



*PETTER v EMC (No. 2) [2015] EWCA CIV 828*

**Having decided to grant an anti-suit injunction, the Court of Appeal has given a further judgment granting not only a prohibitory but a mandatory injunction.**

The first *Employee Competition Bulletin* (available here<sup>1</sup>) discussed the decision of the Court of Appeal in *Petter v EMC Corporation* (27 July 2015) to grant an anti-suit injunction to restrain proceedings brought against Mr Petter in Massachusetts by the parent company of his employer. Interesting as that judgment is, it only tells part of the story. It says nothing about the steps that the parties were taking on both sides of the Atlantic in the run-up to the judgment being handed down. That story is now set out in a second judgment of the Court of Appeal dated 31 July 2015.

Argument in the Court of Appeal took place on 14-15 July 2015. On 21 July, EMC filed motions in Massachusetts for an anti-suit injunction against Mr Petter, which was listed for hearing on 27 July, and for summary judgment. Mr Petter therefore asked the Court of Appeal to give its decision urgently, and the Court indicated that it would. EMC then asked the Massachusetts court for an urgent telephone hearing. Mr Petter made an urgent application to the Court of Appeal for an interim injunction prohibiting EMC from pursuing the Massachusetts proceedings pending the determination of the English appeal, which was granted on 23 July. At the telephone hearing in Massachusetts later that day, EMC's counsel explained to the judge that she could play no active part in the proceedings, but that the English injunction did not oblige her to withdraw the motions. On 24 July, the Massachusetts court granted an anti-suit injunction against Mr Petter.

Against this background, the Court of Appeal ordered EMC not only to take no further steps in the Massachusetts proceedings, but to take such steps as were reasonably open to it to withdraw the motions filed in that court, in particular the summary judgment motion, and to have the US anti-suit injunction discharged. Moore-Bick LJ said that, while the Court was "*acutely conscious of the demands of comity and the courtesy due from one court to another... the course of events... strongly suggested that EMC had made a last minute attempt to pre-empt the decision of this court by seeking to obtain an anti-suit injunction before this court was able to deliver its judgment... EMC had demonstrated not only that it was prepared to engage in a race to judgment, but that, if an order were made in this jurisdiction first, it was unwilling to abide by the outcome.*"

This case therefore shows the lengths to which the English court will go to defend its jurisdiction under the Brussels I Recast Regulation.

The full judgment can be read here:

<http://www.bailii.org/ew/cases/EWCA/Civ/2015/828.html> (scroll to the bottom).

Paul Goulding QC and Andrew Scott, instructed by Allen & Overy LLP, acted for Mr Petter.

**Mark Vinall**

[http://www.blackstonechambers.com/people/barristers/mark\\_vinall.html](http://www.blackstonechambers.com/people/barristers/mark_vinall.html)

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<sup>1</sup> <http://www.blackstonechambers.com/document.rm?id=620>