

**SDNY ISSUES AN ANTI-SUIT INJUNCTION TO PROTECT
JUDGMENT CREDITOR'S RIGHT TO CONTINUE TO
ENFORCE A \$932 MILLION SWISS ARBITRATION
AWARD CONFIRMED BY SDNY**

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Sonera Holding B.V. v. Cukurova Holding A., 2013 WL 2050914 (S.D.N.Y. May 15, 2013)

This decision is the latest development in the bitterly disputed enforcement case of a \$932 million Swiss arbitration award confirmed by the United States District Court for the Southern District of New York in favor of a Dutch judgment creditor, Sonera Holding B.V. ("Sonera"), against a Turkish judgment debtor, Cukurova Holding A. ("Cukurova").¹

Having confirmed the arbitral award on September 10, 2012, the Court subsequently granted the judgment creditor's request for a preliminary injunction (the "SDNY Injunction") enjoining Cukurova from redeeming certain shares in a transaction (the "Redemption Transaction"), the subject of which was litigated in a related action pending for years in the British Virgin Islands (the "BVI Action"). In turn, Cukurova filed an appeal of the SDNY Injunction and sought either its dissolution or a stay pending appeal. By order dated May 10, 2013, the Court unequivocally denied the dissolution of the SDNY Injunction, but granted a stay subject to Cukurova's posting a bond in the full amount of the judgment.

On the same day that Cukurova sought the dissolution of the SDNY Injunction, it filed a motion in the BVI Action for an injunction (the "BVI Injunction") requiring Sonera to abandon any efforts in the SDNY that would have an effect on Cukurova's ability to complete the Redemption Transaction (the "BVI Motion"). Incredibly, part of the relief that Cukurova sought in the BVI Action is for the BVI Court to require Sonera to seek a voluntary dissolution of the SDNY Injunction and to abandon any request for a permanent injunction. In other words, by the BVI Motion, Cukurova sought to limit Sonera's ability to enforce its judgment in this jurisdiction. In response, Sonera moved in SDNY for an anti-suit injunction requiring Cukurova to withdraw the BVI Motion.

¹ For Wilk Auslander's analysis of a prior decision in this matter relating to service of a restraining notice on Cukurova by service on its attorney in New York, see *Split in Authority Among the SDNY Judges Relating to Service of a Restraining Notice on a Foreign Judgment Debtor's Counsel in New York*: <http://www.wilkauslander.com/news-and-insights/insights/Split-in-Authority-Among-the-SDNY-Judges-Relating-to-Service-of-a-Restraining-Notice-on-a-Foreign-Judgment-Debtor-s-Counsel-in-New-York>

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Applying the two threshold factors necessary for the granting of an anti-suit injunction set forth by the Second Circuit in *China Trade & Dev. Corp. v. MV. Choong Young*, 837 F.2d 33 (2d Cir. 1987) — that the parties must be the same in both proceedings and that resolution of the case before the enjoining court must be dispositive of the action to be enjoined -- the Court granted the anti-suit injunction.

In doing so, the Court relied on the “inherent power” of the federal courts to “protect their own judgments from being undermined or vitiated by vexatious litigation in other jurisdictions” (internal quotations omitted). The Court also noted that the BVI Injunction would effectively hinder Sonera’s only leverage against Cukurova, which, in the Court’s estimation, has proven to be a recalcitrant judgment debtor that ignores even discovery contempt orders.

The Court also held that the BVI Injunction (to the extent granted) would frustrate the public policy that favors enforcement of arbitration clauses in international disputes and endanger the integrity of a federal court judgment. The Court also rejected any notions of comity in enjoining the BVI Motion, expressly stating that “orders of foreign courts are not entitled to comity if the litigants who procure them have deliberately courted legal impediments to the enforcement of a federal court’s orders” (internal quotations omitted). Finally, the Court noted its displeasure with Cukurova’s invoking the authority of a foreign court to interfere with the SDNY Injunction rather than relying on its own appeal in this jurisdiction.

Given Cukurova’s reluctance to comply with the orders of the District Court in the past, it remains to be seen whether it will, in fact, withdraw its motion in the BVI Action in accordance with this decision.

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