Anti-suit Injunction Issued By US Court

The United States Court of Appeals for the Ninth Circuit recently decided the case of *Applied Medical v. The Surgical Company* (available here), which raised the issue whether a district court abused its discretion in denying an anti-suit injunction. In short form, the facts were that two companies entered into a purchasing relationship that was subject to a written agreement that included a choice of law and choice of forum clause. That clause read as follows: "This Agreement shall be governed by and construed under the laws of the State of California. The federal and state courts within the State of California shall have exclusive jurisdiction to adjudicate any dispute arising out of this Agreement." Subject to other clauses in the Agreement, which allowed parties to terminate the agreement and limit liability, Allied decided against renewing the agreement past 2007. Surgical replied by asserting that it was entitled to protection under Belgian law in the form of compensation. Applied then filed a complaint for declaratory relief against Surgical in the United States District Court for the Central District of California. As relevant here, Applied filed a motion for summary judgment requesting that the district court "enjoin Surgical from pursuing relief in Belgium or any other non-California forum under non-California law." Slip op. at 14822. The district court declined to enjoin Surgical.

On appeal, the Ninth Circuit focused on that court's recent decision in *E. & J. Gallo Winery v. Andina Licores S.A.*, 446 F.3d 984 (9th Cir. 2009), which held that a district court, in evaluating a request for an anti-suit injunction, must determine (1) "whether or not the parties and the issues are the same, and whether or not the first action is dispositive of the action to be enjoined;" (2) whether the foreign litigation would "frustrate a policy of the forum issuing the injunction;" and (3) "whether the impact on comity would be tolerable." *Id*. at 991, 994. The Ninth Circuit concluded that a close reading of *Gallo* as applied to the facts of this case required the district court to enter an anti-suit injunction.

While the whole opinion is worth reading to understand the *Gallo* landscape, what is perhaps most interesting is the Ninth Circuit's treatment of the comity issue. The court minimizes the comity inquiry by finding that all this case involves is a contract between two sophisticated parties to litigate their case in a

California forum under California law. Slip op. at 14835-38. As such, comity is not implicated at all, as there is no question of public international law implicated in a dispute that "involve[s] private parties concerning disputes arising out of a contract." Slip op. at 14837-38. Private international lawyers will recognize in this argument a strand of the argument that private international law can be decoupled from state law in hopes of encouraging party expectations.

One might, of course, object to such a statement of comity, for it gives short shrift to the actuality that an American court has entered an order that seeks to bind what parties can do before a foreign court. Such an action uniquely creates a conflict between sovereign powers of legislative and adjudicatory authority, and such an action necessarily brings public actors, most specifically the courts, in conflict, even though the underlying issue is one of party autonomy.

Given recent cases reports on this blog concerning the circuit split regarding anti-suit injunctions, this case might be one to watch.