

CYPRriot COURT HOLDS THAT A THIRD PARTY LITIGATION FUNDING AGREEMENT IS NOT CONTRARY TO THE PUBLIC POLICY OF CYPRUS

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On 31/01/2022, the District Court of Larnaca in Application no. 1/2020 in the case of **Kazakhstan Kagazy PLC a.o v Arip a.o**², issued a judgment holding that litigation funding is not contrary to the public policy of the Republic of Cyprus.

The Larnaca court's judgment was issued within the context of an application by the judgment debtors/respondents to set aside a Cypriot declaration of enforceability of an English money judgment and order issued against them by the High Court of Justice of England & Wales. Although the case was heard after Brexit, the Larnaca court applied the regime established under the Brussels Regulation since the (English) legal proceedings were instituted before the end of the transition period provided under the Withdrawal Agreement concluded between the European Union and the United Kingdom.

The above English judgment and order were rendered in October 2019 after the judgment debtors/respondents were added as defendants to the English proceedings **Kazakhstan Kagazy PLC a.o. v Baglan Zhunus a.o** (CL-2013-000683) for the purpose of costs. By the English judgment, the judgment debtors/respondents were found to be jointly and severally liable to pay the judgment creditors/applicants' costs of the main English proceedings, and they were also ordered to make an interim payment of £8 million towards these costs, pending their final assessment.

1. Polyvios Panayides and Stacey Armeftis appeared as counsel for the judgment creditors/applicants in the proceedings before the Larnaca court.

2. The full text of the Larnaca court's judgment can be found [here](#)

In the main English proceedings, defendants 2 and 3 were found to have perpetrated a sophisticated fraud and were ordered to pay approx. 300 million USD.

Since the English judgment had been issued as part of an action filed by the Applicants in England prior to 10/01/2015, the declaration of enforceability was obtained under Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (“**the Brussels Regulation**”)³.

One of the main grounds raised in the Respondents’ set aside application, by which they challenged the declaration of enforceability, was that the recognition of the judgment would be contrary to the public policy of Cyprus because the English judgment was obtained in proceedings where the judgment creditors’/applicants’ claim was funded under a third-party litigation funding agreement with [Harbour Litigation Funding](#) (“**Harbour**”). Their position was therefore that pursuant to Article 34(1) of the Brussels Regulation, the English judgment should not be recognised and enforced in Cyprus as being contrary to Cypriot public policy.

The Cypriot Court decided that the existence of a litigation funding agreement could not constitute a reason for refusing recognition and enforcement of the English judgment. In reaching its decision, the Court mentioned that:

- The principles of maintenance and champerty were developed under the common law in the middle ages in order to protect the administration of justice from abusive conduct. In particular, it aimed to deter those with positions of influence from buying doubtful or fraudulent claims expecting that they would have higher chances of success in relation to the claimant given their influence and position.

3. Under Article 66(2) of Regulation (EU) No 1215/2012: “Regulation (EC) No 44/2001 shall continue to apply to judgments given in legal proceedings instituted, to authentic instruments formally drawn up or registered and to court settlements approved or concluded before 10 January 2015 which fall within the scope of that Regulation.” The temporal applicability of Regulation 1215/2012 formed the basis of a prior interim decision that was confirmed by the Court in its judgment dated 31/01/2022.

- The principles were developed to prevent proceedings initiated with questionable motives, which could hinder the proper administration of justice.
- The claimants' litigation funding agreement with Harbour was implemented with the full knowledge, approval and acceptance of the English Court and this was never disputed during the English proceedings.
- The litigation funder, Harbour, had adopted the Code of Conduct for Litigation Funders of England and Wales.
- Without the funding, the Applicants would not have been able to pursue their honest claims for fraud against the defendants in the main English proceedings and therefore the litigation funding provided the judgment creditors/applicants with access to justice.

In the absence of Cypriot case law dealing with the legality of third party litigation funding, the Larnaca court agreed with the judgment creditors/applicants that it should apply the (modern) common law position by virtue of section 29 of the Courts of Justice Law 14/1960. The decision makes explicit reference to a number of favourable judgments to third party litigation funding from several common law jurisdictions, including the decisions of the English courts in British Cash and Parcel Conveyors, Limited v. Lamson Store Service Company, Limited [1908] 1 K.B. 1006 and Akhmedova v. Akhmedov & Ors (Litigation Funding) (Rev 1) [2020] EWHC 1526 (Fam), the Canadian case Quebec Inc (Blueberi) v. Callidus Capital Corp [2020] SCC 10, the New Zealand cases Contractors Bonding Limited v. Waterhouse [2012] NZCA 399 and Saunders v. Houghton [2009] NZCA 610, the Jersey case Re Valetta Trust [2011] JRC 227, the Cayman Islands case A Company v A Funder [2017] (2) CILR 710 and the Bermuda case Stiftung Salle v Butterfield Trust (Bermuda) Limited [2014] SC (Bda) 14 Com.

In addition, the Court decided that even if the judgment had been contrary to the public policy of Cyprus, it could not be considered to be contrary to public policy to the level necessary to justify non-recognition of the judgment under the Brussels Regulation, since under the Brussels Regulation regime the judgment to be enforced would have to be manifestly contrary to the public policy of a Member State in order for such a refusal of recognition to be justified.

This is the first Cypriot judgment addressing whether a third party litigation funding agreement can be considered as contrary to the public policy of Cyprus. Although this judgment is not binding on other District Courts in Cyprus, it is to be welcomed as it demonstrates that the Cypriot Courts are prepared to follow the modern common law position under which the medieval rules of champerty and maintenance have been relaxed when it comes to third party funding which facilitates access to justice⁴.

4. It is noted that an appeal has been filed in relation to this judgment before the Supreme Court of Cyprus.



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