

Anti-suit injunctions – A remedy for breach of arbitration agreements



By Sue-Ann Li

Several landmark cases have brought to the fore one of the non-statutory remedies for breaches of arbitration agreements, the anti-suit injunction. Where there is a written agreement containing a jurisdiction clause, the anti-suit injunction is one of the remedies available to one party who fears that an action might be brought in the courts of another foreign state, or to the party who faces proceedings which have already been commenced in such a foreign court.

In *Aggeliki Charis Compania Maritima SA v Pagnan SpA* [1995] 1 Lloyd's Rep 87 (The *Angelic Grace*), Lord Justice Millet declared that it was time to lay aside the 'ritual incantation' that anti-suit injunctions should only be used sparingly and with great caution. He saw "no good reason for diffidence in granting an injunction to restrain foreign proceedings [brought in breach of an arbitration clause] on the clear and simple ground that the defendant has promised not to bring them." It is now clear that a party may seek to enforce arbitration agreements by seeking anti-suit relief.

Anti-suit injunctions have been an effective means to prevent 'forum shopping', or the practice of getting litigated in a forum that the litigant feels would provide more favourable circumstances or a favourable jurisdiction. Cases such as *Evergreen International SA v Volkswagen Group Singapore Pte Ltd and Others* [2004] 2 SLR 457 made it extenuously clear that Singapore was prepared to acknowledge the anti-suit Injunction as a vital part of its judicial armoury. It also elucidated the fact that the local position was similar if not identical to the original English position as reflected in *Société Nationale Industrielle Aerospatiale v Lee Kui Jak* [1987] AC 871.

However, the use of anti suit injunctions has not been without controversy. One issue is the legal concept of 'comity', and the possibility of anti-suit injunctions contravening

this. Comity is legal reciprocity—the principle that one seat of justice should extend legal courtesies to others, in terms of not demeaning their jurisdictions and judicial decisions.

Notably, the English Courts have opined that anti-suit injunctions are simply a means of enforcing contractual obligations, and therefore, comity should not play a part in deciding whether an anti-suit injunction ought to be issued when the remedy is sought to restrain proceedings brought in breach of an anti-suit agreement. The *Angelic Grace* contains a whole plethora of reasons why comity would not be infringed by the granting of anti-suit injunctions, and reveals that the English courts view anti-suit injunctions as a remedy to enforce private contractual rights and obligations.

This stance taken by the English Courts is bolstered by the principle that anti-suit injunctions take effect in personam, that means that they are not directed or effective against the foreign court, but they take effect against the individual or company in restraining it from commencing or continuing an action in a foreign court by an injunction.

Anti-suit injunctions are without doubt a powerful tool in a litigants' armoury to remedy a breach of an arbitration agreement. However, the efficacy of anti-suit injunctions are largely dependant on the degree that the foreign courts will enforce such orders. A hindrance to the effectiveness of anti-suit injunctions is the hostility Courts imbue into an anti-suit order, when they are on the receiving end of it. It is important that who are on the receiving end of an anti-suit order feel it is important that Courts and take judicial notice of anti-suit orders, as this is the crux to channeling disputes away from an inappropriate forum.

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