

INJUNCTIVE
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ARBITRATION

HAKHEEM SERIKI

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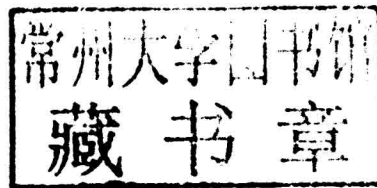
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*In memory of my late father,
Barrister Razaq Atanda Seriki*

FOREWORD

THE HON MR JUSTICE BLAIR

The power of the court of the seat of an arbitration to protect the integrity of the arbitration agreement by granting an injunction restraining a party from commencing or continuing court proceedings is well established, and in exceptional circumstances may extend to granting an anti-arbitration injunction. However, important issues continue to arise as to how this power should be exercised. These include issues as to the relationship between the powers of the court and those of the arbitral tribunal, between the role of the court of the seat and that of other courts that may become involved, and the position where parties that are closely connected to, but not themselves parties to, the arbitration agreement, seek to circumvent its terms. Also, jurisdictional questions often arise in such cases. Other issues remain to arise (for example, the relationship between the jurisdiction of the court and recent provision in arbitration rules for granting “emergency relief,” as under Article 29 of the ICC Rules). In any event, while the underlying principles may be reasonably clear, their application in individual cases can raise difficult questions. The situations where parties feel the need to protect themselves before, during and after arbitral proceedings remain, therefore, a significant area of legal research. Dr Hakeem Seriki is a well-known author on arbitration matters, with strong practical experience, including in relation to Africa. In this new book, he valuably analyses the recent case law of the English courts, including landmark decisions such as that in the *AES Ust-Kamenogorsk* dispute. The result is a coherent and complete explanation of how this field of jurisprudence is developing in the English courts. It is an important addition to the existing literature, and will equally be welcomed by academics and practitioners in the arbitration community.

SIR WILLIAM BLAIR
3 MARCH 2014

PREFACE

International arbitration offers a competent means of dispute resolution tailored to the needs of business users and modern commercial communities. It is therefore no surprise that international arbitration continues to grow in popularity. This, in turn, means that parties to arbitral proceedings are increasingly turning to judicial courts to protect their positions before, during or after arbitral proceedings. This protection is normally sought in the form of an injunction (interim or final) from a court of competent jurisdiction. In England and Wales, we have witnessed a number of important developments in relation to injunctions and arbitration. First, an anti-suit injunction can now be granted even where one party has no intention of commencing arbitral proceedings. Second, there is a willingness on the part of the English courts to grant anti-arbitration injunctions restraining a party from commencing or continuing with arbitral proceedings in appropriate circumstances. Such injunctions were rarely granted a few years ago because they were seen to be at odds with some of the key tenets of international arbitration. Third, the courts will now grant an injunction against a non-party to an arbitration agreement where that party is seen as acting in collusion with the party to the arbitration agreement. In light of these developments, there is a compelling case for an up-to-date work on injunctions and international arbitration, and this book is an attempt to fill that gap. This book is about injunctive relief as an integral part of international arbitration, and I hope that my careful analysis of both the law and procedural aspects of seeking injunctive relief from the courts will assist arbitration practitioners.

This project would not have been achieved without the help and support of many people. I would like to thank the editorial team at Informa for their support and patience while preparing this book. I owe a great deal of gratitude to Professor Rob Merkin for his constant support and help over the years and reading through draft chapters. On a professional level, I would like to thank Ope Sangosanya, Timi Woko, Michelle Harewood, Dr Silvia Borelli, Helen Aldridge and Anita Laybourne, who had to endure the unenviable task of typing up most of the chapters. My thanks go to Matthew Coleman and Ray Werbicki (both of Steptoe & Johnson) for the various lively debates we had while preparing this book.

On a personal note, I need to thank my very special family (including Dina Boykova) for their constant support and encouragement. In particular, my special thanks to my loving mother (Nimota Adufe Seriki) who brought me into this world. She continues to support and encourage me in every step I take.

I have attempted to state the law as at 1 December 2013. However, I have been able to include cases such as *Interprods Limited v De La Rue International Limited* at the proof stage.

HAKEEM SERIKI
2014, LONDON

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