore contended that the written lease agreement was invalid and that the respondent was occupying the premises illegally.

Respondent's argument

The respondent argued that the third party who had entered into the agreement was the representative of the building's previous owner and had been duly authorised to do. This was evidenced by the fact that the third party:

- was managing the building on the owner's behalf;
- had a 'for lease' sign and his contact details on the building;
- had keys to all the units in the building; and
- was collecting the monthly rent from the tenants on the owner's behalf.

The respondent argued that these were clear indications that the third party had had the necessary capacity to enter into the agreement.

Decision

The court noted that prior to deciding whether to grant a mandatory injunction, it first had to examine whether all of the following preconditions, which are prescribed by Article 32(1) of the Courts of Justice Law, **(2)** had been satisfied:

- a serious issue to be heard must exist – this test is satisfied if the pleadings objectively show the existence of a good cause of action;

- a realistic chance of success in the main action must exist – the burden of proof that the applicant must show in this regard (and in general for all interim orders) is more than a mere probability, but less than the balance of probabilities, which is the standard of proof in civil matters; and
- unless the order is issued, it will be difficult or impossible for the applicant to obtain full justice at a later stage – the question is asked of whether declining the application would risk causing irreparable harm to the applicant which could not subsequently be fully remedied by monetary compensation for damages.

The court found that the first two requirements had been met, as there was a serious issue to be heard and a likelihood of success in the main action.

As to the third requirement, the respondent's lawyer argued, among other things, that there was no risk of irreparable damage because the applicant could be compensated in cash if its claim in the main action was successful. However, the court found that the fact that the respondent could compensate the applicant in cash if the claim in the main action was successful did not automatically mean that the applicant would suffer no injustice in the broader sense. The owner of a property has the right to exploit its property as it wishes, and no person may illegally deny this right to the applicant. The court was consequently satisfied that the third requirement had also been met.

However, the fact that the court was satisfied that the preconditions set out in Article 32(1) had been satisfied did not automatically mean that the application should succeed and that the mandatory injunction should be issued. There was a further, final requirement for the court to decide whether it would be just or convenient to grant the order sought by the applicant.

When determining what is just or convenient, the court should weigh the risk of injustice to be caused to the respondent if the order sought by the applicant is granted (if it ultimately appears during the main action that the interim order should not have been granted) against the risk that the applicant will eventually remain uncompensated if the interim order is not granted. When deciding to grant an interim order, the court has a duty to ensure that there is as little risk as possible overall of injustice resulting from its decision.

Where the requested mandatory injunction in an interim order application is identical to the relief sought in the main action, this would effectively pre-judge the main action. A request for a mandatory injunction (as opposed to a freezing order or a prohibitory injunction) is an extraordinary remedial process and the court should grant such an order only in clear and exceptional circumstances, which the court found did not apply in this case. The mandatory injunction requested by the applicant did not aim to restore order, but rather provide expedited relief in terms of the main action, which would cause severe injustice to the respondent.

The court therefore dismissed the applicant's claim and awarded costs in favour of the respondent.

Comment

The decision is in line with well-established legal principles, as a mandatory order is an extraordinary remedial process that is granted not as a matter of right, but rather after the exercise of sound judicial discretion. Its application is restricted to clear and exceptional circumstances in which order needs to be restored without delay.

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Endnotes

(1) *Adamgeo Limited v Vitresko Express Supermarket Limited*, Application 280/18.

(2) Law 14/1960.

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