

BARBADOS

[Unreported]

**IN THE SUPREME COURT OF JUDICATURE
HIGH COURT
CIVIL DIVISION**

CV. No. 897 of 2013

BETWEEN:

SUSAN PATRICIA WALKER

CLAIMANT

AND

VIRGIN HOLIDAYS LTD (PART 20 CLAIMANT)

1ST DEFENDANT

PROSPECT BAY RESORTS LTD (PART 20 DEFENDANT)

2ND DEFENDANT

**Before the Honourable Madam Justice Margaret A. Reifer, Judge of the
High Court**

**Dates of Hearing: 2013 October 29th
November 1st
2014 January 6th, 7th
March 26th
June 5th
2016 January 27th**

Appearances:

**Mr. Chester L. Sue Attorney-at-Law for the 1st Defendant (Part 20
Claimant) ex parte Applicant**

REASONS FOR DECISION

The Application

[1] By Application dated May 29th 2013, the First Defendant herein applied for the registration of a foreign judgment against the Second Defendant under the **Foreign & Commonwealth (Reciprocal Enforcement of Judgments) Act Cap. 201 (FCJA) and Part 72 of the Supreme Court (Civil Procedure) Rules 2008 (CPR)**. The said Application is set out ‘*in extenso*’ below:

“The 1st Defendant (PART 20 CLAIMANT under the CPR of the UK) applies to the court for an order that:

The judgment dated 30th day of November 2011 and made by District Judge Parfitt sitting at Mayors & City of London County Court, The Guildhall Building, Basinghall Street, London, EC2V 5AR that:

- (1) There be judgment for the Part 20 Claimant on the Part 20 Claim in the sum of £49,751.
- (2) The Part 20 Defendant do pay the Part 20 Claimant’s costs in connection with assessment of the Claimant’s costs in the sum of £2190.
- (3) The Part 20 Defendant do pay the Part 20 Claimant’s costs of this application summarily assessed on indemnity basis in the sum of £1829.
- (4) All the above sums to be paid within 21 days of the date of the order.

be registered in the High Court of Barbados against the Second Defendant (Part 20 Defendant).

A draft of the Order that I seek is attached.

The grounds of the Application are:

The above judgment to date remains unsatisfied.”

[2] The Application was accompanied by the Affidavit of Mr. Chester Sue, attorney-at-law as authorized by Mr. Gary Tweddle, Solicitor, for Judgment Creditor Virgin Holidays Ltd (Part 20 Claimant under the UK, CPR).

[3] After it was pointed out *'in limine'* by the Court that the time for the filing of such a judgment had expired, counsel filed with leave on October 28th 2013 an Amended Notice of Application seeking the following additional relief:

“... and the time for making this application be extended beyond 12 months from the date of the judgment sought to be registered.”

[4] Further Affidavits were filed in this matter as follows:

1. Affidavit of Gary James Tweddle dated 23rd October 2013 and filed October 28th 2013;
2. Affidavit of Gary James Tweddle filed December 4th 2013;
3. Affidavit of Chester Sue dated December 9th 2013;
4. Affidavit of Chester Sue dated April 2nd 2014.

The Amended Notice of Application

[5] As mentioned above, this Court pointed out to the Applicant that the application was out of time as **section 3(1)** of the **FCJA** requires a judgment creditor to apply to the High Court within 12 months of the date of judgment to have the judgment registered. It lies within the discretion of the Court, on an application having been made, to enlarge the time (“such longer period as may be allowed by the High Court”).

- [6] This Court observes that the Affidavit of Gary James Tweddle of December 4th 2013 speaks to the reason for the late application without speaking to the record and core consideration, namely, whether there was any prejudice caused to the judgment debtor by the extension: see **Quinn v Pres-T-Con Limited [1998] 35 WIR 379**.
- [7] However, this Court took the view that there appeared to be no prejudice caused to the judgment debtor and allowed the application to proceed.
- [8] The Claimant in this proceeding Susan Patricia Walker entered no appearance in this Court. The 1st Defendant Virgin Holidays is also referred to as a Part 20 Claimant under the UK CPR, while the 2nd Defendant Prospect Bay Resorts is referred to as the Part 20 Defendant.
- [9] It is apparent from the ‘Order’ and other documents filed that the 1st Defendant/Part 20 Claimant sought and obtained judgment against the 2nd Defendant/Part 20 Defendant, Prospect Bay Resorts and now sought to enforce that judgment inclusive of costs and interest against the said 2nd Defendant (Part 20 Defendant).
- [10] Attorney Sue deposed on the authority and instruction of Solicitor, Mr. Tweddle, that the judgment had not been satisfied in the amount of £53,770 inclusive of costs and together with interest of £11.78 per day and that judgment may be ordered to be registered for enforcement

pursuant to the **Foreign & Commonwealth Judgment (Reciprocal Enforcement of Judgments) Act Cap. 201 and Part 72 of the CPR.**

