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Securing assets during a claim in EU countries

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European Judicial Network
(in civil and commercial matters)

Northern Ireland

1 What are the different types of measures?

Prohibitory or Negative Injunction - An order not to do or to stop doing something. This is the most common type of order.

Mandatory or Positive Injunction - An order to do an act or to undo the damage of a previous act.

Quia Timet Injunction - An order to do or not to do an act in order to prevent damage that has not yet happened.

Mareva Injunction - An order preventing a defendant from removing or disposing of his assets to make judgment for damages unenforceable. The order may provide for the allowance of the defendant's living, business or legal expenses.

An undertaking in lieu of Injunction - This is often offered by the respondent to the application for an injunction and if accepted by the applicant should be recorded in writing or by the court.

Order for inspection and preservation of property - This has two purposes:

- to preserve property which is the subject of the action so that the winning party will be able to recover the property or its value intact and
- to make property available for inspection in order to gather evidence in the action. The Court may also make an order permitting entry on the lands of a party for the purpose of carrying out the order.

Anton Pillar Order - This authorises the plaintiff, his solicitor or other responsible agent to seize items without advance warning to the defendant for a preservative or evidential purpose.

2 What are the conditions under which such measures may be issued?

2.1 The procedure

Interim relief can be applied for at any time after proceedings have been issued and before they have been determined. In urgent cases interim relief may be granted before proceedings have been commenced on condition that proceedings are issued immediately.

The procedure for applying for interim relief is set out in rules of court. The general rules of court which apply to the High Court are the Rules of the Court of Judicature(NI) 1980 and those which apply to the County Court are the County Court Rules (NI) 1981.

An application is usually made by "Notice of Motion" or "Summons" to the division of the High Court or to the County Court where the main action is pending.

The notice or summons must state the remedy sought and the rules of court under which the application is brought, must be supported by an affidavit (often sworn by the applicant's solicitor) and a draft order should be provided.

The notice or summons together with the affidavit and any other relevant documents must be served on the defendant at least two clear days before the application is listed for hearing although in urgent cases the court may grant leave for the time for service to be abridged.

In the High Court a master (a type of judicial officer) usually hears the application although in some types of proceedings (specified in the Rules of the Court of Judicature (Northern Ireland) 1980) interim applications have to be heard by a judge.

The County Court has full interim powers in relation to cases falling within its jurisdiction. Applications in the County Court for an interlocutory injunction must be heard by a county court judge.

An application can be made "ex parte" without the service of a notice or summons on the person against whom it is sought in the following circumstances:

- If the case is one of extreme urgency
- If prior notice would lead the defendant to frustrate the purpose of the order
- By convention, for example, applications before proceedings have been commenced are usually made ex parte
- If statute or court rules authorise or direct it.

An ex parte application is made in a special form called an "ex parte docket" and the applicant has a duty to make full and fair disclosure of all relevant facts. Applications for ex parte orders (except applications for ex parte injunctions) are usually decided by the judge or master without a hearing. The costs of an ex parte application are usually reserved for the hearing.

2.2 The main conditions

Injunctive relief is discretionary. A court may grant an injunction at any stage of proceedings where it appears just and convenient to do so. The court exercises its discretion to grant injunctive relief in accordance with the guidelines set out in the case of *American Cyanamid v Ethicon* [1975] AC 396. First the plaintiff must show there is a serious issue to be tried in the proceedings. The judge will then consider whether the plaintiff's rights can be compensated in damages. The judge may go on to consider the balance of convenience between the parties and if that is equal then preservation or restoration of the status quo before the alleged wrong was committed is preferred. A stronger need must be demonstrated if the application is for a mandatory injunction and an injunction will not be granted unless the plaintiff gives an undertaking to pay damages to the defendant in the event of his action being unsuccessful or the injunction proving unnecessary.

In an application for a Mareva injunction the plaintiff must show:

- a good arguable case for an existing cause of action claiming some monetary remedy
- evidence that the defendant has assets which he may remove or conceal
- evidence of a risk that the defendant will dispose of assets before judgment can be enforced.

An application to inspect property can be made in relation to property which is the subject of the proceedings or as to which a question may arise. The right to inspection is not dependent on the strength of the applicant's case.

In an application for an Anton Pillar order the plaintiff must show there is a real possibility that the defendant will destroy documents or things prejudicial to his defence or publish material in which the plaintiff has a right of confidence.

3 Object and nature of such measures?

3.1 What types of assets can be subject to such measures?

An application for an injunction must be incidental to and dependent on an enforceable legal right or cause of

action. However the injunction is not for the purpose of enforcing the applicant's rights rather it is to maintain or restore the status quo pending the determination of the action.

A Mareva injunction can be granted in relation to present or future assets within Northern Ireland (whether or not they are the subject of or connected to the action) whether or not the respondent is domiciled or present in Northern Ireland.

An order for inspection or preservation of property can only be obtained in relation to physical property. This is not the appropriate procedure for inspection of the contents of a document which is available under the rules relating to discovery of documents.

3.2 What are the effects of such measures?

An order can be enforced by committal proceedings. The order must have been served on the respondent before it can be enforced by committal. An undertaking is enforceable like an injunction.

Third parties such as the defendant's wife, solicitor or bank who have notice of a Mareva injunction are liable to preserve the assets of the defendant that are in their possession. However a Mareva injunction has effect only against the defendant and does not give the plaintiff any priority over creditors.

An order for inspection and preservation of property can only be made against a party to the proceedings so its effect will be subject to the consent of a person in whose possession the property is.

An Anton Pillar order is not a search warrant so cannot be executed by force but if the order is worded to command the defendant to allow the search the defendant's refusal to allow inspection is contempt and may lead the Court to infer that he or she has something to hide.

3.3 What is the validity of such measures?

The order may be:

- Interlocutory – to last until the trial
- Interim – to last for a limited period

4 Is there a possibility of appeal against the measure?

Either party may appeal a master's order or decision to a judge. An appeal must be issued within five days and must be served on the other parties at least two clear days before the appeal is listed for hearing. The five day limit can be extended at the court's discretion however the court must be persuaded that there is a good reason to do so. However a party cannot appeal against an undertaking. The refusal of an ex parte application can be appealed by the applicant however the respondent makes an application to set the order aside rather than to appeal it.

The appeal is a complete rehearing although the appellant presents his case first. Whilst new evidence may be adduced the judge will be reluctant to admit new evidence unless there is a good reason for doing so.

An interlocutory order made by the County Court can be appealed to a judge of the High Court by re-hearing or by a case stated to the Court of Appeal.

Related links

[Northern Ireland Courts and Tribunals Service](#)

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