U.S. Court Issues Worldwide Anti-Enforcement Injunction

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Last month, Judge Edward Davila, a federal judge sitting in the Northern District of California in the United States, granted a motion by Google for a rare type of equitable relief: a worldwide anti-enforcement injunction. In *Google v. Nao Tsargrad Media*, a Russian media company obtained a judgment against Google in Russia and then began proceedings to enforce it in nine different countries. Arguing that the judgment was obtained in violation of an exclusive forum selection clause, Google petitioned the court in California for an order to block Tsargrad from enforcing it.

As Ralf Michaels and I found in a recent analysis, the anti-enforcement injunction is an unusual but important device in transnational litigation. There aren't many U.S. cases involving these orders, and one of the leading decisions arose in the context of the wildly complicated and somewhat anomalous Chevron Ecuador litigation. As a result, there is little U.S. authority on a number of important questions, including the legal standard that applies to this form of relief and the mix of factors that courts should assess in considering its availability. Judge Davila's decision in the Google case addresses some of these questions.

Background

In 2020, Google terminated Tsargrad's Google account in order to comply with U.S. sanctions law. Tsargrad sued, alleging that Google violated its terms of service in terminating the account. Although those same terms included an exclusive forum selection clause choosing California courts, Tsargrad initiated the litigation in Russia. It cited a Russian procedural law that vested Russian arbitrazh courts with "exclusive jurisdiction" over disputes involving sanctioned parties, arguing that this rule prevented it from bringing suit in California.

Tsargrad prevailed on the merits in that case. The court ordered Google to

restore Tsargrad's account or suffer a compounding monetary penalty. Google did not restore access, and the penalty mounted to more than twenty decillion dollars (in Judge Davila's words, "a number equal to two followed by thirty-four zeroes"). Tsargrad then started filing actions to enforce its judgment in a number of foreign courts. This prompted Google to seek an anti-enforcement injunction in the Northern District of California.

What Legal Standard Applies to Anti-Enforcement Injunctions?

An anti-enforcement injunction orders a party not to initiate or continue legal proceedings to enforce a judgment. It looks like a species of anti-suit injunction and might therefore be subject to the test used to decide those. As Judge Davila correctly recognized, though, the two contexts are quite different.

An anti-suit injunction aims to prevent parallel litigation from developing in the first place, avoiding a race to judgment and the possibility of inconsistent judgments on a single matter. Those risks aren't relevant to anti-enforcement injunctions, where the foreign court has already entered a judgment. In such cases, the policy of res judicata also comes into play. Anti-enforcement injunctions are also potentially much more intrusive into other legal systems than anti-suit injunctions. The type of injunction that Google sought would have worldwide effect, blocking legal proceedings not only in courts with concurrent jurisdiction over the underlying dispute but in any court, anywhere, in which an enforcement proceeding might be brought. For these reasons, Judge Davila chose instead to apply the normal test for preliminary injunctions, requiring Google to demonstrate: (1) likely success on the merits, (2) irreparable harm, (3) a balance of equities favoring injunction, and (4) public interest favoring injunction.

Does Breach of a Forum Selection Clause Justify an Anti-Enforcement Order?

Once a foreign court has entered a judgment, it is (and should be) very difficult for the judgment debtor to obtain an order from a U.S. court completely blocking any enforcement efforts. In this case, there were two possible grounds for granting that relief. First, as in the *Chevron* case, it appeared that Tsargrad's

enforcement campaign was vexatious and oppressive. Apparently, Tsargrad had itself described its strategy as a "global legal war"—and may have viewed the twenty-decillion-dollar penalty as leverage to extort a settlement or force Google to defend itself in multiple forums. Second, it appeared that Tsargrad had procured the Russian judgment in breach of an exclusive forum selection clause. As Google argued, issuing an anti-enforcement injunction under those circumstances would both preserve the jurisdiction of the chosen courts and vindicate Google's contractual rights.

The case proceeded on the second theory. This raised two interesting questions regarding a post-judgment injunction. First, because the breach of the forum selection clause had already happened, was there any ongoing or future harm to justify injunctive relief? Judge Davila concluded that there was—not based on the forum selection clause itself, but based on an additional *implied* term "bar[ring] parties from enforcing judgments obtained in violation of [a] forum selection clause."

Second, wouldn't the balance of equities here suggest that Google was far too late in seeking injunctive relief? It could have filed an ordinary anti-suit injunction based on the exclusive forum selection clause when Tsargrad initiated the litigation in Russia, rather than waiting until that action proceeded to judgment. (In Ralf's and my study, this kind of delay surfaced as one of the most common reasons to deny anti-enforcement injunctions.) Judge Davila maneuvered around this issue. The basis for injunctive relief, he said, wasn't the breach of the forum selection clause but rather the breach of the implied promise not to enforce judgments procured in violation of the clause. And Google couldn't have sought relief for *that* breach until Tsargrad actually began its enforcement efforts.

What About Comity?

Every country has its own rules regarding the recognition and enforcement of foreign judgments. It's one thing for a U.S. court to deny enforcement of a foreign judgment in the United States, under U.S. rules. But by barring a judgment holder from taking steps to enforce its judgment *anywhere*, a worldwide anti-enforcement injunction indirectly prevents other countries from considering the enforceability of that judgment under their rules. Judge Davila appreciated the serious comity concerns this raises. He concluded, however, that those concerns

were outweighed in this case, citing the “grossly excessive” penalty imposed on Google and the vexatious nature of Tsargrad’s enforcement campaign. With the exception of Russia, then (“it is simply a bridge too far to enjoin a Russian citizen from enforcing a Russian judgment in Russian court”), he gave the order worldwide scope.

Conclusion

Pending a final decision on the merits, the court here did everything it could to block Tsargrad from enforcing the Russian judgment. In addition to entering the anti-enforcement injunction, the court entered an “anti-anti-suit injunction” barring Tsargrad from going back to Russia to seek an anti-suit injunction against the proceedings in California. The open question, as always, is what courts in other countries will do if Tsargard disregards the injunction and continues its efforts to enforce the Russian judgment.

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