ISSUES ARISING

[11] The sole issue that arose for the determination of this Court was, whether the contents of the Application (as amended) and Affidavits in Support thereof, and specifically, the Judgment/Order obtained by the First Defendant (Part 20 Claimant) in the UK Court meet the requirements of Barbadian Law to the extent that the said Order is capable of registration, and subject to enforcement within this jurisdiction.

[12] On June 5th 2014 this Court informed counsel for the Claimant that the Application had been denied and undertook to provide written reasons therefor.

THE LAW

[13] The process at hand is impacted by the following three statutory provisions:

1. The Foreign & Commonwealth Judgment (Reciprocal Enforcement of Judgments) Act (FCJA) Cap. 201;
2. Reciprocal Enforcement of Judgments (Part 72) of the CPR;
3. The Evidence Act Cap. 121.

1. The Requirements of the Foreign & Commonwealth Judgment (Reciprocal Enforcement of Judgments) Act (hereinafter referred to as the FCJA)

[14] The grounding authority for the registration of foreign judgments is to be found at **section 3(1)** which provides as follows:

“Where a judgment has been obtained in a superior court in the United Kingdom, the Judgment creditor may apply to the high court at any time within twelve months after the date of the judgment, or such longer period as may be allowed by the High Court, to have the judgment registered in the High Court, and on such application the High Court may, if in all the circumstances of the case it thinks it just and convenient that the judgment should be enforced in this Island and subject to this section, order the judgment to be registered accordingly.”

[15] The following further provisions to be found at **section 3(2)** are fundamental to the assessment of an application of this nature:

“No judgment shall be ordered to be registered under this section if:

- (a) ...
- (b) the judgment debtor, being a person who was neither carrying on business nor ordinarily resident within the jurisdiction of the original court, did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of that court; or
- (c) the judgment debtor, being the defendant in the proceedings, was not duly served with the process of the original court and did not appear, notwithstanding that he was ordinarily resident or was carrying on business within the jurisdiction of that court or agreed to submit to the jurisdiction of that court;
- (d) ...”

2. Reciprocal Enforcement of Judgments (Part 72 of the CPR) and Judgments and Orders (Part 40) UK CPR (which mirrors Part 42 of the B'dos CPR)

[16] **Part 72** speaks more specifically to the procedural requirements for the registration of a judgment of a foreign court or tribunal in Barbados, subject to the requirements of any relevant enactment in force (this being of course the FCJA) which relates to the reciprocal enforcement of judgments (**rule 72.1(2) and (3)**).

[17] **Rule 72.2(1)** speaks directly to this as follows:

“... an application to have a judgment registered in the High Court may be supported by evidence on affidavit

- (a) annexing or exhibiting the judgment or a verified or certified or otherwise duly authenticated copy thereof;
- (b) stating the name, trade or business and the usual or last known place of abode or business of the judgment creditor and judgment debtor respectively, so far as is known to the deponent;
- (c) stating to the best of the information and belief of the deponent and giving the source and grounds of that information and belief,
 - (i) that the judgment creditor is entitled to enforce the judgment;
 - (ii) that at the date of the application the judgment has not been satisfied;
 - (iii) the amount in respect of which it remains unsatisfied;
 - (iv) that the judgment may be ordered to be registered for enforcement under a specified relevant enactment; and
 - (v) that the registration would not be, or be liable to be, set aside under any relevant enactment; and
- (d) specifying the amount of interest, if any, which under the law of the country of the original court has become due under the judgment up to the date of the application for registration.”

[18] Where the sum payable under a judgment sought to be registered is expressed in a currency other than the currency of Barbados, the Affidavit must state the amount that sum represents in Barbados currency, calculated at the rate of exchange prevailing at the date of judgment: **rule 72.2(3)**.

