

A Dangerous Chimera: Anti-Suit Injunctions Based on a “Right to be Sued” at the Place of Domicile under the Brussels Ia Regulation?

This post introduces my case note titled ‘A Dangerous Chimera: Anti-Suit Injunctions Based on a “Right to be Sued” at the Place of Domicile under the Brussels Ia Regulation?’ which appeared in the July 2020 issue of the *Law Quarterly Review* at page 379. An open access version of the case note is available [here](#).

In *Gray v Hurley* [2019] EWCA Civ 2222, the Court of Appeal (Patten LJ, Hickinbottom LJ and Peter Jackson LJ), handed down the judgment on the claimant’s appeal in *Gray v Hurley* [2019] EWHC 1972 (QB). The appellant appealed against the refusal of an anti-suit injunction.

The appellant (Ms Gray) and respondent (Mr Hurley) had been in a relationship. They acquired property in various jurisdictions using the appellant’s money, but held it in either the respondent’s name or in corporate names. The relationship ended and a dispute commenced over ownership of some of the assets and properties. The appellant was domiciled in England; the respondent lived in New Zealand after the relationship ended and was no longer domiciled in England. He initiated proceedings there for a division of the property acquired by the couple during the relationship. The appellant issued proceedings in England seeking a declaration that she was entitled absolutely to the assets. She also applied for an anti-suit injunction to restrain the defendant from continuing with proceedings in the courts of New Zealand. Lavender J held that England was the appropriate forum for the trial of the

appellant's claims but that the respondent's New Zealand claim could not be determined in England. He rejected her argument that Article 4(1) of the Brussels Ia Regulation obliged him to grant an anti-suit injunction to prevent the respondent from litigating against her in a non-EU state.

The appellant argued that *Samengo-Turner v J&H Marsh & McLennan (Services) Ltd* [2007] EWCA Civ 723, [2007] 2 All E.R. (Comm) 813 and *Petter v EMC Europe Ltd* [2015] EWCA Civ 828, [2015] C.P. Rep. 47 were binding authority that Article 4(1) provided her with a right not to be sued outside England, where she was domiciled, obliging the court to give effect to that right by granting an anti-suit injunction.

The Court of Appeal considered that the issue was not *acte claire* and sent a preliminary reference to the CJEU (pursuant to Article 267 TFEU) asking whether Article 4(1) of the Brussels Ia Regulation provided someone domiciled in England with a right not to be sued outside England so as to oblige the courts to give effect to that right by granting an anti-suit injunction.

The case note examines the Court of Appeal's decision in *Gray v Hurley* [2019] EWCA Civ 2222. It offers a pervasive critique of the argument that the general rule of jurisdiction under the Brussels Ia Regulation gives rise to a substantive right to be sued only in England and that this right is capable of enforcement by an anti-suit injunction. It is argued that the previous decisions of the Court of Appeal in *Samengo-Turner v J&H Marsh & McLennan (Services) Ltd* [2007] EWCA Civ 723 and *Petter v EMC Europe Ltd* [2015] EWCA Civ 828 were themselves wrongly decided. In light of this, it will be even more difficult to justify the broader application of a similar result in the present case.

Indeed, the law would take a wrong turn if the present case is allowed to build on the aberrational foundations of the developing law on anti-suit injunctions based on rights

derived from the Brussels Ia Regulation. Essentially, a chimerical remedy based on a fictitious right would not only infringe comity but would also deny the respondent access to justice in the only available forum. The note also anticipates the CJEU's potential findings in this case.

An open access version of the case note is available [here](#).