Insights: Publications

Significant Shift in Proof to Obtain Interim Injunction in the Common Law Countries

OCTOBER 9, 2024 Written by Eric S. Rein

The court in *American Cyanide Co. (No. 1) v. Ethicon Ltd*. (1975) UKHL 1, established guidelines for when courts should grant interim injunctions. There, an American company, American Cyanide, claimed a British company, Ethicon Ltd. was infringing on its patent for absorbable surgical sutures. The court set forth as one of the requirements to impose an injunction that there must be a serious matter to be tried.

In *Dos Santos v. United SA* (2024) EWCA Civ. 1109, an Angolan billionaire appealed an order freezing her assets as a part of a lawsuit seeking repayment of loans. The Court of Appeal recently addressed the meaning of the requirement of a "serious matter to be tried". The court found this element should be equated to a "good arguable case". The court noted that "(t)his is not a demanding test, and it really only serves to exclude the case where the claim is frivolous or vexatious, or otherwise demonstrably bad."

Thus, the threshold question in freezing injunction applications is now a lesser standard-- "good arguable case". Creditors have an enhanced opportunity to freeze assets in the UK and common law countries.

Related People



Eric S. Rein
t 312.606.3227
rrein@ktslaw.com