[19] The Judgment/Order submitted for registration fails to meet the requirements of our **Part 42** which specifies the standard requirements for the form and content of Judgments/Orders. Our **Part 42** is similar to Part 40 of the CPR of the United Kingdom. Of interest, are the provisions that speak to sealing and authenticity.

3. The Evidence Act Cap. 121

[20] **Section 128 (1)(e)** of the **Evidence Act** provides that the presumptions specified in subsection (2) apply where the imprint of the seal of a body, including a court or a tribunal, or a body corporate established by or under Royal Charter or by an Act, or by the law of a foreign country. Under **section 128 (2)**, the presumptions referred to in subsection (1) are (a) that the imprint is the imprint of the seal of which it purports to be the imprint; (b) that the document was duly sealed as it purports to have been sealed.

[21] **Section 129** states:

“A document that purports to be a copy of, or a faithful extract from, or a summary of, a public document and to have been

- (a) sealed with the seal of a person who, or body that, might reasonably be supposed to have custody of the public document;
or
- (b) certified as such a copy, faithful extract or summary by a person who might reasonably be supposed to have the custody of the public document

shall be presumed, unless the contrary is proved, to be a copy of the public document, or a faithful extract from or a summary of the public document, as the case may be.”

[22] This provision speaks directly to the documents/orders to be submitted from a foreign jurisdiction and the need to ensure that these documents are properly authenticated. This Court was particularly concerned by the quality of the document submitted for registration: it was unsigned, there were unsigned corrections and deletions; provisions for the payment of interest were deleted on the face of the document while the application sought judgment plus interest in an amount of £11.78 per day from the 28th day of December until payment; the document submitted carried no date on which the order sought to be registered was made or entered (the application stated that this order was made on the 30th November 2011) and issues arose as to whether the said judgment was ‘sealed’ as opposed to ‘stamped’. This Court’s concerns about this document were not entirely satisfied by the affidavit of Gary James Tweddle filed

October 28th 2013, purportedly filed to address these concerns, among others.

Grounds for Refusal of Application

[23] Viewing this matter in its entirety, the following grounds, *inter alia*, weighed heavily in this Court's determination not to record this judgment:

1. That the judgment was made in the absence of the Part 20 Defendant in contravention of **section 3(2)(b) and (c) of the Foreign and Commonwealth Judgment (Reciprocal Enforcement of Judgments) Act Cap. 201**. This provision of the Act is in keeping with English conflict of laws rules and rules of international law, followed in this jurisdiction, that the foreign court must have jurisdiction over the defendant: see **Sirdah Gurdyal Singh v Rajah of Faridkote [1894] A.C. 670; Blackstone's Civil Practice 2011 at paragraph 77.3** which cites **Adams v Cape Industries plc. [1990] Ch. 433** and **Rubin v Eurofinance SA [2009] EWHC 2129 (Ch); Maycock v International Sea Food Ltd. No. 355 of 1982 (unreported decision of the High Court of Barbados of January 19th 1984)**. Paragraph 77.3 of Blackstone's Civil Practice 2011 states as follows:

“The defendant at the dates of the hearing must have been present in the foreign country (**Adams v Cape Industries plc [1990] Ch. 433**). Alternatively, the defendant must have submitted, or agreed to submit to the jurisdiction of the foreign court. Actual submission includes voluntary appearance in the foreign court other than for disputing jurisdiction. Agreement to submit includes contractual non-exclusive and exclusive jurisdiction clauses as well as clauses relating to acceptance of service of process. The court will not permit enforcement of a foreign judgment against a person who has played no part in the foreign proceedings (**Rubin v Eurofinance S.A. [2009] EWHC 2129 (Ch)**).”

There is no evidence properly before the Court that the judgment debtor had in fact appeared before the UK Court or being a registered company in Barbados was a person carrying on business or ordinarily resident in the UK or had submitted or agreed to submit to the UK Court.

2. The inadequacies evident on the face of the Order submitted for registration, which being, *inter alia*, the Order submitted failed to state the name and judicial title of the person who made the Order in contravention of **Rule 40.2(2)** of the UK CPR, it lacks the date on which it was given or made, and is merely ‘stamped’ rather than ‘sealed’.
3. The failure to satisfy this Court that the judgment issued from a superior court in the United Kingdom.

Disposal

[24] In the circumstances, this application for registration of a foreign judgment is denied.

MARGARET A. REIFER
Judge of the High Court