

Anton Piller Order : Its Growth And Development

By :

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PREFACE

1.1 Objective of Study

The object of this study is to look into the origin, growth and development of the Anton Piller Order, in England as well as in the Malaysian Context.

Accounts on this order is available only on a limited scale. Further the order has undergone tremendous changes since its introduction. It is the aim of this study; to be modest and precise: to remedy the lack of books that gives accounts in this area. It is hoped that this paper will be beneficial to those who wanted to get to know more about the Anton Piller Order.

1.2 Limitation

This study was hindered in one way or another by the lack of resources and articles on the area. This is especially so in relation to the reception and development of the order in Malaysia.

Time, Finance and poor library facilities are another cause of inconveniences and delay to the study.

Further, the writer is new to research work. Because of relatively little knowledge on the part of the writer, there is a tendency that the paper could not be conducted as smoothly as those conducted by highly skilled and experienced researchers.

1.3 Methodology

Since the area covered by the topic are relatively new areas, most of the information taken are from articles and decided cases, much is obtained from lectures under Civil Procedure in relation to the Anton Piller Order.

Abstract

An injunction is an order by the Court to a party with effect that he shall do or refrain from doing a particular act. In England, the jurisdiction is governed by the Court of Judicature Act 1925. In Malaysia the Specific Relief Act 1950 (Revised 1974) granted to the High Court, the discretion to grant temporary or perpetual injunction.

The Anton Piller Order is a new development in the law of injunction. It came into being after the case Anton Piller KG. Vs Manufacturing Process Ltd (1976) 1 All E.R. 779 which laid down the foundation for the Anton Piller Order.

The Anton Piller Order is a simple and effective 'Civil Search' warrant granted ex parte ordering the defendant to permit the plaintiff and his solicitors to enter the defendant's premises for the purpose of inspecting and removing incriminating documents ; of which if not done, could be disposed off or destroyed, and thus would be detrimental to the plaintiff's case.

The Order was subjected to much limitation after the case of Rank Film Distributors V Video Information Centre where the House of Lord uphold the contention that the defendant would not be bound to answer questions in view of the privilege against self incrimination. However, this limitation was checked by the amendment to Section 72 Supreme Court Act, 1981.

The Order was officially accepted in Malaysia by way of the case Lian Keow Sdn Bhd V C Paramjothy (1982) 1 MLJ 1217. This case is very much welcome . It is hoped that further cases on the Order would come in the near future.

Table Of CasesPages

1.	Acrow (Automation) Ltd V Rex Chain Belt Inc (1971) 1 WLR 1676	3
2.	A.G. ex-rel McWhirter V Independent Broadcasting Authnty (19730 Q.B.D. 629	4
3.	AG V Dean And Chapter OF Ripon Cathedral (1945) Ch. 239	4
4.	Anton Piller KG V Manufacturing Processer Ltd (1976) 1 All E.R 779	8
5.	Beddow V Beddow (1878) 9 Ch. D. 89	2
6.	Channel Ltd V FGM (cosmetics) 1981.....	21
7.	Emanuel V Emanuel (unreported) The Times December 5 1981	17
8.	Fraser V Evans (1969) 1 QB 349	4
9.	Lian Keow Sdn Bhd V C Paramjothy and Anor (1982) 1 MLJ 217	28
10.	LicoIn International Ltd V Eagleton Direct Exports Ltd (1982) 8 FSR 161	20
11.	Morris V Redland Bricks Ltd (1970) A.C. 652	3
12.	Rank Film Distributors And Ors V Video Information Centre (1980) 3 WLR 487	19
13.	Sony Corporation And Anand And Seiko Time (UK) Ltd V Domicrest (Fancy Food) Ltd (1981) 7 FSR 348	17
14.	Thorne V BBC (1957) 1 WLR 1104	3
15.	Universal City Studios Inc. V Mukhtar And Sons (1976) 1 WLR 568	8
16.	Yousif V Salama (1980) 3 All E.R. 405	15

Introduction

1.1 Injunction as an equitable remedy

An injunction is an order by the Court to a party with effect that he shall do or refrain from doing a particular act. In England originally, the court of Chancery or Court of Exchequer alone has jurisdiction to grant an injunction. However due to the inevitable duplication that it led to, the Common Law Procedure Act 1854 was passed to give Common Law Courts the power to grant injunctions in certain cases.

In England the present jurisdiction is governed by the Court of Judicature Acts 1925 which vest in the High Court, the jurisdiction of the Court of Chancery and of the Common Law Courts.

In Malaysia, applications for injunctions are made through Order 29 of Rules of the High Court, Court of Judicature Act 1964. Order 29 Rule (1) (i) of the said Rules provides, 'an application for the grant of an injunction may be made by any party to a cause or matter before or after the trial or the cause or matter

Although the Court has jurisdiction to grant an injunction whenever it appears to be just or convenient to do so, the jurisdiction is exercised not on the individual preference of the judge but 'according to sufficient legal reasons or on settled legal principles'.¹