

Lecture 3

SECURING JUDGMENT: ENFORCEMENT AND INTERIM RELIEF

Themes:

Effectiveness of mechanisms for ensuring the enforcement of judgments in cross-border litigation; critique of grounds for enforcing foreign judgments; pre-trial mechanisms for securing assets pending judgments; issues of comity and extraterritoriality; interface between national law and the Brussels Convention

Reference:

Dicey and Morris, pp. 467-532, 542-559; 182-193; Cheshire and North, ch. 15; Jaffey, ch. 4

a. The enforcement of judgments: bases for enforcement and refusal

The legal framework:

1968 Brussels Convention, arts. 25-28
Civil Jurisdiction and Judgments Act 1982, s. 32
♦ *Adams v. Cape Industries plc.* [1990] Ch. 433 (CA)

The European dimension:

1968 Brussels Convention, arts. 1(4), 27(1)
[Case C-190/89, *Marc Rich & Co. AG v. Soc. Italiana Impianti PA* [1991] ECR I-3855 (ECJ)]
♦ *Interdesco SA v. Nullifire Ltd.* [1992] 1 Lloyd's Rep. 180
Phillip Alexander Securities Ltd. v. Bamberger [1997] I.L. Pr. 73

b. Interim relief: problems of comity and territoriality

Further reading:

Collins, (1989) 105 LQR 262; Gee, *Mareva Injunctions and Anton Piller Relief* (4th edn., 1998), 10, 82ff

The legal framework:

1968 Brussels Convention, arts. 24
[*Mareva SA v. International Bulkcarriers SA* [1975] 2 Lloyd's Rep. 509 (CA)]

The European dimension:

♦ Case C-391/95 *Van Uden Maritime BV v. Firma Deco-Line* [199] 1181 (ECJ)
♦ *Republic of Haiti v. Duvalier* [1990] 1 QB 202 (CA)
♦ *Credit Suisse Fides Trust SA v. Cuoghi* [1998] 818 (CA)
Refco Inc. v. Eastern Trading Co. [1999] 1 Lloyd's Rep. 159 (CA)

Case study 3a:

Pluto, a Venusian company, brought proceedings in Venusia against Britannia, an English company, for breach of contract. The contract was governed by English law and contained a provision whereby any dispute between the parties was to be submitted to arbitration in London. Britannia operates in Venusia through its subsidiary, Subco. In its statement of claim Pluto falsely claimed that its loss was £200,000, although it was in fact only £50,000.

Counsel for Britannia argued before the Venusian court that it lacked jurisdiction because of the arbitration clause. Britannia's counsel also sought dismissal of the claim on the basis that Pluto had deliberately inflated its loss. The court held that it had jurisdiction despite the existence of the arbitration clause, and that the amount claimed by Pluto was correct. Britannia's counsel took no further part in the proceedings.

The court only accepted jurisdiction because it mistakenly held that under English law the arbitration clause was not incorporated into the contract. The court awarded Pluto substantial damages and Pluto wishes to enforce the judgment against Britannia in England.

Advise Britannia as to all available defences.

How, if at all, would your advice be different if references to Venusia in the above facts were references to Belgium?

Case study 3b:

Alphaco, a Utopian corporation, owes substantial sums to Betaco, an English company. Alphaco has an account with Goldco, a Utopian bank with a branch in London. Betaco's interests in England are represented by Lawco, a firm of solicitors, which has agreed to accept service in any proceedings brought by Betaco against Alphaco in England.

Betaco has started proceedings against Alphaco in Utopia for payment of the amount owing. Betaco has also applied to the English courts for an injunction freezing Alphaco's assets throughout the world, including Utopia. Betaco has no assets in England. Betaco previously attempted to obtain a similar order from a court in Utopia, which declined to grant an injunction.

Advise Betaco as to whether the English court would grant an injunction.

How, if at all, would your advice be different if references in the above facts to Utopia were references to Belgium?