

Article

Natural Justice in the Context of Interim Applications

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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.

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](#).

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