

Cyprus Courts deny enforcement of an English Court Judgement in Cyprus on grounds of public policy

An overview

The Larnaca District Court has issued its long-awaited judgement on applications for enforcement of English Court judgements in Cyprus and has denied enforcement on grounds of a manifest breach of the public policy of Cyprus. The issues arose by reference to the provisions of the Council Regulation (EC) No. 44/2001 of the 22nd December 2000 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters (*Brussels Regulation* or *BR*), the predecessor of regulation 1215/2012. Under Article 33(1) of the BR, a judgement given by a Court of an EU Member State is recognised in other EU Member States without the requirement of any special procedure, provided that the judgement is enforceable in the originating Member State and following the application of any interested party (Article 38 (1) of Regulation 44/01). At the same time, Article 34(1) provides that a judgement shall not be recognised if such recognition is manifestly contrary to public policy in the Member State in which recognition is sought. The public policy exception permits a court that is asked to recognise and enforce a foreign judgement to reject doing so if that court determines that recognition and enforcement would contradict a fundamental public policy of the enforcing country.

The Facts

Both cases shared similar facts. U.K. investors acquired property developments in Cyprus, which were financed by Cyprus credit Institutions. It was part of this financing arrangement that the purchasers would assign all rights arising out of the relevant contracts of sale to the credit institutions as a security for repayment of their debts. Thereafter, the purchasers filed actions before the English Court against various parties, including the sellers of the property developments and advancing remedies of rescission of the contracts of sale due to alleged misrepresentations by the sellers. Judgements in default of appearance were subsequently issued against them, part of which decided the rescission of the contracts of sale. Following the issuance of the judgements of the English Courts, the purchasers applied to the Cyprus Courts and obtained without notice orders against the sellers for the recognition and enforcement of the English Court judgements within the jurisdiction of the Republic of Cyprus. The sellers appealed these decisions. One of the principal issues that was open before the Cypriot Courts was whether the enforcement of the English Court judgements could be refused pursuant to the provisions of the BR on grounds of public policy on the basis of the fact that the purchasers/claimants in the English proceedings had advanced a remedy of rescission of a contract while they had already assigned the benefit of a contract to a third party.

Decisions

In both judgements given by the Larnaca District Court, the Court examined the factual matrix and the applicable legal framework of Cyprus and on both occasions, it was held that the appeals should succeed on the basis of the public policy element. In essence, the purchasers/claimants in the English proceedings were not entitled to advance the actions altogether. Having assigned their rights to the credit institutions, they had no locus standi to sue pursuant to the contracts and they were not entitled as a matter of law to obtain judgements before the English Courts. Such actions could only have been properly brought by the credit institutions, being the assignees. The Courts also agreed with the argumentation of the sellers that the matter of locus standi was a public policy matter. In one of the two judgements, Judge Papamichael (District Court President) observed: “... *The fact that the claimants in the English litigation were not legally entitled to raise this action but only the credit institution to which they themselves had assigned their rights based on the contracts of sale to make a loan on that for the purchase of the immovable property, clearly infringes the public policy of the Republic of Cyprus since it is intended to enforce a decision within the jurisdiction of the Cypriot Courts which is for the benefit of persons who were not legally entitled to raise such a claim or to obtain such decision.*” In the second judgement, Judge Dimitriadou-Andreou (District Court President) observed: “*The question of whether a party is legally entitled to resort to Court is a matter of public policy concerning the lawfulness of a judicial process and as such it is examined by the Court of the member state in which the enforcement of a judgement is sought.*”

Comments

To our knowledge, it is the first time that Cypriot Courts deny enforcement of a judgement issued by a Court of an EU member state. The Courts have accepted argumentation that, in the exceptional circumstances of this case, the denial of enforcement was justified on grounds of Cyprus public policy. They also accepted the argument that the locus standi of a claimant is a public policy issue. Judgements have confirmed that assignors (persons who have assigned their rights under a contract) are not entitled to issue proceedings on the basis of that contract and, even if they do and they manage to obtain judgement in a foreign court (including a Court of an EU member state), that will not stop the Cyprus Court, being vigilant of public policy considerations, to deny enforcement of such judgement on grounds of public policy. Evidently, this decision is of great significance for the development of the relevant jurisprudence on public policy exception, both on a national and European level.

Notes:

1. The sellers/appellants were represented by Harris Kyriakides LLC.
2. The full citation of the judgements is Application 2/2016, Ian Almond and ors v Medgolf Properties Limited and ors and Application 3/2016, Lijana Armalaitė and ors v Medgolf Properties Limited and ors
3. The full transcript of the judgements can be found at cylaw.org. A translation of the judgment in App. 2/2016 can be found [here](#) and a translation of the judgement in App. 3/2016 can be found [here](#).