

公报文章

Natural Justice in the Context of Interim Applications

临时禁制令申请中的自然正义

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It is quite common for a party considering bringing an interim injunction application to weigh, among other things, the risk, by bringing the application, of having to disclose information to the court and the respondent that they would rather not disclose (in particular sensitive commercial information). The extent of that disclosure is often broadened by the duty of full and frank disclosure which such an applicant bears.

In the very recent decision of *Olalekan Akinsoga Akinyanmi v Lekoil Limited Cause No. FSD 382 of 2021 (IKJ)*, the Grand Court of the Cayman Islands had to consider whether or not an applicant for an ex parte injunction was required to disclose to the respondent information that the applicant had previously provided to the Judge (for the purpose of obtaining and/or continuing the injunction). The issue arose as a result of a confidentiality application that the applicant had made after obtaining the ex parte injunction. The applicant claimed that the information in question was commercially sensitive.

In dismissing the applicant's application, and ordering it to disclose the relevant information to the respondent (failing which the injunction would be discharged), the Cayman Court held that it is a fundamental principle of natural justice that a party to proceedings is entitled to see all of the information put before the Judge and taken into account. It would therefore be contrary to that principle for "an ex parte injunction to be made or continued...on the basis of material relevant to the granting of the Order which was kept confidential from the [respondent]."

In reaching its decision, the Cayman Court cited with approval various English authorities in which the English courts had held that there are no circumstances in which it would be right for information to be revealed to a judge in an ex parte injunction application which could not at a later stage be revealed to the party affected by the result of the application.

考虑提出临时禁制令申请的当事方普遍会权衡提交此类申请的风险（除了其它考量外），因为他们必须向法院和被告披露他们不愿披露的信息（尤其是敏感的商业信息）。由于申请人负有充分和坦率披露的义务，因此披露的范围往往会扩大。

在最近的 *Olalekan Akinsoga Akinyanmi v Lekoil Limited Cause No. FSD 382 of 2021 (IKJ)* 案的判决中，开曼群岛大法院必须考虑单方面禁制令申请人是否需要向被告披露其之前向法官提供的信息（为了获得和/或继续禁制令的目的）。该问题是由于申请人在获得了单方面禁制令后提交了保密申请而引起。申请人声称所涉信息具有商业敏感性。

开曼法院驳回了申请人的申请，命令其向被告披露相关信息（若不披露，禁制令将被解除）。法院认为，诉讼当事人有权看到提交给法官、供法官考量的所有信息，这是自然正义的一项基本原则。因此，“在与下达单方面禁制令相关的材料对[被告]保密的情况下发出或继续单方面禁制令”，将违反此项原则。

开曼法院在作出裁决时获准引用了多个英国机构，其中的英国法院认为，在单方面禁制令申请中向法官披露信息，而该信息不能在稍后阶段向受到该申请结果影响的当事方披露，这在任何情况下都是不对的。

Comment

The decision contains a useful summary of the application and importance of natural justice in the context of injunction applications, and the duty on the part of the applicant to provide the respondent with all of the information that it supplied to the Court when obtaining (or continuing) that injunction. Those principles apply equally in the BVI. A copy of the decision can be downloaded [here](#).

点评

该裁决提供了非常有用的总结，包含了自然正义在禁制令申请中的应用和重要性以及申请人的义务，即申请人在获得（或继续）禁制令时提供给法院的所有信息，也必须提供给被告。这些原则同样适用于英属维尔京群岛。裁决文件可在[此处](#)下载。

This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.

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