

# US company prevented from suing UK worker in US court

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An injunction has been granted to require that a company withdraw its motions in a Massachusetts court against an employee domiciled in the UK. This was so despite the fact that the relevant agreement reserved jurisdiction to the Massachusetts courts.

Mr Petter was employed in the UK by EMC Europe Limited. EMC Europe's parent company was EMC Corporation, a Massachusetts company. Mr Petter entered into a share incentive scheme with the US parent; the agreement for the scheme was governed by Massachusetts law and gave exclusive jurisdiction to the courts of Massachusetts. Mr Petter tendered his resignation in order to join a competitor and the US parent issued proceedings in Massachusetts seeking a declaration that awards of stock under the incentive scheme could be rescinded. In response, Mr Petter issued proceedings in the English courts seeking, amongst other things, an injunction restraining the proceedings in Massachusetts. The interim injunction application was heard in the High Court on 14 and 15 July 2015. Between then and the delivery of a judgment in the UK, EMC filed motions for an injunction preventing continuance of the UK action and summary judgment. The Massachusetts court obliged in granting the injunction.

The Court of Appeal granted an injunction to restrain the proceedings in Massachusetts. It held that the share incentive scheme was designed to reward on-going service with the UK entity, so was clearly related to Mr Petter's contract of employment. As such, the Recast Brussels Regulation operated to protect Mr Petter by providing that he may only be sued in the UK, being the Member State in which he resided.

The Court of Appeal took the view that EMC's activity in Massachusetts was calculated to pre-empt a decision in the English courts. With that in mind, it provided that the injunction be mandatory – not only was EMC restrained from continuing proceedings in Massachusetts, but it also had to take positive action to withdraw its motions.

Employers should note that even clear jurisdiction clauses in agreements with employees may not be definitive. The European regime provides robust protection and English courts have the authority to restrain proceedings elsewhere in these circumstances and may react adversely to employers' attempts

to subvert it.

Petter v EMC Europe Ltd v anor [2015] EWCA Civ 828

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