

Group Briefing
November 2017

A First in Ireland: Anti-suit Injunctions

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The Irish High Court recently refused to grant an injunction to prohibit legal proceedings in the United States, in the first decision of an Irish court on so-called “anti-suit” injunctions (Walters & anor v Flannery & anor). Arthur Cox acted for the defendants in successfully defending the application for the injunction.

WHAT IS AN ANTI-SUIT INJUNCTION?

Anti-suit injunctions prohibit a party from taking or continuing a case in another jurisdiction. They are used to enforce exclusive jurisdiction clauses and to prevent forum shopping, which is where a party chooses to bring proceedings in the jurisdiction which it considers will be most favourable to its case. Applications for anti-suit injunctions typically arise where a party takes a case which is perceived to be in breach of an exclusive jurisdiction clause.

Anti-suit injunctions to restrain proceedings within the European Union are generally prohibited by EU regulations. There are no regulations with regard to proceedings outside the EU. The UK courts have granted anti-suit injunctions restraining proceedings outside the EU on a number of occasions, but only exercise the power to do so sparingly and with great caution. The decision in *Walters v Flannery* is the first decision of the Irish courts in this area.

WALTERS V FLANNERY: THE VARIOUS AGREEMENTS

The plaintiffs entered a settlement agreement with the defendants following a dispute over ownership of a patent. The settlement agreement contained an exclusive jurisdiction clause in favour of the Irish courts over all disputes relating to that agreement. The parties also entered a security agreement which contained a similar exclusive jurisdiction clause in favour of the Irish courts.

The plaintiffs subsequently entered an assignment agreement to transfer the patent to a third party in the United States. This agreement contained an exclusive jurisdiction clause in favour of the US courts. The defendants claimed that this assignment was fraudulent and initiated proceedings in the US to set aside the assignment.

JURISDICTION CLAUSES	
Settlement Agreement	Ireland
Security agreement	Ireland
Assignment agreement	United States

The plaintiffs sought an injunction prohibiting the defendants from continuing to pursue the US proceedings on the basis that the proceedings should have been brought in Ireland, in accordance with the exclusive jurisdiction clause contained in the settlement agreement.

WHICH JURISDICTION CLAUSE APPLIED?

The Irish High Court held that, on the facts, the US proceedings concerned the validity of the assignment agreement and did not relate to the settlement agreement. The exclusive jurisdiction clause contained in the assignment agreement in favour of the US courts therefore applied. On that basis, the Court refused to grant an injunction prohibiting the defendants from

continuing to pursue the proceedings in the US.

The Court noted that it is in the interest of public policy to enforce exclusive jurisdiction clauses that parties have freely agreed to.

It also had regard to the following factors:

- **Timing:** the assignment agreement post-dated the settlement agreement by two years. The plaintiffs had freely entered the assignment agreement, in the full knowledge that any disputes regarding the subject matter of the agreement would be determined by the US courts, and it represented the entire agreement between the parties.

- **Delay:** there was a clear delay by the plaintiffs in seeking the injunction. The plaintiffs had fully engaged with the US proceedings for a number of months before bringing the application to prohibit the US proceedings.

- **Reactive not vexatious:** the defendants' actions in pursuing the US proceedings were reactive and not vexatious. The only way that the defendants could prevent a further fraudulent assignment of the patent was through proceedings in the US.

The decision is a clear indication from the Irish courts that, while the High Court has discretion to grant anti-suit injunctions restraining proceedings instituted outside of the EU, it will only do so where there are obvious reasons to do so.

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