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July 13, 2017

Certification of Translation

I, Leah Newstead hereby declare that I am proficient in the Hebrew and English languages, and the attached translation is, to the best of my knowledge and belief, a true and accurate translation from Hebrew to English of a decision dated February 2, 2003 by the Supreme Court in Right to a Civil Appeal 9785/02 Uriel Yarkoni V. Boston Scientific Corporation. I declare under penalty of perjury that all statements made herein of my own knowledge are true, and all statements made on information and belief are believed to be true.

L Newstead

Leah Newstead

Free Translation from Hebrew

Uriel Yarkoni vs. BOSTON SCIENTIFIC CORPORATION Civil Appeal 9785/02

SUPREME COURT in Jerusalem

Right to a Civil Appeal 9785/02

Before: The Honorable Justice E. Rivlin

The Applicant: Uriel Yarkoni

Against

The Respondents: 1. BOSTON SCIENTIFIC CORPORATION

2. BOSTON SCIENTIFIC LIMITED

3. MEDINOL LTD

4. **The Minister of Justice** - the competent authority for receiving legal assistance from another country.

Request for permission to appeal the decisions of the Tel-Aviv-Jaffa District Court in Civil Case 17492/02 in Civil Appeal 2759/02 of 23.10.2002 and 13.11.2002, which was given by the Honorable Vice-President Justice Y. Gross

On behalf of the Applicant: Adv. Haim Zadok & Co.

On behalf of the Respondents 1-2: Adv. Fischer, Behar Chen & Co.,

On behalf of the Respondent No. 3: Adv. Leshem Brandwein

Decision

1. The Respondents 1-2 on the one side and the Respondent 3 on the other side, are parties to reciprocal claims concerning civil-commercial disputes, pending in the Federal Court of the Southern District of New York (hereinafter: **the New York Court**). As part of the claims, Respondent 1 filed a motion to the New York Court, to conduct a judicial inquiry process of the Applicant and another witness (hereinafter: **the Witnesses**), as those who were employed by the Respondents during the relevant period of the claims and who have important information relevant to the issues in dispute between the Respondents.

The New York Court granted the request and applied to the Minister of Justice, as the "Competent Authority" under the Legal Assistance Between States Law, 5758-1998 (hereinafter: **the Legal Aid Law**), to take the said evidence.

The Minister of Justice exercised his authority and ordered that the Magistrate's Court would hear the witnesses, but they objected to their obligation to testify as aforesaid. The main argument of the Applicant - who is a relevant person to our case - was that the process before the Court is not a process of collecting evidence, but rather a process known as Deposition. This procedure, which is accepted in US Courts, is a preliminary procedure for gathering evidence and enquiring what is the position of potential witnesses by their interrogation. The Applicant argued that since this procedure does not exist in the Israeli legal system, the Court does not have the authority to order a judicial inquiry as requested.

2. The Tel Aviv-Jaffa Magistrates Court discussed the objections to the request and decided to reject them. In a detailed decision, the Court ruled that the proceeding in question meets the requirements of the Hague Convention and the Legal Aid Law, and therefore the New York Court should be granted the legal assistance requested by it. It was decided that the need to find the truth and to perform a fair trial in the proceeding held in the New York Court, overrides the right of the individual not to be harassed. In view of the above, the Court ordered that the witnesses must appear in front of the Respondents counsel in Israel, for the judicial inquiry.

3. The Applicant filed an appeal to the Tel Aviv-Jaffa District Court against the decision of the Magistrate's Court. For the sake of caution, an application for leave to appeal was also filed. At the same time, the Applicant requested that the execution of the decision be stayed.

The District Court rejected the request for a stay of execution. In its decision of October 23, 2002, the Court noted that there is prima facie merit to the Applicant's contention that if his application will be rejected, such rejection will determine the fate of his appeal. However, after considering the balance of convenience and the chances of appeal, the Court reached the conclusion that delaying execution of the judgment might cause substantial damage to the Respondents, while the execution of the judgment will not actually cause damage to the Respondent [sic]. In a decision dated November 13, 2002, the Court also rejected the Applicant's request to cancel its first decision.

4. The Applicant complains against these decisions. He argues that the appeal, in which the delay of execution was requested, raises the unprecedented question of whether the Legal Aid Law obligates a person to appear for judicial inquiry by Deposition, which is a process that is not recognized (and, according to him, is not even allowed) under Israeli law. The Applicant claims that executing the judicial inquiry before resolving the appeal, will make the appeal redundant and purely academic, and therefore the execution should be delayed as requested. The Applicant further argues that the Court erred when it decided to reject his application for a stay in execution before he submitted his reply to the Respondents' response, as required, in his opinion, according to Regulation 241 (c1) of the Civil Procedure Regulations, 5744-1984 (hereinafter: **the Civil Procedure Regulations**).

Respondents 1 and 2 object to the application and rely on the decisions of the lower Courts. They argue again that the requested judicial inquiry is an essential preliminary procedure for them, since the Applicant's position is necessary both in order to formulate their claims in the trial and in order to submit various applications before the evidentiary stage begin. They believe that the Applicants' chances of winning the appeal are not good, as the requested procedure actually falls within the scope of the "Legal Aid" which the State is obligated to render under the Hague Convention and the Legal Aid Law. The Respondents also contend that the District Court did not have to wait for the Applicant's response prior to its decision, and in any case they claim that the second decision of the Court, dated 13 November 2002, was made after the Applicant's response had been filed.

Respondents 3 and 4 did not take a stand on the request and left the decision to the discretion of this Court.

5. After examining the arguments of the parties, I reached the conclusion that the application should be rejected.

Indeed, in the present case, there is no doubt that if the decision of the Magistrate's Court is not stayed and the appeal will be approved, it will be impossible to restore the situation to its previous state. However, under the circumstances of the case, when the New York Court's request for assistance is pending, considering that the Magistrate's Court gave its opinion, in a detailed decision, regarding the Applicant's reservations; and taking into account that the District Court considered the request to stay the execution twice but did not find it appropriate to grant such stay – it would not be right to intervene in this discretion. I also believe that the balance of damages in this case tends to be to the detriment of the Applicant and that the damage which will be caused to him, as a result of affecting his right nor to be compelled and

his right to exhaust his arguments within the scope of the appeal, is lower than the damage to the Respondents in case they will not execute the judicial inquiry.

I also considered the Applicant's additional contention, according to which his right to respond to the Respondents' response to his request was denied, but I did not find any real grounds to it. The request for a stay of execution is an interim request in the appeal and as such is subject to Regulation 465 of the Civil Procedure Regulations, which allows the court to reject the application, even without hearing the reply of the Applicant to the Respondent's response to the application. As such, we are not required at this time to decide on the relationship between Regulation 241 (c1) and Regulation 241 (d) of the Civil Procedure Regulations.

Therefore, the application is rejected. The Applicant shall bear the costs of Respondents 1 and 2 in the amount of NIS 7,500.

Rendered today, February 2, 2003.

Judge

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