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## Erinford Injunctions in Malaysia

An injunction is a specific court order which either forbids or compels a party to do a specific act. There are many types of injunctions, including prohibitory injunctions, mandatory injunctions, Mareva injunctions and Anton Piller injunctions. Named after the English case of *Erinford Properties Ltd v Cheshire County Council*<sup>1</sup>, an Erinford injunction is an injunction granted to an applicant to preserve the status quo pending the conclusion of an appeal.

At first glance, the Erinford injunction may seem similar to an order for stay of proceedings, but this was distinguished in *Kilang Kosfarm Sdn Bhd v Kosma Nusantara Bhd*<sup>2</sup> where the High Court recognised that whilst the same legal considerations are applicable to the two orders, they are two distinct types of order. An application for stay is based on an earlier order that has already been granted, whereas an Erinford injunction is considered as an original application on its own with no prior order to be executed by any party.

The principal purpose of an Erinford injunction is to prevent the appellate Court's decision from being rendered nugatory should the appeal succeed. In the *Erinford* case, the plaintiff applied for an injunction to restrain the defendant from considering the plaintiff's land planning application. The injunction was dismissed and counsel for the plaintiff sought an *ex parte* injunction to preserve the status quo pending the plaintiff's appeal. This type of injunction has come to be known as the Erinford injunction.

## The Position in Malaysia

There is no statutory recognition for the principle enunciated in *Erinford*. Regardless, the principle was affirmed in the High Court case of *Tahan Steel Corp Sdn Bhd v Bank Islam Malaysia Bhd (No. 2)*<sup>3</sup>, where it was held that Section 43 of the Courts of Judicature Act 1964 (CJA) recognises the inherent power of the High Court to grant an Erinford

<sup>1</sup> [1974] 2 All ER 448

<sup>2</sup> [2002] 5 MLJ 662

<sup>3</sup> [2004] 6 MLJ 1

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injunction to prevent the Court of Appeal ruling being rendered nugatory. Furthermore, the Court of Appeal and Federal Court have jurisdiction to grant orders in the nature of an Erinford injunction pursuant to Sections 44 and 80 of the CJA. These sections stipulate that both Courts are able to issue an interim order in order to “*prevent prejudice to the claims of parties pending the hearing of the proceedings*”.

Having established the jurisdiction of the courts to grant Erinford injunction, the next question is when would an Erinford injunction be granted? This was answered in the case of *Kilang Kosfarm Sdn Bhd v Kosma Nusantara Berhad*<sup>4</sup>.

## Background Facts

This case involved a contractual dispute between a contractor who was appointed to maintain an oil palm estate and the owner of the estate, the plaintiff and defendant respectively. Under the Palm Oil Operation Contract, the Plaintiff was entitled to purchase a portion of the harvested fruits. However, both parties got into a dispute and decided to terminate the contract.

Following the termination of the contract, the plaintiff applied for an *ex parte* injunction to compel the defendant to surrender possession of two pieces of land and to restrain them from interfering with the plaintiff carrying out its contractual obligations. Upon expiry of the said *ex parte* injunction, the plaintiff filed an *inter partes* application for injunction to continue restraining the defendant.

The *inter partes* application was dismissed on the grounds that the balance of convenience lies in favour of the defendant and that damages would be a suitable and adequate remedy for the plaintiff. Following the dismissal, the plaintiff applied for an Erinford injunction pending disposal of its intended appeal. After considering the applicable principles for the grant of Erinford injunction, the High Court dismissed the plaintiff’s application.

<sup>4</sup> [2002] 5 MLJ 662

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## Analysis

In dismissing the Erinford injunction application, the Court followed the decision in *See Teow Guan v Kian Joo Holdings Sdn Bhd & Ors*<sup>5</sup> which sets out the considerations which the Court will consider in deciding whether to grant the Erinford injunction:

- Whether the status quo must be maintained before the hearing of the appeal;
- Whether the balance of convenience lies in favour of the plaintiff;
- Whether the appeal would be rendered nugatory if successful; and
- Whether damages would be an adequate remedy for the plaintiff.

## Status Quo

The Court defined status quo as the state of affairs that existed prior to the plaintiff filing their writ of summons and application for injunction. The Court will adopt equitable principles in determining whether status quo should be preserved pending the disposal of the appeal.

## Balance of Convenience

Similar to the principle enunciated in *American Cyanamid Co v Ethicon Ltd*<sup>6</sup>, the Court weighed the balance of convenience by considering the potential harm that either party would suffer if the Erinford injunction is refused or granted. In this case, the Court held that the balance of convenience lies in favour of the defendant as it would “suffer greater hardship” if the Erinford injunction was granted.

## Nugatory

The Court ruled that an important principle in considering the Erinford injunction was whether the applicant would have any issues enforcing the result of their appeal should it be successful. If so, the Erinford injunction should be granted.

<sup>5</sup> [1996] 3 AMR 3733

<sup>6</sup> [1975] AC 396

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## About Us

We are a full-service commercial law firm with a head office in Kuala Lumpur and a branch office in Penang. Our key areas of practice are as follows:-

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This is a substantial consideration as it would be a waste of the Court's resources if the plaintiff would not be restored to their original position in the event their appeal is successful.

In this case, there was no evidence that the defendant was not financially capable of honouring any judgment if the appeal succeeds. Hence, the Court found it unlikely that the plaintiff would be impeded from enforcing any judgment in its favour. Thus, the plaintiff's appeal would not be rendered nugatory in the event they are successful.

## Damages as an Adequate Remedy

As a general principle, injunctions will not be granted if damages would be a suitable and adequate remedy for the plaintiff. In this case, the Court held that damages would be sufficient as there was a clause in the contract which requires the defendant to compensate the plaintiff upon wrongfully terminating the contract. Additionally, the fact that the plaintiff had claimed for general and exemplary damages indicated that damages would be an adequate remedy for the plaintiff.

## Conclusion

Erinford injunctions are a useful tool for litigants to preserve the status quo pending the disposal of appeal. As illustrated in the analysis above, the Court would only grant an Erinford injunction upon the applicant satisfying all four conditions set out above. This follows the principle of natural justice and is a welcome addition in the "arsenal" of litigation.

Authored by Calan Eskandar, a pupil with the firm's Dispute Resolution practice.

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