THE ENGLISH HIGH COURT PERMITS SERVICE IN THE UAE BY ALTERNATIVE MEANS BASED ON JUDICIAL ASSISTANCE TREATY BETWEEN THE UK AND UAE

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UAE Litigation and Dispute Resolution Alert

By: Jennifer Paterson

In *Cesfin Ventures LLC v Al Ghaith Al Qubaisi* [2021] EWHC 3311 (Ch), the Chancery Division of the High Court of Justice (High Court) in England granted an application for service of an interim charging order by alternative means on a third-party creditor in the United Arab Emirates (UAE) under a treaty between the government of the United Kingdom of Great Britain and Northern Ireland (UK) and the UAE on Judicial Assistance in Civil and Commercial Matters, dated 7 December 2006 (Treaty).

BACKGROUND

In order to enforce an unpaid judgment for costs (costs judgment), the claimants sought and obtained an interim charging order over three properties in the UK belonging to the defendant. In respect of two of the properties, there was a first registered legal charge in favor of Abu Dhabi Commercial Bank (ADCB) in the UAE.

In a final hearing to determine an application for the interim charging order to be made final, the High Court held that documents relating to the interim charging order and the final hearing had been served upon the defendant. The High Court further held that, as the costs judgment remained wholly unpaid and the judgment had not been appealed, it was an enforceable judgment debt. Therefore, subject to the position in relation to ADCB, it was appropriate to make a final charging order in relation to each of the properties. The remaining issues before the High Court were whether ADCB needed to be served and whether to grant the claimants' application for permission to serve ADCB in the UAE by alternative means.

SERVICE BY ALTERNATIVE MEANS UNDER CPR 6.15

Under the English Civil Procedure Rules (CPR), CPR 73.7(7)(d) requires a claimant to serve creditors who have been identified in the application for a charging order or as directed by the court. Further, CPR 73 specifies that the rules for service out of the jurisdiction contained in CPR 6 apply equally to CPR 73 as they do to any other part of the CPR.

The High Court therefore concluded that, while the claimants should be required to notify ADCB in accordance with CPR 6, it was important to bear in mind that ADCB is not a party to proceedings and there is no action being taken against ADCB. Rather, CRP 73 requires creditors to be given notice of the charging order application to enable them to raise any objections they may have to the order being made final.

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In granting the claimants' application for permission to serve ADCB by alternative means, the High Court considered the terms of the Treaty. The High Court noted that, while the Treaty identifies that requests for judicial assistance are usually made via the central authorities to be transmitted through diplomatic channels, the Treaty does not preclude alternative means. Rather, all that is required is that service should be effected in a manner that is not contrary to the relevant domestic law.

The High Court further held that, in circumstances where the Treaty does not make service via diplomatic channels the exclusive means of service, it did not need to find exceptional circumstances to permit alternative service. However, even if the High Court was required to find exceptional circumstances, there were many factors weighing heavily in favor of making the order for service by alternative means.

These grounds included the fact that: (i) a High Court judge had already determined, in the context of a worldwide freezing injunction against the defendant, that service by alternative means in the UAE was appropriate and that the Treaty presents no difficulty to that approach; (ii) giving notice of an interim charging order is not the same as a typical service out of the jurisdiction application where ADCB is to be a party or to be joined to the proceedings; (iii) ADCB was already on notice of the broader dispute between the parties by reference to proceedings in other jurisdictions and had been served with notice of the present application and hearing in multiple ways; and (iv) service through diplomatic channels would likely cause a delay of six to nine months (and possibly longer due to COVID-19). The High Court held that it would not be consistent with the overriding objective or good case management to delay the claimants from being able to secure and enforce their costs judgment, particularly when ADCB's interest was fully protected as a priority charge.

COMMENT

This judgment serves as a useful reminder that the Treaty may be relied upon to support an application for service in the UAE via alternative means, thereby avoiding lengthy delays that would result from service through diplomatic channels.

KEY CONTACTS



JENNIFER PATERSON
PARTNER

DUBAI
+971.4.427.2728
JENNIFER.PATERSON@KLGATES.COM

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